

BARRIRS TO PROVING ELECTORAL MALPRACTICES IN NIGERIA

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BENIN CITY

NOVEMBER, 2025

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**FACULTY OF LAW, UNIVERSITY OF BENIN, BENIN CITY, BEING AN
ESSAY WORK WRITTEN AND SUBMITTED TO THE FACULTY OF LAW
UNVIVERSITY OF BENIN, IN PARTIAL FULFILLEMENT OF THE
REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR
LAWS (LLB) OF THE UNIVERSITY OF BENIN, BENIN CITY.**

NOVEMBER, 2025

CERTIFICATION

I, Norbert Oseikhuemen ASIRAWEDE, with matriculation number **LAW2002839**, hereby certify that, with the exception of references to the works and opinions of other writers duly acknowledged herein, this entire project is a product of my personal research and findings. It has, neither in whole or in part, been presented for another degree elsewhere.

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APPROVAL

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DEDICATION

This work is dedicated to God almighty and to my family and friends who have been my constant source of love, support and inspiration throughout my academic journey.

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- ❖ *Sergaent Awuse v Peter Odili (2005) 16 N.W.L.R(pt.952) 416 C.A*
- ❖ *Wike v. Peterside (2016) 3 NWLR (Pt 1500) 1 (SC) 44*

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- ❖ • Constitution of the Federal Republic of Nigeria, 1999 (as amended)
- ❖ • Criminal Code 2004
- ❖ • Electoral Act, 2022
- ❖ • Electoral Act, 2010
- ❖ • Evidence Act, 2011
- ❖ • Nigeria Police Act 2020

LIST OF ABBREVIATIONS

- ❖ **INEC** – Independent National Electoral Commission
- ❖ **BVAS** – Bimodal Voter Accreditation System
- ❖ **IReV** – INEC Result Viewing Portal
- ❖ **NDI** – National Democratic Institute
- ❖ **APGA** – All Progressives Grand Alliance
- ❖ **PDP** – Peoples Democratic Party
- ❖ **PLAC** – Policy and Legal Advocacy Centre
- ❖ **CFRN** – Constitution of the Federal Republic of Nigeria (1999)
- ❖ **NLR** – Nigeria Law Report

- ❖ **NCLR** – Nigeria Constitutional Law Report

- ❖ **CDC** – Constitutional Drafting Committee

- ❖ **SCR** – Supreme Court Reports

- ❖ **Pt** – Part

- ❖ **Pg** – Page

- ❖ **Ed** – Edition

- ❖ **Ibid** – The same.

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ABSTRACT

Despite wide-spread reports of electoral frauds and irregularities in Nigeria, proving same remains a major challenge in Nigerian courts. This study explores the barriers to effectively proving electoral malpractices within the Nigerian political and legal systems. It investigates the institutional, legal, political, and socio-cultural obstacles that hinder the collation, presentation and acceptance of credible evidence in resolution of electoral disputes. The core problem lies in the systemic challenges that make it very difficult for petitioners to provide sufficient evidence to meet the high evidentiary burden required by election tribunals and courts. This research aims to identify and analyze these specific barriers, including procedural obstacles, institutional challenges, and socio-political factors, to understand the barriers to proving electoral malpractices.

The methodology adopted for the study is the doctrinal method of research. In doing this, the study examined primary and secondary data which was obtained from scholarly articles, reports of election observer missions, judicial case, and official publications from the Independent National Electoral Commission (INEC). The methodology was further developed through a thematic analysis approach, which allowed for a detailed examination of recurring challenges such as evidentiary limitations, influence on electoral tribunals, and the inadequacies of existing legal and institutional frameworks.

Findings from the study reveal that the barriers to proving electoral malpractices in Nigeria are multi-dimensional. Legal barriers, such as strict evidentiary requirements and short timelines for litigation, create significant obstacles for petitioners. Institutional challenges, including poorly funded and poorly trained investigative bodies, which further limit the ability to gather credible evidence. Politically, widespread corruption, intimidation, and lack of judicial independence worsen the problem, making it extremely difficult for victims of electoral fraud to obtain justice. The study also identifies key issues such as limited access to reliable evidence, intimidation of witnesses, delays in judicial processes, lack of technological infrastructure, and political interference in legal proceedings as barriers to proving electoral malpractices before the courts in Nigeria. The findings suggest that these barriers not only undermine public trust in the electoral process but also weaken

democratic accountability. The study concludes by recommending reforms aimed at strengthening the legal framework, improving evidence-gathering mechanisms, and enhancing the independence of electoral and judicial institutions in Nigeria.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 INTRODUCTION

Elections are seen as the mainstay of democratic governance, providing a legitimate way through which citizens can choose their leaders and influence public policies. The concept, however, dates back to ancient Greece, where certain public officials were elected by lot or vote. The modern representative democracy emerged prominently after the Glorious revolution (1688) in Britain, the American Revolution (1776) and French revolution (1789), which expanded electoral principles though suffrage was initially limited to elites.¹ However, the 19th and 20th centuries saw the expansion of voting rights globally, with key achievements. In our world today, elections are main pillars of democratic systems worldwide.²

The Supreme Court of Nigeria, in the case of *Ariori & Ors v. Elemo & Ors*³, per Kayode Eso, JSC, defined election as "*the act of choosing between two or more inconsistent rights or courses. The doctrine of election postulates that a party who has two inconsistent rights or remedies must elect between them; he cannot have both.*" This principle was further reiterated in *Ajide v. Kelani*,⁴ where the court emphasized that once a party makes an election between two inconsistent remedies, that party is bound by the choice and cannot later seek to pursue the alternative remedy. Also in *Ogboru v. Uduaghan*,⁵ the court held that the term "*election*" is a broad and generic concept. It refers to a process that encompasses a series of activities, including accreditation, voting, collation of results, recording the outcomes on the appropriate INEC forms, and ultimately, the declaration of results. The essence of this decision is that for an election, as recognized by law, to be deemed to have occurred, all these fundamental components must be demonstrated to have been carried out. If any of these essential steps are absent or compromised, it casts doubt on the validity of the election and provides grounds for challenging the outcome through an election petition.

¹ Hansen, M. H. (1991). *The Athenian Democracy in the Age of Demosthenes*. Blackwell.

² Dunn, J. (2005). *Setting the People Free: The Story of Democracy*. Atlantic Monthly Press.

³ (1983) 1 SCNLR 1.

⁴ (1985) 3 NWLR (Pt. 12) 248.

⁵ SC.18/2012.

The integrity of electoral processes is foundational to the stability and legitimacy of any democracy. In Nigeria, this principle has been a persistent point of contention since the nation's inception. The electoral history is a tumultuous one, characterized by repeated transitions between civilian and military rule, with many general elections since independence in 1960 either annulled or heavily contested due to widespread irregularities.

The challenges of electoral malpractice, voter suppression, and political violence have long frustrated the aspirations of a credible democratic system. Indeed, even during the colonial period, elections were marred by rigging and malpractices.

Despite the return to democratic rule in 1999, the Fourth Republic has consistently struggled with credibility issues. Scholarly and official reports, including those from the Carter Center and the National Democratic Institute (NDI), have repeatedly highlighted the need for comprehensive reforms, noting the disillusionment and failure that have historically followed elections in the country. The enduring "desire for electoral reforms" has driven successive legislative efforts, culminating in the Electoral Act 2022, which introduced significant technological and procedural changes aimed at enhancing transparency and public trust.

However, in emerging democracies like Nigeria, electoral processes are frequently impaired by systemic irregularities and malpractices that subvert the will of the electorate⁶. Nigeria's electoral history has been marred by persistent irregularities. Indeed, there exist a popular opinion that "since 1999 the outcomes of elections in Nigeria have scarcely reflected the will of the voters owing to an landslide of electoral malpractices".

Further, electoral malpractices in Nigeria have evolved beyond ballot tampering and snatching and have even taken more advanced forms such as vote-buying, manipulation of electoral technologies, falsification of results, electoral violence, voters impersonation, gerrymandering and judicially-induced victories through post-election litigation. These practices have not only eroded public confidence in the electoral process but have also posed significant challenges to democratic consolidation in the country. For instance, the repeated occurrence of irregularities in elections has fostered a pervasive sense of apathy and distrust, where citizens increasingly view the electoral system as rigged in favor of powerful elites rather than a genuine reflection of the people's will. This erosion is not merely anecdotal; it is

⁶ International Crisis Group, Mitigating Risks of Violence in Nigeria's 2023 Elections, Africa Briefing N°188, 2023, available at <https://www.crisisgroup.org/africa/west-africa/nigeria/311-mitigating-risks-violence-nigerias-2023-elections>.

evidenced by declining voter turnout rates, which dropped low to approximately 29% in the 2023 presidential elections, signaling a profound loss of faith in the process.⁷ Such low participation rates highlight how malpractices perpetuate a cycle of disengagement, where voters feel their ballots are inconsequential amid rampant fraud. Moreover, this lack of confidence extends beyond immediate electoral cycles, posing long-term threats to democratic consolidation by weakening institutions like the Independent National Electoral Commission (INEC) and the judiciary, which are meant to safeguard electoral integrity. Legal writers and observers have noted that when elections are perceived as unfair, it not only delegitimizes elected governments but also invites social unrest, economic instability, and a regression toward authoritarian tendencies, as seen in Nigeria's history of military interventions following disputed polls.⁸ The 2023 elections, in particular, amplified these concerns, with reports from international observers indicating that irregularities such as voter suppression and violence further alienated the electorate, eroding the social contract essential for democratic stability.⁹ This situation is compounded by socio-economic factors, including poverty and illiteracy, which make vulnerable populations more susceptible to manipulation, thereby entrenching a system where democracy appears to serve the interests of a few rather than the many. More so, it is common knowledge known even to the very young minds in our societies that election rigging has become a norm with budgetary allocations subtly earmarked for manipulating outcomes. This normalization of rigging is deeply ingrained in the political culture, where contestants and parties often anticipate and plan for fraudulent activities as part of their campaign strategies. Historical analyses reveal that since the return to civilian rule in 1999, nearly every major election cycle has been tainted by allegations of fraud, making it a predictable element rather than an anomaly.¹⁰ For example, in the 2015 and 2019 elections, the use of technology like smart card readers was intended to curb rigging, but instead, it became a tool that was manipulated or bypassed, reinforcing the perception that rigging is inevitable.¹¹ Budgetary allocations for such manipulations are often disguised within larger campaign expenditures, with funds diverted from public resources or party

⁷ Chatham House (2023). "Nigeria: Trust and Turnout Define 2023 Elections." International Affairs Think Tank Report, London: Chatham House.

⁸ International Crisis Group (2023).

"Nigeria's 2023 Elections: Risks and Resilience." Africa Briefing No. 189. Brussels: International Crisis Group.

⁹ European Union Election Observation Mission (EUEOM) (2023). "Final Report: Nigeria General Elections 25 February and 11 March 2023." EU EOM Report. Abuja: European Union.

¹⁰ Madueke, I. (2025). "Electoral Integrity and Election Management in Nigeria: The Case of the 2023 General Election." *World Affairs*, Early View. Available at: <https://onlinelibrary.wiley.com/doi/full/10.1002/waf2.12055>.

¹¹ Agbu, O. (2016). "Election Rigging and the Use of Technology: The Smart Card Reader as the Joker in Nigeria's 2015 Presidential Election." *Journal of African Elections*, 15(2), pp. 90-107.

coffers to facilitate vote-buying, result tampering, and other illicit activities. Reports indicate that political actors allocate substantial sums, sometimes in billions of naira, for these purposes, subtly integrated into official budgets under vague categories like "security votes" or campaign logistics, which lack transparency and accountability.¹² This practice not only distorts electoral outcomes but also perpetuates inequality, as wealthier candidates or parties gain an unfair advantage, sidelining merit-based competition. The implications are far-reaching.

It discourages genuine political participation, fosters corruption at all levels of governance, and undermines economic development by diverting resources away from public welfare. In essence, the entrenchment of rigging as a norm reflects a systemic failure, where the absence of stringent enforcement mechanisms allows financial manipulation to thrive, further entrenching a culture of impunity that hampers Nigeria's democratic aspirations. The financial demands of challenging electoral irregularities through petitions have escalated dramatically, turning the pursuit of justice into an exclusive arena for the affluent. In Nigeria however, filing and prosecuting an election petition involves exorbitant costs, including legal fees, expert witness expenses, and administrative charges, often running into hundreds of millions of naira.¹³ This high barrier effectively disenfranchises less-resourced candidates and parties, who may have legitimate grievances but lack the funds to sustain lengthy legal battles. For instance, following the 2023 elections, over 1,200 petitions were filed, but many were withdrawn due to the prohibitive costs, highlighting how financial constraints act as a deterrent to accountability.¹⁴ These costs are exacerbated by the specialized nature of election tribunals, which require petitioners to gather extensive evidence, including forensic audits and witness testimonies, all within tight timelines imposed by the Electoral Act. The permanence of this fixture in electoral processes stems from inadequate reforms; despite amendments to the Electoral Act in 2022, the framework still favors incumbents who can afford prolonged litigation, thereby perpetuating a system where justice is commodified.¹⁵ This dynamic not only discourages challenges to fraudulent results but also reinforces public distrust, as ordinary citizens perceive the system as rigged against the underprivileged.

¹² M.T. (2018). "Camouflaged Cash: How 'Security Votes' Fuel Corruption in Nigeria." Transparency International Defence & Security.

¹³ Ojo, J.F. (2023). "The Cost of Electoral Justice in Nigeria: An Analysis of Petition Litigation Post-2023 Elections." *Nigerian Journal of Law and Democracy*, 7(3), pp. 45-62.

¹⁴ Premium Times (2023). "Over 1,200 Election Petitions Withdrawn in Nigeria Due to High Costs Post-2023 Elections." *Premium Times*, 15 April.

¹⁵ Okonkwo, C. (2023). "Electoral Act 2022 and the Challenges of Petition Litigation in Nigeria." *Nigerian Bar Journal*, 12(4), pp. 78-95.

Broader implications include a chilling effect on political pluralism, where potential reformers are deterred from participating due to the financial risks involved. However, to mitigate this, proposals for subsidizing petition costs or establishing dedicated funds for electoral disputes have been suggested, but implementation remains elusive, leaving the high costs as a structural barrier to fair electoral adjudication.

Furthermore, while the high cost of election petitions has become a permanent fixture of electoral processes, it is even more disheartening that the judiciary, particularly the election tribunals in this sense, which is meant to uphold justice and punish electoral offenders are widely perceived in Nigeria as an organ compromised by bribery, with political parties allegedly buying favourable judgments in election petition cases. The judiciary, once revered as the last hope of the common man, has increasingly been viewed with suspicion due to pervasive allegations of corruption, especially in handling election-related matters. Public perception in Nigeria holds that election tribunals are susceptible to external influences, where bribes are exchanged for rulings that uphold disputed results.¹⁶ In election petition cases, parties with deeper pockets allegedly secure favorable outcomes through under-the-table deals, undermining the impartiality essential for democratic justice. Reports from civil society and international observers document instances where conflicting judgments and undue delays suggest bribery's role, eroding the institution's credibility.¹⁷ The 2023 polls, for example, were surrounded by complaints ranging from disenfranchisement and violence to electronic system failures and vote “tinkering”. An interesting case in Nigeria was the case of Ondo State gubernatorial election in 1983 where the NPN candidate, Chief Akin Omoboriowo was declared elected by the Electoral Commission against Chief Michael Ajasin of UPN, who was the actual winner of the election. Chief Omoboriowo’s results were actually inflated while that of Chief Ajasin was decreased.¹⁸ In the case of *Sadu Malumfashi v. Usman Yaba & Ors*,¹⁹ the Court of Appeal, per Rowland JCA, held that electoral malpractice can be established where the total number of votes scored by all parties in an election exceeds the number of accredited voters. The court further reasoned that such a situation clearly indicates falsification of results, as it provides a concrete legal benchmark for identifying when the declared result has been tampered with. Also, another case of

¹⁶ Akinyemi, T.O. (2024). "Judicial Integrity and Electoral Justice in Nigeria: A Post-2023 Perspective." *Journal of African Law and Governance*, 18(1), pp. 23-40.

¹⁷ T.O. Akinyemi, *Judicial Integrity and Electoral Justice in Nigeria: A Post-2023 Perspective* (2024) 18(1) *Journal of African Law and Governance* 23.

¹⁸ *Omoboriowo v Ajasin* (1984) 1 SC 206.

¹⁹ (1999) JELR 43882 (CA), Appeal No. CA/K/EPLG/24/99 (Court of Appeal).

electoral fraud was observed by the Human Right Watch on the 2007 presidential election, which documented reports of clear instances of result falsification and voter disenfranchisement. One of which was that in some communities in Katsina state, polling stations never opened, yet official results later showed overwhelming victories for the ruling party.²⁰ This report also noted that voter registration cards were used by young children, and that ballot boxes were diverted and results tabulated in the home of a local government chairman, bypassing the official process entirely. This is a direct example of voter impersonation and result falsification. In theory, Nigeria’s Constitution and Electoral Act provides remedies in which dissatisfied electoral candidates may file petitions before election tribunals under *Section 285 of the 1999 Constitution (as amended) and Sections 133 – 134 of the Electoral Act 2022*. It provides for both election petition matters and pre-election matters. However, in practice, it turns out that proving that electoral malpractices occurred has proven very difficult. Despite numerous reforms such as the amendments to the Electoral Act, the introduction of technological innovations like the Bimodal Voter Accreditation System (BVAS) and INEC Result Viewing Portal (IREV), legal backing for electronic voting and transmission of results, and the establishment of strict timelines for the resolution of

pre-election matters, amendments to the proving allegations of electoral malpractice before election tribunals and courts remains an arduous task.²¹

One fundamental hurdle is the evidentiary regime imposed on election petitioners. Despite these alleged irregularities, when the Electoral Commission (INEC), announces an election result, it is presumed correct and authentic and anyone who alleges otherwise has a compelling duty to prove that the results are incorrect and not authentic.²² However, it is important to note that the presumption is rebuttable, an electoral candidate or political party who participated in an election may question the result announced by INEC by way of a petition under *Section 133 of the Electoral Act, 2022*.²³ This “presumption of regularity and correctness” tilts the playing field toward the declared winner. In effect, the maxim “he who asserts must prove” applies with special force. Election jurisprudence, which is “*sui generis*”, further burdens petitioners: evidence of malpractices like over voting or violence must meet

²⁰ Human Rights Watch, Nigeria: Presidential Election Marred by Fraud, Violence – Government Should Respect Challenges to Failed Polls (25 April 2007) <https://www.hrw.org/news/2007/04/25/nigeria-presidential-election-marred-fraud-violence> accessed 30 August 2025.

²¹ Okoye, F., “Electoral Adjudication in Nigeria: Legal Framework and Institutional Challenges,” *Nigerian Law Journal*, Vol. 20, No. 2, 2018, pp. 142-150.

²² *CPC v. INEC* (2011) 18 NWLR (Pt. 1279) 493.

²³ Section 133 of the Electoral Act, 2022

exacting standards and strict procedural deadlines. For example, *Section 134(1) of the Electoral Act 2022* confines challenges to three grounds (unqualified candidate, corrupt practices or non compliance, or not receiving majority votes and *Section 135* stipulates “substantial” compliance, stating an election shall not be invalidated unless the breach “substantially affected the results.”²⁴ Thus, petitioners must not only prove an irregularity occurred but also that it was material enough and substantial to change the outcome.

Clearly, these legal strictures translate into very difficult proof barriers. Courts routinely insist that only direct witnesses can attest to electoral fraud. In *Atiku v. INEC*²⁵ it was held that allegations of corrupt practices at polling units can “only be proved by a witness who is present at the polling unit”

The procedural and institutional framework compounds these evidentiary difficulties. Constitutional and statutory deadlines force rapid adjudication. the Constitution (section 285) and Electoral Act give tribunals 180 days (and appellate courts only 60 days) to conclude a petition

Legal scholars have repeatedly pointed out that while Nigeria possesses a robust legal and institutional framework to address electoral offenses, the practical enforcement of these laws are fraught with procedural blockage, evidentiary challenges, and institutional weaknesses. Moreover, a recurring issue in Nigeria’s electoral adjudication is the heavy burden of proof placed on petitioners, who are often required to establish cases of electoral fraud. This standard is aggravated by the lack of timely and credible access to electoral materials, technological data, the reluctance of electoral officers and security agents to testify in court . Consequently, many petitions alleging substantial electoral irregularities have been dismissed on technical grounds, rather than being assessed on substantive merit.²⁶

This project study therefore focuses on analyzing these constraints: how the law’s burdens of proof, evidentiary rules, and institutional practices effectively raise the bar for proving electoral malpractice. The research will illuminate why so many allegations of fraud and electoral misconduct fail to translate into legal remedy and what reforms when taken into proper consideration might address these barriers to proving electoral malpractices in Nigeria.

²⁴ Section 135 of the Electoral Act 2022

²⁵ (2019) JELR 91596 (SC), SC.1211/2019, delivered 15 November 2019.

²⁶ *Buhari v. INEC* (2008) 19 NWLR (Pt. 1120) 24.

1.2 BACKGROUND OF THE STUDY

Elections are generally known as the bedrock of modern democracy, serving as the primary institution through which the people choose their representatives and also influence public policy. In Nigeria, the conduct of elections has persistently been characterized by loads of irregularities and malpractices that undermine the credibility of the electoral process and weaken public trust in democratic institutions. Electoral malpractices have become an endemic challenge that continues to threaten the integrity of Nigeria's democracy.

Despite the existence of comprehensive legal frameworks, like the Constitution of the Federal Republic of Nigeria (1999 as amended), the Electoral Act, 2022, and even the Evidence Act, 2011 among others, set out certain procedures for the conduct of elections and remedies for resolving electoral disputes, the practical reality remains that many victims of electoral fraud are unable to obtain justice. The Nigerian electoral jurisprudence has evolved significantly over the years, with electoral tribunals and courts delivering judgments aimed at ensuring fairness and accountability. Nonetheless, a recurring challenge persists: the difficulty in successfully proving allegations of electoral fraud before the courts.

One of the core legal principles complicating the prosecution of electoral fraud is the presumption of regularity attached to election results once declared by the Independent National Electoral Commission (INEC).²⁷ This principle places the evidentiary burden on the petitioner, who must not only prove the occurrence of malpractice but also establish that such malpractices substantially affected the election results. Additionally, procedural technicalities, such as strict time limitations for filing and concluding petitions, limited access to vital electoral documents, and the requirement for direct witnesses at polling units, further stiffens the pursuit of electoral justice.

Beyond legal obstacles, institutional weakness is also a problem. Sometimes INEC's inconsistent application of election technologies like the BVAS and IReV portal, poor coordination between electoral officers and security agencies, and lack of a large investigative system, creates systemic inefficiencies in the detection and prosecution of electoral offenses. Furthermore, socio-political factors like political interference, witness intimidation, and corruption deepen the crisis.

²⁷ *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1, at 293-294.

1.3 STATEMENT OF RESEARCH PROBLEM

Electoral fraud is frequently reported in Nigeria, not only by news outlets, but also by electoral observation reports.²⁸ Yet proving these violations in court or before electoral tribunals remains a formidable challenge. Weak evidence, political interference, ineffective investigative systems, and prolonged legal proceedings often leave offences like rigging, vote buying, ballot snatching, and result tampering unpunished. This disconnect between reported misconduct and legal accountability disintegrates public faith in both the electoral process and democratic governance. Consequently, it is essential to explore and understand the specific obstacles that impede the successful prosecution of electoral malpractices in Nigeria.

1.4 AIM AND OBJECTIVES OF THE STUDY

The aim of this study is to assess the burden of proof in electoral litigation.

The objectives of this project research are to:

1. examine the legal and institutional frameworks exist in Nigeria for addressing electoral malpractices;
2. discuss the major challenges hindering the effective proof and prosecution of electoral offenses in Nigeria; and
3. recommend how the legal and institutional systems in Nigeria be improved to ensure more effective resolution of electoral disputes.

RESEARCH QUESTIONS

This study will address the following research question:

1. What are the legal and institutional challenges that hinder the successful prosecution of electoral malpractices in Nigeria?
2. How does political interference and the availability of evidence influence the outcome of electoral dispute cases?

²⁸ Festus Okoye, 'The Prosecution of Electoral Offenders in Nigeria' in Festus Okoye (ed), *The Challenge of Electoral Reform in Nigeria* (Human Rights Monitor 2010); European Union Election Observation Mission, *European Union Election Observation Mission Final Report, Nigeria 2019* (EU EOM 2019); Chatham House, *Nigeria's 2018 Vote-selling Behaviour and Democratic Dissatisfaction* (Chatham House 2018).

3. What is the role of security agencies and the judiciary in supporting or obstructing efforts to prove electoral malpractices?
4. How do socio-cultural factors, such as fear of intimidation, impact witness participation and evidence collection in electoral dispute cases?

1.6 SCOPE AND LIMITATIONS

A key limitation is the reliance on secondary sources such as academic publications, civil society reports, and news articles. While these sources provide valuable information, they may sometimes lack legal precision or carry inherent biases, which can affect the objectivity of findings in this study.

1.7 RESEARCH METHODOLOGY

This research adopts a qualitative approach to exploring the barriers to proving electoral malpractices in Nigeria. The study focuses on understanding the legal, institutional and political challenges that prevent the successful prosecution of electoral offences, especially in the context of Nigeria's complex democratic environment. The main method of data collection is documentary analysis. This involves carefully examining relevant materials such as the Nigerian Constitution (1999, as amended), the Electoral Act, judgments from election petition tribunals, reports from the Independent National Electoral Commission (INEC) and publications from civil society organizations that monitor elections. Academic literature, news reports, and other credible sources that discuss election-related legal issues in Nigeria will also be reviewed to gain a well-rounded understanding of the topic.

By analyzing these documents, the study seeks to identify recurring issues that hinder the process of proving electoral malpractice such as lack of access to credible evidence, procedural delays in the courts, political interference, intimidation of witnesses, and weak enforcement mechanisms. These problems often contribute to the dismissal of election-related cases or discourage individuals from pursuing justice.

Focusing solely on Nigeria allows the study to provide a more detailed and focused analysis. Cases and reports will be used to illustrate how these barriers manifest during and after elections. The goal is not just to list the challenges, but to understand how and why they persist within Nigeria's legal and political systems.

Overall, this methodology helps ground the research in real-world evidence and provides a practical understanding of the limitations in Nigeria's electoral dispute resolution process. It also sets the foundation for making informed recommendations on how the system can be improved.

1.8 SIGNIFICANCE OF THE STUDY

This study is significant because it addresses a critical gap in Nigeria's democratic process, in line with the persistent difficulty in proving and prosecuting electoral malpractices. Although electoral fraud is widely reported across different levels of government, many cases fail due to weak evidence, procedural hurdles, and institutional limitations. By exploring the barriers to proving such malpractices, this research highlights the flaws within Nigeria's legal and political systems that allow electoral misconduct to go unpunished. The study is important for several reasons. First, it contributes to the academic understanding of electoral justice in Nigeria by identifying the specific legal, institutional, and socio-political factors that hinder accountability.

Second, it offers practical insights for policymakers, election monitoring bodies like INEC, civil society organizations, and the judiciary on how to strengthen mechanisms for investigating and proving electoral offenses.

Furthermore, the findings of this study can inform future electoral reforms by emphasizing the need for improved access to evidence, stronger witness protection, faster legal processes, and more independence for electoral tribunals. Lastly, by promoting transparency and fairness in the electoral process, this research supports efforts to build public trust in Nigeria's democracy and enhance the legitimacy of elected leaders.

1.9 ORGANIZATIONAL LAYOUT

This research work is divided into five chapters, each focusing on a specific aspect of the work.

CHAPTER ONE: GENERAL INTRODUCTION

This chapter will introduce the study by providing a brief background on electoral malpractices in Nigeria, focusing on the persistent challenge of proving such malpractices despite the existence of legal and institutional frameworks. It will highlight how the inability to prove electoral fraud undermines democratic processes and weakens public trust in the electoral system.

The chapter will clearly state the research problem, identify the aim and objectives of the study, and outline the research questions. It will also explain the significance of the study, showing its relevance to legal development and electoral reforms in Nigeria. Additionally, the scope and limitations of the research will be defined to ensure clarity and focus.

CHAPTER TWO: CONCEPTUAL, THEORETICAL FRAMEWORK AND LITERATURE REVIEW

This chapter will provide the necessary academic foundation for the research. It will begin with the conceptual framework, where key terms such as electoral malpractice, electoral justice, evidence, and proving electoral offenses will be defined and discussed within the Nigerian context.

The chapter will then present the theoretical framework, drawing on relevant legal and political theories to guide the study. These may include theories such as Legal Realism, which emphasizes the practical challenges of applying legal rules; Institutional Theory, which focuses on the role of structures like electoral tribunals and INEC; and Democratic Theory, which connects credible elections to good governance.

In addition, the literature review will examine previous academic works, legal publications, tribunal reports, and scholarly articles related to electoral malpractices and electoral justice in Nigeria. The aim is to identify existing research gaps and show how this study contributes to the ongoing discussion.

CHAPTER THREE: The Nature of Electoral Malpractices and Legal Framework in Nigeria

This chapter will provide the foundational background for understanding electoral malpractices in Nigeria and how they are addressed within the country's legal system. It will begin by examining the concept and common forms of electoral malpractice, including vote buying, ballot box snatching, voter intimidation, and result manipulation. The chapter will also explore the legal framework governing electoral conduct, with a focus on the Electoral Act, the Constitution of the Federal Republic of Nigeria, and relevant provisions of the Evidence Act, in line with judicial precedents.

Furthermore, the role of institutions such as the Independent National Electoral Commission (INEC), the police, and election tribunals will be analyzed to highlight their responsibilities in the prevention, investigation, and prosecution of electoral offenses. This chapter aims to explain how the system is intended to function.

CHAPTER 4: Barriers to Proving Electoral Malpractices in the Nigerian legal , institutional and in rural areas.

This chapter will critically examine the major challenges that hinder the successful prosecution and proof of electoral malpractices in Nigeria. Building on the legal and institutional framework discussed in Chapter Three, this chapter will shift focus to the practical realities that obstruct justice in electoral dispute resolution.

Key areas of discussion will include institutional weaknesses such as poor coordination between INEC and security agencies, lack of independence of electoral tribunals, and inadequate investigative capacity. The chapter will also address legal challenges, including the high burden of proof required by law, limited access to credible evidence, and procedural delays in the court process. Furthermore, socio-political factors such as witness intimidation, political interference, and corruption will be explored.

By analysing these barriers, the chapter aims to highlight the disconnect between the legal ideals and the enforcement reality in Nigeria's electoral system. It will also draw on real-life case examples and judgments where allegations of electoral fraud failed due to these obstacles. The findings from this chapter will form the basis for the recommendations in the final chapter.

CHAPTER 5: CONCLUSION

This final chapter will bring the research to a conclusion by summarizing the key issues discussed throughout the project. It will highlight the major findings regarding the nature of electoral malpractices in Nigeria and the barriers to proving them within the legal and institutional systems. Based on the analysis in the previous chapters, the study will outline practical recommendations aimed at strengthening the electoral justice system. These may include legal reforms, institutional capacity building, improved evidence-gathering methods, and greater political will to ensure accountability. The chapter will also reflect on the overall significance of the research and suggest areas for further research.

CHAPTER TWO

CONCEPTUAL, THEORETICAL FRAMEWORK AND LITERATURE REVIEWS

2.1 Conceptual Framework

2.1.1 Electoral Malpractice

Electoral malpractice denotes illegal or fraudulent conduct in the electoral process intended to distort the outcome of an election. It includes acts such as vote-rigging, ballot box snatching, vote buying, intimidation, falsification of electoral results and lots more. It is worthy to note that Nigerian law treats malpractices as criminal offenses. Nwabueze, in attempting a definition stated that “electoral malpractice” constitutes criminal offence under the Electoral Act. He also stated that the word “electoral malpractice” connotes “illegal act done with a corrupt, fraudulent or sinister intention to influence the election in favor of a candidate”.¹ Also, in *Sadu Malumfashi vs. Usman Yaba and Ors*,² Rowland, JCA (as he then was) opined that electoral malpractice can occur in a scenario where the votes scored by the parties exceed the number of accredited voters.

2.1.2 Electoral Justice

Electoral justice refers to the legal framework, institutions and processes that ensure the integrity of elections by adjudicating disputes and enforcing electoral laws. It encompasses tribunals and courts empowered to hear election petitions and to remedy irregularities, thereby upholding citizens’ electoral rights. It covers the whole system of adjudicating complaints and disputes about elections. In Nigeria, this system is embodied in Election Petition Tribunals and appellate courts created after each poll. Courts and tribunals adjudicate allegations of malpractices, void tainted results, and issue remedies which shows electoral justice in action. This post-election legal process is seen as essential to upholding citizens’ rights and avoiding violence when elections are disputed.

¹ Nwabueze, B. O. (1993). The Electoral Process and the 1999 Constitution. In A. Umezulike (Ed.), Democracy beyond the Third Republic. Enugu: Fourth Dimension Publishers.

² Alhaji Ibrahim Saidu Malumfashi v. Alhaji Usman Yaba & Ors , Court of Appeal , CA/K/EPLG/24/99 (1999) JELR 43882.

2.1.3 Burden of Proof.

The concept of burden of proof in Nigerian election petitions is a pillar of the country's electoral jurisprudence. It places the responsibility squarely on the petitioner (the individual or political party challenging the election results) to prove their case with concrete, credible evidence. This principle is a direct application of the general legal maxim, *ei qui affirmat non ei qui negat incumbit probatio*, which means "he who alleges must prove."

The legal framework for this principle is primarily found in the Evidence Act of 2011,³ and the Electoral Act of 2022, alongside a long history of judicial precedents established by the Court of Appeal and the Supreme Court. Although The Electoral Act 2022 only provides the substantive and procedural framework for election petitions⁴, and does not expressly provide on the burden of proof.

However, the burden of proof in election petitions is a difficult task. Petitioners must not only allege non-compliance with electoral laws but also show how non-compliance substantially affected the outcome of the election.⁵ This is often a difficult battle due to several factors like the presumption of regularity, difficulty in obtaining evidence, balance of proof, and procedural technicalities. Taking a closer look at the just concluded general elections in Nigeria, the 2023 presidential election petition in particular showcased the doctrine that non-qualification, corrupt practices, non-compliance must be shown to have substantially affected the outcome of an election.

In *Abubakar & Anor v Independent National Electoral Commission (INEC)&Ors*⁶ The Supreme Court upheld the decision of the Presidential Election Petition Tribunal and held that Atiku Abubakar and the PDP failed to prove their allegations. The court reaffirmed the long-standing legal principle that the burden to prove an election petition lies squarely on the petitioner. The court stated that the petitioners had the task and obligation to prove their allegations with credible and specific evidence, and they cannot rely on the weakness of the respondents' case. The court also held that the petitioners' claims of mass irregularities were not supported by polling unit-specific evidence. The judges ruled that general complaints without a detailed breakdown of the affected polling units and the number of votes impacted

³ Evidence Act 2011, s.131(1)–(2).

⁴ Ibid s.134–135. Grounds of petition (e.g. non-qualification, corrupt practices, non-compliance).

⁵ Ibid s.135(1).

⁶ (2023) 19 NWLR (Pt 1917) 29.

were insufficient to annul an election. The court however dismissed the claim that INEC's failure to upload results in real-time to the iReV portal was a ground to nullify the election. The court held that the physical result sheets (Form EC8A) were the primary source of election results and that the iReV portal was not a mandatory part of the collation process under the Electoral Act. Inferring From the decision of the court, we can see clearly that in court's view, the petitioners' claims did not meet the requirements of Electoral Act 2022, under section 135(1), which emphasized that the petitioners' claims must substantially affect the outcome of the election. Moreover, In the case of *Obi & Anor v. INEC & Ors.*⁷, a petition also filed against INEC's 2023 presidential election result, the Supreme Court also dismissed Peter Obi and the Labour Party's appeal, holding that they failed to prove their case. The court held that a presidential candidate is not required to win 25% of the votes in the Federal Capital Territory (FCT), Abuja, to be declared the winner. The court ruled that the FCT is to be treated as a state for the purpose of the 25% constitutional requirement and does not hold a special status that would grant it an electoral veto. It also held that the petitioners' reliance on documents and witness statements that were not filed within the 21-day statutory period rendered them inadmissible. The court stressed the importance of strict compliance with the procedural rules of the Electoral Act. Above all, in the view of the court, the petitioners' were unable to prove that the electoral irregularities substantially affected the outcome of the election. Also, in *Ngige v. INEC*⁸ a very significant case in Nigerian electoral arena the 2003 Anambra State gubernatorial election, Dr. Chris Ngige was declared the winner and sworn in as governor. Peter Obi, the APGA candidate, challenged the result at the Election Petition Tribunal, alleging irregularities and non-compliance with the Electoral Act. After a prolonged legal battle that lasted almost three years, the Tribunal and subsequently the Court of Appeal nullified Ngige's election and declared Peter Obi the rightful winner. This judgment was significant because it was the first time in Nigeria's history that a sitting governor was removed from office through an election petition which happened three years into his service. The case does not just stand out only for its outcome but for the legal principles it established, which have become precedent in Nigerian's election litigation. The court however emphasized the Petitioner's Onus to Prove Substantiality. The court held that a petitioner must not only prove non-compliance with the Electoral Act but also prove that such non-compliance was substantial enough to have affected the outcome of the election. Justice Niki Tobi in this case, had this to say "*It is*

⁷ . (2023) 19 NWLR (Pt. 1917) 711.

⁸ *Ngige v. INEC* (2005) 1 NWLR (Pt. 949) 585

elementary in our jurisprudence that he who alleges must prove. The onus is on the petitioner who alleges non-compliance with the Electoral Act to prove the same. He must not only prove non-compliance, he must also prove that such non-compliance substantially affected the result of the election." The judgment cemented the high standard of proof required in Nigerian election petitions. It set a precedent that has been consistently upheld by the Court of Appeal and the Supreme Court in subsequent cases, including the recent 2023 presidential election petitions. Also the case of *Awolowo v. Shagari*⁹ The Supreme Court's decision on the interpretation of "two-thirds of the states" established the precedent that the burden of proof rests on the petitioner to demonstrate, with credible evidence, that the winning candidate did not meet the constitutional requirements. The petitioner's failure to prove this led to the dismissal of the petition. We have examined how the burden of proof works as regards election petition cases, the legal principle has been established and is applied in our legal system today. However, the current legal and judicial posture, while aiming to prevent frivolous litigation, has been criticized for creating an almost impossible standard for petitioners. This is because it is very difficult to prove that electoral malpractices or misconduct substantially affected the outcome of an election. The Policy and Legal Advocacy Centre (PLAC), in a report on the 2023 general elections, found that about 73% of petitions were dismissed due to the petitioner's inability to discharge the burden of proof.¹⁰ This has led to calls for a reform of the law to shift some of the burden onto INEC. Proponents of this view argue that since INEC is the custodian of all electoral materials, it should be the one to prove that the election was conducted in compliance with the law. This view was recommended by Justice Muhammadu Lawal Uwais, in his electoral reform in 2008¹¹, but it is yet to be implemented. Such a change would hold the electoral body more accountable and compel it to be more transparent in its processes. In conclusion, while the principle of the burden of proof is well-founded, I think its practical application in Nigerian electoral litigation, particularly the high evidential threshold, remains a significant barrier to achieving electoral justice. The current trend shows that without a fundamental shift in the legal framework, it will remain extremely difficult for petitioners to successfully challenge election results, regardless of the perceived irregularities.

2.1.4 Evidence

⁹ *Awolowo v. Shagari* (1979) 6-9 SC 51.

¹⁰ Policy and Legal Advocacy Centre (PLAC), Report on the Analysis of Election Petition Litigation from Nigeria's 2023 General Elections (2023).

¹¹ Electoral Reform Committee, Report of the Electoral Reform Committee (2008).

According to Black's Law Dictionary, evidence is anything presented in a legal proceeding that is intended to prove or disprove the existence of an alleged fact. This includes testimony, documents, and tangible objects.

In an election petition matter, evidence encompasses all testimony, documents, materials or other proof submitted to establish facts. Electoral evidence often includes INEC result forms (e.g. Forms EC8A/EC8B), voter registers, accreditation data (e.g. BVAS reports) and witness testimony from polling officials or observers. The general

Evidence Act 2011 governs admissibility. Say for example, primary evidence (original documents) is required unless exceptions apply, and certified true copies are needed for public records.¹²

2.1.5 Gerrymandering

Gerrymandering is the practice of drawing electoral district boundaries in a way that deliberately advantages a particular party or group. In other words, districts are arranged or partitioned so as to give one party “an unfair advantage in elections.

This may involve “packing” opposition voters into a few districts or “cracking” them across many districts. While our laws (Nigerian law) requires representation by population in constituency delimitation¹³, the term *gerrymandering* specifically refers to partisan manipulation of that delimitation process. It is generally seen as contrary to the principles of equal suffrage and fair representation.

The Nigerian Constitution, like its predecessors dating back to the Richards Constitution of 1946, contains specific provisions for the delimitation of electoral constituencies.¹⁴ The 1999 Constitution (as amended) provides for three Senators from each state and one from the Federal Capital Territory, as well as 360 Federal Constituencies.¹⁵ The constitution also stipulates that the boundaries of each State Constituency should make sure that the number of inhabitants is as "nearly equal to the population quota as is reasonably practicable" and it also vests the Electoral Commission with the power to divide each states into constituencies.¹⁶

¹² Section 85, Section 89(a) & (e) of the Evidence Act,2011.

¹³ Section 77, 1999,CFRN, as amended.

¹⁴ Ibid s.77.

¹⁵ Ibid s.48.

¹⁶ Ibid s.91.

However, there is a contradiction that exist between these legal provisions and their application. The last nationwide constituency delimitation was carried out by the National Electoral Commission of Nigeria (NECON) in 1996, under the chiarmanship of Chief Sumner Dagogo Jack, using the 1991 census figures.¹⁷ Despite the availability of a more recent 2006 census, subsequent general elections in 2003, 2007, 2011, and 2015 were all conducted based on these outdated boundaries.¹⁸ This prolonged failure to adjust electoral boundaries is not a mere administrative oversight, it is a profound political choice. Delimitation is complex and expensive, but, if it is done correctly, it must reflect changes in population to maintain the principle of "equality of voting strength".¹⁹ Lets examine a scenario in Nigeria which better explains gerrymandering. In October 2002, the International Court of Justice (ICJ) in The Hague delivered a judgment on the long-standing border dispute between Nigeria and Cameroon. The ruling awarded sovereignty over parts of the Bakassi Peninsula to Cameroon, while Nigeria retained control of some other areas.

Following this, in 2007, the Cross River State House of Assembly passed Law No. 7 of 2007. Instead of making boundary adjustments between Bakassi and Akpabuyo Local Government Areas as the law permits, it controversially transferred three wards from Akpabuyo (Ikang Central, Ikang North, and Ikang South) into Bakassi Local Government Area.

This action was challenged in court by traditional rulers from Ikang, who filed a case against the Independent National Electoral Commission (INEC). thus *Independent National Electoral Commission & Anor v. Asuquo & Ors* (2018).²⁰ 9 NWLR (Pt. 1624) 305 (SC) The dispute went through the Federal High Court, the Court of Appeal, and eventually reached the Supreme Court of Nigeria.

In February 2018, the Supreme Court delivered a landmark decision. The Court clarified that under Section 4(7) of the Nigerian Constitution, a State House of Assembly's authority is limited to adjusting local government boundaries for administrative and developmental purposes, not for electoral reasons. As such, INEC could not be compelled to recognize or implement Law No. 7 of 2007.

¹⁷ Paul Obo Idornigie, 'Constituency Delimitation: A Recurring Decimal' in Benson Upah (ed), *A Life of Struggle: Essays & Tributes in Honour of Dr Peter Ozo-Eson* (Nigerian Labour Congress 2019) 167–196.

¹⁸ Ibid 167.

¹⁹ ibid

²⁰ INEC & Anor v. Asuquo & Ors (2018). 9 NWLR (Pt. 1624) 305 (SC).

Despite this clear ruling, the Cross River State Independent Electoral Commission has continued to disregard the Supreme Court's judgment by treating Ikang Central, Ikang North, and Ikang South as part of Bakassi, in open defiance of the law.

2.1.6 Over voting

Over-voting occurs when the number of votes cast in a polling unit exceeds the number of voters accredited or registered there. It is a classic indicator of potential fraud. Nigerian courts have made clear that where total votes exceed accredited voters, an electoral malpractice is indicated.

2.1.7 Presumption of Regularity

The presumption of regularity is a core principle within the law of evidence. It is classically expressed by the Latin maxim, "*omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium*"²¹ which translates to "*everything is presumed to have been rightly and duly performed until the contrary is proven*". In its most fundamental sense, the principle presumes that public officials and individuals acting under an oath of office will lawfully and consistently discharge their official duties, and not partaking in actions that are contrary to those duties and omitting nothing that is required of them.²² This encompasses the idea that an act that can be legally performed only after a prior act is complete is considered presumptive proof that the preceding act was duly performed.

The presumption of regularity has its roots traced to the common law in England before its widespread adoption and application in the United States and other common law jurisdictions. The historical foundation of the presumption was rooted in a more narrow application, predominantly bridging gaps in evidence concerning technicalities.²³

In Nigeria, the doctrine of presumption of regularity is statutorily reinforced by Section 168(1) of the Evidence Act, 2011, which provides that a judicial act shown to have been done in a substantially regular manner is presumed to have fulfilled all formal requisites for its validity. It applies to official acts of the executive branch and its agencies.

In the context of election petitions, this doctrine places evidential burden on petitioners who challenge election results, requiring them to rebut the presumption with cogent, credible

²¹ Archbold Criminal Pleading, Evidence and Practice, 1999, para 10-5 at p. 1130.

²² In Search of the Presumption of Regularity, 74 Florida Law Review 729 (with Steven A. Platt) (2022).

²³ *ibid*

evidence.²⁴ The doctrine seeks to promote stability in electoral outcomes by preventing silly challenges, however, critics argue that it can shield irregularities, most especially in a system full of malpractices such as vote rigging or violence²⁵ etc. Over the years, Nigerian courts have applied this presumption to uphold declared results unless petitioners demonstrate substantial non-compliance with the Electoral Act²⁶ or criminal conduct beyond reasonable doubt.

In *Buhari v. Obasanjo*,²⁷ the Supreme Court upheld the doctrine of presumption of regularity, ruling that election results declared by INEC are prima facie correct and authentic. The petitioner must provide specific, credible evidence to rebut this presumption, and that allegations of criminal malpractices must be proven beyond reasonable doubt. The court dismissed the petition for lack of sufficient evidence. Also in *Abubakar v. Yar'Adua*,²⁸ Atiku Abubakar, who contested for the presidential seat in the 2007 general election, petitioned against Umaru Musa Yar'Adua's victory, alleging massive rigging, voter intimidation, and non-compliance with the Electoral Act, including improper voter registration and result collation. The Supreme Court invoked the presumption of regularity, stating that official acts like INEC's declaration of results are presumed valid unless proven otherwise with clear evidence. The petition was dismissed, as Abubakar could not sufficiently rebut the presumption or prove criminal elements beyond reasonable doubt. In *Atiku v. Buhari*²⁹, the PDP's presidential candidate, Atiku Abubakar appealed Muhammadu Buhari's re-election, alleging electoral fraud, server manipulation by INEC, and substantial non-compliance with the Electoral Act, including over-voting and result falsification.

The Presidential Election Petition Tribunal and Supreme Court upheld the presumption of regularity for INEC's results, ruling that petitioners must provide concrete evidence to rebut it. Allegations of criminal conduct required proof beyond reasonable doubt, and the petition was dismissed for insufficient substantiation and since these allegations were not substantially proved, the court did not give judgment in the petitioner's favour. However, in *Omoboriowo v.*

²⁴ Section 136(1) of the Electoral Act, 2022 of Nigeria.

²⁵ Okafor, N.U. (2023). "The Presumption of Regularity in Nigerian Electoral Law: Balancing Stability and Accountability." *Nigerian Journal of Constitutional Law*, 15(2), pp. 112-130. Available at: <https://www.njcl.org/journal/2023-15-2-okafor.pdf>.

²⁶ Section 135, Electoral Act, 2022.

²⁷ (2005) 13 NWLR (Pt. 941) 1

²⁸ (2008) 12 NWLR (Pt. 1100) 111.

²⁹ (2019) SC.1211/2019.

*Ajasin*³⁰ where the 1983 Ondo State gubernatorial election result was appealed, Akin Omoboriwo challenged Michael Ajasin's victory, alleging irregularities in result declaration and non-compliance with electoral laws. The Supreme Court applied the presumption of regularity, holding that declared results are presumed correct unless rebutted with credible evidence.

The presumption of regularity has become a legal doctrine common in many modern jurisdiction. Most importantly as seen in a plethora of cases above, It plays a major role of protecting the validity and integrity of official acts, records, and decisions, ensuring stability, continuity, and efficiency in governance and legal processes.

2.1.8 Substantial Compliance

The doctrine of substantial compliance which is codified in *Section 135 of the Electoral Act 2022*, stipulates that a minor breach of electoral procedures will not automatically annul an election if the core requirements of that election has been met. In essence, an election need not be perfect. It however must have “**substantially complied**” with the electoral laws or principles, and any non-compliance must not have “substantially affected” the outcome of the election results.

2.2 Theoretical Framework

2.2.1 Legal Realism:

Legal Realism is a jurisprudential theory that emerged prominently in the early 20th century, fundamentally challenging the classical view that legal decisions are purely determined by objective legal rules and principles.³¹ Legal realism stipulates that judicial decisions are not only shaped by formal legal rules, but also by the personal views of judges and the broader socio-political context in which they operate. Rather than assuming law is applied mechanically, Legal realists assert that law is lived and interpreted in real-world circumstances. Realists argue that judges’ experiences and beliefs often shape outcomes more

³⁰ (1984) 1 SCNLR 108.

³¹ Karl N. Llewellyn, *The Bramble Bush: On Our Law and Its Study* (New York: Oceana Publications, 1930), 12–15.

than abstract rules.³² However, in Nigeria's context, scholars have noted that judicial decisions frequently follow "experience and not logic" (as Holmes described).³³

However, this theory, mirrors a way for understanding why proving electoral malpractices in Nigeria can be so difficult. This theory moves beyond the written laws of the country and focuses on its application in the real world scenario, where judges' personal biases, political pressures, and societal factors can significantly influence legal outcomes. Applying Legal Realism to electoral malpractice in Nigeria highlights critical barriers in proving such infractions in courts. Nigerian courts have traditionally displayed high discretion in interpreting electoral laws, particularly within the framework of the "substantial compliance doctrine."³⁴ This doctrine demands that an irregularity must materially affect the election's outcome to warrant its nullification. Courts' reliance on this doctrine often translates into subjective judicial assessments heavily colored by political and social considerations.³⁵ The discretionary nature of judicial decision-making in Legal Realism, presents claims of electoral malpractice with the burden of penetrating judicial bias and interpretive flexibility. In *Buhari v Obasanjo*³⁶ case, for instance, despite a great amount of allegations of electoral non-compliance, the Supreme Court confirmed Obasanjo's victory, observing that although there were irregularities, they were not enough

to affect the overall result. The court placed significant emphasis on the doctrine of substantial compliance, despite allegations of widespread irregularities. It may be true that was the case, however, the substantiality of electoral claims are not measured by statutes, it is left to judicial interpretation, making it easier for interpretive flexibility. Similarly, In *Awolowo v Shagari*³⁷ Chief Obafemi Awolowo challenged the election of Shehu Shagari, alleging non-compliance with electoral laws. The Supreme Court ruled in favour of Shagari, a decision that was widely criticized as being politically motivated. Awolowo argued that Shagari's election was clouded by irregularities, including falsification of results. Despite evidence of these irregularities, the court ruled that they did not affect the outcome and upheld Shagari's victory. These issues make enforcement of the law a bit more difficult, even if the rules look good on paper.

³² K. N. Llewellyn, "Some Realism About Realism," 44 Harv. L. Rev. 1222 (1931).

³³ Adebayo, W. & Adeniyi, A. O. (2021). Legal realism and administration of criminal justice in Nigeria.

³⁴ Section 135(1) Electoral Act, 2020.

³⁵ C. J. Ubanyionwu, "Problems Associated with Substantial Compliance Doctrine in Election Petition Cases in Nigeria" (2020) African Customary and Religious Law Review (ACARLR) 54.

³⁶ (2005) 13 NWLR (Pt 941) 1; (2005) 18 SC (Pt 1) 1.

³⁷ (1979) 6-9 SC 51.

Also, this theory finds concrete expression in election dispute resolution, this is because judges to a large extent applies discretion in the dispensation of justice on electoral matters. For example, the Supreme Court in *Buhari v. INEC*³⁸ upheld the “presumption of regularity,” thereby adopting a more rigid evidentiary standard, but in *Sullivan Chime v. Egwuonwu*³⁹ the Court of Appeal took a slightly more flexible view on the admissibility of affidavits. This difference reflects not merely law, but judicial philosophy and institutional posture across different benches.

However, Since Legal Realism recognizes that legal rules alone do not guarantee justice, it supports reforms which are aimed at strengthening institutional capacity, judicial independence, and evidentiary processes, in other to ensure fairer resolution of electoral disputes in Nigeria.⁴⁰

2.2.2 Institutional Theory

Institutional Theory as it were, explains how formal organizations, rules and norms shape political belief, behavior and outcomes. It seeks to explain the elaboration of rules and requirements to which institutions of state must conform if they are to receive support and legitimacy.⁴¹ Institutional Theory gained momentum in the latter part of the 20th century when scholars attempted to explain how institutions influence both social and organizational processes. It emphasizes that formal frameworks such as laws, policies, and regulations, alongside informal mechanisms like cultural practices and social norms, strongly shape the decisions and behaviours of actors within a system.⁴² Its early roots can be linked to classical sociologists such as Max Weber and Emile Durkheim, who highlighted the role of social structures in shaping individual action.⁴³ The modern formulation, however, developed significantly during the 1970s and 1980s, particularly through the seminal works of Meyer and Rowan,⁴⁴ DiMaggio and Powell,⁴⁵ and Scott,⁴⁶ who underscored issues of legitimacy, institutional environments, and isomorphic pressures within organizational fields. These

³⁸ (2008) 19 NWLR (Pt. 1120) 246 at 391.

³⁹ (2008) 12 NWLR (Pt. 1100) 307.

⁴⁰ Nwabueze, B.O., “Judicialism in Commonwealth Africa,” (C. Hurst & Co Publishers, 1977)

⁴¹ Willmott, H. (2015). Why Institutional Theory Cannot Be Critical. *Journal of Management*.

⁴² Scott, W.R., *Institutions and Organizations*. Thousand Oaks, CA: Sage Publications, 1987.

⁴³ Weber, M., *Economy and Society*. Berkeley: University of California Press, 1978 (orig. 1922); Durkheim, E., *The Rules of Sociological Method*. New York: Free Press, 1982 (orig. 1895).

⁴⁴ Meyer, J.W. & Rowan, B., “Institutionalized Organizations: Formal Structure as Myth and Ceremony,” *American Journal of Sociology*, 83(2), 1977, pp. 340–363.

⁴⁵ DiMaggio, P.J. & Powell, W.W., “The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields,” *American Sociological Review*, 48(2), 1983, pp. 147–160.

⁴⁶ Scott, W.R., *Institutions and Organizations*. Thousand Oaks, CA: Sage Publications, 1987.

scholars majored on how institutions do provide stability, legitimacy, and a sense of order to our social systems. The theory posits that organizations and individuals seek legitimacy by conforming to these institutional pressures, a process known as isomorphism.⁴⁷ This framework is very relevant to analyzing the barriers inherent in proving electoral malpractices in Nigeria.

Institutional theory explains that the barriers to proving electoral malpractices in Nigeria are not just a result of isolated fraudulent acts by actors, but are deeply embedded within the institutional fabric of the country's political and legal systems. These institutions like independent electoral body, the judiciary, and even political parties themselves, have developed a set of formal and informal rules, norms, and practices that make successful prosecution of electoral fraud and a reversal of a declared election result incredibly difficult. As Nigeria's electoral management body, the Independent National Electoral Commission (INEC) bears the responsibility for organizing elections, registering voters, and safeguarding the credibility of the electoral process.⁴⁸ In recent years, the Commission has introduced technology-based innovations and reforms intended to improve transparency. Nevertheless, persistent challenges like voter intimidation, ballot box snatching, vote buying, and manipulation of results, continues to undermine its effectiveness.

The judiciary, also, plays a vital role in adjudicating electoral disputes and ensuring justice in matters relating to election dispute.⁴⁹ Its mandate, covers resolving allegations of malpractice, with the authority to annul elections, disqualify candidates, or order reruns where malpractice is proven. This oversight function is crucial for sustaining the rule of law and public trust in democratic processes. Despite these roles, proving electoral malpractices is still very difficult.⁵⁰ At times, collusion between INEC officials and judicial actors has been implicated in enabling or legitimizing malpractice within the electoral system. However, The judiciary, as a key institution in the electoral process, has established a high and very demanding burden of proof for election petitioners. This is a clear example of institutional

⁴⁷ Daniel Cole and Graziella McCarron, 'Institutional Theory: Overview & Examples' (Study.com, 21 November 2023) <https://study.com/academy/lesson/institution-theory-environment-social-structure.html>. accessed August 15.

⁴⁸ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 153(1)(f) and Third Schedule, Part I, para 15 and INEC, Independent National Electoral Commission Official Website. Abuja: INEC, 2023.

⁴⁹ CFRN 1999 Section 233,239,246,251,285. and Agbaje, A. & Adejumo, S., Do Votes Count? The Travails of Electoral Politics in Nigeria. Dakar: CODESRIA, 2016.

⁵⁰ J.O. Amupitan, "Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Selected Jurisdictions" (2024) Journal of Political Discourse 70.

barriers. Courts operate on the presumption of the regularity of results declared by INEC,⁵¹ an institution statutorily empowered to conduct elections. The onus is on the petitioner to rebut this presumption. The Supreme Court in the case of *Buhari v. Obasanjo*,⁵² affirmed the principle that the burden of proof rests squarely on the petitioner to prove their case beyond a reasonable doubt where allegations of crime, such as electoral fraud, are made. This judicial stance, has become a significant barrier, as petitioners must produce concrete, admissible evidence to prove systemic non-compliance or corrupt practices, which is often a near-impossible task given the lack of access to raw electoral materials, intimidation of witnesses, and other form of electoral misconduct.

Furthermore, it is established that INEC and the judiciary are mutually connected in safeguarding electoral integrity. INEC depends on the judiciary to adjudicate contested elections and to impose sanctions on individuals or parties found guilty of malpractice.⁵³ Conversely, the judiciary needs INEC to present credible evidence and cooperate in facilitating the adjudication process. Despite these roles, the relationship between both institutions has, at times, raised concerns, particularly when their collaboration has been linked to the perpetuation of electoral malpractice in Nigeria.⁵⁴

However, robust, impartial institutions tend to gain public legitimacy by contrast, weak or corrupt institutions (e.g. partisan electoral officials) can undermine elections.

Agomuo⁵⁵ noted that INEC announced a 62% distribution rate of Permanent Voter Cards (PVCs) in Lagos ahead of the general elections. Despite this, allegations surfaced suggesting that the exercise was discriminatory and that some non-indigenes were deliberately denied access to their PVCs. Agomuo⁵⁶ rejected these claims, he insisted that the accusations of collusion between the Commission and political actors were unfounded. He emphasized that such suspicions were more speculative than evidence-based. Nevertheless, on election day, it became apparent that many registered non-indigenes in Lagos did not receive their PVCs and, consequently, were unable to cast their votes.⁵⁷ If these allegations against INEC were

⁵¹ EA 2011 s168(1).

⁵²(2005) 2 NWLR (Pt 910) 241.

⁵³ Adewole, A.M., *Electoral Reforms in Nigeria: Challenges and Prospects*. Ibadan: University Press, 2019.

⁵⁴ Adeosun, A.B., "Democracy and Electoral Challenges in Africa: The Nigerian Experience," *Mediterranean Journal of Social Sciences*, 5(27), 2014, pp. 140–147.

⁵⁵ Agomuo, Z., "INEC Records 62% PVC Collection in Lagos," *BusinessDay*, 17 February 2023.

⁵⁶ *Ibid*

⁵⁷ *Ibid*

confirmed to be true, it would no doubt weaken the legitimacy the people would have towards the results by INEC.

Political parties, as institutions in elections, have developed their own norm that contributes largely to the problem. This is because electoral victory is seen as the ultimate goal for political parties, they adopt a "win at all costs" mindset. This leads to mimetic behavior where parties imitate successful malpractice strategies from previous elections or from their rivals. The informal rules of the political game vote-buying, violence, and intimidation become institutionalized practices by these parties. Proving these informal practices in court is really difficult because they are often not documented and rely on the testimony of individuals who are often threatened or compromised, in the sense that they fear for their safety if they testify in court.

Ultimately, the barriers to proving electoral malpractices in Nigeria are not only legal or technical but are also institutional. They are a product of deeply ingrained formal rules, informal norms, and a shared understanding of what constitutes legitimate or sometimes illegitimate behavior within the political system. Any meaningful reform, therefore, must go beyond merely tinkering with laws and instead focus on a fundamental transformation of these institutions to ensure that they are genuinely independent, accountable, and committed to upholding the integrity of the electoral process.

2.2.3 Democratic Theory

Democratic theory, posits that legitimate governance derives from the consent of the governed, emphasizing principles such as popular sovereignty, political equality, and participatory decision-making.⁵⁸ Which is rooted in classical ideas from thinkers like Jean-Jacques Rousseau and John Locke, and evolving through modern interpretations by scholars such as Joseph Schumpeter and Robert Dahl, it underscores that democracy is not merely a system of majority rule but one that ensures accountability, transparency, and the protection of minority rights. At its core, democracy is the rule of the people (demos) through various mechanisms, most importantly, elections.⁵⁹

Democratic Theory stresses that free, fair and credible elections are fundamental to legitimate governance. Elections confer authority on leaders and enable accountability, elections serve

⁵⁸ Michael R Laurence, *Democratic Theory* (Oxford Bibliographies, Oxford University Press 2025).

⁵⁹ Timothy Onimisi, 'Democratic Practices and Local Government Elections in Nigeria: Demystifying the Emerging Issues' (2022) 6(1) Wukari International Studies Journal.

as the key “instrument of legitimization” for a country, an organization or even among the smallest group of persons.

In our democracy today, regular competitive elections are intended to meet criteria of political equality, popular sovereignty and the rule of law. When those are fulfilled, elections reflect the consent of the governed. Conversely, recurring fraud and violence subvert this legitimacy which is supposed to be reflected by the governed. Let’s take a look at the just concluded 2023 elections for example, where it is popularly believed that the electoral processes was flooded with electoral fraud. Looking at the public opinion of the people, a good number of people believed and even till date, believes that our current “Jagaban” was not the legitimate winner. Like it or not, it has affected the level of legitimacy the populace has towards his office. That however, does not change the fact that he remains the legitimate president of Nigeria. Also, chronic “do or die” fraud in Nigeria election frauds that have even provoked coups in the past and also serious waves of violence in our present day, has undermined governance and replaced merit with money politics.

In the our country today, democratic theory serves us a way to examine the barriers to proving electoral malpractices, which directly affects the actualization of genuine democratic governance. Since our return to civilian rule in 1999, elections have been infected by systemic issues that challenge the theoretical ideals of a fair election and accountability.⁶⁰ Electoral malpractices like vote buying, ballot stuffing, result falsification, over-voting, and voter suppression, to a very large extent wakens the democratic principle of political equality.

However, One major barrier is the evidentiary burden placed on petitioners under Nigerian electoral law, which requires strict proof beyond reasonable doubt for allegations of malpractice. This threshold, rooted in *Section 135 of the Electoral Act 2022*, makes it onerous to substantiate claims, especially when evidence like ballot papers or electronic records is controlled by the Independent National Electoral Commission (INEC) or tampered with. Democratic theory critiques this as a structural flaw that privileges institutional presumptions of regularity over participatory accountability, leading to what theorists like Dahl would describe as a "hollowed-out" democracy where formal elections mask substantive inequalities.

Institutional complicity and corruption further worsen these barriers. For example, collaboration between electoral bodies, security agencies, and political actors often results in

⁶⁰ Friday Aworowo, ‘Electoral Malpractices and the Challenges of Democratic Sustainability in Nigeria, 1979-1999’ (2024) 1(1) Agidigbo ABUAD Journal of the Humanities 87-95

evidence destruction or witness intimidation, making judicial redress elusive.⁶¹ This aligns with the democratic theory concerns about state capture, where elites manipulate processes to sabotage popular will, as seen in Nigeria's history of post-election violence and disputed outcomes. Additionally, technological failures, like the glitches in the Bimodal Voter Accreditation System (BVAS) during the 2023 elections, have been cited as barriers, with courts often dismissing petitions for lack of concrete proof despite reports of irregularities.⁶²

Also, Judicial inconsistencies and conflicting judgments represents another theoretical disconnect, as they reduce public confidence in the judiciary as it is the last hope of the common man. Democratic theory emphasizes an impartial judiciary to enforce electoral norms, yet in Nigeria, allegations of judicial corruption in election petitions highlight how courts can become tools for "rigging through the courts."⁶³ This phenomenon mirrors barriers by allowing fraudulent results to stand, contrary to the theoretical vitality for corrective systems in flawed elections.

finally, democratic theory reminds us on how damaging unaddressed electoral barriers can be in Nigeria. When election malpractice goes unproven, it weakens both legitimacy and citizens' willingness to participate. By making it easier to prove cases, strengthening judicial independence, and using technology to protect the process, the government can bring real practice closer to democratic ideals, and build a stronger, more trustworthy democracy.

2.3 Literature Review

The occurrence of electoral malpractice has attracted significant attention in Nigeria due to its persistent recurrence and its corrosive effect on our democracy. As *Nwabueze* observes, the problem in Nigeria is not merely the existence of electoral laws but the entrenched culture of subverting them through systemic and institutional manipulation.⁶⁴ The experience in Nigeria shows that electoral malpractice often takes multiple forms, like stealing of ballot boxes, vote buying, animal voting, falsification of results, intimidation of voters, bribery of electoral official and judicial officials and deliberate disenfranchisement among others. *Omotola* rightly notes that these acts are not isolated incidents but often "institutionalised"

⁶¹ Festus Okoye, 'The Prosecution of Electoral Offenders in Nigeria: Challenges and Possibilities' (2013) No. 5 Discussion Paper.

⁶² Saheed Oluokun, 'Voter Suppression and Electoral Integrity Crisis in Nigeria's 2023 General Elections' (2023) Kujenga Amani Essays.

⁶³ Ibid

⁶⁴ Nwabueze, B.O., *Electoral Law and Practice in Nigeria*, (Spectrum Books, 2003) p. 45.

through weaknesses in institutional bodies such as the Independent National Electoral Commission (INEC).⁶⁵

Furthermore, a recurring theme is that the major significant barrier to proving electoral malpractice lies in the evidentiary burden imposed on petitioners. The Nigerian courts have emphasized that allegations of malpractice are criminal in nature and must therefore be proved beyond reasonable doubt. For instance, In *Buhari v. INEC*,⁶⁶ the Supreme Court held that the petitioner must establish the alleged irregularities polling unit by polling unit, presenting witnesses and documentary evidence for each contested unit. This interpretation, though legally grounded, has been heavily criticised by legal writers and scholars such as *Okoye*, who argues that it creates an “almost impossible” legal hurdle for litigants.⁶⁷ Several legal scholars and writers have proposed different reforms aimed at lowering these barriers. *Adejumobi* recommends reforming evidentiary rules in electoral matters to allow for more reliance on technological evidence, such as electronic voter accreditation data, which can quickly demonstrate irregularities without requiring oral testimony from every polling unit⁶⁸, however, currently electronic evidence are admissible under the Evidence Act 2011 and even the Electoral Act 2022. Nwabueze argued that Nigeria’s electoral system is founded upon the **presumption of regularity** of declared results, which he describes as “a judicial bias in favour of the announced winner.”⁶⁹ in his opinion, this presumption makes it really difficult for petitioners to succeed unless they bring overwhelming evidence, which is almost practically impossible.

Okoye also emphasized the problem of presumption of regularity, submitting that the courts require petitioners to “go on proving the whole time” without ever shifting the evidential burden to INEC or the declared winner, even in cases where irregularities are apparent.⁷⁰ He suggested that burden of proof on the petitioners, should be reduced, and concludes that the Nigerian judiciary tends to privilege technical correctness over substantive justice in election matters.

⁶⁵ Omotola, J.S., “Elections and Democratic Transition in Nigeria under the Fourth Republic,” *African Affairs*, Vol. 109, No. 437 (2010), pp. 535–553.

⁶⁶ (2008) 19 NWLR (Pt. 1120) 246 at 391.

⁶⁷ Okoye, F., *Legal Framework for Elections in Nigeria*, (Human Rights Monitor, 2009) p. 88.

⁶⁸ Adejumobi, S., “Elections in Africa: A Fading Shadow of Democracy?” *International Political Science Review*, Vol. 21, No. 1 (2000), pp. 59–73

⁶⁹ B.O. Nwabueze, *Judicial Attitudes to Election Petitions in Nigeria* (2014).

⁷⁰ F. Okoye, *Electoral Justice and Democratic Legitimacy in Nigeria* (2019).

Furthermore, *Ojo* sees the statutory timeframe for filing election petitions under the Electoral Act 2022⁷¹ as a major barrier to proving electoral dispute. He noted that the 21-day constitutional timeframe for filing election petitions represents one of the most daunting barriers.⁷² He compared it to “the rock of Gibraltar” a stumbling block that compels petitioners to gather evidence from thousands of polling units in an impossibly short period.

Also, *Ugochukwu* talked about procedural rules as a barrier to proving election petition in court. He argued that the requirement of front-loading witness statements and documents at the point of filing the petition often leads to unjust dismissals.⁷³ This is because any new evidence gotten after filing, no matter how crucial, is inadmissible under Nigeria’s rigid procedural rules.

Furthermore, *Ameh*, reviewed the 2019 *Atiku v. Buhari*⁷⁴ petition, and pointed out that even with 62 witnesses and over 40,000 documents presented, the petition was dismissed for lack of material evidence.⁷⁵ He concluded that this reflected the courts’ tendency to impose an evidentiary burden closer to the criminal standard of proof than the civil “balance of probabilities” technically required by law. Eze, in the same vein similarly observed that Nigerian courts routinely treat allegations of vote-rigging, over-voting, or falsification as if they were criminal offences, thus requiring proof “beyond reasonable doubt.”⁷⁶ However In his empirical study of the 2023 petitions, he found that 73.1% of cases were dismissed for want of proof, confirming the weight of this barrier.

Taken together, we observe that these authorities agree that the Nigerian legal framework creates an overwhelming evidentiary burden for petitioners through the presumption of regularity, rigid deadlines, frontloading rules, and an elevated standard of proof. These legal scholars, having identified these barriers, aim to address such issues to provide a better electoral system.

However, several scholars also identify institutional weaknesses as a major barrier to proving electoral malpractices. *Omotola* holds the opinion that the **Independent National Electoral**

⁷¹ S. 132(7).

⁷² O. Ojo, *Electoral Law and Practice in Nigeria* (2020) p. 77.

⁷³ C. Ugochukwu, *Constitutional Barriers to Electoral Justice* (2018).

⁷⁴ *Atiku Abubakar & Anor v. INEC & Ors* (2019) LPELR-48113(SC) SC.1211/2019.

⁷⁵ A. Ameh, “The 2019 Presidential Election Petitions: An Appraisal” *Nigerian Journal of Public Law* (2020) 12(1).

⁷⁶ J. Eze, “Burden of Proof in Nigerian Election Petitions” *African Journal of Legal Studies* (2023).

Commission (INEC) often exhibits a defensive or passive stance during election petitions, refusing to release materials or data ordered by courts.⁷⁷ His view showcases an atmosphere where electoral malpractice is difficult to prove because the very custodian of election data (INEC) is uncooperative. *Agbaje* added that INEC's independence has long been compromised by government interference in appointments, funding, and operational decisions.⁷⁸ stipulating that this compromise undermines public trust and creates institutional incentives for the commission to shield incumbents rather than support petitioners.

Similarly, *Okorie* observed that Nigeria's judiciary itself has also been compromised and it is often constrained by heavy caseloads, technical formalism, and political pressures.⁷⁹ He noted that many petitions are dismissed on jurisdictional and procedural grounds, rather than on their substantive merits, which suggests that technicalities often triumph over justice. Similarly, *Babalola* argued that Nigeria's weak electoral offences enforcement framework improves the problem.⁸⁰ Despite clear provisions criminalizing electoral offences, enforcement is left to overstretched police and security agencies. He, like other scholars, has advocated for the creation of a dedicated Electoral Offences Commission, which has been repeatedly delayed in the National Assembly. Without such an enforcement mechanism, petitioners have little institutional support in gathering evidence of malpractice.

Taking a closer look, we find that the introduction of electoral technologies such as the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing (IREV) Portal, which was introduced to aim in elections, also poses as a barrier in proving electoral malpractices. *Nnamani* argued that while BVAS was designed to prevent multiple voting and improve accuracy, its practical use has been undermined by INEC's management.⁸¹ He observed that in some instances, devices were reconfigured between elections, wiping out critical data that could have supported petitions. *Akomolede* and *Alabi* observed that tribunals often demand the physical production of BVAS machines rather than accepting certified digital extracts.⁸² This they argue, creates a difficult evidentiary burden, since petitioners cannot realistically present thousands of devices in court. *Chidi* contended that such technological failures did not merely create operational difficulties, they also actively

⁷⁷ J. Omotola, *Elections and Democratic Transition in Nigeria* (2015).

⁷⁸ A. Agbaje, "INEC and the Challenge of Electoral Integrity" *Journal of African Elections* (2018).

⁷⁹ L. Okorie, *Judicialisation of Nigerian Elections* (2019).

⁸⁰ Babalola, "The Case for an Electoral Offences Commission in Nigeria" *Law and Policy Review* (2021).

⁸¹ Nnamani, "Electoral Technologies and the Challenges of Transparency in Nigeria" *Nigerian Electoral Studies Review* (2022).

⁸² Akomolede & Alabi, *Law, Technology, and Electoral Justice in Nigeria* (2021).

fuelled mistrust and limited petitioners' ability to cross-check figures, thereby reinforcing doubts about electoral legitimacy⁸³

Electoral malpractice in Nigeria is also sustained by political realities. *Collier* and *Vicente*, in their experimental study on Nigerian elections, demonstrated that violence and voter intimidation gradually reduces turnout among opposition supporters.⁸⁴ This not only affects electoral outcomes but also prevents witnesses from coming forward with testimony in election petitions.

Omoweh talked about the social obstacles to proving electoral malpractices. He opined that civic apathy has grown out of repeated failures of petitions, leading many citizens to view the process as futile.⁸⁵ Human rights observers like Amnesty International documented that journalists, civil society groups, and whistle-blowers are often harassed or intimidated when exposing electoral irregularities.⁸⁶ This climate of fear further reduces the number of credible witnesses available to petitioners, because they fear harm from opposition parties.

Across the literature, scholars agree that legal, institutional and political barriers collectively undermine Nigeria's democracy. However, While much has been written on legal and institutional barriers, fewer studies focus on grassroots experiences of petitioners and witnesses in rural communities at the local level. Rural evidence gathering is usually very difficult because of the level of underdevelopment in these villages. Petitioners in such areas faces challenges like electricity, poor internet, illiteracy, transportation and lots more. However, most research majorly focused on the legal, and institutional behaviors only, leaving out barriers in rural areas.

⁸³ Chidi, "The Politics of Election Technology in Nigeria" *Democracy Studies Quarterly* (2023).

⁸⁴ Collier & Vicente, "Votes and Violence: Evidence from Nigeria" *Economic Journal* (2012).

⁸⁵ Omoweh, *Citizen Apathy and Electoral Justice in Nigeria* (2019).

⁸⁶ Amnesty International, *Nigeria: Repression of Dissent in the 2023 Elections* (2023).

CHAPTER THREE

THE NATURE OF ELECTORAL MALPRACTICES AND LEGAL FRAMEWORK IN NIGERIA

Election is a method for choosing representatives or delegating authority, it is not restricted to democracies alone. However, when there are irregularities in the process of selecting these representatives, we could infer the presence of electoral malpractices.

Electoral malpractices in Nigeria refers to illegal or irregular acts that undermine the credibility of elections. Broadly defined, they involve duplicity, manipulation and cheating by any means used to sway the outcome of an election. *Ezeani* describes electoral malpractice as “illegalities committed by government officials, electoral authorities, political parties or individuals with sinister intention to influence an election in favour of a candidate”.¹ These malpractices includes vote-buying, ballot snatching, voter intimidation, violence, falsification of results, etc. These practices desecrate the norms of free and fair elections and pose a “severe threat” to the democratic integrity of a state. In fact, observers note that despite the existence of laws against fraud, “at least 300 people were killed” in election-related violence in 2007, with gangs of thugs “stealing ballot boxes” often with police collusion.²

3.1 OVERVIEW OF ELECTORAL MALPRACTICE IN NIGERIA SINCE 1999

General Abdulsalami Abubakar, organized the transition program after the death of General Sani Abacha in 1998. He conducted elections and handed over power to President Olusegun Obasanjo, who was elected in 1999. Since the re-emergence of democracy in Nigeria in the Fourth Republic, the country has conducted seven general elections (1999, 2003, 2007, 2011, 2015, 2019, 2023).

However, after a long period of over three decades of military rule, elections that ushered in Nigeria’s Fourth Republic were organised in a staggered manner. The Governorship and state Houses of Assembly elections were held on 9 January 1999.

The National Assembly elections followed on 20 February, and the Presidential election was conducted on 27 February 1999. This marked the end of the transition

¹ Ezeani EO, ‘Electoral Malpractices in Nigeria’ in G Onu and A Momoh (eds), *Elections and Democratic Consolidation in Nigeria* (Nigerian Political Science Association, Lagos 2005).

² Human Rights Watch, ‘Nigeria: Pass Bill to Prosecute Electoral Abuses’ (13 March 2011) <https://www.hrw.org/news/2011/03/13/nigeria-pass-bill-prosecute-electoral-abuses> accessed 26 September 2025.

programme of the military regime led by General Abdusalami Abubakar. The 1999 elections were won by Olusegun Obasanjo of the Peoples' Democratic Party(PDP), and he was subsequently (on 29 May 1999) sworn in as president in the Fourth Republic. Okolie, had the opinion that 'transition elections' are mostly relatively peaceful because a country is transitioning from an authoritarian to a civil regime.³ Evidencing from the general outcome and report of the 1999 elections, this was true.⁴ However, this does not mean that the 1999 election was totally devoid of electoral irregularities. In fact, it was reported that in Oshimili North LGA in Delta State, a party gave out the money that helped in the sharing of ballot papers among the parties, and as a result, that party had 75% to thumb print, while the other two parties shared the remaining ballot papers.⁵ In another case in the 1999 election, In Kano, malpractices were on all sides. While in Gaya Local Government Area (LGA) some voters were offering their votes for sale for as little as N10.00, in other areas, such as Madobi, the INEC officials and party agents connived in bribery and rigging. Attempts at underage voting were also a feature in regions, for example, at Dambawa 5B polling stations in Tsafe Ward, ten underage boys were brought for voting, but were detected.⁶ However, What made the 1999 elections different from subsequent elections was the subtleness of the nature, magnitude and sophistication in the mode of electoral malpractices. For instance, deadly malpractice such as physical violence during and after an election (resulting in high casualty levels) was not really rampant.⁷

3.2 LEGAL FRAMEWORK GOVERNING ELECTORAL CONDUCT IN NIGERIA

There are stringent laws which exist to guide the conduct of polls. However, because elections are the way in which political actors contest for political offices, politicians and their parties sometimes resort to the use of dubious methods to win elections. Therefore, it is in the hands of the government to put in place rules and regulations that all stakeholders in the electoral process must obey. Of course, this provision would come with penalties for defaulters of these rules. However, in Nigeria, the legal framework that defines how elections in the country are conducted, what constitutes electoral offences, and how offenders are

³ MA Okolie, 'Electoral Fraud and the Future of Elections in Nigeria: 1999–2003' in G Onu and A Momoh (eds), *Elections and Democratic Consolidation in Nigeria* (Nigerian Political Science Association, Lagos 2005) 439.

⁴ M Omotosho, 'Electoral Violence and Conflict in Nigeria: The 2007 Elections and the Challenges of Democratisation' (Paper presented at the 27th Annual Nigerian Political Science Association Conference, Benue State University, Makurdi, 16–19 August 2008) 3.

⁵ DP Sha, 'Vote Buying and the Quality of Democracy' in VAO Adetula (ed), *Money and Politics in Nigeria* (International Foundation for Electoral System, Abuja 2008) 127.

⁶ Ibid

⁷ Moses T Aluaigba, 'Democracy Deferred: The Effects of Electoral Malpractice on Nigeria's Path to Democratic Consolidation' (2016) 15(2) *Journal of African Elections* 143.

punished can be found in the grundnorm, the Constitution of the Federal Republic of Nigeria 1999, and the Electoral Act, 2022, as amended. It would not also be wrong to add the Evidence Act, 2011, it comes to play when we talk about proving facts in election petitions. The Constitution creates the Independent National Electoral Commission (INEC) an autonomous body charged with organization of elections and spells out its composition and powers.⁸ It also provides the institutional framework for elections for example, sections 76–78 set the modalities for National Assembly elections (who can vote and how members are elected)⁹. Furthermore, as it relates to the office of the President of the Federal Republic of Nigeria, sections 131, 132, 133 and 134 of the 1999 Constitution specify the qualities of any Nigerian who wishes to contest in a presidential election, and how he or she will emerge as a president-elect in a national poll. Specifications are also provided in sections 177, 178 and 179, for candidates who seeks to contest elections to office of the State Governor. Importantly, the Constitution also establishes special tribunals to resolve election disputes. Section 285(1) creates, for each state and for the Federal Capital Territory, a National/State Houses of Assembly Election Tribunal, and section 285(2) creates a State Governorship Election Tribunal. These tribunals appointed by the judiciary, have the original jurisdiction to rule on electoral issues, whether candidates were validly elected. The Court of Appeal is granted the exclusive jurisdiction to the exclusion of all other courts and tribunals to hear and entertain the presidential or vice-presidential election petition.¹⁰ Also, section 239 (2) CFRN outlines the judicial quorum as being 3 (three) justices in hearing and determining an election petition. An entity aggrieved by the ruling of the Court of Appeal in its capacity as the presidential election petition tribunal may proceed to the Supreme Court on appeal pursuant to Section 233 (2) (e) (i) CFRN. Thus the Constitution lays down who votes, how polls are run, and what bodies oversee and adjudicate them, while also guaranteeing fundamental voter rights like the right to free, fair elections under.¹¹ Any violation of constitutional election provisions can be struck down by the courts or trigger fresh polls.

Beneath the Constitution, the Electoral Act 2022, provides detailed rules for conducting elections and specifies criminal offenses and penalties. The Act codifies many of the irregularities discussed above as crimes. For example, impersonation of voters through

⁸ CFRN 1999 (as amended), Third Schedule, Part I, paras 14–15.

⁹ Ibid s, 76–78.

¹⁰ Ibid s. 239 (1) (a).

¹¹ Ibid s. 14 (2) (a) & (c)

ineligible voting,¹² possession and attempted use of another person's voter's card,¹³ both of which is punishable with a fine of up to ₦100,000 and/or six months imprisonment. Also, Bribery and conspiracy are expressly criminalized under section 121 Electoral Act 2022, which covers offering, paying or receiving money or other valuable consideration to induce a vote (penalty up to ₦500,000 or 12 months' imprisonment, among other provisions). Impersonation and voting when not qualified are dealt with in section 119 (offences such as voting in another person's name or voting more than once attract fines or imprisonment). The Act protects the secrecy of the ballot under section 122, and makes wrongful voting and the publication of false statements about candidates or withdrawals an offence under section 123, with monetary fines and short custodial terms. The Act protects the secrecy of the ballot under section 122, and makes wrongful voting and the publication of false statements about candidates or withdrawals an offence under section 123 (with monetary fines and short custodial terms). Voting by an unregistered person and related conduct are strictly prohibited under section 124. Furthermore, other fraudulent activities like forging or willfully destroying nomination papers, ballot papers or result forms are covered in section 115, including severe penalties for printing/possessing unauthorised ballot materials. The person may be liable to a fine of up to ₦50,000 000 or imprisonment for a term not less than 10 years. The Act also addresses false announcements and mishandling of returns, for example, a presiding officer who intentionally announces or signs a false result faces heavy penalties, and persons who publish or deliver false certificates of return are criminally liable under the provisions dealing with dereliction of duty and false declarations.

Apart from outlawing electoral offenses, the Electoral Act also sets the procedures for elections and post-election challenges. It specifies how voters are registered, how candidacies are filed, the voting process, and how results are collated and declared winners announced. Importantly, it governs election petitions. An aggrieved candidate must file a petition within 21 days of a result. The Act requires petitioners to attach certified copies of all supporting documents (e.g. polling unit results) or risk immediate rejection. Violations of the Act's procedures (such as canvassing without valid CTCs of results) can itself be grounds for dismissal of a petition. Section 286 of the Electoral Act preserves the constitutional appeal route, presidential petitions go first to the Court of Appeal, then (if contested) to the Supreme Court.

¹² Electoral Act 2022, s 124(1).

¹³ Ibid s 124(2).

Moreover, Another layer is the Evidence Act 2011, which governs how electoral claims must be proved in court. It governs the rules of the admissibility of evidence, the burden of proof and other evidentiary laws. Since election petitions and prosecutions are handled as quasi-civil matters, the standard of proof is generally the balance of probabilities, except for any criminal allegations, which require proof beyond reasonable doubt under Section 138 of the Evidence Act. However, the Evidence Act provides that the contents of a document can be proved either by primary or secondary evidence.¹⁴ Section 94(1) of the Evidence Act defines “primary evidence” to be documents produced for the inspection of the Court. The rule is that all documents must be proved by primary evidence, i.e. the original. The exceptions to this rule are contained in Section 97 of the Evidence Act. In the foregoing section, it can be seen that in proof of public documents, the only type of secondary evidence that is admissible is the certified true copy. In *Ajao v. Ambrose*,¹⁵ the Supreme Court per Coker, JSC, stated that “The combined effect of the subsection is that in the case of public documents, the only type of secondary evidence permissible is a certified true copy of the documents and none other. This is because election petitions typically seek to prove electoral malpractice (overvoting, falsification of results, non-compliance with the Electoral Act, etc.), petitioners must tender these INEC documents in evidence. However they cannot simply tender photocopies obtained informally the court will reject them. They must tender originals (primary evidence), or where originals are unavailable, Certified True Copies (CTCs) obtained from INEC (secondary evidence permissible by law). Furthermore, In *Buhari v. Obasanjo*¹⁶ the Supreme Court emphasized that election petitions must be proved with credible evidence and that documentary evidence must be properly linked to oral testimony. Also, In *Atiku Abubakar & Anor v. INEC & Ors*¹⁷ the Supreme Court examined the use of INEC’s BVAS data and Form EC8A to determine allegations of electoral malpractice. Lastly, In *Awuse v. Odili*¹⁸ the court ruled that for a document to be admissible, it must be certified in line with the Evidence Act, reinforcing the importance of proper certification in election petitions. Practically, this means INEC’s official forms (EC8A, EC8B, etc.) must be certified by the Commission or court to be received in evidence. Party agents’ photocopies are generally hearsay unless they qualify as “carbon copies.” Practically, this means INEC’s official forms (EC8A, EC8B, etc.) must be certified by the Commission or court to be

¹⁴ Section 93 Evidence Act, 2011

¹⁵ (1969) 1 NMLR, 25 at 30

¹⁶ (2005) 13 NWLR (Pt. 941) 1

¹⁷ (2023) SC/ CV/ 935/ 2023

¹⁸ (2004) 18 NWLR (Pt. 905) 90

received in evidence. Party agents' photocopies are generally hearsay unless they qualify as "carbon copies." In *AJA v. Odin*¹⁹, the court allowed carbon copies given to party agents as admissible under Section 94(4) of the Act. In all cases, documents like ballot papers, tally sheets, BVAS reports and voter registers must be properly certified or produced in original form. Failure to do so may render key evidence inadmissible, creating a significant barrier to proving malpractices. This evidentiary regime (originals required, hearsay disallowed) means petitioners must meticulously preserve and tender certified election materials to support any allegation of fraud.

In general, the courts have shown very little tolerance for sloppy evidence doubting results announced by officials if not backed by proper documents and have often struck out petitions for technical failures (missing CTCs, uncertified forms, etc.)

Here are some examples of documentary evidence the court may need during an election petition. They include but not limited to:

1. Certified True Copies (CTCs) of Election Results – INEC's Form EC8A (polling unit results), Form EC8B (ward collation), Form EC8C (local government results), and Form EC8D (state collation).
2. Voter Registers – Used to prove overvoting, voter suppression, or illegal disenfranchisement.
3. Ballot Papers and Tally Sheets – Essential in proving allegations of ballot stuffing or multiple voting.
4. INEC's BVAS (Bimodal Voter Accreditation System) Reports – Crucial in cases where electronic accreditation is in question.
5. Polling Unit and Collation Center Reports – Documents from electoral officers that may support claims of malpractice.
6. Carbon copies of the Election results
7. Copies of the Election results given to Policemen.

3.3 ROLES OF INSTITUTIONS IN PREVENTING AND PROSECUTING ELECTORAL OFFENSES

¹⁹ (2010) LPELR-9131(CA)

3.3.1 Independent National Electoral Commission (INEC)

The Independent National Electoral Commission (INEC) is the main body tasked with conducting elections in Nigeria.²⁰ Moreover, under Section 153(1)(f) of the 1999 Constitution (as amended) and Paragraph 15(a) and (i) of the Third Schedule, it is constitutionally empowered to organize, undertake, and supervise all elections in Nigeria. Its statutory functions are further elaborated under Section 2 of the Electoral Act, 2022, which authorizes it to “conduct voter and civic education, promote knowledge of sound democratic processes, and ensure that all electoral processes are conducted in accordance with the law.”

Furthermore, INEC has a direct role in checking malpractices, it is empowered to investigate alleged infractions and “prosecute offenders to court” after security agencies conduct investigations.²¹ However, INEC faces series of constraints. Different INEC chairmen have publicly admitted that the Commission “does not have the capacity and resources to prosecute electoral offences”.²² Elections consume most of INEC’s budget and manpower, and enforcement powers are limited. Nevertheless, INEC can, and sometimes does suspend elections in electoral units crowded by violence or fraud. In February 2024, INEC suspended re-run elections in 20 polling units across three states, citing irregularities and security concerns. The affected areas included units in Ikono/Ini Federal Constituency (Akwa Ibom) and Enugu South 1 State Constituency (Enugu). Also, in 2015 Kogi State gubernatorial election, After the death of a candidate (APC’s Abubakar Audu) during the collation, INEC declared the election inconclusive.

INEC employs both regulatory and technological measures to prevent electoral crimes. Its exercises its powers under the Constitution and section 148 of the Electoral Act 2022 to issue regulations and guidelines. These documents define procedures and set red lines for all participants, thereby providing clarity on prohibited conduct. The Act comprehensively details offenses with corresponding penalties, which serves a deterrent function. Examples include offences in relation to Nomination e.g, forgery of nomination papers,²³ Bribery and Conspiracy e.g, promising gratification to secure a vote,²⁴ Dereliction of Duty by electoral officials (e.g., failure to discharge official duties).²⁵ INEC is also constitutionally mandated to

²⁰ CFRN 1999, s13 & 14

²¹ Electoral Act 2022, s145

²² Mahmood Yakubu, “Towards Electoral Integrity in Nigeria: Strengthening the Legal Framework for Electoral Offences,” (Keynote Address delivered at the National Dialogue on Electoral Reform, Abuja, 2019).

²³ Electoral Act 2022, s115

²⁴ Ibid, s121

²⁵ Ibid, s120

monitor political parties, including their campaign expenses. Section 85(1) of the Electoral Act 2022, criminalises campaign finance breaches, and INEC's monitoring function is a proactive step against such offenses. Further, the deployment of technology under the Electoral Act 2022 is a major preventive strategy. The Bimodal Voter Accreditation System (BVAS), enabled by section 47 of the Electoral Act 2022, prevents core offenses like impersonation and over-voting. By using biometrics such as fingerprint and facial recognition to verify voters, it eliminates the practice of multiple voting and other forms of voters impersonation. In section 60 of the Electoral Act, there is the electronic transmission of results directly from the polling unit, which is a powerful preventive mechanism against the falsification of results during collation, a previously common offense.

Despite the clear legal framework, INEC's prevention and prosecution role suffers a large number of challenges.

Firstly, it suffers from resource overload. INEC is fundamentally an administrative body. It lacks the dedicated and extensive network of investigators and prosecutors necessary to effectively handle thousands of offenses that occur across the country's vast number of polling units.²⁶ The dual mandate strains the Commission's resources, especially during and immediately after elections.

Secondly, there are disadvantages with the high level of dependence INEC has on Security Agencies. INEC relies on the Nigeria Police Force (NPF) and other security agencies for the primary duty of investigation and arrest. Several reports²⁷ indicate that this dependence is fraught with challenges, including allegations of partisan policing and the failure of security agencies to diligently investigate and submit necessary evidence to INEC for prosecution.

Also, there is the high presence of political Interference and Impunity. Electoral offenders are often high-profile political actors or if not they themselves, are usually their agents. The lack of political will to prosecute members of the political elite is a major barrier. The high cost and complexity of pursuing powerful individuals further makes the process very difficult.

²⁶ F. Okoye, 'The Prosecution of Electoral Offenders in Nigeria' (Friedrich Ebert Stiftung, 2013) 2.

²⁷ Human Rights Watch, Nigeria: Impunity, Insecurity Threaten Elections (Human Rights Watch, 6 February 2023) <https://www.hrw.org/news/2023/02/06/nigeria-impunity-insecurity-threaten-elections> accessed 6 October 2025; Civil Society Situation Room, Report on Nigeria's 2023 General Election (Situation Room, June 2023) <https://situationroomng.org/wp-content/uploads/2> accessed 1 October 2025.

Lastly, the conviction rate for electoral offenses remains alarmingly low, fueling the belief that electoral crimes are committed with impunity. This failure acts as a weak deterrent, encouraging a cycle of electoral fraud and violence.²⁸

3.3.2 Security Agencies (Police and Others)

Security agencies play a pivotal role in Nigeria's electoral process, serving as institutional guardians of the democratic space. As Africa's largest democracy, Nigeria's elections are not merely political events but high-stakes contests that can consolidate democratic gains. The 1999 Constitution of the Federal Republic of Nigeria (CFRN, as amended) underscores this by designating the Nigeria Police Force (NPF) as the lead agency for internal security under Section 214, which explicitly prohibits parallel police forces and mandates the NPF's monopoly on maintaining law and order nationwide. This constitutional framework, reinforced by Section 4 of the Police Act 2020, outlines the NPF's general functions, including preventing crime, protecting lives and property, and ensuring public safety duties that extend critically to the electoral arena. Beyond the police, a constellation of agencies, coordinated through the Inter-Agency Consultative Committee on Election Security (ICCES), collaborates to safeguard the process from pre-election campaigns to post-election adjudication.

The CFRN 1999 forms the bedrock of security agencies' involvement in elections. Section 214(1) vests sole responsibility for internal security in the NPF, ensuring a unified command structure under the Inspector-General of Police (IGP), as per Section 215(2). This provision, echoed in Section 4 of the Police Act, delineates functions such as detecting and preventing crime, apprehending offenders, and maintaining public order explicitly applicable to electoral contexts. The Electoral Act 2022 further operationalizes this by mandating security for the Independent National Electoral Commission (INEC), including the protection of personnel, materials, and voters.

The Inter-Agency Consultative Committee on Election Security (ICCES), inaugurated in 2011, exemplifies inter-agency coordination, comprising the NPF (lead), Nigerian Armed Forces, Department of State Services (DSS), Nigeria Security and Civil Defence Corps (NSCDC), Nigeria Immigration Service (NIS), Federal Road Safety Corps (FRSC), and others. Its mandate includes designing election security plans, developing localized strategies,

²⁸ The Electoral Integrity Project, 'Principles, Barriers, and Pathways to Reforms: Case Study of Nigeria's Elections from 1999 - 2023' (2025) 5.

and ensuring compliance with human rights standards. In 2020, ICCES adopted a unified Code of Conduct and Rules of Engagement for security personnel, prohibiting excessive force, partisanship, and rights abuses while emphasizing neutrality and professionalism. This code applies across electoral phases: pre-election (campaign security), election day (polling protection), and post-election (violence prevention).

In a nutshell, INEC's guidelines complement this framework, requiring security agents to receive briefings from electoral officers, assist vulnerable groups (e.g., women, persons with disabilities), and report irregularities via dedicated hot-lines. For instance, the NIS verifies voter registers to exclude non-citizens, while the DSS investigates INEC staff misconduct. This multi-layered structure aims to mitigate Nigeria's federal complexities, where elections span 774 local governments across diverse terrains.²⁹

Furthermore in relation to Pre-election security, during campaigns, agencies provide security for rallies, candidates, and voters, deterring hate speech, thuggery, and arms proliferation. The NPF leads patrols and intelligence gathering, while the military secures volatile zones like the northeast.³⁰ ICCES deploys early warning systems, such as the Situation Room's violence tracking, to preempt flashpoints. In 2023, over 400,000 personnel were mobilized nationwide, focusing on high-risk states like Lagos, Rivers, and Kano.³¹ On the other hand, during election security, security agencies escort INEC materials, secures over 176,846 polling units, and manage crowds to prevent voter intimidation or snatching of ballot boxes. The code mandates one officer per polling unit, with rapid response to disruptions like vote-buying or over-voting.³² FRSC ensures logistics, while NSCDC protects collation centers. In 2023, this deployment helped achieve 26.7% turnout despite delays, though logistics hitches in riverine areas highlighted gaps.³³ Institutionally, these roles foster credibility. A 2023

²⁹ Policy and Legal Advocacy Centre, 'INEC, Security Agencies, IPAC and Civil Society Discuss Preparations Ahead of 2023 General Elections' (Legist, 25 November 2022) <https://legit.com.ng/news-story/inec-security-agencies-ipac-and-civil-society-discuss-preparations-ahead-of-2023-general-elections/> accessed 7 October 2025.

³⁰ ImpactHub, 'Roles of Security Agencies in Nigerian Elections' ImpactHub <https://impacthubmedia.com/roles-of-security-agencies-in-nigerian-elections/> accessed 6 October 2025.

³¹ Idayat Hassan, 'Identity, Insecurity, and Institutions in the 2023 Nigerian Elections' (CSIS, 23 February 2023) <https://www.csis.org/analysis/identity-insecurity-and-institutions-2023-nigerian-elections> accessed 6 October 2025.

³² Policy and Legal Advocacy Centre, 'INEC Releases Guidelines for Security Personnel on Election Duty' (Legist, 1 July 2020) <https://placng.org/Legist/news-story/inec-releases-guidelines-for-security-personnel-on-election-duty/> accessed 6 October 2025.

³³ Onyedikachi Madueke and Chukwuemeka Enyiazu, 'Electoral Integrity and Election Management in Nigeria: The Case of the 2023 General Election' (2025) 188(1) World Affairs 1.

CLEEN Foundation assessment noted that effective security correlated with higher voter confidence in peaceful states like Ondo.³⁴

Despite these mandates explained above, security agencies grapple with multifaceted challenges. Some of these challenges are :

1. Partisanship :

Allegations of bias e.g., selective arrests favoring incumbents, erode neutrality. In 2023, opposition parties accused NPF of complicity in voter suppression in PDP strongholds.³⁵

2. Resource Constraints and Overstretch:

Lack of the necessary resources has always been a hindrance to the effective pursuance to election security in the country. Underfunding hampers adequate

training for officers. After the 2019's postponement, a blog post³⁶ reports that officers who were deployed to different parts of the country for election security, complained of lack of proper funding, no stipend and short supply of water to their camps.

3. Broader Insecurity :

The high level of insecurity in some parts of the country, most especially the northern part, do affect the ability of the security agencies to secure election polls. This is because some of these terrorists in these parts of the country do have sophisticated weapons which is by far above that of the police, which is the main security agency in an election setting. These insurgencies all over the country has displaced millions of citizens, therefore, disenfranchising IDPs.

However, post-2023 reflections demand critical reform areas for the Inter-Agency Consultative Committee on Election Security (ICCES) to strengthen its role in Nigeria's electoral process.. Recommendations include:

1. Enhancing Neutrality: There should be Mandatory vetting, rotation of officers, and independent oversight via civil society.

³⁴ Election Security Management and the 2023 General Elections: A SWOT ANALYSIS, 7.3.23, Abuja.

³⁵ Sunday Udochukwu Ikwuoma and Akinlabi Akinbowale John, 'Electoral Security Management in Nigeria: A Study of Security Agencies' Conduct in the 2023 Presidential Election in Oyo State' (2025) Juriss 1.

³⁶ John Campbell, 'Nigerian Police Asked to Fend for Themselves During Election Delay' (Council on Foreign Relations, 22 February 2019).

2. Coordination and Tech (ICCES-led AI for threat mapping; sub-national desks for localized plans): This focuses on enhancing ICCES's operational efficiency through advanced technology and localized coordination. Nigeria's electoral landscape is vast and diverse, spanning 36 states, 774 local government areas, and over 176,846 polling units, with varying security challenges like insurgency in the northeast, banditry in the northwest, and separatist tensions in the southeast. Effective coordination among ICCES's member agencies (e.g., Nigeria Police Force, DSS, NSCDC) and the use of technology can preempt and mitigate these threats. Also, Artificial Intelligence (AI) can analyze vast datasets such as historical election violence records, social media activity, and real-time incident reports to predict and map potential security risks. This involves machine learning models that identify patterns in electoral violence, vote-buying, or disinformation campaigns.

Nigeria's 2023 elections saw several violent incidents, including attacks on INEC offices, highlighting the need for predictive tools. Existing early warning systems, like the Situation Room's violence tracking, rely on manual reporting, which is slow and incomplete. Modern AI can enhance these by processing real-time data, police reports, and INEC hotlines. Furthermore, ICCES could partner with tech firms to deploy AI dashboards that flag high-risk areas based on metrics like past violence, voter density, or political tensions. For example, In Kenya's 2017 elections, AI tools analyzed social media to curb misinformation, reducing violence by 15% in targeted areas. Nigeria could adapt similar models, integrating data from ICCES's member agencies and civil society.

3. Accountability (Prosecute Violations via Special Tribunals; Sanctions for Politicians Inciting Violence) : Accountability ensures that electoral violations such as voter intimidation, ballot snatching, face consequences, deterring future offenses. ICCES's Code of Conduct (2020) mandates neutrality and human rights compliance, but weak enforcement undermines credibility. Special tribunals and sanctions target both security personnel and politicians, addressing impunity.

Security agencies, as institutions, are the linchpin of Nigeria's electoral process, enabling participation while embodying state legitimacy. From the NPF's constitutional primacy to ICCES's collaborative ethos, their framework is robust on paper but strained in practice. The 2023 elections, despite flaws, demonstrated potential: reduced fatalities compared to 2019,

thanks to proactive deployments.³⁷ Yet, persistent challenges like partisanship and resource gaps threaten consolidation. As Nigeria approaches future polls, reforming these institutions through accountability, tech, and inclusivity is important.

3.3.3 Election Tribunals and Judiciary

After the dust settles on election day, when voters have cast their ballots, security agencies have guarded polling units, and results have been declared, the judiciary steps in as a critical pillar of the democratic process. Imagine the tension in a community where election results spark protests or allegations of rigging fly on social media platforms. Judging from my experience in Nigeria, there is bare any election that goes by without allegations of rigging not heard about such elections on the media. The judiciary, through specialized Election Petition Tribunals, becomes the arena where these disputes are resolved. This is rooted in the 1999 Constitution of the Federal Republic of Nigeria (CFRN) and the Electoral Act 2022, these tribunals are designed to ensure accountability, deter malpractice, and restore trust in the democratic system. But, as we'll see, the process is far from perfect riddled with challenges like technicalities, delays, and public skepticism.

The judiciary's role in elections is anchored in Section 285 of the 1999 Constitution, which establishes Election Petition Tribunals to handle disputes arising from election outcomes. These tribunals are specialized courts, distinct from regular courts, created to ensure swift and focused resolution of electoral disputes. The Constitution under section 285 lays out their structure. Section 285(1) mandates the creation of one or more tribunals in each state and the Federal Capital Territory (FCT) to address petitions related to National Assembly (Senate and House of Representatives) and State House of Assembly elections. Section 285(2) establishes tribunals for governorship elections, ensuring state-level executive disputes are addressed. The presidential election petitions goes straight to the Court of Appeal, which sits as a Presidential Election Tribunal, with appeals escalating to the Supreme Court.

Sections 131–137 of the Electoral Act 2022 further details the tribunals' operations, setting strict timelines and procedures. For instance, petitioners must file their cases within 21 days of the result declaration,³⁸ and tribunals are expected to deliver judgments within 180 days.

³⁷ Afolabi Adekaaiyaoja, Dengiyefa Angalapui, Olajumoke (Jumo) Ayandele, 'Nigeria's 2023 Election Security Landscape - Drivers, Actors and Emerging Challenges' (DD West Africa, 22 December 2023) <https://ddwestafrica.org/nigeria-2023-election-security-landscape-drivers-actors-and-emerging-challenges/> accessed 8 October 2025.

³⁸ Electoral Act 2022, s.132(7); see also Constitution of the Federal Republic of Nigeria 1999 (as amended), s.285(5).

This tight schedule reflects the urgency of resolving disputes to maintain political stability. Each tribunal typically consists of a judge (often a High Court judge) as chair and two other members, who may be judges or senior legal officers, ensuring a panel with legal expertise to handle complex electoral disputes.

Election tribunals don't prevent malpractices before or during voting that's the job of INEC and security agencies like the Nigeria Police Force under ICCES.³⁹ Instead, what they do is, they step in after the fact, acting as a legal referee to investigate claims of fraud, violence, or procedural errors.⁴⁰ Picture a candidate who believes their victory was stolen through ballot box snatching or inflated vote counts in a rival's stronghold. The tribunal is their chance to prove it.⁴¹ The tribunals' powers are significant they can annul elections if irregularities substantially affected the outcome. For example, in 2007, the annulment of the Bayelsa governorship election due to fraud sent a very strong signal about accountability.⁴² They also uphold results if evidence shows the election was credible, reinforcing INEC's declarations. They can order reruns in specific polling units or entire constituencies, as seen in the 2023 Kano governorship dispute, where the tribunal ordered a rerun due to invalid votes.⁴³ They also have the onus to disqualify candidates if they're found guilty of serious violations, like submitting forged certificates or documents.⁴⁴

However, by providing this legal recourse, tribunals serve as a strong deterrent to electoral offenders which includes politicians, thugs, or even INEC officials who know their actions could be checked in court.⁴⁵ The possibility of annulment is meant to keep players honest, ensuring that the will of the voters prevails. In practice, the system's effectiveness depends on how well these tribunals operate. It is no new that our judiciary can sometimes be compromised. The tribunal process, however plays an adversaria rolel.⁴⁶

³⁹ CFRN 1999, s 214; Police Act 2020, s 4; Inter-Agency Consultative Committee on Election Security (ICCES), National Election Security Framework (INEC 2020) 12.

⁴⁰ CFRN 1999, s 285(1)–(2); Electoral Act 2022, s 131.

⁴¹ Electoral Act 2022, s 137 (burden of proof); INEC, Guidelines for Election Petitions (INEC 2022) para 3.4.

⁴² O Ezigbo, Tribunal Sacks Sylva, Orders Rerun The Punch (Lagos, 28 August 2007) 1.

⁴³ (2023) EPT/KN/GOV/02/2023 (Kano Governorship Election Tribunal, 20 September 2023) (rerun ordered in 3 LGAs due to invalid votes).

⁴⁴ Electoral Act 2022, s 65(2)(b); *Modibbo v Usman* (2019) LPELR-49223(CA) (disqualification for forged certificate).

⁴⁵ A Ojo, 'Election Tribunals and the Deterrence of Electoral Malpractice in Nigeria' (2021) 15 Nigerian Journal of Legal Studies 89, 97.

⁴⁶ E E Uzu, 'Adversarial Justice in Nigerian Election Petitions: A Critical Appraisal' (2022) 18 Nigerian Bar Journal 112, 115.

CHAPTER FOUR

THE BARRIERS TO PROVING ELECTORAL MALPRACTICES IN NIGERIA.

We looked exhaustively at the nature of electoral malpractices and the legal framework in Nigeria, we are now going to observe critically the hurdles which affects petitioners while trying to prove electoral misconduct.

since the return to democratic rule in 1999, our electoral history has witnessed several forms of malpractices, such as vote buying, ballot box snatching, result falsification, voter intimidation, and ethnic-based suppression. These irregularities of course undermines the legitimacy of elected governments, and that is why we have the courts, to guide this legitimacy, thereby providing a platform by which aggrieved political actors, can seek redress after the electoral misconduct has been carried out. However, despite frequent petitions, very few cases succeed at the courts. Furthermore, the adjudication of electoral disputes in Nigeria is characterized by significant legal, institutional, and socio-political barriers that collectively make it a near-impossible task for petitioners to successfully prove allegations of electoral malpractice and secure the nullification of a declared election result.

In Nigeria, just as in many other countries, an election petition serves as a recognized and lawful means for candidates to express dissatisfaction with the results of an election. This legal process is grounded in the nation's legislative framework and reinforced by judicial precedents, both of which provide avenues for contesting and possibly overturning flawed electoral victories. Beyond disputes over election results, irregularities in the nomination process of candidates can also be challenged, sometimes resulting in the rightful candidate replacing one who was wrongly nominated. A notable example is the case of Rotimi Chibuike Amaechi,¹ former Governor of Rivers State, which remains an important case in the Nigerian legal system. Election petitions in Nigeria are typically filed before specialized tribunals. Tribunals are mandated to adjudicate petitions based on the rules of evidence, meaning that a petitioner must rebut the presumption of regularity attached to declared election results before such results can be overturned. The primary legislation governing the admissibility and evaluation of evidence in Nigeria is the Evidence Act 2011, which applies to both civil and criminal proceedings, with certain exceptions.

¹ [2008] 15 NWLR (Part 784).

This chapter examines these obstacles in depth, drawing on historical patterns from elections in 2003, 2007, 2011, 2019, and 2023, while highlighting how they perpetuate a cycle of irregularity. Understanding these barriers is essential for reforming Nigeria's electoral framework to foster genuine electoral integrity in the fort-coming 2027 general elections and beyond.

4.1 Legal Barriers

The Nigerian legal architecture for electoral offenses is primarily enshrined in the 1999 Constitution (as amended), the Electoral Act 2022, and ancillary laws like the Criminal Code Act and Police Act 2020. Sections 114–129 of the Electoral Act criminalize a wide array of malpractices, such as bribery (Section 121), undue influence (Section 123), and false result announcements (Section 118), with penalties including fines up to N500,000 and imprisonment for up to 1 years. Yet, the enforcement of these provisions is hamstrung by inherent legal flaws that elevate the threshold for proof and prosecution. We are going to look at several legal barriers.

4.1.1 Strict burden and standard of proof as a barrier

Conceptual Foundations of the Legal Burden in Nigerian Electoral Petitions.

The litigation of electoral disputes in Nigeria is characterized by a unique and stringent application of the common law principle of *onus probandi* (burden of proof). This legal requirement, which means that "he who asserts must prove," places an extraordinarily high gateway on any petitioner seeking to nullify a declared election result.² The term "burden of proof" often encompassing two distinct legal duties.³ The first is the Legal Burden or the Burden of Persuasion, which represents the duty of establishing the truth of operative facts by the certain standard of evidence. This burden, resting upon the party asserting the affirmative, typically remains with the petitioner throughout the duration of the trial, defining the criteria

² F. O. Osadolor, 'Burden and Standard of Proof in Election Petitions without Criminal Allegations' 12(3) *Journal of Politics and Law* 156.

³ F. Aborisade, 'Legal Framework on the Electoral Process and Challenges of Judicial Reconstruction in Nigeria' (Independent National Electoral Commission (INEC) Conference Paper, 2019).

they must meet to ultimately win the case.⁴ In the context of an election petition, the petitioner is the party who will fail if no evidence is adduced on either side.

The second duty is the Evidential Burden or the Burden of Production, which is the obligation on a party to go forward with sufficient evidence to counter a prima facie case made against them.⁵ Unlike the legal burden, the evidential burden is dynamic and shifts between the parties based on the specific assertions made in the pleadings and the evidence presented. However, in Nigerian practice, the focus remains overwhelmingly on the petitioner's perpetual legal burden, often disregarding potential evidential shifts to the respondent, such as the Independent National Electoral Commission (INEC).

Election petition proceedings in Nigeria have long been described as *sui generis* that is, unique in nature. This characterization was first articulated in the case of *Onitiri v. Benson*,⁶ where the former Federal Supreme Court emphasized that the jurisdiction of election tribunals is special and distinct, lacking the usual features associated with appeals in ordinary civil cases. This principle was later reaffirmed by the Supreme Court in *Obih v. Mbakwe*⁷ while interpreting the 1982 Electoral Act. The sui generis nature of election petitions means that both civil and criminal procedural elements are intertwined during their prosecution and adjudication. This hybrid framework often results in tribunals applying two different standards of proof. Proof beyond reasonable doubt and proof on the balance of probabilities, depending on the specific circumstances of the petition brought to the tribunal. Ordinarily, election petitions are categorized as civil proceedings, which require proof based on the balance of probabilities. However, this general rule is influenced by the nature of the claims and allegations presented.⁸ When the issues raised are purely civil, such as non-compliance with electoral procedures or irregularities in vote counting, the civil standard of proof applies.⁹ Conversely, when the petition includes allegations that imply criminal conduct such

⁴ N. C. Anyim, 'Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions (Ghana and Kenya)' 2(4) *Journal of Political Discourse* 70.

⁵ F. Aborisade, 'Legal Framework on the Electoral Process and Challenges of Judicial Reconstruction in Nigeria' (Independent National Electoral Commission (INEC) Conference Paper, 2019).

⁶ (1960) 5 FSC 150 at 153.

⁷ (1984) 1 SC NLR 192.

⁸ *Sergaent Awuse v Peter Odili* (2005)16 N.W.L.R(pt.952) 416 C.A

⁹ *Adams Oshiomole v I.N.E.C and ors*; Petition Number EDGV/EPT/1/07

as fraud, forgery, or violence the higher standard of proof beyond reasonable doubt is required.

A persistent challenge in election petition litigation is determining which specific grounds or allegations amount to criminal acts, thus invoking the stricter standard of proof. Closely linked to this is the difficulty of defining what constitutes a “crime” within the context of election proceedings. Should “crime” be confined to offences outlined in the Electoral Act, or should it be interpreted more broadly to include offences defined in the Criminal Code¹⁰ or Penal Code?

A useful starting point in resolving this issue lies in Section 138(1) of the Evidence Act, which establishes the requirement for proof beyond reasonable doubt in civil cases where the commission of a crime is directly in question. This section is clear and should be interpreted literally it applies only when the alleged criminal act is directly relevant to the matter being adjudicated.

Furthermore, Sections 6, 7, and 8 of the Evidence Act define what constitutes a “fact in issue” in both civil and criminal proceedings. Specifically, Section 6(1) allows the court to admit evidence that is relevant to determining the existence or non-existence of a fact but excludes evidence deemed too remote or immaterial. In applying this principle, it follows that the allegation of a crime in an election petition becomes relevant only if it has a direct impact on the outcome of the case. Where such an allegation is tangential or unrelated to the reliefs sought, it may be considered too remote and, therefore, inadmissible.

According to the Act, a fact in issue refers to any fact from which the existence or non-existence of a right, liability, or obligation in a proceeding can be inferred. Thus, in election petitions, the relevance and required standard of proof should depend on whether the alleged criminal act directly affects the petitioner’s claims or the relief sought. In essence, the correct application of these evidentiary principles is central to resolving the ongoing debates surrounding the precise meaning and scope of the burden of proof in Nigerian election petition proceedings.

¹⁰ The Criminal Code cap. C38 Laws of the Federation of Nigeria 2004, never really defined the word "Crime" but defined the word "offence" which has the same meaning as "crime". Section 2 of the Code defined "Offence" to mean an act or omission which renders the person doing the act or making the omission liable to punishment under this Code or under any Act, or law.

Having looked at a summary of the issues on burden of proof, we would go therefore to look into specifics aspect of the burden of proof as it relates to election petition in Nigeria.

4.1.1.1 Failure of INEC to Bear the Burden of Proving the Credibility of Elections

One the most formidable legal impediment to successfully proving electoral malpractices in Nigeria is the judicial application of the burden of proof, which rigidly imposes an almost impossible evidential standard on the petitioner while simultaneously affording the Independent National Electoral Commission (INEC) a powerful, and often unjustifiable, legal shield. This structural imbalance ensures that the systemic failure of the electoral administrator is routinely absolved under the guise of procedural formalism.

The Nigerian judiciary regards an election petition as a special form of civil proceeding (*sui generis*),¹¹ thereby applying the core common law rule of the Evidence Act, which states that the legal burden of proof rests entirely on the party that brings the claim, who is the one questioning the election result. The cardinal rule is "he who asserts must prove".¹² This means INEC, the party defending the declared result (the respondent), is generally not required to lead any evidence or establish the regularity of the election unless and until the petitioner has met their initial obligation. As stated in *Adeyemo Onifade v. Muslim Raheem*,¹³ the burden is on the litigant who would fail if no evidence is led in proof of the claim before the court. Since the petitioner challenges the status quo, they are the party who fails by default, thus insulating INEC from the initial legal burden. The most potent judicial weapon that enforces INEC's non-burden status is the rebuttable presumption of regularity. This doctrine dictates that the result declared by the Returning Officer is *prima facie* correct and valid, and the burden of rebutting this presumption lies solely on the challenger.¹⁴

The Supreme Court definitively entrenched this principle in the case of *Ngige v. INEC*,¹⁵ holding that the declared result enjoys a provisional stamp of approval until the petitioner provides "cogent and credible evidence" sufficient to destroy that presumption. By granting this default position, the judiciary relieves INEC of the necessity to prove that it conducted the election substantially in compliance with the Electoral Act, 2022, until its declaration is successfully removed. Legal analysis suggests this presumption, in the context of Nigeria's

¹¹ F. O. Osadolor, "Burden and Standard of Proof in Election Petitions without Criminal Allegations," *Journal of Politics and Law*, Vol. 12, No. 3 (2019), p. 156. [1]

¹² *Ibid*

¹³ (199) LPELR CCN/1/2/99, per Onalaja JCA at p. 21, paras E-G. [2]

¹⁴ *Ngige v. INEC*, cited in *Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions: Ghana and Kenya* (2024), p. 70. [3]

¹⁵ *Ibid*; see also *Ngige Vs. INEC* (2014) CLR 9(a) (SC). [4]

fraught electoral history, "no longer serve[s] the end of justice" as it aids INEC in being "reckless" in its conduct, knowing the courts start with a validation of their actions.¹⁶

Furthermore, the onus only shifts to INEC (the respondent) under highly restrictive conditions. Judicial interpretation of the Electoral Act mandates that the petitioner must overcome a dual evidential hurdle before INEC acquires any evidential burden:

The petitioner must prove specific non-compliance with the Electoral Act.

The petitioner must prove that the non-compliance substantially affected the result of the election.¹⁷

In the cases of *Aminu & Anor V INEC & Ors*¹⁸ the court confirmed that the petitioner must first establish firm and credible evidence of INEC's departure from the Act and satisfy the court that the non-compliance adversely affected the validity of the results. It is only after the petitioner has successfully surmounted these issues, that the onus shifts to the respondent to demonstrate that the election was indeed conducted substantially in accordance with the principles of the Act.¹⁹ This means that INEC's burden is merely a secondary, defensive one, contingent entirely on the petitioner's success.

The court's decision to keep INEC free from the burden of proof makes it very difficult for anyone challenging election results. This is because INEC controls all the important election materials such as voters' registers, ballot papers, and result sheets which are the very documents needed by the petitioner to prove their case.

Moreso, Section 74 of the Electoral Act, 2022, mandates the Resident Electoral Commissioner to provide Certified True Copies (CTCs) of requested election documents to an applicant.²⁰ However, this statutory duty, which even carries criminal sanctions for non-compliance, does not translate into a legal burden of proof for INEC in the litigation itself.

In practice, the documents is used to assist the petitioner. It may not even be readily and fully disclosed by INEC.²¹ Since the burden remains on the petitioner, a petitioner who is denied access to the CTCs or who faces undue delays is logically unable to meet the evidential

¹⁶ Osadolor, supra note 1, at 156; see also F. O. Osadolor, supra note 1, at 158.

¹⁷ *Aminu & Anor V INEC & Ors*, cited in *Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions: Ghana and Kenya* (2024).

¹⁸ *Ibid*

¹⁹ *Ucha V Chief Elechi*, cited in *Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions: Ghana and Kenya* (2024).

²⁰ Electoral Act 2022, Section 74 (mandating the provision of CTCs of documents to applicants).

²¹ Osadolor, supra note 1, at 158.

standard required to prove "substantial effect." This procedural reality transforms the burden of proof from a neutral rule into an "illogical and unfair" ²²mechanism that structurally sanctions administrative obstructionism by INEC. The burden of proof, therefore, operates as a judicial instrument that makes electoral justice unattainable by rewarding the party that controls the evidence with a default presumption of regularity.

In the case of *Atiku v. Buhari*,²³ on the 2019 Nigerian Presidential Election held on February 23, 2019, was primarily contested between Muhammadu Buhari of the All Progressives Congress (APC) and Atiku Abubakar of the People's Democratic Party (PDP). Following the election, the Independent National Electoral Commission (INEC) declared Muhammadu Buhari as the winner and duly elected President. Dissatisfied with the outcome, Atiku Abubakar and his party, the PDP, filed a petition before the Presidential Election Petition Tribunal challenging the validity of the election and Buhari's qualification to contest.

The petition was based on two main grounds. First, the petitioners alleged that President Buhari did not possess the minimum educational qualification required to contest for the office of President. Second, they claimed that Buhari did not score the majority of lawful votes cast, and that the election was marred by irregularities and substantial non-compliance with electoral laws. The respondents in the case were Muhammadu Buhari, the All Progressives Congress (APC), and the Independent National Electoral Commission (INEC).

During the tribunal hearing, the petitioners presented 62 witnesses, including a Kenyan ICT expert, Mr. David Njorga, and tendered over 40,000 documents in support of their claims. They alleged that INEC manipulated results by deducting votes from the PDP and adding them to the APC, asserting that data obtained from INEC's back-end server showed they actually won the election with a margin of 1.6 million votes. While the APC and Buhari presented their defense and called witnesses, INEC did not call any witness in its defense.

After considering the evidence, the five-member Presidential Election Petition Tribunal, chaired by Justice Mohammed Garba, dismissed the petition. The tribunal held that the petitioners failed to prove their allegations of irregularities, vote manipulation, and non-compliance with the Electoral Act. It also ruled that the alleged INEC server evidence was not credible or legally admissible, and that the second respondent's educational qualification was sufficient, meeting the constitutional requirements through the alternative pathways

²² Ibid.

²³ 17 NWLR (Pt. 1690) 455 (SC), 17 NWLR (Pt. 1690) 300 (CA)

provided in Section 318. This finding recognized that the second respondent, having served in the Nigerian military and held the highest offices of state, possessed the demonstrated literacy, training, and length of public service that the Constitution recognizes as the equivalent of a school certificate. Consequently, the tribunal affirmed that Muhammadu Buhari was duly elected as President.

Dissatisfied with the tribunal's judgment, the petitioners appealed to the Supreme Court. However, on October 30, 2019, the Supreme Court unanimously dismissed the appeal, upholding the tribunal's decision on the grounds that the petitioners failed to substantiate their claims with credible evidence. The Court concluded that the election was conducted in substantial compliance with the law, and that president Buhari was qualified to contest in the 2019 general elections. Justice Okoro, in the lead judgment, stated that:

“President Buhari was eminently qualified having met the requirements stipulated in Section 131 (d) of the Constitution that provides that an aspirant to the position of president should be educated to the secondary school level or primary six and have served in the public service for ten years and attend training, with ability to read and write in English Language and any other qualifications acceptable to the Independent National Electoral Commission (INEC).”

It is very important to differentiate the legal closure provided for the qualification ground from the resolution of the electoral malpractice claims. The ground relating to educational qualification was dismissed based on robust, settled constitutional interpretation. The court established that even if the physical certificate was not presented (though it was later attested to), the candidate's life history provided legally sufficient and compelling evidence of qualification under the law. Hence the supreme court concluded that Buhari was qualified to contest the 2019 general elections. In contrast, the second issue of the petition allegations of irregularities, vote manipulation, and the use of INEC's server data, was dismissed on technical evidential grounds, primarily concerning the inadmissibility of the alleged server evidence.

Flowing from the facts stated, the big question is, is it right to place the whole burden of proof on the petitioner during an election petition and insist that the burden must remain on the petitioner throughout the petition's hearing ?

Analyzing this case, the 2019 Presidential Election Petition, Atiku Abubakar and the PDP did everything possible to prove their case. They presented evidence to show that the election, declaration, and return of late President Buhari were tainted by irregularities and violations of the law committed by the APC, its candidate, and INEC. The petitioners tendered documents

from all 36 states, showing that INEC unlawfully deducted votes from them, which affected their victory. They also relied on results obtained from INEC's server, which matched the figures collected by their agents across the country but differed from the official results declared by INEC.

In a typical civil case, once a party provides credible evidence to support his claims meeting the standard of proof based on the balance of probabilities.²⁴ The burden of proof should shift to the other party. Therefore, after the petitioners presented their evidence, the evidential burden should have moved to INEC, as the electoral body responsible for conducting the election, to prove that the process was free, fair, and properly conducted. The court should not have expected the petitioners to prove the full extent of every irregularity that occurred nationwide. However, the rationale for the court's decision was borne out of the Section 139(1) of the Electoral Act 2010. It emphasized that irregularity of any sort should substantially alter the outcome of the result. It also permanently chained the burden to the petitioner, and shielded INEC from accountability, even when evidence strongly suggested otherwise. However this rigidity, not the petitioners' failure, doomed the case. Also, there are no sections in the Electoral Act 2010 that requires INEC to call witnesses, or produce original server logs. It is worthy of note that the Electoral Act 2022, does not introduce a general shifting of the burden of proof to INEC in election petitions, this remains fixed on the petitioner, as in 2010.

Furthermore, an election petition is not a criminal case where the standard of proof is "beyond reasonable doubt." Hence, INEC's simple denial of having a server, without presenting any witness or evidence, should not have been accepted outright by the Tribunal or the Supreme Court. INEC did not call a single witness, which denied the petitioners the opportunity to cross-examine them on the server issue. In contrast, the petitioners called 62 witnesses, all of whom gave detailed accounts of what occurred in their respective states and provided testimony regarding the server. Given these efforts, it is reasonable to ask, what more could Atiku Abubakar and the PDP have done to prove their case?

4.1.1.2 The Rebuttable Presumption of Regularity

²⁴ Oraegbunam, Ikenga K.E., "Re-Examining the Standard of Proof of Criminal Allegations in Election Petition Determination in Nigeria" (2016) 19 Nigerian Law Journal 226.

The presumption of regularity is a core principle within the law of evidence. It is classically expressed by the Latin maxim, "*omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium*"²⁵ which translates to "*everything is presumed to have been rightly and duly performed until the contrary is proven*".⁶

One underlining root barrier facing petitioners is the judicial doctrine of the rebuttable presumption of regularity. Nigerian electoral jurisprudence is founded on the presumption that election results declared by the returning officer or the electoral umpire (INEC) are correct and valid until proven otherwise.²⁶ In the case of *Ogboru v Uduaghan & Ors*²⁷, the principle of the presumption of regularity for election results was emphatically restated by Justice Dahiru Musdapher, JSC (as he then was) stated:

"It is trite law that in an election petition, the result declared by the Returning Officer and the Electoral Officer is presumed to be correct. The burden of proving the contrary lies squarely on the Petitioner, who alleges that the result is wrong. The petitioner must adduce cogent, credible, and sufficient evidence to rebut the presumption."

The presumption was affirmed in the case of *Ngige v INEC*²⁸, where the court held that the burden of rebutting this presumption lies squarely on the person who denies the correctness of the result. By granting assumed validity to the declared result from the electoral body, the legal system forces the petitioner to achieve not just proof of error, but overwhelming proof sufficient to dislodge an official, court-sanctioned truth. This immediate placement of the legal burden on the Petitioner, constitutes an undue judicial subsidization of the presumed winner and the electoral umpire,²⁹ The combined effect of fixing the legal burden permanently on the petitioner, and upholding this strong presumption of regularity fundamentally protects the status quo, thereby unintentionally encourages electoral malpractice, as political actors understand that the legal burden required to overturn the result is practically insurmountable.

4.1.2 The Dual Statutory Barrier: Proving Non-Compliance and Substantial Effect

²⁵ Archbold Criminal Pleading, Evidence and Practice, 1999, para 10-5 at p. 1130.

²⁶ Evidence Act 2011, ss.145(1) and 168(1).

²⁷ (2011) 1 SC (Pt. I) 1

²⁸ (2015) 1 NWLR (pt. 1440) 280.

²⁹ N. C. Anyim, 'Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions (Ghana and Kenya)' 2(4) Journal of Political Discourse 70.

Another striking barrier to proving electoral malpractices is the dual requirement established under the Electoral Act, 2022.³⁰ This statutory mandate requires satisfaction of two separate criteria, making failure at either stage fatal to success of such petition.

The statutory foundation for this barrier is enshrined in Section 135(1) of the Electoral Act, 2022, which provides:

"An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election."

The standard for nullifying an election result on the basis of non-compliance or irregularity is exceptionally high. For a petition to succeed, the petitioner must not only prove that there was non-compliance with the provisions of the Electoral Act, but also that "the non-compliance substantially affected the result of the election"³¹. This law, imposes a weighty additional burden.³² The petitioner must satisfy the court of the causal link between the established procedural breach (non-compliance) and the outcome of the election.

The first stage requires the petitioner to establish firm and credible evidence demonstrating the Electoral Commission's departure from the statutory provisions³³ Non-compliance typically involves technical breaches such as failure to adhere to accreditation rules, improper handling of election forms, or violations of counting and collation procedures. However, succeeding at this stage alone is insufficient. This brings us to the second stage.

This second stage is the critical, and often fatal, it's a choke point in electoral litigation.³⁴ Even where a petitioner proves non-compliance, the result may stand if the breach is not deemed to have substantially affected the overall election outcome¹².

³⁰ Electoral Act, 2022 s 135(1).

³¹ Electoral Act 2022, s. 134(2).

³² O. Adebisi and T. Ajetunmobi, 'Burden of Proof in Election Petition in Nigeria and the Implication of Section 137 of the Electoral Act 2022' 10(1) International Journal of Law and Legal Jurisprudence Studies 30.

³³ F. O. Osadolor, 'Burden and Standard of Proof in Election Petitions without Criminal Allegations' 12(3) Journal of Politics and Law 157.

³⁴ F. Aborisade, 'Legal Framework on the Electoral Process and Challenges of Judicial Reconstruction in Nigeria' (Independent National Electoral Commission (INEC) Conference Paper, 2019).

The court requires petitioners to undertake a rigorous quantitative analysis to demonstrate substantiality.³⁵ Under this, mere allegations of irregularities such as voter suppression, ballot stuffing, or procedural lapses are insufficient; the petitioner must adduce cogent, quantifiable evidence linking the non-compliance to a material distortion of the electoral results. For instance, evidence might include statistical analyses of vote discrepancies, witness testimonies on widespread malpractices, or expert reports on turnout anomalies, all tailored to show that the declared winner would not have prevailed absent the irregularities.³⁶

Therefore, this dual requirement creates a practical barrier because the "substantial effect" clause is outrageously hard to prove, particularly in Nigeria's often chaotic electoral environment where comprehensive data (e.g., from polling units or BVAS Bimodal Voter Accreditation System devices) may be incomplete, disputed, or inaccessible to petitioners.³⁷ Courts have consistently held that the burden remains squarely on the petitioner throughout, without any evidential shift to the respondent (e.g., INEC or the winner), even where prima facie evidence of irregularities exists.³⁸ Failure to discharge this burden results in the petition being dismissed, preserving the status quo and perpetuating the presumption of regularity in electoral outcomes.

In *Ngige v. INEC*,³⁹ the Supreme Court underscored that the petitioner bears the onus to prove both non-compliance and its substantial impact, warning that unsubstantiated claims of irregularities cannot vitiate an election. The Court held that: "*The petitioner who alleges non-compliance must go further to establish that but for the non-compliance, the result of the election would have been different.*" This ruling illustrates how the dual test operates as a filter, dismissing petitions where petitioners fail to provide "cogent and compelling evidence" beyond mere assertions.⁴⁰ Similarly, in the more recent *Aminu & Anor. v. INEC & Ors*⁴¹ the Supreme Court reaffirmed the application of Section 135(1), ruling that a petitioner alleging non-compliance must explicitly demonstrate how the irregularities substantially affected the

³⁵ O. Adebisi and T. Ajetunmobi, 'Burden of Proof in Election Petition in Nigeria and the Implication of Section 137 of the Electoral Act 2022' 10(1) *International Journal of Law and Legal Jurisprudence Studies* 32.

³⁶ N.C. Anyim, 'Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions (Ghana and Kenya)' (2015) 4 *Journal of Political Discourse* 70, 75-78.

³⁷ See Independent National Electoral Commission (INEC), Guidelines and Regulations for the Conduct of Elections 2022, reg 25 (on BVAS data integrity).

³⁸(2024) LPELR-61787 (SC) at 45-50.

³⁹ (2015) 1 NWLR (Pt. 1440) 280 at 312-315.

⁴⁰ Ibid at 314.

⁴¹ (supra) at 48.

result. That failure to do so renders the petition incompetent. The Court clarified: "It is not enough to prove non-compliance; the petitioner must lead evidence showing the quantum of votes affected and their linkage to the final tally." This decision, highlights the barrier's contemporary relevance, where despite technological safeguards like BVAS, petitioners struggled to meet the evidential threshold amid disputes over result transmission.⁴² Another case is *Jimi (Dr.) O. Agbaje & Anor. v. INEC & Ors*,⁴³ where the Supreme Court dismissed a petition for lacking proof of substantial effect, despite acknowledged procedural flaws in collation processes. The Court reiterated that "*the law does not invalidate elections on technicalities alone; the substantial effect must be demonstrable*," thereby reinforcing the dual barrier as a safeguard against destabilizing post-election litigation.⁴⁴

Furthermore, this statutory framework has been criticized for unduly favoring incumbents and electoral bodies, as the petitioner's limited access to official records (e.g., Form EC8A results sheets) hampers proof of substantial effect, while respondents benefit from the presumption of compliance.⁴⁵ In jurisdictions like Ghana and Kenya comparative models cited in Nigerian scholarship the burden is similarly petitioner-centric but mitigated by more accessible discovery mechanisms, a reform gap in Nigeria's system.⁴⁶

4.1.3 Evidential Burden of the polling unit formality

Beyond the strict legal standards, the practical realities and procedural mandates of Nigerian tribunal, do constitute barriers to evidence collection and presentation.

The Nigerian legal system, mandates that non-compliance and substantial effect must be proved polling unit by polling unit.⁴⁷ The polling unit is viewed as the fundamental base of the electoral process where accreditation and voting occur. To discharge the difficult burden, petitioners are traditionally required to Call Witnesses, which includes mobilizing and presenting witnesses, typically polling unit agents of the political party, who were physically present at the point of alleged malpractice. It also includes tendering primary evidence e.g the primary result forms (Form EC8A) for each specific unit and have the witnesses authenticate these documents under cross-examination.

⁴² Ibid at 52-55 (discussing BVAS non-compliance claims in Kano Governorship Petition).

⁴³ (2022) 8 NWLR (Pt. 1833) 585 at 620.

⁴⁴ Ibid at 625.

⁴⁵ N.C. Anyim, 'Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions (Ghana and Kenya)' (2015) 4 Journal of Political Discourse 82-85.

⁴⁶ Ibid 86-90 (comparing Nigeria's s 135 with Ghana's Public Elections Regulations, 2020, art 12 and Kenya's Elections Act, 2011, s 85A).

⁴⁷ *Wike v. Peterside* (2016) 7 NWLR (Pt. 1512) 454 at 495-496 (SC).

Statutorily, this requirement is anchored in Section 137 of the Electoral Act, 2022, which mandates that grounds for questioning an election (e.g., non-compliance under Section 134) be stated with particulars, including the specific polling units affected.⁴⁸ The First Schedule to the Act (Paragraph 4(1)(c)–(d)) reinforces frontal loading: petitioners must list documents, witnesses, and polling units in the petition, failing which the case is struck out for vagueness.⁴⁹ Evidentially, proving overvoting or suppression at a unit requires tendering the voters' register, Form EC8A (polling unit result), BVAS accreditation data, and witness testimony from that exact unit—often hundreds or thousands for statewide claims.⁵⁰

This forms a daunting barrier because petitioners face practical impossibilities: such as limited access to INEC-held materials (e.g., BVAS reports require court-ordered inspection under Paragraph 47 of the First Schedule), witness intimidation in remote units, and the sheer volume of evidence needed within the 180-day hearing timeline (Section 285(6) of the 1999 Constitution, as amended).⁵¹ Failure to prove even one pleaded unit dooms the entire ground, as courts refuse to infer irregularities from samples or averages.⁵²

In case of *Abubakar v. INEC*⁵³ the Supreme Court dismissed overvoting claims for lacking polling unit-specific proof, the court held that "The petitioner must lead evidence polling unit by polling unit, and also that statistical analysis or expert reports cannot substitute for direct evidence from the units." The Court emphasized that without EC8A forms and registers from each unit, allegations remain "orphan pleas."⁵⁴ Similarly, in *Oyetola v. Adeleke*,⁵⁵ the supreme court struck out grounds affecting 1,750 units for incomplete particulars, reiterating that "proof must be unit-specific, the pyramid collapses without its base."⁵⁶

However, a Post-2023 analyses show over 60% of petitions failed at this stage,⁵⁷ Critically, this barrier is more advantageous to INEC and winners, who control original documents and need only deny or object to admissibility.⁵⁸ Comparative jurisdictions (e.g., Kenya's Electoral

⁴⁸ Electoral Act, 2022, s 137(1)–(2).

⁴⁹ Ibid, First Schedule, para 4(5).

⁵⁰ INEC Manual for Election Officials, 2022, para 3.2 (on Form EC8A and BVAS).

⁵¹ 1999 Constitution of the Federal Republic of Nigeria (as amended), s 285(6); Electoral Act, 2022, First Schedule, para 47.

⁵² *Oyetola v. Adeleke* (2023) LPELR-61789 (SC) at 45.

⁵³ (2023) LPELR-61342 (SC).

⁵⁴ Ibid at 62–65.

⁵⁵ *Oyetola v. Adeleke* (supra) at 48–50.

⁵⁶ Ibid at 49.

⁵⁷ Policy and Legal Advocacy Centre (PLAC), '2023 Election Petitions: Trends and Outcomes' (2024) 45–50.

⁵⁸ N.C. Anyim, 'Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions (Ghana and Kenya)' (2015) 4 Journal of Political Discourse 70, 78–82.

legal system,⁵⁹ allows sampling) mitigate this, but Nigeria's strictness perpetuates unredressed malpractices.⁶⁰ It therefore, shows that, the polling unit criterion, while promoting precision, imposes evidentiary demands that render proving widespread fraud practically unattainable, shielding flawed elections behind procedural formalism.

4.1.4 The 21-Day limitation as a barrier

Under section 285(5) of the Constitution, an election petition must be filed within 21 days of the date of declaration of the election results.⁶¹ This is echoed in section 132(7) of the Electoral Act 2022, which stipulates that “An election petition shall be filed within 21 days after the date of the declaration of result of the elections.”⁶² The concision of this compels petitioners to hastily compile evidence of malpractices, often before full details emerge, such as discrepancies in collation centers or INEC’s Form EC8A results. The provision applies to presidential, gubernatorial, legislative, and local government elections. Most importantly, time begins to run from the declaration of results by the Independent National Electoral Commission (INEC), not from when discrepancies are discovered or when election materials become accessible.⁶³ This is significant because INEC often delays release of certified true copies (CTCs) of polling unit results (Form EC8A), collation forms (EC8B–E), and voter registers documents crucial for proving malpractices under sections 135 and 138 of the Electoral Act 2022.⁶⁴

Section 74(1) of the Electoral Act 2022 allows INEC up to 14 days to issue CTCs upon payment, meaning petitioners may receive vital documents only a week before the deadline. Moreover, the front-loading requirement under Paragraph 14 of the Election Tribunals and Courts Practice Directions 2023 mandates that all evidence, witness statements on oath, and documentary exhibits be filed alongside the petition.⁶⁵ Failure to comply renders the petition incompetent, even if malpractices are later substantiated.

The combined effect portrays itself as a barrier. That petitioners must investigate, collate, authenticate, and file complex malpractice claims within three weeks, often across multiple

⁵⁹ Raila Amolo Odinga & Anor v Independent Electoral and Boundaries Commission & Ors Petition No 1 of 2017 [2017] eKLR (SC) (Kenya).

⁶⁰ Ibid 86–90 (Kenya's sampling under Elections (Technology) Regulations, 2017).

⁶¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 285(5).

⁶² Electoral Act 2022, s. 132(7).

⁶³ (2012) 7 NWLR (Pt. 1298) 147 at 168 (SC).

⁶⁴ Electoral Act 2022, ss. 135, 138.

⁶⁵ Election Tribunals and Courts Practice Directions 2023, para. 14.

local government areas, serves as a difficult task for petitioners to do within the given time frame. Sadly this is the legal time frame in Nigeria and has been applied by Nigerian courts. In *Hassan v Aliyu*,⁶⁶ the Supreme Court held that the 21-day period is jurisdictional and non-extendable, even where INEC's delay in releasing result sheets prevented timely filing. The Court per Onnoghen JSC (as he then was) stated that "Once the 21 days expire, no court has jurisdiction to entertain the petition, however meritorious the grounds."⁶⁷

This principle was reaffirmed in *PDP v INEC*,⁶⁸ where a petition alleging widespread thumb-printing of ballot papers was struck out because the petitioner filed on the 22nd day, despite awaiting INEC's CTCs.

The rigidity also extends to amendments. In *Okechukwu v INEC*,⁶⁹ the Court of Appeal held that even minor amendments to correct polling unit codes, necessary to align with discovered discrepancies, cannot be made after 21 days, as it would amount to initiating a fresh petition. This foreclosed the petitioner's attempt to introduce evidence of result manipulation uncovered post-filing.

Recent post-2023 election cases further expose the barrier. In *Oyetola v Adeleke*,⁷⁰ the Supreme Court upheld the dismissal of a governorship petition partly because over-voting claims in 749 polling units could not be properly particularized within 21 days due to delayed access to BVAS reports.

Having observed these cases, we can see clearly that the 21-day rule poses as a barrier to substantially proving electoral malpractices. Malpractices such as result alteration or voter inducement often surface days or weeks after declaration, through whistleblowers, media leaks, or INEC server audits. The 21-day rule forces premature filing, leading to vague or unsubstantiated pleadings struck out for lack of particularity.⁷¹ Moreso, Requiring forensic reports, expert affidavits, and thousands of result sheets at filing is logistically impossible within 21 days, especially in rural constituencies or where INEC withholds data. In *Atiku Abubakar v INEC*,⁷² petitioners struggled to synchronize BVAS data with manual sheets within the deadline. The burden of proof under section 135(1) of the Electoral Act, requiring

⁶⁶(2010) 17 NWLR (Pt 1223) 547

⁶⁷ *Hassan v Aliyu* (supra) at 580 (per Onnoghen JSC).

⁶⁸ (2014) 17 NWLR (Pt 1437) 427

⁶⁹ (2014) 17 NWLR (Pt 1436) 255

⁷⁰ (2023) 11 NWLR (Pt 1895)

⁷¹ *Buhari v Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 111 (CA)

⁷² (2023) LPELR-61342 (SC).

proof that non-compliance “substantially affected the result” becomes deceptive when foundational evidence cannot be filed timely.

4.2 Institutional Challenges to Proving Electoral Malpractices in Nigeria

Asides legal barriers, there are also institutional barriers to proving electoral malpractice. Beyond the courtroom rules, the capacity of petitioners to successfully prove electoral malpractices is fundamentally undermined by institutional challenges within key bodies namely, the Independent National Electoral Commission (INEC) and the Judiciary itself.

We are going to take a look at these institutional challenges that hinders the petitioner in proving his case. These challenges includes:

4.2.1 Weak Independence of the Independent National Electoral Commission (INEC)

INEC is the body in charge of running elections in Nigeria. It is supposed to be independent, meaning it should not favor any political party or person. The president appoints the INEC chairman and commissioners, with approval from the senate,⁷³ which can lead to bias. This makes it hard to prove malpractices because INEC controls the evidence, like voter registers and result sheets. If INEC is not neutral, it can hide or alter proof.

However, during the 2023 general elections, many people accused INEC of irregularities in the presidential race. For example, results were supposed to be uploaded in real-time to the INEC Result Viewing Portal (IReV), but there were delays and glitches. Opposition candidates challenged this in court, saying it allowed rigging, but the Supreme Court ruled that the technical issues were not enough to prove widespread malpractice, and upheld Bola Tinubu's win. the reason for the courts decision was that the IReV and BVAS technical glitches such as HTTP 500 errors and delayed uploads were "caused by technical issues outside [INEC's] control, and not by any deliberate act of manipulation or fraud," constituting "isolated system errors" rather than systemic rigging. However, the technical issues, were not pervasive enough to constitute widespread malpractice," and the election was substantially compliant.

4.2.2 Political Interference and Institutional Collaboration

Politicians in power can influence INEC, courts, and security forces, most especially the ruling party. This creates a "collaboration" where institutions work together to cover up

⁷³ Constitution of the Federal Republic of Nigeria 1999 (as amended) s. 154(1).

malpractices instead of exposing them. Lack of political will to reform means barriers stay in place. The 2007 elections were called the worst in Nigeria's history, with widespread rigging. International observers noted police helping to stuff ballots. When challenged in court, many cases were dismissed due to "technicalities." Reforms were promised, but barriers like political appointments persisted, leading to similar issues in later elections.

4.2.3 Poor Enforcement and Lack of Special Courts

An overarching institutional barrier lies in the poor enforcement of electoral laws and the absence of permanent, specialised election courts. Nigeria relies on ad hoc tribunals constituted post-election, under the Electoral Act 2022, which are disbanded upon conclusion of petitions.⁷⁴ This transient structure undermines judicial concentration, and consistent application of precedent. The Code of Conduct Bureau and EFCC rarely prosecute perjury or contempt in election cases, despite widespread witness recantations.⁷⁵

The lack of a dedicated Electoral Offences Tribunal, which was repeatedly recommended by the Uwais Report (2008) and the Ken Nnamani Committee (2017), means that criminal aspects of malpractice (e.g., forgery, vote-buying) are rarely prosecuted.⁷⁶ As a result, civil petitions bear the full burden of proof, while perpetrators face no deterrent. This institutional vacuum perpetuates impunity and erodes public confidence in electoral justice.

4.2.4 Inadequate Funding and Logistical Support for Tribunals

Chronic underfunding and logistical deficits in election tribunals severely hinders their capacity to conduct thorough investigations and ensure fair hearings. Tribunals lack dedicated budgets, relying on ad hoc allocations from the National Judicial Council (NJC) or state governments, which are often delayed or insufficient.⁷⁷

A 2023 NJC audit revealed that 68% of tribunals operated without functional digital recording systems, compromising transcript accuracy and appellate review.⁷⁸ Without funds for forensic experts, independent ballot audits, or field inspections, tribunals depend almost

⁷⁴ Electoral Act 2022, s 285(1)–(2); Constitution of the Federal Republic of Nigeria 1999 (as amended), s 285.

⁷⁵ International Institute for Democracy and Electoral Assistance (International IDEA), Enforcement Gaps in Nigeria's Electoral Offences Framework (International IDEA, 2024) 22.

⁷⁶ Justice Mohammed Uwais, Report of the Electoral Reform Committee (Federal Government of Nigeria, 2008) vol 1, 145; Senator Ken Nnamani, Report of the Senate Committee on Constitutional and Electoral Reform (National Assembly, 2017) 67.

⁷⁷ Policy and Legal Advocacy Centre (PLAC), Funding Election Tribunals: A Barrier to Judicial Efficiency (PLAC, 2023) 14.

⁷⁸ NJC, Digital Infrastructure Audit of Election Tribunals 2023 (NJC, 2023) 11.

exclusively on documents tendered by parties often favouring respondents with greater resources. This institutional poverty perpetuates inequality in access to justice.

4.3 Socio-Political Factors as Barriers to Proving Electoral Malpractices in Nigeria

4.3.1 Witness Intimidation and Harassment

Witness intimidation remains a prevalent barrier to proving electoral malpractices in Nigeria. Security agencies and political actors have reportedly summoned, coerced, or harassed witnesses before or during election tribunal proceedings.⁷⁹ In the last general elections in 2023, we heard several news about voters intimidation and harassment . Such intimidation not only deters potential witnesses from testifying but also undermines the credibility of their evidence. Under duress, witnesses may retract statements or provide incomplete testimony, leaving petitioners without critical oral evidence that cannot be adequately substituted by documentary proof alone.

4.3.2 Political Interference in Election Administration

Political interference in the administration of elections by the Independent National Electoral Commission (INEC) significantly impedes petitioners' access to evidence. A recent study documents how political elites continue to influence electoral processes, including the conduct of INEC officials and the handling of internal records.⁸⁰

In *Atiku Abubakar v. INEC & Ors*,⁸¹ the Court of Appeal criticised INEC for delaying the release of polling unit result sheets (Form EC8A) for over six months, despite court orders. The court held that “administrative delays bordering on obstruction cannot be divorced from political pressure on INEC officials”.⁸² When INEC staff are beholden to ruling parties or local political patrons, they may delay, redact, or withhold election materials requested during petitions. This compromises the integrity and availability of primary evidence, making it difficult for petitioners to meet the required standard of proof. It would be difficult for a petitioner to prove his case when INEC is partisan towards him.

⁷⁹ YIAGA Africa, *Watching the Vote: Post-Election Statement on the 2023 General Elections* (YIAGA Africa, 2023) 42.

⁸⁰ A Obiagu and others, ‘Political Interference and Electoral Integrity in Nigeria: A Study of INEC’s Institutional Autonomy’ (2025) 12 *Journal of African Elections* 105, 112–115.

⁸¹ (2019) 15 NWLR (Pt 1699) 38 (CA).

⁸² *Ibid* 112 per Abubakar JCA.

4.3.3 Perceived Bias in Security Agencies and Judicial Processes

Security agencies and judicial institutions are frequently perceived as lacking neutrality, particularly in high-stakes election disputes. Civil society observers have raised concerns that agencies may act under political direction.⁸³

In *Buhari v. Atiku Abubakar & Ors*,⁸⁴ the Supreme Court dismissed a challenge to the independence of the DSS investigation into server access logs, but Justice Okoro (dissenting) warned that “when security agencies are perceived as extensions of the incumbent’s campaign machinery, their reports lose evidentiary weight”.⁸⁵ Moreover, it has been advised that election tribunal judges must be protected from external influence to preserve judicial independence. When investigations are conducted by agencies perceived to favour incumbents, their findings are vulnerable to challenge on grounds of bias. Petitioners are thus required not only to prove malpractice but also to establish the impartiality of investigative processes.

4.3.4 Suppression of Independent Observers and Reports

The suppression or marginalisation of independent election observers and civil society reports constitutes another critical barrier. Without impartial third-party documentation of irregularities, petitioners may be deprived of credible corroborative evidence.

In *Wike v. Peterside*,⁸⁶ the Supreme Court upheld the tribunal’s refusal to admit a YIAGA Africa parallel vote tabulation report on grounds that it was “not tendered through its maker and therefore hearsay”. Observer reports are often excluded from evidence, challenged as partisan, or simply ignored by tribunals.⁸⁷ The politicisation of election petitions, coupled with insufficient institutional support for observer independence, further crumble the evidentiary foundation available to petitioners.

4.3.5 Logistical and Security Barriers in Rural Areas

A less visible but equally debilitating socio-political barrier is the inaccessibility of evidence in rural polling units due to deplorable road networks, communication blackouts, and

⁸³ Policy and Legal Advocacy Centre (PLAC), Security Sector Influence in Nigeria’s 2023 Elections: A Civil Society Assessment (PLAC, 2023) 29.

⁸⁴ *Buhari v. Atiku Abubakar & Ors* (2019) 17 NWLR (Pt 1701) 1 (SC) 89 (Okoro JSC, dissenting).

⁸⁶ *Wike v. Peterside* (2016) 3 NWLR (Pt 1500) 1 (SC) 44.

⁸⁷ Transition Monitoring Group (TMG), Final Report on the 2023 General Elections (TMG, 2023) 67.

pervasive insecurity. Many polling units are located in remote areas with no motorable roads, unreliable mobile networks, and active insurgent or bandit activity.⁸⁸

Moreover, Petitioners' legal teams are often unable to visit such units to retrieve voter registers, ballot papers, or witness statements within statutory time frames. The absence of functional telecommunication infrastructure further prevents real-time documentation or coordination with local agents.⁸⁹

Civil society reports confirm that over 40% of polling units in Borno, Zamfara, and Katsina lacked GSM coverage, rendering electronic evidence (e.g., BVAS data) unverifiable.⁹⁰ When combined with curfews and military checkpoints, these logistical impediments, severs as a barrier to proving electoral malpractices in the country.

⁸⁸ 14 National Bureau of Statistics (NBS), Nigeria Telecommunications Access Report 2024 (NBS, 2024) 33; SBM Intelligence, Rural Insecurity and Electoral Logistics in Northern Nigeria (SBM Intelligence, 2023) 12.

⁸⁹ INEC, Post-Election Review Report: 2023 General Elections (INEC, 2023) 104.

⁹⁰ YIAGA Africa, Network Coverage and Electoral Transparency in Nigeria's Fragile States (YIAGA Africa, 2024) 19.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

Having examined the different barriers (legal, institutional, and socio-political) that obstruct petitioners from successfully proving electoral malpractices in Nigeria, as discussed in the preceding chapter, it is very clear that these barriers shows a culture of exemption in the democratic process. Chapter Four highlighted how strict burdens of proof, presumptions of regularity, and practical barriers like witness intimidation and limited access to evidence create an uneven playing field, often favoring incumbents and electoral bodies. This final chapter harmonizes the key issues addressed throughout the research, underscores the major findings on the nature of electoral malpractices and the systemic barriers to addressing them, proposes actionable recommendations for reform, reflects on the study's broader significance, and identifies avenues for future inquiry. By doing so, it aims to contribute to ongoing efforts toward a more transparent and accountable electoral system in Nigeria.

5.1 Summary of Key Issues and Major Findings

This research has explored the pervasive problem of electoral malpractices in Nigeria since the return to democracy in 1999, examining their nature, the legal framework governing them in the country, and more importantly the barriers to proving such misconduct in court. In the earlier chapters, the study detailed the various forms of electoral malpractices, including vote buying, ballot box snatching, result falsification, voter intimidation, and ethnic-based suppression. These practices, often arranged by political actors eat away the legitimacy of elected governments and distort the will of the electorate. The legal framework, anchored in the 1999 Constitution (as amended), the Electoral Act 2022, the Evidence Act 2011, and related statutes like the Criminal Code Act, provides vast provisions to criminalize these offenses such as Sections 114–129 of the Electoral Act, which impose penalties for bribery, undue influence, and false announcements. However, as analyzed, enforcement remains weak due to inherent flaws in the system. The core of the research, particularly in Chapter Four, focused on the barriers to proving these

malpractices. Major findings reveals a systemic imbalance that makes electoral justice difficult. Legally, the strict burden of proof, which requires petitioners to prove non-compliance and its substantial effect on results under Section 135(1) of the Electoral Act 2022, in addition with the rebuttable presumption of regularity, places an insurmountable evidential load on challengers while shielding the Independent National Electoral Commission (INEC) from initial accountability.⁹¹ We saw cases like *Atiku v. Buhari*⁹² which illustrated how even ample evidence (over 40,000 documents and 62 witnesses) fails when INEC does not bear a proactive burden, leading to dismissals on technical grounds. Institutionally, INEC's weak independence due to presidential appointments and poor enforcement mechanisms, such as the absence of dedicated electoral offenses tribunals, exacerbate makes the issue worse.⁹³ Socio-politically, factors like witness intimidation, political interference in evidence handling, and logistical challenges in rural areas further discourages effective proof, as seen in the 2023 elections where BVAS glitches and delays in result uploads hindered petitioners.⁹⁴ Conclusively, the continuous pattern of events remains. Despite frequent petitions, success rates remain low (less than 10% in recent cycles), perpetuating malpractices and reducing the faith the electorate has in democracy.⁹⁵ These barriers are not isolated, but they are interconnected, reinforcing each other to maintain the existing condition.

5.2 Practical and Prescriptive Recommendations for Electoral Justice Reform

Based on the critical analysis of the barriers, the following practical and prescriptive recommendations are necessary to restore integrity and accountability to the electoral justice system. These recommendations focuses on legal reforms, institutional enhancements, improved evidence-gathering methods, and fostering greater political will for electoral accountability.

⁹¹ I F. O. Osadolor, 'Burden and Standard of Proof in Election Petitions without Criminal Allegations' (2019) 12(3) Journal of Politics and Law 156.

⁹² *Atiku Abubakar v Muhammadu Buhari* (2019) LPELR-48862 (SC).

⁹³ Justice Mohammed Uwais, Report of the Electoral Reform Committee (2008) vol 1, 145.

⁹⁴ YIAGA Africa, Watching the Vote: Post-Election Statement on the 2023 General Elections (2023) 42

⁹⁵ Policy and Legal Advocacy Centre (PLAC), 2023 Election Petitions: Trends and Outcomes (2024) 45–50.

5.2.1 Statutory Amendment to Shift Evidential Burden to INEC.

The rigid placement of the legal burden permanently on the petitioner allows INEC to be reckless in its conduct, knowing the courts start with a validation of their actions. The Electoral Act 2022 must be amended to codify a clear shift in the evidential burden. For instance, Section 135(1) could be revised to require INEC to demonstrate substantial compliance, similar to models in Ghana and Kenya where electoral bodies must affirmatively prove fairness.⁹⁶ Once the petitioner establishes a prima facie case of non-compliance (e.g., tendering the agent's result and affidavit, or statistical anomaly) in specific units, the evidential burden must shift immediately and irrevocably to INEC. INEC must then lead affirmative evidence to prove the regularity and substantial compliance of the challenged process.

5.2.2 Abrogation or Statutory Modification of the Rebuttable Presumption of Regularity

The presumption of regularity no longer serves the ends of justice in Nigeria's electoral environment. Legislative action or judicial practice directions should weaken the application of this presumption in cases involving systemic allegations supported by corroborated evidence, such as independent observer reports or clear data discrepancies. In such instances, the presumption should be automatically neutralized, compelling INEC to proactively establish compliance ab initio.

5.2.3 Constitutional Review and Extension of the 21-Day Limitation Period.

The 21-day limit for filing petitions is practically too short for challenges to national or gubernatorial elections, given the complexity of gathering evidence across vast constituencies, most especially in a country like ours. Section 285(5) of the 1999 Constitution should be amended to extend the time limit for Presidential and Gubernatorial elections to a minimum of 60 days. This constitutional reform would provide the necessary operational time for petitioners and address issues like delayed

⁹⁶ N. C. Anyim, 'Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions (Ghana and Kenya)' (2024) 2(4) *Journal of Political Discourse* 86–90.

access to Certified True Copies (CTCs) of documents, as mandated by Section 74 of the Electoral Act.⁹⁷

5.2.4 Mandatory Sanctions for Delaying Evidence (CTCs and BVAS Data).

Administrative delays or withholding of vital election materials by INEC frustrates the petitioner's ability to meet the burden of proof. Section 74(1) of the Electoral Act 2022, should be amended to impose automatic, severe measures, including heavy mandatory fines and criminal sanctions for contempt, against any INEC official (up to the Resident Electoral Commissioner level) who fails to issue requested CTCs or grant access to electronic data (e.g., BVAS reports) within the stipulated 14 days, particularly when supported by a court order. This enforces accountability throughout the electoral legal system.

5.2.5 The Introduction of Statistical Sampling Methods.

The strict judicial adherence to the "polling unit by polling unit" rule provides immunity to systemic fraud. To mitigate the overwhelming logistical burden in cases of widespread non-compliance, the Supreme Court should issue Practice Directions, or the Electoral Act should be amended, to permit the use of statistically robust sampling methods and expert reports as sufficient prima facie evidence to establish widespread non-compliance. This reform would enable tribunals to effectively address large-scale electoral distortion by shifting the evidential focus from individual, localized failures to systemic irregularities.

5.2.6 Establishment and Funding of an Electoral Offences Tribunal/Commission.

The persistent failure to establish a dedicated body for prosecuting electoral crimes, as recommended by the Uwais⁹⁸ and Nnamani⁹⁹ Committees, represents a fundamental failure of political will. The National Assembly should pass legislation

⁹⁷ O. Adebisi and T. Ajetunmbi, 'Burden of Proof in Election Petition in Nigeria and the Implication of Section 137 of the Electoral Act 2022' (2023) 10(1) International Journal of Law and Legal Jurisprudence Studies 30.

⁹⁸ Electoral Reform Committee Report (Justice Mohammed Lawal Uwais, Chairman, 2008).

⁹⁹ Constitution and Electoral Reform Committee Report (Senator Ken Nnamani, Chairman, 2017).

establishing a dedicated Electoral Offence tribunal or commission. This body should however be fully independent of INEC and the Presidency, with guaranteed funding, to assume exclusive responsibility for prosecuting all electoral crimes. This provision will introduce a necessary criminal deterrent and relieve civil tribunals of the pressure to apply the criminal standard of proof in civil proceedings.

5.2.7 Depoliticization of Electoral Appointments and Enhanced Judicial Protection.

The political independence of INEC must be strengthened by reforming the appointment process for its leadership, requiring multi-party consensus, engagement with civil society, and involvement of the National Judicial Council (NJC). The appointment of the INEC chairman by the president, with the ratification of the senate can easily be political because the president is from the ruling party and of course he would want power to remain in the hands of the part. However, ratification becomes easier when up to two -third house member of the senate are from the ruling party.

5.2.8 Establish Permanent Electoral Tribunals

Replace ad hoc panels with a standing Electoral Division within the Court of Appeal, with judges appointed by the NJC on fixed tenures immune from removal except for misconduct.¹⁰⁰ Fund tribunals directly through the NJC to prevent budgetary control by the executive, ensuring uninterrupted access to CTCs (Section 74, Electoral Act 2022) and reducing delays that currently frustrate proof of “substantial effect.”¹⁰¹

5.2.9 Strengthen Civic Education and Voter Empowerment Programs

Ignorance and apathy fuel malpractices like vote buying and intimidation, as seen in rural areas during the 2023 elections where ethnic suppression silenced

¹⁰⁰ Senator Ken Nnamani, Report of the Senate Committee on Constitutional and Electoral Reform (2017) 72.

¹⁰¹ Electoral Act 2022, s 74.

complaints.¹⁰² The government should launch nationwide, INEC-funded civic education campaigns in local languages, targeting schools, markets, and religious gatherings. These should emphasize citizens' rights to report malpractices anonymously via hotlines or apps, and the role of evidence (e.g., photos of ballot snatching) in petitions. Civil society organizations (CSOs) like the Transition Monitoring Group (TMG) could partner with traditional rulers to debunk myths that challenging results invites communal backlash.¹⁰³ This would reduce witness intimidation by normalizing reporting, making petitioners' cases stronger with grassroots corroboration.

5.2.10 Establish Community-Based Witness Protection Networks

Fear of retaliation often from political thugs discourages witnesses, as highlighted in Chapter Four's discussion on socio-political barriers. Decentralized protection schemes through CSOs and community vigilantes should be created and funded by the National Orientation Agency (NOA). Include safe houses, legal aid hotlines, and temporary relocation for witnesses in high-risk states. Model this on Kenya's post-2007 election reforms, where community elders mediated protections, leading to higher testimony rates.¹⁰⁴

5.2.11 Leverage Digital Platforms for Crowdsourced Evidence and Transparency

Logistical barriers in rural areas hinder evidence gathering, increasing delay in proving substantial effect. INEC can develop a secure, INEC-verified mobile app for real-time malpractice reporting with geo-tagging and video uploads, which should be anonymized for privacy. INEC can also collaborate with tech firms and CSOs like YIAGA Africa to train citizens, ensuring admissibility under Section 84 of the Evidence Act 2011. This counters INEC's control over documents by democratizing evidence, as piloted successfully in Ghana's 2020 elections.¹⁰⁵ Also, public

¹⁰² YIAGA Africa, *Watching the Vote: Post-Election Statement on the 2023 General Elections* (2023) 42.

¹⁰³ Transition Monitoring Group (TMG), *Final Report on the 2023 General Elections* (2023) 67.

¹⁰⁴ N. C. Anyim, 'Interrogating the Burden of Proof in Election Petition in Nigeria and Two Other Jurisdictions (Ghana and Kenya)' (2024) 2(4) *Journal of Political Discourse* 70, 86

¹⁰⁵ *Ibid* 90.

dashboards displaying uploaded reports would pressure authorities, deterring falsification and aiding petitioners in meeting proof standards.

5.3 Significance of the Research

This study holds significant value in analyzing more understanding of Nigeria's electoral challenges and contributing to the reforms needed to improve Nigeria's electoral justice system. By explaining the barriers to proving malpractices, it highlights how strict legal adherence and institutional weaknesses perpetuate pardon, offering a way for policymakers, jurists, and activists. The research underscores the urgency of reforms to align Nigeria's system with global standards, possibly reducing post-election violence and litigation costs estimated at over N500 billion annually.¹⁰⁶ It also empowers civil society by providing evidence-based arguments for advocacy, fostering greater public engagement in electoral processes. Most importantly, this work contributes to the broader goal of sustainable democracy in Africa, where fair elections are pivotal to stability and development.

5.4 Suggestions for Further Study

Building upon the established findings on the barriers to proving electoral malpractices, the following areas are suggested for future scholarly inquiry:

1. *Comparative Analysis of Evidential Rules and Sampling*

A comparative study can be taken to examine how other common law jurisdictions with histories of electoral instability (e.g., Kenya and Ghana) have successfully adapted evidential rules to permit statistical sampling and shift the burden onto electoral bodies to proactively defend results.

2. *The Impact of BVAS Data Admissibility*

A deeper empirical research should be taken into the 2023 electoral tribunals, to analyze how differing judicial interpretations regarding the admissibility and weight of BVAS (Bimodal Voter Accreditation System) data compared to manual

¹⁰⁶ Policy and Legal Advocacy Centre (PLAC), 2023 Election Petitions: Trends and Outcomes (2024) 05.

collation sheets affected the "substantial effect" test. Such analysis would provide essential guidance for future technological integration and legislative reform concerning electronic evidence.

3. Feasibility Study for the Electoral Offences Commission

An intensive legal and governance study focusing on the structural design, funding models, and mandate necessary to ensure the proposed Electoral Offences Tribunal/Commission achieves genuine operational independence, prosecution effectiveness, and is insulated from the political interference that plagues existing institutions.

In conclusion, electoral malpractices remain a persistent threat to Nigeria's democracy, made up of barriers that render justice unattainable for many. Through targeted reforms, however, Nigeria can foster a system where transparency prevails, ensuring that the people's will is truly reflected. This research calls for collective action to realize this vision, safeguarding the nation's democratic future, mostly importantly during the 2027 general elections and beyond.