

Nigeria's Legal Regulatory Framework for Ensuring a Credible 2023 Election

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ABSTRACT: *Since independence, the Nigerian electoral process has been plagued with spiralling anomalies, including worsening violence, intimidation, death and fraud. This has jeopardized Nigeria's socio-economic, political and national security and eroded confidence in the democratic process as well as increased election season security concerns. For elections to be credible, the competition must be fair, which requires impartial process management. So, despite the recently revised Electoral Act and other related laws that could help Nigeria realize its potential for credible elections. This work argues that the legal framework still has several components that must be studied or introduced to improve electoral processes. The method used is qualitative with a case study approach and empirical juridical. The results of this study propose that Article 225 of the Constitution be amended to eliminate the requirement for cash given to political parties from outside Nigeria to be transferred to INEC; otherwise, the donation must be notified to INEC and made public. The constitution should be modified to establish an Election Offences Commission or Court to try and punish individuals (INEC officers, candidates and voters) who violate articles 114–128 of the new law. Section 29(5) of the Elections Act should be amended to allow the Federal Capital Territory and the High Court of Abuja State to hear and resolve pre-election disputes. In addition, instead of focusing on technical matters, the trial for the regional election application should focus more on the substance of the application and the facts of the case.*

Sejak kemerdekaan, proses pemilihan Nigeria telah diganggu dengan anomali spiral, termasuk kekerasan, intimidasi, kematian, dan penipuan yang semakin memburuk. Ini telah membahayakan keamanan sosial-ekonomi, politik, dan nasional Nigeria dan mengikis kepercayaan dalam proses demokrasi serta meningkatnya masalah keamanan musim pemilu. Agar pemilihan dapat dipercaya, persaingan harus adil, yang memerlukan manajemen proses yang tidak memihak. Jadi, meskipun Undang-Undang Pemilu baru-baru ini direvisi dan

undang-undang terkait lainnya yang dapat membantu Nigeria mewujudkan potensi pemilu yang kredibel. Tujuan karya ini berpendapat bahwa kerangka hukum masih memiliki beberapa komponen yang perlu dipelajari atau diperkenalkan untuk meningkatkan proses pemilu. Metode yang digunakan adalah kualitatif dengan pendekatan studi kasus dan yuridis empiris. Hasil kajian ini mengusulkan agar Pasal 225 Konstitusi diamandemen untuk menghilangkan persyaratan uang tunai yang diberikan kepada partai politik dari luar Nigeria untuk ditransfer ke INEC; sebaliknya, sumbangan tersebut harus diumumkan kepada INEC dan dipublikasikan. Konstitusi harus dimodifikasi untuk memungkinkan pembentukan Komisi atau Pengadilan Pelanggaran Pemilu untuk mengadili dan menghukum individu (petugas, kandidat, dan pemilih INEC) yang melanggar pasal 114–128 dari Undang-Undang yang baru. Bagian 29(5) dari Undang-Undang Pemilu harus diubah untuk memungkinkan Wilayah Ibu Kota Federal dan Pengadilan Tinggi Negara Bagian Abuja untuk mendengar dan menyelesaikan perselisihan pra-pemilu. Selain itu, daripada menitikberatkan pada hal-hal teknis, seharusnya persidangan permohonan pilkada lebih fokus pada substansi permohonan dan fakta-fakta perkara.

Keywords: *Legal Regulatory, Framework, Credible 2023 Election.*

I. INTRODUCTION

In every democratic nation such as Nigeria, credible elections are vital for its socio-economic and political development (Inokoba & Kumokor, 2011). An adequate framework is a prerequisite for the conduct of credible elections. The term "legal and regulatory framework" refers to the combination of legislation and a rules-based system for the conduct of credible elections. With Nigeria experiencing the longest unbroken period of democratic governance and elections (Olajide-Awosedo, 2011), the importance of credible elections for its continuance cannot be overemphasised.

The fundamental principle defining credible elections is that they must reflect the will of the electorate (Feddersen & Sandroni, 2006). To achieve this, elections must be transparent, inclusive, accountable, and equitably conducted; this is the basis of any true representative democracy. It is trite that one of the essential requirements for credible elections is the presence of viable legal and regulatory frameworks and the establishment of an independent electoral management body that sets out electoral guidelines for effective electioneering (Sunday et al., 2000; Okorie & Igwenyi, 2022).

Since independence until the most recent general elections in 2019, Nigeria's election process has been plagued by spiralling irregularities: violence, intimidation, killings, fraud, and so on, which have gotten worse with each round (Imbua & Ushie, 2008; Duri et al., 2019). This has threatened the socio-economic, political, and national security of Nigeria and led to a loss of confidence in the electoral process (Enang, et al., 2012). This has contributed to heightened security issues during election periods. As a result, the existing legal framework on the conduct of credible elections pioneered by the Uwais Electoral Reform Committee and other consequential regulations is a response to the shortcomings of previously established legal frameworks (Salami et al., 2021). These also include the framework that oversees the conduct of security personnel and agencies

during elections and how they are to work to ensure a credible and incident-free election exercise.

II. METHOD

The method employed is qualitative and employs a case study approach and empirical legal methodology. Due to its capacity to collect in-depth, clear, and primary data regarding an observed phenomena, the qualitative method is favored. The empirical legal method entails doing descriptive research and analyzing laws and regulations that are processed by adjusting/comparing existing state-environment facts.

There are frequently differences between data acquired directly from the public and information obtained through library books in the field of study. Primary data (or fundamental data) refers to information taken directly from the general public, whereas secondary data refers to information gained through library sources. Research-related legislation and regulations, scientific publications, journals, and articles. Primary legal materials, or all legally enforceable papers and resources.

This study collects data using library research methods, namely finding and analyzing library sources (literature, research results, scientific magazines, scientific bulletins, scientific journals, and others). The gathering of legal resources includes an inventory approach, identification of laws and regulations, and categorization and systematization of legal sources according to research objectives. The study findings are presented using a systematic descriptive format. This implies that the gathered primary and secondary data will be integrated according to the topic being studied, so as to generate a coherent whole in line with the requirements of the research.

III. RESULT AND DISCUSSION

Clarification of Concepts

Election: it is a process where a person is selected to fill an office through decision-making by a group of people in a democratic process called voting (Lau & Redlawsk, 2001). The Electoral Act 2022 defines an election under Section 152 as "any election held under this Act and includes a referendum." As a result, elections are limited to those that INEC is authorised to hold.

Electoral Process: The electoral process refers to the entire election cycle as well as the processes used to ensure a credible election, such as the proposal and passage of election laws, the delineation of constituencies, conflict prevention, management, and resolution, voter education and registration, and the design and imposition of electoral guidelines and codes of conduct during elections (Awah, et al., 2007; Oriji et al., 2011; Koko, 2013). The electoral process was defined in *National Democratic Party v. INEC* as the procedure by which a person is elected to public office in a democratic society [Omotola, 2010].

Election Security: Election security is a strategy or plan that aims to maintain law and order while also assuring safety and protection from any form of disruption or hindrance that might distort or undermine the conduct of credible elections (Hounkpe & Gueye, 2010). Its purpose is to protect voters, candidates, polling officers, the media, observers, materials, data, and infrastructure in general from death, damage, and destruction during elections.

Legal and regulatory framework: The phrase "legal and regulatory framework for elections" refers to a country's collection of election-related laws and regulations. The applicable provisions of the Constitution, the electoral law, and additional laws that impact elections or are attached to the electoral law, such as a law on political parties, comprise a legal framework for elections (Benoit, 2004).

Credible Election: A credible election is devoid of misconduct or fraud (Onapajo, 2015). When an election is free of harassment, coercive or non-coercive practices by political parties to manipulate voters, and actions that contravene the Constitution or the Electoral Act, it is considered credible. A credible election requires that all registered political parties have equal access to run for office, campaign for votes, and attend rallies (Broersma & Graham, 2012). It is an election in which all voters have an equal chance to register, all votes are counted, and the declared results accurately represent the number of ballots cast.

The Legal and Regulatory Frameworks for Credible Elections in Nigeria

The legal framework for credible elections in Nigeria consists of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the new Electoral Act 2022, the Independent National Electoral Commission (INEC) Regulation and Guidelines for the Conduct of Election 2022, and the Code of Conduct and Rules of Engagement for Security Personnel on Electoral Duty, 2020 (Ayodele, 2022). These embody the rules and regulations controlling both the electoral body (system and process), election security, and pre-, mid-, and post-election activities. The Constitution is the most vital legal instrument in Nigerian elections. It is followed in the hierarchy by the Electoral Act, which empowers INEC to provide guidelines and regulations for elections, and the code of conduct applicable to security personnel during elections (Olurode, 2013).

The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution is the fulcrum upon which all other laws in Nigeria hang; it possesses an overriding effect over other law-making bodies [8], and it is the major law that governs the electoral process in Nigeria (Enebeli & Njoku, 2022). The Constitution recognises INEC's existence, election administration responsibilities, and oversight of political party activities (Omotola, 2010). It also specifies certain qualifications (disqualification and tenures) that candidates for constitutional offices must meet before they can run for those positions (Omotola, 2010). Foremost, the provisions of the Constitution for ensuring credible elections are embedded in Section 40, the Right to Peaceful Assembly and Association. It states that every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union, or any other association for the protection of his interests, provided

that the provisions of this section do not derogate from the powers conferred by the Constitution of INEC concerning the political parties to which that commission does not accord recognition. As a result, everyone has the right and freedom to form or join any political party to partake in elections for any elective position; this is a foundational principle of credible elections. Section 78 states that voter registration and election administration are subject to INEC's direction and supervision.

The Electoral Act of 2022

Legal frameworks are vital to using various innovative ideas, equipment, and processes to ensure the credibility of elections. This is succinctly captured under the new Electoral Act 2022, which was signed into law on February 25, 2022, and is believed to have progressive provisions that will aid credible elections. These innovations, particularly those that use technology to improve voter registration, voter accreditation, result management, and the promotion of inclusivity for marginalised people, are now legally mandated and protected (Balewa, 2022). This also extends to the registration and accreditation of observers, media organisations, and the nomination of candidates and polling agents by parties (Balewa, 2022). Some vital innovations to the electoral process within the legal authority of INEC include the Automated Biometric Identification System (ABIS) that combines registered voters' fingerprint and facial authentication and helps clean up the Register of Voters by identifying multiple registrations, underage registrations, etc. As there can't be credible elections without a credible register of voters, the BVAS system has eliminated the problem of multiple accreditations observed in previous elections, ensuring that the accredited person is actually the voter and the bearer of the card. The voter must go through biometric accreditation using their fingerprint; if this fails, the option of a facial scan is used. This is also guaranteed by law, and it has also improved confidence in election outcomes, as shown in the recent off-cycle elections (Onuoha & Okafor, 2020). It has eliminated the use of the Incident Form, which indirectly encouraged identity theft in voting (Opeibi, 2019). The INEC Result Viewing (IReV) portal ensures the transmission of scanned images of the polling unit level results in real-time to the commission; this is safer and less susceptible to hacking than transmitting raw figures and increases transparency in result management.

Some key provisions of the new Electoral Act 2022 include an early release of election funds to INEC in Section 3(3) no later than one year before the general elections to aid preparations for the elections. Section 8(5) requires INEC appointees to be apolitical and to disclose any political affiliations they may have. Section 24(3) authorises INEC to postpone elections if a credible and proven threat to the peace and security of electoral officials and materials exists after the polls have commenced.

INEC is required by Section 28(1) to issue a Notice of Election no later than 360 days before the general election date. Section 29(1) requires political parties to provide a list of their validly nominated candidates 180 days before the election date. Section 34 allows political parties to replace a candidate who dies after the polls have begun but before the final results are announced and a winner is declared (Solomon, 2022). Section 47 authorises INEC to use a smart card reader (SCR) or other technological devices to accredit voters electronically in order to verify, confirm, or authenticate the particulars of

the intending voter. Section 41(1) provides for electronic voting or manual voting, with INEC having the option of supplying ballot boxes, electronic voting machines, or other voting equipment during elections. Section 50(2) gives INEC the authority to choose whether to send election results electronically or manually (Obiefuna-Oguejiofor, 2018).

Section 51(2) redefined overvoting by mandating that the total number of accredited voters will decide the election's legality. Section 54(2) also requires INEC to take reasonable steps to ensure that people with disabilities, special needs, and vulnerable people are assisted during voting and have access to appropriate communication devices. INEC is required by Section 62 to maintain a national electronic register of election results by polling unit results and aggregating election results from each election it holds. Section 65(1) empowers INEC within seven days to review declarations and returns where it is believed they were made involuntarily or contrary to election laws (Nwankwo & Njoku, 2020).

Section 73(2) and (3) declares an election void if the amount, serial numbers, and other details of results sheets, ballot papers, and other sensitive materials are not recorded in the manner stipulated by INEC and criminalises the infringement by imposing an N10 million punishment or at least one year in prison on a presiding officer who is found guilty [16]. Section 84 (2) requires direct, indirect, or consensus-based party primaries. According to Section 84 (9), political parties must ensure that they have the written consent of all aspirants indicating their voluntary withdrawal and acceptance of the consensus candidate for consensus candidature. According to Section 84(11), a special convention or nomination congress must be held at designated centres to ratify the consensus candidate. Section 84(12) stipulates that anyone holding a political office or an appointment must relinquish the position before they can be eligible to participate in the electoral process either as a candidate or as a delegate (Iloka, & Ojukwu, 2021). Sections 88 (2) to (7) of the Act establish the limitations on election expenditures, setting new top and lower limits of N5 billion and N5 million, respectively, depending on the positions sought (Okolie et al., 2021).

The Independent National Electoral Commission's (INEC's) Regulations and Guidelines for the Conduct of Election 2022

Section 148 of the Electoral Act of 2022 empowers INEC, as a subject of the Act, to publish regulations, guidelines, or manuals to carry out the provisions of the Act and to administer it (Ekuri & Sanusi, 2016; Ayika, 2022). To carry out these constitutional and legislative authorities, INEC issued Regulations and Guidelines for the Conduct of Elections, 2022, which supersede all previous election conduct regulations issued by the commission and will remain in effect until replaced by a new regulation. Section 1 states that it applies to the conduct of elections for various elective offices ranging from president to area council councillors. Section 5 of the Regulations and Guidelines provides the criteria for a person who is eligible to vote. Voting in an election shall take place at the polling units and voting points as provided under Section 6 (Ayika, 2022). Section 13 provides that voting must be in accordance with the continuous accreditation and voting system (CAVS) procedure, the Election Manual, and other guidelines. Section

101 provides the persons to be allowed access to the electoral material distribution centres, polling units, and collation centres.

Electoral Offences and Punishments Under the Electoral Act 2022

The 2022 Electoral Act made provisions for the punishment of those who breach the Electoral Act. These offences and punishments are captured in Sections 114–128 of the Act (Idowu, 2022). These include offences in relation to registration, offences in relation to nomination, disorderly behaviour at political meetings, improper use of voter's cards, improper use of vehicles, impersonation and voting when not qualified, dereliction of duty, bribery, and conspiracy, requirement of secrecy in voting, wrongful voting and false statements, voting by an unregistered person, disorderly conduct at elections, offences on election day, undue influence, and threatening violence. The offences carry fines and prison terms ranging from 1 million naira or 2 years in prison to 500 thousand naira or one year in prison, while some carry a prison term of six months, two hundred thousand naira, or even one hundred thousand naira depending on the nature of the offence. Section 126(4) pegs a prison term of 24 months with no provision for fines for any person who tampers with electoral materials or devices, for example, ballot box snatchers or those who violently collect electoral materials. Section 121(6) of the Act also states that if a candidate for election has knowledge of or has sponsored an Electoral Act offender, he will be punished as the main offender (Idowu, 2022). That is to say that if a candidate for an election sponsored a person who committed an offence such as bribery, undue influence, or violence, the candidate would not be spared by the law. It is our hope that this provision will be used to invalidate the election of a person who sponsors violence or buys votes in an election.

Code of Conduct and Rules of Engagement for Security Personnel on Election Duty

INEC is entirely responsible for election security, particularly vote security. Only the commission is authorised under Section 27(3) of the Electoral Act of 2022 to seek the deployment of required security personnel for elections or voter registration and to distribute them in collaboration with relevant security agencies. The Armed Forces, on the other hand, can only be asked and deployed to ensure the distribution of election materials and officials (Ugoh, 2022). The Nigeria Police Force and other related security agencies are primarily responsible for election security (Ugoh, 2022).

In order to ensure effective election security management, INEC formed the Inter-Agency Consultative Committee on Election Security (ICCES) in 2010. The ICCES is made up of 19 security institutions, each of which has a distinct duty to fulfil in accordance with its constitutional and/or legislative obligations. The National Security Adviser's Office, the Ministry of Police Affairs, the Nigeria Police Force, the Police Service Commission, the Nigerian Army, the Nigerian Navy, and the Nigerian Air Force; the State Security Services; the National Intelligence Agency; the National Drug Law Enforcement Agency; the Nigeria Customs Service, the Nigeria Immigration Service, the Federal Road Safety Corps, and the Nigerian Security and Civil Defence Corps are among the security institutions. Others are the Economic and Financial Crimes Commission as well as the Independent Corrupt Practices Commission. The ICCES is responsible for enhancing INEC's overall election security management throughout the country.

As a result of the above, under the auspices of the current ICCES, the Code of Conduct and Rules of Engagement for all security agencies conducting electoral tasks were released in June 2020 (Kelly & Mahesh, 2017). It has not been used for any significant elections other than off-cycle elections conducted after June 2020. The code is expected to be used by security agencies on electoral tasks during the 2023 general election. Clause 6.1 of Part I requires all security staff to wear their prescribed uniforms and visible name badges. Clause 7.1 requires designated officers to designate inner and outer rings to serve as guides in deployment. This will be used to determine the type of weapon officers deployed to these locations will carry. Other clauses address general and standard operating guidelines, briefing and debriefing rules, crowd control, the use of force or lethal weapons, escorting or protecting electoral materials, checkpoint and roadblock rules, and conduct during elections (Kelly & Mahesh, 2017). Part 2 clauses 13–17, respectively, contain the basic rules of engagement, the arrest process, caution to arresting staff, and a reportorial duty. Clause 14.1 states that force should only be used against clearly recognised armed miscreants, to protect oneself and colleagues against hostile acts or intents, to fight attempts to abduct or imprison oneself or colleagues, to resist attempts to abduct or cart away election material, and so on.

IV. CONCLUSION

Despite new improvements to the Electoral Act and other consequential laws that can promote the realisation of Nigeria's potential for credible elections, the legal frameworks still have some components that need to be examined or added in order to improve the electoral process. With the Constitution acting as the primary legal framework for elections, the constitution should attempt to ensure the commission's independence, and it should be changed to give INEC complete financial independence. Section 225 of the Constitution should be amended to eliminate the need for monies supplied to a political party from outside Nigeria to be transferred to INEC; alternatively, such donations should be reported to INEC and made public. Furthermore, the Constitution is silent on INEC's authority to disqualify candidates who make fraudulent representations to the commission. The Constitution should be modified to enable the formation of an Electoral Offences Commission or Tribunal to try and sentence individuals (INEC officers, candidates, and electorates) who violate the requirements of sections 114–128 of the new Act. This will be done to limit the growing judicialisation of politics, particularly pre-election disagreements among members of the same political party.

Section 29(5) of the Electoral Act should be amended to enlist the High Courts of the State and Federal Capital Territory of Abuja to hear and resolve pre-election disputes. The Act should be changed to allow members of the public to challenge a candidate who provided false information or documents to the INEC. Also, the trial of election petitions should be based on the substance of the petition and the facts of the case and not on technicalities. This frequent throwing out of petitions based on technical grounds dampens the spirit of those who are involved in the electoral process. Finally, every citizen should be mandated to adhere to the Electoral Act. Because elections are handled by people, ensuring the safety of election officials, voting materials, and voters is

important to a smooth election process. INEC should offer precise instructions to the Nigerian Armed Forces when they are deployed to secure election materials and electoral officials. These must be specifically stated in the INEC Election Security Regulations or the Code of Conduct.

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