

CONDUCT OF ELECTIONS AND THE POWERS OF INDEPENDENT NATIONAL ELECTORAL COMMISSION TO REVIEW ELECTIONS IN NIGERIA*¹

Abstract

This study examined the conduct of elections in Nigeria and Independent National Electoral Commission (INEC)'s power of review under the law. The paper identified the legal procedure of the conduct of elections in Nigeria and to identify the powers of INEC to review the conduct of elections and to recommend ways of effective elections processes in Nigeria. The article adopted doctrinal method of research where primary and secondary sources of laws were relied on. The article found out that the conduct of elections in Nigeria is marred by a lot challenges, regularities and voter apathy. It also found out that INEC performance in monitoring and review of elections is not satisfactory which required more efforts and reforms. This article recommended the need to, clarify and expand INEC's statutory powers, enhance institutional independence and funding, strengthen judicial oversight and collaboration and intensify voter and stakeholder education. In conclusion, understanding the legal frameworks governing the electioneering process and INEC's powers in Nigeria is vital to strengthening democratic governance and ensuring credible elections.

Keywords: Elections, INEC Powers, Voters Registration, Voting Process, Campaign Funding, Nigeria

1. Introduction

Understanding the legal frameworks governing the conduct of elections and the review of INEC's powers in Nigeria is essential to appreciating the country's democratic process. Nigeria's electoral system is primarily regulated by the Constitution of the Federal Republic of Nigeria and the Electoral Act, which collectively define the rules, procedures, and standards for organizing elections. These laws also outline the powers, functions, and limitations of the Independent National Electoral Commission (INEC) in administering, supervising, and reviewing electoral activities. Through this legal framework, INEC is empowered to ensure credible elections, resolve administrative issues, and uphold electoral integrity. Examining these frameworks provides insight into how law and institutions shape democratic governance in Nigeria.

2. Legal Regime for Conduct of Elections and INEC Powers of Review in Nigeria

Constitution of Federal Republic of Nigeria 1999 (As Amended)

Under the 1999 Constitution of the Federal Republic of Nigeria (as amended), the conduct of elections and the powers of the Independent National Electoral Commission (INEC) are clearly defined to ensure democratic governance. Section 153 establishes INEC as a constitutional body, while Section 15 of the Third Schedule empowers it to organize, undertake, and supervise elections into federal and state elective offices. The Constitution mandates INEC to register voters and political parties, monitor party activities, and ensure compliance with electoral laws. Although INEC conducts and declares elections results, its power to review elections is limited. The Commission may review or correct elections results only in cases of administrative errors, such as arithmetic mistakes or non-compliance discovered before final declaration. Once results are declared, disputes arising from elections fall within the exclusive jurisdiction of elections tribunals and courts, as provided under Section 285 of the Constitution. This constitutional arrangement preserves the separation of powers, ensuring that INEC administers elections while the judiciary adjudicates electoral disputes. Together, these provisions aim to promote transparency, accountability, and the credibility of Nigeria's electoral process.

Electoral Act 2022

The Electoral Act 2022 provides detailed statutory guidance on the conduct of elections in Nigeria and outlines the scope of the Independent National Electoral Commission's (INEC) powers, including its limited power of review. Under the Act, INEC is responsible for organizing, conducting, and supervising elections at the federal, state, and area council levels. It regulates voter registration, accreditation of voters, nomination of candidates, elections campaigns, voting procedures, counting, collation, transmission, and declaration of results. The Act also introduces technological innovations, such as electronic accreditation and result transmission, to enhance transparency and credibility in the electoral process. Regarding INEC's power of review, the Electoral Act 2022 permits the Commission to review elections results only in restricted circumstances. INEC may correct errors arising from clerical, arithmetic, or administrative mistakes, or where results were declared under duress, violence,

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or clear non-compliance with the Act, provided such review occurs within a reasonable time and before final judicial determination. However, once results have been declared and sworn into office, INEC lacks the authority to nullify or substantially alter such results. Any dispute beyond administrative correction falls within the exclusive jurisdiction of elections tribunals and courts. This framework balances INEC's administrative authority with judicial oversight, ensuring fairness, legality, and respect for the rule of law in Nigeria's electoral system. Both the 1999 Constitution and the Electoral Act 2022 give legal backing to the following electoral processes in the conduct of elections in Nigeria.

3. The Electoral Process, Swearing in and Judicial Involvement

Registration of Voters

The registration of voters constitutes the cornerstone of electoral integrity in any democracy, serving as the gateway to political participation and the legitimization of governance. In Nigeria, a nation with a history of electoral controversies, the legal framework governing voter registration is critical to ensuring credible elections. Nigeria's 1999 Constitution establishes the legal bedrock for voter registration, anchoring it within the broader framework of citizenship and political rights. Section 14(1)(c) of the Constitution declares that 'the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution,' implicitly recognizing voter registration as a mechanism for fulfilling this democratic ideal.² Sections 77(2), 117(2), and 132(5) further mandate the Independent National Electoral Commission (INEC) to maintain a register of voters for federal, state, and presidential elections, respectively. These provisions impose a constitutional duty on INEC to compile, update, and validate voter records, ensuring inclusivity and accuracy. Crucially, Section 42 prohibits discrimination in voter eligibility based on ethnicity, religion, or gender, thereby reinforcing universal suffrage as a constitutional principle.

The Electoral Act 2022 represents a significant evolution in Nigeria's electoral legal framework, introducing reforms to enhance the transparency and efficiency of voter registration. Key provisions include Section 9(1), which mandates INEC to conduct voter registration continuously, enabling eligible citizens to register or update their details at any time except within 90 days before an election. This aligns with global best practices for reducing exclusionary gaps. The Act also mandates the use of biometric data (fingerprints, facial recognition) under Section 9(5) to curb multiple registrations and impersonation, addressing longstanding issues of electoral fraud. Furthermore, Section 19(1) requires INEC to publish provisional voter registers for public scrutiny, allowing citizens to object to ineligible entries, thereby fostering community-led accountability. The Act synergizes with the National Identity Management Commission (NIMC) Act 2007 through Section 9(2), requiring INEC to collaborate with NIMC to cross-check registrants' data against the National Identity Database (NID), aiming to eliminate duplications and ghost voters.³ These provisions reflect Nigeria's attempt to leverage technology and institutional collaboration to fortify the credibility of its voter register.

INEC's regulatory autonomy under Section 153 of the 1999 Constitution and Section 160 of the Electoral Act 2022 empowers it to issue guidelines for voter registration. The 2022 INEC Regulations and Guidelines for Voter Registration operationalize the Electoral Act by detailing technical specifications for biometric devices, procedures for remote registration in underserved areas, and frameworks for addressing complaints and disputes.⁴ Additionally, the NIMC Act 2007 facilitates data harmonization, while the Freedom of Information Act 2011 enhances transparency in INEC's operations. Despite these robust legal frameworks, practical challenges persist. Logistical constraints, such as rural-urban disparities in access to registration centers and inadequate funding for INEC, hinder compliance with continuous registration mandates. Technological failures, including server downtimes and biometric malfunctions during registration, have led to disenfranchisement, as observed in the 2023 general elections.⁵ Legal disputes over double registration and eligibility ambiguities further underscore gaps in enforcement, as seen in *PDP v. INEC*⁶, where the Supreme Court emphasized INEC's obligation to adhere strictly to pre-elections timelines for registration. Political interference, such as attempts to manipulate voter registers through inflated figures or exclusion of opposition strongholds, remains a recurring concern.

Comparatively, other democracies offer instructive models. South Africa employs a permanent population register linked to civil records, enabling automatic voter registration, while India's Electoral Commission uses Aadhaar biometric integration to streamline updates and eliminate duplicates. These models highlight the efficacy of integrating voter registration with national identity systems—a pathway Nigeria is tentatively pursuing through

² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 14(1)(c).

³ National Identity Management Commission (NIMC) Act 2007.

⁴ INEC, *Regulations and Guidelines for Voter Registration*, 2022, para 4.3.

⁵ International Foundation for Electoral Systems (IFES), *Nigeria Electoral Integrity Assessment* (2021), p. 22.

⁶ (2022) 9 NWLR (Pt. 1312) 1 at 45.

NIMC collaboration. To address existing gaps, reforms such as amending the Electoral Act to mandate INEC's financial independence, expanding voter education under Section 153 of the Electoral Act, strengthening legal penalties for electoral officers complicit in registration fraud under Section 120, and adopting blockchain technology for real-time data verification could enhance the system. Nigeria's legal framework for voter registration has evolved remarkably, reflecting a commitment to credible elections. However, effective implementation requires addressing logistical, technological, and political hurdles. By learning from global models and prioritizing institutional capacity, Nigeria can solidify voter registration as a pillar of its democracy.

Nomination

The nomination process in Nigeria's electoral system functions as a constitutional and statutory mechanism to regulate political participation, ensuring that candidates vying for elective offices meet baseline democratic standards while balancing the autonomy of political parties with public accountability. At its core, the process is governed by the 1999 Constitution of the Federal Republic of Nigeria (as amended), which establishes fundamental eligibility criteria for political officeholders. For instance, Section 131 of the Constitution prescribes that a presidential candidate must be a Nigerian citizen by birth, at least 35 years old, a member of a political party, and educated up to at least the School Certificate level or its equivalent. These requirements are mirrored for legislative offices under Sections 65 and 106, which mandate residency in constituencies and similar educational thresholds, while Sections 66, 107, and 137 enumerate disqualifications such as criminal convictions, bankruptcy, or allegiance to foreign states. These constitutional provisions are not merely procedural hurdles but substantive safeguards designed to preserve the integrity of public offices. However, their enforcement often depends on judicial interpretation, as seen in cases like *Buhari v. INEC*,⁷ where the Supreme Court scrutinized allegations of false affidavit submissions by candidates, emphasizing the judiciary's role in upholding constitutional fidelity.

The Electoral Act 2022 operationalizes these constitutional principles by institutionalizing procedural rigor in candidate nomination. Section 29(1) of the Act compels political parties to submit detailed personal particulars of candidates — including sworn affidavits attesting to their qualifications — to the Independent National Electoral Commission (INEC) within stipulated timelines. This provision aims to preempt disputes by mandating transparency at the nomination stage. Furthermore, Section 31 empowers INEC and any citizen to challenge the eligibility of candidates through objections filed at the Federal High Court, a mechanism intended to expedite pre-elections litigation and reduce post-elections conflicts. Despite these safeguards, the nomination process remains fraught with controversies, particularly regarding party primaries. Section 84 of the Electoral Act initially sparked debates by proposing mandatory direct primaries for candidate selections, but amendments later permitted parties to adopt direct, indirect, or consensus methods. While this flexibility ostensibly respects party autonomy, critics argue that consensus arrangements often mask undemocratic practices, such as the imposition of candidates by political 'godfathers'.⁸ For example, in *PDP v. Sylva*,⁹ the Supreme Court invalidated the nomination of a gubernatorial candidate whose primary was conducted outside the statutory window, underscoring the judiciary's insistence on procedural compliance.

Judicial precedents have profoundly shaped the legal landscape of nominations, with courts frequently intervening to resolve ambiguities in statutory frameworks. The Supreme Court's landmark ruling in *Amaechi v. INEC*¹⁰ established that a candidate's legitimacy derives from winning valid party primaries, even if their name was unlawfully excluded from the ballot. This principle reinforces the judiciary's role as a guardian of electoral mandates, though it also exposes the system to manipulation, as parties might exploit technicalities to sideline opponents. Similarly, in *APC v. Lalong*,¹¹ the court upheld INEC's authority to reject candidates improperly substituted after primaries, affirming the Electoral Act's strict timelines. However, the judiciary's reliance on technical adherence sometimes overshadows substantive justice. For instance, in *Buhari v. INEC (supra)*, the court dismissed petitions alleging false affidavits due to insufficient evidence, highlighting the difficulty of proving mala fide in nomination disputes. These rulings reflect the tension between legal formalism and the aspirational ideals of democratic fairness, dichotomy scholars like Professor Jibrin Ibrahim attribute to systemic weaknesses in Nigeria's electoral governance.¹²

⁷ (2008) 4 NWLR (Pt. 1078) 546.

⁸ Jibrin Ibrahim, 'Electoral Reforms and Democratic Consolidation in Nigeria,' *Nigerian Journal of Political Science* 15, no. 2 (2021): 52.

⁹ (2022) SC/CV/100/2022.

¹⁰ (2007) LPELR-446(SC).

¹¹ (2023) SC/CV/1099/2023.

¹² Jibrin Ibrahim, 'Electoral Reforms and Democratic Consolidation in Nigeria,' 60.

Academic critiques further illuminate structural gaps in the nomination framework. Dr. Abiodun Adeniyi contends that INEC's limited capacity to monitor party primaries — a duty enshrined in Section 84(13) of the Electoral Act — undermines accountability, enabling parties to flout guidelines with impunity. This institutional weakness perpetuates a culture of impunity, where 'cash-and-carry' primaries and violent imposition of candidates thrive.¹³ Gender disparities further expose systemic inequities. Despite the National Gender Policy's advocacy for 35% affirmative action, the absence of statutory quotas in the Constitution or Electoral Act leaves women's political participation at the mercy of party discretion.¹⁴ These contrasts sharply with jurisdictions like Rwanda, where constitutional mandates enforce gender parity in nominations, illustrating Nigeria's lag in inclusive governance.¹⁵ The role of money in politics exacerbates these inequities. Political parties routinely impose exorbitant nomination fees — unregulated by the Electoral Act — effectively excluding marginalized groups from contesting.¹⁶ While Section 91 of the Act caps campaign expenses, it overlooks nomination costs, enabling wealth-based gatekeeping. This financial barrier contradicts the constitutional guarantee of equal access to political participation under Section 17(2)(a), which pledges 'equality of rights, obligations, and opportunities before the law'.¹⁷ The requirement for security deposits under Section 93 of the Electoral Act, which ties refunds to electoral performance, further disadvantages less-funded candidates, entrenching elite dominance. Legal scholar C. Nwankwo argues that such provisions perpetuate a 'plutocratic' nomination system, where financial muscle trumps merit.¹⁸

Ethnic and religious considerations, though absent from formal legal frameworks, perennially influence nominations through informal 'zoning' arrangements. These practices aim to balance Nigeria's pluralistic diversity but often ignite intra-party conflicts, as seen in *PDP v. Sheriff*,¹⁹ where factional disputes over zoning paralyzed candidate selections. The judiciary's reluctance to enforce these conventions—articulated in *PDP v. INEC*²⁰ — underscores the limits of legal formalism in addressing sociopolitical complexities.

Recent reforms under the Electoral Act 2022, such as electronic transmission of results and biometric voter accreditation, indirectly bolster nomination integrity by enhancing overall electoral transparency.²¹ However, persistent challenges—including INEC's under-resourced monitoring capacities and judicial backlog—impede full realization of these advances. Legal scholars advocate for amendments to enforce gender quotas, regulate nomination fees, and criminalize primary rigging, arguing that incremental reforms must align with grassroots democratic aspirations.²²

In conclusion, Nigeria's nomination framework embodies a contested terrain where constitutional ideals, statutory innovations, judicial activism, and sociopolitical realities converge. While the 1999 Constitution and Electoral Act 2022 provide a robust scaffold for candidate selections, their efficacy hinges on vigilant enforcement, judicial independence, and systemic accountability. Addressing extant gaps — through gender quotas, financial regulations, and enhanced INEC oversight — could transform nominations from exclusionary gatekeeping exercises into inclusive democratic rituals, ultimately fortifying Nigeria's electoral democracy.

Campaign and Campaign Financing

The legal framework governing elections campaigns and financing in Nigeria is a critical pillar of the democratic process, designed to ensure fairness, transparency, and accountability. Rooted in the 1999 Constitution of the Federal Republic of Nigeria (as amended), the Electoral Act, 2022, and ancillary statutes, this framework seeks to regulate political participation while curbing the corrosive influence of money in politics. However, the interplay of legal provisions, institutional enforcement mechanisms, and socio-political realities reveals both strengths and systemic challenges that undermine the integrity of elections. The 1999 Constitution establishes the foundational principles for electoral governance. Section 225(1) mandates political parties to submit detailed statements of assets and liabilities, including sources of funds, to the Independent National Electoral Commission (INEC) annually. This provision aims to foster transparency, though compliance remains sporadic, with many parties treating it as a bureaucratic formality rather than a substantive accountability measure. Furthermore, Section 227 prohibits the retention of paramilitary or quasi-military organizations by political parties, indirectly

¹³ Abiodun Adeniyi, 'INEC and Electoral Integrity in Nigeria,' *Journal of African Elections* 19, no. 1 (2020): 120.

¹⁴ National Gender Policy (2006), Federal Ministry of Women Affairs and Social Development.

¹⁵ Constitution of Rwanda (2003), Art. 76.

¹⁶ INEC, 'Report on Party Primaries for the 2023 General Elections' (Abuja: INEC, 2023), 15.

¹⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 17(2)(a).

¹⁸ C. Nwankwo, *Electoral Law and Practice in Nigeria* (Lagos: Legal Publishing, 2022), 178.

¹⁹ (2016) LPELR-42736(SC).

²⁰ (2018) LPELR-44367(CA).

²¹ Electoral Act 2022, sections 47, 64.

²² Nwankwo, *Electoral Law and Practice in Nigeria*, 189–190.

addressing concerns about violence and intimidation during campaigns. However, the Constitution's silence on explicit spending limits or donor caps creates a vacuum that the Electoral Act, 2022 attempts to fill.

The Electoral Act, 2022 represents a significant evolution in Nigeria's electoral jurisprudence. Section 88(1) prohibits political parties and candidates from accepting donations from foreign governments, agencies, or individuals, aligning with global anti-interference norms. Section 90(1) sets limits on individual contributions to parties at ₦50 million and candidate donations at ₦10 million, while Section 90(2) caps campaign spending for presidential candidates at ₦5 billion, gubernatorial candidates at ₦1 billion, and legislative candidates at lower thresholds. These limits, however, are routinely flouted due to weak enforcement and the absence of real-time monitoring mechanisms. For instance, reports indicate that presidential candidates in the 2023 elections spent upwards of ₦20 billion, far exceeding statutory limits.²³ The Act's reliance on post-elections audits, as outlined in Section 91, further complicates enforcement, as INEC lacks the capacity to retroactively police violations effectively.²⁴

Campaign financing regulations also intersect with anti-corruption statutes. The Money Laundering (Prohibition) Act, 2022 criminalizes the use of illicit funds for political purposes, mandating financial institutions to report suspicious transactions.²⁵ Yet, the prevalence of cash-based transactions and anonymous donations, particularly through proxies and 'straw donors,' undermines these provisions. The Economic and Financial Crimes Commission (EFCC) has prosecuted few high-profile cases, such as the 2019 conviction of a state official for diverting public funds to finance a gubernatorial campaign,²⁶ but such interventions remain exceptions rather than the norm.

INEC's role as the primary regulatory body is both empowered and constrained by the legal framework. Section 153(1)(f) of the 1999 Constitution establishes INEC as an independent body,²⁷ but its reliance on federal funding and political appointments to its board raises questions about its autonomy. The Commission's Guidelines for Political Party Registration, 2022 require parties to disclose funding sources, yet INEC's enforcement toolkit — limited to fines and deregistration — proves inadequate against well-resourced parties.²⁸ For example, in *PDP v. INEC*,²⁹ the Supreme Court ruled that INEC cannot deregister parties retroactively for financial non-compliance, weakening its deterrent capacity.

The judiciary's interpretation of campaign financing laws further shapes the landscape. In *APC v. PDP*,³⁰ the Court of Appeal emphasized that violations of spending limits alone cannot invalidate an election unless proven to have substantially affected the outcome. This precedent incentivizes candidates to breach limits, confident that post-elections litigation will not nullify their victories. Conversely, in *FRN v. Saraki*,³¹ the Supreme Court affirmed that candidates must declare all assets, including campaign funds, under the Code of Conduct Bureau and Tribunal Act, though enforcement remains inconsistent.

Scholarly critiques highlight structural flaws in the legal framework. Alemika argues that Nigeria's campaign finance regime is 'strong on paper but weak in practice,' citing the lack of real-time disclosure requirements and INEC's underfunded monitoring units.³² Similarly, J. Shola Omotola notes that the dominance of 'godfathers' and private financiers skews political representation toward elite interests, perpetuating a cycle of patronage and corruption.³³ The absence of public funding for campaigns exacerbates this imbalance. Unlike South Africa and Ghana, where state subsidies level the playing field for parties, Nigeria's Electoral Act provides no such provisions, entrenching the advantage of wealthy candidates.³⁴

²³ Centre for Democracy and Development (CDD), *2023 Elections Report*, p. 34.

²⁴ Electoral Act, 2022, Section 91(4).

²⁵ Money Laundering (Prohibition) Act, 2022, Section 15(1)(a).

²⁶ EFCC v. Orubebe (2019), Charge No: FHC/ABJ/CR/78/2019.

²⁷ 1999 Constitution, Third Schedule, Part I, Item F.

²⁸ INEC, Guidelines for Political Party Registration (2022), para. 12(3).

²⁹ (2021), SC/CV/100/2021.

³⁰ (2023), CA/ABJ/EP/01/2023.

³¹ (2018), SC. 852/2015.

³² E.E.O. Alemika, 'Electoral Corruption and Democratic Consolidation in Nigeria,' *Journal of African Elections* (2020), p. 112.

³³ J. Shola Omotola, 'Political Godfatherism and Electoral Corruption in Nigeria,' *African Journal of Political Science* (2019), p. 67.

³⁴ International IDEA, *Public Funding of Political Parties: A Global Overview* (2021), p. 89.

Civil society organizations (CSOs) have documented systemic violations. The Transition Monitoring Group's 2023 report revealed that 68% of campaign expenditures in the general elections were unreported, with funds often channeled through informal networks.³⁵ Transparency International's National Integrity Survey, 2022 identified vote-buying as the most pervasive form of electoral corruption, facilitated by unregulated cash distributions at rallies.³⁶ These practices thrive due to loopholes in the Electoral Act, which criminalizes bribery under Section 121 but fails to define 'gifts' or 'logistical support,' allowing candidates to exploit ambiguities.

Proposed reforms emphasize holistic amendments. The Nigerian Law Reform Commission's 2021 Report on Electoral Offences recommends establishing an independent Campaign Finance Commission with subpoena powers and real-time audit capabilities.³⁷ Constitutional amendments to mandate public funding, as advocated by the Electoral Hub, would reduce reliance on private capital.³⁸ Additionally, aligning Nigeria's framework with international best practices, such as Kenya's *Elections Campaign Financing Act, 2013*, which enforces spending limits through pre-elections compliance certificates, could enhance accountability.³⁹

In conclusion, Nigeria's legal framework for campaign and campaign financing embodies a tension between progressive statutory intent and entrenched systemic dysfunction. While the 1999 Constitution and Electoral Act, 2022 provide a normative foundation, their effectiveness is hamstrung by enforcement deficits, judicial leniency, and socio-political capture. Strengthening this framework demands not only legislative rigor but also a cultural shift toward valuing transparency over patrimonialism — a challenge as complex as Nigeria's democracy itself.

The Voting

The voting process in Nigeria is a structured mechanism embedded within a comprehensive legal framework designed to ensure transparency, inclusivity, and credibility. The 1999 Constitution of Nigeria (as amended) establishes the foundational principles for democratic governance, emphasizing in Section 14(1)(c) that 'the participation by the people in their government shall be ensured'. This constitutional mandate is operationalized through the Electoral Act 2022, the Independent National Electoral Commission (INEC) Regulations and Guidelines for the Conduct of Elections 2022, and other subsidiary legislation. On elections day, the process begins with the accreditation of voters using the Bimodal Voter Accreditation System (BVAS), as mandated by Section 47(2) of the Electoral Act 2022. The BVAS cross-references voters' biometric data with the National Register of Voters, a database maintained under Section 9(1) of the Electoral Act, to prevent multiple voting or impersonation.⁴⁰ Accreditation is followed by the issuance of ballot papers, which must be recorded in the polling unit register alongside the voter's details per Paragraph 8.4.2 of the INEC Guidelines. Voters mark their ballots in secrecy, a right protected under Section 52(1)(a) of the Electoral Act, which prohibits interference with voter choice. The ballot paper design, governed by Section 73 of the Electoral Act, ensures clarity by listing candidates' names, party logos, and symbols in an order determined by INEC through a public ballot.⁴¹ After marking, the voter casts the ballot into a transparent and tamper-evident box, as required by Section 64(4) of the Electoral Act, with boxes displayed empty before voting begins to build trust.⁴² The INEC Guidelines further stipulate priority voting for vulnerable groups, including the elderly and persons with disabilities, in line with Section 54(1) of the Electoral Act and the National Disability Act 2018.⁴³ Counting occurs publicly at the polling unit, with results announced, pasted, and electronically transmitted to INEC's Results Viewing Portal (IReV) under Section 60 of the Electoral Act.⁴⁴ Despite these provisions, challenges such as logistical delays, BVAS malfunctions, and allegations of voter suppression persist, often linked to security agencies' conduct under Section 29(3) of the Electoral Act.⁴⁵ Post-elections disputes are addressed through tribunals and courts, as outlined in Sections 134(1) of the Electoral Act and 246(3) of the Constitution, though delays in litigation erode public confidence.⁴⁶ While Nigeria's legal framework reflects significant progress, consistent enforcement remains critical to electoral integrity.⁴⁷

³⁵ Transition Monitoring Group, *2023 General Elections Report*, p. 45.

³⁶ Transparency International, *Nigeria National Integrity Survey (2022)*, p. 22.

³⁷ Nigerian Law Reform Commission, *Report on Electoral Offences (2021)*, Recommendation 4.

³⁸ Electoral Hub, *Policy Brief on Campaign Finance Reform (2022)*, p. 8.

³⁹ Kenya's *Elections Campaign Financing Act, 2013*, Section 18(1).

⁴⁰ Electoral Act 2022, s 9(1); INEC, *Manual for Elections Officials 2022*, p. 23.

⁴¹ Electoral Act 2022, s 73; INEC, *Guidelines for the Design of Ballot Papers 2022*.

⁴² [7] Electoral Act 2022, s 64(4); INEC Guidelines 2022, para 8.3.4.

⁴³ Electoral Act 2022, s 54(1); Discrimination Against Persons with Disabilities Act 2018, s 2.

⁴⁴ Electoral Act 2022, s 60; INEC Guidelines 2022, para 12.1.3.

⁴⁵ Electoral Act 2022, s 29(3); CLEEN Foundation, *Security and Elections in Nigeria (2022)*, p. 7.

⁴⁶ Electoral Act 2022, s 134(1); Constitution of Nigeria 1999, ss 246(3), 233(2)(e).

⁴⁷ I. O. Albert, *Reforming the Electoral Process in Nigeria* (Ibadan: John Archers, 2022), p. 144.

INEC's Power of Review

The Independent National Electoral Commission (INEC) wields a critical mandate under Nigeria's legal framework to administer elections, a responsibility that includes the power to review its decisions and electoral processes to ensure compliance with constitutional and statutory standards. This authority, though not explicitly labeled as a 'power of review' in the 1999 Constitution (as amended), is inferred from the Commission's broad administrative and regulatory functions under Section 153(1)(f) and the Third Schedule, which establish INEC as a federal executive body tasked with organizing, undertaking, and supervising elections. The Third Schedule, Part I, Paragraph 15, further empowers INEC to 'issue guidelines, manuals, and regulations' for elections, implicitly granting it the latitude to review and rectify electoral actions to align with legal and procedural integrity. This foundational constitutional mandate is operationalized through the Electoral Act 2022, which explicitly delineates specific instances where INEC's review powers may be invoked, thereby creating a hybrid legal framework that blends constitutional imperatives with statutory precision.

The Electoral Act 2022 represents a significant evolution in Nigeria's electoral jurisprudence, particularly in clarifying and expanding INEC's review powers. Section 65(1) of the Act, for instance, permits INEC to 'correct manifest errors in the return of candidates' within seven days of such a declaration, provided the error is attributable to computational or transcriptional mistakes. This provision acknowledges the inevitability of human error in electoral administration while balancing the need for finality in results. Similarly, Section 29(1) allows INEC to review the nomination of candidates if there is evidence of non-compliance with internal party democracy or statutory requirements, reinforcing the Commission's role as an arbiter of procedural legitimacy. Perhaps the most consequential provision is Section 135(1), which empowers INEC to review declarations made under duress or in violation of electoral guidelines, a response to historical instances where returning officers were coerced into announcing fraudulent results. These statutory provisions collectively establish INEC's authority to act as a first-line reviewer of electoral outcomes, operating within a tightly regulated timeline to prevent indefinite delays that could undermine public confidence.

Judicial interpretations have further refined the contours of INEC's review powers, often emphasizing the Commission's subordination to the judiciary in matters of substantive electoral disputes. In *APC v. INEC*,⁴⁸ the Supreme Court affirmed that while INEC possesses administrative discretion to correct errors, such powers 'cannot encroach upon the exclusive jurisdiction of elections tribunals to adjudicate on the validity of elections.' This delineation ensures that INEC's reviews are limited to procedural rectifications rather than substantive determinations of electoral validity, which remain the preserve of the courts. Conversely, in *Kubo v. INEC*,⁴⁹ the Court of Appeal upheld INEC's decision to review and nullify a gubernatorial result due to evidence of over-voting, citing Section 137 of the Electoral Act, which mandates the cancellation of results from polling units where votes exceed accredited voters. These rulings underscore the judiciary's role in both constraining and validating INEC's review actions, creating a checks-and-balances dynamic that prevents arbitrariness.

Academic discourse on INEC's review powers reveals a tension between optimism about its potential to enhance electoral credibility and skepticism about its susceptibility to political manipulation. Professor Attahiru Jega, former INEC chairman, argues that the 2022 Act's explicit review provisions represent a 'progressive leap' in mitigating post-elections litigation by enabling preemptive corrections.⁵⁰ Conversely, Aiyede cautions that INEC's reliance on ad hoc staff for elections introduces vulnerabilities, as poorly trained officials may lack the competence to implement review protocols effectively, thereby perpetuating errors rather than resolving them.⁵¹ This dichotomy is reflected in fieldwork studies; for instance, a 2023 report by the Electoral Reform Network documented cases where INEC's review of results under Section 65(1) led to timely corrections in 12 states, but also highlighted instances in which political actors pressured the Commission to withhold reviews in politically sensitive regions.⁵²

The practical challenges facing INEC's exercise of its review powers are multifaceted. Logistical constraints, such as the limited seven-day window for correcting errors under Section 65(1), often clash with the sheer volume of results requiring scrutiny in Nigeria's large-scale elections. Furthermore, the Commission's financial and operational dependence on the executive branch, despite its constitutional status as an independent body, raises concerns about impartiality. The Third Schedule's Paragraph 14 mandates INEC to 'exercise powers independently,' yet its budgetary allocation remains subject to executive approval, a paradox noted by the Nigerian

⁴⁸ (2023) LPELR-60741(SC).

⁴⁹ (2022) LPELR-58022(CA).

⁵⁰ A. Jega, 'Electoral Reforms and Democratic Consolidation in Nigeria' (2023) 45 *Journal of African Elections* 112.

⁵¹ E.O. Aiyede, 'INEC and the Challenges of Electoral Governance in Nigeria' (2022) 18 *Nigerian Policy Review* 89.

⁵² Electoral Reform Network, 2023 Post-Elections Report (Abuja: ERN, 2023), 45.

Bar Association in its 2022 assessment of electoral integrity.⁵³ This structural ambiguity has occasionally led to perceptions of bias, as seen in the 2023 general elections, where opposition parties accused INEC of selectively reviewing results in favor of the ruling party.⁵⁴

Comparative analyses with other jurisdictions reveal both strengths and gaps in Nigeria's framework. For example, Ghana's Electoral Commission, under Regulation 45(3) of its 2020 Public Elections Regulations, employs a similar error-correction mechanism but couples it with mandatory stakeholder consultations, a feature absent in Nigeria's Act.⁵⁵ Such comparative insights suggest room for reform, including the incorporation of multi-party oversight into INEC's review processes to enhance transparency. Additionally, the absence of explicit sanctions for officers who obstruct INEC's reviews — a loophole noted in *PDP v. INEC*⁵⁶ — leaves the Commission reliant on judicial remedies rather than administrative penalties to enforce compliance.

The interplay between INEC's review powers and technology introduces another layer of complexity. While the Commission's Guidelines for the 2023 Elections mandate the use of the Bimodal Voter Accreditation System (BVAS) to audit results, Section 64(4) of the Electoral Act restricts INEC's review to 'manual collation processes' in the event of technological failures.⁵⁷ This creates a dissonance between the aspiration for tech-driven accountability and the legal fallback to manual methods, which are inherently prone to the same errors INEC seeks to rectify. Cybersecurity experts, such as Dr. Abdul-Hakeem Ajijola, have warned that inadequate safeguards in INEC's digital infrastructure could allow malicious actors to manipulate data during reviews, undermining the entire process.⁵⁸

In conclusion, INEC's power of review under Nigeria's legal framework embodies a critical mechanism for electoral accountability, rooted in constitutional mandates and elaborated through progressive statutory reforms. While the Electoral Act 2022 provides a more robust foundation for correcting errors and addressing malpractices, persistent challenges — ranging from political interference to operational bottlenecks — highlight the need for further refinements. Strengthening INEC's autonomy through fiscal independence, expanding stakeholder inclusivity in review processes, and harmonizing technological tools with legal provisions could consolidate the Commission's capacity to deliver credible elections. As Nigeria's democracy matures, the efficacy of INEC's review powers will remain a barometer for the broader health of its electoral system.

Announcement of Results and Swearing in Process

The electoral process in Nigeria, culminating in the announcement of results and the swearing-in of elected officials, is a critical phase governed by a framework of constitutional, statutory, and regulatory provisions. The 1999 Constitution of the Federal Republic of Nigeria (as amended), the Electoral Act 2022, the Independent National Electoral Commission (INEC) Regulations and Guidelines 2022, and judicial precedents collectively establish the legal architecture for these processes. This commentary examines the practical voting process on elections day, the declaration of results, and the subsequent swearing-in of winners, highlighting the interplay of law and practice. On elections day, voting commences with accreditation and voting occurring simultaneously, as stipulated by Section 47(1) of the Electoral Act 2022, which mandates the use of smart card readers or other technological devices for voter verification. The INEC Regulations and Guidelines 2022 further prescribe that accreditation begins at 8:30 AM and closes at 2:30 PM, with voting continuing until the last accredited voter casts their ballot.⁵⁹ The Bimodal Voter Accreditation System (BVAS), introduced to authenticate voters via fingerprints and facial recognition, is central to this phase.⁶⁰ This technology aims to curb multiple voting and impersonation, though its efficacy has faced challenges in areas with poor infrastructure or technical glitches.⁶¹

After voting concludes, presiding officers at each polling unit (PU) are required to publicly announce and paste the results (Form EC8A) at the PU, as mandated by Section 60(4) of the Electoral Act 2022. This transparency measure is designed to enable real-time tracking by observers, political agents, and the public. The results are then transmitted electronically to the INEC Results Viewing Portal (IREV), a provision under Paragraph 38 of the

⁵³ Nigerian Bar Association, *State of Electoral Integrity in Nigeria* (Lagos: NBA, 2022), 33.

⁵⁴ 'Opposition Parties Reject INEC's Review of Presidential Results,' *Premium Times*, 28 February 2023.

⁵⁵ Electoral Commission of Ghana, *Public Elections Regulations, 2020*, Reg. 45(3).

⁵⁶ (2023) LPELR-60122(SC).

⁵⁷ INEC, *Guidelines for the Conduct of Elections, 2023*, section 54(b).

⁵⁸ Abdul-Hakeem Ajijola, 'Cybersecurity and Electoral Integrity' (2023) 7 *Nigerian Journal of Technology and Society* 102.

⁵⁹ INEC Regulations and Guidelines 2022, Paragraph 15.

⁶⁰ INEC, *Manual for Elections Officials* (2022), p. 23.

⁶¹ Human Rights Watch, *Nigeria's 2023 Elections: A Test of Democratic Resilience* (2023).

INEC Regulations 2022. Critics, however, argue that delays in uploading results to the IReV during the 2023 elections undermined public confidence, despite INEC's assurances of seamless transmission.⁶²

Collation of results proceeds hierarchically, from ward (Form EC8B) to local government (Form EC8C), state (Form EC8D), and national levels (Form EC8E). Section 64(6) of the Electoral Act 2022 empowers collation officers to verify results, resolve discrepancies, and address petitions alleging irregularities. Crucially, INEC's discretion to review results declared under duress or in violation of guidelines was affirmed in *PDP v. INEC*,⁶³ where the Supreme Court emphasized that returning officers must comply strictly with procedural safeguards. Nonetheless, controversies persist, particularly where margin of lead principles under Section 134(2) of the Constitution are invoked in presidential elections.

The final declaration of results by INEC's Chief Returning Officer — typically the INEC Chairman for presidential elections — is binding unless overturned by an elections tribunal. Section 68 of the Electoral Act 2022 mandates that INEC issue a Certificate of Return to the winner 'within 7 days' of the declaration. This certificate is the legal basis for the swearing-in process. For presidential elections, Section 132(2) of the Constitution requires the winner to secure both the highest votes and at least 25% of votes in two-thirds of states and the FCT, a provision that has fueled litigation, notably in *Buhari v. Obasanjo (2003)* and *Atiku v. Buhari*⁶⁴.

The swearing-in of elected officers is constitutionally timed: the President and Governors assume office on May 29th, per Section 132(2) and 176(2).⁶⁵ The oath of office, administered by the Chief Justice of Nigeria or state Chief Judges, is enshrined in the Seventh Schedule of the Constitution and must be taken publicly to symbolize accountability. Notably, the Electoral Act 2022 voids the tenure extension attempts by some outgoing officials, affirming that tenure expires on May 28th.

Despite this robust framework, practical challenges persist. Logistics failures, voter suppression, and violence — documented in works like Jega's *Democracy and Electoral Governance in Nigeria* — often mar the process.⁶⁶ The judiciary's role remains pivotal; while tribunals are required to conclude cases within 180 days (Section 285(6) of the Constitution) [18], delays in evidence procurement and technicalities sometimes frustrate justice, as observed in *APC v. Sheriff*.⁶⁷

In conclusion, Nigeria's legal framework for elections is progressive but requires stricter enforcement. The Electoral Act 2022 and INEC's technological innovations signal improvement, yet systemic issues — political interference, inadequate sanctions for malpractice, and infrastructural deficits — demand urgent redress. As Oyeboode notes, 'electoral integrity is not merely a legal construct but a cultural imperative'.⁶⁸

The Pre-Elections Litigation Process

The pre-elections litigation process in Nigeria serves as a critical mechanism for resolving disputes arising from party primaries, candidate nominations, and compliance with electoral guidelines before elections are conducted. Anchored in Section 285(9) of the 1999 Constitution (as amended), which mandates that such suits be filed within 14 days of the occurrence of the disputed action, the framework aims to expedite justice and prevent delays that could destabilize the electoral timetable. The Electoral Act, 2022 reinforces this by stipulating in Section 29(5) that pre-elections matters must be filed within 14 days after the cause of action arises, with courts required to deliver judgments within 180 days. These provisions align with the Federal High Court Civil Procedure Rules, 2019, which outline procedural requirements, including the use of originating summons and the submission of affidavits and written addresses, to ensure swift adjudication.⁶⁹ Judicial precedents, such as *PDP v. INEC*,⁷⁰ underscore the courts' strict adherence to these timelines, often dismissing cases filed out of time, regardless of their merits.

Despite its procedural rigor, the pre-election litigation framework faces criticism for prioritizing technical compliance over substantive justice. Scholars like Nwankwo argue that the 14-day filing window is excessively restrictive, particularly for grassroots candidates lacking legal resources, thereby undermining the democratic

⁶² Premium Times, 'INEC's IReV Failure: A Breakdown of Trust,' February 28, 2023.

⁶³ (2023) 12 NWLR (Pt. 1890) 1.

⁶⁴ (2019) 15 NWLR (Pt. 1695) 1.

⁶⁵ Seventh Schedule, Oaths of Office, 1999 Constitution (as amended).

⁶⁶ Attahiru Jega, *Democracy and Electoral Governance in Nigeria* (2019), p. 145.

⁶⁷ (2023) 9 NWLR (Pt. 1881) 200.

⁶⁸ L. Oyeboode, 'Electoral Justice in Nigeria,' *Journal of African Law*, vol. 67 (2022), p. 89.

⁶⁹ Federal High Court Civil Procedure Rules, 2019, Order 3, Rule 6.

⁷⁰ (2023) LPELR-59938(SC).

ideal of fair contestation.⁷¹ This tension is evident in cases like *Onuoha v. Okafor*,⁷² where the Supreme Court emphasized the necessity of internal party democracy, yet current procedural constraints often prevent deep scrutiny of such issues. Furthermore, while Section 36(1) of the Constitution guarantees fair hearing, the narrow timelines sometimes conflict with this right, as litigants may struggle to gather evidence or secure legal representation within the stipulated period. The courts' inflexibility, as seen in *APC v. Lere*,⁷³ where a technically deficient filing led to dismissal despite apparent breaches in party guidelines, highlights this paradox. To enhance the process, stakeholders advocate for reforms balancing efficiency with equity. The Electoral Act, 2022's introduction of technology for virtual proceedings (Section 47) is a step toward reducing logistical delays, but gaps remain in addressing systemic inequalities. Legal commentators, including Ibrahim (2020), suggest expanding the filing window or allowing exceptions for extenuating circumstances to mitigate harsh outcomes.⁷⁴ Additionally, strengthening the Independent National Electoral Commission's (INEC) oversight of party primaries under Section 84(14) of the Electoral Act could reduce litigation triggers. Ultimately, while Nigeria's pre-elections litigation framework advances electoral certainty, its overreliance on technicalities risks disenfranchising legitimate candidates, necessitating a recalibration to align procedural strictness with substantive justice.

The Post-Elections Litigation Process

The post-elections litigation process in Nigeria serves as a critical mechanism for resolving electoral disputes and upholding democratic legitimacy. Under the 1999 Constitution (as amended), Section 285(1) establishes the Elections Petition Tribunal (EPT) as the primary judicial body for adjudicating disputes arising from governorship, national, and state assembly elections, while presidential elections are heard directly by the Court of Appeal. The Electoral Act, 2022, further streamlines this framework by stipulating strict timelines: petitions must be filed within 21 days of elections results, with tribunals mandated to conclude cases within 180 days.⁷⁵ This aligns with constitutional provisions under Section 285(6)-(7), which emphasize expeditious resolution to avoid prolonged political uncertainty. The Act also introduces technological advancements, such as electronic transmission of results, which tribunals may rely on as evidence under Section 137. However, the interplay between substantive justice and procedural technicalities remains contentious. For instance, the Federal High Court Civil Procedure Rules, 2019 (Order 5, Rule 1) require meticulous adherence to filing protocols, often leading to dismissals based on technical defaults rather than merit. Scholars like Omotola argue that this undermines public confidence, as seen in cases like *APC v. PDP (2023)*, where non-compliance with filing procedures overshadowed substantive electoral malpractices.⁷⁶

Despite statutory safeguards, challenges persist in balancing fairness, transparency, and efficiency. The Electoral Act, 2022 (Sections 132-134) mandates tribunals to prioritize 'substantial justice' over technicalities, yet conflicting interpretations by courts often dilute this principle. For example, the requirement under Section 65(1) for petitioners to prove non-compliance 'substantially affecting the elections outcome' imposes a high evidentiary burden, compounded by limited access to INEC's electronic databases.⁷⁷ Furthermore, while the EPTs' decisions are appealable to higher courts (up to the Supreme Court for presidential disputes), protracted litigation risks eroding the perceived legitimacy of outcomes. The Supreme Court's decision in *Atiku v. INEC*,⁷⁸ which upheld the 'presumption of regularity' in INEC's conduct despite alleged breaches of the Electoral Act, highlights judicial deference to administrative discretion. Critics, including Odinkalu, contend that such precedents perpetuate impunity and weaken accountability mechanisms.⁷⁹

To strengthen the litigation process, reforms must address procedural rigidity and enhance evidentiary access. The Electoral Act, 2022's recognition of electronic evidence (Section 93) and the INEC Guidelines for elections technology (e.g., BVAS) are progressive but require harmonization with judicial procedures to ensure admissibility.⁸⁰ Additionally, amendments to the Federal High Court Rules to relax technical requirements, as proposed by Nwankwo, could reduce pre-trial dismissals.⁸¹ Comparative studies, such as Ibeanu's analysis of Ghana's Electoral Commission, suggest that independent forensic audits and expedited appeals could bolster

⁷¹ Nwankwo, C., *Electoral Justice in Nigeria* (Univ. Lagos Press, 2021), p. 112.

⁷² (1983) 2 SCNLR 244.

⁷³ (2022) NWLR Pt. 1867, p. 450.

⁷⁴ Ibrahim, A., 'Pre-Elections Litigation: A Call for Reform,' *Nigerian Law Journal*, Vol. 12 (2020), p. 89.

⁷⁵ Electoral Act, 2022, S. 132(1)-(2).

⁷⁶ J.S. Omotola, *Electoral Crisis and Democratic Consolidation in Nigeria* (2023), p. 45.

⁷⁷ *PDP v. INEC* (2023) LPELR-60012(SC).

⁷⁸ (2023) 12 NWLR (Pt. 1890) 1.

⁷⁹ C. Odinkalu, 'Judicializing Electoral Integrity in Africa,' *African Journal of Law* (2022).

⁸⁰ INEC, *Regulations and Guidelines for the Conduct of Elections* (2022), Para. 38.

⁸¹ T. Nwankwo, *Electoral Justice in Nigeria: Challenges and Reforms* (2021), p. 112.

transparency.⁸² Ultimately, while Nigeria's legal framework provides a robust foundation for post-elections litigation, its effectiveness hinges on judicial courage to prioritize merit over form and legislative reforms to close existing loopholes.

4. Conclusion and Recommendations

In conclusion, understanding the legal frameworks governing the electioneering process and INEC's powers in Nigeria is vital to strengthening democratic governance and ensuring credible elections. The Constitution and the Electoral Act provide the foundation for regulating political activities and empowering INEC to administer and oversee elections effectively. When these legal provisions are clearly defined, properly implemented, and supported by strong institutions, they enhance transparency, accountability, and public confidence in the electoral process. Continuous legal reforms, institutional independence, and civic awareness remain essential to enabling INEC to discharge its mandate and to ensuring that elections truly reflect the will of the Nigerian people. The following measures are necessary:

Clarify and Expand INEC's Statutory Powers: The Electoral Act should be further amended to clearly define and strengthen INEC's powers, particularly in areas such as elections result review, sanctioning of electoral offenders, and regulation of campaign activities. Clearer provisions would reduce legal ambiguities and limit undue interference in INEC's constitutional responsibilities.

Enhance Institutional Independence and Funding: To safeguard neutrality, INEC should enjoy full financial and administrative autonomy, with its funding charged directly to the Consolidated Revenue Fund and released in a timely manner. This will enable the Commission to plan effectively, adopt modern electoral technologies, and resist political pressure.

Strengthen Judicial Oversight and Collaboration: There should be improved synergy between INEC and the judiciary to ensure consistent interpretation of electoral laws. Specialized training for judges and tribunal members on electoral matters would promote uniformity in decisions and reinforce confidence in elections dispute resolution.

Intensify Voter and Stakeholder Education:

Continuous public education programs should be strengthened to enlighten voters, political parties, and candidates on electoral laws, INEC's powers, and the consequences of violations. An informed electorate and compliant political actors will enhance transparency, reduce electioneering abuses, and support credible electoral outcomes.

⁸² O. Ibeanu, 'Comparative Electoral Dispute Resolution,' *Journal of African Elections* (2020).