

**APPRAISING THE DUTIES AND CHALLENGES OF THE INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) AS AN UMPIRE IN THE NIGERIAN ELECTORAL PROCESS\***

**Abstract**

*The electoral system consists of the processes, institutions and legal framework engaged in the conduct of elections to elect persons into the various elective offices. Generally, the processes are carried out in three stages: pre-election, election and post-election stages. This paper is aimed at appraising the duties and challenges of the Independent National Electoral Commission (INEC) as a regulatory body in the conduct of elections in Nigeria. The doctrinal method is adopted anchored on appraisal and analysis of information gathered from both primary and secondary data. The paper found that electoral malpractices of various forms, shades and dimensions militate against the duties of the Independent National Electoral Commission in the conduct of general elections. The malpractices range from certificate forgery to circumvention of disqualification status of a candidate; making false statement in affidavit submitted to the electoral regulatory body; non-compliance with the electoral laws, and rigging. It is recommended that the 37 state-wide voters' registers be merged into one public document that is challengeable in whole. The legal framework particularly, the Electoral Act, 2010 (as amended) should be further amended to strengthen INEC's independence to enable the Commission carry out its duties free from political influence. There have been some attempts by the successive governments since the country's independence to introduce a measure of electoral reforms into the electoral system. These attempts have not manifestly yielded the desired improvements in the electoral process. The paper, having explored a jurisprudential exposition of the provisions of the Electoral Act, 2010 (as amended) prospects a reformed process that conditions a free and fair election. The merger of the states-wide voters register, the unfettered independent INEC, the cooperative application of the electronic voting system, the smart card reader machine and other innovative mechanisms such as independent candidacy is an assured way to strengthening our electoral system to erode the prevailing travesty of democracy.*

**Keywords:** Duties, Challenges, INEC, Electoral Process, Nigeria

**1. Introduction**

Nigeria gained independence from Britain in 1960. Like most former British colonies, its elections have been managed by various electoral regulatory bodies. Nigeria's political history is characterized by years of military rule and four republics of civil rule. With every transition programme, an election management authority was established. Overall, Nigeria has had five electoral regulatory bodies: the Electoral Commission of the Federation (ECF) that conducted the 1964 federal elections and 1965 regional elections; the Federal Electoral Commission (FEDECO) that conducted the transitional elections in 1979 and the controversial 1983 elections that ended in a return to military rule; the National Electoral Commission (NEC) that managed the three-year transition programme and ended with the annulled 1993 elections; the National Electoral Commission of Nigeria (NECON) that was established by General Sani Abacha to manage his transition programme, which was aborted after his death in 1998; and the Independent National Electoral Commission (INEC). INEC, which is the focus of this paper, is the longest-serving electoral regulatory body in Nigerian history. It has conducted six elections: the 1999 transition election; the historic 2003 election, which was the first election successfully conducted under civil rule in Nigeria; the critical 2007 elections, which facilitated the first civilian regime change in Nigeria; the 2011 elections, the 2015 elections, and the 2019 elections.<sup>1</sup> The Independent National

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<sup>1</sup>Jinadu, Adele, 'Nigeria', in Ismaila M. Fall, Mathias Hounkpe, Adele L. Jinadu and Pascal Kambele (eds), *Election Management Bodies in West Africa* (OSIWA, 2011).

Electoral Commission (INEC) has been very vocal and involved in the national discourse on constitutional and electoral reforms. It is important to mention that the 2004 Electoral Bill was drafted by the commission and submitted to the National Assembly, and was later passed as the Electoral Act of 2006. This approach was criticized because it was not submitted in line with the prescribed procedure. The commission also conducts post-election review exercises at which issues for reform are identified. It is trite knowledge that election and election related matters are *sui generis*. They are much unlike ordinary civil and criminal proceedings. According to the court in *P.D.P. v. Ezeonwuka*,<sup>2</sup> election petition is not the same as ordinary civil proceedings. It is viewed as a unique proceeding owing to the special nature of elections and their great importance to the well-being of a democratic society. Generally, societies across the globe regard elections with an aura that places them over and above other mundane daily transactions, which give rise to ordinary or general claims in court between individuals. This paper will discuss the dimensions of electoral processes viewed in three stages: pre-election, election and post-election matters. Thus, the paper shall, among other things, appraise the juridical framework, as well as the duties and challenges of the Independent National Electoral Commission in the conduct of elections in Nigeria.

## 2. Conceptualization of Election and its Modality Expressed in Voting

It is widely believed that most theories of elections assume that voters and political actors are fully rational in their decisions at election processes. Rather than responding to their self-interest environment, they are constrained to move only within ideologically circumscribed boundaries of their political party's manifesto and guidelines. Thus, the electorates launch into adaptations to the prevailing political circumstances even against their self-interest. This formulation could produce some insights and at the same time generate anomalies particularly in terms of low turnout at elections. Individuals and organisations such as electoral bodies do respond to their environments although they tend to do so late most of the time.<sup>3</sup> On their part, parties lack the capability to directly respond to their environment such as public opinion shift due to information shortages. Instead, they rely on alternatives such as past election results, government opposition status and marker parties when they decide on their programmatic changes to advance the party course.<sup>4</sup>

There are some basic methods of voting recognized such as plurality versus majority voting, sequential voting and point-count methods. The fairness of election is assessed on the basis of the existence or otherwise of techniques to manipulate the result.<sup>5</sup> The theory envisages the problems inherent in electoral system particular as it revolves around rigging and other shades of electoral malpractices at the poll. In another perspective, the candidate that wins a majority of the votes in every head-to-head election against each of the other candidates is the winner. Accordingly, the winner, being an alternative that defeats every other by a simple majority, is the socially optimal choice. It argues that if the object of voting is to determine the best decision for society but voters sometimes make mistakes in their judgments, then the majority alternative is statistically most likely to be the best choice. Although novel and statistically correct rule for finding the most likely ranking of the alternatives, does not represent the true position often times.<sup>6</sup> In large elections, it is envisaged a model of probabilistic voting and examines the incentives faced by candidates in a spatial model of elections.<sup>7</sup> According to McKelvey, voting game exists for all elections with a finite number of candidates, and then proceed to show that, with enough voters and the addition of a regularity condition on voters' utilities, a platform is brought to exist where candidates seek to maximize their expected margin of victory. It merges strategic voting and probabilistic behavior to achieve equilibrium. This equilibrium consists of all candidates converging to the policy that maximizes the expected sum of voters' utilities. The

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<sup>2</sup> (2018) 3 N.W.L.R. (Pt. 1606) p. 187 at 199.

<sup>3</sup> G. Rowley, Electoral Behaviour and Electoral Behaviour: A Note on Certain Recent Electoral Development in Electoral Geography, available at [www.tandfonline.com](http://www.tandfonline.com), accessed on 30<sup>th</sup> December, 2020.

<sup>4</sup> ResearchGate, A Behavioural *Theory of Elections* (Princeton University Press, 2011), available at <https://www.researchgate.net>, accessed on 9<sup>th</sup> July, 2020.

<sup>5</sup> W.D. Wallis, 'The Theory of Voting', available at <https://link.springer.com>, accessed on 9<sup>th</sup> July, 2020.

<sup>6</sup> H.P. Young, *The American Political Science Review*, Vol. 82, No. 4 (1988), pp. 1231-1244, available at <https://www.jstor.org>, accessed on 10<sup>th</sup> July, 2020.

<sup>7</sup> W.G. Meyer, 'Voting Behaviour', available at [www.sciencedirect.com](http://www.sciencedirect.com), accessed on 30<sup>th</sup> December, 2020.

equilibrium exists even when voters can abstain, and more so, it is unique when there are only two candidates. The theorist concludes that election concerns a single issue, if all voters vote and if all voters are equipped with adequate knowledge.<sup>8</sup>

## 2. Juridical Framework of an Election in Nigeria

Generally, democracy is a system of government rooted on the choice of the people in terms of the personality composition of the leader, the leadership style and the determination of how the resources should be shared. It is thus, seen as the best form of government. It is, in simple language defined as the government of the people by the people and for the people. In the choice of who to be elected to govern their affairs, the electorate is usually influenced by different factors, intrinsic and extrinsic to their interests. They oftentimes display vagaries of behavioural pattern in choosing their candidates for election. Traditional approaches in political science and even economics have failed to explain why people vote or take other actions that apparently have no basis in self-interest or that are intrinsically utilitarian to them.<sup>9</sup>

Nigeria has a long history of constitutional and electoral reforms dating from the period of colonial administration up to 2010, and the debate on electoral reforms has continued since the 2011 elections till date. It is also important to note that the major constitution-making processes that have taken place have been closely linked to Nigeria's history of transition programmes. Since the return of Nigeria to civil democracy in 1999, elections and their administration by the electoral body have been rather problematic to the effect that many observers doubt that electoral democracy will survive in Nigeria. The successive electoral bodies since independence have been appointed by the president, subject to legislative ratification. The electoral bodies established during the military regime were appointed by the Federal Executive Council. It is also important to mention that since the introduction of the Federal Character Principle in the 1979 Constitution, it has remained one of the criteria for the appointment of members of the electoral commissions. Elections in Nigeria are principally regulated by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act of 2010 (as amended). As in previous constitutions, the Independent National Electoral Commission (INEC) was established as a federal executive body by virtue of section 153 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The constitution broadly defines the scope of the commission's powers and responsibilities, and provides for its independence and funding.<sup>10</sup>

The 1999 constitution introduced the establishment of the Independent Electoral Commission as well as State independent electoral commissions (SIECs) in all the states of the federation, which are mandated to conduct local government elections. The constitution also provides for the appointment of the chairman and members of the commission by the president, subject to confirmation by the senate. At the state level, the governors appoint the chair and members of the SIECs with confirmation from the State House of Assembly. The constitution also stipulates the criteria for registering political parties. The Electoral Act, 2010 (as amended) provides further detail on the structure of the commission, its powers and guidelines for registering voters, procedures for the conduct of elections, the registration and regulation of political parties, electoral offences and the determination of election offences. It is therefore imperative to discuss the legal framework for elections in Nigeria.<sup>11</sup>

The legal framework for elections in Nigeria has undergone a number of reforms since 1999. The Electoral Act was passed in 2001, and three other pieces of legislation have since been passed, in 2002, 2006 and 2010. The 2006 Electoral Act, among other innovations, empowered the Independent National Electoral Commission to appoint its secretary, to undertake voter education and to prosecute offenders. The law also addressed the ambiguities surrounding the appointment and dismissal of Resident

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<sup>8</sup> R.D. McKelvey, 'A Theory of Voting in Large Elections', *Games and Economic Behaviour*, Volume 57, Issue 1, (2006) pp. 155-180.

<sup>9</sup> Voting Behaviour: an Overview', available at [www.sciencedirect.com](http://www.sciencedirect.com).

<sup>10</sup> A. Basiru and K. Adesina, 'Electoral Reforms and the Administration of the 2015 General Elections in Nigeria', available at [www.tandfonline.com](http://www.tandfonline.com), accessed on 29<sup>th</sup> December, 2020.

<sup>11</sup> O. Akinduro, 'Nigeria: Independent National Electoral Commission (INEC)', available at [www.aceproject.org](http://www.aceproject.org), accessed on 29<sup>th</sup> December, 2020.

Electoral Commissioners (RECs). Following the conduct of the 2007 elections, which were reported as the worst in the country's history, the late President Yar'Adua set up the Electoral Reform Committee (ERC) headed by Justice Mohammed Uwais on 28 August 2007 to review the electoral processes in Nigeria, including the legal and institutional framework for the conduct of elections, and make proposals for reforms. The ERC undertook wide consultations and received 1,466 memoranda. Its report, submitted in 2008, was widely accepted as reflecting Nigerians' thoughts on electoral reform. The report also greatly contributed to the constitutional and electoral reforms that preceded the 2011 elections. In its extensive analysis of the challenges of electoral governance in Nigeria, the ERC noted that INEC is an overburdened institution and proposed the creation of three other institutions to undertake its responsibilities.<sup>12</sup>

It is argued that although the executive did not fully adopt the content of the ERC report, it did set the tone for the national deliberations on constitutional and electoral reforms prior to the 2011 elections. In 2010, the executive drafted and submitted to the National Assembly a bill for amending the 1999 constitution. While there was a list of pressing national issues to address in a constitutional review process, priority was given to electoral matters. The first amendment of the 1999 constitution provided for the financial autonomy of INEC by charging its budget and the salaries of its chair and members to the Consolidated Revenue Fund. The neutrality and non-partisanship of commission members was also addressed in the amendments, in addition to the timing of elections, the jurisdiction of the courts in determining election petitions, the composition of election petition tribunals and the time limits for determining election petitions. The second bill for amendment of the 1999 constitution involved re-examining the new timelines for the conduct of national elections.<sup>13</sup>

The 2010 Electoral Act was passed to address the shortcomings of the 2006 Act and harmonise the provisions of the Act with the amended Constitution. It is important to note that the debates on the passage of the Act coincided with the debates on constitutional reforms ahead of the 2011 elections. The 2010 Electoral Act therefore concentrated on certain issues that previous electoral reform efforts could not address because they required the amendment of the 1999 Constitution. The Act was also amended once before the 2011 elections to increase the time for voter registration and to postpone the elections from January to April 2011, and further streamline the powers of the Commission to regulate political parties' activities, especially the process of nominating candidates through party primaries. The 2010 Electoral Act also prohibits parties from changing the names of persons nominated as candidates, provides new ceilings on campaign expenditures, empowers INEC to deregister political parties on the basis of conditions provided in the law, and limits the powers of an election petition tribunal to nullify the results of an election, but restrains tribunals from declaring candidates as winners of an election.<sup>14</sup> As part of its innovations, the Act mandates the announcement and posting of election results at polling stations, introduces penal provisions for electoral offences, and empowers INEC to prosecute offenders. The Constitution of the Federal Republic of Nigeria, 1999 was amended twice in 2010, after over ten years of national discourse on constitutional reforms. The Electoral Reform Committee (ERC) also proposed to transfer the powers of appointment of the INEC from the president to the National Judicial Council, and recommended that the commission be recruited through an open process. As part of its report, the ERC proposed five bills for reforming different aspects of the electoral process in Nigeria, three of which were focused on unbundling and restructuring INEC.<sup>15</sup>

### **3. Establishment, Duties and Powers of Independent National Election Commission (INEC)**

The Independent National Election Commission (INEC) is established pursuant to section 153(1)(f) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The duties and powers of INEC are as contained in paragraph 15(a)-(i) of Part 1 of the Third Schedule to the 1999 Constitution (as

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<sup>12</sup> 'The Politics of Electoral Reform in Nigeria, 2007-2011', available at [www.eisa.org](http://www.eisa.org), accessed on 29<sup>th</sup> December, 2020.

<sup>13</sup> O. Akinduro, 'Election Management', available at <https://aceproject.org/ace-en/topics/em/annex/electoral-management-case-studies/nigeria-a-need-for-modernization>, accessed on 23<sup>rd</sup> December, 2020.

<sup>14</sup> M.D. Omeiza, 'Analysis of the Structure of Nigeria's Independent National', available at [www.core.ac.uk](http://www.core.ac.uk), accessed on 29<sup>th</sup> December, 2020.

<sup>15</sup> O. Jegede, 'Overview of Electoral Laws in Nigeria', available at [www.mondaq.com](http://www.mondaq.com), accessed on 29<sup>th</sup> December, 2020.

amended) and section 2 of the Electoral Act, 2010 (as amended).<sup>16</sup> Essentially, issues relating to an electoral body that conduct elections as well the tribunal that determines issues arising from the conduct of election are fundamentally provided for in the Constitution of the Federal Republic of Nigeria, 1999 (as amended).<sup>17</sup> The court in *Nyesom v. Peterside*<sup>18</sup> has held that INEC is empowered to, *inter alia*, do the following:

- (a) organize, undertake and supervise all elections to the office of the President and Vice President, a Governor and his deputy and to the membership of the National Assembly and House of Assembly of each State;
- (b) register and supervise political parties;
- (c) arrange and conduct registration of persons qualified to vote;
- (d) maintain and review the voters register for the purpose of any election under the Constitution; and
- (e) carry out such other functions as may be conferred on it by an Act of the National Assembly.

In streamlining the duties and powers of the Independent National Electoral Commission, the court in *A.D.C. v. Bello*<sup>19</sup> has held that by virtue of paragraph 15(a), the Commission shall have power to organize, undertake and supervise all elections to the offices of President and Vice President, the Governor and Deputy Governor of a State and the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation. In addition, section 153 of the Electoral Act empowers the Independent National Election Commission to issue regulations, guidelines or manuals for the smooth conduct of elections.

However, by virtue of section 138(2) of the Act, where an act or omission regarding such regulations or guidelines is not contrary to the provisions of the Act, it shall not of itself be a ground for questioning an election. In *Nyesom v. Peterside*,<sup>20</sup> the court held that the provision of the Electoral Act are superior to any letter or directive of the INEC. The Independent National Election Commission is generally saddled with the responsibility of organizing and conducting elections under the Electoral Act. It is a body corporate with perpetual succession and may sue and be sued in its corporate name.<sup>21</sup>

The Independent National Electoral Commission (INEC) occupies a sensitive and crucial position in the constitutional scheme of Nigeria's electoral process. It is therefore, expected to remain an impartial umpire between contending political parties as well as contending candidates for an election.<sup>22</sup> Accordingly, section 69 of the Electoral Act, 2010 (as amended) empowers the Returning Officer duly appointed by the Commission, i.e. INEC to declare and return a duly elected candidate after the counting of votes cast for each candidate. It is therefore abundantly clear without any equivocation that the electoral body, which is currently INEC is an integral part of the entire election process. This presupposes that a complaint that a person was not duly elected by a majority of lawful votes cast is an indictment on the body that conducted the election. Thus, by the provision of section 137(3) of the Electoral Act, 2010 (as amended), INEC is not only a necessary party but a statutory party where an election petitioner complains of the conduct of an Electoral Officer, a Presiding Officer or Returning Officer.

It is the function of INEC to divide every state in the Federation into such number of constituencies as is equal to three or four times the number of Federal Constituencies within the State. The function includes INEC periodically reviewing the division of every state into constituencies at intervals of not less than ten years, and altering such constituencies to such extent as it may consider desirable in the light of the review or in consequence of any alteration of the boundaries of the State or by reason of the holding of a census of population of Nigeria. Where the boundaries of any state constituency established

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<sup>16</sup> 'Independent National Electoral Commission,' available at <https://inecnigeria.org>, accessed on 10<sup>th</sup> July, 2020.

<sup>17</sup> P.A. Onamade, *Advocacy in Election Petitions*, (Lagos: Philade Co. Ltd., 2007) p. 30.

<sup>18</sup> (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 476.

<sup>19</sup> (2017) 1 N.W.L.R. (Pt. 1545) p. 112 at 121.

<sup>20</sup> (2016) 7 N.W.L.R. (Pt. 1512) p. 452 at 476.

<sup>21</sup> Electoral Act, 2010 (as amended), section 1(a) and (b); See also P.A. Onamade, *Advocacy in Election Petitions* (Lagos: Philade Co. Ltd., 2007) p. 85.

<sup>22</sup> O.D. Amucheazi and C. Onwuasoanya, *The Judiciary, Politics and Constitutional Democracy in Nigeria* (1999-2007) (Enugu: SNAAP PRESS Ltd., 2008) p. 79.

under section 112 of the Constitution are altered in accordance with section 114 of the Constitution, the alteration shall take effect after securing the approval of the Senate and the House of Representatives, and after the current life of the House of Assembly. Thus, the Independent National Electoral Commission (INEC) is vested with the power to create and review electoral constituencies.<sup>23</sup> Accordingly, by virtue of section 114 of the Constitution, INEC shall periodically review the division of every state constituencies at intervals of not less ten years., and may alter such constituencies to such extent as it may consider desirable in the right of the review. Again, by sections 114(2) and 115 of the Constitution, the Commission may at any time carry out such a review and alter the constituencies in accordance with the provisions of this section to such extent as it considers necessary in consequence of any alteration of the boundaries of the State or by reason of the holding of a census of the population of Nigeria in pursuance of an Act of the National Assembly. The court held in *INEC v. Asuquo*<sup>24</sup> that it is the powers of the Independent National Electoral Commission (INEC) to create or review constituencies. Accordingly, sections 112, 113 and 114 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) have vested in the INEC the power and authority to create, alter or review states constituencies in the country.

#### **4. Reception of List of Candidates by the INEC**

The Independent National Electoral Commission shall, within seven days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intends to contest the election. At the time of submitting the prescribed form, the candidate should furnish the Commission with an identifiable address in the State where he intends to contest the election. It is this address that all documents and court processes from either the Commission or any other person shall be served on him. The combined effect of sections 31(1), (2), (3) and (7) and 32(1) and (2) of the Electoral Act, 2010 (as amended) is to the effect that every political party shall, not later than sixty (60) days before the date appointed for general election, submit to the Independent National Electoral Commission, in the prescribed forms, the list of candidates the party proposes to sponsor at the elections, provided the Commission does not reject or disqualify candidate(s) for any reason whatsoever. In *Aghedo v. Adenomo*,<sup>25</sup> the court held that the list or information submitted by each candidate shall be accompanied by an affidavit sworn to by the candidate at the Federal High Court, High Court of a State or of the Federal Capital Territory, indicating that he has fulfilled all the constitutional requirements for election into the office. A candidate for an election shall be nominated in writing by such number of persons whose names appear on the register of voters in the constituency as the Commission may prescribe. The law does not permit a person to nominate more than one person for an election to the same office.

It is imperative to state that by virtue of section 41 of the Electoral Act, 2010 (as amended), the Commission (INEC) is empowered to extend time for nomination of candidate if at the close of nomination, there is no candidate validly nominated. However, where there is a candidate validly elected at the close of nominations, such a person shall be declared elected except in case of election into the office of President or Governor. The court has held in *A.P.C. v. Karfi*,<sup>26</sup> that by virtue of section 33 of the Electoral Act, 2010 (as amended), a political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of the Act, except in case of death or withdrawal by the candidate. After the close of nomination and elections, there is no provision in the Electoral Act, which allows the court to extend time for a political party to conduct fresh primaries in order that another general election should be conducted. That would amount to rewarding the offending political party for the breach it committed.

Thus, the Constitution<sup>27</sup> provides time frame within which to hear or determine a suit or an appeal. In *A.P.C. v. Umar*,<sup>28</sup> the court held that by virtue of section 285(12) of the 1999 Constitution of the Federal

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<sup>23</sup> The Independent National Electoral Commission (INEC) as one of the Federal Executive Bodies is listed in Paragraph F, Part I of Third Schedule of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

<sup>24</sup> (2018) 9 N.W.L.R. (Pt. 1624) p. 305 at 309.

<sup>25</sup> (2018) 13 N.W.L.R. (Pt. 1636) p. 264 at 272.

<sup>26</sup> (2018) 6 N.W.L.R. (Pt. 1616) p. 479 at 488.

<sup>27</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>28</sup> (2019) 8 N.W.L.R. (Pt. 1675) p. 564 at 567.

Republic of Nigeria (as amended) and by section 2(13) of the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration No. 21) Act, 2017, an appeal from a decision of a court in a pre-election matter shall be heard and disposed of within sixty days from the date of filing of the appeal. The court also held in *Toyin v. P.D.P.*<sup>29</sup> that this provision, which limit the time for entertaining and determining pre-election appeals to sixty days after filing of notice of appeal takes immediate effect. The court in *A.P.C. v. Umar* proceeded to espouse that the courts lack jurisdiction to extend or expand the time stipulated in section 285(12) or any other provision of the Constitution of the Federal Republic of Nigeria. It will amount to judicial legislation if the court extends the time for the performance of any action under the Constitution. In keeping with the doctrine of separation of powers, the legislature is to make laws while the judiciary is to apply the law, and in the process explain it.

It is also the responsibility of the Independent National Electoral Commission (INEC) to screen and clear aspirants for political office to contest primary election of a political party. The provision of section 31(1) of the Electoral Act, 2010 (as amended) is activated after primary elections of political parties have been concluded and at the stage when political parties submit the names of candidates who scaled through the primaries and whose are being submitted as candidates for the general elections. Accordingly, INEC Form CF001 is issued to candidates who won their party's primaries. By virtue of section 31(2), of the Act, the document submitted and affidavit deposed to are to show that the candidate has fulfilled all the constitutional requirements for election into that office. The information required is in respect of the constitutional requirement for the office the candidate is vying for. The court in *Nduul v. Wayo*<sup>30</sup> has held that a certificate that an aspirant has been screened and cleared to contest the primary election of a political party is *prima facie* evidence attesting to the aspirant's due compliance with the political party's guidelines and his eligibility to contest at the election.

The main thrust of section 31(5) of the Electoral Act, 2010 (as amended) is the falsity of any information given by a candidate in the affidavit or any document submitted by that candidate to the Independent National Electoral Commission. In *Nduul v. Wayo*<sup>31</sup> the court held that the information that may be complained about must be with reference to section 31(2) of the Electoral Act, 2010 (as amended). In effect, any complaint of falsification of document, or of making a false statement against a candidate for a general election must relate to the grounds of disqualification or non-qualification stated in Constitution of the Federal Republic of Nigeria, 1999 (as amended). The publication of the personal particulars of a candidate in the constituency where he intends to contest the election pursuant to section 31(3) of the Act and the right of any person to apply for copies of the nomination forms, affidavit and any other document submitted pursuant to section 31(4), is to provide an avenue for challenging the person's candidature where he does not meet the constitutional requirements for the office he is seeking. It is in this regard that section 31(5) of the Act becomes effective.

### **5. Substitution of Candidates at the INEC**

Substitution of candidates necessarily implies a preceding nomination of candidates. Thus, there must be a valid nomination of a candidate before there can be any replacement or substitution. Hence, there cannot be a valid substitution of a candidate when the nomination of a candidate was invalid in the first place. However, the court in *Lau v. P.D.P.*,<sup>32</sup> has held that by virtue of section 33 of the Electoral Act, 2010 (as amended), a political party cannot change or substitute its candidate whose name has been substituted pursuant to section 319 of the Act, except in the case of death or withdrawal by the candidate. Although section 33 of the Electoral Act, 2010 (as amended) does not state how the candidate to be substituted for the dead, resigned or withdrawn candidate is to emerge, common sense and constitutional democracy practice demand that the political party ought to return to the result of the primary election which produce the original candidate and nominate the candidate with the second highest votes cast thereat, and forward his name to INEC. This practice was adopted by the All Progressive Congress (APC) in the case of the governorship primary election in Kogi State following the death of the original

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<sup>29</sup> (2019) 9 N.W.L.R. (Pt. 1676) p. 50 at 53.

<sup>30</sup> (2018) 16 N.W.L.R. (Pt. 1646) p. 548 at 556.

<sup>31</sup> (2018) 16 N.W.L.R. (Pt. 1646) p. 548 at 556.

<sup>32</sup> (2018) 4 N.W.L.R. (Pt. 1608) p. 60 at 72.

candidate, Alhaji Abubakar Audu, before the completion of the election in question. According to the court *Lau v. P.D.P.*,<sup>33</sup> this is the proper thing to do in a democracy, and not a resort to the old order where nomination was at the whims and caprices of the political parties and consequently arbitrary and undemocratic. The days of arbitrary nomination is past and long gone, and should accordingly, remain buried in the doldrums of history. The rationale for a resort to the result of the primary election is advised by the fact that the candidate with the second highest votes must have gone through all the pre-nomination exercises designed to ensure that the candidate is qualified to contest the election if eventually nominated at the primary election and satisfied same.

## **6. Challenges to Effective Performance of the Independent National Electoral Commission (INEC)**

There are many criticisms leveled at the Independent National Electoral Commission (INEC) as factors that inhibit its ability to conduct free and fair elections. This pitfall is complemented by the fact that the voters register, for instance, has been so seriously flawed as to undermine the credibility of the entire election. Accordingly, serious shortcoming has been recorded regarding the voters lists and the transparency of the implementing bodies, the Independent National Electoral Commission. Thus, this paper shall identify the challenges of the Commission in the conduct of elections in Nigeria. The registration of voters and the transparency of the register are once more the subject of controversy as much as the independence of INEC is in question.

### **Independence of INEC**

As an umpire in the electoral process, the Independent National Electoral Commission should be clothed with independence in the exercise of its duties and powers. However, the way in which INEC has carried out its duties has drawn criticism from all stakeholders, including political parties, the Nigerian Bar Association and Nigerian civil society groups.<sup>34</sup> There is controversy surrounding the Commission's claim that it has the right to screen candidates and bar them from competing if it finds them ineligible to contest under the provisions of Constitution of the Federal Republic of Nigeria. On the basis of these powers, INEC has said that, unless instructed otherwise by the courts, it will bar a number of prominent opposition candidates from appearing on the ballot in the general elections.<sup>35</sup> Accordingly, the autonomy of the Independent National Electoral Commission influences the integrity of the elections conducted by it.<sup>36</sup>

### **Poor Capacity of the INEC**

The effectiveness of the Independent National Electoral Commission (INEC) has been hampered by the slow passage of the Electoral Act of 2006, which delayed the preparations for registration and for the election itself. INEC has received considerable support through a UNDP-coordinated donor basket fund which represents the combined efforts of several key donors to support the electoral process, with INEC as one of its primary beneficiaries. Other donors have offered to provide additional technical support and funding to INEC where the Commission has indicated that it has needs.<sup>37</sup>

### **Registration of Voters by INEC**

Registration of voters is a crucial stage of the election process, and it requires huge commitment of the INEC in order to combat the besetting problems associated with registration of voters. Many prospective voters often complained that they were not able to register because of what registration officials described to them as technical difficulties including inadequate ink and run-down batteries for the Direct Data Capture machines procured especially for the exercise. This defect could pose a barrier

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<sup>33</sup> (2018) 4 N.W.L.R. (Pt. 1608) p. 60 at 76.

<sup>34</sup> P.O. Momah, 'Electoral Commissions and the Conduct of Elections in Nigeria', available at <codesria.org>, accessed on 27<sup>th</sup> December, 2020.

<sup>35</sup> M.D. Omeiza, 'Analysis of the Structure of Nigeria's Independent National Electoral Commission', available at <www.https://core.ac.uk>, accessed on 27<sup>th</sup> December, 2020.

<sup>36</sup> 'Institutional Independence of INEC and the Credibility of its Elections', available at www.inecnigeria.org, accessed on 27<sup>th</sup> December, 2020.

<sup>37</sup> 'The Role of the Independent National Electoral Commission', available at www.hrw.org, accessed on 27<sup>th</sup> December, 2020.



to people expressing their right to vote. Having registered somewhere else because they failed to find a registration unit open in their area, voters may show up to vote on polling day at their usual location and find that they are not on the list. Under the terms of the Electoral Act, voters are allowed to change their place of registration by written application to INEC. However, INEC is expected to conduct effective public awareness campaign to inform voters of the possibility to change their place of registration. In addition, INEC is expected to reduce the possible areas of contention that may erupt electoral malpractices on a polling day. There is need for the enlargement of time under the Act for voter registration.<sup>38</sup>

### **Credibility of the Voters Register**

Compilation of a credible voters' register is the first exercise in ensuring that political parties have a level playing ground in electoral competition.<sup>39</sup> The Independent National Electoral Commission has been criticized for not displaying the register adequately. Unresolved problems with the voter register will result in increased tensions during the elections and may disenfranchise large numbers of eligible voters while others vote fraudulently. However, there is dramatic increase in the pace of registration in the closing stages of the exercise. INEC eventually reported that 61 million voters were registered in total, which would constitute a very high percentage of the total voting-age population of Nigeria, estimated at around 70 million. This is seemingly at odds with anecdotal evidence suggesting that there were significant numbers of eligible voters who were unable or unwilling to register. The paper submits that the computerization of the various components of the voter registration process can reduce cost and increase the reliability of data greatly.<sup>40</sup>

### **Inadequate Display of Voters Register**

The compilation of a credible voters' register is an indispensable step in the electoral process. The Electoral Act of 2006 stipulates that the voters register should be publicly displayed so that voters can check whether their names have been included and to challenge the names of others that they feel may not have the right to be on the list. This is crucial because of the transparency that it could lend to the voters' register and especially important since the integrity of the register has been questioned. INEC announced that display would take place from February 5 to 10, the minimum number of days allowed under the Electoral Act. However, because of some of the delays at registration, elaborate display of the voters' register would be a farce. In fact, in many areas it appears that display did not take place at all. Thus, the failure of the Independent National Electoral Act (INEC) to fully display the register only serves to fuel suspicions about the credibility of the voters' list or register and to sow confusion among voters who should be able to find out if they are registered in the right place, or even registered at all. A credible register prevents malpractices during accreditation.<sup>41</sup>

### **Verification of the Register**

The election process must be structured in such a way that only legitimately registered individuals are allowed to vote.<sup>42</sup> One of the principal reasons for INEC's use of Direct Data Capturing (DDC) machines to register voters is that they provide INEC the opportunity to prevent multiple registrations and to remove ghost voters fairly simply by looking for duplicates of the fingerprints recorded as part of the registration process. In addition, it would undermine one of the main reasons for spending so much money and effort on registering voters using the Direct Data Capturing machines. The DDC machines is thus, expected to eliminate the impact of fraudulent voters that pad the voters roll. The inability of INEC to organize the registration process on time will mean that one of the fundamental

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<sup>38</sup> 'Nigeria: Independent National Electoral Commission (INEC)', available at <aceproject.org>, accessed on 27<sup>th</sup> December, 2020.

<sup>39</sup> 'INEC and the Electoral Process', available at [www.link.springer.com](http://www.link.springer.com), accessed on 27<sup>th</sup> December, 2020.

<sup>40</sup> 'Voter Registration – ACE Electoral Knowledge Network, available at [www.https://aceproject.org](http://www.https://aceproject.org), accessed on 27<sup>th</sup> December, 2020.

<sup>41</sup> 'Can Ghana's Electoral Commission Compile a Credible Voters Register?', available at [www.https://democracyinfrica](http://www.https://democracyinfrica)>, accessed on 27<sup>th</sup> December, 2020.

<sup>42</sup> 'Voter's Proof of Identification', available at [www.https://aceproject.org](http://www.https://aceproject.org), accessed on 27<sup>th</sup> December, 2020.

flaws of the previous elections could continue to linger. The goal of verification of voters register is to ensure that only duly registered voters are allowed access to the polling station and to vote.<sup>43</sup>

### **7. Conclusion**

Election regulatory commissions can be independent, mixed, judicial or executive. They may also be responsible for electoral boundary delimitation. In the Nigerian federations, there is separate body for each state of the federation. The election commission has a duty to perform election related activities in an orderly manner. Thus, the mission of the Independent National Electoral Commission (INEC) is to serve as an independent and effective regulatory body committed to the conduct of free, fair and credible elections for sustainable democracy in Nigeria. The vision of INEC is to be one of the best election management bodies in the world that meets the aspirations of the Nigerian people. However, the paper found that various electoral malpractices have prevailed in the conduct elections in Nigeria. It is recommended that there should be a single challengeable document embodying the voters' register for the entire 36 states and the Federal Capital Territory. The legal framework particularly, the Electoral Act, 2010 (as amended) should be amended to strengthen INEC's independence to enable the Commission carry out its duties free from political influence. There have been some attempts by the successive governments since the country's independence to introduce a measure of electoral reforms into the electoral system.

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<sup>43</sup> 'Voter Verification', available at [www.https://peopleid.zetes.com](https://peopleid.zetes.com), accessed on 27<sup>th</sup> December, 2020.