

Inconclusive Elections and The Integrity of the Electoral Process in Nigeria's Fourth Republic

Olajide Olufunsho Ayobolu

Doctoral Student of Federal University of Lokoja, Kogi State
ooayobolu@gmail.com

Abstract

It is imperative to underscore the fact that the recurring issue of inconclusive elections is becoming frequent and ubiquitous in the conduct of elections in Nigeria and a formidable challenge in Nigeria's electoral system. This therefore makes this subject particularly fertile for exploration. The significance of the study is exemplified in the fact that the administration of elections remains a vital component of democracy and public trust, as the efficacy and efficiency of Electoral Management Bodies (EMBs) is often a reflection of how well organised (or not) the electoral process has become over the years. Integrity of the electoral process, in many African States, is a major concern for both international and domestic election observers. Therefore, this study on inconclusive elections will be of immense benefit to policy makers, civil society organisations and other critical stakeholders in the electoral process. This study relied largely on the secondary sources of data collection. These include textbooks, articles, newspapers and other published and unpublished materials such as electoral laws, electoral precedence as well as relevant interviews where absolutely necessary. It involves the use of descriptive, prose and narrative methods in describing scenarios and events through the prism of scientific observation. The study demonstrates that inconclusive election leads to voter apathy and increases the financial burden on INEC. Another discovery is that without the supplementary elections, elections could have been won and lost at the first ballot. The margin of votes had been applied differently by INEC to similar electoral situations in the country and it is an aberration. This study recommended amongst other things that the idea of inconclusive election based on margin of votes should be jettisoned. It contradicts the electoral system that is operational in the country which is First –Past- The-Post (FPTP), predicated on simple majority and geographical spread.

Introduction

Inconclusive elections have become an increasingly frequent occurrence in the conduct and management of elections in Nigeria with serious implications for the trust of voters in the political process as well as the stability of the political system. It is a recent but recurring development in Nigeria's electoral history and process that has assumed the dimension of a challenge that must be seriously studied and effective remedies proffered. The issue of inconclusive elections has provoked so much debate in the public space and this reinforces the importance of elections to democracy. The electorate hold on tenaciously to the fact that they have the power and the right to elect those who will preside over their affairs, hence, they do not just want to vote but they want their votes to count. It is in this regard that Joseph (1987) argued that elections do not necessarily guarantee worthwhile democratic rule. It is also true that election is at the heart of the modern conception of democracy following from the inability of the modern society to accommodate the classical democratic notion of involving every citizen in decision-making. In a related vein, Akhter (2001) postulated that the abuse and misuse of elections and the manipulation of the electoral system notwithstanding, elections are still relied upon for determining important matters in most political systems.

In spite of the fact that inconclusive election is well provided for in the Electoral Act 2010 and 2022 (as amended) as well as Independent Nigeria Electoral Commission (INEC) Guidelines and Regulations, many of the political gladiators see inconclusive election or supplementary election as the case may be, as a clever and deceptive way of manipulating the electoral process to favour a particular political party. That is why the former speaker of the House of Representatives Dogara. Y. (2019) warned the "Independent National Electoral Commission (INEC) against setting a dangerous precedence by declaring elections inconclusive.

In 2019, INEC had declared elections inconclusive in at least six states, including Bauchi where the former speaker hails from. Addressing a National Executive Council meeting of the People's Democratic Party (PDP) in Abuja, Dogara cited election cases in Ghana and other African countries, saying, "It is only in Nigeria that elections are declared inconclusive". As inconclusive election has become a recurring decimal in Nigeria's electoral firmament, It is imperative to point out the position of Unini Chioma 2019 where he argued trenchantly that

"...The fundamental question that arises here is whether INEC is telling the whole world that an election cannot be won by just one vote in a democratic setting. How then did we come about this idea of 'margin of votes between two leading candidates', that we can no longer conclude our elections? ...For instance, in the bye-election to fill the vacant seat of Lokoja/Kogi Federal Constituency in 2018, triggered by the death of Hon. Buba Jibrin, Haruna Isah was

declared winner having polled 26,860 votes as against Engr. Bashir Abubakar of PDP, who scored 14,845 votes. The margin of win was 6,900 votes. The election was marred with violence such that 19,960 votes were canceled. INEC did not declare the election inconclusive, but proceeded to declare APC's candidate winner. That is the level of arbitrariness and selectiveness of INEC in the application of the unknown principle". The election for the Abia North senatorial district which, by INEC standard, should have been declared inconclusive. But, Orji Uzor Kalu, a former governor of Abia State, was among the about 100 senators-elect who received their certificates of return from INEC in Abuja. He had been returned as elected after polling 31,201 votes for the APC to beat incumbent PDP senator, Mao Ohuabunwa who polled 20,801. Some 38,526 votes were canceled, which is much larger than the margin of win of 10,400 votes. INEC refused to declare the Abia North senatorial election as inconclusive" (The Nigeria Lawyer 2019).

By the same token, Taiwo Adisa writing in the Nigeria Tribune Newspaper (2019) submitted that there are discrepancies in the different provisions of the law about inconclusive election as well as the differences in the application of the provisions of Section 133 of the 1999 constitution of the Federal Republic of Nigeria as well as Section 179 of the 1999 constitution. Besides the constitutional provisions, Section 53(1 and 2) of the Electoral Act 2010 (as amended) as well as Section 69 of the Act are some of the contradictory provisions.

It is in this context that Abah E. O. and Nwokwu P. M. (2016) contended that

"the frequent cancellations and subsequent reruns would confirm that the Nigerian electoral system is flawed and vulnerable to manipulations. This implies that it may be possible for wrong candidates to emerge and have access to state funds that could be easily looted before they are sacked through judicial pronouncements. To that extent good governance will continue to elude Nigerians as long as they do not elect those they considered qualified to run the state affairs. Although some individuals hold the opinion that canceled polls will sanitize the electoral system, the fact remains that reruns will come at higher costs to the nation and taxpayers. The INEC will have to spend more funds to reorganize the polls. One could wonder the financial stress our country will bear, especially now we are battling with severe economic downturn and cash crunch".

To this end, this research will endeavour to delve into how elections should be properly conducted, to ensure that electoral outcomes are generally acceptable to the mass of the electorate. How important or otherwise is inconclusive election to the overall outcome of elections and how will inconclusive election help to bring about integrity of the electoral process or is inconclusive election a fraud that should be jettisoned? Or is it a genuine attempt to make elections freer, fairer, more transparent and generally acceptable? What was at the back of the mind of the framers of the law when they input "margin of election" into the Electoral Act? What are the pros and the cons of inconclusive elections that need to be vigorously interrogated? In what ways can inconclusive elections contribute to the integrity of the electoral process? Or should it be expunged from Electoral Acts.

Research Problematique

Critical to the issue of election is the role of Electoral Management Bodies (EMB's), in this case INEC and political parties. If the EMB is independent, impartial and competent, it will reflect on the outcome of elections. Similarly, if the political parties play by the rules and do not engage in any untoward practices, there is every likelihood that the outcome of elections will not generate controversies or cause anxiety of any sort. It is, therefore, incumbent on both the INEC and political parties as important stakeholders to play their roles diligently to have decent and reliable outcomes.

Understanding Inconclusive Election

Right from the onset it is important to point out that different definitions have been given to the concept of inconclusive election. According to the Electoral Act 2010 as amended, an "Inconclusive election" would occur when no candidate meets the condition for the declaration of a winner of the election after polls. Simply put, "He or she must satisfy all legal requirements, score the majority of lawful votes cast at the election in which all eligible voters have been given the opportunity to exercise their franchise. Where no candidate satisfies this requirement, the election is said to be inconclusive,"

According to Babalola A. M. et al (2019) "the conduct of supplementary election or a declaration of suspension of the process in the voting exercise and the announcement of another day for the exercise is often referred to as inconclusive election'. In the views of

Onah and Chukwu (2019) they submitted that inconclusive election

“Is a scenario where the electoral umpire fails to announce the result of an election due to some irregularities arising from cancellations in some electoral units which sufficiently negates the electoral laws, rules and regulations backing such election. Inconclusive elections arise due to some of the following conditions that undermine the credibility of the polls: lack of election in some electoral units; cancellation of election results from some polling or electoral units due to irregularities; serious security breach in significant areas of the electoral districts etc. The enabling legislation for elections in Nigeria stipulate that whenever the number of voters who were disenfranchised as a result of the negative incidents appear higher than the number or the difference between the presumed winner and runner-up of the election, such election should be declared inconclusive because those voters, if given a conducive environment to exercise their franchise, could change the entire result”.

Furthermore, Nkwede and Emordi (2020) contended that the concept “inconclusive election”

‘is a namby-pamby phenomenon which has attained the status of a new lexicography of electoral trite and clichés in Nigeria. The imbroglio surrounding inconclusive election as a pervasive buzz word is that it lacks any scholastic cum academic definitions due to the fact that it has not been subjected to such rigors. In this study, attempts would be made to employ a legalistic approach at defining the seemingly ambiguous compound-concept of inconclusive election’.

In a related development, Abah and Nwokwu (2016) posited that inconclusive election

“is an emerging phenomenon in the Nigerian electoral process whereby elections are concluded without clear winners returned. It implies a situation where elections are held but due to cancellations of election results, winners in elections could not emerge. In other words, an inconclusive election would occur when no candidate meets the condition for the declaration of a winner of the election after polls. Simply put, “he or she must satisfy all legal requirements, score the majority of lawful votes cast at the election in which all eligible voters have been given the opportunity to exercise their franchise. Where no candidate satisfies this requirement, the election is said to be inconclusive”.

On his part, Ezenwa, (2016) maintained that the idea that inconclusive elections

“have existed only recently is a myth. The fact remains that inconclusive elections have existed throughout the lifecycle of Nigeria’s democratic experiment. Pointer cases include: 1979 Presidential election, Rivers state gubernatorial election (1999), Imo state gubernatorial elections (2007 and 2011), Anambra state gubernatorial election (2014), Bayelsa, Imo, Kogi and Taraba states gubernatorial elections (2015), to mention but a few”.

According to Oni et al (2013) the history of inconclusive elections

“Dates back to the June 12, 1993 presidential poll. This was the forerunner to what has lately occurred in Kogi, Bayelsa and Imo North Senatorial zone. Perhaps, the only difference between the June 12, 1993 election and that of Kogi, Bayelsa and Imo North in 2015 is that the voting process on June 12 was concluded throughout the length and breadth of the nation, but while the then National Electoral Commission of Nigeria, under the watchful eyes of Professor Humphrey Nwosu, commenced state by state announcement of the results of the presidential election, it was suddenly stopped midway by the then military administration under General Ibrahim Babangida”.

Importantly, inconclusive elections arise mainly as a result of the numerous anomalies in the use of biometric technology voting systems. The European Union Election Observation Mission (2015) maintains that

“Structural procedural weaknesses persist for collation, particularly in regards to checks in the process and transparency. These include: no requirement for distribution and display of copies of voting point results forms, no double-blind data entry during collation, an insufficient system for dealing with anomalies or suspicious results, and no requirement for display of PU results at the first-level of collation (thereby breaking the chain of results data compromising stakeholders' ability to check the veracity of announced totals”.

Inconclusive election in the strict sense of the term is an emerging phenomenon in the Nigerian electoral process whereby elections are concluded without clear winners returned. It implies a situation in which elections are held but due to cancellations of election results winners in the elections could not emerge. In other words, final results

which determine the true and overall winners are not pronounced by the returning officers owing to cancellations of substantial numbers of votes during the polls due to alleged violence and other sundry irregularities. This imbroglio gives rise to supplementary elections where the fates of contestants are finally decided. Hence, those who will decide the winner of an election in this regard might not even be the electorates at the end of the day.

Theoretical Clarifications

The research effort is going to use democratic theory in understanding the critical issues raised by the issue of inconclusive elections. The democratic theory has its setting in the ancient Greek polity, which compartmentalised, categorized or pigeonholed government in accordance with the numbers of participants in the decision-making process. Conceptually, democracy is very complex, byzantine and convoluted. Democracy means different things to different people and can be so defined. For instance, Abraham Lincoln sees democracy as the government of the people, by the people and for the people. This deeply profound and elaborate definition suggests consensus, agreement or accord by the government, willingly chosen by the generality of the people for the quest of the needs, aspirations, desires, interest, growth, advancement and development of the people. Such a government operates at the mercy of the people and is held accountable to the people through periodic elections because indeed, power belongs to the people. This process enables the people to govern themselves through incessant cross-fertilization of ideas and meetings on shared and widespread issues/interests, voting during elections and of course, running for public offices. The driving forces behind a democratic government are the shared understanding, ideas, focus, initiatives, viewpoints, interests, assessments, experiences and opinions rather than the fixated worldview of a Leviathan. However, in real terms there are several intervening variables that makes the ideals of democracy impracticable especially in developing countries like ours. These include issues such as godfatherism, lack of internal democracy, imposition of candidates, vote buying, vote selling and vote trading; exorbitant cost of nomination forms, lack of clear-cut party ideology, power of incumbency just to mention but a few.

It is in this respect that Adejumobi (2000) explains that democracy refers to a “political system characterized by regular and free election in which politicians organize into parties, compete to form the government by right of virtually all adult citizens to vote and by guarantee of a range of familiar political and civil rights”. It means that there is an organic link between democracy and elections. For this linkage to be productive, it has to meet certain essential conditions. These include: the people have to be empowered to make political choices without hindrance, and the political atmosphere under which this choice is made should be free from threat, intimidation and manipulation. Also, the practice of choosing political leaders should cohere with the cultural values of the people which should safeguard the exercise. In other words, elections must be compatible with democracy that is being practiced in a given country. For elections to make sense to a democratic system, it must go beyond a ritualistic exercise carried out periodically.

In furtherance of this, Kelsen (1955) and Barak (2006), assert that “representative democracy which allows freedom of political expression, freedom of speech and freedom of the press are considered to be the essential rights that allow eligible citizens to be adequately informed and able to vote according to their own interests”. Robert Dahl’s writings (1971, 1989) provide a benchmark for defining the essential elements of democracy. In Polyarchy, Dahl (1971: 3) identified eight criteria in defining democracy: the right to vote; the right to be elected; the right of political leaders to compete for support and votes; elections that are free and fair; freedom of association; freedom of expression; alternative sources of information; and institutions that depend on votes and other expressions of preference.

The most important elements encapsulating the democratic agenda are popular participation, equitable representation and accountability. Thus democracy provides opportunities for the citizens to have inputs in the policy process as well as contribute in the making of decisions that affect their lives and environments. It is also a means of creating political infrastructure through which diverse interests are represented in government, and the institutionalization of mechanisms to hold rulers accountable to the public will. Democracy also entails providing the means for the removal of government from power without military intervention as well as engendering the principle of accountability through which rulers are held responsible for their action in public office by the citizen through the instrumentality of competition and cooperation of their elected representatives.

It is in this regard that Amuwo (1992) said democracy “consists not only in winning elections but also and more importantly in establishing organic relations with the people and allowing them to control their leaders by holding them to account. This may sound absurd especially in Nigeria where the political gladiators who canvassed and begged for votes only yesterday from the electorates usually tend to abandon them as soon as they assumed office by claiming that their elevation or appointment is divine and not challengeable by any human institution; in such

circumstance, elections become ritualistic and formalistic which changes nothing. The ritual of elections cannot guarantee democracy to people who face undemocratic courts, police and bureaucrats every day”.

And, Egwu (2002) maintains, and rightly so that “unless democracy is used as a means of responding to the acute needs of the people such as food security, shelter and clothing, the people would not be strong enough to support democracy. Democracy makes sense only when it guarantees freedom, liberty and economic emancipation”. The Universal Declaration of Human Rights (1948) Article.1, states that “everyone has the right to take part in the governance of his country, directly or indirectly, or through freely chosen representatives... While Article.3 states that the will of the people shall be the basis of the authority of the government; this will be expressed in periodic and genuine elections that shall be held by secret vote or by equivalent free voting procedures”.

Although elections do not democracy make, in other words, elections do not necessarily translate to good democratic governance but election is important and central to the whole idea of democracy. In fact, there can be no democracy without elections. This is because election is the process and procedure through which electorates freely and willingly choose those they want or prefer to represent their own interest without any iota of coercion or inducement.

That is why Diamond (2004), articulates democracy as, “a means for the people to choose their leaders and to hold their leaders accountable for their policies and their conduct in office”. He goes on to state that the people decide who will represent them in parliament, and who will head the government, at the national and local levels. They do so by choosing between competing parties in regular, free and fair elections”.

In a lecture titled “What is Democracy”? Larry Diamond (2004) gave an overview of what in his opinion democracy is. He describes democracy as a system of government with four key elements:

- A system for choosing and replacing the government through free and fair elections;
- Active participation of the people, as citizens, in politics and civic life;
- Protection of the human rights of all citizens; and
- A rule of law in which the laws and procedures apply equally to all citizens.

Therefore, in appreciating and understanding the democratic theory, it is germane to come to terms with the sublime role election plays in a democracy. This brings the issue of inconclusive election to the fore, hence, if the representatives of the people are not duly elected by the people, where will they derive their legitimacy from? Genuine elections must be free, fair and credible as well as reflect the wishes and aspirations of the majority of the people. It is only then that those elected can be accountable to the people who elect them into public office and also carry out the various promises they made to the people during electioneering campaigns.

However, according to Fishkin (2001) a central problem of democratic theory

“Is how to avoid ‘tyranny of the majority. A decision may count all or most people's preferences, it may be supported by the public's considered judgments, it may be aggregated by an appropriate decision rule such as majority rule, and it may, nevertheless, conflict with justice or impose unacceptable consequences on some portion of the population. In other words, the people may, democratically, decide to do bad things. Attempts to address the problem of majority tyranny usually rely on answers to the questions addressed above: Whose preferences count? What kinds of preferences are considered? What decision rule is employed? What is the design of democratic institutions? First, the spread of the franchise to most or all adult citizens has been an important factor in making sure that the interests of those citizens are considered. The spread of voting rights across racial, ethnic, religious, gender, and class divisions has proven to be an important factor in creating institutional incentives for addressing the problems of those who were previously disenfranchised. But such a solution is imperfect. A group can have its votes counted, but outvoted, its interests considered but neglected or even despised”.

Similarly, democratic theory provides us with conflicting visions rather than some uniquely authoritative answer to the questions posed here. Although fundamental questions about democracy remain unsettled, but unlike any other period in its history, the authority of the basic democratic idea is virtually unchallenged in the modern era. Democracy (in some sense) triumphs even as disagreements proliferate as to what it is, or might be.

According to Ansolabehere (2001) another drawback for democratic theory in modern societies is that

“People apparently know little about the choices they face and they have little incentive to seek new information. Candidates and parties, then, have very strong incentives to provide information to voters at little or no search costs: candidates try to reach us, rather than us, them. As a result we are highly reliant on what politicians choose to say in their advertisements. This is the problem of voter autonomy as voters have largely abdicated to political elites the important jobs of choosing what issues will be discussed, what elections and therefore

government will be about, and even what we will think as people walk into the voting booth. From this view, people are highly susceptible to false or deceptive advertising and will vote for the candidate whom we see the most rather than the one we think is best representative. Regulation of the volume and content of political advertising may, therefore, be necessary”.

The counter argument is that voters, even though they do not know much by way of details, have a clear sense of what they themselves value or prefer, and, in order to win elections, politicians must adjust their messages to what the voters want. In crafting their advertisements, a candidate selects issues on which he or she can make electoral gains, because the voters care about it, because the candidate has a strong record, or because the candidate has taken the more popular position. This leads to majoritarian biases in what is discussed, but that is the essence of elections.

Therefore, it is instructive to note that democratic theory is relevant in explaining how inconclusive elections impact the integrity of the electoral process. Democracy is about the organization of government predicated on the wishes of the majority of the people through transparent, flawless and sincere elections. Therefore, inconclusive election in Nigeria following the trend of events seem to suggest that INEC might be inadvertently playing into the hands of dishonest and unprincipled politicians cum desperate political parties to get electoral victories through the backdoor, regardless of the desires of the generality of voters which is what this research effort wants to interrogate.

Elections are an indispensable part of the democratic process. For democracy as presently constituted, without an election, there is no democracy. Hence, the conduct of an election is crucial to the survival of any democracy because the freedom of choice, which is a key principle of the democratic culture, is exercised.

Issues in Inconclusive Elections in Nigeria

Inconclusive election has generated a lot of controversies in the polity to the extent that it has called to question the integrity and credibility of INEC. It is imperative to underscore the fact that there are some factors that bring about inconclusive elections in the country, chief of which is insecurity. If there is insecurity and violence takes place, there is no way elections can be conducted and even where it is conducted there is every likelihood that it would be canceled and a fresh election will be rescheduled for electorates to exercise their franchise. Security is key to have issue-free elections but in our clime there are numerous cases of ballot-box snatching, thugs disrupting elections and preventing people from voting, massive thumb printing of ballot papers etc.

According to Mediayanose (2018) Some of the roles of security in elections are as follows: “Providing security for candidates during rallies, congresses, conventions, electioneering campaigns and elections; safeguarding the lives and properties of citizens during the electoral process; ensuring and preserving a free, fair, safe and lawful atmosphere for campaigning by all parties and candidates without discrimination; maintaining peaceful conditions, law and order around the polling and collation ; providing security for electoral officials at the voting and counting centre’s; ensuring the security of election materials at the voting centres and during transportation; ensuring the security of all electoral material, personnel and citizens during registration of voters, update, revision and any other electoral event. In sum, the role of security is to ensure safety of the electorate, electoral materials and electoral officers before, during and after elections”.

It is for this reason that Jegede (2003) said “there are different manifestations of electoral violence e.g., murder, arson, abduction, assault, violent seizure and destruction of electoral materials. These acts are perpetuated by individuals and groups with the intention of influencing the outcome of elections or deter elected officials from consolidating their positions after election”. Also, Ogunidiya (2003) argued that “electoral violence includes all sorts of riots, demonstrations party clashes, political assassinations, looting, arson, thuggery, kidnapping, etc., spontaneous or not, which occur before, during and after elections. It could be regarded as an election motivated crisis employed to alter, change or influence by force or coercion, the electoral behaviour of voters or voting patterns or possibly reverse electoral decisions in favour of particular individuals, groups or political party”. Afolabi (2003) posited that “electoral violence is a form of violence that is associated mainly with the process of elections in a given society precisely a democratic set up or in the process of democratic transition. It is very glaring, therefore, that insecurity that necessitates electoral violence is one of the cardinal reasons for inconclusive election”.

In fact, Igbuzor O. (2013) argued that “the success or failure of any election depends on the stakeholders performing their duties (INEC, Political Parties, Election Observers, Media and Security Agencies)”. He laments that “the security agencies can make a difference in the outcome of elections”. It is therefore important that security officers display the highest level of integrity, neutrality, professionalism and sense of duty. The protection

of human life, voters, electoral materials and officials and the preservation of lawful and orderly electoral processes are necessary for credible, free and fair elections.”

Just like the way Olurode (2013) put it “security is indispensable to the conduct of free, fair and credible elections. From the provision of basic security to voters at political party rallies and campaigns to ensuring that result forms are protected, the whole electoral process is circumscribed by security considerations.” Thus, without adequate security, there cannot be credible, free and fair elections.

Another factor that can lead to inconclusive election is over voting, if in any polling unit or booth, the number of votes cast is more than the number of registered voters, such an election will be canceled and a new round of election can be organised. That is why the Electoral Act 2010 as amended, section 53 (1-3) states that “No voter shall vote for more than one candidate or record more than one vote in favour of any candidate at any one election. (2) Where the votes cast at an election in any polling unit exceed the number of registered voters in that polling unit, the result of the election for that polling unit shall be declared null and void by the Commission and another election may be conducted at a date to be fixed by the Commission where the result at that polling unit may affect the overall result in the Constituency. (3) Where an election is nullified in accordance with subsection (2) of this section, there shall be no return for the election until another poll has taken place in the affected area”.

Also, in the case of natural disasters like flood, landslide, earthquake, volcanic eruption, tornados, hurricanes, acid rain, ocean surges in riverine area and many others elections can be halted and fresh elections arranged, hence, natural disasters can lead to inconclusive election, that is why section 26 (1 and 2) of the Electoral Act (2010) as amended says that “(1) In the event of an emergency affecting an election, the Independent National Electoral Commission shall, as far as possible, ensure that persons displaced as a result of the emergency are not disenfranchised; (2) Where a date has been appointed for the holding of an election, and there is reason to believe that a serious breach of the peace is likely to occur if the election is proceeded with on that date or it is impossible to conduct the elections as a result of natural disasters or other emergencies, the Commission may postpone the election and shall in respect of the area, or areas concerned, appoint another date for the holding of the postponed election, provided that such reason for the postponement is cogent and verifiable”.

Moreover, if in any election the total number of canceled or voided votes are more than the difference between the party that came first and second in the election, the election will be inconclusive and a supplementary will be organised. Paragraph 41(e) and 43(b) of the INEC Regulations and Guidelines-

Paragraph 41(e) says “the State Collation/Returning Officer for the Governorship election shall where the margin of lead between the two leading candidates is not in excess of the total number of registered voters of the Polling Unit(s) where election was canceled or not held in line with Sections 26 and 53 of the Electoral Act, the returning officer shall decline to make a return until polls have taken place in the affected Polling Unit(s) and the results incorporated into new form EC 8D and subsequently recorded into form EC 8E for Declaration and Return”.

While paragraph 43(b) says “the LGA Collation Officer/Returning officer in-charge of State Constituency (House of Assembly) Election shall: Where the margin of lead between the two leading candidates is not in excess of the total number of registered voters of the Polling Unit(s) where election was canceled or not held in line with section 26 and 53 of the Electoral Act, the returning officer shall decline to make a return until polls have taken place in the affected Polling Unit(s) and the results incorporated into the new Form EC 8C(I) and subsequently recorded into form EC8E(I) for Declaration and Return”.

Again, if candidates in an election poll equal votes, none of them will be declared winner and the Electoral Act 2010 as amended, Section 70 states that “Where two or more candidates poll equal number of votes being the highest in an election, the Returning Officer shall not return any of the candidates and a fresh election shall be held for the candidates on a date to be appointed by the Commission”.

If candidates do not satisfy all the conditions specified by the extant laws on elections in the country, no candidate will be declared winner and a rerun will be arranged, according to section 179 of the 1999 constitution of the Federal Republic of Nigeria.

Also, the fact that electoral offenders are not summarily brought to book in accordance with the provisions of the electoral law is another factor that brings about inconclusive elections. Since thugs are not dealt with, they are emboldened to be willing tools in the hands of unscrupulous politicians to disrupt the electoral process for selfish reasons. That is why Isah (2019) reasoned that “it is thus high time to call out politicians who are the major actors in the electoral process to desist from disrupting the process or face the wrath of the law. It will be even better if these electoral offenses that lead to cancellation of hard-earned votes can be investigated and when linked to principal perpetrators they should be punished accordingly. Come to think of it, has the Inspector General of Police ever made an effort to hold Commissioners of Police responsible in states where electoral violence occurs? It’s high time Commissioners start holding Divisional Police Officers responsible at the Locations where there

are disruption of election. He went further to explain that Reports abound on how political thugs inspired by desperate politicians disrupt the process or destroy election materials especially when their personal interest is at stake. The sudden inferno at a number of INEC offices close to the elections still await investigation. More so, whether the security agencies involved in the election claim that they are being impersonated by political thugs in their uniforms or not, the security agencies also have a large chunk of blame when it comes to disruption of elections leading to cancellation and most times the infamous inconclusive election declaration”.

Election officials “cannot be harassed, intimidated or assaulted and then still take the blame for snatching the ballot box while security agents who as a matter of fact are mandated to protect everyone including the materials remain exonerated. The best INEC can do in such a scenario is to cancel elections in such polling units or collation centers and if the total number of registered voters surpass the margin of lead between the two major candidates, the credible thing to do is conduct a supplementary election”.

And closely related to the above mentioned factor is INEC’s ill-preparedness for the conduct of election, as much as the electoral umpire has tried in preparing for elections, it is as if they have not prepared well enough and it is some of the lapses noticeable particularly in the area of security and logistics that have sometimes precipitated inconclusive elections in the polity.

Oni, Chidozie and Agbude (2013) assert that “one of the major causes of inconclusive election is poor logistics on the part of INEC and in most cases; it is the complete responsibility of the Commission”. Berating the poor logistical set up of INEC, Olayiwola, (2014) and Ojo, Adewunmi, and Oluwale (2013) opined that “in most other situations INEC is responsible for failure to deliver election materials on time. However, unless materials arrive extremely late in the afternoon, elections will still be held in the polling unit that day. This means that logistics is very rarely a major contributor to not holding elections in a polling unit unless as in cases where security concerns did not permit materials to be delivered within a reasonable time”.

However, Ibrahim (2019) said “the number of inconclusive elections has grown because opposition parties have grown stronger and become more competitive. In addition, the introduction of technology, especially the use of the smart card reader has been a real check on the old practice of the illegal allocation of votes, reducing the number of landslide results. One of the interesting things about the governorship elections is that the pattern of voting changed in certain states in relation to the presidential vote, due to local political dynamics. When local dynamics are reflected in results, it’s a clear message that the votes of ordinary people are counting and both the Peoples Democratic Party and the All Progressives Congress have good and bad stories to tell on the matter. It is widely known that those who seek rig elections act on the principle of getting fraudulent results announced through any means and forcing the opponent to go and prove fraud in court, which we all know is very difficult. The approach of INEC since 2011 is not to rush to announce results when there are suspicions of fraud and to organise supplementary elections to protect the integrity of the outcome. This trend should be understood for what it is, improving the integrity of elections”.

Controversies in inconclusive elections

According to Babatola et al, (2019) Politics of the inconclusive elections usually begins from “the moment the political parties start to field their candidates for the elections. The plans of ensuring that the candidates of the various political parties win the election at whatever cost using all techniques always informs the conduct of inconclusive elections. The struggle and desire to win the elections at all cost normally propels the hideous activities in which political thugs are used to perpetrate evil acts such as ballot snatching, beating of the electoral officers, in some cases even killing the officers like, the security personnel, election observers either local, national or international. For instance, the killing of the returning officer for gubernatorial poll in Rivers State accounted for the inconclusive election in the state”. In some other instances, it is a clear-cut case of over voting.

However, Udenhele G.I. (2019) noted that It is clear from the above provision of the law that “a call for a re-run election can only happen when the result of voided votes in a polling unit affect the overall result of the constituency which, in this case is the whole of the state. In addressing the issue, INEC has mischievously changed the word “Polling unit” to “Polling units” in Regulation 34(e). By this, it imposes on itself the duty of collating canceled votes in a constituency to determine margins of win. No law permits INEC to collate canceled votes after an election”.

It has been argued and well documented that margin of win has never constituted any impediment to electoral victory of a winner in Nigeria until the current dispensation of Prof. Mahmood Yakubu’s INEC. In the case of *Agagu v. Mimiko*, INEC declared the appellant winner of the governorship election in Ondo State with 349,288 votes whilst the respondent garnered 226,021 votes. At the trial, the actual votes were found to be 313,355 and 195,030 respectively. Thus, 248,724 were canceled. In view of the fact that Section 179(2) of the Constitution had

been satisfied, the Court of Appeal of old, not the current one that has become deeply and thoroughly controversial and unpredictable, affirmed the respondent's return as governor.

In *INEC v. Oshiomhole*, INEC had earlier declared 329,740 for PDP and 197,472 for Action Congress (AC) i.e. for Mr. Oshiomhole. In setting aside INEC's decision and declaring Oshiomhole as winner, the Court of Appeal of old canceled 200,723 of votes scored by PDP and 30,895 of votes scored by AC (canceling a total of 231,618 votes). The court did not find any reason to call for a rerun because the petitioner satisfied the requirements of Section 179 (2) (a) & (b).

In judicial litigation between *Aregbesola v. Oyinlola*, INEC had earlier declared 426,669 votes for Oyinlola, and 240,722 for Aregbesola. The margin of win was 185,947 votes. The Court however nullified votes in 10 disputed local government areas when 41,923 votes were cast for Aregbesola and 253,789 votes were cast for Oyinlola. Total canceled votes were 298,712. In declaring the petitioner as winner of the election, the Court of Appeal then referred to Section 179 (2) of the Constitution and held that the appellant satisfied the requirements of the law. As a matter of fact, Governor Fayemi of Ekiti State was also a beneficiary of canceled votes without a re-run. From the foregoing, it is clear that in the entire circumstances of the current events, Section 179 of the Constitution is the applicable provision and not INEC Guidelines or Manual. Again, unfortunately, in *Faleke's* case, and for some inexplicable reasons, the Supreme Court elevated INEC Guidelines and Manual above the Constitution. That is the grave damage the Supreme Court has done to our jurisprudence by its politically motivated decision in *Faleke's* case.

It can be reasonably argued that Regulation 34 (e) of the INEC Guidelines for elections is unconstitutional, self-serving and apparently intended to serve the interest of the party in power in connivance with INEC and therefore should be so declared as unconstitutional, because the guideline is not in sync with extant provision of the 1999 constitution on election matters. The constitution of the Federal Republic of Nigeria must remain sacrosanct, sacred, unfringeable and firm.

According to Nkolika (2015) "(a) Inconclusive election exacerbates voters apathy (b) Inconclusive elections hamper the judgmental competence of voting citizenry ultimately undermining people's franchise. (c) It challenges the credibility of Nigeria's electoral umpire, INEC, to manage the effective conduct of elections in the country". Moreover, there is an ongoing debate over a single, universal definition of electoral integrity, but it can generally be defined as "any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial, and transparent in its preparation and administration throughout the electoral cycle." (Kofi Annan Foundation, 2012).

In the words of Noris "electoral integrity refers to international standards and global norms governing the appropriate conduct of elections". (Noris Pippa 2014; P 9). Furthermore, it has been suggested that "electoral integrity is the degree of the freeness and fairness of elections which is surrounded by several factors including the following (a) legal framework; (b) electoral system; (c) technical efficiency of electoral management authority; (d) relative autonomy of the electoral agency from interference by other organs of government and the ruling party; and (e) degree to which electoral processes, decisions, participation and outcomes are insulated from manipulation, corruption and violence". (Alemika E. E. 2007; P3).

Without electoral integrity, leaders and officials lack accountability to the public, confidence in the election results is weak, and the government lacks necessary legitimacy. Electoral integrity allows for peaceful resolution of conflict, open dialogue, debate, and information sharing among leaders and the public. Integrity depends on public confidence in electoral and political process.

Conclusion

This study concludes from the above findings that transparent and credible election is central to any democratic governance which is predicated on the will and the wishes of the generality of the electorates. Anything short of this, does not make elections to be elections properly so-called. And, an inconclusive election is a subversion of the electoral will of the voters because the outcome is not a true reflection of their desires and aspirations. The legality of inconclusive elections is contestable as there are contradictory electoral laws guiding the process coupled with the fact that the electoral umpire has not been able to apply similar rules to similar situations across board in the country. Also, inconclusive elections have led to voter's apathy and lack of sustained interest in the electoral process because the integrity of the electoral process as well as the unbiasedness of INEC have been called into question.

Recommendations

The study put forward the following recommendations. The idea of inconclusive election based on margin of votes should be done away with completely. It contradicts the electoral system that is operational in the country which is FPTP, predicated on simple majority and geographical spread. And, in almost all the cases so far in the country, it is not the party that leads in the first round of elections that eventually wins the inconclusive/supplementary election.

Also, all contradictory laws in electoral matters should be reviewed and streamlined by the National Assembly to conform to the extant provisions of the 1999 constitution of the Federal Republic of Nigeria. This is because there are contradictory provisions in the different electoral laws; the 1999 constitution of the Federal Republic of Nigeria, the Electoral Law 2010 as amended and now the Electoral Act 2022 and INEC Regulation and Guidelines that can generate unnecessary polemics, controversy, tension, litigation, inconclusiveness and confusion in the electoral process. This is because as they are presently, they constitute impediment to a transparent and credible electoral system.

In a related development, the government should endeavour to fully implement the report of Justice Mohammed Uwais Electoral Report Committee. This will enable the Independent National Electoral Commission (INEC) to be truly independent in terms of appointments and financial autonomy, to this end, it will be able to conduct free, fair and credible elections. Also, the Uwais Electoral Committee report recommended the setting up of the National Electoral Offenders Commission by the government to take care of the issues of electoral offenders that has become more or less a recurring decimal in the electoral process in the country.

The Offenders Commission is more necessary now than at any other time in the history of elections in the country. This is because some of the reasons put forward to justify inconclusive elections such as thuggery, violence, over-voting, vote buying, arson, kidnapping, killings, maiming, snatching of ballot boxes, preventing votes from voting peacefully are all electoral offenses that the commission should handle, thereby having more credible elections. The 1999 Constitution should be amended to strengthen INEC's legal framework so that there will be no contradictions in the discharge of its duties and responsibilities. This study reiterates our position above as regards the inconsequentiality of margin of lead or vote, which had necessitated supplementary elections. The margin of win or votes or lead as the case may be is fraudulent because it is predicated on the entire number of voters registered in any particularly polling booth, and not on the actual numbers of voters accredited to vote on Election Day. On the day of election, not every voter come out to cast their ballot, in fact, not every accredited voters eventually vote. Indeed, not all registered voters are eligible to vote because not all of them have collected their PVC's. Therefore the margin of vote is a needless electoral exercise that ought to be promptly discarded. If this is not done, the future of democracy in the country will be jeopardised, through democratic reversal or democratic backsliding. If these suggestions are well implemented the future of democracy in the country will be in jeopardy.

References

- Abah, E. O & Nwokwu, P. M (2016). Inconclusive Elections in Nigerian Democracy: Causes and Cures. *African Journal of Politics and Administrative Studies*, 9 (1), 27-44
- Adejumobi .S. (2000). "Election in Africa: Fading Shadow of Democracy" in Nnoli. O. (ed.) *Governance in Africa: A Reader*. Harare: SAPES
- Afolabi A. A. (2003). *Electoral Violence and the Democratisation Project: The Nigerian Experience in Olasupo* B. A. *Electoral Violence in Nigeria: Issues and Perspectives*, Lagos, FES.
- Akhter M. Y (2001). *Electoral Corruption in Bangladesh*, Ashgate Publishing Ltd, Glover House, England.
- Alemika E. E. (2007). *Quality of Elections, Satisfaction with Democracy and Political Trust in Africa; Afro-barometer working paper Series*.
- Amumo K. (1992). *The International and Domestic Context of Democratic Transition in Africa: Road Blocks to Democracy in "Democratic Transition in Africa*, Caron B. Et al (eds.), CREDU, Ibadan.
- Amuwo K. (2005). *The Peripheral State: Critical Perspective on the Structure and Role Of Public Bureaucracy*, *Journal of Development Alternative Area Studies*, Vol. 24 Number ¾ pp 119-130.
- Ansolabehere S. (2001). *Political Advertising in Smelser N.J. & Baltes P.B. (eds.) International Encyclopedia of the Social and Behavioral Science*, Elsevier Ltd.
- Annan, Kofi A. et.al. (2012). *Deepening Democracy: A Strategy for Improving the Integrity of Elections*. Worldwide Stockholm: Global Commission on Elections, Democracy and Elections. /<http://Kofiannanfoundation.org>
- Babatola A. M. et al (2019). *Socio- Political & Economic Implications of the*

- Inconclusive Elections in Nigeria: Issues and Trends in the 2019 General Election, *International Journal of Research and Innovation in Social Science (IJRISS)*, Vol. 111, Issue IX, September 2019. ISSN 2454-6186.
- Barak A. (2006). *The Judge in a Democracy*, Princeton, Princeton University Press Pg 28.
- Dahl R. (1989). *Democracy and Its Critics*, New Haven: Yale University Press
- Dahl R. (1971). *Polyarchy*, New Haven: Yale University Press.
- Diamond L (2002). *Free and Fair? The Administration and Conduct of 1983*
- Diamond L. (2004). *What is Democracy?* <http://www.standard.edu/~diamond/Iraq/whatisdemocracy>
- Ebegbulem, J. C (2011). *Credible Elections and Democratic Consolidation in Nigeria: The Moral Imperative*. *Journal of Emerging Trends in Educational Research and Policy Studies (JETERAPS)*, 2(4), 246-250
- Ejalonibu G.L. (2019). *Ecology of Election Administration and the Performance of Electoral Management Body in Nigeria's Fourth Republic*, *Social Science and Law Journal of Policy Review and Development Strategies*, vol. 7, Number 1
- Eya N. (2003). *Electoral Processes, Electoral Malpractices and Electoral Violence*, Enugu, Sage Publications Nigeria Ltd.
- Fishkin S. (2001). *Democratic Theory in Smelser N.J. & Baltes P. B. (eds.) International Encyclopedia of the Social & Behavioral Sciences*, Elsevier Ltd.
- Igbuzor, O (2013). *The Role and Performance of Security Agencies in the 2011 Election in Olorode L. (ed.) Election Security in Nigeria: Matters Arising*, Nigeria: INEC & FES
- Isah M. (2019). *Inconclusive Elections- Consequence of Politicians Electoral Misconduct*, YIAGA AFRICA.
- Jegede S. (2003). *Inter and Intra-Party Conflicts and the Future of Democracy in Nigeria*, in Olasupo B. A. (ed.) *Electoral Violence in Nigeria: Issues and Perspective*, Lagos: Fredrick Ebert Stiftung (FES).
- Joseph R. A (1987), *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic*: Cambridge, Cambridge University Press.
- Kelsen H. (1955). *Ethics, Foundation of Democracy*, Vol. 66, Number 1, Part 2 Pp 1-101
- Mediayanose .O. E. (2018). *The role of Security in Credible Elections and Sustenance of Democracy in Nigeria*, *Journal of Public Administration, Finance and Law*, Issue 13/2018, pp 134-142.
- Nkolika O.E. (2015). *Independent National Electoral Commission (INEC) and the Administration of 2015 Elections in Nigeria. The Strengths, Weaknesses and the Challenges*. A paper presented at the Conference on the 2015 General Election in Nigeria: The Real Issues- organised by the Electoral Institute, INEC, Abuja, July 26th-29th, 2015.
- Nkwede J.O. & Emordi A.T.O. (2020). *INEC, Political Parties and the Politics of Inconclusive Elections in the 2019 General Elections in South East, Nigeria*, *Ife Social Science Review* (28(1), pp 76-87.
- Nnadozie U. O. (2005). *History of Elections in Nigeria* in Onu. G & Momoh A. (eds.) *Elections and Democratic Consolidation in Nigeria*, proceedings of 23rd Annual Conference of Nigeria Political Science Association, A. Triad Associates Educational Publishers and Printers, Lagos.
- Nnoli O. (1990). *The 1987 Local Government Elections in the Eastern Zone of Nigeria: Plateau, Benue, Anambra, Imo, Rivers, Cross-Rivers and Akwa-Ibom States* in Jinadu L. A. and Edoh. T. (eds.) *The 1987-1988 Local Government Elections in Nigeria, Case Studies*, Vol 1, Lagos: National Electoral Commission.
- Norris P. (2014). *Why Electoral Integrity Matters*, Cambridge, Cambridge University Press.
- Olayiwola V.O. (2014). *Turbulent Election History: An Appraisal of Precipitating Factors in Nigeria*, *International Journal of Politics and Good Governance*, 5(5), pp 23-41.
- Olorode L, (ed), *Election Security in Nigeria: Matters Arising*, INEC & FES, Nigeria
- Ogundiya I. S. (2003). *Electoral Violence and the Democratization Project: The*

- Nigerian Experience in Olasupo B. A. Electoral Violence in Nigeria: Issues and Perspectives, Lagos, FES.
- Okorie A. et al (2020). Election and National Security in Nigeria 1999-2020, International Journal of Business Management and Economic Review, Vol 3, No 6.
- Ojo R. O., Adewumi E. F. & Oluwale E. (2013). Electoral Malpractices and Problems in Africa: A critical Analysis Journal of Research and Development, 1(6), Pp 33-47.
- Olajire O. O (2019) Security Agents and Elections Security in the 2015 Nigeria's General Elections, Journal of Education, Society and Behavioral Science, 30(2): pp 1-12. Article No. JESBS 46878.
- Olayiwola V.O. (2014). Turbulent Election History: An Appraisal of Precipitating Factors in Nigeria, International Journal of Politics and Good Governance, 5(5), pp 23-41.
- Olukotun A. (2003). Observers, the Media and the 2003 General Elections in Nigeria In Nigeria in Anifowoshe R. & Babawale T. (eds.) 2003 General Elections and Democratic Consolidation in Nigeria, Lagos, Frankad Publishers.
- Omotola J. S. (2010). Explaining Electoral Violence in Africa's New Democracies. Revised Version of a Paper presented at the 27th Annual Conference of of the Nigerian Political Science Association (NPSA), Electoral Reform, Political Succession and Democratization in Africa, held at the Benue State University, Markurdi, Benue State, Nigeria. Pp 16-19
- Onah V.C. & Chukwu J.C. (2020). Prognostic Analysis of Implications of Inconclusive Elections on Democracy in Nigeria, 2019 and Beyond. South East Journal of Political Science Vol. 3, Number 1.
- Onapajo H. & Babalola D. (2020). Nigeria's 2019 General Elections- A shattered Hope? The Commonwealth Journal of International Affairs, Vol. 109, 2020 Issue 4.
- Oni S., Chidozie F.C. & Agbude A. G. (2013). Electoral Politics in the Fourth Republic of Nigeria's Democratic Governance. Developing Country Studies, 3(12), pp 37-49.
- Udenhehe G. I, (2019). Independent National Electoral Commission (INEC), Inconclusive Elections and Democratic Consolidation. A Study of 2019 General Elections in Nigeria, Journal of Humanities and Social Science, Vol. 24, Issue 8, Ser. 6 (August 2019) 13-21; e-ISSN 2279-0837, P- ISSN: 2279- 0845.

REPORTS

- European Union Observation Mission (2013) Federal Republic of Nigeria. Final Report
- On the General Elections, 28th March, 2015 and 11th April, 2015. Published in 2015.
- INEC (2003) Manual for Elections Observers 2003.
- International Institute for Democracy and Electoral Assistance (IDEA) 2020 Outcome Report.
- Policy and Advocacy Centre (2019). Laws Governing of Elections in Nigeria.
- Report of the Political Bureau Federal Republic of Nigeria, MAMSER (1987).
- The Mohammed Uwais Electoral Reform Committee Report (2008).
- Universal Declaration of Human Rights (1948).
- www.inecnigeria.org

ELECTORAL LAWS

- INEC Guidelines and Regulations (2015).
- INEC Guidelines and Regulations (2019).
- The 1999 Constitution of the Federal Republic of Nigeria.
- The Electoral Act (2010) as amended.

NEWSPAPERS

- International Centre for Investigative Reporting 5th July, 2019.
- Leadership Newspaper 10th December, 2015.
- Nigerian Tribune 20th March, 2019
- The Cable 21st March, 2019.
- The Punch 30th September, 2018.
- The Nigeria Lawyer, 17th March, 2019.