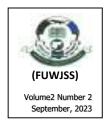
NIGERIA'S 2023 PRESIDENTIAL ELECTION AND NEGATIONS OF THE 2022 ELECTORAL ACT

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Abstract

Evidences prevail to contend that electoral administration play a vital role in ensuring the fairness, transparency and legitimacy of elections in democratic societies. The high premium placed on electoral administration is due to its capacity to engender electoral integrity which is foundational to the entrenchment of a credible electoral process. In this regard, this paper examines electoral administration and the electoral process of the Nigeria's 2023 presidential election. The paper argues that the Nigerian Independent National Electoral Commission (INEC), the body saddled with the responsibility of conducting general elections, introduced the use of Bimodal Voter Accreditation System (BVAS) for the 2023 elections in order to curb electoral malpractices experienced in previous elections. However, the failure of INEC to stick to its own guidelines as it failed to post the results of the 2023 presidential election from the polling units on the INEC Result Viewing Portal (IReV) tends to undermine the integrity of the electoral process in the Nigeria's 2023 presidential election. The paper's findings established negation of the Electoral Act by INEC in the Nigeria's 2023 presidential election. The paper concludes that negation of the Electoral Act by INEC is a worrisome trajectory that has detrimental impacts on the quality of Nigerian electoral process. The paper recommends that there is need for increased transparency and accountability by INEC, as well as better collaboration between INEC and civil society organizations in order to ensure credible electoral process that will reflect the will of the Nigerian people.

Keywords: Electoral Act, BVAS, IReV, INEC, democracy

Introduction

Across democratic societies, election reflects the basis of the social contract between representatives and the represented. This is because periodic elections provide opportunity for transition from particular sets of representatives and office holders to another set of rulers. The potency of elections to serve as mechanism for accountability and transparency justifies the premium placed on electoral administration. For proper conduct of elections, democratic societies often set up Electoral management body to manage electoral administration. Thus, electoral administration embodies the establishment of modest laws and adoption of best practices for ensuring free, fair, and credible electoral process. In this sense, effective electoral administration must prioritize secure voter registration processes, accessible

polling locations, timely vote-counting and collation of resulting in line with the electoral guidelines. The political systems in most countries of Africa and particularly Nigeria, the electoral processes are often characterized by hooliganism and electoral brigandage manifest in electoral fraud, intimidation of political opponents, harassment and electoral violence amongst other vices. Such ugly trend tends to have serious implications for the democratic future of Nigeria because the phenomenon is growing rather than declining as seen in successive elections of 2007, 2011, 2015, 2019 and the most recent 2023 presidential elections in Nigeria.

As should be noted, Omotola, (2014) avers that elections are the first and most basic indicator of democracy because of their presumed capacity to guarantee political participation, competition and legitimacy which, in turn, are pivotal to democratic governance. Also, David, Manu and Musa (2014) points out that the critical functions of election underscore its significance as bedrock and critical framework of the democratic process. Through elections, the legitimate power which rests with the people could be invested into political office holders. Elections are crucial in ensuring political stability and providing alternation of political power. Other studies, such as Ibeanu, (2007); Jega, (2007); Omotola, (2014); Omodia, (2007), Adejumobi, (2011) have separately argued that political opportunism, opposition intolerance and crises of governance; poor, uncoordinated and confusing voter education affect the outcomes of elections in Nigeria. Incidentally, regardless of the emphasis on the potency of election as a vital instrument of democratic governance, electoral administration seem not have fared so well in Nigeria's fourth republic. This is because elections have frequently been a sour point of Nigeria's politics. Most of the elections conducted in Nigeria are characterized by irregularities; manipulations and abuse of electoral processes. It is indicative that Nigeria is facing the problems of qualitative decline in the electoral process. The Nigeria's 2023 presidential election manifested a new paradigm in the Nigeria's electoral history. It brought about a unique partisan politics in all probability with a third force that challenged the hitherto political status quo and unexpected influence on the outcome of the elections.

The hope of citizens for a credible electoral process was rekindled by the high level of preparedness demonstrated by the Independent National Electoral Commission especially the promise to deploy the newly acquired biometric and result transmission technological device (BVAS) to curb electoral fraud. To be specific, the build up to the 2023 general elections was characterized by promises of fairness and transparency that gave the citizens and global community high hope that there would be a credible electoral process in the country. This was accentuated by signing of the 2022 Electoral Act into law. The decision of INEC to make use of Bimodal Voter Accreditation System (BVAS) for 2023 general elections was expected to be a game changer to curb electoral malpractices experienced in previous elections. INEC's assurance to the public of its commitment and determination to the use of BVAS technology and technological devices to enhance the quality, transparency, integrity and credibility of the electoral process as provided under the Electoral Act 2022 brought huge hope to voters in Nigeria. The technology is said to have the capacity for real-time transmission of polling unit results to the IRev.

As such people's hopes were high and expectations upbeat with several seemingly unbreakable promises of the INEC to utilize the BVAS as a game changer to drastically eliminate electoral fraud in Nigeria. However, there are indications that INEC negated its own rules and guidelines in the conduct of the 2023 elections with manifest glaring electoral dishonesty and injustice

that have continued to be a chronic dent on successive elections in Nigeria. This worrisome scenario seems to have daunted the much touted efficacy of the Bimodal Voters Accreditation System (BVAS) and thus undermined electoral process in the country. The electronic transmission was introduced to enhance the transparency and integrity of the electoral processes but its negation by INEC amounts to violation of its own rules and guidelines. The failure to post the results of the 2023 presidential election from the polling units on the INEC Result Viewing Portal (IReV) as promised by the election umpire as soon as the polls closed questions the integrity of INEC and depicts a possible collusion in electoral fraud by the umpire. This is a difficult scenario for electoral process and hinders the chances of elections to be turned into opportunities for political choice due to electoral fraud evident in all manners of elections rigging. There were allegations of bribery, and undue influence, intimidation and other acts of coercion exerted on voters, falsification of results, fraudulent announcement of a losing candidate as winner of elections.

The foregoing tends to suggest that the INEC was procured by political money-bags to negate the 2022 electoral Act. The pervasive monetization of politics appears to have influenced INEC officials to care for money rather than the integrity of the electoral process. This is manifestation of apparent collapse of values worsened by ethnic, religious and regional based politics resulting to corporate national damage. Undoubtedly, the conduct of 2023 presidential election threw up a new dimension of political corruption, electoral malfeasance, electioneering hooliganisms, and religious bigotry as well as leadership rascality and irresponsibility by INEC. Against this backdrop, this paper examines electoral administration and electoral process in Nigeria by interrogating the factors that propel the negation of the Electoral Act by INEC in the 2023 Presidential Election. The remainder of this paper focuses on conceptualization clarifications, and theoretical anchorage. It also looks at the imperative of elections in a democratic society and the impact of electoral administration on electoral process highlighting the negation of Electoral Act by INEC in the Nigeria's 2023 Presidential election. This is followed by conclusion and recommendations.

Electoral Administration in Nigeria

Election refers to the process through which adults and qualified citizens are allowed to participate in determining who pilots the affairs of a particular state or organization either by voting or standing as candidates. It is a process that begins from political campaign and ends at the emergence of an individual or group to represent the public in government. This is to say therefore, that election is a formal group decision making process by which a population chooses an individual or group to hold public office in their collective interests. Elections serve twin purposes in a democracy. First, it gives voters the freedom to choose candidates of their choice in order to manage their affairs and secondly, it affords the candidates the opportunity to canvass for the votes of the eligible voters in a free and fair contest (Obianyo & Emesibe, 2015).

There is no doubt that elections have remained the cardinal pillar of democracy and have attained global acceptance as necessary means of changing and legitimizing governments. The administration of elections determines the success or failure of elections in the democratic process. This portends that that the credibility of any election depends largely on the effectiveness and efficiency of electoral administration, defined in terms of strict adherence to the rule before, during and after elections. Thus, electoral

administration energizes democratic process and serves as pedestal for democratic consolidation (Obi, 2009).

Omotola (2010) stated that election administration entails legalconstitutional interaction, involving a combination of institutional rules and organizational procedures that ascertain the basic rules for electoral processes, political competitions, organization of political campaigns, registration of eligible voters, voting on election day, resolving electionrelated disputes and certification of election results. Undoubtedly, electoral administration is an important component of democratic process that ascertains the efficacy of the electoral processes and determines the level of democratic maturity (Agbaje & Adejumobi, 2006). Electoral process refers to all the activities and procedures involved in the election of representatives by the electorates ranging from the provision of voter education to the dissolution of the National Assembly, (Iyayi, 2005; Jinadu, 2007). It entails all the pre and post-election activities consisting of registration of political parties, review of voters' register, delineation of constituencies, resolution of electoral disputes, return of elected representatives, swearing elected representatives. This involves the processes of registration, nomination, campaigning, voting, and counting of votes. Eya, (2003) posited that electoral process is the rules that guide the conduct of election, and important activities that make up an electoral process emphasizing that any conduct that threatens the electoral process is a subversion of the peoples' sovereignty. Also, Ezeani, (2005) and Odofin, (2005) have separately contended that electoral process is a complex process that encompasses the good intentions and undesirable outcomes of election administration, particularly in emerging democracies where general elections are often marred by culturally hued electoral malpractices. This indicates that electoral process is immensely characterized by a culture of electoral malpractices such as illegalities committed by government officials responsible for the conduct of elections, political parties, groups or individuals with sinister intention to influence an election in favour of a candidate or candidates. Electoral process commences with the announcement of intention to conduct elections, till the elections have been won and invariably lost.

Fundamentally, electoral processes can be divided into three key phases, consisting of pre-voting, voting, and post-voting. The Pre-voting stage has to do with electoral frameworks which determine the voter eligibility. The various elements and activities of the pre-voting phase include voter and civic education, voter Registration, party nominations, and electoral campaigns also take place. The Voting phase involves the casting of votes, vote counting and the verification of results, announcement of result, and probable litigations. On the other hand, the Post-voting phase has to do with the various activities that take place between different elections. These include revision of voter register, review of electoral laws amongst others. The essence is to strengthen the electoral process.

Theoretical Framework: Elite Capture Theory

The theoretical framework adopted in this paper is the Elite capture theory. The elite capture theory is anchored on the assumption that most societies are dominated by elites of unprecedented power and unaccountability, free from popular control, pursues its own concerns which are power and self-aggrandizement. It entails a situation where a fraction of the society has the power to take decisions which affect society and these decisions usually reflect the interest of the elite rather than the wishes of the majority. The theory emphasizes personal attributes of leaders, which aid their hold or dominance in power positions and the institutional framework

of society (Ademola & Adenuga, 2015). Political elites are usually located within the political process of any nation-state and are responsible for managing the political and administrative affairs (Platteau, 2004). It argues that the elite possess some qualities necessary for their accession to political power, such as consciousness, coherence, conspiracy and organisation. Members of the elite are thus not only aware of their status, but work determinedly to protect it with the use of exclusionary factors in leadership. In this regard, the political power of elites is perpetuated through land holdings, family networks, employment status, wealth, political and religious affiliation, personal history and personality (Platteau, 2004). This suggests that what makes elite capture so powerful is that elites exert their influence less often by coercion, and more by moral claims and symbolic power (Dasgupta & Beard, 2007). The dynamism of elite domination manifest in 'elite continuity, transformation and replacement' through which elites cooperate, compete and reconcile their differences from time to time (Norris, 2011).

The elites in Nigeria's politics tend to have kept virtually all the state apparatus at hostage through skewed electoral process in various countries. In fact, the Democratic institutions in Nigeria such as the legislature, executive, judiciary, and regulatory agencies have been captured by the elites thereby weakening the capacity of the state to ensure rule of law. This is because the elite capture in Nigeria results to unaccountability, unprecedented use of power for selfish pursuit and personal aggrandizement. The elites focus on control of political and state power for protecting and promoting the interests of members at the expense of the masses. The consequence is very inimical to the tenets of democratic rule and tends to negate the critical attributes of democratic governance which are embedded on accountability, responsiveness and transparency. Genyi and Ortom (2017) aver that election has remained the cornerstone of democracy due to its capacity to regulate the dynamics of political power as seen in Nigeria. The ethno-religious plurality of in Nigeria has indeed given elections this powerful function and makes election to assume high stake among political competitors. The control of state power means access to wealth and influence and the consequences of losing power are the loss of wealth and influence (Awojobi, 2014). As a result, the unrelenting quest for control or access to the state becomes a preoccupation of the elites.

This explains the high premium placed on electoral administration as the bedrock for electoral process. Incidentally the political elites tend to manipulate the machinery of electoral administration so as to influence the electoral process as witnessed in the 2023 presidential election in Nigeria. As such, the 2023 presidential election in Nigeria was daunted by high rate of manipulation and fraudulent process. The unwholesome electoral malpractices manifest in bribery, vote buying and manipulation of election results amongst others. This trajectory accounts for the inability of electoral administration to engender electoral process in Nigeria and thus depict the negation of self-set rules by INEC.

Elections and Democracy in Nigeria

Election is very cardinal to the survival of any democratic political system. This is premised on the fact that election provides the most peaceful and visible means through which citizens routinely select their leaders in or out of government. Thus, elections provide a platform by which policy-makers are encouraged to act attentively and considerably to needs and interests of their citizens' (Berouk, 2008). Powell, (2000) describes election as the litmus test of democracy in all societies. The implication is that election

determines the quality of democracy in all societies because it is the winners at the poll; that eventually form the government. In this vein, Johari, (2011) avers that election is one of the most significant ways people can participate in decisions that affect their lives and hold their elected representatives responsible. Jega, (2014) that elections serve three major functions in every democratic society which include; a means for people to choose their representatives; a means of choosing governments and a means of given legitimacy to the political systems.

The above shows that election is central for effective democratic governance. Election depicts a social contract between representatives and the represented and also provides opportunity for transition from particular sets of representatives and office holders to another (David, Manu & Musa 2014). It is a method of selecting a few people from a large group such that the few people become a representative of the large group. Nnadozie (2005) posits that election is a medium through which individuals or groups are chosen in order to represent their constituencies in the context of governance. Omotola (2014) notes that elections are the first and most basic indicator of democracy because of their presumed capacity to guarantee political participation, competition and legitimacy which, in turn, are pivotal to democratic governance. This implies that competitive elections provide a framework quintessential to organizing democratic uncertainty in order to produce legitimate change, rebirth, and renewal and power alternation (Przeworski 1997). As a mechanism for democracy, elections serve the function of recruiting representatives by popular vote or ballot. Election constitutes a basic institution of democratic control, which enables the establishn1ent of popular sovereignty. Arguably, elections are the central concern and determinant of democratic governance and requires that the electoral umpire should be neutral, unbiased and maintain high level of integrity for effective electoral administration.

Negations of the 2022 Electoral Act by INEC in the Nigeria's 2023 Presidential Election

Electoral administration in Nigeria has remained the constitutional responsibility of the Independent National Electoral Commission (INEC) in line with 1999 Constitution as amended and the Electoral Act (2010) as amended. This legal document empowered INEC as the electoral umpire in the country, to organize elections into various political offices. Going by the postulations of Diamond (2002) who stated that the impartial treatment of opposition candidates and political parties by the electoral umpires are indispensable components of electoral and democratic fairness, especially in transitional settings, it thus appear that composition, tenure and funding of INEC remain critical factors affecting its roles in the electoral administration which affects democratic process in Nigeria. The above aligns with the assertion of Hartlyn, McCoy and Mustillo (2008) that electoral administration are likely to promote electoral process where the rules are respected and there exist considerable level of independence and professionalism within the Electoral Commission. It is instructive to note that INEC seems not have complete independent budget, but tendencies of the staff affect the effectiveness of electoral administration by INEC to ensure credible electoral process in Nigeria. The result includes poor organization of elections, lack of accountability and transparency in the electoral administration in Nigeria. This seems to be responsible for the rate at which electoral administration undermines democratic process in Nigeria.

Edigheji (2006) posited that the quality and credibility of elections are directly related to the competency, efficiency and effectiveness of the

electoral administrators. In his view, Ekundayo (2015) summarized that electoral administration involves the management of the participation of the people in the act of electing their leaders and their own participation in governance. Such include registration of political parties, regulation of political parties and financing of political campaigns; the authentication of voters register and the liberalism or otherwise of the political process in the country. Electoral administration thus, entails the process of arriving at free and fair selection of candidates to fill public positions. Such activity necessarily should involve well co-ordinated actions by men and women aimed at achieving the goal of peaceful and orderly elections in a political system. Electoral administration has become a keystone of the process of democratization in the countries of West Africa. It consists of the gamut process and composition of electoral management bodies (EMBs), their mandate and activities towards conducting quality elections in a democratic society. In this regard, Jinadu (1997) stated that electoral administration entails the structure and processes involving the organization and conduct of elections to political offices by an electoral body.

This attests to the fact that electoral administration is a crucial aspect of electoral process for ensuring quality of the elections. The determinant of quality of an election, has to do with the extent to which political actors see the entire electoral process as legitimate and binding, (Elklit and Reynolds, 2002). Winners and losers can accept electoral processes and results which are products of popular participation, competition and legitimacy. These indicators of democratic quality can only be guaranteed or provided by the Election Management Bodies. This suggests that the electoral management bodies require as necessity, good structure, autonomy, adequate funding, transparency and general capacity to handle their constitutionally assigned duties effectively. The inherent challenges of electoral administration in Nigeria prompted Azom and Nwosu (2017) to conclude that recruitment process of and consequent turnover of electoral administrators and partisan manipulation in the recruitment and deployment of ad hoc staff accounted for flawed electoral process. The scholars recommended structurally and institutionally reposition the electoral management bodies especially, the Independent National Electoral Commission (INEC) to conduct credible elections. Moreover, Omotola (2010) stated that election administration entails legal-constitutional interaction, involving a combination of institutional rules and organizational procedures that ascertain the basic rules for electoral processes, political competitions, organization of political campaigns, registration of eligible voters, voting on election day, resolving election-related disputes and certification of election results. Undoubtedly, electoral administration is an important component of democratic process that ascertains the efficacy of the electoral processes and determines the level of democratic maturity (Agbaje & Adejumobi, 2006). Electoral administration is likely to be respected when there exist considerable level of independence and professionalism within the electoral commission, (Hartlyn, McCoy & Mustillo, 2008). This prompted Diamond (2002) to aver that the impartial treatment of opposition candidates and political parties by the electoral umpires are indispensable components of electoral and democratic fairness, especially in transitional settings undergoing democratization in Nigeria. This seems to point to the fact that the roles of electoral commissions crucial for sustaining democracy.

Ibeanu and Orji (2014) stated that the effectiveness and efficiency of electoral administration is affected by three major indicators such as the composition, tenure and funding of the electoral management bodies. This means that credible elections are practically impossible without effective and

efficient electoral administration. Ibrahim (2007) argued that electoral administration is vital to overall election quality, perception and the level to which political participants see the entire electoral process as legitimate, valid and binding. Thus, political actors are likely to accept the electoral processes and outcome, when elections are effectively administered. Such is possible when and where the electoral administration body has autonomy in terms of its structure, funding, composition and capability.

The conduct of elections is principally regulated by the Electoral Act and the Regulations and Guidelines for the conduct of Elections. Both the Electoral Act and the Guidelines are meant to be obeyed. INEC has a compelling duty to ensure that the Act and Guidelines are complied with in the conduct of free, fair and credible elections. Breach of the Act and Guidelines has far-reaching consequences. However, there are indications that INEC negated the 2022 electoral Act in the conduct of the 2023 presidential election. In fact, the failure of INEC to use the BVAS to upload election results to the INEC Result Viewing Portal (IREV), disenfranchisement of voters, rigging, violence and intimidation, manipulation of election results, under-supply of voting materials, overvoting, ballot box stuffing and others are issues of corrupt practices and noncompliance with the provisions of the Electoral Act. In this regard, it could be argued that the 2023 presidential did not comply substantially with the provisions of the Electoral Act 2022 as amended. The Independent National Electoral Commission INEC failed to conduct the elections in compliance with the provisions of relevant laws guiding the conduct of elections in the country. The election was in breach of the constitution and the Electoral Act.

The 1999 constitution (as amended) stipulates that for a candidate to be declared a President, the political party should be able to meet the threshold of 25 percent votes cast in 2/3 of the states and the FCT which means you must have 25 percent in 24 states and the Federal Capital Territory. "Secondly, the electronic transmission of results is a matter of law and not just a guideline of INEC as it is enshrined in the Electoral Act 2022. It states that once voting has been completed results must be transmitted electronically from the polling unit before moving to the collation Centre. The electoral body, in the exercise of its discretion through its regulation, adopted the electronic means of transmitting the results of elections. Such information or data is accessed, for accountability, at a speed necessary to create a watertight defence from the manipulation of results. The Electoral Act 2022, which repealed the Electoral Act 2010 virtue of the provision of Section 151, introduced various changes and its contents accede to the claim that technology is the future. Some notable inclusion highlighting Nigeria's participation in the technological advancement includes the utilisation of the BiModal Voters Accreditation System (BVAS) and the electronic mode of transmitting election results. The electronic transmission of results adopted in the new Act is a departure from the old Act, which was devoid of the electronic transmission of results. The provision highlights the incorporation of technology for an expeditious transfer of results from diverse locations and also suppresses the occurrence of electoral malpractice. However, the nascent status of Nigeria in technology, which was evidenced in the connection failures when attempting to provide all presidential election results electronically, have led to controversy in the interpretation of provisions pertaining to the transfer of election results.

Incidentally, INEC tend to have jettisoned the provisions of the Electoral Act 2022 with regards to electronic transmission of results to the IRev. Thus INEC negated its own guidelines by not complying with Section 60(5) of the Electoral Act 2022 which stipulates that "Presiding officers must transmit

results to the INEC Result Viewing Portal on completion of elections" Failure to comply to this regulation and guideline is a criminal offence. This shows how critical the electronic transmission of results to the IREV portal is under the law. Incidentally, due to excuses of network glitches, presidential election results from most of the polling units across Nigeria were not electronically transmitted as appropriate. More worrisome is the fact that the BVAS was able to electronically transmit the results of the National Assembly elections which was conducted simultaneously with the presidential election. This makes the electoral process of the 2023 presidential elections questionable and lack of credibility. Apparently, INEC seem to have been grossly compromised to the extent of negating its own regulations and guidelines. Moreso, there are allegations by political candidates, electorates, stakeholders, political parties, observers and concerned citizens of the peculiar challenges that marred the conduct of the election. The allegations range from the disenfranchisement of voters, rigging, violence and intimidation, manipulation, under-supply of voting materials and over-voting.

The negation of the Electoral Act 2022 by INEC is a dent on electoral administration and has serious implications on the electoral process. Essentially, credible electoral process helps to institute a representative government, bestow legitimacy and credibility, activates accountability and institutionalize democratic transition and succession of governments ((Egwu, 2015). In this manner electoral process tends to strengthen, entrench and institutionalize democratic ideals and virtues in a political system. Electoral process is considered to be so crucial that some scholars have argued that it is the bedrock of all democratic variables. To this end, democracy is best defined in terms of electoral process, politics and the institutional parameters that underpin them.

Conclusion and Recommendations

The analysis in this paper points to the fact that the 2023 presidential elections have been marred by unprecedented abuse of the electoral process in form of election rigging, inadequate and late arrival of voting materials at polling centres, vote buying, connivance between the ruling party elites and INEC to manipulate and even declare false elections results. Electoral malpractices were committed by the politicians with the connivance of political parties, national electoral body, and security agencies. The manifestations of electoral malpractice witnessed in the 2023 presidential election indicate that the electoral body deliberately carried out an infraction on the Constitution of Nigeria and the Electoral Act and amounts to disregard for the rule of law. There were inadequacies and inefficiencies, in the electoral process and gross non-compliance with the provisions of the Electoral Act and the Guidelines. Failure to transmit the results in compliance with the Electoral Act that guides the conduct of elections amounts to infraction by INEC officials. There is need for the criminal prosecution of INEC officials who compromised the integrity of the 2023 presidential election. This will help reposition electoral administration to foster electoral process and prevent further negation of the rule of law by INEC.

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