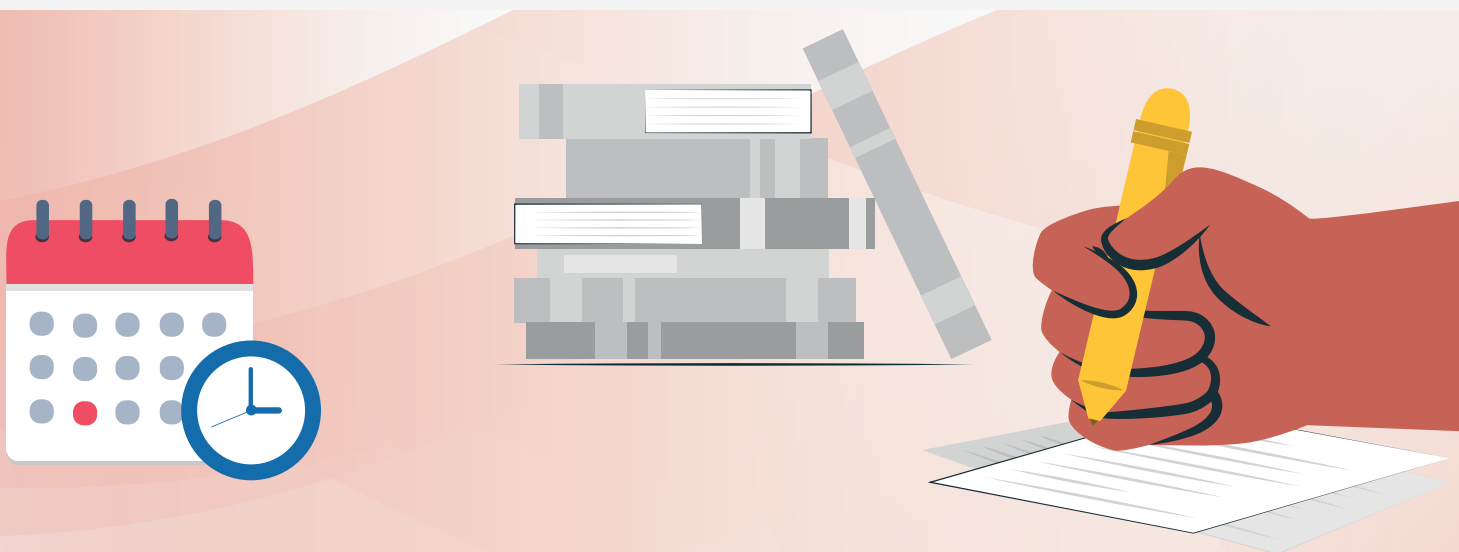


ELECTION PETITION TIMELINES NO LONGER STRICT AS CONSTITUTION AMENDMENT PROVIDES “FORCE MAJEURE” EXCEPTION

TITLE: *Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) (No.10) Act, 2023 to alter the Constitution to exclude the period of intervening events in the computation of time for determining pre-election petitions, election petitions and appeals; and for related matters*



Introduction

This Constitution Amendment, signed by President Muhammadu Buhari, provides for an exception to stipulated timelines for the filing and hearing of pre- and post-election matters. By so doing, it introduces some flexibility on the matter.

The amendment introduces a new **subsection (13A)** to **section 285** of the Nigerian Constitution to recognise the occurrence of what is called in law, a “*Force Majeure*”, that is, emergencies

or uncontrollable circumstances such as **natural disaster, war, or a national or state emergency** which can prevent the filing or hearing of a pre-election matter or election petition by a Court or Tribunal. It says that the period of the occurrence of such circumstances will not be counted in computing the stipulated timelines for the filing and resolution of such matters. Although not explicitly stated, it is presumed that the Court or Tribunal is responsible for making such determination.

Timelines for Election Matters likened to Rock of Gibraltar and Mount Zion

"Courts do not have the vires to extend the time assigned by the Constitution. The time cannot be extended, or expanded or elongated, or in any way enlarged. The time fixed by the Constitution is like the rock of Gibraltar or Mount Zion which cannot be moved. If what is to be done is not done within the time so fixed, it lapses as the court is thereby robbed of the jurisdiction to continue to entertain the matter."

- Supreme Court in ANPP v. Goni (2012) 7 NWLR (PT 1298) 147

Timelines for filing and hearing pre-election and election matters as outlined in the Constitution are sacrosanct and not subject to extension. This is mostly attributable to the *sui generis* nature of election petitions (i.e., of a unique or special class). As such, timelines are inserted in the law to ensure that the courts and tribunals hear petitions expeditiously. As the popular saying goes, "Justice delayed is Justice denied." It also ensures that litigation has a definite end and does not become an endless activity.

The courts have held that in a purely civil matter, the late filing of a process after the period prescribed may be regularised, but in election matters, even a slight infraction of the rules, particularly those relating to time, can be fatal to the process filed.

Before the adoption of timelines for hearing petitions following alterations to the Constitution in 2010 and enactment of the now repealed 2010 Electoral Act, the position of the law (in section 148 of the preceding 2006 Electoral Act) was that an election petition and an appeal arising therefrom should be given accelerated hearing and have

precedence over all other cases before the Court. Unfortunately, the ensuing experience was that Lawyers took advantage to frivolously delay proceedings and extend the time to benefit their clients who may have been willfully declared winners. Also, election petitions took over two years to complete, often leading declared winners to almost complete their tenures before judgement is given.

For example, President Muhammadu Buhari's post-2003 General Election petition against the re-election of President Olusegun Obasanjo, took over two years to conclude at the Supreme Court. Also, the Anambra State governorship election dispute between Chris Ngige and Peter Obi famously stretched over a period of 34 months (from April 2003 to March 2006) causing Anambra to be the first State to go "off-cycle" in the election calendar.

While timelines are acknowledged to be necessary, lawyers have often argued for exceptions to be made, for example, where a retrial is ordered, where a tribunal may need to be disbanded or reconstituted, in cases of protracted sickness or death,

where there is war or terrorist attack, or where an “Act of God” or natural events occur e.g., earthquakes, floods, hurricanes, etc.

In law, the occurrence of a *Force Majeure* usually suspends all legal obligations, including timelines for performing an action because it is an unforeseen and uncontrollable circumstance. For instance, during the COVID-19 pandemic, countries all over the world including Nigeria went into an extended lockdown thereby making regular activities, such as court sittings impossible. This amendment

makes room for these probabilities by explicitly stating that the period of such emergencies should not be counted in determining whether a litigant is out of time in filing court processes or whether a court or tribunal is out of time to hear petitions and render its verdict. This would promote delivery of justice by ensuring that parties are not foreclosed from seeking judicial remedy.

Below are the constitutional provisions, actions and timelines affected by this amendment.

1	Action	Existing Timeline
	Filing of a pre-election matter Section 285 (9)	not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit
2	Delivery of judgment by the Court in pre-election matters Section 285 (10)	within 180 days from the date of filing of the suit
3	Appealing Court decision in a pre-election matter Section 285 (11)	within 14 days from the date of delivery of the judgment appealed against
4	Disposal of appeals from a decision of a Court in a pre-election matter Section 285 (12)	within 60 days from the date of filing of the appeal
5	Filing of an election petition Section 285 (5)	within 21 days after the date of the declaration of result of the elections
6	Delivery of judgment by an election petition tribunal Section 285 (6)	within 180 days from the date of filing of the petition
7	Disposal of an appeal from a decision of an election tribunal or Court of Appeal Section 285 (7)	within 60 days from the date of the delivery of judgment of the tribunal or Court of Appeal



About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making process.

The main focus of PLAC's intervention in the democratic governance process is on building the capacity of the legislature and reforming the electoral process. Since its establishment, PLAC has grown into a leading institution with capacity to deliver cutting-edge research, policy analysis and advocacy. PLAC receives funding support from donors and other philanthropic sources.

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