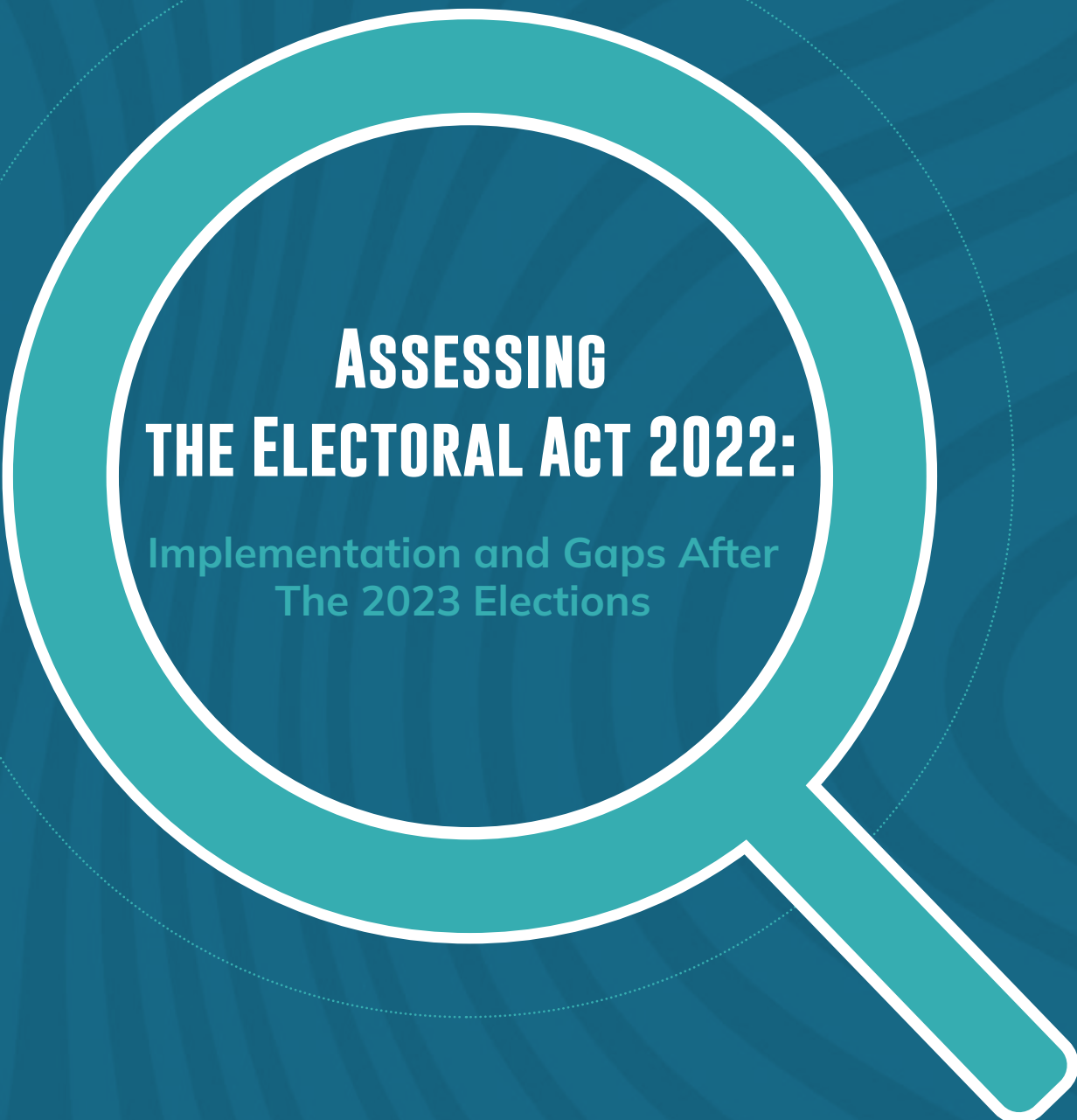




ASSESSING THE ELECTORAL ACT 2022:

Implementation and Gaps After
The 2023 Elections



Assessing the Electoral Act 2022: Implementation and Gaps After the 2023 Elections

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Executive Summary

The enactment of the Electoral Act 2022 marked a milestone in Nigeria's electoral reform, introducing new provisions on election funding, technology, party primaries, inclusivity, and legal accountability. This report provides a post-legislative assessment of the Act's key provisions and their implementation in the 2023 general elections, identifying achievements as well as gaps that became apparent during the polls.

This report provides a **post-legislation assessment of the Electoral Act 2022**, focusing on how key provisions influenced the conduct of the 2023 elections and what gaps or inefficiencies became apparent. Each section examines a thematic area of the Act, such as election administration, party regulation, use of technology, inclusivity, election security, and dispute resolution – analysing the implementation experience and any shortcomings. The report then offers recommendations to address the identified gaps. The goal is to inform lawmakers and advocates as they consider possible reforms before the next electoral cycle. While the Electoral Act 2022 significantly improved the legal framework (and remains fundamentally “**fit for purpose**” in many respects), continuous refinement and commitment to enforcement are needed to keep pace with evolving challenges.

Key Findings:

- **Improved Framework, Mixed Implementation:** The Act 2022 provided a robust legal framework – e.g., early funding of the electoral commission, biometric voter accreditation, and electronic results viewing – which should enhance

election credibility. In practice, some provisions yielded positive outcomes (such as widespread use of BVAS devices for voter accreditation), while others faced implementation challenges (notably, delays in electronic result transmission undermined transparency).

- **Party Primaries and Candidate Nomination:** New rules required political parties to hold primaries and submit candidate lists well ahead of the election (at least 180 days prior) and maintain membership registers. While these timelines were followed in 2022, they also led to a flood of internal party litigations (nearly 1,900 pre-election court cases) as aspirants challenged nominations.¹ The exclusive jurisdiction of the Federal High Court for such disputes created bottlenecks, with hundreds of appeals reaching appellate courts. The lack of sanctions for parties failing to submit membership registers (per Section 77) undermined compliance, enabling opportunistic party switching. New rules on party primaries and candidate nomination (Sections 29, 77, 82, 84) sought to instill internal democracy, but many parties still experienced intense disputes.
- **Election Technology and Results Transmission:** The Act empowered INEC to deploy technology like the BVAS (Bi-modal Voter Accreditation System) for voter accreditation and the electronic **IREV Portal** (INEC Results Viewing

¹ Premium Times. “NBA Tackles National Assembly for Burdening 77 Judges with 1,800 Pre-Election Suits.” *Premium Times Nigeria*, January 24, 2023. <https://www.premiumtimesng.com/news/570223-nba-tackles-national-assembly-for-burdening-77-judges-with-1800-pre-election-suits.html>.

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Portal) for results transmission. This led to nationwide use of BVAS devices in 2023, with most polling units reportedly successfully using BVAS for accrediting voters,² a major improvement in voter verification. However, the results transmission faced serious setbacks: on February 25, technical glitches prevented timely uploading of polling unit results to the IReV, undermining transparency.³ INEC's failure to communicate and resolve this promptly eroded public trust. The law's wording inconsistency (using "transfer" in one section and "transmit" in another) contributed to interpretational disputes over whether electronic transmission was legally required. Clearer drafting could have averted this confusion.

- **Election Dispute Resolution:** The dispute resolution legal framework was rigorously tested. On the pre-election side, Federal High Courts across Nigeria heard nearly 1,900 cases stemming from party primaries in 2022. The courts often struggled to deliver within 180 days due to volume. Additionally, the sheer scale of post-election litigation post-2023 (about 1,200 cases) put strain on the judiciary and raised concerns that the people's will is often decided in court rather than at the ballot box. While timelines for post-election

adjudication were largely met, and all petitions from the 2023 elections were concluded by late 2023, this meant many elected officials served months in office under legal uncertainty. The 2023 experience indicates that deeper reforms – possibly constitutional – may be needed to ensure electoral disputes are resolved before winners take office and with less socio-political disruption.

- **Electoral Offences and Accountability:** The 2022 Act raised penalties for vote-buying, ballot snatching, and other offences. However, enforcement remained weak – very few offenders were prosecuted during the 2023 polls. INEC's Legal Department, though authorised to prosecute electoral offences, is overstretched. Over 1,200 post-election petitions were filed after 2023's polls, reflecting both the contentious nature of the outcomes and the reliance on courts for electoral accountability.⁴ Most petitions were dismissed or withdrawn, but the volume overwhelmed tribunals and left many winners in office pending lengthy appeals. This underscores the need for an Electoral Offences Commission and judicial reforms to swiftly sanction malpractice and resolve disputes before inauguration.
- The 21-day window for filing petitions after results declaration proved extremely tight, especially for a nationwide presidential election – placing a heavy burden on petitioners to gather evidence across 176,000+ polling units.

2 Vanguard. "Nationally, Only 44 Percent of Polling Units Commenced Election at 9:30 AM." *Vanguard Nigeria*, March 1, 2023. <https://www.vanguardngr.com/2023/03/nationally-only-44-percent-of-polling-units-commenced-election-at-930-am-mbamalu-yiaga-africa-programme-director/>.

3 Nigeria Civil Society Situation Room. *Report on Nigeria's 2023 General Election*. 2023. <https://situationroomng.org/wp-content/uploads/formidable/6/Situation-Room-Report-on-Nigerias-2023-General-Election.pdf>.

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Another contentious issue was the swearing-in of election winners while cases were still pending, though the Act (**Section 138**) provides that a nullified winner remains in office.

- **Election Security and Logistics:** The Act gave INEC powers to postpone elections in emergencies and to request security force deployment. These provisions were invoked when the gubernatorial elections were postponed by one week (from March 11 to 18, 2023) due to logistical delays in reconfiguring BVAS devices and other issues. Nonetheless, the 2023 elections saw numerous security incidents – observers recorded 101 violent events and 74 fatalities during the campaign and voting.⁵ Thuggery and intimidation in some areas led to voter suppression. While the law empowered INEC to void results where polling is disrupted by violence, enforcement was inconsistent. Better inter-agency coordination and election security planning are needed to fulfill the Act's intent of safe and orderly elections.
- **Inclusivity (Women, Persons with Disabilities, IDPs):** The Act contains provisions for inclusivity (such as facilitating voters with disabilities in **Sections 9 and 54**), yet the 2023 elections saw marginal improvements in participation of women, youth, and persons with disabilities. The Act introduced provisions requiring

the voter register to note disability status and mandating assistive devices at polling units for persons with disabilities. INEC, in collaboration with civil society, made progress by deploying thousands of Braille ballot guides and magnifying glasses to polling stations and prioritising vulnerable voters in queues. Special voting arrangements for internally displaced persons (IDPs) were also developed under a new framework. But many IDPs who resided outside their home states could only vote in the presidential race, reflecting a gap in enabling full franchise for displaced voters. Also, voter turnout plummeted to only **26.7%** – the lowest since 1999 – despite a large registered voter roll, reflecting public disengagement and lingering barriers to participation.⁶

- **Legal Gaps and Ambiguities:** The 2022 Act, though progressive, is not without flaws. Conflicting timelines (e.g., voter registration cut-off vs. register display periods) and drafting errors (e.g., an incorrect cross-reference in Section 50(2) regarding result transmission) created confusion. Ambiguous language – such as inconsistent use of “transmit” vs. “transfer” for election results – led to varying interpretations, as seen in litigation over whether INEC was required to electronically transmit presidential results. Additionally, some reforms were left incomplete: for instance, the Act increased penalties for electoral offences,

5 Dataphyte. “EU EOM Report: Challenges and Achievements of Nigeria’s 2023 General Elections.” *Dataphyte Elections Insight*, July 3, 2023. <https://elections.dataphyte.com/insights/eu-eom-report-challenges-and-achievements-of-nigerias-2023-general-elections>.

6 Daily Trust. “Nigeria’s Voter Turnout Drops to 26.70 Per Cent.” *Daily Trust*, March 1, 2023. <https://dailytrust.com/nigerias-voter-turnout-drops-to-26-70-per-cent/>.

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but enforcement remained weak in the absence of a dedicated Electoral Offences Commission.

Recommendations:

The assessment concludes with actionable steps, including targeted amendments to the Electoral Act, improvements in INEC's operations, and broader electoral reforms beyond the Act's scope. Key recommendations urge the National Assembly

to clarify ambiguous provisions and close legal loopholes, strengthen INEC's independence and capacity, establish mechanisms to prosecute electoral offences, and engage civil society in sustaining voter confidence. These measures are vital to consolidate the gains of the 2022 reforms and address shortcomings observed in 2023. Stakeholders must recognise that while legislation lays the foundation, committed implementation and political will are required to realise credible and inclusive elections.

■ 1. Introduction

The Electoral Act 2022 was enacted as a comprehensive overhaul of Nigeria's electoral legal framework, replacing the 2010 Electoral Act. Signed into law on 25 February 2022, the new Act emerged from a broad consultative process involving the National Assembly, the Independent National Electoral Commission (INEC), civil society, political parties, and observer groups. It incorporated recommendations from the post-2019 election reviews. Its primary objectives were to enhance the credibility and transparency of elections, strengthen INEC's autonomy and operations, promote internal democracy within parties, improve inclusion of marginalised groups, curb electoral violence and malpractice, and embrace appropriate technology in the electoral process.

Crucially, the Act was in place roughly one year before the 2023 general elections – a timeline that gave INEC and stakeholders some opportunity to adjust to the new rules. The Commission updated its regulations and manuals to align with the Act's provisions and conducted voter education campaigns to familiarise the public with changes (such as the new technological systems).

Nonetheless, the late passage of the Act (coming just a year before the polls) forced a compressed implementation schedule. INEC had to revise its election timetable to comply with new deadlines, and political parties rushed to conduct primaries under the new legal requirements. The tight timeframe posed challenges for full operationalisation of the law's innovations before the 2023 elections.

The 2023 general elections were the first major test of the Electoral Act 2022. The Act introduced innovative provisions – from election planning and funding timelines to technological innovations and stricter rules for political parties – all aimed at improving electoral outcomes. During and after the 2023 elections, however, various stakeholders (observers, political actors, CSOs, media, etc.) noted areas where the implementation of the Act fell short or new challenges emerged. They highlighted that while the Act was fundamentally sound and “fit for purpose”, there remain critical weaknesses in practice that Nigeria must address ahead of future elections. Calls have intensified for “*deepening electoral reforms*” to address these issues and further strengthen Nigeria's democracy. This report evaluates the key provisions of the Act and assesses their on-the-ground impact during the 2023 elections, identifying what worked, what didn't, and what can be improved through legislative or administrative action.

2. Key Provisions of the Electoral Act 2022 and Their Implementation

2.1 Election Planning and Administration

Legal Provisions

The Act sought to strengthen election planning by ensuring timely funding and clear timelines.

- **Section 3(3)** requires that all funds for a general election be released to INEC **at least one year before the election date**. This was a response to past delays in disbursing election budgets.
- **Section 28(1)** mandates INEC to publish the Notice of Election **360 days in advance** of the poll, fixing the dates and locations for candidate nominations.
- Other clauses, like **Section 9(6)** and **Section 19(1)**, impose cut-off dates for voter registration updates and display of the voters' register (both no later than 90 days before the election). These timelines were intended to lock in key preparatory activities well ahead of election day.

Implementation in 2023

- In line with **Section 3(3)**, INEC had its core funding for the 2023 elections appropriated and released by early 2022.⁷ The Commission publicly affirmed that it received sufficient funds to conduct the elections. The early release of ₦303 billion (later supplemented to ₦355 billion) allowed INEC to procure election materials, upgrade technology, and recruit staff

in advance.⁸ The Notice of Election was duly issued 360 days ahead (February 28, 2022) after the Act was signed, albeit this required adjusting the initially planned election date by one week to meet the new legal timeline. Voter registration was conducted up to mid-2022 and then halted as per the 90-day rule.

- These measures improved preparedness on paper; however, significant logistical challenges still emerged. Despite having funds and plans in place, logistics deployment on election eve faltered in many areas, leading to late arrival of officials and materials. This suggests that early funding alone did not resolve issues with transport procurement, distribution of materials, and training of staff. Indeed, INEC later admitted that a failure to efficiently mobilise contracted transporters (exacerbated by a nationwide fuel and cash shortage) was a key problem. Thus, the intent of the Act's timeline provisions was partially achieved (financial readiness), but operational execution lagged due to on-the-ground inefficiencies.
- Another planning gap came from an inconsistency in the Act's drafting: **Section 9(6)** closed voter registration 90 days before the election, yet **Section 19(1)** also required the voters' register to be displayed 90 days prior. In practice, the provision of the Act made it impracticable for INEC to entertain claims and objections during the display while registration was simultaneously ongoing up to that exact

⁷ BusinessDay. "INEC Wants N305bn for 2023 Elections." *BusinessDay Nigeria*, December 20, 2021. <https://businessday.ng/news/article/inec-wants-n305bn-for-2023-elections/>

⁸ The Guardian. "Nigeria Spent N355 Billion on 2023 Elections — INEC." *The Guardian Nigeria*, May 23, 2023. <https://guardian.ng/news/nigeria-spent-n355billion-on-2023-elections-inec/>

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deadline. INEC ended Continuous Voter Registration in July 2022 (well before 90 days to the polls) to reconcile this, but the law's conflicting timeline caused confusion. This indicates a need to amend the law for clarity.

The overlap is a minor drafting oversight that could be clarified (for example, by having registration stop 120 days before and display at 90 days, or some separation that allows for practicability).

Positives: Adequate funding was available, and key preparatory milestones (notice of election, voter register finalisation) were met in accordance with the law, marking an improvement over previous elections where funding or legal delays disrupted the timetable. INEC's early preparations included expanding voter access by creating new polling units and deploying a Voter Enrolment portal for online registration, which boosted voter enthusiasm.

Challenges: Logistical bottlenecks and weak last-mile delivery undermined the advantages of early planning. The currency swap and fuel scarcity in early 2023 further complicated the deployment of materials despite funds being released. Additionally, some provisions of the Act (like the 90-day deadlines for both CVR and display of the voters register for claims and objections) require better harmonisation to avoid operational ambiguities. Moving forward, institutional capacity and accountability in planning need to match the law's requirements – for example, ensuring that having funds in hand translates to efficient training of ad-hoc staff, robust transportation arrangements (possibly via engaging reputable logistics companies for secure material movement), and realistic contingency planning for challenges.

2.2 Regulation of Political Parties and Candidates

Legal Provisions

The Act sought to strengthen internal democracy and the candidate nomination process:

- **Section 29(1)** required parties to submit their list of candidates (who emerged from valid primaries) not later than **180 days** before the election. This long lead time was intended to reduce last-minute candidate switches and give courts time to resolve any primary disputes.
- **Section 31** of the Act allows a nominated candidate to withdraw his/her candidacy in writing, with such withdrawal communicated to INEC by the political party **not later than 90 days before the election**. **Section 33** further provides that the political party may, within **14 days of such withdrawal**, conduct fresh primaries to produce a replacement
- **Section 84** enumerated how parties may conduct primaries – allowing **direct, indirect, or consensus** methods – and crucially, **Section 84(13)** stipulated that any candidate who

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emerged not in compliance with the Act's provisions shall not be listed on the ballot. This put parties on notice to follow due process or risk forfeiting their candidatures.

- **Section 84(12)** barred political appointees from being voting delegates or aspirants unless they resigned. This was contentious and faced court challenges. The President and Attorney General of the Federation sought to void the provision at the Supreme Court, but the apex court, in a unanimous decision, dismissed the suit.
- **Section 77** compelled every party to maintain a membership register and submit it to INEC **30 days before primaries**. This aimed to curb the practice of irregular party registers and ensure only bona fide members participate in candidate selection. However, the Act did not specify a direct sanction if parties failed to comply with this submission, raising questions about enforceability.
- **Section 82** mandated parties to give INEC at least **21 days' notice** of any congress or convention for nominating candidates or electing party executives. This enables INEC to send observers or monitor compliance.

Overall, these provisions were meant to make party primaries more transparent and reduce legal disputes by setting clear rules and timelines.

Implementation in 2023

- The 2022 Act was supposed to streamline party primaries and reduce the chaos of last-minute court injunctions and substitutions that marred past elections. All political parties conducted primary elections in mid-2022 to select their flag-bearers for the 2023 polls, meeting the 180-day submission deadline. The new requirement forced greater transparency in how parties ran primaries, with many adopting direct primaries or revised delegate systems to comply. The clear timeline also gave the judiciary a window to resolve pre-election disputes before the general election.
- However, some political parties deliberately and sometimes on security considerations conducted primaries that violated legal stipulations. Some political parties conducted their indirect primaries outside the Senatorial District and Federal and State Assembly Constituency. This violated **Section 84(5)(c)** of the Electoral Act. Some political parties submitted "unusable" membership registers and conducted opaque direct and indirect primaries with such registers. Some of the political actors changed the venue and dates of their primaries at their discretion, and this distorted preparations by the electoral management body in monitoring such primaries.
- Despite the framework, intra-party disputes remained rampant. Aggrieved aspirants who alleged irregularities in primaries (or false information by rival candidates) turned to the courts. Although the Act (**Sections 29(5) and 84(14)**) narrowed the locus standi to only participants in the primaries, it did not stem the tide of litigation – it simply concentrated

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it among insiders. About **1,893 pre-election cases** arose from the party primaries across Nigeria in 2022.⁹

- The Federal High Court, given exclusive jurisdiction, struggled to handle this caseload within 180 days, and hundreds of appeals ensued. This overwhelmed the courts and, in some instances, led to last-minute judicial decisions altering the ballot (even up to a few weeks before the election). For example, several legislative candidates' names changed due to court orders in January/February 2023 and up until the eve of elections, causing confusion for voters and INEC. Consequently, in the 2023 post-election cases, the courts held that where disputes over a political party's valid candidate are not resolved before the election, the party would be deemed not to have had any candidate in that election.¹⁰ Such an outcome indicates that while the law set up a mechanism to handle disputes, the underlying causes (contentious primaries, lack of party internal resolution) were still very much present. It highlights a gap: **legal reforms alone did not incentivize parties to conduct smoother primaries**, and additional measures may be needed in this regard.
- Another shortcoming was the **lack of an enforcement mechanism for Section 77's membership register rule**. Many parties did submit membership lists to INEC, but there were no penalties for non-compliance or falsification. Observers noted that *the Act provided no clear sanction if a party failed to submit its register or if it allowed candidates not in the register*. As a result, cases of "party hopping" persisted – politicians who lost in one party's primary sometimes switched to another party and contested, arguably defeating the purpose of the membership register rule.
- Another issue is **Section 29(5)** of the Act, which restricts who can challenge false information in candidate affidavits to only a fellow aspirant from the same primary. The idea was to prevent opposition parties from meddling in each other's nominations. However, this also meant if all aspirants in a party primary choose not to sue, a potentially ineligible candidate could get on the ballot unchallenged. Moreover, the Act's punishment for a successful Section 29(5) suit is extreme: if a court finds a candidate provided false information about, say, age or qualifications, **Section 29(6)** mandates disqualification of that candidate and their political party, thereby precluding a substitution by the disqualified party. This all-or-nothing consequence arguably dissuades aspirants from filing such cases, as no runner-up wants to win a case that causes their entire party to lose the chance to contest. In 2023, this dilemma was evident as very few Section

9 Premium Times. "NBA Tackles National Assembly for Burdening 77 Judges with 1,800 Pre-Election Suits." *Premium Times Nigeria*, January 24, 2023. <https://www.premiumtimesng.com/news/570223-nba-tackles-national-assembly-for-burdening-77-judges-with-1800-pre-election-suits.html>.

10 See: Policy and Legal Advocacy Centre (PLAC). *From Ballot to the Courts: Analysis of Election Petition Litigation from Nigeria's 2023 General Elections*. Abuja: PLAC, 2025. <https://placng.org/wp-content/uploads/2025/04/FROM-BALLOT-TO-THE-COURTS.pdf>

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29(5) cases succeeded. Some observers argue this clause should be revisited, as it might allow unfit candidates to slip through due to a lack of incentive to challenge.

- Additionally, **Section 29(5)** clearly deals with **pre-election disputes**: an aspirant challenging false information *before* an election takes place. But subsection (6) then directs that the court shall “*declare the candidate with the second highest number of valid votes ... the winner of the election.*” That phrasing presupposes that an election has already been held, which is inconsistent with a pre-election suit that, by definition, arises *before* voting. So, read literally, subsection (6) seems to address a **post-election outcome**, even though it follows a pre-election trigger in subsection (5). To resolve this, the provision should be deleted or amended to clearly indicate its pre-election scope. This clarification would promote coherence, procedural certainty, and consistency in interpretation.
- **Section 84(13)** does not identify the organ or agency responsible for enforcing the non-inclusion of a candidate from a political party that fails to conduct valid primaries in accordance with its constitution, guidelines, or the Act. Some have proposed amending this section to expressly empower INEC to reject or refuse to publish the name of any such candidate. However, in practice, the political consensus has been to reserve that authority for the courts, with INEC merely implementing court orders.
- To align the law with this reality, an alternative proposal is to amend Section 84(13) to formally codify the current judicial enforcement approach, explicitly stating that INEC shall act on issues of candidate inclusion or exclusion only upon the order of a competent court. This would reflect existing practice, acknowledge the legislative history (particularly the 2010 removal of INEC’s broader disqualification powers), and avoid reintroducing a politically sensitive debate. While such an amendment would not expand INEC’s discretion, it would enhance legal certainty and reinforce the judiciary’s role as the final arbiter in intra-party nomination disputes.
- However, it is important to note that the judiciary itself has shown growing discomfort with this role. Courts have increasingly leaned toward removing their jurisdiction over intra-party affairs, a trend reflected in calls to repeal Sections 29(4)–(6) and 84(14) of the Act. This shift is driven by public criticism of perceived judicial interference in candidate selection, often described as “judicial imposition”. If such amendments succeed, the courts’ jurisdiction in pre-election matters would become limited – restricted primarily to hearing complaints from political parties challenging INEC’s refusal to include their candidates on the ballot.
- There were conversations on the legality of the use of “**Placeholders**” (a.k.a. surrogate or dummy candidates) in the 2022 Nominations. While neither the Constitution nor the Electoral Act 2022 recognises the concept

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of “placeholders”, **Sections 31 and 33** of the Act permit withdrawal and substitution of candidates within specific timelines. Parties exploited these provisions not to address genuine withdrawals, but to buy time for political bargaining – submitting temporary nominees, especially for vice-presidential and deputy-governorship positions, while negotiations on final running mates continued.

- **Section 31** of the Act allows a nominated candidate to withdraw in writing, with such withdrawal communicated to INEC by the political party not later than 90 days before the election. **Section 33** then permits the party to substitute the withdrawn candidate within 14 days by conducting fresh primaries. Political parties in the 2022 nomination cycle nonetheless interpreted Section 33 as allowing them to temporarily submit “placeholder” names for these joint-ticket positions, to be replaced later once final decisions were made. They contended that where a vice-presidential nominee validly withdraws in writing within the permitted window, the party may lawfully submit a replacement without conducting a new primary, because the vice-presidency flows from and is incidental to the presidential nomination itself. Others argued that the withdrawal and substitution procedures in Sections 31 and 33 apply equally to the vice-presidential candidate because it is an “elective” position, not an appointive one, and that there can be no informal “placeholder” status for a running mate.

- In effect, the placeholder practice in 2022 exposed a grey area in the law; one that allowed political parties to manipulate timing provisions while remaining within the letter of the Act. To prevent abuse, future amendments should clarify the exact procedure for withdrawal and substitution on joint tickets, explicitly stating whether and how a vice-presidential or deputy-governorship candidate may be replaced, and prohibiting the informal use of “placeholders” that undermine transparency and constitutional coherence.
- Furthermore, a key risk in the placeholder arrangement is that a nominee may refuse to withdraw, since **Section 31** of the Electoral Act requires a personal, written withdrawal by the candidate. Without this consent, the party cannot lawfully substitute a new nominee within the legal window. There were conjectures that political parties would have asked nominee placeholders to sign a withdrawal letter ahead of time to avoid such situation.¹¹ This further exposes the fragility and opportunism of the practice, which relies on personal loyalty rather than legal certainty, and can easily lead to blackmail, internal conflicts, or coercion within parties.

11 The Guardian. “2023: No Place for Placeholder — Falana, Senior Lawyers Back INEC.” *The Guardian Nigeria*, June 24, 2022. https://guardian.ng/news/2023-no-place-for-placeholder-falana-senior-lawyers-back-inec/?utm_term=Autofeed&utm_medium=Social&Echobox=1656053308&utm_source=Telegram

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Positives: To some extent, the extended timelines and clearer rules did impose discipline – for example, all parties concluded their primaries by June 2022 (eight months before the election) and submitted candidate lists by the Section 29 deadline in good time. The threat of having a candidate barred incentivised parties to follow their own rules and timelines more scrupulously than in 2019.

Challenges: Some political parties still conducted primaries that violated legal stipulations, e.g., some parties conducted their indirect primaries outside the Senatorial District and Federal and State Assembly Constituency, contrary to the Act; some submitted “unusable” membership registers and conducted opaque direct and indirect primaries with such registers, while some changed the venue and dates of their primaries at their discretion.

The huge number of pre-election court cases highlights that many aspirants still felt shortchanged and saw litigation as the only remedy. This reveals a need for *better dispute resolution mechanisms within parties* and perhaps arbitration measures that could resolve issues without overburdening the courts. Moreover, the law could be amended to ensure that only candidates who emerged through compliant primaries (and whose names are on the submitted membership register) can be accepted – closing the loophole that allows parties to flout the register with impunity.

The legality of the practice of using “placeholder” candidates was ambiguous, but its ethical implications were clear: it undermined transparency, sincerity of nomination, and respect for voters and aspirants. By treating the nomination process as a fluid political transaction, parties blurred the line between lawful substitution and opportunistic manipulation. The controversy also exposed tensions between legal principles and political expediency. Overall, the experience of 2023 suggests that additional reforms (and strict enforcement) are needed to foster true internal democracy and reduce the incentive for endless litigation after primaries.

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2.3 Election Technology and Results Management

Legal Provisions

One of the most lauded aspects of the Electoral Act 2022 was its formal recognition of election technology.

- **Section 47(2)** requires that a voter can only vote if authenticated by a device such as the Smart Card Reader or **any other technology prescribed by INEC**. This provided legal backing for INEC's Bimodal Voter Accreditation System (BVAS), which uses fingerprints and facial recognition to accredit voters, effectively eliminating manual voter accreditation and incident forms.
- **Section 50(2)** and **Section 60** empowered INEC to determine the procedure for voting and transmission of results, implying electronic transmission was allowed. Specifically, Section 60(5) mandated presiding officers to transfer the election results and number of accredited voters from each polling unit *"in a manner prescribed by the Commission"*.
- Additionally, **Section 64** outlined a process for resolving discrepancies during collation, referencing electronically transmitted results as a check against altered results on paper.

In essence, the Act and accompanying Regulations provided the foundation for INEC's Result Viewing Portal (IReV) – an online portal where polling unit results (scanned from BVAS) are uploaded for public view in real time. The combination of BVAS

and IReV was intended to enhance transparency and confidence in the vote tallying process.

Implementation in 2023

- In the 2023 elections, INEC deployed over 176,000 BVAS devices – one per polling unit – and this significantly improved the integrity of voter accreditation. Reports indicate BVAS functioned well in the vast majority of locations. This dramatically reduced incidents of multiple voting and ghost voting that marred past elections.
- However, the **electronic transmission of results**, which the public believed was guaranteed by the new law, did not go as expected. The electronic results transmission faced major difficulties on presidential Election Day (Feb 25). While the law authorised electronic transmission, it did not *compel* a specific method, leaving it to INEC's regulations. INEC had assured the public and political parties that results from polling units would be uploaded to the IReV promptly on election day. But as polls closed and counting finished, many Nigerians found that the IReV site was not updating with the presidential results as expected. INEC later cited a **"technical glitch"** in their system, acknowledging that the sudden surge of traffic and data on election night overwhelmed the portal. By midnight on election day, only a tiny fraction of polling unit results had been posted online (in contrast to recent off-cycle state elections where most results were viewable by midnight). This delay persisted well into the

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next day, by which time INEC had moved ahead with the national collation of results. The delay – unexplained by INEC in real-time – undermined public confidence and led to speculation about result manipulation.

- The consequence was a **collapse in transparency at the most critical moment**. Party agents and observers could not cross-verify the announced results against the polling unit level records in real time, as intended. Opposition parties walked out of the national collation centre in protest, alleging results manipulation since the agreed electronic safeguard was not functioning. INEC, for its part, proceeded with manual collation and declared winners while promising that the remaining results would eventually appear on IReV. This sequence of events severely undercut the credibility of the process for many Nigerians and observers. The European Union Election Observation Mission (EU EOM) later noted that **lack of transparency in results transmission** was a key failing of the 2023 polls.¹²
- It is noteworthy that the 2023 general elections brought renewed scrutiny to the legal force and enforceability of **INEC's Regulations and Guidelines for the Conduct of Elections (2022)**, especially provisions on electronic transmission and collation of results using the IReV portal. While these regulations were widely viewed

as a progressive step toward transparency, post-election litigation revealed a serious gap in their legal standing. At the heart of the legal debate was whether INEC's stated plans in its regulations to electronically transmit and collate results had the force of law. Courts uniformly held that Regulations and Guidelines, as subsidiary legislation, cannot override or expand the express provisions of the Electoral Act. Both the Court of Appeal and the Supreme Court affirmed that manual collation of results – clearly preserved in the Electoral Act – remains valid and binding, and that non-compliance with INEC's Guidelines on electronic transmission does not automatically invalidate an election.

- Notably, **Section 65** of the Act gives INEC the power to review any result declared under duress or contrary to the law within 7 days. Many stakeholders called on INEC to use this power for the presidential election given the IReV issues. INEC chose not to formally review any presidential results, arguing that allegations of irregularities would be handled by the courts.
- Furthermore, the wording inconsistency in the Act – **Section 50(2)** referencing **Section 63** in error – caused some to argue that electronic transmission was not strictly mandated. Lawyers defending INEC's actions pointed out that the law said results transfer should follow INEC procedure and did not explicitly compel real-time online publication. This legal grey area became a point of contention in post-election litigation.

¹² European Union Election Observation Mission (EU EOM). Final Report: General Elections – Nigeria 2023. Brussels: European Union External Action, June 2023. https://www.eeas.europa.eu/eom-nigeria-2023/european-union-election-observation-mission-nigeria-2023-final-report_en?s=410279

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Positives: BVAS greatly boosted voter authentication. Incidents of overvoting (more votes than accredited voters) were substantially reduced, and where they occurred, they were detectable by comparing BVAS data with results. The legal acceptance of electronic methods represents a progressive step that modernised Nigeria's elections, drawing praise during the voting process in many areas. Also, there were few incidents of ballot box snatching compared to previous election.

Challenges: The failure of the IReV at the crucial moment negated many of the gains in perception. Some uploaded results did not correspond with the polling unit results.

To fulfil the Act's intent, technical systems must be robust. INEC's admission that there was a technical glitch is troubling. In the future, stress-testing and scaling of result transmission infrastructure must be a top priority. The law itself might need an amendment to explicitly require INEC to electronically publish polling unit results on election day, to remove any doubt of legal obligation. Additionally, clearer language substituting "transmit" uniformly (instead of "transfer") could preclude misinterpretation. Finally, INEC's communications during the failure were poor – an area for administrative improvement (timely public information could have tempered suspicion). Overall, technology is only as effective as its implementation; 2023 showed that legislating tech is not enough without operational excellence to back it up.

2.4 Inclusion of Women, Youths, Persons with Disabilities (PWDs), and Internally Displaced Persons (IDPs)

Legal Provisions

The Electoral Act 2022 made some advances in promoting inclusive participation. Certain sections address the needs of under-represented groups.

- **Section 54(2)** requires INEC to ensure that PWDs and other vulnerable persons are assisted at polling places, including the provision of suitable means of communication like Braille, large print, or sign language interpretation.
- **Section 9(2)** directs that the voter register database should record voters' disability status to facilitate targeted arrangements.
- For IDPs, **Section 24(1)** provides that in the event of an emergency (such as conflict or natural disaster) that displaces people, INEC "shall, as far as practicable, ensure that persons displaced are not disenfranchised." This section essentially mandates efforts to include IDPs in voting through special polling centres or other means.
- While the Act does not impose quotas for women or youth candidates, its broad objectives and some party-related provisions (e.g., on improving the primary process) aim to level the ground for more female and youth aspirants to compete fairly.

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Implementation in 2023

- In its 2023 General Election Report, INEC noted that ahead of the 2023 elections, they worked with disability-rights NGOs to map PWD voters nationwide and the types of assistance they might need. By the final register, about **85,000** voters were officially recorded as persons with disabilities (across various categories such as albinism, visual impairment, hearing impairment, physical disability, etc.)¹³ According to INEC, this informed the procurement of assistive devices such as approximately **15,000 magnifying glasses** for voters with visual impairment and nearly **6,000 Braille ballot guides** across polling units.¹⁴
- Some election-day reports indicate several polling units did have these aids available, and priority queuing was implemented for PWDs, the elderly, and pregnant women in line with INEC guidelines. These measures were positive, although some PWD advocacy groups noted inconsistency in application (e.g., not all election staff were trained on how to use or offer the Braille guide). Other reports note that INEC did not do enough to support persons with disabilities (PWDs) during elections.¹⁵

13 TAF Africa. *Election Preparedness Report on Disability Inclusion v1.2*. Available at: <https://tafafrica.co/documents/election-preparedness-report-on-disability-inclusion-v1-2/>

14 Independent National Electoral Commission. *Report of the 2023 General Election*. February 2024. <https://inecnigeria.org/wp-content/uploads/2024/02/2023-GENERAL-ELECTION-REPORT-1.pdf>

15 Abdullahi, Maryam. "Report: 2023 election shows INEC not committed to assisting PWDs." *TheCable*, 14 July 2023. Available at: <https://www.thecable.ng/report-2023-election-shows-inec-not-committed-to-assisting-pwds>

- It's worth noting that observer reports corroborated these measures while also highlighting implementation gaps. For instance, TAF Africa (The Albino Foundation) found that many polling units still lacked these materials on election day. TAF's PWD observers noted that **75%** of polling units had no Braille ballot guide and **87%** had no magnifying glass during the March 18 gubernatorial elections.¹⁶ Furthermore, the EU Election Observation Mission¹⁷ noted Braille guides were only available for the presidential ballot, not for other races, undermining equal access for visually impaired voters in those other contests.
- For IDPs, Nigeria faced a challenge as 2023 saw significant populations displaced by conflict (insurgency in the North-East, banditry in the North-West, etc.). INEC had developed an **IDP Voting Framework** in 2022, which delineated how IDPs in camps could vote, primarily in presidential and governorship elections of their home states. In practice, special polling units were arranged in certain IDP camps. IDPs who remained within their state could vote for all offices; those outside their state could vote only in the presidential election (since legislative seats are state-specific). During the elections, IDP voting occurred in parts of Borno, Adamawa, and other affected states. Turnout among IDPs varied, and observations showed

16 "Elections: Deployment of braille ballot, magnifying glasses for PWDs was inadequate – TAF Africa." *News Agency of Nigeria (NAN)*, 18 March 2023. <https://nannews.ng/2023/03/18/elections-deployment-of-braille-ballot-magnifying-glasses-for-pwds-was-inadequate-taf-africa/>

17 Supra

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several hurdles: some IDPs were not aware of arrangements, and those living outside formal camps (with host families, etc.) often could not be accommodated.¹⁸

- Meanwhile, women's inclusion in elective offices did not see a marked improvement under the new Act. Parties are often urged (but not compelled) to consider affirmative action measures. Ultimately, women constituted roughly 10% of candidates and fewer than 5% of those elected – a statistic essentially unchanged from 2019. The broad goals of reformers to open up the political space for women and youths were not substantially achieved in 2023 – pointing to sociopolitical impediments

beyond the scope of the Electoral Act. Many are advocating for revisiting proposals like a constitutional measure for reserved seats for women or incentives for parties to nominate women, to meet the verbal promise of inclusion. At minimum, political parties need stronger internal policies (or perhaps legal requirements) to promote female candidates during primaries, which the current Act does not provide. Youth registration was high, indicating interest, but this did not translate to voting turnout or tangible youth candidacy.

18 See: Global Protection Cluster. *Advocacy Note: Participation of Internally Displaced Persons in Electoral Processes in North-East Nigeria*. March 2023. https://globalprotectioncluster.org/sites/default/files/2023-03/psne_-_idp_participation_in_elections_-_march_2023.pdf.

See also: Haruna, Abdulkareem. "2023: Examining Nigeria Electoral Body's Plan To Conduct Election In IDP Camps." *HumAngle*, 6 February 2023. <https://humanglemedia.com/2023-examining-nigeria-electoral-bodys-plan-to-conduct-election-in-idp-camps/>

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Positives: The Act's emphasis on inclusion led to tangible actions. Accessible election materials were more available than ever before. The 2022 Act might be considered the most PWD-friendly to date in Nigeria. PWD organisations felt empowered by the law to demand accommodations, and INEC's responsiveness set a precedent. For IDPs, having a legal mandate pushed INEC to create a framework where none existed before, allowing at least thousands of displaced citizens to vote when previously they would have been completely excluded.

The Continuous Voter Registration (CVR) exercise before the 2023 election was bolstered by technology and drew millions of young Nigerians. Out of **9.5 million** new voters registered in 2021–2022, about **76.5%** were ages 18–34. INEC's introduction of the online pre-registration portal and the biometric data capture (facial and fingerprint) through the INEC Voter Enrolment Device helped streamline the process and attract tech-savvy youth.

Challenges: Implementation gaps persisted. Many polling units still lacked full accessibility (e.g., situated in hard-to-reach locations for wheelchair users, or no sign language interpreters for deaf voters). Reports say that only **22.26 percent** of PWDs had assistive aids, **while 38.05 per cent** could not access voter education initiatives.¹⁹ Also, priority voting was not uniformly enforced. The IDP voting arrangement was limited – without constitutional amendments, IDPs outside their state cannot vote for local representatives, a gap that the Act alone cannot fix.

In addition, the challenge remains to convert youth enthusiasm in registration to actual voting, which fell short – pointing to a need for better voter engagement strategies after registration. Overall voter turnout in 2023 hit a historic low of **26.7%** of registered voters. In raw numbers, about 25 million people voted out of 93.5 million registered (many of the registrants were young people).²⁰ This is strikingly low, even accounting for the fact that many “registered” voters might have relocated or died (a perennial issue with the register). The steadily declining turnout since 2003 (when it was 69%) is alarming. Reasons for 2023's low engagement include logistical obstacles, security fears, and currency and fuel crises at the time which complicated travel plans for voters.

19 Abdullahi, Maryam. “Report: 2023 election shows INEC not committed to assisting PWDs.” *TheCable*, 14 July 2023. Available at: <https://www.thecable.ng/report-2023-election-shows-inec-not-committed-to-assisting-pwds>

20 Punch. “2023 Voter Turnout Hits 44-Year Low, Drops to 27%.” *The Punch Nigeria*, March 1, 2023. <https://punchng.com/2023-voter-turnout-hits-44-year-low-drops-to-27/>.

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2.5 Election Security and Electoral Offences

Legal Provisions (Security)

The Act equips INEC with tools to manage security disruptions.

- **Section 24** permits INEC to postpone an election in a particular area if there is reason to believe holding it would result in a serious breach of peace, provided such postponement is no longer than necessary and reasons are “cogent and verifiable”. If an election has already started and is then disrupted, Section 24(3) allows suspension and rescheduling of the voting in affected units.
- **Section 27(3)** emphasises that INEC controls the deployment of security personnel during elections, and it may request the aid of the armed forces solely for protecting election materials and officials. These provisions aimed to reinforce INEC’s lead role in election security coordination and ensure uniformed services act in support, not independently.
- Other provisions (e.g., **Section 34**) handle scenarios like a candidate’s death during the process, allowing elections to be rescheduled and parties to nominate substitutes in certain races – ensuring one candidate’s demise doesn’t disenfranchise voters or invalidate the entire election.

Legal Provisions (Offences)

- The Act enumerates a wide range of electoral offences (from voter registration fraud to vote-

buying, ballot box snatching, announcement of false results, etc.) in **Sections 114–129** and elsewhere, and in many cases imposes stiffer penalties than the 2010 law. For instance, imprisonment terms and fines were increased for offences like bribery and violence.

- Importantly, **Section 145** empowers INEC to prosecute electoral offenders through its legal officers or lawyers it appoints. Also, if an election tribunal makes a recommendation for prosecution in its judgement (for example, naming individuals involved in fraud), INEC is required to consider those recommendations and act on them.

Implementation in 2023 (Security)

- The 2023 elections were conducted under significant security pressures. In the lead-up, several INEC offices were attacked by unknown arsonists, and there were areas of the country under threat from insurgents or criminals. INEC invoked **Section 24** when it postponed the Governorship and State Assembly elections by one week (from March 11 to 18), citing the logistical challenge of reconfiguring BVAS devices after the February 25 presidential vote and some concerns about tensions. During the February 25 polls, when violence or snatching of materials occurred in certain polling units, INEC sometimes suspended voting there and later conducted reruns (for example, some Senate and House races were declared inconclusive and re-run where violence had interrupted the initial vote). These actions were in line with

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the powers given by the Act to ensure voters eventually have a peaceful environment to cast ballots.

- Despite preventive deployments of 400,000+ security personnel nationwide, election day saw incidents of violence: ballot boxes were snatched in many polling units; there were reports of voters being threatened in a few urban areas; and clashes between rival party supporters occurred. Security forces reacted by reinforcing presence in hotspots, but often after damage was done. In most cases, voting proceeded, but sometimes under tension.
- After the elections, calls were renewed to establish a dedicated body to investigate and prosecute electoral offences, as recommended by the 2008 Uwais Reform Committee and echoed by civil society. The Act's provisions for penalties are only as good as their execution. In 2023, they were largely **not a deterrent**, as evidenced by recurrent vote-buying and reports of officials manipulating results in some areas (with the expectation that consequences, if any, would be minimal).

Implementation in 2023 (Offences)

- Enforcement of electoral laws remained the weakest link. Although numerous offences were observed (open vote-buying in some polling units despite a new ban on phones in voting booths; underage voting in a few locales; violence, etc.), few arrests or prosecutions took place during or after the elections. INEC reportedly set up a committee to review tribunals' judgments for recommended prosecutions, but as of late 2023, almost none of the tribunal-flagged offences had led to convictions. The sheer number of cases is problematic – INEC lacks the capacity to prosecute all offenders, and there is currently no independent Electoral Offences Commission to take on that task.

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Positives: The legal framework did empower INEC to act decisively in a few instances – notably, preventing potential chaos in the Adamawa supplementary governorship election, where INEC nullified an illegal declaration (a REC had announced a winner prematurely) and then concluded the process properly. Additionally, the explicit assignment of security coordination to INEC helped in principle to assert civilian authority over security forces in elections.

Section 24 was invoked in a few instances: for example, voting was postponed in some polling units due to violence or threat. These reactive measures ensured those communities eventually voted, which is a positive use of the contingency provisions. However, proactive prevention of violence remains an area needing improvement beyond what the Act alone can achieve.

Challenges: Observers criticised the overall security arrangement as reactive and noted that perpetrators of obvious election-day violence were seldom arrested on the spot. Election security on the ground did not dramatically improve, as violent political actors adapted their tactics. The Act alone cannot eliminate these threats; it requires strong inter-agency collaboration and political will to prosecute high-profile offenders. The near-absence of accountability for offences in 2023 underscores that structural reforms are needed, such as creating the Electoral Offences Commission with prosecutorial powers (so INEC can focus on administration), as well as judicial reforms to ensure swift trials for such cases. Until perpetrators face real consequences, the cycle of electoral violence and malpractice may continue despite tougher laws.

2.6 Election Dispute Resolution (Pre-Election and Post-Election)

Legal Provisions

The Act and related constitutional amendments streamlined the adjudication of both pre-election and post-election disputes.

- For pre-election (intra-party) disputes, the Act reinforced that only the Federal High Court has jurisdiction over cases like candidate eligibility or substitution – e.g., Section **29(5)** allows an aspirant who participated in a primary to sue if another candidate's submitted information is false, and Section **84(14)** gives the Federal High

Court exclusive jurisdiction on suits against party primary procedures.

- **Section 285 (9) to (14) of the Constitution** fixes tight timelines for pre-election cases, which must be filed within 14 days of the contentious act and resolved within 180 days, with appeals concluded 60 days after judgment.
- **Section 285 (5) to (7) of the Constitution** states that election petitions must be filed within 21 days after the declaration of results. All petitions must be decided within 180 days at the tribunal and 60 days at the appeal level. For presidential election petitions, the Court of Appeal is the court of first instance (with final

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appeal to the Supreme Court). Governorship petitions start at Tribunals (appeal to the Court of Appeal, then the Supreme Court). Legislative (National/State Assembly) petitions go first to Election Tribunals (appeals end at Court of Appeal).

- **Section 134** of the Act indicates three strict grounds for an election petition – including that a winner can be challenged for not meeting constitutional qualifications, corrupt practices/non-compliance with the law, or not scoring a majority of lawful votes. Any claims outside these three grounds will not be entertained. Among these, **Section 134(1)(a)**, which lists “a person not qualified to contest the election”, proved the most contentious during the 2023 post-election petitions.
- **Section 134(3)** – a new provision in the 2022 Act – explicitly limits “qualification” to those prescribed by the Constitution, such as citizenship, age, education, and party membership.
- The Act included novel provisions:
 - **Section 138 (1-2)** states that an officeholder will not be removed if their election is nullified on appeal until all appeals are exhausted and that they can retain benefits earned in office even if the victory is later overturned. This was to prevent scenarios of premature ouster and the uncertainty of rotating office occupancy while appeals are pending.
 - **Section 137:** To make election cases faster and less cumbersome, the 2022 *Electoral Act* introduced this provision, allowing judges to rely directly on documents where errors or irregularities are obvious, such as unsigned result sheets or figures that don't add up, without needing oral witnesses to explain them. A related rule in **Paragraph 46(4) of the First Schedule** to the Act also lets lawyers tender such documents and argue their meaning without calling multiple witnesses. The goal was to cut down delays caused by calling hundreds of witnesses just to confirm what was already clear on paper.
 - Under **Section 74(1)** of the *Electoral Act*, Resident Electoral Commissioners (RECs) are required to issue certified true copies of election materials to any party to a petition within 14 days of application. Subsection (2) further makes non-compliance an offence punishable by up to ₦2 million in fines or 12 months' imprisonment, or both.

Implementation in 2023

- The dispute resolution legal framework was rigorously tested. On the pre-election side, as discussed, Federal High Courts across Nigeria heard nearly 1,900 cases stemming from party primaries in 2022. The courts often struggled to deliver within 180 days due to volume, but by election time, most had been decided or at least reached the appeal stage. Still, some appeals were only resolved on the eve of the

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general election, affecting final candidate lists. The concentration of jurisdiction in one court level (FHC) created a congestion, suggesting that the intended efficiency gains need re-examination. It also essentially paused other Federal High Court business for months, since judges were reassigned to handle political cases (as highlighted by the fact that 77 Federal High Court judges faced 1,893 cases, disrupting normal court functions).²¹

- For post-election petitions, after the 2023 vote, a total of **1,209 petitions** were filed across tribunals for various offices. This number is on the higher end historically (the highest being 1,290 in 2007).²² The tribunals and courts generally adhered to the prescribed timelines: notably, the presidential election petition filed by opposition candidates was adjudicated by the Court of Appeal and a final Supreme Court judgment was delivered in October 2023, about 8 months after the election, thus within the legal limit. Many legislative petitions were decided in under a year, with some reruns ordered (e.g. in a few Senate and House seats). The 180-day rule meant that by September 2023, virtually all tribunal judgments were delivered. This is a significant improvement over earlier decades where cases dragged on or winners served full terms before decisions.
- However, the provision letting officeholders remain in their seats during appeals (**Section 138**) had a mixed reception. On one hand, it prevented sudden power vacuums when initial tribunal judgments were overturned on appeal. On the other, a winner found illegitimate by a tribunal still enjoyed time in office and could use state resources to fight the appeal. This is also inadvertently enabled by the existing election petition timelines, which extend beyond the swearing-in of winners. For instance, several governors and legislators in 2023 kept their seats while appealing tribunal verdicts that annulled their elections, in some cases prolonging their tenure by months before a final adverse judgment removed them. Critics claim this incentivises incumbents to “*win at all costs*” and *sort it out in court*, knowing they won’t have to vacate immediately.
- Additionally, the sheer scale of post-election litigation post-2023 put strain on the judiciary and raised concerns that the people’s will is often decided in court rather than at the ballot box. PLAC’s analysis of the 2023 post-election (*[From Ballot to the Courts: Analysis of Election Petition Litigation from Nigeria’s 2023 General Elections](#)*) notes that Nigeria’s courts have effectively become a regular part of the electoral process with thousands of cases each cycle and judges diverted to tribunals (over 300 judicial officers deployed in 2023), causing justice delays elsewhere.²³

21 Premium Times. “NBA Tackles National Assembly for Burdening 77 Judges with 1,800 Pre-Election Suits.” *Supra*. See footnote 1

22 See: <https://electioncases.placlibrary.org/>. See also Kimpact Development Initiative. “Why We Must Know the Winner Before the Oath Is Taken: Why Nigeria Must Conclude All Post-Election Disputes Before Inauguration.” *KDI Blog*, 30 June 2025. Available at: <https://kimpact.org.ng/blog/post/10184#gsc.tab=0>

23 “CJN swears in 39 additional judges for election tribunals.” *Lawyard*, 25 May 2023. Available at: <https://www.lawyard.org/news/cjn-swears-in-39-additional-judges-for-election->

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- Many election petitions claimed that declared winners were not validly sponsored by their parties or that their names were missing from the party register, arguing that such defects amounted to *disqualification* under **Section 134(1)(a) and (3)**. They contended that if a candidate did not emerge from a valid primary conducted according to law, the resulting nomination should be seen as a qualification issue that an election tribunal could hear. However, **Section 134(3)** clearly limits “qualification” to those prescribed by the Constitution, such as citizenship, age, education, and party membership. On this basis, most tribunals rightly held that disputes over nomination or sponsorship are pre-election matters, to be determined before voting under **Sections 29(5) & (6) and 84(14)** of the Act, which govern party primaries and nomination processes. Nonetheless, inconsistency arose because some tribunals assumed jurisdiction, treating invalid primaries as post-election qualification issues. In places like Plateau and Imo, this led to the nullification of several legislative seats, creating public confusion and uneven precedent. This confusion exposed an implementation problem in **Section 134(1)(a)**: while intended to allow genuine challenges to a candidate’s constitutional eligibility, some litigants felt the broad phrasing blurred the line between qualification and nomination, encouraging conflicting interpretations.
- The Supreme Court later criticised these decisions, reaffirming that tribunals must not entertain nomination or sponsorship issues, which fall strictly within pre-election jurisdiction. The apex court described these contrary rulings as a disregard of binding precedent and a misinterpretation of **Section 134(1)(a)**. This position by the apex court revealed an implementation challenge, not a legislative one. The law itself had been clarified through **Section 134(3)** and judicial decisions, but litigants and some tribunals continued to stretch its meaning to reopen nomination disputes after elections.
- Another implementation challenge is the innovation in **Section 137**, which did not work as intended in the 2023 election petitions. Many courts still insisted on oral evidence, saying that relying only on documents alone could breach fair-hearing rights or contradict existing rules of evidence. This led to inconsistent interpretations – some tribunals applied **Section 137**, while others ignored it. The Supreme Court further compounded the problem in the presidential election petitions by holding that it was within the discretion of trial judges to determine when oral evidence could be dispensed with. This approach ultimately undermined the uniformity and efficiency the provision sought to achieve.
- It is noteworthy that dissenting judicial opinions criticised the strict evidentiary standards, which required petitioners to prove allegations through extensive oral testimony, even when documentary evidence clearly showed

[tribunals/](#)

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irregularities. They argued that this rigid approach made electoral justice practically unattainable, allowing winners of flawed elections to glory in the infamy of their victories. In this view, **Section 137** and **Paragraph 46(4)** of the *Electoral Act 2022* were enacted to correct this injustice by abolishing the outdated rule against “dumping” documents and promoting a more realistic, common-sense standard of proof that focuses on the substance of electoral disputes and ensures substantial justice rather than technical defeat.

- Access to election documents remained a serious challenge during the 2023 election petitions despite the clear provision in **Section 74(1)** of the Act for Resident Electoral Commissioners (RECs) to issue certified true copies of election materials to any party to a petition within 14 days of application and attached criminal penalties. INEC and some RECs were repeatedly accused of refusing or delaying compliance with court orders to release election materials needed for petitions. These delays often crippled petitioners’ cases, as the requested documents were crucial for proving allegations of irregularities or non-compliance. This represents a significant implementation failure. The existing penalties proved inadequate or unenforced, allowing non-compliance to persist with little consequence. There is therefore a need for stricter sanctions, clearer enforcement mechanisms, and personal accountability for electoral officials who wilfully disregard lawful requests or court orders in

election petition proceedings.

- Election petitioners in 2023 faced a major challenge complying with the **21-day deadline** for filing petitions, which includes frontloading all evidence, i.e., witness lists, sworn statements, and documents, as required by **Paragraph 4(5) of the First Schedule** to the Electoral Act 2022. Courts extended this rule even to subpoenaed witnesses, who are often uncooperative or beyond the petitioner’s control. As a result, several petitions had key testimony struck out, undermining fair hearing. There is a need to amend the Electoral Act to exempt subpoenaed witnesses from the 21-day frontloading requirement, allowing their statements to be filed later upon showing good cause. This would safeguard due process without sacrificing judicial efficiency.
- Note that **section 285 of the Constitution** currently prescribes uniform timelines for the filing of election petitions, regardless of the size and complexity of the electoral constituency involved. This approach fails to account for the vastly different burdens faced by petitioners in various categories of elections. For instance, the presidential constituency spans **176,846 polling units** nationwide, whereas gubernatorial constituencies are significantly smaller: Examples are: Abia State: 4,062 polling units (PUs); Akwa Ibom, 4,353 PUs; Bauchi, 5,423 PUs; Kano, 11,222 PUs; and Lagos, 13,325 PUs.

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- At the legislative level, constituencies become even more granular. Benue State has 11 Federal Constituencies and 32 State Constituencies, Kwara has 6 Federal and 24 State Constituencies, while Niger has 10 Federal and 27 State Constituencies. The burden of gathering evidence in a presidential election petition is far greater than that required for, say, a State Assembly election. Yet, petitioners face the same compressed timeframe. Under

current law, a presidential petition must be filed within **21 days**, the same window applicable to less complex elections. This creates inequity and undermines the thorough preparation of large-scale petitions.

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Positives: The strict timelines for election petitions ensured that, unlike in the past, electoral disputes did not linger indefinitely. By law, virtually all 2023 election cases were concluded before mid-2024. This is crucial for governance stability. Some tribunals also demonstrated independence in several cases, nullifying results where evidence of irregularities was strong (e.g., courts ordered supplementary elections due to overvoting proven by BVAS data – a new development made possible by electronic accreditation records).

Challenges: The volume and complexity of cases reveal that electoral justice in Nigeria is still overly legalistic and cumbersome. About **89% of post-election petitions** failed due to high evidentiary burden – signalling that the courts are mostly delivering technical justice vs. substantial justice. The concentration of jurisdiction in one court level (Federal High Court) for pre-election matters created a congestion, suggesting that the intended efficiency gains need re-examination. Ultimately, preventing disputes through better election conduct (addressing the root causes of petitions like rigging, violence, or administrative errors) would reduce dependence on the courts.

The confusion around **Section 134(1)(a)** underscores the need for judicial consistency and compliance with precedent. What is required is strict adherence to the Supreme Court's interpretation that only constitutional qualifications are grounds for post-election petitions, while nomination and sponsorship disputes remain within the domain of pre-election litigation. The innovation in **section 137** of the Act that sought to make tendering of documentary evidence in election petitions less cumbersome did not work as intended in the 2023 election petitions. Many courts still insisted on oral evidence, arguing that relying solely on documents could breach fair-hearing rights or contradict the Evidence Act.

Several office holders kept their seats while appealing tribunal verdicts that annulled their elections. To ensure petitions are finalised before winners take oath of office, stakeholders have called for a *single-tier* adjudication for certain offices to cut down delays (for example, having presidential petitions go straight to the Supreme Court as first and last instance) and a *double-tier* adjudication for Governorship election petitions instead of the current three-tier. The current system, while improved by timelines, is still onerous and often beyond the understanding of the average voter.

■ 3. Recommendations for Reform and Improvement

Building on the analysis above, this section outlines clear, actionable recommendations to enhance Nigeria's electoral legal framework and processes. The recommendations are grouped into three categories – **legislative amendments**, **INEC administrative reforms**, and **civic engagement strategies** – reflecting the multi-faceted approach needed. Lawmakers, INEC, and civil society all have roles to play in consolidating the gains of the Electoral Act 2022 and rectifying its shortcomings.

3.1 Legislative Amendments and Policy Changes

A. Clarify and Correct Provisions in the Act:

- i. **Align Voter Registration Deadlines:** Amend Section 19(1) to require display of the voter register, say, 120 days before the general election (instead of 90 days) to avoid overlap with the 90-day stoppage of registration in Section 9(6).
- ii. **Fix Cross-References and Terminology:** Issue an amendment to Section 50(2) to reference Section 60 (not 63). Standardise the use of “transmit” (or “electronically transmit”) across all sections dealing with results to remove any legal ambiguity.
- iii. **Review Section 29(5) & (6) (Candidate Qualification Suits):** Adjust the remedy for challenging false candidate information so that if a candidate is disqualified for false information, the petitioner (if otherwise eligible) could benefit (e.g., getting the nomination). This could incentivise internal whistleblowing on unqualified candidates.
- iv. **Enforce Party Membership Register:** Amend Section 77 to impose a consequence if a party fails to submit its membership list. For instance, stipulate that only those in the submitted register can be validly nominated as candidates or delegates. This will discourage parties from flouting the rule and curb last-minute cross-carpeting of aspirants.
- v. **Explicitly Mandate Result Transmission:** Strengthen the law to state that polling-unit-level results must be electronically published by INEC in real time (network permitting). This could be in Section 60, tying electronic transmission to transparency and allowing INEC to prescribe the platform (e.g., IReV) by regulation. Making this an explicit requirement will bolster trust.
- vi. **Create a clear exemption for subpoenaed witnesses from the 21-day frontloading requirement:** This can be via amendment to Paragraph 4(5) of the First Schedule to the Act. Their written statements on oath should be admissible if filed later, provided the party demonstrates reasonable justification. This reform acknowledges that such witnesses may be unknown or inaccessible at the time of filing, and it ensures that procedural rules do not obstruct substantive justice or fair hearing. This adjustment would preserve procedural fairness, reduce unjust disqualification of critical testimony, and align electoral justice with principles of access and equity.

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vii. **Clarify the conditions under which documentary evidence alone may be relied upon in election petitions:** Amend Section 137 of the Electoral Act to outline specific scenarios where this streamlined approach is appropriate, while also allowing tribunals to require minimal oral testimony to draw attention to material non-compliance apparent on the face of the documents. Importantly, given that election petitions are *sui generis* in nature, the restrictive provisions of the Evidence Act on tendering documentary evidence – often cited to sideline Section 137 – should not override its application. This reform would preserve the intent of Section 137 while ensuring procedural fairness and evidentiary coherence in election litigation.

viii. Amend **Section 285 of the Constitution** to ensure that election petition proceedings – particularly appeals in presidential and governorship elections – are concluded before the swearing-in of declared winners. This reform would help ensure that only candidates with legally validated mandates assume office, curb the incentive to “win at all costs”, and reduce the misuse of state resources during appeals. Further amend section 285 to introduce differentiated timelines for the filing of petitions, proportionate to the scale of the constituency. For instance, presidential election petitions could be allotted 35 days, while governorship petitions may retain

30 days, and State Assembly or National Assembly petitions continue at 21 days. This adjustment would promote fairness, allow more time for evidence gathering in large-scale elections, and strengthen the quality and credibility of electoral adjudication.

B. INEC Independence and Institutional Reform:

i. **Appointment of INEC Leadership:** Work towards a constitutional amendment (long-term) to reform the appointment process for the INEC Chair and Commissioners. Options include a bipartisan committee or independent body to vet nominees or requiring multiple stakeholders (such as the Judicial Council, civil society, etc.) to be involved in nominations. The goal is a more merit-driven, transparent selection to strengthen public confidence. In the interim, enforce rigorous screening of nominees for non-partisanship in the Senate confirmation process.

ii. **Unbundling INEC:** Consider laws to offload some responsibilities from INEC as recommended by various panels. For instance, create a Political Parties Registration and Regulation Commission (to oversee party registration and finances) and transfer constituency delimitation to another agency or an independent commission. This would let INEC concentrate on election operations. It requires legislative action beyond the Electoral Act, but the Act

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could be amended to formally recognise such bodies once established.

C. Electoral Offences and Enforcement:

i. Establish the Electoral Offences

Commission: Although this is a separate bill (still pending), it is an essential complement to the Electoral Act. The National Assembly should prioritise passing a law to create an independent commission with investigative and prosecutorial powers for election offences. This body can take over the role that Section 145 of the Act places on INEC, allowing INEC to focus on its core mandate. The commission should have dedicated tribunals or special courts for speedy trials of such cases.

- ii. **Interim Measures:** Until the above is in place, amend the Act to allow INEC to delegate prosecution powers to other agencies (e.g., the Ministry of Justice or federal prosecutors) more formally, ensuring more cases are pursued. Also consider increasing some penalties (like for vote-buying) to further deter politicians – for example, making vote-buying a ground for disqualification if proven.

D. Electoral Justice System:

i. Simplify Election Petition Process:

Advocate for constitutional amendments to reduce the layers of election petition appeals, at least for the presidential and governorship elections. One proposal is

to have the Court of Appeal as the court of first instance for governorship election petitions to cut down time and conflicting judgments.

ii. Pre-Election Dispute Resolution:

Encourage legal provisions to promote internal party dispute resolution mechanisms (e.g., mandatory arbitration panels within parties) such that some issues are settled in-house or via mediation before escalating to courts. This won't eliminate litigation but could filter out frivolous cases.

iii. Post-Election Cases Timeline Adjustments:

Evaluate if the 180-day/60-day timeline for resolving election disputes is optimal. Some have argued for even shorter timelines (like 120 days) to resolve disputes well before swearing-in. However, speeding up must be balanced with fairness and due process. The provision of the Constitution that limits Presidential, National Assembly and State Houses of Assembly elections to two stages should be applied to governorship election petitions as well. It is suggested that the governorship election petition should be determined at the Court of Appeal and Supreme Court levels only.

E. Electoral Inclusion Reforms:

Legislate more robustly for voters with disabilities and IDPs. For PWDs, consider mandating tactile ballots or other aids in the Act itself (though INEC already does via guidelines).

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3.2 INEC Administrative and Operational Reforms

- A. **Comprehensive Election Audit:** INEC should conduct an in-depth audit of the 2023 elections covering logistics, training, technology, and communication. The audit must identify why delays occurred (e.g., what went wrong with transporter contracts, where materials distribution broke down) and recommend corrective measures. This introspection, if made public in summary, will assure stakeholders that INEC is learning from mistakes.
- B. **Overhaul Logistics Planning:** INEC's Election Monitoring and Support Centre (EMSC)—a tool that tracks operational readiness—must be enhanced and fully utilised at all levels. Personnel deployment should be reviewed to ensure polling units are adequately staffed and start on time.
- C. **Training and Capacity Building:** INEC should strengthen training for both permanent and ad-hoc poll workers through earlier, frequent, and practical sessions, especially on BVAS use, result transmission, and form handling. Standardised manuals reflecting lessons from 2023 should guide all trainings, with proper monitoring and a “training of trainers” system for consistency. The Commission should also assess ad-hoc staff performance and build a roster of proven personnel for re-engagement to enhance institutional memory and reliability in election operations.

D. Strengthen Election Technology Systems:

INEC should upgrade and stress-test its technological infrastructure, especially the IReV platform, to handle high traffic and prevent failures. Independent audits, backup networks, and clear fail-safe mechanisms are essential.

E. Improve Communication and Transparency:

Equally important is improving communication and transparency: INEC should issue prompt, factual updates during technical disruptions, proactively share accreditation and results data, and maintain open engagement with stakeholders rather than allowing an information vacuum. Honest, real-time communication will build public confidence and counter misinformation.

F. Election Security Coordination:

While security is not directly under INEC's control, the Commission co-chairs the Inter-Agency Consultative Committee on Election Security (ICCES) and can push for better coordination. Ahead of elections, INEC should help map out hotspots and ensure security forces deploy in adequate numbers to those areas. The safety of election officials and materials must be prioritised with preventive plans against attacks or abductions.

- G. **Prosecution of Offenders:** Even ahead of an Offences Commission, INEC can collaborate with police to ensure at least high-profile cases from 2023 are investigated and brought to court. Showing that a politician

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or thug caught engaging in violence or fraud is penalised will send a message. INEC can publish a “white paper” listing offences during 2023 and what actions have been taken, pushing security agencies to follow up.

3.3 Civic Engagement and Stakeholder Actions

CSOs and advocacy groups should intensify voter education on the Electoral Act and election procedures using local languages and accessible formats to counter misinformation and build public confidence. Targeted inclusion programmes should empower women, youth, and persons with disabilities to participate actively in politics.

Political parties must commit to internal democracy and transparency in primaries, while the media should promote factual reporting, counter fake news, and help popularise key provisions of the Electoral Act.

Citizens should be encouraged to report election incidents through verified civic tech platforms to enhance accountability. Continuous post-election reviews by INEC, the legislature, and CSOs are vital to sustain reform momentum. Finally, civil society should monitor the implementation of INEC’s promised reforms through regular engagement and follow-up.

■ 4. Conclusion

The 2022 Electoral Act significantly shaped the conduct of Nigeria's 2023 general elections – introducing reforms that yielded both positive outcomes and revealing areas requiring further work. This post-legislation assessment has identified that **legal frameworks, no matter how well-crafted, must be matched by effective implementation.** The 2023 elections showed improvements in areas like biometric voter accreditation and early preparation, yet they were marred by lapses in result transparency, logistical failures, and persistent electoral malpractices.

For Nigeria to consolidate its democracy, it is imperative to treat the Electoral Act 2022 as a living document – one that can be amended to plug gaps and updated to meet emerging challenges. Likewise, INEC must critically evaluate its operational deficiencies and take bold steps to fix them, as the credibility of elections rests not just on laws but on performance.

Finally, the role of citizens, media, and civil society remains crucial. Democratic progress is most sustainable when driven by the people themselves demanding accountability and transparency. The clamour for “deepening electoral reforms” after 2023 – including ideas once proposed by the Uwais Committee and newer recommendations by observer groups – provides a roadmap. Lawmakers and policymakers should seize this momentum to implement the actionable changes outlined in this report. By doing so, Nigeria can ensure that future elections build on the 2022 reforms and truly reflect the will of the people in a free, fair, and peaceful manner.



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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