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# THE LEGAL FRAMEWORK REGULATING ELECTIONS IN NIGERIA

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**ABSTRACT**

The process called election would be practically impossible in a non-democratic system of government. Democracy is a system of government where the people rule directly or indirectly through representatives periodically elected by them through an electoral process. The determinant factor of the time frame for elections differs due to the distinctive feature of various electoral systems applicable in different countries. Lincoln[1]who is a major proponent of democracy is believed to have given one of the most comprehensive definitions of democracy. He opined that democracy is a government "of the people, by the people and for the people. "The participation and involvement of the people is paramount. Clearly, the

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[1]Abraham Lincoln, 16th president of the United States of America.

stability of a democratic system is hinged on the fulcrum of credibility and fairness of elections which are indispensable pillars of sustainable democracy. Free and fair elections satisfy the innate desires of every democratic country.

Since Nigeria gained her independence from colonial rule, Nigeria's electoral process has been bedevilled by irregularities including political thuggery, voter intimidation, violence, and electoral fraud committed either by INEC, Security officials, political parties and their officials or their supporters. These various acts obliterate the foundations of ideal elections in a country practicing the democratic system of government. Achieving this ideal situation will engender having set of laws, rules and regulations enacted or made to ensure the effectiveness of an electoral process. This work looks at the various existing legal regulatory framework that are in place for elections to be truly democratic include; The CFRN 1999 (as amended), The Electoral Act 2022, INEC Regulation and Guidelines for the Conduct of Election 2022, The Code of Conduct and Rules of Engagement for Security Personnel on Electoral Duty, 2020. Etc.

**Keywords:** Democracy, Elections, Fair and credible, Legal regulatory, Framework.

## 1. INTRODUCTION

Political and socio-economic development is of relevance to a democratic country like Nigeria especially where the potentiality of such development is dependent on a credible electoral system. A reliable regulatory framework which must be legal is a determinant factor for the conduct of credible elections. Legal and Regulatory Framework entails a rule-based system which contains legislations that guide the conduct of a fair and credible election. Elections are germane components of maintaining liberal democracy[2]. It cannot be overemphasized that what makes a democratic system of government different from other systems of government is election. Nigeria's chain of democratic governance and elections remain unbroken since the election held on February 27, 1999 (first election of the

[2]Robert Pastor, "The Role of Electoral Administration in Democratic Transitions: Implications for Policy and Research," Journal of Democratization 6, no. 4 (1999): 1-27

4th Nigerian republic) till date. Suffice to say that the importance of credible elections for its continuance cannot be over-emphasized

The presence of periodic free, fair and credible elections gives meaning to democracy.[3]Elections are said to be meaningfully democratic if they are free, fair, participatory, competitive, and legitimate. A reliable legal and regulatory framework establishing independent electoral management body that may be responsible for setting out guidelines for viable electioneering which can be seen as a prerequisite for achieving a credible election reflecting the will of the electorate, the people.

Since 1999, Nigeria's electoral legal framework has undergone a number of modifications. The Electoral Act was approved in 2001, and three more pieces of legislation have been introduced since then, in 2002, 2006, and 2010. Among other things, the 2006 statute gave the commission the authority to designate its secretary, conduct voter education, and prosecute violators.

The law also clarified the complexities surrounding the appointment and removal of Resident Electoral Commissioners (RECs). The 2010 Electoral Act was enacted to fix the faults of the 2006 act and to bring it in line with the modified constitution. It is worth noting that the debates over the act's approval coincided with the debates over constitutional reforms ahead of the 2011 elections. As a result, the 2010 election Act focused on issues that earlier election reform efforts could not address since they required amending the 1999 constitution. The statute was additionally changed once before the 2011 elections to extend the time for voter registration and to move the elections from January to April 2011, as well as to further streamline its powers to govern political party activities.[4].

The 2010 Act also prohibited parties from changing the names of persons nominated as candidates, establishes new campaign spending limits, empowers INEC to deregister political parties based on the conditions specified in the law, and limits the powers of an election petition tribunal to nullify election results while prohibiting tribunals from declaring candidates as election winners. The act requires the announcement and

[3]Steven Levitsky and Lucan Way, Comparative Authoritarianism: Hybrid Regimes after the Cold War (New York: Cambridge University Press, 2010); and Larry Diamond and Leonardo Morlino, Assessing the Quality of Democracy (Baltimore, MD: Johns Hopkins University Press, 2005).

[4]Electoral (amendment) Act 2010.

publication of election results at polling places, establishes penalties for electoral offenses, and enables INEC to punish violators.

After more than ten years of public debate on constitutional revisions, the 1999 constitution was modified twice in 2010. Following the conduct of the country's 2007 elections, which were widely regarded as the worst in its history[5].Nigeria's elections over the years have been characterized with anomalies such as violence, fraud, voter intimidation, killings, political apathy etc. As a result, the late President Yar'Adua established the Electoral Reform Committee (ERC)[6]chaired by the former Chief Justice of Nigeria, Hon. Justice Muhammadu Lawal Uwais commonly referred to as The Uwais Electoral Reform Committee to evaluate Nigeria's electoral history as well as the legislative and institutional framework for election administration, and to provide reform recommendations. The ERC held extensive consultations and received 1,466 memos.

The report of the ERC made in 2008 was widely acknowledged as reflecting Nigerians' views on election change. The report also made a significant contribution to the constitutional and electoral amendments that took place prior to the 2011 elections. The ERC stated that INEC is an overburdened institution in its detailed analysis of the difficulties of election governance in Nigeria and advocated the establishment of three other entities to take on its tasks. The ERC stated that INEC is an overburdened institution in its detailed analysis of the difficulties of election governance in Nigeria and advocated the establishment of three other entities to take on its tasks. The ERC also proposed to transfer the powers of appointment of the INEC from the president to The National Judicial Council, and recommended that the commission be recruited through an open process. As part of its report, the ERC proposed five bills for reforming different aspects of the electoral process in Nigeria, three of which were focused on unbundling and restructuring INEC.[7]

[5]Salami, A. T. (2021). Politics and Democracy in Nigeria: A Critical Examination and Analysis of the Use and Mis-use of Money in Elections. Green University Review of Social Sciences, 7(1-2), 35-64

[6]https://www.researchgate.net/publication/354640978_Uwais_Report_Electoral_Act_2010_and_the_Future_of_Democratic_Elections_in_Nigeria accessed on 26th May, 2023

[7]<https://aceproject.org/ace-en/topics/em/annex/electoral-management-case-studies/nigeria-a-need-for-modernization> accessed on 26th May, 2023.

### 1.1. Methodology

This study adopts the doctrinal methodology. Doctrinal research is the research into doctrines, involving statutory provisions, available literature and case law by application of the power of reasoning.[8] This research method relies on both primary and secondary materials. It refers to research into law as it stands in books.[9]Some primary source materials used in this study include the Constitution of the Federal Republic of Nigeria 1999 (As Amended), Electoral Act 2022. Others include, The Independent National Electoral Commission's (INEC's) Regulations and Guidelines for the Conduct of Election 2022, Code of Conduct and Rules of Engagement for Security Personnel on Electoral Duty, 2020 On the other hand, textbooks, articles in learned journals, papers, newspapers, internet materials, reports are some of the secondary sources that were consulted and used. This research method is preferable as primary sources are of binding force on the subject matter and secondary sources are of persuasive force. The significance of adopting the legal doctrinal research method to this study is that it allows for a comprehensive analysis on The Legal Regulatory Framework on Elections in Nigeria

## 2. CONCEPTUAL CLARIFICATION

### 2.1 **Election**

It is trite that election is what makes democracy significantly different from other systems of government. It is an umbrella word used when the people(electorates) vote their preferred candidates to lead them. This process happens where there is a vacant position not subject to appointment. It is a process where a person is elected to fill an office through decision making by a group of people in a democratic process called voting.[10] Section 152 of the Electoral Act provides its own interpretation of Election as; “any election held under this Act and includes a referendum."[11]Election is a device for filling an office or post through choices made by a designated body of people (electorate).[12]These

[8]M.O.U. Gasiokwu *Legal Research and Methodology*, (Chenglo Limited 2007) 13
[9] ibid
[10]Lau, R. R., &Redlawsk, D. P. (2001). Advantages and disadvantages of cognitive heuristics in political decision making. American journal of political science, 951-971.
[11]Electoral Act, 2022.
[12] Heywood, A. (2004). Politics, Palgrave Foundation: New York

definitions are suggestive of the need for an effective legal framework which will make the process possible and credible in filling up positions.

2.2 **Democracy:**

Democracy as a concept is capable of many definitions and descriptions. There are various opinions, meanings, perceptions and definitions by various scholars and philosophers on democracy. Scholars like; Rousseau, Locke, Jefferson, Lincoln and Mills[13] have contributed greatly to the knowledge of political science. According to Elaigwu, as cited in Yio[14] the concept of democracy is alien to Africa and needs to be domesticated to Nigeria (Africa)'s local conditions and targeted to her peculiar problems. He went further to define democracy as; A system of government based on the acquisition of authority from the people; the institutionalization of the rule of law; the emphasis on the legitimacy of rules; the availability of choices and cherished values (including freedom); and accountability in governance. This definition brings out the principles of democracy and the core one being the residence of sovereignty with the people.

A discussion centred on elections can only be done on the premise of the particular placement of democracy in a society. This is because, elections can only thrive in a democratic system. Election is regarded as the heart of a political process.

**2.3 Electoral Process**

Elections are conducted through a process. A candidate cannot be declared the winner of an election amongst other candidates vying for that position without having been voted for. There must be a process for a candidate to emerge the winner of an election and it is only possible by an electoral process as prescribed in the legislation governing such. The electoral process refers to the entire election cycle as well as the processes used to ensure a credible election, such as the electoral laws and regulations, the delineation of constituencies, conflict prevention, management, and resolution, voter education and registration, and the design and imposition

[13]Odo, L.U. (2015). Democracy and Good Governance in Nigeria: Challenges and Prospects, Global Journal of Human Social Sciences & Political Science, 15(3)1-7

[14]Yio, B. W. (2012). Democracy and Development in Nigeria: A Reflection on the Country's Democratic Experience up to 2011; National Development Studies, No. 5

of electoral guidelines and codes of conduct during elections.[15]The electoral process also entails the nomination of candidates by the various political parties and the presentation of names by the political parties to the electoral empire. Judicial endorsement for the above can be found in the case of *National Democratic Party (NDP) v. INEC*,[16] where Ariwoola JSC (As he then was) held, "There is no doubt that the issue in the instant appeal involves electoral process which is the method by which a person is elected to public office in a democratic society". Also, in the case of *Ojukwu v. Obasanjo*,[17] Salami JCA appears to have adumbrated the meaning of the electoral process even further when he held "The issue of election goes beyond merely voting, as it is a process inclusive of delimitation of constituency, nomination, accreditation, voting itself, counting, collation and return; or declaration of result.

**2.4 Legal and Regulatory Framework**

Within the context of this research, the term "legal and regulatory framework for elections" refers to a country's collection of election-related laws, regulations and institutions that guide the conduct of elections. The applicable provisions of the Constitution, the electoral law, and additional laws that impact elections or are attached to the electoral law, such as a law on political parties, comprise a legal framework for elections[18] To laymen, they are basically rules and regulation that guide the electoral process in a democratic country like Nigeria.

**2.5 Credible Election**

One critical characteristics of a good election, is that it should reflect the will of the people and that the electorates should be satisfied with the results. A credible election is any election where electoral misconduct or fraud is absent. It is an election devoid of misconduct or fraud.[19] Whereby an electoral process is devoid of harassment, coercive or non-coercive practices by political parties to manipulate voters, and actions that

[15]Koko, S. (2013).Understanding election-related violence in Africa-patterns, causes, consequences and a framework for preventive action. Journal of African Elections, 12(3), 51-88.
[16] (2013) 6 NWLR (Pt. 1350) 392, at 419
[17]2004) 1 EPR 626 at 653.
[18] Benoit, K. (2004). Models of electoral system change. Electoral studies, 23(3), 363- 389.
[19]Onapajo, H. (2015). Nigeria's 2015 general elections: The salience of electoral reforms. The Round Table, 104(5), 573-584

contravene the Constitution or the Electoral Act, it is considered to be a credible election. A credible election requires that all registered political parties have equal access to run for office, campaign for votes, and attend rallies[20]. What I perceive a credible election to be is that in which all voters have an equal chance to register, all votes counted, and the results accurately declared represent the number of ballots cast on that day.

## 3. LEGAL FRAMEWORK REGULATING ELECTIONS IN NIGERIA

For every election in Nigeria, there are existing regulations that must be followed. The major Legal Framework for regulating elections in Nigeria consists of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act 2022, the Independent National Electoral Commission (INEC) Regulation and Guidelines for the Conduct of Election 2022, and the Code of Conduct and Rules of Engagement for Security Personnel on Electoral Duty, 2020.[21] These contain the rules and regulations that regulate both the electoral body, its system and processes. It ensures security during election period, the pre, mid, and post-election activities. It is trite, that the constitution come before any legislation in Nigeria, for this reason makes it the most vital legal instrument in Nigerian elections. Next to it in hierarchy is The Electoral Act (2022) as amended, empowering The Independent National Electoral Committee (INEC), the main legal body for conducting elections, to provide guidelines and regulations for elections, and the code of conduct for security personnel on electoral day applicable to security personnel during elections. They will be discussed in a hierarchical order below:

### 3.1 The Constitution of the Federal Republic of Nigeria 1999, (As Amended)

The Constitution is the *Grundnorm*. It is the foundation of other legislations in Nigeria, this is because the constitution is a superior legislation which grants the powers for other legislations to be made. The constitution is supreme and all other laws are subject to it such that if any provision of a

[20]Broersma, M., & Graham, T. (2012). Social media as beat: Tweets as a news source during the 2010 British and Dutch elections. journalism practice, 6(3), 403-419.

[21] Ayodele, O. A. (2022). An Assessment of the Legal Framework Put in Place to Curb Electoral Violence in Nigeria. In Elections and Electoral Violence in Nigeria (pp. 101-122). Palgrave Macmillan, Singapore.

legislation is inconsistent with a constitutional provision, such provisions shall to the extent of its inconsistency be void and of no effect.[22] This is simply known as an overriding effect above other laws. The constitution is the fulcrum upon which all other laws in Nigeria derive their validity; without the constitution those laws will be defunct. It is the major law that governs the electoral process in Nigeria[23]

The Constitution recognises INEC's existence, election administration, responsibilities, and oversight of political party activities. It also specifies certain qualifications (disqualification and tenures) that candidates for constitutional offices must meet before they can run for those positions.[24] Section 40 of the constitution provides the foundation for credible elections. this section provides for the rights to peaceful assembly and association. It provides thus:

> Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

This right is not absolute because no person is allowed in exercise of his own right to infringe on another person's right. In the case of *A. G., Federation v. Abubakar*,[25] the court gave judicial flavour to the above statement when it held thus:

> Under the provisions of the Constitution of the Federal Republic of Nigeria, 1999, it will operate illegality, injustice and unconstitutionally to refuse or deny a citizen of this country to opt out, join, belong to any political party, trade union or any other association for the protection of his

[22]Con**stition** of the Federal Republic of Nigeria, 1999 (as amended), Section 1(3)
[23]Enebeli, V. N., & Njoku, D. C. (2022).A Legal Evaluation of Nigeria's Electoral Jurisprudence. JL Pol'y & Globalization, 118, 1.
[24] Omotola, J. S. (2010). Elections and democratic transition in Nigeria under the Fourth Republic. African Affairs, 109(437), 535-553.
[25] (2007) 10 NWLR (PT. 1041) 1

> interest, except where, in case of political parties, the National Electoral Commission (NEC) or (INEC) or as the name may suggest has not recognize the party.

Based on the constitutional guaranteed right, everyone has the right and freedom to form or join any political party to partake in elections for any elective position. This freedom is what is simply referred to as franchise. The above is the foundation for credible elections. Section 78 of the constitution also provides that "The registration of voters and the conduct of elections shall be subject to the direction and supervision of Independent National Electoral Commission." This clearly means that INEC is the legal body charged with the conduct of elections

### 3.2 The Electoral Act, 2022

The Electoral Act 2022, which was signed into law on February 25, 2022, by The Muhammadu Buhari led administration succinctly captured various innovative ideas and processes for ensuring the credibility of elections. The Electoral Act, 2022 is believed to have progressive provisions that will aid credible elections. These innovations, particularly those that use technology to improve voter registration, voter accreditation, result management, and the promotion of inclusivity for marginalized people, are now legally mandated and protected. This also extends to the registration and accreditation of observers, media organizations, and the nomination of candidates and polling agents by parties.[26]

Salient innovations of the electoral process within the legal authority of INEC include the Automated Biometric Identification System (ABIS) that combines registered voters' fingerprint and facial authentication which helps to clean up the Register of Voters by identifying multiple registrations, underage registrations, etc. The Bimodal Voter Accreditation System (BVAS) has eliminated the problem of multiple accreditations observed in previous elections, ensuring that the accredited person is actually the voter and the bearer of the card. The voter must go through biometric accreditation using their fingerprint; if this fails, the option of a facial scan is used. This is also guaranteed by law, and it has also improved confidence in election

[26]Balewa, I. T. (2022). Assessment of the Role of the National Assembly in Electoral Reforms in Nigeria between 2009 to 2021 (Doctoral dissertation, NILDS-Department of Studies)

outcomes, as shown in the recent February 2023 general elections.[27]It has eliminated the use of the Incident Form, which indirectly encouraged identity theft in voting. The INEC Result Viewing Portal (IReV) ensures the transmission of scanned images of the polling unit level results in real-time to the commission; this is safer and less susceptible to hacking than transmitting raw figures and increases transparency in result management.[28]The (IReV) INEC Result Viewing portal ensures the transmission of scanned images of the polling unit level results in real-time to the commission; this is safer and less susceptible to hacking than transmitting raw figures and increases transparency in result management. A consideration of some of the salient provisions of the Electoral Act is made below

Salient provisions of the Electoral Act, 2022 are:

(1) Early Release of Election Funds to INEC: Section 3(3) of the Electoral Act, 2022, provides: "The election funds due to the Commission for any general elections are to be released to the Commission not later than one year before the next general election."

(2) INEC officials being apolitical and to disclosure of any political affiliations: Section 8(5) provides:
"A person who, being a member of a political party, misrepresents himself by not disclosing his membership, affiliation, or connection to any political party in order to secure an appointment with the Commission in any capacity, commits an offence and is liable on conviction, to a fine of N5,000,000 or imprisonment for a term not more than two years or both."

(3) Postponement of Election if there is proven threat to the peace and security of the nation: "Where an election has commenced and there is reason to believe that there is or has been substantial disruption of election in a polling unit or constituency or it is impossible to continue with the election occasioned by threat to peace and security of electoral officials and materials, the

[27]Onuoha, F. C., & Okafor, J. C. (2020). Democracy or Moneyocracy? Perspective on vote buying and electoral integrity in Nigeria's recent elections. Africa Insight, 49(4), 1-14
[28]Opeibi, T. (2019). The Twittersphere as political engagement space: A study of social media usage in election campaigns in Nigeria. Digital Studies/Le champ numérique, 9(1).

Commission shall suspend the election and appoint another date for the continuation of the election or the process."

(4) Issuance of notice of election by INEC: INEC is required by Section 28(1) to issue a Notice of Election no later than 360 days before the general election date The above section provides: "The Commission shall, not later than 360 days before the day appointed for holding of an election under this Act, publish a notice in each State of the Federation and the Federal Capital Territory—
(a) stating the date of the election; and
(b) appointing the place at which nomination papers are to be delivered."

(5) Requirement of political parties to provide a list of their validly nominated candidates: Political Parties are required to provide INEC with a list of their validly nominated candidates 180 days before the chosen date of election. Section 29(1)) provides thus: "Every political party shall, not later than 180 days before the date appointed for a general election under this Act, submit to the Commission, in the prescribed Forms, the list of the candidates the party proposes to sponsor at the elections, who must have emerged from valid primaries conducted by the political party."

(6) A deceased nominated candidate: Section 34 provides thus: "If after the time for the delivery of nomination paper and before the commencement of the poll, a nominated candidate dies, the Chief National Electoral Commissioner shall, being satisfied of the fact of the death, countermand the poll in which the deceased candidate was to participate and the Commission shall appoint some other convenient date for the election within 14 days."

(7) The use of smart card reader and other technological devices: INEC is authorized to use a smart card reader (SCR) or other technological devices to accredit voters electronically in order to verify the particulars of the intending voter. Section 47(1)(2) provides respectively:(1) "A person intending to vote in an election shall

present himself with his voter's card to a Presiding officer for accreditation at the polling unit in the constituency in which his name is registered.

(2) "To vote, the presiding officer shall use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission."

(8) Electronic or Manual Voting: INEC has the option of either supplying ballot boxes, electronic voting machines, or other voting equipment during elections as the case may be. Section 41(1) provides: "The Commission shall provide suitable boxes, electronic voting machine or any other voting device for the conduct of elections."

(9) Mode of transmission of votes at INEC's discretion: INEC can either choose to transmit votes electronically or manually. Section 50(2) provides: "Subject to section 63 of this Act, voting at an election and transmission of results under this Act shall be in accordance with the procedure determined by the Commission."

(10) Over-voting redefined under the Act: What amounts to over-voting and the consequences of over-voting was provided in Section 51(2). It states: "Where the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the Presiding officer shall cancel the result of the election in that polling unit."

(11) Vulnerable People: INEC is mandated to ensure people with any form of disabilities, special needs, and vulnerable people are assisted during voting and have access to appropriate communication devices so they still get to exercise their right to franchise. Section 54(2) provides: "The Commission shall take reasonable steps to ensure that persons with disabilities, special needs and vulnerable persons are assisted at the polling place by the provision of suitable means of communication, such as Braille, large

embossed print, electronic devices, sign language interpretation, or off-site voting in appropriate cases."

(12) National Electronic Register of Election Results: INEC is to ensure it maintains a national electronic register of election results by polling unit results and aggregating election results from each election it holds kept in an electronic format by the commission. Section 62(2) provides: "The Commission shall compile, maintain and update, on a continuous basis, a register of election results to be known as the National Electronic Register of Election Results which shall be a distinct database or repository of polling unit by polling unit results, including collated election results, of each election conducted by the Commission in the Federation, and the Register of Election Results shall be kept in electronic format by the Commission at its national headquarters."

## 4. ELECTORAL OFFENCES AND PUNISHMENTS UNDER THE ELECTORAL ACT 2022

Electoral Offences mean offences under any statute or statutory instrument relating to local elections.[29]Does this mean any act not criminalized by the Electoral Act, 2022 is not an offence? The 2022 Electoral Act made provisions for the punishment of those who breach the Electoral Act. These offences and punishments are captured in Part VII, Sections 114–128 of the Act.[30]These offences include respectively: offences in relation to registration,[31] offences in relation to nomination,[32] disorderly behaviour at political meetings,[33] improper use of voter's cards,[34] improper use of vehicles,[35] impersonation and voting when not qualified,[36] dereliction of duty,[37] bribery, and conspiracy,[38] requirement of secrecy in voting,[39]

[29]https://www.lawinsider.com/dictionary/electoral-offences
[30]Idowu, H. A. (2022). Democratic and Electoral Process in Nigeria: A Forecast into the 2023 General Elections. Taiwan Journal of Democracy, 18(2), 145-176
[31] Electoral Act, 2022, Section 14.
[32]Ibid, Section 115
[33] Ibid, Section 116.
[34] Ibid, Section 117.
[35] Ibid, Section 118.
[36] Ibid, Section 119.
[37] Ibid, Section 120.
[38] Ibid, Section 121.

wrongful voting and false statements,[40] voting by an unregistered person,[41] disorderly conduct at elections,[42]offences on election day,[43] undue influence,[44] and threatening violence.[45]The above offences carry fines and prison terms ranging from 1 million naira or 2 years in prison to 500 thousand naira or one year in prison, while some carry a prison term of six months, two hundred thousand naira, or even one hundred thousand naira depending on the nature of the offence. Section 121(6) of the Act interests me the most. Paraphrasing that lengthy section, it states that if a candidate for election has knowledge of or has sponsored an Electoral Act offender, he will be punished as the main offender. In my opinion, it means that if a candidate for an election sponsored a person who committed an offence such as bribery, undue influence, or violence, the candidate would also be punished by the law. I hope this section will not just act like a "toothless bulldog" but invalidate the election of a person who is found wanting, sponsors or buys votes in an election and not just punish the people involved.

## 5. THE INDEPENDENT NATIONAL ELECTORAL COMMISSION'S (INEC) REGULATIONS AND GUIDELINES FOR THE CONDUCT OF ELECTION 2022

The Independent National Electoral Commission (INEC) on Friday 4th June, 2022, released the Regulations and Guidelines for the Conduct of Elections. These guidelines were released by The INEC Chairman, Professor Mahmood Yakubu during a special meeting at the Inter-Agency Consultative committee on election security (ICCES) IN Abuja, to review security arrangement for the Ekiti state government elections. The News Agency of Nigeria (NAN) reports that the regulations and guidelines are issued pursuant to section 149 of the Electoral Act 2022 and it supersedes all other regulations and guidelines or updated by way of revisions or supplementary regulations and guidelines supported by decision extract of INEC or an official gazette.[46]

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[39] Ibid, Section 122.
[40] Ibid, Section 123.
[41] Ibid, Section 124.
[42] Ibid, Section 125.
[43] Ibid, Section 126.
[44] Ibid, Section 127.
[45] Ibid, Section 128.
[46]https://www.premiumtimesng.com/news/top-news/534667-2023-inec-releases-guidelines-for-conduct-of-elections.html accessed on April 22, 2023.

Section 148 of the Electoral Act of 2022 empowers INEC, as a subject of the Act, to publish regulations, guidelines, or manuals to carry out the provisions of the Act and to administer it provides thus: "The Commission may, subject to the provisions of this Act, issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of this Act and for its administration." From the above provisions, it is not a mandatory requirement. The word "May" according to an online dictionary means:

> 'a choice to act or not, or a promise of a possibility, as disti
> nguished from "shall" which makes it imperative.'[47]

In exercise of this discretionary authority and constitutional powers, INEC issued Regulations and Guidelines for the Conduct of Elections, 2022, for General Elections, Off-Cycle Elections, Bye-elections, Re-run Elections and Supplementary Elections which supersede all previous election conduct regulations issued by the commission and will remain in effect until replaced by a new regulation is made.

**6. SOME SALIENT SECTIONS OF THE INEC REGULATIONS AND GUIDELINES FOR THE CONDUCT OF ELECTION 2022 ARE:**

i. Section 1 provides for the election of certain positions to which the guidelines apply to the conduct of elections are:
   1. President and Vice President;
   2. Governor and Deputy Governor;
   3. National Assembly (Senate and House of Representatives);
   4. State Houses of Assembly;
   5. Chairmen and Vice-Chairmen of the Federal Capital Territory (FCT) Area Councils; and
   6. Councillors of FCT Area Councils Legislature.

i. Section 5 of the Regulations and Guidelines provides certain criteria for one to be eligible to vote in an election conducted by the commission. This means that if an intending voter fails to satisfy any of these criteria, he or she won't be able to vote. An

[47]May. (n.d.) *The People's Law Dictionary*. (1981-2005). Retrieved April 22 2023 from https://legal-dictionary.thefreedictionary.com/May

intending voter cannot only satisfy one criterion and be fit to vote, all criteria must be satisfied. The criteria include:

iii. He/she is a Nigerian Citizen.
iv. He/she is a registered as a voter.
v. His/her name appears in the Register of Voters.
vi. He/she presents a valid Permanent Voter's Card (PVC) at his/her Polling Unit.
vii. Section 6 provides that voting must take place in polling unit and voting points. The implication of this is that any voting done outside of a polling unit goes against section 6.

The aforementioned section provides: "Voting in any election to which these regulations and guidelines apply shall take place at Polling Units established by the Commission".

viii. Section 13 provides that voting must be done in accordance via the continuous accreditation and voting system (CAVS) procedure, the Election Manual, and other guidelines. It states thus: "Voting shall be in accordance with the Continuous Accreditation and Voting System (CAVS) procedure as specified in these Regulations and Guidelines, the Election Manual and any other Guide issued by the Commission."

ix. Section 101 provides the persons can be allowed access to the electoral material distribution centres, polling units, and collation centres. In the recently held elections, I was able to witness some persons inspect electoral materials brought by the designated INEC official. The above section states thus: "The following shall be allowed access to the electoral material distribution centres, Polling Units, Polling Stations and Collation Centres, provided that they are properly documented or identified:

1. Registered Voters (at Polling Units only)
**1.** Designated INEC Officials on Election Duty
**2.** Approved and Designated Security Officials.

(iv) One Polling Agent per Political Party or candidate. Candidates who choose to serve as their own agents should inform the Commission in good time for proper documentation and identification.

1. Accredited Journalists and Media Organizations.
2. Accredited Domestic and Foreign Observers.

## 7. CODE OF CONDUCT AND RULES OF ENGAGEMENT FOR SECURITY PERSONNEL ON ELECTION DUTY

Ensuring security during the conduct of elections is mandatory. The voters, INEC officers, observers, or Election officers just to classify them and electoral materials must be protected from miscreants or rebels on election day. INEC is responsible for election security, particularly vote security. Only the commission is authorized under Section 27(3) of the Electoral Act of 2022 to seek the deployment of required security personnel for elections or voter registration and to distribute them in collaboration with relevant security agencies. The Armed Forces, on the other hand, can only be asked and deployed to ensure the distribution of election materials and officials. The Nigeria Police Force and other related security agencies are the primary agencies responsible for election security.[48] INEC formed the Inter-Agency Consultative Committee on Election Security (ICCES) in 2010 in order to ensure effective security management throughout the country. The ICCES consists of 19 security institutions, each of which has a distinct duty to fulfil in accordance with its constitutional and/or legislative obligations. Some of these security institutions include:

1. The National Security Adviser's Office,
2. The Ministry of Police Affairs,
3. The Nigeria Police Force,
4. The Police Service Commission,
5. The Nigerian Army
6. The Nigerian Navy
7. The Nigerian Air Force
8. The State Security Services
9. The National Intelligence Agency

[48]Ugoh, S. C. (2022). The Independent National Electoral Commission and the Quest for Electoral Integrity: A Study of the 2019 Kogi State Governorship Election (Doctoral dissertation, NILDS-Department of Studies

10. The National Drug Law Enforcement Agency
11. The Nigeria Customs Service
12. The Nigeria Immigration Service
13. The Federal Road Safety Corps
14. The Nigerian Security and Civil Defence Corps
15. Economic and Financial Crimes Commission
16. Independent Corrupt Practices Commission

Clause 6.1 of Part I requires all security staff to wear their prescribed uniforms and visible name badges. [49]

Clause 7.1 requires designated officers to designate inner and outer rings to serve as guides in deployment. This will be used to determine the type of weapon officers deployed to these locations will carry. Other clauses address general and standard operating guidelines, briefing and debriefing rules, crowd control, the use of force or lethal weapons, escorting or protecting electoral materials, checkpoint and roadblock rules, and conduct during elections [50]

Part 2 clauses 13– 17, respectively, contain the basic rules of engagement, the arrest process, caution to arresting staff, and a reportorial duty. [51]Clause 14.1 states that force should only be used against clearly recognized armed miscreants, to protect oneself and colleagues against hostile acts or intents, to fight attempts to abduct or imprison oneself or colleagues, to resist attempts to abduct or cart away election material, and so on.[52]

## 8. CONCLUSION

No legislation is perfect. It may have some flaws or the problem may be lack of implementation. Following the new improvements to the Electoral Act and other laws that can aid Nigeria's potentiality for credible elections, The Legal Regulatory Frameworks still have some components that need to be looked at or added in order to improve the electoral process. For example, The Constitution acting as the primary legal framework for elections, should

[49]Nabiebu, M., Nigeria's Legal Regulatory Framework for Ensuring a Credible 2023 Electionhttps://najahaofficial.id/najahajournal/index.php/IJLS/ Volume 1, Issue 3, 2022
[50] Ibid
[51] Ibid
[52] ibid

attempt to ensure the commission's independence, and it should be changed to give INEC complete financial independence.

Section 225 of the Constitution in my opinion should be amended to eliminate the need for monies supplied to a political party from outside Nigeria to be transferred to INEC; alternatively, such donations should be reported to INEC and be made public.

Furthermore, the Constitution is calm on INEC's authority to disqualify candidates who make fraudulent representations to the commission which is a very grave issue. The Constitution should be modified to enable the formation of an Electoral Offenses Commission or Tribunal to try and sentence individuals who violate the requirements of sections PART VII, Sections (114–128 of the Electoral Act, 2022.

Amendment of Section 29(5) of the Electoral Act should be considered to grant High Courts of the State and Federal Capital Territory of Abuja jurisdiction to hear and resolve pre-election disputes. The Act should also be changed to allow members of the public to challenge a candidate who provided false information or documents to the INEC.

INEC should instruct security officials and precisely the Nigerian Armed Forces when they are deployed to secure election materials and Electoral officials. These must be specifically stated in the INEC Election Security Regulations or the Code of Conduct.