



SPACES FOR CHANGE | S4C
RESEARCH | POLICY | CITIZEN ACTION

GO TO COURT

Synonym for judicial capture

OCTOBER 2023

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The civic space is as healthy as we make it to be. It is as healthy as the government, the citizens, the civil society, and all the institutions and stakeholders allow it to be.

This report is an invitation to the judiciary to consider its very important role in safeguarding Nigeria's democracy and preserving civic life during and beyond elections.

Toyin Akinniyi
Vice President for Africa Luminate

Luminate

ACKNOWLEDGEMENTS

Does the judiciary play any role in facilitating or impeding the ability of citizens to speak, organize, assemble and associate freely during election seasons? This report aims to deepen public understanding of how the judiciary influenced associative life during the 2023 general elections in Nigeria. This time around, SPACES FOR CHANGE | S4C beamed its focus on the Nigerian judiciary, drawing attention to the way adjudicatory interventions enabled or disabled civic life during the 2023 elections. The result is a thought-provoking piece designed to influence civil society to prepare to act, take action and review progress in an era of increasing uncertainty and opportunity. Blending different forms of expertise and capacities from several sectors, this research benefitted from the contributions of a diverse group of experts, analysts, and teams within and beyond the organization that worked together to unravel newer forms of constraints on civil society, while exploring new pathways for transformative civic action.

We are grateful to the project team at Spaces for Change that worked so hard to deliver on this project, especially Victoria Ibezim-Ohaeri who coordinated the entire research from start to finish. Others are Kehinde Aderogba, Patrick Allam, Lawrence Oboh, Chetachi Louis-Udeh and Sefa Ikpa. A combined team of internal and external staff comprising Lotanna Nwodo and Phillip Akintola tracked election petitions and the judgments of various courts and tribunals, combed through hundreds of media reports, interviewed a broad spectrum of stakeholders, and updated the Closing Spaces Database (www.closingspaces.org) regularly with the incidents of crackdowns on civic participation rights before, during and after the elections. Expert reviews by distinguished legal luminaries, especially JS Okutepa SAN, rooted in decades of experience in election litigation, sharpened the analytical rigour, while bridging the gap between theory and practice.

This research work was made possible by the generous support of the Luminate Group, consistent with their visionary pursuit of an open and participatory society. This publication, GO-TO-COURT, is another testament to Spaces for Change's commitment to knowledge-generation for expanding the civic space in Nigeria in particular, and West Africa, at large.

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TABLE OF ACRONYMS

APC	All Progressives Congress
BVAS	Bimodal Voter Accreditation System
CBN	Central Bank of Nigeria
CFRN	Constitution of the Federal Republic of Nigeria
CSOs	Civil Society Organizations
CVR	Continuous Voter Registration
ETP	Election Petition Tribunal
FCT	Federal Capital Territory
FHC	Federal High Court
FHCCPR	Federal High Court (Civil Procedure) Rules
INEC	Independent National Election Commission
IPOB	Indigenous Peoples of Biafra
IRI	International Republican Institute
IReV	Independent Result Viewing
LP	Labour Party
NBA	Nigeria Bar Association
NBC	National Broadcasting Commission
NBTEB	National Business and Technical Examination Board
NCSSR	Nigeria Civil Society Situation Room
NDLEA	National Drug Law Enforcement Agency
NDI	National Democratic Institute
PCC	Presidential Campaign Council
PDP	Peoples Democratic Party
PVC	Permanent Voters' Cards
NECO	National Examinations Council
NGO	Non-governmental Organizations
NHRC	National Human Rights Commission
NSCDC	Nigeria Security and Civil Defense Corps
PDP	People's Democratic Party
PEPT	Presidential Election Petition Tribunal
PVCs	Permanent Voters' Cards
WAEC	West African Examinations Council
SERAP	Socio-Economic Rights & Accountability Project
S4C	Spaces for Change
YP	Youth Party

FOREWORD



... after the 2015 elections, the Independent National Election Commission (INEC) was taken to court 680 times by litigants...Of the 680 court cases, 600 were dismissed while 80 were upheld.

Similarly, litigations arising from the conduct of the 2019 elections were higher, with about 1,689 court cases. While more than 890 were pre-election matters arising from conduct of political party primary elections, 799 were election petitions that went to various tribunals across the country.

For the 2023 elections, they were 334 post-primary cases in various courts across the country as of July 21, 2022. By February 6, 2023, the Commission had been joined in 1,241 intra-party or pre-election lawsuits in different courts of law, ranging from the Federal High Court, the Court of Appeal, and the Supreme Court... making INEC one of the agencies most litigated against in the country.

- Prof. Mahmood Yakubu, INEC Chairman, February 6, 2023



Go-to-Court! This popular cliché by Nigerian politicians went viral both online and offline after the February 25 general elections. Typically, Go-to-Court suggests that justice will surely be done by the courts. Rather than communicate hope, the cliché passes a subliminal message about judicial fragility, capture and corruption¹ occasioned by the “damaged credibility of Nigeria's electoral process”² particularly after the 2023 general elections. It speaks to the impunity of politicians and the disappearing public trust in the judicial system.³ It signifies the judiciary's ignominious role in selling electoral victory to the highest bidder, making the quest for electoral justice through the law courts a futile pursuit. As a commentator rightly noted: *

“When politicians tell their opponents to GO TO COURT, they are not saying it in an advisory language, but in a dismissive language. GO TO COURT in this context is not an expression of belief in the judiciary as the appropriate organ to resolve disputes. What they are saying is that we can relate with impunity, we can do whatever we like, and we are certain that the judiciary is going to affirm whatever (wrong) we have done.”

* Interview with Inibehe Effiong, Legal Practitioner, Lagos, August 30, 2023

1. Chidi Odinkalu, The Guardian, July 14, 2023, <https://guardian.ng/opinion/go-to-court-any-remedy-for-nigerias-ailing-justice-system-2/>

2. ThisDay, Situation Room Seeks Probe of Shortcomings of 2023 General Elections, See <https://www.thisdaylive.com/index.php/2023/03/20/situation-room-seeks-probe-of-shortcomings-of-2023-general-elections>

3. Interview with Toyin Akinniyi, Africa Director, Luminate, July 18, 2023

One other reason the cliché became very popular among the political class is because of the timeframe to conclude pre- and post-election litigation in Nigeria. Section 285 of Nigeria's 1999 Constitution limits the time to 180 days. It is evident that getting justice within the 180-day timeframe would be an uphill struggle considering the volume of resources and workload involved in adjudicating upon thousands of election petitions pending before a few courts. As the floodgate of litigation⁴ trailing all electoral activities demonstrates, politicians no longer focus on persuading the voter through campaigns and manifestoes, but instead, target the judges through focused campaigns of corruption and capture.⁵

Flawed elections lay the foundation for an obstructed civic space.⁶ The credibility of elections, acceptance of election results and stability of the election environment increasingly hinge on the effective resolution of disputes and human rights violations throughout the electoral cycle.⁷ Against this backdrop of the courts' rising profile as the paramount enabler of democratic participation, this research aims to interrogate the extent the judiciary expanded or contracted democratic civic life during the just-concluded 2023 general elections in Nigeria. We will examine how judicial intercession in electoral processes arising from the 2023 elections has either opened or closed the civic space, flagging the conditions, enablers, and drivers that asphyxiate, rather than energize civil society organizing and citizen participation in political processes.

Finally, the report sheds further light on the broader trends during the electoral cycle that shaped the civic space and the quality of political environment, signposting where legal reforms and socio-political leverage can be activated to enhance the transformative potential of civic engagement. This project proceeds upon the premise that an in-depth understanding of the ways judicial decisions enable or limit civic space(s) can help citizens, groups, and government institutions to surmount barriers to democratic consolidation in Nigeria.

Victoria Ibezim-Ohaeri

Executive Director
Spaces for Change

4. Sodiq Omolaoye, Guardian, INEC and burden of unending litigations from 2023 general elections <https://guardian.ng/politics/inec-and-burden-of-unending-litigations-from-2023-general-elections/>

5. Chidi Odinkalu, *ibid.*

6. Spaces for Change, Civic Space Trends, Threats and Futures, <https://spacesforchange.org/civic-space-in-west-africa-trends-threats-and-futures/>

7. International Foundation for Electoral Systems, Electoral Justice & Dispute Resolution, <https://www.ifes.org/our-expertise/election-integrity/electoral-justice-dispute-resolution>


METHODOLOGY

In simple terms, this research reviewed how the Nigerian civic space fared before, during and around the periods surrounding the 2023 general elections. Closer scrutiny of judicial decisions during the election season unveiled the multiple intrigues at play in the political space that either expanded or contracted the civic space. The aim of conducting this scrutiny is to build new knowledge and evidence regarding the conditions, enablers and drivers that asphyxiate, rather than energize civil society organizing and citizen participation in democratic processes. This report documents the results of that scrutiny in order to deepen understanding of the facilitators and barriers to the exercise of election-related rights. This new knowledge is empowering for civic actors, human rights defenders, non-governmental organizations (NGOs), and journalists working to ensure that court decisions do not collide with civic freedoms, especially the right to speak, participate, organize, associate and assemble freely.

To meet the above objectives, this project tracked and analyzed the decisions, including rulings, of various courts record highlighting their disparate impact across sectors, specific groups, and broad spectrum of civic actors. At this stage of the research, researchers pored through almost 1000 reported incidents regarding the 2023 elections reported on diverse portals, including the periods before, and following the elections. Researchers mainly utilized the civic space monitoring platform hosted by Spaces for Change | S4C – www.closingspaces.org – and other digital law reporting platforms to track the preponderance of electoral contests and decisions of courts related to the 2023 general elections. 132 specific incidents culled from the database and other sources were categorized according to the three fundamental human rights that are relevant to the operation of the civic space, namely, the freedom of association, freedom of assembly, and freedom of speech. These incidents were initially presented in tabular form and aggregated according to specific indicators such as regions, the identity of the actors, the gender of the victims and whether the matter made it to court for definite adjudication. These indicators are structured to bring out consistent patterns which will not only inform human rights defenders of the priority areas, but also arm them with the relevant information to address the observed trends.

Researchers also relied extensively on authoritative law reports, official court communications and in some cases, independently verified reports of court proceedings, in relation to pre- and post-election matters. One limitation to note is that this approach may exclude unreported cases across the massive geography of the country. The reputable law reports mainly report cases from the appellate courts, and this expectedly reduced the sample size available for review. These limitations were mitigated by combining case tracking and case monitoring with personal knowledge, media reportage, key informant interviews with legal practitioners, litigants, judicial officers and the media. By drawing extensive knowledge of the election-related disputes pending before the courts from multiple sources, S4C gathered empirical evidence for deepening understanding of the relationship between electoral processes and the civic space and for enabling courts to balance the competing democratic values at stake.

Researchers convened a private reading of the first draft to civil society stakeholders and legal luminaries who provided detailed feedback and inputs to the preliminary research findings. The analyses of the data gathered from diverse sources highlighted how the civic space has been impacted by the actions of the government (executive, legislature, and the judiciary), politicians, powerful private individuals and non-state actors during the electioneering process, teasing out the patterns of expansion (positive) and contraction (negative) of civic spaces.




The aim of conducting this scrutiny is to build new knowledge and evidence regarding the conditions, enablers and drivers that asphyxiate, rather than energize civil society organizing and citizen participation in democratic processes. This report documents the results of that scrutiny in order to deepen understanding of the facilitators and barriers to the exercise of election-related rights. This new knowledge is empowering for civic actors, human rights defenders, non-governmental organizations (NGOs), and journalists working to ensure that court decisions do not collide with civic freedoms, especially the right to speak, participate, organize, associate and assemble freely.

CHAPTER 1



Source: Arise News

DYNAMICS OF CIVIC SPACE DURING THE 2023 ELECTIONS



With a national population towering above 200 million people, elections conducted by the Independent National Election Commission (INEC) offer the most veritable platforms for getting citizens involved in the civic, governance and political affairs of Nigeria. General elections present the largest avenues for political and democratic participation and serve as the yardstick for measuring the openness or contraction of the civic space. Accordingly, when, why, and, how INEC conducts general elections are major parameters for not just gauging the temperature of the civic space, but also for determining the quantum of respect the country accords to constitutional guarantees of free association, free assembly and free speech.

Voting, or the right to vote, is the essential feature and component of every election. Voting gives people an opportunity to have their say, and choose their leaders, which is embedded in the constitutionally-protected freedom of expression. Without citizens exercising the right to vote, an election loses its value as a bedrock of democracy. This essentially means that the power to enthrone or remove leaders in a constitutional democracy rests with the voters. Go-to-Court represents an unfortunate transfer of that power from the voters to the courts.⁸ The weightiest consequence of the Go-to-Court phenomenon is that contrary to the tenets of universal suffrage—which democracy rests upon—the judge, not the electorate, is the ultimate decider of winners and losers in any election. Not only does this constitute a rape of democracy perpetrated through the law courts, it sanctions the rise of regimes that lack legitimacy while shrinking the space for meaningful civic engagement and democratic consolidation in Nigeria.

Hopes were high that the introduction of a new electoral law in 2022 and particularly the importation of technological innovations into the 2023 general elections will not only enhance the integrity of the electoral processes, but also significantly reduce the deference to the courts to determine the outcomes of electoral processes. The new electoral law introduced the Bimodal Voter Accreditation System (BVAS) and the Independent National Electoral Commission's (INEC's) Result Viewing Portal (IReV) to enhance the transparency of the elections by enabling real-time transmission of election results from polling units to the central collation center. BVAS accredits voters either through thumbprint or facial recognition technologies. Experiences from the recently-concluded general elections showed the contrary, with relatively higher incidences of electoral disputes arising from allegedly flawed processes for candidates' nomination, exclusion of certain political parties from primary elections and the polls, omission of party logos, vote-buying, suppression of political assemblies, voter intimidation, repression of political opposition, tenure uncertainty, electoral malpractices and so forth.

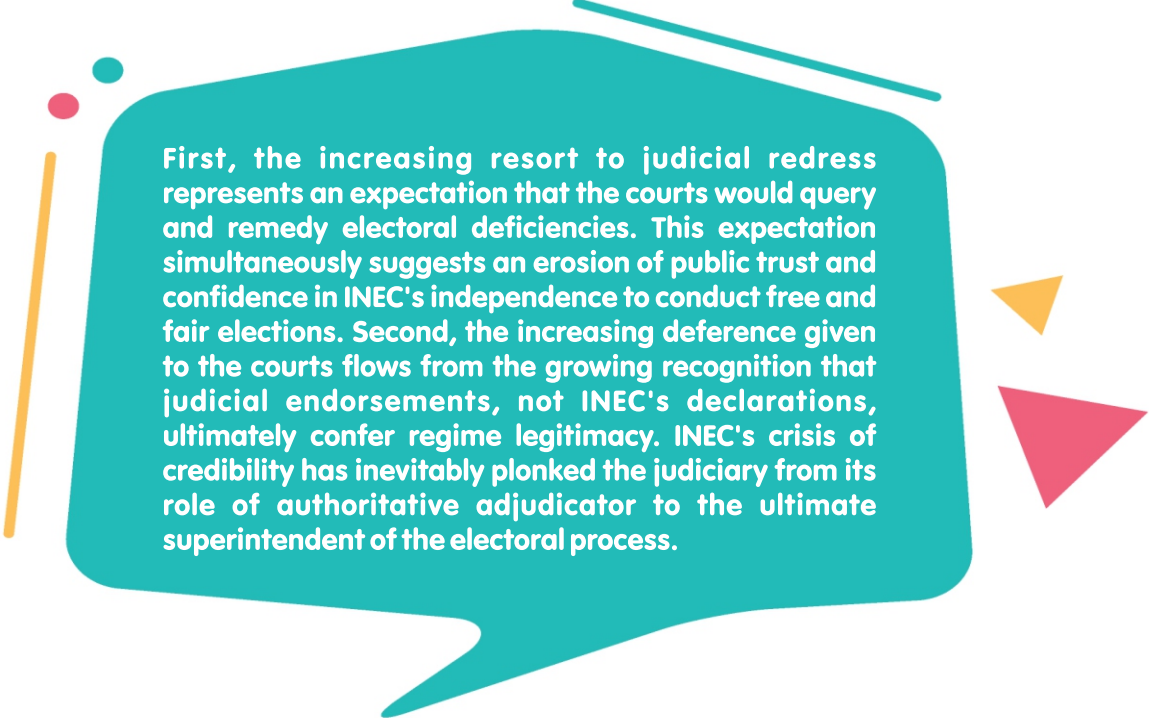
Two deductions can be made from the sheer scale of aggrieved persons and the magnitude of lawsuits joining INEC as a defendant after the 2023 elections.

8. Interview with Toyin Akinniyi, Africa Director, Luminare, July 18, 2023

GO TO COURT: Synonym for judicial capture

First, the increasing resort to judicial redress represents an expectation that the courts would query and remedy electoral deficiencies. This expectation simultaneously suggests an erosion of public trust and confidence in INEC's independence to conduct free and fair elections.⁹ Second, the increasing deference given to the courts flows from the growing recognition that judicial endorsements, not INEC's declarations, ultimately confer regime legitimacy. INEC's crisis of credibility has inevitably plonked the judiciary from its role of authoritative adjudicator to the ultimate superintendent of the electoral process. Numerous incidents lend credence to these assumptions. For the 2023 elections, INEC amended its list of candidates for governorship and National Assembly seats based on court rulings, substituting at least 126 names based on court orders.¹⁰ What this means is that the judiciary now ultimately determines who participates, who qualifies, who contests, who associates, and who wins an election.

So important is the court-enabled electoral justice that the alternative to the aggrieved is self-help, which leads to anarchy and chaos. Consequently, the minimum expectation from the judicial organ of government is to unswervingly uphold civic participation rights during the electoral process by giving verdicts that reflect the wishes of the electorate and providing legal remedy in the event of breach. Meeting this expectation encompasses the obligation to ensure that every action, procedure and decision related to the electoral process—from the start of the campaign seasons to election-day events up to the announcement of the electoral results—aligns with statutory prescriptions. Falling short of this expectation results in significant contractions in the ability of citizens to assert and enjoy their election-related rights, which ultimately shrinks the civic space.



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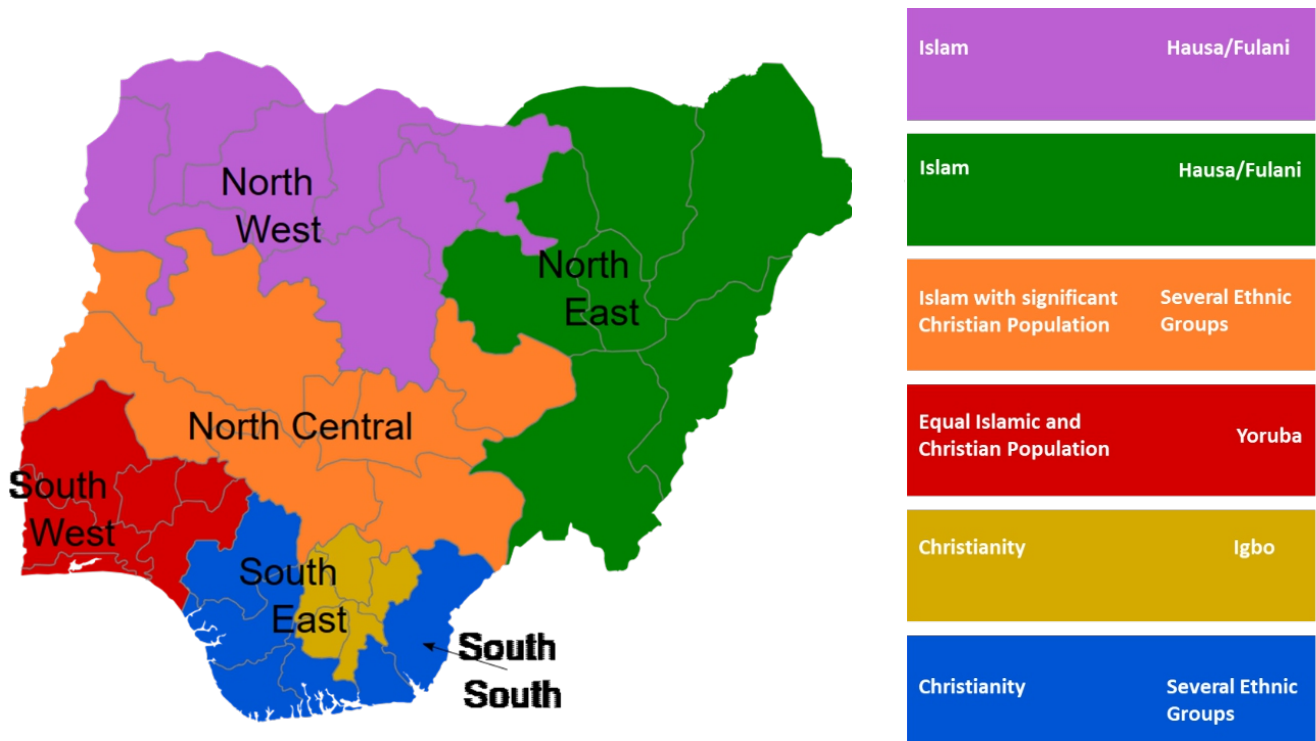
9. Reuters: Nigeria's elections eroded public trust in voting, EU observers say, June 28, 2023; Accessed via <https://www.reuters.com/world/africa/nigerias-elections-eroded-public-trust-voting-eu-observers-2023-06-28/>

10. Leadership Newspapers, Courts May Shape 2023 Polls As Verdicts Disqualify Candidates, <https://leadership.ng/courts-may-shape-2023-polls-as-verdicts-disqualify-candidates/>

1.1. Background and Context of Elections in Nigeria

The area known as Nigeria today emerged in 1914 following Lord Frederick Lugard's amalgamation¹¹ of the numerous ancient civilizations in the southern and northern protectorates of Nigeria for easy colonial administration. On October 1, 2020,¹² Nigeria marked the 60th anniversary of its political independence from British colonial rule. A military coup in 1966 rudely interrupted the brief democratic experiment post-independence. In quick succession, the country witnessed coup after coup,¹³ dotted with very short intervals of democratic rule until May 1999. Ever since, elections conducted every four years have become a consistent feature of Nigeria's democracy.

Nigeria is a multicultural nation with more than 250 ethnic groups and languages. Christianity, Islam, and traditional worship are the three predominant religions, with a higher concentration of Christians in the south and Muslims in the north. The country is a federal democracy split into 36 States and the Federal Capital Territory (Abuja), with a heavy concentration of power at the federal level. The constituent states are further divided into six geo-political zones, namely: North-West, North-East, North Central (or the Middle Belt), the South-West, South-East, and the South-South. Coincidentally, the geo-political zones also reflect the ethnic composition and distribution in the country. The North-West and North-East are predominantly Hausa/Fulani; the South-West is largely populated by the Yorubas whilst the South-East is homogeneously Igbo. The Middle Belt and the South-South are both ethnically diverse and host the majority of the 250 ethnic groups in the country.



11. Before the amalgamation, Nigeria became a British Protectorate in January 1901

12. Nigeria gained independence on October 1, 1960.

13. There were coup de etats in 1975, 1976, 1983, 1985 and 1990

Nigeria's religious, cultural, and ethnic diversity heavily influence and shape voting patterns, permeating deeper into the civic space climate in the country. The ethnic, tribal and religious coloration of diverse political interests often set the stage for confrontations, controversies, and violence. Nigeria's history is replete with episodic skirmishes and fractured relationships equally strained along ethnic, cultural, and religious lines. Some of the conflicts have antecedents in old animosities, but many were resource-driven, spurred by perceptions of unequal participation in governance and the distribution of public resources.¹⁴ These trends are relevant to understanding and measuring the openness or contraction of the civic space during general elections.

1.2. The Legal Fabric of Civic Space During Elections

Nigeria's 1999 Constitution sets out the fundamental human rights central to democratic societies on which civic participation rests upon, specifically: the freedom of association, the freedom of assembly, and the freedom of speech. These rights are classified as fundamental freedoms and accorded special recognition in Chapter 4 of the Constitution. By this special recognition and categorization as fundamental rights, they require a high degree of protection from encroachment by both state and non-state actors.

Freedom of association: Freedom of association—protected under Section 40 of the 1999 Constitution—entitles every Nigerian to form themselves into groups for legitimate purposes such as political parties, professional associations, pressure groups, think tanks, trade unions, and so forth. Consistent with this right, INEC registers and formulates rules and regulations governing political parties' campaigns while acting as the referee to ensure that all the parties interact on a level playing field and by the rules.¹⁵ The right to join a political party is the livewire of the electoral process. Political parties provide the basic platform for recruitment into political office and operate as the fundamental engine driving the civic space during elections. There are 18 registered political parties in Nigeria¹⁶ that are eligible to field candidates running for elections and mobilize the electorates to vote for them.



14. Dr. Kayode Fayemi; *Resurgent Regionalism and Democratic Development in Western Nigeria: Challenges and Prospects*; 2011

15. INEC: *Political Party Finance Handbook* INEC March 2005, https://www.inecnigeria.org/wpcontent/uploads/2018/10/Political_Party_Finance_Handbook.pdf

16. INEC: https://www.inecnigeria.org/?page_id=11 . See also S. 75 of the *Electoral Act 2022*


Registered Political Parties in Nigeria¹⁷

- | | |
|---|--|
| >  Accord (A) | >  Labour Party (LP) |
| >  Action Alliance (AA) | >  National Rescue Movement (NRM) |
| >  Action Democratic Party (ADP) | >  New Nigeria Peoples Party (NNPP) |
| >  Action Peoples Party (APP) | >  Peoples Democratic Party (PDP) |
| >  African Action Congress (AAC) | >  Peoples Redemption Party (PRP) |
| >  African Democratic Congress (ADC) | >  Social Democratic Party (SDP) |
| >  All Progressive Congress (APC) | >  Young Progressives Party (YPP) |
| >  All Progressive Grand Alliance (APGA) | >  Zenith Labour Party (ZLP) |
| >  Allied Peoples Movement (APM) | >  Boot Party (BP) |

The power of political parties to conduct internal party primaries is concomitant to the freedom of association. Conducting primaries flows from the recognition that people that have freely come together under a common umbrella of a political party have the right to choose or nominate who would represent them at the polls. Nigeria's Electoral Act 2022 requires every political party to conduct primaries to select the candidates they wish to sponsor at the elections. The names of successful candidates that emerged from valid primaries are submitted to INEC not later than 180 days before the date appointed for a general election.¹⁸ Any disputes arising from the primaries either pertaining to the qualification, disqualification, nomination, substitution, or how the primaries were conducted are regarded as pre-election matters.

¹⁷ [Lagos State Independent Electoral Commission | LASIEC](#)

¹⁸ Section 29 of the Electoral Act; See also Complaints about the conduct of primaries are pre-election matters." Per Rhodes-Vivour J.S.C. in *A.P.C. v LERE* (2020) 1 NWLR (PT. 1705) 254 at 279.



Freedom of assembly: The freedom of association goes hand in hand with the freedom of assembly. In the context of elections, the ability to associate is meaningless when political parties, interest groups and associations cannot assemble to advance their collective interests. Freedom of association, therefore, entitles all Nigerians to freely gather, both physically and (in this age of the internet) virtually, to propagate and realize their common aspirations. Assemblies during the elections can take the form of political rallies, town halls, peaceful protests, sensitization walks, grassroots mobilization campaigns, party meetings, stakeholder consultations, etc. Likewise, digital assemblies refer to both the spontaneous or organized gatherings of large numbers of concerned citizens or social media users on internet-enabled platforms for calling worldwide attention to their manifestoes or the shortcomings in other political parties.¹⁹

The freedom of expression: Guaranteed under Section 39(1) of the 1999 Constitution of Nigeria, the freedom of expression crowns all other civic participation rights. The ultimate purpose of forming associations and holding assemblies during election season is for political parties and their candidates to express their intentions and communicate their manifestoes to the electorate with the aim of securing their goodwill and votes. On the other hand, the voting populace is equally entitled to express their views without hindrance—orally and in writing—about the electoral process, and to interrogate political parties' agendas as well as the promises of political candidates. Press freedoms, including the digital and traditional channels for disseminating and transmitting information, rest upon the freedom of expression. This includes opinions and fair commentary expressed on televisions and radio, newspapers, magazines, tracts, social media, and so forth.

1.3. Understanding Nigeria's Electoral Architecture

Different organs, tiers, institutions of governance and actors play specific roles that facilitate citizens' participation at various stages of the electoral process and at different times. These responsibilities are prescribed in a maze of legal frameworks consistent with the constitutional doctrine of separation of powers. The various organs of government and the roles they played during the 2023 elections are as follows:

1.3.1. The Legislature

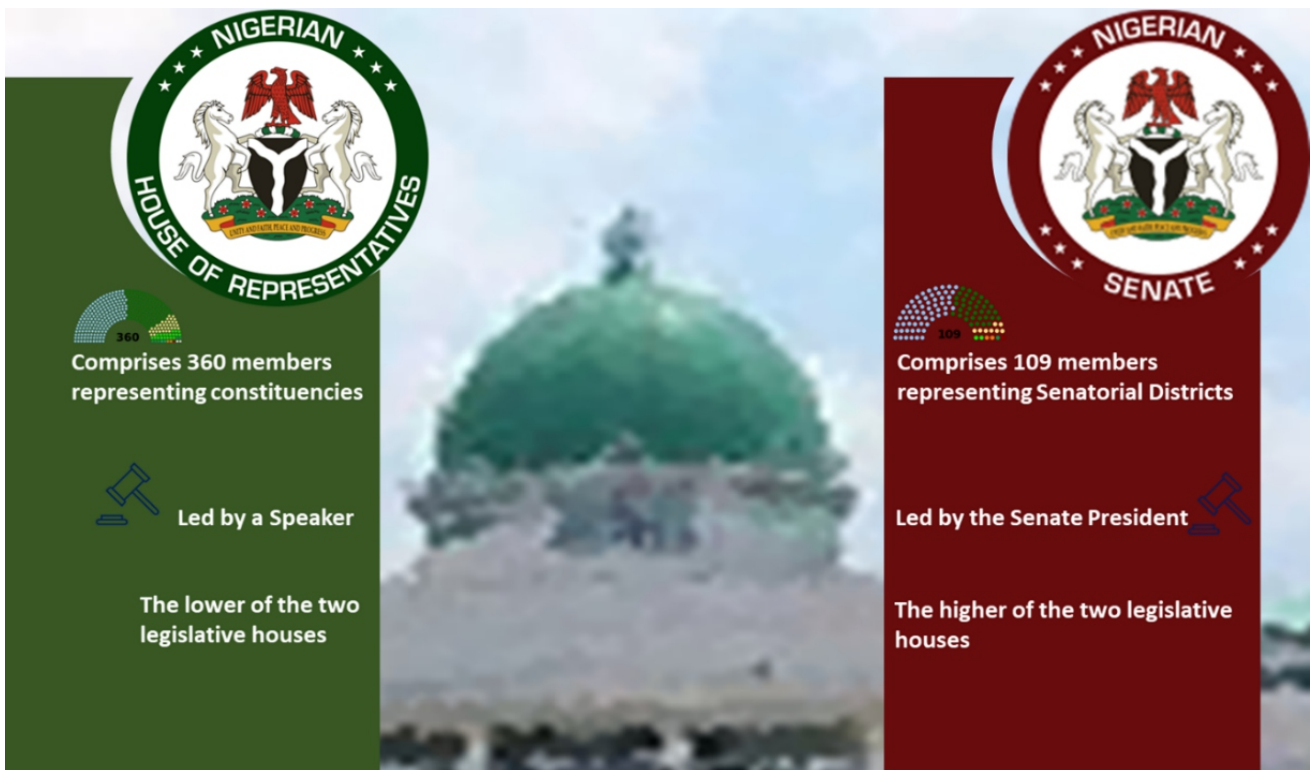
At the federal level, Nigeria operates a bi-cameral legislature comprising the House of Representatives and the Senate. The concurrence of both chambers is required for the successful passage of bills into law. Elections are preceded by the review of existing electoral laws resulting, where necessary, in the amendments of existing laws or the enactment of new regulations. In the just concluded 2023 elections, the Nigerian legislature repealed the Electoral Act 2010, replacing it with the Electoral Act of 2022. This new law introduced innovations that many hoped would enhance the integrity of the elections.

19. Action Group on Free Civic Space, Security Playbook of Digital Authoritarianism in Nigeria (December 2021): <https://closingspaces.org/the-security-playbook-of-digital-authoritarianism-in-nigeria/>

GO TO COURT: [Synonym for judicial capture](#)

The Independent Electoral Commission (INEC) augmented the Electoral Act by issuing Regulations and Guidelines for the Conduct of Elections, 2022, pursuant to Section 149 of the Electoral Act, 2022.²⁰

The National Assembly



As with all national statutes, the Electoral Act derives authority from the Constitution of the Federal Republic of Nigeria 1999 (as amended). It is the Constitution that establishes the governance structures, organs, hierarchies, and the various political offices that are occupied by means of elections.

1.3.2. The Executive

The executive arm of the government plays a central role during elections. The executive comprises the President, the ministers, and federal agencies; the state governor, commissioners, and state agencies; local government chairpersons and the councilors. The executive arm of government also controls the security architecture that is primarily responsible for ensuring the peaceful conduct of elections from the start of the campaigns, the voting day and beyond. For the civic space to remain free and open, security agencies are obligated to act independently and unbiased—not to act in a way that favors or antagonizes any political group, association, community, or stakeholder. The 2023 presidential and gubernatorial elections were turbo-charged with ethnic tensions especially in metropolises such as Lagos State. Although the elections were conducted amid heavy presence of security forces ranging from the Nigeria Police Force, Nigerian Army, Federal Road Safety Corp, National Drug Law Enforcement Agency, Nigeria Security and Civil Defence Corps (NSCDC)—there is overwhelming evidence that

security agencies looked the other way when voters suspected to be either from certain ethnic groups, or in support of opposition candidates, were disenfranchised and violently attacked by hoodlums.²¹ Targeted voter suppression without any restraint from security agents signifies a pattern of contraction on the civic space during the elections.

The Nigerian Constitution empowers the President to appoint the INEC chairman²² even if the President is one of the contestants in the general elections, raising concerns among stakeholders. This constitutional power vested on the President breeds fears that it will be abused to favor the ruling party, or to rig elections, placing Nigerians under the siege of tyranny.²³ To entrench neutrality²⁴ and independence, it has been argued that an electoral umpire ought not to be appointed by a participant in the game. More tellingly, the President equally appoints the heads of security agencies and several departments of government that play major roles during the elections. For instance, the executive oversees the regulation of broadcast media and other institutionalized channels for the dissemination and transmission of information to the electorate, including the mass media and the internet. The National Broadcasting Commission (NBC) slammed Channels TV with a Five Million Naira (N5,000,000) fine for allegedly violating the broadcasting code during the interview session with an opposition politician, Datti Ahmed because “the broadcast was volatile and capable of inciting public disorder”.²⁵ Absent adequate checks and balances, executive oversight can be adversely deployed to advance the interests of certain political parties while suppressing the political opposition.

1.3.3. The Judiciary

The civic space comes to life during election cycles, with candidates, political parties and their supporters competing fiercely for increased political capital and votes. Citizen-to-citizen clashes, particularly verbal and physical altercations between apologists of opposing parties or candidates reach an all-time high during this period. As robust debates ensue online across social media platforms, harsh words are frequently hauled at each other, often crossing the red lines of slander, libel, and defamation. Disputes also arise from pre-election matters relating to the qualification, disqualification, nomination, substitution, conduct of primaries and sponsorship of candidates for the general election.²⁶ And during the actual elections, disagreements regarding the interpretation of constitutional and electoral laws, voter suppression, and criminal disruptions of polling processes also cause tensions that need to be resolved by a neutral and independent arbiter. These varying forms of contestations make the role of the judiciary indispensable before, during and after the elections.

21. Vanguard, Igbo elites speak on attacks against Igbo in Lagos, March 15, 2023, <https://www.vanguardngr.com/2023/03/igbo-elites-speak-on-attacks-against-igbo-in-lagos/>

22. S.154 subsection 3 of the 1999 Constitution

23. Taiwo Ojoye, *ibid.*

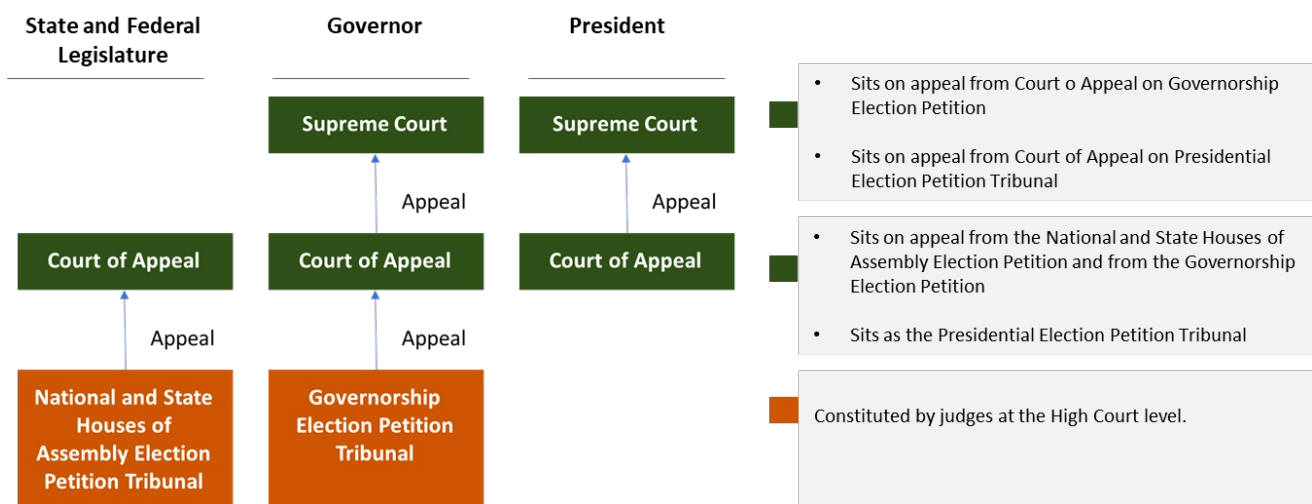
24. Taiwo Ojoye, *Punch Newspapers*, Should President retain power to appoint INEC chairman? 15 June 2017, <https://punchng.com/should-president-retain-power-to-appoint-inec-chairman/>

25. The Gazette, FG fines Channels TV N5 million over interview with Datti Baba-Ahmed, March 31, 2023, <https://gazettengr.com/fg-fines-channels-tv-n5-million-over-interview-with-datti-baba-ahmed/>

26. THISDAY, The Concept of Pre-Election Matters Under Nigerian Law Simplified, <https://www.thisdaylive.com/index.php/2021/05/18/the-concept-of-pre-election-matters-under-nigerian-law-simplified>



As we shall see in cases where electoral outcomes are contested, the judiciary is the final arbiter of the winner of an election. These cases, referred to as election petitions, are determined in accordance with the rules spelt out in the Constitution, the Electoral Act and election petition procedures of the courts. Special courts, called election petition tribunal (EPT), hear the petitions filed by litigants aggrieved by the outcomes of electoral activities. The Chief Justice of the Federation appointed a total of 346 judges²⁷ to preside in various tribunals across the country to hear and determine the 2023 election petitions. The hierarchy is ostensibly different from the traditional hierarchy of courts in the country as seen in the table below.



1.3.4. The Fourth Estate

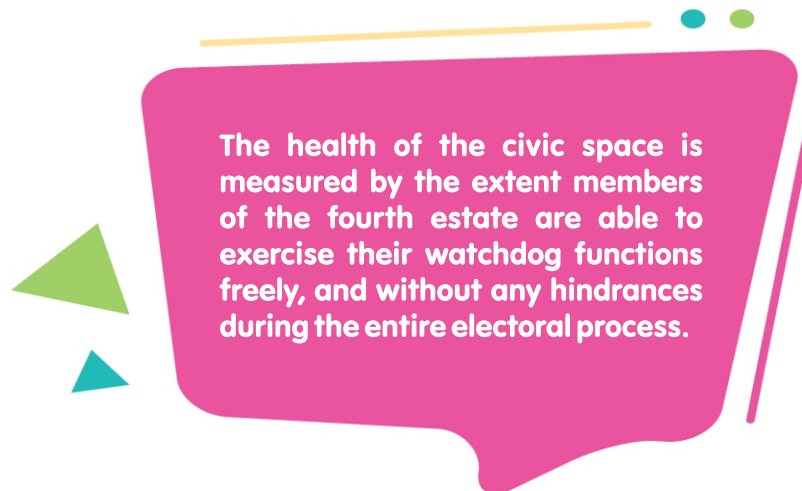
The term, "fourth estate", encompassing the independent media, pressure groups and non-governmental organizations (NGOs) play the role of watchdogs and campaigners holding state and non-state actors accountable during the electoral process. They conduct voter education, influence political debates, scrutinize electoral policies, and checkmate the excesses of elected officials, thereby providing an outlet for enhancing citizens' participation in governance. In Nigeria, NGOs form part of the broader civil society ... carrying out different kinds of good works, with their activities reaching millions of people, particularly in the areas of education, health, security, agriculture, policy formulation, democracy, governance, gender rights, public rights advocacy, and so forth.²⁸ By catalyzing democratic participation through wide-ranging strategies such as providing platforms for interactions between candidates and voters, querying the deficiencies within the legislative, executive and judicial systems, and amplifying the voices of the historically-excluded persons and groups, the fourth estate strengthens the entire architecture the civic space rests upon.

27. CJN swears in 39 more judges for 2023 election petitions (punchng.com)

28. SPACES FOR CHANGE, Unpacking the Official Construction of Risks and Vulnerabilities for the Third Sector in Nigeria, March 2019, page 8, spacesforchange.org/unpacking-the-official-construction-of-risks-and-vulnerabilities-for-the-third-sector-in-nigeria/

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During the 2023 elections, members of the fourth estate deployed a wide range of strategies to support free, fair, and transparent elections in Nigeria, and strengthen the credibility of the wider political system. Spaces for Change's (S4C's) voter education drive in informal and rural communities took important messages about the newly-introduced technological innovations in the new electoral law directly to the informal communities, thereby expanding capacities for marginalized groups to participate in governance.²⁹ Coalitions like the Nigeria Civil Society Situation Room mobilize civil society organizations (CSOs) to monitor the electoral process, including undertaking regular analysis and dissemination of information on major developments in the preparation and conduct of elections in Nigeria.³⁰ International organizations such as the International Republican Institute (IRI) and the National Democratic Institute (NDI) working to support and strengthen democratic institutions worldwide also constituted joint International Election Observation Missions to Nigeria's 2023 elections.³¹



The health of the civic space is measured by the extent members of the fourth estate are able to exercise their watchdog functions freely, and without any hindrances during the entire electoral process. According to a report:³² "...two Situation Room observers were harassed and obstructed from carrying out their duties in ...Enugu State. AIT reporters and cameraman were molested and prevented from covering the elections at some polling units in... Lagos by political thugs and hoodlums. An ARISE TV crew was attacked while covering the election in Elegushi area of Lagos. In Ogun State, a reporter with the News Agency of Nigeria was among journalists molested in ...Abeokuta South LGA where they faced mob attack by political thugs who equally reportedly assaulted INEC officials with axes and allegedly destroyed ballot boxes". These incidents represent a crackdown on the fourth estate, undermining their ability to freely monitor, hold institutions accountable and defend the integrity of the elections. The frequency of these crackdowns poses serious threats to the civic space that can both weaken democratic

29. SPACES FOR CHANGE, Enhancing the Participation of Marginalized Groups in Electoral Processes;

<https://spacesforchange.org/enhancing-the-participation-of-marginalized-groups-in-electoral-processes/>

30. Nigeria Civil Society Situation Room: <https://situationroomng.org/what-we-do/>

31. International Republican Institute (IRI) NDI-IRI Announce International Election Observation Mission to Nigeria for February 25 Elections; <https://www.iri.org/news/ndi-iri-announce-international-election-observation-mission-to-nigeria-for-february-25-elections/>

32. ThisDay: Situation Room Seeks Probe of Shortcomings of 2023 General Elections,

<https://www.thisdaylive.com/index.php/2023/03/20/situation-room-seeks-probe-of-shortcomings-of-2023-general-elections>

CHAPTER 2



The Presidential Election Petition Tribunal (PEPT) sitting in Abuja, Federal Capital Territory, Nigeria. | Source: SUN NEWS

WHY JUDICIAL INTERVENTION IN THE 2023 GENERAL ELECTIONS?

Judicial intervention after an electoral activity is primarily a sign of protest. It signals that an interested party in the elections disagrees with the outcomes of the electoral processes and wants redress. It is also an indicator that political parties are flouting the rules in ways that make the provision of legal remedies imperative. The assumption before the elections was that there would be few reasons to drag the judiciary into the elections.³³ This assumption flows the assurance that the infusion of technological accompaniments, particularly the Bimodal Voter Accreditation System (BVAS) and the Independent National Electoral Commission's (INEC's) Result Viewing Portal (IReV), to the electoral processes would cut down the malfeasance that characterizes elections in Nigeria, thereby eliminating the use of incident forms during accreditation on election day. As we shall see below, "the 2023 elections in Nigeria fell short of citizens' legitimate and reasonable expectations";³⁴ making the recourse to the courts inevitable.

2.1. Factors Responsible for Judicial Intervention in the 2023 General Elections

At present, the presidential candidates of the People's Democratic Party (PDP) and Labour Party (LP) have approached the courts challenging the results of the February 25 presidential elections.³⁵ At the same time, a barrage of lawsuits have also trailed the National Assembly, gubernatorial and State House of Assembly elections. Political parties held their primaries between April and June, 2022 ahead of the 2023 elections. As of February 6, 2023, INEC had been joined in 1,241 intra-party lawsuits in different courts of law.³⁶ In fact, the 2023 Presidential and National Assembly elections have triggered direct judicial intervention as the final phase of the electoral process.³⁷ The numerous reasons for the electoral grievances and resort to the courts are detailed below:

2.1.1. Disputes Arising from Pre-election Matters

Numerous disagreements among party members trailed the primaries conducted by several political parties, with most of them ending up in the courtrooms across the country. From the presidential to the National Assembly to State House of Assembly elections, these disputes stem from the nomination, qualification, candidature, wrongful exclusion, substitution and procedure for the conduct of party primaries. Pre-election matters litter the courts across the federation, with some of the cases bordering on coercion and refusal to withdraw from the primaries in Ebonyi State,³⁸ expulsion of a nominated candidate in order to make way for a new candidate in Plateau State,³⁹ constituting a three-man ad hoc committee to select a candidate

33. Dakuku Peterside, Judicial intervention as extension of 2023 elections, Business Day, May 7, 2023,

<https://businessday.ng/opinion/article/judicial-intervention-as-extension-of-2023-elections/>

34. Emmanuel Akeh, ThisDayLive US Groups Release Final Report on Nigerian Polls, Say Election Marred by Logistical Failures, June 2023, <https://www.thisdaylive.com/index.php/2023/06/14/us-groups-release-final-report-on-nigerian-polls-say-election-marred-by-logistical-failures>

35. The APC candidate polled 8,794,726 votes and won in 12 states, to defeat his closest rivals, Atiku who scored 6,984,520 votes, Obi polled 6,101,533, and Rabiu Kwankwaso of the New Nigerian Peoples Party (NNPP) polled 1,496,687 votes.

36. Sodiq Omolayo, Guardian, INEC and burden of unending litigations from 2023 general elections

<https://guardian.ng/politics/inec-and-burden-of-unending-litigations-from-2023-general-elections/>

37. Dakuku Peterside, Judicial intervention as extension of 2023 elections, Business Day, May 7, 2023,

<https://businessday.ng/opinion/article/judicial-intervention-as-extension-of-2023-elections/>


38. Supreme Court - Nwite v PDP & Ors - (2022) LPELR-59192(SC)

39. Court of Appeal - Margif v Labour Party & Ors - (2023) LPELR-59776(CA)

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for the party instead of holding a valid primary election in Abia State,⁴⁰ holding multiple party congresses in Ogun State involving elected party delegates and duly-screened and cleared aspirants at the designated centre under the supervision of INEC and another one purportedly held at a different venue where persons different from the elected delegates voted for another candidate without the knowledge and supervision of INEC,⁴¹ conducting gubernatorial party primaries in Zamfara State allegedly characterized by flagrant violations of the PDP Constitution and the Electoral Guidelines,⁴² and so forth. In most of these cases, the aggrieved parties are either challenging the outcomes of the primaries or seeking nullification of the said primaries and an order of court to conduct fresh primaries.

Other cases that have been adjudged as pre-election matters by the courts include the (1) nomination of candidates, (2) double nomination of a candidate, (3) disqualification of a candidate, (4) wrongful substitution of a successful candidate's name by the electoral body, (5) wrongful omission of a successful candidate's name on the register, (6) complaints about the conduct of primaries, (7) false declaration on oath about particulars of a candidate.⁴³ Because most pre-election matters challenge the infringement on the freedom of association, they provide an important yardstick for gauging the temperature of the civic space during the elections. By and large, the way pre-election matters are determined by the court not only sets the tone for free and fair elections, but also represents a litmus test for measuring meaningful and effective participation in the electoral processes. Timely and unprejudiced resolution of such matters encourages electoral accountability, while the opposite is a threat to democracy.



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40. Court of Appeal - Ukpai Ifegwu v. PDP & Ors (2023) LPELR-59862(CA)

41. Court of Appeal - AMOSUN v. PDP & ORS (2022) LPELR-59162(CA)

42. See (2022) LPELR-58924(CA)

43. See A.P.C. v LERE (SUPRA), MODIBO v USMAN (2020) 3 NWLR (PT 1712) 470 at 500 – 515, GBILEVE v ADDINGI (2014) 16 NWLR (PT 1433) 394

2.1.2. Failure, Malfunction and/or Manipulation of BVAS

BVAS is an electronic device that can read and authenticate voters using their permanent voters' cards (PVCs). This works in three ways: (1) scanning the barcode/QR code on the PVC/Voter's register; (2) entering the last six digits of the Voter Identity Number; and (3) typing in the last name of the voter by the Assistant Presiding Officer to verify and authenticate. The failure of BVAS to increase election results' openness and foster more public confidence in the outcomes of recent elections in Nigeria tops the list of reasons for judicial intervention in the 2023 elections.⁴⁴ Assuaging the concerns expressed by observer groups⁴⁵ and other critical election stakeholders regarding the effectiveness of BVAS machines, INEC gave assurances that BVAS will enable "the verification of the genuineness of the PVCs and the fingerprint or facial authentication of voters during accreditation" and "replace the Z-pad for uploading the polling unit results to the INEC Result Viewing Portal (IREV) in real-time on election day."⁴⁶

Notwithstanding INEC's assurances, the Nigeria Civil Society Situation Room (NCSSR) reported incidents of failed bimodal voter accreditation system (BVAS) machines during the March 18 governorship and state assembly elections.⁴⁷ The group noted that use of the BVAS "posed challenges to the accreditation process in many voting locations, particularly failure to authenticate fingerprints and detect faces." These technological malfunctions forced electoral officials to resort to offline or manual systems in place of the BVAS machines.⁴⁸

Witnesses at the Presidential Election Petition Tribunal (PEPT) have testified that BVAS was manipulated in over 20 polling units in Kogi State.⁴⁹ The manipulation of BVAS was also accompanied by alleged use of force or coercion of party officials to sign election results by INEC's officials. Petitions filed at the PEPT also accused INEC of installing a third-party device to "manipulate" results of the February 25 poll in favour of ruling All Progressives Congress (APC) and its candidate, Bola Tinubu. For instance, PDP's petition⁵⁰ averred that "it shall lead evidence to show that contrary to the original design of the BVAS machine to upload data directly to the electronic collation system and the IReV portal, INEC contrived and installed an intervening third-party device (Device Management System) which, in its ordinary usage, is meant to secure and administer ITS technological ecosystem for the elections but as it relates to the presidential election, was used to intercept the results, quarantine and warehouse same, and filter them before releasing same to the IReV portal."⁵¹

44. Elijah Bello, The Guardian, Can INEC's BVAS provide security and electoral transparency promised amidst the hype? February 12, 2023, <https://guardian.ng/opinion/outlook/can-inecs-bvas-provide-security-and-electoral-transparency-promised-amidst-the-hype/#:~:text=According%20to%20the%20Commission%2C%20employing,of%20recent%20elections%20in%20Nigeria.>

45. Before the 2023 election, INEC deployed BVAS machines for the November 6, 2021 Anambra governorship election and the Isoko South Constituency 1 bye-election in Delta State on September 10, 2021. Some presiding officers complained that the machine had difficulties capturing the thumbs and faces of some of the voters, especially the aged.

46. Daily Trust, EXPLAINER: What INEC's BVAS Means And How To Minimise Its Failure During Elections, <https://dailytrust.com/explainer-what-inecs-bvas-means-and-how-to-minimise-its-failure-during-elections/>

47. NCSSR, Report on Nigeria's 2023 General Election, 25 February & 18 March 2023, page 23. Please see <https://situationroomng.org/wp-content/uploads/2023/06/Situation-Room-Report-on-Nigerias-2023-General-Election.pdf>

48. Godwin Tsa, The Sun, BVAS didn't transmit presidential election results — INEC adhoc staff tells court, June 8, 2023, <https://sunnewsonline.com/bvas-didnt-transmit-presidential-election-results-inec-adhoc-staff-tells-court/>

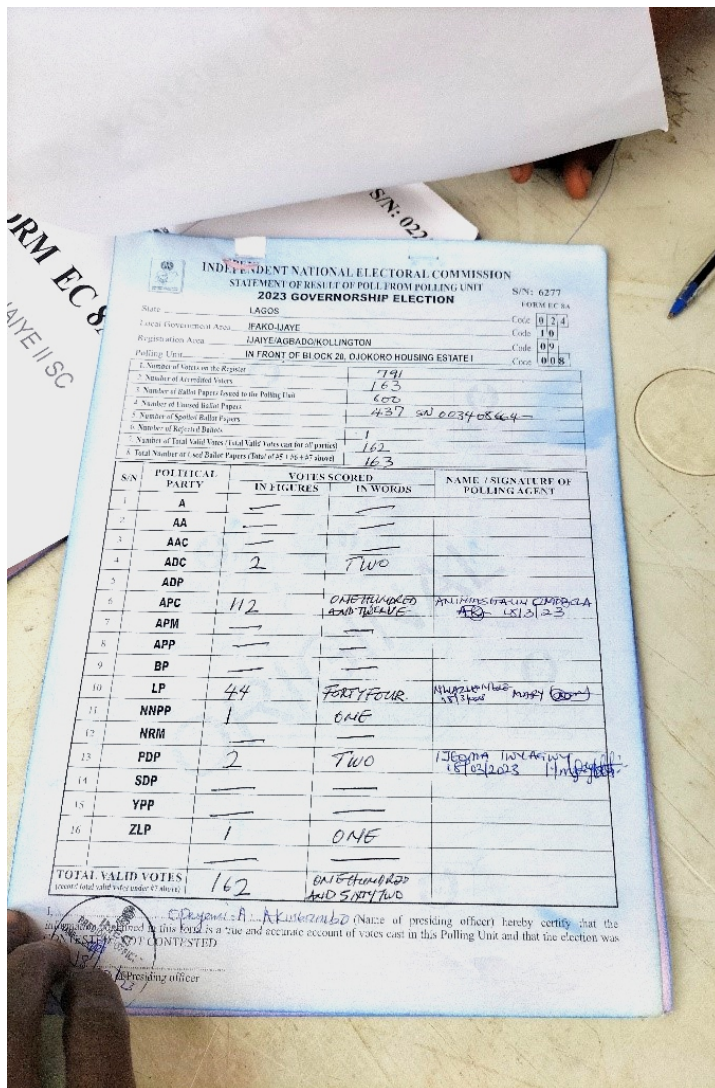
49. Esther Blankson, The Punch, BVAS manipulated in over 20 Kogi Pus, June 2, 2023, <https://punchng.com/bvas-manipulated-in-over-20-kogi-pus-atikus-witness/>

50. The petition is marked CA/PEPC/05/2023

51. PDP's election petition, <https://media.premiumtimesng.com/wp-content/files/2023/03/AAA-v-INEC-Filed-Petition-20032023.pdf>

2.1.3. INEC's Failure to Upload Results on its IREV Portal

The plethora of cases pending before election petition tribunals across the country allege that INEC's failure to upload election results to its IREV portal was intentional. The failure to electronically transmit election results, in violation of numerous provisions of the Electoral Act, 2022, is the first ground raised by the PDP for contesting the 2023 presidential elections.⁵² Likewise, concerned citizens also filed similar petitions before the courts, seeking nullification of presidential and national assembly elections. In *Bob James Esq. v AGF & INEC*,⁵³ the Plaintiff instituted an action against INEC and the Attorney General of the Federation over INEC's failure to transmit election results to its IREV portal. The sole issue for determination was whether or not INEC had a statutory duty to upload electronically on its portal, results of the presidential and national assembly elections immediately elections ended at every polling unit across the country.



Civil society organizations also joined the fray by seeking criminal prosecution for these alleged electoral transgressions. In *Govindex Leadership & Ors. v INEC*,⁵⁴ Govindex Leadership, Empowerment and Development Foundation, a civil society organisation sued the INEC, alleging amongst other things, that the refusal to comply with Sections 60(5) and 148 of the Electoral Act 2022 should attract criminal prosecution. The suit also sought criminal prosecution of INEC's fulltime and adhoc officials that conducted the February 25 presidential and parliamentary elections for flouting the Electoral Act by not uploading the results in real-time after completion of voting at the polling units.

2.1.4. Massive Electoral Malpractices

Electoral malpractices documented during the 2023 elections include challenges with voter registration and voter card distribution, inadequate communication by INEC, lack of transparency in the publication of election data, and unchecked political

52. PDP's election petition, <https://media.premiumtimesng.com/wp-content/files/2023/03/AAA-v-INEC-Filed-Petition-20032023.pdf>
 53. Ikechukwu Nnochiri, Vanguard, Lawyer sues INEC over failure to electronically transmit poll results, March 16, 2023, <https://www.vanguardngr.com/2023/03/lawyer-sues-inec-over-failure-to-electronically-transmit-poll-results/>
 54. <https://punchng.com/presidential-poll-group-sues-inec-demands-officials-prosecution/>

violence before and during the elections.⁵⁵ Others include logistical, technological, and communications failures by INEC, political parties that relied on divisive rhetoric rather than running on issues, regional disparities in electoral integrity, instances of vote manipulation, political violence, and marginalization of key populations.⁵⁶ Election violence was exacerbated by intra-party disputes during some of the primaries, shifting political alliances, the rise in armed groups, the emergence of new informal security elements, and a persistent failure to hold perpetrators of such acts to account.⁵⁷

While demanding an independent probe into “the abuse of electoral process by INEC and security officials”, Nigeria Civil Society Situation Room reported that “apart from incidences of vote-buying, violence, harassment of voters and observers, there were serious glitches in the collation and transmission of results by officials of the electoral body during February 25, 2023, Presidential/National Assembly election and March 18, 2023, Governorship/State Assembly poll”. These glitches are better explained by the forensic analysis tendered before the PEPT which showed that a total of 18,088 blurred result sheets were uploaded into the Independent National Electoral Commission (INEC) Result Viewing (IReV) portal after the February 25 presidential election.⁵⁸

2.1.5. Interpretation of the Provisions of Constitutional and Electoral Laws

Aside from the alleged electoral malpractices, several constitutional and procedural issues have been raised by various stakeholders, including opposition political parties. Top on that list is the contentious issue of whether the winner of the presidential elections must score 25 percent of votes cast in the Federal Capital Territory (FCT). The second issue is the correct position of the law regarding the electronic upload and transmission of election results at the polling units.⁵⁹ In Bob James's case, the plaintiff prayed the court to determine whether the “failure or refusal to upload the results from each polling unit on the day of the election to the INEC IRev portal”, does not nullify the polls. This plaintiff grounded his petition on Section 60 of the Electoral Act 2022 and paragraph 38 (1) of INEC's Regulations.

2.1.6. Violation of Religious Freedoms and Non-Discrimination Protections

In **Ugochukwu Uchenwa v FGN, INEC & Ors**,⁶⁰ an elder of the 7-day Adventist Church in Nigeria approached the Federal High Court Abuja for an order against INEC, WAEC, NECO, and National Business and Technical Examination Board (NBTEB), seeking among other things, a declaration that the timing of Nigeria's elections on Saturdays (the “Sabbath day”) violates his fundamental rights to freedom of worship and also a violation of the applicant's right to

55. IRI/NDI International Election Observation Mission to Nigeria, Final Report of the 2023 General Election June 12, 2023, page 7, <https://www.iri.org/resources/iri-ndi-international-election-observation-mission-to-nigeria/>

56. IRI/NDI, *ibid.* page 7.

57. IRI/NDI, *ibid.* page 8.

58. Fadehan Oyeyemi, Daily Post, INEC Uploaded 18,088 Blurred Election Results into i-REV – Obi's Witness Tells Court, June 15, 2023, <https://dailypost.ng/2023/06/15/inec-uploaded-18088-blurred-election-results-into-irev-obis-witness-tells-court/>

59. The PEPT has also given a verdict on these two issues in September 2023, but the opposition contenders have headed to the Supreme Court. Vanguard, PEPT Judgment: Atiku, Obi head to Supreme Court <https://www.vanguardngr.com/2023/09/pept-judgment-atiku-obi-head-to-supreme-court/>

60. Ikechukwu, Nnochiri, Vanguard, Adventist member sues INEC, seeks to stop conduct of elections on Saturdays; <https://www.vanguardngr.com/2023/01/adventist-member-sues-inec-seeks-to-stop-conduct-of-elections-on-saturdays/>

members of the Seventh-day Adventist Church of Nigeria.

2.1.7. Criminal Charges Brought Against Electoral Offenders

According to the Nigeria Police Force, a total of 489 major electoral infractions occurred during the February 25 and March 18 elections, leading to the arrest of 781 offenders and the recovery of 66 assorted firearms.⁶¹ The breakdown of electoral offenses also reveals that no geographic region of the country is immune from these offences. For instance, the police reported arresting 161 suspects in Kano State, 45 in Lagos State, 49 in Sokoto State, 16 in Cross River State, 22 in Jigawa State, 17 in Nasarawa State and 18 in Oyo State, among others.⁶² Likewise, a civil society group, Socio-Economic Rights & Accountability Project (SERAP)⁶³ also filed an action asking the Court for an order of mandamus to compel INEC to appoint an independent counsel to investigate allegations of electoral violence and other electoral offences against some state governors and their deputies during the 2023 elections. INEC may have ostensibly given credence to these claims when it stated that *most of those arrested, tried and convicted for electoral offences are foot soldiers rather than the sponsors of electoral violence and other violations... Many political elites have either engaged in or supported violence in their bid to illegally shape the outcome of contests.*⁶⁴

2.1.8. Requests for Extension of Time for Voter Registration

In **Adeeyo Bayo Wasiu & Ors v INEC**,⁶⁵ the plaintiffs sued INEC on behalf of the seven million Nigerians that were unable to complete their registration process, without which they cannot obtain their permanent voter cards (PVCs) and exercise their right to vote. This case draws parallel to the cases of **Salimat Anajat & Ors v INEC**⁶⁶ and the case of **Chief Mike Ozekhome and Abubakar Damisa v INEC**.⁶⁷ The logistical challenges faced by INEC during the Continuous Voter Registration (CVR) Exercise made it impossible for many eligible voters to get registered. Towards the initial July 31, 2022, deadline set by INEC, a good number of eligible Nigerians were unable to register due to the mammoth crowd at the registration centres, corruption, violence, technological failure, inefficient staffing, etc. The various claims filed before the courts were predicated on their constitutional rights to civic participation in governance which are subsumed in the tripartite fundamental freedoms of expression, association and assembly. Denying them enough time and opportunity to complete the registration for their PVCs would impair their right to vote in the 2023 elections.

61. Daily Trust Editorial, All Electoral Offenders Must Be Punished, April 6, 2023; All Electoral Offenders Must Be Punished, <https://dailytrust.com/all-electoral-offenders-must-be-punished/>

62. Daily Trust, *ibid.*

63. See FHC/ABJ/CS/583/2023 - SERAP v INEC

64. Daily Trust Editorial, *ibid.*

65. See FHC/ABJ/CS/1662/2022 - <https://serap-nigeria.org/2022/09/18/7m-nigerians-sue-inec-over-failure-to-allow-them-complete-voter-registration/>

66. Suit no: FHC/ABJ/CS/1343/2022

67. Suit no: FHC/ABJ/CS/1335/2022

2.1.9. Challenging Exclusion and Demanding Diaspora Voting

By virtue of Section 77 (2) of the Nigerian 1999 Constitution, every citizen of Nigeria that has attained the age of eighteen years **residing in Nigeria** at the time of the registration of voters is entitled to be registered as a voter. Similarly, the eligibility criteria set down in Section 12 of the Electoral Act for registering as a voter include the citizen being resident, works in, originates from the Local Government, Area Council or Ward covered by the registration center. In simple parlance, residency in Nigeria is a precondition for registration.

In **Nkemnacho v INEC**,⁶⁸ two Nigerian-born British citizens, Chikwe Nkemnacho and Kenneth Azubuike Nkemnacho filed an action against INEC on behalf of all other Nigerians living abroad, contending that they were qualified to take part in the electoral process by registering to vote in the 2023 and all other elections regardless of their place of residence. These claims anchored on sections 13, 14, 15, 42, and 17 of the 1999 Constitution argued that their constitutionally-protected civic freedoms would be infringed if they were not permitted to vote in the 2023 and subsequent elections. They asked the Court to compel INEC to make adequate provisions to enable them, and other Nigerians in the diaspora, to be able to vote in the 2023 general elections.

2.2. Legal Grounds For Judicial (in)action On The 2023 Electoral Disputes

In the cases listed above, the judiciary either intervened or refrained from taking action in electoral disputes based on three main legal grounds: locus standi, jurisdiction mandamus.

2.2.1. Locus Standi:

Locus standi denotes the legal capacity to sue or institute proceedings in court, without inhibition, obstruction or hindrance from any person or body whatsoever including the provisions of any existing law.⁶⁹ *Consequently, if the plaintiff does not have locus standi to institute the suit, the court would have no jurisdiction to entertain the suit. Usually, it is the plaintiff that is questioned as to whether he has locus standi.*⁷⁰ The principle of locus standi applies to all cases including election matters. There must be an interest of the party litigating over election matters.

"The "interest to sue" is *suis generis* and greatly curtailed in pre-election matters. Specific provisions of the Electoral Act and case law specify who has the locus standi to sue in pre-election matters pertaining to a political party's primaries.⁷¹ In such cases, the hands of the courts are tied, precluding them from adjudicating in civil or criminal



68. Suit no: FHC/ABJ/CS/2119/2022

69. See *Adesanya v. Shagari* (1981) 2 NCLR, 385

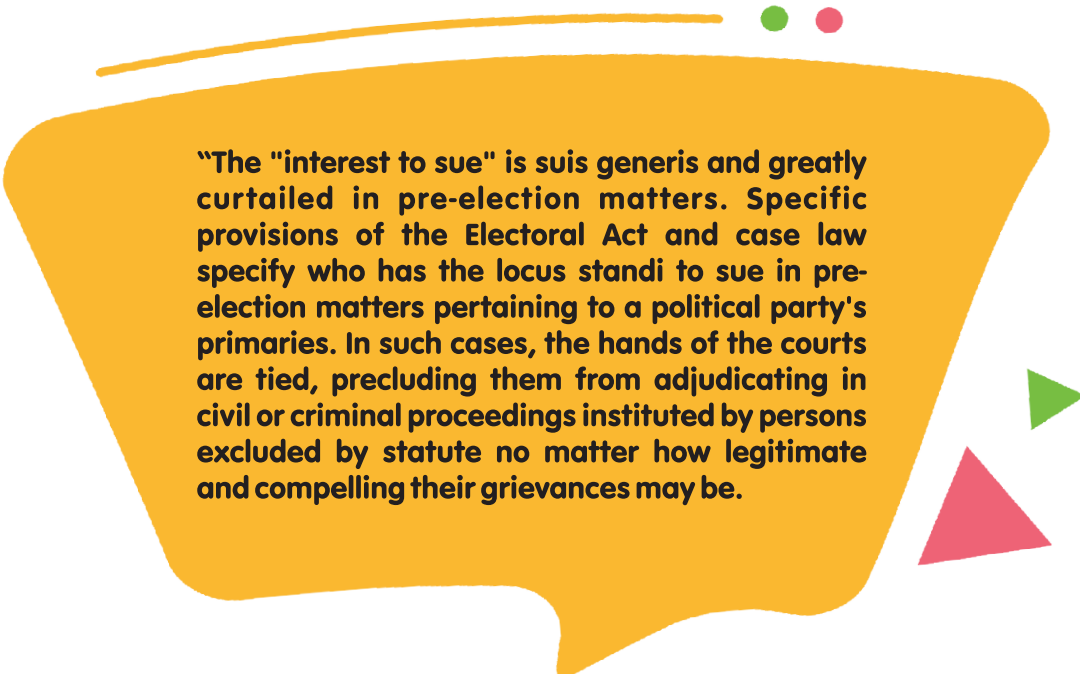
70. *Daniel v INEC & Ors* (2015) LPELR-24566(SC)

71. Court of Appeal in *Jackson v Okon & Ors*, (2023)

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proceedings instituted by persons excluded by statute no matter how legitimate and compelling their grievances may be. The Electoral Act 2022 has now limited locus standi in pre-election suit to an aspirant who participated in the primaries of his political party at the Federal High Court⁷² to challenge the information supplied by a candidate of his/her political party or the conduct of his/her party's primaries. This means that participation in the primaries of his/her party is the litmus test to qualify for locus standi in pre-election petitions.

On the grounds of locus standi, the courts have either refrained from intervening in, or dismissed many petitions initiated by litigants on the basis that it lacked jurisdiction to adjudicate on the internal affairs of political parties.



“The “interest to sue” is *suis generis* and greatly curtailed in pre-election matters. Specific provisions of the Electoral Act and case law specify who has the locus standi to sue in pre-election matters pertaining to a political party's primaries. In such cases, the hands of the courts are tied, precluding them from adjudicating in civil or criminal proceedings instituted by persons excluded by statute no matter how legitimate and compelling their grievances may be.

In **Nkasi v PDP & Ors.**,⁷³ the Court declined jurisdiction on the ground that a political party cannot challenge the outcome of the primaries of another party. This has rather restricted the terminology, “pre-election”, to what happens within the primary election of political parties alone. Although the concept of public interest litigation is allowed under the Nigerian legal system, the Nigerian judiciary frowns at lawsuits brought by persons outside of the categories specified in the electoral laws and considers them as “busy-body” or “meddlesome interlopers”.⁷⁴ The ultimate rationale for abstaining from adjudication in such cases is to try as much as possible to shield the judiciary from being further dragged into partisan politics that it is not well suited for, and to prevent political actors from converting the judiciary into an arena of inter-parties electoral contests.⁷⁵

72. Sections 29 (5) and 84(14) of the new Electoral Act, 2022

73. ((2023) LPELR-59255(CA)

74. Nnamani v. Nnaji, (1999) 1 LRECN 96, 102

75. PDP v. INEC & ORS (2023) LPELR-59444(CA)

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Two things are clear: the restrictions imposed by electoral laws have had positive and effects on the association rights of citizens. On the positive side, petitions must be brought within the statutorily-approved timeframe to ascertain whether a political party complied with its' own constitution and party guidelines or whether INEC has satisfactorily complied with the provisions of the Constitution (as amended) and the electoral laws pertaining to selection or nomination of candidates and participation in an election.

On the other hand, perception is growing that locus standi inhibitions erected by the electoral law, and upheld by Nigerian courts, deprive interested stakeholders and aggrieved candidates of unhindered access to the tribunal to ventilate their grievances.

2.2.2. Jurisdiction

No Nigerian court would be able to act on any question of law or fact presented to it, except it has jurisdiction. Competent jurisdiction or adjudicatory jurisdiction denotes a court's power to adjudicate or decide a matter or issue an order (decree).⁷⁶ Courts are obligated to strictly comply with their jurisdiction as spelt out in either the Constitution or a statute.⁷⁷ In election matters, Section 239(1) (a) of the CFRN 1999 specifically names the Court of Appeal as having original jurisdiction to the exclusion of any other Court, to hear and determine whether any person has been validly elected to the office of President or Vice President. Strictly following the dictates of the law, the Federal High Court declined jurisdiction to entertain the suit⁷⁸ brought against the APC's presidential flagbearer, Asiwaju Bola Ahmed Tinubu, who was declared President-elect by INEC. The plaintiffs sought an order of the court to nullify Tinubu's candidacy in the presidential election, and also an order restraining former President Buhari from swearing-in Tinubu as President of the Federal Republic of Nigeria. Dismissing the suit as frivolous and an abuse of court process, the Court held that the matter is a post-election matter, and the Federal High Court is not the appropriate forum for such disputes.




Bola Ahmed Tinubu was sworn in as the 16th President of Nigeria while his election was still being challenged in court.

76. A.P.C. v E.S.I.E.C (2021) 16 NWLR (Pt. 1801) 1 (P. 54, paras. G-H) SC

77. A.G. Federation v Abubakar (2008) 16 NWLR (Pt. 1112) 135 (P.158, paras. A-B) SC

78. FHC/ABJ/C5/567/2023 – Praise Ileomena & Ors. v INEC



It would seem from a plethora of election petitions before the courts that locus standi and jurisdiction go hand-in-hand. Once a court finds that the plaintiff lacks the locus standi, jurisdiction is almost always declined. In **PDP v. INEC & ORS**,⁷⁹ the Court of Appeal dismissed an appeal on the basis that a registered in Rivers State political party in Nigeria and not being an “aspirant” within the contemplation of the relevant provisions of the 2022 Electoral Act, lacked the locus standi to institute the action at the Federal High Court seeking nullification of the candidates of another party. Applying the Supreme Court's decision in **Eyesan V. Sanusi**,⁸⁰ the court held that the proceedings conducted by the trial Court were a nullity and the judgment delivered was without requisite jurisdiction.

2.2.3. Mandamus

In **Associated Discount House Limited v. The Hon. Minister of the FCT and another**,⁸¹ the Supreme Court defined mandamus as an “*extraordinary writ issued by a court of competent jurisdiction to an inferior tribunal, a public official, an administrative agency, a corporation, or any person compelling the performance of an act usually only when there is a duty under the law to perform an act.*” In simple terms, where a public officer or institution is vested with the authority, power or mandate by a statute or the subsidiary legislation, to perform a public duty or function of a public nature and refuses to perform or carry out that duty or function without cause after demand by a person who has sufficient legal interest in the performance of such a duty or function, a court of law may issue an order to compel the performance of the duty or function in question upon the fulfillment of certain conditions.⁸²

Mandamus is used to compel a public agency such as INEC to do certain things it is required by law to do and which it has refused to do so. However, there are certain conditions to be met before the court can grant this prerogative writ. According to Order 34 Rule 2 of the Federal High Court (Civil Procedure) Rules (FHCCPR) 2019, the court will only grant this order if it is deemed just and convenient to do so. Also, leave to seek an order of mandamus shall not be granted until the party seeking it shows that he has 'sufficient interest' in the matter to which the application relates.⁸³ The following are the condition precedent before an order of mandamus can be granted:

1. There is a public duty under statute or subsidiary legislation to be performed;⁸⁴
2. The public officer/person to perform the duty has refused or is reluctant to do so;⁸⁵
3. There has been a demand to the public officer or person to perform and he has refused;⁸⁶
4. There must be no undue delay;⁸⁷

79. (2023) LPELR-59444(CA)

80. (1984) 1 SCNLR 253

81. (2013) LPELR-20088(SC)

82. Dairo v Stanbic IBTC Bank & Anor. (2019) LPELR-49297(CA)

83. Or. 34, R 3(4) FHC(CP)R 2019

84. Comptroller General, Nigeria Customs Services & Anor vs. Minaj Holdings Ltd (2017) LPELR-43055 (CA)

85. Adejumo vs. Ayantegbe (1989) 3 NWLR (Pt. 110) 477 at Page 445

86. Anthony vs. Governor of Lagos State (2003) 10 NWLR (828) 288 @ 299

87. Fawehinmi v. Akilu (1987) 4 N.W.L.R. (Pt.67) 797 at page 834

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5. The demand must not be unreasonable;⁸⁸
6. The person making the demand has a legal right and sufficient interest to do so;⁸⁹
7. There are no other available and effective remedies.⁹⁰

The Constitution and the Electoral Act 2022 have placed certain public duties on INEC in line with its mandate to conduct elections in Nigeria. Accordingly, a party with sufficient interest can approach the court for a prerogative order of mandamus to compel INEC to perform any of those duties as may be required under law subject to the fulfillment of the conditions stated above. In **Adeeyo Bayo Wasiu & Ors v INEC**,⁹¹ the plaintiffs sued INEC on behalf of the seven million Nigerians that were unable to complete their registration process without which they cannot obtain their permanent voter cards (PVCs) and exercise their right to vote. They sought an order of mandamus to direct and compel INEC to re-activate its continuous voters registration exercise to allow the plaintiffs to complete their registration and collect their PVCs. Early closure of registration shuts the door against eligible voters, while eroding procedural fairness guarantees assured by both the Constitution and electoral laws.



Ibrahim Mansur/TheCable

88. Supra fn. 29

89. Chief Ikedi Ohakim vs. Martains Agbaso NSCQR Vol. 47 2011 page 324 @ 367-368

90. Fawehinmi vs. Inspector General of Police (2002) 7 N.W.L.R. (Pt.767)

91. See FHC/ABJ/CS/1662/2022 - <https://serap-nigeria.org/2022/09/18/7m-nigerians-sue-inec-over-failure-to-allow-them-complete-voter-registration/>

CHAPTER 3



OPENING CIVIC SPACE BY THE JUDICIARY DURING THE 2023 ELECTIONS

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As an independent and impartial arm of government, the role of the judiciary is to interpret the law and give redress to any aggrieved person, including remedying electoral malfeasance. Because the protection of citizens' rights lies at the core of judicial functions, the courts are obligated to adjudicate upon all matters between persons, or between persons and any government or authority for the determination of any question as to the civil rights and obligations of Nigerian citizens.⁹² Flowing from this obligation to protect civil rights of citizens, the way electoral disputes between persons or between government, or authority and persons are handled is an important indicator of the court's role in preventing or enabling the repression of civic space during the 2023 elections.

How well did Nigerian courts adjudicate matters, questions and disputes arising from, or connected with any stage of the 2023 elections? In a plethora of court decisions, the legal grounds, reasoning, and strategies adopted by the courts to remedy electoral flaws produced the consequential effect of expanding the civic space. Instances where judicial intervention specifically expanded the civic space for electorates to assert their expression, association, association, and participation rights are examined below.



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3.1 Facilitating A Free and Open Society

Elections provide the vehicle for civic expression and participation in governance. They also facilitate the creation of forums for the expression of public opinion and legitimize the acts of those who wield power.⁹³ Nigeria's electoral umpire, the Independent National Electoral Commission (INEC)⁹⁴ is vested with the authority to conduct regular and periodic elections which are necessary for ensuring a smooth leadership transition and succession, and for the sustenance of democracy. The independence of the electoral body plays a pivotal role in its performance as a neutral arbiter. INEC's independence is fortified by clauses in the Nigerian Constitution⁹⁵ that preclude certain acts of the Commission from being subjected to the control of any other person or body.

92. Section 6(6)b) of the 1999 Constitution

93. Britannica, Functions of Elections, <https://www.britannica.com/topic/election-political-science/Functions-of-elections>

94. Section 153 of the Constitution of the Federal Republic of Nigeria 1999

95. Section 158 of the Constitution of the Federal Republic of Nigeria 1999

Additional legal provisions in subsequent statutes, especially the new electoral law⁹⁶ reinforce the Commission's independence by conferring it with corporate legal personality, independent funding mechanisms and power to appoint persons answerable to it. The flurry of activities during the election cycle and the accompanying judicial scrutiny contributed further to opening the space for political parties, citizens and NGOs to contest either electoral outcomes or challenge the flawed aspects. The series of lawsuits filed by civil society organizations, pressure groups, citizens, political parties and aspirants in the cases of GOVINDEX, Bob James, George Timinimi, PDP and LP etc., exemplify how a wide range of civic actors utilized the instrumentality of the law to seek clarification and interpretation of electoral laws, challenge impunity and injustices, strengthen electoral jurisprudence and to push for electoral reforms.

3.1.1. Expeditious and Progressive Interpretation of the Constitution and Electoral Laws

As of July 2023, most of the electoral disputes that have been fully resolved are pre-election petitions challenging the outcomes of party primaries. The Electoral Act vests exclusive jurisdiction on the Federal High Court (FHC) to determine pre-election matters within 180 days. As of December 2022, a total of 1,838 pre-election cases had been filed at the FHC ahead of the 2023 general elections the following year.⁹⁷ To lay the foundation for expeditious adjudication of electoral disputes, the FHC issued new pre-election Practice Directions in June 2022 to provide for expeditious adjudication with minimal delays. Effective and timely dispute resolution mechanisms are necessary for protecting fundamental freedoms that underpin civic participation in democracy, and for enhancing the integrity of electoral systems.

In a number of cases, the expeditious hearing of electoral disputes combined with progressive interpretation of the Constitution and electoral laws resulted in shifts in judicial thinking and electoral jurisprudence. Certain verdicts removed *locus standi* limitations on civil society's ability to independently challenge anomalies in electoral processes. For instance, Rule 3 of the FHC (Pre-Election) Practice Directions 202 defined parties to a pre-election matter as *"a party challenging the conduct or outcome of a primary election shall join as a Respondent in the suit, the person who emerged winner of the said election or whose name was forwarded by his political party to the Independent National Electoral Commission"*. In a long line of decided cases,⁹⁸ pre-election matters are restricted to mean what happens within the primary elections of political parties alone". Shifting away from the restrictive interpretation of "pre-election matters", the Supreme Court stated in *Timinimi & Ors v INEC*⁹⁹ that:

"The Supreme Court has shifted from its hitherto conservative stance on locus standi. It would be a lacuna in the system of public law if a pressure group, a single public-spirited taxpayer, or as in this case a group of politicians involved in the electoral process, are prevented by outdated technicality".¹⁰⁰

96. Section 1 of the Electoral Act 2022

97. Premium Times, NBA tackles National Assembly for burdening 77 judges with 1,800 pre-election suits, December 12, 2022, <https://www.premiumtimesng.com/news/570223-nba-tackles-national-assembly-for-burdening-77-judges-with-1800-pre-election-suits.html>

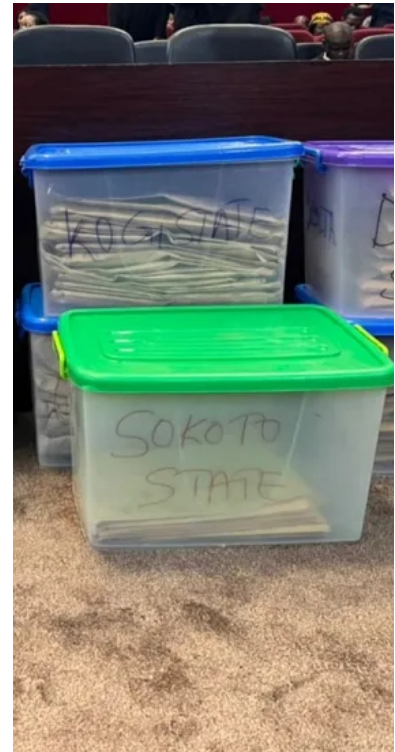
98. *Ozajie & Ors. V Orlu & Ors* (2022) LPELR-59152(CA), See also Supreme Court in *APC & Anor. v INEC v Anor* (2023) LPELR-60098(SC)

99. Suit No: 413/2016: (2023) 7 NWLR (pt. 1882) at 109 (SC)

100. See also the case of *Centre for Oil Pollution Watch v. N.N.P.C.* (2019) 5NWLR (Pt. 1666) 518

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Expanding the application of locus standi rule in pre-election matters enabled a pressure group led by George Timinimi & nine others to succeed in their lawsuit brought against INEC on behalf of the Ijaws of Warri Federal Constituency of Delta State. They claimed that INEC's failure to properly delineate wards and units have caused them hardship, caused by the existence of fictitious wards and units which are used as instruments of electoral malpractices during elections. Upholding their demands, the Supreme Court ordered INEC to conduct a fresh delineation of all electoral Wards/Polling Units for Warri-West, Warri-North, and Warri-South Local Government Area of Warri Federal constituency in Delta State for the purpose of the upcoming general elections in 2023. This decision potentially puts an end to shutting interested persons, civil society organizations, and pressure groups out of the judicial recourse mechanisms on the grounds of locus standi. The requirement to demonstrate sufficient interest in a matter just like "political aspirants" defeats the very essence of public interest litigation and social justice activism.



3.1.2. Protecting the Freedom of Expression and Opinion

Consistent with research findings that freedom of speech faced the most repression across West Africa, including Nigeria,¹⁰¹ spike in attacks on freedom of speech was observed before and during the elections with journalists, social media influencers and broadcast media stations being the main targets. Reports showed that journalists were subjected to harassment and intimidation in Rivers, Oyo, Bayelsa, Ondo, Bauchi State and the FCT during the February 25 Presidential Election.¹⁰² In Anambra State, Nnamdi Chude was arrested for his social media activities in support of the Labour Party.

The judiciary stemmed the tide of crackdowns on free speech by granting bail to victims. The Federal High Court in Abuja¹⁰³ granted bail to Nnamdi Chude, a social media influencer, charged with cyberstalking punishable under Section 24 (1)(b) of the Cybercrime (Prohibition, Prevention, etc) ACT, 2015. The assurance of legal protection from the courts aided the openness of the society by increasing public confidence to speak out, query, and express their views about the electoral processes. Quasi-judicial mechanisms—like the National Human Rights Commission (NHRC)—also complemented judicial provision of bail through the establishment of a hate speech register, further heightening opportunities for civil interactions during election seasons and reproofing hate speech especially in digital spaces.¹⁰⁴

101. Spaces for Change, Civic Space Trends, Threats and Futures, <https://spacesforchange.org/civic-space-in-west-africa-trends-threats-and-futures/>

102. Foundation for Investigative Journalism: [REPORT: Over 20 Journalists Attacked During Presidential Election \(fij.ng\), https://fij.ng/article/report-over-20-journalists-attacked-during-presidential-election/](https://fij.ng/article/report-over-20-journalists-attacked-during-presidential-election/)

103. FHC/ABJ/CR/130/2023

104. Mike Itsibor, Leadership, 2023 Elections: Human Rights Commission Goes After Promoters Of Hate Speech, June

Likewise, NHRC has plans to establish an enforcement mechanism, invite the perpetrators of hate speech during the 2023 election period to defend themselves, under its mandate of addressing all forms of hate speech, including social media, while protecting freedom of speech.

3.1.3. Protecting Association and Assembly Rights

An unprecedented surge in youth consciousness and participation in the electoral processes is a major hallmark of the 2023 elections. 7.2 million new voters that registered for the first time or 76.5% are young people between 18-34 years.¹⁰⁵ Safeguarding the association rights of young people is one of the ways the Nigerian judiciary expanded the frontiers of youth participation and inclusion in the 2023 general elections. The FHC overturned INEC's refusal to register Youth Party (YP) as a political party in 2017¹⁰⁶ which resulted in the party's registration in 2018. INEC deregistered the party again in 2020 for failing to meet certain constitutional requirements such as winning at least twenty-five percent of votes cast in one state of the federation; presidential election; or one local government of the state in a governorship election.¹⁰⁷ In a successful challenge to its deregistration in another lawsuit,¹⁰⁸ the Supreme Court ¹⁰⁹ stated that INEC's power to deregister political parties is not absolute, unqualified or unquestionable since it is subject to certain conditions and requirements set out and prescribed therein. In addition, INEC's power to deregister is subject to judicial supervision by virtue of the provisions of section 6(6) of the 1999 Constitution.

The courts also waned into other forms of restrictions on assembly and association rights. Preserving the freedom of association enshrined in the constitution, courts insisted that political parties cannot act arbitrarily and must obey their own constitution. In **Nwite v PDP & Ors**,¹¹⁰ the Supreme Court backtracked from its principle of non-interference in the internal affairs of a political party and reinstated a duly elected candidate that was unlawfully excluded by his political party. The Supreme Court held that the actions of the political party "was beyond and outside its domestic affairs and the right to choose its candidate for an election, but one which constituted an unmitigated breach and contravention of both the Electoral Act and the 1st Respondent's Constitution and Guidelines for Primary Elections, 2022."

The courts also preserved association rights by preventing unscrupulous inter-party litigation by politicians determined to frustrate or poke their noses into the activities of rival political groups. In a long list of decided cases, the courts invoked locus standi and jurisdiction-related doctrines to stop political parties from either contesting the outcome of primary elections or the nomination of certain candidates in other political parties.

105. TheCable, 40 percent of newly registered voters are students, says INEC, <https://www.thecable.ng/40-percent-of-newly-registered-voters-are-students-says-inec>

106. in suit No: FHC/ABJ/CS/221/2017

107. See section section 225 of the 1999 Constitution

108. FHC/ABJ/CS/10/2020

109. I.N.E.C v Youth Party (2023) 7 NWLR (Pt. 1883) SC

110. Supreme Court - Nwite v PDP & Ors - (2022) LPELR-59192(SC)

111. PDP v. INEC & ORS (2023) LPELR-59444(CA)

In **Nkasi v PDP & Ors**,¹¹² the court declined jurisdiction to hear the case on the grounds that petitioners belonging to PDP could not validly challenge the primary election conducted by APC, a different political party.

3.1.4. Protections Against Discrimination

Before, during and after the elections, citizens and interest groups beseeched the courts to strike a balance between electoral procedures and non-discrimination guarantees in the 1999 constitution. There were concerns that electoral arrangements could potentially limit religious freedoms or cause disenfranchisement of certain groups of eligible voters. In one case,¹¹³ a member of the 7-day Adventist Church urged the courts to declare that holding elections on Saturdays violated his fundamental right to freedom to worship on the “Sabbath day” and his right to free participation in government.¹¹⁴ Nigerians living in diaspora also approached the courts demanding opportunities to vote during the 2023 elections. These reliefs were based on section 42 of the 1999 Constitution which prohibits any form of discrimination or deprivation based on the circumstances of his birth, community, ethnic group, place of origin, sex, religion, or political opinion etc.

In another case, a civil society group filed a lawsuit¹¹⁵ against INEC demanding an extension of the deadline for voter registration to allow eligible Nigerians to exercise their rights. What triggered this lawsuit was INEC's decision to extend the deadline for the conduct of political party primaries, without a corresponding extension of time for voter registration. Granting an order of interim injunction which stopped the INEC from ending voter registration on June 30, 2022, the court upheld the group's argument that extending the deadline for party primaries without providing adequate time and opportunity for eligible voters to register and participate in the 2023 general elections would amount to an unfair and discriminatory treatment of Nigerian voters, and violate other human rights.¹¹⁶ While some of these cases have not been fully concluded, citizens' ability to approach the courts, without hindrance, to raise issues pertaining to their human rights and obligations expands the space for democratic participation while bolstering voter confidence in the electoral process.

3.1.5. Shield Against Partisan Politics

Courts have consistently held that they do not have jurisdiction to question the nomination and sponsorship of a candidate standing for election. One of the main reasons why Nigerian courts invoke the locus standi doctrine to decline jurisdiction in election petitions is to avoid jumping into the arena of conflict between feuding politicians.

112. Court of Appeal - Nkasi v PDP & Ors - (2023) LPELR-59255(CA)

113. Ugochukwu Uchenwa v FGN, INEC & Ors, Suit no: FHC/ABJ/CS/2119/2022

114. Ikechukwu, Nnochiri, Vanguard, Adventist member sues INEC, seeks to stop conduct of elections on Saturdays; <https://www.vanguardngr.com/2023/01/adventist-member-sues-inec-seeks-to-stop-conduct-of-elections-on-saturdays/>

115. FHC/L/CS/1034/2022

116. The Punch, Court stops INEC from ending voter registration, June 20, 2022, <https://punchng.com/court-stops-inec-from-ending-voter-registration/>

In other words, the locus standi and non-jurisdiction principles often act as a shield against judicial incursion into partisan politics. In **PDP v. INEC & ORS**,¹¹⁷ the court held that it is not clothed with the requisite jurisdiction to hear and determine an appeal regarding a pre-election matter involving two political parties. The decision was based on the need to “*protect, the judiciary from being further dragged into politics that it's not well suited for, and preserve the electoral process from being muddled up in unending lawsuits by the political parties.*”

It is instructive to mention that the canons of locus standi and jurisdiction operate as a shield and as a sword. On one hand, the anticipation that the courts would decline jurisdiction minimizes the potential for impunity and abuse of court processes. To that extent, politicians belonging to one political party demanding disqualification of the candidates of another political party,¹¹⁸ or registered political parties who are not “aspirants”¹¹⁹ have been barred from complaining about the conduct of primaries in other political parties. On the other hand, it has been seen to occasion a miscarriage of injustice, especially in cases where the association rights of elected delegates were flagrantly violated by their abrupt exclusion in contravention of their party's Electoral Guidelines for Primary Elections and the Electoral Act, 2022.¹²⁰ For instance, going by the provisions of the Electoral Act,¹²¹ persons unlawfully excluded from an election may not be able to challenge unlawful exclusion from an election. In Yobe State, Machina won the Yobe North Senatorial Primary Election conducted by the APC under INEC's supervision. Senator Lawan did not participate in the said senatorial primary elections but took part in the Party's Presidential Primary.¹²² The Nigerian Supreme Court continues to maintain a negative perception after reinstating Senator Ahmed Lawan, who never participated in APC primaries for the Senate”.¹²³

3.1.6. Exercise of Discretionary Powers

The courts exercised their subpoena, mandamus, and other discretionary powers where applicable, which produced three major outcomes during the 2023 elections. First, court subpoenas facilitated the production of key witnesses to appear and give oral testimony during court hearings. A classic example is the subpoenaed testimony of a cloud engineer from Amazon Web Services to prove whether the electronic transmission of the presidential election results was prevented by technical glitches.¹²⁴ On the other hand, courts exercised their discretion in cases of urgent importance to stop state and non-state actors from committing certain acts that are ostensibly undemocratic. A Lagos court issued an order that stopped INEC from using an organization led by a known member of a certain political party to distribute election materials in the state.¹²⁵

117. (2023) LPELR-59444(CA)

118. Court of Appeal - Orji v. PDP & Ors (2023) LPELR-59858(CA)

119. See PDP v. INEC & ORS

120. Orji v. PDP & Ors (2023) LPELR-59858(CA)

121. Sections 29 (5) and 84(14) of the new Electoral Act, 2022

122. The Guardian, Dissecting the Supreme Court in Lawan Vs. Machina, <https://guardian.ng/opinion/dissecting-the-supreme-court-in-lawan-v-machina/>

123. European Union Election Observation Mission NIGERIA 2023 Final Report, 27.06.23; https://www.eeas.europa.eu/eom-nigeria-2023/european-union-election-observation-mission-nigeria-2023-final-report_en

124. Godgift Onyedinefu, Business Day, Tribunal admits in evidence Amazon's staff report showing INEC server had no glitches, June 19, 2023; <https://businessday.ng/news/article/tribunal-admits-in-evidence-amazons-staff-report-showing-inec-server-had-no-glitches/>

125. TheCable, Court bars INEC from Engaging MC Oluomo in Election Materials Distribution <https://www.thecable.ng/court-bars-inec-from-engaging-mc-oluomo-in-election-materials-distribution>

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In the third part, the issuance of mandamus orders compelled executive bodies, especially INEC, to properly fulfill their official duties to the electorates. In a suit¹²⁶ filed by Labour Party and its governorship candidate, the Federal High Court in Lagos granted an order of mandamus compelling INEC and all the presiding officers of polling units to use BVAS to electronically transmit results from the polling units directly to the digital results collation portal consistent with Clause 37 of the Regulations and Guidelines for the Conduct of Elections, 2022. These court orders have been necessary for the protection of fundamental rights in a digital age, and to counter the potential for transparency erosion often witnessed during elections.




3.1.7. Deepening Democracy and Electoral Jurisprudence

Democracy thrives where laws are tested in court. As the law is being tested in court, democracy grows and enhances jurisprudence.¹²⁷ Juridical review of electoral activities further plays an important role in clarifying new principles enunciated in statute books. The plethora of election petitions pending before several courts provide opportunities for interrogating the practicality of the technological innovations introduced in the country's electoral laws as well as how to apply constitutional provisions to the digital technologies infused into electoral processes.

Through the development of electoral jurisprudence, new legal precedents are established which can give guidance to lower courts on how to eschew technicalities and render judgements that are not only sound in law, but also in tune with the popular sentiment of the electorates.

126. FHC/L/CS/370/2023

127. Anayo Onukwugha, Leadership, Courts May Shape 2023 Polls As Verdicts Disqualify Candidates, <https://leadership.ng/courts-may-shape-2023-polls-as-verdicts-disqualify-candidates/>



Election litigation paves the way for the courts to give informed opinion and guidance for circumventing restrictive provisions of electoral laws. For instance, the Supreme Court in the most admirable quest for justice moved away from its rigid stance on the 180-day rule for determining pre-election petitions. In **Nwite vs PDP & Ors**,¹²⁸ the Supreme Court exercised its appellate jurisdiction even though 180 days had passed. The Court reviewed the evidence and reached a different conclusion from the trial court, thereby allowing the appeal. The civic space is strengthened when aggrieved persons can have violations to their electoral rights redressed on the merit of their claims regardless of the procedural limitations.

3.1.8. INEC's Power to Review Flawed Elections

Perception is growing that the Go-to-Court phenomenon is supposedly rooted in the previous legislative amendments to the electoral law, specifically section 68(c) of the Electoral Act 2010 (as amended). The 2012 amendments ousted INEC's powers to review election result wrongly announced and/or announced under duress. Politicians exploited this lacuna which provided that "declaration of scores of candidates and the return of a candidate, shall be final subject to review by a tribunal or Court in an election petition proceedings under this Act." Once the returning officer, regardless of the circumstance, declared a person winner, such person was considered the validly elected person, while the aggrieved persons were given the herculean task of proving irregularity in court.

The proviso to section 65 (1) (c) Electoral Act 2022 cured the defect in this legal provision by restoring INEC's power to review the declaration and return within seven days where the Commission determines that it was not made voluntarily or was made contrary to the provisions of the law, regulations and guidelines, and manual for the election. INEC exercised this power in some parts of the country during the governorship elections. In Adamawa State, for instance, a returning officer had declared a particular candidate winner of the elections. Exercising its power under section 65(1) (c) Electoral Act 2022, INEC reviewed and voided the declaration, and suspended the Returning Officer. This wouldn't have been possible under the repealed electoral law. Similarly, INEC declared the Abia state governorship election inclusive but subsequently announced the winner. INEC's power to review flawed elections offers a key opportunity to turn the legitimacy crisis and the tide of shrinking civil society space that could result from the activities of unscrupulous officials and politicians.

128. Appeal No: SC/CV/1353/2022, delivered on 9th December 2022

CHAPTER 4



Source: The Guardian Nigeria

CLOSING CIVIC SPACE BY THE NIGERIAN JUDICIARY DURING THE 2023 ELECTION

Nothing depicts the Go-to-Court! phenomenon in Nigeria more than the valedictory address of a former federal lawmaker confessing to his role in influencing his wife's judgements while serving as a judge and president of the Court of Appeal.¹²⁹ Though made under the cover of parliamentary privilege, this confessional statement not only illuminates the extent politicians can go to pervert the cause of justice for party political purposes, but also underscores how corruption is eroding integrity of the judiciary and driving the decline in civic space during elections. Below, we discuss the various ways the activities and decisions of the Nigerian judiciary closed the civic space during the 2023 elections.

4.1.1. Judicial capture and corruption

Judicial corruption, including capture of the judiciary by politicians, comes in different shades. Three main forms are notable: through executive provisioning for the judiciary; influencing the recruitment and appointment of judges, especially for family members and cronies; and the highly-profitable business of buying and selling of judicial decisions. In the first category, judicial capture is framed around the objective of “improving the living condition of judges.”¹³⁰ Under this pretext, state governors give out choice properties, cars, and other huge emoluments to judges. In turn, the judges dance to the whims of the state governor, including handing down decisions based on pecuniary rewards, political, ethnic, and religious influences. In the second category, politicians and judicial figures insist on making their spouses, mistresses, children or family members' judges.¹³¹ These appointments are often made without regard to the rule of law, potential conflict of interests, or code of conduct considerations.¹³²

The third form of corruption—adjudicating elections as profitable business—has the gravest implication on the civic space. A survey by the Independent Corrupt Practices and Other Related Offences¹³³ found that an estimated N9.4bn bribes exchanged hands in the judicial sector between 2018 and 2020. This level of corruption in the justice sector is particularly heightened by the “stupendously high amounts of money offered as bribes to judges by lawyers handling high electoral and political cases.” As these three categories of judicial corruption demonstrate, a justice sector that lacks true independence, impartiality and fairness cannot effectively resolve electoral contestations, uphold electoral rights and dispense justice in ways that which align with democratic principles and civic freedoms. These underhand deals and practices are shrouded in secrecy, happening mainly behind closed doors, thereby constricting the space for civil society, including its ability to monitor all stages of the electoral process.

129. Jibrin Ibrahim, Premium Times, Senator Bulkachuwa and the “go to court” syndrome, By Jibrin Ibrahim, June 16, 2023, <https://www.premiumtimesng.com/opinion/604864-senator-bulkachuwa-and-the-go-to-court-syndrome-by-jibrin-ibrahim.html>

130. Victor Azubuike, Daily Post, Wike builds, hands over 24 duplexes to Judges in Rivers State, September 3, 2020, <https://dailypost.ng/2020/09/03/wike-builds-hands-over-24-duplexes-to-judges-in-rivers-state/>

131. Chidi Anselm Odinkalu, The Guardian, 'Go to court': Any remedy for Nigeria's ailing justice system? 11 July 2023, <https://guardian.ng/opinion/go-to-court-any-remedy-for-nigerias-ailing-justice-system/>

132. Sylvester Udemezue, Extent of Statutory Involvement of Incumbent CJN in the Process to Appoint Mr. Olukayode Ariwoola (Jnr) a Judge of the FHC, July 23, 2023, <https://dnlegalandstyle.com/2023/extent-of-statutory-involvement-of-incumbent-cjn-in-the-process-to-appoint-mr-olukayode-ariwoola-jnr-a-judge-of-the-fhc/>

133. Anti-corruption Academy of Nigeria, [NIGERIA CORRUPTION INDEX: REPORT OF PILOT SURVEY](https://icpcacademy.gov.ng/downloads/), <https://icpcacademy.gov.ng/downloads/>

4.1.2. The 180-Day Limitation Period for Pre-election Matters¹³⁴

Under Nigerian law, courts are obligated to hear and determine pre-election matters within 180 days. Section 285 of the CFRN 1999 (as amended) allots 180 days to the Federal High Court and an additional 60 days to the Court of Appeal and the Supreme court, respectively, to adjudicate on pre-election petitions. As worrying trends in preelection litigation show,¹³⁵ the Supreme Court have either turned down or refrained from delivering justice where lower courts fail to examine the merit of a case within 180 days. If the trial court failed to consider an action on merit, should the Court of Appeal and the Supreme Court refuse to correct obvious errors because 180 days have elapsed?¹³⁶ The basis of the Court of Appeal's appellate jurisdiction is to correct whatever errors the trial court may have made in pre-election matters. Where both the Federal High Court and the Court of Appeal have erred, the Supreme Court has the powers and jurisdiction to determine and correct such errors within 60 days.

In *Besong v. Ochinke & Ors*,¹³⁷ the Supreme Court held that the appellant's suit was statute-barred having been instituted outside the period stipulated by section 285(9) of the CFRN 1999. Although S. 285 aims to give accelerated hearing to electoral disputes and reduce the excessively long time spent on adjudicating election petitions, the 180-day policy holds enormous potential to occasion injustice to litigants and injure the right to fair hearing. The registries of election petition tribunals are overstretched to its limits having to work Monday through Sundays in order to accommodate litigants within the stipulated timeframe. Excess pressure on court registries have resulted in low assignment and scheduling of cases, poor exhibit management systems, long adjournments etc. More importantly, advising litigants to withdraw appeals based on the 180 days principle not only defeats the cause of appellate justice, but also elevates the trial court to a final court in pre-election matters.

The Supreme Court is a policy court¹³⁸ whose decisions shape the country's political, economic, and social order. If the current position is not urgently reviewed and departed from, it sets a very dangerous precedent where trial courts can make erroneous decisions that can neither be appealed against nor corrected, thereby sacrificing justice on the altar of sheer technicality. Depriving citizens of their rights to electoral justice on account of procedural restrictions is detrimental to the civic space and worsens the respect accorded to the constitutionally-guaranteed freedom of expression, association and assembly exercised through free and fair elections.

4.1.3. Disobedience to Court Orders

Disobedience to court orders is a major tactic of state repression, and an indicator of a repressed civic space. Court orders disobeyed by various organs of the executive had distinct impact on the civic space both before and after the 2023 elections.

134. Expert comments by Jibrin Samuel Okutepa SAN, August 2023

135. Halima Yahaya, Premium Times, Supreme Court turns down 14 pre-election cases, <https://www.premiumtimesng.com/news/top-news/307536-supreme-court-turns-down-14-pre-election-cases.html?tztc=1>

136. Interview with Jibrin Samuel Okutepa SAN, August 2023

137. (2023) 7 NWLR (Pt 1884) 545

138. See *Marwa vs Nyako* (2012) 6 NWLR (Part 1296) 199

Before the elections, INEC and the Central Bank of Nigeria (CBN) in tacit connivance with the Presidency brazenly disobeyed court orders. In a brazen display of contempt for the judiciary, the Nigerian government ignored two injunctive orders of the Supreme Court order to keep the old N200, N500 and N1,000 banknotes in circulation till February 22, representing an assault on the rule of law and the principle of the separation of powers. In the same way, INEC ignored the judgments of a Federal High Court, Abuja, Ogun State High Court and the Abuja division of the Court of Appeal that ordered it to publish the names of candidates on its website and in all its offices.¹³⁹

The period preceding the 2023 elections were painfully characterized by an excruciating cash crunch following the naira redesign policy of the Central Bank of Nigeria (CBN). The long queues in banking halls and suspended banking operations sparked violent attacks on financial institutions and bloody protests in many parts of the country by citizens unable to access cash for their daily transactions and participate actively in political activities. Beyond hurting businesses and households in Nigeria, forcing economic activities especially within the informal sector to grind to halt, the ability of individuals and political parties to move, organize and assemble freely was heavily constrained. While vote-buying is common in Nigerian elections, the cash shortages may have worsened it, and particularly forced voters' choices to swing in unexpected directions. A random survey showed that a high percentage of voters confessed that would take money from anybody who offered them due to the current cash crunch.¹⁴⁰

After the elections, INEC led the pack of executive bodies flagrantly disobeying court orders. INEC blatantly disobeyed a court order and subpoenas to grant the Labour Party (LP) access to inspect certified true copies of materials used in the presidential election held on February 25, 2023.¹⁴¹ It took serious threats by the party to embark on a nationwide protest and occupy INEC offices nationwide before INEC could comply with the court order. INEC's purported impunity also trickles down to the state level where it disobeyed a valid order from the governorship election tribunal to allow the Labour Party access to the BVAS machines used for the March 18, 2023 governorship election.¹⁴² The dangers inherent in disobedience to court orders prompted a Nigerian court¹⁴³ to say:

"I have raised this alarm anytime an opportunity presents itself, (and I do so for posterity,) obedience to the rule of law of which respect for the authority and decisions of law is an integral part, is at the foundation and the heart of the stability of our society.

139. Daily Post, INEC's disobedience of court judgements may jeopardize 2023 election – AA chair, Omoaje, <https://dailypost.ng/2022/12/21/inecs-disobedience-of-court-judgements-may-jeopardize-2023-election-aa-chair-omoaje/>

140. Dataphyte, Cash crunch likely to influence vote-buying during 2023 elections, February 22, 2023, <https://www.dataphyte.com/latest-reports/cash-crunch-likely-to-enable-vote-buying-during-2023-elections/>

141. Business Day, Disputed Poll Result: INEC grants LP access to inspect election materials, Mar 14, 2023, <https://businessday.ng/news/article/disputed-poll-resultinec-grants-lp-access-to-inspect-election-materials/>

142. Anayo Okoli, Vanguard Newspapers, July 13, 2023, LP reports Enugu REC to tribunal for disobeying court order; https://www.vanguardngr.com/2023/07/lp-reports-enugu-rec-to-tribunal-for-disobeying-court-order/#google_vignette

143. Rupert Irikefe vs CBN & 2 ors - Suit No: FHC/ASB/CS/139/2019, unreported judgment delivered on the 9th December 2020

"I have raised this alarm anytime an opportunity presents itself, (and I do so for posterity,) obedience to the rule of law of which respect for the authority and decisions of law is an integral part, is at the foundation and the heart of the stability of our society. Everybody has a stake in ensuring that the rule of law prevails and that the authority of courts of law is held as sacred. The reason is because ultimately, everybody turns to the Courts for protection, for in the moral authority of the Courts lies salvation for all. This includes for the weak, in the immediacy, and for the strong, potentially. Human and executive powers are all transient. Stripped by the ephemerality that attends human affairs of his raw or executive power, the strong today inevitably turns out to be the weak tomorrow. And the question is where will the strong, now weakened, turn to for protection tomorrow, if he or she in the hours of strength of today, facilitate or participate in the destruction of the courts, to which all ultimately turn to as an alcove of salvation in the moment of vulnerability? This is a question that I will continue to pose, and for which all stakeholders must and should ruminare in their minds".

The civic space is heavily constrained where court proclamations can neither be enforced nor the violation committed cannot be repaired. Judicial contempt is tantamount to gross disdain for democratic norms which can trigger protracted electoral disputes. Serials acts of disobedience to court orders often points to the absence of strong institutions and mechanisms to enforce punishments on violators. The predictability of consequences for bad behaviour is fundamental to the credibility of the electoral process.

4.1.4. Justice Delayed is Justice Denied

Candidates returned as winners during the 2023 polls have all been sworn into office on 29 May while fierce challenges to their mandates are still pending at the various election tribunals. This has been a longstanding electoral practice in Nigeria. Handing over the trophy before the end of the contest has two major implications for the civic space and on democracy in general. By installing leaders with contested mandates, one party to the dispute is given an unfair advantage of access to an endless supply of human, material and financial resources to counter political rivals. In other words, the chances of success for the opposition are limited particularly in the Nigerian context where judicial capture is commonplace. Second, association rights suffer the most when delays in hearing preelection matters result in either the exclusion of certain candidates from electoral contests or loss of time to seek alternative platforms for political participation. Likewise, disputes arising from the qualification and eligibility of candidates are often concluded long after the elections have been held, which sometimes occasions miscarriage of justice. The refusal of courts to interfere in preelection matters where candidates have been wrongfully excluded or denied nomination by their political parties further aggravates the situation.

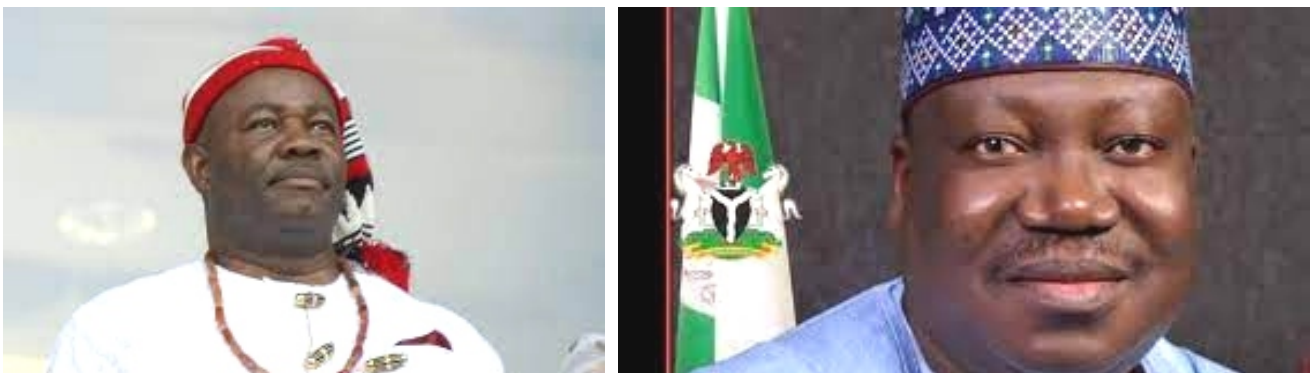
4.1.5. Prioritization of Election Cases Limits Access to Justice

Nigeria's Electoral Act vests only the Federal High Court (FHC) with the jurisdiction to determine pre-election matters within 180 days, putting FHCs across the country under severe pressure before, during and after election periods. For the 2023 elections, a total of 1,838 pre-election cases were filed as of December 2022 ahead of the general elections the following year.

The Federal High Court was only able to commit 77 judges of the court to these cases. ¹⁴⁴ Committing 77 judges to pre-election matters means that all 1,838 pre-election must be disposed of within the 180 days' timeline. Owing to the significant infrastructural and manpower deficits within FHCs to preside over the multitude of election petitions, the courts begin to prioritize election matters far above all other civil and criminal matters pending before them.

Records show that out of the 135,592 pending before FHCs at the end of the 2022 legal year, 41,788 were civil cases; 31,832 criminal cases; 39,799 motions and 22,173 fundamental rights enforcement applications.¹⁴⁵ The implication is that other cases, including urgent matters involving the enforcement of fundamental human rights suffered ceaseless adjournments during that period. As stated elsewhere, "the average Nigerian judge no longer has any incentive to sit on regular casework. The current reality is not merely that the Nigerian judiciary binges on party political cases, it is also that they assign priority to politicians over ordinary citizens, in so doing, encouraging the idea of a hierarchy of citizenship."¹⁴⁶

4.1.6. Bias, Prejudice, Miscarriage of Justice



Both Godswill Akpabio and Ahmed Lawan are stalwarts of the ruling APC

Reminiscent of the judicial absurdity of 2020 where the Supreme Court enthroned a candidate that came fourth in the elections to the number 1 position,¹⁴⁷ this trend persisted during the 2023 elections. Two cases of senatorial primary elections stand out – Machina v Lawan for the Yobe North Senatorial seat and Ekpoudom v Akpabio for the Akwa Ibom Northwest Senatorial District. Although Machina and Ekpoudom, respectively, won the senatorial primaries conducted by their own party, APC, the party refused to submit their names to INEC as their flagbearers. Rather, APC fielded Lawan and Akpabio—who did not contest the primaries, as their flagbearers. These two cases exemplify how the court's non-interference principle in the internal affairs of political parties crushes the association rights of citizens, while the courts look the other way, and are unwilling to provide legal remedies.

¹⁴⁴. NBA tackles National Assembly for burdening 77 judges with 1,800 pre-election suits (premiumtimesng.com)

¹⁴⁵. *ibid*

¹⁴⁶. Chidi Odinkalu, The Guardian, July 14, 2023, <https://guardian.ng/opinion/go-to-court-any-remedy-for-nigerias-ailing-justice-system-2/>

¹⁴⁷. Chido Nwakanma, Business Day, The absurdity the Supreme Court wrought on Imo State, <https://businessday.ng/columnist/article/the-absurdity-the-supreme-court-wrought-on-imo-state/>

Selective administration of justice invites credible accusations of bias against the judiciary and security agencies. Irked by the intensity of violent attacks on the Igbos in Lagos during the 2023 elections, Eze Fredrick Nwajagu was arrested on April 1, for threatening to invite members of the proscribed Indigenous Peoples of Biafra (IPOB) to Lagos to secure properties of Igbo people living in the state.¹⁴⁸ On May 9, Nwajagu was slammed with a nine-count charge bordering on an attempt to commit terrorism, involvement in terrorism and meeting to support a proscribed entity. While Nwajagu languished in detention for several weeks before his bail, former Lagos State National Union of Road Transport Workers NURTW Chairman, Musiliu Akinsanya, popularly called MC Oluomo, whose well-documented electoral atrocities went viral on social media, was neither perturbed by security agencies nor the courts. The civic space is not free where state and non-state actors responsible for unleashing mayhem and violence toward a target group are untouched while protesting victims injured or hurt during such attacks are the ones arrested and slammed with terrorist charges. Discriminatory policing of citizens coupled with the overstretching of simple misdemeanors increase the vulnerability of citizens to arbitrary criminal prosecution, and without protection when their constitutionally-protected rights to life and human dignity, are detrimentally affected.

4.1.7. 'Technical' and Conflicting Judgements

Conflicting court rulings or judgments on election matters particularly from courts of coordinate jurisdiction have become a dangerous hallmark of electoral litigation in Nigeria. Conflict court decisions/rulings are usually inspired by the dilatory tactics of lawyers or grounded on legal technicalities. For instance, Nigerian courts have nullified election results in 63 out of 177 wards in Ekiti because accreditation was done with a red pen. The effect of this judgment is that people from those 63 wards were automatically disenfranchised based on mere technicalities. This unfortunate trend of issuing conflicting verdicts based on technical grounds played out again in the 2023 elections in the case of Machina Vs. Lawan.¹⁵⁰ In this case, Machina won APC's Yobe North Senatorial Primary Election while Senator Lawan did not participate at all in the party's primary election. When APC submitted Lawan's name to INEC as its candidate for the Yobe North Senatorial seat, aggrieved Machina approached the courts to challenge his wrongful exclusion. Both the Federal High Court and the Court of Appeal redressed this injustice and ordered INEC to recognize him as the authentic senatorial candidate. In a strange twist of events, the Supreme Court gave judgement in favor of Lawan on the ground that Machina ought to have commenced his case using a specific litigation procedure. This judgement stirred a public outcry and massive condemnation across the country. The civic space declines when conflicting judgments influence electoral outcomes in a direction that is inconsistent with the wishes of the electorate. Consequently, citizens are not confident to participate and run for political offices for fear of being victims of a corrupt system that only empowers those who can afford 'electoral justice'.

148. Channels TV, Court Grants Bail To Eze Ndigbo Accused Of IPOB Threat In Lagos, <https://www.channelstv.com/2023/05/03/court-grants-bail-to-eze-ndigbo-accused-of-ipob-threat-in-lagos/>

149. Fayemi v. Oni (2010) 17NWLR Pt 1222) 543 at 326.

150. SC/CV/1689/2022, <https://barristerng.com/wp-content/uploads/2023/02/MACHINA.pdf>

Conflicting court judgments also slow down the expeditious delivery of justice by increasing the number of cases requiring appellate consideration. They force litigants to rush to superior courts of record to appeal against flimsy disagreements instead of leaving the most contentious electoral disputes to be taken forward to higher courts. This eventually sucks up the useful time that would have been devoted to the most serious cases. Finally, conflicting judgements deal a devastating blow to the civic space by depriving aggrieved persons the right to an effective remedy before an independent and impartial court, thus breeding mass apathy for subsequent elections.

4.1.8. Discriminatory Application of Judicial Precedents

Closely related to the perils of conflicting judgements is the discriminatory application of judicial precedents. This is particularly more pronounced in pre-election matters where the courts have declined jurisdiction, invoking the non-interference principle in the internal affairs of political parties. This rule is well established in a long list of decided cases. In sharp contrast with this established legal principle, the National Assembly Election Petition Tribunal sitting in Imo State delved deeply into a pre-election matter and nullified the election of Mr. Ikenga Ugochinyere of the Peoples Democratic Party (PDP) on the grounds that Ugochinyere was not validly nominated by the PDP to contest the Ideato North/South Federal Constituency election that held on February 25.¹⁵¹ Valid or invalid nomination of candidates by his party is clearly a pre-election matter. The judgement is equally at variance with the decision of the Presidential Election Petitions Court (PEPC) which ruled in Vice President Kashim Shettima's case, that the issue of nominating or not nominating a candidate validly by a political party is a pre-election matter and an internal affair of the party, which can only be challenged within 14 days of such nomination at a Federal High Court. In essence, while both cases are similar, Shettima's nomination was preserved and upheld by the courts, but Mr. Ikenga Ugochinyere's election was nullified.

Applying judicial precedents—under the doctrine of stare decisis—in a non-discriminatory manner promotes stability and predictability in both the civic space and the legal system. Noting that Nigerian courts are not averse to jurisprudential disagreements especially to correct decisions that rest on faulty reasoning, some special justification—or, at least “strong grounds” must exist to warrant a deviation from well-established precedents. That is not the case here. This matter is currently on appeal and hopes are high that the superior courts of record will revisit this issue.

4.1.9. Perplexities and Disappointments Surrounding Electoral Technology

Hope in the country's electoral process was rekindled when the Ninth National Assembly amended the electoral law and made provisions for the use of BVAS technology in the conduct of the 2023 general elections. Despite this laudable move, concerns around the malfunction, or refusal to use the BVAS technologies to transmit the presidential election results to the collation center, significantly marred the credibility of the polls, eroding public confidence in INEC's independence. The key issue for determination before the various election tribunals across

GO TO COURT: Synonym for judicial capture

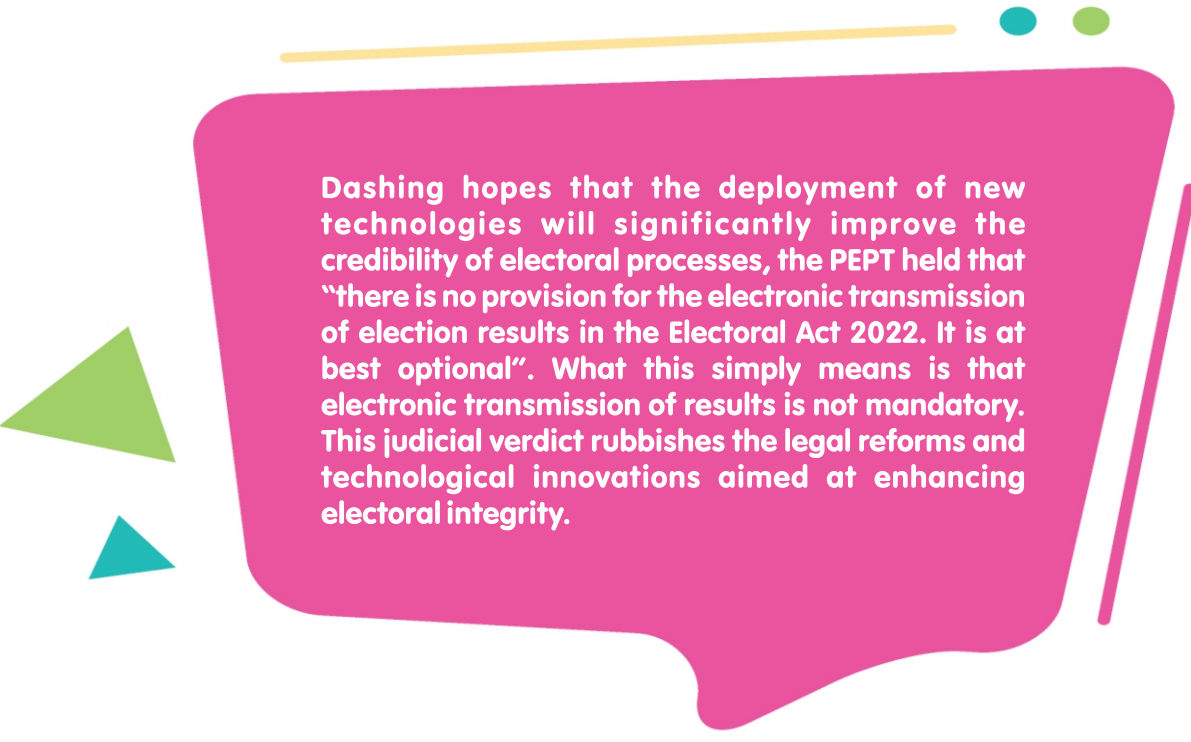
the country is whether INEC's reintroduction of manual accreditation and manual collation of results during the presidential elections instead of using a technological device (BVAS) or a smart card reader and uploading the results to the dedicated viewing portal violates the country's electoral laws.



Source: Channels Television

Sadly, judgements emerging from different tribunals across the country have not been in favour of the BVAS, especially in the area of electronic transmission of results. Dashing hopes that the deployment of new technologies will significantly improve the credibility of electoral processes, the PEPT held that **“there is no provision for the electronic transmission of election results in the Electoral Act 2022. It is at best optional”**.¹⁵² What this simply means is that electronic transmission of results is not mandatory. This judicial verdict rubbishes the legal reforms and technological innovations aimed at enhancing electoral integrity. The recent decisions signify judicial disapproval of the use of electronic evidence in the resolution of electoral contestations to improve verifiability of litigants' claims and deter malpractice. Strong allegations regarding INEC's manipulation of BVAS technology also illuminate how the overbearing influence of the executive on the electoral process constrains the civic space and produces outcomes that do not reflect the wishes of the people. More so, the Nigerian courts' resistance to digital technologies will potentially discourage citizens from subjecting electoral processes to forensic analysis, and refrain from offering digitized solutions that are beneficial for the development of democracy.

152. The Punch, Electoral Act: Electronic results transmission not mandatory – Tribunal, September 6, 2023; <https://punchng.com/electoral-act-electronic-results-transmission-not-mandatory-tribunal/>



Dashing hopes that the deployment of new technologies will significantly improve the credibility of electoral processes, the PEPT held that “there is no provision for the electronic transmission of election results in the Electoral Act 2022. It is at best optional”. What this simply means is that electronic transmission of results is not mandatory. This judicial verdict rubbishes the legal reforms and technological innovations aimed at enhancing electoral integrity.

CHAPTER 5



Source: The Trumpet Nigeria Newspaper

BROADER CIVIC SPACE TRENDS DURING THE 2023 ELECTION CYCLE

In the preceding chapters, we discussed the various ways the actions or inactions of the judiciary either expanded or contracted the civic space during the 2023 general elections. Beyond judicial incursion into the arena of electoral contests, other notable trends observed before, during or after the elections, significantly shaped or impacted the freeness of civic life one way or the other. The observed trends are detailed below:

5.1.1. Freedom of Association is the Dominant Civic Participation Right During Election Cycles

The civic space is typically fluid and vacillates according to constitutional, political, and socio-economic dynamics in a country. The situation is, however, different during elections where nearly every aspect of the electoral process involves the exercise of association and assembly rights. The political temperature often gets charged as political parties rally for support while interest groups emerge in support of their preferred candidates. As seen in the previous chapters, most preelection matters involve restrictions on the rights of citizens to freely associate, qualify, participate, and represent their constituencies during the elections.

The 2023 elections ushered a major shift from rhetoric to action, culminating in the active mobilization of voters both online and offline. Large numbers of interest groups, professional associations, political organizations, and policy thinktanks offering different shades of opinion and commentary struggled for space to influence or control the narratives on the media. 'Vote wisely', character and competence' 'emilokan', 'continuity' are examples of popular slogans sponsored by political parties to brand their party ideologies. Candidates and their supporters used social media to shape narratives and boost the appeal of their messaging to a wide audience.¹⁵³ Parties often paid to increase the reach of their messaging. From January till the middle of March, Nigerian political parties paid Meta ₦28,784,369 to advertise political content on Facebook and Instagram.¹⁵⁴ A combination of these activities helped to minimize voter apathy, resulting in significantly-higher voter turnout rate in some states and among young voters.

5.1.2. Civic Participation Rights Are Differently Impacted at Various Stages of the Elections (Before, During and After the Elections)

Before the elections: Fundamental freedoms supporting the civic space were differently impacted at various stages of the elections. The period leading up to the polls recorded an inordinately high frequency of attacks on the freedom of expression, press freedoms, free association, and assembly. Statements made either online or on broadcast stations attracted the greatest fury of state and non-state actors.


153. Ngozi Chukwu, Tech Cabal, From hashtags to ballots: how an army of social media consultants and influencers impacted Nigeria's 2023 elections, June 6, 2023, <https://techcabal.com/2023/07/06/social-media-campaign-nigeria-elections/>

154. Ngozi Chukwu, Ibid.

GO TO COURT: [Synonym for judicial capture](#)

Consistent with the finding that journalists are disproportionately targeted for repression more than any other group of civic actors, Nigerian journalists were the hardest hit in the buildup to the polls. Some were arrested, detained, fined or their sacks requested. The Presidential Campaign Council (PCC) of the All Progressives Congress, (APC), demanded the sack of two journalists for their “unfavorable reportage” of the APC presidential candidate.¹⁵⁶

State actors used various tactics to curtail assembly rights before, during and after the elections. There were penalties imposed on media stations that reported the public rallies and activities of opposition political parties. Zamfara State government shut down four broadcast stations: three television stations and a radio station for providing media coverage to a political rally organized by the opposition Peoples Democratic Party (PDP) in the state.¹⁵⁷ Likewise, other state governors prevented political rivals and candidates of opposition political parties from campaigning freely in their states or blocked their access to use state-owned media channels. Ogun State government withheld approval for an opposition party to use the state-owned stadium for a presidential campaign rally.¹⁵⁸ Rivers State government revoked the approval given to the PDP presidential campaign team to use the state-owned ¹⁵⁹ stadium while Lagos and Kaduna State governments would not allow opposition parties to erect billboards and posters across the state. Opposition parties and candidates were also denied access to public facilities by various organs of the executive.¹⁶⁰ Unwarranted denial of access to public facilities as well as the forced dispersal of supporters during campaign rallies for opposition candidates,¹⁶¹ constitute repression of association and assembly freedoms.



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156. Africa Freedom of Expression Change, Clampdown on press freedom and freedom of expression ahead of Nigeria's election, <https://www.africafex.org/freedom-of-expression-violations/clampdown-on-press-freedom-and-freedom-of-expression-ahead-of-nigerias-election>

157. Africa Freedom of Expression Change, *ibid*.

158. Ripples Nigeria, PDP cries foul as Ogun denies Atiku access to MKO Stadium for campaign rally, January 17, 2023, [PDP cries foul as Ogun denies Atiku access to MKO Stadium for campaign rally - Ripples Nigeria](#)

159. PDP cancels presidential campaign rally in Rivers | Premium Times Nigeria ([premiumtimesng.com](https://www.premiumtimesng.com))

160. Dachen Isaac, [PDP cries foul as Ogun denies Atiku access to MKO Stadium for campaign rally - Ripples Nigeria](https://www.ripplesnigeria.com/pdp-cries-foul-as-ogun-denies-atiku-access-to-mko-stadium-for-campaign-rally/), <https://www.ripplesnigeria.com/pdp-cries-foul-as-ogun-denies-atiku-access-to-mko-stadium-for-campaign-rally/>

161. Chinagorom Ugwu, Premium Times, Why we dispersed rally by Peter Obi's supporters in Ebonyi – Police, <https://www.premiumtimesng.com/news/headlines/554625-why-we-dispersed-rally-by-peter-obis-supporters-in-ebonyi-police.html?tztc=1>



Elections going on at a polling unit. | Source: internet

Non-governmental organizations (NGOs) were not spared too, with their association rights severely curtailed in some states, especially in the northern part of the country. Ahead of the gubernatorial polls, Adamawa State governor suspended the activities of local and foreign NGOs operating in the state until the elections are over.¹⁶² He accused NGOs of vote-buying even though stakeholders in the state claimed that the real reason is to prevent NGOs from independently monitoring and observing the elections.

During the elections: After the February 25 presidential and National Assembly elections, mutual distrust between the Igbos and the Yorubas which started before the elections peaked during the election days after the APC lost Lagos to Labour Party (LP), perceived to be largely supported by Igbos. This development triggered resentment against the Igbos and non-Yoruba speaking residents in Lagos during the March 11 governorship and State Assembly elections where they were allegedly barred from voting in some places.¹⁶³ Similarly, “in states such as Lagos, Abia, Bauchi, Kano and Rivers, citizens were allegedly threatened, intimidated and harassed on the perception of supporting political opponents.”¹⁶⁴ Other events that impacted the civic space on election day include clashes between supporters of various political parties at polling units,¹⁶⁵ alleged vote-buying by political chieftains,¹⁶⁶ attacks on voters and journalists covering the presidential and National Assembly elections.¹⁶⁷

After the elections: Although electoral activities began to slow down after the elections, expression, association and assembly rights were still dominantly-exercised, with significant constraints recorded in a number of cases. Barely an hour after the declaration of the Kano State

162. Daily Post, Gov Fintiri suspends NGO activities in Adamawa, <https://dailypost.ng/2023/02/28/gov-fintiri-suspends-ngo-activities-in-adamawa/>

163. Chijioke Iremeka, The Guardian, Post-Election Lagos: Dousing ethnic tension and task before Sanwo-Olu, <https://guardian.ng/saturday-magazine/c105-saturday-magazine/post-election-lagos-dousing-ethnic-tension-and-task-before-sanwo-olu/>

164. Chijioke Iremeka, The Guardian, ibid.

165. NNPP, APC Supporters Clash At At Kano Polling Unit, <https://dailytrust.com/breaking-nnpp-apc-supporters-clash-at-at-kano-polling-unit/>

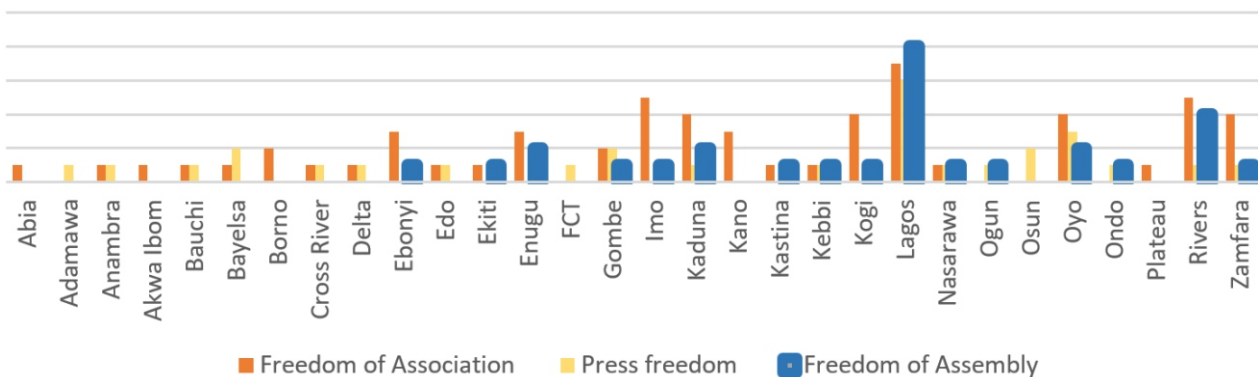
166. TheCable, 'Vote-buying': EFCC arrests Benue PDP campaign director with N306,700, 'Vote-buying': EFCC arrests Benue PDP campaign director with N306,700 | TheCable

167. Premium Times, Angry youth attack journalists, voters in Ibadan, <https://www.premiumtimesng.com/regional/ssouth-west/584219-angry-youth-attack-journalists-voters-in-ibadan.html>

governorship election won by the New Nigeria Peoples Party (NNPP), a popular political singer's house was set ablaze. The singer, Dauda Kahutu Rarara, led singing orchestras at various rallies organized by the APC while the electioneering lasted.¹⁶⁸ Attacks on the Igbos during the Lagos elections dominated both political and media commentary.¹⁶⁹ The attacks further sparked a flurry of press statements, communiques, physical and virtual gatherings organized by socio-cultural groups and organizations.¹⁷⁰ Despite the lull in public gatherings and campaign activities after the polls, restrictions on free expression, association rights and assembly rights persisted across states. Kebbi State Police Command banned all forms of victory celebrations and rallies by political party supporters.¹⁷¹ Likewise, billboards mounted in various parts of the Federal Capital Territory with the inscription, **“All Eyes on The Judiciary”** were pulled down and destroyed following a directive by the Advertising Regulatory Council of Nigeria (ARCON) to pull down all billboards carrying such inscription across Nigeria.¹⁷²

5.1.3. Civic Space Restrictions More Widespread in States with Vibrant Political Opposition

Spikes in civic participation rights were recorded late September 2022 after the government lifted restrictions on campaigns for the general elections. Lifting the embargo on campaigns ushered in a burst of activities in the civic space and counteractions by the opposition political parties.



As shown in the table above, the bars for Lagos, Abia, Ebonyi, Kaduna, Kogi, Rivers, and Zamfara States are higher than the rest of the states indicating vibrant activities of opposition politicians and their supporters. These states also represent major battlegrounds between the opposition

168. Daily Trust, BREAKING: Thugs Set House Of Kano Singer, Rarara, On Fire, <https://dailytrust.com/breaking-thugs-set-house-of-kano-singer-rara-on-fire/>

169. Paul Nwabuikwu, ThisDay Live, THE LAGOS ELECTION AND THE ANTI-IGBO ATTACKS, <https://www.thisdaylive.com/index.php/2023/03/22/the-lagos-election-and-the-anti-igbo-attacks>

170. Premium Times, Ohanaeze condemns attacks on Igbos in Lagos, asks Buhari to take action, April 6, 2023, <https://www.premiumtimesng.com/regional/ssouth-east/592047-ohanaeze-condemns-attacks-on-igbos-in-lagos-asks-buhari-to-take-action.html>

171. Elections: Police ban rallies, celebrations in Kebbi (punchng.com) <https://punchng.com/elections-police-ban-rallies-celebrations-in-kebbi/>

172. Yemi Balogun, Daily Post, 'All eyes on the judiciary': Destruction of billboards an assault on freedom of speech – Atiku's aide, Published on August 15, 2023, <https://dailypost.ng/2023/08/15/all-eyes-on-the-judiciary-destruction-of-billboards-an-assault-on-freedom-of-speech-atikus-aide/>

parties and the ruling party, with the former recording significant successes. Lagos State, formerly considered an APC stronghold, faced fierce opposition and victory from the Labour Party. This loss triggered the alleged killings, violence, and ethnically charged rhetoric by supporters of the APC ruling party. In Enugu State, Labour Party swept the majority seats in the federal and state legislature in a state that have been perennially dominated by the People's Democratic Party (PDP). In Abia, INEC's returning officer bravely defied heavy pressure to change the mandate of the people.¹⁷³ Election results, especially where major upsets were recorded, sparked widespread jubilations in the streets, churches, markets, public places, reflecting a significant increase in the exercise of assembly freedoms.

Beyond the vibrant street campaigns, both incumbent and opposition states radically shifted the exercise of their association and assembly rights to online platforms such as WhatsApp, Facebook, Telegram etc. Accordingly, social media was another major battleground for both the expansion and abridgement of civic freedoms before, during and after the elections. Politicians and their supporters formed or actively participated in WhatsApp groups from where they coordinated logistics, and disseminated information, including election misinformation and propaganda. Social media influencers frequently featured on radio and television programmes to speak about politics, mostly in favor of their political sponsors, and attack their opponents, sometimes spreading false information in the process.

The virile campaigns by political opposition parties caught the ire of incumbent politicians, resulting in the curtailment of civic freedoms. In Ebonyi, parties deployed violent means and manipulative tactics to resist, frustrate and disrupt political campaigns of opposition parties in the State.¹⁷⁴ In Rivers, denial of access to public facilities and other violent attacks on opposition political parties and their supporters resulted in the cancellation of scheduled political rallies.¹⁷⁵ These incidents show how intense electioneering activities contributed to closing the space for civil society during the 2023 elections, undermining the ability of citizens to speak, assemble, organize and associate freely.

5.1.4. Non-state Actors Closing the Civic Space More Than Ever

Non-state actors played major roles that resulted in either opening or closing the civic space during the 2023 elections, and the tactics varied across states and regions of the country. In the South-East, political leaders and large swathes of local populations resisted the attempts by the Simon Ekpa-led faction of the Indigenous People of Biafra (IPOB), to stifle mass participation in the elections using the sit-at-home observance. Long before the elections, residents of the Southeast region observed sit-at-home every Monday as a campaign strategy to demand the unconditional release of IPOB leader, Mazi Nnamdi Kanu.

173. Channels Tv, 'People's Mandate Shall Stand', INEC Returning Officer Declares As Collation Resumes In Abia , <https://www.channelstv.com/2023/03/22/peoples-mandate-shall-stand-inec-returning-officer-declares-as-collation-resumes-in-abia/>

174. Nigerian Tribune, APC using State forces to frustrate, disrupt opposition political campaign in Ebonyi — Group alleges, [February 4, 2023, APC using State forces to frustrate political campaign — Group \(tribuneonline.ng.com\)](#)

175. Premium Times, PDP cancels presidential campaign rally in Rivers, [PDP cancels presidential campaign rally in Rivers | Premium Times Nigeria \(premiumtimesng.com\)](#)

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While separatist agitations in the region have been met with extreme high-handedness and military raids on public gatherings and assemblies, IPOB's alleged methods for enforcing sit-at-home orders equally evoked fear among the populace, fueling widespread reluctance to organize, mobilize and meaningfully participate in electoral activities. Either way, the freedom of assembly and association suffered a major decline because of the repressive conduct of both state and non-state actors.



Jennifer Edifi was attacked on election day when party supporters perceived that she would vote for an opposition candidate.

In the South-West, thugs and party agents topped the list of non-state actors whose activities caused a sharp decline in the civic space. The news excerpt below shed some light on the role party agents played in stifling the civic space during the 2023 elections:

A few days before the 18 March 2023 gubernatorial elections, a [video](#), went viral on social media showing Musiliu Akinsanya, commonly known by his alias, 'MC Oluomo', issuing a threat to Igbo residents of Lagos to either vote for the ruling All Progressives Congress (APC) or stay at home. Speaking in Yoruba, MC Oluomo riled up the energetic men in the room to let those who refused to listen to his plea 'understand'. It was a euphemistic call to violence.¹⁷⁶

173. Channels Tv, 'People's Mandate Shall Stand', INEC Returning Officer Declares As Collation Resumes In Abia , <https://www.channelstv.com/2023/03/22/peoples-mandate-shall-stand-inec-returning-officer-declares-as-collation-resumes-in-abia/>

174. Nigerian Tribune, APC using State forces to frustrate, disrupt opposition political campaign in Ebonyi — Group alleges, [February 4, 2023, APC using State forces to frustrate political campaign — Group \(tribuneonline.com\)](#)

175. Premium Times, PDP cancels presidential campaign rally in Rivers, [PDP cancels presidential campaign rally in Rivers | Premium Times Nigeria \(premiumtimesng.com\)](#)

176. The Republic, The Conductor of Chaos, <https://republic.com.ng/february-march-2023/mc-oluomos-dangerous-rise/>

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Sequel to the above threats, media reports are awash with stories of the alleged killings of the Igbo in Lagos and the destruction of their properties and livelihoods by party agents and supporters of the APC.¹⁷⁷ Security agents looked the other way as these attacks persisted, with many victims denied opportunities to vote. The unrestrained activities of these party agents, not only represents a crude brand of state-backed political instruments,¹⁷⁸ but also evince how the assurance of state protection emboldens non-state actors to cripple civic freedoms without consequences.

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In the northern part of the country especially in Zamfara and Kaduna, many voting centres witnessed huge influx of thugs despite the massive deployment of security officials, including police, navy and army personnel. Sponsored political thugs wielding dangerous weapons attacked campaign rallies of the opposition party in Zamfara State.¹⁷⁹ The hoodlums play a major role in curtailing assembly and association freedoms, with the political opposition as their main targets. Whether known as thugs, hoodlums, or gunmen, they epitomize non-state actors acting on behalf of politicians across political divides. They unleashed mayhem and violence,¹⁸⁰ swooped on journalists,¹⁸¹ razed homes of opposition politicians,¹⁸² killed key members of both the incumbent¹⁸³ and opposition parties,¹⁸⁴ and intimidated voters on the basis of ethnic identity and political party affiliation. The activities of non-state state actors resulted in the postponement of cancellation of elections in many areas, disenfranchisement of voters, and significant repression of civic freedoms at all stages of the electoral process. Democracy as an institution suffers ... when thuggery is used as a tool to determine who participates in elections and who is allowed (or denied) their civic rights to vote.¹⁸⁵

177. Obi Nwakamma, Attacks on the Igbo in Lagos, April 2, 2023, <https://www.vanguardngr.com/2023/04/attacks-on-the-igbo-in-lagos/>

178. The Republic, *ibid.*

179. Zamfara Peoples Democratic Party accused the ruling All Progressive Congress (APC) of sponsoring thugs to attack and disrupt the PDP campaign rally in the Talata Mafara Local Government Area. See [APC Sponsored Hoodlums Disrupt Campaign Rally In Zamfara State, Injure Our Members - PDP Kicks | Sahara Reporters](#)

180. P.M News, Kogi: Notorious thug shot dead as electoral violence rocks Dekina LG, [Kogi: Notorious thug shot dead as electoral violence rocks Dekina LG - P.M. News \(pmnewsnigeria.com\)](#)

181. Daily Post, Vote buying, massive deployment of thugs in Anambra Reps election, [Vote buying, massive deployment of thugs in Anambra Reps election - Daily Post Nigeria](#)

182. Isreal Arogbonlo, Imo Assembly Poll: Gunmen Raze PDP Candidate, Father's House, [Imo Assembly poll: Gunmen raze PDP candidate, father's house \(tribuneonlineng.com\)](#)

183. The Cable, Gunmen kill APC ward chairman in Kaduna, [Gunmen kill APC ward chairman in Kaduna | TheCable](#)

184. Punch, Gunmen kill Kaduna LP Women Leader, party fumes, <https://punchng.com/gunmen-kill-kaduna-lp-women-leader-party-fumes/>

185. The Republic, *ibid.*

5.1.5. The Gender Gap in Political Participation Still Needs to Close

Compared to the 2019 elections where only 62 women out of the 2,970 women¹⁸⁶ won elective positions, the number of women elected to public offices in Nigeria did not increase after the 2023 elections, signaling a further decline in the number of women seeking elective office. In fact, the number of women that contested in the 2023 elections (1,500)¹⁸⁷ is far much lower than the number in 2019 (2970). In the current 10th National Assembly in Nigeria, there are 3 women out of 109 senators, a clear reduction from the 7 women in the 9th National Assembly, while 16 women made it to the House of Representatives out of 360 members, making it a total of 17 female lawmakers in the 10th National Assembly.¹⁸⁸

Nigerian women are striving to close the gender gaps in politics, they are constrained by several factors. On November 29, 2022, Victoria Chintex, Labour Party Women Leader in Kaduna State was brutally murdered¹⁸⁹ leaving her husband badly injured. Salome Abuh, the PDP women leader in Kogi State, was killed and burned beyond recognition in her own home.¹⁹⁰



Cynthia Nwala, leader of the Legislative Council in Etche Local Government, Rivers State, was battered and nearly stripped naked by male politicians during a leadership crisis among the councilors.¹⁹¹ In Lagos, the first daughter of APC's presidential flagbearer coaxed female traders who failed to attend the women's rally in support of her father's presidential ambition, to pay N5,000 or have their stores shut down.¹⁹² These are just a few examples of the election-related hazards women face during elections, which also include cyberbullying, slut-shaming, intimidation, extortion, exorbitant costs of nomination forms and other forms of exclusion.

These trends are also emblematic of the pervasive violence against women in politics rooted in patriarchal value systems which do not encourage female political participation beyond casting

186. The Punch, Only 62 women won elections in 2019, says INEC, <https://punchng.com/only-62-women-won-elections-in-2019-says-inec/>

187. The Punch, 1,524 women contest seats in 2023 polls, 4th December 2022, <https://punchng.com/1524-women-contest-seats-in-2023-polls/>

188. Itodo Daniel Sule, Daily Trust, 2023, [Meet The 17 Women Who Made It To 10th National Assembly](https://www.dailytrust.com.ng/news/10th-national-assembly-women), accessed August 2, 2023

189. Gunmen kill Labour Party's women leader in Kaduna, Nov 22, 2022, <https://www.premiumtimesng.com/regional/nwest/568150-just-in-gunmen-kill-labour-partys-women-leader-in-kaduna.html?tztc=1>, accessed 30th July 2023

190. Salome Abuh, PDP woman leader burnt to death, buried amid tears, Dec 8, 2019, <https://www.premiumtimesng.com/news/top-news/367173-salome-abuh-pdp-woman-leader-burnt-to-death-buried-amid-tears.html>, accessed 30th July 2023

191. Thugs invade Rivers council, assault legislative leader, Oct 6, 2021, <https://guardian.ng/news/thugs-invade-rivers-council-assault-legislative-leader/>, accessed 30th July 2023

5 2023: Only 10% of candidates in Nigeria are women, Nov 26, 2022,

192. 'APC Lagos Rally: Labour Party Calls For Tinubu Daughters Arrest' [Independent Newspaper Nigeria](https://www.independentnewspaper.com.ng/news/2023/11/26/apc-lagos-rally-labour-party-calls-for-tinubu-daughters-arrest/)

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votes at the ballot. The battle for a legal framework facilitating women's participation in governance was aborted when Nigeria's 9th National Assembly rejected 5 gender bills in 2022 that were among the 68 amendment bills during the constitutional review process.¹⁹³ This trend continued to repress women's participation in politics with the result that no woman has ever been elected president, vice president or governor in Nigeria.

5.1.6. Civic Space Infractions are Barely Redressed in Court

Civic space infractions during elections are rarely redressed in court with the result that only few incidents of curtailment on civic freedoms make it to the courtrooms. This is partly attributable to the Go-to-Court phenomenon that signals an increasing loss of public confidence in the judiciary. Go-to-Court further escalates as a driver of political violence during or after elections when perpetrators of civic rights violations—state and non-state actors (including politicians and their supporters)—have the potential to harm challengers to their victory or aggrieved victims seeking redress from the courts. Additional violations may take a variety of forms such as actual or threatened destruction of life, property, or loved ones, infliction of severe physical harm, forced disappearances, extrajudicial killings etc. for instance, no fewer than five houses of the Labour Party candidates/chieftains and their relations were torched by unknown gunmen in Imo State,¹⁹⁴ while Victoria Chintex, Labour Party's Women Leader was brutally murdered in Kaduna State.¹⁹⁵

To make matters worse, the exclusive jurisdiction of the Federal High Court to determine pre-election matters is another barrier. Federal High Courts are usually located in the city centers, and administered by personnel who may be far removed from the realities in non-urban settings. Populations in non-urban settings or located farther from the state capitals also avoid electoral contestations to minimize the anticipation of marginalization often associated with voting against the eventual winner. A classic example is Buhari's justification for sidelining Igbos based on a 97-5% principle, which literally means a divisive allocation of political appointments and federal resources by favoring regions that gave him electoral victory during the March 2015 presidential poll than those who voted for his opponent.¹⁹⁶

Although electoral justice can also come from other judicial, administrative or law enforcement mechanisms, evidence shows that these judicial alternatives have equally been ineffective in providing remedies for electoral breaches. For instance, law enforcement authorities ignored calls for the immediate arrest and prosecution of the Iyaloja General of Lagos State for threatening and intimidating female traders with fines and forced business closures for not attending her father's presidential ambition. Calls to declare a state of emergency in Delta State over "acts of brigandage," where Labour Party "members were subjected to agents of the state's

193. Udora Orizu, This Daylive.com, March 20 2023, <https://www.thisdaylive.com/index.php/2023/03/20/women-underrepresented-with-only-17-members-in-10thassembly> accessed Aug1, 2023.

194. Vanguard, [Labour Party officials attacked, property burnt in Imo - Vanguard News \(vanguardngr.com\)](#)

195. Premium Times, Gunmen kill Labour Party's women leader in Kaduna, [November 29, 2022.](#)

<https://www.premiumtimesng.com/regional/nwest/568150-just-in-gunmen-kill-labour-partys-women-leader-in-kaduna.html?tztc=1>

196. Peoples' Gazette, Buhari justified sidelining Igbos and ruling Nigeria based on 97-5% division: Femi Adesina, October 31, 2021,

<https://gazettengr.com/buhari-justified-sidelining-igbos-and-ruling-nigeria-based-on-97-5-division-femi-adesina/>

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state's ruling party, were also disregarded. As of September 2023, NHRC's hate speech register aimed at holding purveyors of hate speech accountable has not been activated.



The high cost of litigation is another factor that does not only limit access to legal representation but also discourages victims of civic repression from attempting to seek redress at all. Although some lawyers take on some cases on a pro bono basis, the ability to follow through to a logical conclusion is another critical challenge. Courts have also gained notoriety for throwing out good cases on technical grounds, rather than determining them on the merit of the claims. The confidence reposed in the judiciary wanes where technicalities trump merit, making the predictability of decisions more difficult. Beyond throwing up winners that suffer legitimacy crisis, applying technicalities in election petition adjudication has had the effect of empowering courts to subvert the wishes of the electorates based on the errors of legal counsels. The democratic principle of holding free, fair and genuine elections is only meaningful when courts are able to identify, prevent and punish irregularities in elections.

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CHAPTER 6



RECOMMENDATIONS

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Nigeria has a new electoral law which granted financial independence to the Independent National Electoral Commission (INEC) and instituted new arrangements for expanding civic participation in democratic processes. That new law also imposed stricter penalties for electoral offenses¹⁹⁷ and introduced technological enhancements to address the inadequacies of manual accreditation and manual collation of results. The analysis in the preceding paragraphs shed some light on the extent these policy and operational changes safeguarded the sanctity of democratic exercises and the civic space during the 2023 elections. The assurances of electoral integrity were largely unfulfilled, deflecting the initial optimism that greeted the deployment of technological solutions to electoral gaffes. The floodgate of litigation that trailed every aspect of the 2023 elections underscore the contradictions between well-intentioned policy measures and practice. What can be done to shift these patterns of irregularity in future elections? These shifts are necessary to thwart the reoccurrence of harmful trends and patterns that have marred previous election cycles. What is the role of different actors and stakeholders in dismantling the obstructions to civic freedoms? What new strategies should be crafted to rectify existing anomalies, improve resilience, and create an enabling environment for political participation?

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The roles of different actors are detailed below:

6.1. The Legislature

I. Amendments of Electoral Laws: While amendments to the Electoral Act in 2022 were laudable, serious gaps remain, especially in the area of transparency in campaign financing,¹⁹⁸ the court's adjudicatory powers to improve internal democracy within political parties, and the exclusive jurisdiction of the Federal High Court to hear and determine all pre-election matters. Further legislative amendments are necessary to close these subsisting gaps easily exploited by politicians and other actors to repress free speech, association, and assembly rights during

197. Sections 114 – 129 Electoral Act 2022.

198. The Electoral Act 2022 limits the amount a politician can spend during an election, but fails to state the manner of enforcement and procedure of investigation into how much a political party or a candidate actually spends in an election. - <https://www.premiumtimesng.com/news/headlines/414186-analysis-campaign-finance-nigerias-electoral-law-contains-loopholes-being-exploited.html?tztc=1>



electoral cycles. Additionally, the enforcement of strict penalties for electoral offences has been weak and needs upscaling. The passage of the Electoral Offence Bill 2022 currently undergoing parliamentary consideration will not only put in place the legal framework for redressing electoral anomalies, but also serve as a deterrence for criminal behaviour during elections.

II. Engaging with Civil Society Organizations is a valuable strategy for the legislature to maintain effective oversight on the implementation of electoral laws and to gather public input on the effectiveness of electoral reforms. CSOs often represent diverse segments of society and bring unique perspectives to the table.

Through sustained dialogue with CSOs, the legislature can gauge whether electoral reforms address irregularities, improve accountability, and reflect the needs and aspirations of the citizens,

III. Full Adoption of Electoral Technology: Policy confusion still exists regarding whether the new electoral technologies for voter accreditation and results collation trump the previous manual methods. This policy confusion exists because certain clauses in the electoral law allow voter accreditation and result collation through both manual and technological means, creating a situation where INEC could cherry-pick which procedure to use. The Nigerian legislature should consider legislative amendment to eliminate this policy confusion and enthrone full e-voting and e-counting.

6.2. The Executive

I. Independence of Electoral Institutions: A fundamental feature of credible elections is when electoral bodies are free from undue influence, particularly from the executive organs of government. The non-interference principle extends to the activities of the courts, security agencies, political parties, independent observers and other electoral institutions, allowing them to make decisions based on established rules and procedures that are free from external pressures.¹⁹⁹ It encompasses an obligation on the executive to refrain from exerting any form of pressure—on election officials, judges, candidates, non-governmental organizations, and other stakeholder—that could potentially compromise the fairness of the electoral process.

II. Enhancing Voter Education: Well-informed voters are better equipped to make informed choices. Whether through the use of mass media, digital and traditional dissemination and transmission systems, increasing voters' access to information about electoral laws and procedures is critical for fostering civic awareness, educating citizens about their rights and responsibilities, and promoting active engagement in elections, including for citizens with disabilities. Recourse to modern electoral technologies for voter registration, voter verification, and results transmission can significantly improve the accuracy and efficiency of the electoral process. Modern technology minimizes the chances of errors and reduces the scope for manipulation. Accurate voter registration and verification processes ensure that only eligible

199. Fifth Alteration to the Constitution of the Federal Republic of Nigeria, 1999 (No. 6) Act, 2023 which provides for the financial independence of State Houses of Assembly and State Judiciary

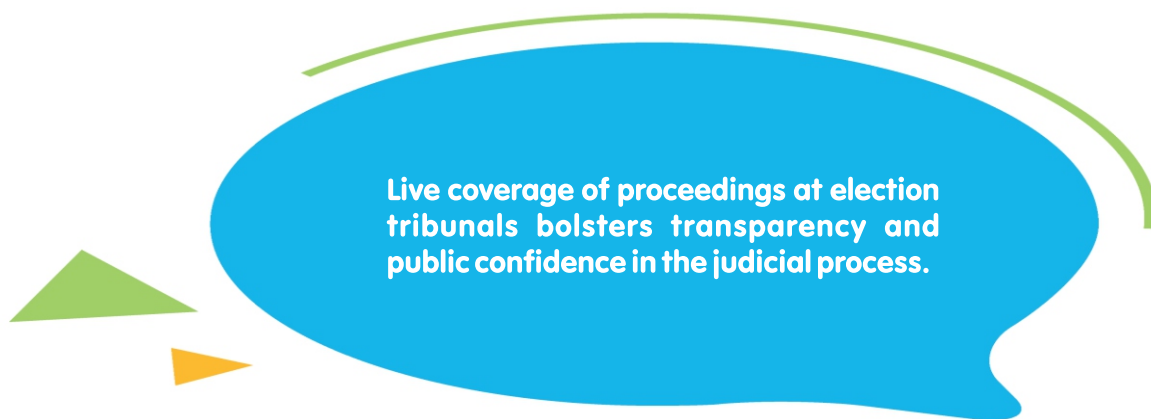
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voters can cast their ballots, thereby enhancing the integrity of the electoral roll. Additionally, technology-driven result transmission facilitates swift and reliable dissemination of election outcomes, reducing the prospect for delays and disputes.

II. Ensure Transparency in Election Management: Ensure Transparency in Election Management: Clear communication of procedures, guidelines, and timelines is the first step towards electoral transparency. Openness and accountability at all stages, from voter registration, election logistics, voting day, vote counting, up to results announcement are important ingredients for enhancing electoral credibility. In sum, INEC should ensure that the results are accurately collated, verified, and announced in a manner that leaves no room for doubt.

6.3. The Judiciary

I. Expedite Resolution of Election-Related Disputes: Timely resolution of election-related disputes is essential to preventing prolonged legal battles that can lead to delays and instability in governance. It is the responsibility of the judiciary to ensure that disputes are heard promptly and efficiently, giving all parties fair hearing, while ensuring swift resolution and the prevention of potential political turmoil. While the expeditious resolution of disputes is crucial, the judiciary must strike a balance between speed and thoroughness, ensuring that cases are properly examined, and all relevant evidence are considered in order to arrive at just and fair decisions. Live coverage of proceedings at election tribunals bolsters transparency and public confidence in the judicial process.



II. Legal Practitioners: Legal practitioners play a crucial role in upholding the integrity of elections and ensuring that the judicial process is fair, independent, and accessible. In the context of election litigation, they are expected to adhere to ethical standards and displaying professionalism in representing their clients, whether they are candidates, political parties, or individuals. The provision of pro bono services to indigent candidates and electorates not only promotes access to justice, also helps to level the playing field so that all participants in the electoral process have an equal opportunity to exercise their rights and defend their interests. Access to fair and adequate legal representation will embolden citizens to challenge and seek legal redress for civic space infractions occurring at any stage of the electoral processes which constrains their ability to exercise their franchise.

6.4. Law Enforcement Agencies

I. Impartial Security and Policing: Impartial policing during elections creates a safe and conducive environment for voters, candidates, and electoral officials alike, and prevents any perception of favouritism or bias towards particular group or actors. As an essential component of electoral integrity, impartiality of security agents enables citizens to exercise their right to vote without fear or coercion. Law enforcement agencies have the responsibility to investigate allegations of electoral offenses promptly to minimize incidents of voter fraud, bribery, vote buying or other illegal activities that undermine transparency. Prompt and unbiased investigations enhance public trust in the electoral system and deter potential wrongdoers.

II. Training and Sensitization: Law enforcement agencies should receive specialized training to handle election-related situations effectively and sensitively. This includes understanding the unique challenges of maintaining security during elections, respecting citizens' rights, and avoiding actions that could be interpreted as biased or suppressive. This is also necessary to ensure that security measures are well-coordinated and that all parties are informed about security protocols and expectations.

6.5. Political Parties

I. Promoting Internal Democracy Within Political Parties: Evidence from this research shows that political parties are way behind in upholding internal democracy entrenched through fair and competitive party primaries and providing equal opportunities for all party members to voice their opinions and contest for leadership positions. Internal democracy within parties sets a strong example of democratic values that can extend to the broader electoral process. Political parties also play major roles in educating and mobilizing the public about the electoral process, voter rights, and encourage debates, forums, and discussions that allow citizens to engage with party leaders and candidates on important issues. By ensuring that citizens are well-informed about their rights and responsibilities, parties can contribute to a more informed and engaged electorate, while serving as vehicles for citizen participation, representation, and the articulation of diverse political ideologies and interests.

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II. Accountability and Oversight: Political parties should establish mechanisms for internal accountability and oversight. This includes transparent financial management, regular reporting, and adherence to ethical standards. Glaring disregard for internal democracy by political parties coupled with INEC's alleged failure to effectively monitor and observe certain party primaries resulted in massive electoral irregularities, discrimination, and exclusion of certain aspirants. In a heterogeneous society like Nigeria divided along ethnic, religious and tribal fault lines, political parties have an obligation to bridge these divides, promoting inclusivity and diversity in their leadership and candidate selection processes.

6.6. Civil Society Organisations (CSOs)

I. Independent Monitoring and Reporting: A free and open civic space rests on the pillars of a vibrant civil society. CSOs should intensify their independent watchdog roles by effectively monitoring various activities and stages of the electoral process to ensure transparency, fairness, and adherence to democratic norms. These include voter registration, campaign activities, voting procedures, vote counting and election litigations. By reporting their findings and observations, CSOs will continue to contribute to informed public discourse and hold electoral authorities and political parties accountable for their actions.

II. Facilitate Public Dialogues and Forums: It is commonplace for CSOs to create platforms for open discussions and dialogues during election rounds where citizens express their opinions, concerns, and recommendations. This practice should be sustained, expanding opportunities for citizens to engage directly with electoral authorities, government officials, and candidates. They may propose changes to laws, regulations, and procedures to address shortcomings and ensure a more inclusive and transparent electoral system. Advocacy efforts by CSOs can lead to positive changes that strengthen the democratic process while promoting peaceful resolution of disputes.

6.7. Media

I. Providing Balanced and Accurate Coverage: Journalists should adhere to ethical standards and avoid sensationalism or manipulation of information. The obligation to shun bias or misinformation requires presenting news objectively and critically, informing the public, shaping public opinion, and ensuring the transparency and credibility of electoral processes. By presenting information fairly and without bias, the media will help citizens make informed decisions based on a comprehensive understanding of the candidates, issues, and policies.

II. Fact-Checking and Countering Misinformation: Misinformation and fake news have serious consequences for elections. The media should intensify fact-checking information, verifying claims, and debunking false narratives. Media outlets also have the responsibility to hold candidates accountable for their statements, promises, and actions. Investigative journalism can expose inconsistencies or misconduct, ensuring that candidates are transparent and that voters can make informed judgments.

6.8. International Development Partners

Enhancing Electoral Credibility: Election observers—both international and local— monitor various stages of the electoral process from voter registration to results announcement, gauging the conduct of elections against established international standards. Election observation by international observers and their local partners should transcend election day activities to monitoring judicial proceedings during post-election disputes. Another way to enhance electoral integrity is through the provision of technical assistance to agencies in order to strengthen electoral systems and processes. This assistance can include training election officials, providing logistical support, and sharing best practices in areas such as voter registration, ballot counting, and results transmission. Capacity building initiatives contribute to the efficiency and professionalism of electoral management bodies.

6.9. Citizens

Citizens are the heartbeat of the civic space during election seasons. Beyond the right to express their opinions, registering to vote and participating in elections are fundamental acts of civic responsibility that enable citizens to contribute to the selection of their representatives and the governance of their country. Where electoral outcomes are contested, it is important that citizens follow developments in the court proceedings, manage expectations while anticipating court decisions. Engaging in demonstrations, rallies, petitions, and other forms of peaceful protest allows citizens to raise awareness about important issues, demand change, and influence public discourse.

Citizens play a crucial role in holding elected officials accountable for their campaign promises and taking action when they fall short. By participating in elections, citizens actively safeguard democratic values such as the right to vote, freedom of expression, freedom of association and assembly. By voting for candidates from various backgrounds, citizens contribute to the creation of a more inclusive and representative political landscape. And finally, parties to election litigation must accept and obey every order of the court in good faith and no party should be seen to employ self-help to disparage or disrespect an order of the court. If not checked and curtailed, this could undermine our democracy, rule of law and constitutionalism”²⁰⁰



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