

# An Introspection into the Emergence of ‘Inconclusive Elections’ from the Electoral Act 2022 and Its Implication on the Nigeria Politics

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## ABSTRACT

The incidence of inconclusive elections in Nigeria has attracted diverse perspectives in recent times. The significance of this discourse to the consolidation of Nigeria’s democracy cannot be ignored considering its consequential effects on the country’s electoral process. In what seems to be an unusual jurisprudential and political development was the case of *John Faleke v Independent National Electoral Commission (INEC) & Anor* which posed a peculiar scenario that was unprecedented to the evolution of electoral disputes in Nigeria. In line with the Constitution of the Federal Republic of Nigeria (CFRN), the Independent National Electoral Commission is empowered to organize or undertake and to supervise all elections to key offices including those of the President and Vice President, Governor, and Deputy Governor among others. It is in the exercise of this power that the INEC developed the Electoral Act and Election Manual used for all general elections which authorized the INEC to declare elections inconclusive or to schedule a rerun election where appropriate. Several arguments have arisen as to the constitutionality of the declaration by INEC. The first notorious case was the Kogi State Gubernatorial Election held on November 21, 2015, as an inconclusive election. It is against this background that the paper examines the decision of the Supreme Court in the case of *James Faleke v INEC*, the provision of the Electoral Act 2022 and Election Manual which affirms the legality of the INEC’s power and the correctness of the declaration of inconclusive election. It argues that the declaration of election as inconclusive is in line with the Electoral Act and the Constitution. The paper further posits the fundamental grounds or conditions upon which an election can be declared as ‘inconclusive.’ However, it suggests that there is a need to carefully thread the path of application of the provisions on inconclusive election in order to avoid a situation where it is being deployed as a manipulative tool for the benefit of the ruling party.

**Keywords:** Electoral Act, Faleke v. INEC, Implications, Inconclusive Elections, Supreme Court Judgement.

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## I. INTRODUCTION

Elections are integral parts of any democratic state. Democracy may be perceived to be a way of governance in which citizens exercise their right to participate in governing power either directly or indirectly (through representatives) from time to time. For a democracy to advance and enjoy durability, it is not enough to merely attempt to conduct elections, it is important that the elections are free and fair and devoid of any sort of irregularity (Amadu, 1989). The consequences of a free and fair electoral process include an increased transparency in the exercise of political powers, a smooth transition in government and accountability in governance Appadorai (1975). Elections are generally seen as the formal decision-making process through which qualified electorates are able to choose from individuals contesting for political posts.

In order to ensure that there are credible elections, democratic states set up electoral management institutions that organize and supervise elections. In the case of Nigeria, the institution has been in operation since 1959 under several appellations including Electoral Commission of Nigeria (ECN), Federal Electoral Commission, National Electoral Commission and National Electoral Commission of Nigeria and lastly the Independent National Electoral Commission. Based on the sensitivity of the nature of work that the institution is saddled with, it is expected that the body has unperturbed independence from every arm of government in order for it to organize free and fair elections that will not be in favour of political manipulators (Abah & Nwokwu, 2016).

Since 1999, upon the country’s return to democracy, there have been several elections that have been conducted in line with the various constitutional timings. Meanwhile, there were concomitant challenges

that negatively impacted the conduct of the various elections. The conduct of the 2003 and 2007 elections by INEC was received with condemnations as there were allegations of massive rigging, violence, and irregularities. Interestingly, the irregularities were so profound that it was acknowledged by former President Late Musa Yar'Adua that the election that brought him to power was fraught with large-scale rigging (Daily Trust Newspaper, May 30, 2007). In what seems to be an interesting development, upon assumption of office of Prof Attahiru Jega, former INEC Chairman, the situation improved as the 2011 and 2015 elections organized under his watch were seen to be relatively free when compared with the status quo. However, there persisted the problems of violence and irregularities even in those elections.

Strangely, there has been a new phenomenon of inconclusive elections that is beginning to surface in the conduct of elections in Nigeria. The idea of inconclusive election essentially means the cancellation of substantial election results in certain polling units to the effect that no winner is returned after the election is concluded. It may be said that the first time that the issue of inconclusive election came up in Nigeria was in respect of the June 12, 1993, presidential election that has been regarded as the freest, fairest, and most credible election conducted in Nigeria. It was conducted by the then Chairman of the National Electoral Commission of Nigeria (Vanguard Newspapers, May 20, 2022).

However, it is now becoming rampant as seen in the gubernatorial elections of Imo, Taraba and Abia which were declared inconclusive by the INEC sequel to alleged cases of violence and political manipulations. In the case of Kogi State election, which is the basis of this paper, the INEC (relying on its Manual for Election Officials) also declared the Kogi State gubernatorial election that was held on November 21, 2015, as inconclusive, as a result of some discoveries about electoral malpractices that occurred in some voting units. The series of event that pervaded the declarations together with the fact that the Bayelsa State's gubernatorial election was also declared inconclusive dampened the hopes and expectations of Nigerians in the electoral process of the country. In the outcome of the 2023 general election in Nigeria, the outcome of Governorship election in Adamawa State was also declared inclusive.

These series of events have led to diverse opinions including arguments that once the constitutional requirement for victory has been satisfied, INEC is not authorized to declare any election to be invalid, (ThisDay Live Newspapers, December 2021). Some contend that INEC's authority to declare elections inconclusive which has gained judicial anchorage through the decision of the Supreme Court in *John James Abiodun Faleke v. INEC* conflicts with Section 179 CFRN 1999 (as amended) and that the ruling in Faleke's case cannot rightly be inferred from the requirements of Section 78 CFRN 1999 (as amended) on the power of INEC to supervise elections. There are also arguments on the legality of the election manual upon which the INEC directly derives the powers to declare elections inconclusive. This paper seeks to examine the concept of inconclusive elections and the constitutionality of the concept in Nigeria by examining the decision of the Supreme Court in the case of *Hon. John Faleke v. INEC*.

## II. CONCEPTUAL ANALYSIS

### A. Election

Election has been defined in several ways by different scholars. Heywood perceives election as a device for occupying an office or post through choices made by electorates (Heywood, 1997). Thus, it avails the right platform for qualified voters to the calibre of people they want to trust with political offices. According to Dye, it is a major instrument for recruiting political leaders in democratic societies. This makes elections very important to effective involvement of the citizenry (Dye, 2001).

Elections are one of the ways a democratic government can be established and realized, especially in the modern era (Zainawa, 2021). In fact, because direct democracy is no longer workable in the modern world, modern representative democracy can only be achieved through the electoral process. Therefore, it might be argued that democracy cannot be implemented or institutionalized without elections. Given the significance of elections to the democratic process, any issue relating to the electoral process will directly affect and have an effect on the democratic institutions (Nnadozie, 2007).

### B. Inconclusive Election

This phenomenon entails the cancellation of the final results of an election with the effect that nobody is pronounced and returned the winner of the election. Abah and Nwokwu perceived it as an emerging phenomenon in Nigeria's electoral process where 'elections are held but due to cancellations of the results, true winners are not pronounced by the returning officers as a result of the cancellation of substantial number of votes during the polls based on alleged violence and other sundry irregularities' (Abah & Nwokwu, 2016).

In considering inconclusive elections, Onah and Chukwu noted that when any irregularities resulting from cancellations in some electoral units substantially negate the electoral laws, rules, and regulations supporting such election, the electoral umpire will fail to declare the outcome of the election (Onah & Chukwu, 2017). Elections that are not conclusive can occur for a variety of reasons that cast doubt on the

validity of the results, including: failure to hold elections in some electoral units; annulment of election results from some polling or electoral units due to irregularities; serious security breaches in important electoral districts and so on. If no contender met the criteria for claiming victory after the polls closed, the election would be deemed to be inconclusive. “He or she must satisfy all legal requirements, win the election by getting a majority of the valid votes cast after all eligible voters have had an opportunity to exercise their right to vote,” to put it simply. The election is judged to be unresolved if none of the candidates meet this requirement (Abah & Nwokwu, 2016).

### III. TRACING THE HISTORY AND CAUSES OF INCONCLUSIVE ELECTION IN NIGERIA

The 12th of June 1993 presidential election between MKO Abiola and Alhaji Bashir Tofa, conducted by Prof. Humphrey Nwosu, then head of the National Electoral Commission of Nigeria, appeared to be the first appearance of inconclusive election ever recorded in Nigerian politics. Most observers agreed that it was Nigeria’s freest, fairest, and most credible election to date. Since that time, several cases of inconclusive elections have become commonplace in Nigeria. In 2013, despite the fact that Willie Obiano, of the APGA) candidate, held a sizable lead with 174,710 votes, the 2013 governorship election in Anambra was determined to be inconclusive. With a total of 94,956 votes, Tony Nwoye of the PDP was his closest rival. The number of votes that were invalidated in roughly 15 local government areas of the state was 113,113, which was more than the number of votes Obiano was leading with. As it stood, Obiano’s votes were greater than Nwoye’s with 79,754 votes. In order to allow for a new election to be held in the locations where voting was suspended, the returning officer ruled the election inconclusive. Obiano ultimately won the vote (Babalola, 2018).

At the gubernatorial election of Bayelsa State in 2015, Timipre Sylva of the APC was in second place with 72,594 votes, and Seriake Dickson of the PDP was in first place with 105,748 votes, hence INEC ruled the 2015 Bayelsa governorship election inconclusive. Despite the fact that Sylva had won just one LGA and Dickson had won six of the state’s seven local government areas, the election was declared inconclusive when the Southern Ijaw LGA’s whole vote was annulled due to widespread electoral fraud and violence. The number of registered voters in Southern Ijaw LGA was put at 120,000, which was above the difference between Dickson and Sylva’s total votes.

Due to vote cancellations brought on by electoral fraud, the 2015 governor’s race in Imo State was also declared inconclusive. At the moment, Emeka Ihedioha of the PDP was trailing APC candidate Rochas Okorocha by 79,529 votes, with 385,671 votes to 306,142. The returning officer was forced to declare the election inconclusive since 144,715 ballots had been invalidated at various polling locations around the state.

In the case of Osun State in 2018, the PDP candidate Ademola Adeleke was in the lead before the INEC pronounced the Osun State Governorship election, which took place on Saturday, September 22, 2018, to be inconclusive. On September 27, 2019, a rerun election was held in seven voting places spread over four Local Government Areas of the State, and Oyetola Gboyega of the APC was proclaimed the victor. Gboyega’s victory was contested by Adeleke at the Osun State Governorship Election Petition Tribunal, where the decision was in his favor, and he was proclaimed the election’s victor. In its ruling from February 6 of this year, the Tribunal declared the second election invalid. It went on to say that 17 polling units where INEC failed to follow its own rules resulted in 254,698 votes for PDP and 253,452 votes for APC after the votes from those polling units were subtracted from the results for both parties. The Osun State Governorship Election Tribunal’s ruling was reversed by the Court of Appeal after Governor Oyetola appealed, making Adeleke’s victory invalid. On Friday, July 5, 2019, the Supreme Court in a majority decision of 5 to 2, upheld the election of Gboyega Oyetola of the APC as the Governor of Osun State at the 2018 Osun State Governorship election. Dismissing an appeal by the PDP Candidate, Ademola Adeleke, the Supreme Court in its lead judgment aligned its decision with that of the Court of Appeal, stating that the absence of Justice Peter Obiorah who delivered the lead judgment of the Election Tribunal, from the proceedings was detrimental to the case of the appellants.

Even though the basic reason for most declarations of inconclusive elections made by INEC is the cancellation of results as a result of electoral violence, there have been several scholarly positions on the reasons for inconclusive elections in Nigeria. The reality is that electoral violence has bedeviled politics in Nigeria. Many political stakeholders approach elections in a do or die manner and this has facilitated an atmosphere of turbulence in political transition. For instance, it has been noted that the electoral-related casualties and communal violence in Nigeria that followed the April 2011 Presidential elections caused over 800 deaths notwithstanding the claims that the election was one of the freest and fairest election ever held in Nigeria (Ogefere, 2015). Electoral violence is a common problem that often reoccurs and has been detrimental to the democratic consolidation of the country. This can also be said, for instance in the case of the first republic that was ended by the first military intervention through the 1966 Major Kaduna

Nzeogwu's coup that was primarily blamed on the failure of politicians to maintain a stable and effective control of power among others (Babalola, 2018).

As regards Kogi State, the governorship election that was declared inconclusive, it has been argued that the winner could have been returned but for the incidents of political violence that took place on the election day (Abah & Nwokwu, 2016). The legal framework that was cited by the Chief Returning Officer, in declaring the election inconclusive was the electoral guidelines and he argued that the total number of canceled votes exceeded the difference in vote between the two major candidates (Ibrahim, 2015). This was said to have necessitated the supplementary election that was scheduled to determine the rightful winner of the election.

In analyzing the case of Bayelsa State, Abah noted that even though the State has only eight local government areas, the 2015 electoral process was marred with unprecedented violence and sundry irregularities (Abah & Nwokwu, 2016) so much that it was necessary for INEC to cancel the result in Southern Ijaw, which was one of the local government areas. This further testifies to the fact that the problem of violence is usually the ground upon which INEC cancels election results and declare election inconclusive.

Nigeria has a long history of electoral violence because whenever elections are held, there is typically a tendency for intense violence to follow. To support this claim, Abbas, in describing the political climate in Nigeria during election times noted that elections held in Nigeria since the 1950s have typically included conditions marred by conflict. Consequently, there may be concerns about electioneering activities that involve violence and human rights violations (Abbas, 2008). Therefore, Nigerian electoral process has, since independence, turned out to be a severe political liability, producing serious political unrest and endangering the future of corporate Nigeria. Rather than serving as a means and process of exercising legal political rights.

#### IV. EXAMINING THE LEGAL FRAMEWORK ON INCONCLUSIVE ELECTION IN NIGERIA: THE CONSTITUTION, ELECTORAL ACT AND INEC REGULATIONS AND GUIDELINES

The grandmom for every legislative endeavour in Nigerian is the CFRN 1999 (as amended). By virtue of section 153(1)(f), it established the Independent National Electoral Commission and saddled it with the responsibilities of organizing, undertaking and supervising elections in Nigeria. Section 78 CFRN 1999 (as amended) provides that the registration of voters and the conduct of elections shall be subject to the direction and supervision of Independent National Electoral Commission. The Constitution, under Paragraph 15(f) of the Third Schedule (Part 1) also confers power on INEC to monitor political campaigns and develop rules and regulations to govern political parties. This directly empowers INEC to regulate elections in Nigeria (Chukwuka O, 2019). The scope of elections covered by INEC include presidential, gubernatorial, National and State Houses of Assembly, or elections holding at the Federal Capital Territory. Apart from the Constitution, the Electoral Act also makes provisions, by virtue of section 153, that confers the power on INEC to make regulations and guidelines in respect of the conduct of elections in Nigeria. It is in respect of the foregoing provisions that the INEC issued General Election Guidelines in 2015 and 2019 to guide the elections in Nigeria in the respective years.

The Nigerian Constitution stipulates the requirement for a political contestant to be declared a winner of an election. Section 179(2) CFRN 1999 (as amended) provides that a candidate for an election to the office of governor of a state is deemed elected where, there being two or more candidates (a) he has the highest number of votes cast in election and (b) he has not less than one-quarter of all the votes cast in each of at least two-thirds of all the local government areas in the State.

The implication of this is that where such a candidate has fulfilled these two requirements, he is to be returned as elected and declared by INEC to be the winner of the election. Such an election is conclusive and there is no need to embark on any rerun election in the state. It is important to note that the case will be different where the candidate qualifies under the first requirement but fails the second requirement that he should have not less than one-quarter of all the total votes cast in each of at least two-thirds of all the total government in the State. When the foregoing takes place, then there will be need to conduct another election since the requirement of the Constitution has not been met (Chukwuka, 2019, p. 196).

In respect of the inconclusive election, the INEC Guidelines provides in paragraph 33(b) that the returning officer shall announce the results in cases where the total number of registered voters in the affected Polling Units is less than the margin by which the leading candidate is ahead of the second candidate, indicating that the supplementary election will not have an impact on the outcome of the election. When the margin of victory between the two leading candidates is not greater than the total number of registered voters in the polling units where elections were canceled or did not take place, paragraph 33(e) directs the returning officer to declare the election inconclusive and instructs them to delay filing their returns until another election has been held in the affected polling units and results incorporated into the appropriate forms (INEC Guidelines 2015, pp. 22-23 Paragraph 4, Section N). Whenever it is necessary to



make returns for any election to which these regulations and guidelines apply, the margin of lead principle is used. Once more, Section 26(1) of the Electoral Act 2010 (as amended) gives INEC the authority to postpone elections when it deems it necessary to do so for whatever reason.

Ordinarily, there is nothing in the provisions that shows that the Guidelines were targeted at any particular candidate to deter him from winning the election. The idea was to facilitate credible elections and ensure that all votes are appropriately considered. Similar to the observation made by the former Acting Chairman of the Independent National Electoral Commission, Amina Zakari that “...faced with circumstances and armed with the legal provisions, INEC in an attempted to be fair to all, and to move away from the established syndrome of “announce the result at any cost and leave it to the courts”, usually invokes the relevant sections to declare elections inconclusive pending determination of the winner through supplementary elections” (Zakara, 2016).

Interestingly, there was no reference to the word ‘inconclusive’ in the Nigerian Jurisprudence as the law was unambiguous as to what conditions are to be met in the conduct of governorship and presidential election. The concept of margin of win introduced by the electoral Guidelines of the INEC is new to the Nigerian electoral process and has never determined the outcome of elections in Nigeria prior to the period when the Guidelines were issued.

There are provisions in the law on the necessary actions to be taken by INEC in cases where violence is anticipated to disrupt the peaceful holding of an election. An example is the provision of the Electoral Act which states that where a date has been appointed for an election and INEC has reasons to believe that it is likely a breach of peace occurs if the election is conducted on that day or the occurrence of an emergency such as a natural disaster has made it impossible to conduct the election on that day, INEC may postpone the election and must appoint another day in respect of the affected areas (Section 26 of the Electoral Act 2010). The case may be different where the election was affected by irregularities such as snatching of ballot boxes, vote buying, card reader malfunction in some polling units among others. In this case, INEC may cancel votes in the concerned areas and declare the election inconclusive. Nkwede, Emordi and Nwelom observed that a declaration could be issued, according to the caveat in Subsection 4 of Section 26 if the results in the affected areas would not have a significant impact on the election’s overall result (Uzzi, 2016).

## V. ANALYSIS OF SUPREME COURT JUDGMENT IN JAMES FALAKE V. INEC

In Nigeria’s electoral lexicon, the case involving Hon. Faleke and INEC serves as either a representative illustration or the first use of the term “inconclusive election. The appellant, Hon. John Faleke, was the late running mate to Prince Audu. The APC submitted their names to the (INEC) as the party’s candidates for the election into the office of the governor and deputy governor. The election proceeded as planned. The PDP emerged second with 199,248 votes at the close of the elections, trailing the late Prince Audu/Faleke ticket by 240,867 votes. Due to the observable electoral malpractices that were alleged to have taken place in 91 voting centres, the 1st Respondent, issued a Public Notice on November 22, 2016, declaring the results of the election inconclusive on the grounds that the total number of registered voters in the disputed 91 polling units where elections had been cancelled, which was 49,953, exceeded the margin of votes between the APC and the opposition party.

Sadly, Prince Abubakar Audu passed away on November 22, 2015, before the supplemental election was held. The APC informed the first respondent that Yahaya Bello, the second respondent and the party’s second-place finisher in the primaries, had been substituted for the deceased. The Court held that:

*“...based on the provisions of Chapter 3 paragraph 3.11, step 14 of INEC’s Manual for Election Officials. The argument of learned senior counsel for the appellant is that the provisions of the Manual cannot be employed to amend or augment the provisions of the Constitution. It is not disputed that pursuant to Section 160(1) of CFRN 1999 (as amended), INEC has the constitutional power to regulate its own procedure or confer powers and impose duties on its Officers for the purpose of discharging its functions. Sections 73 and 153 of the Electoral Act contain similar provisions to ensure the proper discharge of its functions. Section 73 E.A. empowers the Commission to publish in the Gazette guidelines for elections which shall make provisions for the step-by-step recording of the poll in the electoral forms as may be prescribed... while Section 153 empowers the Commission to issue regulations, guidelines, or manuals for the purpose of giving effect to the provisions of the Electoral Act and for its administration.”*

However, the Supreme Court through Justice Adekeye, JSC in the case of *C.P.C v. INEC* (2011) LPELR 8257 (SC) at Pages 54 55 F B. accepted the usefulness of INEC’s Manual for Electoral Officers in the appropriate conduct of elections as follows: “by force of law the Independent National Electoral Commission has the duty of conducting elections. Besides the constitutional provisions, it is guided by the Electoral Act 2010 (as amended) and the Election Guidelines and Manual issued for its officials in accordance with the Act. These documents embody all steps to comply with in the conduct of a free, fair and hitch free election.”

The Court additionally concluded that since 91 polling places in the State had been found to have electoral irregularities, it was appropriate for the first respondent to refer to and use the instructions in its manual to decide what to do next. When this occurs, it is appropriate to declare the election inclusive “where the margin of victory between the two leading candidates is not greater than the entire number of registered voters in the polling unit(s) and elections were cancelled or not held. The INEC is required to delay making a return until another election has been held in the affected polling unit(s) and the results have been recorded onto a new Form EC8D and subsequently recorded into a new form EC8E for Declaration and Return.”

The clause is simple and straightforward, and its implementation did not need delving into any other Manual clauses. It is undeniable that the difference in votes cast between the late Prince Audu and the appellant and Capt. Wada and Arch. Awoniyi was 41,619. The votes were fewer than the total number of registered voters in the 91 polling places where votes were invalidated. The Court was of the opinion that the Court below was correct to declare the election inconclusive based on the number of registered voters in the 91 affected polling units based on the argument above. “The law is written that where any candidate to the office of a Governor meets with these requirements, he should be declared winner and returned as the duly elected Governor. This much has been held in a plethora of decided cases such as: *Ngige v. Obi* (2006) 14 NWLR, held that in the absence of a return by the 1st respondent declaring the appellant and the late Prince Audu as the duly elected Governor and Deputy Governor respectively, neither of them could be deemed to have been duly elected on 21/11/2015 as required by Section 179(2) of CFRN 1999 (as amended). The election conducted on 21/11/2015 was inchoate until after the conduct of the supplementary election on 5/12/2015 which brought the entire process to conclusion.”

It was repeated that by the Supreme Court that “it necessarily follows therefore, that as the appellant in this case and Prince Audu were not returned as duly elected, there was no basis for the application of Section 181(1) of CFRN 1999 (as amended), which allows a Deputy Governor elected with a duly elected Governor to step into the Governor’s shoes in the event of death or any other factor leading to his inability to subscribe to the Oath of Allegiance as well as Oath of Office.”

This paper pitches its tent with the foregoing line of reasoning because it is posited that the Supreme Court rightly applied the relevant laws to the facts of the case. The 1999 Constitution makes provisions to cover a situation where a candidate dies when an election is being conducted. Section 181 (1) of the 1999 Constitution. provides that if a person that is duly elected as a Governor dies before taking and subscribing the Oath of Allegiance and Oath of Office or for any reason is unable to be sworn in, the person that has been elected with him as the deputy Governor is to be sworn in as Governor and then, he is to nominate a new Deputy Governor. However, such nomination is subject to the approval of a simple majority of the House of Assembly of the State. Unfortunately, Prince Abubakar Audu was not the Governor-Elect before his demise and this provision of the constitution does not apply in this case. It then follows that the deputy Governor who instituted this action has not been elected as the Deputy-Governor and cannot be sworn in by INEC.

What seems to be almost relevant to this scenario is the situation envisaged by section 36 (1) of the Electoral Act 2010 which stipulates that “if after the time for the delivery of nomination paper and before the commencement of the poll, a nominated candidate dies, the Chief National Electoral Commissioner or the Resident Electoral Commissioner shall, being satisfied of the fact of the death, countermand the poll in which the deceased candidate was to participate and the commission shall appoint some other convenient date for the election within 14 days.” Thus, this provision would have been applicable but for the fact that the polls have already commenced but has not been concluded before the governorship candidate died. It is important to note that the new E.A. 2022 has addressed this issue. When a nominated candidate passes away before the election, Section 34 of E.A. 2022 gives INEC the authority to postpone the vote and set a new election date within 14 days of the candidate’s passing. Similarly, INEC has the authority to suspend an election for up to 21 days if a nominated candidate passes away after polls have begun but before the official results and announcement of a winner. The political party of the deceased candidate must have a new primary within 14 days of the candidate’s passing if the election is for a legislative House. In the event of a presidential, gubernatorial, or Federal Capital Territory Area Council election, the running mate must select a new running mate before the election is over.

On many occasions the approach of the Nigerian judiciary to this situation was to apply the provisions of the constitution contained in section 179(2) on the requirements that must be met before a candidate is deemed elected as a governor (Chukwuka, 2019, p. 197). This has been the position of the Courts in several cases such as that of *INEC v Musa* (2003) 3 NWLR (Pt.106); (2000) FWLR (Pt. 145) 729 and *Fayemi v Adebayo Oni* (2010) LPELR-LA/IL/EPT/Gov./1/10. An example may be seen in *INEC v Oshiomole* (2009) 4 NWLR (Pt.1132) 607 at 670-671, where the Court did not consider calling for rerun of the gubernatorial election of Edo State because the petitioner satisfied what Section 179 (2) (a) & (b) of CFRN 1999 (as amended) requires. What the Court of Appeal did was to cancel INEC’s declaration of 329,470 votes for PDP and 179,472 votes for Action Congress (AC). The Court of Appeal cancelled a total of 231,618 votes

(cancelling 200,723 of votes scored by PDP and 30,695 of votes scored by ACN) and declared Oshiomole of ACN as the winner of the election (Chukwuka, 2019, p.197).

Similarly in the case of *Olusegun Agagu v Olusegun Mimiko* (2009) 7 NWLR (Pt. 1140) 342 at 401, where INEC declared the winner of the Ondo State gubernatorial election to be the applicant who had 349,288 votes whilst the respondent had 226, 021 votes. During the trial, the Court found the actual votes to be 313,355 for the applicant and 195,030 for the respondent but 248,724 votes were canceled to the effect that the respondent had the highest valid votes. The Court also noted that Section 179 (2) of CFRN 1999 (as amended) had been satisfied, the Respondent's was affirmed as the candidate with the highest votes and was returned as governor.

The judicial acknowledgment of "inconclusive election" and "margin of win," in the Faleke's case has become a precedent as the Supreme Court also relied on the case in *Hon. Abiodun Adeleke v. INEC & Anor.* SC/648/2016 (Per Kekerekun, JSC), when it held that INEC was correct to declare the Kogi State election of November 21, 2015, inconclusive on the grounds that the difference in what the two candidates that were leading scored, that is, the margins of victory was less than the total number of registered voters in the 91 affected polling units where elections were cancelled (Chukwuka O, 2019, p.197). Some have claimed that INEC's declaration that an election was inconclusive violates Section 179(2)(a)(b) of the CFRN 1999 (as amended). But as earlier discussed under the previous heading and as deducible from the Court's decision in *Nyesom Wike v Dakuku Peterside* (2016) 7 NWLR (part 1512) 574, INEC's decision to declare the election inconclusive was not based directly on Section 179(2)(a)(b) of the CFRN 1999 (as amended) or the E.A. 2022. In this regard, it is stated that the Returning Officer's responsibility is to simply declare the winner of an election after all the results have been tallied and not to usurp the authority of the Election Petition Tribunal by ordering a second round of voting. However, this paper posits that, even though the decision to declare the election as inconclusive was not based on these two laws, the Electoral Guidelines 2015 which authorized INEC to declare such election as inconclusive, was validly issued pursuant to the powers conferred upon INEC under section 153(1)(f) and section 78 of the CFRN 1999 (as amended) and under sections 152 and 26(1) of the E.A. 2022 which conferred several regulatory powers on INEC in respect of elections in Nigeria. Hence, the Supreme Court was right by relying on sections 179 and 181 of the 1999 CFRN (as amended), sections 133 and 134 of the E.A. 2022 and the Election guidelines and manual for INEC officials to judge the case. These are provisions that provide for steps to be complied with in an election, especially the principle of lead margin as contained in section 26 and 53 of the E.A. 2022 and paragraph 41(e) and 43 (b) of the INEC regulations and guidelines.

## VI. IMPLICATION ON THE NIGERIA POLITICS

As the interrogation on inconclusive elections persists on democratic consolidation, there is no doubt that an objective investigation of inconclusive elections in Nigeria will reveal its limiting effects including consequential implications on the Nigerian politics such as political instability, loss of trust and public confidence in the electoral umpire, waste of state resources, and pressure to manipulate the suspended election from the political gladiators among others (Obiagu, U, Abada, I, Mbah A et al, 2022). There is no doubt that these resultant implications would have devastating effects on the polity. They are also capable of rendering impotent the effect of the electoral law in the first place.

Interestingly, the new Electoral Act has addressed some issues of overvoting usually caused by section 53(2) of the repealed E.A. 2010. Section 51 Electoral Act, 2022 provides that "the total number of accredited voters will become a factor in determining over-voting at election tribunals." So, if it happens that the total number of those who vote exceeds the number of those officially accredited to vote at a particular polling unit, the returning officer is at liberty to cancel the election of that unit. This is an enhancement over the electoral law that was repealed, which stated that only the Commission could declare the election at the polling place invalid and that the number of registered voters, not the number of accredited voters, would be considered by election tribunals when determining whether there had been excessive voting (Nkwede *et al. op. cit.* p. 86).

It is, however, important to note that, in order to hold free, fair, violent-free, transparent, and decisive elections in Nigeria, INEC must be impartial in the application of the law as regards inclusive elections. INEC has to primarily sanitize its internal bureaucracy to ensure that it is not serving as a puppet of the government in power. This will facilitate its commitment to preventing corrupt practices, manipulations, or conspiracies that can result in unresolved elections. INEC should function as an impartial umpire in every election. This paper posits that, given the circumstances of each case and evidence and facts available to every presiding officer, 'inclusive election' should not be resulted to or declared where it is not necessary. The paper is of the view that it should be the last result for presiding officer having considered thoroughly, the provisions of the CFRN 1999 (as amended) as well as the Electoral Act stipulating the basic conditions for winning the particular election in question.

Furthermore, there is a need to begin to prosecute electoral offenders. There are no records of prosecution of perpetrators of crimes in electoral processes. This should be taken seriously and will likely prevent habitual or unnecessary declaration of elections as inconclusive. It will definitely ensure that sponsors of electoral violence and malpractices are brought to book. In our earlier research studies, it was shown and found that a lacuna exists currently between the INEC and Nigerian Police as to who has the responsibility to prosecute electoral offences (Ogundayisi, 2019). Similar to the position of Nkwede, Emordi and Nwelom, political parties and ruling governments should adhere to the laws and rules of the political game. In order to prevent electoral violence, bribery, rigging, vote buying and selling, manipulations of INEC, and uneducated youths committing acts of violence during elections, politicians should use the platforms of political parties to educate and sensitize the electorate about the actions or activities that may cause an election to be declared inconclusive.

It is also suggested, as noted by Zakara, that INEC should not receive all of the emphasis when trying to solve the problem of inconclusive elections (Zakara A, 2016). It is important that all stakeholders involved should look at all potential solutions, such as advocacy and other voter outreach initiatives. There should be a modification of public perspectives of INEC as an “Inconclusive Election Management Body.” To support research and training orientation of the general public, there should be increased collaborations between INEC and all pertinent parties, including the academic community. Consequent to the introduction of the Electoral Act 2022, it is therefore important to engage in comprehensive electoral reform in order to install a new electoral system based on “digital election technology” that will produce leaders in Nigeria with innovative ideas and virtues for resolute leadership and good governance because self-serving leaders are tragedies to any country (Obiagu *et al.*, 2022).

## VII. CONCLUSION

This paper has made an attempt to analyze the phenomenon of inconclusive elections in Nigeria’s electoral process by identifying some of the recent incidents and examining the case of *Faleke v INEC* in light of the legal frameworks for conduct of election in Nigeria. It is submitted that the phenomenon of inconclusive elections that is founded upon the Electoral Guidelines issued by INEC is not inconsistent with the letters and spirit of the Nigerian Constitution or the Electoral Act. As suggested by Chukwuka, it is an issue of constitutional law whether a candidate won an election or not. However, the INEC Regulations and Guidelines, which supplement the Constitution on the election process, must also be taken into consideration when interpreting the Constitution. So long as Section 79(2) of the CFRN 1999 (as amended), the INEC’s Regulations and Guidelines are lawful Regulations. The paper, however, posits that it is very important that INEC exercises caution in the declaration of elections as inconclusive and should shun political manipulations in order to avoid a collapse of the country’s electoral process.

## REFERENCES

- Abah, E. O. and Nwokwu, P. M. (2016). Inconclusive elections in Nigerian democracy causes and cures. *African Journal of Politics and Administrative Studies*, 9(1), 27.
- Abbass, I. M. (2008). Electoral violence in Nigeria and the problem of democratic politics being. *A Paper Presented at the 27th Annual Conference of the Nigerian Political Science Association on Electoral Reform, Political Succession and Democratization in Africa*, held at Benue State University, Makurdi from 16–19 November 2008.
- Akin O. Ogundayisi. (2019). *Analysis of issues in election petition tribunals towards democratization in Nigeria* [unpublished PhD thesis]. University of Ilorin, Ilorin, Nigeria.
- Amadu, K. (1989). *Election Contest: Candidate’s Companion*, Ibadan. Spectrum Books Ltd.
- Appadorai, A. (1975). *Substance of Politics*. Oxford University Press.
- Babalola, L. (2018). *A Catalogue of INEC’s inconclusive elections* (24th September) Available from <https://pmnewsnigeria.com/2018/09/24/a-catalogue-of-inecs-inconclusive-elections/>.
- Chukwuka, O. (2019). In conclusive elections in Nigeria: A review of the Supreme Court Judgment in Hon. Faleke v. INEC IJOCLEP 1(2), 195.
- Daily Trust Newspaper. (May 30, 2007). *Nigeria: Yar’Adua Admits Election Flaws*. Available at <https://allafrica.com/stories/200705300320.html> accessed 22nd October 2022.
- Dye, T. R. (2001). *Politics in America*. Prentice Hall, Upper Saddle Rivers.
- Heywood, A. (1997). *Politics*. Macmillan.
- Ibrahim, S. (2015). *INEC: Tales of Inconclusive Elections*. NewsWatch 16 December 2015.
- Nkwede, O. Emordi A. and Nwelom, N. (2020). INEC, Political Parties, and the Politics of Inconclusive Elections in the 2019 General Elections in Southeast Nigeria. *Ife Social Sciences Review*, 28(1), 76.
- Nnadozie, U. (2007). *History of Elections in Nigeria, in Elections and the future of Democracy in Nigeria*. NPSA.
- Obiagu, U., Abada, I., Mbah A *et al.* (2022). *The limiting effects of inconclusive gubernatorial elections towards the democratic consolidation of the Nigerian state*. The African Review ER p 1.
- Ogefere, S. (2015). *Violence, Inconclusive Elections and Uwais Reforms*. The Guardian Nigeria 11 Dec. 2015.
- Onah, C. and Chukwu J. (2017). A Prognostic Analysis of Implications of Inconclusive Elections on Democracy in Nigeria, 2019 and beyond. *Southeast Journal of Political Science*, 3(1).
- The Electoral Act 2010 (as amended).
- The Electoral Act 2022.



- This Day Live Newspapers. (2021). Inconclusive Elections: A Constitutional Inconsistency (December 2021) available at <<https://www.thisdaylive.com/index.php/2021/11/16/inconclusive-elections-a-constitutional-inconsistency>> accessed 18th October 2022.
- Uzzi, O. (2016). *Nigeria: Yesterday, Today and... Onitsha*: Africana Educational Publishers Ltd.
- Vanguard Newspapers. (May 20, 2022). *Humphrey Nwosu: Unsung hero, difficult to ignore*. Available at <https://www.vanguardngr.com/2022/05/humphrey-nwosu-unsung-hero-difficult-to-ignore/>.
- Zainawa, A. (2021). Political Parties, Electoral Process and Democracy in Nigeria. *Zamfara Journal of Politics and Development*, 2(1).
- Zakara, A. (2016). *Inconclusive elections are a result of strengthened electoral process*. Available from <<https://www.inecnigeria.org/news-all/inconclusive-elections-are-as-a-result-of-strengthened-electoral-process-commissioner-amina-bala-zakari/>>.



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