

**ROLE OF ELECTORAL MANAGEMENT BODIES IN PROMOTING DEMOCRATIC GOVERNANCE IN NIGERIA: AN APPRAISAL\***

**Abstract**

*It cannot be gainsaid, that the conduct of free, fair and credible elections is fundamental to the establishment a government that can promote inclusiveness, accountability, transparency, responsiveness, participation, respect for human rights and economic efficiency in governance. The responsibility of managing elections in Nigeria is legally entrusted on the Independent National Electoral Commission (INEC) and State Independent Electoral Management Commissions (SIECs). Unfortunately, elections in Nigeria have been shrouded in controversy thereby constituting a threat rather than a process of consolidating and sustaining democratic governance. This paper argues that this situation is largely attributable to weak institutional framework of the electoral management bodies which derogates from their independence and capacity to effectively manage elections in Nigeria. Against the above background, this paper appraises the role of the electoral management bodies in Nigeria and their impact on democratic governance. The paper concludes with salutary recommendations aimed at addressing the above challenges especially, the enhancement of the capacity of the electoral bodies through the provision of adequate legal framework, continuous training, adequate funding and effective oversight by critical stakeholders.*

**Keywords:** Democratic Governance; Elections; Election Management Bodies; Free and Fair Election

**1. Introduction**

The role of the Election Management Bodies (EMBs) is critical to the emergence of the elected public officials who possess the capacity to effectively deliver on their mandate especially, the provision of the democratic governance dividends for the citizens. In Nigeria, the activities of the EMBs are carried out by two electoral bodies at different levels. The Independent National Electoral Commission (INEC) is the major EMB in Nigeria with the primary responsibility of administering elections. The functions and powers of INEC as provided in the Constitution<sup>1</sup> include: organizing, undertaking and supervising all elections to the offices of the President and Vice-President, Governor and Deputy Governor, members of the National and state Houses of Assembly; registering political parties; monitoring the organisation and operation of political parties as well as their finances, conventions, congresses and primaries;<sup>2</sup> registering voters and maintaining the voters register; and monitoring political campaigns. INEC is also mandated to conduct a referendum when a petition for recall of a member of any of the legislative houses is presented to it.<sup>3</sup> INEC is responsible for constituency delimitation.<sup>4</sup> On the other hand, the State Independent Electoral Commission (SIEC) is established under Section 197(1) of the Constitution<sup>5</sup> for each of the 36 states in the country to oversee elections into local government councils.

Unfortunately, the EMBs in Nigeria have a lot of challenges which militate against their effectiveness. Though the political stakes are extremely high in Nigeria, democratic culture is lacking and this is worsened by extremely high level of corruption especially, amongst the political class. Thus, the electoral management system is under pressure and in need of insulation from manipulation by government, political parties and other stakeholders. There is the continuous challenge of ensuring a functional electoral system with a fair and level playing field for everyone and the struggle to retain its autonomy and integrity is more real today than ever before. Stressing the importance of the role of EMBs, the International Institute of Democracy and Electoral Assistance noted that,

The development of professional electoral administration is not merely a technical and managerial issue, but a process that crucially engages political stakeholders who have their own interests and objectives. Its role in the overall development and strengthening of democracy cannot be overstated.<sup>6</sup>

It cannot be overstressed, that free, fair and credible elections have great potential to promote the participation of citizens in governance, allowing the will of the citizenry to be expressed in matters affecting them as well as choosing leaders that will best represent their needs and prioritize developmental goals. According to Mimiko,

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<sup>1</sup>Third SchPt 1 Item F para 15(a)-(i) CFRN 1999 as amended.

<sup>2</sup>Also s225 CFRN 1999 (as amended).

<sup>3</sup>Ss 69 & 110 CFRN 1999 (as amended).

<sup>4</sup>Ss 71, 73, 112& 114 CFRN 1999 (as amended).

<sup>5</sup>CFRN 1999 (as amended).

<sup>6</sup> H. Catt and others, *Electoral Management Design* (rev. edn, Intl IDEA 2014) V.

‘democracy provides a platform for good governance and promotes systemic stability as long as there is an outlet to legitimately access power by the political contenders through people’s votes at elections’.<sup>7</sup>

Unfortunately, elections in Nigeria have been criticized for various reasons including lack of effective planning; organizational lapses leading to postponement of elections, poor logistics arrangements in movement of election materials causing late arrival to polling units and delay in commencement of voting; voter registration irregularities leading to disenfranchisement of voters, inclusion of underage voters, large number of uncollected Permanent Voter Cards (PVCs); lack of transparency in transmission and collation of results; lack of integrity of some *ad hoc* and permanent staff and so on. EMBs are central to conduct of elections therefore making assessment of their role in promoting democratic governance critical.

Against the above background, the core responsibilities of INEC and the extent to which INEC has effectively carried them out are specifically examined, in light of their nexus to democratic governance principles and dividends. Finally, salutary recommendations are made with a view to addressing the challenges of the EMBs in conducting free fair and credible elections in Nigeria as a pre-condition for the promotion of good governance and its dividends.

## **2. Explanation of Concepts**

### **Democratic Governance**

Democratic governance simply means governance based on basic democratic principles so as to achieve the developmental goals of any society. It is a system of government that ‘emanates from a legitimate government that does not act arbitrarily but manages a country’s economic and social resources in a transparent, accountable and responsive manner to achieve developmental goals.’<sup>8</sup> The concepts of good governance and democratic governance can be used interchangeably as democracy is the philosophical foundation of good governance.<sup>9</sup> Good governance is therefore governance that satisfies the welfare needs of the people and results in development.<sup>10</sup> It embraces institutional and structural systems, procedure for decision making, formulation and implementation of policy, personnel development, flow of information and the style of leadership within a polity.<sup>11</sup> It envisages a system of governance where institutions function according to democratic processes and norms, both internally and in their interaction with other institutions.<sup>12</sup> Good governance aims at creating a favourable environment for political and socio-economic development just as it also increases the efficiency and effectiveness of any society’s development program.<sup>13</sup>

### **Elections**

Elections are virtually unavoidable in any modern polity and are seen as a *sine qua non* for representative democracy in modern times. Elections form a basis for a social contract through which the citizens give their chosen leaders the legitimacy to rule them.<sup>14</sup> Essentially, elections as a means through which people choose their leaders; vest their leaders with legitimacy to govern them; provide a platform through which the sovereignty of the people is exercised and; is a means of making choices between options in policies as well as among contenders for political offices.<sup>15</sup>

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<sup>7</sup>F.N.O. Mimiko, ‘Political and Constitutional Reforms’ in H. Saliu and others (eds) *Nigeria’s Reform Programme: Issues and Challenges*, (Vantage Publishers 2007) 303.

<sup>8</sup> See O.E. Nwebo, *Ibid*, p 263.

<sup>9</sup> W.J. Ekundayo, ‘Good Governance Theory and the Quest for Good Governance in Nigeria’ [2017](7)(5) *IJHSS* 154.

<sup>10</sup>Y. Dogara, ‘Legislative Oversight as a Critical Component of Good Governance’ *The Guardian* (Lagos 2 May 2016) <<https://guardian.ng/features/legislative-oversight-as-a-critical-component-of-good-governance/>> accessed 12 September 2019.

<sup>11</sup> S.O Ilufoye, ‘Democracy and Good Governance: Nigeria’s Dilemma’ [2010](4)(6) *AJPSIR* in Y. Dogara, *ibid*.

<sup>12</sup> Office for Democratic Institutions and Human Rights OSCE, *op cit*.

<sup>13</sup>A.N. Ekpe, ‘Effective Management of Socio-Political Conflicts in Akwa-Ibom State: Chief Godswill Akpabio’s Effort’ [2008] (2) *The Public Administration* 63 in D.E. Gberville, ‘The Challenges of Good Governance, Accountability of Governmental Agencies and Development in Nigeria’ [2014] (6)(2) *AUDA* 80.

<sup>14</sup> J. Mapuva, *op cit*.

<sup>15</sup>B. Ighorejeh and B.A. Adeyeye, ‘Election and Electoral Fraud in Nigeria’s Democratic Experience of the Fourth Republic: An Exposition’ [2016](2)(1) *NJASS* 3.

### **Electoral Management Bodies (EMBs)**

Electoral management simply refers to the administration of elections. It is a relatively new field of study and practice that emerged from the area of democracy-building and democratic consolidation.<sup>16</sup> The concept encompasses the body or organization responsible for administering elections and the different mechanisms, functions and roles it may have.<sup>17</sup> An Electoral Management Body is an institution entrusted with the responsibility of electoral management. In other words, an EMB is 'an organization or body that has the sole purpose of and is legally responsible for managing some or all of the elements that are essential for the conduct of elections and direct democracy instruments

### **Free and Fair Elections**

There is however a requisite standard for elections to be truly democratic or capable of producing the desired impact in governance. Thus, elections must be 'free' and 'fair' in order to capture the essence of democratic elections. Hence, Goodwin-Gill asserts that 'free is about participation and choice; fair is about equality of participation and of vote, and about impartiality and non-discrimination.'<sup>18</sup> To achieve free and fair elections, the EMB and security agencies must be independent and objective. There must be equal media access by all parties and candidates as well as the presence of election observers. It is submitted that where an election is characterized with the due observance of the above principles, the outcome becomes credible and accordingly, the person elected enjoys legitimacy.

### **3. Analysis of the Role of Election Management Bodies in Managing Elections**

This paper argues that there is a nexus between the role of EMBs in managing democratic elections and the strengthening of democratic governance. This relationship is obvious against the background that democratic elections promote legitimacy, democratic stability, peaceful transitions of government as well as the various principles which embody democratic governance. Furthermore, democratic principles can only be applied by the products of democratic processes with democratic culture. The principles around which democratic governance revolve include accountability, control, responsiveness, equity, effectiveness and efficiency, transparency, public participation, economic efficiency, consensus orientation, strategic vision, rule of law and so on.<sup>19</sup> Thus, this section evaluates the way and manner INEC and SIECs in undertaking its core mandates have deepened democratic governance.

### **Registration of Voters**

INEC is entrusted with the mandate of registration of voters for all elections in Nigeria.<sup>20</sup> This includes registering new voters, maintaining the voters register and engaging in continuous voter registration.<sup>21</sup> It also comprises transfer of registered voters,<sup>22</sup> issuance of voters card,<sup>23</sup> replacement of voters card<sup>24</sup> and display of the voters register for public scrutiny.<sup>25</sup> Accordingly, INEC is obliged to ensure an all-inclusive electoral process by affording every Nigerian citizen above 18 years the opportunity to participate in the elections by being registered irrespective of class, location or disability. This is one of the costly, time-consuming and complex aspects of the electoral process, it often accounts for a considerable portion of the budget, time and resources.<sup>26</sup> INEC had for years undertaken this role via manual means leaving many persons disenfranchised owing to omissions, errors, misplacements and duplications. It began automating some of its processes by including a biometric register of voters as well as Permanent Voter Cards and Smart Card Readers which reduced some of the complaints. There was a cleanup that necessitated removal of over 15 million records due to de-duplication between 2011 and 2015.<sup>27</sup> A total of 15.7 million new registrations were made between 2015-2019 and another 1 million records removed

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<sup>16</sup>R. Lopez-Pintor, *Electoral Management Bodies as Institutions of Governance* (Bureau for Development Policy UNDP <<https://www.eods.eu/library/UNDP.Electoral%20Management%20Bodies%20as%20Institutions%20of%20Governance.pdf>> accessed 16 August 2021.

<sup>17</sup>Ace Project, 'Electoral Management' <[https://aceproject.org/aceproject.org/ace-en/topics/em/explore\\_topic\\_new](https://aceproject.org/aceproject.org/ace-en/topics/em/explore_topic_new)> accessed 16 August 2021.

<sup>18</sup>G. Goodman-Gill, 'Free and Fair Elections' in O. Mtapuri, 'Holding 'Free but not Fair' and 'Fair but not Free' Elections: Be the Judge' in J.R. Rukema (ed) *Elections and Governance in Africa* (Sub-Saharan African University Press 2017) 24.

<sup>19</sup> W.J Ekundayo, *op cit*.

<sup>20</sup> S 78 & s15(e) 3rd Sch Pt 1 CFRN 1999 (as amended)

<sup>21</sup> Ss 9 & 10 EA 2022.

<sup>22</sup> S 13 EA 2022.

<sup>23</sup> S 16 EA 2022.

<sup>24</sup> S 18 EA 2022.

<sup>25</sup> S 19 EA 2022.

<sup>26</sup>ACE, 'Voter Registration' <<https://aceproject.org/ace-en/topics/vr/onePage>> accessed 18 August, 2021.

<sup>27</sup>Y. Mahmood, 'Technological Innovation as Antidote to Election Rigging' Paper delivered at Blueprint Newspaper 's Lecture & Award ceremony on 3 June 2021..

due to de-duplication.<sup>28</sup> It is hoped that the introduction of the Continuous Voter Registration Portal by INEC will further reduce previous shortcomings. The new online portal caters for new registration, updating of information, transfer of voters to another polling unit, PVC collection and replacement.<sup>29</sup> INEC in deploying innovative technology ought to consider the illiteracy level in the country as well those without access to internet services to ensure it is not leaving a large section of the nation behind.

### **Organization and Supervision of Elections**

It is INEC's duty to organize, undertake and supervise elections to the offices of the President and Vice-President, Governor and Deputy Governor, members of the National and state Houses of Assembly.<sup>30</sup> This is a comprehensive task encompassing planning, training, actual voting, counting of ballots, collation of results, transmission of results, declaration of results and many associated legal and administrative tasks. The manner in which these electoral processes are handled by INEC determine if the outcome of the election is truly reflective of the will of people. The legitimacy of government, democratic stability and also the responsiveness and accountability of government is tied to the effective fulfilment of this responsibility by INEC. Undoubtedly, organizing elections in Nigeria with its vast terrain and geographical complexity is an uphill task. INEC has so far conducted six quadrennial elections (as well as some off cycle elections) which have been criticized in varying degrees. Improvements in the legal framework over the years have brought some improvement in the handling of some of these processes.<sup>31</sup> Increased use of technology has also attracted the advantages of reduction of human interference, improved time delivery, transparency and accuracy in some of its processes. For instance, authenticity of voters on the day of election with the introduction of Permanent Voters Cards (PVCs) and Smart Card Readers (SCRs) in 2015 reduced impersonations. INEC also successfully piloted the electronic transmission of results during the bye elections in Nassarawa state.<sup>32</sup> Section 52(2) of the Electoral Act 2010 as amended in 2015<sup>33</sup> by removing on the prohibition on electronic voting and allowing INEC determine the manner of voting has motivated INEC to look into the possibility of E-voting.<sup>34</sup> In exercise of its powers INEC usually issues Regulations and Guidelines for the conduct of each election.

The introduction of braille ballot guide for use of the persons with visual disabilities in the Osun gubernatorial election in 2018 has improved the inclusiveness of the voting process.<sup>35</sup> Arrangements for voting of the growing numbers of internally displaced persons (IDPs) were made in 2015. The amendment of the Electoral Act in 2015 to include section 26(1) has given legal back up to INEC's move and prompted it to issue Regulations for Voting by IDPs 2018 as well as a Framework on Voting by IDPs which served as a guide for the conduct of IDP voting during the 2019 elections.<sup>36</sup> Lapses resulting from lack of effective planning and perhaps lack of implementation of plans have resulted in postponing of elections,<sup>37</sup> late arrival of voting materials, late take-off of voting and so

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<sup>28</sup> *Ibid.*

<sup>29</sup> INEC, <cvr.inecnigeria.org> accessed 18 August 2021.

<sup>30</sup> S. 15(a) 3<sup>rd</sup> Schedule Pt 1 CFRN 1999 (as amended).

<sup>31</sup> The 2001 Electoral Act was repealed and replaced by the 2002 Electoral Act; the 2002 Act was amended by the Electoral Act (Amendment) Act 2003; the 2002 Act (as amended) was replaced by the 2006 Electoral Act; the CFRN 1999 was amended by the CFRN 1999 (First and Second Alteration) Acts 2010; the 2010 Electoral Act replaced the 2006 Act and was later amended in 2010, 2011 and 2015; the CFRN 1999 was further amended by the CFRN 1999 (4<sup>th</sup> Alteration) Act 2017; O. Akinduro, 'Nigeria: The Role of the EMB in Electoral Reform' <aceproject.org/ace/en/topics/if/annex/ifc/electoral-reform-in-nigeria-insights-into-amb-role/mobile\_browsing/ onepage> accessed 10 November 2019.

<sup>32</sup> The E-Collation system enables a more secure and transparent platform for collection of data from polling units (PU) to collation centers. Electronic copies of PU result sheets (EC8A) as signed by the Presiding Officers are photographed and uploaded for public view into the system. The RA Collation officer compares the EC8A brought to the collation center is the same as that in the system before collation of results; Y. Mahmood, 'Technological Innovation as Antidote to Election Rigging' Paper delivered at Blueprint Newspaper 's Lecture & Award ceremony on 3 June 2021.

<sup>33</sup> Now s 50(2) EA 2022.

<sup>34</sup> Y. Mahmood, *op cit.*

<sup>35</sup> This was in accordance with s 56(2) EA 2010 (as amended), now s54(1)&(2) EA 2022; A. Olufemi, 'Osun Decides: INEC Launches Braille Guide for Blind Voters' *Premium Times* (18 September 2018)

<<https://www.premiumtimesng.com/news/more-news/284299-osundecides-inec-launches-braille-guide-for-blind-voters.html>> accessed 19 August, 2021.

<sup>36</sup> INEC, *Framework for Voting by Internally Displaced Persons (IDPs)* (December 2018)

<<https://www.inecnigeria.org/elections/framework-regulations-for-idp-voting/>> accessed 30 March, 2021; now s24(1) EA 2022.

<sup>37</sup> INEC postponed elections in 2015 from February 14 to March 28 for security reasons; also in 2011, National Assembly elections were postponed from April 2 to April 4 on the ground of late arrival of result sheets in many parts of the country; In 2019 elections were postponed from 16 February to 23 February just a few hours before the take-off of the elections; S. Toromade, 'How INEC also Postponed Elections in 2011 and 2015' *Pulse* (16 February 2019)

<<https://www.pulse.ng/news/politics/inec-postpones-2019-elections-how-elections-were-also-postponed-in-2011-2015/22x5kv7>> accessed 3 December 2019; F. Mbah, 'Nigeria Elections Postponed by a Week' *Aljazeera* (16 February

on. Lack of transparency in collation and transmission procedures have resulted in numerous post-election disputes.<sup>38</sup> These lapses among others have affected the credibility of elections so far conducted in Nigeria leaving a lot more to be desired from INEC.

### Registration and Monitoring of Political Parties<sup>39</sup>

This is another important role played by INEC and is critical to democratic governance. INEC is empowered to register and deregister political parties;<sup>40</sup> mandate political parties to submit and publish a statement of its assets and finances;<sup>41</sup> receive annually a detailed statement and analysis of sources of funds and assets as well as statement of expenditure of political parties;<sup>42</sup> give directions, examine and investigate financial books and records of political parties;<sup>43</sup> and ensure political parties observe the practices of internal democracy including fair and transparent party primaries and party conventions.<sup>44</sup> Political parties are the only platform through which any candidate may vie for votes in elections in Nigeria.<sup>45</sup> They serve as a link between citizens and government and a platform for citizens to influence government policies.<sup>46</sup> Therefore, INEC's role in monitoring political parties is crucial to democratic governance ends. This is more so as the political parties in Nigeria have a tendency to exert influence over electoral processes to manipulate the outcome to its favour. INEC's role in ensuring a level playing ground for all parties by controlling party finances as well as ensuring the participation of the party members in decision-making processes and not just the money bags or 'godfathers' alone hold sway, is essential to ensure credible elections.

INEC in carrying out this responsibility has issued manuals and guides to guide political parties.<sup>47</sup> Implementation and enforcement of this guides and electoral laws remain questionable as no political party has been prosecuted for any electoral offence.<sup>48</sup> However, INEC has put its foot down on some erring political parties such as when it blocked the All Progressive Congress in Zamfara state from fielding candidates for the 2019 elections for failing to meet the deadline for conducting primaries.<sup>49</sup> Likewise, INEC pursuant to section 225A of the 1999 Constitution deregistered 74 political parties leaving only 18 registered political parties.<sup>50</sup> INEC has also launched a portal to better interface with political parties-INEC Political Party Management System. Irrespective of the various amendments of the Electoral Act and efforts of INEC, internal democracy remains a challenge, resulting in intra-party conflicts manifesting in parallel and irregular party primaries leading to multiple court orders which have many cases left INEC confused as to who to recognize as the lawfully nominated party candidate. Furthermore, vote buying and exorbitant nomination fees by political parties persist, while party finances are still not being scrutinized.

### Voter and Civic Education

Voter and civic education are important activities which are necessary to promote electoral democracy as these have positive affect on voter turnout, voter registration, understanding voting procedures and the negative impact of electoral violence. Civic education is wider in scope covering concepts that underpin a democracy such as the rights and duties of citizens, government, the mass media, regular and competitive elections and so on.<sup>51</sup> Voter education on the other hand, addresses voters' motivation and readiness to participate in elections. It explains concepts such as the relationship between human rights and voting rights, why each vote is important and its

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2019) <[www.aljazeera.com/news/2019/02/nigeria-elections-postponed-week-190216044828404.html](http://www.aljazeera.com/news/2019/02/nigeria-elections-postponed-week-190216044828404.html)> accessed 3 December 2019.

<sup>38</sup> Atiku & Anor v INEC & Ors LER [2019] CA/PEPC/002/2019; *Uzodinma & Anor v Ihedioha & 2 Ors* (S.C. 1462/2019).

<sup>39</sup> S 15(b)(c)(d) & (f) 3<sup>rd</sup> Schedule, Pt 1 CFRN 1999 (as amended).

<sup>40</sup> Ss 222 & 225A CFRN 1999 (as amended).

<sup>41</sup> S 225(1) CFRN 1999 (as amended).

<sup>42</sup> S 225(2) CFRN 1999 (as amended).

<sup>43</sup> S 225(5) CFRN 1999 (as amended).

<sup>44</sup> S 228(a)&(b) CFRN 1999 (as amended).

<sup>45</sup> S 221 CFRN 1999 (as amended).

<sup>46</sup> IRI, *The Role of Political Parties in Nigeria's Fledgling Democracy* (IRI 2020) 2.

<sup>47</sup> These include: Political Party Finance Manual, Political Parties Handbook and Code of Conduct for Political Parties; INEC, 'Political Parties' <<https://inecnigeria.org/political-parties/>> accessed 17 August 2021.

<sup>48</sup> For instance, offences relating to political party finances and exceeding limitation of election expenses- Ss 88 (a)(b) & 90 EA 2010 (as amended).

<sup>49</sup> S. Tukur, 'INEC Blocks APC from Fielding Candidates in Zamfara for 2019 Elections' *Premium Times* (10 October 2018) <https://www.premiumtimesng.com/news/headlines/289415-exclusive-inec-blocks-apc-from-fielding-candidates-in-zamfara-for-2019-elections.html> accessed 21 August 2021.

<sup>50</sup> Deregistered political parties have challenged INEC decision in court and final Supreme Court verdict is awaited.

<sup>51</sup> ACE, 'Basic Ideas and Definitions of Voter Information, Voter Education and Civic Education' <<https://aceproject.org/>> accessed 19 August 2021.

impact on accountability and so on.<sup>52</sup> Voter Information simply refers to basic information about electoral process: date, time, place of voting, eligibility, voter registration, and mechanisms for voting.<sup>53</sup> INEC in recognition of this responsibility included voter education as one of its five key goals in its 2017-2021 INEC Strategic Plan.<sup>54</sup> INEC has continued to collaborate with the media and civil societies to fulfil this role. INEC's website is user friendly and offers useful information to voters on electoral processes. However, voter turnout in elections has been dwindling over the years due to varied reasons including inadequate voter education.<sup>55</sup> The large numbers of rejected votes mostly due to irregular thumb printing evidence the need for voter information to be clear, precise as well as translated into local languages to reach out to more persons.<sup>56</sup> It is part of the functions of political parties to mobilize the citizens to participate in elections and to educate their supporters on the voting methods to avoid wastage due to ignorance. Unfortunately, the political parties are not carrying out this important function.

INEC is entrusted with responsibility of delineating senatorial districts, federal constituencies and state constituencies.<sup>57</sup> Delineation of constituencies must be carried out in such a manner to ensure equitable and fair representation in Nigeria's governance structure. INEC since establishment has not carried out this duty as the last delineation exercise was carried out in 1996, over twenty-five years ago.<sup>58</sup> INEC will however need accurate population figures and effective collaboration with other agencies to successfully carry out this exercise. The foregoing buttresses the argument that INEC in playing its role of administering elections can deepen democratic governance if the elections are conducted in a free, fair and credible manner.

#### **4. Challenges of the Electoral Bodies in the Management of Elections**

##### **Independent National Election Commission**

Elections organized by INEC since its inception have been variously criticized in grounds of poor organization, widespread procedural irregularities, lack of essential transparency, significant evidence of fraud, disenfranchisement of voters at various stages, flawed party primaries, lack of equal conditions for contestants and numerous incidents of violence. Inasmuch as INEC is not solely responsible for these lapses, its position as the EMB is key to the credible conduct of elections. The ability of INEC to successfully conduct free and fair elections is hinged on its strength in the sense of its independence and capacity. An EMB must not only be independent but must also be seen to be independent. In fact, the public perception of the independence of the EMB has a direct bearing on the acceptance of the electoral outcome.<sup>59</sup> Independence may be structural (in the sense of separation from other branches of government) and behavioural (in the sense of normative independence of decision and action).<sup>60</sup> The independence of EMBs is usually assessed using the parameters of institutional arrangement, implementation, formal accountability, powers, composition, term of office and finance.<sup>61</sup> The legal provisions establishing these parameters have been highlighted earlier in this paper. The issue for consideration is whether in view of these provisions and the exigencies of the management of elections INEC is truly independent.

It is contended that entrusting the appointment and removal of the Chairman and members of the Commission in the hands of the President and majority of the Senate who may belong to the same party does not portend well for the independence of INEC as well as for the neutrality of INEC. The ruling party may capitalize on its power to appoint persons who will serve their interests or who are partisan. The President's recent nomination of a partisan politician as an INEC Commissioner may have scaled through the Senate screening if not for the public outcry

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<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> Voter turnout in 2019 presidential polls-35%; 2015-44%; 2011-54%; WFD, 'Improving Voter Education to Increase Voter Turnout in Nigerian Elections' 10 February 2021 <[www.wfd.org](http://www.wfd.org)> accessed 19 August 2021.

<sup>56</sup> 2019 Nigerian presidential election recorded 1,289,607 rejected votes nationwide, which constitutes 4.5% of 28,614,190 total votes cast in the election; C. Awariefie and M.O. Nana, 'The Impact of Rejected Votes on 2019 Nigerian Presidential Election: An Application of Ordinary Least Square' *IJAAR (STE)*(6)(4)(2020)14.

<sup>57</sup> Ss 71, 73 & 112 CFRN 1999 (as amended).

<sup>58</sup> News, 'NASS 'll Support INEC on Delineation of Electoral Constituencies-Lawan' *Vanguard* (24 June 2021) <<https://www.vanguardngr.com/2021/06/nass-ll-support-inec-on-delineation-of-electoral-constituencies-lawan/amp/>> accessed 19 August 2021.

<sup>59</sup> N. Kelly, 'The Independence of Australian Electoral Commissions' in *Directions in Australian Electoral Reform: Professionalism and Partisanship in Electoral Management* (ANU Press) 27 <<https://www.jstor.org/stable/j.ctt24hbxv.6>> accessed 17 August 2021.

<sup>60</sup> ACE, 'EMB Independence and the Origin of Independent Election Administrations' <<https://aceproject.org/electoral-advice/archive/questions/replies/156664001>> accessed 19 August 2021.

<sup>61</sup> Wall and others, *Electoral Management Design: The International IDEA Handbook* (Intl IDEA 2006) 9.

against it.<sup>62</sup> Furthermore, INEC cannot be truly independent when there are constant intrusions on its operations by the government. The attempts of the National Assembly to use its legislative powers to circumscribe the functioning of INEC for personal advantage leave a lot to be desired. For instance, in 2018, the National Assembly attempt to amend section 25 of the Electoral Act by prescribing the sequence of elections in its own interest was an interference with INEC's power and already published schedule of election. The Constitution vests the power on INEC to fix the dates of elections within the designated timeframe.

More recently, the passage of the Electoral Act (Amendment) Bill 2021 by the Senate, wherein section 52(2) subjects the electronic transmission of results by INEC to the vetting of the National Communications Commission and the National Assembly is another instance of interference with INEC's powers. The reluctance to approve a procedure that improves the transparency of the collation of results and which procedure has already been implemented by INEC in some off cycle elections is suspicious. The Constitution assigns to INEC the power to organize, undertake, direct and supervise the conduct of elections in Nigeria.<sup>63</sup> This specific power is not subjected to be in accordance with any Act or control of the National Assembly the way some other of INEC's powers are couched like the power to register political parties.<sup>64</sup> INEC needs not wait on the National Assembly or the President to determine its procedure.<sup>65</sup> It is contended that the freehand given to INEC by the Constitution to organize, undertake and supervise elections is intentional in order to enable it function without interference from any arm of government. Bowing to pressure from the public, Senate reversed its earlier stance and has now provided in the new Electoral Act 2022 that transmission of results shall now be in accordance with the procedure determined by INEC.<sup>66</sup>

Additionally, INEC seems to be overwhelmed with the duties of voter registration, voter education and organizing elections that little or no attention has been given to prosecution of electoral offences, and delineation of constituencies. INEC has not been effective in monitoring political parties in the precise manner prescribed by the law. It neither has the financial or human resource capacity to effectively carry out these functions in a large and complex nation like Nigeria.

In spite of the several amendments to the Electoral Act and the Constitution since 1999, electoral reform has been slow, selective, incomprehensive and insufficient to capture the needed changes. In an emerging democracy like Nigeria, electoral reform is key to responding to challenges thrown up by past elections to compel improvement in future elections. Unfortunately, the legislature in Nigeria has not displayed the needed political will to undertake comprehensive reform. The President by refusing to assent the Electoral (Amendment) Act 2018 after it was presented to him four times before the 2019 elections is also reflective of the quagmire. It is hoped that the Electoral Act 2022 which has finally been passed into law will effectively guide the electoral process and be amended as soon as the need arises. The continuous introduction of innovative technology by INEC necessitates the amendment of some sections of the Electoral Act which prescribe manual procedures. The law needs to evolve ahead or at the same pace as INEC and not behind it to motivate the best electoral practices.

Furthermore, INEC powers are necessarily constrained by the role of other democratic institutions such as the legislature, executive, judiciary and the security agencies as the successful conduct of elections requires the interplay of constitutional rules, legal rules, institutional roles and organizational practices. For instance, conflicting orders from courts of coordinate jurisdiction leave INEC in a dilemma creating uncertainty and even interfering with INEC's discharge of its duties.<sup>67</sup>

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<sup>62</sup>Q.E. Iroani, 'Senate Rejects Laurretta Onochie a INEC Chairman' *Premium Times* (13 July 2021) <<https://www.premiumtimesng.com/news/headlines/473304-breaking-senate-rejects-laurretta-onochie-as-inec-commissioner.html>> accessed 21 August 2021.

<sup>63</sup> S 78; s15(a) 3<sup>rd</sup> Sch, Pt 1 CFRN 1999 (as amended).

<sup>64</sup> S15(b) 3<sup>rd</sup> Sch, Pt 1 CFRN 1999 (as amended).

<sup>65</sup> S 160 (1) CFRN 1999 (as amended).

<sup>66</sup>S 50(2) EA 2022; J. Akubo, 'Senate Bows to Public Outcry, Adopts Electronic Transmission of Election Results' *The Guardian* (12 October, 2021) <<https://guardian.ng/news/senate-bows-to-public-outcry-adopts-electronic-transmission-of-election-results/>> accessed 18 October 2021.

<sup>67</sup>For instance the conflicting court orders on the All Progressive Grand Alliance (APGA) gubernatorial candidate in the November 2021 elections in Anambra State brought about uncertainty until it was eventually settled by the Supreme Court; A. Ejekwonyilo, 'Conflicting Court Orders: CJN Summons Six chief Judges, NBA Laments' *Premium Times* 30 August 2021 <<https://www.premiumtimesng.com/news/headlines/482106-conflicting-court-orders-cjn-summons-six-chief-judges-nba-laments.html>> accessed 19 October 2021; Channels TV, 'Supreme Court Affirms Soludo as APGA's Governorship Candidate' (14 October 2021) <<https://www.channelstv.com/2021/10/14/breaking-supreme-court-affirms-soludo-as-apgas-governorship-candidate/>> accessed 19 October 2021.

### **State Independent Electoral Commissions**

The SIECs role of conducting elections into local government councils is essential to bringing about political participation, legitimacy and accountability at the lowest level of governance. However, these benefits have hardly been realized owing to the weakness of SIECs in the sense of its lack of autonomy. In practice, every state of the federation has a SIEC established by law but most SIECs are unable to function because the local government system itself as established by the Constituted is flawed. Although, the local government is brandished as a third tier of government it lacks the independence to operate and exist on its own and its existence is largely dependent on the States. There is no regularity in the conduct of local government elections as most state governments just set up caretaker committees to oversee the local governments leaving the SIECs with nothing to do. Some state governments only organize elections on the verge of their exit from office.<sup>68</sup> Some other state governors even dissolve elected local government council and replace them with appointed committees.<sup>69</sup> The lack of regularity and uncertainty of local government elections hinders effective planning and strategizing that is needed to successful conduct elections.

Furthermore, even when elections are held, the SIECs merely authenticate the desires of the sitting state government by ensuring victory for the ruling party. As highlighted earlier when considering the constitutional framework setting up SIECs, unlike INEC they can only independently exercise powers of appointment or discipline over persons but need the Governor's approval in rule making, in regulating its own procedure and in conferring powers or imposing duties on any officer or authority for the purpose of discharging its duties.<sup>70</sup> The appointment and removal procedure for members of the Commissions is left in the hands of the Governor and House of Assembly who maybe in the same party and appoint persons who are loyal to them. The budget and finance of the SIECs is also at the mercy of the state government. All the foregoing rid the SIECs of the independence, neutrality and capacity to conduct free and fair local government elections.

### **5. Conclusion and Recommendations**

This paper has demonstrated that there is a nexus between the conduct of free, fair and credible election and the promotion of good governance as a condition for social development. *A fortiori*, the role of the EMBs in effectively undertaking their constitutional mandate of conducting free, fair and credible elections is not only the right of citizens but also a pathway to the promotion of democratic governance and the achievement of development. However, it is apposite to note that election management is a whole gamut of activities requiring the participation of various institutions and bodies in one form or the other. In other words, though the management of the core activities in the electoral process is the constitutional mandate of the EMBs, the other institutions whose roles are critical include: the legislature; the executive bodies (especially the security agencies); the judiciary; the civil society organizations; the media; etcetera. It has also been demonstrated that elections and democratic governance in Nigeria have been atrophied and this is largely attributable to weak institutional framework of the electoral management bodies which derogates from their independence and capacity to effectively manage elections. Therefore, EMBs must be strengthened to enable it perform its role effectively. This is imperative because as we have argued earlier in this paper, it is only the outcome of a free fair and credible electoral process that will enable the emergence of credible elected leaders that can promote democratic governance and *ipso facto* provide democracy dividends for the citizens.

In light of the foregoing, the following recommendations are made: The process of appointing the Chairman, National and Resident Electoral Commissioners should not be left in the hands of the President and the Senate only. The process of appointment should involve the input of professional associations, civil society organisations and the media. Nominees should also be subject to thorough scrutiny including background security and corruption checks. On the other hand, the removal of any of the above appointees before the end of his or her tenure must be based on good cause shown and upon the confirmation of the senate. Adequate and timely training of INEC permanent and *ad hoc* staff should be undertaken. This training should not be limited to the electoral tasks they are assigned to but also to key principles like neutrality and transparency as well as the current electoral laws and offences. INEC's drive for use of innovative technology in electoral processes must be supported by parliament and Nigerians. However, newly acquired technology must be test run long ahead of usage to ensure their effectiveness and security. There must be more effective monitoring of the activities of political parties especially in the conduct of elections of party executives and primary elections to ensure internal democracy. A coherent system for feedback and follow up must be put in place by INEC. Its staff (permanent and *ad hoc*) and

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<sup>68</sup>For instance, in Rivers State the governor ordered for elections on 23 May 2015, six days to his exit; J.O Olaniyi, 'State Independent Electoral Commissions and Local Government Elections in Nigeria' [2017] (5) (1) *APSDPR* <<https://apsdpr.org/index.php/apsdpr/article/v>> accessed 10 October 2019.

<sup>69</sup> The Supreme Court frowned on this procedure in *Governor Ekiti State & Ors v Olubunmo & Ors* (2016) LPELR-48040(SC).

<sup>70</sup>S 204 CFRN 1999.

partnering security agencies should be obliged to give detailed reports upon completion of assigned duties. These reports will assist INEC in conducting objective post review of elections. In order to inculcate discipline in our electoral process and as a deterrence to others, INEC should ensure that electoral offenders are duly and promptly prosecuted. In this connection, the establishment of Election Offences Commission is recommended as a matter of urgency to effectively handle election offences especially various forms of election rigging, thuggery, snatching of ballot box, vote buying and falsification of results. The responsibilities of delineation of constituencies, prosecution of electoral offences and political party management should be entrusted to separate independent agencies to allow for effectiveness and efficiency. The State Independent Electoral Commissions should be scrapped and INEC strengthened to enable it conduct local government polls across the nation at the same time with other elections. This would also require amendment of the Constitution to ensure the local government system is established to exist independently as a third tier of government. INEC must effectively collaborate with the media and civil society organizations to ensure continuous civic and voter education within and off electoral cycles. The judiciary must be strengthened to guarantee its independence and impartiality in the resolution of electoral disputes. Erring judicial officers must be punished in accordance with laid down procedure. The Nigerian Bar Association (NBA) has a role to play by ensuring that its members who engage in forum shopping or by allowing themselves to be used by politicians to influence judicial outcomes in violation of their professional obligations are disciplined.