

# Inconclusive Elections and the Electoral Process in Nigeria's Post 2015 General Elections

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## Abstract

The spate of inconclusive elections since the aftermath of the 2015 general elections in Nigeria has been cited as sign posting the dangers ahead of the current and future electoral process in Nigeria. In deed the "new" obvious challenges to successful election in the country's transition to democracy, the frequent declaration of regular, bye and re-run elections inconclusive by the Independent National Electoral has attracted the attention of stakeholders within an outside the country the most. This paper examines the causes, dynamics and patterns of inconclusive elections from the perspective of weak institutional, attitudinal a political culture of the dominant political parties, the judiciary and the electoral empire. Using a qualitative method of data analysis, the paper argues that political parties with their weak institutional bases intentionally hatch, through cut-throat competition and compromised legal technicalities, inconclusiveness of elections. The paper concludes that addressing the crisis of inconclusive elections requires the input II stakeholders, particularly politicians, political parties, the civil society, the electoral management body and the judiciary. The action is not only for the INEC to undertake, it requires a synergy of stakeholders because the problems of the conduct of elections emanate mainly from the institutional weaknesses that affect the democratic institutions in developing democracies such as Nigeria.

## Introduction

The centrality of election in a representative democracy cannot be over-emphasized. Election serves democracy as a political system because its effective conduct provides political legitimacy, accountability and good governance. One of the striking features of sophistication in the practice of democracy is the ability of democratic institutions to engender free, fair and credible election, in which the embodiment of rule of law, social justice and accountability is deeply entrenched and guided by the process arid

conduct of the exercise. Therefore, the outcome of any meaningful election is to justifiably, depending on the context of the enabling laws of societies, declare the winner of the exercise, and possibly encourage consensus and accommodation of divergent political interests for the effective enterprise of policymaking and good governance. However, when the conduct c election does not finally decide a winner, the election is said to be inconclusive. This type of election is one out of numerous dimensions of badly conducted elections and must be carefully addressed. Unless adequate preparations and care is taken, "badly conducted elections can totally undermine democratization and replace it with authoritarian rule, of the civilian or military varieties" (Jega, 2015a:6).

It needs to be stressed from the outset that inconclusive elections is neither peculiar to Nigeria's electoral process, nor a new experience in the country's political history. Though inconclusive elections happen in both developed and developing democracies around the world, in Nigeria it raises questions about the incompatibility of the electoral process with the changing patterns and realities of the country's politics and the human agency that shapes it, at least since the return to civilian rule in 1999. The avalanche of inconclusive elections after the 2015 general elections has generated a lot of concern about Nigeria's electoral process and the future of the country's democratization process in general.

The number of inconclusive elections in recent times is unrivalled in the history of electora' management in the country, and this has opened up a new vista in the county's political development. It has been reported that as a: January 2016, INEC was faced with about 82 re-run elections for Senatorial, Federal 1 Louse of Representatives and 1 louse of Assembly seats across the country (EMAOG, 2016:2). The incidence of inconclusive election is becoming very alarming across the countn and has been a nauseating issue in the minds of Nigerians; elector managers, civil society organizations an of the International, stakeholders. To cap

it all, opinionated commentators in the mass media have euphemistically branded INEC as "Inconclusive' National Electoral Commission. Undoubtedly, it is not the number of inconclusive election *per se* that matters most in Nigeria, but the circumstances that lead to it, which are majorly the result of electoral irregularities, violence, court orders and other related electoral infractions. After all, following the February 2006 general election in Iran, the nation recorded a total of 136 candidates contesting for parliamentary re-run elections for 68 seats in the country's 290-seat parliament. In the first general election, none of the candidates achieved a clear majority and run-offs election slated for April 29, 2016 completed the race (*USnews*; April, 2016).

By all accounts/ the declaration of election as inconclusive raises more questions than answers, particularly at the time when the expectations of Nigerians about democratic consolidation, following the successful conduct of the 2015 general elections are very high. This is even higher as the new leadership of the Independent National Electoral Commission (INEC) was envisaged to build on the commission's reclaimed credibility, which it had lost over the years for its apparent institutional weaknesses and lack of autonomy, and engender further electoral reforms that would make future elections free, fair and credible. It is against the backdrop of the occurrences of inconclusive elections and their threat to the process of ensuring credible elections in Nigeria that this paper sets out to examine issues which are germane to the understanding of such phenomenon in the country. Therefore, the paper is divided into six sections.

The first section is the introduction, while section two examines the conceptual and legal bases that inform the declaration of an election as inconclusive. Section three examines the nature, context and dynamics of inconclusive elections in Nigeria's electoral process, while section four highlights the dilemma of inconclusive elections and their impact on the country's electoral and democratization processes. Section five offers possible

recommendations on measures to address the challenges posed by inconclusive elections. Finally, section six concludes the paper by arguing that the recent spate of inconclusive elections experienced in Nigeria is a clear manifestation of the weak institutional bases of political institutions, political behavioural patterns and a crisis of personalized and patrimonial politics inherent in the country's political system and environment.

### **Inconclusive Elections — Conceptual and Legal Premises**

The goal of any election is to provide the electorate with the opportunity to select their representatives in a peaceful electoral process. This process not only defines the method and provides enabling laws for holding an election, but also explains the duties and obligations of all partakers and stakeholders in order to conduct free/fair and credible elections. The electoral process is divided into three phases — pre-election, election and post-election; and each phase is further subdivided into sections, notably election legislation, delimitation of constituencies, registration of voters, campaign period, voting, counting of the votes, announcement of the votes, announcement of results and election review, among others

(David et al. 2014; Agbaje and Adejumobi, 2006). The conduct of election is the second stage of the electoral process and its cycle is concluded when a winner is declared after the election or decided at the court. Election is said to be inconclusive when its outcome does not end with a winner. It is an unfinished, undecided and not finalized election whose outcome is to be determined after a re-run election is held. It is an election on hold, essentially over irregularities.

In developed democracies, when an election is declared inconclusive, the pronouncement is rarely the result of political violence but essentially the outcome a tally between o or more contestants, or some breaches of enabling laws of the conduct of

the exercise. In most cases, state-based, regional or provincial elections of governors, members of parliaments, congresses, or municipalities hardly lead to declaration of election inconclusive. This is essentially because the stakes of local politics are regulated within the prism of the rule of law and the framework of strong institutions and robust civil society. In most cases the declaration of inconclusive elections happens at the level of national politics in the election of the heads of government, prime ministers or presidents. Essentially, these actions are as a result of the failure of technology as was the experience of the 2004 American Presidential election in Florida (Tatanoor, 2005:136), arid in Austria on the ground of "widespread rule breaking" in May 2016. In developing democracies, one can cite Haiti and Zanzibar's presidential elections re-run of October 2015 as some of the recent experiences of inconclusive elections that we're determined through the re-run elections as a result of electoral fraud and vote cast tally, respectively.

Two types of voting in re-run or run-off elections are prominent in modern electoral system — *Majority run-off election* and *instant-run-off voting*, also known as ranked-choice voting. Whereas the former is commonly found in various liberal democratic societies around the world, including those of Eastern Europe, Africa, Asia and Latin American states, the latter is mainly used in developed industrialised democracies with a relatively small number of voters and manageable number of registered political parties. In the majority re-run election a presidential candidate must win 50 per cent of the vote to avoid a re-run election. For example, the constitution of Zambia has adopted this system of election. Under a majority re-run "a candidate wins outright in the first round if he or she obtains an absolute majority of votes" (Gratton and Bouton, 2015). In a situation where no candidate wins in the first round, as was the experience of Zambia's 2016 tight race between President Tidgar Lungu of party and the opposition UPND led by Hakainde Hachililema, a re-run election

has to be conducted. This same system -run election is used in Austria and Italy and elections / into Mayoral office in some states in the USA, among others.

Though the majority re-run election gives the electorate the opportunity to decide a winner in the second round and provide him with more democratic legitimacy, it may create a *push over* condition. This condition happens when the winner of the re-run is not necessarily the candidate preferred by the majority and therefore lacks democratic legitimacy. This was the scenario in Peru's presidential election in 2016, when Lourdes Flores Nano of Unidada National did not make it to the second round, despite her popularity which was attested to by the opinion polls conducted before the first round of election (Gratto and Bouton, 2015:284). This system of rerun election allows a majority group of strategic voters to influence the outcome of election to its advantage. Though this *push over* effect of majority run-off election has not been documented, its occurrence cannot be ruled out completely.

In the case of the Instant-run-off voting, or ranked — choice voting, the electoral system builds the re-run election process right into the general election, eliminating the need for a second trip to the polls (1 loley well, 2015). Thus, instead of electing one candidate on the basis of total vote cast, as is the case with Nigeria's *first-past-the-post system*, voters rank their choice of candidates. Where nobody receives more than 50 per cent of the votes, a re-run becomes necessary. Any candidate that receives the least number of votes from the ranking is eliminated from the contest. This process continues until somebody wins a majority votes.

The lesson to learn from the experience of elections in other countries is that re-run elections are neither informed by electoral violence nor always the result of a legal debacle. They are primarily built in their system of voting and electoral process. To make this point clear, it is imperative to note that in Nigeria, the percentage of registered voters is used to calculate the expected turn out in election. This is a serious grey area in the country's

electoral law and system. The situation raises a lot of concern over the legitimacy of the outcome of various re-run elections held in the country. The use of registered voters may not provide the much needed percentage of the participation of majority voters in a re-run election. Similarly, at another level, election petitions that lead to annulment of election and its declaration as inconclusive are also recurrent decimal in Nigeria's growing cases of rerun elections. The Electoral Act (2010 as amended) states thus: "Where an election is nullified in accordance with subsection (2) of this section, there shall be no return for the election until another poll has taken place in the affected area" (Section 53 (3) of the Electoral Act, 2010 as amended). This implies that inconclusive election arises when the first ballot election is not finalised and a supplementary or a re-run election is conducted to conclude the election and end its process with the declaration of a winner.

Therefore, an inconclusive election occurs when the electoral body using the powers conferred on it by the Constitution, the Electoral Act and other related enabling laws — decides to cancel a first ballot (or even a re-run) election and fix a new date to conclude the poll, in which a winner will be decided. In Nigeria, the provision of Section 53 of the Electoral Act 2010 (as amended) clearly makes a provision for the cancellation of Polling Units (PUs) with over voting, and calls for the declaration of inconclusive election. Section 53 (2) aptly provides that:

Where the votes cast at an election in any polling unit exceed the number of registered voters in that polling unit, the result of the election for that polling unit shall be declared void by the Commission and another election may be conducted at a date to be fixed by the Commission where the result at that polling unit may affect the overall result in the Constituency.

Declaring an election inconclusive is also informed by other factors such as electoral violence, snatching of electoral materials and non-usage of the Smart Card Reader (SCR) in the conduct of elections. In particular, the breach of peace, as a result of electoral

violence, natural disasters or emergencies, is provided in Section 26 (1) of the Act as follows:

Where a date has been appointed for the holding of an election, and there is reason to believe that a serious breach of the peace is likely to occur if the election proceeded with on that date or it is impossible to conduct the elections as a result of natural disasters or other emergencies, the Commission may postpone the election and shall in respect of the area, or areas concerned, appoint another date for the holding of the postponed election, provided that such reason for the postponement is cogent and verifiable.

These actions constitute some of the glaring incidents that can be considered electoral misconducts, and inevitably the major infringements of the basic expectations of the electoral process. In addition, there is also the legal context that could lead to the declaration of election inconclusive; that is overturning election by Tribunal or Court. Section 140 (1) in particular provides that: "Subject to subsection (2) of this section, if the Tribunal or the Court, as the case may be, determines that a candidate who was returned as elected was not validly elected on any ground, the Tribunal or the Court shall nullify the election." In the case of disqualification of a candidate, Section 140 (2) of the Electoral Act further provides that:

Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the election tribunal or court shall not declare the person with the second highest votes as elected, but shall order a fresh election.

This is a context outside the purview of the EMB, but yet the body has to abide by the court verdict and set aside a new date for a re-run election. It is intriguing to note that from January to June 2016, INEC had conducted 50 re-run elections in 16 states in compliance with court orders (Yakubu, in *Leadership*, Thursday, June 2, 2016: 12). In some cases, the court could overturn the election of a candidate declared winner without necessarily calling for a re-



run election, in which case it normally orders INEC to withdraw a certificate of return from that candidate (now adjudged not to have been validly elected). In this case, the court directs the electoral body to declare and issue a certificate of return to the candidate favoured by its judgment. Section 140 (3) clearly states thus:

If the Tribunal or the Court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election Tribunal or the Court, as the case may be, shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the Constitution and this

Arguably, it can be said that two types of inconclusive elections prominently exist in Nigeria today, and both are rooted in the conduct of election. First, there is the INEC- *declared inconclusive election* mainly arising from the conclud-of-first-ballot election and is normally informed by electoral violence, the use of political party thugs to scare away voters, carting away of election materials, or arising from electoral misconducts such as the non-use of SCR in some PLJs or election has not been held in other places. The declaration of election inconclusive arising from this type is made by INEC. Second, there is a *Tribunal or court- declared inconclusive election*, which happens when the Tribunal or the Court gives a judgment and declares an election inconclusive. In this case, the INEC is expected to obey the court order and fix a date for a re-run election.

It is also important to understand some of the terms used in the electoral process, such as bye-election, re-run and supplementary elections, in order to appreciate their worthiness in the analysis of inconclusive elections in Nigeria. 'Though they sound elementary and simplistic, the terminologies allow for differences in their usage for proper understanding of the point at which an election is declared inconclusive. A bye-election is said to have taken place when an elected member at first ballot dies and election is conducted to fill in the vacant position so created. 'Thus, bye-

elections are used to fill in elected offices that have become vacant either as a result of the demise of an elected member or upon being appointed to a (ministerial) post, resignation or recall. Different phrases, which change according to relevant electoral laws are used to refer to this type of election. In the USA, bye-elections are called 'Special elections'. In contrast, a re-run election takes place when election (whether on first ballot or bye-election) is conducted, but such election is pronounced inconclusive. Also, a supplementary election takes place when some PUs have not conducted any election at all due to either late arrival of election materials or other related logistics, leading to the conduct of election the next day or on a date considered appropriate by INEC.

In a nutshell, it can be said that both INEC and Election Tribunal and Courts are legally bound to declare election inconclusive provided that the conduct of the exercise is accompanied by any of the misconducts or infractions cited in the Electoral Act and the Constitution of the Federal Republic of Nigeria, 1999. Finally, it is important to note that INEC conduct re-run elections guided by the same legal framework and enabling laws that were used to regulate the conduct of the 2015 general elections. The only slight change in the exercise is that accreditation of voters and voting were carried out simultaneously. The mode of the re-run election does not change; there is no prohibition of the use of technology, and the use of SCR is one of the basic requirements of the credibility of the conduct of the election.

### **The Trend and Dynamics of Inconclusive Elections in Nigeria's Electoral Process**

In Nigeria, the declaration of election inconclusive did not start with INEC as an electoral umpire, or the present administration that took of power after the 2015 general election, or even the current leadership of the Electoral Management Body (EMB). In 1979, the Unity Party of Nigeria (UPN) court case challenging the

presidential election was on the basis of inconclusive election. The same can be said in Rivers State Governorship election after the return to democracy in 1999. Also, inconclusive elections occurred in the case of governorship elections in Ekiti, Imo, Anambra, Taraba, Imo, Kogi and Bayelsa states in 2009, 2011, 2014, and 2015 respectively. Others are the Anambra Central Senatorial election in 2011; and Oguta Constituency of Imo State in 2013, among other prominent cases. However, the trend of inconclusive elections and resultant supplementary elections in the aftermath of the 2015 general elections are unparalleled in the history of Nigeria's political experience.

Of the over 80 re-run elections in various states, INEC provided a breakdown of the type of inconclusive elections before it, from January to June, 2016 as follows: 49 re-run elections in 16 states out of the 80 elections nullified by court orders; 10 bye-elections in 8 states across the country following the death or resignation of elected members of the National Assembly and State Assemblies; 3 end-of-tenure Governorship elections in Kogi, Bayelsa and 68 Area Council elections for FCT Constituencies; and 23 upturned Constituency elections into the Senate, House of Representatives and State Assembly (Yakubu, 2016:2).

Different reasons have been advanced to explain the factors responsible for the high number of inconclusive elections in Nigeria. In a nutshell, among the contending arguments advanced by political analysts and commentators for the high rate of inconclusive elections can be summarized into five arguments. First, those desperate politicians are the causative agents of the trend, largely because of their inherent tendency to manipulate the outcome of elections in their favour. The desperation of politicians to wrestle power by all means has informed their relentless efforts in hatching electoral violence which mars the peaceful conduct of election in disregard of the enabling electoral laws. Second, there is the argument which points accusing finger at the Election Management Body (EMB). This perspective sees inconclusive

elections as the outcome of what can be called weak organizational and administrative management of elections by the electoral body.

The chief protagonists of this claim are politicians who simply consider the performance of the EMB after the 2015 general elections as dismal and conclude that the body, in its present leadership, is beset with technical and administrative lapses in handling competitive elections in the country; hence, the body's indecision, arbitrariness and hasty declaration of elections inconclusive. Third and closely related to this viewpoint is the argument that the current rate of inconclusive elections can be blamed solely on some inadequacies associated with the legal framework of the election, especially the Electoral Act 2010 (as amended). There is also the fourth standpoint, which says that although frequent cases of inconclusive elections in Nigeria are not desirable in the electoral process, the development is a sign of progress and should be accepted as a positive outcome of an expanded political space, which has been reinforced 'by the increased political competition among political parties. This perspective is predicated on the belief that the defeat of the hitherto ruling party (EPDP) has narrowed gaps in political competition among political parties and increases opportunities for contestants to win an election.

In any case, this paper concurs with the first and last perspectives, but with some input about the dynamics of politics since the last general election and within the context of the trajectories of political and economic relationships that shape politics in Nigeria. These trajectories have been magnified largely because of high political stakes, especially in states where the re-run elections have proved difficult and dangerous to conduct peacefully. These factors, which for a long time have been undergoing permutations, only germinated and eventually snowballed in to a full-blown circle with the end of monopolization of the political space by a single political party. Thus, because political competition for the control of the central government by

the political class and their parties was settled after the 2015 presidential election, political contestations have now been relegated to states. The desperation to wrestle power in the 'homelands' has reinforced the tendency of the political class to play politics with somewhat sink or swim vigour, thereby providing room for the relegation of the rules of the political game to the background. In this scenario, politicians inevitably direct their energies towards bastardising the enabling electoral laws to achieve their political objectives. Their actions lead to infringements of the laid down rules for the conduct of free, fair and credible elections; thereby resulting in the cancellations of election results and the declaration of same inconclusive. Indeed, where an electoral dispute is settled at the election Tribunal with the Court nullifying elections and ordering INEC to organize a re-run election, such decisions often expose the idiosyncrasies of the judges involved and the level of patrimonial relationship that exists between them and the political class, whether from the plaintiff or complainant.

Re-run elections are special in nature and their dynamics are also unique; they are intricate and often pose serious challenges that surpass those of the regular elections. Besides they are very difficult to manage and execute given the intense contestations that characterise them. In most cases, in consolidation elections", which is defined as elections "organised by a civilian regime and are intended to consolidate civil rule" Agbajc and Adejumobi, 2006: 37), re-run elections are the veritable platforms on which politicians dramatize their hegemony and claim or reclaim power and influence. This tendency is particularly pronounced in cases where there are serious political divide and a strong opposition to the ruling political party in the state. The incessant political violence that characterizes inconclusive elections during re-run elections is highly informed by the inability of the politicians to reach compromise, embrace political accommodation and agree to subordinate themselves to the enabling electoral laws. The political

expediency of politicians normally determines the direction of political conducts to the extent that some elections have to go through two to three re-runs. The case of Rivers re-run election is an obvious example of politicization of election and over-saturation of Nigeria's political temperature because competition for power taken to mean a 'do-or-die' affair. Violence and politically motivated assassinations were the toll at the National State Assemblies re-run elections to fill the state's 3 senatorial seats, 12 out of the 13 I louse of Representatives seats and 22 out of the 32 State 1 louse of Assembly seats on March 19, 2016. Despite the level playing ground that was given to all political parties to contest the elections by INIc, political anxiety, desperation and machination were used to amplify violence and discredit the electoral process in the eyes of local and international community.

The two leading contending political parties in the state, the PDP and ARC, and their political gladiators engaged in war of words and accused each other of the spate of political violence in the state. In particular, while the APC was accusing the PDP of Omoku killings which it described as "genocide against APC members in Rivers", the POP not only denied the allegation and reacted that the massacre was masterminded by cultists, but also went the extra mile to spread rumours barely 48 hours to the elections that a plan to arrest all PDP leaders in the state was in the offing (*Premium Times*, March 15, 2016). The Achilles heel of the Rivers re-run political acrimony happened when the Governor of the state, Nyesome Wike, in an attempt to display lack of confidence in the federal government and at the same time portray the notion that INEC was not disposed to providing credible re-run elections, took the Rivers politics to an international stage. The state government wrote a letter to about 50 world leaders requesting them "to urgently initiate and maintain pressure on the Federal Government of Nigeria to allow free, fair and violence-free elections in Rivers State on the 19th of March, 2016". INEC responded to the situation in Rivers State by reiterating its stand

that there would be no more re-run election in the state until peace reigns (*Vanguard*, March 22, 2015).

The simmering tension in Rivers State not only confirmed the commission's understanding of the intricate power play in the state, but also the challenges ahead in conducting a re-run election where the power struggle among the competing political elite was tense, and by all means dangerous. Also, while Rivers re-run election illustrates the pattern of Nigerian politics and its volatility when the focal point of political stakes are narrowed to the state after the settlement of the quest for political supremacy at the national political leadership, the situation is not much different in other states. In some cases, the context and nature of political competition determine whether or not re-run elections would be peaceful or violence free. Recent experiences with re-run elections show that it goes beyond neo-patrimonial relationship but also include prebendal politics. Following the Appeal court's nullification of Senator David Mark's victory in the 2015 election under the platform of the PDP, his campaign slogan "Operation Homeland Defence" was purportedly meant to drag politics to its idiosyncratic base and magnify the contest of power to assume the dimension of the interplay of national and local politics. Party candidates who hitherto boasted of victory at the poll because of the control of the machinery of power at the national level often express profound frustration over the non-existence of window opportunities for election rigging, especially when subjected to a strict compliance with the electoral laws. The reality of political competition within the refined convention of law leads to violence and disruption of peace during the conduct of election. "Peace Accords" signed before the rerun election in FCT and Rivers notwithstanding, over-voting, violence and snatching of electoral materials marred the exercise. As a result, the outcome of the elections was cancelled in the affected areas and INEC had to fix another date for a re-run election.

One can attribute the high rate of inconclusive elections to two main variables: institutional and systemic weaknesses of political parties, including the proclivities of key party players and their supporters, and the organizational challenges of INEC in managing critical election conducts, especially in the face of rising suspicion over the commission's role in presiding over and managing the affairs of the electoral process. Institutionally, political parties are organizationally weak with all sorts of interests ranging from those of "godfathers" and chief executives who often manipulate party decisions to suit their politically entrenched interests (Jega, 2015b: 85; Mohammed, 2015:10). The obvious outcome of this politics of domination and manipulation of party bureaucracy by a single political personality or group of party stalwarts is the incurable disease that affects the direction of party's support to a candidate in the re-run election. The high interest involved and the colossal amount of money usually spent to finance the campaign activities of a 'godson', without due regard to internal democracy makes a re-run election exercise a 'do-or-die' affair. Thus, a re-run election involving candidates with a strong backing from the chief executives of states or godfathers with a strong influence on political party activity creates an enabling environment for electoral misconducts and political violence. In electoral politics where the political environment is hijacked by "forces of wealth and power for purposes that are entirely predatory and subversive of democracy" (Agbaje and Adejumobi, 2006:29), internal party camps produce a collateral damage to the electoral process. In some cases, where there is a strong intra-party conflict between two factional groups, usually between the former and incumbent state governors who are at political loggerheads the sour relationship is usually taken to the election days, now considered as a battlefield for settling political field.

In fact, Onoja (2009:88) observes that the level of violence in an electoral contest is profoundly determined by the degree of interest-in election; that was the scenario in the Minjibir House of



Assembly re-run election in Kano held on April 30 and July 30, 2016. The internal party squabbles within the APC between the faction of the former Governor of the state, now Senator Rabi'u Musa Kwankwaso, whose supporters out rightly committed anti-party activity and resolved to vote massively for the PDP candidate in the election had further created an enabling environment for tension in the state. The supporters of the State Governor, Dr. Abdullahi Umar Ganduje, who were all out to vote for the APC candidate, made Minjibir Local Government Area an inevitable theatre of war and a battlefield for the consolidation of party control at the state level.

During the first re-run election, the exercise was believed to have started peacefully but halfway through it turned violent (Report on Minjibir Re-run, INEC Electoral Operations Department, April 30, 2016). Political thugs brandished different types of weapons and freely harassed and intimidated the security agencies. Finally, INEC had to declare the election inconclusive. What really saved Minjibir from the bloodbath seminar to the ones experienced in River's rerun elections was the early morning withdrawal of Aihaji Auwalu Ubale of the PDP from the race on the day fixed for the second re-run election, against the backdrop of what he called poor security situation on the eve and the day of the poll. This singular action dissipated the energies of the PDP supporters who decided not to partake in the exercise at all, expressing dissatisfaction with the action of their candidate. INEC's reaction to Ubale's withdrawal was in line with the provision of Section 35 of the Electoral Act which says that withdrawing a candidature is by notice in writing signed and delivered by the candidate himself " to the political party that nominated him for the election and the political party shall convey such withdrawal to the commission not later than 45 days to the election'. In any case, the election proceeded and ended peacefully with Mallam Muhammad Tasiu of the APC scoring 21, 970 votes, while the PDP candidate scored a total of 1, 238 votes.

The Minjibir re-run election is one of the many cases of the weak institutional base of political parties in Nigeria, which has also been reinforced by lack of a strong party discipline and ideology, a situation which snowballed into electoral contest and eventually smeared the foundation of free, fair and credible election in the country. It also showcases the failure of the Nigerian state to provide tight security during the conduct of election in hotspot areas. 'The security lapses in Minjibu started when the security personnel were unable to restrict movements of hoodlums and political thugs who eventually penetrated the various polling units and caused untold mayhem (INEC Electoral Operations Department, April 30, 2016). They overpowered the unarmed policemen deployed to provide security for the election, many of whom ran away for their dear lives.

Furthermore, circumstances that led to cancellation of results include: the attitudinal issues which can be pigeonholed under a subculture in the political culture of overxcalous and ambitious electorate who always suspect that their votes could not necessarily count, given the complexity of challenges encountered in the management of election. This suspicion is even more pronounced in a situation whereby electoral officers are not well trained to manage and perfect the use of the Smart Card Reader and are eventually intimidated to use manual accreditation for voting. Unaware of the fact that non-usage of SCRs could lead to cancellation of the affected PUs, voters whose fingerprints are rejected, notwithstanding the provision of incidence forms to address the challenge, often react violently and force electoral officers to allow them to vote, like the cases of the FCT Area Council election and the Nasarawa/Toto Federal Constituency re-run election. Table I provides an example of how violence led to a re-run election in Kogi state.

**Table I:** Local Government Areas where Violence Caused Election Cancellation in Kogi State Governorship Election held on November 21, 2015.

LGA	PUs Areas Affected
Ajaokuta	2 PUs Kbia South (406 registered voters), Itua Opaja (572 registered voters) and Adogun Ogodu (Xo election conducted at all) 248 Registered 6,021 registered voters could not vote due to
Dekina	17,454 voters could not vote due to cancellations (significant violence in Ayingba).
Idah	One PU (213 registered voters) was cancelled due to violence and the attack of Polling Officers by
Igalamela	Open Space Okocheve Unit 004-781 voters
-Odolu	(violence and INHC officials attack and all
Ijumu	Cancellation in Avetoro (1, 705 Registered Voters
Kabba-	3 affected Pus in three wards 10/01 (524
Bunu	registered Voters) affected (ballot box and other material snatched and burnt). Adokpe Ward 14
Kogi	Unit5 (380 registered voters). Bv 1pm, 54 voters
Okcne	One PU cancelled due to violence.
Olamabor	696 registered voters affected by cancellation of
o	election because of violence and 1NKC materials,
	433 registered voters affected when party agents
	who started voting by force for voters in the queue
	overpowered a polling officer. Flection in some
	other PUSs having 2, 026 registered voters was
Omala	6 Pus were cancelled. 2,526 registered voters were
	affected in cancelled Pus as a result of snatching of
	ballot papers, card readers and other election

**Source:** The Election Monitor Accredited Election Observer-Group (EMAOG) Kogi State Governorship Election, Interim Report, November 27, 2016. P.7

## **The Dilemmas of Inconclusive Elections — Promoting or Endangering Nigeria's Electoral Process and Democracy**

Democracy flourishes when the electoral process provides an atmosphere of transparency and equal opportunity for all candidates vying for public offices. Meanwhile, for a democracy to thrive and lead to democratic consolidation the electoral process must provide room for leadership legitimacy through free, fair and credible election. Similarly, the institutionalization of political institutions is rooted in political participation. The experience of Nigeria with liberal democracy today has shown that the weak ideological foundations of political parties and the procedural regulations in the conduct of electoral process are informed by myriad of factors, which are essentially institutional and systemic in nature. In any case, the culture of corruption transcends public life and is engulfing the foundation of politics, society and the economy leading to various manifestations of uneasiness in the practice and handling of the most cardinal democratic rituals that is the electoral practices. It is in the context of the orientation of the political elite and their stakes in power that one can explain the legal, operational and organizational challenges of INEC in handling elections, particularly the re-run elections. Other equally important dimension of the crisis of the electoral process today is the behavioural challenge associated with the electorate in exercising their civic mandates. The overall consequences of these experiences account for the epileptic development of the electoral process and democracy in general. The impact of these tendencies on the political process is often pronounced in the cancellation of results and declaration of elections inconclusive with profound impact on the development of democracy in Nigeria.

Inconclusive election creates political apathy and despondency on the part of the electorate.

In analysing the relationship between re-run election and low turnout of voters in Houston Texas, Holeywell (2014) observes

that out of 27 per cent of registered Houston voters that cast their ballots in November 2015, the highest total since 2003, only 15 per cent of voters cast their ballots in the run-off election that was conducted. The turnout was very low because many voters lost interest in the process. The experience of re-run election turnout in Nigeria also shows that once voters fatigue creep in, either as a result of insecurity or nullification of election by a Tribunal or Court of Appeal, they usually give up their mandate and are reluctant to turn out for election. Where a re-run election has informed the need for tight security in the hotspots of electoral violence, voters and, to a large extent, electoral officers hardly turn out for the election in the affected PUs. Table II shows less than 40 percent of voters out in twelve elections conducted between May and July, 2016. Ife-Central bye-election and supplementary election recorded the lowest turnout of voters with 16.62 per cent, while Isiala Mbani Local Government State constituency recorded 27.66 per cent turnout of voters.

**Table II:** Summary of Results of Bye-elections, Re-run and Supplementary Elections in Some Selected Federal and State Constituencies, February to July 30, 2016

	Const./ Senatorial District	Type of Electio n	Date	Total No. of Regd. Voters	Total No. of Acct. Voters	Total Number of Valid Votes	Total No. of Rejd. Votes	Total No. of Votes Cast	% of Turn out
1	Minjibir, State Constituency, Kano State	Re-run	July 30 2016	78, 210	28, 474	23, 620	2028	25, 648	36.41%
9	Nassarawa/ Toto Federal Constituency	Bye- election	May 28, 2016	202, 338	76, 475	74, 848	978	75, 826	37. 80%
3	Benue South Senatorial	Re-run	Febr uarv 20, 2016	522,713	165,093	155,813	.3, 744	159, 557	31.58%
4	Oru East State Constituency Election	Re-run Election	July, 23, 2016	69,029	11,97(1	11,171	736	11,907	17. 35%
5	Isiala Mbani State Constituency, Imo State	Re-run	July 23, 2016	74, 875	15,297	14, 339	683	15,022	20. 43 %

6	Imo North Senatorial District	Re-run	July 23, 2016	305, 102	95, 603	89,917	2, 749	92, 666	31.33%
7	Oru East State Constituency, Imo State	Suppl. election	July 28, 2016	69, 029	12, 887	12, 032	785	12, 817	18. 67%
8	Isiala Mhano State Constituency, Imo State	Suppl. election	July 28, 2016	79, 608	22, 018	20, 870	859	21,729	27. 66% 35. 01 %
9	Imo North Senatorial District	Suppl. election	July 28, 2016	305, 102	106, 819	100, 823	3, 023	103, 846	
10	Ife-Central State Constituency	Bye-election and Suppl. election	April 9 and 10, 2016	95, 114	15, 312	15, 008	304	15, 312	16. 62%
11	Nassarawa/ Toto Federal Constituency	Suppl. election.	July 1, 2016	202, 338	87, 602 85, 728	1, 007	86, 805	43. 29	

**Source:** Data gathered and compiled by the author from INEC Reports and Election Monitors, 10<sup>th</sup> August 2016.

For example, the killing of soldiers and people and the intimidation of electoral officers had resulted in the withdrawal of many voters and trained electoral officers in the re-run elections held in Ogba/ Egbema/Ndoni Local Government Area of Bayelsa State. In Rivers and Kano re-run elections, the experience was not different. In the FCT Area Council elections, the exercise had to be postponed because of what the Resident Electoral Commissioner called shortage of ad hoc workers. Similarly, with total registered voters which stood at 78,210, the Minjibir, Kano House of Assembly re-run election ended with a total of 25,648 votes cast due to voters' apathy arising from the fears of possible electoral violence. This does not mean that all the re-run elections held in 2016 were marred by violence. Rather, where election regulations were observed and adequate preparations made, INEC had a plain sailing with negligible incidents of logistical hitches like the failure of the Card Reader, rejection of the fingerprints of voters and late commencement of voting process.

In addition to the contraction of the democratic space for the electorate, the costs of running a re-run election arising from the declaration of election inconclusive are very high. Obviously, the conduct of any election, nay re-run elections, is expected to be costly. For example, with only a total of 5.8 million registered voters, Haiti's recent re-run presidential election was budgeted to cost \$55 million (*Miami Herald*, 2016). Although the financial costs of conducting rerun elections in Nigeria are not yet made available, it can be inferred that the combined costs of the re-run elections conducted so far by INEC are better imagined than provided. To illustrate this point, it is important to understand the cost of undertaking a re-run election and waste of resources therefrom citing the experience of Lafia/Obi Federal Constituency held on April 8, 2016. The winner of the election declared by INEC in the 2015 election scored over 74,000 votes, while the runner-up had a little over 70,000 votes, but when the Court of Appeal ordered INEC to conduct a re-run in Angwan Doke Polling Unit (004) alone, a unit with over 1,000 registered voters, only 25 voters turned out in an election that cost INEC N3.2 million (Yakubu, in *The Jathn*, March 16, 2016). Available figures from the commission's Consolidated Operations Budget show the financial costs of conducting elections for 2 governorship elections re-run (Kogi and Bayelsa); 2 federal constituencies re-run; and 1 (Jibia, Kastina) state Assembly bye-election held from December — March 2016 as follows:

**Table III:** INEC Expenses for Governorship, Federal and State Constituency Bye- election and re-run elections, December 2015 — march, 2016.

State	Constituency	Amount
1. Gombe	Akko/ Federal Constituency re-run	67,237,355
2. Bayelsa	Governorship Re-run Election	475,451,210
3. Katsina	Jibia State Assembly Constituency Bye-election	46,694,720
4. Kogi	Governorship Election re-run	633,615,975

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5. Benue Benue South Senatorial Re-run election 220,710,244

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**Source:** INEC Consolidated Operations Budget, December 2015  
— March 2016

The table III above shows that colossal amount of money was spent to conduct re-run and bye-elections in Nigeria. The aggregate of the amount that would be spent on such elections is more than what one i-night imagine. The financial cost of re-run elections is one out of many other costs of inconclusive elections because the electoral body usually multiplies the number of its staff and logistics in order to ensure a hitch-free re-run election exercise. In terms of lives and property, the social and economic costs of violence that precipitated the declaration of the re-run elections held in Kogi, Taraba, Imo, Bayelsa, Rivers and Kano are unimaginable as property of INEC were mostly the target of political thugs and vandals. In most cases, electoral violence also causes temporary disruptions of economic activities.

The role of Tribunals and Court of Appeals in nullifying elections serves democracy better in some cases, and in others it retards the credibility of the electoral process. It is an understatement to say that the Election Petition Tribunal and Courts are really reducing the rate of hijacking the mandates of voters through the nullifications of elections with cases of procedural irregularities; it is also endangering the electoral process when legal interpretations arc embroiled in apparent subjectivity. Badamasiuy and Bello (2015:134-135) observe that:

More troubling were the series of election decisions that were grounded not strictly on the law and facts but on technicalities and purported 'national security concerns' in order to consolidate the transition to a matured democracy... The wishes and aspirations of the people, which constitute the core of democratic governance and legitimacy, were persistently disregarded because of technicalities in election petitions.

Such legal verdicts that further complicate rather than resolve, once and for all, election petitions are antithesis to democratic



deepening. The fact that some courts have nullified elections and ordered for a re-run election only to be reversed later by conflicting judgments by different judicial division of the Court of Appeal is a signal that Nigeria's judicial system needs to operate in tandem with its counterparts in developed democracies. Such were the fates of Governorship Election Appeal Tribunal that nullified the election of Nycson Wike as the Governor of Rivers State and the Governor Okoxie Ikpcazu of Abia State, among other legal conundrum. Similarly, although the legal dilemma that was caused by the death of the A PC governorship candidate on the day the results of the election were declared was settled with the replacement of the deceased with another candidate of the party, the legal void created by the Electoral Act and the Constitution is still a reference point of legal dilemmas of election in Nigeria. Too many inconclusive elections are undermining the institutional capacity of the electoral management body and this is likely to send a wrong signal to stakeholders on Nigeria's electoral process that future elections could be littered with spots of inconclusive elections. The 2015 general elections had set a new record in the country's democratization process; for despite the challenges encountered in some areas, the exercise was considered a reflection of voters' mandate. Therefore, there is need for caution and steadfastness in addressing the factors that generate electoral misconducts, expressed mainly in over-voting, vote snatching, violence and intimidation of electoral officers with dire consequence on the integrity of the process.

### **What should be done and who should do what?**

Thus arising from the challenges identified above, three major conclusions can be deduced. First, the condition in which national politics has temporarily ceased to be an epicenter of contestations in the aftermath of the 2015 general elections has created intense competition in the 'homelands' of political hegemonies. This is a sufficient avenue through which unwieldy competition and

unconventional techniques of the winner takes all politics result in the cancellation of re-run elections and bequeath untold consequences on the electoral process. Second, and closely related to the first point is the fact that as national politics relegates political competition to states, political hegemonies found it expedient to cut corners, using the instrumentalities of election Tribunals and Courts, to achieve their covert but designed objective of making election inconclusive. It has been reported that there were no less than 680 court cases emanating from the 2015 general elections today Yakubu, cited in *Punch Newspaper*, Saturday August 20, 2016). Thirdly, capitalizing on the logistical challenges faced by IN EC in re-run elections politicians are quick to exploit this as a window opportunity to disrupt the conduct of bye-elections or run-offs elections as time-buying mechanism in order to replenish their resource strength and vigour in the next round of election. In view of these challenges neither INEC nor Courts could guarantee conclusive election at the first ballot (Yakubu, cited in *Punch Newspaper*, August 20, 2016).

Whichever way one looks at it, inconclusive elections are products of necessity and imposition to the electorate. On their part, voters also find it reluctant to be governed by the regulations of election at re-run elections because they see it as an aberration. In most cases, in their anxiety to put the election exercise behind them, they often bastardize its conduct and create enabling environment for politicians to maximally use subtle mechanisms to gullibly entice voters to disrupt its conduct, leading to further cancellation of results in some PUs and eventual declaration of inconclusive election. This phenomenon can be referred to as the inevitability of the vicious circle of inconclusive election which produces a series of unfinished election. Undoubtedly, this circle is basically reinforced by the phenomenon of business-as-usual pattern of party politics in Nigeria and has been characterised by youth vanguardism, crude manifestation of the class character of political hegemonies and the intricate power tussles in the state,

local government or any area where a re-run election is holding, as was the case in Abuja Area council elections. Therefore, to reverse the occurrence of seemingly unending scenario of inconclusive elections, political parties and their supporters must abide by the enabling laws governing the conduct of election in the country, otherwise no rocket science effort can make INEC conclude election in the face of apparent violations of the rule of political game.

In spite of such generally worrying trends that informed the occurrence of inconclusive elections in Nigeria, there is still the need to emphasize that INEC is substantially making an indelible mark in the area of managing elections. I lowcver, what is needed is to continue to pursue the earlier reform initiated by its former chairman to its logical conclusion. It is highly important to face the reality of the election environment in the country and revisit the existing polling units in order to reduce the distance from one polling unit to another. The experiences of election in Kogi State where the terrain is very difficult and PUs is far apart have further reinforced the need to create more polling units. Creating more PUs will reduce overcrowding in one PU and enable dispersing voters as evenly as possible. In addition, creating additional PUs will enable the commission to split large PUs and create room for new settlements not serviced by any existing PUs to have one (Jega, 2015a). The Commission should also go beyond the institutional/ organizational reform to include some of its enabling laws that do not require the assent of the National Assembly. With the support of *civil* society organizations, the commission should vigorously pursue the incorporation of most of the justice Muhammad Uwais Electoral Reform Committee's (ERC) recommendations to address existing contradictory provisions in the Electoral Act and the amendment of the Constitution in order to address special scenarios like the death of a candidate before or on the day of the declaration of election results as experienced in the case of Kogi Governorship election in November 2015. There

is also the need to provide a caveat in the Electoral Act to the effect that nullified election as a result of disqualification of a *winning* candidate should not call for a re-run election in that constituency. Instead, a certificate of return should be issued to the runner-up. Also, there is the need to include in the amendment of the Electoral Act the restoration of INEC's powers to disqualify candidates.

Furthermore, Nigeria's voting formula in the determination of percentage of voters needs to be revisited. The first-past-the-post system should be modified to provide a more systematic and credible voting system that would help avoid incessant cases of inconclusive election is urgently needed in the reform of the electoral laws. To this end, majority re-run election is recommended for Nigeria because it reduces votes to only two candidates in the second rerun. If this system is adopted with only the calculation of the percentage of voter turnout in the re-run election, instead of percentage of the registered voters, it stands to eliminate wastage and encourage positive campaigns.

In the area of management of election, whether re-run, end-of-tenure and bye-elections, INEC should develop an elaborate training for its ad hoc staff on the use of SCRs and also ensure that it overcomes some inherent logistical challenges in the conduct of elections. In some of the re-run elections conducted thus far (for example, Southern Ija w Constituency election, Kogi Central Senatorial re-run and the FCT Area Council elections, to mention a few) there were reported cases of late arrival of election officials, run-down batteries and non-usage of the SCRs and snatching of ballot papers. These logistical challenges and many other related cases need to be addressed administratively before the next general election in order to restore confidence and provide effective service delivery. Though the controversy on whether or not to use SCR is legal has been settled because the law warrants INEC to come up with administrative reforms that it deems effective in the conduct of election and the deployment of card reader has been covered in this category, there is still the need to have an explicit provision in

the Electoral Act to accommodate its utilization. This effort will settle the issue of disputing the legality of using the method in elections and finally address any controversy related to it.

Also, administratively, INEC should adhere to constitutional limit for holding elections and ensure that conducting elections close to the end of tenure or bye-election creates huge logistical burden for the commission and tense political atmosphere in the political environment of the election in question.

The security dimension of the problem of election in the country needs to be looked into. If past experience-is anything to go by, particularly in the case of Rivers, Minjibir, Okigwe, Bayelsa and Kogi re-run elections, it is quite necessary to revisit the terms of engagement of the police during the conduct of election. The security agencies are sometimes partisan and unreliable in the discharge of their expected role of protecting voters, INEC officers and public property from the wrath of political thugs.

Civil society organizations should also develop keen interest in monitoring bye-elections, rerun and end-of-tenure elections in order to provide independent reports and recommendations on how best to organize manage and administer such special elections. It appears that most CSOs are visible during the general elections and very few apply to INEC for accreditation to participate in special elections.

"Such elections have their dynamics, forms and character, which require a special monitoring team for effective coverage of their proceedings. The difficult challenge of ensuring successful bye or re-run elections is the human agency, which informs the attitude of the political elite and their supporters. It is a serious concern in the remote past, recent past and in the current development of Nigerian politics. Politics has always been a battlefield and today the contest for power has been magnified to include hate speeches, personality attack and other innuendoes that are inconsistent with the moral precepts of politics. Provisions (Sections 95,128, and 117) are made in the Electoral Act 2010 (as

amended) but in reality the legal system has not been very speedy, where the culprits are summoned before it, to bring electoral offenders to justice. In particular, Section 95 (1) says that "a political party campaign or slogan shall not be tainted with abusive language directly or indirectly likely to injure religious, ethnic, tribal or sectional feelings", and (2) "abusive, intemperate, slanderous or bad language or insinuations or innuendoes designed or likely to provoke violent reaction or emotions shall not be employed or used in political slogans". Different penalties have also been specially provided for whoever contravenes these provisions. In practice, lack of enforcement of these laws and their serial abuse during political campaigns is common.

Therefore, enforcement of the existing electoral laws requires the setting up of the Electoral Offences Commission Tribunal, as recommended in the Uwais' and later Sheikh Abubakar Lemu's committees. In order to reduce the high incidence of curt cases before INEC and also try election offences such as hate speech and insinuations that could generate political tension and electoral violence, justice must be institutionalized and no one should be above it. Establishing specialized Tribunals and Courts to address election petition cases and infractions by politicians would provide room for professionalized legal dispensation of justice on election matters and also regulate the behaviour of politicians. Similarly, with the establishment of the Electoral Offences Tribunal, election petition cases would not be dragged on for too long either on technical ground or based on the whims and caprices of judges, as is the case in conventional courts.

## **Conclusion**

In a nutshell, a lot needs to be done in the long and short run, in order to overcome the recurrent challenges that lead to inconclusive elections. The experience of inconclusive elections is reversing the gains of the progress made in the 2015 general elections and is likely, if it is not informed substantially by the

principle of justice as provided in the enabling electoral laws, to endanger democracy and its consolidation in Nigeria. Hence it can be argued that inconclusive elections only promote democracy when, on a case-by-case merit, they are meant to forestall a situation of appropriating the mandate of the electorate. In any case, the spate of inconclusive elections across Nigeria is a bad omen in a country that had conducted peaceful elections in 2015 and has restored the confidence of Nigerians and the international community that it has gotten it right. To make the situation better for democracy, it requires the input of all stakeholders, particularly politicians, political parties, the civil society, the electoral management body and the judiciary. The action is not only for the INEC to undertake, but also requires a synergy or stakeholders because the problems of the conduct of elections emanate mainly from the institutional weaknesses that affect the democratic institutions in developing democracies such as Nigeria. Consolidation elections are very difficult to come by because they carry the trappings of various interests: political, class, religious, group and even sectional. In general, these challenges also require a change in the country's political culture, which is deeply rooted in the material base of politics with its emphasis on power being the focal point of ascendancy to fame, social mobility and class domination.

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