ANALYSIS OF THE LEGAL IMPLICATIONS OF THE USE OF INFORMATION COMMUNICATION TECHNOLOGY (ICT) IN THE 2023 PRESIDENTIAL ELECTIONS IN NIGERIA

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Abstract

Technology globally has continued to play huge roles in election management. This paper critically examined the legal consequences of deploying Information and Communication Technology (ICT), specifically the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV), in Nigeria's 2023 Presidential Election. Adopting a doctrinal methodology, it examined the legal framework and judicial pronouncements in post-2023 election petitions. This paper found that while the Electoral Act 2022 provided the good statutory backing yet for technological deployment the judiciary adopted a strictly positivist interpretation that preserved the primacy of manual Form EC8A over electronic records and refused to treat real-time uploading to IReV as a mandatory condition precedent to the validity of results. These outcomes exposed a critical disjuncture between legislative intent, institutional practice, and judicial interpretation, thereby diluting the transformative potential of ICT reforms. The paper further underscored risks in cybersecurity and biometric data

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protection that remain inadequately addressed. Recommendations include urgent amendment of the Electoral Act 2022 to insert an explicit "supremacy clause" making electronically transmitted results prevail over physical sheets, institutionalisation of independent technical audits, and modernisation of judicial practice directions on electronic evidence.

Keywords: Elections, Information Communication Technology, Presidential Elections

1.1 INTRODUCTION

Election Management Bodies (EMBs) of countries often deployed Information Communication Technology (ICT) tools ranging from biometric voter registration systems to electronic transmission of results in a concerted effort to enhance transparency, increase efficiency, and bolster the integrity of the electoral process.[1] The central promise of this technological shift lies in its potential to introduce verifiable data, minimizing the opportunities for human manipulation endemic to manual processes such as multiple voting and falsification of results at collation centres.[2] This helps in obviating incidences of malpractices, conflicts and legal scuffles. In contrast particularly, it enhances the acceptability of the process. The utilisation of ICT in electoral processes thus offers advantage towards enhancing the credibility of electoral processes.

[1] European Union Election Observation Missions, Background Paper: Challenges and Opportunities of Election Observation: ICT (2017), p. 2.
[2] International Foundation for Electoral Systems, Lessons on the Use of Technology in Elections (2022), p. 1.

Nigeria's journey towards credible elections has been consistently marked by the adoption of incremental technological reforms, moving from the use of Direct Data Capture Machines (DDCMs) for voter registration to the Smart Card Reader (SCR) for accreditation.[3] This evolution culminated in the enactment of the Electoral Act, 2022, which provided the most explicit legal mandate for the use of technology yet.[4] The Act explicitly empowered the Independent National Electoral Commission (INEC) to deploy technology for voter accreditation and the electronic transmission of results, thereby effectively reducing the possibilities of prior legal ambiguities.[5]

The paper is therefore of critical importance for three interrelated reasons. Firstly, it seeks to clarify the actual legal status of BVAS data and IReV results within Nigeria's judicial framework, thereby establishing their definitive evidentiary weight. Secondly, it highlights the critical disjuncture between the provisions of the Electoral Act 2022 and that of the judicial interpretations that followed INEC's non-compliance, revealing the practical limitations of the legislative reforms introduced to modernize the electoral process. Thirdly, it aims to propose targeted legal and legislative recommendations to ensure that technology is not only integrated effectively into Nigeria's electoral process but also safeguarded against abuse in future elections, thereby reinforcing the credibility of the country's democracy.

[3] I. Ogbeide-Ilhama, 'The Effect of ICT on the 2015 and 2019 Presidential Elections in the FCT: Case of Bwari Area Council' (PhD Thesis, NILDS–Department of Studies, 2022).
[4] Electoral Act, 2022, s. 47 (2) & s. 60 (5).
[5] S. C. Ndema, 'Interrogating the Independence of Independent National Electoral Commission (INEC) in Nigeria' (2025) 11(2) International Journal of Social Sciences and Humanities 33–47.

2.1 LEGAL FRAMEWORK FOR ELECTION IN NIGERIA

The legal framework governing elections in Nigeria is anchored on a combination of constitutional provisions, primary legislation, and subsidiary regulatory instruments which collectively shape the scope, authority, and limits of Information and Communication Technology (ICT) utilisation in the electoral process.

2.1.1 Constitution of The Federal Republic Of Nigeria, 1999

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the supreme legal foundation upon which the entire electoral framework rests. First, the Constitution is the source of electoral powers. Section 153(1)(f) establishes the Independent National Electoral Commission (INEC) as one of the constitutional federal executive bodies.[6] This elevates INEC beyond a mere statutory creation and guarantees it a measure of institutional autonomy that is essential for credible election management. The Constitution thereby ensures that the authority to regulate elections, including the adoption of new technological tools such as the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV), is exercised by a body whose existence and core mandate are constitutionally entrenched.

Secondly, the constitutional mandate of INEC is expressly set out in the Third Schedule, Part I, paragraph 15. INEC is empowered to "organise, undertake and supervise" elections to the offices of President, Vice-President, Governor, Deputy Governor, and members of the National and State Houses of Assembly.[7] This provision grounds the Commission's

[6] Constitution of the Federal Republic of Nigeria 1999 (as altered) s 153(1)(f).
[7] Ibid. Third Schedule, Pt I, para 15.

responsibility not only for the logistics of voting but also for designing and implementing procedures and systems including ICT frameworks that can guarantee genuine, periodic and competitive elections. Any technological deployment by INEC must therefore be understood as an incident of this constitutional responsibility.

Thirdly, the Constitution articulates the sovereignty and democratic expectations that elections must satisfy. Section 14(2)(a)–(c) declares that sovereignty belongs to the people of Nigeria, that government is derived from their will, and that the security and welfare of the people shall be the primary purpose of government.[8] These provisions are not merely rhetorical; they function as substantive standards against which electoral processes can be measured. If elections are manipulated, opaque, or systemically unreliable whether through abuse of manual processes or failure of ICT tools, the result is a constitutional injury to popular sovereignty.

The right to participate in governance is also indirectly supported by other constitutional provisions. Freedom of expression under section 39 enables citizens to receive information about electoral processes and outcomes, including digital publication of results via platforms like IReV.[9] Freedom of association under section 40 protects the right to form and join political parties and other civic organisations that contest or monitor elections.[10] When ICT platforms fail, are selectively deployed, or are rendered inaccessible, they may not only affect the mechanical conduct of

[8] Constitution of the Federal Republic of Nigeria 1999 (as altered) s 14(2)(a)–(c).
[9] Ibid. s 39.
[10] Ibid. s 40.

elections but also impair these broader participatory rights, for example by depriving citizens and parties of timely and accurate electoral information.

2.1.2 Electoral Act 2022

On February 25, 2022, President Muhammadu Buhari approved the 2022 Electoral Act Amendment Bill into law, after several months of delaying his approval.[11] The 2022 Electoral Act ("the new Act") replaces the Electoral Act No. 6, 2010 ("the former Act") and aims to introduce new regulations for Federal, State, and Area Council elections in Nigeria. [12]The Electoral Act 2022 is the central statutory instrument governing the deployment of Information and Communication Technology (ICT) in Nigeria's electoral process and it is the first electoral statute to expressly and substantively integrate technology into the core mechanics of accreditation, voting, transmission, and collation of results, thereby giving legal backing to devices such as the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV).[13]

(a) Section 47(2): Mandatory Technological Accreditation

Section 47(2) provides that a voter shall be accredited "in accordance with the procedure determined by the Commission," including the use of a "smart card reader or any other technological device" prescribed by INEC.[14] In practice, BVAS is the technological device designated for this purpose. The provision has two important implications.

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[11] Miracle Eme "The Electoral Act 2022: Key Changes and Impact on The 2023 Elections" (2022) Mondaq.<https://www.mondaq.com/nigeria/constitutional-administrative-law/1185368/the-electoral-act-2022-key-changes-and-impact-on-the-2023-elections> accessed 20th November, 2025

[12] ibid

[13] ibid

[14] Electoral Act 2022, s 47(2).

First, it elevates technological accreditation from administrative discretion to a statutory requirement. Accreditation through BVAS is no longer optional; it is the default legal mechanism for verifying that a voter is entitled to vote. Secondly, it creates potential consequences where BVAS is bypassed or not properly used. Where manual accreditation is conducted without lawful justification, such votes may be susceptible to nullification on the ground of non-compliance with section 47(2), provided the petitioner demonstrates that such non-compliance substantially affected the outcome of the election.[15] The case law following the Osun State governorship election underscores the tension between strict adherence to BVAS-based accreditation and judicial reluctance to invalidate results solely on alleged technological irregularities without robust, corroborative proof.[16]

(b) Section 51(2): BVAS Figures and Overvoting

Section 51(2) provides that where the number of votes cast at a polling unit exceeds the number of accredited voters, the result of the polling unit shall be declared invalid and a fresh poll may be ordered.[17] Read together with section 47(2), this provision ties the determination of overvoting to the accreditation figures generated by BVAS, since BVAS is the lawful accreditation device. This is a fundamental departure from earlier jurisprudence where the voters' register or incident forms were the primary benchmark for assessing overvoting.

[15] Ibid. s 135(1).
[16] *Adegboyega Isiaka Oyetola & Ors v Independent National Electoral Commission (INEC) & Ors* (2023) Legalpedia 26471 (SC).
[17] Electoral Act 2022, s 51(2).

In theory, this places BVAS data at the centre of any allegation of overvoting. In practice, however, courts in post-2022 cases have required petitioners not only to tender BVAS reports but also to link them polling-unit by polling-unit to the impugned result sheets and oral evidence, thereby diluting the automatic, self-executing force some commentators had expected section 51(2) to have.[18]

(c) Section 60(5): "Transfer" of Results and IReV

Section 60(5) requires the presiding officer, after recording the result of the election in the prescribed forms, to "transfer the result including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission."[19] This is the statutory hook upon which INEC has anchored the use of IReV as a platform for uploading scanned images of Form EC8A from BVAS devices.Normatively, section 60(5) creates a legal expectation that there will be an electronic step in the result-management chain, even though the precise technology and workflow are left to INEC's prescription. Through its Regulations and Guidelines, INEC interpreted this to mean near real-time upload of polling unit results to IReV.[20] The controversy in the 2023 Presidential Election arose from the perceived failure or delay in this electronic "transfer," leading to arguments that INEC had violated both its own guidelines and the statutory expectation of digital transparency.

[18] N A Iguh, B E Ewulum, G N Ikpeze and A C Onah, 'Socio-Legal Implications of the Adoption of Bimodal Voter Accreditation System (BVAS) for Credible Elections in Nigeria' (2023) 7(2) *African Journal of Law and Human Rights* 1.
[19] Electoral Act 2022, s 60(5).
[20] INEC, Regulations and Guidelines for the Conduct of Elections (2022) Pt II.

(d) Section 64(4) – (6): Electronically Transmitted Results and Collation

Section 64(4) – (6) governs the conduct of collation when a result is disputed. It provides that where a collated result is challenged, the collation officer or returning officer shall "compare the data and information" in the collated result with the "results transmitted directly from the polling units" and the BVAS record of accreditation.[21]

On its face, this provision formalises the role of electronically transmitted results and BVAS data as verification tools at the collation stage. It suggests that when there is a conflict between figures, recourse must be had to the digital trail, BVAS accreditation data and transmitted results to ascertain the "correct" result. This section was central in the 2023 litigation, where petitioners argued that failure to rely on electronically transmitted results (or their absence on IReV) invalidated the collation process.

However, in the post-2023 presidential election appeals, the Supreme Court adopted a cautious, positivist interpretation. It held that while section 64 recognises electronically transmitted results as verification aids, it does not elevate IReV uploads to the status of the primary legal record of results, which remains Form EC8A.[22] The Court also distinguished between "transmission" and "collation," and treated IReV as a transparency tool rather than a mandatory collation platform. This approach significantly limited the transformative potential many had ascribed to sections 60(5) and 64(4) – (6).

[21] Electoral Act 2022, s 64(4) – (6).

[22] The consolidated presidential election petition appeals: *Atiku Abubakar v INEC & Ors* (SC/CV/935/2023, 26 October 2023, unreported); *Peter Obi v INEC & Ors* (SC/CV/937/2023, 26 October 2023, unreported).

(e) Section 148: INEC's General ICT Regulatory Powers

Section 148 of the Electoral Act 2022 empowers INEC to make regulations, guidelines and manuals for the purpose of giving effect to the provisions of the Act.[23] This includes the authority to design and regulate ICT platforms such as BVAS, IReV, and related technical protocols. Through this provision, INEC issued the Regulations and Guidelines for the Conduct of Elections 2022 and specific documents on electronic transmission and collation, thereby operationalising sections 47, 60 and 64.[24]

Nonetheless, Nigerian courts have consistently held that such regulations and guidelines, although binding on INEC, are subordinate to the Act and cannot expand or contradict the clear wording of its provisions.[25] This doctrinal position explains why, in the 2023 presidential election cases, non-compliance with INEC's IReV-related guidelines was not automatically treated as a ground for nullifying the election in the absence of clear statutory language making electronic transmission a condition precedent to validity.

2.1.3 Cybercrime Act 2015

The Cybercrimes (Prohibition, Prevention, etc.) Act 2015 forms a crucial part of the legal environment within which election-related ICT operates in Nigeria. First, the Act imposes cybersecurity obligations on institutions that operate critical information infrastructure, which, in the context of

[23] Electoral Act 2022, s 148.

[24] INEC, 'Electronic Transmission and Collation of Results: Details of the Relevant Provisions of the Law (Sections 60 and 64 of the Electoral Act 2022)' (INEC, Abuja, 2022).

[25] See for example *Shinkafi v Yari* [2016] 7 NWLR (Pt 1511) 340 (SC).

elections, includes INEC's servers, networks and devices used for voter accreditation and result transmission.[26] Section 3 empowers the President, on the recommendation of the National Security Adviser, to designate certain computer systems and networks as "critical national information infrastructure," thereby imposing heightened duties of protection and resilience on their operators.[27] Given the centrality of BVAS and IReV to the electoral process, INEC has a legal responsibility to ensure that these systems are adequately secured against unauthorised access, damage or disruption. Failure to do so may not only undermine electoral credibility but also amount to a breach of statutory duty.

Secondly, the Act criminalises a range of conduct that is directly relevant to elections, including unauthorised access, data manipulation and interference with electronic systems. Section 6 prohibits unauthorised access to computer systems, including attempts to deface, alter or impair the operation of such systems.[28] Section 14 criminalises identity theft and impersonation through electronic means, which may be implicated where electoral databases or authentication processes are fraudulently manipulated. [29] Section 22 addresses system interference and data interference, penalising intentional acts that seriously hinder the functioning of a computer system or alter, delete, suppress or render inaccessible computer data without lawful authority.[30] Any attempt to hack into BVAS devices, manipulate accreditation figures, or corrupt IReV-uploaded results could thus constitute a prosecutable cybercrime under

[26] Cybercrimes (Prohibition, Prevention, etc.) Act 2015
[27] Ibid. s 3.
[28] Ibid. s 6.
[29] Ibid. s 14.
[30] Ibid. s 22.

these provisions. Thirdly, the Act has significant implications for liability arising from hacking, data interference and unauthorised access.

2.1.4 Evidence Act 2011

The Evidence Act 2011 provides the procedural backbone for the treatment of data generated by ICT tools such as the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV) in election petitions. While the Electoral Act 2022 creates the substantive obligations to use technology in accreditation and result management, it is the Evidence Act that determines whether, and how, the resulting electronic records can be placed before a court and what weight they may attract.[31]The principal provision is section 84, which deals with the admissibility of "statements in documents produced by computers".[32] Election-related ICT outputs – including BVAS accreditation reports, IReV screenshots, electronically generated result summaries, and server logs – all fall within the category of computer-produced documents. Section 84(1) provides that such a statement is admissible in evidence if it is shown that the conditions in subsections (2)–(4) are satisfied. These conditions include, among others, that:

i. the document containing the statement was produced by the computer during a period when it was regularly used to store or process information for activities regularly carried on by a person or body;
ii. during that period, information of the kind contained in the statement was supplied to the computer in the ordinary course of those activities; and

[31] Evidence Act 2011
[32] Ibid. s 84(1).

iii. the computer was operating properly, or if not, any malfunction did not affect the production or accuracy of the document.[33]

In practice, this means that a party tendering BVAS reports or IReV printouts must not only produce the documents but also lay the necessary foundation evidence, usually through a witness familiar with the operation of the system, and, where appropriate, a certificate under section 84(4) attesting to the manner and conditions of production.[34] Where these formalities are not satisfied, courts have been prepared to reject electronic evidence, even when it originates from INEC's own systems.

Section 258 of the Evidence Act broadens the definitional scope of "document" to include "any disc, tape, sound track or other device in or by which sounds or other data are recorded, stored or retrievable" and "any statement or representation … produced by a computer".[35] This expansive definition ensures that electronic records from BVAS and IReV are conceptually recognised as documents, capable of being tendered and relied upon in the same way as traditional paper forms such as Form EC8A, subject always to the admissibility requirements in section 84.

2.1.5 INEC Guidelines and Regulations on ICT Usage

The Independent National Electoral Commission (INEC) exercises its powers over the conduct of elections not only through the Electoral Act 2022 but also through a suite of subsidiary instruments, most notably the Regulations and Guidelines for the Conduct of Elections 2022 and related manuals. These instruments operationalise the broad provisions of the

[33] Ibid. s 84(2).
[34] Ibid. s 84(4).
[35] Ibid. s 258(1) (definition of "document").

Electoral Act, particularly those relating to the deployment of ICT such as the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV), but they do not enjoy the same normative force as the Act itself.

Section 148 of the Electoral Act 2022 authorises INEC to "issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of this Act."[36] This provision, read together with section 160(1) of the Constitution, which permits INEC to make its own rules "subject to the approval of the President," provides the legal basis for INEC's regulatory output.[37] On this foundation, INEC issued the Regulations and Guidelines for the Conduct of Elections 2022, which, inter alia, prescribe detailed procedures for BVAS accreditation and the electronic transmission and publication of results.With respect to BVAS, the Guidelines stipulate that accreditation must be conducted using the device for both fingerprint and facial recognition, and that no person shall be allowed to vote unless successfully accredited by BVAS or in accordance with a narrowly defined contingency procedure.[38] This gives practical content to section 47(2) of the Electoral Act 2022 and is intended to standardise accreditation across all polling units.Regarding IReV, the Guidelines and INEC's policy documents require presiding officers, after completing Form EC8A, to use BVAS to capture an image of the result sheet and upload it to the IReV portal before leaving the polling unit.[39] This creates an operational expectation of near real-time electronic visibility of results, consistent with

[36] Electoral Act 2022, s 148.
[37] Constitution of the Federal Republic of Nigeria 1999 (as altered), s 160(1).
[38] INEC, Regulations and Guidelines for the Conduct of Elections (2022) Pt II, Ch 2.
[39] INEC, 'Electronic Transmission and Collation of Results: Details of the Relevant Provisions of the Law (Sections 60 and 64 of the Electoral Act 2022)' (INEC, Abuja, 2022).

sections 60(5) and 64(4)–(6) of the Electoral Act 2022. In practice, these provisions transformed IReV from a purely administrative innovation into a central component of INEC's publicly announced transparency architecture for the 2023 general elections. Nigerian appellate courts have consistently held that while INEC's manuals and guidelines are binding on its officials and are relevant in assessing whether an election has been properly conducted, they cannot override or amend the clear provisions of the Electoral Act.

In *Shinkafi v Yari*,[40] the Supreme Court emphasised that INEC guidelines, being subsidiary in nature, must "bow" to the primary legislation where there is a conflict.[41] Similarly, in earlier card-reader litigation, the Court held that the INEC Manual could not elevate the card reader above the voters' register expressly recognised by the Electoral Act.[42]This doctrinal stance was central to the post-2022 and post-2023 cases. In *Adegboyega Isiaka Oyetola & Ors v INEC & Ors*,[43] the Supreme Court accepted the relevance of BVAS and electronic reports but declined to treat INEC's internal procedures as a basis for displacing the statutory presumption of regularity of declared results, absent strict proof of non-compliance with the Act itself.[44] In the consolidated 2023 presidential election appeals, the Court again reaffirmed that INEC's Regulations and Guidelines on IReV, though important for transparency, did not convert electronic upload into a

[40] [2016] 7 NWLR (Pt 1511) 340 (SC).
[41] *Shinkafi v Yari* [2016] 7 NWLR (Pt 1511) 340 (SC).
[42] *Jegede v INEC* [2021] 14 NWLR (Pt 1797) 409 (SC); Faleke v INEC [2016] 18 NWLR (Pt 1543) 61 (SC).
[43] (2023) Legalpedia 26471 (SC).
[44] *Adegboyega Isiaka Oyetola & Ors v Independent National Electoral Commission (INEC) & Ors* (2023) Legalpedia 26471 (SC).

condition precedent to the validity of results where the Electoral Act had not expressly so provided.[45]

3.1 INSTITUTIONAL FRAMEWORKS FOR THE USE OF ICT IN ELECTIONS IN NIGERIA

The institutional framework for ICT deployment in Nigeria's electoral process is anchored on a network of public bodies whose mandates intersect around election management, adjudication and security.

3.1.1 Judiciary

The Judiciary is the central institutional arbiter of the legal consequences of ICT deployment in Nigeria's electoral process. Vested with judicial powers under section 6(6)(b) of the Constitution, it interprets the Electoral Act 2022, the Evidence Act 2011 and related instruments, determines the admissibility and weight of electronic evidence, and ultimately resolves disputes arising from the use or non-use of BVAS and IReV.[46]

In *Adegboyega Isiaka Oyetola & Ors v INEC & Ors*[47], the Supreme Court accepted BVAS reports as admissible electronic evidence but insisted that they must comply with section 84 of the Evidence Act and be forensically linked to specific polling units and oral testimony.[48] The Court declined to treat BVAS figures as self-executing proof of overvoting, thereby diluting

[45] *Atiku Abubakar v INEC & Ors* (SC/CV/935/2023, 26 October 2023, SC, unreported); *Peter Obi v INEC & Ors* (SC/CV/937/2023, 26 October 2023, SC, unreported).
[46] Constitution of the Federal Republic of Nigeria 1999 (as altered), s 6(6)(b).
[47] Adegboyega Isiaka Oyetola & Ors v Independent National Electoral Commission (INEC) & Ors (2023) Legalpedia 26471 (SC).
[48] Supra

the transformative potential many commentators had attributed to sections 47(2) and 51(2) of the Electoral Act 2022.

In the consolidated 2023 presidential election appeals, *Atiku Abubakar v INEC & Ors*[49] and *Peter Obi v INEC & Ors*[50], the Supreme Court held that IReV was primarily a transparency and public-information tool, not the legally decisive record of results.[51] The Court ruled that the Electoral Act 2022 did not make real-time electronic upload to IReV a condition precedent to validity, and reaffirmed Form EC8A as the primary result document. This jurisprudence significantly weakens the legal expectation that technological innovations will automatically enhance transparency, and signals that ICT evidence will only displace traditional paper records where petitioners meet stringent admissibility and proof requirements.

3.1.2 Independent National Electoral Commission (INEC)

INEC is the primary institutional actor responsible for the design, deployment, and operational integrity of electoral technologies in Nigeria. Its constitutional mandate under paragraph 15 of the Third Schedule is expanded by the Electoral Act 2022, which expressly authorises and, in some instances, mandates the use of ICT in accreditation, result transmission and collation.[52] INEC's ICT responsibilities include the deployment, management and maintenance of BVAS, which is the statutory accreditation device under section 47(2) of the Electoral Act 2022; ensuring

[49] Supra
[50] Supra
[51] Atiku Abubakar v INEC & Ors (SC/CV/935/2023, 26 October 2023, SC, unreported); Peter Obi v INEC & Ors (SC/CV/937/2023, 26 October 2023, SC, unreported).
[52] Constitution of the Federal Republic of Nigeria 1999 (as altered), Third Schedule, Pt I, para 15; Electoral Act 2022, ss 47, 60–64.

the electronic transmission and publication of results, as contemplated under section 60(5); and securing its ICT infrastructure, including BVAS devices and the IReV server, in compliance with cybersecurity standards under the Cybercrimes Act 2015.[53] INEC must also train ad-hoc staff in the proper use of BVAS and result-upload procedures, a task primarily undertaken by its ICT Department and the Election Operations Department.[54]

3.1.3 The Nigerian Police

Although the Nigeria Police Force (NPF) is not a technological institution, it plays an indispensable role in safeguarding the operational integrity of ICT infrastructure deployed during elections. As the lead agency responsible for internal security under section 4 of the Police Act 2020, the Police are mandated to ensure the protection of electoral personnel, materials and facilities, which necessarily includes BVAS devices, IReV transmission equipment and associated digital systems.[55]At polling units, the Police provide physical security for BVAS devices, preventing theft, damage or obstruction of their use during accreditation. They also protect ICT and ad-hoc staff, who may be vulnerable to intimidation, violence or attempts to interfere with result-uploading processes.[56] Section 214(1) **e**stablishes the Nigeria Police Force as a single, centralized national police body and prohibits the creation of any other police force by any state or authority, save as permitted by law. [57]

[53] Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 3, 6, 22.
[54] INEC, Regulations and Guidelines for the Conduct of Elections (2022).
[55] Police Act 2020, s 4.
[56] Constitution of the Federal Republic of Nigeria 1999 (as altered), s 215(3).
[57] Ibid s 214(1)

4.1 THE USE OF INFORMATION COMMUNICATION TECHNOLOGY IN THE 2023 PRESIDENTIAL ELECTIONS

During the 2023 General Elections, the Independent National Electoral Commission (INEC) introduced two critical technological innovations to leverage the aforementioned new legal backing, namely: The Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV).[58] The BVAS was designed to accredit voters using fingerprints and facial recognition, fundamentally linking accreditation data to the device itself. [59] It was also a critical device used for taking ~~a~~ snapshot of the completed polling unit result sheet (Form EC8A) and uploading it directly to the IReV portal for public viewing in real-time.[60] The Independent National Electoral Commission (INEC) of Nigeria has established the INEC Result Viewing Portal (IReV), an online platform aimed at improving the transparency and trustworthiness of its electoral process. This platform enables the public to access and view election results from polling units (PU) shortly after they are documented on the day of the election. This two-pronged strategy for robust accreditation via BVAS~~,~~ and transparent transmission via IReV was widely anticipated to be the definitive solution to any electoral malpractice at collation centers.

Ironically, while the BVAS generally performed its accreditation function, the real-time electronic transmission of the Presidential Election results to

[58] Uchenna O Ekwuribe and Joshua Tom Edet, 'The Bimodal Voters Accreditation System (BVAS) and Credible Elections in Nigeria: An Assessment of the 2023 General Elections' (2025) 18(2) *Ékwé International Journal of Igbo Scholars Forum for Socio-Cultural Advancement* 41–75.

[59] H. Musa, 'Data Protection Issues in the Management of the Bimodal Voters Accreditation System (BVAS) in Nigeria' (2023) 10(2) *Journal of Commercial and Property Law* 65–74.

[60] INEC, Electronic Transmission & Collation of Results (2023), p. 4.

the IReV portal, as was expected from INEC's own guidelines and previous off-cycle elections, experienced widespread failure or systemic delay.[61] This systemic seemingly non-compliance with the publicly advertised procedure created a deep crisis of confidence, fueling widespread allegations of result manipulation and subsequently forming the primary ground for election petitions challenging the outcome.[62] The central legal conflict became the battle over which record was superior between: the manual/physical result sheets (Form EC8A) or the electronic data, captured by the BVAS; and ostensibly transmitted to the IReV.[63] The resolution of this conflict fell squarely on the Nigerian judiciary, providing the ultimate legal test for the new technological regime.

The imperative of this paper transcends a mere documentation of the technical failures that plagued the 2023 general elections. Instead, its core focus is the critical appraisal of the subsequent legal consequences that trailed ICT utilization, as necessitated by judicial pronouncements in post-election petitions which fundamentally redefined the mandatory nature and evidentiary value of electronic results and accreditation data. This study's main aim is to critically appraise the legal consequences resulting from the utilization of ICT specifically the BVAS and IReV systems in the conduct and adjudication of the 2023 Presidential Elections in Nigeria. To achieve

[61] O. G. Okolie, 'BVAS, IReV and Democratic Elections in Nigeria' (2024) *Pinisi Journal of Social Science* 9(1), 89.
[62] Stephen Ogbodo, 'Independent Electoral Commission and Management of Electoral Malpractice: An Evaluation of Nigeria' (2024) 3(3) *Research Invention Journal of Current Issues in Arts and Management* 125–136.
[63] Chigozie Joseph Nebeife and Celestine Ogechukwu Okafor, 'Independent National Electoral Commission (INEC) and the Conundrum of BVAS in 2023 General Elections in Nigeria' (2023) 5(1) Ogbazuluobodo: *University of Nigeria Journal of Multidisciplinary Studies* 56–71.

this, five specific objectives have been developed, each addressing a key aspect of the overarching legal questions surrounding the 2023 electoral process.

The deployment of Information and Communication Technology (ICT), specifically the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV), was presented as the definitive statutory safeguard against electoral fraud during the 2023 Presidential Election.[64] The Electoral Act 2022 legally empowered the Independent National Electoral Commission (INEC) to deploy these tools for accreditation and result verification, requiring electronically transmitted data to be relied upon in dispute resolution, thereby setting a high expectation for tamper-resistant elections. [65] However, the practical experience of the 2023 poll exposed a sharp tension between technological design and legal reality. Despite the BVAS successfully performing accreditation, the real-time transmission of presidential results to the IReV portal was either delayed or failed, violating INEC's public assurances.[66] This systemic non-compliance transformed a technical glitch into a profound legal crisis: which record, the manual Form EC8A or the electronic BVAS/IReV data ultimately prevails?[67]

[64] Ekwuribe and Edet (n 1) 41.
[65] Electoral Act 2022, ss 47, 60, 64; Independent National Electoral Commission (INEC), Electronic Transmission and Collation of Results: Details of the Relevant Provisions of the Law (Sections 60 and 64 of the Electoral Act 2022) (INEC, Abuja, 2022) 1–4.
[66] INEC, Electronic Transmission and Collation of Results: Details of the Relevant Provisions of the Law (Sections 60 and 64 of the Electoral Act 2022) (INEC, Abuja, 2022) 3–4.
[67] Nebeife and Okafor (n 1) 56.

5.1 LITERATURE REVIEW

Prior to this paper, some scholars have provided an analytical synthesis of existing academic and legal works relevant to this paper's focus, identifying key findings, theoretical perspectives, and existing research gaps.

Araoye and Okokpujie, proposes biometric and secure e-voting frameworks theoretically suited to Nigerian conditions. Their contributions identify cyber vulnerabilities and propose security standards that could significantly improve electoral integrity. Nevertheless, these proposals rarely engage with Nigeria's actual legal environment. They do not explain how their models would align with the Electoral Act, what legal standards would govern the validation of encrypted logs, or what liability regime should apply if such systems fail or are compromised. This presents another gap: the absence of analysis linking engineering solutions to legally enforceable regulatory mechanisms.

Bisong add another dimension to the literature by showing how ICT adoption influences voter trust and political behaviour. However, trust-based assessments often overlook the legal importance of establishing clear mechanisms for forensic verification and evidentiary evaluation. While these studies correctly note that public confidence is essential for electoral legitimacy, they do not articulate how courts should legally evaluate electronic evidence in line with public expectations of transparency. INEC, including position papers on electronic transmission and collation, provide essential clarifications on the commission's intentions and policy interpretations of the Electoral Act.[68] Although these documents outline

[68] Independent National Electoral Commission (INEC), "Electronic Transmission of Election Results — Position Paper" and related INEC notes on electronic transmission and collation (2021–2023)

administrative guidelines, they do not establish binding legal obligations or sufficiently detailed standards for judicial interpretation. Consequently, they neither fill the evidentiary gaps in the literature nor address inconsistencies between INEC guidelines and judicial decisions in election petitions. Their limitations signal a broader research gap: scholars and institutions alike have not developed a comprehensive legal framework that integrates emerging technology with electoral law in a manner that reduces ambiguity during litigation.

Jega provided insights by revealing the institutional tensions involved in deploying ICT innovations. [69] Jega's reflections indicate that the commission's administrative choices often interact uneasily with statutory rules, especially when technological reforms outpace legal frameworks. These works underscore that legal reforms do not always keep pace with technological adaptations, leaving courts to navigate ambiguities concerning INEC's discretionary powers and the evidentiary status of electronic results. However, even these insider accounts do not comprehensively address how such administrative decisions should be interpreted within the technical and constitutional boundaries of Nigeria's electoral law, thus creating another notable gap.

Abioro and Abiodun's study on Nigeria's electoral management emphasized that weak institutional compliance and inadequate training of

[69] Attahiru Jega "Interview and policy reflections on electoral innovations (various interviews, ACE/Princeton transcripts, 2015).<https://www.atlanticcouncil.org/blogs/africasource/interview-with-professor-attahiru-m-jega-ofr-chairman-of-nigeria-s-independent-national-electoral-commission/> accessed 27th November, 2025.

polling officials often undermine the effectiveness of ICT tools.[70] These findings underscored that technology must be embedded within strong administrative and legal systems to function effectively. Within Nigeria, scholarship on BVAS and IReV has grown rapidly after the 2023 elections. Ekwuribe and Edet's empirical assessment concluded that the BVAS and IReV were groundbreaking innovations that reduced impersonation but failed to meet expectations due to technical lapses and selective implementation.[71] Musa examined the data protection implications of BVAS, warning that voter biometric data remain vulnerable without explicit cybersecurity provisions or independent oversight.[72] Collectively, these works reveal that while ICT has improved election administration in Nigeria, gaps persist in legal enforcement, technological reliability, and institutional accountability.

Iwuoha's work on biometric technology adoption in rural Nigeria demonstrates that while ICT tools such as card readers and biometric verification promise reduced electoral fraud, the realities on the ground reveal deep infrastructural gaps, low digital literacy, and inconsistent implementation.[73] These inconsistencies have significant legal

[70] T A Abioro and O M Abiodun, 'Electoral Management Bodies, Information and Communications Technology and Democratization Process in Nigeria' (2021) 21(1) *Global Journal of Human-Social Science: F (Political Science)* 1–10.

[71] U O Ekwuribe and J T Edet, 'The Bimodal Voters Accreditation System (BVAS) and Credible Elections in Nigeria: An Assessment of the 2023 General Elections' (2025) 18(2) *Ékwé International Journal of Igbo Scholars Forum for Socio-Cultural Advancement* 41–75.

[72] H Musa, 'Data Protection Issues in the Management of the Bimodal Voters Accreditation System (BVAS) in Nigeria' (2023) 10(2) *Journal of Commercial and Property Law* 65–74.

[73] Iwuoha, V. C., "ICT and Elections in Nigeria: Rural Dynamics of Biometric Voting Technology Adoption,"(2018). Africa Spectrum, 53(3).

consequences, particularly concerning disenfranchisement and the enforceability of the right to vote when technological failures occur at polling units.

Nwangwu examined the use of biometric verification in previous election cycles and concluded that despite improvements in transparency, device malfunction, inadequate training, and poor data handling introduced new grounds for dispute.[74] His analysis points to evidentiary challenges that the law has yet to fully address, showing a gap in how Nigerian electoral jurisprudence treats electronic artifacts such as machine logs, timestamps, and transmission records.

Okon and Ojedor have examined the role of ICT through the lens of social media and digital political mobilization, especially in 2023.[75] While their work highlights the transformative impact of online communication, including misinformation during the election period, they do not fully explore the legal liabilities of platforms or the standards for admitting social-media-derived evidence in electoral litigation. This leaves open questions about regulatory responsibility and evidentiary thresholds in a digital campaign environment.

[74] Nwangwu, C., "Biometric Voting Technology and the 2015 General Elections in Nigeria" (Conference paper / analyses), The Electoral Institute / INEC presentation, 2015–2018. <https://www.inecnigeria.org/wp-content/uploads/2019/02/Conference-Paper-by-Chikodiri-Nwangwu-1.pdf> accessed 27th November, 2025

[75] Etido Aniedi Okon "The Role of Social Media in the 2023 Nigerian General Elections: An Analytical Appraisal of Selected Platforms. (2025). American Journal of Arts and Human Science, 4(1), 32-42

Ogunmokun and Olaposi , in their work focused on the impact of election technologies in the Nigeria Electoral system.[76] The gaps is situation of absence of linkage between the failure of this technologies and legal outcome especially in the act. This present work will contribute further by discuss the impact of technology in future legal outcome and analyze the Electoral Act.

In the light of foregoing, scholars have made contributions to the discussion of the subject matter but this paper contributes to existing scholarship by bridging these gaps through a comprehensive legal appraisal of ICT's use in Nigeria's 2023 presidential election. It evaluates how BVAS and IReV function within statutory, judicial, and constitutional frameworks, addressing unresolved issues of legality, admissibility, data protection, and institutional accountability

6.1 CHALLENGES OF ICT UTILIZATION IN NIGERIA'S ELECTORAL PROCESS

6.1.1 Practical Challenges faced by INEC in the Use of ICT for Elections Management

Notwithstanding the legal and institutional frameworks, the practical implementation of these technologies revealed substantial gaps between legal design and operational reality. These gaps manifested in inconsistent BVAS performance, failure or delay in uploading results to IReV,

[76] Adeleke S. Ogunmokun, Oluwatoyin S. Ayanlade, Titilayo O. Olaposi "Understanding the Impacts of Electoral Technologies on Nigeria's Electoral System". (2024) I*nternational Journal of Research and Innovation in Social Science (IJRISS), 8(03), 2523-2533.*

inadequate training of ad-hoc staff, weak network coverage, and limited contingency planning for technological failure.[77]

The practical defects in deployment were not merely administrative shortcomings; they generated direct legal consequences. Petitioners in the 2023 post-election litigation relied heavily on alleged failures of BVAS and IReV as evidence of non-compliance with sections 47, 60 and 64 of the Electoral Act 2022.[78] The courts, in turn, were required to determine whether these failures amounted to substantial non-compliance capable of vitiating the election under section 135(1) of the Act, or whether they constituted irregularities insufficient to disturb the declared result. The outcome of this judicial scrutiny has shaped the present and future legal status of ICT in Nigeria's electoral jurisprudence.

6.1.2 The INEC Result Viewing Portal (IREV) Controversy

The IReV controversy stands at the heart of the 2023 Presidential Election disputes. INEC's Regulations and Guidelines for the Conduct of Elections 2022, read together with its public statements and voter education materials, created a legitimate expectation that results from each polling unit would be uploaded in real time to the IReV portal using BVAS.[79] Earlier off-cycle elections, particularly the Edo and Ondo gubernatorial polls, had

[77] U O Ekwuribe and J T Edet, 'The Bimodal Voters Accreditation System (BVAS) and Credible Elections in Nigeria: An Assessment of the 2023 General Elections' (2025) 18(2) Ékwé International Journal of Igbo Scholars Forum for Socio-Cultural Advancement 41, 55–58.

[78] Electoral Act 2022, ss 47, 60, 64, 135(1).

[79] Independent National Electoral Commission (INEC), Regulations and Guidelines for the Conduct of Elections (INEC, Abuja 2022) pt II–III.

demonstrated that timely IReV uploads could significantly enhance transparency and public confidence.[80]

In the presidential poll, however, IReV experienced widespread delay or failure in uploading presidential results, even where National Assembly results from the same polling units appeared on the portal promptly.[81] INEC subsequently attributed this to technical challenges in its result-upload system, but the differential performance between elections held on the same day within the same framework deepened public suspicion.[82] The perceived failure of IReV was widely interpreted as selective non-compliance, rather than a neutral system malfunction.[83]

From a legal standpoint, this episode raised critical questions. First, whether INEC's inability or refusal to upload presidential results to IReV constituted a breach of section 60(5) of the Electoral Act 2022, which requires presiding officers to transfer election results and accreditation

[80] N A Iguh, B E Ewulum, G N Ikpeze and A C Onah, 'Socio-Legal Implications of the Adoption of Bimodal Voter Accreditation System (BVAS) for Credible Elections in Nigeria' (2023) 7(2) African Journal of Law and Human Rights 1, 10–12.

[81] Augustine Ugar Akah, Ojonimi Ferdinand Edino, Uno Ijim Agbor, Chris Iwejuo Nwagboso, Andrawus Musa, John Anyabe Adams, Joseph Ebegbulem, Terrence Richard Eja, Ugo Samuel Bassey, Joy Iyeumbe Ogar, Salome Nnenna Nwagboso and Stella Odey Ekpo, 'Elections Administration and Bimodal Voter Accreditation System (BVAS) Technology' (2024) 11(1) International Journal of Public Administration in the Digital Age 1–20.

[82] Independent National Electoral Commission, Report of the 2023 General Election (INEC, Abuja 2024) https://inecnigeria.org/wp-content/uploads/2024/02/2023-GENERAL-ELECTION-REPORT-1.pdf accessed 1 December 2025.

[83] Femi Samuel Oladele, Rashida Oyoru Adamu and Moshood Olayinka Salahu, 'Technology Security and Electoral Credibility in Nigeria: A National Security Review of BVAS and IReV in the 2023 General Elections' (2025) 8(3) International Journal of Intellectual Discourse 13–30.

figures "in the manner prescribed by the Commission".[84] Second, whether the non-use or partial use of IReV amounted to substantial non-compliance capable of invalidating the election. Third, whether the expectations generated by INEC's guidelines and public assurances had crystallised into enforceable obligations or remained within the realm of administrative policy. These questions framed much of the argumentation in the presidential election petitions.

INEC's legal accountability arises where it fails to properly deploy BVAS or to upload results as prescribed in its guidelines. Such failures may constitute non-compliance under section 135(1) of the Electoral Act 2022, although courts require proof that this non-compliance substantially affected the outcome before an election can be invalidated.[85] INEC also bears responsibilities under the Nigeria Data Protection Act 2023 for safeguarding biometric and personal data processed through BVAS and IReV, exposing it to potential administrative penalties for breaches.[86]

6.1.3 The Legality Status of Admissibility of Electronically Transmitted Results

The operational challenges surrounding IReV and BVAS brought to the fore the issue of the legality and evidential status of electronically transmitted results. The Electoral Act 2022 appears to give ICT a central role in accreditation and result management, while the Evidence Act 2011 recognises electronic records as documents, and section 84 provides for their admissibility where certain conditions of authenticity and reliability

[84] Electoral Act 2022, s 60(5).
[85] Electoral Act 2022, s 135(1).
[86] Nigeria Data Protection Act 2023, ss 24–30.

are satisfied.[87] The core legal challenge is the tension between the sui generis nature of election petitions and the strict admissibility requirements of the Evidence Act 2011.

Under Section 84 of the Evidence Act, a party seeking to tender electronic records (such as BVAS reports or IReV screenshots) must produce a certificate of compliance demonstrating that the computer was operating properly. In the 2023 post-election cases, petitioners faced significant hurdles in accessing the "backend" logs required to satisfy this provision, as these were in the exclusive custody of INEC.[88]

Furthermore, the legal status of the electronically transmitted result remains ambiguous. Is it a primary document or merely corroborative secondary evidence? In the hierarchy of electoral documents, the courts have historically prioritized the physical hard copy (Form EC8A). The challenge in 2023 was that while the Electoral Act 2022 empowered the use of technology, it did not explicitly repeal the supremacy of the manual result sheet. Consequently, when discrepancies arose between the IReV upload and the physical Form EC8A, the courts were legally constrained to prioritize the physical form, rendering the electronic record inadmissible for the purpose of overturning the manual declaration, absent proof of manipulation on the face of the physical document.[89]

In practice, petitioners tendered BVAS reports, accreditation data, and IReV-downloaded result sheets in an attempt to demonstrate over-voting, manipulation, or non-compliance with statutory procedures. However,

[87] Evidence Act 2011, ss 84, 258.
[88] Ibid, s 84(2)
[89] *Wike Ezenwo Nyesom v. Dakuku Peterside & Ors* [2016] 7 NWLR (Pt. 1512) 455.

courts were cautious in elevating these electronic materials above traditional paper-based records. In Adegboyega Isiaka Oyetola & Ors v INEC & Ors, the Supreme Court accepted that BVAS reports are admissible as electronic evidence, but insisted that they must be properly produced, linked to specific polling units, and corroborated by oral testimony and other documentary evidence.[90] The Court held that the manual Form EC8A, being the polling-unit result sheet expressly provided for in the Electoral Act, remains the primary legal record of votes, while electronically generated data functions as corroborative rather than conclusive proof.

Similarly, in the 2023 presidential petitions, the Court of Appeal and Supreme Court declined invitations to treat IReV uploads as legally superior to Form EC8A.[91] Electronic screenshots and portal extracts were admitted but were not accorded overriding evidential weight where they conflicted with manually collated results. The courts thereby adopted a conservative evidentiary approach, reinforcing the primacy of paper-based documentation despite legislative advances in ICT utilisation.

6.1.4 Judicial Interpretations of the Electoral Act 2022

Judicial interpretation of the Electoral Act 2022 has had decisive consequences for the legal force of ICT in Nigerian elections. While sections 47(2), 60(5) and 64(4)–(6) were widely understood by commentators and stakeholders as signalling a paradigm shift towards

[90] *Adegboyega Isiaka Oyetola & Ors v Independent National Electoral Commission (INEC) & Ors* (2023) Legalpedia 26471 (SC).

[91] Rt Hon Chinedum Orji & Peoples Democratic Party (PDP) v Chief Obinna Aguocha, Labour Party (LP) & Independent National Electoral Commission (INEC), National and State House of Assembly Election Petition Tribunal (Panel 3), Umuahia, Abia State, Petition No EPT/AB/HR/14/2023, judgment delivered 7 September 2023 (Hon Justice Abubakar Idris Kutigi) (unreported).

mandatory technological processes, the courts have interpreted these provisions in a manner that preserves extensive discretion for INEC.[92]

In *Oyetola v INEC*, the Supreme Court held that although INEC is empowered to deploy BVAS for accreditation, the failure of the petitioner to present sufficient evidence, including properly certified BVAS reports and credible witness testimony, meant that the burden of proving substantial non-compliance had not been discharged.[93] The Court thus recognised BVAS data but declined to treat it as self-executing proof of over-voting.

The consolidated appeals in Atiku Abubakar v INEC & Ors and Peter Obi v INEC & Ors further entrenched this interpretive trend. The Supreme Court held that the Electoral Act 2022 did not make real-time electronic transmission of results to IReV a condition precedent to the validity of an election or declaration of a winner.[94] Section 60(5) was construed as vesting INEC with discretion to determine the method of result transfer and did not render electronic upload mandatory in the strict sense.[95] Consequently, the non-use or delayed use of IReV was held not, in itself, to invalidate the

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[92] See generally HLA Hart, The Concept of Law (2nd edn, Oxford University Press 1994) 100–123; J Finnis, Natural Law and Natural Rights (Oxford University Press 2011) 351–380.

[93] Oyetola v INEC (n 8).

[94] Atiku Abubakar v INEC & Ors (SC/CV/935/2023, 26 October 2023, SC, unreported); Peter Obi v INEC & Ors (SC/CV/937/2023, 26 October 2023, SC, unreported).

[95] Independent National Electoral Commission, Electronic Transmission and Collation of Results: Details of the Relevant Provisions of the Law (Sections 60 and 64 of the Electoral Act 2022) (INEC, Abuja 2023) https://www.inecnigeria.org/wp-content/uploads/2023/02/Electronic_Transmission__Collation_Of_Result-5.pdf accessed 1 December 2025.

election.[96] These decisions established that, under current law, ICT tools remain legally significant but not determinative; they supplement, rather than supplant, the traditional regime of manual collation.

6.1.5 Cybersecurity and Data Privacy Issues

The deployment of BVAS and IReV engages not only electoral statutes but also the broader legal framework governing cybersecurity and data protection. BVAS devices process sensitive personal data, including biometric information, while IReV operates as a web-based platform receiving and publishing election results nationwide.[97] This infrastructure constitutes a form of critical information system whose compromise could significantly impair electoral integrity.[98]

The Cybercrimes (Prohibition, Prevention, etc.) Act 2015 criminalises unauthorised access, data interference, system damage, and related cyber-offences, and empowers relevant agencies and law enforcement bodies to protect critical national information infrastructure.[99] Likewise, the Nigeria Data Protection Act 2023 imposes obligations on data controllers and processors to ensure the confidentiality, integrity and availability of personal data, and to implement appropriate technical and organisational measures against data breaches.[100] INEC, as custodian of voters' biometric and electoral data, is therefore under a statutory duty of care to secure

[96] Cinjel and Bur (n 1).
[97] INEC, Electronic Transmission and Collation of Results (n 1).
[98] Adedeji Ogbadebo, 'The Role of BVAS in Safeguarding Electoral Integrity: An Evaluation of the 2023 General Elections in FCT, Abuja' (2025) 6(1) Journal of Social Political Sciences 1–14 https://doi.org/10.52166/jsps.v6i1.251 accessed 1 December 2025.
[99] Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 3, 5–8, 21–22.
[100] Nigeria Data Protection Act 2023, ss 24–30.

BVAS devices, backend servers, and the IReV platform against hacking, manipulation or leakage.

Although there is no publicly adjudicated case alleging successful hacking of BVAS or IReV during the 2023 elections, persistent allegations of system vulnerability and opacity in communication by INEC have raised questions about the robustness of its cybersecurity posture. Scholars such as Musa have warned that deficient data-security practices in electoral technologies could expose INEC to civil liability, regulatory sanctions, and a severe erosion of public trust.[101] The absence of transparent post-election technical audits has further limited the ability of courts and stakeholders to conclusively evaluate whether any cybersecurity incidents occurred and how they may have affected the electoral process.

7.1 PROSPECTS OF THE USE IN ELECTIONS MANAGEMENT IN NIGERIA

Despite the challenges and controversies that characterised the 2023 Presidential Election, the prospects for ICT as a tool for strengthening Nigeria's electoral democracy remain considerable. The principal lesson from 2023 is not that technology should be abandoned, but that its deployment must be anchored on clearer statutory obligations, more robust institutional practices and more progressive judicial doctrines.

First, there is a strong argument for legislative clarification. Amending the Electoral Act 2022 to expressly provide that electronic transmission of polling-unit results is mandatory and that electronically transmitted data

[101] H Musa, 'Data Protection Issues in the Management of the Bimodal Voters Accreditation System (BVAS) in Nigeria' (2023) 10(2) Journal of Commercial and Property Law 65, 73–75.

enjoys a defined evidential status would reduce discretion and uncertainty.[102] Clear statutory language would also limit the scope for conflicting judicial interpretations.

Secondly, INEC must invest in infrastructure and capacity, including resilient servers, redundant transmission channels, and comprehensive training for ad-hoc staff. Technical failures, whether real or perceived, have disproportionate political and legal effects in a context of low public trust. Thirdly, institutional accountability mechanisms, such as independent ICT audits and multi-stakeholder oversight of election technologies, could enhance transparency and foster confidence in digital processes.
Nigerian courts may, over time, develop a more nuanced approach to digital evidence in election petitions, balancing the need for procedural certainty with recognition of the probative value of machine-generated records in a technology-driven electoral system. If these reforms are pursued, ICT can evolve from being a source of electoral controversy to a foundation for verifiable and credible elections in Nigeria. INEC's effectiveness in ICT deployment directly shapes the credibility, transparency and legal defensibility of Nigeria's elections.

This study set out to appraise the legal consequences of ICT utilisation in Nigeria's electoral process, with particular reference to the 2023 Presidential Elections and the deployment of the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV). Anchored on a doctrinal research methodology, it examined the relevant constitutional provisions, the Electoral Act 2022, the Evidence Act 2011,

[102] See S Terzungwe, 'Electoral Act Amendment: Senate Proposes Mandatory Electronic Transmission of Results – Akpabio' Daily Trust (Abuja, 23 October 2025) accessed 26 October 2025.

the Cybercrimes Act 2015, the Nigeria Data Protection Act 2023, INEC's Regulations and Guidelines, and judicial decisions arising from the 2023 election petitions.

First, the study found that the Electoral Act 2022 represents the most advanced statutory recognition of ICT in Nigerian elections to date, particularly through sections 47(2), 51(2), 60(5) and 64(4)–(6), which collectively seek to institutionalise technological devices for accreditation and result management.[103] Secondly, the research revealed a significant implementation gap: while BVAS generally functioned for voter accreditation, the failure or delay in uploading presidential results to IReV created a crisis of confidence and generated substantial litigation, indicating that legal reforms were not matched by operational discipline.[104]

Thirdly, the study established that the judiciary has adopted a largely positivist and conservative stance towards ICT. In Oyetola v INEC, Atiku v INEC and Obi v INEC, appellate courts declined to treat IReV as a mandatory component of result collation or to accord BVAS data conclusive evidential status over Form EC8A.[105] This has effectively limited the transformative potential many stakeholders expected from ICT reforms.

[103] Electoral Act 2022, ss 47(2), 51(2), 60(5), 64(4)–(6).

[104] U O Ekwuribe and J T Edet, 'The Bimodal Voters Accreditation System (BVAS) and Credible Elections in Nigeria: An Assessment of the 2023 General Elections' (2025) 18(2) Ékwé International Journal of Igbo Scholars Forum for Socio-Cultural Advancement 41, 55–58.

[105] Adegboyega Isiaka Oyetola & Ors v Independent National Electoral Commission (INEC) & Ors (2023) Legalpedia 26471 (SC); Atiku Abubakar v INEC & Ors (SC/CV/935/2023, 26 October 2023, SC, unreported); Peter Obi v INEC & Ors (SC/CV/937/2023, 26 October 2023, SC, unreported).

Fourthly, the study found that the evidentiary regime for electronic records, while formally provided for in section 84 of the Evidence Act, still poses practical hurdles for litigants, particularly in proving authenticity, chain of custody, and correlation with specific polling units. Fifthly, ICT utilisation implicates cybersecurity and data protection obligations under the Cybercrimes Act 2015 and the Nigeria Data Protection Act 2023, yet there is limited transparency regarding how INEC operationalises these duties in practice.[106] This study concludes that ICT has become central to Nigeria's electoral architecture, but its legal effectiveness is constrained by statutory ambiguity, institutional weaknesses and cautious judicial interpretation.

8.1 RECOMMENDATIONS

In light of the foregoing findings, the study makes the following key recommendations:

i. **Need for Legislative Clarification and Reform**

(a) The National Assembly should amend the Electoral Act 2022 to expressly provide that electronic transmission of polling-unit results is mandatory nationwide, specifying the legal consequences of non-compliance by INEC officials.[107]

(b) The Act should clarify that BVAS accreditation data constitute the authoritative benchmark for determining over-voting under section 51(2),

[106] Cybercrimes (Prohibition, Prevention, etc.) Act 2015, ss 3, 21–22; Nigeria Data Protection Act 2023, ss 24–30; H Musa, 'Data Protection Issues in the Management of the Bimodal Voters Accreditation System (BVAS) in Nigeria' (2023) 10(2) Journal of Commercial and Property Law 65.

[107] See S Terzungwe, 'Electoral Act Amendment: Senate Proposes Mandatory Electronic Transmission of Results – Akpabio' Daily Trust (Abuja, 23 October 2025) accessed 26 October 2025.

and set out the evidential hierarchy between electronic and manual records. Better still, The National Assembly must urgently amend Section 64 of the Electoral Act 2022 to insert a "Supremacy Clause." This clause should explicitly state: "Where there is a discrepancy between the physical result sheet (Form EC8A) and the electronic result transmitted from the BVAS to the IReV, the electronic record shall prevail, provided the accreditation data on the BVAS validates the votes cast." This removes judicial discretion and makes electronic transmission the golden standard.

ii. Need to Strengthen INEC's Institutional and Technical Capacity

INEC should adopt a binding ICT architecture policy that includes redundancy mechanisms, real-time monitoring, and post-election system audits for BVAS and IReV.

(b) Comprehensive training programmes should be institutionalised for permanent staff and ad-hoc personnel on the operation, troubleshooting and documentation of BVAS and IReV processes.

iii. Judicial Practice and Evidentiary Modernisation

(a) The Judiciary, through the National Judicial Council, should develop practice directions on the handling of electronic evidence in election petitions, simplifying the application of section 84 of the Evidence Act to large-scale digital records.

(b) Courts should progressively recognise the probative value of machine-generated election data, particularly where such data are supported by forensic reports and expert testimony.

iv. Cybersecurity and Data Protection Compliance

(a) INEC should categorise BVAS and IReV as critical national information infrastructure and collaborate with relevant security agencies to harden them against cyber-attacks.[108]
(b) The Commission must fully implement its data-protection obligations under the Nigeria Data Protection Act 2023, including conducting Data Protection Impact Assessments (DPIAs) for electoral technologies.[109]

v. Need for Enhanced Transparency and Multi-Stakeholder Oversight
(a) INEC should publish post-election technical and operational audit reports on the performance of BVAS and IReV.
(b) Political parties, civil society organisations and accredited observers should be granted structured access to ICT monitoring dashboards and system logs under appropriate confidentiality safeguards.

vi. Public Education and Trust-Building
INEC and civil society should intensify voter education on the role, limits and safeguards of ICT in elections to manage expectations and promote informed public engagement.

9.1 CONCLUSION

The integration of ICT into Nigeria's electoral process through BVAS and IReV was intended to strengthen transparency, accuracy and public trust. In normative terms, the 2022 electoral reforms were a marked improvement on the earlier regime that relied primarily on manual accreditation and collation. However, the experience of the 2023 Presidential Election

[108] Cybercrimes (Prohibition, Prevention, etc.) Act 2015, s 3.
[109] Nigeria Data Protection Act 2023, ss 31–33.

demonstrates that technology, without clear legal mandates and consistent institutional compliance, cannot guarantee electoral integrity.

The courts' refusal to construe the Electoral Act 2022 as making electronic transmission to IReV mandatory has significantly weakened the legal force of ICT, relegating it to a supplementary rather than determinative role. At the same time, INEC's inconsistent deployment and communication regarding BVAS and IReV have undermined citizens' confidence in the neutrality and competence of the electoral management body.

The central conclusion of this paper is that the promise of ICT in Nigeria's elections will remain under-realised unless three pillars are addressed simultaneously: (1) statutory clarity on the mandatory nature and evidential status of electronic processes; (2) institutional discipline and technical capacity within INEC; and (3) judicial readiness to adapt evidentiary and interpretive doctrines to an increasingly digital electoral environment. Absent these conditions, ICT risks digitising rather than resolving the crisis of electoral integrity.