

Crisis in the Application of “Principle of Margin of Lead” in the 2023 Nigeria’s Gubernatorial Elections: The Zamfara State Experience

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Abstract: *This paper examined the origin and development of the application of the principles of margin of lead in the Nigerian electoral process. It examined how the principles sharply affected many elections in Nigeria since 2015 and how it was perceived in Nigerian legal jurisprudence. It has established a special case study on the 2023 experience as it relates to Zamfara state and why the application of the principles varies in the case of Zamfara state and whether or not the Independent National Electoral Commission (INEC) has a convincing reason for its variant application of the principles in the election. The paper adopted a mixed research methodology of field interview and extensive literature to ascertain the extent of the understanding of the principles.*

Keywords: *Crisis, Application of “Principle of Margin of Lead”, 2023 Nigeria’s Gubernatorial Elections, Zamfara State*

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INTRODUCTION

Application of the “Principle of the Margin of Lead” has become one of the powerful instruments in determining the outcome of the Nigerian electoral process. It was a statutory provision in the new Electoral Act 2022 (as amended) that provides that a winner shall not emerge in an election where the total number of registered voters in the polling units/registration areas where an election is cancelled exceeded the margin of lead. though many had claimed that, the application of the principle of margin of lead is not known to the Nigerian electoral process, the Kogi experience where the late Prince Abubakar Audu contested alongside Governor Idris Wada marked the beginning of the functionality of this principle in the Nigerian democratic process as argued by (Karimi S 2019), This Poisonous bug called “Principle of Margin of lead” commenced its deadly attack on the Nigerian Electioneering process on the 21st

November 2015, when the Kogi State Gubernatorial Election was declared inconclusive.

Late Governor Abubakar Audu, candidate of the APC in the November 2015 governorship election was already coasting home to victory with 240,867 votes whilst the PDP Candidate, the then incumbent Governor Wada was trailing with 199,514 votes. But the number of cancelled votes was 49,953, higher than Audu’s victory at the time 41, 353 votes. The Returning Officer declared the election inconclusive

The Kogi state experience had helped in generating mixed interpretations as to whether the application of this principle is basically known to the law as the majority believed it was in clear contravention of the provision of the Nigerian Constitution 1999 (as amended). As argued by (Karimi S 2019), the declaration of an inconclusive Election was in flagrant disregard of Section 179(2) of the

Constitution of the Federal Republic of Nigeria 1999(as amended), which provides that a candidate for the election of the office of Governor of a State shall be deemed to have been duly elected where, there being two or more candidates, he has scored the highest votes cast in the election and he has not less than one-quarter of all votes cast in at least 2/3rd of all the Local Governments areas in the State.

Though it is a matter of legal arguments, there are those with the opinion that The Constitution has already stipulated what makes a candidate for chief executive offices duly elected, the Electoral Act in section 26 posits that where there is the likelihood of civil unrest, elections shall be shifted to another day, section 53(2) & (3) is to the effect that inconclusive elections can only be declared when there is over-voting at the polling units (Bello 2023). These arguments surpassed that, the combined effects of Section 134,179, 111 of the Constitution of the Federal Republic of Nigeria 1999(as amended) and 26(1) as well as Section 53(2) & (3) of the Electoral Act shows that inconclusive elections are not envisaged in our laws, except where there was over-voting in a polling unit, not where votes already cast were cancelled.

But notwithstanding these legal arguments, the new Electoral Act 2022 (as amended) especially, has maintained the provisions which empower INEC the Electoral Commission to declare the Governorship or any election as inconclusive. INEC guidelines for the conduct of the general election have also made an in-depth provision for the declaration of any election as inconclusive once such requirements for declaration have not been made. But more surpass, there are those with the opinion that the Supreme Court decision in the Hon. James Abiodun Falake versus INEC SC.648/201 is the authority empowering INEC to declare election as inconclusive (Onikepo 2022).

The 2023 Governorship election in Zamfara state is one of the basic electoral parameters that political and legal observers believe has further raised fear about the legality of the application of the 'Principle of the Margin of Lead' in declaring the legitimate winner of the Governorship poll in the state. In the declaration made by the Deputy Vice Chancellor of the Federal University Birnin Kebbi Prof. Kasimu he announced that the PDP candidate Dauda Lawal polled (377,726) to defeat Bello Matawalle of the APC who polled (311,976) votes. In the said election where PDP candidate was declared winner, the total number of registered voters where election was cancelled statewide was put at (85,063) added with four (RA's) with (46,000) registered voters where the election did not take place in Birnin Magaji one of the fourteen local government areas of the state. Surprisingly however, the margin of lead in respect of the scores by both the PDP and APC is put at (65,750) votes. Under this circumstance and in line with the principle of the margin of lead the election is supposed to be declared as 'Inconclusive' hence the margin of lead is lesser than the number of registered voters in PU's where elections were cancelled

and also where election was not conducted in the case of Birnin Magaji (Maradun 2023).

Though this was the scenario with the case of Adamawa state in Binani versus Fintiri and Kebbi state respectively the case of Zamfara state was treated differently and using different approach. While the margin of lead was lesser than the vote cancelled the returning officer without recourse to the sections of the electoral act and INEC guidelines for the conduct of the general elections in Nigeria, he declared a winner in the election. This has generated mixed reactions as to the electoral modeling used by the INEC in the case of other states in Nigeria and why it is chosen to adopt the different model for Zamfara state.

The objective of this position paper is to examine the validity of the declaration of the winner of the 2023 Zamfara Governorship poll and whether or not the declaration conforms with the statutory provisions of the law. It also aimed at examining the historical antecedents of inconclusive elections in Nigeria since 2015 and determining whether the circumstance in the case of Zamfara can best fit the case scenario of other states or not. The paper adopted a mixed research methodology of field interviews and literature review to examine the position of other stakeholders in the Nigerian electoral process.

A HISTORICAL ASSESSMENT OF THE MAJOR INCIDENCES OF INCONCLUSIVE ELECTIONS IN NIGERIA.

As highlighted earlier, the historical origin of inconclusive elections in the Nigerian electoral process can best be traced to the conduct of the governorship election in Kogi State North Central Nigeria which took place on the 21st of November 2015. Before the Kogi governorship election was declared inconclusive, the late Prince Abubakar Audu was leading to victory by (240,867) ahead of his opponent Governor Idris Wada who polled (199,514) votes. A crisis emerged during the collation when it was detected that, the number of cancelled votes was (49,953) a figure which exceeded the margin scored by Prince Abubakar Audu which stood at (41,353) votes. Since then stakeholders asserted that the new development emerging from the idea of inconclusive election will mark the beginning of new reforms that will shape the election and electoral process in Nigeria.

After Kogi the next election that was declared inconclusive was that of Imo State where Rochas Okorocha the then-former Governor of the state was the APC candidate while Imeka Ihedioha the former Deputy Speaker under Waziri Tambuwal was the candidate for the PDP. As captured by (Imran 2019), Rochas Okorocha scored a total of (385,671) votes to defeat Ihedioha Imeka who polled (306,142), the margin of lead between them was (79,529) votes and the returning officer declared the election as inconclusive. The Bayelsa state gubernatorial

election was also declared inconclusive even when Seriaka Dickson of the PDP polled (105,748) to beat his opponent Timipre Sylva of the APC who scored (72,584). The election was declared inconclusive because Dickson won in (6) out of the (7) local governments but because elections were cancelled in the entire Ijaw Local Government area as a result of electoral malpractices and violence. The number of registered voters in Ijaw was put at 120,000 votes, which is above the difference between Dickson and Sylvia (Imran 2019).

Maryam 2019, argued, that out of the 29 gubernatorial elections conducted by the Independent National Electoral Commission on March 9, 2019, six state gubernatorial elections have been declared inconclusive. They include Sokoto State, Plateau State, Adamawa State, Bauchi State, Benue State and Kano has which have been declared inconclusive. In Benue State, the Returning Officer relied on the margin of lead principle, while the total number of cancelled votes in the Benue State governorship election was put at (121,019) votes, the margin of lead between Governor Samuel Ortom and Jime stood at (81,554) votes, Ortom polled (410,576) votes while Jime Scored (329,022) votes. The cancellation of votes was due largely to the destruction of electoral materials at Mbalom Council Ward 9 (Onikepo B. 2022),

In Bauchi State though the 2019 governorship election was conducted peacefully there came a serious conflict especially disruption of election materials including the result sheets at the local government collation center in Tafawa Balewa local government, the circumstance warranted the returning officer to use a separate sheet to collate and there after wrote an explanatory memorandum explaining why she used non-INEC result sheets to collate result. The state returning officer having regard to the statutory provision of the law rejected the Tafawa Balewa result and declared the election of the governorship in Bauchi as inconclusive (Onikepo B. 2022),

In Adamawa and Sokoto States, Election has also been declared inconclusive based on the margin of lead principle. In Adamawa State, according to the Independent National Electoral Commission, (40,988) votes were cancelled in 44 polling units across the State; the margin of lead was (32,476). The People's Democratic Party Candidate Ahmadu Fintiri was leading having polled (367,471) votes against Mr. Bindow who polled (334,995) votes. The total number of accredited voters in the election is (894,481) votes (Onikepo B. 2022).

The case of Sokoto State in 2019 is also the point of reference, Governor Aminu Waziri Tambuwal of the PDP scored (489,558) votes to defeat Ahmad Aliyu of the APC who scored (486,145) votes leaving a margin of (3,413) votes, while (75,403) votes were cancelled because of violence in some polling units across the state. The returning officer declared the Sokoto election as inconclusive.

In the 2023 election, the election of two states namely Adamawa and Kebbi states were declared inconclusive by the respective INEC returning officers. In the case of Adamawa Governor Ahmadu Fintiri of PDP state scored (421,524) votes to defeat his APC opponent Aisha Dahiru Binani who polled (390,275) votes. Governor Fintiri in the analysis made won election in the (13) out of the 21 local governments while Sen. Aisha Binani won the remaining local government. But the election was declared inconclusive hence the margin of lead between Fintiri and Sen. Binani was put at (30,000) votes while the total number of cancelled votes was put at (37,000) votes.

As for the 2023 governorship election in Kebbi state the problem of the cancelled votes exceeding the margin of lead equally resulted in declaring the governorship election as inconclusive. According to the state returning officer Prof Yusuf Said stated that. 'we aggregated the total number of collated PVCs in those polling units and it came to a total of (91,829) and we checked the result, the two leading political parties in this contest APC and PDP polled (388,258) and (342,980) votes respectively when we looked at the difference it stands at (45,278)' (NAN 2023).

THE ZAMFARA 2023 SCENARIO

The scenario that relates to the conduct of the 2023 governorship election in Zamfara state was both unique and confusing hence the model of the 'Principle of the Margin of Lead' was vehemently disregarded. In the March 2023 governorship poll in Zamfara Dauda Lawal, the PDP candidate polled (377,726) to defeat the incumbent Governor Bello Matawalle of the APC who scored a total of (311,976) votes. In the same result a total (of 85,062) votes were cancelled in various registration areas of the state even as INEC was unable to conduct an election at in four registration areas of Birnin Magaji local government with a total of (46,000) registered voters. The expectation of everyone in Zamfara was for the returning officer to declare the election of Governorship in Zamfara as inconclusive hence the total number of votes cast plus the number of registered voters where the election did not hold multiplied the margin of lead based on the prescription above (Maradun 2023).

But the INEC returning officer for the governorship election in Zamfara declared the PDP candidate as the winner against the provision of the Principle of Margin of lead. while at the state collation center, one of the APC agents Dr. Mikailu Barau stood up to inquire how legitimate was the decision of the state returning officer for announcing the winner when he knew he has issued a directive to all political parties to mobilize their political forces for the conduct of the re-run election in the registration areas (RA's) affected by non-conduct of election in Birnin Magaji. Against that objection by the APC, and without recourse to the violation of the various

provisions of the electoral act 2022 (as amended) and INEC guidelines for the conduct of the 2023 elections, the Commission went ahead to declare the 2023 governorship election as conclusive and declared PDP candidate as the winner of the governorship poll.

DETERMINATION OF ISSUES OF LAW AND FACTS REGARDING “THE MARGIN OF LEAD PRINCIPLE” AND OTHER ISSUES SURROUNDING THE CONDUCT OF THE ZAMFARA 2023 GOVERNORSHIP ELECTION

The number one issue challenged by the APC in the aftermath of the conduct of the governorship election by the electoral commission in Nigeria is numerous. Principal among them is the issue of the margin of lead. (Hamisu 2023), the number one illegality we are challenging the INEC is the main declaration of a winner without recourse to the principle of the margin of lead. The Principle of the margin of lead can best be observed in section 26 and 53 of the Electoral Act 2022 (as amended) and also paragraph 41(e) and 43(b) of the INEC regulation and guidelines for the conduct of election. It states that: a re-run election should be declared if the margin of victory in an election is lower than the cancelled votes. Besides the law, there are many decided cases by the Supreme Court regarding the application of the margin of lead in an election which he said are clear judicial precedents which that can determine by the election petition tribunal.

Another issue of concern for the APC is the non-conduct of election in the four registration areas of Birnin Magaji local government areas of the state. According to the committee report set up by the Zamfara APC, it states that, “the fact remains that, INEC was not able to deploy election materials for the conduct of the election in the (4) four wards of Birnin Magaji comprising of (84) eighty-four polling units with over (42,000) forty-two thousand registered voters. The Resident Electoral Commissioner of the state announced during the collation of the governorship result that, a winner will not be declared in the Zamfara Governorship race until election in the four registration areas is conducted and results are collated and that has been the valid position of the law. All political parties at the state collation center where he made the pronouncement were asked to communicate to their members and asked them to get prepared for the re-run election in the four wards of Birnin Magaji on Tuesday the 21st of March 2023”. The report added that “surprisingly however, the Resident Electoral Commissioner decided to change the decision for reasons best known to him and go ahead to declare the winner few hours to the commencement of the voting in the four registration areas (RA’s) of Birnin Magaji. He took the decision without mindful of the provision of the section 24(3) and (4) of the Electoral Act 2020 (as amended).

For clarity, Section 24(3) (4) of the electoral act 2022 (as amended) states that: where election has

commenced and there is a reason to believe that there is or has been substantial disruption of election in a polling unit or constituency or it is impossible to continue with the election occasioned by threat to peace and security of the electoral officials and materials the commission shall suspend the election and appoint another date for the continuation of the election or the process. Sub section (4) states: “where the commission appoints a substituted date in accordance with sub-sections (2) and (3) there shall be no return for the election until polling has taken place in the area or areas affected”

In the opinion of (Kaura 2023), INEC as an electoral umpire is expected to understand that by the declaration of a winner in the Zamfara 2023 governorship polls, it has acted against the constitutional rights of these (42,000) registered voters who are empowered by the Nigerian constitution to exercise their franchise by voting for the candidate of their own choice. Added to this argument, (Kabir 2023) argued, “I read from the submission of the INEC National Commissioner in charge of voter education Mr, Festus Okoye that “if on the account of our own logistics, we are unable to deploy election materials and personnel in some areas, it will be unjust to deny the people their right to vote. We will go back and ensure that election is conducted before the winner is finally returned”.

Another delicate issue connected with the 2023 Zamfara governorship election is the refusal of the INEC to accept the collated result from Maradun local government and instead resorted to using the data from the IREV to declare the result of the local government area. (Jafar 2023) argued, INEC knew very well that it is out of law to use result from the internet in declaring an election hence the law recognizes only result collated by a designated collation officer. He cited reference with the case of Dino Melaye versus Mahmud Yakubu the Chairman of INEC where Melaye was loudly and clearly informed that, INEC recognizes result collated by respective state collation officers only when he challenged the commission to use results uploaded from the IREV in declaring the 2023 presidential election.

Barau 2023, argued, “we saw how collation was made for other local governments twelve for instance why is the procedure changing in case of Maradun?. The first observation is that, this is not the approach used in declaring other local governments why Maradun?, collation officers went to the field collated result and they came here and presented it why is Maradun different you rather went to the internet download result and declared a winner and to the best of our understanding this is a sharp contravention of an established procedure why Maradun?. The rejection of the Maradun collated result in the opinion of (Lawal 2023) is a clear issue to be challenged on the point of law at the tribunal. The question is, does the Resident Electoral Commissioner or the returning officer has the power under the electoral act to reject result collated by returning officers from respective local governments?

There is also the issue of additional (50) polling units where case of over-voting was detected. As argued by (Jafar 2023), during the cause of evaluation of the result sheets visa-vie the total number of votes cast it was detected that (50) polling units across the state had cases of over voting where the number of votes cast exceeded the number of voters accredited based the data extracted from the B-Vass report and in this type of situation it is a clear case that the tribunal will eventually ordered for the cancellation of these polling units.

LESSONS TO LEARN FROM THE ZAMFARA GOVERNORSHIP 2023 ELECTION

It was a general consensus among the political observers that the conduct of the 2023 governorship election by the INEC in Zamfara has left many lessons for the political class and indeed the citizens to learn even as the commission claimed that, it has adopted renewed strategies aimed at enhancing the credibility of the nation's electoral process since 1999.

Lesson number one is that people have seen in the case of election in Zamfara how INEC became inconsistent in terms of applying the law where it is required required. As argued by (Jafar 2023), there is no reason why INEC should be selective in terms of where to apply law and where not. Take example of Maradun result, one strategy has been used in declaring result of the (13) local governments another different strategy was again used in declaring the result of Maradun. Sharply however, the application of this law is not in tandem with the position of the law since there are many Supreme Court decisions to this effect. (Bala 2023) argued, we have seen how same INEC refused to make use of the data from the IREV to declare the result of Kaduna where Ashiru Kudan was leading Sen. Uba Sani the current governor by difference of (3000) votes and instead resorted to using result collated by the respective returning officers from the local governments to declare Sen. Uba Sani. This means INEC is totally inconsistent when it comes to the application of the electoral laws.

To buttress this point, (Jamilu 2023) argued, it was very clear that section 26 of the electoral act 2022 (as amended) has clearly made provision for what to be done where INEC failed to mobilize for the conduct of an election and for the reason of being selective in the application of the law, it refused to honor the provision of the electoral act by ensuring that election is conducted in the (84) polling units of Birnin Magaji and thereafter declared the result of the election and announced the Governor elect for Zamfara.

Another lesson to be learn is that, returning officers who are basically ad-hoc staff employed by INEC most a time are not adequately informed about the appropriate decisions to take when it comes to the stage of declaration. The application of the "Principle of the Margin of Lead" in an election is clearly an issue of law and for

whatever reason, this principle need to be applied across all states and strata of elections. As argued by (Jafar 2023) the returning officer need to be clearly trained to understand that it is an electoral catastrophe to declare a winner in an election where the total number of votes cast exceeded the margin of lead. In the case of Zamfara, there are over (88,000) cancelled votes/ registered voters where election did not hold in the case of Birnin Magaji and the returning officer knowing fully that (88,000) is greater than (66,000) he ought to have declare the Zamfara governorship election as inconclusive. To buttress this point (Hamisu 2023) argued, it was similar scenario that occurred in the case of Sen. Marafa versus Ikira Aliyu Bilbis and in the case of Sanusi Rikiji versus Kabiru Amadu all in Zamfara state and same election and because the number of votes cancelled exceeded the margin of win the returning officer Prof. Ahmad Galadima in this case declared the election as inconclusive. Why is Zamfara governorship election different?

Another lesson learned is how the law is short-changed in the case of Maradun because the popular argument is that, data from B-Vas or IREV are not meant for declaration of winners rather provided to enhance transparency of the nation's electoral process. As argued by (Salman 2023), it was only in Zamfara where we are making history that data from the IREV can be used in declaring a winner in an election. This new development in our electoral process and even the INEC does not have the backing of the law to justify its decision to declare the Zamfara 2023 Governorship election of Maradun using the IREV data. He cited reference with the case of Dino Melaye versus Mahmud Yakubu where INEC stated loudly and clear that "it will only rely on the results collated from respective state returning officers to declare a winner in an election.

It was also a lesson learned that, INEC in clear breach of the provision of section 65 of the electoral act 2022 (as amended) has refused the application to review its declaration made despite request by the APC. As argued by (Salman 2023), the electoral act clearly empowered INEC to review its decision where parties involved in an election believed that there are grounds to warrant that. The APC in a letter by its counsel Usman O. Sule (SAN) had asked the commission in Zamfara to review itself on the ground of infractions detected with the declaration. In strict compliance with that provision, the commission is expected to review itself and reconsider those areas of infractions amendable but it has ignored the request and instead issued the certificate of return to the PDP candidate it has declared as winner. He stated that "INEC is proving to be bigger than the electoral law because the law.

The last lesson learned was how politicians take advantage of the weakness of the electoral commission to instigate actions that are in contravention of the statutory laws in the Nigerian electoral process. As argued by (Salman 2023) the development with regard to Zamfara governorship election in 2023 and the major

infractions detected may not be unconnected with the privilege politicians taking advantage of the weakness of the commission and some of its staff to buy victory for themselves against the provision of the laws.

CONCLUSION

From the discussion so far the development with regard to the application of the “principle of margin of lead” in the conduct of an election in Zamfara has been vehemently abused by the Independent National Electoral Commission (INEC). The historical antecedent as captured in the discussion made so far has indicated the principle has now become a substantial ground in the nation’s electoral process since many elections were cancelled as a result of its provisions and application. The inconsistency of the nation’s electoral umpire in the case of Zamfara 2023 governorship election will now be tested before the competent court of law to ascertain whether the commission can unilaterally work against the electoral laws without being guided by the court.

Again the volume of the decided cases that relate to this particular scenario of the application of the margin of lead principles is more than adequate to await the decision of the court to decide whether or not it is right to cancel elections in some places for the reason of the consideration of the principle and sustain another election that is in violation of the same principle. The decision of the tribunal in the case of Zamfara governorship election will now come to establish whether the application of the principle of the margin of lead in the Nigerian electoral process is compulsory, selective or optional.

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