

## THE LEGAL BURDEN ON THE INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) BY THE ELECTORAL ACT 2022\*

### Abstract

*The mission of the Independent National Electoral Commission (INEC) is to serve as an independent and effective Election Management Bodies (EMB), committed to the conduct of free, fair and credible elections for sustainable democracy in Nigeria. Nigeria being a developing country, INEC has found itself having enormous amount of responsibilities which has been amplified with the passage of the Electoral Act 2022 (as amended). It is thus imperative that in order to reap the full dividends of elections, the body conducting it should have its roles sieved out in clear terms to ensure efficiency and accountability. This article scrutinized this legal burden upon INEC by the Electoral Act 2022 (as amended) and analyzed the challenges that they confront when discharging these responsibilities. Through a detailed examination of the Electoral Act 2022 and case laws, this article identified several core mandates that are legally placed upon INEC by the Electoral Act. These range from voter registration to primary election conduct and result management procedures as well. It also explored the legal implications that could arise if these crucial responsibilities are not adequately fulfilled in practice during the course of an election. Ultimately this study proposes feasible strategies for enhancing INEC's operational performance while underlining how critical it remains towards ensuring impartiality & transparency during Nigerian elections.*

**Keywords:** Independent National Electoral Commission, Electoral Act, Legal Burden, Free and Fair Elections, Legal Responsibility.

### 1. Introduction

The conduct of free, credible and fair elections is a very solid principle of democratic governance in Nigeria; the Independent National Electoral Commission (hereinafter referred to as INEC) plays an important role in ensuring the absolute integrity of the electoral process. The establishment of the Commission is consolidated on the provisions of Section 153(1)(f) of the Constitution of the Federal Republic of Nigeria 1999 as amended (hereinafter referred to as CFRN 1999), in essence, it gives legality to the commission's existence. The INEC is vested with different powers and responsibilities under Section 153(2) of the CFRN 1999 and such are listed under item 15 of part 1 to the 3rd Schedule. Some of these responsibilities include the undertaking and supervision of elections, registration of political parties, monitoring of political campaigns in elections, amongst others. Under that item, the INEC is also obligated to carry out responsibilities imposed on it, as well as exercise powers conferred on it by the Act of the National Assembly. Nigeria, as a democratic State, has always been determined to achieve a transparent, credible, free and fair electoral process in the past years. President Muhammadu Buhari signed the 2022 Electoral Act Amendment Bill into Law on February 25, 2022<sup>1</sup>. The CFRN 1999<sup>2</sup> as well as the Electoral Act 2022, makes provision for the establishment of the Commission<sup>3</sup>, sets out its legal boundaries and framework vide its provisions for the conduct of elections in Nigeria and places significant mandates on INEC to ensure the impartiality and credibility of the electoral process. The Act incorporates several provisions of a high legal responsibility placed on INEC to secure credible elections in Nigeria. However, carrying out this legal burden may be challenging, and non-compliance will lead to nullification of the election result and this will pose a legal challenge to INEC's decision. Hence, this paper analyzed the legal burden placed on INEC by the Electoral Act 2022, explored the challenges in discharging this legal burden and gave feasible recommendations.

To achieve this, the article addressed the following research questions:

1. What are the core legal burdens that the Electoral Act 2022 places on INEC to ensure credibility and Integrity in the election process in Nigeria?
2. What are the legal implications that may arise in a situation of non-compliance with the stipulated provisions of the Electoral Act 2022?
3. What strategies can INEC employ to enhance its operation in fulfillment of its legal burden in line with the Electoral Act 2022?

To address these questions, the article examined the core mandates that INEC must fulfill under the Electoral Act 2022, including voter registration, primary election conduct, and result management procedures. Additionally, the article identified the legal implications that arise when INEC fails to fulfill its legal obligations and proposed feasible strategies to enhance INEC's operational performance. By addressing these issues, this study aimed to provide valuable insights into the legal burden of INEC by the Electoral Act 2022 and its impact on the conduct of free, fair, and credible elections in Nigeria. Ultimately, the article highlighted the critical role that INEC plays in ensuring impartiality and transparency during Nigerian elections and the need to ensure that the institution fulfills its legal responsibilities under the Electoral Act 2022.

### 2. The Legal Burden Placed on INEC by the Electoral Act 2022 to Ensure Credible Elections in Nigeria

The independent National Electoral Commission (INEC) has some crucial burden placed on it by the legislation. Section 2 of the Electoral Act, 2022 provides that the Commission is saddled with the responsibility of conducting voters and citizen education; promoting knowledge of sound democratic process; conduct any referendum that needs to be conducted under the provisions of the Constitution or an Act of the National Assembly. These duties include:

- Burden of conducting election and strict adherence to its procedures;
- Burden to ensure compliance on Political Parties;
- Burden to register Voters and keep an appropriate voters' register;
- Burden to transmit election results electronically;
- Burden to maintain neutrality throughout the election process,

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<sup>1</sup>Michael, Onyishi 'is the Election Act 2022 a game changer?' Business day, March 9<sup>th</sup> 2023. Retrieved from: <https://businessday.ng/news/legal-business/article/is-the-electoral-act-a-game-changer-to-perceived-infractions/#:~:text=INEC%20must%20show%20that%20the,the%20outcome%20of%20the%20election> Last accessed: 10<sup>th</sup> May, 2023.

<sup>2</sup> CFRN 1999 s. 153

<sup>3</sup> Electoral Act 2022 s. 1

### **Burden of Conducting Elections And Strict Adherence To Its Procedures**

The primary burden and obligation of the Independent National Electoral Commission (INEC) under the Electoral Act, 2022 which is the extant electoral framework in Nigeria is to conduct elections and ensure strict adherence to its procedure. The Electoral Act, 2022 has statutorily saddled the INEC with the burden of conducting elections from Presidential level down to Ward level elections. This burden reflects the primary obligation of INEC as a Commission created under the Constitution of the Federal Republic of Nigeria, 1999.<sup>4</sup>The obligation to conduct elections and to ensure strict adherence to its procedure ranges from the registration of voters, maintaining a continuous voters register, establishment of polling units, provision of adequate ballot papers and voting devices, procedure during election, electronic transmission of results in real time in the IRev portal, the use of Bimodal Voter Accreditation System (BIVAS), etc. The burden and obligation of INEC in conducting election and ensuring strict adherence to its procedure can be well gleaned from the many provisions of the Electoral Act 2022 and in extension, the Regulations and Guidelines For the Conduct of Elections, 2022. This paper shall critically examine this burden by meticulously looking at the provisions under the Electoral Act, 2022 and the Regulations and Guidelines for the Conduct of Elections, 2022 to properly capture this. Under the Electoral Act 2022, as one of the obligations of INEC in conducting elections, is to have a National Register of Voters and to register voters.<sup>5</sup> Section 9(1) expressly provides that ‘the Commission shall compile, maintain, and update, on a continuous basis, a National Register of Voters (in this Act referred to as ‘the Register of Voters’) which shall include the names of all persons –

- a) entitled to vote in any Federal, State, Local Government or Federal Capital Territory Area Council election, and
- b) with disability status disaggregated by type of disability.

This Register of Voters shall be kept by the Commission in its National headquarters and other locations as the Commission may determine. Provided that the Commission shall keep the Register of voters in ----

- a) electronic format in its central database; and
- b) manual, printed, paper-based record or hard copy format.<sup>6</sup>

It is pertinent to note that in the registration of voters, INEC is mandated to take into cognizance the constitutional and statutory qualification requirement for such registration. By the provision of Section 12(1) and (2) of the Electoral Act, 2022, ‘A person shall only be qualified to be registered as voter if such a person ---

- a) is a citizen of Nigeria.
- b) has attained the age of 18 years;
- c) is ordinarily resident, works in, originates from the Local Government Area Council or Ward covered by the registration centre;
- d) presents himself to the registration officers of the Commission for registration as a voter; and
- e) is not subject to any legal incapacity to vote under any law, rule or regulation in force in Nigeria.

Subsection (2) makes it clear that ‘a person shall not register in more than one registration centre or register more than once in the same registration centre. The Commission in the exercise of registering voters for elections is empowered to print or issue voters card to registered voters. <sup>7</sup> According to Paragraph F of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria, the Independent National Electoral Commission (INEC), is vested with the powers to organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation. In the conducting of these elections, INEC is required by law to adhere to all the procedures enlisted in the Part IV of the Electoral Act, 2022. Part IV of the Act generally contains several due processes for the smooth running of elections, ranging from actions to be taken where there is a substantial disruption of election in a polling unit or constituency or where the election has occasioned a threat to peace in the country<sup>8</sup>, the procedure for the announcement of results of the elections<sup>9</sup>, the oath of neutrality and loyalty of the electoral officers, preventing them from accepting bribes or gratification from any person and ensuring that they perform their functions and discharge their duties impartially<sup>10</sup>, and means of appointment of officers, with the rule that no person who is a member of a political party or who has openly expressed support for any candidate can be appointed<sup>11</sup>.

In a bid to ensure that elections are conducted with the appropriate equipment and with qualified and capable polling agents, Section 41 of the Act provides that INEC shall provide suitable ballot boxes and other voting devices, with polling agents present at the distribution of the electoral materials. It however, gives the commission the liberty to prescribe the format of the ballot papers to be distributed, however providing that there shall be differentiating colours for each office being contested<sup>12</sup>. However, the forms must be recorded and the quantity, serial numbers and other particulars of result sheets, ballot papers and other sensitive electoral material should be made available otherwise the elections would be invalid<sup>13</sup>. Any presiding officer that intentionally announces or signs any election result in violation of the above subsection shall be guilty of an offence and be liable on conviction to a fine of 10 million naira or imprisonment for a term of at least one year or both<sup>14</sup>. Section 44 provides that not later than 14 days before the day of the election, the commission shall publish a notice specifying the days and hours fixed for the poll, persons entitled to vote and location of the polling units, with the commission expected to stick to whatever date and time they have provided.<sup>15</sup>Section 50 of the Act also provides that the conduct of the poll shall be by open secret ballot. The Act goes on to provide the means for the counting of votes and forms, stating that it shall be done

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<sup>4</sup> s. 153(1) (f)

<sup>5</sup> Electoral Act, 2022, s. 9.

<sup>6</sup> *Ibid*, S.9(1).

<sup>7</sup> *ibid*, S. 16(1).

<sup>8</sup> Electoral Act, s.24

<sup>9</sup> Electoral Act, s.25

<sup>10</sup> Electoral Act, s.26.

<sup>11</sup> Electoral Act, s.27

<sup>12</sup> Electoral Act. s. 42

<sup>13</sup> Electoral Act, s. 73(2)

<sup>14</sup> Electoral Act, s. 73(3).

<sup>15</sup> Electoral Act, s. 45

by the presiding officer of each poll<sup>16</sup> and providing that in counting of votes, any ballot paper which does not bear the official mark prescribed by the commission shall not be counted<sup>17</sup>. It also gives strict procedures as to the counting and announcement of results and providing that any presiding officer that contravenes the procedures laid down in Section 60 of the Act shall be guilty of an offence with the conviction to a fine of not more than 500,000 naira or imprisonment for a term of at least six months.<sup>18</sup> The Act also provides that the commission shall compile and update the results sent by the presiding officers of each polling unit, and that the final result shall be ascertained by counting the votes cast for each candidate and that subject to the provisions of Section 133, 134 and 179 of the Constitution, the candidate that receives the highest number of votes shall be declared elected by the appropriate returning officer<sup>19</sup>.

The burden of strict compliance to the procedures laid out in the Electoral Act cannot be overemphasized. Hence, even though it was stated in the case of *CPC V. INEC*<sup>20</sup> that once the electoral commission announces the result of an election, it is presumed correct and authentic and anyone who alleges otherwise has a compelling duty to prove that the results are incorrect and not authentic, according to Section 134 of the Electoral Act, the outcome of an election can be questioned or challenged and subsequently rendered invalid if there was non-compliance with the provisions of the act. Therefore, INEC has the duty of ensuring that the procedures as enlisted in the Act are strictly adhered to so as to bring about the conduct of free, fair and credible elections.

### **Burden to Ensure Compliance on Political Parties**

The Commission equally has the task of ensuring that political parties adhere to the regulations stated in the Electoral Act, 2022. The rules regulating the registration, symbols, merger, monitoring etc of political parties, as contained in Part V of the Electoral Act 2022, provide that a political association must comply with the provisions of the constitution in order to be registered<sup>21</sup> and that any association, its executive members or principal officer which gives false or misleading information for the purposes of being registered shall be guilty of an offence and liable, in the case of an association, to a fine of 5 million naira and each executive or principal officer of the association to a fine of 3 million naira or imprisonment for a term of at least two years or both. The Act also states that any political party or association that contravenes the provisions of Section 227 of the Constitution, which provides that no association shall train or organise a group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest or in such manner as to arouse reasonable apprehension that they are organised or trained or equipped for that purpose, shall be guilty of an offence and liable for a sum of up to 7 million naira depending on the number of times such an offence is committed.<sup>22</sup> Section 88 of the Electoral Act provides a limitation as to the expenses which can be incurred by a candidate at a presidential or governorship election, and Section 91 provides that political rallies shall be proper and peaceful, with Section 93 prohibits the use of force or violence during political campaign. Section 92 goes on to provide that the political campaign or slogan of political parties shall not be tainted with abusive language directly or indirectly likely to injure religious, ethnic, tribal or sectional feelings. In the same line, Section 97 provides that a candidate, person or association that engages in campaigning or broadcasting based on religious, tribal, or sectional reason for the purpose of promoting or opposing a particular political party or the election of a particular candidate, commits an offence under the act.

The Act goes on to provide that the commission shall keep records of the activities of all the registered political parties.<sup>23</sup> In this view, and in pursuance of the provisions of the act, during the previous elections, the electoral body insisted that all political parties must draw from their constitutions, guidelines, the Electoral Act and other regulations and guidelines issued by the commission, warning that where a political party fails to comply with the provisions of the Act in the conduct of its primaries, its candidate shall not be included in the election for the particular position in issue. Hence, candidates of certain political parties during the governorship election in Osun State, such as Action Alliance, African Democratic Congress and All Progressives Grand Alliance, were barred from participating in the July 16<sup>th</sup>, 2022 election.<sup>24</sup>

### **Burden to Provide and Keep an Appropriate Voters Register and Register Voters**

INEC being the body to handle and conduct electoral matters has that responsibility to ensure that it keeps a clear record of voters in the country to ensure a free and fair election in the country and that the Citizens franchise are exercised. This duty is important as it precedes other duties as provided by the Act<sup>25</sup>. This is because without a voters registration/register, then there can be no election. Thus the Act has placed on the INEC the crucial burden to register voters and provide a comprehensive register of voters in the county as provided under Part III of the Electoral Act 2022 which comprises Sections 9 to 23. Moving forward, the Act includes provisions on the following: the eligibility to register as a voter; the procedure for registration; the requirements for updating the voters register, the use of the voters register. It is designed to improve the process of voter registration in Nigeria. The Act also provides for a number of reforms that are intended to make the process more transparent, fair, and inclusive. Some of the key provisions of Part III of the Electoral Act 2022 include:

- The requirement for the Independent National Electoral Commission (INEC) to register all eligible voters.
- The establishment of a central database of voters.
- The provision for the use of technology to improve the accuracy and transparency of the voter registration process.

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<sup>16</sup> Electoral Act, s. 60(1).

<sup>17</sup> Electoral Act, s. 63(1).

<sup>18</sup> Electoral Act, s. 60(6).

<sup>19</sup> Electoral Act, s. 66.

<sup>20</sup> (2011) LPELR – 8257 (SC)

<sup>21</sup> Electoral Act, s. 75(1).

<sup>22</sup> Electoral Act, s. 78.

<sup>23</sup> Electoral Act, s.83.

<sup>24</sup> Egbamuno U, 'Why Political Parties Must Adhere to Guidelines – INEC' (*Nigeria Info, Let's Talk!*, 5 April 2022) <<https://www.nigeriainfo.fm/news/homepage/why-political-parties-must-adhere-to-guidelines-inec/>> accessed 5 June 2023

<sup>25</sup> Electoral Act 2022 Part III

Section 9 of the Electoral Act 2022 generally provides for National register of voters and voters' registration. The Section is to the sharp effect that INEC shall compile, maintain and update on a continuous bases the National voters register<sup>26</sup>. This should be done through electronic format in its central database and manually, hard copy or printed<sup>27</sup>. It also provides for a time period (not later than 90 days before any election) where updating and revision of voters register to take place.<sup>28</sup> Also, the Commission under this section has the duty to register voters at the designated registration center. To consolidate this provision, Section 17 of the Electoral Act provides that each electoral officer shall take custody of the voters' register of his or her Area under the careful supervision of the Resident Electoral Commissioner. Thus this shows that the Electoral Act has placed in the Commission the primary responsibility of registration of voters and maintaining an updated data register of voters. To buttress this legal duty of the registration of voters, the court in the case of *Akinwunmi Ambode v Independent National Electoral Commission (INEC) & ORS*<sup>29</sup> pointed out the importance of INEC maintaining an effective and comprehensive voters register. Furthermore, for the sole purpose of maintaining an effective Voters register, the Act<sup>30</sup> provides that INEC shall appoint officers who are not members of any political party to maintain, revise and manage the Voters' register. In dispensing this duty, due diligence is required. Thus the Commission in the discharge of its duties is not answerable to a political party, neither is it subject to the authority of any person except otherwise stipulated by the Electoral Act. Also, officers that INEC will employ must have no affiliations or political party or any authority which draws its power from a political party.

Moving on, Section 10 of the Electoral Act provides that INEC shall continue to register persons who are qualified to be voters in Nigeria. This means that the Independent National Electoral Commission (INEC) is required to continuously register voters, regardless of whether or not there is an election scheduled. This is in contrast to the Electoral Act 2010, which only allowed for registration of voters in the lead-up to an election. The Continuous registration of voters is important for a number of reasons. First, it ensures that all eligible voters have the opportunity to register, regardless of when they turn 18 or become otherwise eligible to vote. Second, it helps to keep the voter register up-to-date, so that INEC can accurately determine the number of eligible voters and ensure that all votes are counted. However, by Section 9(6) of the Act, the registration of voters, updating and revision of the voters register shall stop not later than 30 days before any election covered by the Act. This provision made by the Act helps to reduce the number of people who are turned away from the polls on Election Day because they are not registered to vote. Section 10 of the Electoral Act 2022 places a responsibility on INEC towards ensuring that all eligible Nigerians have the opportunity to participate in the electoral process. It is a key component of a free and fair election, and it is essential for the continued development of democracy in Nigeria. The spirit of Section 19 of the Act is to the effect that INEC shall not later than 90 days to the general election, appoint a period of 7 days during which a copy of the voters' registration would be made public in each of the Local Government, Area Council or Ward for scrutiny by voters and other members of the public. This responsibility is placed on the Commission to enable the public raise objection as to the registration. After such objection has been raised within a period of 14days after the display of the register in the manner as prescribed by the Act<sup>31</sup>, then the commission will address the matter.

#### **Burden to Transmit Election Results Electronically**

With the advent of the Electoral Act 2022 the amendment as to the mode of election results transmission has been made. There is a duty on the Commission to transmit election results electronically as opposed to the manual transmission which was prevalent before the enactment of the Electoral Act 2022. The electronic transmission of election results came into existence in light of the Electoral 2022. It is the basic idea and analogy that since the INEC is saddled with the responsibility of conducting elections in Nigeria, then it should be responsible for the transmission of results. The INEC Regulation plays a directory role in this duty. Clause 38 in the INEC Regulation introduces the electronic transmission of election results. This regulation is a subsidiary legislation, as it flows from the primary lawmaking responsibility of the legislature, which had delegated its power to the body. Any action in defiance of the regulation by those bound by it is therefore unlawful, as the regulation carries the same weight and force as the law empowering it. The court in the case of *Best Njoku v. Chief Mike Iheanatu*<sup>32</sup> held that a subsidiary legislation is one that is subsequently made pursuant to the powers conferred by the principal legislation to which it is complimentary; it has the force of law. Therefore, it raises no question as to the validity of the power of INEC to make rules to regulate its own procedures, save for where the regulations are in conflict with the constitution or the Electoral Act empowering it; where the latter occurs, it is null and void. The electronic transmission of election results by virtue of being in the INEC regulation, receives the force of the law. Since it receives the force of law then it places a responsibility for the Commission to transmit the election results electronically as opposed to the formally used manual transmission.

#### **Burden to Maintain Neutrality throughout the Election Process**

Neutrality is a very important concept the Electoral Act 2022 has provided in order to ensure a free and credible election in Nigeria. Neutrality means standing alone without siding any entity in order to avoid bias and ensure transparency. Section 8(5) of the Electoral Act makes it an offence for members of political parties who seek appointment with INEC or are being appointed to work in INEC, failing to disclose their membership, affiliation or connection with a political party to INEC. Further, the Section states that any INEC official with political affiliations commits an offence and is subject to a fine of ₦5, 000,000 (Five Million Naira) or imprisonment for a term not exceeding two years, or both, if convicted. Electoral Officers are mandated to affirm or swear to an Oath of Loyalty and Neutrality indicating that they would not accept bribe or gratification from any person, and shall perform their functions and duties impartially and in the interests of the Federal Republic of Nigeria without fear or favour.<sup>33</sup>

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<sup>26</sup> Section 9 (1)

<sup>27</sup> Section 9 (2)

<sup>28</sup> Section 9 (6)

<sup>29</sup> FHC/L/CS/1034/2019 (Unreported)

<sup>30</sup> Electoral Act Section 11

<sup>31</sup> Electoral Act 2022 S. 19 (2)

<sup>32</sup> (2008)LCN/2886(CA)

<sup>33</sup> Electoral Act 2022 S. 28

### 3. Legal Implications that may arise in a Situation of Non-Compliance with the Provisions of Electoral Act 2022

Section 134 (1) (a-c) of the Electoral Act provides in clear terms the grounds on which a petition may be brought. Among the grounds provided under paragraphs a-c is on the grounds of 'non-compliance' with the provisions of the Act. Paragraph b provides in clear terms that:

- a) An election may be questioned on any of the following grounds –
- b) the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act.

The effect of this provision is that when there is non-compliance with the provisions of the Electoral Act by either the INEC or any of the candidates in an election, a petitioner may challenge it on the grounds of non-compliance. Non-compliance with the provisions of the Electoral Act 2022 is a sufficient ground to invalidate an election. The Act also goes further to state under Section 137 that it shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly discloses the non-compliance alleged. The effect of non-compliance with the provisions of an Electoral Act has been given judicial imprimatur in a long line of decisions. However it is imperative to note that for non-compliance to ground an election, the said non-compliance must be substantial as to satisfy the court that same affected the generality and the outcome of the election. Thus, in *Ambrari & Anor v Saraki & Ors*<sup>34</sup>, his lordship Per Sankey, J.C.A in his considered words held on the non compliance with the Electoral Act vis: 'the law is that, for any non-compliance with the provisions of the Electoral Act to render an election invalid, same must be such as to satisfy the Court or Tribunal that it affected or might have affected the majority of the voters or the result of the election'<sup>35</sup> This position is well captured also under Section 135(1) of the Electoral Act, 2022 which is to the effect that an election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election. It is further instructive to note that, it is the duty of a petitioner in proving allegation of non-compliance with the Electoral Act. In *Andrew & Anor v INEC & Ors*<sup>36</sup> the Supreme Court per Onnoghen, J.S.C held thus:

for one to succeed on the grounds of non-compliance with the Electoral Act, it is now settled law that where a petitioner alleges non-compliance with the provisions of the Electoral Act, he has the onus of presenting credible evidence from eye witnesses at the various polling units who can testify directly in proof of the alleged non-compliance<sup>37</sup>

Therefore, it does not suffice for a petitioner to just allege non-compliance with the provisions of the Electoral Act, but the duty beholds on the person to prove such non-compliance by calling credible witnesses to testify. Therefore, the effect from the foregoing is that where a petitioner who alleges non-compliance fails to prove the non-compliance which he asserts, and that the said non-compliance was substantial as to affect the election he cannot succeed on this ground notwithstanding that the law has provided 'non-compliance' with the Electoral Act as one of the grounds on which an election may be questioned. The need to prove 'non-compliance' with the Electoral Act is an incidence of the trite evidential principle of law that, 'he who asserts must prove'. Nigerians trooped to the polls on February 25 and March 18, 2023, to elect a new President, National Assembly Members as well as 28 State Governors and members of 36 State Houses of Assembly. It was the seventh consecutive general election since the return of the country to democracy in 1999. This represents 23 years of unbroken democracy, the longest in the history of Nigeria. The Presidential election was contested by eighteen political parties and conducted under a new electoral framework. The new electoral framework known as the Electoral Act 2022 as amended, allows the country's electoral body, the Independent National Electoral Commission (INEC), the use of Technology for the conduct of elections using Bimodal Voter Accreditation System(BVAS) for fingerprint and facial biometric identification and authentication of the voters.

The new Act also allows the commission to transmit election results electronically from the collation centers into the INEC servers and results viewing portal immediately after the counting of the votes. Invariably, the new technological innovation introduced by INEC, paved the way for online pre-registration system of voters and new INEC enrolment device which helped to reduce the long queues witnessed in previous voter registration and voting exercises in the past. The new Electoral Act as amended by the Nigerian National Assembly also extended the time for political campaigns from 90 to 150 days which has equally created the opportunity for politicians to visit the nooks and crannies of the country if they so desire.

However, instead of reducing the amount of money used in Nigerian politics, the Act jacked up campaign finance funds from an initial N1billion to N5 billion for presidential candidates. That for other elected positions was also increased significantly in the new electoral Act. There were 93.4 million registered Nigerian voters eligible to go to the polls. However, only a little above 30 million people turned out for the February 25 Presidential and National Assembly elections a far cry from those registered. Prior to the elections, the electoral umpire adopted some strategic action plans to ensure a successful and smooth conduct of the elections. To achieve that, the commission activated 2,673 additional permanent voter card registration centers nationwide, introduced simultaneous accreditation and voting system and created additional polling units nearer to the electorates. It also embarked on continuous engagements with election stakeholders such as security agencies, political party leaders, civil society groups and the media towards improving the electoral processes. In a bid to ensure that no eligible voter was disfranchised in the General Election, the commission made special provision for persons with disabilities, adequate provision for voters in Internally Displaced Camps to exercise their franchise during the elections.

The commission was equally engaged in continuous sensitization programmes on the processes and preparations for the elections by galvanizing the citizenry by ensuring that they understand and participate fully in the electoral proceedings for the peaceful conduct of the elections. Despite the mechanisms and measures put in place by the commission ahead of the elections, there were still some challenges encountered by the commission. Some of these challenges include attacks on INEC facilities and personnel in some parts of

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<sup>34</sup> (2009) LPELR-CA/IL/EP/SEN/20/2008

<sup>35</sup> *Amosun v INEC* (2007) ALL FWLR (pt. 391) 1712; *Dada v Dosunmu* (2006) ALL FWLR (pt. 343) 1605

<sup>36</sup> (2017) LPELR-SC.466/2017

<sup>37</sup> *Buhari v Obasanjo* (2005) 13 NWLR (pt. 941) 1 at 315-316; *Buhari v INEC* (2008) 18 NWLR (pt. 1120)246 at 391-392; *Okereke v Umahi* (2016) 11 NWLR (pt. 1524) 438 at 473; *Nyesom v Peterside* (2016) 7 NWLR (pt. 1512) 452

the country, vote buying and selling during elections, the malfunctioning of the BVAS in the transmission election results during the presidential election amongst other things. The last general election conducted on the 25<sup>th</sup> February, 2023 came with a lot of bedlam and cries by many Nigerians on the election violence, rigging and oppression that were replete across most states of the Federation and on the non-compliance by INEC with the provisions of the Electoral Act 2022 and the INEC Regulations and Guidelines for the Conduct of Elections 2022. After the collation and announcement of the results, it was voraciously challenged and called by the Nigeria's two largest opposition parties, the People's Democratic Party (PDP) and the Labour Party (LP) that the Presidential election be cancelled over allegation that the electoral commission (INEC) did not comply with the law. According to Ifeanyi Okowa, the Vice-Presidential Candidate of the PDP, he described the election as 'a sham, and never free and fair'<sup>38</sup>, a position corroborated by the LP's Vice-Presidential Candidate. Among the many grouse is that INEC failed to upload the results of elections in the over 170,000 polling units onto a central server (IReV) as required by law. That step should have been done before the collation and announcement of results.<sup>39</sup>

The two main opposition parties, the People's Democratic Party and the Labour Party have both petitioned the INEC, the APC and the APC Presidential Candidate, now President, Bola Ahmed Tinubu challenging the election which they have not failed to refer to as a 'sham and total embarrassment of the Nigerian democratic process'. Alleged non-compliance with the Electoral Act sign-posts the petition brought by the two opposition Parties and their Presidential Candidates. They have alleged that INEC did not comply with the provisions of the Electoral Act 2022. They inter alia alleged that INEC failed to transmit the result electronically in real time on the IReV Portal pursuant to Section 47 of the Electoral Act, that INEC also failed to comply with the provisions of the law which provides that a person cannot be validly returned as a President if he doesn't meet the requirement of 25% in 2/3<sup>rd</sup> States of the Federation and the FCT<sup>40</sup>. That the APC candidate who was returned by the INEC did not meet the provisions of the law as he scored less than 25% in the FCT and as such should not have been returned by the INEC. They have vociferously contended that INEC is in gross departure of the provisions of the Electoral Act and as such by their non-compliance with the Electoral Act and their guidelines, the consequent return of the APC Candidate should be invalidated.

Be that as it may, and as these issues are before the Court to be resolved, it is pertinent to consider if going by the provisions of Section 135 of the Electoral Act and a long line of judicial cases, the 2023 General Elections (particularly the Presidential elections) can be invalidated by reason of non-compliance with the Electoral Act. The wordings of the Section 135 of the Electoral Act is express that non-compliance with the provisions of the Act cannot invalidate an election and this position seems to resonate in tune with our courts as seen in a long line of cases.<sup>41</sup> Thus, the fact that INEC failed to comply with the provisions of Section 47 as alleged by the Petitioners by failing to transmit the result on the IReV Portal in real time does it invalidate the election? One may going by the raw letters of the provisions of Section 135 of the Electoral Act give a quick answer in the negative – that is, it cannot invalidate the election. However, caution to be had that, this is a keenly question, that the answers lies only within the purview and circumference of the court. In other words, only the court can answer this question looking at the facts and circumstances of the Petitioners' petitions. Notwithstanding the provision of Section 135 of the Electoral Act, the court may impute non-compliance looking at other grounds of which the INEC may have failed to avert its mind before going ahead to announce the results. Some of these grounds are constitutional grounds provided under the Constitution of the Federal Republic of Nigeria, 1999 and some others provided under the Electoral Act 2022. Under the Electoral Act, the grounds of petitions are clear vis-:

134.(1) An election may be questioned on any of the following grounds—

- (a) a person whose election is questioned was, at the time of the election, not qualified to contest the election;
- (b) the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or
- (c) the respondent was not duly elected by majority of lawful votes cast at the election.

Therefore, aside Section 134(b), the court can impute non-compliance by INEC with the provisions of the Electoral Act 2022 where it goes on to return a candidate who it is shown to either have been not qualified to contest the election or was not duly elected by majority of lawful votes cast at the election. Thus, the argument by the Petitioners that INEC returned a candidate who didn't score 25% in the FCT may be a strong ground for the court to invalidate the election. However, this lies within the wisdom of the court to decide.

#### **4. Conclusion and Recommendations**

In essence, non-compliance with the provisions of the Electoral Act is a ground for a petition to invalidate an election. However, non-compliance with the Electoral Act does not invalidate the election if it is shown to have been sufficiently carried out. And the onus to prove such non-compliance with the Electoral Act lies with the Petitioner. However, the court may go on to invalidate an election for non-compliance if the non-compliance is substantial, gross or causes injustice. It has been seen that INEC has a lot of burden placed on it by the Electoral Act 2022. However, it is indeed possible for provisions to be made in order for the burden to be effectively carried out. Here are some recommendations to improve the duty the Nigerian Electoral Act 2022 places on INEC: There is need to increase the independence of INEC. The Electoral Act 2022 has made some progress in this area, but more can be done to ensure that INEC is truly independent from the government. This could include giving INEC more control over its budget and staffing, and making it more difficult for the government to interfere in its operations. Strengthening the legal framework for elections is also necessary. The Electoral Act 2022 has made some important improvements to the legal framework for elections, but there is still room for improvement. For example, the law could be clearer on the roles and responsibilities of different actors in the electoral process, and it could provide stronger penalties for electoral offenses. It is important to improve transparency in elections. The Electoral Act 2022 has taken some steps to improve the transparency of elections, such as requiring INEC to publish more information about its operations. However, more can be done to ensure that the public has a clear understanding of how elections are conducted and how their votes are counted. Increase public participation in elections is equally a necessity. The Electoral Act 2022 has made some provisions to increase public participation in elections, such

<sup>38</sup>Premium Times, 'PDP and LP Calls For Cancellation Of Presidential Election' (*Premium Times*, 28 February, 2023) <https://www.premiumtimesng.com/news/top-news/585350-nigeriadeclides2023-pdp-lp-demand-cancellation-of-presidential-results-announced-in-abuja.html> accessed 20th July, 2023

<sup>39</sup> *ibid*

<sup>40</sup>Section 134(2) (a) (b).

<sup>41</sup>*Ambrari & Anor v Saraki & Ors* ((2009) LPELR-CA/IL/EP/SEN/20/2008

as requiring political parties to hold primaries that are open to the public. However, more can be done to encourage people to register to vote and to cast their ballots. These are just a few recommendations to improve the duty the Nigerian Electoral Act 2022 places on INEC. By implementing these reforms, Nigeria can take a significant step towards ensuring that its elections are free, fair, and credible. In addition to these recommendations, the researcher suggests that INEC should invest in technology to improve the efficiency and transparency of elections. It should also improve on its voter education and outreach programmes. INEC should endeavour to work with civil society organizations to monitor elections and promote transparency. By taking these steps, INEC can help to ensure that Nigeria's elections are truly democratic and representative.