

THE ROLE OF INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) IN JUDICIAL ADJUDICATION OF ELECTORAL DISPUTES IN NIGERIA

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Abstract

Since the Independent National Electoral Commission, hereinafter referred to as INEC was established by the Constitution of Federal Republic of Nigeria, 1999 (as amended), this important executive body has been on hot seat and x-ray of the people of Nigeria and the international community. This study considered the role of INEC in judicial adjudication of electoral disputes in Nigeria. INEC is empowered to organize, undertake and supervise all elections to offices of President, vice President, Governor, Deputy Governor, membership of senate, House of Representatives and House of Assembly of each state of the Federation among other functions. The study identified and analyzed the role of INEC as a Respondent or Defendant in judicial adjudication of electoral disputes in Nigeria. The study further identified and analyzed how the role of INEC has impacted on judicial adjudication of electoral disputes in Nigeria. The study adopted the doctrinal method of legal research by examining and analyzing constitutions, statutes, books, views of authors, journal, dictionaries, conference papers, dailies, periodicals, websites etc and inferences were drawn from some selected election petition cases both reported and unreported which showed the role of INEC in judicial adjudication of electoral disputes in Nigeria. The study concluded and recommended that there is need to ensure that INEC should be granted full administrative and financial autonomy, well funded with capacity to prosecute electoral offenders and play its role as Respondent in electoral adjudication. Electoral offenders tribunal should be established to enable INEC fast track the prosecution of electoral offenders. There should be legislative reform mandating INEC to provide certified true copies of results and materials used for conduct of election to parties in electoral disputes adjudication within three days of declaration of result of election. The legal framework should be amended to make INEC share the burden of proof of electoral malfeasance with the petitioner in electoral disputes and it was suggested that there should be constitutional amendment to enable INEC conduct full electronic elections and defence in electoral disputes.

Keywords: electoral disputes, election petitions, judicial adjudication, electoral justice, Nigerian electoral law, democratic governance, rule of law.

Introduction: The Independent National Electoral Commission (INEC) is an executive body established by the Constitution of Federal Republic of Nigeria, 1999 (as amended)¹. The President of Nigeria is responsible for the appointment of the chairman and members of INEC subject to confirmation of the senate². The membership of INEC comprise of Chairman, as Chief electoral commissioner, twelve other members as national commissioners and resident electoral commissioner for each state of the federation and federal Capital Territory, Abuja.³ INEC is empowered among other functions to organize, undertake and supervise all elections in the country to offices of President, Vice President, Governor, Deputy Governor, membership of senate, House of Representatives and House of Assembly of each state of the federation.⁴ There is no clear cut role in the constitution of federal Republic of Nigeria empowering INEC to engage in judicial adjudication of electoral disputes in Nigeria. We shall proceed to examine later why in reality INEC is always a party to every judicial adjudication of electoral dispute in Nigeria.

¹ See Section 153 (1) of 1999 Constitution (as amended)

² Ibid See Section 154(1)

³ Ibid See paragraph 14, part 1 of third schedule

⁴ Ibid See paragraph 15, part 1 of Third Schedule and section 2 of Electoral Act, 2022.

1.2 Conceptual Clarifications

There are some key technical terms such as electoral disputes, election petitions, judicial adjudication, electoral justice, Nigerian electoral law, democratic governance and rule of law that need clarifications for a clear understanding of this paper.

(a) **Electoral Disputes:** Electoral Disputes are disputes that arises from conduct of elections. In Nigeria, INEC has the constitutional mandate to conduct elections and more often disputes arises after the results of election are declared by INEC. Candidates or political parties thereafter can challenge election results. Candidates or political parties dissatisfied with the results declared by INEC has 21 days after the date of declaration of the results to file election petition to challenge the results before the election petition tribunal or court.⁵ In the case of electoral disputes arising from the presidential election the candidate(s) or political parties dissatisfied with the result of the election declared is expected to approach the court of Appeal in the first instance for the resolution of such electoral dispute.⁶ Election petition tribunal has the exclusive original jurisdiction to resolve electoral disputes arising from governorship, state house of assembly and national assembly elections.⁷ The court of Appeal also entertain appeals to resolve electoral disputes from governorship, state/national assembly elections appeals.⁸ However, while the supreme court is the final arbiter in the resolution of electoral disputes arising from appeals in presidential and governorship elections,⁹ the court of Appeal is the final arbiter in the resolution of electoral disputes arising from appeals in State/national assembly elections.¹⁰

(b) **Election Petitions:** Election petitions are judicial processes filed in court or election petition tribunals to challenge the result of election. In Nigeria, candidates or political parties have 21 days after date of declaration of results of election to file election petitions.¹¹ INEC is constitutionally responsible for conduct of elections/declaration of results of elections and INEC is normally a statutory respondent to election petitions.¹²

Election petitions are the only forms or processes filed in court or election petition tribunals to challenge the outcome of presidential, governorship and state/national assembly elections in Nigeria. Election petitions are *sui generis*. Time is of the essence in the prosecution of election petitions. Election petition tribunal or courts must determine election petition within 180 days from the date of filing of election petitions.¹³ Appeals from decision of election petition tribunal or court of Appeal must be decided within 60 days from date of delivery of the judgment appealed against.¹⁴

The Election petition tribunal has exclusive original jurisdiction to determine election petitions arising from governorship and state/national assembly elections.¹⁵ The court of Appeal sitting as Election petition tribunal has original jurisdiction to determine election petition arising from presidential election.¹⁶

In this paper, we shall examine the role played by INEC in the judicial adjudication of election petitions in Nigeria.

⁵ See Section 285 (5) of the Constitution of Federal Republic of Nigeria, 1999 (as amended)

⁶ *Ibid* See Section 239 (1) (a)

⁷ *Ibid* See Section 285(1) and (2)

⁸ *Ibid* See Section 246 (1)

⁹ *Ibid* See Section 233(2)

¹⁰ *Ibid* See Section 246 (3)

¹¹ *Ibid* See Section 285(5)

¹² See Section 133(a) (b) of Electoral Act, 2022

¹³ See Section 285 (6) of 1999 Constitution (as amended)

¹⁴ *Ibid* See Section 285 (7)

¹⁵ See Section 285 (1) and (2) of 1999 Constitution (as amended)

¹⁶ *Ibid* See Section 239 (1)

(c) Judicial adjudication: Judicial adjudication is the process of court deciding a case before it. In this paper, judicial adjudication relates to the process of election petition tribunal or courts resolving electoral disputes filed by the petitioner against the respondent which may include INEC. Basically, judicial adjudication of electoral disputes in Nigeria is governed by the *Constitution of Federal Republic of Nigeria 1999 (as amended)*¹⁷ and the *Electoral Act, 2022*.¹⁸

(d) Electoral Justice: To appreciate electoral justice we have to note that election is the exercise of choice especially the act of choosing from several possible rights or remedies in a way that precludes the use of other right or remedies.¹⁹ It is simply the act of choosing representatives and leaders in any society. *Section 152 of Electoral Act, 2022* interpreted election to mean any election under this Act and includes a referendum.

Electoral justice is ensuring that election is fair, transparent and its in compliance with *the Constitution, Electoral Act, 2022* and other laws in Nigeria. INEC has the responsibility to conduct free and fair elections in Nigeria as the only electoral umpire.

After INEC declare result of election and the losing party or candidate file electoral dispute the law empower election petition tribunal, Court of Appeal and the Supreme Court to ensure that there is electoral justice. That is the election petition tribunal and courts are to ensure that elections were conducted in substantial compliance with the subsisting laws. Where the conduct of elections by INEC fall short of the requirements of subsisting laws the election tribunal or courts could nullify the election and order INEC to conduct fresh election.²⁰ The election tribunal or court could also decide on other remedies in appropriate cases.²¹

(e) Nigerian electoral law: Nigerian electoral law is basically provided in the *1999 constitution (as amended) and the Electoral Act, 2022*. *The 1999 constitution (as amended)* established the Independent National Electoral Commission (INEC)²² with clear mandate to organize, undertake and supervise all elections in the country to offices of President, Vice President, Governor, Deputy Governor, membership of senate, House of Representatives and House of Assembly of each state of the federation.²³

The Electoral Act, 2022 is an Act to regulate the conduct of federal, state and area council elections and other functions as provided. INEC is also empowered by the *Electoral Act, 2022* to issue regulations, guidelines, or manuals for the purpose of giving effect to the provision of this Act and its administration.²⁴

(f) Democratic Governance: Democratic Governance is about governing a country with the principles of democracy. There are basic elements of democratic governance such as free and periodic elections, strong institutions, rule of law, independence of judiciary, fundamental human rights including freedom of speech, free press, rights of citizens to hold their government accountable etc. Democracy has to do with free choice, the right of citizens to choose their representatives and leaders.

¹⁷ See for example Sections 285, 233, 239 and 246 of 1999 constitution

¹⁸ See Sections 133, 134, 136 etc of Electoral Act, 2022

¹⁹ Bryan A. Garner (ed), *Black Law Dictionary (9th Edition, West publishing co, St Paul, MN 2004) P. 595*

²⁰ See Section 136 (1) of Electoral Act, 2022

²¹ *Ibid* Section 136 (2) and (3)

²² See Section 153 (1) of 1999 constitution (as amended)

²³ *Ibid* see paragraph 15, part 1 of third schedule and section 2 of Electoral Act, 2022

²⁴ *Ibid* See Section 148

INEC is a stand out strong democratic institution in Nigeria that has ensured at least sustained periodic elections in Nigeria since 1999. Despite the imperfection of elections conducted by INEC in Nigeria since 1999, the election petition tribunal and courts have intervened to ensure sustained democratic governance in Nigeria since 1999.²⁵

(g) Rule of law: Rule of law connotes the supremacy of law over rule of individual. It means that all persons and authorities including the government are subject and under the same law. The concept of the rule of law was made popular by Professor A.V.

Dicey, who ascribed three different interpretations to the rule of law,²⁶ he posited that rule of law means supremacy of law, equality before the law and entrenchment of fundamental human rights. This paper shall examine whether INEC, candidates and political parties are complying with the rule of law in judicial adjudication of electoral disputes.

1.3 Prosecution of Offence Disclosed in Election Petition And Electoral Offences.

INEC is empowered by law to consider any recommendation made to it by a tribunal with respect to the prosecution by it of any person for the offence disclosed in any election petition.²⁷ INEC is expected to undertake the prosecution of electoral offences by making use of its legal officers or any legal practitioner appointed by it.²⁸ In practice, however there has been public discontent that INEC has been treating the prosecution of electoral offences with levity. Impunity appears to be the order of the day as Nigeria has history of many persons that committed electoral offences during elections and get away with it without prosecution or sanction for such serious crimes. The situation is so serious that a leading NGO has gone to obtain Judgment in court to compel INEC to perform its statutory duty to prosecute electoral offenders during the 2023 general election.²⁹ Another court has also ruled that it is only INEC that has the statutory duty to prosecute electoral offenders in Nigeria.³⁰ Since it has been established that it's the duty of INEC to prosecute electoral offenders discerning minds are worried that INEC has not been living up to expectation or its turning a blind eye to the issue of avalanche of electoral offences that have been bedeviling successive elections in Nigeria. Vote buying, electoral violence, rigging, ballot snatching, manipulation of election results etc. happen always with impunity. These electoral offences are swept under the carpet while INEC prepare for the next election. However, like a recurring decimal electoral offences always reared its ugly head to mar or hinder successive elections in Nigeria.

There are concerns on the refusal, inability or incapacity of INEC to prosecute electoral Offenders³¹. The real problem is whether INEC has the willingness and the capacity to prosecute electoral offenders all over Nigeria. There is no doubt that the problem of electoral offences during elections in Nigeria is rampant and massive as electoral offences are committed with impunity during elections. INEC has refuted allegations of unwillingness and incapacity to prosecute electoral offenders. INEC has noted that it is prosecuting over 500 electoral offenders from the 2023 general election including an INEC resident electoral commissioner in the high court of Yola, Adamawa State.³²

²⁵. See for example *Ojukwu v. Obasanjo & Ors* (2004) Vol. 10 M.J.S.C 1 at 50; *Ameachi v INEC & Ors* (2008) vol. 158 LRCN 1; *Manasseh v Goshwe & ors* (2024) LPELR – 61673 (SC); *Buhari v Obasanjo* (2005) 1 LRECN 235 etc

²⁶ A.V. Dicey, *The Law of Constitution* (London, 1909).

²⁷ See Section 144 of *Electoral Act, 2022*

²⁸ *Ibid* Section 145 (2)

²⁹ See Gilbert Ekugbe, 'Obey Court ruling, on 2023 electoral offences, SERAP tells Inec' (punch newspaper report of 29th September, 2024) www.punchng.com accessed 29/8/2025

³⁰ See *Deborah Musa*, 'Only INEC can prosecute electoral offenders – court' (punch newspaper report of 17th March, 2025) www.punchng.com accessed 29/8/2025

³¹ *I. F Akande & M.A Imran*, 'An appraising of the legal framework for prosecution of electoral offences in the conduct of elections in Nigeria,' *Achievers University Law Journal (AULJ)* Vol. 3 Issue (2023)

³². See Gift Habib, 'Inec refutes SERAP'S allegations on electoral offenders prosecutions' (punch newspaper of 30/10/2024) www.punch.ng.com, accessed 12/9/2025

The slow pace of prosecution of electoral offenders has been blamed on delay in judicial adjudication in Nigeria, lack of legal framework fixing timeline for the prosecution of electoral offenders and the need for reform by creating electoral offences tribunal to adjudicate speedily and try electoral offenders.³³

1.4 Parties to Election Petitions

The law is very clear as to the parties that can prosecute and defend election petitions. An election petition is expected to be presented by a candidate in an election or a political party which participated in the election.³⁴ A person whose election is complained of is referred to as respondent.³⁵ It is also expected that where a petitioner has complain against any conduct of any INEC officer, it will not be necessary to join any such INEC officer in election petition as it shall suffice if INEC is made a respondent and deemed to be defending the petition for itself and on behalf of its officers or such other persons.³⁶

From the clear provisions of the law INEC is not granted the role of a petitioner in electoral dispute adjudication even when INEC is not satisfied with the result of the election. INEC is empowered by the legal framework to play the role of a respondent and defendant in electoral dispute adjudication. The philosophy and thinking behind this legal framework is that it will be unreasonable for INEC that conducted the election to question or challenge its own act. It accord with common sense for INEC to be Respondent or Defendant with the sole aim of defending allegations of the Petitioner against the conduct of INEC or its staff during the election. It is not out of place for INEC to defend the result of the election by leading evidence in electoral petition that the election was conducted in compliance with the Electoral Act and the constitution.

The Supreme court in interpreting *Section 137 of the Electoral Act, 2010 (as amended)*, which is impari materia with *section 133 of the Electoral Act, 2022* held that:

Section 137 (1) of the Electoral Act, 2010 (as amended) made provision for parties to an election petition thus: An election petition may be presented by one or more of the following persons:

- (a) A candidate in an election
- (b) A political party which participated in the election

(2) A person whose election is complained of is in this Act referred to as the respondent.

(3) if the petition complains of the conduct of an electoral officer, a presiding or returning officer, it shall not be necessary to join such officer or person not withstanding the nature of the complaint and the commission shall, in this instance, be

- (a) made a respondent and
- (b) deemed to be defending the petition for itself and on behalf of officers or such other persons³⁷

The law recognize two classes of respondents, the winner of the election complained of and INEC, that should be made a respondent if there is complaint against the conduct of its staff. In practice, there

³³ See Gift Habib, 'Inec Chair pushes for electoral offences tribunal to fast track prosecutions' (punch newspaper of 7/2/2025) www.punchng.com accessed 12/9/2025.

³⁴ See *Section 133 (1) (a) (b) of Electoral Act, 2022*

³⁵ *Ibid Section 133 (2)*

³⁶ *Ibid Section 133 (3) (a) (b)*

³⁷ *All Progressives Congress v Peoples Democratic Party (PDP) (2015) EJSC (vol.14) 2 at 57; see also A.D.C. v Bello (2017) EJSC (Vol.59) 28 at 44*

is usually complain against the conduct of INEC staff during conduct of election. The Supreme Court in *Dickson v Sylva*³⁸ has held on the purpose of election petition that an election petition is filed to complain of undue election or undue return after the conduct of an election, secondly, it is a complaint against the conduct of the election by the electoral body or against the return of the person who was declared duly elected.

When it comes to judicial adjudication of electoral disputes in Nigeria, INEC is a necessary party. It is practically impossible to challenge the result of election in this country without making INEC a respondent to the petitioner's petition. The question here is who is a necessary party in a case?. The Supreme court answered the question in case of *A. D. C. v Bello*³⁹ thus:

A necessary party in a case is one whose presence or involvement in the matter is not only necessary, but crucial and unavoidable for the effective, effectual, exhaustive, complete and comprehensive adjudication of all questions raised in a case or matter. Such a party is one who is not only interested in the subject matter of the proceedings, but also who in his absence, the proceedings cannot be fairly dealt with. In other words, the question to be settled in the action between the existing parties in the suit must be a question which cannot be properly settled unless they are parties to the action instituted by the plaintiffs. Where the issues or questions raised in the action cannot be effectually and completely settled unless a person is a party to the suit, then he is a necessary party. (*Green v Green* (1987) 3 NWLR (pt. 61) 480.

In judicial adjudication of electoral disputes it is impossible to effectually and completely resolve such disputes without making INEC a respondent to such cases. The answers are not far fetched. INEC is responsible for conduct of the election and declaration of the result complained against. The electoral petition filed in court or tribunal also include allegation against the conduct of INEC or its staff during the election. More importantly the legal framework has made it imperative to make INEC a respondent to electoral petition, therefore INEC is not only a necessary party but a statutory party.⁴⁰ Failure to join INEC as a party in electoral petition is failure to join a necessary party and the consequence is fatal to the petition because failure to join a necessary party and statutory party will rob the court or tribunal of the jurisdiction to entertain the case or petition. The supreme court has held in a long list of cases that failure to join a necessary or mandatory party makes the case or petition incompetent.⁴¹ The failure to join INEC in *A.D. C v Bello*⁴² was held by the supreme court to be very fatal as it violated the Electoral Act.

In order for INEC to be able to play its statutory role as a respondent in election petition, the legal framework empowered INEC to make use of its legal officer or engage legal practitioner to represent INEC at the tribunal or court.⁴³ INEC at all times during judicial adjudication of election petition remains a respondent and do not share the burden of proof with the petitioner. However, in a rare burst of judicial activism O. Rhodes – vivour JSC in the case of *Emmanuel v Umana*,⁴⁴ advocated that:

A careful reading and understanding of decided authorities shows that a petitioner has an uphill task proving his petition in accordance with the Electoral Act. The petitioner is always saddled with difficult legal requirements and procedures. To my mind, I think it is high time something radical and good for the electoral process is done. It is suggested by me that the Electoral Act should be amended to shift the burden of proof to the independent National Electoral Commission (INEC) to prove that it conducted a fair and reasonable election.

³⁸(2017) EJSC (Vol. 56) 56 at 84

³⁹ (2017) EJSC (Vol. 59) 28 at 42 – 43

⁴⁰ See *A.D.C v Bello* (Supra) at 44

⁴¹See for example *A.D.C v Bello* (supra) at 58; *Jegade & Anor v INEC & 3 Ors* (2022) EJSC (Vol. 177) 108

⁴² (2017) EJSC (vol. 59) 28 at 59

⁴³ See Section 139 (1) of Electoral Act, 2022

⁴⁴ (2016) EJSC (Vol. 46) 108 at 190

We hold the view that the Electoral Act should be amended to reduce the burden of proof on the petitioner by mandating INEC to prove that it conducted the election in compliance with the Electoral Act. This will not be out of place as INEC is the owner and in legal custody of electoral materials and results used for conduct of the election. This amendment will make INEC release timeously to the tribunal or court and parties documents used for conduct of the election complained of.

1.5 The Role of INEC in Primary Election Matter (pre – Election Matter) In Court.

The extant legal framework did not specifically empower INEC to play any role in judicial adjudication over primary election matter (pre – election matter) in Court. It is the aspirant in party primary election who has complain concerning the selection or nomination of a candidate of a political party for election, that is empowered to apply to the federal high court for redress.⁴⁵ Recently, the supreme court judicially noticed and gave judicial blessing to *Section 84 (14) of Electoral Act, 2022* in the case of *PDP & Anor v Lawal & Anor*.⁴⁶

In Nigeria, INEC does not have the competence to settle pre – election dispute as it is the Federal high court that is empowered by law to adjudicate on pre – election dispute.⁴⁷ The role of INEC in primary election matter or pre – election matter is that of a nominal party as INEC is not empowered by the legal framework to play any active role in judicial adjudication of pre – election matter. It has been judicially noticed by the Supreme Court that:

*2022 in the case of PDP & Anor v Lawal & Anor.*⁴⁶

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INEC in primary election matters is a nominal party or stand by on looker. The term ‘pre – election matters does not contemplate INEC as among the contestants or involved in the affair and struggle. The grouse of a party in primary election is against the party and not INEC⁴⁸

Comparatively, the IEBC (electoral commission) of Kenya is empowered pursuant to article 88 (4) (e) of the Kenya constitution, to be responsible for the settlement of electoral disputes arising from nomination but excluding election petition arising from declaration of election results.⁴⁹ The pre – election dispute are expected to be determined by the Electoral Commission within ten days of lodging the dispute with the commission⁵⁰

The constitution of federal republic of Nigeria⁵¹ has provided clarification that “pre – election matter” means: (a) An aspirant who complains that the Electoral Act or any Act of National Assembly and provision of guidelines of political party has not been complied with by a political party in the conduct of selection or nomination of candidates for an election; (b) An aspirant challenging the actions, decisions or activities of INEC in respect of his participation in election or who complain that the Electoral Act or Act of national assembly has not been complied with by INEC in respect of selection or nomination of candidates and participation in election. (c) A political party can challenge INEC for disqualifying its candidate from participating in election or complain that INEC did not comply with Electoral Act or any other law in respect of nomination of candidate for election, timetable for election etc.

⁴⁵ See *Section 84 (14) of Electoral Act, 2022*

⁴⁶ (2024) EJSC (Vol. 204) 88 at 122

⁴⁷ See *Section 84 (14) of Electoral Act, 2022; see case of PDP & Anor v Lawal & Anor (Supra) at 122; see also Alhassan v Ishaku (2017) EJSC (Vol.66) 142 at 172*

⁴⁸ see *APC v Uduji & Anor (2020) EJSC (Vol. 135) 86 at 105*

⁴⁹ See *Section 74(1) of Elections Act No. 24 of 2011, Laws of Kenya*

⁵⁰ *Ibid S. 74 (2)*

⁵¹ See *Section 285 (14) (a) (b) © of 1999 Constitution (as amended); see also case of Sulaiman & 17, 907 Ors v APC & 9 ors (2024) EJSC (vol. 211) 2 at 31 – 32, where the supreme court upheld the constitutional clarification of meaning of pre – election matter by virtue of Section 285 (14) (a) – (c) of 1999 Constitution (as amended).*

It is submitted with the greatest respect that the above constitutional clarification has made it imperative for INEC to be a respondent to pre – election matters in the two latter situations. In practice, even where INEC is said to be nominal party in pre – election matters, INEC is normally joined as a respondent so that it can be bound by the decision of the court. It is trite law that a court of law cannot make an order against a person that is not a party to the case before court. *Ararume v Ubah & 4 Ors.*⁵² The situation in paragraph (b) and (c) above is challenging the actions, decisions or activities of INEC and that makes it imperative for INEC to be made a statutory respondent in such pre – election matters.

1.6 SOME ACHIEVEMENTS BY INEC IN JUDICIAL ADJUDICATION OF ELECTORAL DISPUTES IN NIGERIA.

Despite the criticism of INEC lack of capacity and willingness to play its statutory role in judicial adjudication of electoral disputes in Nigeria, INEC has recorded some achievements and successes. We adumbrate some achievements or contribution of INEC to judicial adjudication of electoral disputes hereunder.

Between three cycles of elections, 2004, 2007 and 2011, a total of 2,596 post-election petitions were heard by the courts in Nigeria.⁵³ INEC participated in greater majority of the

- (a) said electoral petitions and that is great achievement at great cost to INEC to be respondent in thousands of post-election petitions all over Nigeria.
- (b) INEC claimed that its performance has led to decline of number of upturned elections since 2015 and gave the statistics as follows:
 - i. In 2015, 663 cases were filed at the tribunals, only 87 (13.1%) were nullified while INEC was ordered to conduct re – run in some polling units or entire constituencies.⁵⁴
 - ii. In 2019, 807 petitions were filed but elections were only ordered to be re – run in 30 (3.71%) constituencies.⁵⁵
 - iii. In 2023, five presidential election petitions were filed in the tribunal and the five were dismissed while three went on appeal.⁵⁶ All the appeals have since been dismissed.
 - iv. In 2023, 82 governorship election were filed in election tribunal, 72 (87.8%) were either dismissed or withdrawn by the petitioners.⁵⁷
 - v. For senatorial elections, 146 petitions were filed out of which 100 (68.5%) were dismissed. For house of Representatives 413 petitions were filed, 309 (74.81%) were dismissed or withdrawn while for state Houses of Assembly, 550 petitions were filed out which 468 (82.4%) were dismissed or withdrawn.⁵⁸
- (c) A non – governmental organization (NGO) admitted the statistics of high failure of election petitions in court without praise to INEC for good performance but blamed sundry factors for high failure of election petitions. The most striking is the burden and standard of proof in election petitions emerged as a major challenge, where petitioners struggled to meet high burden and standard of proof, particularly in obtaining critical documentary evidence from INEC. INEC tampering with BVAS machines and data also posed as critical challenge to litigants in election petitions.⁵⁹
- (d) INEC is currently prosecuting 774 persons accused of electoral offences during the 2023 general elections.⁶⁰ Though, it is an achievement on the part of INEC, its like drop of a cup of water into the ocean. A lot need to be done by INEC to prosecute thousands of electoral offenders nationwide

⁵² (2021) EJSC (Vol.172) 2 at 21; see also *A.D.C v Bello (Supra)*

⁵³ J. Tochukwu Omenma, 'Courts' involvement in the Electoral process and their impact on improving election quality in Nigeria' (<https://upjournals.co.za/indez.php/politeia> Vol. 38, No. 1, University of South Africa press, 2019) pp 12-13

⁵⁴ Omeiza Ayayi, 'Number of upturned elections declining since 2015,' (Vanguard newspaper news of 19/10/2023) www.vanguardngr.com accessed 27/9/2025

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ .. Ibid

⁵⁹ .. Policy And Legal Advocacy Centre (PLAC) press brief on PLAC's report from ballot to the Courts: Analysis of Election petition litigation from Nigeria's 2023 General Election' dated 9th April, 2025, <https://placng.org/i/> press – brief – on – places – report – from – ballot – to – the – courts – analysis – of – election – petition – litigation – from – Nigeria – 2023 – general – elections accessed 27/9/2025

⁶⁰ Gift Habib, 'Inec prosecutes 774 electoral offender' punch newspaper news report of 7th February, 2025, www.Punchng.com accessed 29/9/2025

- (e) INEC has been advocating for the establishment of electoral offences tribunal which should be a dedicated judicial body to handle cases of electoral malpractice.⁶¹ The argument in favour of establishment of electoral offences tribunal has its root in the slow judicial system in Nigeria. If the tribunal is established with clear legal framework and time frame for the prosecution of electoral offenders it will no doubt fast track the prosecution of electoral offences in Nigeria.

INEC has also mobilized or budgeted massive financial resources to defend hundreds or thousands of petition filed to challenge the outcome of the 2023 general elections. The over three billion naira mobilized or budgeted by INEC also included the prosecution of electoral offenders.⁶² The question is whether INEC performance in playing its role in (a) judicial adjudication of electoral disputes has justified the huge budget by INEC for defence of petitions and prosecution of electoral offenders. The prosecution of just 774 electoral offenders nationwide tell story of poor performance by INEC and waste of huge tax payers money to achieve very little result (b) INEC has also been advocate of elimination of conflicting judgment by courts of co-ordinate jurisdiction in judicial adjudication of electoral disputes.⁶³

1.7 SOME CHALLENGES MILITATING AGAINST INEC PERFORMING ITS STATUTORY ROLE IN JUDICIAL ADJUDICATION OF ELECTORAL DISPUTES INNIGERIA.

INEC performance of its statutory role in judicial adjudication of electoral disputes in Nigeria has been bedeviled by legion of challenges. We adumbrate some of such challenges hereunder as follows:

- (a) An over burdened and slow judicial system in Nigeria is a major challenge militating against INEC performing its statutory role in judicial adjudication of electoral disputes. The Nigerian judiciary is still using archaic recording of proceedings in long hands leading to very slow trial and delay in the administration of justice especially in electoral disputes. There is also the issue of courts of co-ordinate jurisdiction issuing conflicting orders and judgments which has hampered INEC in the performance of its statutory role in electoral disputes resolution. This challenge has been so disturbing that a public commentator and writer asked if the judiciary was the problem of INEC.⁶⁴
- (b) INEC has also been grappling with dearth of lawyers to prosecute electoral offenders and defend election petitions as respondent nationwide after each circle of general elections.
- (c) Inadequate funds or financial muscle has been militating against INEC performing its statutory role in electoral disputes resolution in tribunal and court. INEC need billions of naira to pay legal practitioners especially senior lawyers of rank of senior advocate of Nigeria (SAN) to defend INEC nation wide. INEC also need a lot of money to get electoral documents ready for court litigation and also to mobilize witnesses nationwide. The greatest challenge in the mobilization of witnesses is the presiding officers during elections. INEC normally make use of *ad hoc* personnel as presiding officers during elections and its difficult to get them to be attending court sessions to testify on the role they played during conduct of elections as they are not permanent staff of INEC.
- (d) There is also the challenge of lack of institutional framework and timeframe for the prosecution of electoral offenders. All election petitions emanating from the 2023 general elections have been determined due to the fact that there is special tribunal and time frame for determination of election petitions. In the case of prosecution of electoral offenders, its only the magistrates courts and state high courts that have jurisdiction to prosecute electoral offenders. These courts are already congested with their normal cases and adding the prosecution of electoral offenders to their cause list have led to delay in the prosecution of electoral offenders nationwide. These courts also have the latitude of time frame to determine or conclude the prosecution of electoral offenders as there is no legal framework fixing the timeframe to determine the prosecution of electoral offenders.

⁶¹ *Ibid*

⁶² .Punch newspaper news report of 27th March, 2023, www.punchng.com, accessed 29/9/2025

⁶³ . Tonnie Iredia 'Is the Judiciary the problem of INEC?' (vanguard newspaper of 21st January, 2018) www.vanguardngr.com, accessed 1/10/2025

⁶⁴. *Ibid*

- (e) The challenge of INEC electoral guidelines not backed by legal framework has impugned on the statutory role of INEC in judicial adjudication of electoral disputes. For example, INEC electoral guidelines introduced the electronic card reader for accreditation of voters which was designed to reform the manual processes of accreditation from manual voters register that has been susceptible to abuse and inflation of votes. The policy intervention was not backed by statutes and this led to the supreme court upholding the supremacy of the manual voters registers which was backed by the Electoral Act over the smart card reader which was merely a policy intervention of INEC.⁶⁵ In *Emmanuel v Umana*⁶⁶ the supreme court held that the card reader was meant to supplement the voter's register and was never designed or intended to supplant, displace or supersede it. It is crystal clear that the voters register which is backed or provided for in the Electoral Act is superior to the card reader that is only a product of INEC guidelines.
- (f) Lack of administrative and financial autonomy by or for INEC also temper its role in judicial adjudication of electoral disputes.
- (g) Interference by the government of the day also hamper INEC prosecution of electoral offenders. Politicians are the worst culprits in commission of electoral offences and the government in power always interfere to protect their own.

1.8 REFORMS TO STRENGTHEN INEC PERFORMANCE OF ITS ROLE IN JUDICIAL ADJUDICATION OF ELECTORAL DISPUTES.

In order to strengthen INEC performance of its statutory role in judicial resolution of electoral disputes we hereby suggest the following reforms:

- (a) There is need for urgent reform in the Nigerian judicial system and the legal framework on electoral adjudication to fast track trial of cases especially electoral disputes. The judiciary need improvement in vibrant personnel, modern infrastructure and ICT tools to fast track trial of cases.

Comparatively, Kenya has taken a giant leap in fast tracking the judicial adjudication of electoral disputes. In the case of *Raila Odinga & ors v William Ruto & Ors*⁶⁷ the supreme court of Kenya adumbrated the fast track procedure thus:

(79) Article 163 (3) (a) of the constitution provides that the Supreme Court shall have - 'a. exclusive original jurisdiction to hear and determine disputes relating to the election of the office of the President arising under Article 140';

(80) Article 140 of the Constitution in turn provides:

"1. A person may file a petition in the Supreme Court to challenge the election of the President – elect within seven days after the date of the declaration of the results of the presidential election.

2. within fourteen days after the filing of a petition under clause (1), the Supreme Court shall hear and determine the petition, and its decision shall be final.

3. If the Supreme Court determines the election of the President – elect to be invalid, a fresh election shall be held within sixty days after the determination.

There is urgent need to amend the Nigerian Constitution to fast track the filing and determination of electoral petitions.

- (a) There is need for INEC to employ thousands of lawyers to be able to have the capacity to prosecute electoral offenders nationwide as provided by the Electoral Act, 2022.
- (b) There is also need for the Federal Government and the National Assembly to create or establish electoral offenders tribunal all over the country as a special judicial body to exercise exclusive original jurisdiction to try cases of electoral offenders. It is suggested that Magistrates should be employed and deployed to man such electoral offenders tribunal in each state of the federation.

⁶⁵. Eze Onyekpere, 'Nigeria needs electoral reform now' <https://punchng.com/Nigeria – needs – electoral – reforms – now> accessed 1/10/2025

⁶⁶. (2016) EJSC (vol.46) 108 at 172; see also *Okereke v Umahi* (2016) EJSC (vol.39) 48 at 87; *Nyesom v. Peterside* (2016) EJSC (vol. 47) 100 at 171, 174 – 176; *Emerhor v Okowa* (2016) EJSC (vol.49) 142 at 182; *Ikpeazu v Otti* (2016) EJSC (vol.41) 84 at 124.

⁶⁷. Presidential Election Petition No. E005 of 2022 (consolidated with) P.E.P No. E001 – E004 and E007 – E008 of 2022

- (c) *The Electoral Act, 2022* should be amended to provide for time frame for determination of prosecution of electoral offenders before the special judicial body or electoral offenders tribunal.
- (d) INEC should be granted administrative and financial autonomy in practice. There should be no interference from the executive and legislative branches of government. The finances of INEC should be on the first line charge of the consolidated revenue fund. INEC should not go cap in hand begging the president and national assembly for funds to run INEC and its activities which include its role in resolution of electoral disputes. It has been advocated that INEC should be removed from any form of control by making it fully independent.⁶⁸
- (e) *The Electoral Act, 2022* should be amended to back the smart card reader, with statutory provision. *The Electoral Act, 2022* should make clear provisions for electronic voting and use of ICT tools to organize election in Nigeria. The same argument apply to BVAS and IRev for online publication of election results from the polling units. They are provided for in INEC guidelines but the Electoral Act, 2022 did not make them mandatory by INEC. It has been advocated that the Electoral Act, 2022 should be amended to make the use of BVAS machine and IRev mandatory in the conduct of elections by INEC.⁶⁹

The Electoral Act, 2022 should also be amended to review the cumbersome burden and standard of proof in electoral litigation. The burden of proof of electoral malfeasance rest squarely on the Petitioner at all times and this present a lot of difficulties in trying to prove election petitions. Where a Petitioner makes or plead criminal allegations in election petition, the petitioner is expected to prove his criminal allegation beyond reasonable doubt.⁷⁰ Its also not enough for a petitioner to allege non – compliance with the Electoral Act, the petitioner has the burden of showing that the non – compliance with the Electoral (a) Act substantially affected the result of election.⁷¹ In rare bust of judicial activism, O. Rhodes – Vivour JSC suggested that the Electoral Act should be amended to shift the burden of proof to INEC to prove that it conducted a fair and reasonable election.⁷² This is the best way to go as the burden of proof on the petitioner is too cumbersome.

- (b) There is also the need to provide legislative reform to address the problem of petitioner obtaining certified true copies of electoral materials/results from INEC after declaration of result of election. INEC should be given three mandatory days from date of declaration of result by statute to provide CTC of electoral materials/results to the Petitioner used for conduct of the election.
- (c) There is need for legislative reform to empower INEC to carry out electronic transmission of results from polling units directly to a central electronic collation centre. The current manual collation by INEC should be abolished by law as electoral fraud and manipulation take place during the different stages of manual collation.
- (d) **Appointment of INEC Chairman and the national commissioners of INEC should be constitutionally removed from the President, who is also a player in the electoral game.** The idea of a player appointing the referee of the game is a call to partiality and interference with the conduct or rules of the game. The National Judicial Council (NJC) should be empowered by the constitution to appoint INEC Chairman, National Commissioners and Resident electoral Commissioners of INEC to ensure the independence and impartiality of INEC in the conduct of election in Nigeria.

It's our firm belief that the findings, suggestions and reforms proffered in this paper will improve the performance of INEC in playing its role in the adjudication of electoral disputes in Nigeria.

⁶⁸. A.G. Umar Kari, 'Issues in Election Petition Adjudication in Nigeria's fourth Republic: A sociological critique of the Role of the Judiciary,' *Global Journal of politics and Law Research*, Vol. 5 No. 7 (2017) (published by European Centre for Research and Development UK), www.eajournals.org, accessed 25/8/2025.

⁶⁹. Vanguard newspaper news item of 20/7/2025, 'NBA to NASS: Amend Electoral Act to mandate BVAS, IRev use' www.vanguardngr.com, accessed 2/10/2025

⁷⁰. See *Emmanuel v Umana* (2016) *EJSC* (Vol.46) 108 at 150; *Nwobobo v Onoh* (1981 – 1990) *LRECN* 369

⁷¹. See *Emmanuel Umana* (*supra*) at 192 – 193

⁷². See *Emmanuel v Umana* (*Supra*) at 190