

THE INDEPENDENT NATIONAL ELECTORAL COMMISSION'S POWER OF REVIEW: CHALLENGES AND PROSPECTS

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Abstract

The Independent National Electoral Commission is saddled with the responsibility of conducting elections for State Houses of Assembly, Governors, House of Representatives, Senators, and Presidential offices. Nigeria's Electoral Commission operates the independent model of an electoral umpire. The idea of being independent is to ensure that it shall operate without any influence from any quarters, and that it can review its administrative actions. Thus, the power of review is given to INEC in section 65 of the Electoral Act 2026. The power of review given to INEC fortifies its independence, such that if it uses the power without fear or favour, it will go a long way in entrenching electoral integrity. In that vein, this paper examined INEC's power of review, the challenges and prospects thereto. The paper focused on Section 65 of the Electoral Act 2026 viz-a-viz Section 44 to 64 of the Electoral Act 2026 dwelling on the voting process. The paper adopted the doctrinal method of research and used primary and secondary sources such as the Constitution of the Federal Republic of Nigeria 1999, Electoral Act 2022, relevant statutes, case law, textbooks

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and articles in journal to address the issues raised in this paper. Findings from the study revealed that INEC was unable to use its power of review in the 2023 general elections due to the fact that the 7 days' time frame is very inadequate and that the time to file an election petition within 21 days starts from the day of declaration of winner by the returning officer. This paper therefore, suggested that there should be an elaborate legal framework on INEC's power of review so as to make it very effective. Finally, it is recommended that the Constitution and Electoral Act should be amended to give at least a 30-day timeframe for review by INEC and that the time for filing any election petition should be after the pronouncement on the review. This way the power of review will be meaningful, effective and capable of entrenching electoral integrity.

Keywords: Power of Review, Electoral Commission, Electoral Integrity, Challenges and Prospects.

1. INTRODUCTION

Section 153 of the Constitution of the Federal Republic of Nigeria 1999 establishes the Independent National Electoral Commission of Nigeria. According to paragraph 15 Part 1 of the Third Schedule, INEC's responsibilities include organizing national elections, registering voters, arranging for election logistics, registering and deregistering political parties, keeping an eye on political campaigns, auditing political party accounts, conducting voter and civic education, fostering awareness of a sound democratic election process, and conducting referendums as provided by the Constitution and any Act of the National Assembly.¹

In its power to conduct elections, sections 40-64 of the Electoral Act 2026 vest in INEC the power to do the following:

¹ See section 2 of the Electoral Act 2026.

- i. Establishment of Polling Units²
- ii. Provision of Ballot boxes, electronic voting machines for the conduct of elections³ .
- iii. Provision of Ballot papers⁴
- iv. Give notice of poll day⁵
- v. Give notice of poll hours⁶
- vi. Accredite voters by technological device⁷
- vii. Conduct election by open secret ballot⁸
- viii. Register the admission of voters to the polling unit⁹.
- ix. Count votes at the close of poll¹⁰
- x. Counting of Votes
- xi. Recount votes where so demanded by a polling agent¹¹
- xii. Collate results from all the polling units¹².
- xiii. Reject ballot papers without official marks¹³
- xiv. Review within 7 days any declaration and return made by a returning officer when it determines that the return was not made voluntarily or was made contrary to the provision of the Act, regulations and guideline and manual for the election¹⁴.

² S 40, Ibid.

³ S 41(1), Ibid.

⁴ S 42, Ibid.

⁵ S 44, Ibid.

⁶ S 45, Ibid.

⁷ S 47, Ibid.

⁸ S 50, Ibid.

⁹ S 58, Ibid.

¹⁰ S 60, Ibid.

¹¹ S 61, Ibid.

¹² S 62, Ibid.

¹³ S 63 Ibid.

¹⁴ S 64, Ibid. It is to be noted too that for every general election, the INEC usually makes regulations, guidelines and manual for the said election.

- xv. Declaration as winner to an elective office a candidate who scored the highest votes subject to section 133,134 and 179 of the constitution¹⁵.

The INEC power of review is predicated on the decision of a returning officer at an election conducted by it. Thus, Section 65 of the Electoral Act provides as follows:

- 65 The Commission shall have the power, to within seven days, to review the declaration and return where it receives a report from its officials, and it is satisfied that a declaration or return may have been made-
- a. Under duress; or
 - b. Knowingly and wilfully contrary to the procedures prescribed under section 62 (4)-(8) of this Act.

It should be noted that the thrust of this discourse is not the power of review by the election tribunal or court, but the power of review by the Independent National Electoral Commission.

The authority to review is delegated to legislative, executive, and judicial entities in administrative processes. Thus, the legislature has the authority to examine financial forecasts that have been presented by the head of state, the president, the governor, or a local government chairman. If a law's interpretation does not sit well with the legislature, it may also review the court's decision by amending it or completely repealing it. The Executive can review legislative actions when the president or Governor refuse to assent to a bill by pointing out areas

¹⁵ See section 66 Electoral Act 2026. It should be noted that Sections 133,134 and 179 of the Constitution 1999 relate to the additional requirement of a presidential and governorship candidate that in addition to a majority of lawful votes scored at the election, he/she must also have $\frac{1}{4}$ in $\frac{2}{3}$ of states or local government in the states in case of president or governor respectively.

that must be corrected in a bill before assent. The Executive can review an existing law to bring it into conformity with the constitution by modifications usually through an Executive Order¹⁶. In the same vein, the judiciary can review the action of the executive through interpretation of the existing laws, especially when the executive in its administrative powers, does not conform to the law. The judiciary too can review the executive and the legislature through the application of its writ of habeas corpus, certiorari, prohibition, mandamus and injunctive reliefs. Thus, for example, Order 42 of the Nasarawa State High Court Rules 2010 gives the Court the power of judicial review of administrative action and inferior court actions.¹⁷

The power of review given to INEC by section 65 of the Electoral Act 2026 is in the realm of “administrative review of administrative action. Administrative review is usually conducted upon a complaint to expose “a case working error” committed by administrative staff of an organisation¹⁸

A “case working error” is said to be: “where the original decision maker’s decision was incorrect”¹⁹. This kind of phenomenon occurred during the 2023 Adamawa State Governorship election, where the Resident Electoral Commissioner, one Barr. Hudu Yunusa declared the All Progressives Congress candidate Senator Aisha Dahiru (alias Binani) as winner contrary to the provision of the Electoral Act 2022 (now repealed) which vests such power on the returning officer. The

¹⁶ See section 315 of the 1999 Constitution of Federal Republic of Nigeria, 1999 (as amended).

¹⁷ See also Order of The Federal Capital Territory High Court Rules, 2025.

¹⁸ See Richmond Chambers: What is the difference between Administrative Review and Judicial Review? Available at: <https://inorganizationbarrister.co.uk>> accessed on 27/7/26

¹⁹ Ibid.

Commission constituted a review committee headed by Festus Okoye, who reviewed the same and voided the declaration²⁰.

Apart from the Adamawa State scenario, there were many complaints from political parties asking for review in the 2023 general election which did not see the light of day. At the end, such complaints were submitted to the tribunals or courts for review in the form of an election petition.²¹

This paper posits that if INEC's power of review was utilized in all complaints arising out of the election in 2023 general elections, the outcome of the election petitions would have produced electoral integrity capable of deepening democracy in Nigeria.

3. CONCEPTUAL FRAMEWORK

In this discourse, some concepts need defining. These concepts include electoral process, independent management body, electoral integrity, and review of administrative actions.

3.1 Electoral Process

The Black's Law Dictionary²² defines "electoral process" as the method by which a person is elected into public office in a democratic society; is the taking and counting of votes. The definition by Black's Law dictionary is restrictive as it only dwell on one aspect of the electoral process. In that regard electoral process is best defined from the procedure or methods inherent in the process. Electoral process

²⁰ F. Olorok, et al, *NEC annuls Binani's declaration as Gov.-elect, says REC usurps returning officer's power*, available at <https://punchng.com/binani-declaration-adamawa-rec-under-fire-faces-inec-panel-today/> accessed on the 27th July 2026

²¹ Nasarawa State People's Democratic Party also applied for INEC Review, but did not see the light of the day.

²² B.A. Garner, Black's Law Dictionary, 9th Edition, (St. Paul. Minnesota, West Publishing Co 2001), p.596

therefore is the whole gamut of election procedure or actions which include pre-election process i.e. delineation of constituencies, voters regulations, election of party executive, nomination of candidates to elective offices, campaign; election day activities which include polling stations, ballot papers, ballot boxes, secrecy of voting, counting and declaration of results at polling units; and post-election activities such as collation of results from polling units, declaration of result by returning officers swearing in of successful candidates, post-election review and election dispute

3.2 Independent Electoral Management Body

According to the Electoral Knowledge Network²³ an “electoral management body” is a body or organization with a single aim that is officially in charge of overseeing all or some of the components necessary for the conduct of elections and direct democracy tools, such as citizen initiatives, recall votes, and referendums, if they are included in the legal framework.²⁴ That the essential elements of its responsibilities include determining who is eligible to vote, receiving and validating nomination of electoral participants (for elections, political parties and or candidates) conducting polling; counting the votes; and tabulating the votes²⁵.

By paragraph 15, of Part 1 to the 3rd Schedule to the 1999 constitution, the National Independent Electoral Commission being Nigeria’s

²³ ACE Electoral Knowledge Network, available at: <https://aceproject.org/mob-search?rtype=m&country=Nigeria&topic=&SearchableText=electoral%20body%20management&language=en> accessed on 15 August 2026

²⁴ Independent National Electoral Commission Strategic Plan 2012-2016 (Abuja, 2012) p. 9.

²⁵ A.A. Ujo, *Understanding Elections in Nigeria: The First 50 years (1960-2010)* (Joice Graphic Printers and Publishers, 2012.), p.119.

electoral management body has all of the above responsibilities given to it.²⁶

According to Ujo, the Independent Election Management body or model is one that functions independently of the executive arm of government both institutionally and relationally. It oversees its own budget, is not answerable to any government agency or department, and its members do not work for the executive arm of government. Instead, they may answer to the National Assembly, the courts, or the President of the State.²⁷

3.3 Electoral Integrity

According to Ujo²⁸ integrity of elections is the ability of an election management body to operate without any form of interference. According to the Electoral Knowledge Network,²⁹ 'Any election that adheres to the democratic values of universal suffrage and political equality as expressed in international agreements and norms, as well as being professionally, impartially, and transparently prepared and managed throughout the electoral cycle, is considered to have electoral integrity. Therefore, the term "electoral integrity" refers to the impartiality of the entire voting process as well as the degree to which it guards against dangers to a free and fair election, such as election subversion.

3.4 Review of Administrative Actions

According to Black's Law Dictionary³⁰ "review" means "consideration, inspection or re-examination of a subject or thing "Administrative review" on the other hand according to Black's law

²⁶ Ibid.

²⁷ ACE, (n, 23).

²⁸ Ujo, (n.25) at p.10

²⁹ ACE, (n, 23).

³⁰ Garner, (n.20) p.1434

dictionary means judicial review of an administrative proceedings with the agency itself. This definition is inadequate as review of administrative actions can be “administrative” and “judicial” and the essence is to correct errors committed by an administrative official(s).

4. INEC’S POWER OF REVIEW UNDER THE ELECTORAL PROCESS

The Independent National Electoral Commission (INEC) power of review of election results is provided under section 65 of the Electoral Act 2026. It states that The Commission shall have the power, to within seven days, review the declaration and return where it receives report from its officials, and it is satisfied that a declaration or return may have been made- a. under duress; or b. knowingly and willfully contrary to the procedures prescribed under section 62 (4)-(8) of this Act.

Section 62 (4)-(8) of the Electoral Act 2026 provides as follows:

(4) A collation officer or returning officer at an election shall collate and announce the result of an election, subject to his or her verification and confirmation that the-

- a) number of accredited voters stated on the collated result are correct and consistent with the number of accredited voters recorded under section 47(2) of this Act transmitted directly from polling units; and
- b) votes stated on the collated result are correct and consistent with the votes or results recorded and transmitted directly from polling units under section 60(4) of this Act.

(5) Subject to subsection (1), a collation officer or returning officer shall use the number of accredited voters recorded under section 47(2) of this Act and transmitted directly from polling units under section

60(5) of this Act to collate and announce the result of an election if a collated result at his or her lower level of collation is correct.

(6) where during collation of results, there is a dispute regarding a collated result or the result of an election from any polling unit, the collation officer or returning officer shall use the following to determine the correctness of the disputed result

- a) the original of the disputed collated result for each polling unit where the election is disputed;
- b) the Smart Card Reader or other technological device used for accreditation of voters in each polling unit where the election is disputed for the purpose of obtaining accreditation data directly from the Smart Card Reader or other technology device;
- c) data of accreditation recorded under section 47(2) and transmitted directly from each polling unit where the election is disputed as prescribed under sections 47 (2) and 60 (5) of this Act; and
- d) the votes and results of the election recorded and transmitted directly from each polling unit where the election is disputed, as prescribed under section 60(5) of the Act.

(7) where the disputed result under subsection (6) were otherwise found not to be correct, the collation officer or returning officer shall re-collate and announce a new result using the information in subsection (6) (a)-(d).

(8) where the dispute under subsection (6) arose at the level of collation and the returning officer has satisfied the provision (6) (a)-(d), the returning officer shall accordingly declare the winner of the election.

From the foregoing, the power of review by the Electoral Commission entails that within seven days it shall:

- i. Determine whether or not the decision of the returning officer was wrong having been made under duress.
- ii. Determine whether or not the decision of the returning officer was wrong having been made knowingly and wilfully contrary to the provision of section 62 (4)-(8) of the Act.
- iii. Determine whether the collation of result and announcement of same tallied with the accredited voters through the Bimodal Voter Accreditation System and was transmitted directly from polling unit.
- iv. Determine whether the collation or returning officer in the event of a dispute over collation of results used the original results, obtained accreditation data from the smart card reader and transmitted directly from each polling unit.
- v. Determine whether there was a re-collation of the results by the collation officer or returning officer before final announcement of results.

5. LEGAL FRAMEWORK FOR INEC’S POWER OF REVIEW

INEC’s power of review is founded on the voting process as enshrined in Sections 44-64 of the Electoral Act 2026

The power of review is founded on a dispute as to the correctness of the decision of the returning officer on the following:

1. Accreditation of Voters:

On Election Day, voter accreditation is the first step in the voting process. According to Section 47(1) of the Electoral Act 2026, if a voter presents his voting card, the presiding officer must check or confirm him in the way that the commission specifies. INEC supplied the BIMODAL voters’ accreditation system technology (BVAS) for the general election of 2023. The 2023 INEC Manual on Election states in paragraph 2.7.1 that the BVAS is a system that enables voter

authentication via the use of facial recognition and fingerprint technologies. The INEC Result Viewing (IREV) is used to electronically receive and scan polling unit results. The presiding officer must record the quantity, numbers, and other details of the inspected and sensitive materials in the forms that are specified for the conduct of the election, in accordance with the Regulations and Guidelines for the Conduct of Election 2026.³¹ In order to be accredited, a voter must: verify that the voter's permanent voters card (PVC) is valid; positively identify the voter in the BVAS; authenticate the voter by matching their fingerprint or face to the voter record using the BVAS; complete form EC40H: PWD Voter information and statistics; apply indelible ink to the voter's finger cuticle, if available; and set up a priority voter line for expectant mothers, nursing or breast-feeding mothers, the elderly, and those with physical disabilities.³²

A voter will not be permitted to cast a ballot if the BVAS for a polling place is unable to identify them, or if, after three attempts, their fingerprint or face cannot be matched with the information in the BVAS.³³

The assistant presiding officer will kindly notify the voter if the PVC they supplied is not for the polling unit and advise them to go to the proper polling unit.³⁴ Voting will not be permitted for anyone who presents another person's PVC with the intent to use it, and they risk legal action and possible arrest.

³¹ See para. 17(c), Regulations and Guidelines for the Conduct of Election 2022.

³² See para. 19, Ibid.

³³ See para. 20, Ibid.

³⁴ Para 21, Ibid.

The above accreditation process can be subject of complaint by a political party which will necessitate a review by the electoral commission.

2. Serialisation (Marking and Issuance of Ballot Papers)

Section 50 (3) of the Electoral Act 2026 provides that a voter on receiving a ballot paper shall mark it in the manner prescribed by the commission. This is because only ballot papers with the official watermark and stamp prescribed by the commission shall be counted by the presiding officer³⁵. Presiding officers are empowered to report to their immediate superiors, any ballot paper without the official watermark and stamp³⁶. By Section 52(1) of the Electoral Act 2026, a voter is prohibited from marking his ballot paper. This too can be subject of review³⁷.

3. Counting And Recounting of Votes

At the close of polls, the presiding officer shall count and enter the votes scored by each candidate in a form to be prescribed by the commission as the case may be, and announce same³⁸. A candidate or a polling agent may demand to have the votes recounted and may be so recounted.³⁹ Voter papers without an official mark won't be tallied. In the way specified by the commission, the presiding officer will transmit the results, which will include the total number of voters who have been accredited and the outcome of the vote. Notwithstanding the absence of the official mark, the returning officer shall count the ballot

³⁵ Para 36 (i), Ibid.

³⁶ Para 36 (ii), Ibid.

³⁷ See the case of Yusuf Abba Kabir & APC & 2ors, SC/CV/1179/23, where the issue at contention was whether the tribunal was right to have invalidated 165,616 ballot papers on the basis that they were not signed, stamped, dated and without the names of presiding officers.

³⁸ Section 60 (i) (4), Electoral Act 2022.

³⁹ Section 63 (2), Ibid.

paper if they are satisfied that it was taken from a book of ballots that was provided to the polling unit's presiding officer for use at the election in question and does not bear the official mark.

After the polling unit voting and result procedure is complete, the presiding officer will electronically transmit or transfer the polling unit results directly to the collation system as directed by the Commission. Using the BVAS, upload a scanned copy of the EC8A (polling unit result) to the INEC result viewing portal (IREV). Then, in the presence of security and polling agents, take the BVAS and the original copies of each form in a temper proof envelope to the registration area/ward collation officer.⁴⁰

4. Collation and Transmission of Results

Section 62 (4) of the Electoral Act 2026 provides that a collation officer or returning officer at an election shall collate and announce the result of an election subject to his or her verification and confirmation that:

- (a) Number of accredited voters stated on the collated results are correct and consistent with the number of accredited voters recorded and transmitted directly from the polling unit. The vote, stated on the collated result are correct and consistent with the vote or result recorded and transmitted directly from the polling unit.
- (b) The votes stated on the collated result are correct and consistent with the votes or results recorded and transmitted directly from polling units.

The returning officer is to use the number of accredited voters recorded and transmitted directly from polling units by the presiding

⁴⁰ Para 38 of the 2022 Electoral Guidelines.

officer and the votes or results recorded and transmitted directly from the polling unit as announced by the presiding officer.

5. Declaration of Result

Section 66 of the Electoral Act 2026, provides that for all contested elections whether or not contested inclusive of the office of the president and governors, the appropriate returning officer subject to Section 133, 134 and 179 of the Constitution shall be declared as elected the candidate with the highest number of votes.

The reference to the said section of the Constitution is the constitutional provision that in addition to securing the highest number of votes, the President must also have at least one quarter of the vote cast at the election in each of at least two-third, of all the states in the federation and the Federal Capital Territory, Abuja.⁴¹ The governor too must in addition to securing the highest number of votes, must also win one quarter of at least two third of the local government in the state.

In declaring results, the returning officer shall reckon with paragraph 67 of the regulations and guidelines which provides as follows:

Where the margin of lead between two leading candidates in an election is not in excess of the total number of voters who collected their permanent voters cards (PVCs) in polling units where elections were postponed, voided, not held or were cancelled in line with sections 24 (2) & (3), 47(3) and 51 (2) of the Electoral Act 2026, the returning officer shall not make a return for the constituency until polls

⁴¹ As to whether the winner of the presidential election must also win one-quarter in the FCT generated a lot of debate after the declaration of Bola Ahmed Tinubu as President during the 2023 elections. However, this was settled by the Supreme Court in *Abubakar Atiku & anor v INEC & 2ors*, SC/CV/935/2023 and *Peter Gregory Obi & anor v INEC*, SC/CV/937/2023.

have been conducted in the affected polling units and the results collated into the relevant form EC8(A) for Declaration and return. This is the margin of lead principle and shall apply wherever necessary for making returns for all elections in accordance with these regulations and guidelines.

Flowing from the above regulatory framework, a candidate or political party may have cause to complain of the following inter-alia.

- i. That the accredited process was not done in accordance with the law, regulations and guidelines to the election.
- ii. That there was cause to cancel some ballot papers especially if there are allegation of issuance of fake ballot paper.
- iii. That there was wrong counting and entering of votes, especially allegation of over voting.
- iv. That the collation and transmission of result was contrary to the law, regulations and guidelines.
- v. That the declaration and return of candidate did not fulfil the law, regulations and guidelines to the election
- vi. That the “margin of lead” principle was not followed by the returning officer etc.
- vii. That the declaration was made under duress.

In such cases, the commission upon reports from its officials shall within seven days review the decision of the returning officer with a view to putting in proper perspective the right and valid voting process. The problem here is why should review be predicated upon complaints from INEC officers? Who shall compel the officers to submit reports to the INEC National Headquarters? Does this mean INEC has the discretion to refuse a review of complaints coming from a political party or its candidate? Despite this lacuna, it is submitted

that a review will be conducted even if the complaint is from political parties and or their candidates.

6. PROSPECTS OF INEC’S POWER OF REVIEW

The power of review accorded to INEC by the 2026 Electoral Act vide section 65 thereof is one of the laudable provisions of the Act⁴² despite its radical departure from the repealed Electoral Act 2022 provision. The said provision is aimed at entrenching electoral integrity in the voting process.

There is no denying the fact that vesting of the power of review on INEC has the capacity of strengthening the internal working of the commission with a view to entrenching electoral integrity. Some of the prospect of INEC’s power of review include:

a. Asserting the Commission’s Independence

An independent election management body presupposes that it is not under the control of any government, political party or men of power. According to IDEA, one of the guiding principles of an election management body is independence. It is without doubt that election is the means of capturing power, so all kinds of influence will be exerted on the persons on ground midwifing the voting process. It is the ballot papers that determines who win election and so it is the most sensitive material in the voting process. Once INEC becomes bold enough to correct anomalies recorded in the compilation of results, the politicians will fear the electoral umpire and thus capable of making them abide by the rules⁴³.

⁴² See s 68 of the Electoral Act 2010 was the equivalent section to section 65(1) of 2022 Electoral Act. However, it does not give INEC the power of review and only vest in the tribunal the power of review of returning officer’s decisions.

⁴³ Other guiding principles include impartiality, integrity, transparency, efficiency, professionalism and service mindedness

b. INEC will be a Nominal Party in Election Petitions.

Where INEC exercises its power of review, it is obligated to abide by the result of its review. It is to be noted that despite the power of review vested on the electoral commission, the final power of review is vested in the tribunal, or courts. However, where the commission with transparency reviewed the decision of a returning officer, it will be bound by its result even at the tribunal. In such situation it will be difficult to upturn such reviewed decision. Such was the case with the 2023 Adamawa State Gubernatorial election. In this kind of scenario, INEC will only be a nominal party instead of an active party and therefore becoming antagonistic to the petitioner.

c. Avoidance Of Technical Justice

In some instances, the power of review of returning officers decision has the capacity of nipping in the bud the resort to technicalities at tribunals. A ready example is the recent decision of the Supreme Court in *Emmanuel David Ombugadu vs Sule Audu Alh.*⁴⁴. The Returning Officer had declared Alh. Audu Sule the incumbent Governor of Nasarawa State as winner of the Nasarawa State Gubernatorial Election. The 1st petitioner Hon. David Ombugadu and his party the People's Democratic Party had applied for a review of the decision of the returning officer on the ground that the returning officer refused to bid to the plea of PDP to deduct over voting result in two wards in Lafia LGA, but INEC did not undertake a review. In its bid to prove over voting in the wards, Ombugadu and PDP brought in official witnesses from INEC the 3rd respondent and other political parties who testified and tendered in the results from its IREV, upon which the tribunal used to declare Ombugadu as winner of the election. The governor's counsel line of advocacy is that the subpoenaed witness statement on oath ought to have been frontloaded in accordance with

⁴⁴SC/CV/1213/2023.

frontloading proceedings and since this was not done within 21 days allowed by section 285(8) of the Constitution to file petition and frontload witness statement on oath as provided by paragraph 4(1) of the first schedule of the Electoral Act 2022, then the evidence given by the official witness should be struck out. This line of reasoning was accepted by the Court of Appeal and affirmed by the Supreme Court⁴⁵.

The decision of the Court of Appeal and Supreme Court were not on the basis of whether or not there was over voting but based on lack of frontloading of evidence of an official witness who from all intents and purposes is not in the control of the Petitioner nor is that position contemplated by the Evidence Act 2011 which is the principal legislation on evidence. Certainly, if the INEC had remedied the over voting issue as complained by the petitioner as it were and gone ahead to announce the winner based on the provisions of the law, the technical justice wouldn't have occurred. The resultant effect of this technical justice is that in all cases where official witness is crucial to resolving a fact in issue, his evidence must be frontloaded!⁴⁶

d. Reduction in Election Petitions

Where INEC'S power of review is utilised professionally and with service mindedness, with the attendant impartiality and transparency, even the hardest of consciences will know that there is no need to go to court to test the election results. This is because all parties would have been heard, every error corrected in line with the law, regulations and guidelines, and it will be apparent that justice is seen to be done.

⁴⁵ The result is technical justice.

⁴⁶ God help the litigant where the official witness is hostile.

The 2023 general elections is said to have witnessed the highest number of election petitions⁴⁷, and the result of the election petitions were greeted with mixed feelings. If INEC is determined to review complaints of anomalies and come to the right decisions that is fair and just, it will automatically eliminate loads of election petition thus deepening democracy and restoring the people's confidence in the electoral process.

e. Promotion of Election Integrity

There is no denying the fact that elections in Nigeria is taking as war and so politicians commit every malpractice to win elections. It is better to win at all cost than to be a petitioner in an election petition. In Nigeria, the acclaimed winner is sworn in with all the paraphernalia and power of offices while he conducts his defence. It is better imagined what a person who had not won an election can do in such a situation. In the sight of money and offer of privileges, even a saint can succumb. Professor Attahiru Jega in 2011 general elections as INEC chairman used University lecturers who are seen as beacons of integrity as collation and returning officers. However, over the years, University Professors have proved to be fallen humans too.

But the point here is that a determined INEC to review genuine complaints on the voting process, will deepen the integrity of the electoral process thereby igniting interest in the political process. Election integrity will necessarily have a bearing on the decisions of the tribunals as INEC will be seen as an impartial umpire.

7. CHALLENGES TO INEC'S POWER OF REVIEW

The power of review given to INEC despite its numerous advantages, has some challenges viz:

⁴⁷ 3,959 election petitions were filed in 2023 general elections. See www.dataphyte.com> accessed on 5 May 2024

a. Power of Review Predicated upon Report from INEC's Officials.

In the case of *Chief Francis Uchenna Ugwu & Ors v. Peoples Democratic Party & Ors*⁴⁸ the Court of Appeal held as follows:

Section 15 of the Electoral Act 2026, unlike the provisions in Section 65(1) proviso of the defunct Electoral Act 2022, predicates the review upon reports from its officials. These officials include the Presiding Officer, the collation officers, the returning officers, the State Resident Commissioners, the National Commissioners in charge of specific elections, etc.

This provision is capable of different interpretations. An opposition to the review can successfully challenge the review, insisting that it did not come from officials of INEC. This will ultimately work to the hardship on a party seeking review. It is therefore necessary that INEC, through its guidelines and regulations, clarify these provisions to clearly state that it can embark on review coming from complaints and/or reports from parties and/or its officials in the field.

b. Inadequate Timeline for Review

Section 65 of the Electoral Act 2026 gives the commission a timeline of seven days within which to make a review of the decision of a returning officer. This timeline is very inadequate for a just determination of the matter(s) submitted for review. A review will usually be done upon application. When will the commission give all parties time to respond to the allegation? If the review should be meaningful, the whole-time frame for review and the time for filing of an election petition should be reviewed. This will require a

⁴⁸ (2013) ELPR 21356

constitutional amendment. An acceptance timeline for review by the commission should not be less than 30 days.

c. Inadequate Legal Framework

At present, the power of review is restricted to two reasons, viz:

- i. Determine whether or not the decision of the returning officer was wrong, having been made under duress.
- ii. Determine whether or not the decision of the returning officer was wrong, having been made knowingly and wilfully contrary to the provisions of section 62 (4)-(8) of the Act.

The Electoral Act 2026 is bereft of a comprehensive legal framework and therefore grossly inadequate unlike the 2022 Electoral Act provisions which were more elaborate. Like section 84 of the Evidence Act, which gives a comprehensive legal framework for the admissibility of electronic evidence, there should be a comprehensive legal framework that will provide for the power of review by INEC. Such legal framework should contain provision on how the application should be made, time framework within which to undertake the review, which specific officer of INEC will review grievances arising from House of Assembly election, governorship elections, House of Representatives elections, Senate elections, and presidential elections, what will be the effect of the results of the review in the event the matter goes to an election tribunal, should the review precede the final return by the returning officer *inter alia*.

8. CONCLUSION

The power of review in section 65 of the Electoral Act 2026 is a laudable provision. However, the provision is very restrictive, unlike the defunct 2022 Electoral Act provision; one hopes that this power will be employed in the 2027 General Election, where its officials will be tested. Unlike the 2023 General Election where the only time the

power of review was used by INEC was during the Adamawa Gubernatorial Election does not help matters. Even where there is a call for review, the INEC couldn't muster enough willpower to exercise its power. The only ready example the commission had to step in was the Adamawa state governorship election and this was because the State Resident Electoral Commissioner usurped the power of the returning officer and went ahead to announce the results and returning Senator Binani winner of the election. It is not certain if INEC would have stepped in to make a review in the circumstances if it were the returning officer that announced the Adamawa governorship election. It is obvious that INEC itself was wary of exercising its power of review in order to give a semblance of neutrality. It should be noted that the provision is meant to give vent to its independence, impartiality, integrity, professionalism and service mindedness. It is in this regard that it is recommended that a comprehensive legal framework in INEC's manual be provided for INEC's power of review. The legal framework should at least give a 30-day timeline within which INEC will undertake a fair review. The legal framework should provide that the review should be made before final return by the returning officer and that the time for filing of election petition should start after the final return by the returning officer in the event of a review by the Commission. Where there is an election dispute despite the review, the INEC shall remain a nominal party in the litigation. When the power of review is done without fear or favour, it will go a long way in enhancing the integrity to the electoral process.