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## THE LEGAL IMPROPRIETY OF REFUSAL TO RESCHEDULE ELECTIONS WHICH EITHER DID NOT HOLD OR WERE MARRED BY VIOLENCE, AND THE LEGAL REMEDIES AVAILABLE TO VOTERS IN NIGERIA

Although democracy has been the backbone of Nigeria's political system since its independence in 1960, the Nigerian brand of democracy has been a source of great instability to the country and the well-being of its citizens. It is a foundational principle that the only way democracy can be maintained is by conducting credible elections periodically, to reflect the voice and views of the people as well as determine the leadership of the country. After all, *Vox Populi, Vox Dei* – The voice of the people is the voice of God.

However, the reason democracy has not been fully consolidated in Nigeria is mostly attributable to electoral malpractice and corruption. One would expect that as the years go by, electoral malpractice would be gradually eradicated, and that we would gradually grow to have credible leadership and institutional structures, distinct from the shadow rulers of Nigeria. Unfortunately, vote trading, thuggery, violence, and brazen result manipulations have been the order of the day ever since our most recent revert to democracy in 1999 till date, despite all efforts to do away with these banes.

Perhaps, the prevalent poverty and heavy corruption in the system is the force keeping electoral fraud in place, because the security agencies, the electoral umpires and public office holders all seem complicit.

The just-concluded 2023 Presidential election, amongst other things, seriously raises questions as regards the credibility and 'independence' of the Independent National Electoral Commission (INEC). We have seen the political elites, in conjunction with electoral umpires, play chess with the peace and

stability of the country in the just concluded Presidential elections in Nigeria. One might be tempted to ask if this was an election or an appointment into office.

Ballot boxes are meant to portray the minds of the people and collectively serve as the mirror which reflects the acceptance or the rejection of any candidate by the Nigerian State and its people. If elections are marred by absence of election materials and officers, violence, or any other form of intimidation to cause voter apathy, it therefore means that for every vote that is repressed, suppressed or fraudulently excluded, even by avoidable negligent actions or omissions of the INEC or political actors, this "mirror" will be missing vital parts and essentially, such a mirror would not reveal a complete reflection of the people's will. We should not forget that broken mirrors have very sharp edges and can draw blood from the hands that wield them.

The right to vote is a constitutional right and a civic duty. As such, no qualified citizen should be disenfranchised. Disenfranchisement can take many forms; voter intimidation, systematic exclusion, falsification of results and lots more.

Non-cancellation and rescheduling of elections which could not hold as expected due to thuggery and failure of the BVAS<sup>1</sup> devices in polling units during elections in Nigeria by INEC is ordinarily contrary to the Electoral Act 2022.

Although elections may be cancelled in any polling unit where there is a breakdown of law and order or

<sup>1</sup> <https://www.premiumtimesng.com/regional/north-central/584858-nigeriadecides2023-inec-cancels-elections-in-11-kogi-polling-units-over-thuggery-bvas.html> Premium Times.

where there is a threat to the lives of voters, electoral officials, or security personnel, INEC is expected to reschedule the election in such affected polling unit to a later date. This is expressly provided in **Section 24(3) of the Electoral Act** which specifies that elections must be suspended and rescheduled where there has been a substantial disruption of election in a polling unit or constituency or it is impossible to continue with the election occasioned by threat to peace and security of electoral officials and materials. This is to prevent disenfranchisement, which constitutes a violation of the constitutional right of the citizen to vote.



### **What can be construed as violence and electoral malpractice?**

Violence refers to physical force intended to harm or damage, typically involving physical aggression, assault, or abuse. In the context of elections, violence can include acts such as physical assault or intimidation of voters, candidates, or election officials, destruction of property, or other forms of coercion or harassment that seek to influence the outcome of an election.

Electoral malpractice, on the other hand, refers to any illegal or unethical behavior that occurs during the electoral process. These include actions such as voter fraud, vote rigging, vote buying, misuse of public resources, or other forms of corruption that undermine the integrity of the election.

Both violence and electoral malpractice can have a significant impact on the outcome of an election and can ultimately undermine the democratic process. It is

therefore important for governments, civil society organizations, and other stakeholders to work together to prevent and address these issues and ensure free, fair, and transparent elections.

On many occasions, the courts have stated that INEC has the power to stop and reschedule elections where there are reports of violence and electoral malpractice. This was stated by the court in *SYLVA V INEC*<sup>2</sup> and similarly held in *FINGESIN V INEC*.<sup>3</sup> These cases demonstrate the importance of conducting elections in a peaceful and secure environment to ensure an accurate reflection of the true spirit of the People's choice through the ballot box.

A reasonable man may argue that the alarming incompetence and impunity exhibited by the INEC in organizing elections in Nigeria is a crippling blow on democracy and as we can see, it is seriously weighing heavily on the people of Nigeria. If INEC fails to postpone an election in situations where it is necessary to do so under Section 24 of the Electoral Act, the consequence is that the election may be invalidated by a court of law with jurisdiction to do so.

### **What then are the remedies available to the electorates who have experienced voter intimidation, election violence and unavailability of election materials in their polling units?**

Any citizen that has been unlawfully disenfranchised can bring a suit by way of Originating Summons against INEC at the Federal High Court asking for a writ of mandamus compelling INEC to conduct afresh, free and fair elections in all such polling units where there were no election materials or where the electoral process was disrupted by violence.<sup>4</sup> However, it is important to give a pre-action notice to the INEC, before this judicial remedy is embarked upon.

Also, the Electoral Act, 2022 gives every candidate the power to bring an action against INEC where it has failed to cancel and postpone elections done in areas threatened or marred by violence. Thus, a candidate may file a petition challenging the outcome of the

<sup>2</sup> (2018) 18 NWLR (Pt. 1651) Pg. 310 at 348.

<sup>3</sup> (2019) LPELR-49144 (CA)

<sup>4</sup> Also, in a situation where the results have not been announced, (for instance, the upcoming gubernatorial elections), a court

order restraining the electoral commission from announcing the final results pending when the supplementary elections are carried out in those areas should be sought for.

election on the grounds that the election was not conducted in substantial compliance with the law.<sup>5</sup>

Therefore, it is important for INEC to exercise its power and discretion to postpone elections, when and where necessary, under **Section 24 of the Act**, in order to avoid a situation where a Presidential election in which over ₦300billion of tax payers' money was deployed is nullified due to substantial non-compliance with the law. In a situation where they refuse to exercise their powers and discretion where

applicable, the citizens can head to court and compel them to do so promptly.

### **Conclusion**

It is time to rise above ethnic sentiments and anachronistic compasses based on religion, party affiliations and selfish “stomach infrastructure” that have bedeviled the Nigerian State and use the machinery of the judiciary to compel the INEC to act where it seems reluctant to do so. Beyond an espousal of the law, this is a wake-up call.



<sup>5</sup> S. 24(6) and 134(1) of the Electoral Act 2022.