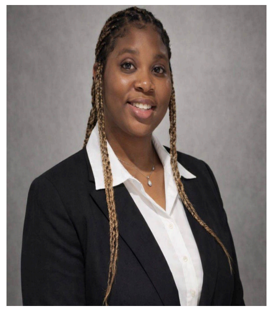
The Resignation Directive and the Electoral Act: When Executive Power Outruns the Law

DIAMOND UDOKAMMA IZUOGU
INTERN AT NEOTERIC LP (M.A MUSTAPHA & CO)



INTRODUCTION

On the 19th of March 2026, President Bola Ahmed Tinubu issued a directive requiring all political appointees seeking to contest elections in 2027 to tender their resignations no later than the 31st of March 2026. The directive, transmitted through the office of the Secretary to the Government of the Federation, George Akume, was framed as a measure to preserve the integrity of the electoral process and prevent the misuse of public office for partisan advantage. It was widely reported, broadly discussed and largely accepted by the political establishment as an exercise of presidential authority.

Legal analysts and constitutional scholars, however, have begun asking a more pointed question: what law actually requires this? The Electoral Act 2022, which remains the primary statutory framework governing elections in Nigeria, does not prescribe a resignation deadline of the 31st of March or any equivalent date in the year preceding a general election. If the statute does not compel it, the question becomes whether a presidential directive can create an obligation that the legislature has not seen fit to impose.

This article examines the legal tension at the heart of the resignation directive. It looks at what the Electoral Act 2022 actually says, what the Constitution permits by way of executive action, and what happens when a directive purports to govern conduct in an area the legislature has already addressed without prescribing the same outcome.

1. What the Electoral Act 2022 Actually Says

The most relevant provision of the Electoral Act 2022 is section 84(12), which has itself been the subject of considerable litigation. That subsection, as originally enacted, provided that no political appointee could vote at a political party's convention, congress or primary election unless the appointee had resigned from office at least thirty days before the date of the primary. The Supreme Court of Nigeria, in *Attorney General of the Federation v. House of Representatives* and related proceedings, affirmed the validity of that provision in principle.

What section 84(12) does not do is establish a separate, standalone resignation deadline for general elections themselves. The thirty-day window it creates runs from the date of a party primary, not from an administratively chosen date like March 31 of the year preceding an election. An appointee who wishes to contest but does not intend to vote at a primary is, on the face of the statute, differently situated. More critically, the Act does not authorise the President, the SGF or any executive body to prescribe a different or earlier deadline by fiat.

The Independent National Electoral Commission (INEC) releases its timetable for general elections, including primaries, in advance. Until that timetable is issued and primary dates are fixed, the statutory thirty-day clock cannot meaningfully begin to run. A directive that sets a deadline of March 31, 2026, effectively moves the goalposts to a point the legislature never marked.

2. The Constitutional Limits of Executive Directives

The executive power of the federation is vested in the President by section 5 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). That power is broad. It encompasses the administration of government, the direction of federal executive bodies and the general superintendence of the executive arm. It does not, however, include the power to legislate. That power rests with the National Assembly under section 4 of the Constitution.

The principle that executive action cannot create new legal obligations where the legislature has spoken, or has deliberately remained silent, is foundational in administrative law. It is sometimes described as the principle against executive legislation by directive. Where a statute occupies a field, a presidential directive cannot expand, contract or substitute for the statutory framework without legislative authorisation. The resignation deadline, as imposed by the President, operates precisely in this fashion: it supplements the Electoral Act 2022 in a manner the Act does not contemplate.

There is also the question of enforceability. A directive that has no statutory anchor cannot, in law, compel compliance in the same manner that a statute can. An appointee who declines to resign by March 31 faces administrative consequences, not legal ones. The President can, of course, remove an appointee at will. But that removal must be grounded in the President's power of appointment and dismissal, not in a fictional legal duty to resign by a date the statute does not prescribe. The two are legally distinguishable, and that distinction matters.

3. The Gap Between Political Legitimacy and Legal Authority

There is a difference between what is politically defensible and what is legally authorised. The resignation directive may be eminently sensible as a matter of political hygiene. It addresses a genuine concern: that political appointees who remain in office while pursuing elective mandates may deploy public resources, patronage networks and institutional influence in ways that distort competition. That concern is real. But the proper response to a real problem is legislation, not executive decree.

Nigeria has grappled with this issue for years. The National Assembly has, at various points, considered bills that would more explicitly regulate the conduct of appointees during electoral seasons. The absence of a comprehensive statutory deadline is not an oversight; it reflects the difficulty of reaching legislative consensus on how early is early enough. When the executive steps into that gap with a directive, it is not filling a lacuna in good faith. It is substituting its judgment for that of the legislature in an area the legislature has the exclusive competence to address.

Courts in Nigeria have shown a growing willingness to scrutinise executive action for its statutory and constitutional foundation. In *Inakoju v Adeleke*, the Supreme Court reinforced the principle that constitutional and statutory processes must be followed strictly, regardless of the political convenience of deviating from them. The lesson from that jurisprudence is that good intentions do not cure unlawful process.

4. Implications for Appointees, Parties and the 2027 Electoral Cycle

For political appointees with electoral ambitions, the directive creates a practical trap. Resigning by March 31 in compliance with an executive directive that has no statutory force may be politically prudent, but it cannot be treated as satisfying the section 84(12) requirement until the INEC timetable is published and the thirty-day statutory window begins to run in earnest. An appointee who resigns in March and then discovers that primaries are scheduled in October 2026 has resigned fourteen months ahead of any statutory obligation.

For the political parties, the directive raises questions about internal democracy. Section 84 of the Electoral Act is directed at both parties and appointees. If the President can unilaterally move the resignation deadline, questions arise about whether different appointees in different parties are being treated consistently, and whether the directive, however well-intentioned, is being applied evenhandedly across partisan lines.

For INEC, the directive potentially complicates the management of its own statutory timetable. The commission derives its authority to fix election dates and regulate primaries from the Constitution and the Electoral Act. A presidential directive that effectively establishes a pre-INEC electoral calendar sits awkwardly alongside the commission's constitutional independence under section 160 of the Constitution.

5. The Proper Course: Legislative Action

If the federal government believes that political appointees should be required to resign by a fixed, early date ahead of general elections, the solution is straightforward: introduce a bill to amend the Electoral Act to say so. A legislative amendment would give the deadline democratic legitimacy, provide a clear statutory basis for enforcement and remove the ambiguity that currently surrounds compliance.

The amendment could specify, for instance, that any person who holds a political appointment and intends to contest a general election must resign no later than twelve months before the scheduled date of that election. Such a provision would have the force of law, would be prospectively certain and would not depend on the political climate at the time a directive is issued. It would also be subject to judicial review if challenged, in a way that an executive directive is not.

Until that legislative step is taken, executive directives in this area will remain legally vulnerable, politically contested and constitutionally suspect. They may be obeyed, because political power tends to compel compliance regardless of legal authority. But obedience is not the same as legality, and in a constitutional democracy, that difference should not be elided.

CONCLUSION

President Tinubu's resignation directive is a symptom of a broader pattern in Nigerian governance: the tendency to use executive power as a shortcut where legislative reform is harder but more appropriate. The Electoral Act 2022 does not fix a March 31 resignation deadline. The Constitution does not authorise the President to create one. What exists is a directive that is politically significant, administratively consequential and legally untethered.

Law firms and legal practitioners advising political appointees would do well to distinguish carefully between the political pressure to comply and the statutory obligation to do so. The two do not presently coincide. Appointees who resign should understand that they are responding to executive authority, not statutory duty. Those who decline to resign by March 31 are not, on the face of current law, in breach of the Electoral Act.

The question this episode raises is a larger one: in a constitutional democracy, who gets to decide what the law requires? The answer, in Nigeria as elsewhere, must be the legislature. Executive directives that function as legislation by another name are not merely inconvenient. They are a direct challenge to the principle of separation of powers that the Constitution was designed to protect.

Diamond Izuogu

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Email: neotericlp@gmail.com

Tel/WhatsApp: 08013602316