ELECTORAL REFORM IN NIGERIA: THE DANGEROUS MANIPULATIONS IN THE ELECTORAL BILL 2021



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THE ELECTORAL HUB

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About The Electoral Hub

The Electoral Hub an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), is a multidisciplinary strategic think-tank which seeks to provide solutions to improve the credibility and integrity of the electoral process. It is conceptualised to complement the roles and activities of the different institutions, stakeholders and drivers of the electoral process and governance. The Electoral Hub's aim is to strengthen electoral governance and accountability in Nigeria through the provision of data and critical analysis supporting the credibility and integrity of the electoral process. We believe that the integrity of the electoral process is crucial in improving the electoral governance architecture and democracy in Nigeria. We also believe in contextual analysis for solutions rooted in the principles of justice and equity.

Our core values are knowledge-exchange, inclusion, justice, equity, transparency and accountability.

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ACRONYMS

ACCESS Nigeria	Alliance of Civil Society Organisations for Expansion of Electoral and Democratic Space
APC	All Progressives Congress
CSOs	Civil Society Organisations
ECES	European Centre for Electoral Support
INEC	Independent National Electoral Commission
IRIAD	Initiative for Research, Innovation and Advocacy in Development
NASS	National Assembly
NCC	Nigerian Communications Commission
PDP	People's Democratic Party
PLAC	Policy and Legal Advocacy Centre
PRP	People's Redemption Party
PVCs	Permanent Voter Cards
YIAGA	Youth Initiative for Advocacy, Growth and Advancement

Executive Summary

Since the Fourth Republic which began in 1999, a number of electoral reforms have taken place in order to improve Nigeria's electoral systems and processes. Of particular note was the 2015 general election, which was judged by observers to be one of the most credible elections in Nigeria. However, the 2019 elections fell below the expectations of Nigerians, with an increase in electoral malpractices and violence. Against this background, the 9th National Assembly has instituted a comprehensive process of electoral and constitutional reform targeted at improving the electoral process of Nigeria.

After missing three initial deadlines of December 2020, March 2021, and June 2021, both chambers of the National Assembly passed the Electoral Bill in July 2021, with a slightly different version in each chamber. However, there are many unresolved issues in the Bill, most notably section 52(3) which provides that: "The Commission may consider electronic transmission of results provided that the National Network Coverage is adjudged to be adequate and secured by the Nigerian Communications Commission (NCC) and approved by the National Assembly". By subjecting the Independent National Electoral Commission (INEC) to the direction of the NCC, this section is not only undemocratic but also unconstitutional.

In order to resist the dangerous manipulations and ensure a sound electoral legal framework, we make the following recommendations for different stakeholders:

1. The National Assembly should quickly finalise the Electoral Bill, including harmonising the different versions and resolving contentious issues, so as to prevent last-minute changes to the law.
2. INEC should increase advocacy and engagement with NASS leadership, as well as make public statements on the relevant issues.
3. Political parties should make public statements and recommendations regarding the Bill. Importantly, those who have members in the National Assembly should also influence them to vote against the manipulations.
4. CSOs should further employ policy influencing strategies, including public statements, press conferences, protests, and high-level meetings with legislators.
5. Donor agencies should support CSOs to put pressure on the National Assembly, and also directly put pressure on them through high-level engagements.
6. The media should publicise NASS proceedings, highlight the manipulations, and make opinion pieces on why these manipulations should be rejected.



7. The electorate should speak up and make their views on the Bill known. They can do this in various ways, including calling their legislators, sending letters and petitions to their legislators, organising and joining protests, and even making posts on social media.
8. Other stakeholders, including State Governors, State House of Assembly members, and so on, should continue to voice displeasure with the manipulations and urge the National Assembly to pass the Electoral Bill that Nigerians want.

Ultimately, the more voices there are, the more pressure the National Assembly will face to remove the contentious provisions in the Bill. In order to ensure that INEC has the enabling framework to conduct free, fair and credible elections come 2023, we therefore urge all stakeholders, including NASS, INEC, political parties, CSOs, donor agencies, media, the elections, to fiercely resist the dangerous manipulations in the Electoral Bill 2021.

INTRODUCTION

Elections in Nigeria are infamous for the high level of electoral violence, vote buying, vote rigging, and other electoral malpractices that occur. These factors are not unconnected to the history of the country, whereby numerous military coups hampered the development of democracy since the First Republic. The result is that Nigeria has had only 22 years of uninterrupted experience with democracy. The combination of these factors has also resulted in voter apathy and lack of public trust in the system.

Since the Fourth Republic which began in 1999, a number of electoral reforms have taken place in order to improve Nigeria's electoral systems and processes. These are found in the amendments to the 1999 Constitution; the various Electoral Acts; and the policies put in place by INEC. These reforms have, to varying extents, improved the effectiveness of elections in Nigeria.

Of particular note was the 2015 general election, which was judged by observers to be one of the most credible elections in Nigeria, "with relatively little violence or voter fraud".[1] Some of the factors responsible for this level of success were the thorough clean-up of the voter register and the introduction of permanent voter cards (PVCs) and electronic card-reading machines by INEC prior to the elections. [2]

However, the 2019 elections fell below the expectations of Nigerians, with an increase in electoral malpractices and violence that saw at least 600 people killed.[3] Against this background, the 9th National Assembly has instituted a comprehensive process of electoral and constitutional reform targeted at improving the electoral process of Nigeria.

After missing three initial deadlines of December 2020, March 2021, and June 2021, both chambers of the National Assembly passed the Electoral Bill in July 2021, with a slightly different version in each chamber. However, there are many unresolved issues in the Bill. The final version of the Bill which was passed contains some manipulations that are at variance with the will of Nigerians. This is not only undemocratic but also unconstitutional.

[1]Akeem Ayanda Araba and Joseph Odunayo Braimah, "Comparative Study of 2011 and 2015 Presidential Elections in Nigeria", Global Journal of Human-Social Science F: Political Science (Vol 15, Issue 7), https://globaljournals.org/GJHSS_Volume15/4-Comparative-Study-of-2011.pdf

[2]Hakeem Onapajo (2015), "Nigeria's 2015 General Elections: The Salience of Electoral Reforms", The Round Table, https://doi.org/10.1080/00358533.2015.1090795

[3]"Nigeria: Widespread Violence Ushers in President's New Term", Human Rights Watch (10 June 2019), https://www.hrw.org/news/2019/06/10/nigeria-widespread-violence-ushers-presidents-new-term



Against this background, The Electoral Hub, an organ of the Initiative for Research, Innovation and Democracy in Development (IRIAD), has produced this paper. In this paper, we explore the dangerous manipulations in the Electoral Bill 2021 and make recommendations for different electoral stakeholders – the National Assembly, the Independent National Electoral Commission (INEC), political parties, civil society organisations (CSOs), donor agencies, the media, and the general public. These recommendations are aimed at ensuring that the quality of the Electoral Bill is not compromised, and the integrity and credibility of Nigeria's electoral process is upheld.

THE ELECTORAL BILL 2021

BACKGROUND

Since 1999, Nigeria has had four Electoral Acts – the Electoral Act 2001, the Electoral Act 2002, the Electoral Act 2006, and the Electoral Act 2010 – which have been amended at various times. Following the 2015 general elections, the 8th National Assembly underwent a process of drafting a new Electoral Bill to repeal the 2010 version. However, the President refused to sign the Bill on four different occasions. On the last occasion, which was in 2018, one of the reasons cited by the President for refusing to the sign the Bill was that it was too close to the next general election. Thus, the 2019 general elections were conducted under the framework of the 2010 Bill.

Following the 2019 elections, the process of reviewing and updating the Bill started again. Various versions of the Bill were publicised for public engagement. Public hearings were held in December 2020, and continuous technical sessions were held with CSOs and development partners, including Policy and Legal Advocacy Centre (PLAC), Youth Initiative for Advocacy, Growth and Advancement (YIAGA), and the European Centre for Electoral Support (ECES). The Bill was finally passed by both chambers of the National Assembly in July 2021.

Manipulations in the Bill

In early July, there were indications that the final version of the Bill contained manipulations by a section of the Joint Committee on INEC and Electoral Matters in the National Assembly, which were not presented to the whole Committee for review (see Appendix). Some of the manipulations that were particularly concerning were the prohibition of electronic transmission of results (section 50(2)), the removal of INEC's powers to review results declared under duress or in contravention of electoral laws (section 65), and the drastic increase in the limits on campaign expenses (section 88).

There were concerns that prohibiting electronic transmission of results and removing INEC's powers to review results declared under duress would reduce transparency and thus increase the level of electoral malpractices in the country. There were also concerns that the drastic increase in campaign financing would amount to a monetisation of our democracy, with elections won by the highest bidder. This would have a disproportionate effect on women, youth and other minority groups who usually have less financial resources.

Although the prohibition on electronic transmission of results has now been removed in the version of the Bill passed by the National Assembly, there are still concerns about the power given to the Nigerian Communications Commission (NCC) over the electronic transmission of results. This power is contained in section 52(3) in the version of the Bill passed by the Senate, which reads: "The Commission may consider electronic transmission of results provided that the National Network Coverage is adjudged to be adequate and secured by the Nigerian Communications Commission and approved by the National Assembly".

By this provision, the National Assembly is subjecting INEC to the direction of two bodies: the NCC and the National Assembly. This provision goes against section 78 of the 1999 Constitution of Nigeria, which states that "the conduct of elections shall be subject to the direction and supervision of Independent National Electoral Commission". The Constitution further gives INEC the power to "organise, undertake and supervise all elections",

including presidential elections, governorship elections, and legislative elections.[4] As a public affairs analyst, Jide Ojo, notes, "the mode of election and transmission of results are critical parts of the conduct, supervision, undertaking and organisation of elections in Nigeria".[5] The provision of section 52(3) is therefore unconstitutional, and if not changed, has the potential to undermine INEC independence and, in turn, the integrity of our electoral process. As the main electoral umpire in the country, INEC should be the only body to determine the mode of voting and transmission of results during elections.

[4]Paragraph 15, Part 1 of the Third Schedule to the 1999 Constitution of Nigeria

[5]Jide Ojo, "NASS 2021 Electoral Amendment Bill: Betrayal of Peoples' Trust", This Day (20 July 2021), https://www.thisdaylive.com/index.php/2021/07/20/nass-2021-electoral-amendment-bill-betrayal-of-peoples-trust/



Stakeholders Response

CSOs have responded rapidly to the manipulations in the Bill by organising activities aimed at raising public awareness and getting the attention of the National Assembly. The Electoral Hub, together with other members of the Alliance of Civil Society Organisations for Expansion of Electoral and Democratic Space (ACCESS Nigeria), has drafted and signed statements, organised advocacy meetings with strategic partners, organised protests and press conferences, and made radio and TV appearances.

Other stakeholders, including INEC, the Southern Governors Forum, some individual Governors, some state legislatures, minority lawmakers, some political parties, the media, and the general public, have continued to speak out against the manipulations in the Bill. The issue that has been loudest is that of electronic transmission of results. Many stakeholders seem to be in support of electronic transmission of results without NCC interference, and even INEC has stated that it has the capacity to transmit results electronically nationwide.[6] The fact that the Bill was passed by the National Assembly even with these unresolved issues is undemocratic and goes against the norms of public discussion and dialogue.

[6]Friday Olokor, "INEC counters NASS, says nationwide e-transmission of election results possible", Punch (18 July 2021), https://punchng.com/inec-counters-nass-says-nation-wide-e-transmission-of-election-results-possible/

RECOMMENDATIONS

It goes without saying that the legal framework is an important aspect of the electoral process, and a defective legal framework could undermine the integrity and credibility of the upcoming 2023 elections. Against this background, it is important for electoral stakeholders to take actions to safeguard our electoral laws. It was discussed in the previous stakeholders that stakeholders have been responding to the manipulations in the Bill in several ways. This section suggests ways in which these stakeholders can further build on their actions to ensure a sound electoral legal framework.

01 National Assembly

The National Assembly consists of elected legislators at the national level representing constituencies/senatorial districts. Given this representative function, legislators must ensure that the laws they pass represent the views of the people they represent. Unfortunately, it appears that the Electoral Bill was passed without fully taking into account the views of the people, especially regarding electronic transmission of results. We therefore urge individual legislators to properly consult their constituents and review the provisions in the Bill that are not in tandem with these views. Subsequently, the National Assembly should also refrain from passing Bills until all contentious issues are resolved.

Another issue is that the National Assembly should conclude the process of harmonising the different versions of the Bill in the Senate and House of Representatives in good time. There seems to be a trend in recent years where Electoral Bills are passed closed to elections. The 2015 amendment to the Electoral Bill 2010 was passed very close to the election, and in fact had not even been gazetted at the time of 2015 elections. Furthermore, one of the reasons the 2018 Bill was not signed by the President was that it was too close to the 2019 elections.

The National Assembly has now passed the Electoral Bill 2021 just a day before they went on vacation, after missing three initial deadlines. Since different versions of the Bill were passed by both chambers, there is still need to harmonise the different provisions, which might not happen until the National Assembly returns from recess in September.[7] Even after the provisions are harmonised, there is still uncertainty about whether the President will sign the Bill or send it back to the National Assembly. All of these would be happening while the 2023 elections are drawing nearer.

It is therefore imperative for the National Assembly to quickly finalise the Electoral Bill, including harmonising the different versions and resolving contentious issues, so as to prevent last-minute changes to the law and also allow INEC sufficient time to internalise and implement the law, and even test-run it in smaller elections before the 2023 general elections.

[7]Jide Ojo, "NASS 2021 Electoral Amendment Bill: Betrayal of Peoples' Trust", op. cit.

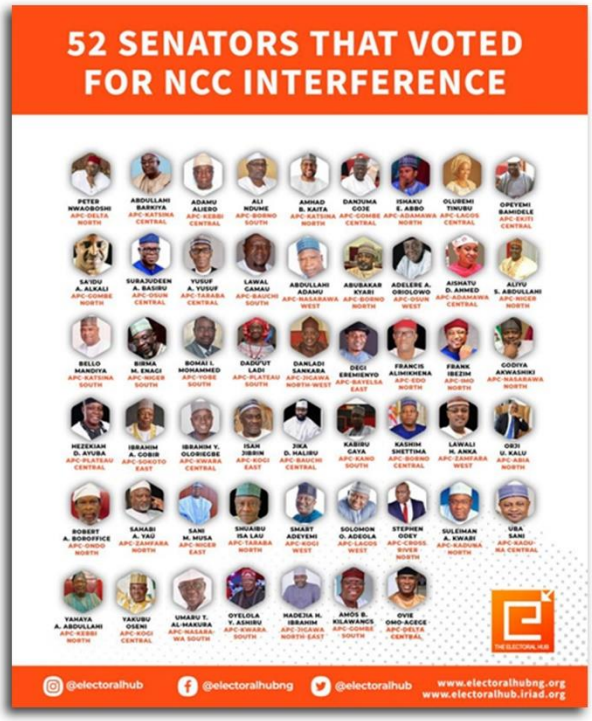
02 INEC

INEC, as the primary electoral management body (EMB) in Nigeria, has a major role to play in this process. The Commission had earlier submitted proposals to the National Assembly on the Electoral Bill, some of which were adopted while others were rejected. In the face of these dangerous manipulations in the Bill, INEC should increase advocacy and engagement with NASS leadership. Making statements on the relevant issues also contributes to the debate. For instance, INEC's recent statement that it has the capacity to transmit election results electronically nationwide provides further impetus to the argument that INEC should be able to transmit election results without NCC interference.

03 Political Parties

Political parties also have a major role to play in ensuring a sound electoral legal framework. They can do this by submitting proposals to the National Assembly during public hearings and making statements and recommendations regarding the Bill even outside the formal process of public hearings. Parties such as the People's Redemption Party (PRP) and the People's Democratic Party (PDP) have at various times issued statements condemning issues in the Bill regarding electronic transmission of results.

Another important way through which parties indirectly contribute to electoral laws is by influencing their members in the National Assembly to vote in a particular way on contentious issues. This was evident in the voting on section 52(3) of the Bill in the Senate. This voting was clearly done along party lines, as all 52 Senators who voted for NCC interference were from the All Progressives Congress (APC), while all 28 Senators who voted for electronic transmission of results without NCC interference were from the People's Democratic Party (PDP).







Summary of voting results in the Senate on whether NCC should interfere with electronic transmission of results by INEC. The Senate President, Dr Ahmed Lawan, did not vote.

This shows the high level of influence that political parties wield over their members. Parties can therefore resist the manipulations in the Bill by making public statements and, for those who have members in the National Assembly, influencing them to vote against these manipulations.

04 CSOs

CSOs can contribute by further employing policy influencing strategies, including public statements, press conferences, protests, and high-level meetings with legislators. We have seen how pressure from CSOs can generate results, following the rejection of the appointment of Ms Lauretta Onochie by the Senate Committee on INEC. We therefore urge CSOs to continue to put pressure on NASS to reject the manipulations in the Electoral Bill.

05 Donor Agencies

Donor agencies can contribute in two main ways. Firstly, they can provide financial support to CSOs to carry out their activities aimed at pressuring the National Assembly to reject the manipulations in the Bill. This is because many CSOs cannot conduct these activities – at least not on a large scale – without the support of donors. Secondly, donors can also contribute by conducting high-level engagement with NASS leadership and individual legislators to encourage them to resist the manipulations in the Bill. The combination of the pressure from CSOs through donor support and pressure directly from donors should have a powerful cumulative effect.

06 Media

The media's role in this process cannot be overemphasised. It is only through media reports that many of these manipulations come to the public's attention. The media therefore has a major role to play in publicising NASS proceedings, highlighting the manipulations, and making opinion pieces on why these manipulations should be rejected. This role of the media will also have an indirect effect in urging members of the public to further speak out against the manipulations in the Bill, as discussed in the next point.

07 The Electorate

A representative democracy like ours thrives on principles such as participation, representation, transparency, and accountability. This means that the electorate must participate actively in the legislative process, ensure their views are represented, and hold legislators accountable for failing to act in accordance with their wishes. In the face of these manipulations in the Bill, the electorate must speak up and make their views known. They can do this in various ways, including calling their legislators, sending letters and petitions to their legislators, organising and joining protests, and even making posts on social media. All of these will contribute to the actions of other stakeholders, thereby mounting pressure of the National Assembly to reject the manipulations.

08 Other Stakeholders

Other stakeholders, including State Governors, State House of Assembly members, and so on, should continue to voice displeasure with the manipulations and urge the National Assembly to pass the Electoral Bill that Nigerians want. Ultimately, the more voices there are, the more pressure the National Assembly will face to remove contentious provisions from the Bill, especially section 52(3) which gives the NCC undue powers over INEC.

CONCLUSION

It is undoubted that Nigeria's electoral process needs to be reformed, and the Electoral Bill 2021 needs to be finalised urgently in the context of the fast-approaching 2023 general elections. However, this desire for a timely Bill does not mean that the quality of the Bill should be compromised. The Electoral Hub strongly rejects section 52(3) of the Bill which gives the NCC power to interfere and decide whether INEC should electronically transmit elections results. As the main electoral umpire, INEC should be given the unfettered discretion to determine the mode of voting and transmission of election results.

Going back a few years, we can see that the success of the 2015 elections can at least be partly attributed to INEC's initiatives regarding smart card readers and PVCs. In line with this, INEC should also be allowed to take further initiatives, including electronic transmission of results, if they determine that they have the capacity to do so. This is not just a more practical solution, but also in line with their constitutional mandate.

In order to ensure that INEC has the enabling framework to conduct free, fair and credible elections come 2023, we therefore urge all stakeholders, including NASS, INEC, political parties, CSOs, donor agencies, media, the elections, to fiercely resist the dangerous manipulations in the Electoral Bill 2021.

APPENDIX: DIFFERENCES BETWEEN ORIGINAL BILL AND MANIPULATED BILL

This table highlights the differences between the earlier version of the Electoral Bill 2021 and the version that came out in early July 2021, which contained manipulations purported to be made unilaterally by a section of the Joint Committee on INEC and Electoral Matters in the National Assembly.

S/N	ISSUE	ORIGINAL BILL	MANIPULATED BILL
01	Smart Card Reader – Section 47(3)	Where a smart card reader or any other technological device deployed for accreditation of voters fails in any unit and a fresh card reader is not deployed, the election in that unit shall be cancelled **and another election shall be scheduled within 24 hours.**	Where a smart card reader or any other technological device deployed for accreditation of voters fails in any unit and a fresh card reader is not deployed, the election in that unit shall be cancelled and another election shall be scheduled within 24 hours. **The Commission is allowed to conduct another election only if it is satisfied that the election in that polling unit will substantially affect the final result of the whole election and declaration of a winner in that constituency concerned.**
02	Transmission of Results –Section 50(2)	Voting and transmission of results should be in accordance with a procedure determined by the Commission.	Provides that procedure for voting should be determined by the Commission which may include electronic voting, provided that **results should not be transmitted by electronic means.**
03	Declaration of Results – Section 65	Proviso makes mention of the power of the Commission to review the declaration and return made by the Returning officer within seven days.	The **proviso** is completely **non-existent.**

APPENDIX: DIFFERENCES BETWEEN ORIGINAL BILL AND MANIPULATED BILL

S/N	ISSUE	ORIGINAL BILL	MANIPULATED BILL
04	DECISION OF THE COMMISSION SUBJECT TO JUDICIAL REVIEW – SECTION 76	A legal action challenging the decision of the Commission not to register an a sociation as a political party shall be commenced within **14** days from the date of the receipt of the decision on non-registration from the Commission	A legal action challenging the decision of the Commission not to register an association as a political party shall be commenced within **45** days from the date of the receipt of the decision on non-registration from the Commission
05	NOMINATION OF CANDIDATES BY PARTIES – SECTION 84(1)	A political party seeking to nominate candidates for elections under this Act **shall** hold direct or indirect primaries for aspirants to all elective positions, which shall be monitored by the Commission	A political party seeking to nominate candidates for elections under this Act shall hold direct or indirect primaries for aspirants to all elective positions, which **may** be monitored by the Commission
06	CAMPAIGN FINANCE – SECTION 88	Section 88(2); election expenses to be incurred by a candidate for presidential election shall not exceed **N5,000,000,000** Section 88(3); election expenses to be incurred by a candidate for Governorship election shall not exceed **N1,000,000,000** Section 88(4); election expenses to be incurred by a candidate in respect of a senatorial and House of Representatives seat shall not exceed **N100,000,000** and **N70,000,000** respectively	Section 88(2); election expenses to be incurred by a candidate for presidential election shall not exceed **N15,000,000,000** Section 88(3); election expenses to be incurred by a candidate for Governorship election shall not exceed **N5,000,000,000** Section 88(4); election expenses to be incurred by a candidate in respect of a senatorial and House of Representatives seat shall not exceed **N1,500,000,000** and **N500,000,000** respectively

APPENDIX: DIFFERENCES BETWEEN ORIGINAL BILL AND MANIPULATED BILL

S/N	ISSUE	ORIGINAL BILL	MANIPULATED BILL
		Section 88(5); election expenses to be incurred by a candidate for state Assembly election shall not exceed **N30,000,000** Section 88(6); election expenses to be incurred by a candidate for an Area Council election shall not exceed **N30,000,000**	Section 88(5); election expenses to be incurred by a candidate for state Assembly election shall not exceed **N50,000,000** Section 88(6); election expenses to be incurred by a candidate for an Area Council election shall not exceed **N50,000,000**
07	ELECTION EXPENSES OF POLITICAL PARTIES – SECTION 89(4)	Maximum amount of fine for failure of political party to make audited return on election expenses is **N1,000,000**	Maximum amount of fine for failure of political party to make audited return on election expenses is **N5,000,000**
08	DISCLOSURE BY POLITICAL PARTIES – SECTION 90	Section 90(2)(b); a political party shall not accept any monetary or other contribution more than **N1,000,000** Section 90(3); a political party shall not accept any monetary or other contribution more than **N1,000,000** unless it can identify the source of the money or other contribution to the Commission	Section 90(2)(b); a political party shall not accept any monetary or other contribution more than **N50,000,000** Section 90(3); a political party shall not accept any monetary or other contribution more than **N50,000,000** unless it can identify the source of the money or other contribution to the Commission



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