

How Nigeria's National Assembly Can Make the Electoral System Impregnable on Electronic Transmission to Prevent Fraud During Election Result Collation

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ABSTRACT:

For many years, stakeholders in the election process in Nigeria had rued perceived manipulation of each round of elections in Nigeria, owing largely to the fact that the result management system had essentially been manual with the attendant weaknesses, leading to proliferation of post-election petitions and of exacerbation of rancour and tension after each round of elections. The Electoral Act 2022 was signed into law with the aim of legitimising the e-management of election results, as an addition to the existing manual processes, by putting in place safeguards towards promoting the integrity of the pre-election, balloting, and especially post-balloting processes thereby entrenching greater transparency in the election process and ensuring that each round of elections came out as a true reflection of the will of the electorate. Unfortunately, in 2023, Nigerian Courts took the position that electronic transmission was not an indispensable requirement of the Electoral Act, 2022. Since then, a new wave of clamour and agitation to make electronic transmission a sine-qua-non in the election process in Nigeria has sprung up. The purpose of this piece is to present a template, as an example, to the National Assembly of the Federal Republic of Nigeria, on how to make the Electoral Act impregnable on electronic transmission, thereby closing the door on perpetrators of election result management frauds in Nigeria, thereby installing greater credibility and transparency in the election system. In presenting the draft below, the author does not lay any claim to being perfect; the aim is to provoke further discussions in the interest of democracy and good governance in Nigeria, because the writer believes that the best way to nip in the bud opportunities for fraud in election results management in Nigeria, is to leave no room for discretion on the part of election managers. Creating exceptions and granting discretions gives fraudulent election managers a leeway to truncate the process.

KEYWORDS: Nigeria, Election; Election System; Electoral Act; Electronic Transmission; IReV, BVAS, National Assembly; Impregnable; Democracy; INEC; Collation; Returning Officer.

1. SUGGESTED AMENDMENTS TO THE ELECTORAL ACT, ON ELECTRONIC TRANSMISSION OF RESULTS

The National Assembly should consider inserting the following or similar provisions into the Electoral Act, 2022, to demonstrate seriousness about making electronic transmission of results genuinely mandatory, indispensable in the election process.

SECTION 1:

1) Voters who are registered to vote in a Polling Unit, who are accredited to vote and who voted in the Polling Unit on the day of an election, are entitled to stay behind at the Polling Unit after casting their vote, to witness the post-balloting procedures at the Polling Unit, including the recording of the votes and accreditation in the prescribed

Form EC8A by the Presiding/Polling Officer for the Polling Unit, the signing of the duly completed Form EC8A by relevant persons as prescribed in subsection (2) of this Section, and the direct electronic transmission of a scanned copy of the Form EC8A as duly completed and endorsed by the relevant persons, from the polling unit to the iReV on the day of the election, as required by this Section.

2) Upon the conclusion of voting at a Polling Unit, the Presiding/Polling Officer for the Polling Unit shall immediately, while still at the polling unit and in the presence of voters (if any) who remained behind after casting their vote at the polling unit, record the results of the votes and of the accreditation for the Polling Unit in the prescribed Form EC8A for assigned for Polling Unit, and sign the Form accordingly, after which all candidates present or their duly accredited party agents, and the police officer duly posted to the affected polling unit, shall also endorse the Form accordingly.

3) Immediately after the recording of the results and accreditation records in the prescribed Form EC8A, and of the endorsement of the Form EC8A by relevant personnel at the polling unit, the Presiding/Polling Officer must use the BVAS machine assigned to the Polling Unit to electronically transmit a scanned copy of the Form as duly completed and endorsed Form EC8A, direct from the polling unit to the iReV, and before leaving the Polling Unit on the day of the election; Provided that notwithstanding anything to the contrary in this Act, the electronic transmission of scanned copy of duly completed and endorsed Form EC8A is mandatory and must be done by the Polling Officer, from the Polling Unit in the presence of voters who choose to stay behind after voting.

4) Any result or results not so transmitted electronically on the day of the election, from the Polling Unit as required by Subsections (2) and (3) of this Section, is/are void (save for results of a rescheduled election which must comply with the provisions of Subsections (2) and (3) of this Section), and must not be taken into account in making a return for that Polling Unit and election.

5) After complying with the procedure in Subsections (2) and (3) of this Section, the Presiding Officer (or Polling Officer), in the company of the candidates or party agents who are present, must take the hard/original copy of the duly endorsed Form EC8A and other election materials, to the appropriate and relevant INEC collation centre.

6) Failure to electronically transmit a scanned copy of the Form EC8A as provided in Subsections (2) and (3) of this Section automatically renders the election and results in each affected Polling Unit(s) null, void.

SECTION 2:

1. The Presidential, Senatorial, and House of Representatives elections must hold simultaneously on the same date, to be fixed by the Independent National Electoral Commission (INEC), while the Governorship and State Houses of Assembly Elections shall hold simultaneously in each relevant State or States and on a date to be fixed by the INEC.

2. Separate BVAS machines must be used for the Presidential, the Senatorial, and the House of Representatives elections on the one hand, and for the Governorship and the State Houses of Assembly Elections on the other; Provided that the BVAS Machines used for the Governorship and the Houses of Assembly Elections shall be different from the BVAS machines used for the Presidential, the Senatorial and the House of Representatives elections.

3. Records or data entered on the BVAS machines used for each round of elections must not, under any circumstances whatsoever be erased or otherwise deleted or tampered with by the INEC or INEC officials (including polling unit officials), until the conclusion of election litigation up to the final court of appeal for that round of elections; Provided that if this subsection is violated, the result or results of any Polling Unit results affected by such violation is/are thereby voided and must not be taken into account in determining the winner of the election.

4. Any Resident Electoral Commissioner or other election official or staff member of INEC or other person who violates the mandatory prescriptions in Subsections (2) and (3) of this Section must automatically lose his office, must in addition be ineligible to hold any public office in Nigeria for 10 years, and is guilty of an offence, punishable upon conviction by a term of imprisonment not less than 5 years.

SECTION 3:

1) A collation officer at any collation center must, before certifying each original copy of Form EC8A received by him, verify the authenticity of the results on the Form EC8A by comparing the results as recorded on the Form with the polling unit results as electronically uploaded to the IReV from the polling unit on the date of the election.

2) In all circumstances without any exception, where a Collation Officer is satisfied that the results as recorded on the hard copy the Form EC8A received by the Collation Officer, vary from the results on the scanned copy of the Form EC8A as directly electronically transmitted from the polling unit to the IReV on the election day, the results as uploaded to the IReV must be preferred as the authentic results from the affected Polling Unit.

SECTION 4:

1. Where any candidate or political party who fielded a candidate for an election applies for Certified True Copy or Certified True Copies of accreditation records and or the election results for the election or for any Polling Unit, the candidate/party must in addition to delivering a copy of such an application to the national headquarters of the INEC, deliver a copy of each such application to the INEC state office in each affected State.

2. Upon receipt of such an application as mentioned in Subsection (1) of this Section, the Chairman of INEC and every Resident Electoral Commissioner for each affected state must each within 10 days from the date of the receipt of such an application, compile and deliver to the national headquarters of each affected political party a Certified True Copy (CTC) of the requested record of accreditation and results detailing polling unit by polling unit results as recorded in the Form EC8A in each polling unit and as electronically transmitted direct from the polling units on the affected election day in each affected state.

3. Any result(s) on any such CTC which is/are inconsistent with the results as electronically transmitted to the iReV in line with this Act, shall be null ab initio, and void.

4. Any resident Electoral Commissioner who violates the mandatory prescription in Sections (2) and (3) of this Section shall automatically lose his office, and shall in addition be ineligible to hold any public office in Nigeria for 10 years.

5. Where due to internet network failure, technical glitches, poor internet network, violence, or other logistic or or artificial or natural factors, a scheduled election is not able to hold in a polling unit or the polling officers are not able, due to such glitches, etc, as named above, to electronically transmit scanned copies of the duly endorsed Form EC8A as required by this Act, the INEC must reschedule the election for the affected polling unit or polling units; Provided that any results not shown to have been duly transmitted electronically to the IReV as required by this Act is void and must not be taken into account in determining the result of the election.

SECTION 5:

1) No return or declaration of results of an election shall be made until elections have been conducted in all polling units and the results of the election have been electronically uploaded as prescribed in this Act; Provided that if the total number of registered voters in the polling unit or polling units whose results are not transmitted electronically as required by this Act is not higher than the difference between the total votes scored by the candidates who is leading in the election, and the total votes scored by the first runner-up, the Collation Officer or returning officer as the case may be, must proceed and make a declaration or return.

2) Notwithstanding anything to the contrary in this Act or in any other law, any return or declaration made in contravention of this Section is void ab initio, unless the number of registered voters in the affected polling unit or units is not enough to change the results of the election.

3) Notwithstanding anything to the contrary in this Act or in any other law, no results from a polling unit whose results are not transmitted electronically as required by Sections 1, 2, 3 and 4 of this Act shall be taken into consideration in calculating the valid results of the election towards making a declaration or return for the affected election.

4) Notwithstanding anything to the contrary in this Act or in any other law, in all cases without any exception, any conflict between results electronically as transmitted to the IReV in line with this Act and results as manually collated must be resolved in favour of the results as electronically transmitted to the IReV as prescribed by this Act.

5) Any result transmitted to the IReV after the date of the election of in contravention of this Act is void ab initio, and the election for the effected Polling Unit or Polling Units must be repeated and transmitted as required by this Act, unless the votes of the affected Polling Unit or Polling Units are not enough to change the other results of the election.

6) Any collation Officer or Returning Officer who makes a return or declaration in any election conducted under this Act, without complying with the provisions of Sections 1, 2, 3, 4 and 5 of this Act stands banned from holding any public office for 10 years, and is additionally guilty of an offence and upon conviction liable to a term of imprisonment not below five years.

7) Where it is alleged that the provisions of Sections 1, 2, 3, 4 or 5 of this Act has been violated by any person or group in any State, the Commissioner of Police of the affected State must within 5 days of receipt of a complaint in this regard, apply to a High Court in that State for a judicial verification or determination of the allegation, and the High Court must within 14 days from the date of filing the application, make a determination as to whether or not any provisions of Sections 1, 2, 3, 4 or 5 of this Act has or have been violated.

8) For the purpose of Subsection (7) of this Section, the Court must offer all parties a fair hearing in the circumstances, but the court must make its determination within 14 days of the filing of the application in court.

9) Any Commissioner of Police who violates Subsection (7) or (8) of this Section shall automatically lose his office as a Commissioner of Police but not as a Police Officer, and shall additionally be liable to be demoted to the rank of an Assistant Commissioner of Police.

SECTION 6:

1. For the purpose of enforcing any provisions of this Act and of giving effect to any punishment or liability imposed by this Act for any violation of any provisions of this Act, the Nigerian Bar Association or any person or persons or group of persons or Non-Governmental Organisation or other group or organisation or Association shall have the locus standi to approach a State High Court or Federal High Court in any State of the Federation including the FCT or the High Court of the FCT with an application by way of either Originating Motion or Originating Summons, supported by an Affidavit and a Written Address; Provided that any relevant supporting evidence or documents shall be attached to the Affidavit as Exhibits; and Provided that proceeding under this Subsection must be filed within two months from the date of the election to which the proceeding relate.

2. A Court hearing any suit or proceedings filed in line with Subsection (1) of this Section shall have powers to make any order or orders or to make any determination or to give any direction or directions or to impose any punishment as it may deem fit in line with the provisions of this Act; Provided that the Court must make its determination within 30 days from the date of the commencement of the court proceedings.

3. Every processes or processes filed for this purpose must be duly served on all parties affected or likely to be affected by the determination in the proceedings; Provided that every person or party on whom any court process or processes is/are served in respect of proceedings instituted in line with Subsection (2) of this Section may respond by filing and serving his response (if any) within five (5) days from the date of service of the processes on him and the applicant shall be entitled file and serve a reply to the Respondent's Response within three days from the date

of service of such Response on the applicant; Provided further that no extension of time is allowed for the doing of any act or for taking of any steps or action permitted to be taken under this Section.

4. Where personal service fails or is not possible or is rejected, the affected process or processes may, with the leave of Court, be served by WhatsApp or by email to the verified phone number or email address of affected party, or by any other relevant means of substituted service; Provided that an application for such substituted service must be heard by the Court within three days of filing of the application.

2. CONCLUSION

The truth is that until electronic transmission of election results is made an indispensable requirement of election results collation process in Nigeria, credibility would continue to elude the country, and so long would post-election tensions and agitations continue. The present writer respectfully believes that if amendment in the Electoral Act follows the format proposed above, the Act would have achieved the status of impregnability with regard to electronic transmission of results, in a manner that would make it near-impossible for anyone or group, within or without the electoral umpire, to manipulate with impunity, post-ballot (collation) processes in any election in

Nigeria. It is respectfully submitted that until Nigeria gets it right with leadership recruitment through the process of elections in Nigeria using impregnable laws, good governance and its attendant dividends may continue to elude the country. Installing the above or similar impregnable provisions into the Electoral Act would ensure transparency, institute credibility, and assure that the will of the electorate prevails in all elections. Such an impregnable system is necessary to deliver to Nigerians the type of free, fair and credible election that can effectively measure up to, or beat, 21st-century standards, international benchmarks and prevailing global best practices, thereby making election petitions less rampant after each round of elections in Nigeria, unlike what is currently the case in Nigeria. As experience has shown, the average Nigerian with the intention to manipulate extant laws to his selfish advantage, always looks for loopholes, and excuses to latch on to evade obedience to extant laws. Bearing this in mind, the best way out is to insert into our electoral laws stiff, impregnable self-enforcing mechanisms, that would make it impracticable for anyone with such mischievous intentions to have an opportunity to violate or truncate the laws, or at least to have an opportunity of violating or truncating the laws with impunity. In this way, we're sure that the laws will achieve their set objectives; a law that is practically incapable of fulfilling its set objectives, is ineffective, useless, is as good as not made at all. The only way to be sure that a law can realise its objectives in a country of difficult people, like Nigeria, is to make the laws or their provisions impregnable, stiff, and of strict liability. Having a new system of laws in place is not enough if the new system is not made strong, impregnable and self-enforcing enough to be able to effectively deal with the hard-nut-to-crack set of people that many Nigerians have proven to be. Only tough laws are fitting for rough people as many Nigerians have proven to be. Weak laws, laws with exceptions and loopholes or which leave room for manipulation or which are easy to manipulate with impunity, are the most unsuitable for the Nigeria situation. By impregnable laws or impregnable provisions in laws, this author means the installation of laws or statutory provisions that are practically incapable of being violated with impunity. Impregnable laws will reset our attitude and thereby reform us. The author plans in his next paper to discuss further, the concept of impregnability of laws as a sure way to achieving effectiveness in implementation or enforcement.

REFERENCES