

MERITS OF THE ELECTORAL BILL 2021

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Acronyms

CSOS	CIVIL SOCIETY ORGANISATIONS
IDP	INTERNALLY DISPLACED PERSONS
INEC	INDEPENDENT NATIONAL ELECTORAL COMMISSION
IRIAD	INITIATIVE FOR RESEARCH, INNOVATING AND ADVOCACY IN DEVELOPMENT
PWDS	PERSONS WITH DISABILITIES





MERITS OF THE ELECTORAL BILL 2021

INTRODUCTION

The legal framework guiding elections is one of the most crucial elements of an electoral system. This is because it sets out the powers of the electoral management body, the conditions for registration of a political party, the requirements for contesting an elective office, the criteria for eligibility to vote, the procedure on election day, the procedure for settlement of election disputes, and other issues around the electoral process.

In Nigeria, the electoral legal framework consists primarily of the 1999 Constitution of Nigeria, the Electoral Act 2010, and regulations and guidelines issued by the Independent National Electoral Commission (INEC). Given a long history of electoral malpractices, violence and corruption during elections, there have been widespread calls for reform to the electoral law.

Since the start of the 2019 electoral cycle, the ninth National Assembly has been undergoing a comprehensive process of constitutional and electoral reform. Under its electoral reform programme, the legislative body has been reviewing the Electoral Act 2010 with a view to replacing it. Numerous technical retreats, consultations, public hearings and drafting sessions have resulted in the passing of the Electoral Bill 2021 which seeks to repeal and replace the 2010 Act. After the Bill was passed, it was transmitted to the President for assent in line with legislative procedure.

However, the President refused assent to the Bill, primarily because of the requirement of parties to conduct direct primaries. The Bill has now been sent back to the National Assembly, although there are hopes that it will be passed before the 2023 general elections. The concern is that, with less than 400 days to the election, if the Bill is passed there will be insufficient time for stakeholders to study the Bill and its implications for the election.

Against this context, the Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), has prepared this brief using the version of the Bill that was transmitted to the President. It highlights the merits of the Bill with a view to facilitating knowledge and understanding among key electoral stakeholders, including INEC, political parties, civil society organisation (CSOs), and the media. This brief is expected to facilitate the work of these electoral stakeholders in the areas of election administration, research, civic and voter education, advocacy, and training.

MERITS OF THE BILL

The Electoral Bill 2021 has a number of provisions aimed at improving *transparency, accountability, inclusion*, and the overall *integrity* of the electoral process. These are explained below.

» RELEASE OF ELECTION FUNDS

CLAUSE 3(3) OF THE BILL PROVIDES:

The election funds due to the Commission for any general elections are to be released to the Commission not later than one year before the next general election.

This provision has the potential to greatly improve election planning and administration. As Yiaga Africa has noted, the Federal Government released 76% of funds to INEC 86 days to the 2019 elections, and the remaining 24% only 57 days to the election.¹ This poses logistical challenges, a problem that led to the postponement of the 2019 just a few hours before polls were scheduled to open.² Indeed, general elections have been postponed three times in a row since 2011. To prevent events like this from recurring, Clause 3(3), which provides for the early release of funds to INEC, is highly welcome.

» MODE OF VOTING AND RESULTS TRANSMISSION

CLAUSE 50(2) OF THE BILL STATES:

Subject to section 63 of this Act, voting at an election and transmission of results under this Act shall be in accordance with the procedure determined by the Commission.

By giving INEC the discretion to determine the mode of voting and results transmission, the Bill allows for flexibility in election administration. This means that INEC is not restricted to using only electronic or only manual modes but can decide which one to use depending on its financial and technical capacity. Such flexibility is important to allow INEC administer elections effectively, using the resources available at its disposal.

¹<https://twitter.com/YIAGA/status/1336661198335512579/photo/4>

²Samuel Ogundipe, "It's Official: INEC postpones all Nigeria's general elections", Premium Times (16 February 2019). Available at: <https://premiumtimesng.com/news/headlines/313199-its-official-inec-postpones-all-nigerias-general-elections.html>

» POLITICAL PARTY STRUCTURE AND OPERATIONS

CLAUSE 29(1) OF THE BILL STATES:

Every political party shall, not later than 180 days before the date appointed for a general election under this Act, submit to the Commission, in the prescribed Forms, the list of the candidates the party proposes to sponsor at the elections, who must have emerged from valid primaries conducted by the political party.

This clause is important because it makes it explicit that parties must only submit list of candidates who “have emerged from valid primaries conducted by the political party”. This is aimed at strengthening internal democracy within parties.

CLAUSE 75(1) ALSO PROVIDES:

Any political association that complies with the provisions of the Constitution and this Act for the purposes of registration shall be registered as a political party. PROVIDED however, that such application for registration as a political party shall be duly submitted to the Commission not later than 12 months before a general election.

The requirement of political parties to register at least a year before a general election, up from just six months in the current law, is likely to improve election planning on the part of INEC. It will also prevent last-minute parties from springing up too close to the elections and causing logistical issues for the Commission.

CLAUSE 77(2) PROVIDES:

Every registered political party shall maintain a register of its members in both hard and soft copy.

CLASS 77(3) FURTHER PROVIDES:

Each political party shall make such register available to the Commission not later than 30 days before the date fixed for the party primaries, Congresses or Convention.

These are highly welcome provisions that are bound to prevent last-minute changes and defections from politicians seeking to grab tickets for candidacy from parties. They are also likely to strengthen internal democracy within parties.

FURTHERMORE, SECTION 81(2) STATES:

Political parties intending to merge shall each give to the Commission nine months’ notice of their intention to do so before a general election.

This is a change from the current law, which requires just 90 days’ notice. This provision is bound to strengthen political parties’ internal structure and ensure that they plan their operations ahead of time. The nine months’ notice will also give INEC ample time to plan, update its records, and handle logistical issues prior to elections. Ultimately, these numerous provisions have the potential to improve political party structure and operations greatly, thereby strengthening internal party democracy.

» GENDER EQUALITY AND SOCIAL INCLUSION

IN ORDER TO PROMOTE THE INCLUSION OF INTERNALLY DISPLACED PERSONS (IDPS), CLAUSE 45 OF THE BILL PROVIDES:

Voting in any particular election under this Act shall take place on the date and time appointed by the Commission.

This is a change from the provision in the Electoral Act 2010, which provides that “voting in any particular election under this Act shall take place on the date and time appointed by the Commission throughout the Federation”. By removing the phrase “throughout the Federation”, this clause allows for voting by IDPs in areas outside Nigeria where INEC has provided a voting centre.

FOLLOWING ON FROM THIS, CLAUSE 55 OF THE BILL STATES:

No voter shall record his or her vote otherwise than by personally attending at the polling unit or voting centres and recording his or her vote in the manner prescribed by the Commission.

This reference to “polling unit or voting centres” is a change from the current law, which only makes reference to polling units. The inclusion of voting centres can therefore accommodate IDP voting.

IN ORDER TO PROMOTE INCLUSION OF PERSONS WITH DISABILITIES (PWDS), CLAUSE 54(1) OF THE BILL ALSO PROVIDES:

A voter with visual impairment or other form of disability who is otherwise unable to distinguish symbol or who suffers from any other physical disability may be accompanied into the polling unit by a person chosen by him or her and that person shall, after informing the Presiding Officer of the disability, be permitted to accompany the voter into the voting compartment and assist the voter to make his or her mark in accordance with the procedure prescribed by the Commission.

CLAUSE 54(2) FURTHER PROVIDES:

The Commission shall take reasonable steps to ensure that persons with disabilities, special needs and vulnerable persons are assisted at the polling place by the provision of suitable means of communication, such as Braille, large embossed print, electronic devices, sign language interpretation, or off-site voting in appropriate cases.

This provision contains more inclusive language than the Electoral Act 2010, as the former uses the phrase “a voter with visual impairment”, while the latter uses the phrase “a voter who is blind”. Moreover, the use of the word “shall” places a statutory duty on INEC to take reasonable steps to ensure that PWDs are assisted at polling units. This is an improvement from the current law which uses the word “may”, implying that this duty is not mandatory.

Furthermore, the law uses gender-inclusive language (“he or she”, “his or her”, etc.). This makes it different from other laws in Nigeria, which use masculine language. This use of gender inclusive language is highly commendable and reflects positively on the National Assembly.

» OVER VOTING

CLAUSE 51(2) OF THE BILL PROVIDES:

Where the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the Presiding Officer shall cancel the result of the election in that polling unit.

This clause corrects an error in the Electoral Act 2010, which defines over voting as a situation where the votes cast at an election “exceed the number of registered voters in that polling unit”. In order to correctly identify cases of over voting, it is important to compare the total votes cast with the number of accredited voters (i.e. those who come out to vote on election day), rather than the number of registered voters (i.e. those who participated in the voter registration process but may not come out to vote on election day).

» ADJUSTMENT OF TIMELINES

The Bill made a number of adjustments to timelines relating to various events in the electoral process. These are aimed at improving administrative convenience and planning on the part of INEC and other stakeholders. Some of these adjustments are outlined below:

- Clause 9(6) changes the timeline for registration of voters and revision of the voter register. The clause provides that these activities should stop not later than 90 days before an election, up from 60 days in the current law. This is necessary to allow INEC sufficient time to review and clean up the register, as well as display the register for citizens to make claims and objections.
- Clause 28(1) changes the timeline for INEC to publish the notice of elections from not later than 90 days to the election to not later than 360 days. This change in timeline is necessary to allow other stakeholders, including political parties and CSOs, to plan their activities for upcoming elections.
- Clause 29(1) changes the timeline for political parties to submit their candidate list from not later than 60 days to a general election to not later than 180 days. This is necessary to allow INEC sufficient time to compile the list of candidates and print sensitive materials.

CONCLUSION

Ultimately, the Electoral Bill 2021 has many provisions aimed at improving the electoral process in Nigeria. Through measures to release election funds early, give INEC the powers to determine the mode of voting and results transmission, improve political party structure and operations, promote gender equality and social inclusion, clarify the definition of over voting, and adjust timelines in the electoral process, the Bill addresses many issues that have long marred the conduct of elections in the country.

Therefore, the importance of a quick passage of the Bill cannot be overemphasised. With the 2023 general elections fast approaching, it is important to give INEC sufficient time to internalise the new law, test-run it in small elections prior to 2023, and also meet the new timelines in the law. We therefore urge the National Assembly to review the Bill quickly, addressing the President’s concerns on the issue of primaries, and transmit it back for assent.

If this Bill is passed, we are confident that the 2023 general elections will be conducted on a much better foundation, with the potential for an increase in integrity and credibility. We commend the ninth National Assembly for its initiative in comprehensively reviewing the electoral law and producing this Bill with its many merits. It is now left for the legislative body to complete the commendable work it started, before its tenure ends in 2023.



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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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