



ANALYSIS OF SENATE AMENDMENT TO THE ELECTORAL BILL 2021



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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. The Electoral Hub complements 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 research, documentation, electoral education, policy and legal influencing and impact advocacy. We believe that the integrity of the electoral process is crucial in improving the electoral governance and sustaining democracy in Nigeria. We also believe in solutions rooted in the principles of justice and equity.

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ACRONYMS

CSOs	Civil Society Organisations
INEC	Independent National Electoral Commission
NASS	National Assembly
NCC	Nigerian Communications Commission

INTRODUCTION

Since the beginning of the 2019 electoral cycle, the ninth National Assembly has been undergoing a process of electoral reform through the drafting of the Electoral Bill 2021, which seeks to repeal and replace the Electoral Act 2010 (as amended). After many delays, both chambers of the National Assembly finally passed the Bill in July 2021. However, there were variations between the version of the Bill passed in the House of Representatives and the version passed in the Senate.

The main area of controversy related to the mode of results transmission. The House Bill stipulated that “voting at an election and transmission of result under this Bill shall be in accordance with the procedure determined by the Commission” (clause 51(2)). The Senate Bill stipulated that “the Commission may consider electronic transmission of results, provided that the national coverage is adjudged to be adequate and secured by the Nigerian Communications Commission (NCC) and approved by the National Assembly” (clause 52(3)).

In September 2021, a Conference Committee was set up to review and harmonise the areas of divergence between the Bills. The leader of the Committee in the Senate, Senator Yahaya Abdullahi, moved a motion for the recommittal of four clauses in the Senate Bill to the Committee of the Whole: clauses 43, 52, 63, and 87.¹ On the recommendation of the Committee, the Senate during plenary made amendments to these clauses on 12 October 2021.

The major amendment that made headlines was the removal of NCC and NASS approval before the Independent National Electoral Commission (INEC) can transmit results electronically. In the amended version, the Senate empowered INEC to determine the mode of results transmission, whether manual or electronic (clause 52). Other amendments include clause 43 which deals with ballot boxes and voting devices, clause 63 which deals with counting of votes and forms, and clause 87 which deals with mode of primaries.

This paper analyses these amendments and highlights their capacity to improve the electoral legal framework. Ahead of the 2023 elections, we are confident that the amendments made by the Senate will provide a better assurance of electoral integrity and credibility.

¹ Ajibola, A. (2021, October 21). Full List of Changes Senate Made to Electoral Act Amendment Bill. *Channels*. <https://www.channelstv.com/2021/10/12/breakdown-of-senates-amendments-to-electoral-act/>

ANALYSIS OF AMENDMENTS

The Senate made amendments to four clauses in the Electoral Bill: clause 43, clause 52, clause 63, and clause 87. This section outlines the details of these amendments, and highlights whether they would be beneficial or detrimental to the electoral legal framework.

1. Ballot Boxes and Voting Devices (Clause 43)

The original version of the Bill stated that INEC shall provide suitable boxes or any other voting device for the conduct of elections. This provision was amended to state that *INEC shall provide “suitable boxes, electronic voting machine or any other voting device for the conduct of elections”*. Similarly, the Bill originally stated that polling agents shall be entitled to be present at the distribution of the election materials and voting devices from the office to the polling booth. The phrase “election materials and voting devices” was amended to include “election materials, electronic voting machine and voting devices”.

It is submitted that the addition of “electronic voting machine” to the list is redundant, as the original phrasing (“voting device”) already captures both electronic and manual voting devices. Nevertheless, since the amendment says “electronic voting machine or any other voting device”, there is still legal backing for either electronic or manual voting. This flexibility is important to avoid implementation problems.

2. Mode of Results Transmission (Clause 52)

The original version of the Bill subjected INEC to the direction of two bodies in deciding whether to transmit results electronically: the NCC and NASS. The provision stated that the NCC must first adjudge the national coverage to be adequate and secure, and NASS must then give approval before results are transmitted electronically. In the amended version, the Senate empowers INEC to determine the procedure for voting and results transmission, subject to clause 63. The justification for subjecting INEC to clause 63 is to ensure that authentic results are counted and entered into forms, signed by Presiding Officers, and announced at the polling units before transfer or transmission of results.²

² The Senate Federal Republic of Nigeria. (2021, October 12). *Recommittal of Amended Clauses of a Bill for an Act to Repeal the Electoral Bill 2021, No. 6, 2010 and Enact the Electoral Act 2021, (SB.122) by the Senate.*

The Senate’s decision to give INEC the discretion to determine the mode of results transmission is highly commendable, as it is in line with the Commission’s role as electoral umpire. Moreover, the use of flexible language, which The Electoral Hub has been canvassing for,³ means that INEC is not restricted to one form of voting or results transmission but can make the decision on which form to use based on funding and capacity.

3. Counting of Votes and Forms (Clause 63)

The original Bill states that the Presiding Officer shall transmit the results, including total number of accredited voters and the results of the ballot, in a manner prescribed by INEC. The amended version replaces the word “transmit” with “transfer”. The justification for this change is that the word “transfer” accommodates both physical and manual results transmission, while “transmit” implies electronic transmission. This change, although minor, is commendable because it allows for more flexibility in the conduct of elections.

4. Mode of Primaries (Clause 87)

The original Bill provides that a party shall hold direct or indirect primaries to elect their candidates, whereas the amended Bill states that parties must hold direct primaries. While direct primaries are bound to promote inclusivity and transparency within parties, this use of restrictive language is unwelcome. It is submitted that the law should not be too restrictive in how parties conduct primaries, because different parties have different levels of funding and capacity. Rather, parties should be allowed to choose the mode of primaries that is suitable for them based on their capacity in terms of logistics, funding, etc. This will not only promote independence among parties, but also gives them a sense of rightsholder. What we should be pushing for instead is having certainty in the register of members, so that party primaries, whether direct or indirect, will be credible.

Another important amendment is that while the original Bill stated that primaries “may” be monitored by INEC, the amended Bill states that primaries “shall” be monitored by the Commission. This is a key amendment in line with INEC’s constitutional role. Moreover, mandatory monitoring by the Commission should

³ See The Electoral Hub, *The Electoral Hub Agenda for Electoral Reform*. <https://electoralhub.iriad.org/the-electoral-hub-agenda-for-electoral-reform/>

also reduce the frequent underhand dealings during party primaries and give aggrieved candidates a tool for redress.

The amended Bill also features new insertions aimed at improving political party operations during primaries, including the following:

- All aspirants must be given equal opportunity of being voted for by members of the party, as well as the opportunity to have agents to monitor the primaries.
- The procedure adopted for the primaries must be spelt out in a guideline to be issued by the political party and filed with INEC at least 14 days before the primary. Every aspirant cleared by the party is also entitled to a copy of the guideline.
- The party must maintain a register of its members and use that register for accreditation for the primaries.

In addition, we canvass that parties should submit a certified register of members to INEC prior to any primaries just like INEC shares the register of voters with all parties prior to elections. This principle of reciprocity combined with these amendments would greatly strengthen political party operations and internal democracy within parties.

RECOMMENDATIONS

Going forward, we make the following recommendations for various stakeholders:

1. NASS should consider using more flexible language by allowing political parties to choose their mode of primaries, whether direct or indirect. NASS should also consider including that parties should share certified register of members with INEC prior to primaries just as INEC is mandated to share register of voters with them prior elections.
2. Stakeholders, including INEC, political parties, the executive, and CSOs should continue to engage with NASS to advocate for electoral reforms that will guarantee electoral integrity and credibility.
3. CSOs and donor agencies should continue to provide technical support to NASS in the law-making process.
4. The media should continue to highlight developments in the electoral reform process to keep citizens abreast of the issues.
5. Members of NASS should continue to engage with citizens and respond to their demands for electoral reform.
6. CSOs should sensitise the public on these issues and how they can get involved.
7. Citizens should get more involved in the law-making process and make their opinions known. The Senate reneging on its decision on electronic transmission following public outcry shows that the voice of the masses is highly influential. Citizens should continue to raise their voice on key issues to influence the electoral reform process.
8. Once the harmonised Bill is passed, the President should assent to it in a timely manner.

CONCLUSION

Ultimately, the Senate amendments to the Electoral Bill 2021, regarding ballot boxes and voting devices, mode of results transmission, counting of votes and forms, and mode of primaries, are bound to improve the electoral legal framework. We particularly commend the Senate for renegeing on its decision to subject INEC to the direction of the NCC and NASS before considering electronic transmission of results. By giving INEC the discretion to determine the mode of results transmission, the Senate has not only empowered the Commission in line with its constitutional mandate but has also shown responsiveness to citizens' demands. This is highly commendable and the principle of responsiveness should continue to be upheld in the electoral and constitutional reform process.

Furthermore, we urge NASS to use flexible language by giving parties leeway to determine their mode of primaries, whether direct or indirect. Other stakeholders, including INEC, political parties, the executive, the media, CSOs, and donor agencies, should also continue to engage with NASS in their various capacities. In this way, we will be able to achieve an electoral legal framework that guarantees electoral integrity and credibility.

APPENDIX: SENATE AMENDMENTS TO THE ELECTORAL BILL 2021⁴

S/N	ISSUE	CLAUSE	ORIGINAL DRAFTING	AMENDMENT
1	Ballot Boxes and Voting Devices	43	<p>(1) The Commission shall provide suitable boxes or any other voting device for the conduct of elections.</p> <p>(3) The Polling Agents shall be entitled to be present at the distribution of the election materials and voting devices from the office to the polling booth.</p>	<p>(1) The Commission shall provide suitable boxes, electronic voting machine or any other voting device for the conduct of elections.</p> <p>(3) The Polling Agents shall be entitled to be present at the distribution of the election materials, electronic voting machine and voting devices from the office to the polling booth.</p>
2	Mode of Results Transmission	52	<p>(2) Voting at an election under this Bill shall be in accordance with the procedure determined by the Commission, which may include electronic voting.</p> <p>(3) The Commission may consider electronic transmission of results provided that the national coverage is adjudged to be adequate and secure by the Nigeria Communication</p>	<p>(2) Subject to section 63 of this Bill, voting at an election and transmission of results under this Bill shall be in accordance with the procedure determined by the Commission.</p> <p>(3) Deleted.</p>

⁴ Bill as at 12 October 2021

S/N	ISSUE	CLAUSE	ORIGINAL DRAFTING	AMENDMENT
			Commission and approved by the National Assembly.	
3	Counting of Votes and Forms	63	(5) The Presiding officer shall transmit the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission.	(5) The Presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission.
4	Mode of Primaries	87	<p>(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 may be monitored by the Commission.</p> <p>(2) The procedure for the nomination of candidates by political parties for the various elective positions shall be by direct or indirect primaries.</p> <p>(3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.</p>	<p>(1) A political party seeking to nominate candidates for elections under this Bill shall hold direct primaries for aspirants to all elective positions, which shall be monitored by the Commission.</p> <p>(2) Deleted.</p> <p>(3) The procedure for the nomination of candidates by political parties for the various elective positions by direct primaries shall ensure that all aspirants are given equal opportunity of being voted for by members of the party and</p>

S/N	ISSUE	CLAUSE	ORIGINAL DRAFTING	AMENDMENT
			<p>(4) A political party that adopts the system of indirect primaries for the choice of its candidate shall adopt the procedure outlined below –</p> <p>(a) in the case of nominations to the position of presidential candidate, a political party shall –</p> <p>(i) hold a special presidential convention at a designated centre in the Federal Capital Territory or any other place within the Federation that is agreed to by the National Executive Committee of the party where delegates shall vote for each of the aspirants, and</p> <p>(ii) the aspirant with the highest number of votes at the end of voting, shall be declared the winner of the Presidential primaries of the political party</p>	<p>given opportunity to have agents for the purpose of monitoring the primaries.</p> <p>(4)-(8) deleted. New insertions:</p> <p>(4) The procedure adopted for the direct primaries shall be spelt out in a guideline to be issued by the political party and filed with the Commission at least 14 days before the primary election.</p> <p>(5) A political party shall maintain register of its members and provide in the guideline for the conduct of the primaries that the register of its members shall be used for accreditation for the primaries.</p> <p>(6) The Commission shall deploy personnel to monitor the primaries in all the centers where the direct primaries are held.</p> <p>(7) Every aspirant cleared by the party to contest at the primary not later</p>

S/N	ISSUE	CLAUSE	ORIGINAL DRAFTING	AMENDMENT
			<p>and the aspirant name shall be forwarded to the Commission as the candidate of the party;</p> <p>(b) in the case of nominations to the positions of Governorship candidate, a political party shall, where it intends to sponsor candidates –</p> <p>(i) hold a special congress in the State Capital or any other place within the State with delegates voting for each of the aspirants at the congress to be held on a specified date appointed by the National Executive Committee (NEC) of the party, and</p> <p>(ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant’s name shall be forwarded to the</p>	<p>than fourteen days to the primary shall be entitled to a copy of the guideline for the conduct of the primaries in which he or she is participating.</p>

S/N	ISSUE	CLAUSE	ORIGINAL DRAFTING	AMENDMENT
			<p>Commission as the candidate of the party, for the particular State;</p> <p>(c) in the case of nominations to the position of a candidate to the Senate, House of Representatives and State House of Assembly, a political party shall, where they intend to sponsor candidates –</p> <p>(i) hold special congresses in the Senatorial District, Federal Constituency and the State Assembly constituency respectively, with delegates voting for each of the aspirants in designated centre on specified dates, and</p> <p>(ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the</p>	

S/N	ISSUE	CLAUSE	ORIGINAL DRAFTING	AMENDMENT
			<p>Commission as the candidate of the party; and</p> <p>(d) in the case of the position of a Chairmanship candidate of an Area Council, a political party shall, where it intends to sponsor candidates –</p> <p>(i) hold special congresses in the Area Council, with delegates voting for each of the aspirants at designated centres on a specified date, and</p> <p>(ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant’s name shall be forwarded to the Commission as the candidate of the party.</p>	

S/N	ISSUE	CLAUSE	ORIGINAL DRAFTING	AMENDMENT
			<p>(5) In the case of a Councillorship candidate, the procedure for the nomination of the candidate shall be by direct primaries in the ward and the name of the candidate with the highest number of votes shall be submitted to the Commission as the candidate of the party.</p> <p>(6) Where there is only one aspirant in a political party for any of the elective positions mentioned in subsection (4) (a), (b), (c) and (d), the party shall convene a special convention or congress at a designated centre on a specified date, for the confirmation of such aspirant and the name of the aspirant shall be forwarded to the Commission as the candidate of the party.</p> <p>(7) A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the</p>	

S/N	ISSUE	CLAUSE	ORIGINAL DRAFTING	AMENDMENT
			<p>procedure for the democratic election of delegates to vote at the convention, congress or meeting, in addition to delegates already prescribed in the constitution of the party.</p> <p>(8) A political appointee at any level shall not be an automatic voting delegate at the convention or congress of any political party for the purpose of nomination of candidates for any election, except where such a political appointee is also an officer of a political party.</p>	



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