

AN EXAMINATION OF THE LEGAL FRAMEWORK ON THE CONDUCT OF ELECTRONIC VOTING IN NIGERIA

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INTRODUCTION

In the modern world, leaders come into power through elections and Nigeria is no exception. In an ideal situation, the elections are supposed to be credible, free and fair. However, it is already an established fact that there can never be a perfect election anywhere in the world as such the credibility of an election is weighed on the scale of substantial compliance.

In Nigeria, Elections are conducted in respect of the different levels of Government in the country, be it Local Government, State Houses of Assembly, the National Assembly, comprising the Legislators and Senate and finally Presidential Electionsⁱ. The elections have been conducted manually first using the head count called “option A method” and subsequently with ballot paper and that remained the trend until elections were suspended following incessant military interventions starting from 1966 and only resumed in 1999 when the nation was returned to democratic rule.

The elections so far conducted have been marred by agitations of malpractices and are influenced by social, economic, political and ethnic complexities, which caused people to manipulate the system for selfish gains. As a result, Nigerian election are characterized by irregularities and malpractices such as multiple registration, impersonation of election officials,

forgery of election documents, late arrival of election materials, snatching and destruction of election materials, unlawful possession of voter cards, unlawful possession of ballot papers, false declaration of results, bribery, voting by unregistered or under aged persons, false publication and false announcement of results, threats and political party finance violations. These malpractices created an impression of dissatisfaction leading to low voter turnout and general loss of confidence in the electoral process and signalled the need for a reform.

ELECTRONIC VOTING

Part of the reforms introduced to suppress the malpractices is the introduction of electronic voting system.ⁱⁱ Electronic voting is defined as a form of computer-mediated voting where voters make their selection with the aid of computer touch screen display although audio interface can be made available for voters with visual disabilities. In a computer-based voting, casting of votes, submission and recording of votes casts and tabulation are routinely done with computers. In spite of these features, electronic voting is not without limitations. Especially in Nigeria, even before deployment, there are foreseeable problems such as non-availability of electricity especially in the rural areas and possible failure of the accreditation device may pose a challenge and have to be addressed if deployment of electronic voting in Nigerian elections is to be successful.

This paper therefore, seeks to examine the extent to which legal framework on elections adopts the conduct of electronic voting in Nigerian elections which is the umbilical cord of all electoral activities and on the identified foreseeable challenges associated with it.

REGULATORY FRAMEWORK ON ELECTIONS IN NIGERIA

The Regulatory Framework for elections in Nigeria are: the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Electoral Act, 2022 and the Regulations and Guidelines on elections.

The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The Constitution of every country is its *grund norm*. It is the living law from which all other laws derive their validityⁱⁱⁱ. The Supreme Court emphasized on this point when it held that “In interpreting the provision of the Constitution which is the organic law of the land or the *grund norm*, care must be taken to give it the real meaning which the people had in mind in adopting its provisions...”^{iv}.

The 1999 Constitution created two Independent Electoral bodies thus: Independent National Electoral Commission and the State Independent National Electoral Commissions.

a. the Independent National Electoral Commission is entrusted with the duty of conducting the following elections at National level thus:

The Commission shall have power to-

- (a) Organize, undertake and supervise all elections to the offices of the President, Vice president, the Governor and deputy governor of a state, and to the membership of the senate, the House of representatives and house of Assembly of each state of the Federation;
- (b) Register political parties in accordance with provisions of this Constitution and an Act of the National Assembly.
- (c) Monitor the organization and the operation of political parties including their finances, convention, congresses and party primaries;
- (d) Arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
- (e) Arrange and conduct the registrations of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution.
- (f) Monitor political campaigns and provide rules and regulations which shall govern the political parties;
- (g) Ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;
- (h) Delegate any of its powers to any Resident Electoral Commissioner; and

- (i) Carryout such other functions as may be conferred upon it by an act of the National Assembly^v.

In addition to the above, it conducts elections into the office of Chairman and Councilors for the Federal Capital Territory thus: “the conduct of elections into the offices of Chairman, Vice Chairman and a member of an Area Council and the recall of a member of an Area Council shall be under the direction and supervision of the Commission in accordance with this Act^{vi}”.

b. On the other hand, the conduct of Chairmanship and Councillorship elections at Local Government is under the supervision of the State Independent Electoral Commission, thus:

The Commission shall have power:

- i. to organize, undertake and supervise all elections to local government councils within the state.
- ii. to render such advice as it may consider necessary to the Independent National Electoral Commission in the compilation of and the register of voters in so far as that register is applicable to local government elections in the state.^{vii}

In addition, the Constitution conferred on the above Electoral Bodies the power to make their distinct rules of procedures for the conduct of elections. This how the power to issue Manual and Guidelines for elections inured on the electoral bodies^{viii}. As broad as the above provisions appear to be, yet they fell short to state specifically whether the election is manual or electronic or a combination of both. This is important in the wake of the move to adopt electronic voting. It is our view that the vivid permissibility of electronic voting ought to start from the grund norm as the saying goes; “charity begins at home” and even from experience, litigants have challenged the provisions of laws on the ground that they cannot override the Constitution and the Court has always upheld such a position^{ix}. Thus, it will not be surprising if in the future litigants approach the Courts seeking to invalidate electronic voting for the sole reason that it is not provided by the above exhaustive provisions of the Constitution^x.

The Electoral Act, 2022

Precisely on the 24th February, 2022, the Electoral Bill, 2021 was assented to by the President and it became the Electoral Act, 2022 thereby repealing the Electoral Act, 2010 (as amended)

the Electoral Act, 2022. Though it repealed the Electoral Act, 2010 (as amended)^{xi} Yet, it retained several it retained most of its provisions but in addition captured the realities of modern elections, including electronic voting processes like electronic registration of voters^{xii}, electronic voting^{xiii}, electronic transmission of results^{xiv} and even prescribed offences involving manufacturing or tampering an electronic voting machine^{xv}. Worthy of mention is the fact that one of its provisions^{xvi} on ineligibility of a political appointee to serve as a voting delegate or be voted for at convention, congress for the purpose of nomination of candidates at an election has been struck down by the Court for spelling disenfranchisement and therefore inconsistent with the provisions of Sections 66 (1) (f), 107, (1) (f), 137 (1) (f), and 182 (1) (f) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)^{xvii}. In spite of the fact that the Attorney General, being the only Defendant in the case has made it clear that he is not appealing the decision, yet, the judgment was widely criticized. On the whole, the enactment of the new Electoral Act is a mile stone towards improving the Nigerian Electoral processes.

Manuals and Guidelines for Elections

The INEC and state Electoral Commissions have been empowered to make Guidelines and Manuals for elections.^{xviii} They are drawn pursuant to the doctrine of Delegated Legislation which is part of the legal system in Nigeria; it simply implies that Government Agencies are empowered to make regulations pursuant to their enabling laws to enhance the performance of their duties^{xix}. The essence of Delegated Legislation is to lighten the task of the National Assembly from incessant policy making thereby enhancing administrative flexibility^{xx}. Pursuant to the enactment of the Electoral Act, 2022, the INEC Manual and Guidelines is currently being updated to conform to the provisions of the new Electoral Act on electronic voting.

ELECTRONIC VOTING IN NIGERIAN ELECTIONS

The Electoral Act being the Law regulating National Elections conducted by the Independent National Electoral Commission has consistently prohibited the conduct of electronic voting thus: “The use of electronic voting machine for the time being is hereby prohibited^{xxi}”. Hence, since the return to democratic rule in 1999, voter registration and voting were done manually with ink and paper. At the time, the credibility of the election was hotly contested.^{xxii} In

successive elections however, electronic devices such as Direct Data Capture Machines were gradually and cautiously deployed to ease the rigours of election processes while the prohibition of electronic voting still remains before it was finally relaxed, as outlined in the time line below:

- i. in 2003, the optical Magnetic Recognition which is a technological device used for compilation of names and particulars of prospective voters which are then keyed into a computer and printed as voters register and voters' card. This is an advancement from what obtains in the previous election. In spite of this, the photograph of voter is still absent, no data base of registered voters; accreditation and voting are still conducted manually.^{xxiii}
- ii. in the 2007 elections, the Direct Data Capture Machines (DDCM) were deployed in the registration of voters. This DDCM comprises of a computer, Scanner for taking finger prints, camera for taking pictures, a backup battery as alternative power source, external hard disk for data backup and a printer for printing of temporary voter's card. During this period there were reports that the DDCM were obsolete which caused their frequent breakdown, there was also no sufficient supply of the machines to cover all the registration areas of the country.^{xxiv} In addition, a Very Small Aperture Terminal (V-SAT) was installed in all the Local Government Offices and State headquarters of the INEC for the purpose of transmitting election results but the purpose of installing the V-SAT was never realized as no result was transmitted through it.^{xxv}
- iii. in 2011, there was a fresh and comprehensive registration of voters through new DDC machines. An Automatic Finger Identification System (AFIS) was also deployed to flush out double registration. But just like in previous elections, no technology was used in accreditation, casting of ballots, collation, declaration and transmission of results.^{xxvi}
- iv. during the 2015 General elections, the deployment of technology reached an unprecedented pace; the Automatic Finger Identification System from previous elections was enhanced with the introduction of the concept of 'Business Rule' which means that at least two finger prints of a voter must be captured to be eligible to be included in the voters register. There was also an enhanced Permanent Voters Card bearing the picture and details of a voter. In addition, there was the deployment of the Smart Card Reader for the purpose of accreditation of voters which prevented multiple voting and enhanced the credibility of the election.

The deployment of card reader device and Automatic Finger Identification System (AFIS) in the process of election raised the level of confidence of electorates as they prevented multiple voting which has for time immemorial being a major factor militating the credibility of elections in Nigeria. The election conducted with above devices was generally perceived as free, fair and credible. It was during this election that the incumbent President along with many incumbent political office holders were defeated at the polls and majority of them never bothered to challenge the outcome of the election signaling its credibility.^{xxvii} v in 2022, a new Electoral Act was signed into law which in addition to the above steps specifically allowed the conduct of electronic voting and transmission of results.

At first, the legality of the smart card reader was challenged on the ground that it supersedes the register of voters as it goes contrary to the provisions of the Electoral Act which reads: “A person intending to vote with his voter’s card shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voter’s card”. “The Presiding Officer shall on being satisfied that the name of the person is on the register of voters issue him a ballot paper and indicate on the register that the person has voted”^{xxviii} But a counter argument, which was upheld by the Court maintained that the deployment of the smart card reader was meant to give effect to the said provision as it can be seen from the foregoing that the introduction of the smart card reader enables the Presiding Officer to convince himself that the person intending to vote is the genuine owner of the voters card presented. This absurdity has also been settled in the Electoral Act, 2022 which permits its utilization in accreditation^{xxix}.

More importantly, the above reforms were earlier given legal backing in the 2015 amendment to the Electoral Act, 2010 which liberalized the provision of Section 52 which prohibits electronic voting thus: “Voting at an election under this Act shall be in accordance with the procedure determined by the Independent National Electoral Commission^{xxx}”. This development implies that the INEC is given unfettered discretion to choose the procedure for the conduct of election, and where a discretion is given to a body to act in a particular way, the law is trite that, that the body exercising the discretion cannot be dictated upon to act in a specific way as held by the Supreme Court thus:

The Order of mandamus of course, only issues to a person or corporation requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty; but if the

duty imposed by a statutory provision leaves a discretion in whom it is imposed as to the mode of performance mandamus will not issue to compel performance of that duty in a specific way^{xxxix}.

Notwithstanding the above, electronic voting in Nigerian elections has so far been limited to only some of the processes of election like registration of voters, submission of names of candidates for election and accreditation of voters and in the Electoral Act, 2022 extends to the actual electronic voting as such, the impediments to the conduct of electronic voting in Nigerian elections is at best now only constrained by administrative and logistical reasons as opposed to legal impediments. In fact, the provisions of the Electoral Act, 2022, on electronic voting are more elaborate than those of the Kaduna State Electoral Law 2021 as it covers more areas and even prescribes offences on electronic voting which had been identified as some of the lapses of the Kaduna State Electoral Law thus putting it on the defensive. And given the fact that, it is the replica of the Electoral Act, it would not be out of place if promptly updated in tandem with the National Law.

It can be argued conversely, that the reason behind the gradual implementation of electronic voting in National elections is to avoid situations that occurred in countries like Germany where it was fully adopted but proved counter-productive and likewise for Nigeria, hasty implementation may spell doom, which is the reason for the gradual and tactical approach in the implementation as is been witnessed in Nigeria. Notwithstanding the gradual approach, there were reports of computer hacking during the online registration of voters^{xxxix}, also during the Presidential Election Petition after the 2019 General Election an expert witness informs the Election Tribunal that they hacked the INEC server in the course of transmission of election results^{xxxix}. Even at the recently concluded Nigerian Bar Association electronic voting, there was the allegation that the technology adopted was highly susceptible to electronic fraud, rigging and pre-programming of votes and that votes by eligible voters bounced back, absence of voting links, it was also alleged that the IT expert engaged to monitor the site was manipulated thus given the impression that the technology used at the election was highly vulnerable and susceptible to electronic fraud, rigging, pre-programming of votes and that the web site could be manipulated, hence called for the audit of the election server^{xxxix}.

With the Law now permitting adoption of electronic voting, it would be ideal if employed in elections with limited dimensions like bye-elections or pilot schemes elections and gradually extended to wider and more inclusive elections like National Assembly or Governorship elections and ultimately Presidential elections, as experience has shown that the success of electronic voting is more pronounced in countries which are either less populated than Nigeria, for example Estonia^{xxxv} or elections with limited geographical location or population like union or campus elections^{xxxvi}.

Another classical example of the vulnerability of electronic election is the United States' Presidential Election involving George Bush and Al Gore^{xxxvii}. In this case, the United Supreme Court considered the fact that there were anomalies of the legality of some electronically votes cast due to incompletely punched votes, blank votes, multiple votes and confused votes: meaning the paper designed caused confusion leading voters to vote for a candidate they had not intended; as such the Florida Supreme Court ordered that manual counting was resorted to clear the anomaly. In sharp contrast, the United States Supreme Court by a majority decision nullified the manual counting for being contrary to "Equal Protection Clause of the Fourteenth Amendment" and that the recount if conducted, has the tendency of exceeding the deadline set for the announcement of the result of the election and resolution of disputes of the election set by the Federal Law known as the Safe Harbor Deadline^{xxxviii}.

Similarly, in the 2020 United States' Presidential Election, there were allegations by Microsoft that Russian, Chinese and Iranian hackers targeted the election with cyber-attacks and disruption operations and compromise emails of voters affiliated with both Donald Trump and Joe Biden campaign as such called for strict measures to be put in place to protect the sanctity of the votes. What these shows is that even in technologically advanced countries, electronic voting is susceptible to manipulation talk less of Nigeria that is only adopting the system. These are issues that require special consideration and rectification if the electronic voting is to be successful as desired.

PHASES OF ELECTRONIC VOTING IN NATIONAL ELECTIONS

Even before the enactment of the Electoral Act, 2022, the Independent National Electoral Commission identified four stages *seriatim* in the process of adoption of electronic voting in National Elections thus:

- i. Electronic Biometric Voters Register
- ii. Electronic Accreditation
- iii. Electronic Voting (balloting)
- iv. Electronic Transmission of Results

The above four stages are elaborated below:

i. Electronic (Biometric) Voters Register- This is the foundation for the conduct of elections. As its name implies, it is the compilation of names of eligible voters for the purpose of elections. The conduct of election in Nigeria has been with the usage of manual voters register. But beginning from 2003, the optical Magnetic Recognition which is a technological device was used for compilation of names and particulars of prospective voters which are then keyed into a computer and printed as voters register. In spite of this, it suffers from lack of details of voters like absence of the photograph of a voter is still and there was no data base of registered voters.^{xxxix}

In the 2007 General elections, Direct Data Capture Machines (DDCM) were deployed in the registration of voters. This DDCM comprises of a computer, Scanner for taking finger prints, camera for taking pictures, a backup battery as alternative power source, external hard disk for data backup and a printer for printing of temporary voter's card. During this period there were reports that the DDCM were obsolete which caused their frequent breakdown, there was also no sufficient supply of the machines to cover all the registration areas of the country.^{xi}

In 2011, there was a fresh and comprehensive registration of voters through new DDC machines. An Automatic Finger Identification System (AFIS) was also deployed to flush out double registration at the end over 68 million voters were registered^{xli} and in the 2015 General elections, the deployment of technology reached an unprecedented pace; the Automatic Finger Identification System from previous elections was enhanced with the introduction of the

concept of 'Business Rule' which implies that at least two finger prints of a voter must be captured to be eligible to be included in the voters register. There was also an enhanced Permanent Voters Card bearing the picture and details of a voter and over 84 million prospective voters were registered^{xlii}. More importantly, it has a legal backing thus:

The Commission shall keep the register of voters in National Headquarters and other locations as the Commission may determine:

Provided that the Commission shall keep the register of voters in-

(a) Electronic format in its central data base;^{xliii}

ii. Electronic Accreditation- This means the verification of a voter's card to confirm that the bearer of the voter card is its *bonafide* owner. Accreditation has been conducted manually and no technology was used in accreditation. During the 2015 General elections, the Smart Card Reader was deployed for the purpose of accreditation of voters which prevented multiple voting and enhanced the credibility of the election. Currently, electronic accreditation is enhanced with a device called 'Z-Pad' which recognizes both finger print and facial features of a prospective voter and in 2021 over 4 million voters have so far been captured^{xliv}. The legal backing for this is as follows:

To vote, the presiding officer shall use a smart card reader or any other technological device that may be prescribed by the Commission for the accreditation of voter to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission.

Where a smart card reader or any other technological device deployed for accreditation of voters fails to function in any unit and a fresh card reader or technological device is not deployed, the election in shall be cancelled and another election shall be scheduled within 24 hours if the Commission is satisfied that the result of the election in that polling unit will substantially affect the final result of the whole election and declaration of the winner in the constituency concerned^{xlv}.

Electronic Accreditation as outlined above, is so entrenched in the Law to the extent that it is prescribed as the electronic means of resolving conflicts of election results thus:

Where during collation of result, there is a dispute regarding a collated result or the result of an election from any polling unit, the collation officer or returning officer shall use the following to determine the correctness of the disputed result

- (a) The original of the disputed collated result for each polling unit where the election is disputed
- (b) The smart card reader or other technology device used for accreditation of voters in each polling unit where the election is disputed for the purpose of obtaining accreditation data directly from the smart card reader or technology device;
- (c) Data of accreditation recorded and transmitted directly from each polling unit where the election is disputed as prescribed under section 47(2) of this Act; and
- (d) The votes and results of the election recorded and transmitted directly from each polling unit where the election is disputed, as prescribed under section 60(4) of this Act^{xlvi}.

iii. Electronic Voting (balloting)- This is the stage where voters will be able to cast their votes through the electronic voting machines or internet as opposed to what obtains currently in National elections. This stage is recognized by Law following the amendment which confers the INEC with unfettered powers to determine the procedure for voting at elections^{xlvii}. Worthy of note is the fact that electronic voting is a general concept encompassing the entire process of election including accreditation, voting, collation and declaration of results, as such electronic balloting which is specific is also inclusive. This implies that there is no longer any legal impediment hampering the conduct of electronic voting (balloting) in National elections as conspicuously captured in the law thus: “the Commission shall provide suitable boxes, electronic voting machine or any other voting device for the conduct of elections”.^{xlviii}

iv. Electronic Transmission of Results- This was initially tested via short message service (SMS) but hampered by the prevalence of many political parties whose number is up to 87 at the time, email was also used to transmit initial presidential election result. In 2011 it proved effective and still in use. And now there is the Collation Support and Result Verification System (CSRVS). In all these scenarios however, though they enhanced the speed of receipt of election results, yet it is the manual results that are used in declaration of the winner. But,

currently and specifically in the 2022 amendment, the law specifically allows the INEC to adopt the procedure it deems fit for the transmission of results of election thus: “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”^{xlix}. It went further to prescribe the mode of compiling, maintaining, and updating the voters register thus:

The Commission shall compile, maintain, and update on a continuous basis, a register of election results to be known as the National Electronic Register of Election Results which shall be a distinct data base or repository of polling unit by polling unit results including collated election results of each election conducted by the Commission in the federation and the Register of Election Result shall be kept in electronic format by the Commission at its national headquarters¹.

While it can be seen that the stages of the adoption of the stages follow piecemeal, it can be seen that the cardinal stages for the adoption of electronic voting have been captured. Thus, it can be safely stated that there is a legal framework for the adoption of electronic voting in National elections starting in 2022, but there is no certainty of its implementation since there are necessary measures like procurement and storage facilities of equipment that are yet to be in place for its deployment. In the meantime, only electronic voter registration and electronic accreditation are implemented but electronic balloting and transmission are yet to be realized. Thus, strategies for Electronic Transmission of Result which is the feasible and visible phase are being worked out as detailed below.

ELECTRONIC TRANSMISSION OF ELECTION RESULTS

The National Assembly approved Electronic Transmission of Results in accordance with the procedure determined by the Commission. The rationale behind this is apparent considering the fact that one of the features of a free, fair and credible election is that election results are to be announced as soon as possible or else the confidence of the public on the electoral process may be eroded. This is especially so in Nigeria where there is distrust and suspicion of the process which can be heightened if transmission and declaration of result is delayed. It is worthy of mention that depending on the type of election conducted, i.e., whether

Councillorship, Chairmanship, State House of Assembly, National Assembly, or Presidential. There are several stages of transmission of results like:

- i. tabulation and announcement of result at polling unit^{li}
- ii. collation of result at registration area center^{lii} and
- iii. final declaration by the returning officer^{liii}.

In each of the above types of elections, elections are compiled and transmitted to the next stage. For example, it starts from polling unit to the ward collation center, Local Government Collation State and finally to the Returning Officer for declaration of the winner. In each of the stages, computations are made which have proved tedious manually. The results are then transported manually to the next stage where allegations of manipulation and distortion of the results are always the order of the day thereby affecting the credibility of the process.

By choosing to make these processes of election electronic, barring any risk of cyber-attacks, what is computed and stored in the memory of the computer is instantly transmitted to the next stage until results are declared, as a result, the transparency and the credibility of the process is enhanced. On this issue, the INEC made it position clear that it is ready to use technology in transmitting result electronically once the necessary legal framework is provided and even deployed the IReV portal to prevent hacking which proved efficient and effective^{liv}. in the same vein, it highlighted cardinal issues like the purpose of electronic transmission of result, likely challenges to be encountered and addressed and the legal framework required to usher in electronic transmission of result and debunked all misconceptions associated with electronic transmission of results. It stressed that:

- i. electronic transmission of result is a progressive path towards increasing trust in the system.
- ii. it safeguards the health of the people in the wake of the covid 19 pandemic to reduce person to person contact as was done in the case of creation of portals for submission of list of nominated candidates, electronic accreditation of election observers and the electronic results viewing portal.
- iii. timely and efficient results management and announcement as excessive delays have the tendency of fuelling violence.

iv, it increases public confidence in the system

v. reduction to the barest minimum, negative human intervention in determining the outcome of an election as negative human intervention has over the years been identified as the root cause of election malpractices such as manipulation and alteration, destruction or theft of results that did not favour a particular candidate.

vi, audition and verification of result which is a very common after the conduct of an election, aggrieved candidates usually call for a review of the election results, thus, with electronic transmission of results, any request for review can easily be handled as opposed to being left in its current manual form. It is worth noting that after the 2019 General Elections, the Presidential Election Tribunal was faced with the issue of electronic transmission of result and the issue was discarded due to the absence of a clear legal framework permitting its adoption^{lv}.

vii. transparency and accountability since the mindset of the public is inclined towards adoption of electronic process as a viable option, electronic transmission of result is timely.

viii. record keeping and archiving electronically guarantees safety of documents and easy retrieval as experience has shown that records of past election manually stored are hard if not impossible to find.

ix. value for money as with the adoption of electronic voting paper work is reduced and the number of people required to manage result is also reduced.

x. stepping stone towards adoption of electronic voting.

Even Rules of Courts of law nowadays make it mandatory that electronic copies of filed processes be made available to the Court (e-filing) and some even use electronic recording machines to enhance the timely dispensation of justice.^{lvi}

PROSPECTS AND MANAGEMENT OF ELECTRONIC VOTING AND ELECTRONIC TRANSMISSION OF RESULTS

The process of implementing Electronic Voting in Nigerian elections is carried out gradually in the form of one process leading to the other until the intended effect is achieved. Below are

the mechanisms put in place by the Independent National Electoral Commission to electronic transmission of result:

1. Electronic Results Management- This is the stage where the images of the result of polling units already announced by the Presiding Officers at the Polling Units are also scanned and published online. This was first tested during the Edo and Ondo State Governorship Elections and it proved a success^{lvii}.
2. IReV Portal- This is the portal used to test the security of transmitted election result, they have passed the security test including dummy hacking by hackers^{lviii}.
3. IReV Online Publishing of Polling Unit- This is the portal used to test the capacity of national infrastructure intended to be used for future electronic transmission of images of polling units and their election results from all parts of the country for different elections from all locations notwithstanding the terrain and security situation as was done in the case of Zamfara, Jigawa, Lagos, Niger, Bayelsa, Borno, Edo, Bauchi and Imo States in 2021^{lix}.
4. Engagement with Nigerian Communications Commission for telephony and data transmission without which it will not be possible to carry out electronic transmission of result.

In summation, what is required by the Independent National Electoral Commission from the Nigerian Communications Commission for the success of electronic voting process is as follows:

- i. telecommunication infrastructure for transfer of election data
- ii. secure data transfer from collation points to the central server of INEC
- iii. constant availability service during the period of election and;
- iv. ability to ascertain location information of all SIMs during the period of election^{lx}.

When the above requirements requested by the INEC are fulfilled, it can be said that the stage is set for the full deployment of the much-yearned Electronic Voting as a way to purify the electoral process of Nigeria from malpractices. More so, it will afford the INEC the opportunity

of testing whether the deployment of Electronic Voting is the best solution to the challenges experienced in the conduct of elections in Nigeria. This process is also strengthened further with the admissibility of electronically generated documents including those produced during the conduct of electronic voting by the Nigerian Law of Evidence^{lxi}.

CONCLUSION

Electronic Voting has been consistently prohibited by the amendments done to the Electoral Act, 2010 (as amended) but the prohibition was finally relaxed due to the need to capture the current trends of technology with the enactment of the of a new Electoral Act, 2022. This is further cemented by the amendment to the Evidence Act, 2011 which allows for receipt of electronic evidence that was also not the case before. Thus, to cure the pervading electoral malpractices prevalent in Nigeria, electronic voting seems a viable option.

Based on the foregoing, the paper makes the following findings:

1. The Regulatory framework on election in Nigeria recognizes and permits the adoption of electronic voting but the framework is not broad enough to incorporate future technological advancements like online voting.
2. Electronic Voting is being implemented in National elections at piecemeal stages (from registration of voters to declaration of results) and now there are clear provisions on adoption of each of its stages. For example, the controversy surrounding electronic voting and transmission of results have been laid to rest with the passage into Law of the Electoral Act in 2022.
3. Electronic Voting is very effective in the management of elections in the wake of covid 19 pandemic especially in registration of voters but attempts were made by fraudsters to undermine the process and only few provisions of the Electoral Act, 2022 prescribes penalties for cyber offenders.

Accordingly, the following recommendations were put forward:

1. There should be a concerted foresight and realistic strategies to further make the Legal framework on electronic voting broad enough to encompass future amendments. For example, specific reference by law to a particular technology should either be avoided or be liberal enough to contain words like “including but not limited to”. This will enable the deployment of new technologies (as they are invented) without unnecessarily awaiting amendments and unnecessary litigations.
2. There should be realistic strategies for the implementation and realization of the clear provisions of the Electoral Act, 2022 on deployment of all the aspects of electronic voting as the deployment of electronic voting is no longer legally impeded.
3. Stringent measures like subjecting saboteurs to the Cyber Crime Laws should be devised to prevent all electronic voting crimes and possible hacking of electoral portal as has been witnessed during the 2021 online registration of voters.

ENDNOTES

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- ⁱ Section 15, Third Schedule and Items 22, 56, 67 and 68 of Part I Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- ⁱⁱ www.brittanica.com accessed on 21st December, 2022 at 11:38 am
- ⁱⁱⁱ Section 1(3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- ^{iv} *Abubakar vs INEC* (2020) 12 NWLR (Part 1737) 102
- ^v Section 15, Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
- ^{vi} Section 98 of the Electoral Act, 2022.
- ^{vii} Section 4, Part II of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- ^{viii} Section 160 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 153 of the Electoral Act, 2010 (as amended)
- ^{ix} *Shinkafi vs yari* (2016) 7 (part 1511) 406.
- ^x Section 15, Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended)
- ^{xi} Section 152 of the Electoral Act, 2022
- ^{xii} Section 15 of the Electoral Act, 2022
- ^{xiii} *Ibid*, Section 41
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- ^{xv} Section 115(2)(d) and Section 126(4) of the Electoral Act, 2022
- ^{xvi} *Ibid*, Section 84(10) and (12)
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