

Much Work remains to be done on Nigeria's Electoral Bill, 2021

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The Electoral Bill, 2021, which seeks to repeal and replace the Electoral Act No. 6, 2010, is expected to be introduced in the National Assembly for passage in July 2021. Without a doubt, the Bill is a considerable improvement on the Act it seeks to replace, as it integrates several recommendations made by leading election reform experts. Some of these accepted recommendations include financial autonomy for the Independent National Electoral Commission (INEC), provisions for electronic voting, and a more convenient timeline for political parties to submit their lists of nominated candidates ahead of elections. However, the Centre for Democracy and Development (CDD-West Africa) finds that certain provisions in the Bill, if passed into law, are capable of dragging the overall electoral reform process backwards.



Centre for Democracy & Development

Centre pour la démocratie et le développement

1. Opposition to the Full Use of Digital Technology Across the Voting Spectrum

Although the Bill allows for electronic voting, the prohibition of the electronic transmission of election results (Section 50(2)) — a key aspect of CDD-West Africa’s recommendations for the digitisation of the electoral process — needs to be reconsidered. While anxieties about the susceptibility of online electronic systems to hacking seem to have informed the legislators’ opposition to the electronic transmission of results, CDD-West Africa believes that the benefits to transmitting results electronically are significant and that there are numerous ways to secure electronic systems, protecting the integrity of electoral outcomes. CDD-West Africa sees benefits in an electronic system that can both record votes digitally, and produce an instantaneous paper record of each vote (a digital receipt and ballot paper showing only the party voted for) to be received by the voter and inserted in a secure box for later cross-referencing with the electronically transmitted results. A valid result, therefore, will be one where the digital and paper records correspond.

CDD-West Africa’s strong preference for fully digitising the process is informed by its long-standing monitoring and documentation of the chaotic nature of the current manual results collation and tabulation system. Our observation of the 2019 elections across Nigeria revealed a collation process that was often messy, incoherent, and susceptible to manipulation by individuals and political parties. In some instances, the manual system was vulnerable to violent disruption by the losing party. Allowing the use of technology across both the voting and results transmission process will reduce human errors and manipulation. This has the potential to improve the integrity and trustworthiness of the outcomes of elections as our report ‘Counting The Votes: Ward-Level Collation During



Nigeria's 2019 Presidential Election – A Postmortem Analysis' compellingly demonstrates.

2. Powers of the Returning Officer to Correct Unit Results

One major challenge of the currently opaque manual results collation and tabulation system is that human errors are common at the polling unit level. Unit-level results have often had to be corrected by Returning Officers (ROs). Indeed, observers have frequently noted that this practice is controversial, and perhaps even illegal. While the powers granted ROs in the Bill to make corrections to erroneous unit results is understandable, such powers, without clear provisos, provide a loophole for abuse.

For instance, in 2021, Peter Ogban, who served as a RO for the North-West Senatorial District of Akwa-Ibom State was convicted of manipulating election results by publishing and announcing false results at two local government areas: Oruk Anam and Etim Ekpo. CDD-West Africa's report 'Electoral Corruption In Nigeria: A Case Study Of The 2019 General Elections', provides further evidence of how results are manipulated at the collation level by ROs. To reduce the risk of such manipulation, CDD-West Africa believes that any corrections to unit results must be done with the expressed consent of both the Polling Officer of the concerned unit and the designated agents of the parties whose final scores would be most impacted by the correction.

A survey conducted by the CDD-West Africa in 2020 — with respondents selected from the FCT and one state in each of the six geopolitical zones — highlighted voter's fears that INEC's ad-hoc officials have the proclivity to manipulate election results. In response to the prompt: " I feel INEC staff gave undue advantage(s) to agents of the ruling party during the 2019 presidential elections," a substantial 41 per cent of respondents said



“yes,” the largest proportion of whom were from Lagos State (74 per cent) and the least proportion of whom were from Enugu State (44 per cent). While this suggests that a majority — 59 per cent of respondents — expressed trust in the conduct of election officials at the state and presidential elections, it is worrying that at least two in every five Nigerians did not feel such trust.

3. Increase in Campaign Financing Limits

Alarming, contrary to expectations that the Bill would reduce the influence of money in electoral politics, Section 88 of the Bill instead substantially increases the maximum amount political parties are permitted spend on campaigns.

Limits on Campaign Financing

Category of Election	Old Limit (₦)	New Limit (₦)
Presidential	1 billion	15 billion
Gubernatorial	200 million	5 billion
Senatorial	40 million	1.5 billion
House of Reps	20 million	500 million
State House of Assembly	10 million	50 million

While CDD-West Africa recognises that campaigns are expensive all over the world and that the old limits may no longer be feasible given inflation and devaluation of the naira, the proposed limits are extremely high. The new limit for Presidential Election, for



example, is a fifteen-fold increase, while the limits for gubernatorial candidate are increased twenty-five-fold. Similarly, significant increases will also be applied to candidates seeking election to the Senate (thirty-seven-fold), House of Representatives (twenty-five-fold) and State Houses of Assembly (five-fold). CDD-West Africa's experience has shown that the expensive nature of politics in Nigeria is a major hurdle to the political advancement of women and youth candidates. Where such high limits on campaign financing are maintained, major political parties are highly likely to be disinclined toward nominating individuals deemed incapable of making significant contributions to their campaign or attracting heavy donations to fund the campaign.

Importantly, the proposed amendment also retains the current definition of 'election expenditure'. This means that any expenditure incurred by candidates before INEC formally announces election dates is excluded. This narrow definition of election expenditure offers a convenient legal loophole to candidates, allowing them to spend considerable amounts of money before the 'official' start of the campaign period. Even when campaigning does begin, candidates can use third parties to campaign on their behalf without their expenses being included as part of a candidate's expenditure.

CDD-West Africa's opposition to these increases and loopholes is informed by the unwholesome and corrupting effects of big money on competitive party and electoral politics.

4. Funding for INEC

The provision guaranteeing INEC's financial independence is welcome. However, without clearly providing for the yearly release of funds to the Commission, the same old problems are likely to remain in place. CDD-West Africa believes strongly that the solution to



recurring gaps in election funding is to treat elections as a recurrent cycle, and not as stand-alone events. When elections are funded as a cycle, essential requirements for the electoral process can be met on a progressive and incremental basis. This would contribute to ensuring the operational efficiency of INEC, enhancing its independence, and guaranteeing the integrity of elections.

To this effect, and to strengthen the financial independence of INEC, CDD-West Africa supports the recommendations of a recent study into the cost of elections by the ECOWAS Network of Electoral Commissions. The study proposes that a three-year election rolling plan be adopted allowing INEC election-budgets to be passed three years before the general elections, with twice yearly releases and disbursements in January and June of each of the two years before the elections. This will enable the Commission to better plan and prepare for election processes.

Without clearly providing for the yearly release of funds, the Commission will continue to be faced with logistics and supply challenges. Such challenges have caused delays and postponements to the last three general elections. Efforts must be taken to avoid this embarrassing habit from recurring in Africa's largest democracy in 2023.

5. Denying INEC the Power to Review and Correct Declared Results

Given the experience of the 2019 election where an INEC RO admitted to having announced results and declared a winner under physical threats to his safety, a key recommendation proposed by observers, was that the new legislation grant the Commission the power to review declared results where there is sufficient evidence that the RO had been forced to make a coerced declaration. The rejection of this important recommendation in Section 65 of the Bill risks not only emboldening politicians to apply



the now tested strategy of coercing officials to make false declarations but also puts the safety of ROs in jeopardy.

It is our firm position that every amendment to Nigeria's electoral law must improve, rather than undermine both the electoral process and the integrity of electoral outcomes. We, therefore, urge the National Assembly to, in the best interest of the country, ensure the Bill is not passed until these critical shortcomings are addressed.

Signed:

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Director

