The Electoral Act Amendment Bill 2021 and Democratic Governance in Nigeria.

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Abstract

As the 2023 general elections approach, the Nigerian political environment has been heated because of the attempts to amend the electoral laws. Although amendment of electoral laws has become common in months preceding general elections in Nigeria, the effort in 2021 is laced with fear and suspicion. This paper examines the amendment process with particular focus on the controversy around sections 52(2&3) of the proposed amendments. Relying on the secondary method, the paper interrogates the processes of amendment and observes that while it is the constitutional responsibilities of the legislature to amend electoral laws, the roles played by legislators as beneficiaries of the electoral process is fraught with dangers of dishonesty. The paper concludes that the political actors deliberately delay the amendment processes to dramatically improve their chances of winning elections. The paper found out that there is fear, apprehension and suspicion for the introduction of electronic transmission of results. The paper concludes that the electoral body can still override the provisions of the electoral act to conduct electronic transmission of results. While making specific suggestions, the paper recommends that Nigerians should make sure that they do not allow the tide of the electoral process to shift more towards mass rigging and elite manipulations. That Nigerians should legitimately suspect their political actors in their commitments towards making laws for free, fair and transparent elections.

Key words: Electoral act; Democracy; Amendment; Elections, Campaigns

Introduction

The democratic system of government differs from other systems not only in its historical antecedents but also in its practices and objectives especially as exemplified by the choices it affords citizens to participate directly in choosing who should lead and represent them. This feature is enshrined in the universally accepted tenets of any democracy; the others being the existence of the rule of law, equity and equality among citizens, guarantee of liberties and freedoms, education and debate. The freedom to choose representatives in the democratic process requires a neutral functional and credible process ensuring that the choice of the majority is translated into a decision for all. There is certainly first, the requirement for an electoral umpire that inspires the confidence of everyone in the electoral process while conducting elections, an outcome which has to be the choice of the people. The credibility of a choice made by a participating people without any doubt bestows legitimacy on the electoral body. This therefore means that without the clear rules of elections, democracies cannot thrive in any community. Elections are the processes through which leaders are appointed and selected into office. (Yaqub, 2010)

The Elite Theory

The elite theory historically predicts that it is most viable or even inevitable that decision making in a society is made by a selected minority of men and women identified for their knowledge, wisdom, tact or traits in managing the affairs of men. Ancient political thinkers have severally dissuaded society from allowing rule by "ordinary men" which can be interpolated today to mean majority rule. The theory envisions society as divided between the people and the ruling minority. (Mariotti, 2020). Indeed, historical reference of the ideas on elite theory concepts can be traced to the earliest writings on political science: Polybius (150 BC) for example sited that the original sources of power as monarchy, democracy and autocracy. He argued that eventually, "if not balanced in a mixed government", monarchy would become tyranny, democracy become" mob rule" and autocracy (elite rule) would become "oligarchy" (Scott-Kilvert, 1979)

It was the in the 19th and 20th centuries that a more detailed study of the elite theory emerged mainly from the Italian school of elitism. The debates in the Italian school were influenced greatly by the writings of Gaetano Mosca, Vilfredo Pareto and Robert Michels. While Pareto saw elite as the catalyst to success of all spheres of living, as those with intellectual superiority and capacity to regenerate and replace themselves, Mosca saw the elite as an organized group benefiting from their organizing capabilities to lead the unorganized majority. To Mosca the elite are the ruling class in a world made of political and non-political classes. Mosca identified the elite as those with both moral and material supremacy. Robert Michel on his part believed that all organizations whether political, social, are run by few individuals and are therefore elitist by nature. Every human organization is influenced by the "iron law of oligarchy" which requires the need for leaders, specialized staff and facilities, essential is the capacity of the leaders to utilize the facilities.

Much more resent contributions to the elite theory are the in the works of C.Wright Mills, *The Power Elite (1956)* which identified power groups that operate from the political, military and economic spheres of the American society merging "through a process of rationalization at work in all advanced industrial societies whereby the mechanism of power became concentrated, funneling overall control into the hands of a limited, somewhat corrupt group (Mills, 1956).

Mills indeed concluded that power generally lies outside the control of the US elected representatives. In Nigeria the elite operate with impunity lacking nationalism and clear sense of self preservation. Many actions traced to the political class are laden with corrupt practices. This paper wishes to interrogate the electoral process because of its role in providing avenues for self-perpetuation of the elite political class. Have the Nigerian elite acted in the interest of the majority in making and amending the electoral laws? What factors determine the nature of laws the elite support in Nigeria? Could the Nigerian political class be trusted with creating laws that have directed bearing to the dominance of the class over the affairs of the whole? In conducting its analyses, the paper uses the Amendment Bill of 2021.

History of Elections in Nigeria

Even though elective democracy was introduced into Nigeria in May 1919 when the Township Ordinance provided for three elected representatives into the Lagos Town Hall which happened in the first election held on 29th March 1920, general elections in Nigeria were first conducted 1923 with the inauguration of the Clifford constitution. The Nigerian electoral process was tasked with the election of just four persons (three persons in Lagos and one in Calabar) to represent the local elite in the forty-six-member colonial administrative council. The electoral process has bourgeoned in these 98 years to become very versatile while remaining infantile. From inception, the electoral franchise was designed to allow only citizens that were 21 years and above, who resided in the provinces for more than a year and have income of at least 100 Pounds. Public servants, ex-convicts, and persons of unsound minds were denied the franchise to vote or be voted for.an electoral register was established and candidates were required to deposit 10 pounds to contest. Only about 4,000 persons of the nearly 99,000 population of Lagos participated in the elections. The Nigerian National Democratic Party (NNDP) won three of the seats in Lagos for the term period of 5 years (Tamuno, 1966).

In 1933, another cycle of the same election produced similar results with the contest of an independent candidate Olayinka Alakija who lost to the NNDP. The 1938 election circle was dramatic in the sense that the Nigeria Youth Movement won all the three seats in Lagos reserved for the Legislative Council. NNDP which had won the seats since 1923 was routed only to return and win the three Lagos seats in 1947. Elections were suspended until 1947 because of the Second World War. Calabar that had consistently presented unopposed candidates, had Okon Efiong and E. E. E. Anwan contest as individuals. By 1954 a general election was conducted taking cognizance of the 1951 Constitutional Amendments of Sir John McPherson. Political parties have revolved into regional parties and the Northern People's Congress won the highest number of seats all from the Northern Region. National Council for the Nigeria and the Cameroons won majority of the seats in Western and Eastern Nigeria, the Action Group was the only party that won seats in all the three regions. In preparation to hand over power to the natives at independence, the 1959 elections were conducted where the parties won seats on regional basis and formed a government of alliance between the Northern People's Congress and the NCNC to form a government that took over control of the country from British colonial rule.

Post-Independence Elections in Nigeria

Nigeria has had a lot of experience with elections since its independence in 1960; many electoral bodies have been created by law and have been provided with the logistics and legitimacy to conduct free fair and credible elections within the vast territories of the Nigerian state. Since

1978, the military has decreed electoral management bodies into existence. There was Federal Electoral Commission, (FEDECO) in 1978, National Electoral Commission, (NEC) in the late 80s, Nigerian Electoral Commission, (NECO) and recently, the Independent National Electoral Commission, (INEC) instituted in 1998. The legal frameworks for the operations of the electoral bodies have largely transformed from the military edicts and decrees into Acts of parliament as provided for by the Nigerian Constitution where it is directed that all military decrees automatically transform into acts of parliament at the inception of a democratic order. Being acts of parliament, the laws governing election are therefore subject to amendments by members of parliament on their individual rights or as sponsors acting on the request of other members of the larger society.

The Nigerian constitution of 1999, in Section 153(f) provided for the existence of an electoral management body EMB to be called the Independent National Electoral Commission INEC. The commission is saddled with powers to conduct elections into various political offices at intervals corresponding with the end of their tenures. The commission can sue and be sued. It's in a similar vein section 197(f) provided for State Independent Electoral Commissions SIECs to conduct elections into offices in the local governments. In every respect, the need to make electoral amendments is trite considering the fact that society is dynamic and many activities of contemporary life are impacted speedily and significantly by science and technology. The dilemma is, if elected, can officials be left with the responsibility of making and amending electoral laws being primarily interested parties to, and beneficiaries of elections themselves? Questions that would bother the mind is if legislators would not conspire to make laws that would benefit them. Could the beneficiary of a law work to change the law to not favor them? Can the credibility and independence of the electoral body withstand scrutiny by interested parties? While the thrust of this paper would be to interrogate the amendment procedure for the 2010 Electoral Act in July of 2021, an attempt to clear our minds on these nagging questions will be made right away. The examples of USA, Brazil and India will be briefly stated to clear our doubts.

Electoral Law Amendment in the USA

The conduct of elections in the USA is created by election laws obtains from Article 1 of the US constitution. This gives States the responsibility of overseeing and conducting all federal elections. Every state makes laws and guidelines for the conduct of free fair and credible elections where their local and national representatives would be elected directly. The President and Vice-President would emerge through the election of Electoral Colleges made of members apportioned disproportionately. However, while the procedures for the conduct of elections have remained largely with the States, many constitutional amendments and changes to electoral laws by the Congress have taken place. These changes however generally seek to protect the rights of the citizens to vote and fully participate in the democratic space rather than dictate election procedures. The 15th amendment of the constitution in 1870 for example, specifically gave African American men the right to vote. The 19th amendment ratified in 1920, gives American women the right to vote. The 24th amendment ratified in 1964 eliminated poll taxes. The taxes had been used in some states to keep African-Americans from voting in federal elections. The 26th amendment ratified in 1971 lowered the voting age for all elections to 18 years.

Federal laws have also been promulgated by the Congress to help protect the rights of all Americans to vote. The Civil Rights Act of 1870 for example, created some of the earliest

federal protections against discrimination in voting. These rights and protections were further outlined by the Civil Rights acts amendment laws of 1957, 1960 and 1964. The Voting Rights Act of 1965 prohibited voter discrimination based on race, color or membership to a language minority group. It also required some states with the history of voter discrimination to provide election materials in languages other than English. This provision was however struck out by the US Supreme Court in 2013. The Voting Accessibility for Elderly and Handicapped Act of 1984 is another example that provided for Polling units be very accessible to people with disabilities.

The national voter registration act NVRE of 1993 created ways to register to vote; it also called for states to keep accurate voter registration. The Help America Vote Act HAVA of 2002 authorized federal funding for elections it also created The US Election Assistance Commission EAC. The EAC helps states comply with HAVA to adopt minimum standards on voter education registration and ballots. Lastly, the Military and Overseas Voting Empowerment MOVE act of 2009 improved access to voting by the military, diplomats and other categories of overseas voters. At the moment, the United states have laws in about 2/3 of their states that require you to show some form of ID before you are allowed to vote. This issue, with a long history has remained contentious as it is suspected that the political actors especially the white majority help create laws that would disenfranchise as many black and colored voters as possible. The matter is still being debated. Therefore, because of its history and structure, Federal laws passed over the years in the USA were targeted at helping protect American's right to vote and making it easier for citizens to exercise that right while addressing racism and discrimination. Federal laws have not targeted electoral procedures in depth.

Electoral Law Amendment in Brazil

In Brazil, a central electoral management body; the Tribunal Superior Electoral or Superior Electoral Court (TSE) is provided for by the Brazilian constitution. This electoral body operates within the ambit of the judiciary. TSE has jurisdiction over all aspects of elections in Brazil and regulates the function of political parties. TSE developed a reputation for honesty, competence and independence in the management of electoral processes. The TSE is also responsible for revising the electoral law every two years by submitting such amendments to the legislature for approval as required by Brazilian law. Because it has maintained good reputations, the electoral law submitted by the TSE is rarely debated and this gave the TSE significant leeway to pursue electronic voting as a solution to challenges faced by the electoral process. While outside actors had made some inputs, the move to electronic voting was largely an autonomous decision taken by the TSE.

Brazil has been shifting towards electronic voting since 1994, the initial move into electronic voting has been managed by the TSE. The TSE has acquired electronic voting machines (AVMs) to combat the fraud incipient in the paper ballot tabulation process along with other related malpractices common with ballots in the paper voting system. Due to Brazil's complex electoral laws, voters regularly have to choose from thousands of legislative candidates; this makes the result of tabulation and a logistical nightmare because the paper voting system involves hundreds of thousands of vote counters who are often government employees and very accessible to inducements. Because of the scale of this task vote counting could take weeks and the periods after election are times of great uncertainty and tensions (NDI, 2013) On the 5th of August this year 2021, the Brazilian President Jain Bolsonaro suffered a major defeat in Congress when

Brazilian lawmakers rejected his proposal to require printed receipts additional to the electronic ballots. This is tantamount to having ballot papers. Without presenting any evidence Bolsonaro has insisted that Brazil's electronic voting system is prone to fraud and that print-outs would allow for auditing results (Associated Press, 2021). Bolsonaro has threatened that there will be no elections in 2020 'if they are not free and democratic'. Bolsonaro has for years campaigned for Brazil's electronic voting system, which has been in place for the last 25 years be changed (BBC, 2021)

Electoral Law Amendment in India

According to the Indian constitution the conduct of free and fair elections is the responsibility of the Election Commission of India. This Commission is granted autonomy and independence and is charge with preparing electoral rolls and issuing all special directions in cases where election laws enacted by the parliament have inadequate provisions. Electoral laws in India are framed by different legislative bodies The elections for the President and the Vice president and other state legislative houses can be enacted only by the parliament of India. State legislatures draft law supporting elections into municipalities and other local bodies. Under article 324 of the Indian constitution the election Commission of India ECI has the right to enforce the moral code of conduct which ensures elections are free and fair with the participation of every candidate upholding good values (see Indian Electoral Laws www.kotaksecurities.com)

Some laws enacted by the Indian parliament on the conduct of elections include the Presidential and Vice-presidential election act of 1952, the Presidential and Vice-presidential elections rules of 1974, the Presentation of the People act of 1950 which is concerned with the preparation of election and electoral rolls and the Registration of Electoral Rules 1960 which provides rules relating to the superintendence of the elections and updating of registration and verification of electors details. Under Section 28 of this 1960 rule, all rules relating to the preparation of elections electoral, updating of registration of eligible electors and the issuance of voter ID cards with the voter's photograph are stipulated. It also includes rules on the inclusion of eligible voters, exclusion of ineligible voters and corrections to be made regarding disputes, acts of malpractice and judicial pronouncements.

The Electoral Process in Nigeria

A close look at the Guidelines for the conduct of the 2019 elections would show that Nigerian elections pass through 5 major stages, namely: Voter education, Registration of voters, casting of votes, collation and counting of votes, Transmission of results and Declaration of winners.

1. **VOTER EDUCATION**

For every electoral system to perform optimally those that are of voting age need to be sensitized and educated on the need to participate by presenting themselves to cast their votes at the designated areas provided by the electoral body. Without voters, the entire electoral process becomes an official waste of time and resources. Although voter apathy does not void elections it affects the credibility of the selected winners of the elections. Nigerian elections have consistently recorded very low number of voters since 1999. For example, President Buhari was elected by only 18.5% of Nigerian voters. With a population of 200 million people, 83 million registered for the election of 2019 and only 28.6 million voted. Of this number, only 15,191,847 (18.5%) voted for Buhari while 11, 262, 978 (13.7%) voted for Atiku. (Akinyemi, 2019) This

translated to a total of 32.2% voters voting for the top two candidates; the question to ask is could 15.2 million people make a choice for 200 million? Other reasons presented for voter apathy in Nigeria are bad governance, failed promises, ethnicity, regionalism and general insecurity of the electoral process, the most significant of which is the fear of violence during elections, a factor that has become endemic to the Nigerian electoral system. Many voters believe that their votes would not make a difference.

2. Voter Registration

This involves the taking up of the details of potential voters eligible to participate in the election. In Nigeria, the conduct of voter registration has always been mired in controversy especially because the Nigerian census figures have remained very contentious. But with the introduction of electronic card readers in the 2015 elections, the data of voters as well as electronic tabulation of the voter register eliminated a lot of the previously noticed fraud and tempering. Because of the introduction of the Personal Voting Card (PVC), hundreds of thousands of votes that would have been rigged-in, could not be picked by the card reader. This action was revolutionary, it presented a situation and opportunity where technology when applied enhanced the credibility of the electoral process and stopped electoral malpractices at the point of registration. With the introduction of the PVC card reader, accreditation of voters became very transparent in Nigeria. Data on voters were collected for the next circles of elections.

3. Voting

The physical casting of the votes by eligible voters is a key ingredient of the election process in Nigeria. INEC has over time introduced very good measures of securing the voting process while acquiring secured and sealable transparent ballot boxes. There have not been serious incidents of fake ballot papers discovered in the process. Although some countries have acquired the technology to conduct the voting processes electronically, Nigeria still relies on the manual process completely.

4. **Collation Of Results**

Although it has been highly disputed and apocryphal, Joseph Stalin was quoted to have said that "….it is not enough that the people know there was an election. The people who cast the votes decide nothing. The people who count the votes decide everything". Coalition is the procedure for counting votes cast from every ballot box in every polling unit at every polling center until a final tally of result and figures are arrived at. Realistically, the counting of votes is done very transparently and primary figures are obtained on the spot at the unit election collation centre. Physical presence of party agents, security personnel, local and international observers and especially of the voters allowed within certain distances of the collation centers makes manipulation of the counting process very difficult.

5. **Results Transmission**

This signifies the process of transportation of collated figures of results across the length and breadth of the country of every constituency for final figure to emerge and candidates be declared. There are traditionally manual and of resent electronic methods of transmitting results. Nigeria adopts the use of the manual methods. This entails the use of all forms of transportation of every type available to the electoral officers within every constituency to transport materials

and counted results of specific area polling units, constituency and central collation centers. Polling unit results are transported to ward and local government collation centers before and state collection centers where national figures are finally transported to the National center at Abuja. Indeed, the greatest problem of elections in Nigeria is in the transmission and announcement of results. The interception of results in the process of physical transmission has become the bane of Nigerian electoral system. While voters may be happy that votes have been counted and everybody goes home happy the results could be changed by officials, thugs and hoodlums at any point while on transit for transmission from and to different collation centers. Violence has been used to destroy election results or refuse to allow the correct numbers tallied be transmitted to collation centers.

6. Announcement of Results

Results are announced at every polling station by the leading electoral officers. Results collated are counted every polling unit in the presence of all party and security agents, figures are added up and then transported to the next collision center this process continues unabated till the final tally. it is worth noting that results are made public at every collation center.

The Controversy of the Amendment of the Electoral ACT 2010

The amendment of the electoral act is adjudged controversial because of its antecedents. Since 1999, there have been four amendments to the constitution as well as four amendments to the electoral law, namely amendments to; 2001 electoral act, electoral act 2002, the 2006 electoral act, and the 2010 electoral act. All of the amendments processes turned out to be highly controversial. As earlier stated, all decrees not repealed automatically become acts of parliament. The electoral act was ab initio a product of a military decree. The 2001 electoral act was short lived due to certain controversial clauses contained therein; one of which was the power granted to INEC by the National Assembly to conduct elections for local government areas. This was challenged in the courts by the Attorney General of Abia State. The Supreme court ruled that NASS has no power to make INEC conduct local government elections (Ojo, 2021).

The 2002 electoral act was passed to conduct the 2003 election. A court however struck out section of the law that stipulated the sequence and order of elections granting INEC the powers to make the order and decide on the sequence of elections. In 2006, the electoral amendment act was challenged by the Conference of Nigerian Political Parties over the sharing of grants to political parties. Justice Abimbola Augie of the Federal High Court ruled that some sections of electoral Act 2006 were at variance with the provisions of section 228(c) of the constitution which stipulated the fair and equitable sharing of grants meant for political parties (Ojo, 2021). The 2010 electoral act was used to conduct three general elections i.e., the 2011 election 2015 election and the 2019 election. This is despite the fact that amendments were attempted on the 2010 act severally. The 2015 amendment for example was signed very late by the then President Goodluck Jonathan it wasn't Gazette until the election took place. In 2018 another amendment was proposed and sent to President Buhari which he rejected. On three other occasions, President Mohammad Buhari refused to ascent amendments citing many corrections. Every effort by the 8th Assembly to get the 2010 Amendment passed proved abortive.

A tradition is being established that sees to every election being preceded by amendment acts. Are these amendments really required to enhance the electoral process or to benefits the actors?

While some amendments have dramatically improved the credibility and transparency of the electoral process, e.g., the introduction of the card reader, one can argue that every election circle brings forth challenges that might require legislation to remedy, but at the same time it could be possible that every time amendments to the electoral act are envisioned, some changes are made to improve the chances of the incumbent political actors to return. Or, every time some dramatic improvements to the electoral process are envisioned, there is deliberate inertia on the part of the political actors to delay its speedy implementation through the amendment of the electoral act.

Section 52(2-4) and Transmission of Results

From observation, the major area of controversy over the amendment process of the electoral act 2021 has to do with section 52(2-4) of the act. The provisions provided for the electronic transmission of results contained in amendment act of 2021 and suffers precisely from the seeming reluctance and ultimate failure of the bill to be assented to by the President since 2018. Skeptics believe that the president did not want to send to the bill because it would create a more favorable electoral climate that could cost him a second term. Indeed, when the president was unable to sign the 2010 amendments in 2018 the National Assembly inaugurated a joint committee of the two houses headed by Senator Kabiru Gaya and house member Aisha Dukku with technical committees from INEC, the Attorney General of the Federation's office as well as The Legal Aid Group.

The 9th Assembly promised to get the bill signed three times but failed to fulfil the promise on the three occasions. The assembly had hoped to get the bill passed in December 2020, then early 2021 or in the second quarter of 2021. This bill was only partially passed in July 2021. This is because the Senate and the House of Representatives passed the bill with inconsistencies as regards section 52(2). Whereas the Senate insisted that INEC should get clearance from the National Communications Commission (NCC) and approval from the Senate in order for it to conduct any electronic transmission of results, the House of Representatives on the other hand was careful to retain the clause as was presented to the plenary session by the Senate Committee on INEC. Amendment 2021 divided the Senate when it started the clause-by-clause consideration of its committee report on electoral amendments. Clause 52(3) of the bill had prescribed that the INEC might adopt electronic voting and transmission of results where practical. INEC thus reserves the powers to transmit results by electronic means where applicable on the day of the elections. The section which provided for INEC to decide on Electronic transmission of results was however amended to empower the Nigerian Communications Commission to determine suitability of network to conduct election processes with approval of the National Assembly the amendment was sought by Senator Sabi Abdullahi of Niger state and it read "the commission may consider the electronic transmission of results provided the national network coverage is adjudged to be adequate and secure by NCC and approved by the Senate" (Jimoh, Abuh, Akubo, 2021) The Senate President quickly passed the amendment and drama arose when the Chairman of the Joint Committee that made the presentation in the Senate, Senator Kabiru Gaya, suddenly made a U-turn and voted against the provision to support the new amendment.

Instantly, Senator Bassey Akpan of the PDP called for an amendment to restrain the initial recommendations on clause 52(3), this did not go down well with many senators. A call for division of the house was initiated and accepted by the Senate President only reluctantly. Fifty-two Senators voted in support, twenty-eight against while another twenty-eight were absent. For

the avoidance of doubt, the provisions of section 52(3) as was brought to the Senate Plenary reading: *The Commission may transmit results of elections by electronic means where and when practicable.* The amendment agreed upon read*: The Commission may consider the electronic transmission of results provided the National Network Coverage Is adjudged to be adequate and secure by the National Communication Commission and approved by the Senate*. The manifest differences between the two positions created the outcry and controversy.

The House of Representatives on the other hand, failed to reach a consensus on the amendment of section 52(3) after many attempts were made by the Deputy Speaker to railroad the chamber into doing so. The Nigeria lower chamber passed this bill after a clause-by-clause consideration by the house. Majority of the 158 clauses of the bill including section 52(2 and 3) were adopted after uproar and protest by some members. The clause was passed to allow the national Independent Electoral Commission determine the mode of voting and transmission of results. The clause read as follows: *voting at election and transmission of results shall be in accordance with the procedure determined by the Commission.* (Channels TV, 2021). Subsequently the speaker invited the Independent National Electoral Commission and the National Communication Commission NCC for clarifications. Both commissions explained that they could not guarantee 100% safety over the electronic transmission of results explaining that no system is completely free from hackers. NCC also explained that Nigeria has only 50% 3G network coverage, transmission can only take place on 3G network. The former speaker of the House of Representatives and Sokoto State governor also the Chairman of the PDP Governor Forum Aminu Tambuwal described the Senate position as totally unconstitutional and ultra vires. He stated that "for the avoidance of doubt section 78 of the constitution provides that the registration of voters and conduct of elections shall be subject to the direction and supervision of INEC in the third Schedule Part 1F section 15 of the constitution, it is clearly stated that INEC shall not be subject to the direction of anybody or any authority. The powers of the National Assembly to amend the electoral act must therefore be consistent with the constitution" (Ojo, 2021).

The powers of INEC cannot therefore be shared with either the National Communications Commission or the Senate. What has played out in the National Assembly on the 15th and 16th of July is believed by the civil society and the opposition to be deliberate drama carefully scripted in order to delay and ultimately kill the amendment bill 2021. The disparity between the positions of the two legislative houses on section 52(3) now requires the inauguration of a technical committee by the two chambers of the NASS to harmonize the two positions. The bill itself was passed on the last day of work prior to a recess of two months by the National Assembly. On resumption the National Assembly is expected to be busy with the Appropriation Bill 2022. More worrying is that, if the Senate position is adopted by the two Chambers, the President might withhold accent to the amendment bill because it would be regarded unconstitutional. The governor of Sokoto has also drawn our attention to the Supreme Court position of the Supreme Court in Unongo VS Aper Aku where FEDECO was granted powers not to take directives from any other authority on the mandate freely given to it by the constitution. (Ojo, 2012)

Another area of concern in the current bill is Section 88 where significant increase in the limit on campaign expenses section were made. Campaign expenses for the presidential elections have been increased from 1 billion naira to 15 billion naira while that for the House of Representatives

was increased from 30 million naira to 500 million naira and for the House of Assembly elections from 10 million naira to 150 million naira. But intentions here are clear that is hence on, only the Super rich, most of whom have stolen public funds, can contest in future elections in Nigeria. This anti people provisions must be removed is course for more concerns.

Conclusion and Recommendations

There is very high expectation that INEC might succeed with electronic transmission even if not derived from the amendment of the electoral act as many argue that INEC must not be subjected to the legislation of the National Assembly on this matter. INEC can rely on powers provided for it in the Nigerian constitution to introduce electronic transmission results in all subsequent elections going by the fact that the infrastructure for electronic transfer of results already exists with INEC. In the guidelines for the 2019 elections for example, INEC had made provisions for IT personnel to conduct electronic transfers where necessary, though INEC denied having a server to transmit results during the Supreme Court judgment between Buhari and Atiku on the 2019 elections, there was clear evidence IT infrastructure deployed by INEC (John Nwachukwu, 2019)

It is the suggestion of this paper that electronic transmission can actually be done concurrently with manual transmission. In the event a polling unit does not have network coverage after the counting of votes, the transmitters can still be imputed with the results both digitally and in imagery in the presence of all the agents of the candidates along with the election observers, electoral and security operatives. Network coverage can ultimately be accessed in transit while transporting the manual registers and figures of the result of the election. This would reduce the risk of violent interception by hoodlums and sponsored thugs by nearly 70 percent.

On another note, INEC must not necessarily rely on private network carriers to transmit results, the NICOMSat belonging to Nigeria can be activated to provide the network required to transmit the results. Results can also be transmitted to many secure sources at once in order to establish genuine duplication. The paper attempted to look at the controversy surrounding the enactment of the 2021 Electoral amendment bill. While interrogating the powers of political actors to legislate on the conduct of elections, the paper found out that this is not alien as many nations have had their electoral processes reviewed and amended by the legislature. Because elections are very potent ways of regenerating the ruling elite, we realized that legislations on elections have different emphasis in different nations. One can argue that the legislature, as a legitimate branch of the ruling elite has unimpeachable rights to amend the electoral laws of every democratic nation; However, it is debatable if every nation allows citizen participation in the amendment processes or that these amendments are made for the empowerment of the Election Management Bodies to enhance their truthfulness, competence, honesty and independence. The extent of elite manipulation becomes very obvious with deeper inquisitions.

The paper also took the liberty of looking at the electoral process in Nigeria highlighting areas of friction, manipulation and misunderstanding. The work then zeroed on Section 52(2-3), of the 2021 Amendment act to finally understand the actions and fears of interested parties. Some suggestions were proffered. Nigerians have a high level of consciousness and great expectation on the improvement on the conduct of elections. Nigeria must not allow the tide to turn and return to the era of massive election fraud. In this spirit of moving forward, the last general election in 2019 ought to have been conducted with a brand-new electoral law but President

Buhari had declined accent to the three successive bids for amendment. Not all of sections of the bills were acceptable and some of the president's objections were valid. Nonetheless it is clear that the president refused to work with the eighth National Assembly to agree on a bill that would improve the quality of elections.

Nigerians should suspect the motives of the political actors on their commitment to work toward the improvement in the election process. It is interesting that the president had said repeatedly overtime that the legacy he wants to leave for Nigeria is an electoral system would integrity, which produces free, fair and credible elections. The promise in itself explains the manner Nigeria elite manipulate the majority citizens in order to perpetuate themselves.

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