



A longitudinal analysis of the maladies in Nigeria's Electoral Act 2026: Need for legislative rethinking

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Abstract

The conduct of elections in Nigeria has been operated under a composite legal framework wherein the Electoral Act is one. The Act has received legislative attention more than any other legislation within the Nigerian legal portfolio. The 2026 electoral law has made inroads in innovation but inherent with maladies capable of undermining the electoral progress that the 2022 Act made. In examining the retrogressions attendant to the Act, this paper employs the doctrinal methodology encapsulating statutory enactments, subsidiary legislation, caselaw, books, journals, newspapers, and Internet resources. Finding cropping up from the appraisal projects some amended provisions as premised on protecting certain political gladiators and boosting the political advantage of the ruling party. The haste of the assenting authority in applying bills in the assenting process constitutes a finding. Beyond the ritual of pre-election amendment, the Act cries for a patriotic review to advance the course of electoral democracy in Nigeria.

Keywords: Electoral Act 2026, electoral integrity, legislative rethinking, and maladies

Introduction

The Electoral Act constitutes the superstructural legislation that regulates the conduct of elections in Nigeria. The essence of the Act lies in providing a legal instrument for ensuring that elections are credible, fair and transparent. ^[1] Before the enactment of each Electoral Act, the electoral process of Nigeria was governed by ad-hoc legal and constitutional provisions which created inconsistencies, gaps, and room for electoral malfeasance. ^[2] The cardinal essence of an Electoral Act is the codification of legal rules for conduct of elections. ^[3] The law prescribes detailed procedures from registration of voters, nomination of candidates, financing of campaigns, voting, collation, to the declaration of results. ^[4] By the stipulations, the legislation empowers the electoral management body to conduct elections and, in the case of Nigeria, to conduct recall referenda as well. ^[5]

It is clear that a significant essence of electoral law is citizens' protection of the right to vote, which is cognisable under international law and the Nigerian grundnorm. ^[6] The law criminalizes voter intimidation, vote merchandising and other electoral malpractices. The legislation provides timelines for the release of election funds to the Independent National Electoral Commission (INEC), primaries, campaigns, registration of voters, submission of candidates to INEC for elections, and a dispute resolution mechanism for resolving conflicts. ^[7] One of the innovations introduced into the electoral process of the polity has been the landmark introduction of technology for the purpose of attaining electoral integrity. ^[8] The introduction of the Bimodal Accreditation System (BVAs) and the INEC Resulting Viewing Portal (IREv) was designed to arrest electoral fraud, including multiple voting, ballot stuffing, and manipulation of election results. ^[9] The aim of the introduction is to build and sustain public confidence in the electoral process and the outcome. The reliance on the Electoral Act strengthens democracy and the rule of law. ^[10]

By law setting out rules and sanctions in clear terms, every modicum of arbitrariness has been arrested or at least reduced, and this ensures the transference of power on the instrumentality of the will of the electorate. ^[11] No doubt, the Act serves as a bridge between constitutional enshrinement of elections and the empirical demonstration of electoral conduct. Put differently, electoral law institutionalizes order, promotes transparency, and integrity in elections and recall referenda, which constitutes the legal fulcrum upon which the conduct of elections is predicated. ^[12]

The Electoral Act 2026

The Electoral Act 2026 was not initiated by the President as an executive Bill. Rather, the Act emanated from the National Assembly as a private member's bill. The Senate and House of Representatives first considered the Act as the Electoral Act (Amendment) Bills 2025 to amend the Electoral Act 2022. Later on, the two chambers of the National Assembly worked towards a new Electoral Act rather than merely amending the 2022 Act. The Chairman of Senate Committee on Electoral Matters, Sen. Simon Bako Lalong representing Plateau South and member of the All Progressive Congress (APC) on behalf of the Senate proposed a bill for an Act to repeal the Electoral Act No. 13, 2022 and enact the Electoral Bill, 2025 to regulate the conduct of federal, state and area council elections in the Federal Capital Territory and for related matters. ^[13] Similarly, the Chairman of the House of Representatives Committee on Electoral Matters and member of the APC, Hon. Adebayo Oluwaseun Balogun representing the Ibeju-lekki Federal constituency, Lagos state proposed the Electoral Bill 2025 in the same long title as that of the Senate. ^[14] The Senate deliberated and passed the bill on February 4 2026 while the House of Representatives passed it earlier on December 23 2025.

The Senate and House of Representatives harmonized and passed the harmonized version of the bill. Within 24 hours of the passage of the bill by the National Assembly, President Bola Ahmed Tinubu passed the bill into law on February 18 2026 at the State House, Abuja. The Act was intended to guide the conduct of the 2027 general elections. The National Assembly further passed an amendment to the Electoral Act of 18 February 2026 introducing penalties for dual party membership and technology-driven service of election petition processes and related electoral litigation matters on April 29 2026. There is no record that the amendment of April 29 2026 was signed by the President into law. In the same vein, the adoption of technology in the judicial process particularly digital service of organising and other processes form part of the law.^[15] The Act which repeals the Electoral Act 2022 encapsulates nine parts, containing 156 sections and three schedules. Part I establishes the Independence National Electoral Commission (INEC),^[16] while Part II deals with the staff of the commission.^[17] Part III provides for the National Register of Voters and Voters Registration.^[18] The law enshrines the procedure at elections in Part IV,^[19] political parties in Part V^[20] and the procedure for the elections of Area Council in Part VI.^[21] The regime of electoral offences,^[22] determination of election petitions arising from elections^[23] and miscellaneous provisions^[24] are canonised under Part VII, VIII and IX of the Act. Furthermore, the rules of procedure for election petitions,^[25] oath of loyalty and neutrality for the electoral officials^[26] and prescribed electoral and related forms^[27] are stipulated. The Electoral Act 2026 consolidates the gains and improvements over the Electoral Act 2022 which regulated the 2023 general and off-cycle elections. The 2026 Act was enacted to regulate the 2027 general and off-season elections.

Improvements under the Act

The Electoral Act 2026 represents a number of improvements and reforms over the Electoral Act 2022 in the areas of INEC funding, recognition of Bimodal Voter Accreditation System (BVAS) and electronic accreditation, electronic transmission of result and penalty for frustrating electronic transmission of results. Others are cancellation and rescheduling of elections, statutory treatment to election and INEC Resulting Viewing Portal (IReV), reforms in political-party administration, candidates nomination and compilation, obligation and adoption of IReV and consensus modes of party primaries. The improvements may be grouped under six major areas:

a. Improved Institutional and Financial Framework For INEC

Perhaps, the clearest provision in the Electoral Act 2026 deals with improved financial and institutional framework for INEC. The law provides; There is established the Independent National Electoral Commission Fund (In this Act referred to as “the fund”). There shall be paid into the Fund – such sums and payments received from the Federal Government available to the Commission for the performance of its functions under this Act; such sums as may be credited to the Fund by way of interest from investments made from the Fund; and aids, grants or any other accruals to the commission in order to perform its functions, the election funds due to the

commission for any general election shall be released to the Commission not later than 6 months before the next general election. Disbursements from the fund shall be made in accordance with rules set out by the Commission^[28]

The law creates a dedicated statutory fund for INEC rather than relying solely on ordinary appropriation arrangements. It provides a statutory timeline of six months to a general election for releasing election funds to INEC as well as provision to support operational and administrative continuity by making election financing a structural statutory mechanism.

b. Application Of Electoral Technology

The 2026 Act provides for statutory recognition of BVAS. This recognition was lacking under the Electoral Act 2022. The lacuna led to loss of electoral litigations by petitioners who relied on the mechanism of BVAS to win their cases. Specifically the law stipulates;

‘To vote, the presiding officer shall use a Bimodal Voter Accreditation System or any other technological device that may be prescribed by the Commission, for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission.’^[29]

Also, the Act unlike the Electoral Act 2022 accords legal recognition to IReV. In clear words, the Act enshrines;

‘The presiding officer shall electronically transmit the results from each polling unit to IReV portal and such transmission shall be done after the prescribed form EC8A has been signed and stamped by the presiding officer and/or countersigned by the candidates or polling agents where available at the polling unit.’^[30]

c. Electronic Register of Voters

The Act expressly recognises an electronic format of the Register of voters. This strengthens the legal basis for maintaining and using the voters register in digital form. It states:

‘The Commission shall keep the Register of Voters in its National Headquarters and other locations as the Commission may determine: provided that the Commission shall keep the Register of voters in electronic format in its central database; and manual, printed, paper-based record or hard copy format.’^[31]

Other improvements in the application of technology include; Electronic Voters Register and online publication^[32], National Electronic Register of Election Results^[33], Electronic access and certification of election results^[34] and digital registers of members of political parties.^[35] The definition of digital and electronic format in the interpretation provision lies to the general legal foundation supporting these digital mechanisms.^[36]

d. Penalty For Frustrating Electronic Transmission

Under Section 60^[3] of the Act, the law casts a duty on the presiding officer at a polling unit to transfer election results electronically to IReV. The Electoral Act 2026 strengthens the legal framework for electronic transmission of election results by imposing a specific sanction on an electoral officer who deliberately frustrates the process. This provision is significant because it seeks to ensure that the electronic transmission of polling unit results is not merely an administrative procedure but an enforceable electoral obligation. Punishment for the violation includes

imprisonment for a term not less than six months, a fine not exceeding #500,000 or both.^[37]

e. Stronger Accountability For Election Officials

It is obvious that one of the major improvements introduced by the Electoral Act 2026 is the strengthening of accountability for election officials. The Act imposes clearer statutory duties and sanctions on officials who fail to perform their responsibilities properly and effectively. Election officials, including presiding officers and retiring officers, are required to subscribe to an oath of neutrality and impartiality.^[38] Violation of the obligation constitutes a punishable offence under the law. Also, a Resident Electoral Commissioner who willfully fails to provide certified electoral documents within the prescribed period is liable to a minimum of two years' imprisonment without an option of fine.^[39] Section 124 provides broader sanctions for misconduct or dereliction of duty by election officials, including imprisonment for 12 months and a fine of #2,000,000 or both.

f. Reform of Political-Party Primaries

The Act strengthens the regulation of political party primaries by providing a compelling statutory framework for the nomination of candidates. This reform is designed to promote internal party democracy, transparency, fairness and accountability in the candidates selection process. Section 82 of the Act provides for the procedure for nomination of candidates by political parties including the conduct of primaries and other approved modes of candidates selection. In clear terms, the section adopts direct and consensus methods of selecting candidates at primaries. Section 83 strengthens the requirements relating to party primaries and nomination of candidates including compliance with the procedures enshrined in the Act and constitutions of political parties. Section 84 relates to submission of list of nominated candidates to INEC and other related requisites.

From the above, the Electoral Act 2026 represents an improvement in the regulation of political party primaries by providing a more structural legal framework for nomination of candidates. The provisions seek to strengthen internal party democracy, transparency, and accountability by requiring political parties to conduct primaries in accordance with legally prescribed procedures. The reform is of great efficacy as disputes generated from candidate nomination have historically constituted a substantial component of electoral litigations in Nigeria. This category of dispute is properly situated as pre-election matters and cannot be a ground for voiding an election. By providing clearer statutory requirements for the conduct of primaries and nomination process and enhancing confidence in the internal democratic process of political parties.

Maladies Inherent in the Act

An examination of the Electoral Act 2026 has shown certain defects which are inimical to the advancement of electoral democracy, electoral integrity, and transparency of the electoral process. Most notably, the conflict between constitutional provisions and stipulations of the Act.

a. Violation Of The Constitution

Section 137^[1] of the Constitution provides that a person shall not be qualified for election to the office of the

President if a presidential candidate has presented a forged certificate to the Independent National Electoral Commission.^[40] Similarly, the law enshrines the qualifications a governorship candidate must satisfy to be validly elected.^[41] The election of a presidential or governorship candidate may be challenged in court on the qualifications enshrined in sections 137^[1], 177 and 182 of the Constitution, including the provisions relating to the forgery of certificates by a candidate.^[42] In that case, the Supreme Court, in a unanimous decision delivered on 13 February 2020, set aside the election of David Lyon and his running mate, Biobarakuma Degi-Eremienyo, had presented forged certificates to INEC and was therefore disqualified under Section 182^[1](j) of the 1999 Constitution. The court consequently held that the joint ticket of Lyon and his running mate was vitiated.

Under section 134 of the Electoral Act 2022, an election may be challenged on three grounds. One, the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, the candidates was not duly elected by a majority of lawful votes cast and thirdly, the candidate presented forged certificate to INEC. However, the Electoral Act 2026 limited the grounds for an electoral challenge in court to only the first two and discountenanced presentation of forged documents to INEC. The provision in the Electoral Act 2022 was in complete compliance with the 1999 constitution while the provision in the Electoral Act 2026 contravenes the constitutional provisions. Since certificate forgery is no longer expressly listed as a ground for questioning the result of an election under section 138 of the Electoral Act 2026, the interpretation is that an allegation of certificate forgery has become a pre-election matter rather than a post-election ground for nullifying an election. It has long been settled that where a law contravenes a provision of the constitution, that law is null and void to the extent of the inconsistency.^[43] Thus, section 138^[1] derogates from the constitution and therefore is invalid and null.

b. Reintroduction of Manual Collation of Election Result

Section 60^[3] of the Electoral Act 2026 makes electronic transmission of polling unit results to the IReV portal mandatory. However, the provision creates an exception where transmission fails and it becomes impracticable to transmit the result. In such a circumstance, the duly completed and signed form EC8A remains the primary source for the collation and declaration of the result. The exception proviso states that, 'provided that if the electronic transmission of the result fails as a result of communication failure and it becomes impossible to transmit the result contained in form EC8A signed and stamped by the presiding officer and countersigned by the candidates or polling agent where available at the polling unit, the form EC8A shall at all times remain the primary source of collation and declaration of the result.'

From the perspective of legal and electoral governance, the provision constitutes a weakness. The provision has a significant legislative gap because the Act does not define what constitutes 'communication failure.' The law does not distinguish between network failure, server problems, equipment malfunctions, human error and deliberate interference. The legal provision does not state who determines 'communication failure' nor has it prescribed

independent procedure for verifying a claim of transmission failure. The laxity creates the possibility that a deliberate failure to transmit could potentially be presented as a technical failure. Though section 60 ^[6] of the Act criminalizes the wilful frustration of electronic transmission by a presiding officer, the burden of establishing that the failure was wilful may be difficult where there is no statutory requirement for the presiding officer to document the circumstances of the failed transmission.

c. Ouster of Court Jurisdiction in Internal Party Affairs

Section 83 ^[5] of the Act restricts the judiciary by providing that no court can entertain suits relating to the internal affairs of a political party, such as the nomination of candidates and leadership disputes. To strengthen the ouster provision, section 83 ^[6] requires the court to impose a minimum fine of #10,000,000 each on plaintiffs and their counsel where such cases are instituted, thus creating an intense financial barrier to internal party democracy. No doubt, this provision aligns with the judicial attitude of rendering actions on an internal party matter non justiciable. ^[44] Although the courts in Nigeria, in a plethora of decisions, have held that the court cannot hear matters relating to the internal affairs of a political party, this disposition does not resonate with the practice of the court wading into matters that are more private than political party affairs. If the court can hear divorce matters and issue divorce decrees over denial of conjugal rights and desertion of the matrimonial bed, it will be unreasonable to extol a political party to the status of leviathan. The present state of the law breeds impunity in political party leadership and returns the Nigerian polity to the state of nature where might is power.

In the Republic of Ghana, internal affairs of political parties are justiciable. The supreme law of the land provides that the internal organization of a political party must conform to democratic principles, and its actions must not be inconsistent with the constitution or any other laws. ^[45] By virtue of this provision, Ghanaian courts have jurisdiction to intervene if a political party breaches its own rules or fundamental democratic matters as a "political question" outside the realm of judicialism, Ghanaian courts review internal party actions to ensure compliance with Article 55 ^[5] of the constitution. The Supreme Court of Ghana exercises jurisdiction over internal political party structures, as demonstrated by rulings that evaluate whether internal party mechanisms (such as delegate-based voting systems) align with constitutional demands for broad participation and democratic accountability. ^[46] The justiciability of the internal affairs of a political party is practiced in many jurisdictions across the world including Argentina, Germany, and Kenya.

d. Exclusion of Electronic Voting

The Electoral framework in Nigeria has utilized technology in the registration of voters, accreditation of electors and transmission of election results from polling units to IReV. The deliberate nonadoption of electronic ballot casting constitutes a determined regulatory hesitation rooted in systemic fear of technological manipulation, infrastructure deficit and high institutional procurement costs. Despite intense advocacy for full electoral digitalization by the Nigerian public, the Electoral Act 2026, like the 2022 Act,

has avoided the deployment of Electronic Voting Machines (EVMs). This legislative laxity promotes manipulation in the voting process particularly in favour of the ruling party. For over a decade, the Nigerian Bar Association adopted e-voting, where its members vote from their comfort zones. The supreme legal instrument of the association established universal suffrage and electronic voting eligibility for all lawyers who have met their financial obligations (branch dues and practicing fees). ^[47] Similarly, Student Union governments in Nigeria practice e-voting. In the University of Abuja, the Student Representative Assembly (SRA) constitutes the Electoral Committee and, under internal campus regulations, the SRA, backed by university management, enforces electronic voting strictly through the official UniAbuja Mobile App. The student union in University of Ibadan executes its election under e-voting ^[48] in the same way its counterpart in the University of Lagos does. ^[49] Electronic voting has been globally recognized to defeat electoral malfeasance, promote electoral integrity, inspire confidence in the electoral process, eliminate electoral violence, and ensure transparency, in addition to reducing the high cost of elections. The Nigerian state released election funds of #313.4 billion to INEC for the conduct of the general ^[50] and #873.78 billion for the 2027 general elections. ^[51] These election sums exclude monetary provisions for off-cycle elections. No doubt, the adoption of e-voting will save the nation the humongous expenditure involved in conducting elections.

Conclusion

The Electoral Act 2026 has made significant inroad into electoral sanctity by particularly codifying the adoption of technology into the electoral process of the polity. ^[52] While electronic transmission of election results is commendable, the proviso reintroducing manual collation system in case of communication failure consumes the gains that were recorded under the Electoral Act 2022. As many Nigerians criticized the inclusion of the proviso into the Act, the President within 24 hours of the passage of the bill by the National Assembly hastily assented the bill. The haste in the grant of presidential assent presupposes a deliberate act by the governing apparatus to undermine electoral integrity. Although many nations of the world practice dual-collation systems involving electronic transmission of results and manual documentation in paper, many other democracies rely heavily on electronic transmission of election results. ^[53] The glamour and agitation for electronic voting has been very intense among the populace. The Uwais Electoral Reform Report ^[54] and the 2014 National Conference Report were both in unanimity that electronic voting be made mandatory in the electoral administration in Nigeria. ^[55] President Musa Yar'Adua who set up the Mohammed Uwais Electoral Reform Committee and received the report but couldn't implement the same before he passed into glory. In the same vein, President Goodluck Jonathan who convened the 2014 National Conference and received its report was bereft of time to implement it before he conceded defeat in the 2015 Presidential election. Subsequently, government administrations have been wary to implement the reports despite advocacy by the intelligentsia and civil society organizations.

It has been observed that the Nigerian legislature has granted digital application in doses to the administration of elections in Nigeria. The electoral Act has remained one

legal instrument most tinkered of all the legislation in the Nigerian legal portfolio. Empirically, the Electoral Act has been either amended or totally enacted before the conduct of every general election. It will be expedient for the legislature to streamline the electoral Act with the constitution, constitutionalize the adoption of Electronic Voting and divest the President of the power to appoint the Chairman, National Commissioners, and Resident Electoral Commissioners of INEC. The procedure of appointing Electoral managers should be analogous to the appointment pattern of the Chief Justice of Nigeria (CJN) and other Justices of the Supreme Court. The President in consultation with the Federal Civil Service Commission appoints a pensionable public officer as National Commissioner subject to the confirmation of the Senate. The Secretary of INEC should transmit the name of the most senior National Commissioner to the President who would in turn will seek the confirmation of the senate and thereafter appoint him as INEC Chairman. Furthermore, the President's power to appoint RECs should pass into history. RECs should be appointed by the INEC Chairman in consultation with National Commissioners from the workforce of the Commission. The National Assembly will do the Nigerian polity a great service by adopting the recommendations herein for the purpose of advancing the course of electoral democracy in Nigeria.

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