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COVID-19 AND ELECTIONS: HOW NATIONAL ASSEMBLY CAN ENSURE THE INTEGRITY AND CREDIBILITY OF ELECTIONS IN NIGERIA

ELECTORAL HUB TECHNICAL BRIEF 2/2020

INTRODUCTION

Electoral processes and elections are among several issues impacted by the COVID- 19 pandemic. Across the world, over fifty-one (51) countries have delayed their national or regional elections, while about eighteen (18) have continued with their elections as planned.ⁱ

In Nigeria, the Independent National Electoral Commission (INEC)ⁱⁱ have already postponed bye-elections for the senatorial districts in Bayelsa, Imo and Plateau States. The governorship elections scheduled for September 19, 2020, and October 10, 2020, in Edo and Ondo States respectively, may be at risk of being postponed. As Legislatures all over the world debate on the framework for conducting elections during this pandemic, the National Assembly should not be on the sidelines.

Elections continue to be an important means to provide legitimacy to the government as well as mechanisms to protect democratic rightsⁱⁱⁱ, and as such, this should not be taken lightly by our legislature. INEC and other stakeholders should not be inclined to seek the postponement of the governorship elections because of the contagious nature of the pandemic^{iv}, the lack of effective cure or vaccination^v and inadequate laws to guide possible proactive measures and interventions. All stakeholders, particularly the National Assembly, should be focused on ensuring the integrity and credibility of the electoral process and conducting elections on the scheduled dates to avoid constitutional crises. The National Assembly therefore ought to be proactive in law making and electoral appropriation to ensure that electoral calendar is maintained and forestall postponement of elections. This point is being emphasized because the legitimacy of the country's democracy and all democratic institutions depend on the protection of the electoral process.

A recent survey of global attitudes towards democracy by the Pew Research Center^{vi} showed dwindling trust in institutions and the ruling class. However, the survey also revealed that the vast majority of people still feel that voting allows some public influence on how the government is constituted and, by extension, run. Thus, postponing elections could be a crippling blow to the public's remaining confidence in both the composition of the governing elites and institutions the institutions and structures of governance^{vii}.

The mention of the governing elites brings to the fore the role of the legislators who are required statutorily to work to ensure quality elections in times of public health emergencies. Specifically, the legislators should look for policy options to ameliorate the challenges that can emerge in the wake of the pandemic. This Technical Brief provides some concrete actions that the National Assembly can take to improve election

administration during the COVID-19 pandemic. Importantly, the recommendations would further strengthen the management of elections – not only in the governorship elections this year but also future elections, particularly similar situations. In reality, embracing these practical policy options is long overdue and would provide significant improvements in strengthening our electoral process and ensuring the legitimacy of elections for years to come. Whereas the governorship elections might seem far away, the National Assembly should establish legislative mechanisms and strategies that would improve elections administration while maintaining the health and safety of the electorate. This pandemic provides a unique opportunity for the National Assembly to improve Nigeria's electoral framework and modernize the elections infrastructure, and thus, establishing a more secure and credible electoral process for Nigeria and Nigerians.

NATIONAL ASSEMBLY AND THE ELECTORAL PROCESS

Elections in Nigeria have been regulated seriatim by the 1999 Constitution (as amended) and the Electoral Act of 2010 (as amended) which provide the outlines and premises for the entire electoral system and process, and the conduct of elections.

The National Assembly is the highest lawmaking authority in Nigeria^{viii} and has unrestricted jurisdiction over the electoral process in Nigeria, save local government council elections^{ix}. As such, it is the National Assembly that has powers to shape the framework for elections in Nigeria.

It is important to note that the debates on electoral reforms in Nigeria are always two-pronged^x, namely: (i) Electoral Act amendment; and (ii) Constitutional amendment. Often, debates on the amendment to the Electoral Act coincides with the debates on constitutional reforms because there are certain issues on elections in Nigeria that cannot be addressed because they would require constitutional amendment^{xi}. However, due to the cumbersome nature of the constitutional amendment in Nigeria^{xii}, more often than not, the National Assembly only pursue electoral reforms that can be achieved within its bicameral legislative chambers^{xiii}.

Since 1999, the National Assembly has made several changes to the legal framework for elections in Nigeria. Four constitutional alterations have been made to the 1999 Constitution, with the fourth alteration reducing the age requirements of candidates seeking executive or legislative offices^{xiv}. In the case of the Electoral Act, which was initially passed in 2001 and, three additional pieces of legislation were passed 2002, 2006 and 2010 to amend the older versions. Several further changes to the Electoral Act 2010 have also been made, with the most recent one in 2015^{xv}. The majority of the changes have been to resolve the deficiencies of the constitutional or statutory provisions^{xvi}.

It can be said therefore that the National Assembly remains the most important player in the electoral process, since all electoral reforms involve legal changes to the electoral system^{xvii}. Furthermore, in the hierarchy of laws in Nigeria, legislations or statutes enacted by the National Assembly supersedes all other legal instruments except the constitution^{xviii}. Thus, even if INEC makes positive or novel changes to the electoral process, it cannot alter or override the statutory provisions in the electoral laws^{xix}. Therefore, in all the proposed innovations and changes to the electoral process, it is important that National Assembly is on the same page with the electoral administrative body.

IMPACT OF COVID-19 ON THE ELECTORAL PROCESS IN NIGERIA

Experts have agreed that the coronavirus disease (Covid-19) presents a difficult and novel challenge to the administration of elections all over the world^{xx}. It is upending the traditional methods of electioneering at the different stages of elections, be it the nomination process, election campaigning as well as the actual physical voting on Election Day^{xxi}. For some countries, the laws provide for either executive adjustments to the electoral process or legislative changes to the legal framework^{xxii}. In Nigeria, changes to the electoral process can be achieved through constitutional changes (National Assembly and 36 State Houses of Assembly)^{xxiii}, legislative changes (National Assembly)^{xxiv} and administrative changes (INEC)^{xxv}.

The 1999 Constitution (as amended) and Electoral Act 2010 (as amended) have set out clear periods for conducting governorship elections provisions^{xxvi} which must be adhered to by INEC and other stakeholders. Unfortunately, these laws did not adequately anticipate a public health crisis of the nature of coronavirus hampering the electoral process. Unlike other types of natural disasters, a pandemic does not have a discrete and relatively predictable endpoint. Recent election emergencies in Nigeria are largely man-made events such as logistical issues in 2011^{xxvii} and 2019^{xxviii}, and security challenges in 2015^{xxix}. Furthermore, even with other challenges in the past, both the National Assembly and INEC have never really made any election planning for natural disasters.

So, what are some of the salient challenges that may confront INEC if it intends to proceed with elections under the present electoral legal framework? These are highlighted in **Table 1** below.

Table 1: Legislative Implications of COVID-19 on the Electoral Process

S/N	PROCESS	CHALLENGES
1	ELECTION ADMINISTRATION AND LOGISTICS	<ul style="list-style-type: none"> ▪ Section 26 of the Electoral Act 2010 (as amended) does not provide adequate legislative guidance on conducting elections during viral pandemics (which are different from other types of natural disasters) ▪ Postponement of the elections may cause constitutional crises since the periods for the conduct of the

		<p>election are delineated in the 1999 Constitution (as amended)^{xxx} and no exceptions were created for emergencies such as COVID-19</p> <ul style="list-style-type: none"> ▪ Fresh funding and budgetary allocations needed to implement new administrative safety procedures and rules that may be instituted by INEC ▪ Additional funding would be required for the additional ad-hoc personnel that INEC would have to recruit ▪ Postponement of elections may incur additional budgetary costs to the capital expenditure of the country ▪ It may be problematic for INEC to source or procure supplies and election materials from international supplies/vendors if the national borders remain closed
2	VOTER REGISTRATION AND EDUCATION	<ul style="list-style-type: none"> ▪ Section 10(2) and 12(1)(d) of the Electoral Act 2010 (as amended) mandates physical voters' registration. With no alternative registration process that can ensure social distancing or protection of INEC staff, INEC may find it difficult to conduct voters' registration exercise and thereby denying new voters the opportunity to participate in the election. ▪ The procedure for the display of the copies of the Voters' list, under Section 19 of the Electoral Act 2010 (as amended), is also arduous and

	<p>would pose substantial risks to voters and INEC staff.</p>
<p>3</p>	<p>PARTY NOMINATION AND CAMPAIGN PROCESS</p> <ul style="list-style-type: none"> ▪ It may disrupt the dates of party primaries (inability to conduct primaries) and could force some parties to miss official deadlines for submitting the nomination (if INEC offices are inaccessible during lockdowns) ▪ The primary system as envisaged under Section 87 of the Electoral Act would require a large gathering of people to select their party nominee and such gatherings are prohibited by the recent Quarantine Regulations 2020. With no judicial guidance on how this conflict between the two different legal instruments can be resolved, the nomination process may become messy. ▪ Since there is a possibility of spreading the virus rapidly if these activities occur, the large rallies that usually mark elections will no longer be possible. ▪ Virtual campaigns through social and print media and radio may be adopted by parties. This will increase the cost of campaigning, as some campaigns may need to spend amounts that exceed the limitations of campaign financing under Section 91(3) of the 2010 Electoral Act (as amended). ▪ There is also the risk that the new campaigning strategies through social or print media will exclude the

	<p>poor and the indigent and will only favour people with access to finance and technology^{xxxii}.</p>
4	<p>ELECTION DAY VOTING PROCEDURES</p> <ul style="list-style-type: none"> ▪ Lack of alternative modern and inclusive voting methods. Electoral Act only provides for in-person voting. Thereby, putting enormous costs and risks to both INEC and voters during this pandemic period. ▪ Ensuring polling units meet up to public health standards would involve substantial funding and budgetary allocations. ▪ Funding for the purchase of protective gear and equipment for INEC personnel and security officers working on Election Day ▪ Eligible voters may be wrongly sent away from the polling unit due to improper reading of symptoms of physical illness or body temperatures

Given the complexity of the task, INEC's large-scale planning, backed up by the National Assembly's robust support, is required urgently to ensure that the 2020 governorship elections and all subsequent elections are safe, fair, accessible and secure. Majorly, Nigeria would need substantial modifications to its present election procedures, substantial flexibility in the processes, and a substantial infusion of funding to ensure that every eligible voter can register and vote safely, securely, accessibly, and as conveniently as possible. It should also ensure that every ballot cast by an eligible voter counts while maintaining the security of the election and safety of election workers.

RECOMMENDATIONS ON IMPROVING THE ELECTORAL PROCESS

While INEC would have to continue to administer elections in the wake of COVID-19 within our current legal authority, we recommend that the National Assembly should consider taking the following legislative actions to address the impacts of the coronavirus pandemic on our elections. These actions are categorized broadly into:

1. LAW MAKING ACTIONS:

The objective of this legislative action is to amend the legal framework of the electoral process and system. These include the alteration or abrogation of provisions of the Electoral Act 2010 (as amended) or 1999 Constitution (as amended) by the National Assembly. The National Assembly, in that respect, aims to resolve the inadequacy/gap in the existing legal framework by passing new laws or amending existing ones.

2. APPROPRIATION ACTIONS:

The degree of effectiveness of any initiative or measure to be adopted by INEC depends upon its financial capacity and the National Assembly is key in ensuring a financially strong election commission. Funding would be important in areas such as voter registration, training and remuneration of ad-hoc staff, logistics and election materials, ICT Infrastructure, voter education and sensitization, polling units' facilities and supplies and election security. While the situation with COVID-19 is changing daily, we believe the following recommendations will help the elections, the basis of Nigeria's democracy remain strong and resilient in these uncertain times.

S/N	Areas	Recommendations
Law Making Actions		
1	Electoral Framework and Management of the Process	<ul style="list-style-type: none"> ▪ Review the nomination process to mandate political parties to introduce less arduous party primaries while maintaining internal party democracy and inclusivity. ▪ Recognize telephonic meetings and meetings held by other remote means are specifically authorized for purposes of conducting official party business or activities.

		<ul style="list-style-type: none"> Amendment of section 26 of the Electoral Act 2010 to provide actions that should be taken when conducting elections during viral pandemics
2	Voters' Registration Process	<ul style="list-style-type: none"> Review the procedure for registering to vote to allow for registration through electronic means, while giving INEC the discretion on the type or standard of the technologies to be used.
3	Political Campaigns	<ul style="list-style-type: none"> Review the financial limits of election expenses for political campaigns Review the requirements for holding of public rallies to mandate compliance with public health and safety regulations as well as practices Introduce stiffer sanctions against political parties that break public health protocols during pandemics or health emergencies
4	Voting Process	<ul style="list-style-type: none"> Introduce alternative means of voting during elections in Nigeria such as early voting, online voting etc. Mandate that all polling units must be designed and set up to comply with public health standards Outline the procedure to be taken to protect the right to vote of persons suffering from a viral illness, whether they are under isolation, quarantine or exhibit the symptoms at the polling units
5	Protection of Vulnerable Groups	<ul style="list-style-type: none"> Provisions for protection of the voting rights of vulnerable groups (i.e. PWDs, senior citizens, etc.) during elections, either by the introduction of special

		voting procedures on Election Day or early voting ahead of the Election Day
Appropriation Actions		
1	Voters' Registration	<ul style="list-style-type: none"> ▪ Purchase of software and ICT infrastructure ▪ Recruitment and training of specialized officials
2	Training and Renumeration of Ad-Hoc Personnel	<ul style="list-style-type: none"> ▪ Additional funds to cover purchase of personal protective equipment and health hazard allowances
3	Logistics and Election Materials	<ul style="list-style-type: none"> ▪ Additional funding to improve logistical arrangement and operations in line with recent global best practices
4	ICT Infrastructure	<ul style="list-style-type: none"> ▪ Backend systems and technologies ▪ EMS infrastructure
5	Voter Education and Information	<ul style="list-style-type: none"> ▪ Funds for adaptive and new strategies for information dissemination
6	Polling Unit Facilities and Supplies	<ul style="list-style-type: none"> ▪ Sanitary and health supplies to ensure that PUs meet up with NCDC requirements
7	Election Security	<ul style="list-style-type: none"> ▪ Provision of protective gears for security agents ▪ Health hazard allowances

CONCLUSION

For the governorship elections occurring later this year, COVID-19 pandemic presents a serious challenge for election administration in the country. The National Assembly, as a key stakeholder in the electoral system, must assume the critical role of providing legislative guidance and resources that would ensure safe and credible elections. The interventions by the National Assembly must aim to accomplish the following goals: (a) Promote voter participation for every eligible Nigerian, including ensuring those with the coronavirus and people who are or have been quarantined can register to vote; (b) Prevent the further spread of the disease; and (c) Protect the integrity, accessibility, and security of the electoral process.

The Electoral Hub believes that the National Assembly's support to INEC is crucial. This would enable INEC to proceed with the governorship elections while mitigating public health risks during these extremely unusual conditions. Whilst COVID-19 presents grave threats to elections worldwide, it allows democratic institutions, such as the National Assembly, the chance to prove their commitment to representing the needs of the people they represent. Integrity and credibility of the electoral process and elections are the clearest expression of this commitment. The Electoral Hub further believes that the 2020 governorship elections should not be delayed since both the National Assembly and INEC have sufficient time to act and prepare adequately. The most crucial steps going forward are to make it as easy as possible for all eligible Nigerians to register and vote as well as provide INEC with sufficient resources to implement any necessary changes to ensure electoral integrity and credibility that guarantees free, fair and acceptable elections.

ⁱ International Foundation for Electoral Systems (IFES), "Elections Postponed Due to COVID-19 -As of May 15, 2020" (International Foundation for Electoral Systems (IFES), May 15, 2020), https://www.ifes.org/sites/default/files/elections_postponed_due_to_covid-19.pdf.

ⁱⁱ The Electoral Management Body in Nigeria

ⁱⁱⁱ Anthony Banbury, "Opinion: Elections and COVID-19 — What We Learned from Ebola," Devex, April 8, 2020, <https://www.devex.com/news/opinion-elections-and-covid-19-what-we-learned-from-ebola-96903>.

^{iv} Brian Resnick, "Coronavirus Pandemic: Covid-19 Testing, Death Rates, and Risk Factors, Explained," Vox, April 2, 2020, <https://www.vox.com/science-and-health/2020/4/2/21197617/coronavirus-pandemic-covid-19-death-rate-transmission-risk-factors-lockdowns-social-distancing>.

^v Lydia Denworth, "How the COVID-19 Pandemic Could End," Scientific American, May 2020, <https://www.scientificamerican.com/article/how-the-covid-19-pandemic-could-end1/>

^{vi} Pew Research Center, "How People around the World See Democracy in 8 Charts," Pew Research Center, February 27, 2020, <https://www.pewresearch.org/fact-tank/2020/02/27/how-people-around-the-world-see-democracy-in-8-charts/>

^{vii} IFEX, "How Do We Conduct Elections and Protect Free Speech during COVID-19?" IFEX, May 7, 2020, <https://ifex.org/how-do-we-conduct-elections-and-protect-free-speech-during-covid-19/>.

^{viii} Section 4, Constitution of the Federal Republic of Nigeria 1999 (as amended)

^{ix} Item 22, Part 1, Second Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended)

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- ^x Electoral Reform Committee, “Report of the Electoral Reform Committee. Vol. 1: Main Report. (Uwais Report)” (Federal Government of Nigeria, December 2008). p. 113
- ^{xi} For example, reforms to the election petitions procedures would require both constitutional and statutory amendments
- ^{xii} Section 9, *Ibid.*; The Constitution provides that an amendment may be proposed either by the Congress with a two-thirds majority vote in both the House of Representatives and the Senate or by a constitutional convention called for by two-thirds of the State legislatures. This is further subject to Presidential Assent.
- ^{xiii} Olufunto Akinduro, “Nigeria: Independent National Electoral Commission (INEC),” ACE Project, 2015, http://aceproject.org/ace-en/topics/em/electoral-management-case-studies/nigeria-a-need-for-modernization/mobile_browsing/onePag
- ^{xiv} Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 27) Act, 2017; Timileyin Omilana, “Buhari Signs Not Too Young to Run Bill into Law,” *The Guardian Nigeria News*, May 31, 2018, <https://guardian.ng/news/buhari-signs-not-too-young-to-run-bill-into-law/>
- ^{xv} Electoral (Amendment) Act, 2015
- ^{xvi} Peniel Ibe, “Nigeria’s Electoral Reforms Lay the Foundation for the Country’s Democratic Progress and Growth,” PYXERA Global, July 21, 2015, <https://www.pyxeraglobal.org/nigerias-electoral-reforms-lay-the-foundation-for-the-countrys-democratic-progress-and-growth/>.
- ^{xvii} Electoral Reform Committee, no. 10. p. 112
- ^{xviii} *Chief Gani Fawehinmi v. General Sani Abacha & Others* [1996] 9 NWLR (Pt 475) 710; Benson Oluwakayode Omoleye and Bolanle Oluwakemi Eniola, “Administration of Justice in Nigeria : Analysing the Dominant Legal Ideology,” *Journal of Law and Conflict Resolution* 10, no. 1 (January 31, 2018): 1–8, <https://academicjournals.org/journal/JLCR/article-full-text-pdf/614930155699>.
- ^{xix} *Nyesom v. Peterside & Ors.* (2016) LPELR-40036(SC)
- ^{xx} Benjamin Siegel, “How Experts Worry the Coronavirus Outbreak Could Cloud the 2020 General Election,” ABC News, April 2, 2020, <https://abcnews.go.com/Politics/experts-worry-coronavirus-outbreak-cloud-2020-general-election/story?id=69908301>.
- ^{xxi} International Institute for Democracy and Electoral Assistance (IIDEA), “Elections and COVID-19” (International Institute for Democracy and Electoral Assistance (IIDEA), 2020), <https://www.idea.int/sites/default/files/publications/elections-and-covid-19.pdf>. p. 1
- ^{xxii} *Ibid.* p. 2
- ^{xxiii} Section 9, Constitution of the Federal Republic of Nigeria 1999 (as amended)
- ^{xxiv} Section 4, *Ibid.*
- ^{xxv} Section 153, Electoral Act 2010 (as amended)
- ^{xxvi} Sections 176-187, Constitution of the Federal Republic of Nigeria 1999 (as amended); Section 25(7), Electoral Act 2010 (as amended)
- ^{xxvii} Al-Jazeera, “Nigeria Elections Postponed for Second Time,” Al-Jazeera, April 3, 2011, <https://www.aljazeera.com/news/africa/2011/04/201143174718212830.html>.
- ^{xxviii} John Campbell, “Nigeria’s Election Postponement Met with Suspicion,” Council on Foreign Relations, February 19, 2019, <https://www.cfr.org/blog/nigerias-election-postponement-met-suspicion>.
- ^{xxix} Julia Payne, “Nigeria Postpones Feb. 14 Presidential Election to March 28,” *Reuters*, February 8, 2015, <https://www.reuters.com/article/us-nigeria-election/nigeria-postpones-feb-14-presidential-election-to-march-28-inec-idUSKBN0LB0TL20150208>
- ^{xxx} Section 178(1), Constitution of the Federal Republic of Nigeria 1999 (as amended)
- ^{xxxi} Thijs Berman, “Solving the Corona Crisis: Respect for Democracy Is the Key,” Netherlands Institute for Multiparty Democracy (NIMD), May 18, 2020, <https://nimd.org/solving-the-corona-crisis-respect-for-democracy-is-the-key/>.



About the Electoral Hub

The Electoral Hub (E-Hub), a project of the Initiative for Research, Innovation and Advocacy in Development (**IRIAD**), is a multidisciplinary strategic think-tank which seeks to provide solutions to improve the credibility and integrity of the electoral process. It is conceptualized to complement the roles and activities of the different institutions, stakeholders and drivers of the electoral process and governance. E-Hub's aim is to strengthen electoral governance and accountability in Nigeria through the provision data and critical analysis supporting the credibility and integrity of the electoral process. Because we believe that the integrity of the electoral process is crucial in improving the electoral governance architecture and democracy in Nigeria. We also believe in contextual analysis for solutions rooted in the principles of justice and equity.

The Hub's core values are knowledge-exchange, inclusion, justice, equity, transparency and accountability.

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