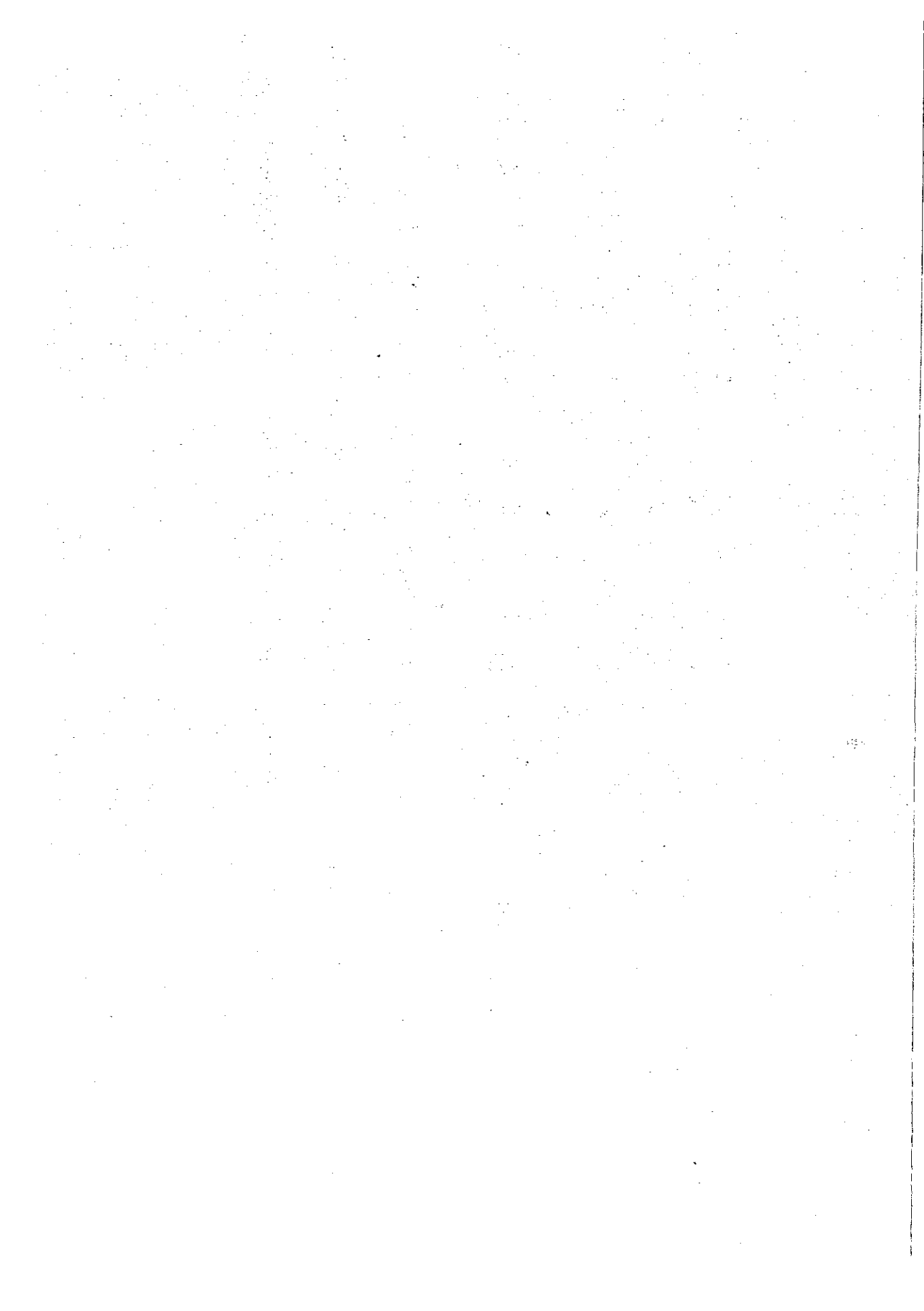


ELECTORAL ACT (AMENDMENT) BILL, 2017

ARRANGEMENT OF CLAUSES

Clauses:

1. Amendment of the Principal Act
2. Amendment of Section 27
3. Amendment of Section 31
4. Amendment of Section 34
5. Amendment of Section 36
6. Amendment of Section 44
7. Amendment of Section 45
8. Amendment of Section 49
9. Amendment of Section 52
10. Amendment of Section 53
11. Amendment of section 63
12. Amendment of Section 76
13. Amendment of Section 78
14. Substitution of Section 87
15. Amendment of Section 99
16. Amendment of Section 138
17. Amendment of section 139
18. Amendment of section 140
19. Amendment of First Schedule
20. Citation



A BILL

FOR

AN ACT TO AMEND THE ELECTORAL ACT 2010 TO AMONG OTHER THINGS MAKE OUR ELECTORAL PROCESS MORE CREDIBLE, BY MAKING THE USE OF CARD READER THE CREDIBLE MEANS OF VOTERS ACCREDITATION AND VOTING AND ENHANCE TRANSPARENCY AND EFFICIENCY IN THE CONDUCT OF FREE, FAIR AND CREDIBLE ELECTIONS AND FOR OTHER RELATED MATTERS.

Sponsored by Hon. Simon Arabo

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria-

1 1. The Electoral Act 2010 (in this bill referred to as "the Principal
2 Act") is amended as set out in this Bill.

Amendment of
the Principal Act

3 2. Section 27 of the Principal Act is amended by inserting a new
4 subsection "(4)" and "(5)"-

Amendment of
Section 27

5 "(4) The result of an election conducted in a polling unit shall be
6 announced at that polling unit in full glare of the public immediately after
7 the votes cast at the polling unit are counted, recorded in the form prescribed
8 by the Commission and transmitted to collation centres as provided in
9 subsection 63(4) of this Act, and this process may be recorded on audio-
10 visual device(s) by any member of the public, party agents, accredited
11 observer or officials of the Commission and any announcement of the result
12 of an election conducted by the Commission in a polling unit that
13 contravenes the provision of this subsection shall be void and constitute
14 electoral malpractice."

15 "(5) Where the audio-visual or a VCD is produced showing the
16 various acts of the presiding officers, party agents, accredited observers or
17 other authorised officials of the Commission at the polling units, it shall be

Amendment of
Section 31

1 accepted as prima facie evidence of compliance with the section.
2 3. Section 31 of the Principal Act is amended by substituting for the
3 existing subsection (6) a new "(6)"-

4 "(6) If the Court determines that any of the information contained in
5 the affidavit or any document submitted by that candidate is false, the Court
6 shall issue an order disqualifying the candidate from contesting the election
7 and if already elected, the Court shall issue an order for a fresh election and the
8 party that presented the candidate shall not be allowed to participate in the fresh
9 election."

Amendment of
Section 34

10 4. Section 34 of the Principal Act is amended by inserting a new
11 subsection "(2)" and "(3)"-

12 "(2) Any candidate who observes that his name or that of his party is
13 missing on the list published in accordance with subsection(1) of this section,
14 shall notify the Commission in writing duly signed by him and supported by an
15 affidavit not later than 21 days to the election".

16 "(3) Where a candidate or political party fails to notify the
17 Commission in accordance with subsection (2) of this section, a candidate shall
18 be deemed to have waived his right and the outcome of the election shall not be
19 challenged in any court or Tribunal".

Amendment of
Section 36

20 5. The Principal Act is amended by substituting for the existing
21 Section 36 a new Section "36"-

22 "36 (1) If after the commencement of voting and before the
23 declaration of results, a nominated candidate dies, the Chief National Electoral
24 Commissioner or the Resident Electoral Commissioner shall, being satisfied of
25 the fact of the death, proceed with the election and allow the Political Party
26 whose candidate died, a period of (14) days to make a substitution
27 notwithstanding the provisions of section 87 of this Act.

28 (2) If the Party of the deceased candidate emerges as the winner of the
29 election the winner shall on being sworn in, in consultation with his or her
30 Political Party nominate a new Vice-President or Deputy-Governor as the case

1 may be subject to the approval of a simple majority of the Senate or House of
2 Assembly of the State as the case may be.

3 (3) Where after the commencement of the poll to the office of the
4 President or Governor of a State both the Presidential Candidate and the
5 Vice-Presidential Candidate of the same Political party or both the
6 Gubernatorial Candidate and deputy- Gubernatorial Candidate of the same
7 Political Party die before the conclusion of the election, the candidate who
8 scored the next highest number of votes in the primaries which was won by
9 the deceased candidate shall be deemed to be the Candidate of the Political
10 Party as if the substituted person was the candidate originally nominated by
11 the Party:

12 PROVIDED that the replacement candidate scores at least 30% of
13 the votes cast or not more than 10% lower than the votes scored by the
14 deceased candidate whichever is higher."

15 6. Section 44 of the Principal Act is amended by inserting new
16 subsection "(3)", "(4)" and "(5)"-

Amendment of
Section 44

17 "(3) The Commission shall invite political parties at least 20 days
18 to an election to inspect samples of electoral materials."

19 "(4) The political parties shall within 2 days of the inspection
20 communicate to the Commission whether it approves or disapproves its
21 identity as appeared on the samples of the electoral materials proposed for
22 the election."

23 "(5) Where any political party fails to honour such invitation or
24 does not raised any objection to its identity, it cannot longer complain of
25 unlawful exclusion.

26 7. Section 45 of the Principal Act is amended by inserting, after
27 subsection (3), new subsections "(4)"- "(8)"-

Amendment of
Section 45

28 (4) Candidates, political parties or polling agents who are in
29 attendance at a polling unit or polling station; shall be entitled, before the
30 commencement of accreditation of voters, to have originals of result sheets,

1 ballot papers, ballot papers account and verification documents, and such other
2 sensitive electoral materials prescribed by the Commission to be used for an
3 election at a polling unit or polling station inspected and counted in their
4 presence, and the inspection and counting of electoral materials may be
5 recorded on audio-visual device by any party agent, accredited observer or
6 official of the Commission.

7 (5) The names or types, quantities, serial numbers, and other specific
8 identifications of all sensitive materials prescribed to be used or used by the
9 commission for the conduct of an election shall be recorded in such manner as
10 may be prescribed from time to time by the Commission.

11 (6) A Presiding Officer, Assistant Presiding Officer or any official
12 designated by the Commission to conduct an election at a polling unit or
13 polling station shall not conduct an election in violation of subsections (4) and
14 (5) of this section.

15 (7) An election conducted at any polling unit or polling station in
16 violation of subsections (4) and (5) of this section shall be invalid.

17 (8) A Presiding Officer or any other official designated by the
18 Commission to conduct an election who contravenes subsections (4) and (5) of
19 this section commits an offence and is on conviction, liable to a minimum of 1
20 year imprisonment or a fine of N1,000,000 or both"

Amendment of
Section 49

21 8. Section 49 of the Principal Act is amended by-

22 (a) substituting the existing subsection "(2)"-

23 "(2) The Presiding Officer, Assistant Presiding Officer or any
24 official designated by the Commission shall use smart card reader or any other
25 technology devise for the accreditation of voters".

26 (b) inserting new subsections "(3)", "(4)", "(5)"-

27 "(3) Notwithstanding the provision of subsection (2) of this section, a
28 Presiding Officer, Assistant Presiding Officer or any official of the
29 Commission who is in charge of a polling unit, shall accredit an intending voter
30 manually to vote in an election and shall fill an incident form or other forms and

1 electronic device as may be prescribed by the Commission:

2 PROVIDED that the total number of intending voters accredited
3 manually to vote under this subsection shall not exceed 10% of the total
4 number of registered voters in the polling unit or polling station failing
5 which the election shall be cancelled and postponed to any other day to
6 allow the Commission provide another card reader.

7 "(4) The Presiding Officer, Assistant Presiding Officer or any
8 official designated by the Commission shall after accreditation and voting,
9 enter in appropriate form the total number of successful accreditation, the
10 total number of failed accreditation and total accreditation as captured by the
11 smart card reader at the polling unit for use at the other stages of the collation
12 of the results."

13 "(5) The information recorded by the Presiding Officer, Assistant
14 Presiding Officer or any official designated by the Commission on the
15 appropriate electoral forms as captured by the card reader at a polling unit
16 may be compared with the information automatically transmitted to the
17 central database or server of the Commission at the headquarters of the
18 Commission in Abuja, or wherever located."

19 9. Section 52 of the Principal Act is amended by inserting new
20 subsection "(5)" and "(6)"-

Amendment of
Section 52

21 "(5) The Commission shall take necessary steps through the
22 adoption and use of appropriate e-platform to make available printable
23 certified true copy on line for applicants from the repository of election
24 documents kept by the server and such on-line certified true copy shall, on
25 compliance with section 84 of the Evidence Act, be admissible in any Court
26 or Tribunal in Nigeria alongside the receipt of payment."

27 "(6) The Commission shall give on-line access to the Registry of an
28 Election Tribunal or Court of necessary electoral documents including
29 electoral results of States within the jurisdiction of the Tribunal or Court to
30 be compared with any on-line certified true copy tendered by a party at an

1 election petition proceeding."

Amendment of
Section 53

2 **10.** Section 53 (2) of the Principal Act is amended by substituting for
3 the word "registered" the word "accredited"

Amendment of
Section 63

4 **11.** Section 63 of the Principal Act is amended by substituting for the
5 existing subsection (4) a new subsection "(4)"-

6 "(4) The Presiding Officer, Assistant Presiding Officer or any other
7 official designated by the Commission shall after the close of poll -

8 (a) count the votes cast for each contestant;

9 (b) record the votes scored by each candidate and results in a form
10 prescribed by the Commission;

11 (c) announce and paste the result at the Polling Unit; and

12 (d) immediately thereafter, upload, transmit or send the Polling Unit
13 result by secured mobile electronic communication to the -

14 (i) collation center at each level of collation of results to which the
15 polling unit belongs in a constituency, and

16 (ii) central database or server of the Commission at the headquarters
17 of the Commission in Abuja, or wherever located, and this process may be
18 recorded on audio-visual device(s) by any member of the public, party agent,
19 accredited observer or official of the Commission."

Amendment of
Section 76

20 **12.** Section 76 of the Principal Act is amended by inserting new
21 subsections "(2)" and "(3)"-

22 "(2) An election conducted at any polling unit or polling station
23 without the prior recording in the forms prescribed by the Commission of the
24 quantity, serial numbers and other particulars of the sensitive electoral
25 materials for the polling unit shall ipso facto render the election in the polling
26 unit or polling station null and void."

27 "(3) A Presiding Officer, Assistant Presiding Officer or any other
28 official designated by the Commission to conduct an election who declares or
29 and signs any election result without the prior recording in the forms prescribed
30 by the Commission of the quantity, serial numbers and other particulars

1 prescribed in the form shall be guilty of an offence and, on conviction, be
2 liable to a minimum term of imprisonment of 5 years or a fine of ₦5,000,000
3 or both."

4 13. Section 78(5) of the Principal Act is amended by inserting, Amendment of
section 78
5 after the word "cancelled" in line 3, the expressions, "and the Association
6 and each of its executives or principal officers shall, on account of such false
7 or misleading information, be guilty of an offence and shall, on conviction,
8 be liable-

9 (a) in case of the Association, to a fine of ₦5,000,000; and

10 (b) in case of each executive or principal officer of the Association,
11 to a minimum of 6 months imprisonment or a fine of ₦1,000,000 or both."

12 14. The Principal Act is amended by substituting for Section 87, a Amendment of
Section 87.
13 new Section "87"-

14 "87 (1) A political party seeking to nominate candidates for
15 elections under this Act shall hold direct primaries for aspirants to all
16 elective positions which shall be monitored and supervised by the
17 Commission.

18 (2) All registered card carrying members of a political party shall
19 be eligible to vote in the direct primaries of the party in the Ward or
20 Registration Area where they are registered as members of the party.

21 (3) A political party shall ensure that all aspirants for elective
22 positions in its direct primaries are given equal opportunity of being voted
23 for by card carrying members of the party.

24 (4) A political party shall not impose nomination fees, charges,
25 dues or any financial payment whatsoever above two million naira
26 N2,000,000 on any aspirant for elective position or a candidate at an election
27 under this Bill.

28 (5) In case of nomination to the position of presidential candidate, a
29 political party that chooses direct primaries shall where they intend to
30 sponsor a candidate-

1 (a) conduct direct primaries in the Wards or Registration Areas in the
2 36 States of the Federation and the Federal Capital Territory where all
3 registered card carrying members of the party are eligible to vote and may vote
4 for any Presidential Aspirant of their choice;

5 (b) declare the Presidential Aspirant with the highest number of valid
6 votes cast during the primaries across the 36 States of the Federation and the
7 Federal Capital Territory as winner of the direct primaries;

8 (c) hold a National Convention where it shall present the winner of the
9 direct primaries to the public as the Presidential Candidate of the party; and

10 (d) forward the name of the winner of the direct primaries to the
11 Commission as the Presidential Candidate of the party.

12 (6) In case of nominations to the position of Governorship candidate,
13 a political party that chooses direct primaries shall where they intend to
14 sponsor a candidate-

15 (a) conduct direct primaries in the Wards or Registration Areas in each
16 Local Government Area in the particular State where all registered card
17 carrying members of the party are eligible to vote and may vote for any
18 Governorship Aspirant of their choice;

19 (b) declare the Governorship Aspirant with the highest number of
20 valid votes cast in all Local Government Areas in the particular State as winner
21 of the direct primaries in the State;

22 (c) hold a National Convention where it shall present the winner of the
23 direct primaries to the public as the Presidential Candidate of the party; and

24 (d) forward the name of the winner of the direct primaries to the
25 Commission as the Governorship Candidate of the party.

26 (7) In case of nominations to the position of Senatorial candidate,
27 House of Representatives Candidate, and State House of assembly candidate,
28 a political party that chooses direct primaries shall where they intend to
29 sponsor a candidate-

30 (a) conduct close direct primaries in the Wards or Registration Areas

1 in each Local Government Area in the particular Senatorial District, Federal
2 Constituency and State assembly Constituency respectively where all
3 registered card carrying members of the party are eligible to vote and may
4 vote for any Senatorial, House of Representatives and State House of
5 Assembly Aspirant of their choice;

6 (b) declare the Senatorial Aspirant with the highest number of
7 valid votes cast in all Local Government Areas in the particular Senatorial
8 District as winner of the direct primaries in the Senatorial District and
9 forward the name of the winner to the Commission as the Senatorial
10 candidate of the party for the Senatorial District;

11 (c) declare the House of Representatives Aspirant with the highest
12 number of valid votes cast in all Local Government Areas in the particular
13 House of Representatives Constituency as winner of the direct primaries in
14 the House of Representatives Constituency and forward the name of the
15 winner to the Commission as the House of Representatives candidate of the
16 party for the House of Representatives Constituency; and

17 (d) declare the State House of Assembly Aspirant with the highest
18 number of valid votes cast in all Local Government Areas in the particular
19 House of Assembly Constituency as winner of the direct primaries in the
20 House of Assembly Constituency and forward the name of the winner to the
21 Commission as the State House of Assembly candidate of the party for the
22 House of Assembly Constituency.

23 (8) In case of nominations to the position of Chairmanship
24 candidate of an Area Council in the Federal Capital Territory, a political
25 party that chooses direct primaries shall where they intends to sponsor a
26 candidate-

27 (a) conduct direct primaries in the Wards or Registration Areas in
28 the particular Area Council where registered card carrying members of the
29 party are eligible to vote and may vote for any Chairmanship Aspirant of
30 their choice; and

1 (b) declare the Chairmanship Aspirant with the highest number of
2 valid votes cast in all Wards in the particular Area Council as the winner of the
3 direct primaries in the Area Council Constituency and forward the name of the
4 winner to the Commission as the Chairmanship candidate of the party for the
5 Area Council.

6 (9) In case of nominations to the position of Councillorship candidate
7 in the Federal Capital Territory, a political party that chooses direct primaries
8 shall where they intends to sponsor a candidate-

9 (a) conduct direct primaries in the Wards or Registration Areas where
10 all registered card carrying members of the party are eligible to vote and may
11 vote for any Councillorship Aspirant of their choice in their Wards or
12 Registration Areas; and

13 (b) declare the Councillorship Aspirant with the highest number of
14 valid votes cast in the particular Ward as the winner of the direct primaries and
15 forward the name of the winner to the Commission as the Councillorship
16 candidate of the party for the Ward.

17 (10) Where there is only one Aspirant in a political party for any of the
18 aforesaid positions, such an Aspirant shall be deemed to be unchallenged for
19 the purpose of direct primaries and the party shall forward the name of the
20 Aspirant to the Commission as the candidate of the party for the particular
21 position and constituency.

22 (11) Where a political party conducts a primary election with the
23 Commission in attendance and the result of the primaries is endorsed or
24 certified by the Commission, the Commission shall have the power to overrule
25 a subsequent change or alteration of the original result by the party, if the
26 change or alteration is against a person or aspirant whom the Commission
27 witnessed and certified as the winner of the primaries originally.

28 (12) Nothing in this section shall prevent a political party from
29 organizing staggered primaries.

30 (13) Where a political party fails to comply with the provisions of this Bill in

1 the conduct of its primaries, its candidate for election shall not be included in
2 the election for the particular position in issue.

3 15. Section 99 of the Principal Act is amended by inserting new
4 subsection "(3)"-

Amendment of
Section 99

5 "(3) For the purpose of campaign for party primaries-

6 (a) every candidate of a political party shall commence campaign
7 30 days before his party primary and end 24 hours prior to that day; and

8 (b) any candidate who violate the provision of paragraph (a) of this
9 subsection, shall be liable to pay a fine of ₦200, 000 to his political party.

10 16. Section 138 of the Principal Act is amended-

Amendment of
Section 138

11 (a) in subsection (1)-

12 (i) Paragraph (a), by inserting, after the word, "Act" in line 2, the
13 words, "or non-compliance with gazette manuals, guidelines, regulations,
14 procedures or directives issued by the Commission for the conduct of the
15 election".

16 (ii) by inserting, after paragraph (d), a new paragraph "(e)-

17 "(e) that a person whose election is questioned has given a false
18 information in the list or information submitted in accordance with section
19 31(2) of this Act";

20 (b) in subsection (2), by inserting, after the word, "Act" in line 3,
21 the words, "or non-compliance with gazette manuals, guidelines,
22 regulations, procedures or directives issued by the Commission for the
23 conduct of the election"; and

24 (c) by inserting, after subsection (2), a new subsection "(3)"-

25 "(3) with respect to subsection (1) (a) of this section, a person shall
26 be deemed to be qualified for an elective office and his election shall not be
27 questioned on grounds of qualification if, with respect to the particular
28 election in question, he meets the requirement of section 65, 106, 131 or 177
29 of the Constitution of the Federal republic of Nigeria, 1999 (as altered) and
30 he is not in breach of sections 66, 107, 137 and 182 of the Constitution of the

Amendment of
Section 139

1 Federal Republic of Nigeria, 1999.

2 17. Section 139(1) of the Principal Act is amended by inserting-

3 (a) after the word, "Act", in line 4, a "comma" and the words,
4 "gazetted manuals; guidelines, regulations, procedures or directives issued by
5 the Commission for the conduct of the election;

6 (b) after the words, "election" in line 5, a proviso-

7 "Provided that the onus of proving that the non-compliance is not substantial to
8 invalidate the election shall be on the respondents who affirm the election"; and

9 (c) after subsection (2), new subsections "(3)-(9)"-

10 "(3) Where a petitioner alleges that an election was not conducted by
11 the Commission in a polling unit; it shall be the duty of the Commission or any
12 other respondent affirming the election in that polling unit to prove that
13 election was conducted at that polling unit.

14 (4) A certified true copy of an electoral document used by the
15 Commission to conduct an election and tendered in proof of its contents shall
16 not be classified as documentary hearsay notwithstanding that the certified true
17 copy is not tendered by the Commission or an official of the Commission or its
18 maker.

19 (5) A petitioner or petitioners witness may analyse and incorporate the
20 contents of certified true copies of electoral documents used by the
21 Commission to conduct an election in written statements on oath that
22 accompany the petition or filed at the trial of a petition and such written
23 statements on oath shall, upon adoption by the witness at the trial of the
24 petition, constitute evidence of the witness and be deemed to be demonstrated
25 to the court or tribunal.

26 (6) A petitioner may lead in his petition to rely on analyses of the
27 contents of certified true copies of electoral documents used for the conduct of
28 an election at the trial of a petition.

29 (7) Where a petitioner adopts the process mentioned in subsection (5)
30 of this section, the evidence shall not be classified as hearsay, whether

1 documentary or otherwise, provided that the source of the information is
2 stated in the written statement on oath.

3 (8) In a petition where the case of the petitioner is over-voting or
4 that the winner of the election did not score the majority of the lawful votes
5 cast, discrepancies between figures captured in written depositions and
6 certified true copies of electoral documents issued by the Commission, shall
7 be deemed as irregularities and that the case of the petitioner can be proved
8 notwithstanding the discrepancies.

9 (9) Except where fraud is proven, it shall not be necessary to call
10 the maker of any document used in a conducted election by the Commission
11 and tendered in proof of its contents if the documents are certified by the
12 Commission."

13 18. Section 140 is amended by the for subsection (4), a new
14 subsection "(4)"-

Amendment of
Section 140

15 "(4) Where an election tribunal or court nullifies an election on the
16 ground that-

17 (a) the election was marred by substantial irregularities or non-
18 compliance with the Provisions of the Electoral Act; and

19 (b) the logo of the party of any candidate is omitted on the ballot
20 paper,
21 the election tribunal or court shall-

22 (i) in case of paragraph (a), not declare the person with second
23 highest votes as elected, but shall order a fresh election in accordance with
24 subsection (1) of this section,

25 (ii) In case of paragraph (b), order for a bye election between the
26 winner of the first election and the candidate whose party's logo was
27 omitted.

28 19. The First Schedule to the Principal Act is amended-

Amendment of
First Schedule

29 (a) by deleting paragraphs 4(7), 5, 18(4) and 27(1);

30 (b) in paragraph 46(4), by inserting, after the word, "consent", the

1 words "such documentary evidence shall be deemed demonstrated in open
 2 court, the parties in the petition shall be entitled to address and urge argument
 3 on the content of the document and the tribunal or court shall scrutinize or
 4 investigate the content of the documents as part of the process of ascribing
 5 probative value to the documents or otherwise." And

6 (c) in paragraph 53, by substituting for subsection (1), a new
 7 subsection "(1)-

8 "(1) Non- compliance with any of the provisions of this Schedule, or
 9 with a rule of practice for the time being operative shall not render any
 10 proceedings void."

Citation

11 20. This Bill may be cited as Electoral Act (Amendment) Bill,
 12 2017.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Electoral Act 2010 to among other things make our
 electoral process more credible, by making the use of Card Reader the credible
 means of voters accreditation and voting and enhance transparency and
 efficiency in the conduct of free, fair and credible elections.

to members A
of the House

to members A
of the House

(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12)

(13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25)