

**ELECTRONIC TRANSMISSION OF ELECTION RESULTS
AND DEMOCRATIC LEGITIMACY IN NIGERIA: LEGAL
AND ETHICAL LESSONS FROM THE 2023 GENERAL
ELECTIONS**

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Abstract

The introduction of electronic transmission of election results under the Electoral Act 2022 represented a deliberate legislative effort to reconstruct electoral transparency and reinforce democratic legitimacy in Nigeria. Conceived as a technological safeguard against post-poll manipulation, the reform sought to strengthen procedural integrity by embedding digital verifiability within the collation process. The experience of the 2023 General Elections, however, exposed structural tensions between statutory aspiration and institutional execution. This article interrogates the legal architecture of section 60(3) of the Act, examines its judicial interpretation during post-election litigation, and evaluates the ethical implications of administrative discretion in technologically mediated elections. It argues that the statutory design, while reformist in orientation, retained interpretive elasticity by conditioning transmission on procedures prescribed by the Independent National Electoral Commission, thereby complicating enforcement and public expectation. The repeal and re-enactment of the Electoral Act in 2026, which expressly incorporates electronic transmission within the statutory text while authorising conditional manual fallback, constitutes the legislature's response to these vulnerabilities. The paper concludes that the durability of this reconstructed framework will depend on the transparency and

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evidentiary discipline with which fallback mechanisms are invoked, and that the credibility of the 2027 general elections will provide the decisive test of its constitutional adequacy.

Keywords: Electoral Act 2022; Electoral Act (Repeal and Re-Enactment) 2026; Electronic Transmission of Results; Democratic Legitimacy; Dual Transmission Model; Judicial Interpretation

1.0 INTRODUCTION

Electoral governance in Nigeria has long been characterised by recurrent contestation, post-election litigation, and periodic institutional distrust, conditions that have steadily complicated the consolidation of constitutional democracy.¹ Within this context, democratic legitimacy has become inseparable from the credibility of electoral procedure, rather than merely the formal declaration of results.² Legislative reform has therefore assumed a structural dimension, culminating in the enactment of the Electoral Act 2022, which sought to reconstruct procedural integrity through technological innovation and enhanced regulatory clarity. Among its most consequential interventions was the provision for electronic transmission of election results, conceived as a mechanism for transparency capable of narrowing the space for administrative opacity and post-poll manipulation.³

However, the experience of the 2023 General Elections revealed that the juridical architecture of electronic transmission did not eliminate interpretive elasticity. Instead, statutory ambiguity, coupled with the breadth of administrative discretion vested in the Independent National Electoral Commission, produced contested understandings of

¹ *Buhari v Obasanjo* (2005) 13 NWLR (Pt 941) 1.

² *Atiku Abubakar & Anor v INEC & Ors (No. 1 & No. 2)* [2023] 19 NWLR (Pt. 1835) SC; *Obi & Anor v INEC & Ors (No. 1)* [2023] 19 NWLR (Pt. 1834) 1 (SC).

³ Section 60 of the Electoral Act 2022.

compliance and obligation.⁴ The constitutional difficulty, therefore, lies not merely in technological failure but in the structural tension between legislative aspiration and institutional execution.

Whereas the 2022 framework deferred critical aspects of electronic transmission to regulatory prescription, the Electoral Act (Repeal and Re-Enactment) 2026 incorporates electronic transmission directly into the statutory text while preserving manual fallback in the event of network failure, thereby institutionalising a dual transmission model.⁵ This legislative reconstruction represents the most recent attempt to address the legitimacy strain exposed in 2023. However, the codification of conditional transmission does not extinguish the underlying constitutional concern; rather, it situates it within a redesigned compliance framework whose adequacy will be tested in the 2027 general elections.

This article contends that the regulation of electronic transmission under the Electoral Act 2022, as reconfigured by the Electoral Act (Repeal and Re-Enactment) 2026, foregrounds deeper questions concerning procedural legitimacy, accountability, and the normative foundations of democratic authority in Nigeria.

2.0 CONCEPTUAL FOUNDATIONS

Democratic legitimacy, within constitutional theory, is not reducible to the mere existence of periodic elections; rather, it derives from the normative acceptability of the processes through which political authority is constituted.⁶ A distinction must therefore be drawn between

⁴ Section 60(5) of the Electoral Act 2022; *Atiku & Anor v INEC & Ors* (n 2); *Obi & Anor v INEC & Ors* (n 2); INEC, 'Regulations and Guidelines for the Conduct of Elections 2022' (June 2022).

⁵ Electoral Act 2022; Electoral Act (Repeal and Re-Enactment) Act 2026 s 60(3).

⁶ J Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (William Rehg tr, Polity Press 1996).

substantive legitimacy, which concerns the representational outcome of elections, and procedural legitimacy, which interrogates the integrity of the mechanisms by which electoral outcomes are produced.⁷ In societies marked by recurrent electoral dispute, procedural legitimacy assumes heightened importance, since institutional trust is sustained less by unanimity of result than by confidence in the fairness and transparency of the process itself.

Transparency operates within this framework as a structural precondition for public confidence. It does not simply denote openness in an abstract sense, but refers to legally enforceable standards that render administrative conduct verifiable and contestable.⁸ Where electoral procedures are technologically mediated, transparency acquires additional constitutional relevance, because the opacity of digital systems may either reinforce or undermine public trust depending on the clarity of regulatory design and the consistency of institutional implementation. Thus, electronic transmission of results must be evaluated not only as an efficiency mechanism, but as an instrument of procedural integrity.

Electoral administration accordingly functions as a site of constitutional accountability. The Independent National Electoral Commission exercises powers derived from statute and the Constitution, yet those powers are constrained by principles of legality, reasonableness, and fidelity to legislative intent.⁹ Administrative discretion, although necessary for operational flexibility, must remain normatively bounded, particularly when the credibility of democratic succession is at stake.

⁷ *ibid.*

⁸ LL Fuller, *The Morality of Law* (Yale University Press 1964).

⁹ Section 153 of the 1999 Constitution (as amended); Section 148 of the Electoral Act 2022.

Within this conceptual architecture, a further distinction becomes analytically necessary: the difference between law as enacted and law as experienced. The former reflects legislative aspiration, articulated through statutory text; the latter captures the lived institutional reality of implementation. Where these diverge, legitimacy is strained, not because the normative framework is inherently defective, but because its execution generates interpretive uncertainty. The analysis of electronic transmission under the Electoral Act 2022, as subsequently reconfigured in 2026, must therefore proceed from this tension between normative design and institutional practice.

3.0 STATUTORY ARCHITECTURE OF ELECTRONIC TRANSMISSION UNDER THE ELECTORAL ACT 2022

The juridical foundation of the electronic transmission of election results is principally located in section 60 of the Electoral Act 2022, which regulates the procedure for counting, recording, and announcing votes at the polling unit.¹⁰ Section 60(5) provides that the presiding officer shall transfer the results, including the total number of accredited voters and votes cast, in a manner prescribed by the Commission.¹¹ Read together with section 62 and the regulatory powers conferred under section 148, the statutory framework establishes a technologically mediated architecture in which the Independent National Electoral Commission is authorised to determine the modalities of transmission.¹² Doctrinally considered, the provision does not create an unqualified obligation of real-time electronic transmission in explicit terms; rather, it conditions transmission on procedures “as prescribed” by the Commission.¹³ This drafting choice embeds interpretive elasticity within the statutory scheme. On one view, the legislature sought to

¹⁰ Section 60 of the Electoral Act 2022.

¹¹ *ibid*, Section 60(5).

¹² *ibid*, Sections 62 and 148.

¹³ *ibid*, Section 60(5).

secure transparency by incorporating technological tools, including the Bimodal Voter Accreditation System (BVAS) and the Result Viewing Portal (IREV), into the electoral process. On another, the breadth of administrative prescription allowed operational discretion that could recalibrate the immediacy or sequencing of transmission without textual violation.¹⁴

Legislative debates preceding enactment reflected an intention to modernise electoral administration and minimise post-poll manipulation through digital safeguards.¹⁵ Nonetheless, the regulatory design preserved significant institutional latitude.¹⁶ The Act positioned the Commission as both the implementer and the interpreter of transmission obligations by deferring procedural details to subsidiary regulation. This delegation constituted the principal vulnerability of the 2022 framework: while reformist in aspiration, it lacked a statutorily entrenched real-time transmission duty, thereby leaving the immediacy and sequencing of electronic uploads subject to administrative determination.

The resulting framework thus oscillates between mandatory language and administrative flexibility. It was this indeterminacy that the 2023 General Elections exposed, transforming what had appeared to be operational flexibility into a contested question of legal obligation.¹⁷

¹⁴ *Obi & Anor v INEC & Ors* (n 2) and *Atiku & Anor v INEC & Ors* (n 2).

¹⁵ National Assembly of Nigeria, 'Press Statement from the Office of the Senate President – Senate empowers INEC to determine transmission of election results' (12 October 2021), National Assembly of Nigeria, available at <<https://www.nass.gov.ng/news/item/1583>> accessed 18 February 2026.

¹⁶ This allowed operational adaptation but also created space for 2023 controversies over transmission delays and partial uploads. The design reflects a legislative compromise between reform ambition and administrative necessity.

¹⁷ *Obi & Anor v INEC & Ors* (n 2); *Atiku & Anor v INEC & Ors* (n 2); INEC Guidelines 2022 (n 5).

4.0 IMPLEMENTATION DURING THE 2023 GENERAL ELECTIONS

The 2023 General Elections constituted the first comprehensive test of the technological architecture contemplated by the Electoral Act 2022.¹⁸ Although the statutory framework authorised electronic transmission as part of a broader reform agenda, its operationalisation revealed the complexity of translating legislative aspiration into institutional practice. The deployment of the Bimodal Voter Accreditation System (BVAS) and the Results Viewing Portal (IREV) was presented as an instrument of procedural transparency; yet the sequencing and timing of result uploads generated contestation regarding the extent of compliance with statutory expectations.¹⁹

The Independent National Electoral Commission attributed delays and inconsistencies in the upload of presidential election results to technical glitches affecting the portal infrastructure, while maintaining that accreditation data had been securely transmitted.²⁰ Public perception, however, was shaped less by the distinction between categories of data transmission and more by the anticipatory assurances that electronic uploading would occur contemporaneously with collation at polling

¹⁸ INEC, 'Report on the 2023 General Elections' (February 2024), available at <<https://inecnigeria.org/wp-content/uploads/2024/02/2023-GENERAL-ELECTION-REPORT-1.pdf>> accessed 18 February 2026; European Union Election Observation Mission (EU EOM), 'Final Report on the 2023 General Elections in Nigeria' (2023), available at <https://www.ecas.europa.eu/eom-nigeria-2023/european-union-election-observation-mission-nigeria-2023-final-report_en> accessed 18 February 2026.

¹⁹ Section 60 of the Electoral Act 2022; *Obi & Anor v INEC & Ors* (n 2), *Atiku & Anor v INEC & Ors* (n 2).

²⁰ Qosim Suleiman, 'INEC Gives Details of IReV Failure During 2023 Presidential Election' *Premium Times* (23 February 2024), available at <<https://www.premiumtimesng.com/news/top-news/671063-inec-gives-details-of-irev-failure-during-2023-presidential-election.html>> accessed 18 February 2026.

units.²¹ The controversy, therefore, did not arise merely from malfunction but from the disjunction between statutory ambiguity and heightened public expectation.

It is analytically important to distinguish technological failure from regulatory discretion. Technological failure refers to operational incapacity arising from system malfunction, whereas regulatory discretion arises from statutory latitude permitting institutional choice in sequencing or method of compliance. The controversy surrounding the 2023 elections cannot be reduced to either category in isolation. Rather, it emerged at the intersection of both: a statutory framework that vested procedural prescription in the Commission, and an implementation environment in which technical disruptions interacted with discretionary authority.²²

In this sense, the 2023 General Elections functioned as a constitutional stress test of the 2022 statutory design, revealing that delegated prescription without a statutorily entrenched immediacy requirement could generate competing interpretations of legal obligation.²³ The constitutional consequence of this interaction lies in its effect on institutional trust. Where transparency mechanisms are introduced as instruments of legitimacy, any ambiguity in execution acquires heightened normative significance. The legitimacy deficit that followed

²¹ EU EOM Final Report (n 21); Guardian Nigeria, 'INEC's Election Day Performance Was Not Seamless, Says CDD' *The Guardian* (10 March 2023), available at <<https://guardian.ng/politics/inecs-election-day-performance-was-not-seamless-says-cdd/>> accessed 18 February 2026.

²² Section 60(5) of the Electoral Act 2022; *Obi & Anor v INEC & Ors* (n 2); *Atiku & Anor v INEC & Ors* (n 2); EU EOM Final Report (n 18).

²³ S Jolaosho, *Unpacking the Ongoing Controversy Surrounding the 2023 Presidential Election Court Case: The Two Perspectives* (26 pages, Independent, 18 April 2023), SSRN Working Paper, available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4422807> posted 1 May 2023, accessed 19 February 2026.

the 2023 presidential election, therefore, reflects not episodic malfunction but the strain produced when reformist statutory language encounters operational contingency within a context already marked by fragile public confidence.

5.0 JUDICIAL TREATMENT AND THE BURDEN OF ELECTORAL PROOF

Post-election adjudication constituted the principal juridical arena within which the meaning of electronic transmission under the Electoral Act 2022 was clarified. In the proceedings before the Presidential Election Petition Tribunal, and subsequently on appeal to the Supreme Court, petitioners contended that the failure to electronically transmit presidential election results in real time amounted to non-compliance with section 60 of the Act.²⁴ The courts, however, approached the issue through the orthodox lens of electoral proof, emphasising that a petitioner bears the burden of establishing substantial non-compliance and demonstrating that such non-compliance affected the result of the election.²⁵

In interpreting section 60(5), the Tribunal and the Supreme Court declined to construe the provision as imposing an inflexible obligation of real-time electronic transmission. Rather, the statutory language, which conditions transmission on procedures prescribed by the Commission, was treated as conferring discretion upon the Commission with respect to timing and method.²⁶ The courts further clarified that upload to the IReV portal was not equivalent to statutory collation, thereby limiting the juridical consequences of transmission

²⁴ 2023 Presidential Election Petition Tribunal (Petition No. CA/PEPC/03/2023); *Bola Ahmed Tinubu v Atiku Abubakar & Ors* (Consolidated Appeals SC.1/2023, SC.2/2023, SC.3/2023, judgment 26 October 2023).

²⁵ Section 135 of the Electoral Act 2022.

²⁶ Presidential Election Petition Tribunal (n 23); *Tinubu v Atiku & Ors* (n 23), *Obi & Anor v INEC & Ors* (n).

irregularities. This judicial construction effectively reinforced the delegated architecture identified in the Electoral Act 2022, confirming that the immediacy of electronic transmission was not statutorily entrenched but administratively mediated.

The doctrinal posture adopted by the courts reveals the tension between evidentiary discipline and democratic accountability. Election petitions in Nigeria are adjudicated within a strict evidentiary framework that privileges proof of concrete irregularity over abstract procedural expectation. Yet where statutory innovation is introduced to enhance transparency, judicial restraint in expanding the scope of compliance obligations may reshape public perception of institutional responsibility. Adjudication, therefore, does more than resolve disputes; it shapes the constitutional meaning of reform and mediates the relationship between legislative aspiration and democratic legitimacy.

6.0 ETHICAL DIMENSIONS OF ELECTORAL ADMINISTRATION

Electoral administration is not merely a technical enterprise; it is a constitutional function that carries ethical obligations grounded in transparency, accountability, and fidelity to democratic expectations.²⁷ Where statutory reform introduces technological mechanisms designed to enhance verifiability, the ethical dimension of administration extends beyond minimal compliance to encompass the preservation of institutional trust. The controversy surrounding real-time electronic transmission during the 2026 legislative reconsideration of section 60 illustrates this normative tension.²⁸

²⁷ Section 153 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Section 60 and 148 of the Electoral Act 2022.

²⁸ Section 60 of the Electoral Act 2022; National Assembly of Nigeria's Press Statement (n 15); C Okeke and G Ugwuezi, 'Understanding the Electronic Transmission Controversy: A Legal Analysis of the Electoral Act Amendment Bill' *BusinessDay Nigeria* (15 February 2026), available at

Arguments advanced within the Senate emphasised infrastructural limitations, particularly the possibility of network failure in rural communities, as justification for retaining discretionary flexibility rather than imposing an unequivocal obligation of real-time transmission.²⁹ This position reflects a prudential concern with feasibility and operational contingency. However, it stands in contrast to prior assurances by the former Chairman of the Independent National Electoral Commission, who indicated that collaboration with telecommunications providers had significantly expanded coverage, with the vast majority of polling units capable of network connectivity at varying bandwidth levels.³⁰ The divergence between these institutional narratives invites an ethical inquiry into whether conditional transmission reflects infrastructural realism or a preference for administrative latitude.

Public mobilisation, including organised protests at the National Assembly complex, further demonstrates that electoral technology is perceived not merely as administrative innovation but as a normative

<https://businessday.ng/life/article/understanding-the-electronic-transmission-controversy-a-legal-analysis-of-the-electoral-act-amendment-bill/> accessed 18 February 2026.

²⁹ Punch Nigeria, '2027 Elections: Lawmakers Protest as NASS Okays E-Transmission, Manual Backup' *Punch* (17 February 2026), available at <https://punchng.com/2027-elections-lawmakers-protest-as-nass-okays-e-transmission-manual-backup/> accessed 18 February 2026; A Adesanya, 'Senate Passes Electoral Act Amendment Bill After Mild Row' *Business Post Nigeria* (17 February 2026), available at <https://businesspost.ng/general/senate-passes-electoral-act-amendment-bill-after-mild-row/> accessed 18 February 2026.

³⁰ S Nathaniel, '2023 Elections: INEC Partners Telcos to Address Network Issues' *Channels Television* (25 February 2023), available at <https://www.channelstv.com/2023/02/25/2023-elections-inec-partners-telcos-to-address-network-issues/> accessed 18 February 2026; G Habib, 'INEC Partners Telcos To Address Network Challenges' *Punch Nigeria* (24 February 2023), available at <https://punchng.com/inec-partners-telcos-to-address-network-challenges/> accessed 18 February 2026.

guarantee of procedural integrity.³¹ When legislators invoke persistent network deficits, even while occupying longstanding positions of public authority over infrastructural development, the ethical inquiry inevitably extends to questions of governance responsibility. Electoral transparency cannot be detached from broader state obligations to provide the enabling infrastructure upon which democratic reforms depend. Within this context, the ethical legitimacy of electoral administration is shaped as much by institutional candour and consistency as by formal statutory compliance.

7.0 THE 2026 DUAL TRANSMISSION MODEL AND ITS CONSTITUTIONAL IMPLICATIONS

The repeal and re-enactment of the Electoral Act in 2026 concluded the legislative reconsideration of section 60(3) by expressly incorporating electronic transmission within the statutory text while authorising manual fallback in circumstances of network failure.³² This development marks a departure from the 2022 framework, which deferred critical transmission modalities to regulatory prescription, but it does not eliminate conditionality; rather, it codifies it. Under the

³¹ ThisDay Nigeria, 'Electoral Act: Coalition of CSOs Warns 2027 Elections May Be Compromised' *ThisDay* (10 February 2026), available at <<https://www.thisdaylive.com/2026/02/10/electoral-act-coalition-of-csos-warns-2027-elections-may-be-compromised/>> accessed 18 February 2026; RealNews Magazine, 'Electoral Bill 2026: HURIWA Backs Peaceful Mass Protests' *RealNews* (February 2026), available at <<https://realnewsmagazine.net/electoral-bill-2026-huriwa-backs-peaceful-mass-protests/>> accessed 18 February 2026; Punch Nigeria, 'Activists Plan Occupy NASS Protest Over Senate's Rejection of E-Transmission of Results' *Punch* (February 2026), available at <<https://punchng.com/activists-plan-occupy-nass-protest-over-senates-rejection-of-e-transmission-of-results/>> accessed 18 February 2026.

³² Electoral Act (Repeal and Re-Enactment) Act 2026 s 60(3); A Folorunsho-Francis, 'Electoral Act Amendment: Empirical Data Guided Our Decision – Senate' *Vanguard Nigeria* (15 February 2026), available at <<https://www.vanguardngr.com/2026/02/electoral-act-amendment-empirical-data-guided-our-decision-senate/>> accessed 18 February 2026.

enacted provision, electronic transmission is recognised as a statutory component of result management, yet its immediacy remains contingent upon infrastructural functionality. The law, therefore, resolves textual silence but preserves operational discretion. The divergence that previously existed between legislative chambers has thus been replaced by a consolidated dual transmission model whose constitutional implications require careful evaluation.

The central question is whether this statutory reconstruction cures the vulnerability identified in the 2023 presidential election due to the provision in the Electoral Act 2022. The legislature reduces interpretive uncertainty regarding the Act's legal status by incorporating transmission directly into the 2026 re-enactment Act. However, by expressly permitting manual transfer where network failure occurs, the provision institutionalises conditional compliance, thereby retaining a zone of discretionary judgment in determining when fallback is justified.

Institutional accountability must therefore be assessed not in terms of whether transmission is recognised, but in terms of how fallback is regulated. Absent clearly defined evidentiary thresholds for network failure and mandatory documentation requirements for resort to manual collation, the dual transmission model risks reproducing, in modified form, the elasticity that characterised the 2022 framework. The Independent National Electoral Commission should be statutorily required to publish pre-election technical audits of network preparedness and post-election compliance reports detailing instances of transmission delay or deviation.³³

³³ Section 153 of the 1999 Constitution (as amended); Section 148 of the Electoral Act 2022.

The constitutional significance of the 2026 re-enactment lies in this recalibrated balance between certainty and contingency. Whether the dual transmission model fortifies procedural legitimacy or re-entrenches administrative latitude will ultimately be tested in the conduct and adjudication of the 2027 general elections.

8.0 CONCLUSION

The experience of electronic transmission under the Electoral Act 2022 reveals a deeper constitutional tension between reformist rhetoric and the institutional conditions necessary for its faithful execution. Legislative innovation, when articulated in technologically progressive language yet framed with discretionary elasticity, risks generating expectations that exceed enforceable obligation. The result is not merely operational controversy but a reconfiguration of public trust in the electoral order. The constitutional stakes are therefore significant. Electoral technology functions not as a peripheral administrative tool but as an instrument through which democratic authority is mediated and validated. Where statutory ambiguity, administrative discretion and infrastructural uncertainty converge, the legitimacy of electoral outcomes becomes vulnerable to normative contestation, even in the absence of proven illegality.

With the enactment of the Electoral Act (Repeal and Re-Enactment) 2026, Nigeria has now codified a dual transmission model that recognises electronic transmission while authorising conditional manual fallback. This reconstruction resolves the textual indeterminacy that characterised the 2022 framework, yet it retains contingency at the level of implementation. The durability of this model will be measured not by its formal recognition of technology, but by the transparency and evidentiary discipline with which fallback mechanisms are invoked. As attention turns toward the 2027 general elections, the resilience of Nigeria's constitutional democracy will depend less on digital

innovation itself than on the clarity, enforceability and institutional candour embedded within the revised statutory scheme.