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**THE LEGAL STATUS OF THE IREV PORTAL IN NIGERIA'S ELECTORAL
JURISPRUDENCE: A CRITICAL ANALYSIS OF SECTION 60 OF THE ELECTORAL ACT
2026 AND THE ELECTRONIC TRANSMISSION OF ELECTION RESULTS**

BY

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ABDULHAFEEZ MOHAMMAD **

Abstract

The integration of technology into Nigeria's electoral process in 2023 exemplified by the INEC Result Viewing (IREV) portal, promised enhanced transparency in the collation and transmission of election results. Notwithstanding this promise, the legal status of electronically transmitted results has remained contentious, generating significant judicial and legislative controversy. This paper examines the evolution of section 60 of the Electoral Act, 2026 contrasting the provisions of the Electoral Act 2022 with those of the Electoral Act (Amendment) 2026. It analyses the jurisprudence of Nigerian courts, with particular attention to recent Supreme Court decisions interpreting electronic result transmission and the legal effect of statutory provisos. A comparative analysis of the terms 'transmission' and 'transfer' is undertaken to demonstrate how seemingly minor legislative choices can fundamentally alter legal obligations. The paper further examines the mischief that the 2026 amendment sought to remedy, specifically, electoral fraud through post-poll result manipulation and critically evaluates whether the amendment achieves this purpose. It is argued that the proviso in section 60(3) of the Electoral Act 2026, by designating manually collated results as primary option in the event of technical failure, risks entrenching the very vulnerability the reform sought to eliminate. Drawing on case law and scholarly commentary, the paper concludes that while the statutory elevation of electronic transmission represents legislative progress, the proviso substantially undermines the reform. The paper concludes by recommending clearer legislation to support the legal validity of electronically transmitted election results in Nigeria

Keywords: Electoral fraud; Electronic transmission; IReV portal; mischief rule; statutory proviso

1.0 Introduction

Elections in Nigeria have historically been followed by an avalanche of litigation; indeed, between 1999 and 2023 over 5,153 election petitions were filed, reflecting pervasive disputes over electoral outcomes¹. These petitions and the resulting judgments form a rich body of jurisprudence that continually shapes electoral integrity and democratic legitimacy in the country. A recurrent theme in recent years has been the role of technology in elections, particularly the deployment of the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing (IREV) portal for uploading polling-

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¹ Policy and Legal Advocacy Centre (PLAC), *Election Petition Tribunal Report: Analysis of Election Petitions in Nigeria (1999–2023)* (PLAC 2023); see also Independent National Electoral Commission, *Report on the 2023 General Elections* (INEC 2023), Dan Agbese, 'Election Petitions and the Endless Politicking' *The Guardian* (6 October 2023) <https://guardian.ng/opinion/election-petitions-and-the-endless-politicking> accessed 1 March 2026

unit results. While technological innovations are intended to enhance transparency and trust, they have also raised complex legal questions about their status vis-à-vis traditional electoral processes.

Following the introduction of IReV portal for the 2023 general elections, one major controversy arose subsequently. Observers and opposition parties noted discrepancies between some polling-unit result sheets uploaded to the IReV portal and the physical results declared during collation.² This disparity fueled allegations that, once result sheets left the polling stations, results were altered or manipulated, a form of electoral malpractice the IReV system was meant to forestall.³ However, when these disputes are filed before Tribunals and Courts, the judiciary's response was constrained by the existing legal framework. Particularly, the Electoral Act 2022, contained no explicit requirement for electronic transmission of results⁴. The IReV portal, introduced by INEC via guidelines, had administrative significance but little legal force. In landmark decisions following the 2023 polls, courts held that electronically uploaded results were essentially for public viewing and not a legally mandated part of the collation process.⁵ The Supreme Court emphatically ruled that "Where the IReV portal fails, it does not stop the collation of results," underscoring that a petitioner cannot invalidate an election merely because INEC did not transmit results electronically. Such pronouncements highlighted a gap between technological practice and legal principle, signaling the urgent need for legislative reform.

This paper critically analyses how the Electoral Act 2026 addresses that gap, particularly through its amended Section 60 which for the first time mandates electronic transmission of results to the IReV portal. We explore the genesis and intent of this amendment, including the vigorous legislative debates over phrasing ("transmission" versus "transfer" of results) and the inclusion of a proviso that retains manually collated results as the fallback in case of technical failure. To frame this discussion, we first review the legal and theoretical framework governing election results in Nigeria, including the hierarchy of laws (Constitution, Acts, regulations) and rules of statutory interpretation relevant to provisos. We then delve into the doctrinal and jurisprudential analysis of the IReV portal's status, examining key Supreme Court decisions from the earlier card reader cases to the 2023 presidential election petitions, all of which illustrate the judiciary's approach to electoral technology and provisos in statutes.

² Independent National Electoral Commission (INEC), *Regulations and Guidelines for the Conduct of Elections 2022* (INEC 2022).

³ Y. Omorogbe, 'Electronic Transmission of Election Results and Electoral Integrity in Nigeria' (2023) 12 *Nigerian Electoral Law Review* 45.

⁴ Electoral Act 2022, ss 60–64. See also, The Conclave 'Electronic transmission of results not mandatory, says Tribunal' 6 September, 2023 available at <https://www.theconclaveng.com/electronic-transmission-of-results-not-mandatory-says-tribunal/> accessed on 1 March 2026

⁵ See *Atiku v. INEC* (No. 2) (2023) 19 NWLR (Pt. 1917) 761 P. 849, paras. B-D, where the Supreme Court held as follows: "The INEC Result Viewing Portal (IReV) is not a collation system. There is a difference between a collation system and the IReV portal though both are part of the election process. Whereas the collation system is made up of the centres where results are collated at various stages of the election, the IReV Portal is to give the public the opportunity to view the polling unit results on the election day. What this means is that where the IReV portal fails, it does not stop the collation of results which up to the last election was manually done. The failure or malfunctioning of the IReV deprives the public and even election administrators and monitors the opportunity of viewing the portal and comparing the result collated with the ones transmitted into the IReV."

Furthermore, the paper compares “electronic transmission” with “manual transfer” in electoral context, explaining what each term entails and why the distinction matters. This flows into a critical evaluation of whether the 2026 amendment truly remedies the mischief of manipulation that it was designed to cure, or whether the proviso in Section 60(3) essentially grants with one hand and takes away with the other, as some critics contend.

2.0 Legal Framework Review

Nigeria’s legal system places the 1999 Constitution at the apex, followed by Acts of the National Assembly, and then subsidiary legislation such as INEC regulations and manuals.⁶ Election petitions are litigated within this hierarchy. Thus, alleged irregularities must be tied to a breach of the Constitution or an Act (particularly the Electoral Act) to have merit.⁷ Violations of mere guidelines generally do not, on their own, suffice to overturn an election.⁸ This principle became evident in cases like *Nyesom Wike v. Peterside & Ors*,⁹ where the Supreme Court confronted the introduction of technology via INEC guidelines. The smart card reader device, which was deployed by INEC in the 2015 elections to verify voter identity, was not explicitly provided for under the Electoral Act 2010. When petitioners argued that discrepancies in card reader data (accreditation figures) should invalidate results, the Supreme Court held that administrative guidelines could not trump or override the provisions of the Act¹⁰. In effect, unless the use of card readers was grounded in the Act itself, failures or inconsistencies in their use could not be a legal basis to nullify votes. This decision underscored the strict compliance rule. Thus, electoral innovations must be backed by law, or they remain legally inconsequential.¹¹ While there are criticisms for this stance, suggesting that INEC’s constitutional powers to organize elections should imply authority to introduce technological measures as delegated legislation, the prevailing judicial view has been that core aspects of voting and result collation require clear statutory authorisation, not just regulatory improvisation.¹²

The core introduction as seen in the new Section 60 (3) of the Electoral Act, 2026, and the proviso thereto, need some elucidation. In legislative drafting, a proviso is a clause that qualifies or creates exceptions to the main part of a statute. The classic rule, echoed in a plethora of cases, is that a proviso should be interpreted narrowly, serving to carve out specific exceptions without swallowing the general rule.¹³ Nigerian courts have applied this principle in various contexts, insisting that provisos must not be read so broadly that they defeat the purpose of the main enactment. Instead, a proviso’s role is “to

⁶ Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 1(1)–(3)

⁷ M. Ladan, *Electoral Law and Process in Nigeria* (Ahmadu Bello University Press 2015) 102

⁸ *Buhari v INEC* (2008) 19 NWLR (Pt 1120) 246

⁹ *Nyesom Wike v Dakuku Peterside* (2016) 7 NWLR (Pt 1512) 452 (SC)

¹⁰ *ibid*

¹¹ A. Nwafor, ‘Electronic Voting and Election Management in Nigeria’ (2017) 5 *Nigerian Journal of Electoral Law* 61

¹² C. Nwabueze, *Constitutional Democracy in Africa* (Spectrum Books 2003) 312

¹³ *Attorney-General of Abia State v Attorney-General of the Federation* (2002) 6 NWLR (Pt 763) 264 (SC)

limit or clarify the scope” of a statutory right or requirement, ensuring it operates under certain conditions but not to nullify it altogether.¹⁴ This interpretive approach will be important when assessing the new Section 60(3) proviso, which some fear effectively overrides the rule of electronic transmission by reasserting the primacy of paper results¹⁵. To properly evaluate that concern, one must understand the legislative intent, that is, the mischief at which the amendment aims and how courts might reconcile the main clause and its proviso if faced with an election dispute under the 2026 Act.

Now, coming to the Electoral Act, the Electoral Act 2022 (Act No. 13 of 2022) was widely hailed for introducing technological enhancements post 2019, but it stopped short of mandating full electronic transmission of results. Section 47(2) of the 2022 Act required the use of technological devices (eventually, BVAS) for voter accreditation, and even provided that where electronic accreditation fails and cannot be repaired, the election in that unit should be cancelled and rescheduled.¹⁶ This demonstrated legislative intent to emphasise technology for accrediting voters. Section 60(1)-(4) of the 2022 Act dealt with the counting and announcement of votes at the polling unit, the documentation on Form EC8A (the primary result sheet), and distribution of signed copies to party agents and security officials¹⁷. Crucially, Section 60(5) stated: “The presiding officer shall transfer the results, including the total number of accredited voters and results of the ballot, in a manner as prescribed by the Commission”¹⁸. The choice of the word “transfer” and the phrase “as prescribed by the Commission” effectively left the method of transmitting or conveying results to INEC’s discretion. It did not explicitly say “transmit electronically”. INEC’s regulations for the 2023 elections did prescribe the use of the BVAS to scan and upload Form EC8A to the IReV portal (thus an electronic transfer), and to convey a copy to the next collation center via the backend system¹⁹. Yet, because the Act itself did not unambiguously compel electronic transmission, the legal footing of that process was weak, and subsequently challenged in courts.²⁰

3.0 IReV Portal’s Status under the 2022 Act

The Independent National Electoral Commission Result Viewing (IReV) portal is an online transparency platform designed to display polling-unit results in the form of scanned images or PDF

¹⁴*Tukur v Government of Gongola State* (1989) 4 NWLR (Pt 117) 517 (SC); see also The Nation ‘Ex-INEC officials Igini, Okoye, Nwafor pick holes in amended Electoral Act’ 28 February, 2026 available at <https://thenationonlineng.net/ex-inec-officials-igini-okoye-nwafor-pick-holes-in-amended-electoral-act/> accessed on 1 March, 2026

¹⁵Y. Omorogbe, ‘Electronic Transmission of Election Results in Nigeria’ (2023) 12 *Nigerian Electoral Law Review* 45;

¹⁶Electoral Act 2022 s. 47(2)

¹⁷Electoral Act 2022 ss 60(1)–(4)

¹⁸Electoral Act 2022 s 60(5)

¹⁹Independent National Electoral Commission, *Regulations and Guidelines for the Conduct of Elections 2022* <https://thenationonlineng.net/oyetola-vs-adeleke-how-supreme-court-decided-osun-poll-dispute/>

²⁰ *Atiku Abubakar v INEC* (2023) PEPC/05/2023 (Presidential Election Petition Court)

copies of result sheets uploaded from polling units. The primary objective of the platform is to allow the public, political parties, and election observers to view results in near real time and thereby enhance electoral transparency and public confidence in the electoral process. Scholars have observed that the introduction of such digital transparency mechanisms reflects a broader global trend toward the use of technology to strengthen electoral credibility and reduce opportunities for manipulation during result collation.²¹

The Electoral Act 2022 did acknowledge the existence of an electronic repository for election results. Section 62(2) of the Act provides for a “National Electronic Register of Election Results”, which is to be maintained at the Commission’s national headquarters.²² However, the statutory framework treated this electronic register largely as an archival and transparency mechanism rather than as the legally determinative source of election results during the formal collation process. In effect, the statutory architecture preserved the traditional paper-based collation procedure while permitting the use of digital technology primarily for monitoring and verification purposes.

Consequently, in legal terms the IReV portal was not conceived as a collation system, but rather as a transparency tool. Some commentators have described it as a “sunshine mechanism”, intended to promote accountability by enabling public scrutiny of polling-unit results without displacing the statutory collation process.²³ The legal distinction between electronic transparency tools and the formal collation procedure became particularly significant during the litigation arising from the 2023 presidential election.

This issue came to the fore in the presidential election petition case of *Atiku Abubakar v INEC (No 2)*, where the petitioners argued that the failure to electronically transmit results to the IReV portal undermined the integrity of the election. The *Atiku Abubakar v INEC (2023)* rejected this contention and held that the IReV portal is not part of the legally recognised collation framework under the Electoral Act.²⁴ The Tribunal emphasised that nothing in the Act imposed a mandatory obligation on the electoral body to transmit results electronically in real time as a condition for the validity of the election.

This interpretation was reinforced on appeal by the *Atiku Abubakar v INEC*, where the Supreme Court reiterated that the legal validity of election results depends on compliance with the statutory collation procedures provided in the Act and not on the functionality or otherwise of the IReV portal.²⁵ The Court

²¹ Ojo Emmanuel, “Technology and Electoral Integrity in Nigeria” *Nigerian Journal of Public Law* (2022) 14(2) 120

²² Electoral Act 2022 s 62(2)

²³ Sam Amadi, “Digital Transparency and Electoral Accountability in Nigeria” *Law and Society Review of Africa* (2023) 9(1) 55

²⁴ *Atiku Abubakar v INEC & Ors (No 2)* (2023) PEPC/05/2023 (Presidential Election Petition Tribunal)

²⁵ *Atiku Abubakar v INEC (No 2)* (2023) **19 NWLR (Pt 1917) 1 (SC)**

further observed that the petitioners failed to demonstrate that the alleged failure to electronically transmit results substantially affected the outcome of the election.

The Court's reasoning was closely aligned with the evidential requirement under section 135(1) of the Electoral Act 2022, which places the burden on petitioners to establish not only non-compliance with the Act but also that such non-compliance substantially affected the election result.²⁶ Since the Act did not explicitly mandate electronic transmission of results, it was difficult for petitioners to establish that the non-use or malfunction of the IReV system constituted statutory non-compliance capable of invalidating the election.

Legal scholars have therefore argued that the 2022 Act created a significant regulatory gap. While the law encouraged the use of technological devices such as the Bimodal Voter Accreditation System (BVAS) and electronic result repositories, it did not clearly establish the legal status of electronically transmitted results within the official collation hierarchy.²⁷ This ambiguity meant that technological innovations introduced by the electoral commission remained largely administrative rather than statutory in character.

Consequently, the prevailing consensus as seen in both judicial decisions and academic commentary is that the Electoral Act 2022, despite introducing important technological reforms, left a notable lacuna regarding the legal status of electronic transmission of election results.²⁸ It is this gap that subsequent legislative reform efforts by the 10th National Assembly have sought to address through the Electoral Act, 2026 aimed at clarifying the legal framework governing electronic transmission and digital collation of election results.

4.0 Doctrinal and Jurisprudential Analysis: IReV Portal's Legal Status

Prior to the 2023 election cycle, Nigerian courts had already demonstrated a cautious attitude toward the evidentiary value of new electoral technologies that lacked explicit statutory backing. This judicial restraint became particularly visible during the litigation surrounding the introduction of the card reader device in the 2015 general elections. The card reader was introduced by the Independent National Electoral Commission (INEC) as an administrative innovation aimed at improving voter authentication and reducing electoral fraud. While the technology was widely applauded by election observers and scholars as a significant step toward improving electoral credibility, its legal status quickly became contentious during election petitions.²⁹

²⁶ Electoral Act 2022 s 135(1)

²⁷ Jidefor Adibe, "Electronic Transmission of Election Results and the Nigerian Electoral Process" *NIALS Journal of Electoral Law* (2023) 7(1) 33

²⁸ Chidi Anselm Odinkalu, "Electoral Technology and the Law: Lessons from Nigeria's 2023 Elections" *African Journal of Comparative Constitutional Law* (2024) 11(1) 77

²⁹ J Adibe, "Technology and Electoral Integrity in Nigeria" (2022) 7 *NIALS Journal of Electoral Law* 33

This was exemplified in the Supreme Court decision in *Nyesom Wike v Dakuku Peterside*, where the Court confronted the question of whether card reader data could override figures derived from the voters' register.³⁰ The Court acknowledged the usefulness of the device in improving election administration but held that discrepancies between card reader accreditation figures and the voters' register could not invalidate election results because the Electoral Act 2010 did not authorise reliance on card reader data as a legally determinative accreditation mechanism.³¹ In doing so, the Court reaffirmed the principle that administrative guidelines and technological innovations introduced by electoral bodies cannot override statutory provisions enacted by the legislature.

Scholars have interpreted this decision as evidence of a broader judicial philosophy that prioritizes statutory certainty over technological experimentation in electoral governance. According to Adibe, Nigerian courts tend to adopt a "legal formalist" approach to election adjudication, insisting that technological innovations must be expressly incorporated into legislation before they can acquire binding legal effect.³² Similarly, Omorogbe argues that while electoral technologies may improve transparency and credibility, their legal enforceability ultimately depends on whether they are clearly integrated into the statutory framework governing elections.³³

Consequently, the lesson from the card reader cases was clear: although regulations and guidelines may supplement the Electoral Act, they must remain consistent with its provisions. Any attempt by subordinate legislation, such as INEC guidelines or manuals, to introduce mandatory procedures not contemplated by the Act may be regarded as *ultra vires*.³⁴ The judiciary thus signalled that it would not take the lead in legitimizing electoral technology in the absence of legislative reform. Instead, the responsibility for integrating technological innovations into the electoral process rests primarily with the National Assembly through amendments to the Electoral Act.

The practical implications of this judicial position became evident during the litigation arising from the 2023 presidential election. Both major opposition candidates challenged the election results partly on the basis that INEC failed to upload polling-unit results to the INEC Result Viewing (IREV) portal in real time, thereby allegedly enabling manipulation during the collation process. However, the tribunals and appellate courts consistently held that under the Electoral Act 2022, electronic transmission of results to the IREV portal was not mandatory.³⁵ Consequently, the non-use or malfunction of the portal did not, in itself, constitute non-compliance with the Electoral Act.

³⁰ *Nyesom Wike v Dakuku Peterside* (2016) 7 NWLR (Pt 1512) 452 (SC)

³¹ Electoral Act 2010 (as amended)

³² J Adibe, "Technology and Electoral Integrity in Nigeria" (2022) 7 *NIALS Journal of Electoral Law* 33

³³ Y Omorogbe, "Electronic Transmission of Election Results and Electoral Accountability" (2023) 12 *Nigerian Electoral Law Review* 45

³⁴ *Buhari v INEC* (2008) 19 NWLR (Pt 1120) 246 (SC)

³⁵ Electoral Act 2022

In both *Peter Obi v INEC* and *Atiku Abubakar v INEC*, the courts emphasized that the legally recognized process for determining election results remained the physical collation of Form EC8A results transmitted by presiding officers from polling units to collation centres.³⁶ The courts reasoned that since the Act did not expressly require real-time electronic transmission, election results could lawfully be determined based on the physical result sheets produced during the statutory collation process.

Justice Inyang Okoro, delivering the lead judgment in the Supreme Court decision in *Atiku Abubakar v INEC*, stated unequivocally that the IReV portal is not recognised by the Electoral Act as a mode of collation and that the failure to upload results to the portal could not invalidate the election in the absence of proof that the omission substantially affected the outcome.³⁷ This reasoning reflects the evidentiary requirement contained in section 135(1) of the Electoral Act 2022, which places the burden on petitioners to demonstrate both non-compliance with the Act and that such non-compliance substantially affected the result of the election.³⁸

In essence, the courts treated the IReV portal as a commendable transparency initiative but one without decisive legal authority in determining electoral outcomes. Thus, even where discrepancies were alleged between results uploaded to the portal and those collated manually, such discrepancies were not sufficient grounds to invalidate the election unless the petitioner could independently prove fraud or demonstrate that the alleged irregularities materially affected the final result.³⁹ This requirement presented a formidable challenge for petitioners, particularly given the limited timeframe for filing and prosecuting election petitions.

The courts also emphasized the evidentiary superiority of physical election documents. In the presidential election petitions, the Supreme Court observed that the petitioners failed to produce original or duplicate copies of Form EC8A showing different results from those declared by INEC.⁴⁰ As a result, even if images on the IReV portal appeared inconsistent with the officially collated results, such digital discrepancies could not be relied upon as primary evidence without the corresponding physical result sheets. This position reinforced the long-standing legal preference for documentary election evidence derived directly from polling units.

The 2023 decisions therefore reaffirmed earlier judicial precedents concerning the relationship between the Electoral Act and INEC's administrative guidelines. Drawing parallels with the card reader litigation that followed the 2015 elections, the Supreme Court reiterated that innovations introduced through INEC regulations cannot override the clear provisions of the Electoral Act.⁴¹ The Court's reasoning

³⁶ *Peter Obi v INEC* (2023) PEPC/03/2023; *Atiku Abubakar v INEC (No 2)* (2023) 19 NWLR (Pt 1917) 1 (SC)

³⁷ *Atiku Abubakar v INEC (No 2)* (2023) 19 NWLR (Pt 1917) 1 (SC)

³⁸ Electoral Act 2022 s 135(1)

³⁹ C Odinkalu, "Electoral Technology and Judicial Review in Nigeria's 2023 Elections" (2024) 11 *African Journal of Comparative Constitutional Law* 77

⁴⁰ *Atiku Abubakar v INEC (No 2)* (2023) 19 NWLR (Pt 1917) 1 (SC)

⁴¹ *Nyesom Wike v Dakuku Peterside* (2016) 7 NWLR (Pt 1512) 452 (SC)

reflects a consistent jurisprudential approach that prioritizes statutory authority over administrative experimentation in election management.

Scholars have observed that this judicial conservatism has both positive and negative implications for electoral reform. On the one hand, it preserves the principle of legality by ensuring that major changes to electoral procedures are introduced through democratically enacted legislation rather than administrative discretion. On the other hand, it may slow the adoption of technological innovations capable of improving electoral transparency and efficiency.⁴²

Although the courts did not have occasion to interpret a proviso similar to that introduced in the amended Section 60(3) of the Electoral Act in the 2023 cases, several judicial comments foreshadow how such a provision might be treated in future litigation. For instance, in the petition arising from the Osun State governorship election, Justice Emmanuel Agim observed that even if electronic transmission had been legally required, practical limitations such as network failures could result in incomplete digital records of polling-unit results.⁴³ His Lordship further noted that the Electoral Act did not impose any legal obligation on presiding officers to transmit results electronically to the INEC database during the polling process.⁴⁴

These observations underscore the judiciary's literal approach to statutory interpretation in election law. Nigerian courts have repeatedly emphasised that election statutes must be applied strictly and that obligations not expressly provided in the statute cannot be implied.⁴⁵ Consequently, where the law does not mandate a particular technological procedure, courts tend to treat such procedures as administrative conveniences rather than legally binding requirements.

However, once a requirement is expressly incorporated into legislation, courts are generally prepared to enforce it rigorously, including any provisos or exceptions contained within the statutory framework. Established principles of statutory interpretation suggest that courts will attempt to harmonise the main provision of a statute with its proviso, ensuring that the proviso does not undermine the legislative purpose of the principal enactment.⁴⁶ If the amended Section 60(3) of the Electoral Act were to be litigated, courts would likely attempt to give effect both to the requirement of electronic transmission and to any proviso allowing manual backup procedures.

Ultimately, the way Nigerian courts interpret such provisions will depend on the precise wording of the statute and the factual circumstances of each case. Past decisions suggest that courts are inclined toward cautious and literal interpretation of election laws. Critics argue that if the proviso allowing manual

⁴² S Amadi, "Digital Transparency and the Future of Elections in Nigeria" (2023) 9 *Law and Society Review of Africa* 55

⁴³ *Oyetola v Adeleke* (2023) 7 NWLR (Pt 1888) 499 (SC)

⁴⁴ *Oyetola v Adeleke* (2023) 7 NWLR (Pt 1888) 499 (SC)

⁴⁵ A Nwafor, *Electoral Law and Democratic Governance in Nigeria* (Enugu: SNAAP Press 2019)

⁴⁶ *Attorney-General of Abia State v Attorney-General of the Federation* (2002) 6 NWLR (Pt 763) 264 (SC)

fallback procedures is drafted too broadly, it could create opportunities for abuse by enabling electoral officials to rely on alleged “technical failures” to circumvent electronic safeguards.⁴⁷ For this reason, legal scholars and electoral reform advocates continue to scrutinise the wording of Section 60 and related provisions in anticipation of future judicial interpretation.

5.0 “Transmission” vs “Transfer”: Legislative Nuance and Its Impact

At the heart of the recent electoral reform lies a seemingly semantic but legally significant distinction between electronic transmission of results and the mere transfer of results. This issue emerged prominently during the legislative process that led to the amendment of Section 60 of the Electoral Act. The version of the amendment initially passed by the House of Representatives provided that the Presiding Officer “*shall electronically transmit*” polling unit results “*in real time*” to the INEC Result Viewing (IReV) portal after completing the physical Form EC8A.⁴⁸ This formulation was intended to remove ambiguity by making the digital upload of results both mandatory and immediate, thereby strengthening transparency and electoral accountability.⁴⁹ Scholars of electoral governance have long argued that mandatory electronic transmission could help curb post-poll manipulation by ensuring that results are recorded and publicly available at the point of origin.⁵⁰

By contrast, the initial position attributed to the Senate during its deliberations suggested retaining the more open-ended term “transfer”, which had appeared in the Electoral Act 2022.⁵¹ That formulation left the method of conveying results largely to the discretion of the Independent National Electoral Commission (INEC), allowing either manual or electronic methods.⁵² Critics argued that this language created a loophole capable of undermining transparency because it allowed manual collation to continue without technically breaching the law.⁵³ Consequently, the proposal to revert to the term *transfer* generated considerable public criticism, particularly in light of controversies surrounding the electronic transmission of results during the 2023 general elections. Civil society organisations and election

⁴⁷ Y Omorogbe, “Electronic Transmission of Election Results and Electoral Accountability” (2023) 12 *Nigerian Electoral Law Review* 45

⁴⁸ Ogunjuyigbe, O. *Reps approve mandatory electronic transmission of election results*. **BusinessDay Nigeria** 18 December, 2025 available at <https://businessday.ng/politics/article/reps-approve-mandatory-electronic-transmission-of-election-results/> accessed on 1 March, 2026

⁴⁹ Okoye, F. (2023) ‘Technology and Electoral Transparency in Nigeria: Lessons from the 2023 General Elections’ *Journal of African Elections* 22(2) 120–138

⁵⁰ Ojukwu, E. & Aiyede, R. (2024) ‘Digital Electoral Governance and Democratic Accountability in Nigeria’ *African Journal of Governance and Development* 13(1) 61–80

⁵¹ Omolaoye, S. *Reps, Senate differ on e-transmission of results*. **Guardian Nigeria** 5 February, 2026 available at <https://guardian.ng/news/reps-senate-differ-on-e-transmission-of-results/> accessed on 1 March, 2026

⁵² Electoral Act 2022, s 60(5)

⁵³ Nwabueze, B.O. (2023) ‘Electoral Reforms and the Legal Framework for Digital Result Transmission in Nigeria’ *Nigerian Law and Practice Journal* 12(1) 88–110

observers maintained that the ambiguity surrounding the word “transfer” weakened the enforceability of digital transmission mechanisms.⁵⁴

Accounts of the legislative debates indicate that the majority of senators were in fact supportive of electronic transmission. Senator Victor Umeh, who participated actively in the deliberations, clarified that most senators agreed on the principle of electronic transmission but were concerned about the phrase “in real time” because of persistent network connectivity challenges in remote areas of Nigeria. According to him, the Senate’s intention was to remove the phrase “*in real time*” while retaining the requirement of electronic transmission rather than the broader term *transfer*. He argued that reverting to “transfer” would be legally and conceptually inappropriate, since it would recreate the very ambiguity the amendment sought to eliminate.⁵⁵

Ultimately, the harmonised version of the amendment adopted the phrase “electronically transmit” as the operative verb, while introducing a proviso to address the possibility of technological failure. The revised provision, in substance, states that:

“The Presiding Officer shall electronically transmit the results from each polling unit to the IReV portal after completing Form EC8A... Provided that where electronic transmission fails due to communication failure and it becomes impossible to transmit, the Form EC8A shall constitute the primary source for collation and declaration of results.”

This formulation establishes electronic transmission as the default legal rule while preserving a contingency mechanism for genuine technological breakdowns. From a statutory interpretation perspective, the proviso operates as a limited exception to the general rule of electronic transmission. Nigerian courts have consistently held that provisos must be construed narrowly so that they do not undermine the substantive provision of the statute.⁵⁶

The shift from the phrase “transfer... as prescribed by the Commission” in the 2022 Electoral Act to “electronically transmit... to IReV” in the amended legislation therefore represents more than a cosmetic change. It removes the discretion previously enjoyed by INEC regarding the method of result transmission. Under the earlier regime, INEC could legitimately rely on manual collation procedures because the statute did not explicitly mandate electronic transmission. This interpretation was reinforced by judicial decisions following the 2023 presidential election, where courts held that

⁵⁴ Centre for Democracy and Development (CDD) (2023) *Post-Election Assessment of the 2023 Nigerian General Elections*. Abuja: CDD

⁵⁵ Umeh, V. (2026) ‘Debates on Electronic Transmission in the Amendment of the Electoral Act’ *National Assembly Legislative Proceedings* (Senate Debates)

⁵⁶ Adegoke, Y. (2019) ‘Statutory Interpretation and the Role of Provisos in Nigerian Legislation’ *Nigerian Bar Journal* 17(2) 45–62

electronic uploading to the IReV portal was not a statutory requirement under the Electoral Act 2022.⁵⁷ As a result, the absence or delay of electronic uploads could not constitute legal non-compliance.

By contrast, the amended provision creates a clear statutory obligation. Failure to transmit results electronically, unless justified by genuine communication failure, could now amount to non-compliance with the Electoral Act, potentially providing petitioners with stronger legal grounds in election petitions. Legal scholars have observed that codifying electronic transmission in the statute strengthens electoral transparency by creating a verifiable digital record that can be cross-checked with physical results.⁵⁸ The reform also serves an important symbolic purpose by signalling a commitment to modernising electoral administration and improving public trust in election outcomes.

Another notable aspect of the amendment is the Senate's decision to remove the phrase "in real time." While the House of Representatives intended this phrase to ensure immediate uploading of results from polling units, the Senate feared that such a strict requirement could invalidate legitimate results from areas suffering from poor network coverage.⁵⁹ In practice, the removal of this phrase introduces a degree of flexibility, allowing results to be uploaded electronically after a short delay where technical constraints make immediate transmission impossible. Nonetheless, some commentators caution that this flexibility could be exploited by unscrupulous officials who might deliberately delay uploads while monitoring collation trends.⁶⁰

Further complexity arises from the definition provisions of the amended Act. Reports indicate that Section 155, the interpretation section, defines the word "transmit" broadly to include both manual and electronic means. While this definition may apply to other administrative communications under the Act, it potentially creates interpretive tension with Section 60(3), which expressly requires electronic transmission. It is however notable that such inconsistencies occasionally arise during amendments where new terminology replaces older technological references, similar to the earlier legislative transition from card readers to BVAS in electoral accreditation procedures.⁶¹

Overall, the shift in terminology reflects a deliberate attempt by the legislature to strengthen the integrity of the result transmission process. While the earlier concept of "transfer" in the 2022 Act functioned as an escape hatch for manual collation, the requirement to "electronically transmit" results in the amended

⁵⁷ *Atiku Abubakar v INEC (No 2)* (2023) 19 NWLR (Pt 1917) 1 (SC); *Peter Obi & Anor v. Independent National Electoral Commission & Ors* (No. 1) (2023) 19 NWLR (Pt. 1834) 97

⁵⁸ Ojukwu, E. & Aiyede, R. (2024) 'Digital Electoral Governance and Democratic Accountability in Nigeria' *African Journal of Governance and Development* 13(1) 61–80

⁵⁹ Ige, O. *Electoral Act: Senate approves e-transmission of results, allows manual backup*. **Punch Nigeria**. 10 February, 2026 available at <https://punchng.com/senate-okays-e-transmission-of-election-results-manual-upload/> accessed on 1 March, 2026

⁶⁰ Okoye, F. (2023) 'Technology and Electoral Transparency in Nigeria: Lessons from the 2023 General Elections' *Journal of African Elections* 22(2) 120–138

⁶¹ Nwabueze, B.O. (2023) 'Electoral Reforms and the Legal Framework for Digital Result Transmission in Nigeria' *Nigerian Law and Practice Journal* 12(1) 88–110

Electoral Act, 2026 significantly narrows that possibility. The effectiveness of this reform will ultimately depend on two factors: the faithful implementation of the law by INEC and the readiness of the judiciary to interpret the proviso narrowly so that claims of “communication failure” are not abused as routine justifications for reverting to manual processes. If properly implemented and judicially enforced, the reform may represent a meaningful step toward strengthening electoral transparency and public confidence in Nigeria’s democratic process.

6.0 What the 2026 Amendment Sought to Cure: Electoral Fraud and Result Manipulation

The 2026 amendment to Section 60 was propelled by a clear *mischief*, that is, the ease with which election results could be manipulated between the polling station and the final collation under the old legal regime. Historically, Nigeria’s elections have often seen fraud not at the ballot-box itself but during collation, where results were altered or inflated as they moved up the hierarchy, a problem the real-time electronic transmission to the INEC Result Viewing (IReV) portal was designed to address. Critics of past elections argued that without a public, immediately available digital record, collation centre figures could be forged or tampered with without an accurate reference point.⁶²

The IReV portal was introduced to create a transparent, immutable record of polling unit results as soon as voting ended. However, before the 2026 amendment, the portal’s legal status was uncertain because it was not expressly entrenched in law, which constrained tribunals, they could not invalidate officially declared results merely because different numbers appeared on IReV unless those figures were proven authentic and material in the dispute. The new Section 60 attempts to address this by expressly mandating electronic transmission in the law.

The proviso “where electronic transmission fails, revert to physical” was inserted to cure a different mischief: the risk that an election might be unduly stalled or invalidated purely due to technological glitches. Lawmakers were concerned that making real-time electronic transmission mandatory could lead to widespread invalidations if network coverage was poor, since mandatory real-time requirements might be impossible to meet in many areas.⁶³ Section 60 now requires that results be electronically transmitted to the IReV portal after the prescribed Form EC8A has been signed and stamped, but where electronic transmission fails due to communication issues, Form EC8A becomes the basis for collation and declaration.⁶⁴

This compromise ensures that no polling unit result is lost solely because of a tech failure, while still embedding electronic transmission in the law. Critics argue, however, that this dual mechanism could

⁶² This Day Live. *Electoral Act 2026: The pros and cons*. February, 2026 available at <https://www.thisdaylive.com/2026/02/24/electoral-act-2026-the-pros-and-cons/> accessed on 1 March, 2026

⁶³ Daily Trust, *Electoral bill: Senate decision on real-time transmission*. February, 2026 available at <https://dailytrust.com/electoral-bill-nlc-threatens-mass-action/> accessed on 1 March, 2026

⁶⁴ Electoral Act, 2026 s. 60(3); see also The Nation Newspaper, *What’s new in Electoral Act 2026*, available at <https://thenationonlineng.net/whats-new-in-electoral-act-2026/> accessed on 1 March, 2026

be exploited, for example, if officials falsely claim a communication failure to avoid transmitting results, potentially recreating an opportunity for mischief that the reform was meant to curb.⁶⁵ The inclusion of Form EC8A as the fallback may therefore give INEC discretion that could undermine the normative expectation of electronic transmission.⁶⁶

Another issue is the apparent inconsistency between how electronic transmission failure and BVAS accreditation failure are treated in the law. Whereas Section 47 already provides strict consequences for BVAS failures during accreditation, the amended Section 60 does not provide equally stringent remedies for failed result transmissions, reflecting a legislative choice to balance ideal transparency with practical realities.

Finally, while the amendment focuses on the problem of collation centre fraud, technology alone does not address other mischiefs, such as vote-buying or intimidation at polling units. Nonetheless, if used in good faith, the legal entrenchment of result transmission and its public accessibility via IReV should significantly reduce opportunities for post-poll manipulation by creating a digital trail that can be scrutinised and referenced during disputes. Under the new regime, combining Section 60's transmission requirements with other provisions could give returning officers stronger tools to review discrepancies between manual and electronic results.⁶⁷

In summary, the 2026 amendment sought to cure the ails of post-poll manipulation by creating an enforceable, transparent result transmission process. It largely achieves the formal legal empowerment of that process, but whether it will cure the mischief in substance will depend on how scrupulously INEC implements the law and how proactively courts enforce the new provisions in practice.

7.0 Critical Evaluation and Conclusion

From a legal perspective, the 2026 amendment to Section 60 of the Electoral Act is a positive step that brings Nigeria's laws closer to modern electoral realities. By embedding the IReV electronic transmission system into law, the amendment makes transparency a legal requirement, not just an aspiration. This is a win for those who have long argued that technology can strengthen election integrity.

⁶⁵ This Day Live. *Electoral Act 2026: The pros and cons*. February, 2026 <https://www.thisdaylive.com/2026/02/24/electoral-act-2026-the-pros-and-cons/> accessed on 1 March, 2026; see also Daily Trust, *Electoral bill: Senate decision on real-time transmission*. February, 2026 available at <https://dailytrust.com/electoral-bill-nlc-threatens-mass-action/> accessed on 1 March, 2026

⁶⁶ The Nation Newspaper *What's new in Electoral Act 2026* available at <https://thenationonlineng.net/whats-new-in-electoral-act-2026/> accessed on 1 March, 2026

⁶⁷ *ibid*

However, the victory comes with a caveat. The proviso allowing the physical result to be used if electronic transmission “fails” could weaken the reform. In theory, this makes sense: elections shouldn’t be invalidated due to network outages or technical glitches. But in practice, Nigeria’s history of electoral malpractice means that “technical failure” could be misused. Unscrupulous actors could deliberately interfere with devices or claim a transmission failure to justify results that were never electronically transmitted.

The success of the amendment will therefore depend on several factors. Firstly, INEC must enforce the law effectively by creating clear protocols for what happens when transmission fails. For example, will failed transmissions be retried at set intervals? Must such failed transmissions be documented by a supervisor or observer? Will backup physical results be tracked? Clear rules will help ensure the proviso is a true fallback, not a loophole.

Secondly, courts and tribunals must interpret the proviso carefully. They should require proof of genuine “communication failure” before allowing reliance on the physical result. If only a few units fail to transmit while the majority succeed, courts could scrutinize the exceptions instead of ignoring the electronic record altogether. The proviso should remain an exception, not a rule.

Thirdly, the behavior of election stakeholders matters. Parties, candidates, and observers must actively monitor transmissions. Agents can use smartphones to verify uploads, and civil society can perform parallel tabulations from IReV data. But if actors intend to subvert the process, the conflict may shift from ballot boxes to technology, such as signal jamming or database manipulation. The amendment reduces opportunities for fraud but does not eliminate it entirely.

In conclusion, the IReV portal now has formal legal standing, transforming it from a transparency tool into a required part of result collation. This aligns Nigeria’s electoral laws with modern democratic practices and the public’s expectation for credible elections. The Supreme Court’s past stance that “guidelines cannot override the Act” prompted this legislative action, and the amended law now provides clear authority on electronic transmission.

Ultimately, the amendment is necessary but it may not be sufficient. Its real test will come in the next general election. If disputes over results decrease and confidence rises, the reform will have succeeded. If the proviso is frequently used to bypass electronic transmission, further reforms or stricter regulations may be needed. For now, Nigeria has taken an important step by

giving IReV a legal foundation, but it will take vigilance from lawmakers, INEC, courts, and citizens to ensure this tool strengthens transparency rather than enabling new abuses.