

ELECTORAL JURISPRUDENCE AND TECHNOLOGY: ANALYZING BVAS, IReV AND THE FUTURE OF ELECTION PETITIONS IN NIGERIA*¹

Abstract

This article argues that Nigeria currently occupies an unstable middle ground: technological infrastructure exists, but jurisprudential frameworks remain inadequate, and the Electoral Act 2026, while progressive, contains structural deficiencies that will generate litigations in 2027.

Keywords: Election Petitions, Jurisprudence, Technology, BVAS, IReV, Nigeria

1. Introduction

Nigeria's 2023 general elections marked a watershed moment in the nation's electoral evolution—not because they were particularly transparent, but because they crystallized the collision between technological promise and jurisprudential reality. The Independent National Electoral Commission (INEC) deployed the Bimodal Voter Accreditation System (BVAS) across 176,846 polling units and established the INEC Result Viewing (IReV) Portal to transmit results electronically. These innovations, codified in the Electoral Act 2022 and championed as democracy-enhancing tools, generated unprecedented expectations for credible, transparent elections. Those expectations shattered spectacularly on February 25, 2023. As presidential election results trickled in, the IReV portal displayed incomplete data, illegible scanned documents, and conspicuous gaps. By INEC's own admission, thousands of polling unit results never appeared on IReV. The Bimodal Voter Accreditation System—designed to authenticate voters biometrically and transmit results electronically—functioned erratically. Some units recorded zero accredited voters despite hundreds of announced votes. Others showed accreditation figures wildly exceeding registered voters.

The ensuing legal battles exposed fundamental contradictions at the intersection of electoral technology and Nigerian jurisprudence. Could INEC's failure to electronically transmit results—after explicitly promising to do so—invalidate an election? Did IReV data constitute admissible evidence or merely a 'viewing portal' with no legal weight? Must election tribunals inspect BVAS machines to verify accreditation data, or could INEC's manual records trump technological evidence? The Supreme Court's decisive answers to these questions in *Atiku Abubakar & Anor v. INEC & Ors* (2023) and its watershed pronouncement in *Atiku v. INEC* (No. 2) [2023] 19 NWLR (Pt. 1917) 1, delivered December 29, 2023, reshaped Nigeria's electoral landscape. This article examines that jurisprudence critically, analyzes the Electoral Act 2026's legislative response, and projects how technology will function in the 2027 elections and beyond.

The stakes extend beyond academic inquiry. Nigeria's electoral system operates under intense strain. Voter turnout has declined from 52.3% in 1999 to 26.7% in 2023—a reflection of profound public disillusionment with electoral integrity. If technology cannot restore confidence, Nigeria faces democratic atrophy. Conversely, if properly deployed and legally supported, electoral technology could transform Nigeria's democratic practice.

2. The Technological Evolution: From Smart Card Readers to BVAS

Historical Context: Manual Manipulation and the Case for Technology

Nigeria's electoral history provides compelling rationale for technological intervention. The 2007 general elections—widely regarded as Nigeria's worst-conducted democratic exercise—featured ballot box stuffing, result sheet alteration, and collation center manipulation. International and domestic observers documented systematic fraud. The European Union Election Observation Mission reported that the 2007 polls 'fell far short of basic international standards.' INEC itself acknowledged the process's fundamental flaws. Subsequent elections revealed persistent patterns: thugs snatching ballot boxes, presiding officers altering

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figures during transit, collation officers announcing results inconsistent with polling unit declarations. Manual processes created opportunities for manipulation at multiple stages. The absence of real-time verification meant declared results often diverged dramatically from votes cast. This crisis of credibility demanded intervention.

The Smart Card Reader Era (2015-2019)

INEC's introduction of the Smart Card Reader for the 2015 elections represented Nigeria's first systematic deployment of electoral technology. The device authenticated voters biometrically through fingerprint verification, preventing multiple voting and impersonation. Its impact proved transformative. The 2015 presidential election-Nigeria's first democratic transfer of power from incumbent to opposition-gained credibility partly through Smart Card Reader authentication. However, significant limitations emerged. The Smart Card Reader lacked statutory recognition; INEC introduced it through administrative guidelines. This created ambiguity: were presiding officers legally obligated to use it? Could elections proceed where devices malfunctioned? The Electoral Act 2022 provided no answers because the statute predated the technology. Courts split on the Smart Card Reader's legal status. Some tribunals treated it as binding on INEC since the Commission promulgated regulations requiring its use. Others held that absent explicit statutory mandate, the device constituted administrative convenience without legal force. This doctrinal uncertainty plagued election petitions throughout 2015-2019.

BVAS: The Bimodal Revolution

The Bimodal Voter Accreditation System, deployed for 2023 elections, represented substantial advancement over Smart Card Readers. BVAS incorporated dual biometric verification (fingerprint and facial recognition), creating redundancy against authentication failure. Beyond accreditation, BVAS possessed technical capacity for electronic result transmission-a function Smart Card Readers lacked. INEC's specifications revealed BVAS's sophisticated architecture. Each device captured voter biometrics, recorded accreditation data with timestamps, photographed polling unit results (Form EC8A), and possessed connectivity for uploading images to IReV. This multifunctionality theoretically eliminated gaps between accreditation, voting, and result declaration. The electronic trail would provide verifiable documentation resistant to post-election manipulation. The Electoral Act 2022 granted BVAS implicit recognition through Section 47, requiring INEC to use 'appropriate technology' for voter accreditation. Section 60 permitted electronic transmission of results. INEC's Regulations and Guidelines for the 2023 general elections made BVAS deployment mandatory and required presiding officers to upload results to IReV immediately after announcement at polling units.

These provisions created binding legal obligations-or so stakeholders believed. INEC Chairman Professor Mahmood Yakubu's January 2023 Chatham House presentation amplified expectations. He explicitly guaranteed electronic transmission of results in real-time, characterizing this as a transformative advancement ensuring transparency and reducing manipulation opportunities.

IReV: The Result Viewing Portal

The INEC Result Viewing Portal constituted the second pillar of Nigeria's electoral technology strategy. Established as a public-facing website (<https://inecelectionresults.com>), IReV would display Form EC8A images uploaded from polling units via BVAS, enabling real-time public verification of declared results. IReV's theoretical benefits were substantial:

Transparency: Citizens, party agents, and observers could independently verify results without relying solely on INEC announcements.

Accountability: Real-time uploading created contemporaneous records, making post-collation manipulation detectable.

Dispute Resolution: Election petitioners could compare IReV data with manually declared results, identifying discrepancies.

Public Confidence: Visible, verifiable data would demonstrate electoral integrity, restoring declining public trust.

However, IReV's February 2023 performance contradicted these aspirations. Analysis by civil society organizations documented over 18,000 illegible result sheets on the portal. Thousands of polling units showed no uploaded results. Some uploads occurred days after voting, not real-time. Where results appeared, image quality often prevented verification-blurred photographs, improper lighting, or incomplete forms. These failures triggered the legal controversies this article examines.

3. The Supreme Court's Jurisprudence: Three Defining Authorities

Atiku Abubakar & Anor v. INEC & Ors (SC/CV/935/2023) – October 26, 2023

Facts and Procedural History: The 2023 presidential election, conducted February 25, produced a contested outcome. INEC declared Bola Ahmed Tinubu of the All Progressives Congress (APC) winner with 8,794,726 votes (36.61%). Atiku Abubakar of the Peoples Democratic Party (PDP) secured 6,984,520 votes (29.07%), and Peter Obi of the Labour Party polled 6,101,533 votes (25.40%). Dissatisfied, Atiku and the PDP filed petition CA/PEPC/05/2023 at the Presidential Election Petition Court, raising multiple grounds including:

Non-compliance with Electoral Act: Alleged INEC failed to electronically transmit results as mandated by the Electoral Act 2022 and its own regulations.

Legitimate Expectation Doctrine: Claimed INEC's explicit promises to transmit results electronically created binding obligations.

FCT 25% Requirement: Argued Tinubu failed to secure 25% votes in two-thirds of states AND the Federal Capital Territory, misinterpreting Section 134(2) of the Constitution.

Qualification Issues: Challenged Tinubu's eligibility based on alleged certificate forgery and narcotics conviction.

The Presidential Election Petition Tribunal, in its September 6, 2023 judgment led by Justice Haruna Tsammani, dismissed the petition comprehensively. On appeal, Atiku presented 35 grounds seeking to overturn the tribunal's decision.

The Supreme Court's Holdings: Justice Inyang Okoro, presiding over a seven-member panel, delivered the lead judgment. On electronic transmission-the issue with greatest implications for electoral technology-the Court held:

Electronic Transmission Not Mandatory Under Electoral Act 2022: The Court examined Section 60(5) of the Electoral Act 2022, which provided: 'The Presiding Officer shall transmit results of elections by electronic means to the Commission's collation system as prescribed by the Commission.' The Court noted the phrase 'as prescribed by the Commission' delegated discretion to INEC regarding transmission methodology. Reading Section 60 alongside INEC's Regulations, the Court concluded that while INEC committed to electronic transmission through its guidelines, the statutory framework provided alternatives. Where electronic transmission failed, manual transmission remained permissible. The Court stated: 'The failure of INEC to electronically transmit results does not affect the collation of results. The law permits INEC to determine the mode and manner of transmission.' This holding effectively characterized electronic transmission as aspirational rather than mandatory-a means INEC could deploy but wasn't legally compelled to use exclusively.

IReV as 'Viewing Portal' Not Legal Collation System: Perhaps most controversially, the Court held that IReV constituted a 'viewing portal' for public information, not a legally recognized collation system. Justice Okoro stated: 'There is a difference between the result collation system and the IReV portal. The IReV portal

is for viewing results, not for collation and declaration.’ This distinction proved critical. It meant IReV data carried no independent legal weight in determining election outcomes. Where discrepancies existed between IReV-displayed results and manually collated figures, manual records prevailed. The Court placed evidentiary primacy on physical Form EC8A signed at polling units, not electronic images uploaded to IReV.

Rejection of Legitimate Expectation Doctrine: Atiku's appeal invoked the doctrine of legitimate expectation—arguing INEC's explicit promises to transmit results electronically created binding obligations. The Court rejected this ground decisively: ‘INEC conducted the election within the legal framework. The doctrine of legitimate expectation cannot override statutory provisions. INEC's operational decisions, even when publicly stated, do not alter the law's permissive language.’ This holding established that INEC's pre-election commitments, absent statutory compulsion, could not be enforced through election petitions. Promises made at Chatham House or in guidelines remained administratively binding perhaps, but not judicially enforceable in determining election validity.

Burden of Proof on Petitioner: The Court reaffirmed election petition law's fundamental principle: petitioners bear the burden of proving non-compliance substantially affected election outcomes. Justice Okoro noted: ‘The appellants relied solely on INEC's failure to transmit results in real-time. They did not produce polling unit-by-polling unit evidence showing how transmission failure altered the election outcome.’ This meant challenging electronic transmission failures required demonstrating not merely that INEC failed to upload results, but that such failure changed who won the election. Absent alternative vote tallies proving a different winner, transmission failures proved legally inconsequential.

Dismissal of Fresh Evidence Application: Atiku sought to introduce Chicago State University documents as fresh evidence of certificate forgery. The Court refused, holding that Section 285(5) of the 1999 Constitution mandates election petitions be filed within 21 days of result declaration, and Section 285(6) requires tribunals to deliver judgment within 180 days. These stringent timelines preclude introducing evidence obtained after petition filing. The Court stated: ‘Election petitions are time-bound proceedings. Fresh evidence cannot be admitted to extend timelines the Constitution has circumscribed.’

Implications: The Supreme Court's October 2023 decision fundamentally undermined technological electoral reforms' legal foundation. By characterizing electronic transmission as discretionary and IReV as a mere viewing tool, the Court signaled that technology's benefits were operational, not legal. Elections could be valid despite comprehensive technological failures. This created perverse incentives: if manual processes ultimately determined legal outcomes, what prevented returning to purely manual systems? Why invest billions in BVAS and IReV if courts would disregard their data when convenient?

Atiku v. INEC (No. 2) [2023] 19 NWLR (Pt. 1917) 1 – December 29, 2023

Context and Significance

Two months after dismissing Atiku's main appeal, the Supreme Court delivered a second, more comprehensive judgment addressing lingering questions about electoral technology's legal status. This judgment, known as *Atiku v. INEC (No. 2)*, provided definitive answers on issues the October decision left ambiguous. Justice John Inyang Okoro again delivered the lead judgment for a seven-member panel comprising Justices Uwani Abba Aji, Mohammed Garba, Ibrahim Saulawa, Adamu Jauro, Emmanuel Agim, and Tijjani Abubakar.

Key Holdings

INEC's Regulatory Power is Plenary but Not Unlimited: The Court affirmed that Section 153 of the 1999 Constitution and Section 40 of the Electoral Act vest INEC with power to regulate its procedures and conduct elections. However, such regulations cannot contradict or exceed statutory provisions. The Court stated: ‘INEC's power to make regulations is derivative from the Electoral Act. Where the Act uses permissive

language ('may'), INEC cannot through regulations convert it to mandatory language ('shall').⁹ This principle established that INEC's guidelines requiring electronic transmission didn't transform the Electoral Act 2022's permissive provisions into mandatory obligations. Administrative directives cannot override legislative intent.

Technology Adoption Requires Express Statutory Authorization: Addressing whether electoral innovations introduced through INEC guidelines carry legal force, the Court held: 'Where the Electoral Act does not expressly mandate use of specific technology, its deployment remains within INEC's administrative discretion. Courts will not treat administrative guidelines as having statutory force absent explicit legislative endorsement.'¹⁰ This pronouncement confirmed that Smart Card Readers, BVAS, and IReV-despite operational deployment-lacked binding legal status under the Electoral Act 2022. Their use was administrative policy, not legal requirement.

Notable Pronouncement on Need for Technology: Significantly, the Court acknowledged technology's importance while declining to mandate it judicially. Justice Okoro stated: 'We commend INEC's efforts in adopting technology to enhance electoral transparency. However, the place of technology in our electoral system must be determined by the National Assembly through explicit statutory provisions, not by judicial interpretation or INEC's administrative fiat.'¹¹ This statement served dual purposes: praising technological advancement while firmly placing responsibility for legal recognition on the legislature. The Court essentially told the National Assembly: if you want technology to have legal force, amend the Electoral Act to say so explicitly.

Collation and Transmission Distinction: The judgment carefully distinguished between collation (the hierarchical aggregation of results from polling units to wards, local governments, states, and federation-wide) and transmission (the conveyance of result data from one location to another). The Court held that Section 65 of the Electoral Act 2022, which details collation procedures, creates a manual, physical process where collation officers progressively aggregate results. Transmission-whether electronic or manual-serves merely to convey information to collation centers. It does not constitute collation itself. This distinction proved crucial: IReV transmitted result images, but collation occurred through physical Form EC8A aggregation at designated centers. Transmitted data thus remained auxiliary to, not determinative of, official results.

Burden of Proof in Technology-Related Challenges: Where petitioners allege non-compliance with technology deployment, the Court held they must prove: (a) The technology's use was legally mandatory, not merely administratively preferred; (b) Non-compliance occurred; (c) Such non-compliance substantially affected the election outcome; and (d) Absent the non-compliance, a different candidate would have won. Failure to establish any element proves fatal to technology-based challenges.

Analysis and Critique

Atiku v. INEC (No. 2) provided clarity but also revealed deep tensions in Nigeria's electoral-technology jurisprudence. The Court correctly identified that the Electoral Act 2022's language left technology's legal status ambiguous. However, the judgment's formalist approach created practical problems:

The Formalism Trap: By insisting on express statutory language before recognizing technology's legal force, the Court created a system where INEC could deploy technology, citizens could rely on it, yet courts would disregard it. This breeds cynicism and undermines institutional credibility.

The Institutional Competence Question: Electoral technology evolves faster than legislation. BVAS replaced Smart Card Readers within seven years. What device will succeed BVAS in 2030? If the National Assembly must specifically legislate each technological iteration, Nigeria's electoral system will perpetually lag behind available innovations.

The Legitimate Expectation Gap: The Court's rejection of legitimate expectation doctrine in electoral contexts seems inconsistent with administrative law principles. When a public authority makes explicit, unambiguous promises that citizens rely on detrimentally, courts typically enforce such commitments. Why should electoral administration be exempt?

The Evidence Paradox: The judgment affirmed that petitioners challenging election results bear heavy evidentiary burdens-producing polling unit agents' testimony, tendering Form EC8A, demonstrating unit-by-unit non-compliance. Yet simultaneously, the Court devalued the one evidence source (BVAS data and IReV records) capable of systematically documenting irregularities at scale. This creates an impossible burden: prove systematic fraud without using systematic evidence.

Ighodalo v. Okpebholo (Supreme Court Judgment, July 10, 2025)

Factual Background

The Edo State gubernatorial election of September 21, 2024 provided the next major test of electoral technology jurisprudence. INEC declared Monday Okpebholo of the APC winner with 291,667 votes, defeating Asue Ighodalo of the PDP who garnered 247,274 votes-a margin of 44,393 votes. Ighodalo and the PDP challenged this outcome, alleging systematic over-voting in 765 polling units across 18 local government areas. Their petition centered on BVAS evidence: they subpoenaed and tendered 154 BVAS machines, claiming the devices recorded accreditation data fundamentally inconsistent with announced results.

Specifically, petitioners alleged:

- In numerous units, declared votes exceeded BVAS-recorded accreditations by hundreds;
- Some units showed zero accreditations in BVAS yet announced hundreds of votes;
- BVAS timestamps indicated accreditation ceased hours before voting supposedly continued;
- Discrepancies between BVAS data and manually completed Form EC8A were not randomly distributed but systematically favoured one party.

The Edo State Governorship Election Petition Tribunal dismissed the petition on April 2, 2025. Justice Wilfred Kpochi's panel held that while the petitioners tendered substantial BVAS evidence, they failed to call polling unit agents to provide oral testimony linking BVAS data to specific irregularities. The Tribunal characterized the BVAS machines and their data as 'dumped documents'-tendered without proper foundation through witness testimony. The Court of Appeal affirmed this decision, holding petitioners had not discharged their burden of proof despite tendering technological evidence. The matter reached the Supreme Court.

The Supreme Court's Decision

On July 10, 2025, a five-member panel led by Justice Mohammed Lawal Garba delivered judgment. The Court unanimously dismissed Ighodalo's appeal, affirming both the Tribunal and Court of Appeal.

BVAS as Primary Source of Accreditation Data: Significantly, the Supreme Court acknowledged-for the first time explicitly-that BVAS constitutes 'the primary source of accreditation data' under the Electoral Act 2022. This represented substantial doctrinal development beyond *Atiku v. INEC (No. 2)*, which had characterized technology as administratively convenient but not legally determinative. Justice Garba stated: 'The Electoral Act 2022 mandates accreditation through biometric means. BVAS, as the device deployed for this purpose, generates the authoritative record of who was accredited to vote. Form EC8A's accreditation figures should ordinarily correspond with BVAS data.' This holding elevated BVAS from administrative tool to legal authority-at least regarding accreditation. The Court effectively recognized that once INEC deploys technology pursuant to statutory authority, the technology's outputs carry evidentiary weight.

Evidentiary Requirements for BVAS-Based Challenges: Despite acknowledging BVAS's authoritative status, the Court maintained stringent evidentiary requirements for petitioners seeking to rely on BVAS data:

(a) Physical Production: BVAS machines must be physically tendered, not merely their printouts or data extracts; (b) Proper Foundation: Expert or technical witnesses must explain BVAS functionality, data retrieval processes, and interpretation; (c) Polling Unit Agents: Agents who witnessed voting should testify about conditions enabling verification of BVAS data accuracy; (d) Demonstration: Where BVAS machines are produced, petitioners should activate them in court, demonstrating discrepancies between stored data and declared results; (e) Comprehensive Challenge: Petitioners cannot selectively tender BVAS data from units supporting their case while ignoring others.

The Court held Ighodalo's petition failed multiple criteria. While 154 BVAS machines were tendered, petitioners didn't activate them during proceedings. No technical witnesses explained data extraction or interpretation. Polling agents testified in only a fraction of the disputed units. The Court stated: 'The appellant dumped BVAS machines on the tribunal without properly demonstrating their contents or linking them to specific allegations of irregularity. Tendering evidence without proving it remains insufficient.'

Reconfiguration Issue and INEC's Responsibility: The judgment addressed a persistent problem: INEC's reconfiguration of BVAS devices between elections. After the February 2023 presidential poll, INEC reconfigured BVAS machines for March 2023 state elections, effectively wiping data. Petitioners in both 2023 and 2024 elections struggled to obtain uncorrupted BVAS data. The Supreme Court acknowledged this concern but declined to provide remedy. Justice Garba noted: 'While reconfiguration before petition resolution creates difficulties for litigants, INEC requires functional devices for subsequent elections. The solution lies in better data preservation protocols and backup systems, not in restraining INEC from conducting elections.' This pragmatic but unsatisfying position left unresolved tensions. Election tribunals now recognize BVAS as authoritative for accreditation, yet INEC's operational requirements undermine BVAS data's availability for litigation.

Burden Remains on Petitioner Despite Technological Evidence: Most significantly, the Court reaffirmed that technological evidence doesn't shift the burden of proof from petitioner to respondent. Justice Garba held: 'Establishing discrepancies between BVAS data and declared results doesn't automatically invalidate an election. The petitioner must still prove such discrepancies substantially affected the outcome and that absent the irregularities, he would have won.' This holding meant even proving systematic over-voting via BVAS data remained insufficient unless petitioners demonstrated the over-voting changed the election winner. Since Okpebholo's margin exceeded alleged irregular votes in petitioners' calculations, the petition failed.

Implications and Analysis

Ighodalo v. Okpebholo represents incremental progress and persistent frustration. The Supreme Court finally acknowledged BVAS's legal significance—a crucial development. Technology ceased being merely administrative convenience and became authoritative evidence source for accreditation verification. However, evidentiary requirements imposed make successfully challenging elections via BVAS data extraordinarily difficult. Requiring petitioners to:

- Physically produce BVAS machines for potentially thousands of polling units;
- Activate and demonstrate each machine's data in court;
- Call polling agents for every disputed unit;
- Provide expert testimony on technical operations;
- Prove not just irregularities but also outcome-determinativeness

...creates barriers few petitioners can overcome, particularly given tribunals' compressed timelines and limited technical resources. The reconfiguration problem remains unresolved. INEC's operational needs

conflict with litigants' evidentiary requirements. The Electoral Act 2026 attempts to address this, as we examine next.

4. The Electoral Act 2026: Legislative Response and Structural Gaps

The Political Context of Reform

Following the 2023 electoral controversies and the Supreme Court's pronouncements, the National Assembly undertook Electoral Act revision. Two competing pressures shaped this process:

Public Demand for Technology: Civil society, opposition parties, and reform advocates demanded explicit statutory recognition of electronic transmission and IReV's binding status. They argued the Supreme Court had invited legislative clarification; the National Assembly should provide it.

Operational Pragmatism: INEC, some legal practitioners, and sections of the ruling party emphasized technology's limitations-network coverage gaps, equipment malfunction risks, cybersecurity vulnerabilities. They advocated maintaining manual fallbacks.

The resulting Electoral Act 2026, signed into law by President Tinubu in February 2026, attempted compromise. It made progress but also embedded contradictions that will generate litigation in 2027.

Key Provisions of the Electoral Act 2026

Section 47: Statutory Recognition of BVAS: The Act explicitly recognizes BVAS, stating: 'The Commission shall use the Bimodal Voter Accreditation System or such other technology as the Commission may adopt for the accreditation of voters.' This provision codifies BVAS's legal status, addressing *Atiku v. INEC* (No. 2)'s criticism that technology lacked express statutory recognition. Section 47(2) provides that accreditation data recorded by BVAS constitutes 'primary evidence' of the number of accredited voters-a critical evidentiary designation. However, Section 47(3) creates an exception: 'Where the Bimodal Voter Accreditation System or equivalent device fails in any polling unit and a replacement device is not deployed, the election in that unit shall be cancelled and rescheduled within 24 hours, but only where the Commission determines that the result would substantially affect the overall outcome in the constituency.' This 'substantial affect' qualifier creates problematic discretion. Who determines whether a cancelled unit's result would substantially affect outcomes? INEC? The returning officer? Election tribunals on petition? The provision provides no criteria or procedural safeguards.

Section 60: Electronic Transmission Mandate: Section 60(3) represents the Electoral Act 2026's most consequential and controversial provision: 'The Presiding Officer shall electronically transmit the results from each polling unit to the INEC Result Viewing Portal and such transmission shall be done after the prescribed Form EC8A has been signed and stamped by the Presiding Officer and/or countersigned by the candidates or Polling agents where available at the Polling Unit: Provided that in all cases, the Form EC8A shall remain the primary source of collation and declaration of the result.' This provision makes electronic transmission mandatory-resolving ambiguity in the Electoral Act 2022. The phrase 'shall electronically transmit' imposes obligation, not discretion. Presiding officers must upload results to IReV. Failure constitutes statutory breach. However, the proviso subverts this mandate by declaring Form EC8A-the manually completed result sheet-as 'the primary source of collation and declaration.' This creates immediate contradiction: if electronic transmission is mandatory but manual forms remain primary, what legal consequence follows transmission failure? Section 60(3) continues with the communication failure exception: 'Provided further that where there is communication failure, the presiding officer shall upon the restoration of communication immediately transmit the results electronically.' This second proviso requires transmission 'upon restoration of communication,' but defines neither 'communication failure' nor restoration timeframes. What constitutes communication failure—complete network absence? Intermittent connectivity? Server congestion? Equipment malfunction? Human error? Deliberate sabotage? The Act provides no definition.

Section 60(6): Criminal Sanctions: The Act creates criminal liability for transmission failures:

‘A Presiding Officer who wilfully frustrates the transmission of results electronically commits an offence and is liable on conviction to a fine of N500,000 or imprisonment for six months or both.’ This provision targets intentional obstruction but leaves ‘wilful frustration’ undefined. Must prosecution prove the presiding officer deliberately disabled BVAS? Or does unexplained failure to transmit suffice? Does claiming ‘communication failure’ provide automatic defence? Section 60(6) offers no answers.

Section 65: IReV's Elevated Status: Section 65 explicitly recognizes the INEC Result Viewing Portal: ‘The Commission shall maintain a publicly accessible result viewing portal for the electronic transmission and display of results from polling units. Results displayed on the portal shall be admissible as evidence in election petitions.’ This provision directly overrides the Supreme Court's characterization of IReV as a mere ‘viewing portal’ in *Atiku v. INEC*. IReV data now constitutes admissible evidence by statute. However, admissibility doesn't equal determinative weight. Section 65 makes IReV data admissible, but Section 60(3)'s proviso declares Form EC8A the ‘primary source.’ When conflicts arise—Form EC8A shows one result, IReV shows another—which prevails? The Act provides no hierarchy or conflict-resolution mechanism.

Section 155: Definitions: Section 155 defines ‘transmit’ as ‘to send manually or electronically,’ maintaining the alternative modes present in the 2022 Act. This seemingly innocuous definition creates interpretive problems. If transmission can be manual or electronic, does Section 60(3)'s mandate of electronic transmission mean presiding officers must attempt electronic transmission but can fall back to manual methods? Or must they transmit only electronically, with manual methods prohibited? The definition's continued ambiguity undermines Section 60(3)'s apparent clarity.

Critical Analysis: Progress and Persistent Gaps

The Electoral Act 2026 makes genuine progress:

Statutory Recognition: BVAS and IReV now enjoy explicit statutory status, eliminating arguments that they're merely administrative tools.

Mandatory Transmission: The ‘shall transmit’ language creates legal obligation, not discretion.

Admissibility: IReV data is statutorily admissible, giving technological evidence legal standing.

Criminal Accountability: Section 60(6) deters wilful obstruction, though enforcement remains uncertain.

Primary Evidence Designation: BVAS accreditation data as ‘primary evidence’ elevates its evidentiary status.

However, critical gaps persist:

Undefined Communication Failure: The Act nowhere defines ‘communication failure,’ leaving this crucial exception to unguided discretion at 176,846 polling units. Presiding officers can claim failure without objective criteria determining validity.

No Time Requirement: Electronic transmission is mandatory but untimed. Presiding officers could delay uploading for hours or days, defeating real-time transparency while technically complying.

Conflicting Primacy: Section 60(3) declares both that transmission is mandatory AND that Form EC8A is primary. This incoherence guarantees litigation when electronic and manual records conflict.

Undocumented Exception Invocation: Nothing requires presiding officers to document communication failure claims. No verification mechanism exists. The Act creates obligation but no accountability for claiming exemption.

Unprocedured Adjudication: When petitioners challenge claimed communication failures, what standard applies? Must INEC prove failure occurred? Can petitioners demand contemporaneous documentation? The Act provides no procedural framework.

Preservation and Access: The Act doesn't mandate BVAS data preservation or establish procedures for petitioners accessing such data. The reconfiguration problem persists.

These gaps will generate 2027 election petitions. Presiding officers will claim communication failure in disputed units. INEC will defend by citing Section 60(3)'s proviso prioritizing Form EC8A. Petitioners will

argue transmission failures invalidate results. Tribunals will face the same interpretive questions the Electoral Act 2026 failed to resolve.

5. Projecting 2027: Litigation Scenarios and Doctrinal Questions

Likely Petition Grounds Based on Electoral Act 2026

Based on the Electoral Act 2026's provisions and unresolved gaps, election petitions arising from 2027 polls will likely include:

Mandatory Transmission Violations: Petitioners will argue that where presiding officers failed to electronically transmit results to IReV, such failure constitutes non-compliance with Section 60(3)'s mandatory language, substantially affecting the election. They'll cite the Supreme Court's invitation in *Atiku v. INEC (No. 2)* for statutory clarity-which the Act provided. Electronic transmission is now statutorily required. Respondents will counter with Section 60(3)'s proviso declaring Form EC8A as primary source, arguing that while transmission is required, its failure doesn't invalidate elections where manual forms exist. They'll cite the communication failure exception, claiming network issues prevented upload. Tribunals will probably hold that transmission failures violate the Electoral Act but don't automatically invalidate results. Petitioners must still prove such failures substantially affected outcomes-essentially maintaining the burden of proof doctrine from *Atiku v. INEC*. Without demonstrating that non-transmitted units' results, if transmitted differently, would have changed the winner, petitions will fail.

Communication Failure Disputes: Expect extensive litigation over what constitutes 'communication failure' under Section 60(3). Petitioners will demand documentation of network issues-INEC server logs, telecommunications provider outage reports, technician diagnostics. They will argue claimed failures in units where their candidates performed poorly suggest fabrication. Respondents will argue presiding officers' subjective determinations of communication failure suffice. They'll note the Act doesn't require documentation, and imposing such requirements judicially would exceed statutory text. First-instance tribunals will likely split on this issue. Some will require objective evidence of communication failure beyond presiding officers' say-so. Others will defer to presiding officers' contemporaneous determinations. Appellate courts will need to establish consistent standards-likely holding that while presiding officers possess initial authority to determine failure, petitioners can rebut such determinations through circumstantial evidence (functioning BVAS in neighboring units, absence of reported network outages, implausible patterns of failure favouring one party).

IReV-Form EC8A Conflicts: Where IReV-displayed results differ from manually collated Form EC8A, petitioners will argue IReV data should prevail as:

- Contemporaneous with polling unit announcement (less subject to post-hoc alteration);
- Photographically documented (visible to observers);
- Statutorily admissible under Section 65;
- Generated by BVAS, now recognized as primary accreditation evidence source.

Respondents will invoke Section 60(3)'s explicit designation of Form EC8A as 'primary source,' arguing the National Assembly deliberately chose manual forms' legal primacy despite electronic transmission. Courts will apply a tiered analysis:

- *Where both IReV and Form EC8A exist and match:* No issue.
- *Where IReV data exists but Form EC8A is missing/illegible:* IReV data likely accorded substantial weight, though courts may still require corroborating evidence.
- *Where both exist but conflict:* Form EC8A will likely prevail absent evidence of tampering, given Section 60(3)'s explicit 'primary source' designation. However, IReV data may support inferences of manipulation, shifting evidentiary burdens.

BVAS Accreditation-Voting Discrepancies: *Ighodalo v. Okpebholo* established BVAS as primary accreditation evidence. The Electoral Act 2026 codifies this in Section 47(2). Petitions will increasingly rely on BVAS data showing votes exceeding accreditations.

Challenges include:

- Obtaining BVAS machines before reconfiguration;
- Activating machines in court to demonstrate stored data;
- Calling sufficient polling agents and technical witnesses;
- Proving over-voting substantially affected outcomes.

Over-voting challenges based on BVAS evidence will succeed where petitioners meet all evidentiary requirements from *Ighodalo*. However, the high burden-physical production, demonstration, comprehensive agent testimony-will defeat most petitions. Successful challenges will likely occur only in close elections where margin of victory is smaller than proven irregular votes.

Doctrinal Questions Requiring Appellate Clarification

Standard of Proof for Communication Failure: Does a presiding officer's bare assertion of communication failure suffice, or must INEC provide objective evidence? What level of proof satisfies this-balance of probabilities, or some higher standard given implications for electoral validity?

'Substantial Effect' Threshold: The Electoral Act 2026 uses 'substantially affect' in multiple contexts (Section 47(3), Section 60 (3)'s operational effect). What quantum of irregular votes 'substantially affects' an election?

- Only where irregular votes exceed margin of victory?
- Where they create reasonable doubt about declared winner?
- Some percentage threshold (e.g., 10% of total votes)?

Different tribunals will apply different standards absent Supreme Court guidance.

Relationship between Accreditation and Votes Cast: May valid votes exceed accreditation where late voters were accommodated, or does the relationship constitute a hard ceiling? What tolerance exists for minor discrepancies versus systematic over-voting?

Temporal Requirements for Electronic Transmission: Section 60(3) mandates transmission but specifies no timeframe. Is transmission within one hour of announcement compliant? One day? One week? Or must it be 'real-time' as INEC's pre-election commitments promised?

Remedies for Proven Transmission Failures: Assume petitioners prove systematic non-transmission across hundreds of units. What remedy applies? Does the tribunal:

- Order fresh elections in affected units?
- Nullify the entire election?
- Deduct disputed units' votes from respondent's tally?
- Declare petitioner winner if remaining votes establish victory?

The Risk of Contradictory Jurisprudence

The Electoral Act 2026's gaps combined with Nigeria's decentralized tribunal system create risk of contradictory jurisprudence. Simultaneously:

- Lagos State tribunals might hold communication failure requires documentation;
- Kano tribunals might defer to presiding officers' determinations;
- Rivers tribunals might prioritize IReV data over Form EC8A;
- Plateau tribunals might maintain Form EC8A primacy.

These contradictions will create forum-shopping incentives (petitioners preferring tribunals with favourable interpretations) and nationwide confusion about legal standards. Only appellate harmonization-ideally Supreme Court pronouncements early in 2027 litigation-can prevent doctrinal chaos.

6. Comparative Perspectives: Lessons from Other Jurisdictions

Kenya: Technology as Binding Requirement

Kenya's electoral technology experience provides instructive contrasts. Following the 2007 post-election violence, Kenya invested heavily in electoral technology. The 2013 Elections Act made biometric voter identification and electronic transmission mandatory-not advisory. Critically, Kenya's Supreme Court in *Raila Odinga v. IEBC* (2017) invalidated the presidential election specifically citing technological failures. The Court held that where legislation mandates technology use for transparency, systematic failures undermine the election's credibility even if proving outcome-determinativeness remains difficult. The Nigerian Supreme Court's contrasting approach-requiring petitioners to prove technology failures changed winners—places heavier burdens on challengers. Kenya's stance shifts that burden: if electoral authorities failed to implement mandated technology, the election's integrity is presumptively compromised. Nigeria could adopt similar doctrine: where the Electoral Act 2026 makes transmission mandatory, systematic failures might trigger presumptions of irregularity, with INEC bearing the burden of proving such failures didn't affect outcomes.

India: The EVM Precedent

India's Electronic Voting Machines (EVMs), deployed since 1999, offer lessons on technological adoption and legal acceptance. Initially controversial, EVMs gained legitimacy through:

- Transparent development (source code reviewed by political parties);
- Rigorous testing (by independent technical institutions);
- Incremental rollout (pilot programs before nationwide deployment);
- Consistent judicial support (Supreme Court repeatedly rejecting EVM manipulation claims absent evidence).

Nigeria's challenge is different-our technology (BVAS/IReV) functions but produces data subsequently disregarded by courts. India's experience suggests that once technology is deployed and proven reliable, courts should accord its outputs presumptive validity rather than treating them as administratively convenient but legally secondary.

Ghana: Simplicity and Credibility

Ghana's electoral success relies partly on avoiding over-ambitious technology. Ghana uses biometric verification but eschews electronic transmission, preferring manually delivered results with shorter geographic distances and better logistics. This suggests Nigeria might be attempting technological leaps before infrastructure supports them. The communication failure exception in Electoral Act 2026 Section 60(3) acknowledges this reality-but transforms it from operational concern to legal loophole. Perhaps Ghana's lesson is: deploy technology where infrastructure reliably supports it, rather than mandating nationwide implementation with exceptions that swallow the rule.

7. Recommendations for Stakeholders

For the National Assembly: Urgent Amendments

Define 'Communication Failure': The Electoral Act 2026 requires immediate amendment defining communication failure objectively: "Communication failure" means complete absence of internet connectivity or server capacity as verified by INEC technical personnel and documented through diagnostic

reports prepared contemporaneously with the claimed failure.’ This definition prevents self-serving claims while accommodating genuine technical issues.

Establish Time Requirements: Amend Section 60(3) to require transmission within specific timeframes: ‘Electronic transmission shall be completed within two hours of result announcement at the polling unit. Where communication failure prevents timely transmission, transmission shall occur within one hour of communication restoration.’ This preserves real-time transparency while accommodating reasonable delays.

Create Conflict Resolution Hierarchy: Amend Section 60(3) to address Form EC8A-IReV conflicts: ‘Where discrepancies exist between electronically transmitted results and Form EC8A: (a) IReV data shall be presumed accurate unless evidence demonstrates: (i) Form EC8A was signed by party agents present during counting; and (ii) Circumstances explain the discrepancy (e.g., image illegibility, upload error). (b) Where neither presumption applies, the tribunal shall order recount or scrutiny.’ This establishes clear hierarchy while maintaining flexibility for genuine discrepancies.

Mandate Data Preservation: Insert new Section 60(7): ‘INEC shall preserve BVAS-recorded data for minimum twelve months after election conclusion. Data shall be stored in non-alterable format accessible to petitioners under tribunal orders. INEC shall not reconfigure BVAS devices until petition filing periods expire or pending petitions are finally determined.’ This solves the reconfiguration problem plaguing litigation.

Establish Burden-Shifting for Systematic Failures: New Section 60(8): ‘Where petitioners prove electronic transmission failures occurred in more than 10% of a constituency’s polling units, the burden shifts to the respondent to prove such failures did not substantially affect the election outcome.’ This creates appropriate incentives for INEC compliance while maintaining petitioner burden-of-proof in ordinary cases.

For INEC: Operational and Transparency Imperatives

Real-Time Transmission Protocols: INEC must establish presumptive transmission timelines in its Regulations:

- Results should upload to IReV within 30 minutes of polling unit announcement;
- Presiding officers claiming communication failure must complete incident reports detailing: network provider; troubleshooting attempts; alternative transmission methods explored; and time communication restored (if applicable).

Backend Data Integrity: Establish immutable data storage architectures where BVAS-recorded accreditation and transmission data cannot be altered after recording. Use blockchain or similar distributed ledger technology ensuring data integrity and providing cryptographic proof of authenticity.

Public Dashboard Development: Create public-facing dashboards showing:

- Percentage of polling units that have transmitted results;
- Units with pending transmission;
- Average transmission times;
- Reported communication failures by location.

Real-time transparency will pressure compliance and enable early problem identification.

Comprehensive Training: Presiding officers receive insufficient BVAS/IReV training. INEC should mandate:

- Minimum 40-hour technical training for all presiding officers;
- Practical simulations including troubleshooting;

- Certification requirements;
- On-site technical support teams deployable to problematic units.

Communication Infrastructure Investment: Partner with telecommunications companies to ensure:

- Network capacity upgrades in areas with known connectivity issues;
- Dedicated bandwidth allocation for BVAS transmission on election days;
- Backup satellite connectivity for truly remote areas.

For Election Tribunals: Evidentiary Standards Development

Adopt Progressive Approach to BVAS Evidence: Tribunals should develop case management protocols where:

- BVAS machines are inspected in-camera before full hearing;
- Technical assessors assist tribunals in data extraction and interpretation;
- Timelines accommodate technological evidence complexity;
- Cost awards prevent tactical evidence dumping while protecting genuine challenges.

Establish BVAS Demonstration Procedures: Create standardized procedures for in-court BVAS activation:

- INEC technical personnel under tribunal supervision activate devices;
- Retrieval processes are recorded;
- Data extraction follows chain-of-custody protocols;
- All parties witness demonstrations.

This prevents the ‘dumped documents’ criticism while ensuring probative value.

Apply Realistic Burden Standards: Recognize that requiring polling agent testimony for every disputed unit in petitions challenging thousands of units is practically impossible. Permit:

- Statistical sampling (representative unit selection);
- Expert testimony on systematic patterns;
- Circumstantial evidence chains;
- Rebuttable presumptions where BVAS data conflicts with declared results.

Prioritize Substance Over Form: Where petitioners prove substantial irregularities through credible technological evidence, tribunals should not dismiss petitions on technicalities like improper witness sequencing or minor pleading defects. Electoral justice should prioritize ascertaining actual electoral will over procedural formalism.

For Political Parties: Strategic Adaptation

Technology Monitoring Capacity: Parties must develop institutional capacity for real-time technology monitoring:

- Dedicated IT teams tracking IReV uploads;
- Automated alerts for non-transmission;
- Immediate documentation of failures;
- Contemporaneous evidence gathering.

Waiting until after elections to discover failures proves too late.

Evidence Preservation Teams: Deploy technical experts to problematic areas who can:

- Document network availability;
- Record BVAS functionality;

- Capture timestamped evidence;
- Preserve data before reconfiguration.

Legal Expertise Development: Retain counsel with technology law expertise. Election petitions now require understanding:

- Digital forensics;
- Database management;
- Network engineering;
- Cybersecurity;
- Data authentication.

Traditional electoral law expertise remains necessary but insufficient.

For Civil Society: Accountability and Advocacy

Systematic Monitoring: Civil society organizations should develop technology-specific monitoring:

- Real-time IReV portal analysis;
- Comparison algorithms detecting discrepancies;
- Network availability tracking;
- Systematic reporting to media and stakeholders.

Strategic Litigation Support: Organizations like YIAGA Africa, PLAC, and Enough is Enough should provide:

- Litigation funding for meritorious technology-based petitions;
- Technical expert witnesses;
- Data analysis services;
- Amicus curiae briefs on novel technology-law questions.

Legislative Advocacy: Continue pressing for Electoral Act amendments addressing identified gaps. The Electoral Act 2026 represents progress but remains incomplete. Civil society must maintain pressure for comprehensive technology regulation.

Public Education: Educate citizens on:

- Their right to verify results on IReV;
- How to detect irregularities;
- When to alert authorities;
- Available legal remedies.

Informed citizenry creates accountability pressure.

8. The Deeper Structural Question: Can Technology Save Nigerian Democracy?

Technology as Necessary but Insufficient: The foregoing analysis reveals an uncomfortable truth: technology alone cannot ensure electoral integrity. BVAS and IReV work remarkably well when administrators want transparent elections. They fail spectacularly when manipulation is intended. Technology should be viewed as transparency infrastructure-enabling detection of fraud, not preventing it. BVAS makes over-voting harder to hide. IReV makes result alteration during collation detectable. But these benefits actualize only if:

- Legal frameworks support technology's evidentiary use;
- Institutions enforce compliance;
- Courts accord technological evidence appropriate weight;

- Political actors accept results technology verifies.

Nigeria's challenge isn't technological-BVAS and IReV function adequately. Our challenge is institutional: courts that devalue technological evidence, officials who invoke convenient exceptions, parties that reject unfavourable results regardless of data.

The Legitimacy Crisis: Nigeria's electoral legitimacy crisis predates BVAS. The 2023 presidential election's 26.7% turnout reflected not just apathy but profound distrust. Citizens increasingly believe electoral outcomes are predetermined, rendering participation futile. Technology's promise was restoring confidence through transparency. The Supreme Court's jurisprudence in *Atiku v. INEC* undermined that promise by signaling technology remains secondary to manual processes courts trust more. The Electoral Act 2026 attempts course correction. Whether it succeeds depends on 2027 implementation and subsequent judicial interpretation. If tribunals accord technological evidence appropriate weight and enforce mandatory transmission requirements, technology might restore some legitimacy. If courts maintain formalist approaches prioritizing manual records despite contrary technological evidence, the legitimacy crisis will deepen.

The International Dimension: Nigeria's electoral credibility affects West African regional stability, foreign investment, and international partnerships. Persistent electoral controversies reinforce negative narratives about African democracy generally and Nigerian governance specifically. Successfully implementing electoral technology with robust legal frameworks would position Nigeria as a democratic leader in Africa. Failure reinforces perceptions of institutional dysfunction. International actors-development partners, democracy promotion organizations, foreign governments-should support Nigeria's technological electoral development through:

- Technical assistance on election technology;
- Judicial training on technology-related evidence;
- Legislative support for drafting best-practice electoral laws;
- Observation and verification that holds institutions accountable.

9. Conclusion: The Inflection Point

Nigeria stands at an electoral technology inflection point. The infrastructure exists. The legislation-though imperfect-provides foundation. The judiciary has begun acknowledging technology's legal relevance. The question isn't whether Nigeria CAN implement technological electoral transparency, but whether Nigeria WILL.

The 2027 general elections will answer that question definitively. They will reveal whether:

- The Electoral Act 2026's mandatory transmission provisions are enforced or circumvented through communication failure exceptions;
- IReV data receives appropriate weight in tribunals or remains legally secondary despite statutory admissibility;
- BVAS accreditation evidence successfully challenges over-voting or evidentiary burdens prevent its effective use;
- Political actors accept technology-verified results or continue rejecting outcomes regardless of data.

For legal practitioners, 2027 presents both challenge and opportunity. Challenge because technology-based election petitions require expertise beyond traditional electoral law. Opportunity because practitioners who master this intersection-who understand BVAS functionality, IReV operations, data forensics, and how to present technological evidence persuasively-will define electoral litigation's next generation.

For the judiciary, 2027 requires balancing doctrinal consistency with adaptive innovation. Maintaining precedential stability matters, but so does recognizing when technological evolution demands doctrinal development. *Atiku v. INEC (No. 2)* invited legislative clarity; the Electoral Act 2026 provided it. Courts

should honour that legislative response by according statutory technology mandates their full effect rather than continuing to prioritize manual processes developed for pre-technological eras.

For the Nigerian polity, 2027 will test whether we possess collective will to implement democratic norms our laws now articulate clearly. The Electoral Act 2026 is workable despite gaps. BVAS and IReV can deliver transparency. The Supreme Court has indicated openness to technology's legal role. What remains uncertain is whether political elites will tolerate transparency that constrains manipulation, and whether institutions will enforce rules that powerful interests prefer ignored. This is fundamentally a question of political will, not legal capacity. Nigeria knows what works. Kenya proved electronic transmission can be mandatory and judicially enforced. India demonstrated that once technology is deployed successfully, courts should trust its outputs. Ghana showed simplicity and incremental implementation can build credibility.

Nigeria possesses legislative frameworks, technological infrastructure, and judicial precedents necessary for credible electoral technology use. Whether we deploy these tools effectively in 2027 will determine not just who governs but whether Nigerian democracy survives the legitimacy crisis eroding it. The law is now clear enough. The technology works adequately. The remaining question is whether Nigeria's institutions and political class possess sufficient commitment to democracy to let technology work as intended: preventing manipulation, ensuring transparency, and reflecting actual electoral will. That question will be answered at 176,846 polling units on January 16, 2027 and February 6, 2027. The intersection of law and technology that this article has examined will be tested in practice, not theory. We will discover whether BVAS transmissions actually happen, whether IReV data is respected, whether tribunals enforce the Electoral Act 2026's provisions, and whether political actors accept technology-verified outcomes. Nigerian legal practice, electoral administration, and democratic governance will be transformed by that answer-for better or worse. The intersection beckons. How we navigate it will define Nigeria's democratic trajectory for decades.