

Policy Analysis

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**Conducting Scheduled
Governorship Elections in Edo
and Ondo States in the Face
of COVID-19 National Health
Emergency in Nigeria:
Possibilities and Options**

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Abstract

This policy paper examines the possibilities and options of conducting the scheduled governorship elections in Edo and Ondo States in the face of the COVID-19 pandemic. Using both primary and secondary sources of data, the paper argues that the spread of COVID-19 to Nigeria has significantly hampered social and political activities, including elections. This is because processes of democratic elections, which often involves the congregation of people during political rallies, campaigns and casting of ballot now contravenes health and public safety protocols and measures adopted by the Nigeria Centre for Disease Control (NCDC) to contain the coronavirus disease. By virtue of the 1999 Constitution (as amended), postponing a governorship elections, unlike legislative elections, beyond a certain timeframe, even in times of national emergency may present grave constitutional crisis. This leaves INEC with the difficult choice of proceeding with the elections despite public health safety concerns and possibilities of low voter turnout. The paper concludes that in order to maintain democratic inclusiveness in the forthcoming elections despite the prevalence of COVID-19 public health measures, the adoption of electronic and other impersonal voting methods provides a safer and sustainable option.

Key words: COVID-19, Edo, Ondo, Governorship, Election, Nigeria

Introduction

Towards the end of 2019, the world awoke to the outbreak, in Wuhan China, of Corona virus (commonly referred to as COVID-19 by the World Health Organisation-[WHO]). COVID-19 is a highly infectious respiratory

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disease that spreads by contacting the droplets (produced through sneezing, coughing and talking) of infected persons. In Nigeria, the first officially reported case of COVID 19, according to media reports, occurred on February 20, 2020 through an Italian (name withheld) who arrived in Lagos, and visited Lafarge Africa Plc. a leading sub-Saharan African Building Materials Company.

In several countries threatened by the pandemic, governments responded by adopting measures such as banning of large gathering of people (Heather, 2020); maintaining social distancing (Praphul and Tanweer, 2020); encouraging regular washing of hands accompanied by the use of alcohol-based hand sanitisers to prevent communal transmission. From March 31 to June 3, 2020, the Nigerian Federal Government imposed a lockdown on Lagos, Ogun and Oyo States as well as Abuja, the Federal Capital Territory (FCT), to contain the spread of the virus (The Punch 2020). Other States of the Federation also placed serious restrictions on human and vehicular movements, especially states that had recorded cases of the virus.

Before the outbreak of the pandemic, the Independent National Electoral Commission (INEC), had fixed September 19, and October 10, 2020, for the Governorship Elections in Edo and Ondo States, respectively (Akinwunmi, 2020). The election timetable for party primaries and campaigns for votes in both States indicated that political activities were expected to commence by June, 2020. However, following the restrictions placed on movement and strict adherence to safety measures such as social distancing, the usual tradition of conducting political party rallies and campaigns were bound to face serious challenges.

Since the National Independent Electoral Commission had postponed bye-elections for senatorial districts in Bayelsa, Imo and Plateau States because of Coronavirus (Ukpong 2020), there were trepidations regarding the conduct of governorship elections in Edo and Ondo States. Another key consideration was how long would COVID 19 last? In other words, what was the likely span of the COVID-19 pandemic? Would INEC ignore the threat posed by COVID-19 and proceed with the scheduled elections without putting in place special arrangements just because there were no

significant outbreaks in these states? If the elections were not postponed, would they not be detracted by voter apathy in the face of the burgeoning threat posed by the virus?

A recent survey conducted by YIAGA Africa (2020) showed that 68% of respondents supported INEC's decision to go ahead with the off-circle governorship elections during the COVID-19 pandemic, while 42% of the respondents were concerned that voters and election officials could contract the virus on election-day. Similarly, a related survey conducted in Edo State by the Electoral Institute (2020) revealed that COVID-19 has implications for effective conduct of the election in terms of health risk for the poll workers, the electorate as well as for the turnout in the elections. Although 71.7% of respondents believed that the election could be safely conducted during the COVID-19, 55.5% of respondents felt that the electorate was at the risk of being infected by the virus during the election. A related survey conducted by Kimpact Development Initiative (2020, p.13) indicated that two-thirds of Edo and Ondo States indigenes expected that the governorship elections would be disrupted by COVID-19.

However, unlike senatorial elections, postponing governorship elections may present grave constitutional and technical challenges due to constitutional term limits and the vacuum that would be created when current tenures expire. It is against this background that this policy paper examines the impact of COVID-19 pandemic on the conduct of the scheduled governorship elections in Edo and Ondo States.

Constitutional/Legal Issues around Political Office Tenure

Legal Basis: The 1999 Constitution and the Electoral Act, 2010 (as amended), provides the legal basis for the conduct of elections in Nigeria. First, the 1999 Constitution vests the power and authority to organize and conduct elections in INEC. INEC was established under *Section 153 of the Constitution*, while its functions and powers are outlined in *the third schedule, {part 1 Item F, paragraphs 14 and 15}* (CFRN 1999). In addition, the Electoral Act specifies the powers of INEC and describes how it will be

organised to carry out its executive, administrative, financial functions as well as how it administers elections.

Political Office Tenure: The tenure of the Governors of Edo and Ondo States will end on the November 12, 2020 and February 24, 2021, respectively. Pursuant to the provisions of *Section 178(2) of the 1999 Constitution and Section 25(8) of the Electoral Act 2010*, elections cannot hold earlier than 150 days (Zebulon, 2020) and not later than 30 days (Sanni, 2020) before the expiration of the term of office of an incumbent Governor. The above sections indicate that the tenure of a Governor is a Constitutional matter; postponement of elections could be challenged in the court of law (Electoral Act 2010). The next segment of this paper examines the basis for postponement of elections.

I. Basis for Postponement of Elections

The Electoral Act 2010 (as amended) provides that INEC may postpone elections in the following circumstances:

1. Where INEC has reasons to believe that a serious breach of peace is likely to occur if elections proceed as scheduled; or - Section 26(2)
2. Natural disasters or emergencies make the conduct of elections impossible - Section 26(2)
3. Where the above happens, there shall be no return for election made in the areas, until the holding of polling in the affected areas except INEC decides otherwise. In other words, INEC has discretion to either announce or not announce election results in affected area/areas - Section 26 (3), (4) & (5)
4. INEC's decision to postpone elections can be challenged in court - Section 26 (5)
5. Section 36 empowers INEC to postpone elections where a candidate dies after delivery of nomination paper and before start of polls.

Section 26(2) of the Electoral Act 2010, holds thus:

Where a date has been appointed for the holding of an election, and there is reason to believe that a serious breach of the peace is likely to occur if the election is proceeded with on that date or it is impossible to conduct the elections as a result of natural disasters or other emergencies, the Commission may postpone the election and shall in respect of the area, or areas concerned, appoint another date for the holding of the postponed election, provided that such reason for the postponement is cogent and verifiable.

COVID-19 could be cited as a global/national health emergency (as rightly envisaged by extant laws), on the basis of which INEC may consider postponing elections. However, to postpone the Edo and Ondo States governorship elections, especially outside the window of timeframe provided by the Constitution and beyond the time of the expiration of the term limit of the incumbent, may present constitutional and technical challenges.

Although, the 1999 Constitution (as amended), envisaged this kind of scenario when it provides in Section 191(2) that:

Where any vacancy occurs in the circumstances mentioned in subsection (1) of this section during a period when the office of Deputy Governor of the State is also vacant, the Speaker of the House of Assembly of the State shall hold the office of Governor of the State for a period of not more than three months, during which there shall be an election of a new Governor of the State who shall hold office for the unexpired term of office of the last holder of the office.

This provision makes it unequivocally clear that the Speaker shall not hold the office of the Governor beyond three months; and election of a new Governor of the state shall be conducted within the same period. However, where the pandemic endures longer, it will give rise to constitutional lacuna.

II. Major Constitutional and Technical Implications of COVID-19 on Elections

The decision to postpone or proceed with scheduled elections can be challenging in times of emergencies, especially where term limits and clear timeframes within which to conduct elections are specified by the enabling constitution. The peculiar nature of COVID-19 pandemic whose transmission occurs through contact with droplets of infected persons will seem to make a compelling case for postponement of scheduled elections especially as party primaries; rallies, stakeholder’s meetings, accreditation and voting, and collation of votes involve large gatherings of people. Thus, it is imperative to consider some technical issues that may provide important guides in reaching a decision.

Table 1: Technical Considerations for Postponing or Conducting Elections during Public Health Emergency

S/N	Implication	Description of the Implication
	Concern whether postponing an election is constitutional?	<p>Many constitutions provide for the postponement of elections during emergencies. These constitutions envisage that holding an election during emergency conditions can be difficult because that might divert resources from more urgent life-saving work. Whereas, some constitutions also forbid the passage of constitutional amendments during emergencies. The rationale behind this is fourfold:</p> <p>(a) during an emergency, hasty decisions may be made that address current fears and concerns but neglect longer-term interests in ways that may be harmful to democracy;</p>

S/N	Implication	Description of the Implication
		<p>(b) the enhanced powers of the executive and the restrictions on rights during an emergency may make it easier for the government to unfairly influence the amendment process;</p> <p>(c) amendment processes sometimes require an intervening general election or referendum to allow the people to express their approval or disapproval of a constitutional</p>
2	Concern whether postponing or continuing to hold an election affect its legitimacy	<p>The type and constitutional significance of an election as well as the original date scheduled will be a factor in the decision to postpone or hold an election. The advantages and disadvantages of postponing elections also need to be compared to the advantages and disadvantages of continuing elections, as holding an election may also be tantamount to reduced legitimacy.</p>
3	Loss of voice	<p>Elections are the opportunities for citizens to remove and replace a representative or government. This opportunity is lost for a period of time if an election is postponed.</p>

S/N	Implication	Description of the Implication
4	Claims of political opportunism	<p>Postponement should ideally be agreed on through consensus between all political parties. The risk that incumbent governments may act unilaterally for political advantage, or at least perceived political advantage, should be considered, to avoid undermining confidence in the process and the legitimacy of the result.</p>
5	Effect on turnout	<p>Democratic elections, at their best, are characterized by high turnout and equal levels of participation across different groups in a society. Without this, the result of an election may be shaped by some groups more than others. Holding an election during a pandemic could undermine, or be perceived as undermining this aspect of democracy by reducing turnout. Citizens might be less likely to vote if they are concerned for their health and the health of their family members. The legitimacy of the contest may therefore be undermined by uneven participation. Those with underlying health conditions of COVID-19 might be especially less likely to vote. Continuing with elections could therefore make the electoral process less inclusive (James and Garnett, 2020).</p>

S/N	Implication	Description of the Implication
6	Effect on political debate	Democratic elections should feature a wide political campaign and broad public debate on public policy issues, which may be curtailed if citizens are restricted from moving freely. Moreover, election campaign may be dominated by the current pandemic, preventing a comprehensive discussion on wider public policy issues from taking place.
7	Decision to postpone or continue an election have implications	<p>Proceeding with an election or postponing an election entails risks for a government, INEC and health authorities. While postponing elections may be the most feasible and responsible option from the public health perspective, the decision can cause other risks to materialize such as:</p> <ul style="list-style-type: none"> • reputational risks (for an organization that makes decisions, for trust in democratic processes and institutions, for international relations); • political risks (disturbing the level playing field and undermining the incumbent or opposition); • financial risks (budgetary implications, e.g. money invested that cannot be recovered); • operational risks (alternative dates

S/N	Implication	Description of the Implication
		<p>may not be feasible because of other risks, e.g. Boko Haram attacks, flood, other crises); and</p> <ul style="list-style-type: none"> • legal risks (the decision can be legally challenged).
8	Lack of Access to Alternative mechanisms of campaigning	<p>Party primaries, campaign rallies and town hall meetings are an important part of a vibrant and inclusive democracy. Conducting such electoral activities during the COVID-19 pandemic is unrealistic. The alternative is to use impersonal medium such as social media and electronic platforms in order to observe safety measures of restriction in movement and maintain social distancing. Unfortunately, many Nigerians, especially those in rural areas do not have access to these platforms.</p>
9	No Alternative remote voting methods	<p>Special voting arrangements that allow citizens to cast their votes remotely (i.e. not in person at a polling station), either by post, or online through a computer or mobile phone application that could mitigate health or security hazards presented by voting in congregated spaces are not available. Moreover, financial costs and legal framework may be prohibitive; implementation timeframes may be insufficient for</p>

S/N	Implication	Description of the Implication
		adequate preparation, procurement and training, and putting the legal frameworks in place. Political distrust may also undermine confidence in any alternatives, while possible threats to the integrity of elections can undermine the feasibility of alternative voting options. Also, postal voting typically requires a large-scale logistical effort, from procuring reliable postal services to recruiting ballot-counting staff, and requiring numerous counting officers to cooperate under close supervision. Such an exercise would also be challenging to conduct safely during COVID-19.

Source: Compiled by Authors.

III. Cross-Country Analysis

The International Foundation for Electoral Systems (IFES) revealed that as at October 7, 2020, sixty-six countries and eight territories had postponed a total of one hundred and thirteen elections due to the COVID-19 pandemic (IFES 2020a). In a bid to strike a balance between legitimate public health concerns and keeping to democratic tenets, some other countries have held elections notwithstanding the enduring global public health emergencies. As at August 28, 2020, twenty-seven countries have conducted elections with mitigating measures in place (IFES 2020b). In this section, elections held during the global COVID-19 pandemic in select countries are reviewed:

Germany

The German state of Bavaria held an all-postal vote for the second round of local elections. Bavaria held the first round of local elections on March 16, 2020, offering in person voting at polling stations and postal voting. The second-round run-off, which was held on March 29, 2020, was an all-postal vote. That was decided in response to the COVID-19 pandemic which posed health risks to voters to physically congregate at polling centres due to its contagious nature. The decision and logistical arrangements were made after the first round was held (Süddeutsche, 2020).

Chile

Chile postponed constitutional referendum for six months and had set a national plebiscite on whether or not to draft a new constitution for April 26, 2020. Following a broad political consensus among 15 political parties on March 19, 2020, the plebiscite was rescheduled for October 25, 2020. The decision came after Sebastián Piñera, Chile's President, declared a 90-day state of catastrophe in the country, with the objective of strengthening government's ability to contain the virus. This is an important decision, especially since the demand for a new constitution had been at the heart of the large-scale protests that engulfed the country since October 2019. In order to bring into effect this new date for the plebiscite, a constitutional reform bill was presented and required the approval of two thirds of parliamentarians (McGowan, 2020).

New Zealand

New Zealand considered alternative voting methods ahead of its general elections and two national referendums. The New Zealand Electoral Commission is considering extending existing alternative voting arrangements, designed for voters unable to attend a polling station to vote in person, to all voters for its general elections scheduled for September 19, 2020. Alternative voting arrangements being considered include extending the online services for voting that is currently offered to overseas voters, who can download and upload their voting papers; extending the telephone

dictation voting services, available to people who are blind, partially blind or have a physical disability (although this method prevents voters from casting their voting paper without assistance); offering proxy voting and postal voting, neither of which is currently provided for in electoral legislation; and expanding the use of mobile ballot boxes (Vote NZ 2020).

Liberia

Legislative elections were held during the Ebola epidemic in Liberia in 2014, with some urban areas exempted from participating.

Pakistan

In 2018, Pakistan did not hold elections in certain regions because of insecurity caused by armed conflict.

France

Local elections in France were held but with a much lower turnout than predicted for in previous elections while a referendum on constitutional reform in Italy was indefinitely postponed.

IV. Conclusion

The global spread of COVID-19 pandemic has profoundly impacted on the delivery of public services and routine events that are integral to inclusive societies. Electoral processes are one of such events. The opportunity for a society to confirm officials in elected offices or remove them, within a constitutionally defined timeframe and framework, is a pillar of democratic values and standards. The process of doing this is a communal one, and communal events intrinsically bring people together but this is a process that is contrary to the informed advice for limiting the transmission of COVID-19, a deadly and contagious virus. To avoid a constitutional and a legal breach, we conclude that decisions must be made to ensure democratic institutions function as they ordinarily would do, during extraordinary times, such as the outbreak of a global health pandemic. This

paper, therefore, offers some recommendations for improving decision making process for electoral administrators, governments and civil society organizations on administering elections amid the continued spread of COVID-19 as distilled in the next segment.

V. Recommendations

- In consideration of public health safety, constitutional and technical issues, INEC should postpone the Edo and Ondo States governorship elections by one or two months to enable the Commission monitor the progress on the containment of COVID-19 as well as put in place adequate logistics and safety arrangements for the conduct of the elections;
- If the pandemic persists, INEC should proceed with the elections but provide adequate public safety arrangements as well as safety guidelines and procedures for the conduct of the elections. This should be complemented with massive sensitization and public awareness campaign by all relevant agencies of government in the affected states. Personal protective equipment should be adequately supplied to all electoral officials, security personnel as well as voters. Nigeria can draw lessons on safety measures from the recently conducted parliamentary elections in South Korea on April 15, 2020, amidst the COVID-19 pandemic.
- Nigeria's National Assembly should expedite action on the passage of the 2020 Electoral Amendment Bill; and provide for Alternative Remote Voting Methods such as online/electronic voting and voting by post etc. Similarly, Early Voting, Diaspora Voting, and other such measures that will ease voting activities and decongest voting centres should be captured in the Bill.
- INEC, political parties should put out safety guidelines and procedures for the conduct of the elections on time as well as mechanisms for their dissemination. Political parties participating in the governorship

elections in the two states should explore the conventional and social media for their campaigns and other forms of enlightenment programmes aimed at mobilization of the electorates.

- INEC should regularly update the general public on the progress made in its plans for the conduct of the Edo and Ondo States governorship elections in the face of the COVID-19 pandemic particularly, on the safety measures as well as the logistics arrangements being put in place for the conduct of the elections.

VI. Suggested Guidelines for operating polling stations during the COVID-19 pandemic

Actions for Electoral Officials before and during elections:

- Electoral officials should ensure that voters observe and maintain the recommended social distancing in all polling centres/units, collation centres during and throughout the period of the elections;
- INEC should ensure that personal protective equipment such as face masks, hand sanitisers, among others, are adequately supplied to all election workers as well as voters;
- Additional polling units/centres should be created by INEC before elections in order to decongest existing ones and avoid overcrowding;
- All voters must be screened on arrival at the polling centres/units with thermometer guns by accredited health practitioners before accreditation and voting; and
- Standby ambulances and other relevant health equipment should be provided by the Ministry of Health and stationed at strategic locations for emergency interventions where necessary.

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