



## **THE SUCCESSES OF THE CARD READING MACHINE IN NIGERIA'S 2015 GENERAL ELECTIONS: ISSUES AND CHALLENGES**

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### **Abstract:**

*This paper examines the card reading machine as a medium to ensure free and fair elections in democratic entities especially Nigeria. The paper analyses the 2015 general elections in Nigeria and the card reading machine as a critical component in the whole exercise. Findings show that the card reading machine was first experimented in Nigeria's electoral process and it remains one of the greatest innovative technologies in the history of Nigeria's democratic practice-hence it was effective; it unseated a ruling party and an incumbent government as due to its efficacy it disallowed elections rigging. The paper concludes that the INEC chairman has been successful only by introducing the card reading machine which completely changed the democratic process of Nigerian history from hitherto manipulative tendencies. The paper recommends that the management of Independent National Electoral Commission should successfully invest on appropriate human capacity on the use of the smart card reader. The company that would manufacture the electronic equipment should be liberal enough to deeply drill Nigerian officials in the technical-know-how of the card reader so that indigenous Nigerians would, at the slightest notice, handle any technical challenge that could arise in the course of an election, among other things.*

### **Introduction:**

The development of the card reading machine started as a memory device which keeps data and record for future use. PC Cards (PCMCIA) were among first commercial memory card formats (type I cards) to come out in the 1990s, but are now mainly used in industrial applications and to connect I/O devices such as modems. In the 1990s, a number of memory card formats smaller than the PC Card arrived, including Compact Flash, Smart Media, and Miniature. The desire for smaller cards for cell-phones, PDAs, and compact digital cameras drove a trend that left the previous generation of "compact" cards looking big. In digital cameras Smart Media and Compact Flash had been very successful (neutrality is disputed). In 2001, SM alone captured 50% of the digital camera market and CF had captured the professional digital camera market. By 2005 however, SD/MMC had nearly taken over Smart Media's spot, though not to the same level and with stiff competition coming from Memory Stick variants, as well as Compact Flash. In industrial and embedded fields, even the venerable PC card (PCMCIA) memory cards still manage to maintain a niche, while in mobile phones and PDAs, the memory card market was highly fragmented until 2010 when micro-SD came to dominate new high-end phones and tablet computers (Lori (2010)).

Since 2010, new products smart card reader and Olympus (previously only using XD-Card) have been offered with an additional feature. The new feature will among other things reads the content of the encrypted voter's bio-data and biometrics details with the associated private key and the availability of a matching voter ID to the smart card then begins to run a live matching with the voter information database where a version of each voter's bio-data and biometric details is housed. If a match is found, the person is authenticated and certified as a duly registered voter (ISO/IEC 7816-3:2006).

### **Reason for the Adoption of Card Reading Machine:**

Past elections in Nigeria had witnessed the desperate bid for political power by some stakeholders with vested interests in the Nigerian electoral process. Some of these stakeholders engaged in all forms of electoral malpractices including multiple voting, impersonation, manipulation and falsification of results which had led to legal actions, electoral conflicts and violence.

Electoral malpractices make the citizens to lose confidence in the electoral process; and lack of confidence by the citizenry in the democratic process is an impediment in deepening electoral democracy because if the citizenry does not believe in the fairness, accuracy, openness, and basic integrity of the election process, the very basis of any democratic society might be threatened (Alvarez and Hall, 2008: 134).

Electoral fraud according to López-Pintor (2010: 9) has more serious political implications, in that it allows a party or candidate to take over public positions contrary to the popular will. This undermines the democratic process and usually leads to electoral violence, insecurity and political instability. The governments of Cote d'Ivoire, Peru, and Serbia all fell in the year 2000 as a result of popular rebellions against fraudulent elections. Similarly, the so called "Orange Revolution" in Ukraine in 2004 caused presidential elections to be completely re-held after extensive fraud was demonstrated (López-Pintor, 2010: 5).<sup>10</sup>

In view of the negative impacts of electoral malpractices, global attention is now focusing on how to mitigate this undemocratic behavior and improve the electoral process. One of such strategies to combat electoral malpractices is the introduction of information and communication technology into the electoral process. Though, the use of technology in elections is not an end in itself, but assists in the various aspects of electoral administration (ACE Project). It is against this background that an electronic technologically based device, the smart card reader was introduced into the Nigerian electoral process in 2015 to help improve and deepen electoral democracy.

### **The Use of Card Reading Machine in Nigeria's 2015 General Election:**

The smart card reader is a technological device setup to authenticate and verify on election day a Permanent Voter Card (PVC) issued by INEC. The device uses a cryptographic technology that has ultra-low power consumption, with a single core frequency of 1.2GHz and an Android 4.2.2. Operating System (INEC, 2015). In other words, the INEC card reader is designed to read information contained in the embedded chip of the permanent voter's card issued by INEC to verify the authenticity of the Permanent Voter's Card (PVC) and also carry out a verification of the intending voter by matching the biometrics obtained from the voter on the spot with the ones stored on the PVC (Engineering Network Team, 2015).

The ability of the card reader to perform the above described functions as well as keeping a tally of the total numbers of voters accredited at the polling unit and forwarding the information to a central database server over a Global System for Mobile (GSM) network makes the card reader most welcome at this point in time in the nation's electoral history (Engineering Network Team, 2015).

### **Argument For and Against the Use of Card Reading Machine for 2015 General Election:**

In spite of the laudable goals and objectives of the smart card reader, it generated debate among the 2015 general elections stakeholders before, during and after the polls. On one hand, proponents of the card reader have viewed the innovation as a deliberate effort in ensuring the conduct of a free and fair election. He argues that card reading machine deployment 2015 general elections by INEC is capable of

achieving the following objectives:(1) To prevent electoral fraud (2) To allow the electorates votes to count (3) To reduce litigations arising from elections (4) To authenticate and verify voters (5) To protect the integrity and credibility of the election (6) To audit results from polling units across the federation and (7) To ensure transparency and accountability.

Others are to do a range of statistical analysis of the demographics of voting for the purposes of research and planning; to build public confidence and trust in the election; to reduce electoral conflicts; to ensure a free and fair election and to further deepen Nigeria's electoral and democratic process.

While on the other hand, there have been arguments that INEC neither has the legitimate authority nor capacity to use the card reader (Policy and Legal Advocacy Centre, 2015). The opponents believed that in the peculiar circumstances of the Nigerian situation, the card reader is designed to assist a certain political party to win the general election. Peters (2015) maintained that the major plank of their argument is that the card reader must have been programmed to assist a pre-determined winner of the election by ensuring that so many persons would discriminately be disenfranchised to deny other parties of favorable votes thereby ensuring the winning of an INEC preferred or pre-determined party.

There is also the sentiment about the use of a faith based bank to transfer money for printing of permanent voter's card and the configuration of the card reader. The socio-political sentiments advanced against the use of the card reader could not be established. The allegation of the card readers being designed to favor a political party turned out to be completely baseless and unfounded as we have seen before and after the elections.

This unsubstantiated statement led to the invasion and destruction of the APC Data Center in Lagos and subsequent arrest of the supplier of the card readers by the Department for State Security (DSS).

The DSS subtly apologized to the APC and later released the supplier of the card readers when no evidence was found. The contention that a faith based bank (JAIZ Bank) was use for the payment of the supply of the card readers appears to me as ridiculous. Was the transaction illegal? Was the bank not a license financial institution in Nigeria? Investigations show later that another bank (First City Monument Bank) was used in the electronic payment transfer for the supply of the card readers.

The use of the card reader for the 2015 general elections was also criticized on the premise that its timing was too close for over a sixty eight million Nigerian voters. Considering the fact that the device was relatively a new technology that has not been tested or tried in Nigeria, it was therefore argued that INEC should step aside the card reader in the 2015 general elections.

This argument appears to be valid to the extent that INEC will conduct an election with such magnitude and deploy a device that will have a far reaching impact on the electoral process, would not have used the device in previous smaller bye-elections to effectuate its effectiveness and efficiency. Moving from manual process to infusing technology in voting process is a milestone that requires high efficiency. Between 2011 and 2015, INEC conducted Governorship Elections and bye-elections in some states of the federation. Why would INEC wait for 2015 general elections to use the card reader?

### **The Efficacy of Card Reading Machine before the 2015 General Elections:**

To address the issue of the card reader not been tested, INEC hurriedly conducted a test-run for the device on March 7, 2015 (21 days to the commencement of the polls) in twelve states (consisting of 225 polling units and 358 voting points) of the federation. Some of the card readers could not function effectively during the test-run. However, INEC promised to deal with the issue. This test-run exercise was carried out after the general elections were rescheduled. In order words, INEC could have conducted the general elections without test running the device. This could have created a disaster for INEC that could only be imagined.

The legality of the use of the card reader in the 2015 general elections was one crucial aspect of the debates that critics of the card readers contested. To examine this debate, a careful study of the Nigeria's electoral jurisprudence is needed to determine whether the use of the smart card reader by INEC falls within the confines of the law. Firstly, as argued earlier, it is clear that INEC is a creation of the law as it is established under Section 153 of the 1999 Constitution (as amended) as a Federal Executive Body.

Under paragraph 15 of Part 1 of the Third Schedule to the 1999 Constitution (as amended), INEC is mandated to organize, undertake and supervise all elections in Nigeria, conduct the registration of persons qualified to vote and prepare, maintain and revise the registration of voters for the purpose of any election (Policy and Legal Advocacy Centre, 2015). It is also empowered to carry out the functions conferred upon it by virtue of the Electoral Act, 2010 (as amended). In addition, the Policy and Legal Advocacy Centre (2015) argued that Section 118 of the 1999 Constitution (as amended) subjects the registration of voters and the conduct of elections to

INEC's discretion while Section 16 of the Electoral Act, 2010 (as amended) gives power to INEC to cause to design, print and control the issuance of a voters card to voters whose names appear on the register. Therefore, according to the Policy and Legal Advocacy Centre (2015), NEC has express and implied powers to design means, procedures and processes that enable it exercise the powers granted to it under the Constitution including for example, the use of permanent voter cards in the 2015 general elections.

### **Legal Framework for the use of Card Reading Machine:**

No doubt, the legal framework for the 2015 general elections empowers INEC to be the electoral umpire. However, Sections 49 and 52 of the Electoral Act 2010 (as amended) had been subjected to legal debate in respect to the use of the card reader for the 2015 general elections. To some, the deployment of card readers for the accreditation of voters at the elections tactically meant adoption of electronic voting, which the 2010 Electoral Act outlaws (Oderemi, 2015). Section 49 states that:

(1) Every person intending to vote shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voter's card. (2) The Presiding Officer shall, on being satisfied that the name of the person is on the Register of Voters, issue him a ballot paper, and indicate on the Register that the person has voted. Section 52 stipulates that: (1) Voting at an election under this Act shall be by open secret ballot. (2) The use of electronic voting machine for the time being is prohibited. (3) A voter on receiving a ballot paper shall mark it in the manner prescribed by the Commission. (4) All ballots at an election under this Act at any polling station shall be deposited in the ballot box in the open view of the public.

In his contribution, Falana (2015) averred that the deployment of the card reader by INEC is not illegal. He submitted that INEC has the constitutional power to set the standards and guidelines for elections. In view of this, he argued that the card

reader is part of accreditation and not voting. He maintained that what the law proscribed is electronic voting and not the card readers. Therefore, according to him the use of the card reader in the 2015 general elections is legal and legitimate (cited in Oderemi, 2015).

The Society for Advancement and Protection of Public Rights (SAPPR) (2015), a civil society in its submission argued that the deployment of the card reader is illegal because it is in violation of Section 52 (1) of the Electoral Act, 2010 (as amended). SAPPR opined that the use of the card reader for screening of voter cards or which has the effect of preventing a registered voter to vote is beyond the powers of INEC. As such, the civil society maintained that by virtue of Sections 77 (2) and 117 (2) of the 1999 Constitution (as amended) of Nigeria, INEC had no power to deprive eligible Nigerians of the right to vote at the election (cited in Oderemi, 2015).

In an intellectual exposition, Banire (2015) contended that the electronic voting machine and the card reader are two different devices that are not necessarily deployed together for all purposes. He explained that a card reader is not an electronic voting machine but a machine to be used for accreditation of voters only before the actual voting. According to him, electronic voting requires no ballot papers whereas the 2015 general election was ballot paper-based. He submitted that what Section 52(2) prohibits as indicated earlier is the use of electronic voting machine but not the use of card reader for accreditation of voters.

It is in the same vein that Banire (2015) believes that the use of the card reader is not prohibited. In view of this, he argued, what is not prohibited is permitted in law. He cited the case of *Ojo Bolarinwa Theophilous vs. Federal Republic of Nigeria* (2012) LPELR-9846 (CA), wherein the Court of Appeal declared that: "The basic canon of interpretation or construction of statutory provisions remains that what is not expressly prohibited by a statute is impliedly permitted."

Thus, since the use of card reader for the purpose of accreditation of voters is not prohibited by the Electoral Act 2010 (as amended), same is definitely permitted (Banire, 2015). Furthermore, Banire maintained that accreditation of voters is not the same thing as casting of vote as a person may be accredited without presenting himself to vote. The difference between accreditation and voting is underscored according to him by Section 49(1) and (2) of the Electoral Act 2010 (as amended). In order to separate accreditation from actual voting, he opined that the 2015 INEC Guidelines and Manual for Election Officials provides that accreditation shall hold between 8.00 am and 1pm or such time as the last person on the queue finishes while, voting commences at 1.30pm or so soon thereafter when accreditation must have been completed till the last person concludes.

Citing Section 52 of the Electoral Act, 2010 (as amended), Peters (2015) argued that the use of the card reader is illegal. Section 52 clearly stipulates that the use of electronic voting machine for the time being is prohibited. He maintained that INEC has in respect of the introduction of the card reader gone beyond its limits. He submitted that the card reader was only mentioned and introduced in the Electoral Manual 2015. In view of this, according to him, it is illegal and void because the ever green policy of the law is that where a statute provides a method of doing a particular thing, no other method would be accepted. He cited the case of *Ajuta II v. Ngene* (2002) posited in 1 NWLR (Part 748) at p. 300 para. C. Muhammad J.C.A said:

It has become trite that where a statute provides for the manner of doing a particular act, only that manner as provided by the enabling legislation

would be acceptable. The doing of the act by a vehicle other than that provided by law for its attainment would be declared void.

To that extent, according to Peters (2015) every other requirement including the card reader outside the said Section 49 (1) (2) of the Electoral Act that is contained in the Electoral Manual 2015 is illegal and void. He accused INEC of developing false confidence that it can do and undo under the cover of “an umpire” instead of pursuing the amendment of the law to accommodate the new invention (card reader). He advised that the Electoral Act, 2010 (as amended) be amended to bring in the card reader. Until it is done, he posited that the use of the card reader is illegal.

Peters (2015) went further to observe the contradiction between the Electoral Act, 2010 (as amended) and the Electoral Manual 2015 wherein the card reader was introduced for the accreditation process of the 2015 general elections. According to him, Section 49(1) of the Electoral Act 2010 (as amended), mandatorily stipulated that an intending voter shall present himself to the Presiding Officer for accreditation processes. Contrary to this, the Electoral Manuals 2015 said the intending voter shall rather present himself to an Assistant Presiding Officer (APO). Peters (2015) cited the Latin maxim – “expressiouniusestexclusioalterius” - which means that the express mention of a name or thing in a statute excludes the applicability of the things or names not specifically mentioned therein.

Furthermore, absence of the name of Assistant Presiding Officer (APO) in Section 49(1) of the Electoral Act underscored the position of the Electoral Act, 2010 (as amended) that an APO has nothing to do with the accreditation process in our electoral system. When the words used in a statute is clear, it must be given its natural and ordinary meaning. It is therefore clear that electronic voting which the law prohibited in Nigeria is not the same with card reader. As such, the used of the card reader as part of the accreditation process in the 2015 general elections is in tandem with the legal frameworks for the elections. In spite of the hullabaloo about the card reader, it was eventually used for the 2015 general elections. However, the device had some challenges in its operation during the elections.

### **Conclusion:**

The Smart Card Reading Machine has become a legacy for which history would continue to remember and possibly honor the former Vice-Chancellor of Ahmadu Bello University Zaria and chairman of Independent National Electoral Commission. It has to be emphasized in this study that the card reader has now thrown up an entirely different phenomenon in the electoral system of Nigeria. Long before the introduction of the card reader, politicians had taken it for granted that the electoral success of a contestant did not depend on the collective will of the electorate. This feeling was indeed, true because politicians, as long as they had the needed money and influence, were very easily able to manipulate the electoral system and got themselves declared victorious in a contest, even when it was obvious that they were not the people’s choice. The outcome of this illegitimacy was that those that were elected through such manipulative ways had no regard for the electorate and, so, were completely insensitive to the plight of the masses.

But with the smart card reader, every one now should have realized that Nigeria has reached a stage where electoral success would have to be determined entirely by the voting population. Anybody that has a permanent voter’s card has automatically become a stake-holder. Politicians that are known to be pompous and arrogant have been rendered irrelevant and ineffective in the present dispensation of things. This is a

very positive way of strengthening the country's democracy, as every vote now matters and counts.

**Recommendations:**

Since the smart card reader has been introduced and has equally come to stay, it has become necessary that its use should form a legitimate integral part of the country's electoral laws and system. The eighth National Assembly of the Nigerian legislature, which is expected to come into existence from June 2015, would be expected to legitimize and formalize the use of the smart card reader by giving it a legal backing. This would demand for an amendment to the present electoral law or act as to give the use of smart card reader a legal existence.

The management of Independent National Electoral Commission should successfully invest on appropriate human capacity on the use of the smart card reader. The company that would manufacture the electronic equipment should be liberal enough to deeply drill Nigerian officials in the technical-know-how of the card reader so that indigenous Nigerians would, at the slightest notice, handle any technical challenge that could arise in the course of an election.

Once the National Assembly passes a law that mandates the Independent National Election commission to supervise the conduct of Party primary elections, using the card reader for accreditation and authenticate the winner(s) of the primary election, it would become very certain that internal democracy would have been injected into political parties and this would help reduce the magnitude of rancor and bitterness that are associated with party primary elections and, by so doing, stabilize Nigeria's democracy.

In order to continue raise the quality of Nigeria's electoral process with particular emphasis on the organization of elections. The application of the card reader technology had its merits, but was made redundant by allegations of electoral officials and community collusion to ensure that the machines played no part in determining electoral results. It is certainly a technology that needs to be improved upon in the run up to the 2019 general elections.

National Assembly should create independent court to frontally treating electoral offences/offenders more seriously and making deterrents of culprits.

Federal Government should assess and consider reforms to portions of its current electoral law; ones that seem to weaken the Nigerian state responsiveness to electoral offences.

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