

## TOWARDS A CREDIBLE 2019 ELECTORAL PROCESS IN NIGERIA: INEC NOT DE FACTO INDEPENDENT

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### **Abstract**

*The problem of evolving an electoral system in Nigeria that would be free and fair; devoid of overt malpractices, credible and acceptable to the generality of the Nigerian populace, had been a recurring decimal since independence. Consequently, this paper sets out on a revolutionary note, to test the hypothesis that the Independent National Electoral Commission (INEC) is not a de facto independent electoral umpire; hence the need for a drastic review of Nigeria's electoral process. The enabling statute of INEC, the Electoral Act 2010 (as amended), was examined and many of its provisions critically analyzed. In this study, we applied as our theoretical foundation, the Conflict Resolution Strategy, whereby the various parties to a contentious transaction come together with open minds and in harmonious atmosphere, adopt the WIN-LOSE approach, with a view to evolving a mutually acceptable modus vivendi; thereby finding an amicable solution to their common problem. The study concludes with a number of feasible recommendations including, inter-alia, amendment of vital provisions of the Electoral Act, 2010, to provide for inputs by the major political parties, to the nomination of INEC members; measures to ensure a drastic reduction of the number of political parties, etc. New strategies were also advocated for revamping the funding system of parties and evolving mechanisms for minimizing election rigging and vote buying; as well as a modus operandi for the conduct of future elections and simultaneous announcement of results at various voting and collation centres. Worthy of note is that the author served as an Election Monitor/Observer during the 2011 and 2015 elections, under the aegis of Caritas International; hence some of the comments*

*and recommendations made were predicated on his experience and observations during that exercise.*

### **Introduction**

In recent times and as Nigerians look forward, with anxiety, to the 2019 elections, there had been comments, criticisms and expressions of diverse opinions by various groups, on how best to make the elections free, fair and credible to the vast majority of the Nigerian populace. Most of these opinions emanate from the political parties who sponsor candidates to various elective positions; as well as from political observers, the academia, voters generally and the mass media. Most of the comments centre on criticisms of various provisions of the Electoral Act, 2010 and the operational mechanisms adopted by the Independent National Electoral Commission (INEC), which is the body statutorily charged with responsibilities for conducting nation-wide elections in Nigeria.

It is for above reasons that this paper sets out to have a critical look at the electoral process in Nigeria, the constitutional provisions for elections under the Electoral Act, 2010 and the modus operandi of the electoral umpire, INEC. Recent developments that attracted the attention of this paper, include assessment of recent innovations of the electoral body such as accreditation of voters using the permanent voters card (PVC) and the credibility of the card readers, especially in rural areas where there is irregular supply of electric power. The paper further casts doubts about the de facto independence of the Independent National Electoral Commission (INEC), given the method of appointment of its principal officers by the President who is, in turn, a political appointee of the dominant political party at any given point in time.

This paper is divided into the following major segments;

- i. Literature Review: Constitutional Provisions for Conduct of Elections in Nigeria; the INEC Enabling Laws.
- ii. Composition and Mode of Appointment of Members of INEC
- iii. Critique: INEC not De Facto Independent
- iv. Political Parties; Registration of Members and Funding of Political Parties.
- v. Grievance Procedure, Petitions and Election Tribunals
- vi. Major Observations and Recommendations for Reform.
- vii. Concluding Remarks

### **Literature Review: The Legal Framework**

The theoretical foundation of the paper is the conflict resolution strategy, or WIN-LOSE exchange model, whereby it is argued that there is need for the various stakeholders, political parties, those in government and the opposition, key politicians, and the electoral umpire; to work in harmony; with a view to working out a more mutually acceptable electoral system for Nigeria, which will result in free, fair and credible elections. Applying this model, the major actors, contenders to electoral offices, security agencies and the electoral umpire; make concessions within the law, in a give-and-take exchange relationship; to arrive at mutually acceptable modalities for legitimate conduct of credible elections. The provisions of the Electoral Act, 2010, are also critically examined in course of this exercise.

The INEC enabling statute is the Electoral Act, 2010, which repeals the former Electoral Act, No.2 of 2006 and the Independent National Electoral Commission Act.<sup>1</sup> By the Electoral Act, 2010; the National Assembly duly enacts a new legislation, to regulate the conduct of Federal and State elections all over Nigeria and Area Council elections in the Federal Capital Territory, Abuja

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1. See Cap 15, Laws of the Federation of Nigeria, 2004

The Electoral Act, 2010, is comprised of nine parts and 158 sections; as follows:

**Part I:** Establishment and Functions, etc of Independent National Electoral Commission (Sections 1-7)

**Part II:** Staff of the Commission (Section 8)

**Part III:** National Register of Voters and Voters' Registration (Sections 9-24)

**Part IV:** Procedure at Election (Sections 25-77)

**Part V:** Political Parties (Sections 78-102)

**Part VI:** Procedure for Election to Area Council (Sections 103-116)

**Part VII:** Electoral Offences (Sections 117-132)

**Part VIII:** Determination of Election Petitions Arising from Elections (Sections 133-145)

**Part IX:** Miscellaneous (Sections 146-158)

There are also Three Schedules to the Act, containing mostly Rules of Procedure for Election Petitions, Fees, Evidence at Hearing, Motions and Applications; Practice and Procedure of Court of Appeal and Supreme Court, etc.

### **Composition and Mode of Appointment of Members of INEC**

Basically, politics is all about contest for power, with a view to capturing power, legitimizing and consolidating power, so as to be in comfortable position to control and distribute the nation's resources. In view of the large population and land area covered by most countries practicing democracy, the ancient Greek model of direct participation by all enfranchised male adults, is impracticable in the modern era; hence our resort to representative democracy via the electoral process. Sequel to the above; political parties vie for power, in their attempt to control the government; hence the methods of organizing and conducting

elections, as well as the credibility of the dramatis personae involved in the exercise, become crucial to the success of our democratic ideals.

Section 153 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); (herein after referred to as the 1999 Constitution), captioned Establishment of Certain Federal Executive Bodies, provides for the setting up of 14 Federal Executive Bodies; among which is the Independent National Electoral Commission. The enabling statute of INEC is the Electoral Act, 2010 (as amended). Section 2 of the Act empowers the Commission (INEC), among other functions to: conduct elections, organize voter and civic education, promote knowledge of sound, democratic election processes; conduct referenda, etc.

The Constitution further provides at Part I of the Third Schedule that the Commission (INEC) shall be comprised of (a) A Chairman who shall be the Chief Electoral Commissioner and (b) Twelve other members to be known as National Electoral Commissioners. There shall also be, for each State of the Federation and the Federal Capital Territory, Abuja, a Resident Electoral Commissioner, who shall be appointed by the President, subject to confirmation by the Senate. The Chairman and twelve (12) National Electoral Commissioners shall be appointed by the President after consulting the Council of State. Their appointments "shall be subject to confirmation by the Senate". The Chairman shall be the Chief Electoral Commissioner and must not be less than 50 years of age; while each of the 12 National Electoral Commissioners shall be 40 years and above. For the 36 States and the Federal Capital Territory (FCT) Abuja; Resident Electoral Commissioners who shall not be less than 35 years old, shall be appointed by the President, subject to confirmation by the Senate.<sup>1</sup> Prior consultation with the Council of State is not required, as is the case with the appointment of the Chairman and 12 National Electoral Commissioners.

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1. See part F of the Third Schedule

Besides, they must not be members of any political party. The method of appointment of the 37 Resident Electoral Commissioners is not clearly specified, thus implying that the President who is a member of a political party, has the freedom to appoint whoever he desires to that crucial office. This implies that presumably, those who are loyal to the President or favourably disposed to him and his party, are most likely to be appointed to the crucial positions of Resident Electoral Commissioners.

### **Critique: INEC Not De Facto Independent?**

Judging from the method of appointment of its Chairman and the 12 National Electoral Commissioners, it is argued herein that the Independent National Electoral Commission (INEC) is only independent in name, and not de facto independent. The basis for this point of view is that general elections in Nigeria are solely political party qua political party affairs. There is no provision for independent candidates. Therefore, the INEC Chairman, the 12 National Electoral Commissioners and the 37 Resident Electoral Commissioners for the 36 States and the FCT; all of whom are appointees of the President, who in turn, is elected to that office on the sponsorship of a political party, cannot be said to have been appointed independently, *stricto sensu*; the provision that the Council of State is consulted and the requirement of prior confirmation of the Senate, notwithstanding:

It is clear from the above that the composition or membership of the Commission (INEC), is predominantly persons appointed by cronies of the ruling political party; to the exclusion of opposition parties which are stakeholders in the political game of contest for power. In other words, the opposition parties have no input in the nomination or appointment of the Electoral Commissioners; who are umpires for the conduct of elections contested by all the

parties. Under the above circumstances, it is difficult to believe or conceptualize that INEC can officiate as an unbiased umpire with regard to the conduct of elections. Consequently, it can be inferred that there is sufficient ground for opposition parties to allege that there is likelihood of bias on the part of the electoral body (INEC), against the opposition candidates and in favour of candidates sponsored by the ruling political party, whose representatives were appointed into office as electoral umpires and to whom they owe a modicum of loyalty and support.

The relationship here could be inferred or be likened to that between a principal and his agents; whereby the principal (President) issues directives and conditionalities to his agents (INEC Officials) in the field of electoral contest. To further buttress this school of thought, is the fact that in the immediate preceding elections and in fact, all elections hitherto, since the return of democracy in 1999; INEC conducted the governorship elections and State Assembly elections first, before the Presidential and National Assembly elections which came later. The change in order of elections in the 2019 elections which places the Presidential and National Assembly elections first, despite the stiff objections of the opposition parties, is generally believed to be ordered by INEC on the covert directive of the APC ruling party and ostensibly to its advantage. Conducting the presidential election first may have a band wagon effect on the subsequent elections.

In the light of the above and to correct the impression of the opposition parties that INEC is not independent de facto, it is hereby suggested that the major opposition parties should constitutionally be empowered to produce or recommend for appointment, four members or one third of the 12 National Electoral Commissioners and the same proportion of the 37 Resident Electoral Commissioners, to ensure a fair balance.

There was a recent attempt, spearheaded by the opposition parties to over-ride the Presidential veto of a bill by the National

Assembly, to amend a few sections of the Electoral Act, 2010. By the provisions of Section 58(5) of the 1999 Constitution; where the President withholds his assent to a bill presented to him by the National Assembly i.e. vetos a bill; and the bill is again passed by two thirds majority of members of the National Assembly “the bill shall become law and the assent of the President shall not be required”. This is called veto over-ride. The amended 2018 Electoral Bill was vetoed by Mr. President in December 2018 on the ground that the solicited amendment will delay the conduct of 2019 elections. Members of the National Assembly threatened to over-ride the President’s veto and where this measure failed; to delay the passage of the anticipated 2019 Appropriation Bill, yet to be presented to the National Assembly by the President.<sup>1</sup> This is another area of confrontation between the Legislature and the Executive which is attributable to the mode of appointment and imbalance in the composition of the INEC membership; which calls for the recommendation made supra.

### **Registration of Voters: The Voters’ Register**

INEC is obligated to maintain a Register of voters. Sections 9 and 10 of the Electoral Act, 2010, provide, inter alia, for the registration of qualified voters by INEC; keeping a register of voters, up-dating and displaying the voters’ register and undertaking continuous registration of voters in-between elections.

With regard to qualifications for registration of voters, voting is not compulsory in Nigeria; hence an eligible voter must present himself for registration as a voter; must be a Nigerian citizen who had attained 18 years of age or above. He must present himself in person as a voter to the INEC registration officers at a registration centre or ward wherein he is ordinarily resident or works.

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1. See details in **The Nation Newspaper**, Edition of Sunday, 09 December 2018, pp. 1&4

Double or multiple registrations is prohibited by the Act and besides, an eligible voter must “not be subject to any legal incapacity to vote under any law, rule or regulation in force in Nigeria”.<sup>1</sup> It is further provided that registration of voters must end not later than 120 days before the beginning of any election.

There had been complaints by political parties and voters about multiple registrations of voters, hoarding and swindling of voter’s cards, vote buying, thumb printing of multiple ballot papers by politicians using one voter’s card etc. It is therefore, our view and recommendation that to plug the existing loop-holes with regard to exercise of franchise by honest eligible voters; up-dated register of voters should be published in all constituencies not later than 100 days before any election and that each voter’s card must bear the name, address, age and occupation of the voter, together with his/her photograph and finger print, duly embossed on the permanent voters card (PVC), in a laminated form, for ease of identification and to avert impersonation. INEC should educate voters not to part with their PVC’s, to check vote buying. Besides, card readers should be energized to function, so as to avoid impersonation and reject fake voters.

Among the major irregularities observed during previous elections were non receipt or late receipt of election materials, including ballot papers and result sheets; diversion of sensitive election materials to unauthorized locations, tampering with the materials and duplication of same for illegal purposes, etc, by powerful politicians, party agents and thugs sponsored by political parties. Elections at some centres or constituencies were either post-poned or cancelled, as a result of detected anomalies which also formed the basis of election petitions. The practice of using helicopters, trucks, vans and private cars for distribution of election materials on the eve or the very day of election, lent room for mishandling, abuses and confusion.

1. See Section 12 of the Electoral Act, 2010

### **Political Parties**

Part V of the Electoral Act (Sections 78-102), variously provide for registration of political associations as political parties by INEC; monitoring of political parties, notice of conventions/party congresses; conduct of political rallies and processions, disclosures by political parties, limitation of election expenses and of election campaigns and political broadcasts; prohibition of use of force, violence, abusive or slanderous language, etc. Perhaps the most obnoxious aspect of the repealed 2006 Act was the provision at Sections 90 and 91 thereof, for financial grants to political parties by the National Assembly, and for annual grants to the Commission, INEC, “*for distribution to the registered political parties, to assist them in their operation*”. 10% of the grant shall be shared equally among all the registered political parties and the remaining 90% in proportion to the number of seats won by each party in the National Assembly. The new Electoral Act, 2010, has no provision for financial grants to political parties by government, which is good riddance.

These erstwhile provisions encouraged pretence of registration and fraud by promoters/founders of parties. Under the repealed 2006 Act, the number of registered political parties, increased by leaps and bounds, in their bid to benefit from the largesse of 10% grant to all registered political parties by government, including parties who have no hope, or any genuine intention of winning seats at the National Assembly. Despite the present registration by INEC, of a multiplicity of 91 political parties, the largest number in Black Africa; Nigeria is fast tending towards a two-party state, in view of the dominance of power by two major political parties, viz the All Progressives Congress (APC) and the Peoples Democratic Party (PDP) which have membership, over and above all the other parties combined.

The Electoral Act, 2010 has laid to rest some of the scandals and corrupt practices associated with the repealed 2006 Act. The new Act has no provision for financial grants

to registered political parties either by INEC or by the National Assembly. Besides, the 2010 Act has stringent provisions at Part V (Sections 78-102) for controlling reckless expenditures by political parties. Other vital provisions include; limitation of election expenses, monitoring the expenditure of political parties, conduct of political rallies, processions, etc. with penalties prescribed for offences by political parties under the Act.

To avert the unbridled proliferation of mushroom parties, we strongly recommend that in addition to nonpayment of grants to political parties, they should furnish INEC with their legitimate sources of income and availability of funds, prior to registration. Similarly, the financial status of their promoters, donors and benefactors, with commensurate amount of taxes paid, should be investigated by the appropriate tax authorities and other regulatory financial agencies. In order to checkmate the tendency towards formation of multiplicity of micro-mini parties; the Electoral Act 2010 should be further amended to provide for the registration of only those parties which at the last election won a minimum of 10% of collective National Assembly and State Houses of Assembly seats. In other words, any party which fails to win a minimum of 10% of the seats at the National Assembly i.e. Senate and the House of Representatives; or the State Houses of Assembly, at the 2019 Elections; should be de-registered and cease to exist as a political party. This recommendation will, in addition, eliminate overcrowding of ballot papers with symbols of a multitude of political parties, which tend to confuse voters during elections.

### **The Voting Process and Announcement of Election Results**

There are provisions at part IV of the Electoral Act 2010, for **Procedure at Election**; (Sections 25-77). Despite the copious provisions aimed at ensuring fool-proof elections, there are several loop-holes which result in rigging of elections and other electoral malpractices. These loop-holes should be adequately monitored and checkmated in course of the voting process.

Our suggested measures to minimize election malpractices include the following:

- a) To avert thuggery and electoral violence, only authorized security personnel should be allowed to bear firearms at polling stations and collation centres.
- b) Voters who so wish should be allowed to remain at the polling stations till after the end of polls and declaration of results at each centre, rather than be sent away compulsorily, thereby creating fertile ground for election rigging and violence by party thugs.
- c) Votes cast should be counted at each polling station immediately after close of polls, the result sheets should be counter-signed by party agents in full glare of the public and the press; and the results recorded and announced on the spot. Copies of the signed result sheets should be issued to contestants or their party agents before forwarding same to collation centres, where applicable.
- d) All unused and invalid ballot papers should be counted at the end of voting, recorded and counter-signed by party agents and duly sealed, for onward transmission to the collation centres, under strict guard by armed escorts of security personnel.

### **Grievance Procedure, Petitions and Election Tribunals**

Section 285 of the 1999 Constitution provides for establishment of:

- (a) National Assembly and State House of Assembly Election Tribunal, and
- (b) Governorship Election Tribunal, for each State of the Federation and the F.C.T. These Election Tribunals shall, to the exclusion of any other court or tribunal, have original jurisdiction to handle election petitions, as may be appropriately referred to them. Aggrieved persons and parties should not be hindered from seeking redress at the Tribunals. The fundamental principle of

natural justice “*Nemo judex in causa sua*” should be fully observed by ensuring that INEC is not a judge in its own case on electoral matters before the Tribunals; and that to avert mutilations and alteration, relevant election materials should be kept in independent custody after election and promptly produced as Exhibits at the Tribunals. It is suggested as amendment to Section 285 of the 1999 Constitution, that Election Tribunals should dispose of all petitions before them expeditiously, prior to the swearing into office of the ultimate winners of contentious elections, as respectively applicable.

It is further suggested that, elections should be held not later than three clear months before assumption of office or inauguration of elected public officials. This is to avert hurried swearing into office, of wrong incumbents not duly elected or cleared by Election Tribunals i.e those who have election petitions pending against them. A good example to cite is the case of Awolowo V. Shagari which was disposed of at the Supreme Court, prior to swearing into office, of the ultimate winner, Alhaji Shehu Shagari, as President of Nigeria on 1<sup>st</sup> October 1979. Another good example is that the United States Presidential elections are held in November of each election year. The winning candidate is inaugurated the following January, after clearing all legal hurdles. It is therefore, recommended that elections be held in Nigeria timeously, some three months ahead, to ensure that all election petitions are disposed of not later than ninety days after the elections and before swearing into office, of the right candidate duly adjudged the winner, after due judicial processes of determining all attendant election petitions by the judicature.

### Major Observations

In keeping with our theoretical foundation, the conflict resolution strategy, it is strongly suggested that chieftains of all registered political parties should meet with representatives of Federal and State governments and INEC officials, to work out a new modus operandi for conduct of future

elections in Nigeria. Such a forum, guided by the WIN-LOSE strategy of conflict resolution, will evolve mutually acceptable modalities for the conduct of free, fair, credible and generally acceptable future elections. This should include a new composition of the membership of the twelve (12) INEC National Electoral Commissioners and Resident Electoral Commissioners, to ensure that one third of their members, are those nominated by the major opposition parties.

It has been established, in the course of this study that the major causes of crisis and other manifestations of discontent after most elections in Nigeria, include *inter alia*, the inadequacies and loop-holes in the INEC enabling statute, the Electoral Act, 2010; the non-independent (de facto) of INEC, due to appointment of its chairman and members by the President or the Government in power at the Federal level; and the multiplicity of political parties due to easy conditions for registration of parties; thus resulting in electoral vices, such as thuggery, vote buying, falsification of records, rigging of elections and voter apathy.<sup>1</sup> It is further observed that thousands of permanent voters cards (PVC's) remain uncollected by their owners at various INEC offices. This is indicative of poor voter education and negligence by INEC. To remedy this anomaly, INEC officials should not wait for voters to travel to their state and local government offices, for collection of their PVC's. Rather INEC field officials should convey uncollected PVC's to the various electoral wards, for distribution among the registered voters at their nearest places of residence.

Our working hypothesis which is to the effect that most electoral malpractices stem from the observed fact that INEC is not a *de facto* independent electoral umpire;

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1. A panel of resource persons, including this author, made this and other recommendations on Radio Nigeria, Enugu Network political programme, “MEDIA LINK”, on Sunday, 06 January 2019.

was affirmed at the end of the study. This is because Sections 153 and 154 of the Constitution of the Federal Republic of Nigeria, 1999, provide for appointment of the Chairman, 12 National Electoral Commissioners and 37 Resident Electoral Commissioners by the President who was elected into office on the platform of the ruling political party. This recommendation is predicated on the principle that an appointee or agent generally, does not openly counter-mand the directives of his principal. In other words, whoever appointed an electoral body, (in this case the President or government or party in power), tends more often than not, to be favoured by its appointee.

### **Recommendations**

Without prejudice to the contents of the reports of previous Electoral Reform Committees, this paper hereby makes a number of feasible recommendations to improve modalities for the conduct of the 2019 elections and future elections in Nigeria, generally.

Our recommendations are summarized as follows:

- (i) The use of firearms at polling stations and collation centres should be limited to only identified security personnel officially assigned to such venues to maintain law and order during elections.
- (ii) To avert impersonation, the names, designations/ranks and identification numbers of personnel on election duties, should be displayed at their respective duty posts.
- (iii) Only trained NYSC volunteers, teachers, University/Polytechnic lecturers and senior civil servants should officiate as ad hoc staff of INEC during elections
- (iv) To avoid infiltration of party supporters, as fake election workers, all ad hoc officials should be properly screened, identified and trained, prior

to their assignments to perform election duties.

- (v) With a view to avert rigging of elections and falsification of votes, there should be prompt counting of votes and announcement of results at the various polling stations, while the result sheets should be counter-signed by party agents prior to their being forwarded to the collations centres, under strict security measures.
- (vi) To drastically reduce the proliferation of multiplicity of registered political parties, the Electoral Act, 2010, should be amended to empower INEC to de-register all parties which fail to win 10% of the seats in the National Assembly and State Assemblies; provided that any party which fails to achieve this National Assembly minimum, but wins 10% of seats in any State House of Assembly, may be re-registered only as a State Political Party in any State(s) wherein it wins a minimum of 10% of seats in the State House(s) of Assembly.
- (vii) To avert impersonation, vote buying and engagement of under-aged voters, card readers should be fully energized; while all fraudulent activities, including abuse of PVC's, should be promptly penalized according to law.
- (viii) Voter apathy as manifested by large numbers of uncollected PVC's, could be addressed by improved voter education, whereby INEC officials travel to all electoral wards in the local governments and rural areas to hand over unclaimed PVC's to their legitimate owners; and to encourage them to vote for candidates of their choice:

It is our hope and belief that if the above reform measures are tactically adopted;

future elections in Nigeria will tend to be comparatively less rancorous, freer, fairer and more credible to the political players, a vast majority of the Nigerian populace and the international election monitors/observers, generally.

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