



INEC and the Management of Elections: Lessons from Nigeria.

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“The elections took place under an ill-prepared and partial electoral commission and were marred by reports of voter malfeasance and vote-rigging. In certain areas of the country, polls opened either after significant delay or did not open at all.... We also have encouraged Nigeria to expedite election tribunals and to strengthen the independence and capacity of the Independent National Electoral Commission.”

Barry F. Lowenkron, US Assistant Secretary of State for Democracy¹

Summary

This paper examines the Independent National Electoral Commission (INEC), a statutory body charged with the responsibility of conducting elections in Nigeria, with specific reference to the management and conduct of the 2007 elections. The paper contends further that INEC functions within a highly politicised milieu, which continues to threaten its independence, accountability, transparency, legitimacy and by implication, the consolidation of electoral democracy in Nigeria. The paper also looks at the role played by INEC in the run up to the 2007 elections and beyond, in terms of how it has impacted on Nigeria’s electoral process. Above all, it makes some policy recommendations which have to do with the restructuring of INEC within the context of both constitutional and electoral reform through the Electoral Reform Committee set up by the President as well as the Constitutional Review Committee set up by the National Assembly.

Introduction

The management of elections by bodies such as the INEC in Nigeria occupies a significant and strategic position in the election process, and, by implication, the consolidation of electoral democracy. Since such institutions are responsible for organising democratic elections, their actions and inactions could make or mar elections. The primary goal of any elections management body is to organise free, fair and credible elections with an outcome that is considered acceptable by all stakeholders. In other words, the outcome and results of its exercise must reflect the wishes of the electorate. In other words, their votes must count in the final analysis. For this to happen, the following are the requisite qualifications that such body must possess. It must be independent, impartial, transparent and accountable; that is, it must not act under the influence of any government, political party or organised group. It must be impartial in all its activities and programmes. A deliberate effort must also be put in place to ensure that its operations and programmes are open and known to all.

The April 2007 elections have come and gone. INEC’s leadership concluded that its role in the elections made the entire exercise a huge success (Ezeani, 2007). On the contrary, majority of the national and international election observer groups in their reports on Nigeria 2007 elections, concluded that INEC failed to deliver free, fair and credible elections (Yusuf, 2007; Human Rights

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¹ ‘Democracy in Sub-Saharan Africa’, Testimony before the Senate Foreign Relations Subcommittee on African Affairs, Washington, DC, 17 July 2007.



Watch, 2007). The sections below examine INEC as an institution in the context of the extent of its independence, impartiality, transparency and accountability in the run up to the April 2007 elections.

Towards an Understanding of INEC and its functions

INEC is one of the Federal Executive bodies established by Section 153 (1) F of the 1999 Constitution of the Federal Republic of Nigeria..² The functions of the body as spelt out in the Constitution include:

1. Organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of representatives and the House of Assembly of each State of the Federation;
2. Register political parties in accordance with the provisions of the 1999 Nigerian Constitution and the act of the National Assembly;
3. Monitor the organisation and operation of the political parties, including their finances;
4. Arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
5. Arrange and conduct the registration of persons qualified to vote and prepare, maintain and revised the register of voters for the purpose of any election under the Nigerian 1999 Constitution;
6. Monitor political campaigns and provide rules and regulations which shall govern the political parties;
7. Ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;
8. Delegate any of its powers to any Resident Electoral Commissioner; and
9. Carry out other duties in the 2006 Electoral Act.³

For INEC to successfully carry out these duties, its independence is critical. The 1999 Constitution is not oblivious of this independence challenge; hence, it provides that the Chairperson of the Commission is to be appointed by the President of the Federal Republic of Nigeria but such appointment must be subjected to the confirmation and approval of the National Assembly. In fact, Section 158 (1) of the 1999 Constitution provisionally guarantees the independence of INEC and other Federal Executive Bodies when it said "...and the Independent National Electoral Commission shall not be subject to the direction or control of any other authority or person."

While there are good provisions in the Nigerian 1999 Constitution for the Commission, there are also bad provisions in the same legal document. For example, Section 156 (1) (a) of the Constitution provides that those to be appointed as electoral commissioners must be qualified to be members of the House of Representatives, implying that the person must be a member of a political party.⁴ Such a provision does not in any way insulate INEC from being an institution that is partisan in its dealings, which also has serious implications for its functions as an independent and impartial umpire (Adejumobi, 2007).

Another shortcoming in the Constitution is Section 14 (2) a; in the Third Schedule, Part one relating to the Federal Executive Bodies. It empowers the President of the Federal Republic of Nigeria to appoint Resident Electoral Commissioners (RECs) for all the 36 states of the Federation and the

² The 1999 Constitution of the Federal Republic of Nigeria is the supreme law of the land that set the ground rules as a legal framework for the conduct of the 2007 elections.

³ The Electoral Act 2006 is also one of the legal frame-work for the conduct of elections in Nigeria.

⁴ Section 65 (2) of the 1999 Constitution provides that among the qualifications for a person to be elected as a member of the Senate or House of Representatives are that 'he [sic] is a member of a political party and is sponsored by that party.'

Federal Capital Territory, Abuja without recourse to the National Assembly for Approval. This provision made it possible for President Olusegun Obasanjo to appoint members of his party, the Peoples Democratic Party (PDP), as RECs across the country in the run up to the 2007 elections. This provision in the Constitution made it possible for the majority of INEC leadership to be susceptible to influence and manipulation in the hands of the ruling party.

INEC is also not independent of the executive in terms of its mode of operations. Despite the significant improvements in the Electoral Act 2006, INEC remained a tool in the hands of the executive. The Chairman of INEC and the 37 RECs were not only appointed by President Olusegun Obasanjo, they also reported to him with respect to how they were managing the institution. The financial fate of the Commission also laid at the mercy of the Federal Minister of Finance who is an appointee of the President. The executive does not only determine the level of funding and disbursement to the Commission, it also determines when and how the allocations to INEC were to be released. With these structural and institutional challenges, INEC was susceptible to manipulation and control from the executive before, during and after the 2007 elections.

INEC and the Electoral Process in the run up to the 2007 Elections- Understanding the Distortion

Although the preparation of INEC towards the 2007 elections started early, the entire process was both inefficient and non-transparent (Adejumobi, 2007). The Commission started voter registration on 7 October 2006 in specific areas across the country while the nationwide registration exercise kicked off on 25 October, 2006. This exercise was marred by complaints from the electorate, the legislature and the civil society groups in general (Ibrahim, 2007a). In its quest to 'improve' the electoral process, INEC introduced a computerised Direct Data Capture Machine (DDCM) to modernise voter registration and to prevent multiple voting. Unfortunately the result of the exercise failed to meet national and international electoral standards. The Commission lacked the technical capacity and material resources to successfully implement this laudable project. For example, the Commission could not supply the DDCM in several places across the country. This is because, of the 33,000 DDCM needed to cover the 120,000 registration centres, and only about 1,500 were available at the commencement of the voter registration exercise. The inadequacy of the DDCM hampered the early and successful commencement of voter registrations in the country.

Consequently, millions of Nigerians were disenfranchised due to this insufficiency. In some areas where these machines were available, there was no electricity to charge the batteries when they run down. In fact, Nigerians made contributions in some places to hire generators and to buy petrol to generate electricity in order to operate these registration machines. Evidence abounds that in some parts of the country, particularly in Eastern Nigeria, INEC ad-hoc staff collected bribes from qualified Nigerians before they were registered. Many Nigerians were roaming about during this registration exercise trying to find a place to register, since they were denied registration in their place of residence. Meanwhile, the late Alhaji Lamidi Adedibu, the most influential politician in Ibadan, Oyo State was found in possession of six DDCM in his house where he was illegally registering both qualified and under-aged people.

The National Assembly was also not satisfied with the outcome of the electronic registration exercise across the country. On 10 October 2006, the upper house of the National Assembly – the Senate – invited Professor Maurice Iwu, the Chairman of INEC to convince them that his Commission had the capacity to successfully utilise the technology to register qualified Nigerian voters. In order to convince the legislators that his Commission was more than ready, Maurice Iwu operated one of the registration machines on the floor of the upper chamber. But, symbolically, the machine used to convince the legislators developed a fault and was unable to function after a mock registration of ten Senators.

Despite these limitations and appeals from the Nigerian civil society to revert to manual registration, the Commission insisted that it was either electronic registration or no registration. When the Commission could not register a satisfactory numbers of Nigerians for the elections, it extended the period of the registration such that the exercise which was expected to end in December 2006, was extended to 2 February 2007. At the end of the exercise, INEC claimed it registered about 61.5 million voters out of the 140 Million Nigerian population (Adejumobi, 2007). Section 20 of the 2006 Electoral Act provides that INEC should also display on time the registration list for Nigerians to cross check their names; this was only done few days to the 14 April 2007 state elections in few urban centres without adequate publicity (the presidential and National Assembly elections were held only a week later, on 21 April). Also, the temporary voter slips issued to the electorate during the registration exercise were not laminated by the ad-hoc registration officials and no one could get the permanent voters card from INEC before the elections. All these anomalies accounted for why the 2007 elections in Nigeria were seen as programmed to fail (Ibrahim, 2007b).

Objectivity versus Subjectivity: INEC and the 2007 Elections

Prior to the elections, the federally established Economic and Financial Crime Commission (EFCC) compiled what it called an ‘advisory list’ of corrupt Nigerian politicians. EFCC submitted its list of 135 names to the Federal government and advised that they should not be allowed to contest the 2007 elections. The Federal Government responded by setting up an ad hoc administrative panel to consider the list. Within a few days, the panel completed its assignment and made recommendations to the federal government that the names of those listed should be published in the official gazette, and disqualified from contesting the 2007 elections. Their names were subsequently gazetted and sent to INEC.

Despite the fact that INEC has no legal power to disqualify candidates since such powers are vested in the courts, it went ahead to disqualify the listed candidates. According to the International Crisis Group (ICG, 2007), Alhaji Atiku Abubakar, the then Vice President who had fought vigorously against President Olusegun Obasanjo efforts to amend the constitution to allow him to run for a third term in office, was on the list and was disqualified from contesting the 2007 presidential election. It took the intervention of the Supreme Court for politicians like Abubakar Atiku, Senator Ifeanyi Ararume and the Governor of Abia State, T. A. Orji and several others to contest the 2007 elections. This positive intervention of the Supreme Court did not only nullify INEC’s action, it also reflected the partisan nature of INEC in terms of implementing the agenda of the ruling party. In fact, President Obasanjo made it known to Nigerians that PDP must win the 2007 elections by all means. He declared “the 2007 election is a do or die affair”.⁵ In the end, the PDP won both the presidential elections and the overwhelming majority of the gubernatorial as well as legislative seats across the country.

INEC’s inability to remain non-partisan in the run up to the 2007 elections impacted significantly on the electoral process. The influence of the executive on the Commission, through the presidential appointment of the INEC Chairperson and National Commissioners as well as the State Resident Commissioners, made impartiality impossible. Among the abuses and problems reported were the following:

1. Delays in the supply of voting materials;
2. Delays in the arrival of INEC ad hoc-staff leading to shortage of time and the exposure of the voters to all manner of inconveniencies;
3. The use of partisan ad-hoc staff;
4. Restriction of civil society organisations from monitoring or observing the conduct of the elections;

⁵ The former President, Olusegun Obasanjo, made this statement in reference to the fact that the ruling party, (PDP) will not relent in its effort in ensuring its success at the poll no mater what it takes.

5. Delay in the accreditation of election observers or monitors;
6. Disenfranchisement of millions of Nigerians. Many had their registration Identity Cards but their names were not in the voters registration lists utilised to conduct the;
7. Barring of aggrieved politicians from having access to evidences that were in INEC's custody to support their election petitions;
8. INEC officials thumb printed ballot papers after the elections to assist the ruling party at the tribunal court;
9. Refusal of INEC officials to provide adequate voting materials to polling stations where opposition parties were seen to have strong support;
10. INEC delayed the printing of Presidential ballot papers and it resulted in omission of candidates names, their pictures and ballot paper serial numbers;
11. Wrong spelling and omission of candidates' names and pictures in the ballot papers thereby causing cancellation of elections;
12. The use of fictitious names and pictures on the voter register.

Yet INEC had the human and financial resources to conduct free, fair and credible elections. The Commission, in addition to its permanent staff, recruited and utilised 500,000 ad hoc staff to manage the elections. INEC was also provided with adequate budget of N54.5 billion Naira (Euro 349 million) to conduct the election. The Joint Donor Basket Fund (JDBF) put together for the Nigeria 2007 elections by the UK Department for International Development (DFID), European Commission (EC), United Nation Development Programme (UNDP) and the Canadian International Development Agency (CIDA) also made it possible for INEC to independently carry out some positive roles to influence the 2007 elections in the right direction (EU Mission Report, 2007). USAID was not left out of this support. It budgeted \$15 million for a three-year Nigerian election and political processes programme from July 2005- May 2008 (Rotberg, 2007).

There were a few positive initiatives and programmes that INEC embarked upon prior to, and during the 2007 elections that deserve mention in this paper. They include:

1. Awareness campaign in the media through jingles about Nigerians' civic duties and obligations;
2. Training of INEC staff as well as its ad-hoc staff;
3. Partnership with the Nigerian and international civil society organisations working on the success of 2007 elections through the setting up of the to INEC-Stakeholders Forum; and
4. The establishment of an Electoral Institute in each of the six geo-political zones.

This collaboration also led to the establishment of networks such as the INEC-Civil Society Management Committee, INEC-Civil Society Forum, Political Finance Monitoring Group and Civil Society Partnership for Democracy (CISPAD). These groups were made up of different organisations that cut across the country's six geo political zones including Transition Monitoring Group (TMG), Alliance for Credible Election (ACE), Centre for Democracy and Development (CDD), Electoral Reform Network (ERN), International Republican Institute (IRI), Justice Development and Peace Commission (JDPC) of the Catholic Church, National Council of Women Society (NCWS), Federation of Muslim Women Association of Nigeria (FOMWAN), and IFES etc.

Policy Recommendation and the Imperative of Reform:

The serious challenges to electoral democracy in Nigeria in the manner INEC managed the 2007 elections makes reform an issue of urgent national concern. Reforming INEC is not just a necessary condition for getting elections right in future; it is a prerequisite or guaranteeing the political stability and indeed, the survival of electoral democracy. The quest for a reform of INEC through the Electoral Reform Committee set up by President Umar Yar'Adua after winning office, as well as the Constitutional Review Committee set up by the National Assembly, should include a holistic review

of the 1999 Constitution, addressing issues such as the qualification for membership, appointment and removal of INEC Commissioners, funding of the Commission as well as its autonomy and accountability. This review should take into account the following issues:

1. The de-listing of INEC from the federal executive bodies (which are vulnerable to executive control), so as to guarantee its independence and impartiality in the discharge of its duties and responsibilities;
2. Paragraph 14(2) (b) of the Third Schedule as contained in the 1999 Constitution should be removed and reformed to limit the role of INEC to administrative recognition of political parties rather than having any further discretion to decide on their right to register;
3. Section 156 of the 1999 Constitution which provides that a person cannot be appointed member of INEC unless he is qualified to be elected into the House of Representatives implies that he must belong to a political party in accordance with Section 65 of the Constitution. There is a need to amend this section so as to make it clear that the required qualification does not include membership of a political party;
4. As a means of enhancing its autonomy, the funding of INEC should come from the Consolidated Revenue of the Federation. The implication is that appropriation power should reside in the National Assembly rather than the executive arm of government;
5. The involvement of INEC in the determination of the eligibility of candidates for elections, which was clearly outside of its constitutional and legal mandate, raised serious doubt regarding its independence and the expectation that it would create a level playing field for all the parties and contestants. The power to determine the eligibility of candidates for elections should be vested in the political parties and the courts rather than INEC;
6. As a way of un-bundling INEC towards making it more responsive and effective; the registration of voters should be carried out by the National Directorate of Civic Registration; voter education to be conducted by the National Orientation Agency, Constituency Delimitation should be carried out by the National Population Commission, Bureau of Statistics and the National Boundary Commission respectively, the monitoring and auditing of the finance of political parties should be handled by the Corporate Affairs Commission. INEC should have only the responsibility of conducting the election;
7. The powers to prosecute electoral offences should be removed from INEC and vested in an electoral crimes commission.

Concluding Remarks

Elections are very central to the principle and practice of democracy all over the world. The genuine path to good governance and development in Nigeria is not just premised on the conduct of elections, but the institution that manages the conduct of such elections is also critical.

The institutional weakness of Nigeria's electoral process and legal framework for the conduct of elections as it relates to the INEC constitutes grave threat to democratic consolidation. A clear and more explicit constitutional and legal framework designed to enhance the independence and efficiency of INEC within the context of the ongoing electoral and constitutional reform is germane at this point in time in our political history. Indeed, such reforms should be geared towards securing social justice for the citizens, who sees a credible electoral process managed by INEC as the most potent weapon for transfer of power under a democratic system of government in Nigeria.

The views expressed in this paper are those of the author and do not necessarily reflect those of AfriMAP or the Open Society Institute or Soros Foundation Network.

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