

A Legal and Political Appraisal of the Role of the INEC in the Conduct of Credible Elections in Nigeria

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Abstract

Election management has been a critical issue in Nigeria's political history since independence, leading to the abortion of several attempts of democratic governance before 1999. Various abuses of the electoral process had been recorded in the seven general elections held before the 2011 elections. The paper evaluates the efficiency of the election management body, Independent National Electoral Commission (INEC) in terms of preparations for the election, ability of INEC to ensure compliance to electoral laws by political parties and actors, and the level of synergy between INEC, security agencies and other institutions. The paper adopted doctrinal research approach as theoretical framework. This approach was used as platform for a content analysis of the secondary data comprising of relevant published books, scholarly journal articles, newspapers articles, conference and institutional papers, as well as materials downloaded from the internet. The paper argues that when compared with the past elections, the 2011 elections were relatively free, fair and credible. However, several shortcomings were identified including, inefficiency in the preparation for elections on the part of INEC, undemocratic imposition of candidates by all the leading political parties, and various security lapses during and after the elections. The paper concludes that INEC leadership must tackle the identified lapses, including carrying out a complete re-organization of the commission to make it more efficient, ensure strict adherence to the electoral law by all political parties and put in place security measures that deter threats.

Keywords: *Elections, Independent National Electoral Commission, Legal, Political*

Background to the Study

The Independent National Electoral Commission (INEC) is the main electoral management body in Nigeria which was established in the 1999 Constitution (as amended). According to Okoboh (2007), it is responsible, among other things, for the conduct of the presidential election, National Assembly Election, Governorship and House of Assembly Elections. The second election management body in Nigeria is the State Independent Electoral Commission (SIEC) which is responsible for conducting Local Government Elections.

Election Management Bodies (EMBs) according to Ujo (2012) occupies a strategic position in the electoral process and by implication play a decisive role in the success of a democratic system of government. Since they are charged with the responsibility of organizing elections, their omission or commission could make or mar elections. The concept of independence implies that an election management body should not be under the influence of any government, political party or organized groups. The indication of independence includes a legal mandate and well defined jurisdiction, composition and function.

The Electoral Commission of Ghana under the former chairman of Dr. Kwadwo AfariGyan exhibited best practice. Dr. AfariGyan was deputy chairman of the Interim National Electoral Commission (INEC) which conducted the 1992 referendum on the draft Constitution and the subsequent parliamentary and presidential elections.

In Tanzania, the seven members Commission derive its powers from the Constitution. In election issue, the Tanzania National Electoral Commission has the final say. Its decisions are final, and under the constitution, no court has powers to determine any matter done by the Commission in the exercise of its powers. Another example of best practice is the Independent Electoral Commission of South Africa under Dr. Brigalia Bam who took over the Chairman position of the Commission after the resignation of Judge Johan C. Kriegler in 1999. Dr. Bam successfully conducted the 1999 and 2009 elections. On the two occasions, the elections were described as free and fair. In recognition of this achievement, the IEC received many awards. Members of election management bodies are human beings and are likely to have their party preferences. Such preferences should not in any way affect their official duties. They are required to be impartial and neutral while exercising their official functions. An impartial Election Management Body deals openly and on equal terms with each political party to apply fair access by each of the political parties to the state-owned media, freedom to campaign and respect by candidate and parties of limits set for campaign expenses. Electoral Management Bodies must ensure that transparency is observed in all aspects of the election process from voter registration to the certification and announcement of results. The transparency of the election process included monitoring the media to ensure equal access to each political party and promoting the involvement of independent election observers and political parties (Iwuajoku, 2013).

Objective of the Study

Evaluates the efficiency of the election management body, Independent National Electoral Commission (INEC) in terms of preparations for the election, ability of INEC to ensure compliance to electoral laws by political parties actors, and the level of synergy between INEC security agencies and other institutions.

Statement of Problem

According to Ajayi (2007), in Nigeria, the election administration process since independence has always resulted in controversy and crisis arising mostly in part from the perceived collaboration of EMB's with the respective ruling military or civilian regimes. The implication as noted by Ajayi is that the history of electoral administration in Nigeria has been a "history of controversy engendered by electoral malpractices". It is in realization of the controversial and problematic nature of election administration in Nigeria that an Electoral Reform Committee (ERC) was set up in 2007 to "examine the entire electoral process with a view to ensuring that we raise the quality and standard of our general elections and thereby deepen our democracy." While Nigeria's EMB the Independent National Electoral Commission (INEC) plays a central role in the democratic project of Nigeria, it is widely acknowledged that the structural character of INEC has over the years become the focal points at which elections are compromised (Jega; 2007, 2012, 2013).

Constituents of Credible Election

There were four conditions of free and fair elections as identified by Ujo (2012). These are independent judiciary to interpret electoral laws, an honest competent non-partisan administration to manage elections, a developed system of political parties well organized to put their policies, traditions and teams of candidates before the electors as alternatives between which to choose, and a general acceptance throughout the political community of certain rather vague rules of the game, which limit the struggle for power because of some unspoken sentiments that if the rules are not observed more or less faithfully, the game itself will disappear amid the wreckage of the whole system. The essence of free and fair elections cannot be over emphasized. The Supreme Court of Nigeria has emphasized the need and essence of free and fair elections. In 1983, the Nigerian Supreme Court maintained: The essence of democratic elections is that they be free and fair and that in that atmosphere of freedom, fairness and impartiality, citizens will exercise their freedom of choice of who their representatives shall be by casting their votes in favour of those candidates who, in their deliberate judgments, they consider possesses the qualities which mark them out as preferable candidates to those others who are contesting with them. The voters must be allowed to freely go to the polling booths and cast their votes unmolested. Free and fair election cannot, therefore, tolerate thuggery or violence of any kind; corrupt practice, personating, threats, undue influence, intimidation, disorderly conduct, and any acts which may have the effects of impeding the free exercise by the voter of his franchises.

GoodWin-Gill (2006) stated that the global standard for free and fair elections has been set by the Inter-parliamentary union. These standards comprise of constituent elements for free and fair elections. They include Electoral Law and System; Constituency Delimitation; Election Management; The Right to Vote; Voter Registration; Civic Education and Voter Information; Candidates, Political Parties and Political Organization; Electoral Campaign;

Balloting, Monitoring and Results; Complaints and Dispute Resolution. The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the supreme legal instrument as it regulates Nigeria's political arrangements and gives Fundamental Human Rights legal force within the country. Meanwhile, the "right to participation in government" embodies two key ideas. That is the right to vote and the right to be fairly elected to public office. The Constitution explicitly provides for the right to participate in government through voting (for all citizens above the age of 18). However, it fails to make express provision for the right of citizens to public office. This right to public office in Nigeria may be construed in two important ways: First, through interpretation of related provisions in the Constitution (such as voting); and second, through the transformation of the African Charter on Human and People's Rights into domestic law.

It is within this framework that rights associated with governance in Nigeria can be founded in part 1 of the Constitution 1999 (as amended). Specifically, the Constitution begins: This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provision of this Constitution. The Constitution makes it clear that, "Sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority." Here, the spirit of the law implies the integral role that the Nigerian people play in governing. The Constitution goes on to list the fundamental rights and freedoms of Nigerian citizens, each of which play a role in assuring equitable access to participation in government. Freedom of thought, conscience, religion, and expression, including the "freedom to hold opinions and receive and impart ideas and information without interference" are each expressly guaranteed. Without these rights, access to public offices could legally and easily be impeded by discriminations based upon religious beliefs or political ideology.

The fact that every Nigerian citizen has the right to freely associate for political purposes strongly implies the citizens' right to participate in government through elections to public office, as parties are the only vehicles for seeking political office under the Constitution. The Constitution further establishes the Independent National Electoral Commission (INEC) as the institution to assist in the realization of the promise of democracy through the ballot box. Paragraph 15(a) of the Third Schedule to the Constitution vests INEC with powers to "organize, 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". The right to participate in government is also captured in Nigerian law, through the transformation of the African Charter on Human and People's Rights into Nigerian domestic law. The African Charter (Ratification and Enforcement Act) expressly grants a right to participate in government in Article 13. Section 13 indicates the two specific ways a right to participate in government can be construed: that is through 1) voting and 2) access to public office in free and fair elections. The Act also guarantees a right to fair hearing, including a duty to "guarantee the independence of the Courts." As an international treaty that Nigeria has signed and then further transformed through domestic legislation, the Act

has the binding force of law, just as any other federal enactment. Thus, even though the right is not expressly provided for in the Constitution, it is as applicable as any of the other rights enumerated in Chapter IV.

Nigeria is a party to various international human rights instruments. These instruments complement domestic constitutional and legal human rights guarantees. The right to participate in government and to fair trial are also embodied in these international instruments, among them are the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), Constitutive Act of the African Union (2000), African Charter on Human and Peoples' Rights, African Charter on Democracy, Elections and Governance, ECOWAS Protocol on Democracy and Good Governance, and the Protocol to the African Charter on the Rights of Women.

Independent National Electoral Commission and General Elections in Nigeria
INEC since its establishment in 1998 has conducted four major General Elections in Nigeria, namely: 1999, 2003, 2007 and 2011. These elections could be described as a mix bag of both credible and not too credible elections. Nigerians have always struggled with elections, whether of the national kind or those that concerned town/village unions and each time people find cause, whether justified or not, to criticize election. It is the umpire that mostly suffers for it. In other words, the umpire is to be blamed whenever elections are conducted if they fall short of national or international expectations.

According to Swiftcount reports, it was unanimous of the international observers' report that though the 2011 elections were not perfect, they were marked as a departure from flawed and sour elections that this country has experienced over the years, particularly the 2007 elections. The 2011 elections according to the reports was characterized by the determination of INEC to halt the history of fraudulent elections and the desire of many Nigerians to restore and sustain the democratic process. INEC thereafter accepted the commendations and the attendant criticisms in good faith and participated in several post-elections round tables by civil organizations with a view to build on top of its successes. The legal structural role and finances of INEC might be responsible for its inability to conduct credible elections. This paper will go ahead to look at this items to see how the compromised conduct elections were carried out by INEC. At the apex of the organizational structure of INEC is the Chairman who serves as the Chief Executive Officer of the Commission; who together with the 12 National Electoral Commissioners constitutes the policy-making organ. Until the introduction of the Electoral Act (2006), the Nigerian President had the power to appoint someone from the ranks of Federal Permanent Secretaries to serve as the Secretary to the Commission. Such an individual is also usually the Accounting Officer and Head of the Secretariat. The Commission, at the National Headquarters, functions through Department. In June 2005, a key institution within INEC The Electoral Institute (TEI) was established for the purpose of the following objectives: the method of constituting the electoral management team (commissioners) and the funding of INEC.

In the appointment of electoral commissioners, the Constitution of Nigeria empowers the President to appoint the chairman and commissioners of INEC subject to the confirmation by the senate. Although this provision was not operational in the 1999 elections, it is however gathered from interviews of political party officials and the Transition Monitoring Group (TMG - a coalition of over 50 civil society organizations and human rights groups involved in election observation in Nigeria) that former President Olusegun Obasanjo ensured that he appointed members of his political party -the PDP as commissioners; who served in the electoral commission during the conduct of the 2003, 2007 and even to the 2011 Presidential elections. Electoral finance, seen as the cost that a country incurs as a result of the various activities undertaken by an EMB and other agencies in the conduct of an electoral process has been the object of controversy in many emerging democracies including Nigeria. Indeed, while the funding of elections in Nigeria appear to be costly, the controversy surrounding electoral finance arises more from who finances the EMB and how, than from the actual cost of conducting the elections. This notwithstanding, a categorization of electoral finance for the three main models of EMB's can be made (Daily Trust, 2015). INEC alone bears the core costs of election administration in Nigeria. According to the Electoral Act; there is to be established for the commission a fund to be known as the independent national electoral commission fund.

Over the years, two key issues relating to the funding of INEC have generated controversy. These are: the approval of election expenditure and the method of disbursement of approved funds on a timely basis. As can be seen in the foregoing six budgetary categories of INEC; while the salaries and allowances of commissioners are charged directly on the consolidated revenue reserves, election expenses in Nigeria are not. This creates serious problems for the election administration process in Nigeria; as INEC has to join the queue at the ministry of finance for its funds. Indeed, given the huge capital outlay required for INEC activities, the performance of its responsibilities has largely been dependent on the government which makes decisions about funding. While for many independent EMBs, funding is a separate line item in the national budget; released directly to the EMB by the treasury, this is not the case in the Nigerian situation. As a result, the disbursement of funds to INEC has not always been timely. For example, in the run up to the 2003 elections, INEC cried out three times for funds to enable it carry out its statutory responsibilities.

The delay in the release of the funds affected the commissions operations to the extent that its severely constrained the over half a million ad-hoc staff of various categories (polling assistants, polling clerks, presiding officers, supervisory presiding officers, collation officers and returning officers) recruited to run the over 120,000 polling stations and collation centers in the country.

Findings

The 1999 Constitution provides that any person contesting for elective position must do so under a political party platform in other words there is no room for independent candidacy under our current political dispensation. Presently, the Independent National Electoral Commission (INEC) has 63 registered political parties in its official records, 53 of this number are active in one form or the other in previously concluded election. With this staggering

number, problems and challenges are bound to present themselves both to the electorate and to INEC. These problems according to INEC are in the area of the ballot paper and relating to internal democracy within the party structures. This has led to political parties and aspirants all laying claim as to who is the rightful candidate to stand for the election under the platform of the party.

According to Maliki (2011) the importance of an electoral law that would guarantee free and fair election cannot be overemphasized because absence of credible electoral law has plunged Nigeria into several electoral crises. Accordingly, the 2011 General Elections upon which the Electoral Act of 2010 was based lay bare a number of problems and challenges in many areas amongst which were poor Computerized and Compilation of authentic and credible voters and the use of modern technology i.e. Direct Data Capturing Machine, registration of children and under aged persons, disenfranchisement of the Diaspora population. The Civil Society Pro-Democracy Network, 2011 observed that lack of civic education and ignorance of their basic rights by a majority of the voters was a major challenge to the election. This has led to the electorate being bought over with money and other basic items like soap, indomie noodles, clothing materials etc.

Conclusion

The structural challenge of Nigeria's election administration system has to do with the manner of appointment of commissioners of INEC and the funding of the commission. Indeed, INEC does not conveniently fit into any of the three main models of EMB's (that is the independent, governmental or mixed model). While INEC is being described and presented as an independent body, it has in reality been constituted as an extension of the executive. The implication of this fact is that the incumbent regime occupies a position where it could undermine the election administration process to its advantage. Establishing the structural independence of INEC; particularly in the area of appointment of commissioners and funding is therefore a basic requirement for guaranteeing the credibility of the election administration process and the sustainability of democracy.

Recommendations

The Electoral Act should be amended to establish a clear procedure, including appropriate criteria, for approval or rejection of an application for accreditation. Accreditation for observers should be published and accessible for completion by observer institutions from the date that INEC announces the election timetable. Adequate visibility and accreditation materials should be printed by INEC and distributed to accredited organization with their accreditation circulated to all INEC offices and police formation. It is important that INEC conducts a retrospective exercise to determine its weaknesses and find ways to address them for the integrity of future elections. That way it will be able to conduct operations transparently and conduct outreach activities with political parties, domestic monitors and international observers, and security services; Create unhindered access to all aspects of the election process to political party, candidate agents, domestic election monitors and observers; Partner with the press to ensure that accurate information on the electoral process is provided to the public. Take all measures to ensure the accessibility of the voting process to marginalized groups.

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