

**GOVERNANCE AND INSTITUTION-BUILDING IN NIGERIA: A
STUDY OF THE INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)**

By

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Preamble

Those who cast the votes decide nothing; those who count the votes decide everything. – Joseph Stalin, former USSR Communist leader

The problem we have had in Nigeria is that every succeeding election is worse than the previous one. In other words, the election of 1999 was better than that of 2003, and if care is not taken (that of 2003) will be better than that of 2007. That does not show growth, it does not show that our democracy is being deepened, talk less of thriving. – Ken Nnamani, Nigeria's former Senate President

This report on the Independent National Electoral Commission (INEC) is part of a broader project on *Modelling Success: Governance and Institution-building in West Africa* being implemented by the Consortium for Development Partnerships (CDP), a community of institutions dedicated to collaborative policy-oriented research and capacity-building in North America, Europe and West Africa. The Consortium is jointly coordinated by the Council for the Development of Social Science Research in Africa (CODESRIA) and the Programme of African Studies (PAS), Northwestern University, USA.

The project focuses on the identification of concrete strategies to advance institutional performance in Africa through an in-depth analysis of institutions which are key in ensuring that governments and public officials act on behalf of the public interest. Generally speaking, the project highlights good practices, lessons of value, and successes in the functioning of these institutions with an emphasis on making the linkage between good practice and models of success in democratic governance.

The report is structured into eleven sections, with the first four sections dealing with preliminary issues of Preamble, Introduction: Background and Statement of Problem, Research Objectives, and Methodology. These are followed by Context: Development of Political System and Its Influence on Performance of Electoral Authority, Institutional Autonomy and Design, Organisational Structure, Capacity and Adaptability, Leadership and Inclusiveness, Electoral Process: Design and Implementation, Public Trust and Social Capital, and Challenges of Reform and Policy Recommendation.

Introduction: Background and Statement of Problem

Deficiencies in capacity and organizational governance directly constrain the ability of key public institutions in Nigeria and elsewhere, in Africa, to fulfil their intended mandates. These debilitate all sectors of government and impede progress in poverty reduction, democratization, popular representation and economic development. Whereas there have been lots of research efforts into increasing knowledge around governance and institutional capacity for achieving

positive change, there are still gaps in the area of proposing concrete strategies for advancing institutional performance from a perspective which highlights models of democratic success.

Nigeria's Independent National Election Commission (INEC) is constitutionally empowered to organize, undertake and supervise all elections into federal and state offices; to register political parties and compile voters' list, as well as to disburse subventions to political parties and monitor them to ensure transparency and accountability. Local government elections are however organised by State Independent National Electoral Commissions, although they have the obligation to use INEC's voter's register.

This study examines the process and challenges of institutional building for democratic governance in INEC. We believe that it makes valuable contribution both to knowledge and policy as it examines the constitution, operations, performance, successes and challenges of the electoral body, cognizant of its centrality and strategic importance to the evolution of good governance, social cohesion and political stability in Nigeria. The study looks into reasons why governance institutions are bereft of the requisite capacity and the systemic inhibitions to their efficient performance. The scope of the work covers post-military rule starting from 1999 to date, though the historical background provided in the report dates back to colonial and post-independence times. The policy recommendations to be made should be helpful in reformulating the policy agenda for improved performance.

Research Objectives

In specific terms, this study seeks to:

- Examine the histories of electoral institutions in Nigeria within the context of the development of sustainable institution-building;
- Explore the difficult environment that has created the conditions for the trajectories followed by INEC;
- Assess institutional cultures of the organisation from the standpoint of its legal framework, composition, institutional autonomy, internal structure and capacity, functioning and performance with particular respect to transparency, accountability and democratic governance, as well as public perception and credibility; and to
- Explore policy recommendations on how best to make INEC more effective and functional to the benefit of the Nigerian people.

The study, is conducted along side a similar study governed by the same methodological framework on the Ghana Electoral Commission conducted by the Accra-based *Ghana Centre for Democratic Development (CDD-Ghana)*. The objective is to draw some comparative lessons from the Ghana study with a focus on identifying best practices and successful strategies that can be replicated in the Nigerian electoral administration.

Methodology

We set out to examine the factors that have generated successes and/or failures in the operations of Nigeria’s Independent National Electoral Commission (INEC). How does the system function vis-à-vis its stated objectives? What works and what does not work? By exploring these questions, we set out to identify what lessons need to be learned and how the lessons can be applied in a consistent way that would make INEC embrace international best practices and earn the necessary credibility Nigerians are demanding from their electoral commission. To achieve this, the research team relied on materials from both primary and secondary sources. Secondary sources explore the wider literature and other institutional and country experiences in the search for actionable lessons for the electoral body. The researchers also used primary sources of information through interviews. The framework of the primary sources containing *Areas of Assessment, Indicators* and *sub-indicators* was jointly developed at various project and methodology meetings of the Nigerian and Ghanaian project teams. The benchmarks did not only define success, formulate models and strategies for success, it also formed the basis for conducting prescriptive analysis (the inclusion of recommendations in response to weaknesses or shortfalls identified in the course of information-gathering).

Table I: Agreed Areas of Assessment, Indicators and Sub-indicators for the research are tabulated below:

<i>Area of Assessment</i>	<i>Indicator</i>	<i>Sub-indicator (s)</i>
1. Context	The level of development of the political system and how it influences the Electoral Authority’s (EA) performance	<ul style="list-style-type: none"> - Historical background (history of the electoral authority) - Power structure and relationship - Nature of leadership, including the leadership’s commitment to the democratic process & impact on the function of the EA - Nature and activities of political parties - Independence of the judiciary or electoral adjudicating bodies - External influences - Civil Society mandate and protection, including election consciousness, organisation and involvement

		<ul style="list-style-type: none"> - Background of elections/EAs trajectory
2. Public perception and public confidence in the institution	Level of public trust in the institution	<ul style="list-style-type: none"> - Is the EA dependable? - Are elections conducted by EA adjudged credible (acceptance of outcome) and transparent (openness)? - Reliability for future elections
3. Quality of the leadership of the institution	Institutional/collective leadership as opposed to personal/individual leadership	<ul style="list-style-type: none"> - Procedural mechanism for decision-making (collective or personal) - Leadership style (collective or personal, weak or strong) - Leadership capacity (background, vision, personality) - Positive use of the 'founding father syndrome' - Presence of succession plan
4. Institutional autonomy (as a matter of institutional design)	Level of institutional autonomy, including constitutional, legal, operational and financial autonomy	<ul style="list-style-type: none"> - Constitutional/Legal regime - Legal capacity/resource - Appointment - Tenure - Removal - Sources of funding and determination of funding - Criteria for determining funding - Security of funding - Autonomy in the enforcement of electoral rules
5. Institutional inclusiveness	Involvement of key	<ul style="list-style-type: none"> - How inclusive is the

	stakeholders and the level of quality consultation	<p>composition of the EA in terms of involving Civil Society, labour, professional members</p> <ul style="list-style-type: none"> - Consultation with major stakeholders in policy issues and major activities of the EA - Involvement of stakeholders in the programmes and activities of the EA - EA – citizens interactions e.g. public education, open fora/forum
6. Institutional capacity	The human, organisational and infrastructural capacity of the organisation	<ul style="list-style-type: none"> - Human resource capacity, including the competency and skills of administrative and operational staff - Professionalism - Adequacy and retention of core staff - Training - Hiring, firing and promotion policy and clear rules - Infrastructure, including technological capacity, infrastructure at national and regional level, transportation, communication, ability to effectively utilise facilities and equipment, buildings - Moral/ethical capacity, including presence of strict code of conduct, ethics training and enforcement, managerial integrity
7. Institutional impartiality		<ul style="list-style-type: none"> - The perception of key

		<p>stakeholders and the general public on the neutrality of the institution</p> <ul style="list-style-type: none"> - Non-partisanship - Non-sectarianism - Following due process, including the exercise of discretion - The impartial handling of key moments and events - An EA that rules against the sitting government
8. Institutional adaptability	Frequent positive adaptability to changing scenarios (the level at which the EA is able to adapt to new institutions)	<ul style="list-style-type: none"> - Funding adaptability - Technical adaptability - Technological adaptability - Level of innovation - Pro-activity (the ability to anticipate challenges and act to address them)
9. Process	Electoral cycle processes (pre-election, election and post-election)	<p><i>Pre-Election</i></p> <ul style="list-style-type: none"> - Regulatory framework, convention and practices governing pre-election activities, including registration of voters, candidates, political parties, supervision of political parties, exhibition and compilation of voters register, printing of ballot papers, appointment of electoral officers and recruitment of temporal staff, notice of poll, storage of ballot papers,

		<p>distribution of ballot papers, etc, (particularly paying attention to issues of inclusiveness, transparency, security and dispute resolution – to be mainstreamed)</p> <p><i>Elections</i></p> <ul style="list-style-type: none"> - Distribution of electoral materials - Voting - Counting, collation, transmission and tabulation of votes - Declaration of results - Transmission of results - Dispute resolution – to be mainstreamed <p><i>Post-Elections</i></p> <ul style="list-style-type: none"> - Process of adjudication of electoral disputes - Handling of materials after elections
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The Nigerian case study team engaged in fieldwork to obtain information about the country’s specificities on the achievements or failures of INEC in facilitating free and fair elections, a pre-condition for good governance and rule of law. At a preliminary planning meeting held by the CDP Modelling Success team, it was agreed that the study will combine the case study and comparative methods and will use both qualitative and quantitative techniques. However, lack of sufficient resources required for a survey forced the joint team to set it aside and we then relied on statistics generated by other research initiatives conducted by CDD, Afro barometer, Alliance for Credible Elections (ACE), the Institute of Democratic Assistance in South Africa (IDASA) and IFES.

For the fieldwork, Nigeria was divided into the already known six geo-political zones.¹ One state was chosen in each of the six geo-political zones for elite interviews, with Abuja taken on its own strength as the Capital of Nigeria. The six states are Kaduna in the North-west, Plateau in North-central, Bauchi in the North-east, Enugu in South-east, Lagos in the South-west and

¹ Nigeria is generally classified into six geopolitical zones – North-East (comprising Adamawa, Bauchi, Borno, Taraba, Gombe & Yobe); North-Central (consisting of Plateau, Benue, Nasarawa, Kogi, Kwara, Niger & Abuja); North-West (Kano, Kaduna, Kebbi, Katsina, Jigawa, Sokoto & Zamfara); South-East (Abia, Anambra, Ebonyi, Enugu & Imo), South-South (Akwa Ibom, Bayelsa, Delta, Edo, Rivers & Cross River); and South-West (Lagos, Ekiti, Ondo, Ogun, Osun & Oyo).

Edo in the South-south. Respondents were drawn from INEC, political party officials and contestants, universities and research institutions, development partner institutions, civil society organisations and security agencies. Three focus group discussions were also held in Enugu (Enugu State), Jos (Plateau State) and Benin City (Edo State) for representatives of civil society organisations, politicians and INEC officials.

This methodology allowed us to produce qualitative observations on the capacity and mode of governance of the electoral body, with a view to assessing its performance and identifying challenges that need to be addressed, as well as propose suggestions for possible reform. The first draft of the study was presented at a multi-stakeholders' review workshop of Saturday, December 15, 2007, attended by researchers and representatives of INEC and Ghana's Electoral Commission, political parties and civil society organisations, where further inputs were incorporated into the report.

Context: Political System and Its Influence on Performance of Electoral Authority

The political history of Nigeria has been one of “a litany in brinkmanship, incoherence and uncertainty” resulting in perpetual transition – a sort crossroads – rather than an assured path to democracy and good governance (Agbaje, Onwudiwe and Diamond 2004: ix). From colonial times to putatively democratic rule at independence, Nigeria has had a succession of regime changes whose main ‘added value’ had been mainly the mere change of leadership. The overall consequence of this phenomenon had been that the task of getting the state and its institutions of governance to perform the primary function of producing public goods that meet the needs and yearnings of its citizens has not happened. The promotion of both democracy and development has been marginalised in Nigerian governance.

Contemporary discourse of liberal democracy has recognised and appreciated the place of a free and fair electoral process as a critical component of any effort to enthrone a democratically responsive and development-focused government. Nonetheless, very little attention is paid to the importance of a truly independent and non-partisan electoral management body as an essential ingredient of such a system. In Nigeria, we have had repeated tinkering with our electoral commissions but their dependence to the political authority of the day has not been addressed. Not surprisingly, Nigeria is regularly haunted by a ‘ghost of the past’, a cloud of fear organised around perceived uncertainties and a constant fear of repeated violence and election rigging producing electoral failures and undemocratic rule (Ibid).

The Nigerian political system is constructed in a manner that produces regular patterns of failed elections. While Nigerians are generally committed to exercising their civic responsibilities, including voting for those they want to exercise political power, the political class has developed systematic techniques for frustrating citizens in their civic engagement through rigging and electoral fraud (Ibrahim, 2007a). Indeed, just before the 1983 elections, a report of experts prepared by the National Institute of Policy and Strategic Studies, correctly predicted that the elections could not be conducted without massive electoral fraud because the parties in power were not ready to allow others to come to power (NIPSS, 1983:3). The report also showed that only the 1959 and 1979 elections were held without systematic rigging and that

those two elections had one point in common: they were held in the presence of strong arbiters, the colonial State and the military, who were not themselves participants in the elections and who desired free and fair elections at those instances. Indeed, it has been observed that rigging is almost synonymous with Nigerian elections, just as advance fee fraud or 419 crimes are synonymous with Nigerians the world over (Kurfi, 2005:101). Are elections doomed to the machinations of fraudsters who frustrate the democratic aspirations of the Nigerian people?

According to Ben Nwabueze (2005:1), election rigging refers to:

Electoral malpractices which are palpable illegalities committed with a corrupt, fraudulent or sinister intention to influence an election in favour of a candidate(s) by means such as illegal voting, bribery, and undue influence, intimidation and other acts of coercion exerted on voters, falsification of results, fraudulent announcement of a losing candidate as winner (without altering the recorded results).

The political system uses electoral rigging or fraud to frustrate the democratic aspirations of citizens who have voted, or would have voted into office someone other than the rigged in individual.

In the passage below, we quote extensively from Bayo Adekanye's review of some of the highpoints of electoral fraud in Nigeria:

- (i) *There was the Northern Regional Election of May 1961 which gave the then Northern People's Congress (NPC) a sweeping victory of 94% of seats in the regional assembly, while eliminating the Northern Elements Progressive Union (NEPU) as an opposition. The regional ruling party had achieved that sweeping electoral victory using in part all forms of electoral chicanery, political intimidation, and even coercion, including arrest and imprisonment of opposition leaders.*
- (ii) *Similar methods had been employed in the Eastern Regional Elections, also held in 1961, by the then ruling party of the Eastern Region, the National Council of Nigerian Citizens (NCNC) turning the East into a uni-party dominant region. The elections were also marked by persecution of all dissident minority opposition parties operating along the periphery.*
- (iii) *The mid-Western Regional Elections of October 1963 and January 1964 turned the then newly created region into what one writer at the time called the "cockpit of Nigeria." There took place in the region a fierce struggle for supremacy among the three majority parties: NPC, NCNC, and the by now politically emasculated Action Group (AG), all of them deploying every man, money and material considered necessary for capturing that region of the federation.*
- (iv) *The first post-independence Federal General Elections took place in late December 1964 through early January 1965. They were fought between two*

large political coalitions, i.e. the Nigerian National Alliance (NNA) and the United Progressive Grand Alliance (UPGA). The Nigerian National Alliance (NNA) comprised the NPC and the newly contrived Nigeria National Democratic Party (NNDP), while UPGA was made up of the NCNC and AG. (NNDP was a break-away party from the former AG that the NPC had helped to keep in power in the old West and apparently against popular wishes). Marked by countrywide electoral malpractices, political intimidation, and violence, the December 1964 elections were climaxed by last-minute boycott by one of the coalitions of parties. This resulted in a serious constitutional crisis, as Nigeria was for three days characteristically governed without a government, during which loose talk about Eastern Regional plan to secede or about an impending army-organized putsch filled the political air.

- (v) *Dust from the latter had scarcely settled when Nigeria found herself preparing for yet another election i.e. the Western Regional Elections which did actually take place in October 1965. They proved to be one of the most farcical elections to be conducted in post-independence Nigeria, as the results were heavily rigged against the dominant AG interests and in favour of the break-away NNDP minority party in power in the region since 1962. The Western elections were immediately followed by a mass revolt of the region's inhabitants against NNDP's usurpation. Nor could the latter regime be saved by subsequent counter-measures by its supporters in the NPC-dominated Federal government such as "flooding the West with troops." The bloody violence from the last event, resulting de facto in the break-down of law and order, was threatening to engulf the whole federation when the army majors of January 15, 1966 struck (Adekanye, 1990:2).*

This sad history of electoral fraud or rigging has been having serious implications for our democratic future because the phenomenon is growing rather than declining. As the elections go by, the principal forms of rigging and fraud have been increasing and perfected in successive elections since 1964, 1965, 1979, 1983, 1999, 2003 and 2007. The result is that elections have become turning points in which the outcomes have been the subversion of the democratic process rather than its consolidation. Not surprisingly, major political conflicts have emerged around rigged elections.

The 1983 elections occupy a special place in the history of electoral fraud in Nigeria, as competitive rigging reached its apogee, then:

All sorts of strategies and stratagems including manipulation of the ballot or "rigging" were employed in order to win elections. Each of the opposition parties used its local power of incumbency to retain power and/or to improve its position vis-à-vis other contenders. However, federal might was used to dislodge state governors in Anambra, Oyo, Kaduna, Gongola and Borno states, thus raising NPN's tally of governorships from seven to twelve

states, reversing the power structure existing before the election when opposition parties had twelve against NPN's seven governors (Kurfi, 2005:97)

One interesting case was that of the Ondo State gubernatorial election in 1983 where the National Party of Nigeria (NPN) candidate, Chief Akin Omoboriowo, was declared elected by the electoral commission, with 1,228,891 votes as against 1,015,385 votes credited to the Unity Party of Nigeria (UPN) candidate, Chief Michael Ajasin. However, the true scores, as found by the election count, the Federal Court of Appeal and the Supreme Court from the certificates of results signed by the assistant returning officers and by the party agents, as well as from the oral testimonies of those assistant returning officers and party agents, were 1,563,327 votes for Chief Ajasin and 703,592 for Chief Omoboriowo. Chief Omoboriowo's scores were thus inflated by 523,389 votes, while that of Chief Ajasin was decreased by 547,942 votes. The evidence showed that the falsification was done at the level of the deputy returning officer. Chief Ajasin was accordingly declared by the court to have been duly elected (Ben Nwabueze, 2005:1).

Ahmadu Kurfi recounts that he was in a security meeting with the Secretary to the Government, Shehu Musa; the Inspector General of Police, Sunday Adewusi; and other security chiefs when the flash came through that "we have delivered Ondo" (Kurfi, 2005, 97). Although Ondo state was successfully "delivered" to the NPN in 1983, the "elected" governor, Akin Omoboriowo had to go into hiding to protect himself from an irate electorate that would not accept that its verdict be stolen. Police stations and houses of prominent NPN supporters were burnt and many people killed. The judicial decision that ceded Ondo state back to the UPN came within the context of a massive level of popular mobilization of citizens determined to protect their votes.

The most significant issue in the 1983 elections was that emphasis shifted from tradition forms of electoral rigging based on the manipulation of the ballot to total disregard of the figures collated on the basis of ballots and completed forms. Figures totally unrelated to any results, genuine or forged, are simply announced and illegally protected by state power. The emergence of electoral victory by false declaration did not mean that other forms of competitive rigging disappeared. Indeed, the diversity of the forms of competitive rigging employed during the 1983 elections has been carefully enumerated by the Babalakin Commission of Inquiry (FRN, 1986:289-290). These include:

- 1) Compilation of fictitious names on voters' registers.
- 2) Illegal compilation of separate voters' list.
- 3) Abuse of the voters' registration revision exercise.
- 4) Illegal printing of voters' cards.
- 5) Illegal possession of ballot boxes.
- 6) Stuffing of ballot boxes with ballot papers.
- 7) Falsification of election results.
- 8) Illegal thumb-printing of ballot papers.
- 9) Voting by under-age children.
- 10) Printing of Form EC 8 and EC 8A used for collation and declaration of election results.

- 11) Deliberate refusal to supply election materials to certain areas.
- 12) Announcing results in places where no elections were held.
- 13) Unauthorised announcement of election results.
- 14) Harassment of candidates, agents and voters.
- 15) Change of list of electoral officials.
- 16) Box-switching and inflation of figures.

In 2003, Nigeria conducted the second general election since her return to civil politics in May 1999. The 2003 elections were almost as contentious as the 1983 elections. The report from Nigerian observers affirmed numerous reported cases of alleged fraud in many states across the country (Transition Monitoring Group, 2003:120). The European Union observer report also described widespread malpractices in a number of states in the Middle Belt, the South-East and the South-South (European Commission, 2003:42). The plethora of electoral malpractices such as ballot box stuffing, snatching of electoral materials and smashing of ballot boxes, inflation of votes and other dimensions of electoral fraud, and the high incidences of electoral violence, once more rekindled the old fears that the basic institutional weaknesses associated with Nigeria's electoral system could bring the democratic experiment to grief. There are three phases in election rigging: pre-election, election-day, and post election rigging. We shall briefly outline some of the forms.

The repeated cycles of frustrating Nigerian voters have been central to the country's tortuous history of political instability and the recurrent incursions of the military into governance. This is the sense in which Nigeria has managed to merely survive since independence. The First Republic merely survived up to 1966 when the military, through a coup d'etat, initially struck to introduce organised violence into governance. Since then, the country has oscillated between military rule and civilian rule, with the Second Republic running between October 1979 and December 1983. This was followed by a protracted transition to the Third Republic, which was eventually botched in 1993 following General Babangida's annulment of the June 12 1993 elections and the resumption of full-blown military rule. What is presently described as the Fourth Republic came into existence in May 1999 following yet another return of Nigeria to civilian rule. While the country appears to have survived all of the threats around its pathways to democratic development so far, it has been at a serious cost to democratic culture. In seeking a path towards the regeneration of a democratic political culture, getting the electoral commission to do its work properly is an essential element.

In all democracies, electoral management bodies are saddled with the responsibility of organising open, regular, and competitive elections, in which results are not only a reflection of the wish of the people, but are also seen and accepted by all as such. This is the sense in which liberal democracy and competitive electoral politics are intimately connected and are part of a symbiotic relationship. But, as laudable and ideal as this may be, Nigerians have been denied of the experience of a truly liberal democracy owing to the country's notorious and unenviable electoral umpire. Despite the deep belief by the majority of the people in democracy as the most acceptable form of government, Nigeria has not been blessed with a credible electoral process characterised by internationally acceptable standards. The result has been a sad feature of a

political history in which the outcomes of every general election, beginning with that of 1959, have been disputed and contested. Every election is followed by controversy from real and perceived flaws; structural and institutional inadequacies; and deficiencies in the electoral laws, including the Constitution. A source has it that “the problem of our electoral system ... lies with the people and institutions charged with the conduct and management of elections....”²

As rightly observed by President Umaru Musa Yar’Adua at the inauguration of the Electoral Reform Committee (ERP), it will be foolhardy to pretend that post-election dislocation trends are not a threat to the peace, stability, growth and development of Nigeria.

Historical Background of Elections and the Trajectory of Electoral Authorities

The history of elections in Nigeria can be traced to the 1922 Clifford Constitution which introduced the elective principle for Lagos and Calabar as a basis for political representation and party politics in the colonial political structure (Seteolu 2005:34). The Nigerian National Democratic Party (NNDP) and the Nigerian Youth Movement (NYM) were the competitors in the indirect elections that were conducted under the system. Several reviews of the electoral process under the 1946, 1951 and 1954 Constitutions expanded the political space and gradually fostered greater citizen participation. The 1959 elections set the stage for subsequent elections in a context of ethno-regional parties and dynamics set in a tri-polar Federation with democracy deficits.³

The trajectories of electoral authorities in Nigeria started with the post-independence federal Electoral Commission of Nigeria (ECN) that was headed by its first Chairman, Sir Kofu Abayomi, who, on resignation, was replaced by Mr. Eyo Esua, whose appointment was made by President Nnamdi Azikiwe on the advice of the Prime Minister, Tafawa Balewa (Aderemi, 2005:327), with other members of the Commission nominated by each of the four regions of the country - West, Lagos, North and East. This Commission was sacked in 1966 when the military struck. The Commission’s mandate had included the delimitation of federal constituencies, compilation of voters’ register, construction of polling booths, printing of ballot papers, recruitment of staff, registration of political parties and their candidates, and the actual conduct of elections (Ibid).

The long period of military rule, which lasted from 1966 to 1979 and was marked by three coup d’etats and a 30-month civil war, foreclosed any opportunity for the functioning of the electoral commission. It was not until November 1976 that the General Olusegun Obasanjo regime established the Federal Electoral Commission (FEDECO), appointed Chief Michael Ani as its Chairman, and got the creation of this Commission backed up by retroactively promulgating Decree 41 of 1977. Section 4 of the Decree empowered the Commission to become an autonomous body *subject to the directives of nobody in the discharge of its statutory duties*

² Prince Chidi Chukwudi of the National Democratic Party (NDP) said this on the Africa Independent Television’s (AIT) “Matters Arising” programme anchored by Osiregbeme Elamah, on Friday, 17 August, 2007, at 3pm.

³ The elections are the 1961 Northern Regional Elections, the 1964 General Elections, the 1965 West Regional Election, and the general elections of 1979, 1983, 1993, 1999, 2003 and 2007.

(Jinadu, 1981). Not even the controversies generated by the provision on the immutability of FEDECO in the courts of law and the litigations that arose there from succeeded in stripping the Commission of its powers. FEDECO was soon to be tested for its competence, impartiality and integrity under the chairmanship of Michael Ani and his successor, Justice Victor Ovie-Whiskey. Sadly, the very contentious issue of ‘two-thirds of nineteen states’ (of votes cast in 1979) soon turned around to be the acid test for Chief Ani’s FEDECO.⁴ The apparent allegiance of his successor, Justice Ovie-Whiskey, to the Federal Government and the largely fraudulent elections of 1983 made the Commission one of the most scandalous of all Nigeria’s electoral commissions.⁵

The National Electoral Commission (NEC), which succeeded FEDECO, was established by Decree 23 of 1987. It had similar functions to those of FEDECO, except that the Babangida regime that established it further saddled its Chairman, Professor Eme Awa, with the near impossible task of “implementing its blanket ban on erstwhile political and public office holders from partisan politics” (Aderemi 2005:328). The complexity of NEC’s tasks and the reasons that compromised it from inception have been described in the following manner:

- The whole process of civil rule under Babangida was a charade *ab initio*; ... Babangida *et al* proved to be the agent provocateurs of the commission.
- The NEC brief was rather too ambitious; aside from the extra electoral function of implementing a controversial decision, it was also charged with the mandate to actively collaborate with MAMSER, the Political Bureau and Transition Committee at revamping the political culture.
- The deliberate structural ambiguity inherent in NEC’s configuration, for instance the confusion as to whether the chairman was in charge, as provided by section 2(2), 9(1) and 9(2) or the secretary, as directed by the Chief of General Staff for most of the Babangida regime, Rear Admiral Augustus Aikhomu.
- The inevitably tenuous relationship between an obedient, public spirited and forthright NEC chairman and a perfidious, undemocratic and corrupt supervisory military establishment.
- The existence of a parallel and at times competitive organ, the Alfa-led Transition Committee (Aderemi, 2005:328).

Against the backdrop of the foregoing, it was not surprising therefore that pressure for the removal of Professor Awa mounted after the conclusion of the local government elections of

⁴ The Constitution required that for some one to be elected President in the first round, the person must score a majority of votes and, in addition, score at least 25% of the votes in at least two-thirds of the states. As Nigeria, at that time, had nineteen states, the debate was whether whole numbers or fractions should be used in making a determination. The Supreme Court ruled that two-thirds of nineteen states was twelve two-thirds, not thirteen, thereby allowing Shehu Shagari to win, following the first round of the elections.

⁵ At its inquest in 1983 by the Justice Babalakin Commission of Enquiry, FEDECO was indicted for management lapses and internal contradictions. See Tijani, “Democracy, Accountability and the State of the Nation” in Mohammed, S. and Edoh, T. (eds.), *Nigeria: A Republic in Ruins*, Gaskiya Corporation, Zaria.

1987, which NEC conducted on a zero-party basis. He was eventually removed and replaced with Professor Humphrey Nwosu in 1989.

As Chairman of NEC, Professor Nwosu was, among several other tasks, saddled with the responsibility of registering political parties for elections in 1990. Afterwards, the thirteen political parties recommended by NEC to the Armed Forces Ruling Council for registration were rejected on the basis that they did not fully meet the criteria established for the registration of parties. The Federal Military Government then established two parties – the National Republican Convention (NRC) and the Social Democratic Party (SDP) – and imposed them on Nigerians. People were asked to choose their preferred party on the basis of their ideological leaning, with one and the other being ‘a little to the right and a little to the left respectively’. Despite several re-adjustments in the transition timetable, Professor Nwosu’s NEC staved off another postponement of the Presidential election slated for June 1993, when it “ignored the obnoxious Association for Better Nigeria (ABN) and the restraining order of an Abuja High Court obtained on the eve” of the June 12, 1993 presidential elections, to hold the polls (Ibid, p.329). As if that was not enough, Professor Nwosu went ahead to defy General Babangida and the AFRC to commence the open release of the results of the presidential elections in 14 of the 30 states of the country, before the government deployed its coercive machineries to stop him. He was soon replaced by Professor Okon Uya, after the annulment of the results of the elections in which Chief M.K.O Abiola of SDP was poised to win.

Professor Okon Uya’s tenure as NEC Chairman was marked by stark inactivity as Nigerians openly expressed their displeasure at going into any other elections whilst the government had appropriated the mandate citizens had given to Chief Abiola, the putative winner of the annulled elections. This was the situation until November 1993 when General Sani Abacha sacked the Interim government of Chief Ernest Shonekan who had replaced General Babangida, the erstwhile dictator who had been forced to “stepped aside”. General Abacha thereafter dissolved NEC and replaced it with the National Electoral Commission of Nigeria (NECON), with Chief Summer Dagogo-Jack, a retired civil servant, as its Chairman. Chief Dagogo-Jack’s NECON was apparently under the grand manipulation of the government, with all the elections it conducted into councils, states and federal legislatures described as highly ineffective and inefficient.

The death of General Abacha in June 1998 paved the way for yet another transition to civil rule and the emergence of another electoral commission. The succeeding regime of General Abdulsalami Abubakar, after declaring all the elections conducted under General Abacha invalid, got set to take Nigerians through yet another electoral process by dissolving all the political structures put in place by the late ruler. These included the Transition Implementation Commission (TIC), which was by law empowered to supervise NECON. The National Reconciliation Committee (NARECON) and the Devolution of Powers Committee (DPC) which were also organs established by General Abacha as part of his manipulative and authoritarian self-succession agenda. The regime also moved to reconstitute another electoral commission by prefixing General Babangida’s NEC with “Independent” to form Independent National Electoral Commission (INEC), perhaps to serve as a confidence restoring measure for

Nigerians who had just gone through a long period of transition (1986 to 1999) to democracy that never materialised.

According to Aderemi (2005: 330):

The perceptible doggedness of the Abubakar government to restore democratic rule in Nigeria in double-quick time, coupled with the choice of the well respected and elderly Ephraim Akpata, judge of the appellate division of the Nigerian judiciary as chairman gave mileage and invaluable credence to INEC and the whole transition process, at a time the citizenry was completely befuddled by the shenanigans of the Babangida and Abacha years which spanned an odd decade.

The very first assignment that Ephraim Akpata was saddled with included the verification of claims by political associations, voters' registration, the registration of political parties, the organisation of local government elections in the December of 1998, and the conduct of general elections into states' Houses of Assemblies, the National Assembly (i.e. House of Representatives and Senate) and the gubernatorial and presidential offices by April 1999. Despite some obvious lapses and very strident protestations of partiality in favour of the People's Democratic Party (PDP) that emerged as one of the three parties on the stage, INEC was adjudged to have done relatively well, especially in the context of the very short time it had to plan its work and given the magnitude of the task itself. The Commission thus acquitted itself rather commendably before the court of the Nigerian people who had long yearned for a break from military rule and sought to join the civilised world liberal democracy.

Dr. Abel Guobadia succeeded Justice Akpata upon the death of the latter in 2000. It was the expectation of the majority of Nigerians that his tenure as INEC Chairman was going to mark an improvement on the relatively good work started by his kinsman (Akpata) whom he succeeded, but the outcome of the 2003 elections proved that people's expectations were unfounded. INEC under Dr. Guobadia turned out to be highly susceptible to grand manipulation by the government and seemed to have facilitated electoral fraud in favour of the ruling PDP during elections. This sad development continued when Professor Maurice Iwu took over from Dr Guobadia and organised the April 2007 general elections, largely adjudged by Nigerians as the worst in the history of electioneering in the country.

TABLE II: Chairmen of Nigeria's Electoral Commissions in History

S/N	Name	Period
1.	Chief Eyo E. Esua	1964 – 1966
2.	Chief Michael Ani	1976 – 1979
3.	Justice Victor Ovie-Whiskey	1980 – 1983
4.	Professor Eme Awa	1987 – 1989
5.	Professor Humphrey Nwosu	1989 – 1993

6.	Professor Okon Edet Uya	1993
7.	Chief Sumner Dagogo-Jack	1994 – 1998
8.	Justice Ephraim Akpata	1998 – 2000
9.	Dr. Abel Guobadia	2000 – 2005
10.	Professor Maurice Iwu	2005 – date

It is clear from the foregoing that there have been fundamental structural and institutional constraints that marred the history of electoral administration in Nigeria. There is clear historical evidence that the country's electoral authorities have, to a large extent, not been independent. In spite of the frequent change of name of Nigeria's electoral management body and the repeated reform of the electoral law, the structural design of the electoral commissions did not change. The Chairs were consistently appointed by the President (or the Head of State as the case might be), to whom they all reported. Added to this is the fact that Electoral Authorities in Nigeria's history have not enjoyed financial autonomy. The executive always determined their levels of funding and the pace and timing of disbursement. Indeed, in the current Nigerian Constitution, the Chair and Commissioners of the Electoral Commission are expected to be qualified to be members of the House of Representatives, as a requirement for their appointment. The logical interpretation of this provision is that those appointed as members of the electoral commission should be party members, since party membership is one of the criteria for election into the House of Representatives (Adejumobi, 2007: 14). This structural problem has made the electoral commission prone to manipulations and control of the federal authorities.

Nature and Activities of Political Parties

Political parties are without doubt essential elements in the development and operations of liberal democracy. Nigerian political parties are cast in the mould describes by Weingrod (1977) as factional machines for the distribution of patronage. Not surprisingly, parties have no respect for their members. Imagine the words of a party chief: "The People's Democratic Party (PDP) is full of members who fraudulently obtained their party membership cards", *Nigerian Tribune*, 23rd of November 2005. These chilling words were pronounced by Colonel Ahmadu Ali, the then Chairman of the ruling People's Democratic Party to justify the decision of the party to dismiss all its members in November 2005 and request that they all apply for new membership. For weeks, the PDP enjoyed the distinction of being the only ruling political party in world history without a single member. Following the dismissal of all the party members, a thorough process of screening was developed to ensure only the right type of people were re-admitted into the party. Among those refused re-registration were the Vice-President of the country and numerous state governors elected on the platform of the ruling party. In many states, applicants rejected during the screening process resorted to the use of thugs to take over party secretariats. Armed policemen were dispatched to protect the party from erstwhile dissolved members. The Vice-President of Nigeria led protesters in a national campaign, insisting he was a foundation member of the party and must be re-registered. In a rare moment of magnanimity, the President ordered the party to register the Vice-President. It obeyed. The party leaders had all been imposed in congresses where the party constitution was set aside and

these leaders were appointed by presidential fiat rather than through elections.

In trying to understand why a party would dismiss all its members and make it difficult for them to re-integrate, we need to understand the relationship between parties and elections in Nigeria. Elections in the country are characterised by rampant violence in which party barons and godfathers contest against each other in an orgy of violence and political assassinations. Political parties therefore do not require popularity through members and supporters; what they require are state power, arms, thugs and money.

One empirical way of defining political parties in Nigeria is that they are vehicles for the expression and exercise of conflicts over the control of power (Ibrahim, 2006b). In other words, parties in Nigeria are not about democracy and elections. The most important aspect of the internal functioning of political parties in Nigeria, since 1978, is that they have a persistent tendency to factionalise and fractionalise (Ibrahim, 1991). Indeed, a recent study shows that the four leading political parties in the country are all enmeshed in internal crises with high levels of violence (Ibrahim, 2006c). Political parties operate like the mafia. In understanding the characteristics of mafia style gangsterism in Nigerian politics, it is important to note that many political parties are essentially operated by political ‘godfathers’ who use money and violence to control the political process. They decide on party nominations and campaign outcomes, and when candidates try to steer an independent course, they are usually dealt with. The result is that they raise the level of electoral violence and make free and fair elections difficult. Although parties have formal procedures for the election of their leaders, these procedures are often disregarded; when they are adhered to, the godfathers have means of determining the outcomes.

Nigeria has a very illiberal regulatory regime for the registration and operations of political parties. Section 222 of the Constitution specifically restricts the qualification of a political party to an organisation registered by the Independent National Electoral Commission under the stringent conditions stipulated by Sections 221–229 of the Constitution. Section 229 of the 1999 Constitution defines a political party thus: “Political party includes any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice–President, Governor, Deputy Governor or membership of a legislative house or of a local government council.” It is therefore a very narrow definition that reduces the essence of political parties to canvassing for votes.

Section 222 of the 1999 Constitution specifies the conditions under which an association can function as a political party. It states that “No association by whatever name called shall function as a political party, unless:

- (a) the names and addresses of its national officers are registered with the Independent National Electoral Commission;
- (b) the membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping;
- (c) a copy of its constitution is registered in the principal office of the Independent National Electoral Commission in such form as may be prescribed by the Independent National Electoral Commission;
- (d) any alteration in its registered constitution is also registered in the principal office of the Independent National Electoral Commission within thirty days of the making of such alteration;
- (e) the name of the association, its symbol or logo does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria;
- (f) The headquarters of the association is situated in the Federal Capital Territory, Abuja;

At party congresses, leaders are elected and candidates nominated for elective positions. The elections are however pre-determined most times and party bosses tend to have the final say in the selection of leaders. This is the underlying logic that leads to the process of continuous internal party crises in the country. Party bosses or godfathers do not usually allow internal party democracy and this resolves into frequent conflicts and the underdevelopment of political parties as popular organisations. Indeed, these party bosses have over the years developed comprehensive techniques for eliminating popular aspirants from party posts and from being nominated for elective posts (Ibrahim and Salihu, 2004).

The ideology question and the left/right divide have been largely evacuated from Nigerian political parties, as such conflicts are focused on personalities, issues relating to ethnic grouping, geopolitical zones and the control of power. And yet, ideology matters in Nigeria. Nigerians, for instance, are profoundly opposed to the liberal economic policies articulated and imposed on the country by the Bretton Woods institutions. Political parties could therefore take on this concern, but they do not do so.

Political Parties do not have the need to attract members, and candidates do not need to be popular because elections are rigged. As party democracy exists to attract the best and most popular into leadership, this is not really required in the Nigerian context. Alternative forms of mobilisation become more relevant.

What is the rationale for citizens to be active in political parties where their views and votes do not count? Only citizens committed to the age-old reason for which parties were invented – the capture of political power – tend to participate in party activities. There are two levels of participation in Nigerian political parties: as faction leaders or godfathers making a claim on power or as clients supporting a faction leader or god father.

Power and Pecuniary Motivation

It follows, therefore, that the motivation for engagement in party activities is simple – power and money. Alternatively, it can be money and power. Hence, Nigerian parties operate outside the norm of the definition of a political party as *an organized group of individuals seeking to exercise power to implement the policy choices they have espoused*. The contemporary political dispensation in Nigeria, characterized as it is by dislocations and disruptions, points to the absence of an enduring system of political parties organising a coherent and relevant mode of mobilisation (Ayandiji, 2004:84). Since Nigeria’s return to civil rule in 1999, several efforts at institutionalising a durable political party system that is capable of providing abiding and workable platforms for citizens have ended in failure. As rightly argued by Oyovbaire (1984: 84), Nigeria (and by extension, its party system) is still a state (system) in formation, with the absence of appropriate institutions and, or, mechanisms.

A prognosis of recent empirical studies reveals a link between political parties and other contending political forces seeking power; and to an extent, individuals whose motive borders on personal aggrandizement. This is the context in which the nature of the political party in Nigeria is examined. The former INEC chairman Chief Abel Goubadia wrote on the nature of political parties in Nigeria as follows:

Nigerian political parties behave like war machines cocked almost permanently to go into combat with perceived opponents, both existing and potential. More often than not, the enemy is not just the opposition party but also the electorates who refuse to toe the party line. Once in power the parties want to remain there forever (Tarzarce) by hook by crook, intolerant to challenges either from within or from without. Another disturbing dimension is the lack of cohesion within each of the parties, which generates intra-party wrangling and endless crisis. Such crisis, which degenerates into intra-party factions spilled over into elections, with each faction presenting different candidates (as cited in Kurfi, 2003:15).

The former special adviser to ex-president Obasanjo on political matters, and AD member, Chief Ezeife, similarly declared that:

From the beginning we had wanted ideological parties. That opportunity was ruined. We now go for winning, winning only. No more ideology, we are playing (the) survival game. Our preference for the use of ideology to unite Nigerians and present them with clear democratic choice did not work.⁶

On another occasion, Chief Eziefe added:

Unless parties are formed based on ideology, no party can be better than a group of armed robbers who have agreed on how to share

⁶ *Vanguard*, September 7, 1998.

*loot.*⁷

For Ezekiel Izougu:

The political parties and indeed the leading ones – PDP, ANPP, AC – are military contraptions without any ideological content. The PDP is a marriage of strange quarrelsome bedfellows who do not only misunderstand themselves but also are regularly feuding. ANPP is virtually moribund, while AC is split into two contentious camps (Ezekiel in Ayandiji, 2002: 6).

Lamenting the degeneration of PDP on account of indiscipline, the party's former Chairman, Chief Audu Ogbeh, said:

*...the biggest problem confronting PDP is that the party is yet to become a political party. It is more a rally. The biggest tragedy in PDP is gross indiscipline where individuals mistake democracy for anarchy.*⁸

The ruling PDP has the largest membership, it controls the National Assembly (Senate and House Representatives) with overwhelming majority and established control in 21 out of 36 states in the 2003 general elections, and 28 out of 36 states immediately after the April 2007 elections (before electoral tribunals started upturning some of these 'victories'), and also in most state Houses of Assembly. In spite of all these advantages that the party enjoys, it remains the most crises-ridden and disorganised platform in the country. Its members in the National Assembly, which it still controls, were constantly at daggers drawn with the ex-president Obasanjo, who was elected on the platform of the same party, while the recent *Etteh-gate* scandal⁹, which led its Chairman, Ahmadu Ali, to read the riot act to members of the party to protect the former House speaker, Patricia Etteh, was flagged off and spearheaded by the same party's members until she was eventually removed from office. As it was at the national level, the PDP also faced similar situations in almost all of its state branches, where factions rose up in arms against each other, resulting in the decamping of prominent members to other parties or the formation of newer ones. The Action Congress (AC) came on board through such process.¹⁰

Political parties in Nigeria, irrespective of their standing, are controlled by a few individuals in the upper hierarchy of the parties. These few influential and powerful individuals – the godfathers – who are in the minority make all the decisions for others to follow, thus confirming the various classic views on the ruling elite, which recognise two classes of people in a political society – a class that rules and a class that is ruled. It was evident that in the 2003 and 2007 general elections that some governorship aspirants did not contest in the primaries or campaign

⁷ *Newswatch*, April 9, 2007, p.6.

⁸ See *ThisDay*, Wednesday, July 24, 2002, p. 6.

⁹ Etteh-gate refers to the alleged graft of N826million spent in the renovation of the official residence of the Speaker and Deputy Speaker of House of Representatives in which the Speaker was accused.

¹⁰ Abia, Edo, Delta, Lagos, Oyo and Plateau states, to mention a few.

for election, but the party forwarded their names to INEC, and they eventually won, not because of their popularity but because the ruling elite in the parties wanted them to. Former governors Chris Ngige of Anambra State (PDP) in 2003 and Celestine Omehia of Rivers State (PDP) in 2007 are clear examples of this category of favoured ‘aspirants’. The same mechanism won a senatorial seat for Iyiola Omisore in Osun State in 2003 and a governorship seat for Theodore Orji in 2007 while both of them were in detention. This confirms Robert Michell’s thesis of the ‘iron law of oligarchy’ as an explanation of the workings of elite theory in political organisations.

Independence of the Judiciary

The judiciary, it is generally said, is the last hope of the common person. It is also the bastion of a functional democratic system. Following the massive rigging that occurred in the 2007 elections, very few people thought that the judiciary could play a positive role in providing justice for candidates whose mandates were initially stolen. This is because after the fraud that characterised the 2003 elections, the judiciary did not succeed in making major reversals on the issue of stolen mandates. The situation was as follows:

- i. Petitions on elections took a long time because incumbents who had stolen the people’s mandate paraded long lists of witnesses who must be heard in court due to the principle of fair hearing. Many cases took three to four years, almost the whole duration of the mandate. Meanwhile, those with stolen mandates remained in office and continued to enjoy the fruits of their nefarious activities;
- ii. The INEC, as custodian of electoral materials, frustrated cases by not providing or providing inadequate evidence, often compromising the petitions of litigants;
- iii. No one was prosecuted for electoral fraud, and this was because prosecution is the responsibility of INEC which in most cases supported the ruling party candidate who had stolen the mandate;
- iv. The basis for evidence in election tribunals is the same as for criminal cases – proof beyond reasonable doubt. As security forces and INEC usually supports the ruling party, it was almost impossible for opposition parties to prove allegations of electoral fraud beyond reasonable doubt. The principle of balance of probability which is easier to prove is disallowed in election cases (Falana, 2007).

Following the 2007 elections, however, the judiciary took a number of steps which significantly increased the possibility of election tribunals to deliver electoral justice in some cases:

- i. The Court of Appeal issued a practice directive to all election tribunals requiring them to collect evidence up-front in the form of affidavits rather than listening to witnesses and cross examining them. This directive sped up the conduct of tribunals, many of whom were able to deliver their judgements, but of the first instance and on appeal within one year;
- ii. The tribunals were also directed to be less formalistic and less dismissive of evidence that did not follow the exact formats of the evidence law. For the first time in election

- cases, evidence from forensic experts showing repeated voting by the same thumb-print became admissible;
- iii. The tribunals also started directing incumbents who had lost their appeal to vacate office before the conduct of bye-elections.

The result of these measures has been that a number of incumbent governors and legislators who obtained their seats illegally have been removed from offices. Although it is still difficult to prove that an incumbent stole his/her mandate to rule, those who manipulated their ways into power without due regard to law and procedure have been disqualified on technical grounds and the elections into their offices re-conducted. The courts also ruled that INEC had no powers to disqualify candidates; as such many opposition candidates who INEC had disqualified following pressure from the ruling party got their days in court and were subsequently fielded for elections. In Bayelsa state, where observers had said that no elections took place in both 2003 and 2007, the court of appeal in April 2008 agreed that there was no evidence that elections actually took place and cancelled the fake results declared by INEC, while ordering fresh elections. Another interesting result was the Court of Appeal's judgement with respect to the Sokoto governorship elections where although only ten candidates contested, INEC allocated results to fourteen candidates, showing therefore that the results were not based on facts. Once again, the court cancelled the elections and ordered that a new one be conducted.¹¹

Institutional Autonomy and Design

A truly independent and non-partisan electoral management body is one of the very basic political structures that are a precondition for any democratic system.¹² Nigeria's chequered history of democratic elections reveals that the problem associated with the conduct and management of elections are a central factor in the breakdown of democratic regimes in the country (Momoh and Adejumobi (1999:81). The failure, since independence in 1960, of the country's successive electoral commissions to guarantee the integrity of elections and, by extension, the sustenance of governments formed thereof has been widely acknowledged.¹³ None of this was more indicting than the reports of the Babalakin Commission of Inquiry into the activities of the Federal Electoral Commission (FEDECO) which conducted the 1979 general elections, and the Coker Political Bureau which was inaugurated by the Babangida

¹¹ Festus Okoye, *Sunday Trust*, 26th April, 2008.

¹² The others are: a well organised system of political parties, a fearless and independent judiciary to interpret electoral laws and the laws guiding the electoral process, a free media and a well-organised police force that would maintain law and order. B.O. Nwabueze, "Electoral Process and the 1989 Constitution", in I.A. Umezulike (1993), *Democracy Beyond the Third Republic*, Fourth Dimension Publishers, Enugu; W.J.M. Mackenzie, "Representation in Plural Societies", *Political Studies*, 2(2), 1954; W.J.M. Mackenzie, *Free Elections*, George Allen and Unwin, London.

¹³ See Attahiru Jega and Okechukwu Ibeanu (eds), *Elections and the Future of Democracy in Nigeria*, Nigeria Political Science Association (NPSA), 2007; Bayo Adekanye, "Elections in Nigeria: Problems, Strategies and Options", *Nigeria Journal of Electoral and Political Behaviour*, 1 (1), September 1990; Julius Ihonvbere, *The Rise and Fall of the Second Republic*, Zed Press, London, Lai Olorode, A Political Economy of Nigeria, John West Publications, Lagos, 1987; Richard Joseph, *Democracy and Prebendal Politics: The Rise and Fall of the Second Republic*, Cambridge University Press, Cambridge, 1991; Ahmadu Kurfi, *The General Elections of 1959 and 1979*, Macmillan, Lagos, 1986; *Report of the Political Judicial Commission of Inquiry into the Affairs of the Federal Electoral Commission (FEDECO) 1979 – 83*, Federal Government Printer, Lagos; *Report of the Political Bureau ...*. This is also confirmed by interviews conducted by the researchers in Abuja, Bauchi, Benin, Ibadan, Jos, Lagos, Enugu and Kaduna between June and November 2007.

regime to chart a new political course for Nigeria. Both reports did not only indict FEDECO, they also recommended an independent and non-partisan electoral body to manage future elections in Nigeria (Ibid,145; Ibeanu & Egwu 2007:102).

Indeed, the different changes in the name of Nigeria's electoral body since independence are a clear evidence of this claim.¹⁴ In setting up newer electoral bodies, the governments in power had often claimed that they intended not only to erase the fixated "public antipathy and distrust" associated with an abolished electoral body, but also to correct the structural and operational impediments that constrained its effectiveness and efficiency, particularly the desire to guarantee its institutional autonomy, constitutionally, legally, operationally and financially. This seeming desire to institutionalise the process reached its climax with the decision by the Babangida regime, through Decree No. 23 of 1987 and as amended by Decree No. 8 of 1989, to make the National Electoral Commission (NEC) an all-Nigerian intergovernmental agency (Jinadu 1992: 13) by abolishing state electoral commissions and structuring electoral commissioners at the state level to serve under NEC. This arrangement has since been reverted to accommodate state electoral body structures again, while assigning them enormous responsibilities. The key issues of institutional autonomy and design that arise in the Nigerian case are as follows:

- i. The President appoints all the national commissioners, including the chair and the resident state electoral commissioners. This means that the President who is a party leader and sometimes a candidate appoints those who conduct the elections;
- ii. The Electoral Commission cannot access funds directly from the consolidated federal revenue. This means that the President also determines the level and timing of funds to the Commission and can thus manipulate the body through pecuniary measures;
- iii. Civil society, opposition parties, and the judiciary have no representation in the Commission;
- iv. The Constitution virtually stipulates that only party members can be INEC commissioners; so the ground is laid for the President to appoint ruling party cronies to the Commission.

Constitutional and Legal Regime

In Nigeria, as in many parts of the world, the powers of the electoral body are rooted in the constitution and the Act of the National Assembly. Even though the country has had electoral management bodies since 1959 when the elections that heralded independence were held, the paradox is that it has not been fortunate to enjoy a credible electoral democracy. This, if anything, only establishes and mutually reinforces a correlation between political instability and poor electoral management culture (Adetula 2007:30). The country's experience over time (since 1959) has been that repeatedly the electoral management body had to be redesigned and

¹⁴ The name of Nigeria's electoral body has changed over time: Electoral Commission of Nigeria (ECN) in 1959, Federal Executive Commission (FEC) in 1964, Federal Electoral Commission (FEDECO) in 1978, National Electoral Commission (NEC) in 1987, National Electoral Commission of Nigeria (NECON) in 1995 and Independent National Electoral Commission (INEC) in 1998.

reconstituted during the numerous transitions to “democratic rule”. This means that a lot of constitutional and legal engineering, reflecting the interests of various regimes became the order of the day.

Contemporary INEC predates Nigeria’s Constitution in view of the fact that it was created by Decree 17 of 1998 with the formal inauguration of its appointed officers on August 11, 1998. The legal existence of the electoral management body was however incorporated in the 1999 Constitution of the Federal Republic of Nigeria which came into effect on May 29, 1999. Indeed, Section 153(1) provides for the creation of INEC, among other Federal Executive bodies; Sections 154 – 157 provides for the appointment, tenure qualifications and removal of the Chairman, as well as its Secretary; while Section 158(1) confers independent powers to appoint, and exercise disciplinary control over its staff. Specifically, Section 153(1) reads thus:

There shall be established for the Federation the following bodies, namely:

- a) *Code of Conduct Bureau...*
- f) *Independent National Electoral Commission*

Section 154(1) of the same Constitution also provides for the powers of the President of the Federal Republic of Nigeria, subject to confirmation by the Senate, to appoint the Chairman and members of INEC. The relevant section in Part I (F) of the Third Schedule of the Constitution reads:

- a) *Chairman, who shall be the Chief Electoral Commissioner; and*
- b) *Twelve other members to be known as National Electoral Commissioners, who shall be persons of unquestionable integrity and not be less than fifty years and forty years of age, respectively.*

It is also provided in the Constitution that:

There shall be for each state of the Federation and the Federal Capital Territory, Abuja, a Resident Electoral Commissioner who shall:

- a) *be appointed by the President;*
- b) *be persons of unquestionable integrity;*
- c) *not be less than forty years of age;*

Beyond the Constitution, other components of the legal framework for the management of Nigeria’s electoral process are: the INEC Establishment Act 1998 and the INEC (Amendment) Act 1998, the Electoral Act 2006 as an amendment of those of 2002 and 2004, and Guidelines issued by INEC. Of all these, the Constitution takes the first place in the order of precedence, in that any provision in any Act or Regulation which is contrary to its provision(s) is null, void and of no effect to the extent of such inconsistency.

At the inauguration of INEC in August 1998, the then Head of State, General Abdulsalami Abubakar, reiterated his regime's commitment to granting the electoral body a free hand to go about its assignment. In particular, it said "the Commission is protected from direction or control from any other person or authority, Federal government or its agencies."¹⁵ By this token, there was nothing in doubt, at least, in the ordinary sense, as to what the institutional autonomy of INEC was expected to be, though this has not been the case. For instance, in the build up to the 2003 general elections, INEC sent a bill to the National Assembly which was passed as Electoral Act 2001. What emerged from that exercise was the revelation that the Presidency of Chief Olusegun Obasanjo and the leadership of the National Assembly under Anyim Pius Anyim and Alhaji Ghali Umar Na'aba clandestinely tinkered with the Act to the extent that foreclosed the registration of new political parties, contrary to the provisions of Section 222 of the 1999 Constitution, and rearranged the order of elections to allow the presidential elections to hold before other ones (Garuba 2005:186, 2007:97 ; TMG 2003: 36; LEMT 2003:13). These were issues on which President Obasanjo had earlier publicly expressed preferences, prior to the passage of the bill.

This brazen conspiracy precipitated criticisms by the Nigerian public and cynical buck-passing among the principal elements involved in the criminal act to the point that "made the staple of *The Insider Weekly* throughout the remaining period of the First Term" of the democratic dispensation (Garuba 2005:186, 2007:98). Historically, the Electoral Act 2001 has stood as the most criticised and challenged electoral instrument in the history of democratic elections in Nigeria. The crucible of judicial fire initiated by opposition parties led by Chief Fawehinmi and his National Conscience Party (NPC) and that led by the Attorney-General of Abia State (a ruling PDP state) drove the final nail on the coffin of the Act, to precipitate the passing of another version in 2002. The version was still considered as containing provisions that were adjudged as highly undemocratic and unconstitutional, hence the passage of the 2006 version that was used for the 2007 general elections.

Operational Mechanism

There have been several attempts to assess the constitutional and legal autonomy of INEC with particular respect to the pressures they are subjected to from incumbents, the power elite and political parties. Much of these attempts have been prompted by and centred on the poor ratings of the Commission, particularly during the eras of Dr. Abel Guobadia and Professor Maurice Iwu as its Chairmen. Dr. Guobadia captured the contempt in which the Nigerian public holds the Commission when he observed that:

There is ... the challenge of convincing Nigerians that the Independent National Electoral Commission is free from interference from the incumbent government or any other authority or groups in its administration of elections....The Commission can only hope that its policies, procedures and arrangements meet the popular expectations (TMG 2003: 53).

¹⁵ See *The Guardian*, Thursday, March 11, 1999.

The current Chair of INEC, Prof. Maurice Iwu also admitted that Nigeria has:

Engaged in electoral processes the outcome of which were distorted, sometimes beyond recognition by the very electorate that was supposed to speak through polls, (arguing that) the only way to extricate the hostage society from the grips of these anti-democratic influences is to tackle the very roots of their crooked power through an integrated agenda of reforms (Iwu 2006:19-20).

The sham elections that INEC conducted under both officers in 2003 and 2007 respectively, coupled with several other developments that exerted pressure on the Commission, have provided the ground not only to challenge its constitutional and legal framework, but also its capacity to cope and effectively respond to pressures.

The main issues identified as compromising the institutional autonomy of INEC are:

- *Reference to INEC in the Constitution as a Federal Executive Body (Section 153(1) of the 1999 Constitution);*
- *The mode of appointment of INEC's Chairman and members of the Commission, including officials such as Resident Electoral Commissioners (RECs), and the Commission's Secretary (Section 154(1) of the Constitution);*
- *The equation of the qualification for appointment as an INEC official with membership of a political party (Section 156 of the Constitution); and*
- *The funding of the Commission (Sections 3 – 5 of the Electoral Act 2006).*

On the heels of the consultations on constitutional amendment across Nigeria by the Senate in 2005, the Citizens' Forum for Constitutional Reforms (CFCR), Nigeria's largest coalition of civil society associations and groups, in a submitted memorandum, took on these points and argued that Section 153(f) of the 1999 constitution contradicts the very essence of the institutional autonomy intended for INEC because it recognises the electoral body as a "Federal Executive body." This, according to the Forum, has its own implications, especially against the backdrop of the fact that only the Executive arm of government is empowered to direct, appoint and disburse funds to INEC (CFCR, 2005: 7).

Executive bodies are by mere circumstances of their being part of the full range of structures of governmental administration parastatals which operate outside the framework of civil service, thus making them quasi-autonomous bodies whose performance is largely limited and controlled by any government in power. This is the context in which the constitutional power vested in the President to appoint the Chairman and Members of INEC, as well as Resident Electoral Commissioners and the Commission's Secretary has far-reaching implications on its ability and capacity to exercise independence. The argument is that apart from the likelihood that these individuals so appointed by the President would be at his (and, by extension his party's) beck and call, there is also the natural tendency of office holders to act in favour of

those who appointed them to secure their re-appointment (Chukwu 2005:361; Nwabueze 1993). In the given circumstance, the tendency would be for every new President to appoint persons into such positions that would serve his party's interests. This is a fundamental stumbling block to the Commission's quest to grow and develop the necessary resilience and institutional autonomy it requires. Nigeria has been hard hit by this in that none of those who have served in the office of the country's electoral body has been privileged to have his position re-confirmed for another term.¹⁶ The present currents trailing the 2007 elections widely acclaimed to have been massively rigged by the ruling PDP and which have impelled an on-going effort depicted in the Electoral Reform Committee being headed by a former Chief Justice of Nigeria¹⁷, Mohammed Uwais, are clearly indicative of the fact that even the present Chairman of INEC, Prof. Maurice Iwu, might only just be marking his time. Indeed, longevity is not one of the traits of being an electoral commissioner in Nigeria, and this fact has consequences for institutional development and stability.

It is necessary to note that most of the constitutional and legal impediments to INEC's autonomy are administrative. While elections are administered by INEC, the Nigerian state, to a very large extent, has a responsibility in assisting INEC to prepare and administer the electoral process, without necessarily exerting undue influence on the body. Given that only a thoroughly independent electoral authority can safeguard the integrity of any country's electoral process, the argument of many people interviewed in the field is that the constitutional and legal framework that empower the Executive arm of government to direct, appoint and disburse funds to INEC cannot be said to provide for the institutional autonomy of the latter. If the perceptible doggedness of General Abdulsalami Abubakar's regime to return Nigeria to civil rule and the dexterity brought to work by the well respected Ephraim Akpata as Chairman of INEC gave invaluable credibility to the electoral body at the end of the elections that led to the handover of power to civilians in 1999,¹⁸ the 2003 and 2007 elections have clearly destroyed that trust as the Nigerian state was adjudged to be infringing on INEC's independence to ensure that the Peoples Democratic Party (PDP) perpetuates itself in power at all levels.

¹⁶ The first indigenous Chairman, Sir Kofo Abayomi, resigned preparatory to the December 1964 elections and was replaced by Mr. Eyo Esua who was appointed by President Nnamdi Azikiwe on the advice of the Prime Minister Tafawa Balewa. Michael Ani who became appointed in the same position in 1977 in the course of the transition to civil rule in 1979 was also replaced by Justice Victor Ovie-Whiskey who conducted the flawed elections of 1983. The appointment of Professor Eme Awa by President Ibrahim Babangida as the Chairman of the National Electoral Commission (NEC) in 1987 was soon cut short with his removal and replacement with Professor Humphrey Nwosu in 1989 who was also removed in the heat of controversy generated by the annulment of the June 12, 1993 Presidential Elections and replaced by Professor Okon Uya. The sacking of Ernest Shonekan's Interim government and the adventure by General Sani Abacha to take Nigeria through another round of transition led to the appointment of Chief Sumner Dagogo-Jack, who was also replaced by Chief Ephraim Akpata on the death of Abacha as Nigeria's Head of State in 1998. Chief Akpata was soon to leave after he conducted the election that returned the country to civil rule in 1999 and was replaced by Dr. Abel Guobadia who was succeeded by Professor Maurice Iwu after the end of the 2003 elections. For an account of the performance of these fellows, see Adewale Aderemi, "Electoral Commissions and Construction of Democratic Rule in Nigeria: 1979 – Date", in Godwin Onu & Abubakar Momoh (eds.), *Elections and the Future of Democratic Consolidation in Nigeria*, Nigerian Political Science Association (NPSA), Lagos, 2005.

¹⁷ Dr. Jibrin Ibrahim, one of the present authors was a member of the 22-man panel.

¹⁸ It has been argued that the success of INEC in the elections leading to the transfer of power to civilians in 1999 was due rather to "the integrity of its members rather than to institutional safeguards". See International IDEA, *Democracy in Nigeria: Continuing Dialogue(s) for Nation-building*, International Institute for Democracy and Electoral Assistance, Stockholm, 2001, p.229.

The flawed elections of 2003 and 2007 have exposed the deleterious bases of the involvement of the Executive arm of government in the appointment of the INEC Chairman, the National Electoral Commissioners, and other key officials such as Resident Electoral Commissioners (REC) and the Commission's Secretary. It also exposed the danger in equating the qualification for appointment as an INEC official with the membership of a political party, thereby compromising INEC's independence. The credibility of any election is not only dependent on the extent to which the officials of electoral commissions discharge their duties without fear or favour, but also on the extent to which the public attests to the integrity of the officials and the transparency of the process that brought them on board. This is the context in which controversies trail the often close-ended manner in which people are nominated for these sensitive positions in INEC, to the extent that compromises the electoral body's institutional autonomy and integrity. The popular perception is that because they are appointed by the President who himself is a party member, INEC top-ranks "pander to the wishes and do the bidding of the government in power" (TMG 2003:54). Not even the provision of Section 154(1&3) that the President should consult the Council of State in the discharge of his power of appointing these key INEC officials and that the appointments shall be subject to the confirmation of the Senate has safeguarded the process from being totally abused. This is because it still gives much room to the President (and his party) to manoeuvre, as he reserves the 'rights' – at all times – not only to withdraw any candidate rejected and re-nominate another for confirmation, but also to resubmit even nominees earlier rejected after a process of lobby would have been undertaken and perfected.

Nonetheless, it is important to make the point that at a certain level, the independence of INEC is provided for. Indeed, Section 158(1) of the Constitution states categorically that:

In exercising its powers to make appointments or to exercise disciplinary control over persons ... the Independent National Electoral Commission, shall not be subject to the direction and control of any authority or person.

The import of this section however is that the institutional autonomy of INEC is limited solely to personnel services (particularly appointments and disciplinary control) as against its constitutional and statutory responsibilities of the electoral process.

What can be gleaned from the discussion so far is that the independence of INEC does not rely on the prefixing of its name with "Independent", but on the constitutional provisions on which it derives its powers and authority as applied to the appointment and composition of its membership, which presently denies the organisation of its essence and legitimacy as the supposed 'impartial umpire in the electoral process.'. What then will strengthen INEC's operational mechanism? Varying suggestions have been proffered on the possible mode and criteria for doing so. These range from the removal of the powers of appointment of the Chairman and other key officials of INEC from the hands of the President and entrusting it on the Chief Justice of the Federation and/or the National Council of State; reconstituting INEC

with a spectrum of stakeholders such as political parties and interest groups (such as civil society, labour, professional organisations, religious bodies, academic bodies); advertising the key positions in the organisation for open competition, and ‘careering’ the positions as is applicable in Ghana where the head of the Commission and the commissioners have the status of appeal court judges who cannot be removed easily before they reach their retirement age. Without going to the nitty-gritty of these various positions, what is clear is that they all seek to demand for a constitutional instrument whose provisions are capable of guaranteeing the Nigerian people an open and transparent mechanism for regulating the appointment, tenure and conditions for the removal of key officials of INEC in such a manner that public trust in the institution can be regained.

Financial Autonomy

Section 3 (1) of the Electoral Act 2006 provides for the Establishment of an INEC Fund, while Sections 3(2) identifies sources of the Commission’s funds to be: monies allocated by the Federal Government to enable it exercise its constitutional functions; monies accruing to it by way of interests from investments made on the Fund; and, aids and grants made by development partners to facilitate its ability to carry out its functions. Over time, the government allocation to INEC through the Federal Ministry of Finance has generated controversy, and the issue there is that this enables the government to exercise undue influence on the Commission. Indeed, since the Commission cannot function without adequate funding, financial resources become part of the *raison d’être* for its functionality as an institution.

Based on the foregoing, coupled with the provisions of Section 4(1&2) of the Electoral Act which demands the establishment and maintenance of a separate fund from which all expenditure and running expenses incurred by the Commission shall be met,¹⁹ the Commission is subject to Section 5 of the Act to be funded under six budgetary heads, viz:

- *Consolidated revenue fund charges (including personal emoluments of National Commissioners and Resident Electoral Commissioners);*
- *Cost comprising salaries and allowances of staff of the Commission;*
- *Overheads comprising office running costs, travels and transportation, the maintenance of equipment, utilities, bank charges, etc;*
- *Special electoral capital comprising the costs of balloting instruments (i.e. ballot papers, result sheets, ballot boxes, etc);*
- *Special electoral capital (including ad-hoc staff training costs, allowances of ad-hoc registration and poll officials, etc) and other structural capital (comprising the construction of buildings, purchase and installation of equipments like generators, etc); and*
- *Purchase of vehicles, etc.*

¹⁹ The provision added a proviso “except such expenditure as may be incurred by it under Section 5 of the Act.”

Given the huge capital outlay required for INEC's work, it is clear that the performance of its responsibilities will be largely dependent on the government which makes decisions about funding (Adetula 2007: 40), even though nothing impedes the security of the money that is paid to it. INEC's supposed grasp of this is shown in its statement:

Electoral bodies all over the world are generally financed either by direct Government funding or by appropriate tax legislation. The case in Nigeria is the direct funding by Government, and therein lies the danger. There is a need ... for an electoral body like INEC to be well funded so that it does not rely on financial support from state and local government for its logistic and operational needs to survive. For the Commission to protect its independence it must be adequately funded. The financial resources of the Commission must be sufficient to meet its needs, to ensure a credible electoral system (INEC, 1999).

In the run up to the 2003 elections, INEC 'cried' out three times for funds to enable it carry out its statutory responsibilities (Ibid; LEMT 2003:11). The delay in the release of the funds affected the Commission's operations to the extent that this 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 centres in the country. It also manifested in the delay in embarking on voters' registration, the holding of stakeholders' dialogues and procurement and acquisition processes. The run up to the 2007 exercise was not any different. Perhaps the most devastating damage was the late preparation and training of ad-hoc staff and the delay in the distribution of INEC guidelines on the elections to local and foreign observers/monitors who were left with little time to fully acquaint themselves with the content of the materials and organise necessary trainings with them.²⁰ Given the importance of elections to democratic consolidation, the delay impacted negatively on the overall capacity of the Commission to effectively manage the electoral process, thus compromising its performance and bringing it into disrepute before the Nigerian electorate. In October 2006, the chairman raised alarm that the Commission was having difficulties withdrawing money from banks due to "administrative rascality" and delays within the Central Bank, the Budget Office and the Due Process Office, all resulting in the rejection of cheques issued by the Commission (International Crisis Group 2007a:13). While the arguments advanced by these offices that they acted in the need for prudence and accountability in funds management (especially in the context of Nigeria's chequered history of corruption in public procurements) is appreciated, revelations on the flawed elections suggest that the delay in the release of funds to INEC was politically contrived to manipulate the Commission and the electoral process (Ibid, 14).

The delay in the release of funds to INEC has often been further complicated by the inadequacy of the funds released for its operations. Except (perhaps) for the 2007 elections when INEC was

²⁰ Over time, the release by INEC of the guidelines has been increasingly messy. It was done three weeks before the actual date of elections in 1999 and one week to elections in 2003.

allegedly allocated more than what it requested for, the issue of delayed disbursement made it impossible for the Commission to keep to its carefully developed work plan.²¹ Available information on the funding pattern of the Commission between 2000 and 2003 reveals a huge disparity between the approved allocation and the actual money disbursed. The Commission tells this story clearly:

In each year, the grants released under each head fell short of what were approved in the Appropriation Act. The shortfalls were most severe on the Overheads, Electoral and Capital Expenditures. In the case of electoral expenditure, grants were not received until about mid-2002. Partial capital grants were released in 2000 and 2001 and none in 2002 and 2003.... The net impact of the late release and funding below the levels of approved grants posed a considerable challenge to the Commission's planning and implementation efforts (INEC 2004:69-70).

If the above statement shows that INEC's access to government allocations and, by implication, monies accruing to it by the way of interests from investments made on such allocations have dwindled over time, the same cannot be said about the Commission's access to aids and grants (both in cash and in kind) made by development partners to facilitate its work. The acknowledged vital importance of Nigeria as the most populous country and the biggest oil producer in Africa, as well as its significant clout at both regional and continental levels have combined to explain international and development partners' interests in financing INEC and its electoral process in Nigeria. Clearly, Nigeria's development partners believe that Africa's vaunted renaissance would be jeopardised if free and fair elections continue to elude the country.²² It is in view of the above that the United States, the United Kingdom, the European Union and several other groups, including the financiers of the Joint Donor Basket Fund (JDBF)²³, funded processes that provided technical capacity-building assistance to INEC during the 2003 and 2007 elections (Rotberg 2007:15). However, it has been argued, especially in the case of the 2003 elections that "the training did not necessarily reach those who filled critical roles in the election process" (Adetula 2003:43).²⁴ The outcome of the 2007 elections has also cast doubt on the impact of such contributions because clearly development partners were unable to impose effective delivery conditionalities on INEC.

²¹ In an interview, Festus Okoye, the Kaduna-based lawyer and human rights activist quoted the former Minister of the Federal Capital Territory, Mallam Nasiru el-Rufai as saying the Federal Government met everything up to pencil that INEC demanded to enable it conduct a free and fair election. Funto Akinduro of the Electoral Reform Network (ERN) asserted that INEC got twice of what it budgeted for because development partners also matched its budget by 100 percent.

²² Nigeria has a population of 140 million people by the 2006 Census. The country's oil production is reflected in its 3.22% of world export of the commodity. See *The Economist*, April 21, 2007, p39; Robert I. Rotberg, *Nigeria: Elections and Counting Challenges*, CRS No. 27, Council on Foreign Relations, New York, 2007.

²³ The Joint Donor Basket Fund was put together by the Canadian International Development Agency (SIDA), the European Union (EU), the UK Department for International Development (DFID) and the United Nations Development Programme (UNDP). The Fund was administered by DFID. Ms. Angela Odah also confirmed this to Dauda Garuba in a telephone interview on Saturday, 1st December, 2007. Also see Human Rights Watch, *Election or "Selection"? Human Rights Abuse and Threats to Free and Fair Elections in Nigeria*, New York: Human Rights Watch, 2007, pp.23.

²⁴ The two INEC officials interviewed in Enugu also confirmed this.

The question of the timing of disbursements is clearly an important one in the annals of INEC. It is an instrument that has been used effectively to erode the Commission's ability to develop its institutional autonomy. It is on this basis that critical stakeholders have consistently called for the funding of the Commission from the first-line charge of the Consolidated Revenue Fund. This is not to say that there is no divergent view about the position. For instance, Idowu Akinlotan (2007:56) has argued that "cutting the financial chord linking INEC with the government, while a positive step, is not the sure cure for the woeful failure of the Commission," adding that "even with financial independence, it would be boyish optimism for anyone to think" that INEC "could have performed any better...." Not even many of the stakeholders are comfortable with having the Commission receive funds from development partners. This category of people has argued that the issue of elections is at the core of Nigeria's sovereignty, and that the country is rich enough to match the financial implications required for these. They are, however, of the view that development partners could assist in providing logistics support and technical training and assistance to INEC and civil society groups, but not to bankroll the Commission.²⁵ They frown at the alleged unaccountable manner in which INEC used its funds in the 2007 elections, linking this to the seeming arrogance of the present leadership of the Commission. The proviso to the call for financial autonomy, therefore, is that the Commission be restructured to establish democratic control over it.

Autonomy in the enforcement of rules

INEC is entrusted with the responsibility of ensuring that electoral laws as enshrined in the Constitution and the Electoral Act are faithfully observed. However, the institutional autonomy challenges faced by INEC in terms of the constitutional and legal framework, and the operational and financial senses, affect the Commission's capacity to enforce the electoral rules, especially in complying with the provisions relating to voters' registration, and the display of the voters' register for necessary verification, claims, and objections. For instance, contrary to the provisions of Section 15 of the Third Schedule of the 1999 Constitution and the relevant sections of the Electoral Act (i.e. 1-14 of the Electoral Act 2002 and 10-25 of the Electoral Act 2006) on the registration of voters for elections, the Commission failed in its duty. Amongst the major problems and fraudulent practices that trailed the voters' registration exercises of September 2002 and the staggered 2006/2007 voters' registration, were: shortages or the complete lack of registration materials, the insufficient number of registration centres, underage registration and the trading of voter cards. The staggered 2006/2007 voters' registration was meant to be a technological breakthrough but it turned out to as a spectacular failure. The decision to use the electronic voters' register without adequate planning and without having ordered the machine sufficiently early meant the voters' registration was bound to fail, and that might have been the plan of the executive and its cohorts in the Commission. It has been argued, Ibrahim (2006:37; 2007a:4, 2007b:10) that the decision by INEC to adopt the electronic voters' registration and voting system perplexed the people "because whatever the merits ..., there was insufficient time to pass the legal and constitutional amendments, determine the type of machine that could work in the Nigerian context, and carry out the procurement process

²⁵ Interview with Festus Okoye in Kaduna on Tuesday, 14 August, 2007.

before the elections”. Many of people were disenfranchised in the process, because they could not register as there were insufficient functional machines. Also, the delay in the display of the voters’ register in both the 2003 and 2007 general elections, contrary to the constitutional provisions of 60 days before the elections, was not only an indication of the Commission’s inability to operate by its abiding rules, but also a factor that led to the turning away of prospective voters.

The failure of INEC to enforce its autonomy had side effects, as it informed the sense in which the Commission lost its moral responsibility to sanction political parties who violated certain provisions of the Electoral Act with impunity. The acknowledged violations were in the areas of the inordinate competition of political parties to outwit one another in perpetrating irregularities during the voters’ registration and election periods, the monitoring of political party finance, and the shoddy, nocturnal, and fraudulent procedures for the selection/imposition of unpopular candidates at political party primaries, which INEC was to control. All these did not only impact negatively on the electoral processes as handled by INEC in the 2003 and 2007 elections, they, especially the imposition of candidates by parties, also accounted for the myriads of problems of nominations and substitution of genuine candidates for favoured ones for which the Commission was been held culpable.²⁶

Organisational Structure, Capacity and Adaptability

Power, Structure and Relationship

The powers and functions of INEC as contained in Part I of the Third Schedule of the Constitution of the Federal Republic of Nigeria are to:

- (a) 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;*
- (b) register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;*
- (c) monitor the organisation and operation of the political parties, including their finances;*
- (d) 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;*
- (e) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;*
- (f) monitor political campaigns and provide rules and regulations which shall govern the political parties;*

²⁶ There have been series of cases in courts and election petition tribunals wherein the issue at stake has been the determination of the ‘real’ party candidate at the time of elections. Ben Obi, the Vice-Presidential candidate of the Action Congress in the April 2007 elections, as well as a few other persons, came into the 2003 Senate through such judicial victory. The recent inauguration of Rotimi Amaechi as Governor of Rivers State after April 2007 elections was also a product of an election tribunal judgment on a similar note.

- (g) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe to the oath of office prescribed by law;
- (h) delegate any of its powers to any Resident Electoral Commissioner; and
- (i) carry out such other functions as may be conferred upon it by an Act of the National Assembly.

The above functions of INEC are anchored on a well rooted structure. In this structure, the head is the Chairman who serves as the Chief Executive Officer/Chief Electoral Officer and operates from the Commission's headquarters in Abuja; there are 12 Commissioners who are appointed on the simple logic of geo-political zone balancing (even though this is not stipulated in the country's Constitution); and a Secretary. These three categories of officers, together, constitute the policy-making organ of INEC, with the Secretary to the Commission being the Accounting Officer and the Head of Administration, and the Commissioners functioning as Directors/Heads of departments, directorates and units.²⁷ The divisions of the Commission are:

- Public Affairs
- Finance & Accounts
- Information & Communications Technology
- Estate & Works
- States Coordination
- Logistics & Transport
- Operations
- Legal Services
- General Administration
- Human Resources
- Political Party Monitoring & Liaison, and
- Internal Audit & Security

The structure also provides for 37 Resident Electoral Commissioners (RECs), who, subject to Nigeria's constitutional provisions, are to be of "unquestionable integrity" and not less than 40 years of age. As applicable to INEC Headquarters, these RECs serve as the Chief Executive Officers in the 36 states of the Federation and the Federal Capital Territory, Abuja, with Administrative Secretaries who function as the Accounting Officers and Heads of Administration. There are also functional departments headed by senior officers at the level of the state, and yet other Electoral Officers placed in charge of Local Government Area Offices.

As is common to many public institutions in Nigeria, there are no provisions or even considerations on gender equity that could have led to the implementation of the principle of according 30% of the appointments of persons in these positions to women in the Beijing spirit of the affirmative action principle.

²⁷ See *Review of INEC's Strategic Action Plan for 2007: Report of the Proceedings of the Retreat held at Conference Hall, State Library, Calabar, Cross River State from May 22 – 24, 2006.*

Capacity

It has been argued that Nigeria has a disjointed history of democracy and elections (TMG 2003:61). While the different changes in the name of Nigeria's electoral body since independence appears to confirm this, it is also worthy to acknowledge that one of the features of Nigeria's disjointed history of elections is the oft-repeated quest for the necessary capacities of every electoral institution founded to grapple with its vast and complex statutory responsibilities. This, as would be easily gleaned, is not far from the fact that the efficient management of electoral processes are a necessary political demand for ensuring "sanctity, transparency and credibility of elections results in the nation's democratic setting" (Akinboye 2005:294). What has remained undoubtedly critical to this process is the level of human, ethical and infrastructural capacity.

Human Capacity

Beyond its acknowledged constraints on electoral matters, the 1999 Constitution of the Federal Republic of Nigeria was spectacularly generous in granting enormous administrative independence to INEC. It accords the Commission the right to appoint, dismiss and exercise disciplinary control over its staff without interference from anybody or authority. Thus, apart from the positions of the Chairman, the 12 Commissioners and the Secretary of the Commission, which are appointments by the President, subject to confirmation by the Senate, INEC is bound by the public service statutory regulation to advertise all vacant positions for employment. The process also provides for the short-listing of candidates who meet the stipulated requirements, and the conduct of interviews for short-listed candidates before letters of employments are issued to the successful ones to resume duty. Expectedly, the paper qualifications for any top position in the Commission is also matched with the necessary cognate experience and other good and enhancing qualities, including effective communication and inter-personal skills, as well as a capacity to cope and work under pressure. All those employed through the above rigorous process constitute the core staff of INEC, though a few of the people interviewed in the course of this research believe that some staff are on the Commission's employment not necessarily because they scaled through any rigorous recruitment exercise, but because of the *I know you* phenomenon which Nigerians describe in the sexist parlance of 'man-know-man'.²⁸ Anybody familiar with the Nigerian system cannot deny the existence of situations in which people secure jobs only on account of their connection with highly placed people, and INEC is not necessarily an exception to this. The growing state of unemployment in the country, which has left the labour market congested since the economic crisis that started with the Structural Adjustment Programme (SAP), has lubricated this culture of having to know somebody to access lucrative jobs.

It is not clear if the core staffers of the Commission are adequate in numbers or not. Some of the Commission's members of staff interviewed argued that the staffing level of the organisation is adequate, while others outside believe that the Commission is not adequately staffed. Yet, another category of interviewees is of the view that the issue is not about the adequacy of staff,

²⁸ This is a common expression of the influenced employment process in Nigeria. Another term for this is "who you know".

but about coordination and the infrastructure available to work with, adding that a substantial number of the Commission's staff do not have any schedule of duty but roam about the place. For instance, Dr. Osagie Obayuwana of the National Conscience Party (NCP) shares the view that if elections are staggered such that would allow for mid-term exercise, INEC will be able to organise itself better and maximise the available staff to its credit by deploying men to only where they are required.²⁹ Upon recruitment, there is absolute guarantee of job retention for the core staff, except where one earns himself termination or dismissal through disciplinary action.

Besides the core staff, INEC also maintains ad-hoc staff that are engaged or contracted for specific assignments prior to or during elections. The figure of this category of staff has risen up to half a million over the last two general elections held in 2003 and 2007 in response to Nigeria's growing voting population now pegged at 61.5million. The process of their employment is as shady and shoddy as the poor job performance often associated with their work. While INEC's employment practices are about the basic staff recruitment standards and procedures in any organisation that aims for the ideal, these do not necessarily translate into concrete success performance. This is specifically the case of the ad-hoc staff who perpetrate the majority of the horrendous criminal acts for which INEC is often criticised and vilified. Largely unemployed, INEC ad-hoc staff have over the years fallen cheap to the money and immediate material gains advanced by power hungry and desperate politicians who view politics only from the angle of an investment on which profit should accrue. A case in point was in Nassarawa State where a presiding officer simply absconded with electoral materials meant for a polling booth where the former American Secretary of State, Madeline Albright, was scheduled to visit as the head of the National Democratic Institute (NDI) election observation mission during the 2007 elections.³⁰ It is true that politicians often clandestinely sponsor card carrying members of their parties or their cronies to work as the Commission's ad-hoc staff with a view to manipulating the outcome of elections. A top staff of INEC in one of the states in the North-central zone absolved the Commission of this blame, arguing that it was difficult for INEC to know "who-is-who" in view of the manner ad-hoc staff are recruited. Another staff from one of the states in the North-east stated that any report on suspected party sponsorship often results in the automatic dismissal of such ad-hoc staff. The consequences of having people of ulterior interests serving as ad-hoc staff in INEC has often foundered promises of free and fair elections, with the Commission, being the biggest culprit, lacking the capacity to manage the electoral process. This, if anything, casts aspersions on the professionalism, non-partisanship, non-sectarianism, and the expected independent credentials of the Commission, thus impeding the electoral process.

Thus, while the epileptic nature of the existence of electoral commissions in Nigeria does not make for professionalism, the sheer existence of INEC since 1998 has provided the Commission's staff with opportunities for training and retraining, seminars, workshops and conferences, as well as the technical support of development partners which are well-intended

²⁹ Dr. Osagie Obayuwana is the National Chairman of NCP. He was the Presidential candidate of the party in the 2007 general elections. He was also the governorship candidate of the party in Edo State in 2003.

³⁰ INEC Chairman, Maurice Iwu, simply denounced the act on a live Network programme of the Federal Radio Corporation of Nigeria (FRCN) monitored in Enugu as something contrived to "embarrass the Commission and the country as being incapable of organizing a free and fair election".

steps to uplift the Commission to greater heights of professionalism. A fundamental landmark was made in developing INEC's human capacity in June 2005 when, in an effort to restructure and reposition the Commission to become "a knowledge-based organisation" capable of conducting credible elections, *The Electoral Institute* comprising of three departments – Training, Voter Education, and Research and Documentation – was established in five training centres at Ibadan, Nsukka, Oghara, Nassarawa and Zaria (Iwu 2006:14).

In specific terms, the objectives of *The Electoral Institute*, as highlighted in Igbani (2006:56), are to:

- *facilitate capacity building and professionalism in the Commission through training and manpower development of the Commission's staff;*
- *engage in vigorous voter education activities with a view to achieving an increased and effective participation of the electorate in the electoral process; and*
- *carry out electoral research and documentation.*

As laudable as the above objectives are, the processes that drive them have not been fast-tracked enough to enable the Commission, and indeed Nigeria, enjoy their benefits. Interactions with some INEC staff at a programme in Enugu and Abuja, as well as interviews with others in Kaduna, Bauchi and Jos indicate that while *The Electoral Institute* is a laudable initiative that has come to fill the gap created by the dearth of organised institutions for training INEC staff and stakeholders on electoral matters, much is still required to be done to fast-track the process that will enable it work in the true sense of achieving its objectives. Such efforts also require the building of moral and ethical capacity, in areas including a strict code of conduct, training on ethics and enforcement and managerial integrity. Until this is done the Commission will only remain like a regular government agency that would possibly never see election administration as a professional career.

Infrastructural Capacity

By its sheer size and spread across the country, INEC, no doubt, requires massive infrastructure. From office buildings, transportation, technology, and information and telecommunications facilities, the sheer quantity of what INEC requires to adequately function is enormous given the size of Nigeria's population. In our visits to INEC offices in Enugu, Benin, Kaduna, Jos, Bauchi and Lagos, we noticed that INEC is poorly equipped and cannot perform optimally. Basic equipment and facilities such as fans, computers, and internet services in the offices of highly placed personnel were lacking. Some lower grade staff did not even have office space or adequate furniture.³¹ It is difficult for INEC to function effectively with such poor work

³¹ In Jos, Dauda Garuba drew the attention of a staff of INEC who refused to talk to him at the Commission's Secretariat to the fact that a mere look at her office speaks volume about the condition of work in the organization. The place was definitely not conducive to any meaningful work, as the very basic needs of an office were not in place, and yet it was supposed to be a very top office in the organization.

conditions. It is also difficult to understand how INEC has been spending the huge budget allocations it has been receiving, even if the allocations arrive late.

The world of technology is inseparable from any functional and effective electoral process, and it is in this sense that INEC should ordinarily not be left out of the various technologies of managing elections. Ucholla, a National Commissioner in INEC, shows appreciation for this rapidly developing character of technological applications in the electoral process when he argues that even with the modest achievements made by INEC since 1999, the question has been how to choose between competing technologies what would best suit the needs of the Commission (Ucholla 2006:67). Although he admits that “excellent technological applications alone do not necessarily guarantee perfection or good electoral outcomes”, yet they are largely “dependent on our collective will to let the various technologies succeed”, in a sense that makes election outcomes reflective of the general wish of the electorate (Ibid).

After a review of the 1998/99 transitional elections, INEC produced a *Strategic Plan 2000-2003* with the overall aim of improving the electoral process and election management in Nigeria. The plan targeted such critical areas as computerisation and information technology for planning and management. Even though the plan had set June 30, 2001 as the deadline for attaining Optical Mark Recognition (OMR) scanning equipment for the compilation of a computerised Voters’ Register and January 1, 2002 as deadline for achieving the installation and operationalisation of elections management databases, as well as for attaining improved communication, transportation and 75% of physical infrastructure, the late release of funds either delayed or completely denied the delivery on the plan. It took up to December 2002 before INEC received funds for the installation of most of the equipment it eventually acquired (INEC 2004).

Thus, the first major attempt to revolutionise Nigeria’s electoral process through technological applications started in the run up to the 2003 elections with the efforts to build an Electronic Voters Register through the associated Optical Mark Recognition (OMR), Intelligent Character Recognition (ICR), and Data Processing and Analysis technologies. OMR is a technology that enables the electronic extraction of intended data from marked fields – i.e. checked boxes and filled-in fields – on printed forms for purposes of quick and accurate processing of surveys, reply cards, questionnaires and ballots. The ICR technology converts handwritten transcripts to texts processed via gradual merger with Optical Character Recognition to form Intelligent Recognition. Data Processing technology, adopted by INEC in 2002 in preparation for the 2003 general elections, was intended to process OMR forms through the use of scanners and specialised software with file server, while Data Analysis was all about analysing the captured data in the 2002/2003 compiled electronic voters register, with the target centred on Automated Fingerprint Identification System (AFIS).

Beyond the foregoing was the introduction of the Results Collation/Transmission technologies, which had facilities for High Frequency Radio Network (HF), Inmarsat Terminals and G3 Fax Transmission. While the Frequency Radio Network had long been in use by several electoral commissions in Nigeria, the new ground gained superseded the earlier limited capacity for data

transmission by batch transfer data terminals that are interfaced with data transmission modems via radio communication (Ucholla 2006:72). INEC's venture into the Inmarsat Terminals technology in 2003 was complimented by the United Nations Development Programme (UNDP) supply of additional terminals on loan. The facilities which are still valuable, especially in difficult terrains where GSM network providers are not available, enabled INEC to transmit results via Thuraya, Bgan Iridium and NERA (Ibid). G3 Fax Transmission was about the most useful of INEC's utilised technologies during the 2003 elections in that up to 90% of the results transmission to the Commission's headquarters from the various states were done through it (Ibid).

While the technologies recounted above would have marked a major revolution in Nigeria's electoral process, they were nevertheless affected by late release of funds by the government, "and in some cases poor choice of technology applications." Also of grave concern was the fact that the applications could not satisfactorily prevent the massive rigging that characterised the 2003 elections and the negative perception that was thus invoked in the minds of many Nigerians. It was no wonder, therefore, that a popular Bini musician, Joseph Osayamore, asked in one of his albums: "*Guobadia wey your computer?*" in an apparent referral to the failure of INEC's computerisation exercise in the 2003 elections.

It was also not surprising that the mere mention of the Electronic Voting System (EVS) as the technology to be adopted by INEC in the build up to the 2007 elections attracted widespread national criticisms. Anchored on a strategic plan to provide functional communication systems in all INEC offices to allow for effective information flow, the consolidation of the already started process of Electronic Voters Register and the plan for the effective use of Geographic Information System (GIS) technology in polling unit location and identification, the EVS was, according to Professor Iwu (2006:16), designed by INEC to incorporate the following major components:

- *Electronic Voters Register,*
- *Voter Accreditation and Authentication,*
- *Electronic Balloting, and*
- *Electronic Transmission of Results*

Nigerians across political divides (except perhaps those in the ruling PDP) were completely opposed to the Commission's new found technology, and this was not without reasons, although the reasons were largely influenced by the general problem of election mindsets in the country, which Iyayi (2006:25) argues, with concrete academic references from Vandermerwe (1996) and Diligio (2006), have a powerful effect on actions and behaviours much more than structures and systems.

In terms of the reasons for which people, political parties and interest groups were opposed to INEC's proposal: first, was the point that the people were yet to forget the flawed 2003 elections. Their argument was that the country was not mature for the system, adding that even the most developed democracies, including the United States, are yet to adopt it. Second, was

the fear that rather than curb rigging, the system will further exacerbate the vices of election rigging and results manipulation. Third, was that whatever its merits are, the EVS should have been tried in some bye-elections in the country before being adopted, adding there was insufficient time to make the necessary legal and constitutional amendments required to legalise its use. Four, was the well known epileptic power supply in the country which triggered a lot of hiccups for many of the laptops imported for the voters' registration exercise. There was nothing more disturbing than revelations during the field interview that most of the electronic transmitting devices ordered from abroad got to the country at the eleventh hour before the elections. It thus resulted in a scenario in which "the much-hyped electronic voting machines and the billions of Naira that it consumed turned in voters' lists that were in the most forbidden state".³²

Besides ICT, INEC also adopts transport technologies³³ for its personnel, election materials and equipment deployment for pre-election, election-day and post-election activities across Nigeria. These also have their enormous challenges.

Many people have argued that INEC does not need to purchase all the equipment it requires to conduct elections. A Coordinator of the Electoral Reform Network (ERN) has specifically advocated for intergovernmental collaboration and synergy that would enable the Air force and Navy to assist with planes and boats to distribute election materials to difficult terrains, while the National Identity Card office assists with electronic voter's registration equipment, as a possible way of addressing the Commission's infrastructural needs. Her argument for this is against the backdrop of the fact that all the equipment mentioned are only required once in every four years, and therefore need not be left to rot away only to be replaced in another four years. Such collaboration, as complemented by other sources, should also mandate the National Population Commission (NPC) to handle constituency delineation issues, get the anti-corruption commissions to monitor political party and campaign finance, while the National Orientation Agency (NOA) takes on the important assignment of voter education. This, it was claimed, would lighten the portfolio of INEC and strengthen its ability to deliver on professionalism.

It appears that technology, in addition to being a concrete problem, was also used as a ruse to produce failed elections by Professor Iwu and his cohorts. Very clearly, most of the essential signposts on the road map to free and fair elections in 2007 were not being addressed in a timely manner by INEC. A close analysis reveals that there was an unfolding design to produce failed or no elections in 2007. For his first year in office, Professor Maurice Iwu held the electoral preparation process to ransom, arguing that INEC must use electronic voting machines for the 2007 elections. People were perplexed because whatever the merits of the voting machine, there was simply insufficient time to carry out the required legal and constitutional amendments, harmonise views on the type of voting machine that can work in the Nigerian context, and carry out the procurement process in time for the elections. By concentrating all the

³² See the Editorial on "INEC and Democracy", *Vanguard* (Lagos), Monday, April 23, 2007, p.18.

³³ Among the transport technologies used by INEC are: trucks, jeeps, cars, motorcycles, boats and bicycles. The recent crash of a helicopter belonging to Nigeria Airforce in the South East during the 2007 elections also drew the Nigerian public attention to the emerging trend of transforming transportations logistics of the Commission.

Commission's energy on the voting machine, the basic preparations for the elections were neglected in spite of the fact that INEC had developed a strategic plan with clear timelines for the various elements on the road map to the 2007 elections.

Adaptability

In a bid to demonstrate its awareness of the responsibility entrusted on it, INEC has crafted its mission statement to read: *“to provide credible and efficient electoral services consistent with the principles of equity, justice and fair play for the building of a strong and viable democracy in Nigeria.”* The Commission has also gone ahead to match this with a vision statement that projects it as a *“dynamic, formidable and independent organisation, committed to the institutionalisation of an enduring democracy, which allows for effective and smooth political change”*.³⁴

These are great principles, but there is little to show that they are taken seriously. The challenge is the ability to adapt the modalities – financially, technically, technologically and innovatively – to accomplish the tasks that would enable INEC to fulfil its vision and mission. At a conference organised by the International Foundation for Electoral Systems (IFES) to review the 2007 elections, INEC Commissioner, Dr. Ishmael Igbani said that “INEC did all it could to hold successful elections. However, we underestimated certain issues”. He pointed to the attitude of Nigerian politicians as the major challenge the Commission had contended with. INEC officials have persisted in blaming Nigerian politicians for their failure in organising free and fair elections. The Electoral Act 2006 however gives INEC the power to prosecute politicians involved in electoral fraud but the Commission has not deemed it necessary to use this power.

On the eve of the Governorship and Houses of Assembly elections in April 2007, a scene was created at the Central Bank premises in Enugu when opposition parties discovered that sensitive election materials, such as appropriate results sheets, were not delivered for onward transmission to polling stations. It took the intervention of the General Officer Commanding (GOC) the 42 Army Brigade in the city to ensure the release of the materials. The general suspicion was that the materials were to be delivered to the houses of party barons where they would be filled with fake figures.

Not surprisingly, doubts have been expressed in terms of the capacity of INEC to adapt to the modalities of integrity that can produce free and fair elections. From Kaduna to Benin, Bauchi to Jos and Abuja, Enugu to Lagos, the research team's consultations revealed that the people rate the Commission low on its adaptability capacity, stressing the nature and interests of the political setting in which the Commission operates as the cause of this. They pointed as example the technological innovation that the EVS was supposed to bring to election administration in Nigeria. And, they argued that INEC should not only have gradually introduced the system, but should have operated it side-by-side with the old manual registration system or piloted it in bye elections to ensure a smooth transition of the process. People also

³⁴ The mission and vision statements of INEC are found in virtually all the publications and website of the Commission.

added that the total mix-up witnessed in the belatedly displayed voters' registers by the Commission across the country was a pointer to the poor sense of discretion at INEC.

Far beyond the moderate position above is the view by another category of respondents who stated that INEC has not demonstrated any adaptability capacity. To some of these people, the Commission does not even recognise its incapacitation in this regard; talk less of acting to improve its capacity. While some people have generously appreciated that INEC foresees problems, except that it does not act to redress them, given that the problems are meant to favour certain categories of people,³⁵ others such as Sabina Idowu-Osehobo, Felix Oriakhi and James-Wisdom Abhulimen simply identified the partisan mindset of INEC's leadership as the major obstacle to its adaptability capacity. The latter category of citizens cited the initial exclusion of the former Vice-President Atiku Abubakar from the 2007 presidential race as a premeditated one, arguing that for adaptability-capacity sake the Commission could have saved itself of the national and international embarrassment that the shoddy and non-serialised ballot papers caused it, if it had heeded the popular advise that it included the former Vice-President's name in the register in anticipation of his judicial victory.³⁶

INEC's inability to anticipate that the Supreme Court judgement could have gone against the Commission, and have a 'Plan B' for the elections, resulted in the violation of Section 45(2) of the Electoral Act which reads: "The ballot papers shall be bound in booklets and numbered serially with differentiating colours for each office being contested". What this portends, especially in terms of the Commission's poor capacity to adapt, is the sheer impossibility of tracing "the votes for the presidential elections back to a polling station, thus creating ample room for ballot manipulation" ...and hampering the Commission from providing "any credible breakdown of the votes cast at each polling station, or in each ward, local government area or state" (International Alert 2007:3). It is in this context that one understands the view expressed at a forum that "if INEC is not serious nobody will ordinarily feel any obligation" towards it, citing the myriad of petitions currently in election tribunals across Nigeria as an indication of huge waste of the money expended on the Commission.³⁷ It is in this sense that one appreciates Festus Okoye's position that INEC would only be able to build its institutional adaptability capacity when it is fully independent.³⁸

Leadership and Inclusiveness

Nature of Leadership and Its Impact on the Function of the Electoral Authority

The leadership question, all over the world, is often hinged on the interface of structure and behaviour, the dialectic of persons in relation to institutions (Seteolu 2004: 2). Beyond defining leadership as a process by which one individual influences others on the level of the pursuit of

³⁵ Interview with Obed Tarkie in Bauchi on Wednesday, 15th August, 2007.

³⁶ Focus Group Discussion held in Benin City on 31st August, 2007.

³⁷ Ayo Obe, a human rights and pro-democracy activist said this at a session she chaired on IFES review conference of the 2007 election held at Ladi Kwali Hall on Tuesday, 21st August, 2007.

³⁸ Interview with Festus Okoye in Kaduna on 13th August, 2007.

group behaviour, the extant literature on the concept offers a theoretical and philosophical basis for explaining the motives and character of the governing elite in any society. The literature analyses leadership within several contexts, such as trait, behaviour, attribution, charisma, transformation and vision. The trait theory identifies the attributes of confidence, determined and decisive ambition and energy, the desire to lead, honesty and integrity, intelligence and knowledge. In this circumstance, the leader initiates the structure, seeks new ideas, generates and implements change. The attribution theory sees leadership as an allusion to how the ‘followership’ characterizes the leaders, while the charismatic theory is hinged on the features of self-confidence, vision, and ability to articulate the vision; strong convictions about the vision, and extra-ordinary behaviour. Put differently, the charismatic leader is viewed as an agent of radical change rather than the status quo (Ibid). Perhaps what may be common to these leaders is the ability to make objective appraisal of environmental constraints and resources needed to foster change. The transformational leader is imbued with charisma, inspiration, intellectual stimulation, vision and a sense of mission that instils pride and attracts respect and trust (Ibid).

Thus, the success or failure of any electoral commission is not only dependent on the degree of availability of the requisite human, material and infrastructural tools at the disposal of it staff to work, but also on the quality and style of its leadership in terms of competence, capacity, procedural mechanism for decision-making and organisational and strategic ability. The stress on “*persons of unquestionable integrity*” by the constitution as a prerequisite for appointment into INEC’s chairmanship suggests that there is much to the job than mere paper qualifications. In other words, while a high level of educational qualification is essential to be appointment into the leadership position of the Commission, a lot more has to do with qualities which include dynamic leadership. The former Chairman of the National Electoral Commission (NEC), Professor Humphrey Nwosu, appreciated the difficulties and challenges facing the leadership of any electoral commission in Nigeria when he observed that:

*Somebody has to do it. Remember it is a difficult position for any Nigerian, no matter...his/her integrity, no matter his/her formal professions.... You can come with the best of intentions, but circumstances beyond your control may push you if you’re not firm into one direction or the other.*³⁹

As difficult and challenging as the leadership job of an electoral commission is, Professor Nwosu believes that appreciating one’s role (as that of an umpire), and working along the line of expected principles in that role is a fundamental requirement for accomplishing one’s tasks as the leader of an electoral commission. Thus, in an apparent appraisal of his tenure as NEC Chairman, he said that “*umpires are not to be active participants in partisan politics. It doesn’t make sense to me.*”

Dr. Abel Guobadia, the INEC Chairman who Professor Maurice Iwu succeeded after the 2003 elections, also harped on the need of having persons who lead the Commission to be “socially

³⁹ See interview with Prof. Humphrey Nwosu, *ThisDay*, Saturday, January 14, 2006, pp. 53.

matured and distinguished in both public and private life”, stressing that the problem with INEC stems from the appointment of “errand boys” into the Commission – implying that Professor Iwu was an errand boy to the Obasanjo Administration.⁴⁰ The majority of those interviewed by the research team could not agree any less with Dr. Guobadia, though they share the view that his records as the Chairman of INEC under whose tenure the sham elections of 2003 were held also personifies that of an ‘errand boy’. More intriguing is that Dr. Guobadia did not explain how social maturity would bring something good to bear on INEC.

Procedurally, it is doubtful if the mechanism for decision-making in INEC is in anyway different from the usual practice in any public sector. The existing mechanism is the type that allows for departmental, directorate or unit representation at decision-making, although the composition of participants in any meeting is largely dependent on the nature, scope and magnitude of issues on which decisions are required. The head of such sessions, as already indicated in the discussion on organisational structure, is the Chairman of INEC to whom other aides might be required to give supportive roles, even though the latter may not necessarily be part of the participating members. How the leadership of INEC appreciates or relegates regular consultation to carry everyone or each section along determines the strength or weakness of the Commission. The same variables also determine and inform the depth of capacity that is placed at the disposal of the Commission’s Chairman for policy decision guide. Put differently, wide-ranging consultative and participatory approach to decision-making and actions should necessarily strengthen and boost the knowledge and experiences of the Commission’s Chairman, while personalisation of powers and actions would weaken and incapacitate the Chairman and the Commission.

Enquiries about INEC’s leadership style in decision-making revealed divergent views which, upon critical assessment, were largely influenced by the identity of the respondents and the freshness of the memories of the 2007 elections which put the research team in a highly suspicious position. While efforts to get INEC staff at the Abuja headquarters to speak to this issue failed, the situation was not the same in the case of interviews held at the Commission’s offices in Bauchi, Enugu, Jos, Kaduna and Lagos.⁴¹ In the various interviews held in these places, officials who spoke with the research team observed that every INEC Chairman is procedurally bound to respect and comply with the ideals of proper representation discussed above in decision-making, and that the leadership of Professor Iwu has not detoured from that practice.⁴²

However, several other respondents had different views about the leadership of INEC. The popular position is that “except for one or two occasions, the Commission has not been led by men of solid principles and character” (Akinlotan 2007: 56). Some respondents noted that while it is difficult to assess the Commission’s leadership using collective or personal variables,

⁴⁰ Dr. Abel Guabadia made this remarks at the Senate hearing on INEC under the Chairmanship of Emmanuel Agboti.

⁴¹ It was only in Benin that no INEC person was ready to speak to the research team. A further enquiry about this revealed that the then case between Governor Osunbor and his Action Congress challenger, Comrade Adams Oshiomole, over the April 2007 governorship elections and the heat it was generating at every hearing made people to keep sealed lips.

⁴² This position was emphasized to a great extent in one of the interviews conducted in the Kaduna office of INEC held on Tuesday, 14 August 2007. The position expressed was that “the leadership of INEC is a good one....”

experience has shown that the leadership of the Commission usually flows along with any government in power.⁴³ There are some who believe that the only place where one finds the semblance of good leadership in the Commission is at the state level, and that even the leadership is only at the level of personal relations, as opposed to an institutional work culture.⁴⁴ Yet, others are of the view that the leadership of INEC is not collective, adding that it is part and parcel of a highly dictatorial political society and its culture. They thus pointed out the Commission as evincing a relationship that is top-down, in the format of an *organogram*, where the President of the country calls the shot as the person constitutionally empowered to appoint the Commission's leadership, and the INEC Chairman, Resident Electoral Commissioners, and local government electoral officers also exert authority on their subordinates in that order of command.⁴⁵ Buttrussing this position, one of the respondents alleged to the utterances of the present INEC Chairman, Professor Iwu, as the "thinking" and "arrogance" of President Olusegun Obasanjo who appointed him. As elections got nearer, Iwu did not only find himself in the camp of former President Obasanjo who had declared the 2007 elections a "do-or-die" affair, he also became more and more difficult to be reached by those to whom he vowed to deliver a legacy of credible elections management.⁴⁶ Some Resident Electoral Commissioners (RECs), especially those who did not agree much with him, were not left out in this isolation or ex-communication. It was even reported in the press that he asked those RECs who are not prepared to serve as instructed to resign their positions.⁴⁷

Dr. Osagie Obayuwana, the presidential candidate of the National Conscience Party (NCP) in the 2007 elections, does not believe that the leadership of INEC, especially under Professor Iwu, is driven by any collective procedural mechanism for decision-making. Arguing that INEC does not anticipate and act, Dr. Obayuwana wondered why INEC should go to court over cases that denigrate the very purpose of its existence – i.e. the conduct of elections, adding that the leadership of the Commission is condescending, self-serving, self-arrogating, and wrapped in a warped sense of partisanship. This, he says, falls below the widely acclaimed poor standard for which Dr. Guobadia's stewardship was known.⁴⁸ Even though Professor Iwu and some other Commissioners and RECs have been on ground at INEC for a long time, they have not demonstrated any technical capacity or leadership style that expresses dynamism.

The mindset of INEC's leadership to go along with any government in power against the wishes of the Nigerian people to whom it is supposed to serve often involved some degree of arrogance. Dr. Abel Guobadia's and Professor Iwu's INEC exhibited this trait of arrogance in the 2003 and 2007 elections respectively. The sinister and hasty manner in which Dr. Guobadia and the PDP 'victors' in the 2003 elections referred aggrieved parties to the election tribunals to seek redress, and the boastful and arrogantly rights-violating manner with which Professor Iwu went about his duty to the Nigerian people clearly indicated poor quality consultation. It was,

⁴³ Interview with Obed Tarkie in Bauchi on Friday 15th August 2007.

⁴⁴ Ibid.

⁴⁵ Interview with Dr. Habu S. Galadima; Santo Rarab and Shanaki Peter; in Jos on Friday, 17th August, 2007.

⁴⁶ Interview with Festus Iyayi in Benin City on Friday, 31st August, 2007.

⁴⁷ The issue was again recalled after the Supreme Court judgement that removed Andy Uba from office as the Governor of Anambra State. See *Leadership*, Monday, June 18, 2007, p.3.

⁴⁸ Interview with Dr. Osagie Obayuwana on Saturday, Saturday, 1st September, 2007.

therefore, not any wonder that Akinlotan (2007:56) observed that Iwu could not have done any better than the worst record of elections administration he presented, arguing that “the man talks too much and his is quite incapable of applying his energies and commonsense in the right direction.”

Consultation with relevant stakeholders in any elections is as important as having INEC to observe its statutory function of conducting elections in Nigeria. This is so because while the tendency has been to place the shortcomings of all the electoral processes in the country since independence at the doorstep of the various electoral commissions, indications are however high that the activities of many other institutions, including the civil society, also affect the smooth conduct of elections in Nigeria.⁴⁹ There is a framework for inclusiveness in the operations of INEC vis-à-vis key stakeholders on election matters, though not to the point of being represented on INEC’s organisational structure. However, a cursory look at the events reveals that nothing shows that INEC and its leadership are ready to keep that window of interaction open for any productive use, except it is forcibly seized.

Compared to the era of Dr. Guobadia, the tenure of Professor Iwu has witnessed more stakeholders’ interface with INEC’s work. All the interviews conducted in Abuja, Bauchi, Edo, Enugu, Kaduna, Jos and Lagos attest to the fact that INEC has organised one form of meeting or the other that was attended by stakeholders⁵⁰, although the inclusiveness, depth and wide-ranging character of such consultations is subject to contestation. For instance, it cannot be said with any proof that such sessions had any appreciable depth of collaboration, as the INEC leadership “never allow(ed) any discussion to take place through the instrumentality of stakeholders’ institutions that already existed.”⁵¹ While many INEC officials interviewed said the Commission invited stakeholders to their meetings to have their inputs,⁵² other respondents representing civil society, labour, and professional groups said that the majority of the meetings organised by the Commission were exclusionary, both in terms of those invited and the choice of Abuja as the venue for them.⁵³ It was also observed that inputs made at such fora to INEC were never incorporated in their scheme, thus concluding that the process was only a ploy to use invited groups to consultations to rubber stamp the selfish agendas of the Commission’s leadership, and the political class that appointed it.⁵⁴

⁴⁹ Abel Guobadia, “INEC, the Media and 2003 Elections”; Speech presented to Media Executives in February 2003. http://www.nigerdeltacongress.com/iarticles/inec_the_media_and_2003_election.htm (Retrieved on 03/07/2006).

⁵⁰ There was also INEC-Civil Society Stakeholder Forum and the INEC-Civil Management Team. Dauda Garuba, one of the research team members represented the Citizens’ Forum for Constitutional Reform (CFCR) in the monthly meeting of the latter that was held in the office of the Commission’s Chairman. Other organisations on the Team were: Electoral Reform Network (ERN), Justice Development & Peace Commission (JDPC), Transition Monitoring Group (TMG), Federation of Muslim Women Association of Nigeria (FOMWAN), National Council of Women Society (NCWS) and Women Leadership Group. The Team caused the decision that led to the establishment of a Civil Society Desk in INEC headquarters, Abuja.

⁵¹ Interview with Festus Okoye, Tuesday 14th August 2007.

⁵² This was the position of all the INEC officials interviewed in Lagos, Kaduna, Bauchi, Jos and Enugu.

⁵³ Arguing that INEC business is not that of an enterprise that carries everybody along, Shamaki Peters and Santos said that the Commission only consults few individuals and civil society organisations.

⁵⁴ Interview with Felix Oriaki, Sabina Idowu-Osahobo and James-Wisdom Abhulime in Benin City on Friday 31st August 2007.

A cursory analysis of the information gathered from the field shows that the interface INEC had with the civil society, especially in the run-up to the 2007 elections, was mainly at the level of involvement in programme implementation and not at the level of policy planning. Even at that level, INEC was very selective in its choice of who were invited to such programmes. This created bad blood in the relationship on both sides of the divide, with INEC “seeing itself as the sole custodian of the election process and civil society organisations insisting on shared ownership” (International Crisis Group 2007a:19). For instance, INEC rejected the pledge of the Nigeria Bar Association (NBA) of 20,000 lawyers to assist it in the elections,⁵⁵ while it also refused applications from many civil society organisations to observe the elections, as only 53 organisations were approved. Among these was the Centre for Democracy and Development (CDD) which ran a programme on Voters Education on Election Mandate Production in the South-east geopolitical zone, Lagos and Enugu states, with the financial support of the UNDP Joint Basket Fund Mechanism, the Open Society Institute for West Africa (OSIWA), and the National Endowment for Democracy (NED) respectively. This is against the content of the earlier adopted *National Pact for Free and Fair Elections* in which *Stakeholders in the Nigeria Democracy Project*, in agreement with the fact that elections in Nigeria should appropriately be a multi-stakeholder project, called on INEC to “ensure that the management and administration of elections are open, transparent and provide opportunities for citizens to scrutinise all aspects of the process, including the appointment of election officials, the distribution of electoral materials and the designation of polling stations.”⁵⁶

Electoral Process: Design and Implementation

Election is a process, and a process is free only to the extent to which its stages are devoid of all forms of inhibitions and contradictions. It is also fair if the process shows no favour to any person, party or side. Fairness means acting in an honest and honourable manner, that is, in accordance with what is desirable according to rules. A fair election therefore entails the following operational modalities: voters’ registration; party registration; a careful acceptance of candidates; electioneering campaigns without any intimidation; the voting process and declaration of results; a properly enacted electoral law that is consistent with the Constitution, clearly stating the conditions which any Nigerian has to fulfil to be able to vote and be voted for. Eligible persons must be given the opportunity to register by the creation of registration centres not too far from their residence, and publicity must be given as to how, when and where to register. Where the Constitution allows for party registration, as well as spells out the conditions, political associations which meet the conditions must be registered early enough for them to prepare for the next elections. Party campaigns must also be conducted freely, fairly and openly without any inhibition. All political party candidates must be given equal access to publicly owned electronic and print media. Thuggery and violence are to be prevented; voting must be secret to avoid victimization; there must be no rigging of votes, and voting centres must not be too far apart. All forms of voting malpractices must be avoided and checked by the electoral authority, security agents and party agents. The counting and collation of votes must be done in the open, in the presence of party agents, security agents, and electoral officials to

⁵⁵ See Ayodele Akinkuotu, *Tell Magazine* (Lagos), April 30, 2007, p.5.

⁵⁶ See “National Pact for Free and Fair Elections”, adopted on Saturday, 16 April, 2005.

avoid any form of manipulation. Results must be announced only by authorized officials designated to do so. When these conditionalities are achieved, in the pre-elections, during elections and post-elections, we can say that such an election was free and fair.

In Nigeria, a legacy of military rule has impeded the development of civilian political leadership and hampered the emergence of a democratic culture. Since achieving independence in 1960, the country has suffered 29 years under military dictators and has experienced only about 20 years of civilian rule. Years of unbridled corruption and poor governance have resulted in weak political institutions, a decayed infrastructure, a feeble economy (outside the lucrative oil sector), and an impoverished population. This is the sense in which Nigeria's 1998/99 elections were best seen in the broader impetus to end military rule. Thus, Nigerian and independent observers viewed the 1998/99 elections as the beginning of a process of democratization and the rebuilding of political institutions to sustain and broaden the efficacy of civilian rule. Consequently, the flaws of a rushed electoral process were largely overlooked or otherwise tolerated by the population and the political competitors.

Expectations for the elections process were higher for the 2003 polls, both within and outside Nigeria. The elections were seen as an opportunity to mid-wife a genuine democratic transition and thereafter advance democratic gains (Garuba, 2005). While the 2003 polls may have resulted in a civilian-to-civilian transition, there were major problems that compromised the integrity of the process. The 2007 exercise turned out to be the worst of the post-authoritarian rule elections in Nigeria, and it tested the viability of many of Nigeria's weak public institutions, most notably the Independent National Election Commission (INEC). In both the 2003 and 2007 exercises, INEC was criticized for its perceived lack of independence from the executive branch and for institutional and professional shortcomings. Moreover, there were delays and lack of transparency in the voters' registration process that disenfranchised eligible voters; high levels of political violence; vandalized, stolen and stuffed ballot boxes across Nigeria; altered results during the multi-tiered tabulation or "collation" process, all of which happened against a background of the wholesale replacement by the executive branch of state Resident Electoral Commissioners (RECs) and the lack of fiscal autonomy and independence for the INEC.

The cumulative effect of these problems is the growing lack of confidence by the public in the Nigerian electoral process. For instance, a public opinion survey conducted by *Afrobarometer* reveals that only 9 percent of Nigerians believe that the 2003 elections were "completely free and fair". This did not only cripple public confidence in the governance generally, but also bred widespread dissatisfaction with the overall situation in the country. In a public opinion poll conducted by IFES under the "Nigerian Election Support 2007" (February 2007), it was estimated that seven out of 10 Nigerians are dissatisfied with the overall situation in the country. The breakdown shows that of the 2,410 respondents conferred with, only a mere 4% expressed satisfaction with the situation in the country. Another 24% was only "somewhat satisfied", while 33% and 37% were "not too satisfied" and "not satisfied at all" respectively. The remaining 2% was either "did not know" or simply "refused" to respond (IFES 2007a:1).

Ordinarily, the foregoing situation would have been enough to seal public interest in any electoral process, but for the strong civic education efforts of the civil society which constantly engaged the public on the need to participate in the 2007 elections. Even in the face of the fear of being a victim of intimidation and violence and the alleged poor preparation of INEC for the elections, the electorate beat all odds that stood in their ways to the elections. A survey conducted by IFES revealed that the Nigerian public had up to 71% confidence in INEC, although only 18% of the figure represented a “Great deal” of confidence, while the remaining 53% only represented a “Fair amount” of confidence (IFES 2007a:4). In a survey conducted by the Alliance for Credible Elections (ACE) and the CLEEN Foundation to elicit information on the views of Nigerians about the preparations for the 2007 elections and the key areas that major role players needed to pay more attention to, it was revealed that despite all odds, which included the confused manner in which the voters’ registration exercise was undertaken, the perceived partial role of INEC in the electoral administration, and the challenges of facing the Nigeria Police to deal with intimidation and violence, up to 76.3% of the 11,156 population sampled (representing 50.5% men and 49.5% women) across the six geo-political zones of the country expressed the probability of their voting.⁵⁷ They, however, suggested that all necessary attention need to be paid to impartiality, transparency/accountability, the procurement of materials for the elections, public relations, the training of personnel, voter/civic education, and others. However, in the April 2007 general elections in Nigeria, many of these conditions were not met, going by the reports of both local and international observers and also the observation of Nigerians.

It is within this context that it is imperative to investigate the Electoral Cycle (pre-elections, elections and post-elections) in which INEC has had to exercise its constitutional mandate since the return of the country to civil rule in 1999. The system, in anticipation of the need to establish a new national political culture and electoral environment, as well as promote inclusiveness, transparency, security and dispute resolution, prompted the development of the Political Parties Code of Conduct 2007 in Collaboration with INEC for electoral activities, comprising the Rule of law, elections (pre-election, election-day and post-election issues) and party finance, with its implementation, monitoring and enforcement located within an Inter-party Advisory Council (IPAC) that is guided by a Terms of Reference.

Pre-Election

Experience with the electoral process reveals that elections are won and lost at the pre-election stage. This is not hard to appreciate, given that much of what happens on election-day only builds on pre-election arrangements. Among pre-election activities that are anchored on the regulatory framework, the conventions and practices on which INEC works around the clock to satisfy are: the registration of voters, candidates and political parties, the supervision of political parties, the exhibition and compilation of the voters’ register, the printing of ballot papers, the appointment of electoral officers and recruitment of temporal staff, the announcement of the notice of polls, the storage and distribution of ballot papers and other election materials. Each of

⁵⁷ See www.acenigeria.org and www.cleen.org

these exercises is faced with peculiar conflicts requiring specific attention to issues of inclusiveness, transparency and security, dispute resolution.

Voters' registration is an important stage in the electoral process. It provides information on the total number of eligible voters, which enhances preparation for the actual voting. In Nigeria, experiences with voters' registration exercises since the return of the country to civil rule in May 1999 centre on complaints about the fraudulent manner in which political parties organise to steal the people's votes. One common case that has been thrown up by the exercise has been the inadequate supply of registration materials by INEC and the orchestration of multiple registrations and the registration of underage voters by politicians and political parties. Prior to the 2007 elections, INEC had used its powers as entrenched in the Electoral Act 2006 to introduce the Direct Data Capturing⁵⁸ (DDC) machine to computerise and modernize the voters' registration exercise and prevent the abuse of the process through multiple registrations.⁵⁹ Under the Act, any person who double-registers commits an offence that is liable on conviction to a fine of up to ₦100,000 or one year imprisonment or both. According to INEC, 10 million double entries were deleted from the register in 2003 but no prosecutions followed this, and in the 2007 voters' registration, no declaration was made of how many double or false entries were deleted.⁶⁰

However, the 2007 elections were poorly executed through the inadequate provision of the necessary equipment and materials to facilitate it. As a result, INEC had to extend the period of the registration, which ought to have ended in December 2006, to February 2007 with the passage of the Electoral Act Amendment Bill 2007 on January 20; but this was after public cries that the bungling of the registration exercise may have been part of a plot to disenfranchise millions of eligible voters in order to thwart the 2007 elections and pave the way for the then President Obasanjo to remain in power. The new Act extended the deadline for the registration of voters to 14 February 2007 (60 days before the elections) and the deadline for the display of the voters' register to 45 days before the election, while also placing the powers of appointment of the Secretary to INEC on the Commission in its Section 9. To further assist the Commission's work, the government declared a two-day public holiday for people to register. At the end of the exercise, INEC claimed to have registered over 61 million voters, and declared the exercise a 'huge success', despite criticisms from the civil society and the National Assembly. More so, INEC did not display the voters' registrar as provided for in the electoral law, but only did so a few days prior to the elections (Adejumobi, 2007: 14).

Registration of political parties and candidates

Political parties have become veritable instruments of democracy and governance. They are sources of political identity and channels of control of political leaders. A party is defined by Appadorai, as "an organized group of citizens who hold similar political opinions and who work

⁵⁸ The exact figure of registered voters announced by INEC was 61,567,036. See *Nigerian Tribune*, Tuesday, 24 April, 2007, p.3.

⁵⁹ This, as earlier noted, was another step in a process that was intended to climax in the EVS project conceived just after the 2003 elections.

⁶⁰ See EU's Final Report on April 2007 elections, *The Punch*, August 31, 2007, p.11.

to get control of the government in order that the policies in which they are interested may be carried into effect” (Appadorai, quoted in Okoh, 2005: 27). Constitutionally, nobody contests any election in Nigeria except under a political party. From the 1999, 2003 to 2007 general elections, political parties in the country have grown from three to 50, out of which only 25 nominated presidential candidates in the last exercise. The orchestrated attempt by a cabal within the PDP, through INEC, to restrict the number of political parties was lost in the run up to 2003 elections, when Chief Gani Fawehinmi of the National Conscience Party (NCP) led and won a legal battle against INEC.

Prior to the 2007 elections, the threat of the impeachment of political office holders in the executive and legislative branches of government almost shrank and froze the political space, and political activities were almost suspended for the fear of EFCC’s prosecution of public officials on allegations of corruption.⁶¹ The undemocratic manner in which party primaries were conducted further heightened tension in the polity. As was the case in the run up to the 2003 elections, internal democracy within political parties was the exception rather than the rule, as “party leaders constituted themselves into a cabal of political barons, who disregarded the result of party primaries and unilaterally anointed the party candidates for the general elections” (Adejumobi 2007:2). During that phase of the subversion of the people’s will, INEC could not invoke its authorities. The nomination of party candidates was characterized by a process of selection rather than election, and sometimes party primaries took place outside clear democratic rules. This resulted in a number of court cases involving politicians who won nominations at internal party primaries but had their names substituted with other names by their political parties. Amaechi and Omehia of Rivers State was a case in point. They were both PDP governorship candidates, but Amaechi was substituted for Omehia by the PDP leadership. The former challenged his removal as the party candidate before the Federal High Court, and the apex court of the land (i.e. the Supreme Court of Nigeria) finally returned him as the governor of Rivers State.

While most of the pre-election cases were completely out of INEC’s powers to resolve, there were also others that were within its mandate, but the Commission could not exercise its powers due to the myriad of challenges confronting it. Since its legal battle over powers to register political parties and another over voters’ registration in the build up to the 2003 elections, INEC had known no peace as a legal entity that can sue and be sued. Events leading to the 2007 elections exposed the manipulative tendencies of the Commission, as series of court cases completely overwhelmed its legal department, to the point that necessitated the outsourcing of legal services.

⁶¹ The timing, procedure and selective manner of the exercise that resulted in the removal of the Governors of Bayelsa, Plateau, Oyo, Anambra and Ekiti states from office were as illegally contrived/implemented as the unilateral declaration of the Vice President Atiku Abaibakar’s seat vacant by President Obasanjo. Except for Bayelsa and Ekiti states, all other decisions were reversed by courts of the land.

Political Funding and Campaign Finance

The result of the above was the decreasing capacity of the Commission to grapple with its assignment, including the monitoring and supervision of political parties during the preparation for elections. Among the areas that INEC defaulted on were the effective monitoring of political campaigns and campaign finance. Cognisant of Max Weber’s postulation that “party finance is among the most important and yet, for obvious reasons, the least transparent chapter of party history”, and Bettino Craxi’s observation that “the greater part of political funding is irregular or illegal”, Nigeria joined the rest of the world in the increasing pressure for the regulation of the private funding of political parties (INEC 2007a: 6, 29). While there are no available statistics on the exact amount of money expended by candidates and political parties in the 1999 and 2003 elections, indications about the heavy reliance on private funding in both elections and their link with corruption abound. The 2003 elections were particularly worrisome in this regard as they were largely “determined by how much money candidates had” (INEC 2007a: 9). Former President Obasanjo corroborated this when he said that “the parties and candidates together spent during the last elections” (i.e. 2003) “more than would have been needed to fight a successful war.” It is in the context of the above concern that Sections 94(7) and 161 of Electoral Act 2006 empowers INEC to set the limit on the election expenses of individual candidates and political parties, subject to Section 225(2) of the Constitution of the Federal Republic of Nigeria which specifically requires political parties to disclose their sources of funds and their manner of expenditures.

The experience in Nigeria, and perhaps elsewhere, is the tendency by political parties to under-report actual income (INEC 2007b:5), while INEC does not demonstrate any effective enforcement mechanisms, thus suggesting that the legislative framework for political and/or campaign finance is not sufficient to provide a meaningful control over money politics.

TABLE III: Campaign Finance of three Political Parties in the 2007 Presidential Elections

<u>AC</u>	<u>ANPP</u>	<u>PDP</u>
<u>PRINT MEDIA</u>		
₦million	₦million	₦million
30,660,529	10,249,101	87,713,619
<u>ELECTRONIC MEDIA</u>		
20,855,923	1,171,820	196,000,043
<u>BILLBOARDS</u>		

78,413,600	122,840,000	188,196,000
<u>POSTERS</u>		
30,000,000	15,000,000	30,000,000
<u>RALLIES</u>		
61,681,000	25,813,900	295,712,000
<u>CAMPAIGN OFFICES</u>		
50,000,000	7,000,000	20,000,000
<u>CAMPAIGN VEHICLES</u>		
?	?	181,550,000 (as declared by Yar'Adua)
<u>TOTAL</u>		
271,611,000	182,000,000	999,000,000

Source: Social and Economic Rights Initiative (SERI), “Beyond the Ceiling: A Report on Campaign Finance and State and Administrative Resources for the 2007 Presidential Elections”.

Except for when the INEC leadership (at a public lecture in the University of Benin, Benin City) identified the challenges of ever-looming violence in elections, the corrosive influence of money in politics, the unhelpful mindset of Nigerians toward elections and the inequitable gender balance in the national politics and other occasional cries of delay in the release of its allocation,⁶² the Commission did not at any time indicate to the Nigerian public that there were any problems encumbering its work prior to the 1999, 2003 and 2007 general elections. The Commission did not only create the impression that all was well with it, but it also severally arrogated the sole rights of election monitoring to itself, while selectively accrediting others with whom its leadership was not on a ceaseless war⁶³ with as mere election observers without rights to question its action.

⁶² Maurice M. Iwu, *Democracy and Constitutional Governance in Nigeria: Paradox of the Extended Middle* (5th Faculty of Social Sciences Public Lecture 15th August), Benin City: University of Benin, Nigeria, 2006.

⁶³ INEC had engaged in a ceaseless war with ACE in the 2007 elections to the point of refusing the organisation accreditation to observe the elections.

Elections

Conduct and Assessment of the Elections

It has been the practice of electoral commissions in Nigeria to announce to the nation and, indeed, the world that they are fully ready for a hitch-free exercise, and that all materials and staff are ready and have been distributed to all parts of the country prior to the commencement of any election. The 1999, 2003 and 2007 exercises were not any exception in this regard, especially in the wake of the increasing interest of a great array of domestic and international observers and monitors as part of the features of promoting democracy.⁶⁴ This is not surprising given that election observation and monitoring has emerged as the most visible form of the broader democracy promotion in contemporary times (Bjornlund 2004: 6-9).

Nigerians and the international community often rely on domestic and international observer and monitor groups for the assessment of poll conducts and INEC's performance in elections. The domestic observers and monitors involved in the Nigerian elections since 1999 include the Transition Monitoring Group (TMG), Electoral Reform Network (ERN), Centre for Democracy and Development (CDD), Federation of Muslim Women's Associations in Nigeria (FOMWAN), Justice Development and Peace Commission (JDPC), Media Monitoring Group (MMG) and Nigeria Labour Congress (NLC), while the Economic Community of West African States (ECOWAS), African Union (AU), National Democratic Institute (NDI), IRI, European Union (EU), European Union Observer Mission (EOM) largely constitute the international observer groups comprising nationals from Africa, Asia, Europe and the United States.

Reports of both the domestic and the international observer groups on the three sets of general elections so far held in Nigeria since 1999 point to a steady and increasing decline, with the worst instance being the 2007 elections. While the 1999 exercise had been tolerated in view of the growing determination of Nigerians to take a break from military rule, those of 2003 and 2007 have simply induced pains that pose tortuous challenges to the country's democratic experiment and credentials. They were marred by large-scale fraud (including instances where the votes declared were more than the number of registered voters)⁶⁵, and therefore were not free, fair and credible. To add to the unintelligibility of those behind the 2007 poll results, Mahmud Jega (as cited in Mato, 2007) observed the case of the fellow(s) as that of falling in passionate love with the figure "6", rather than it being a coincidence; the winner (Yar'Adua) scored 24.6 million votes; the first runner-up (Buhari) scored 6.6 million votes; the second runner-up (Atiku) scored 2.6 million votes and the third runner-up (Ojukwu) had 0.6 million votes.⁶⁶

⁶⁴ There are many domestic and international election observer groups that have been involved in Nigeria's elections since 1999.

⁶⁵ This was the case in Rivers State in 2003 and Anambra State in 2007.

⁶⁶ See Kabiru Mato, "The Burden of a Tainted Mandate", *ThisDay*, Thursday, November 22, 2007.

Some common features of large-scale fraud in both elections and others before them in Nigeria were identified by Ibrahim (2006:49) and Adejumobi (2007:15) as:

- Late commencement of voting in many parts of the country
- Inadequate or non-supply of voting materials
- Delay or outright refusal in opening polling stations in suspected opposition strongholds
- Omission of names and/or pictures of candidates from ballot papers
- Hijacking of election materials, including ballot boxes/bags
- Stuffing of ballots
- Underage voting
- Multiple voting
- Stealing of sensitive polling materials
- Use of intimidation and violence against opposition party members/agents and “non-cooperating” electoral officers
- Lack of transparency in the collation, counting and tabulation of results
- Lack of secrecy in voting process – polling booths and ballot boxes/bags
- Alteration of official results forms
- Concoction and falsification of results

In particular, the EU-EOM final report on the 2007 elections captures the general perception and conclusion in virtually all post authoritarian military rule electoral exercises in Nigeria:

The 2007 state and federal elections have fallen far short of basic international and regional standards for democratic elections. They were marred by poor organization, lack of essential transparency, widespread procedural irregularities, significant evidence of fraud, particularly during (the) result collation process, voter disenfranchisement at different stages of the process, lack of equal conditions for contestants and numerous incidents of violence. As a result, the elections have not lived up to the hopes and expectations of the Nigerian people and the process cannot be considered to have been credible.

The above context explains the reason behind the myriad petitions that have accompanied elections in Nigeria from 1999 till date. Expectedly, among the cases that the Election Petition Tribunal will be handling in Ondo State is the strange issue of the Ondo South Senatorial District where INEC’s Public Relations Officer, Olabimpe Awoniyi, declared a non-existent PDP candidate as the winner of the area’s senatorial elections in which the party did not field any candidate in April 2007.⁶⁷ This development affirmed “the allegation of rigging and other

⁶⁷ To the surprise and embarrassment of Nigerians, a non-existent PDP candidate scored 318,153 votes to win the elections in which Labour Party’s Boluwaji Kunlere scored 13,333 votes to come second, while F. Lebi scored 8,906 votes to come third.

malpractices hauled in the direction of the PDP” and “INEC would find (it) difficult to extricate itself from the allegation of partisanship and favouritism levelled at it by opposition parties”.⁶⁸

TABLE IV: Summary of Presidential Election Results: 1999, 2003 & 2007

Parties – Candidates	Percentage of Votes Won		
	1999	2003	2007
PDP Candidate	62.8	61.9	70
(APP) ANPP	37.2	32.2	18
AC Candidate	-	-	7
Other Candidates	-	5.9	5
Total (All Parties and Candidates)	100.00	100.00	100.00

Source: International Crisis Group: *Nigeria: Failed Elections, Failing State*, Africa Report No. 126, 30 May, 2007b, p.20.

TABLE V: Summary of Governorship Election Results Declared by INEC: 1999, 2003 & 2007

Parties	No. of Governorships Won by Party		
	1999	2003	2007
PDP	21	27	28
(APP) ANPP	9	7	5
AD	6	1	-
APGA	-	1	-
PPA	-	-	2
AC	-	-	1
Others	-	-	-
Total (All States)	36	36	36

Source: International Crisis Group: *Nigeria: Failed Elections, Failing State*, Africa Report No. 126, 30 May, 2007b, p.20.

While the figures from the 2007 elections in the above table represents the situation in December 2007 when the project culminating in this report was concluded, there have been the replacement of the PDP candidate in the 2007 election with the AC candidate in Edo State, through a ruling of the Court of Appeal in 2008. Similar reversals are still possible in the course of the rulings of electoral tribunals in other states.

TABLE VI: Voter Turnout for Presidential Elections: 1999, 2003 & 2007

Voters Registration/Turnout			
	1999	2003	2007
No. of Registered voters (millions)	57.9	60	61.5
No. of Votes cast (millions)	30.2	38.9	35.2
Voter Turnout as Percentage of Registered Voters	52.2%	64.8%	57.2%

⁶⁸ See *Vanguard* editorial, “Ghost Winner and INEC”, Thursday, May 3, 2007, p.18.

Post-Elections

In civilised clime and areas where the people's votes are reflective of popular wish, post-elections are periods for losers to congratulate and embrace winners and for the latter to settle down to the business of governance – i.e. making the positive changes promised during electioneering campaigns. The experience in Nigeria since the return to civil in 1999 has been different. Post-election issues in Nigeria are those of a seemingly endless litigation in Election Petition Tribunals.

Section 285 of the Constitution of the Federal Republic of Nigeria prescribes for the establishment of one or more election petition tribunals for the National Assembly and each state of the federation. The tribunals, which operate to the exclusion of any court or any other tribunal, have jurisdiction to hear and determine petitions as to whether: (1) any person has been validly elected, (2) the term of office of any person under the Constitution has ceased, and (3) the seat of any person has been properly or improperly occupied.

Since the transitional elections of 1999, the number of cases in Nigeria's Election Petition Tribunals has had a geometric increase, with the bulk of them centring on the 2003 and the 2007 exercises. Not many cases came up in the transitional elections, the reason being that the exercise was free and fair to an extent, and that the concern of most Nigerians was to first seek civilian rule by easing the military out of power, after which every other thing would be added. The initial legal steps taken by Chief Olu Falae, who was the presidential flag-bearer of the joint Alliance for Democracy (AD) and All Peoples Party – APP (now ANPP) platform, against INEC to challenge the Commission's declaration of Chief Obasanjo as the victor of the election was soon withdrawn in the light of the latter reason.⁶⁹

The 2003 elections provided the first opportunity for a floodgate of election petitions, although the arrogant manner in which INEC and PDP urged those who were not satisfied with the results of the elections to seek redress in the tribunal was highly suspect. *The Patriots*, a group of eminent elder statesmen were the first to collectively respond to the widespread irregularities that characterised the elections when it argued that the magnitude of the fraud perpetrated in the elections were beyond what the election tribunals could manage with any ease. The long periods that it took the tribunals and the appellate courts to dispense with cases further foreclosed public interest in the entire process. It was not until the celebrated verdict of Peter Obi of the All Progressive Grand Alliance (APGA) against the then PDP Governor Chris Ngige in Anambra State came that many Nigerians were awakened to the reality that the judiciary could help to develop the country's democracy, though this was after the latter had illegitimately ruled for

⁶⁹ Chief Olu Falae said he would not want to be construed as standing on the path of Nigerians' determination to have a permanent break with military rule.

three years.⁷⁰ Prior to this, the Supreme Court of Nigeria had voided the results declared by INEC in the presidential election in some states, including President Obasanjo's state – Ogun.

The tenacity of the APGA candidate, Peter Obi of Anambra State, has added a lever to public confidence in the judiciary as the hope of Nigeria's democracy. Contrary to past scepticisms about the judiciary, many parties and politicians aggrieved by the outcomes of the 2007 elections are in election petition tribunals, pursuing what they consider to be the unfair treatment meted to them by INEC which they accused of either denying them the opportunity to run or secure the mandates freely given to them by the electorate. The belief in the system was not only propped by the noticed progress of the judiciary in the celebrated case of Peter Obi against Chris Ngige, but also on the strength of the statement of the Chief Judge of Nigeria (CJN), Justice Kutigi, that the substance of democracy is dependent on the effective management of cases and petitions that may arise from the 2007 elections (Marco 2007:311). And unlike during the 1999 and the 2003 post-elections cases, the media has been very consistent and forthcoming in reporting the tribunal proceedings of the 2007 post-election cases. True to type, the judgements so far delivered by some of the tribunals currently sitting on post-election cases across the country – which voided the gubernatorial elections in Anambra, Adamawa, Ekiti, Kebbi and Kogi states, as well as replaced Omehia with Rotimi Amaechi in Rivers State, and declared Rahman Mimiko as the rightful winner of the Ondo governorship polls – have not only been widely acclaimed, but have also rekindled a soaring public confidence in the judiciary as the last hope of Nigerian democracy, while the confidence in INEC is diminishing very fast among Nigerians.

Beyond the laudable judgements of the Election Petition Tribunals, other post-election cases that have attracted public attention since 2007 have to do with the alleged reports that some INEC officials have been tampering with some ballot papers which were used during elections to jeopardise the petition of candidates that do not enjoy the favour of the Commission in the elections.⁷¹

TABLE VII: Preliminary Statistics of Cases Filed in Various Election Tribunals in 2007⁷²

S/N	State	No. of Cases in Tribunal
1.	Anambra	99
2.	Borno	08
3.	Edo	32
4.	Ebonyi	17
5.	Imo	13

⁷⁰ The associated issue of whether or not Peter Obi should be allowed to rule for the four years mandate given to him after the almost three years of illegitimate reign of Chris Ngige was the subject of another legal battle which was eventually resolved in favour of the latter by the Supreme Court of Nigeria in the middle of 2007.

⁷¹ Adams Oshiomole, the AC governorship candidate in Edo State raised alarm over this. A similar alarm was raised in respect of the House of Assembly seat in Aniocha South of Delta State. See *Vanguard*, Tuesday, May 8, 2007, p.10.

⁷² This table is neither a comprehensive list of all the states where elections were challenged nor all the election petitions in Nigeria. There are revelations to the effect that several other cases came up later in both the above listed and non-listed states.

6.	Gombe	12
7.	Kaduna	21
8.	Kano	43
9.	Katsina	44
10.	Kogi	46
11.	Ogun	80
12.	Oyo	19
13.	Kwara	21
14.	Plateau	28
15.	Rivers	68
16.	Yobe	06
	TOTAL	601

Source: IDASA, *Conflict Tracking Dossier: A Quarterly Review*, Issue 7, June 2007, p.22.

Already, a votes-recount exercise conducted in 12 local governments in Edo State on the orders of the Election Petition Tribunal sitting in Benin City showed a sharp difference between the results declared by INEC and the figures recounted. The ANPP Presidential candidate, Muhammadu Buhari, also stunned the Court of Appeal sitting in Abuja when he tendered bundles of result sheets allegedly prepared and endorsed by INEC a day before the presidential polls.⁷³

TABLE VIII: Results of Recounted Votes in the 2007 Governorship Elections 12 Local Governments in Edo States

Local Government	Counted	Declared
Esan Central	15,378	30,144
Orhionmwon	39,721	58,869
Etsako West	58,884	48,336
Owan West	18,974	19,991
Esan North East	29,501	33,394
Igueben	19,394	17,103
Esan South East	37,614	36,230
Esan West	57,288	56,900
Uhunmwonde	46,069	35,509
Ovia South West	31,447	31,601
Ovia North East	20,851	23,518
Owan East	27,539	27,598

Source: *ThisDay*, Friday, November 30, 2007, p. 8.

Public Trust and Social Capital

⁷³ See *Vanguard*, Wednesday, October 24, 2007, p.3.

Public Trust and Confidence in INEC

Trust involves a judgement, however implicit, to accept vulnerability to the potential ill-will of others by granting them discretionary power over some good (Warren, 1999: 1). For one to trust is to accept some amount of risk for potential harm in exchange for the benefits of cooperation. As Annette Baier (1986: 235) puts it, “Where one depends on another’s good will, one is necessarily vulnerable to the limits of that good will. One leaves others an opportunity to harm one when one trusts, and also shows one’s confidence that they will not take it.” Thus, for one to trust is to judge – however habitually or tacitly – that one’s trust will not be abused and betrayed.

Democratic mechanisms such as voting, freedom of speech and association, and the separation of powers enable people to challenge supposed relations of trust, while also limiting the discretion of the trusted. A society that fosters robust relations of trust would also probably pass for a society that can afford fewer regulations and greater freedoms, deal with more contingencies, tap the energy and ingenuity of its citizens, limit the inefficiencies of rule-based means of coordination, and provide a greater sense of existential security and satisfaction (Ibid).

There is quite significant literature on trust, with very few directed at the complex relationship between democratic politics and trust – be it trust in political authorities or trust generated or undermined within society as an indirect consequence of political institutions, economic development or cultural transformation (Ibid). Thus, from a functional perspective, trust and democracy might seem as *distinct but complementary ways of making collective decisions and organizing collective actions*. When one trusts, one *forges* the opportunity to influence decision-making, on the assumption that there are shared or convergent interests between the ‘truster’ and the ‘trustee’, thus relieving the burdens of *political* decision-making for both individuals and institutions in naturally complex societies. Hardin’s judgement of trust is premised on an expression of “encapsulated interest” (Hardin, 1993) that extends rational choice axioms which the individual seeks to maximize (self-interested) preferences, while economizing on the effort of gaining the information necessary to know what course of action, in any instance, will maximize preferences. Because individuals are self-interested, those who trust would seem to be choosing, irrationally, to increase their vulnerability to others.

All over the world, elections are billed to represent an affirmation of democratic rights, inclusion and transparency (Dahl, 2006). In Nigeria, the conduct of elections has offered one of the most central barometers of institutional performance and the level of public trust and confidence in the political process. The periodic nature of elections offers a regular “test” of democratic institutions that is distinct from the more continuous functions of the legislature or the judiciary. Nigeria’s recent elections, especially those of 2003 and 2007, have been highly controversial, with domestic and international observers adjudging them as significantly flawed and falling below the standards for democratic elections as enshrined in the ECOWAS Protocol on Democracy and Good Governance (2001), the Strategic Framework for the 2001 New Partnership for Africa’s Development (NEPAD), the Harare Commonwealth Declaration of 1991, and the Universal Declaration of Human Rights, all of which Nigeria is supposedly

committed to as a signatory. In the 1999 transitional polls, the Nigerian public, eager to see an end to military rule, offered relatively favourable assessments of the exercise.⁷⁴ However, in the 2003 elections, observers noted widespread disorganization and electoral fraud and adjudged them as worse than the transitional elections of 1999. In both elections, observers agreed that the most serious instances of misconduct and fraud were perpetrated in states in the South-East and the South-South – particularly in the Niger Delta, with commentators asserting that there were “no elections” in the core Niger Delta states of Rivers, Bayelsa and Delta.⁷⁵ A palpable sense of resentment could be felt among the communities in the states, leading to the loss of confidence in INEC and the electoral process.

It is in the above sense that the role of election administration bodies has been a major source of debate and controversies in Nigeria, with the real issues in the debate being “the preparedness of the bodies and their impartiality” (Ibeanu and Egwu 2007:100). Where the public is not comfortable with the performance of electoral authorities, it puts to question the credibility of the entire electoral system. In a widely representative elite and decision makers (EDMI) survey conducted by CDD in 2006, as part of the Democracy and Good Governance component of Nigeria’s African Peer Review Mechanism (APRM) self-assessment, it was revealed that most Nigerians do not believe in “the credibility of the electoral system for accurate voting”, as 55.5% said the system is either rarely credible or not credible all. Only 10.9% of the respondents agreed that the system for accurate reporting of results is largely credible or fully credible and transparent, while 69.4% said it is rarely credible or not credible and transparent at all. Another 70% of the respondents said that the mechanism for challenging election results is either rarely credible or not credible at all (Ibid, 103-107). A scenario such as the above has far-reaching implications for public trust and confidence in not only INEC, but also in the entire democratic process.

In a survey conducted by Peter Lewis on the overall trust of the elections in March 2007, respondents, while reacting to whether the 1999 and 2003 elections were conducted relatively “honestly” or “dishonestly”, showed ethnic disparities in the assessments of the elections, as well as sharp determination in public evaluations between the transitional (1999) and second (2003) elections.⁷⁶ Hausa and Yoruba voters assessed the 1999 elections in similar fashion, while Ijaw voters were somewhat less effusive, followed by the Igbo. This seeming discrepancy between critical assessments of the elections by observers, and average citizens’ affirmative views of the polls has been attributed to a post-transition “euphoria” which changed when realism set in (Peter, Alemika and Bratton, 2001: 14). By 2003, assessments of elections plummeted. Average Nigerians were dramatically more critical of the elections. Hausa-Fulani and Yoruba assessments declined by about 30% in gauging the honesty of elections, with only about half of each of these groups expressing that the 2003 elections were conducted relatively honestly (ibid). The Igbo and Ijaw groups moved from comparatively strong estimations of the

⁷⁴ See National Democratic Institute Final Report, 6/1/1999.

⁷⁵ See Human Rights Watch, Nigeria, vol.11, No. 2, 1999, p.1.

⁷⁶ See Peter Lewis, “Nigeria: Elections in a Fragile State”, in *Journal of Democracy*, vol. 14 (3), July, 2003.

1999 elections to virtually no confidence in the 2003 exercise, with only single digits, with the former group being scarcely more positive (ibid).

The diminishing confidence in elections is echoed by the declining trust in INEC. While the *Afrobarometer* survey in 2000 showed a general high level of trust in INEC across the population, ranging from about two-thirds (among Igbo) to 90 percent (among Hausa-Fulani), the trust declined to around two-thirds among the Hausa-Fulani, half among the Yoruba, and a quarter or less among the Igbo and the Ijaw after the 2003 elections (Ibid). The opportunity provided by the 2007 exercise to establish a break with the ugly past and rekindle public confidence in the electoral and democratic process of the country was again foundered, as the elections were adjudged by local and international observers as the worst ever in Nigeria's political history.

In a post-election survey conducted by IFES in May 2007, it was discovered that Nigerians' confidence in INEC had dropped substantially from the pre-election rating when a seven in ten majority held a "great deal" (18%) or "fair amount" (53%) of confidence for the Commission. The new rating revealed that only six in every ten Nigerians had a "fair amount" of confidence in INEC. Of the 2,416 Nigerian adults sampled across the 36 states and Abuja, only 38% of respondents expressed a "fair amount" of confidence rather than a "great deal" (20%) of confidence (IFES 2007b:27). As a result of this lack of confidence in INEC and its leadership, many Nigerians called for the resignation of the leadership of the Commission. The last of such calls came on the heels of voided elections in many states including the governorships of Kogi, Kebbi and Adamawa states, with the argument being that the cancellation of the elections in these state have vindicated the positions of both local and international observers that the April elections were characterized by irregularities, and that the INEC Chairman ought to leave office to enable the Commission have a fresh start in the conduct of the by-elections ordered by the courts.

In a letter to the INEC Chairman entitled "A Call to Resign", the then President of the Nigeria Bar Association, Olisa Agbakoba, argued that since the widespread opinion that the general elections were flawed had started receiving validation by Election Petition Tribunals across the country, Professor Iwu had no moral justification to remain in office.⁷⁷ He added that:

INEC will be required to organize, conduct and supervise by-elections (fresh elections) if the courts so order. NBA feels, without prejudice to your standing that it is in the public interest that you resign office to allow INEC a fresh start in the conduct of new elections. This is a necessary sacrifice that you ought to consider making in the National interest. I assure you of my highest consideration.

⁷⁷ Also see Agbakoba, Olisa, "Tribunal Verdicts: What Future for INEC?", *Weekend ThisDay*, Saturday, 18 November, 2007.

Professor Iwu at the presentation of the 2007 INEC report on the general elections berated politicians and wealthy individuals, while insisting that the elections were 80% successful. He simply refused to accept that the system that conducted the sham elections was headed by him and that as the Chief Electoral Officer he had always prided himself to be, he was ultimately responsible for how the elections were managed. It is with this in mind that the majority of the Nigerian public has formed its opinion that the present leadership of INEC is no longer reliable and dependable. Nigerians have therefore been calling for a fresh leadership to allow for fresh blood and ideas that will command the respect and trust of the Nigerian people in the conduct of subsequent elections in the country.

Challenges for Reform and Policy Recommendations

It has been argued that while all modern democracies hold elections, not all elections are democratic (TMG 2003:58). Electoral history in Nigeria predates 1960 when the country had her independence from Britain. “Starting from 1954 when the first general elections were conducted up to the most recently conducted general polls, the nation’s attempts at choosing its leaders at all levels of government through the ballot have always been dogged with sharp electoral malpractices and mass-protests and crises that usually follow such a voting exercise” (Falade and Ojudu 2007:47). Since 1959, Nigeria’s experience with elections is that almost every poll has resulted in controversy, arising from real and perceived structural and institutional flaws and inadequacies, with accusing fingers pointed at the electoral commission. This, according to President Umaru Musa Yar’Adua, who is a beneficiary of what has been termed as the biggest fraud in the history of Nigeria’s election, has become a sad recurrent feature of the country’s political development.

The result has been disputations and contestations which has held Nigeria’s democracy from growing, deepening and thriving. It is against the backdrop of the foregoing that many Nigerians applauded the open declaration by Yar’Adua at his inauguration ceremony as President of Nigeria that the April 2007 elections that brought him to power were not free and fair, and that he was committed to undertaking a reform of the country’s electoral process with a view to raising the standard and quality to acceptable international standards. Even though some Nigerians were divided on the timing of the inauguration of the 22-member Electoral Reform Committee (ERC) which took place on 28 August 2007 (because various election petition tribunals were still, and are still, in session),⁷⁸ not many people disagree with the expressed intention of the assignment and the comprehensive nature of the Terms of Reference of the Committee, which are to:

- *Undertake a review of Nigeria’s history with general elections and identify factors which affect the quality and credibility of the elections and their impact on the democratic process;*

⁷⁸ The 22 members of the panel include: Justice Mohammed Uwais, Bolaji Akinyemi, Jibrin Ibrahim, Attahiru Jega, Olisa Agbakoba, Ahmadu Kurfi, Ahmed Lemu, Grace Alele-Williams, Gamba Abdullahi, Festus Okoye, Ndanusa Alao, Justice Godwin Ononiba, Toyin Oladunri, John Odah, Okon Uya, Hajia Diji Bala., Oladapo Popoola, Aliyu Umar, Abdul Rahim Uyo, Steven Dike,

- *Examine relevant provisions of the 1999 Constitution, the Electoral Act, and other legislations that have bearing on the electoral process and assess their impact on the quality and credibility of general elections;*
- *Examine the roles of institutions, agencies and stakeholders in shaping and impacting on the quality and credibility of the electoral process. These should include Government, Electoral Commissions, Security Agencies, Political Parties, Non-Governmental Organisations, Media, General Public and the International community;*
- *Examine electoral systems relevant to Nigeria's experience and identify best practices that would impact positively on the quality and credibility of the nations electoral process;*
- *Make general and specific recommendations (including but not limited to constitutional and legislative provisions and/or amendments) to ensure:*
 - a) *A truly Independent Electoral Commission imbued with administrative and financial autonomy;*
 - b) *An Electoral process that would enable the conduct of elections to meet acceptable international standards;*
 - c) *Legal processes that would ensure that election disputes are concluded before inauguration of newly elected officials; and*
 - d) *Mechanisms to reduce post-election tensions including possibility of introducing the concept of proportional representation in the constitution of governments.*
- *Make any other recommendations deemed necessary by the Committee.*⁷⁹

Based on information gathered from the field in the course of this work, the case for election reform was identified.

In terms of context, the performance index of INEC is a reflection of the level of the development of Nigeria's political system. INEC can only be best assessed in the context of the larger Nigerian society where the majority of the members of the political class appear not to believe in free and fair elections as a mechanism for societal transformation. Rather, they see electoral institutions as a hindrance to their inordinate ambition to dominate the political system. This, by implication, affects the quality of leadership and the eventual disenchantment by the people, who now hold INEC responsible for their woes because of its brazen refusal to allow their votes to count at elections. The impact of this is the sheer lack of public trust and confidence in INEC and all that is associated with it.

The situation has also called to question the issue of the institutional autonomy of INEC. Certain provisions in the Constitution of the Federal Republic of Nigeria and the Electoral Act 2006 impede INEC's institutional autonomy. In particular, some of the issues involved are: the placing of INEC in the category of Federal Executive bodies which, by implication, contradicts

⁷⁹ See President Yar'Adua's speech at the Inauguration Forum. Also see the Call for Memoranda made by the ERC in *The Guardian*, Monday, November 5, 2007, 48.

the very essence of the institutional autonomy intended for INEC; the powers of the appointment and removal of the INEC Chairman and members of the Commission, including Resident Electoral Commissioners and the Commission's Secretary which reside in the President; the equation of qualification for appointment as an INEC official with the membership of a political party; and the funding of the Commission through the Executive arm of Government, all of which compromise the impartiality of the Commission and its capacity to develop and responsibly adapt positive innovations.

Another challenge that is linked to the foregoing is the sheer problem of leadership and inclusiveness that is associated with the personalisation of leadership, and the selectively and selfishly guided style of consultations that INEC is currently accused of by the larger stakeholder community on elections. It is on record that the leadership of the Commission as represented by Professor Maurice Iwu has been at 'war' with virtually everybody and any institution (local and international) that criticises it for the way and manner it programmed and presided over the failure of the 2007 elections. Through and through, the Commission's actions have subsequently confirmed the fears of the critical stakeholders that the design and implementation of the 2003 and 2007 electoral processes (as reflected in events in the pre-election, election-day and post-election situations) were criminally planned to obstruct the deepening of Nigeria's democracy. The series of verdicts so far passed by electoral tribunals across the country are pointers to the level that INEC went to in obstructing the Nigerian democratic project.

Delivering its judgement on the governorship case in Adamawa State, the Tribunal Chairman specifically scolded the Commission thus that:

*...in (a) more serious and accountable political clime, INEC should have evinced some remorse for the whole problem it has caused and the public money (it) wasted to organize an election it made inchoate even before it started. Its grandstanding is rather unfortunate. As a result of its ineptitude or mischief, a serious disruption will be caused to governance in Adamawa State.*⁸⁰

In view of the above, the ANPP called on Professor Iwu to resign his position as INEC Chairman, arguing that the tribunal's decision was a repudiation of the Commission's "clearly partisan and illegal roles in the illegal exclusion of the candidate of the AC from the April 14 gubernatorial election in the state."⁸¹

What the foregoing depicts is the total loss of confidence in INEC. And as it has been pointed out by one of the respondents to the research team and a presidential aspirant in the 2007 elections, the Commission compromised and denigrated its pride of place from the very moment it started going to court on issues that constitute the very purpose of its existence.⁸²

⁸⁰ See *Daily Trust*, Friday, November 16, 2007, pp.2 & 4.

⁸¹ Ibid.

⁸² Interview with Dr. Osagie Obayuwana, Saturday, 31st September, 2007.

The above notwithstanding, very many of the respondents to the research team, especially Angela Odah who worked under the Joint Donor Basket Fund (JDBF) in the UNDP, are of the strong opinion that there is still hope of salvaging the situation, especially in view of the ongoing reform process of the Commission.

For a Democratic Political Future: The Struggle Continues

Democracy has developed as a universal core value that most societies are striving to attain and consolidate. Responsible leadership in societies in transition to democracy must therefore reflect a deep commitment to and a strategy to deepen democracy through proactive measures that avoid democratic erosion or breakdown (Shedler, 1995:91). This involves a scrupulous respect for the constitution, the rule of law, and norms of democratic practice. The enabling of multiple political-party participation and the crucial role of the opposition as part of the democratic project is part of this commitment. One of the real tests of democracy is the acceptance by those in power that others who criticise them and are indeed trying to take over their exalted positions are legitimate players in the system. This has been a major challenge in Nigeria as those in control of state power have used their high positions to frustrate these elements of democratic growth and consolidation. The 2007 elections were designed by President Olusegun Obasanjo to fail because he was determined to remain in power or impose someone else in power against the desire of the Nigerian people.

This is not because he was unaware of the principles of democracy. Indeed, in his earlier analysis of institutional patterns in post-colonial Africa, he pointed out that:

In most Africa languages, the word opposition has the same meaning and connotation as the word enemy. Can we possibly conceive of a loyal enemy? Yet, the institutionalisation of opposition was one of the pillars upon which the structures and processes that were bequeathed to us were supposed to rest (1993:109-110).

Obasanjo traced many of the challenges to democracy in Africa to the reluctance of political leaders to share power, to strive to build consensus, and show respect to those who challenge them. He therefore challenged African leaders to renounce their commitment to the over-centralisation of power and try to build legitimacy by promoting the principle that “the people’s participation must find expression in the political process” (111).

Obasanjo castigated the present crop of African leadership who tend to lose their bearing almost immediately they come into power:

The new crop of leadership that is emerging must avoid the pitfalls and undoing of their predecessors. I say this because recently, someone observed that while it took the former president, an African, ten years to begin to lose his bearings, his successor took less than six months to lose his own (117)

He added that while the first crop of African leaders had a vision rooted in nationalism, their followers did not.

Obasanjo strongly recommended democracy and good governance as the basis for our socio-economic development. The essential elements he identified are as follows:

- 1) *Periodic elections in which the electorate review the performance of their leaders and renew or terminate the mandate they had given them.*
- 2) *A real democracy is one in which people have choices between competing alternatives.*
- 3) *A viable democracy is one which is fostered and strengthened by effective and independent non-governmental organisations; the civil society.*
- 4) *An independent judiciary that imposes sanctions on unconstitutional transgressions of social and political norms and regulations and also puts premium on protecting the rights and liberties citizens against overzealous and highhanded officialdom is necessary.*
- 5) *A free, independent and responsible press is a critical element (132-3).*

Having articulated these essential elements, Obasanjo warned that:

An irresponsible, arrogant or careless leadership breeds disenchantment, antipathy and disenfranchisement in the followership (133).

He finally recommended very strongly that:

A democratic government protects the different and most times, conflicting interests of the various segments of society. Democracy must strive to include most, if not exactly all segments of society in the run of things. Consensus or compromise must always be sought. A society that is run otherwise risks antipathy from within it (135)

These are indeed the principles upon which our efforts to consolidate democracy should be constructed. Ironically, the crisis of the Fourth Nigerian Republic was the total refusal of the same President Obasanjo, who held power from 1999 to 2007, to take these principles on board in the process of governance. During his tenure, President Olusegun Obasanjo worked hard to change the constitution so that he could continue to rule after his two terms allowed by the *grundnorm* of the country. In the process, huge bribes were offered to legislators to induce them to accept the change. Meanwhile, leaders of the opposition were also hounded by security operatives.

But for Nigerians, the struggle continues. During the 2007 elections, one phrase symbolised the civic attitude of Nigerian citizens in Hausa land, for example: in the streets of Zaria, Kano, Bauchi, the phrase was “*kasa, tsare, raka, kare, har mutuwa*”. Translated, the catch phrase of

the 2007 elections was: “count, protect, escort and protect your vote because your life depends on it”. That was the spirit in which Nigerians all over the country confronted the elections, and it was a palpable demonstration that the message from the civil society that citizens should struggle to defend their franchise had been heard.

There is gratifying pride in what ordinary citizens in Nigeria tried to do during the 2007 elections. They had become convinced, with good reason, that the political class would not allow them to experience true democracy, and they therefore decided to struggle for elections that provided them an opportunity to exercise political choice. By so doing, they sought to expand the democratic space in Nigerian society. This study demonstrates clearly that the level of electoral fraud was massive and that the elections were not free and fair. This is an incontrovertible fact. Rather than dwell on the negative analysis of the elections – that Nigerians were denied the opportunity to exercise their franchise, it is important to anticipate a more positive future that is emerging – in which Nigerians are learning how to protect their electoral mandate.

Nigeria is at a political crossroad. One of the roads on which a majority of Nigerian citizens are marching is the one leading to mandate protection. This concept has a clear meaning in contemporary discourse in the country. It means that democracy matters; and it has become a cherished value, and Nigerians are concerned that they are being denied the rewards of democratic practice. This negation of a cherished value has created a response of the necessity to struggle for democracy, in particular, its very significant component of free and fair elections.

The other road on which a significant proportion of Nigeria’s political class is marching is leading to the disenfranchisement of Nigerians through electoral fraud and violence. This activity, which has now reached its highest level of development embodied in the specifically Nigerian concept of “digital rigging”, expressed itself through the declaration of false results in numerous constituencies where Nigerians were prevented from voting in 2003 and 2007. The struggle of Nigerians to block this road continues.

Yes indeed, the struggle continues because although some Nigerian democrats lost the last round of elections and their mandates were stolen in many constituencies, we can begin to see light at the end of the tunnel. No political class can steal the people’s mandate continuously as long as a democratic civic consciousness is rising.

Policy Recommendations

Given the centrality of elections to democratic processes and the need to strengthen INEC, the policy recommendations of this study are:

- 1) **INDEPENDENCE:** there is the need to strengthen the independence of INEC, as it cannot be seen as sufficiently guaranteed by Section 158 of the Constitution which limits its authority only to the extent of the appointment and discipline of personnel. So, the process of the real autonomy of the Commission should start from its removal from

Section 153 of the Nigerian Constitution which recognises it as one of a number of other Federal Executive bodies. An amendment of Section 14 (1-2) of the Third Schedule of the Constitution which vests the appointment of the Commission's Chairman, National Commissioners, Resident Electoral Commissioners (RECs) and the Commission's Secretary on the President is necessary. The Chief Justice of the Federation should source for and recommend, in consultation with the Council of State, persons of integrity to the National Assembly for confirmation. The scope of representation in INEC should include the civil society and professional associations, such as labour unions, the Nigeria Bar Association and academic unions.

- 2) **ELIMINATING STATE INDEPENDENT ELECTORAL COMMISSIONS (SIECs):** it has been proven that Governors will not allow state electoral commissions the opportunity to organise free and fair elections to local government councils. SIECs should be removed from the Constitution and Resident Electoral Commissioners should organise local government elections.
- 3) **FUNDING:** the funding of INEC should be removed from executive control and made a first-line charge of the Consolidated Revenue Fund that is approved by Parliament, as is the case in Ghana.
- 4) **LEADERSHIP:** the calibre of INEC's leadership is crucial. A mechanism for choosing people with both competence and integrity is essential if INEC is to develop as a functional institution that can improve its capacity to deliver free and fair elections.
- 5) **PROFESSIONALISM:** the issue of professionalism through capacity-building must be taken very seriously by INEC. This should start from a review of its employment policy. The policy should target candidates that are qualified and possess the requisite capacity to deliver.
- 6) **AD-HOC STAFF:** the rules must be enforced to ensure that the quality and political neutrality of ad-hoc staff are known publicly and debated. The practice of appointing political party activists as INEC ad hoc staff must stop.
- 7) **MOTIVATION and PROTECTION:** instilling professionalism in INEC would also require a considerable degree of motivation for its staff. There is much to be done to raise the conditions of service of INEC staff which are still very poor, compared to other commissions with which INEC is constitutionally equated. INEC Commissioners should also be protected by being given the same conditions of appointment as Supreme Court Judges who remain in office until they retire at the ages of between 65 and 70 years.
- 8) **TRANSPARENCY:** to enhance INEC's openness and transparency, voting results must be counted and announced at each voting and collation centre in the presence of journalists who must have the right to broadcast same.

- 9) **SLIMING INEC:** the issue of a coordinated multi-sectoral approach to elections management should be considered as central to smooth elections in Nigeria. INEC's responsibility is obviously overwhelming. A coordinated mechanism that shares some of the Commission's responsibilities will enable INEC to focus on the main issues of elections administration. The National Identity Card should be valid for voting, and the National Population Commission (NPA) should handle the delineation of constituencies; a more professional Economic and Financial Crimes Commission (EFCC) and/or the Independent Corrupt Practices and Other Related Offences Commission (ICPC) should handle political campaign finance; while the National Orientation Agency (NOA) and the civil society should handle civic education, voter education and campaign against violence in elections. This will enable INEC to concentrate on the concrete issues of elections administration.
- 10) **SANCTIONS:** electoral fraud is the most despicable crime in a democracy, and INEC officials, and others involved in electoral fraud must be prosecuted and punished for criminal acts.
- 11) **JUDGEMENTS:** lateness in pre-election and post elections trials and judgements have been a problem, as such a way of fast tracking these must be found.
- 12) **PLANNING:** INEC should, as a matter of principle and administrative culture, begin its work on elections as early as possible, instead of delaying and resorting to what many Nigerians refer to as a "fire-brigade approach" to problem-solving. In such early process, wider consultations of and synergy-building with all stakeholders, as well as the incorporation of their inputs should be seen as central to any possible realisation of the success of electoral administration.
- 13) **CIVIC ACTION:** the Constitution should expressly guarantee the right of the Nigerian people to revolt against INEC or any state institution that steals the mandate of citizens. Rather than take a passive or "*siddon look*" approach to issues and turn round to vilify INEC later, instant corrective measures are necessary.
- 14) **COMPREHENSIVE ELECTORAL REFORMS:** the current process of electoral reforms anchored by the Presidential Committee should be used as a national opportunity in which stakeholders and the Parliament will forge a national consensus to carry out the necessary reform to fix Nigeria's electoral system.

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APPENDIX

Political Parties in Nigeria in January 2007

A	–	Accord
AA	–	Action Alliance
AC	–	Action Congress
ACD	–	Advanced Congress of Democrats
ACPN	–	Allied Congress Party
AD	–	Alliance for Democracy
ADC	–	African Democratic Congress
ANPP	–	All Nigeria People's Party
APGA	–	All Progressives' Grand Alliance
APLP	–	All People's Liberation Party
APN	–	Action Party of Nigeria
APS	–	African Political System
ARP	–	African Renaissance Party
BNPP	–	Better Nigeria Progressive Party
CDC	–	Congress for Democratic Change
CPN	–	Community Party of Nigeria
CPP	–	Citizens Popular Party
DA	–	Democratic Alternative
DPA	–	Democratic People's Alliance
DPP	–	Democratic People's Party
FDP	–	Fresh Democratic Party
HDP	–	Hope Democratic Party
JP	–	Justice Party
LDPN	–	Liberal Democratic Party of Nigeria
LP	–	Labour Party
MDJ	–	Movement for Democracy and Justice
MMN	–	Masses Movement of Nigeria
MRDD	–	Movement for the Restoration and Defence of Democracy
NAC	–	National Action Council
NAP	–	Nigeria Advance Party
NCP	–	National Conscience Party
ND	–	New Democrats
NDP	–	National Democratic Party
NEPP	–	Nigeria Elements Progressive Party
NMDP	–	National Majority Democratic Party
NNPP	–	New Nigeria People's Party
NPC	–	Nigeria People's Congress
NRP	–	National Reformation Party
NSDP	–	National Solidarity Democratic Party
NUP	–	National Unity Party

PAC	–	Progressive Action Congress
PDP	–	People’s Democratic Party
PMP	–	People’s Mandate Party
PPA	–	Progressive People’s Alliance
PPP	–	People’s Progressive Party
PRP	–	People’s Redemption Party
PSP	–	People’s Salvation Party
RPN	–	Republican Party of Nigeria
UDP	–	United Democratic Party
UNDP	–	United Nigeria People’s Party