

Reform of Nigerian Electoral SYSTEM

(Consultative Draft)

A Strategy Paper Prepared by

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(NBA)

JUNE 2007

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1.0: Introduction:

- 1.1. In a civilised society, men and women in order to live in peace and harmony, surrender their rights to a few individuals who by that singular act have conferred legitimacy to a select few to govern them and manage their resources. This social contract signifies ownership by the people. This implies that governance is for the best interest of the people and government is held in trust for the benefit of all. Government in a democracy draws its life from the people and that sacred nexus is made manifest in the electoral system. It is from this people-propelled transfer of power that democracy as a form of government evolved.
- 1.2. Democracy is founded upon certain fundamental precepts amongst which is the ability to hold periodic free and fair elections, effective judicial oversight and independent electoral gatekeepers. Elections are important in any democracy as they afford the citizen the opportunity and power to either express their satisfaction with an incumbent leader or political party or to display their displeasure with an incumbent leader/ political party.
- 1.3.1. Elections it must be emphasised is a process and not an event. It is a process that embodies all variables that lead to the formation of political to the declaration of results in the polls. It affords the citizens the opportunity to freely exercise their choice as to who will manage their resources and govern them over a given period of time. Hence, any attempt to manipulate the process is an affront on the collective will of the people. Good governance and people oriented leadership can only be a product of a fair electoral process which ventilates the expressions of the people as represented in the ballot.

¹ Paper prepared by Udo Jude Ilo. Research assistance by Hilary Ogbonna is hereby acknowledged

2.0. Electoral Process in Nigeria:

2.1. Since independence in 1960, Nigeria has experienced a cycle of corrupt, inept and despotic military and civilian governments. Many Nigerians hoped that the February 1999 elections coming after 15 years of military rule would initiate a break from this vicious cycle and that, elections in the years to come would be confirmation that Nigeria was shakily but steadily on the path to liberal democracy.

2.2.1. Systematic irregularities, occurring within the context of seemingly concerted political and administrative actions and measures by successive governments and electoral agencies, were documented and reported by Nigerian and international observers during the 1999 and 2003 elections. The irregularities noted in the 1999 elections were even more obvious in the 2003 elections, bringing the credibility of both series of elections into question.² The 2007 election however made a departure from what was obtainable in the past election. It broke a record as one of the worst ever witnessed. Below are some of excerpts from the report of some international and local observers:

The European Union observed that the “Elections fail to meet hopes and expectations of the Nigerian people and falls short of basic international standards.”³ They further stated that

...they (elections) were marred by poor organisation, 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.

The British High Commissioner to Nigeria Mr Richard Gozney stated the following on the elections: “it was not just a question of disorganisation, but there was outright rigging and the results were frankly not credible”

² ‘Do The Votes Count?’, [Abuja, Transition Monitoring Group, 2003]

³http://ec.europa.eu/comm/external_relations_human_rights/eu_election_ass_observ/nigeria/preliminary_statement_23_04

Other observers had nothing cheering to say about the election. The National Democratic Institute in their report faulted the elections especially as it relates to the shoddy preparations.⁴ The Commonwealth Observer Group sees the election as a missed opportunity to strengthen Nigerian democracy. They identified managerial problems and insufficient preparations as some of the key factors that marred the elections.⁵

The American government says the elections in Nigeria were “deeply flawed”.⁶ The Transition Monitoring Group called for the cancellation of the election arguing that what happened in Nigeria during the Presidential election cannot be called ‘elections’. The general agreement amongst observers and the generality of Nigeria is that the elections of 2007 are the worst ever witnessed in the country. The Nigerian Bar Association with their members observing election in every part of the country stated that the elections were below standard. In effect there is a general agreement that what happened in April in Nigeria falls short of democratic standard and cannot be said to represent the will of the people.

The disturbing situation here is that while it is generally expected that Nigerian democratic culture would be improving over the years, the reverse is the case. Instead of improving on the last elections, Nigeria has taken a hundred steps backward. The challenge then is to investigate the cause of this decline and map out a roadmap for reform.

3.0. **Pre-Election Environment:**

Third term saga: The build up to the 2007 election portrayed a structural dysfunction of the electoral system. In 2006, there was a general consensus that the Constitution of the Federal Republic of Nigeria needed to be reviewed and some of the provisions amended to reflect our new democratic culture and promote national growth. That exercise was used by the then President to push for a constitutional amendment that will offer him third term in the office as opposed to the two-term provision in the constitution.

This was one move that nearly destabilized the country. Nigerians were opposed to it. It was considered by many to signify the death of democracy in

⁴ allAfrica.com

⁵ <http://www.thecommonwealth.org/document/162848/270407nigeriadepstatement.htm>

⁶ <http://www.voanews.com/English/2007-04-23voa34cfm>

Nigeria. Worse still, it polarised members of the National Assembly along the line of pro and anti third term legislators. The third term bid failed but it left behind a divided political class in Nigeria. It heated up the polity and left an acrimonious environment that reared up its fangs during the party primaries and the general elections. One clear example is that more than 80 percent of the legislators who opposed the third term did not win nomination to contest election under PDP.

Political Violence: The build-up to the election was characterised with high rate of violence and killings. The frontline PDP gubernatorial candidate in Lagos, Dr Funsho Williams was assassinated on 27 July 2006. In Ekiti state, Ayo Daramola a gubernatorial candidate was also assassinated. Just before the election, an Iman known for his political opinions was gunned down in a mosque in Kano State.

In the Niger Delta region, the spate of abduction of expatriates was in increase and there was reported cases of bombing of some politicians home in that area. All around the country there were cases of political thuggery, fighting between political parties and in some cases loss of life and property. There was a high sense of insecurity around the country. In the cases of assassination, the police appeared incapable of arresting the perpetrators. The NBA knows no case where individuals were arrested and tried for act of political violence during the countdown to the election in spite of the obvious identity in some cases of the perpetrators.

Disqualification of Candidates: Perhaps one of the greatest controversies before the 2006 election was the selective disqualification of opposition candidates by the Independent Electoral Commission. Prior to this, the President and the Vice President had already fallen out with the former declaring the office of the Vice President vacant. The controversy between the two got so bad that the Vice President was expelled from the ruling party, indicted by Presidential committee of enquiry for abuse of office and had almost all the privileges of his office withdrawn by the Presidency.

Consequently, the Vice President joined the Action Congress to pursue his presidential ambition. It was at this time that INEC purportedly acting in accordance with section 137 of the constitution which it construed to be self

executory disqualified the Vice President and some other opposition candidates from contesting the election. The curious thing in these disqualifications was that it targeted opposition candidates and even when the court made pronouncements urging INEC to reverse some of the disqualifications, the agency refused. It took the Supreme Court to lay the matter to rest and to pronounce that INEC has no power to disqualify. The judgement was a welcome development but the damage has already been done. The supposedly independent gate keeper came out as not only partisan but dangerously against opposition parties.

Voters Registration: INEC introduced for the elections, electronic data capturing machine. The machine was introduced to check fraud especially as it relates to multiple voting and impersonation during the election. INEC indicated that it will need 30,000 data capturing machines for the registration of voters. 100 days before the election, INEC only had about 1,500 machines for the registration⁷. To cure the problem of paucity of machines, INEC contracted a local computer company to provide ad hoc machines to aid the registration of voters.

In all INEC had about 10,000 machines which were being rotated around polling stations for registration. In some cases, Nigerians were not aware of when INEC officials will be coming to their neighbourhood. It was obvious that there was a shoddy preparation for the registration. At a point, the National Assembly had to hurriedly amend the provisions of the Electoral Act which stipulated time for the close of registration of voters in order to accommodate the large number of would-be voters who were not able to register. At the end of the exercise it was obvious from the facts before the NBA that a large number of Nigerians were disenfranchised because of INEC's ineptitude⁸.

Consequently, INEC was not able to display the voter's registration list 60 days before the election.⁹ JDPC/ Caritas reports that in the few polling stations

⁷ Registration of voters is to be concluded 120 days before the election- Section 10(5) of the Act

⁸ There was also a reported case of a politician in Oyo state, being in possession of the data capturing machines in his private residence. Till date, he has not been prosecuted.

⁹ **Section 11** of the Electoral Act requests INEC to display the voters list for verification and contest 60 days before the election.

where the voter's list was displayed, it was done about 2 weeks before the elections. This gave electors and political parties little or no time to verify the list. The confusion generated by the process destroyed the faith of a great many Nigerians on the process. The data capturing machine did not provide the answers that informed its introduction in the first place.

The painful reality is that from the onset, the political environment before the election was not such that could support the conduct of a viable election. The electoral system had its problems which were playing out during the countdown to the elections. It is important at this juncture to look at the some institutions in the electoral system:

4.0. The Independent National Electoral Commission:

4.1. Appointment of Members of Independent National Electoral Commission:

The Independent Electoral National Commission (INEC) was established pursuant to Section 153 (1)(f) of the 1999 Constitution. Section 154 (1) adds that except in the case of ex-office members or where other provisions are made in this Constitution, "the Chairman and members of the Commission, subject to the provision of this constitution, shall be appointed by the President and the appointment shall be subject to the confirmation by the Senate" Its independence is guaranteed by S. 158(1), which provides As follows: "In exercising its power to make appointments or to exercise disciplinary control over persons, the Code of Conduct bureau, the National Judicial Council, the Federal Civil Service Commission, the Federal Judicial Service Commission, the Revenue Mobilisation and Fiscal Commission, the Federal Character Commission, and the Independent National Electoral Commission shall not be subject to the direction or control of any other authority or person".

However, it is curious that the same Constitution that sought to provide for independence of INEC in another breath compromises it in Section 156 which provides for the qualification for membership of the Commission. We are concerned with S. 65 (2)(b) which specifies membership of a political party as one of the criteria for the membership of the House of Representatives and by extension a condition for membership of INEC. The pertinent question to be asked is, can the independence of INEC be guaranteed if it members must

belong to a political party to qualify for appointment? If on the other hand the members of the Commission insist that they do not belong to any political party, can it then not be argued that they are not qualified to hold such office as a result of non-compliance with the provisions of the Constitution?

4.2. Structure and Operation of INEC:

INEC as presently constituted consists of a Chairman, twelve National Commissioners, a Secretary and thirty seven Resident Electoral Commissioners, all federal appointees and therefore likely to dance to the dictates of the federal executives. It is also important to mention that the Resident Electoral officers are appointed by the President without any confirmation by the National Assembly. What this means is that there is a master/servant relationship between these appointees and the Chief Executive. It will be illogical to assume that the appointees will act independently.

4.3. Financial Autonomy of INEC:

The provision in the Constitution relating to the autonomy of the Commission gives administrative autonomy to INEC but certainly not financial autonomy, which is more vital. Presently, the executive determined the budget of INEC and this is adversely affecting the planning and execution of INEC activities. In the just concluded elections, it was widely reported that a cheque made out to INEC to help it prepare for election by the Federal Government bounced. It actually took the intervention of donor organisations to kick-start the preparation of elections. It is clear from events that INEC funding is not immune from the overbearing influence of the Executive and consequently its independence and capacity is undermined.

5.0. Political Parties

Presently in Nigeria there are 50 political parties. In 1999 there were just three registered political parties. This increase in number would ordinarily be construed as a process of deepening democracy and an evidence of more politically alert population but this seems not be the case. By its structure and

composition, political parties in Nigeria seem to be a conglomeration of strange bedfellows with the only common denominator being greed for power. Whilst one cannot deny the fact that there are some genuine party interest, the fact still remains the conduct of political parties in the last election leaves much to be desired.

In 2003 Prof Lewis defined the Nigerian political parties as a nebulous party system that has nothing to do with ideologies.¹⁰ This definition seems to be very apt even today. From the manner in which candidates were switching parties in order to get nomination and the hastily concluded partnership between political parties, one is wont to believe that it was all about opportunism and selfishness.

Curiously only few political parties actually contested elections. This suggests that some of the political parties which are supposed to beef up the opposition strength were perhaps established solely for grant purposes. The JDPC/ Caritas reports that of the 50 political parties, only 8 actively contested the 2007 general elections.¹¹

Within the structure of the political parties, there was absence of internal democracy. Candidates were imposed on the party by ruling few. Primaries were decided on the financial strength of contestants or on the decision of party leaders. The PDP for instance cancelled party primaries and imposed candidates on some states. In some circumstances it took a court judgement to save nominees from the party manipulations. The court was unable to intervene in some cases due to the obvious handicap imposed on the court by the case of *Onuorah v Okafor*¹².

Political parties in government made brazen use of state resources to further the interest of their candidates. One of such incident was the use of Presidential jets and helicopters by the PDP presidential candidates. All other political parties were guilty of the same offence in the states where they controlled state resources.¹³

¹⁰ Olisa Agbakoba and Udo Jude Ilo, *WHERE DID WE GO WRONG: A REVIEW OF 2003 GENERAL ELECTIONS* (2004)

¹¹ Draft Report of the JDPC/Caritas on the 2007 General Election 25

¹² Judgement in this case places the party primaries out of the oversight ambit of the courts

¹³ See further SERI, *Beyond the Ceiling* (A Report on Campaign Finance and State Administrative Resources for the 2007 Presidential Election) Unpublished

The sad reality was that party structures were not democratic. Formation of political parties was guided more by 'common enemy' than by a common ideology. In effect political parties could not adequately play their roles in a democratic setting. Neither could they support a successful democratic transition.

5.0 Electoral Act:

The Electoral Act is the working document which provides the legal framework for the electoral system and in particular the conduct of elections. It is important piece of legislation upon which the elections is predicated. Whilst not being the only relevant law in the system, it determines to a large extent the colouration of the electoral process. As such it must be adequate in scope and in material particulars.

The Electoral Act in Nigeria has gone through series of amendments. The last election was conducted using the 2006 Electoral Act. In spite of the obvious effort made in improving on previous electoral laws, there were lapses in the law that impacted negatively on the process:

Voter's Registration Process: This is provided for in Part III of the electoral Act. The voter's register is central to the integrity of the electoral process. It contains the names of all electors and as such can be used to checkmate fraud and rigging in the election. However the Electoral Act did not make the existence of a proper voter's register a prerequisite for the conduct of election. It did not stipulate the legal consequences of non-display of the register which is one forum for individuals and political parties to check for fraud. Further still, it did not stipulate the consequences of having a voting return which exceeds the number of registered voters.

The maintenance and the display of the voter's register would ordinarily help to contain fraud. The situation in the last election whereby the register was not displayed nor were Nigerians afforded empirical proof of number of registered voters allowed room for fraud and manipulation.

*Political Parties*¹⁴:

The Act made provisions for the registration of political parties by INEC. It further gave INEC some supervisory roles over the activities of political

¹⁴ See Part V of the Electoral Act

parties. However it is submitted that the supervisory role of INEC over political parties is at best peripheral. Internal activities of political parties like modes of nominations or election of officers falls outside the oversight of INEC and even the court in some circumstances. Penalties provided by the Act for non-compliance by parties on some provisions of the Electoral Act is insignificant and cannot in essence deter infringements. Again, certain political parties are not parties in the strict sense due to the absence of any reasonable activity by such parties. They only collect allocations without living up to the demand of being political parties. There is no mechanism within the act to check such activities. There is no doubt that democracy envisages independent political parties with autonomy. However a key challenge is making sure that liberty given to political parties is not exploited by a few to hijack party structures against the spirit of party constitutions and that compliance to basic democratic principles are maintained. This must be done whilst not eroding the ideological and structural discretions of political parties.

*Political Finance*¹⁵:

Political finance regulation is very important in any electoral system. Such provisions must be one that is able to strike a balance between financial needs of political parties and financial abuse. It must make it possible for parties to access funds whilst also making it difficult for such parties to engage in financial improprieties. An effort was made to reform the political finance regime in the Electoral Act but it is still inadequate. The Act places a limitation on the amount of money candidates can spend in election without a limit on what political parties can spend. In Nigeria, the campaign funds of political parties and candidates are hardly distinguishable. As such, candidates can through their parties spend as much money as they want without falling foul of the Act. The last election aptly exemplifies this.

Infringement of campaign finance regulation is not factored in the consideration of substantial compliance and neither does it serve as a ground to disqualify a candidate or a political party from contesting elections. It only provides for imprisonment and fine as the case may be. Going by how

¹⁵ Much of the provisions on campaign finance in the Act is found between sections 87 – 95 of the Electoral Act

important and integral political finance is to the process, one would have expected a more severe punishment. As such what is provided for in the Act is not really a deterrent.

Political finance impropriety qualifies as corruption. It is a technical field that requires a bit of expertise for one to be able wade through the maze of what political finance represents. INEC as the sole agency of oversight is not equipped to deal with these intricacies. There is no interplay of overlapping anti corruption agencies to monitor party expenses.

Again the computation of the time for which campaign finance rules apply is grossly inadequate. Election expenses means expenses incurred by the party within the period from the date notice is given by the Commission to conduct elections and the polling date.¹⁶ Expenses incurred before this announcement does not count. In Nigeria election expenses start long before such announcement which statutorily had to be made at least 150 days before the election.

The above highlights some of the problems with the political finance regime which allows financial muscle or power of incumbency to determine who runs the party. It also provided uneven playing field for political parties and candidates.

Election Petition Process

The election petition process is designed to afford candidates and political parties the opportunity to subject the outcome of elections to the judicial oversight. It is given that no electoral system is flawless. As such the court provides a forum whereby results of elections are queried to give vent to the voice of the people as expressed via the ballot.

Election petition process in Nigeria has not been able to provide optimum result in terms of satisfactory conflict resolution. One of the problems identified by the NBA with the petition process is on the capacity to present election petition. Section 144 of the Act restricts this capacity to only political parties and candidates who participated in the election. Other relevant stakeholders like electors, trade unions and civil society organisations are excluded in questioning the outcome of elections.

¹⁶ Section 94 (1) of the Act

Substantive provisions as opposed to procedural provisions: The election petition process as provided for in First Schedule to the Act is more of a substantive provision than procedural procedure. It is lacking in details and provides that subject to the express provisions of this Act, the practice and procedure of the Tribunal or Court in relation to an election petition shall be as nearly as possible similar to the practice and procedure of the Federal High court.¹⁷ The Federal High Court cannot adequately contain the demands of a sui generis matter like election petition which ordinarily requires expeditious hearing. As such the greatest problems of the Electoral Act borders on delay suggesting a need for a proper election petition rules.

The Non-Compliance Rule: The Provision on non-compliance in section 146 (1) treats the election as event as opposed to the global understanding that election is a process and the rule of compliance applies to all the provision of the election. Emphasis on the effect of non-compliance on the result negates the larger question of credibility of the process. Moreover certain fundamental non-compliance like in campaign regulations or campaign finance might change the outcome of the votes but the quantum of such effect which may be very high might not be easily established. Credibility of the process is far more important than the established effect of non-compliance on the votes. As such it is submitted the application of the non-compliance rule is very restrictive and does not refer to the whole electoral process. This allows for fraud and other electoral malpractices which greatly undermines the credibility of the process.

Rules of Evidence and Custody of Documents: The election petition procedure revolves around documents. The ordinary rules of evidence on documentation is applied in the tribunal. The inadequacy of this practice is not in doubt. The custody of election documents is with the Commission. Investigations by the NBA show that in some areas these documents are being doctored to support the fraud committed in the election. This raises the question of the propriety of the election documents being left with INEC after the election. The question

¹⁷ Item 50 , First Schedule to the Act

would be whether agencies like the National Library can play a role in this regard?

Time line for disposing election petitions: The Supreme Court has maintained its discomfort with giving a specific timeline for the dispensation of election petition matters. Here the court is concerned with substantive justice which may be jeopardised when candidates are not allowed to establish their cases to the best of their ability. This creates a bit of problems going by the experience in Anambra State in the 2003 elections. It also poses a challenge to combating delay against the background that the person declared winner of the election stays on until the final determination of the election petition.¹⁸ What are the chances of conduction elections months before the inauguration day to afford litigants enough time to dispense with petitions?

Prosecution of Offences

Section 158 vests the commission with the power to prosecute offences. In spite of the glaring number of election malpractices, nobody has been prosecuted. This suggests incapacity of the Commission to undertake this job. This provision also suggests exclusivity of the power conferred on INEC. This would also mean that other agencies like EFCC, Nigerian Police and other related agencies cannot prosecute electoral offences. In effect the sanctions for electoral offences which ordinarily should be a deterrent are rarely enforced. What is clear from the last elections is that individuals do not have any fear of the law as regards electoral malpractices.

6.0. Human Element and Nigerian Political Culture

Law is a vehicle of social engineering. But law is law because it has sanctions that are enforceable. The absence of enforceability renders law impotent. As such the human element is an integral part of the electoral process in that it gives meaning to the principles of democracy represented by the electoral process.

As much as we emphasise the need to amend the electoral laws and reform the process, the fact still remains that the reform initiatives and electoral laws have to be operated by individuals. The outcome of the last election has aptly depicted our valueless system and the disposition of people in power to use

¹⁸ Section 149

such power to further personal interests. If 50 percent of our laws and electoral obligations were adhered to during the elections, we would sure have received a better result.

The appropriate political culture which supports democracy has not been imbibed by Nigerians. Politics is still being played for the purposes of making money. We still have career political class whose only claim to political pedigree rests in the number of touts or corrupt resources that they possess. The average Nigerians see political position as a business opportunity. Democracy is not understood for what it is. In spite of the impressive turnout of Nigerians in the last elections, the result still did not reflect the will of the people. It was not about the laws but about people who are supposed to operate the system. By this we mean Nigerians. The problem of absence of political will to implement the law cannot be solved by enacting more laws but by identifying the factors that militate against individuals who are charged with implementing the laws.

The law did not account for the cancellation of gubernatorial election in Imo state while the state assembly election conducted the same day and at the same time was allowed to stand. Curiously the rerun of the election produced a candidate from the Commission's chairman's zone. The law did not provide for the shoddy conduct of the voter's registration or the flop that became the data capturing machine. It did not make the former president term the election a do or die affair and neither did it provide for imposition of candidates by political parties. It did not provide for INEC to join itself as a party in a suit that concerns whether the Vice President resigned his seat or not. It did not provide the commission to refuse to obey court orders concerning the eligibility of candidates to contest election. The laws did not make us fail at the polls but rather our political culture did.

7.0. Roadmap for Reform

An attempt above has been made to expose the content of our electoral system. We are convinced that the elections did not go well due to interplay of many flaws which were organisational, technical and structural. Our point of intervention proceeds from the premise that election is a process which starts from the one election to the other. We premise our recommendation on the

integral function of the operators of the electoral system which encompasses all Nigerians. The duty for reform is for every Nigerian but that does not remove the fact that key players like the executive, legislators and civil society organisations should come together and drive the process.

It is significant to point out that a lot of activities and consultations were embarked upon before the last election to reform the process. After the huge sums of money which were expended on trainings, seminars and conferences, we still made a woeful outing in the polls. As such our problems are not just about paucity of ideas but rather on implementation and awareness. We therefore recommend the following line of action:

(a) Reforming our political culture:

One finding suggests that some of the reorientation initiatives embarked upon by past administrations were merely cosmetic without proper focus. The power of the grassroots to effect changes in the society is somewhat overlooked. We do newspaper adverts and town hall meeting which has a limited number of elites as the audience. The grassroots are not enlightened properly to appreciate democratic values and principles. It is the average Nigerian youth who will risk his life to carry ballot boxes. It is the average Nigerian who will expect a candidate to make a cash gift to secure his vote. He sees nothing wrong in multiple voting to ensure electoral victory. This is the people that our reorientation effort should target. As such effort should be made to design programs that will target the grassroots to educate them on the new democratic culture.

Reforming the mindset of Nigerians goes beyond civic education. With a population of about 70 percent Nigerian living below poverty line, it will be a tough call to separate our political culture from the large influence of unemployment, poverty and hunger. Proper economic framework must be put in place to save Nigerians from selling their conscience for a loaf of bread. A hungry man cannot have a changed mindset if his hunger is not taken care of. Our point here is that a new political culture can only be achieved when the state hold answers to the needs of the people.

Consequently upon this, the episodic civic education programs for elections must be reviewed. Awareness campaign for the 2011 elections should start now. A proper holistic engagement plan has to be developed

with a bottom up approach to reorient Nigerians. This has to be the first step of our reform effort. We should have a population that appreciates our reforms. Political awareness is the key to viable electoral reform initiative.

(b) Reform of INEC:

This has been a resounding refrain in every part of the country and even outside the country. The INEC as presently conducted cannot operate our electoral system. The association is lacking in capacity, expertise and independence. This has to be addressed. The appointing power of the president has to be reviewed to ensure independence. In general INEC should be reformed to reflect the following:

- (1) The constitution of the members of INEC should be amended to comprise of all stakeholders; political parties, trade unions and the civil society. The appointing process should be designed to ensure independence. Qualification for appointment should be reviewed to avoid a situation where only partisan individuals can be appointed into the commission.

The Resident Electoral commissioners should be members of INEC to enable the commission to have control over them.

- (2) All funds accruable to INEC should be charged to the consolidated account of the Federation without the interference of the Federal Government.
- (3) There should be adequate and continuous training of INEC staff. The ad-hoc staff of the commission should be non-partisan.
- (4) Adequate and timely preparation must be made with respect to election materials and the conduct of election. The fire brigade approach adopted by INEC in the last dispensation is condemned and it is submitted that preparation for next election should start now
- (5) INEC should be equipped to have more supervisory control over political parties especially in the area of party finances. There should be in place a

machinery to enable INEC monitor party nomination, campaign and intra-party activities.

(c) Political Parties:

The fact still remains that political parties are central to the electoral system. The structure and content of our political parties presently portends serious risk to the process. Strategies has to be mapped out to help political parties imbibe internal democracy, work on the basis of ideology and to build an idea based opposition block in the country

(d) Electoral Act

We have identified certain problems with the Electoral Act which require urgent reform. As a pointer, we recommend the following:

- (1) A review of the provisions relating to the registration of voters with the aim of making the voter's register a prerequisite for elections. Also the non-display of voters register should be enough grounds to cancel an election in any particular area
- (2) The use of overlapping agencies like the EFCC, Nigerian Police, Federal Inland Revenue Board and other related agencies to prosecute election related offences.
- (3) Separate campaign finance regime distinct from the Electoral Act to take care of salient deficiencies of the present campaign finance regime. The Centre for Law and Social Action has produced a model Political Finance Bill which tried to address the various deficiencies noted earlier in our discuss. In particular, the Bill provides for political finance intelligence unit which will oversee party finances. It again provides for overlapping role of anti-corruption agencies, cancellation of election returns on the basis of financial malpractices and realistic measures to monitor political donations¹⁹.
- (4) Non-Compliance rule:
Section 146 provided that election can only be invalidated on the grounds of non-compliance when such non-compliance significantly

¹⁹ Copies of the Political Finance Bill will be made available soon

affects the election results. In our earlier discuss we try to highlight the inadequacies of this practice. It is recommended that the doctrine of non-compliance as espoused by Lord Denning in the English case of *Morgan v Simpson*²⁰ be adopted. Denning after a detailed analysis of decided authorities on the provisions of that Act and electoral law in the UK stated the position of the law in England as follows:

Collating all these cases, I suggest that the law can be stated in these propositions:

- (1) If the election was conducted so badly that it was not substantially in accordance with the law as to elections, the election is vitiated irrespective of whether the result was affected or not. That is shown by the **Hackney case** 20 M & H 77 where two out of 19 polling stations were closed all day and 5,000 voters were unable to vote”
- (2) If the election was so conducted that it was substantially in accordance with the law as to elections, it is not vitiated by a breach of the rules or a mistake at the polls provided that did not affect the result of the election. That is shown in the **Islington case**. 17 TLR 210 where 14 ballot papers were issued after 8.pm.
- (3) But even though the election was so concluded substantially in accordance with the law as to elections, nevertheless, if there was a breach of the rules or a mistake at the polls – and it did affect the results of the election, then the election is vitiated. That is shown in **Gunn v.Sharpe** (1974) QB 808 where the mistake in not stamping 102 ballot papers did affect the result.

It is submitted that the first position be adopted in our procedure to curb the incidence of Electoral malpractice.

- (5) Section 144 should be amended to allow other stakeholders bring election petition before the court. Electors who ordinarily are submitting their powers to an elected few should have the capacity to challenge the election outcome. 10 percent of electors signing a petition in a particular polling centre or ward could be the legal requirement for the filing of petition by voters.
- (6) The judiciary should be empowered by the Act to draft an election petition rule as opposed to the substantive provision which is what the schedule of election petition process is about. Such rule of procedure will recognise the time sensitive nature of the proceeding, allow easy access to documents and reduce the nagging question of delay in the election petition process. The Human Rights Law Service, already have a draft of election

²⁰ (1975) 1 QB 151

petition procedure rules which can guide further deliberations on evolving a time sensitive procedure for the election tribunals

- (7) There is need to reform the election calendar in such a manner as to hold elections 4 – 6 months before elections to enable the Tribunals dispense with most election petition cases before elections.
- (8) Most importantly, the 2006 Electoral Act must be interrogated and reformed as soon as possible to enable stakeholders work it into the system early enough. The fact that the 2006 Electoral Act came into force less than 2 years to the general elections impacted negatively on the process and reduced the gains that would have been made on the basis of the new Act

8.0. Conclusion:

This document does not hold all the answers or address all the issues relating to election petition. It only attempts to highlight some of the salient issues and provide a framework for discussion. Our interest is to evolve an electoral system where the votes counts and where the people will have stake in government. This can only be possible when we evolve an electoral system where the people are central. The law alone cannot give us the system we need. Our submission is that the inadequacy of the law is just a component of the larger problem. The problems rests in our political culture; in the money spinning machine that government posts have become and in the poverty that is in the land. To confront these problems, our engagement strategy has to be all encompassing and the time to start is now.

PS: For comments and observations please contact us on programs@nigerianbar.org or info@nbaspidel.org