

## **ISSUES FOR THE REFRORM PROCESS: THE POSITION OF TMG**

The 1999 and 2003 elections posed a lot of challenges to the survival of democracy in Nigeria. These challenges will also confront the Nigerian people and all the stakeholders before, during and after the 2007 elections unless urgent and sincere reforms are embarked upon to confront some of the issues and problems already identified and form a broad consensus on how to tackle and overcome them.

To achieve this however, civil society groups and organizations must be well informed on issues around the Nigerian electoral process. The Legislature must also broaden its agencies and organs of public participation through a process of giving vent to the sovereignty of the people rather than embarking on reforms that serves the particularistic interests of a few and guarantees their remaining in the legislature in perpetuity. This will also entail the molding of political parties that are ready and willing to respect the Constitution of their political parties, that of the Federal Republic of Nigeria and the Electoral Act. It will also require the government to release funds and guarantee other logistics to the electoral body without looking at the political gains to be made from the release or non release of funds to the electoral body. In other words there must be consensus ad-idem among the major stakeholders on the imperatives of reform and the need for the said reform to guide the operations and conduct of political and electoral activities in the country.

This is important because, the 1999 Constitution of the Federal Republic of Nigeria is unequivocal on the fact that sovereignty resides with the people from whom all elected representatives derive their power and authority. This mandate no doubt is given through the votes of the people. It is only the unfettered and voluntary votes of the people that can confer legitimacy and

mandate to a particular government. Only then can it be genuinely said that the mandate given truly reflects the genuine wish of the people. Any regime that comes to power through fraudulent electoral manipulation cannot expect unalloyed loyalty and democratic enthusiasm from the people. The people may prefer democratic values and practices and at the same time use all democratic and constitutional avenues to remove any regime that does not represent the will of the people. We must therefore draw a fine distinction between our belief and practice of democracy and the activities of governments that comes to power on a fraudulent platform.

The issues for the reform process must therefore take on board the principles of democracy and constitutionalism as the guiding principles in the reform process. Some of the issues that call for urgent attention are connected with the imperfections in the 1999 Constitution of the Federal Republic of Nigeria. Others are a reflection of the lack of transparency that attended the promulgation of the Electoral Act and the robust challenges to the Act from political parties and the civil society. Others are practical and logistic issues that must be addressed outside the purview of the Constitution and the Electoral Act.

The agenda of this discourse is to form a consensus around reform issues for consideration and possible adoption. Some of the key issues have been extensively canvassed by the Independent National Electoral Commission, the Transition Monitoring Group, the Press and International Election Observer Groups. The main point here therefore is to tabulate and isolate the areas of consensus and deliberate and debate on the gray areas for purposes of achieving some agreement.

### **The Independence of the Electoral Commission**

Some level of consensus has developed among civil society groups on the need for an independent and effective electoral commission.

This Independence is both a function of the Constitution of the Federal Republic of Nigeria, the Electoral Act and the values and principles shared by National and Resident Commissioners of the Independent National Electoral Commission. There is a consensus among civil society groups and organizations for provision to be made that manifestly grant INEC full and unfettered independence by way of its structure, composition, operations and funding. There is also a consensus that provision should be made for the Independent National Electoral Commission to draw its finances directly from the Consolidated Revenue Fund.

There is also the need to amend the 1999 Constitution of the Federal Republic of Nigeria to remove the ambiguity whether Commissioners of the Independent National Electoral Commission must be card carrying members of political parties before they are appointed. Moreover, the appointment of National and Resident Electoral Commissioners must be a bi-partisan effort rather than an avenue to create and find job for political party stalwarts. To this end the Transition Monitoring Group is of the firm belief that the independence of the Commission can only be guaranteed on the basis of broad representation of labor and professional associations like the Nigerian Labor Congress, the Nigerian Bar Association, the Academic Staff Union of Nigerian Universities, the organized private sector and human rights and pro democracy groups.

### **Registration of Voters**

With the benefit of hindsight, the registration of voters that took place in 2002 cannot be said to have been a major success. It is trite that the building block of any credible electoral process is the production of a comprehensive, accurate and up to date voters register. Some Nigerian politicians aware of the importance of the voters register during elections perfected their plans on how to rig the register. They, with the active connivance of dubious registrations officers, loaded the register with fictitious names and the names of under aged persons. So many genuine and eligible

voters could therefore not find their names on the voters register. The Independent National Electoral Commission must therefore give flesh to the provision of the Electoral Act through embarking on continuous voter registration exercise rather than declaring a fraudulent registration bazaar for some politicians. This registration must also provide for a clear means of identification of individual voters to eliminate under age and ghost voters. To this end, all Local Government Offices of the Commission must be activated and made fully operational.

### **Voter Education**

The education of voters is a major component of the democratic process. Voters must be in a position to distinguish between the programs of various political parties if they are distinguishable in the first place. They must be in a position to recognize the symbols of their political parties and also make informed judgments on why they have to vote one way and not the other. A substantial number of those that went to the various polling stations could not recognize or identify the symbol of their parties. The only thing they could decipher is that they want to vote for Obasanjo or Buhari's party. This gave political party touts and agents the leeway to con the voters and insisted on casting the votes for non literate voters through a fraudulent misinterpretation of the provisions of section 47 of the Electoral Act 2002. The section states that a "voter who is blind or is otherwise unable to distinguish symbols or who suffers any other physical disability may be accompanied into the polling station by a person chosen by him and the person shall, after informing the Presiding Officer of the disability, be permitted to accompany the voter into the voting compartment and assist the voter to make his mark in accordance with the procedure prescribed by the Commission". There is the need to amend section 47 of the Act to remove the ambiguity that can be exploited to con illiterate voters and compromise the secrecy of the voting process.

There is also the need for Constitutional amendment giving the Independent and State Electoral Commissions overall power and authority to carry out civic and voter education before, during and after elections. This will ensure consistency and quality control. It bridge the divide between the functions of political parties in terms of voter education and the tendency to concentrate on political jamborees rather than the political education of their followers

Furthermore, Federal and State owned media organizations must also accept the jingles and programs of civil society organizations before, during and after elections as public service announcements aimed at mobilizing and enlightening the voters. The payment of commercial rate for voter education by civil society groups negates the fundamental tenets of their existence.

### **Registration and Management of Political Parties.**

The Transition Monitoring Group is opposed to any attempt at limiting the number of political parties in the country. Multi party democracy is good for the country and so long as a political association meets the constitutional requirement, that political party should be registered and not fettered in any way. The Independent National Electoral Commission lost a lot of time, energy, resources and support on the needless battle it waged in the law courts against the registration of additional political parties. Parties must rise, survive or disappear on their own without the Commission banning them expressly.

Furthermore, there is the need to create a Constitutional Court or more appropriately to revisit the issue of the creation of a Constitutional Court for the country. These courts will take care of issues arising from political party disputes before the elections. The court will also adjudicate on the qualification and disqualification of candidates before and after elections. The Court will be a permanent feature of our electoral process and not be

disbanded like the Election Petitions Tribunals at the conclusion of issues arising from a particular election. The Constitutional Court must also be empowered to do substantial justice devoid of the technicalities that attended the work of the various Election Petitions Tribunals. It is a sad commentary on our electoral process that a substantial portion of the election petitions fell not on their merits but on technical grounds.

We must also revisit the notion that the nomination of candidates and the conduct of political parties are outside the purview and adjudicatory powers of the courts. Some of the political parties and the godfathers within these political parties violated the letter and spirit of their Constitutions with impunity. They altered the rules guiding the conduct of their activities at will in order to provide differential advantage to party executives or incumbents or political power brokers. We must therefore make provision for judicial review of the conduct of political parties in relation to their Constitutions, structure and internal workings.

### **Results Management**

The issue of results management is a practical and logistic issue that must be addressed by the Commission. Presently, there are too many layers of collation and this creates a loophole for the manipulation of election results. The Commission must also make a clear demarcation in accordance with the law on the powers of the Resident Electoral Commissioners and that of the Returning Officers for the various elections. The Commission must also make available to the political parties the list of the collation centers to be used to eliminate a situation where collation centers will be deliberately moved from one location to the other in order to perpetrate fraud.

### **Election Expenses**

It is the position of the Transition Monitoring Group that section 84 of the 2002 Electoral Act should be strengthened to regulate the use of money in national politics. The reform should define in more specific, practical and detailed ways issues such as public disclosure of the sources of finance to politicians and political parties, expenditure limit on election activities, and contribution restrictions. This regulation is necessary in order to avoid the continued monopoly of Nigerian politics and government by wealthy individuals and well organized donors at the expense of the Nigerian public. More stringent sanctions against those who breach these provisions should be spelt out. The sanctions enshrined in the 1999 Constitution of the Federal Republic of Nigeria and the 2002 Electoral Act on these matters are not stringent enough and must be strengthened to guard the democratic process from being hijacked by Godfathers, Corporate Organizations, Multinational Companies, Contractors, Middlemen and Consultants.

### **Election to Local Government Councils.**

Some State Independent Electoral Commissions and some State Governors have insinuated that their inability to conduct the Local Government Elections is due to the refusal of the Independent National Electoral Commission to release the voters register to them. Some also contend that the funds for the conduct of the elections are simply not there forgetting that at various times they had declared their readiness to conduct the elections with or without a voters register. Other contends that they deferred to the Technical Committee set up by the Federal Government on the reform of the Local Governments. Those peddling these arguments never make mention of the sanctity of the Constitution of the Federal Republic of Nigeria and the need to be constitutionally compliant.

The imposition of unelected political party agents on the various Local Governments in violation of the clear intendments of the

1999 Constitution of the Federal Republic of Nigeria is a clear affront on the democratic sensibilities of the Nigerian people. It is not for the Presidency or the State Governors to decide whether the Local Governments are useless or a drain on the national purse. Their work and mandate is to give effect to the provisions of the Constitution which they swore to protect. Governance and fidelity to the Constitution cannot stop on the basis of a reform process. The various States Independent Electoral Commissions should display a modicum of Independence and set the machinery in motion for the conduct of Local Government Elections. The Independent National Electoral Commission must also as a matter of urgency release the voters register to them if they have not already done so. The Independent National Electoral Commission cannot and must not be seen to be a part of those that have no respect for the Constitution of the Federal Republic of Nigeria.

More fundamentally, there is an urgent need for Constitutional reform in order to strengthen section 7 of the Constitution of the Federal Republic of Nigeria which is both nebulous and confusing.

### **Constituency Delimitation.**

The electoral wards and constituencies used for the conduct of the 1998/99 and the 2003 elections are not fair and equitable. “The number of wards and units used during the elections was inherited from the commission led by Dagogo- Jack. During the short period of the Dagogo Jack Commission, it undertook to review electoral wards and polling stations. Before the review, there were 5 Senatorial districts per state, 449 constituencies for the House of Representatives divided on population basis and 1347 state assembly constituencies(three times federal constituencies). The review by the Dagogo-Jack Commission reduced the number of Senatorial Districts in s State to 3, the number of Federal Constituencies was reduced to 990, the number of polling stations was reduced from 116, 375 to 112, 305 (later increased to 120,000) When the number of local government areas was increased from

305 to 774 a minimum and maximum number of wards was put at 10 and 12 respectively for each local government area. The total number of wards created as a result of this guideline was 8810.”<sup>i</sup> These changes and their arbitrary nature have created a lot of problems for electoral administration in Nigeria. Moreover, there has not been any attempt at constituency mapping taking into consideration the movements of persons and the disruptions caused as a result of ethnic and religious crisis in some constancies and states. Furthermore, state governments are creating their own local governments and mapping out boundaries which have altered the order of things. The Transition Monitoring Group therefore agrees with the proponents of the creation of an independent delimitation commission to take a second look at the distribution of wards, constituencies and polling stations.

This is important because “the delimitation process is not a neutral, technical exercise; boundaries determine the contours of political power and, by definition, redistribute power.”<sup>ii</sup> It is therefore important that the process be guided by clear criteria by insuring that constituencies contain approximately equal number of voters eligible to register, and should be subject to such considerations as:

- Population density
- Ease of transport and communication
- Geographical features
- Existing, patterns of human settlement
- Financial viability and administrative capacity of electoral area.
- Financial and administrative consequences of boundary determination.
- Existing boundaries
- Community of interest.<sup>iii</sup>

Reform of the political process is therefore a necessary step to be undertaken in order to strengthen our democracy and the electoral process. All stakeholders must be committed to it and be prepared to shed individual interests that may cloud their perception of what is good for the country. Our democracy will grow and mature when the political class agrees to play by the rules and respect the sovereign right of the Nigerian people to exercise their democratic franchise without compulsion, intimidation, bribery and other fraudulent electoral practices.

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<sup>i</sup> Professor Abdulhameed Ujo: The Role of Civil Society in Sustaining Democracy in Nigeria: Challenges of the 2003 Elections. Paper presented at a workshop on Training of Trainers Workshop for Election Monitors, organized by the transition Monitoring Group on 11<sup>th</sup> -12<sup>th</sup> March 2003 at Zodiac Hotels Limited, Enugu.

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### **Registration of Voters**

With the benefit of hindsight, the registration of voters that took place in 2002 cannot be said to have been a major success. It is trite that the building block of any credible electoral process is the production of a comprehensive, accurate and up to date voters register. Some Nigerian politicians aware of the importance of the voters register during elections perfected their plans on how to rig the register. They, with the active connivance of dubious registrations officers, loaded the register with fictitious names and the names of under aged persons. So many genuine and eligible

voters could therefore not find their names on the voters register. The Independent National Electoral Commission must therefore give flesh to the provision of the Electoral Act through embarking on continuous voter registration exercise rather than declaring a fraudulent registration bazaar for some politicians. This registration must also provide for a clear means of identification of individual voters to eliminate under age and ghost voters. To this end, all Local Government Offices of the Commission must be activated and made fully operational.

### **Voter Education**

The education of voters is a major component of the democratic process. Voters must be in a position to distinguish between the programs of various political parties if they are distinguishable in the first place. They must be in a position to recognize the symbols of their political parties and also make informed judgments on why they have to vote one way and not the other. A substantial number of those that went to the various polling stations could not recognize or identify the symbol of their parties. The only thing they could decipher is that they want to vote for Obasanjo or Buhari's party. This gave political party touts and agents the leeway to con the voters and insisted on casting the votes for non literate voters through a fraudulent misinterpretation of the provisions of section 47 of the Electoral Act 2002. The section states that a "voter who is blind or is otherwise unable to distinguish symbols or who suffers any other physical disability may be accompanied into the polling station by a person chosen by him and the person shall, after informing the Presiding Officer of the disability, be permitted to accompany the voter into the voting compartment and assist the voter to make his mark in accordance with the procedure prescribed by the Commission". There is the need to amend section 47 of the Act to remove the ambiguity that can be exploited to con illiterate voters and compromise the secrecy of the voting process.

There is also the need for Constitutional amendment giving the Independent and State Electoral Commissions overall power and authority to carry out civic and voter education before, during and after elections. This will ensure consistency and quality control. It bridge the divide between the functions of political parties in terms of voter education and the tendency to concentrate on political jamborees rather than the political education of their followers

Furthermore, Federal and State owned media organizations must also accept the jingles and programs of civil society organizations before, during and after elections as public service announcements aimed at mobilizing and enlightening the voters. The payment of commercial rate for voter education by civil society groups negates the fundamental tenets of their existence.

### **Registration and Management of Political Parties.**

The Transition Monitoring Group is opposed to any attempt at limiting the number of political parties in the country. Multi party democracy is good for the country and so long as a political association meets the constitutional requirement, that political party should be registered and not fettered in any way. The Independent National Electoral Commission lost a lot of time, energy, resources and support on the needless battle it waged in the law courts against the registration of additional political parties. Parties must rise, survive or disappear on their own without the Commission banning them expressly.

Furthermore, there is the need to create a Constitutional Court or more appropriately to revisit the issue of the creation of a Constitutional Court for the country. These courts will take care of issues arising from political party disputes before the elections. The court will also adjudicate on the qualification and disqualification of candidates before and after elections. The Court will be a permanent feature of our electoral process and not be

disbanded like the Election Petitions Tribunals at the conclusion of issues arising from a particular election. The Constitutional Court must also be empowered to do substantial justice devoid of the technicalities that attended the work of the various Election Petitions Tribunals. It is a sad commentary on our electoral process that a substantial portion of the election petitions fell not on their merits but on technical grounds.

We must also revisit the notion that the nomination of candidates and the conduct of political parties are outside the purview and adjudicatory powers of the courts. Some of the political parties and the godfathers within these political parties violated the letter and spirit of their Constitutions with impunity. They altered the rules guiding the conduct of their activities at will in order to provide differential advantage to party executives or incumbents or political power brokers. We must therefore make provision for judicial review of the conduct of political parties in relation to their Constitutions, structure and internal workings.

### **Results Management**

The issue of results management is a practical and logistic issue that must be addressed by the Commission. Presently, there are too many layers of collation and this creates a loophole for the manipulation of election results. The Commission must also make a clear demarcation in accordance with the law on the powers of the Resident Electoral Commissioners and that of the Returning Officers for the various elections. The Commission must also make available to the political parties the list of the collation centers to be used to eliminate a situation where collation centers will be deliberately moved from one location to the other in order to perpetrate fraud.

### **Election Expenses**

It is the position of the Transition Monitoring Group that section 84 of the 2002 Electoral Act should be strengthened to regulate the use of money in national politics. The reform should define in more specific, practical and detailed ways issues such as public disclosure of the sources of finance to politicians and political parties, expenditure limit on election activities, and contribution restrictions. This regulation is necessary in order to avoid the continued monopoly of Nigerian politics and government by wealthy individuals and well organized donors at the expense of the Nigerian public. More stringent sanctions against those who breach these provisions should be spelt out. The sanctions enshrined in the 1999 Constitution of the Federal Republic of Nigeria and the 2002 Electoral Act on these matters are not stringent enough and must be strengthened to guard the democratic process from being hijacked by Godfathers, Corporate Organizations, Multinational Companies, Contractors, Middlemen and Consultants.

### **Election to Local Government Councils.**

Some State Independent Electoral Commissions and some State Governors have insinuated that their inability to conduct the Local Government Elections is due to the refusal of the Independent National Electoral Commission to release the voters register to them. Some also contend that the funds for the conduct of the elections are simply not there forgetting that at various times they had declared their readiness to conduct the elections with or without a voters register. Other contends that they deferred to the Technical Committee set up by the Federal Government on the reform of the Local Governments. Those peddling these arguments never make mention of the sanctity of the Constitution of the Federal Republic of Nigeria and the need to be constitutionally compliant.

The imposition of unelected political party agents on the various Local Governments in violation of the clear intendments of the

1999 Constitution of the Federal Republic of Nigeria is a clear affront on the democratic sensibilities of the Nigerian people. It is not for the Presidency or the State Governors to decide whether the Local Governments are useless or a drain on the national purse. Their work and mandate is to give effect to the provisions of the Constitution which they swore to protect. Governance and fidelity to the Constitution cannot stop on the basis of a reform process. The various States Independent Electoral Commissions should display a modicum of Independence and set the machinery in motion for the conduct of Local Government Elections. The Independent National Electoral Commission must also as a matter of urgency release the voters register to them if they have not already done so. The Independent National Electoral Commission cannot and must not be seen to be a part of those that have no respect for the Constitution of the Federal Republic of Nigeria.

More fundamentally, there is an urgent need for Constitutional reform in order to strengthen section 7 of the Constitution of the Federal Republic of Nigeria which is both nebulous and confusing.

### **Constituency Delimitation.**

The electoral wards and constituencies used for the conduct of the 1998/99 and the 2003 elections are not fair and equitable. “The number of wards and units used during the elections was inherited from the commission led by Dagogo- Jack. During the short period of the Dagogo Jack Commission, it undertook to review electoral wards and polling stations. Before the review, there were 5 Senatorial districts per state, 449 constituencies for the House of Representatives divided on population basis and 1347 state assembly constituencies(three times federal constituencies). The review by the Dagogo-Jack Commission reduced the number of Senatorial Districts in s State to 3, the number of Federal Constituencies was reduced to 990, the number of polling stations was reduced from 116, 375 to 112, 305 (later increased to 120,000) When the number of local government areas was increased from

305 to 774 a minimum and maximum number of wards was put at 10 and 12 respectively for each local government area. The total number of wards created as a result of this guideline was 8810.”<sup>i</sup> These changes and their arbitrary nature have created a lot of problems for electoral administration in Nigeria. Moreover, there has not been any attempt at constituency mapping taking into consideration the movements of persons and the disruptions caused as a result of ethnic and religious crisis in some constancies and states. Furthermore, state governments are creating their own local governments and mapping out boundaries which have altered the order of things. The Transition Monitoring Group therefore agrees with the proponents of the creation of an independent delimitation commission to take a second look at the distribution of wards, constituencies and polling stations.

This is important because “the delimitation process is not a neutral, technical exercise; boundaries determine the contours of political power and, by definition, redistribute power.”<sup>ii</sup> It is therefore important that the process be guided by clear criteria by insuring that constituencies contain approximately equal number of voters eligible to register, and should be subject to such considerations as:

- Population density
- Ease of transport and communication
- Geographical features
- Existing, patterns of human settlement
- Financial viability and administrative capacity of electoral area.
- Financial and administrative consequences of boundary determination.
- Existing boundaries
- Community of interest.<sup>iii</sup>

Reform of the political process is therefore a necessary step to be undertaken in order to strengthen our democracy and the electoral process. All stakeholders must be committed to it and be prepared to shed individual interests that may cloud their perception of what is good for the country. Our democracy will grow and mature when the political class agrees to play by the rules and respect the sovereign right of the Nigerian people to exercise their democratic franchise without compulsion, intimidation, bribery and other fraudulent electoral practices.

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<sup>i</sup> Professor Abdulhameed Ujo: The Role of Civil Society in Sustaining Democracy in Nigeria: Challenges of the 2003 Elections. Paper presented at a workshop on Training of Trainers Workshop for Election Monitors, organized by the transition Monitoring Group on 11<sup>th</sup> -12<sup>th</sup> March 2003 at Zodiac Hotels Limited, Enugu.

<sup>ii</sup> Compendium of Elections in Southern Africa: Edited by Tom Lodge et al, The Electoral Institute of Southern Africa, 2002 at 477-478.

<sup>iii</sup> Compendium of Elections in Southern Africa: Edited by Tom Lodge et al, The Electoral Institute of Southern Africa, 2002 at 477-478.