

In Search of Integrity: Institutional Change and Nigeria's 2015 Elections

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Abstract

The collapse of Nigeria's first and second republics was foreshadowed by controversial elections whose processes and outcomes suffered severe legitimacy deficits. The Third Republic failed because the presidential elections that were to conclude the transition to civil rule programme were annulled. Under the current fourth republic, electoral reforms have been a defining element of constitutional amendment as a result of a series of flawed elections. Academic preoccupation with elections in Nigeria often takes the choice and adoption of electoral rules for granted. Furthermore, institutions of electoral governance, such as dispute adjudication process are often addressed as fallouts of failed elections. Yet the crafting of electoral institutions usually incorporates the process of adjudication of electoral disputes as part of the electoral process. The focus on Election Management Body, their independence, funding, professionalism and competence gives the impression that an effective and independence EMB is all you need to achieve credible and successful elections that lead to a consolidated democracy. However, electoral institutions are tied to the nature of the state-society relations and the political values that they throw up, such as national integration, accountability, conciliation and representation and not just for free and fair competitive leadership succession. This essay explores the role of electoral institutions in structuring electoral competition and their effects on democratic politics. It explores how the choice and adjustment of electoral rules have affected the character of elections in Nigeria. Lastly, it provides insights on how to deal with emerging challenges from the 2015 elections in Nigeria.

Introduction

Electoral malpractices and their consequences have been implicated in the political instability and the dominance of military rule that characterized the first five decades of Nigeria's existence as an independent country. Indeed, the collapse of the first and second republics was foreshadowed by controversial elections whose process and outcome suffered severe legitimacy deficit. The Third Republic failed because the presidential election that was to conclude the transition to civil rule programme was annulled. On the one hand, the 1964 and the 1983 elections which preceded the intervention of the military in politics were marred by electoral malpractices either in the build up to the voting process or during the process of voting and collation of results. Indeed, the preoccupation with electoral fraud, thuggery, oppression of

political opponents, and intimidation of journalists and bribery of electoral officials tend to give the impression that the problems are not with the system but with the operators as remarked by the Political Bureau (FRN 1987). Secondly, the intense political competition, with its violence and criminality, had rendered the electoral processes too stormy for the fine effect of institutions to be easily observed. Politics in Nigeria is about life and death, observed Ake (1996). Thirdly, the importance of institutions is further obscured by the politicization of ethnic identity or the ethnicisation of politics. This carries with it, the exploitation of primordial exchanges, within a patron-client framework of politics that elevates informality to trump formal relations and locations of power, thereby creating an impression that formal institutions do not matter or that informal institutions matter more. Yet there is a complex interaction between formal and informal institutions that play very vital role in the structuring of political behaviour. Indeed, electoral rules and the systems they create can have significant effects on partisan competition and coalition building as seen in Duveger's formulation concerning the mechanical and psychological effects of electoral laws. While academic research has paid little attention to a detailed analysis of the complex network of institutions that structure the character of electoral competition in Nigeria, politicians have paid attention to these. This is manifested in the regular comprehensive review of the various electoral laws before every circle of election since 1999 when the country returned to democratic rule. The Electoral Act 2001 and the Electoral Act 2002, Electoral Act 2006, and Electoral Act 2010 (as amended) preceded the 2003, 2007 and the 2011 elections respectively. The 2015 elections was based more or less on the same legal and institutional framework of the 2011 elections with changes effected in voter registration, voting counting and declaration of results, and the application of technology.

Academic preoccupation with election of the third wave democratization effort in Nigeria has been dominated by administration approach that focus on the election management body because of the narrow conception of institutions, that more or less take the choice and adoption of electoral system for granted. Furthermore, other institutions of electoral governance, such as dispute adjudication process fall out of the picture as if they are the consequences of failed elections. Yet the crafting of electoral institutions usually incorporates the process of adjudication of electoral disputes as part of the electoral process. The focus on Election Management Body, their independence, funding, professionalism and competence gives the

impression that an effective and independence EMB is all you need to achieve credible and successful elections that lead to a consolidated democracy. However, electoral institutions are tied to the nature of the state-society relations and the political values that they throw up, such as national integration, accountability, conciliation and representation and not just for free and fair competitive leadership succession.

This essay explores the role of electoral rules in structuring electoral competition and their effects on democratic politics. It explores how the choice and adjustment of electoral rules have affected the character of elections in Nigeria. Lastly, it provides insights on how to deal with emerging challenges from the recent elections, especially the 2015 elections in Nigeria.

Electoral Institutions, Electoral systems and Democratic Politics

Following North (1991), electoral institutions may simply be defined as the rules of the electoral game. They are devised constraints that shape the interaction of actors in the electoral process. They therefore affect the general outcome of the electoral process. Electoral institutions impose constraints on key actors in the electoral process by stating how the game is to be played. They affect the development of organizations such as the election management bodies, political parties and tribunals. They impose constraints on the choices that individuals make. Institutions are created, altered and used by human beings. Thus, they are the outcome of the strategic calculations and moves by key political actors, the social structural context that defines power relations in society, and the path contingencies that shape the trajectories and outcomes of democratic transitions (Mozaffar 2002:87). Mozaffar and Schedler (2002:8) classify such rules into two: Rules of Electoral Competition which relates to electoral formula, district magnitude, assembly size, electoral time table, and franchise; and the Rules of Electoral Governance relating to voter registration, party and candidate registration, campaign financing and regulation, election observation, ballot design, polling stations, voting, counting, and tabulating, election management bodies and dispute settlement authorities. Institutions may be formal rules such as constitutions and laws or informal rules such as unwritten codes, conventions and norms of behaviour. Not only do these interact, they are path dependent, that is, they reflect on the trajectory of history of the polity. But the important point about formal rules is that they reflect choices made by key actors in the polity. Thus, any meaningful attempt to engage electoral

institutions should focus on the purposes for which the game of politics is played, recognizing that actors can play the game by fair means as well as by foul means. It is in the process of playing the game that the incentive structures are observed and altered, usually in response to changes in the rules, informal constraints and in their effective enforcement. It involves a continuous process of incremental changes. But it must be recognized that changing the formal rules of the game or adopting a new electoral system will not automatically transform the way politicians and constituents behave. The electoral institutions are just a small part of the forces that affect behaviour (Horowitz 2003:116). They interact with other rules such as those that regulate political parties, define the structure of the state itself and the values of governance.

Generally, it is assumed that the essence of electoral institutions is to accurately reflect the preferences of voters in terms of electoral outcome. But electoral systems themselves are not passive instruments in the process of translating individual wishes into collective choice as we have stated earlier. Every electoral system contains specific biases reflected in the effects they have on voter preferences. Hence, the choice of electoral systems are informed by specific objectives, objectives that a people want to achieve or avoid. Thus, people have to decide which system will help achieve specific objectives and reflect how to go about it. What this means is that given the array of electoral systems available in the world and the room for modification and change, electoral institutions will evolve over time within a polity even if the choice of electoral system was not necessarily a conscious choice. For instance, Horowitz (2003) is of the view that the first past the post system is common among the English speaking world. It operates in the UK, USA, Canada, India, Nigeria, and Malaysia and in most Anglophone African countries. The Proportional representation system is common among the francophone countries in Africa and in continental Europe. But in general deliberate choice based on specified objectives is commended given the likely consequences. The general trend is the use of hybrid systems as countries seeks to maximize more than one goal. This applies not only to the electoral formula but also in terms of the structures that manage elections. Thus, in crafting electoral institutions, the specific goals and challenges of a country are critical. Some objectives may be informed by concern about the outlook of parliament and government in a multi-ethnic society or by the desire to provide opportunity for independent candidacy while at the same time encouraging the institutionalisation of party politics.

Horowitz (2003) and Reynolds and Reilly (1997) provide likely goals that can inform the design of electoral institutions. These include the need to enhance representation, accountability and election integrity. According to Reynolds and Reilly (1997) representation can take three ways. The first relate to the desire to ensure geographical representation which can be achieved by ensuring that citizens in each electoral constituency or district is able to choose a member of parliament that would ultimately be accountable to them. Functional representation involves ensuring that all parties achieve seats in parliament according to the votes they receive. Descriptive representation is in terms of the parliament reflecting the disposition of the society at large, a “mirror of the nation”, reflecting its demographic and cultural characteristics. Horowitz (2003:116-120) describes these in terms of the proportionality of seats to votes and accountability to constituents. For him, the PR system ensures the proportionality of seats to votes through the national list and the single non-transferable vote system. He adds that systems that do not limit the power of central party leaders to decide which candidate will be nominated by the party are less likely to promote accountability than those in which the decision is derived from the constituency base.

Another value that may inform the choice of electoral system will be the desire to have a stable or durable government. According to Duverger (1954) the SMP system tends to lead to centrist, non-ideological pragmatic or “brokerage” politics as parties compete for the “median voter”. It increases incentives for strategic voting, since a vote for a minor party candidate may be wasted, leading to the voter’s least-preferred candidate being elected. It tends to reinforce perceptions of regional exclusion and grievances because it expands the advantage enjoyed by the largest political party in a region in vote-seat conversions and punish relatively smaller parties. When used at the provincial level, it may allow the majority social group in a territory to govern alone, while facilitating the consistent exclusion of ethnic, linguistic or religious minorities from political power. It may allow a political party that is hostile to national unity to gain a strong power base through control of a single-party majority government in a state, which it can then use to pursue separatist policies and popular sentiments. Given the above, the tendency around the world is for countries to move away from SMP to some sort of PR or modified SMP to reduce its negative effects (Norris 2004, 2008).

PR, on the other hand, tends to increase the number of parties that are likely to compete in elections, depending on the threshold and size of electoral districts. This is because no party is likely to be seen by voters as a wasted choice. It makes it unlikely that a single party will hold a majority of seats in the legislature, and thus makes either minority or coalition governments the norm in parliamentary systems. In such contexts, the composition of a government and the policies of that government are likely to be decided not by the election but by post-election negotiations among party leaders. The major problem here is that it weakens the ability of legislators in parties that operate nationwide to act as regional representatives, since they are likely to be bound by party discipline. Furthermore, it leads to programmatic parties which seek distinctive appeals to relatively narrow shares of the electorates (Reynolds & Reilly 1997, Norris 2004). Other factors that may influence choice of rules or adjustment of the rules include the need to achieve a representative parliament, accountability, guarantee victory of the Cordecet, stable, efficient and durable government; Inter-ethnic and inter-religious conciliation (with incentive for conciliation), accessible and meaningful electoral process (votes count, not difficult to vote, parliament is relevant), promote parliamentary opposition, promote party Strength-fragmentation, broad political values rather than narrow ethnic, regional or racial concerns, and reduce cost and build administrative capacity of the EMB. There is always a trade-off, maximize goals – sometimes countries end up with hybrid systems. Lastly, because electoral institutions often have clear cut effects in determining who is elected and who is able to influence the political agenda, politicians are often concerned about changes in the institutions. That is why it is argued that losers who want to become winners often support changes that they anticipate may make them winners or give them more leverage over policy making. On the other hand incumbents want to retain the status quo. Changes only occur when sufficient number of incumbents expect to gain with the introduction of new rules or opposition forces reach sufficient density to forces change upon incumbents. Thus politicians position on electoral institutions are often coloured by values and ideology as much as self-interest (see Bowler, Donovan and Karp 2006).

Furthermore, there is a global flow of ideas about standards of practices in elections that inform the decisions and plans of not only those that make laws and thereby define the framework of electoral governance but also informs the operations of an EMB. Some of these ideas are

derived from studies that seek to explain the success or failures of elections. But most of the time they are represented by standards and principles endorsed in a series of conventions, treaties, protocols and guidelines by international agencies and regional bodies like the UN general Assembly, the African Union (AU), the Organisation of American States (OAS) and the Organisation for Security and Cooperation in Europe (OSCE). These constitute the international standards and global norms that govern the appropriate conduct of elections. The integrity and quality of elections in a country are often measured by the extent to which they meet the requirements of these more or less universal standards (Norris 2013).

This essay argues that changes in the electoral institutions have been geared more to reflect descriptive representation and functionally representative and less geographically representative, they have also been geared towards promoting the integrity of elections as part of the effort to achieve democratic stability. The process of electoral reform and institutional change have been slowed by these competing factors of democratic values and self-interest as politicians seek to win elections in Nigeria's intense contests. The paper concludes that the success of the 2011 and the 2015 elections show the relative positive effect of the changes that have been made in the electoral institutions since 1999 and beyond. It points to additional, institutional issues that need to be addressed to strengthen the gains so far made, and to ward off future challenges that may lead to crisis.

Electoral Institutional Changes before 1999

Nigeria's experience with election dates back to the 1922 under the Clifford Constitution, but its first major election was the 1959 independence election. That election and the subsequent election of 1964 demonstrated the problematic character of election for the newly independent country. The electoral challenges were complicated by the structural imbalance of the structure of federation. Under the parliamentary system in the first republic, elections were conducted only into the House of Representatives. The President was elected by a joint "electoral meeting" of the Senate and the House of Representatives. The Senate was made up of selected members. The 1963 Constitution made provision for the Election of the President by a popular vote in which the country was envisioned to be a single constituency since the Constitution named Dr Nnamdi Azikiwe as President, with full status of an elected President. There were 312 elected members

of the House of Representatives. They were elected by direct elections with the country divided into constituencies according to population. The unbalanced federal structure reflected in the distribution of the constituencies and the outcome of the elections. The Northern Region had 175 constituency, the Eastern Region 73 constituency, the Western Region 47 constituencies and the Midwestern Region 15 constituencies and Lagos three constituencies. The north was clearly greater than all the other parts put together. Secondly, the direct election by SMP means that seats in parliament were not proportionate to the number of votes garnered by each political party. Lastly, with politics as the chief means to acquire wealth, membership of the political class became highly sought after and ultimately politics was reduced to the struggle for an access to wealth. It thus became very violent, intensifying conflict between competing coalitions, ultimately leading to crisis and military rule (details of how these played out can be found in Dudley 1973, especially chapter 3).

When the country was about to be returned to democratic rule in 1979, an elaborate review of the institutions of the First Republic was done. The parliamentary system was abandoned for the presidential system. The electoral institutions were changed in many respects arising from this change in the system of government. Clear measures were taken to reduce the impact of ethnicity. This is shown in the provision in sections 201, 202 and 203 of the 1979 Constitution. These sections relate to the character of political parties, their symbols, membership, internal democratic structures, leadership recruitment and spread (federal character), and the values that define the goals of the parties. The aim was to break away from the ethnic-based parties of the First Republic and to promote conciliatory behaviour and deepen interaction across ethnic and regional groupings. A new electoral formula which required presidential candidates to win 25 per cent of votes in 2/3 of the states of the federation, complemented these provisions. According to Section 134 of the 1979, where there are two or more candidates the winner must have a majority of votes cast at the election, in addition to having record “not less than one-quarter of the votes cast at the election in each of at least two—thirds of all states in the federation and the Federal Capital Territory.” Where no clear winner emerges, there shall be a run-off election between the two highest performing candidates. The government had split the country into 19 states, it stipulated the observance of federal character in appointments and election into public offices.

These provision of the constitution in 1979 did not however eliminate ethnic based parties in the Second Republic (1979-1983). This was largely due to the presence of two leading politicians of the First Republic, Chief Obafemi Awolowo and Dr Nnamdi Azikiwe, who led two major parties and continued to draw followers largely from their ethnic base. The persistence of ethnic based parties ensured that there was no decisive dominance of any party under the presidential system adopted in 1979. The presidential system with its characteristics of separation of powers meant also that the both president and parliament were elected. All elections were direct elections with single-member constituencies/districts. While each state was divided into five senatorial districts, the country was divided into 450 federal constituencies. The SMP system was used in all cases, except in the presidential elections in which the SMP was modified.

Similarly, like the first republic a specialized EMB, Federal Electoral Commission (FEDECO), was used to administer elections. The president was empowered to appoint the chairman and members of FEDECO drawn from the various constituent units. FEDECO suffered severe legitimacy deficits because losers accused of complicity in the rigging of elections. Although the Babalakin Commission that investigated the conduct of the 1983 election did not find it guilty of corruption or of complicity in rigging election or inciting people to acts of violence, it was blamed for management lapses, especially in its inability to resolve its own internal conflicts. The Babalakin recommended that elections officers should be properly trained to enable it “build up a corps of permanent staff whose tenure would be guaranteed subject to good behaviour and good performance. This was because some staff of FEDECO were complicit in the rigging of elections. (Awa 1997). During this periods, High Court judges constituted the tribunals that handled election petitions. The second general elections in 1983 were riddled with malpractices and misuse of the federal control of the police and ultimately provoked the coup of December 31, 1983.

The Third Republic failed on the annulment of the 1993 election that was considered the freest, fairest and most peaceful election in Nigeria. The elections was supposed to complete the transition from military rule to civilian rule. Previously, elections were already conducted at the state and local government levels. The first elections, the local government elections were held in 1987, the state level elections (Governor and House of Assembly) were held in 1991 while the

National Assembly elections were held in 1992, and the presidential elections in 1993. The essence was to gradually re-orient Nigerians on democratic practices as the military government of General Ibrahim Babangida sought to build a new political culture for the country. Those elections witnessed innovations in the structure of the EMB and other institutions of partisan politics.

General Ibrahim Babangida (1985-1993) established a two-party system to promote more national parties in which members would be co-joiners. The parties being established by government could not reflect the ethnic base of their founders, since military was none partisan. They were also funded by the government. The Social Democratic Party (SDP) was a little to the left while the National Republican Convention (NRC) was a little to the right of the ideological spectrum. The National Electoral Commission (NEC) was established by Decree no. 23 of 1987. The decree empowered the National Council of States to appoint the chairman and eight commissioners of INEC on the nomination of the president. The members of the commission were expected to be non-partisan persons of proven integrity and all members were originally barred from holding elective offices during the period of transition to civil rule. This was amended by decree No. 9 of 1989. There were three tribunals to handle election petitions: presidential election tribunals, the state governorship and legislative elections tribunals and the local government elections tribunal. Only retired judges and lawyers were qualified to serve as judges in these tribunals. There was also small number of legal practitioners involved. Appeal against the decisions of these bodies lay with the Supreme Court, Court of Appeal and High Court of a State respectively. Although all of these provisions guided the elections state above, the process of democratisation was never concluded due to the annulment of the June 12 1993 presidential elections won by Chief Moshood Abiola of the Social Democratic Party (SDP). The crisis provoked by that annulment reversed the gains achieved by that process, it led to the exit of Babangida who left the ship of state in the hands of an interim government headed by Earnest Shonekan. The Interim government was eventually sacked by General Sani Abacha who demolished all democratic structure and convened a National Constitutional conference to deal with the emerging problems. At the National Constitutional Conference of 1994/1995, power-sharing became a major issue of debate as a way out of the impasse.

The conference agreed by consensus that the presidency shall rotate between the north and the south. In the same spirit, the office of governor shall rotate among the three senatorial districts of a state while Chairmanship of a local government shall rotate among the three sections into which each local government shall be divided by the State Independent Electoral Commission (see Agbaje 1998).

Although this rotation principle was written into the 1995 Constitution, it did not find its way into the 1999 Constitution. Nonetheless, the rotation of vital public offices, between the north and the south and among the six-geopolitical zones, and the allocation of appointive and elective offices in the same manner in the political parties and parliament became the formula for realising the federal character principle stated in the 1979 and 1999 constitutions.

Electoral Institutions and institutional change since 1999 and the 2015 elections

The prospect of innovation in the workings of electoral institution came with the return to democratic rule in 1999. In the first term of the Chief Olusegun Obasanjo administration, constitutional amendment was high on the agenda. Two parallel constitutional review committees were established, one by the President and the other by the National Assembly. The Chief Clement Ebiri Constitution Review Committee submitted its report in mid-2001 to the President while the National Assembly Joint Committee on the Review of the 1999 Constitution submitted a draft Amended Constitution in 2002. Both efforts did not move beyond these points before the 2003 general elections. President Obasanjo inaugurated a Political Reform Conference and eventually proposed over a hundred amendments to the constitution, including the vexed issue of tenure elongation, in 2006 during the second term. The proposed amendments bill was eventually shot down after spirited effort to push it through the National Assembly. This failed efforts would have been the major means of electoral institutional reforms before the Yar'Adua Administration.

The issue of electoral reform became rife when President Yar'Adua admitted during his inaugural speech owned up that the April 2007 election that brought him to power was marred by irregularities and fraud. The President went on to promise electoral reform to ensure a more credible and effective electoral system. To show his commitment to electoral reform, he constituted an electoral reform committee headed by Justice Uwais on August 28, 2007. The

Panel submitted its report on December 11, 2008 after working for about 16 months. The committee received memoranda from several individuals and groups and conducted public hearings across the country and commissioned studies that informed its final recommendations.

According to the committee, the factors responsible for electoral irregularities, malpractices, disruptions and violence “include, among others, the character of the Nigerians state as the arena of electoral contests, the existence of weak democratic institutions and processes; negative political culture; weak legal/institutional framework; and lack of independence and capacity of electoral management bodies”.

The committee recommended various institutional reforms to strengthen the electoral system. To make the Independent National Electoral Commission (INEC) truly independent, the committee recommended the removal of the powers of the President to appoint the chairman and members of INEC and the empowerment of the National Judicial Council to do so. INEC is to be reorganized and its funding to be first-charge on the Consolidated Revenue Fund of the Federation. The states, independent of INEC, were to be involve the establishment of a board to take responsibility for electoral policy, while a technical team will be responsible for actual conduct of elections.

The electoral system should be a mixed system, with an introduction of elements of proportional representation, including the idea that parties that secure 2.5% seats in the national assembly be considered for cabinet level appointments to reduce the intensity of electoral competition. Several ideas to make the political process more inclusive through the electoral process, including gender balance, were also proposed. It recommended the establishment of a constituency delimitation commission, incorporated the national population commission and the national boundaries commission, the National Bureau of Statistics, Office of the Surveyor General of the Federation and the National Identity Management Commission. A Centre for Democratic Studies for civic and political education was also recommended.

It called for the setting up of an Electoral Offences Commission to prosecute electoral offenders. It also recommended that at least five judges should seat when the Court of Appeal hears appeals on an election petition, and the conclusion of election disputes before candidates are sworn in and that the process of adjudicating election disputes be concluded within six months. It further recommended that the burden of proof in a case of election petition should

shift from the petitioner to INEC, INEC is to show proof that elections are free and fair when challenged.

To fast track the process of implementation, the committee recommended that the constitutional amendments involved in the proposed electoral reforms should not be immersed in the larger effort to review the 1999 constitution. They should be taken separately. The committee prepared three draft bills for the amendment of the 1999 Constitution, the amendment of the Electoral Act 2006 and for the establishment of the Electoral Offences Commission. The committee was apparently convinced that the president and his party were committed to carryout fundamental electoral reforms.

These recommendations were reviewed by both the Federal Executive Council and the National Council of States (NCS). Both councils rejected significant aspects of the Committee's recommendations. Among the recommendations rejected are the removal of the powers of the president to appoint the chairman and members of INEC, the recommendation of a time-frame for concluding election petition before the swearing-in of winners, and the incorporation of the State Independent Electoral Commissions (SIECs) into the structures of INEC. President Yar'Adua sent seven bills to the National Assembly to further underscore his commitment to electoral reform. The bills did not enjoy the full support of the assembly. The bill put forward to increase membership and extend the tenure of members of INEC was thrown out by the Senate because they involved constitutional amendments. The bill for the establishment of the Political Parties Registration Commission was also thrown out because it involves an unnecessary duplication of the functions of INEC. These were just two of the seven bills on electoral reforms presented to the National Assembly.

As the controversy over the proposals raged, President Yar'Adua became very ill and had to travel in search of medical help. But he departed without transferring responsibility to the Vice President as required by law. His absence became a major political issue that dragged on till the following year. Indeed in February 2010 the National declared Vice President Goodluck Jonathan Acting President. President Yar'Adua eventually died on 05 May 2010, President Yar'Adua was succeeded by President Goodluck Jonathan. The later promised to conduct free and fair elections and continued with the electoral reforms initiated by Yar'Adua. He appointed Professor Attahiru Jega as Chairman, INEC.

Parliament was interested in watering down the powers of Governors because the high turnover of members of parliament was attributable to the excessive powers wielded by the governors in the selection of party delegates during primaries. They therefore sought to improve internal democracy within the parties. The delay in the appointment of the Chairman of INEC arising from the crisis associated with the absence of Yar'Adua also had to be addressed, as it affected the timetable written into the constitution and the electoral act and uncertain in the political environment arising from the reversal of the result of several gubernatorial election results by the courts. The governors removed from office were largely of the PDP, thus reducing the dominance of the party while strengthening the opposition (Aiyede 2012).

Apart from the constant pressure within civil society for electoral reform, the commitment of the leadership of INEC under Professor Jega to reform also combined with the above forces to create an environment for the first and second amendments of the constitution, the main initiatives that transform the institutions under which technical and organisational changes were made in the electoral process.

Apart from the 1999 Constitution, the first major law that guide elections was the Electoral Act 2002. The content of the Act was similar to the 1982 Electoral Act. The Constitution and the Act provided elaborately for the governance of elections. The broad rules governing the structure of electoral competition, under the 1999 Consatitution relate to the qualifications of candidates for elections into the various elective posts, electoral formulas, district magnitudes, constituency boundaries and assembly size, it also reflects the federal character of the country by making provisions for each level of government.

Section 48 and 49 of the Constitution provides for three senators from each state and 360 members of the House of Representatives respectively. While the distribution of membership of the Senate is based on equal number per state, membership of the House of Representatives is based on population of each state of the federation. Section 71 defines the magnitude of the districts and constituencies while section 73 prescribes the basis and manner for the review of senatorial districts and federal constituencies. Such a review is to be done by INEC at intervals of not less than ten years. Section 74 subjects such a review to the approval of the National Assembly. Section 75 requires that population is ascertained by reference to the latest national census figures. It upholds the single member district formula of the 1979 Constitution. To be

President, a candidate must not only win the majority of YES votes over NO votes, he must record “not less than one-quarter of the votes cast at the election in each of at least two-thirds of all states in the federation and the Federal Capital Territory.” According to Section 134, where there are two or more candidates the winner must have a majority of votes cast at the election, in addition to having record “not less than one-quarter of the votes cast at the election in each of at least two—thirds of all states in the federation and the Federal Capital Territory.” Where no clear winner emerges there shall be a run-off election between the two highest performing candidates within twelve days.

Sections 31 to 40 of the Electoral Act 2010 (as Amended) deal with the nomination of candidates to contest for an elective position. According to the provisions of section (31) (1), political parties should submit a list of candidates being sponsored to INEC not later than 60 days before the elections. The Act prohibits the nomination of more than one candidate by a party in respect of an election to a particular office. A party can however change any of its candidates 45 days before the elections (section 34). In case of death of a candidate, the Chief National Electoral Officer or the Resident Electoral Commissioner is to countermand the poll in which the candidate is to participate and appoint another convenient date for the election (section 37). Section 65 (1 and 2) of the 1999 Constitution stipulates the conditions of eligibility into the Senate and the House of Representative. According to the section, a candidate should be a Nigerian of 35 years, hold a school certificate and is a member of a party and is sponsored by that party to be eligible for election into the Senate. The minimum age for membership of the House is 30 years.

One of the most significant aspects of the electoral law relates to the electoral umpire, INEC. Section 153 of the 1999 Constitution establishes the Independent National Electoral Commission while Section C Part I of the Third Schedule of the Constitution defines its composition and powers. According to that section of the constitution, the Commission is made up of a Chairman and 12 other members (electoral commissioners), whose appointment are made by the President in consultation with the National Council of States and subject to confirmation by the Senate. A Resident Electoral Commissioner is to be appointed for each state of the federation by the President.

INEC is saddled with the responsibility to organize, undertake and supervise all elections to the offices of the President and Vice-president, the Governor and Deputy Governor of a state, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation. It is to register political parties in accordance with the provisions of the Constitution and an Act of the National Assembly; monitor the organization and operation of the political parties, including their finances; and 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. In addition, the commission is to arrange and conduct the registration of persons qualified to vote as well as prepare, maintain and revise the register of voters for the purpose of any election under the Constitution; INEC monitors political campaigns and provide rules and regulations, which shall govern the political parties; and ensure that all Electoral Commissioners, Electoral and Returning officers take and subscribe to the oath of office prescribed by law. It may delegate any of its powers to any Resident Electoral Commissioners; and carry out such other functions as may be conferred upon it by an Act of the National Assembly.

Electoral Act 2010 (as amended) drawing on sections 226 and 227 of the 1999 Constitution expands the functions of INEC to include (a) conduct of ‘voter and civic education’, (b) promotion of ‘knowledge of sound democratic election processes’; and (c) conduct of ‘any referendum required to be conducted pursuant to the provision of the 1999 Constitution or any other law/Act of the National Assembly’ (Section 2). Sections 157 and 158 of the constitution attempt to guarantee INEC’s independence by stipulating that the President can only remove members of the commission by President acting on an address supported by two—thirds majority of the Senate praying that he be so removed. The Commission is not subject to the direction of any person or authority in “exercising its powers to make appointments or to exercise disciplinary control over persons”. The Electoral Act 2010, complements the constitution to strengthen INEC’s autonomy by giving its power to appoint its own secretary who is the head of administration. It also made it impossible for the President to single-handedly remove a Resident Electoral Commissioner in the states. According to the Act, a Resident Electoral Commissioner can only be removed by the President acting on an address supported by two-third majority of the Senate praying that such Resident Electoral Commissioner be so

removed for inability to discharge the functions of his office or for misconduct. In the past, the President removes or redeploys these officers at will.

The Constitution envisages political parties that are national in character. It requires party membership to be open to every citizen of Nigeria irrespective of his or her place of origin, circumstance of birth, sex, religion or ethnic origin. They are to be registered with INEC. The name of the association, its symbol or 'logo' must not contain any ethnic or religious connotation or give the impression that its activities are confined to a part only of the geographical area of Nigeria. The headquarters must be situated in the Federal Capital Territory. Members of the executive committee of the party must also reflect the federal character of Nigeria while its principal officers and members of its executive committee must be elected periodically on a democratic basis. Part V of the Electoral Act 2010 (as amended) deals with the party system. It restates the conditions specified by the constitution for the formation of political parties with specific additions. These additions include: the penalties for contravention of section 227 of the constitution which prohibits the formation of quasi-military organizations.

Section 76 of the Constitution defines the specific time of election into the National Assembly. While INEC is to fix the date of election, such a date "shall not be earlier than sixty days before and not later than the date on which the House stands dissolved". Section 77 stipulates direct election in a single member district and establishes 18 years as the voting age. Section 78 empowers INEC to register voters and conduct elections while section 79 empowers the National Assembly to make provisions in respect of electoral disputes. Similar provisions are made for state level elections in sections 112 to 119 of the Constitution.

Section 132 and 133 make special provision for presidential and gubernatorial elections. According to section 132, INEC is to appoint the date for elections into these offices, "not earlier than 150 days and but less than 120 days before the expiry of the term of office of the last holder of the office". This section also permits INEC to extend the time of nomination if one of the candidates nominated for election to the office of President is the only candidate after the close of nomination. Section 221 prohibits all association except political parties from canvassing votes for any candidate at any elections or contributing to the election expenses of any candidate at an election. Similar provisions are made in respect of gubernatorial elections in sections 179 of the Constitution.

Part III of the Electoral Act 2010 (as amended) makes elaborate provision for registration of voters. Voters' registration is to stop not later than 60 days before any elections covered by the Act (it was 60 days in the Electoral Act 2002 and 120 days in the 2006 Act). It forbids surrogate registration.

Part IV of the Electoral Act 2010 (as amended) deals with the procedure at election. It empowers INEC to determine the procedure. According to section (27) (1) Election results are to be announced by (a) the Presiding Officer at the polling unit; (b) the Ward Collation Officer at the Ward Collation Centre; (c) The Local Government or Area Council Collation Officer at the Local Government / Area Council Collation centre; (d) the State Collation Officer at the State Collation Centre. The Returning Officers at the various levels are to announce and declare the winner (these were similar to the provisions of the 2002 and 2006 provisions).

The Constitution provides against the unwholesome use of money from spurious sources in electoral campaigns. Section 221 provides as follows:

“No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election”

Sections 225, 226 and 227 of the constitution deal with parties financing and accountability. They require political parties to submit detailed annual statements and analysis of sources of funds and other assets and statements of expenditure to INEC. INEC is expected to submit a report on the accounts and balance sheet of every political party to the National Assembly. Section 89 of the Electoral Act compliments this provision by specifying the period to be covered as 1st January to 31st December in each year. The Act also empowers INEC to authorise any of its officers to access the records and audited accounts kept by a party. The commission is to publish such examination or audit in three national newspapers.

Section 229 of the Constitution interprets “association” to mean any body of persons corporate or unincorporated who agrees to act together for any common purpose, and includes an association formed for any ethnic, social, cultural, occupational or religious purpose. Section 228 enables the National Assembly to make laws providing for punishment of any person involved in the management or control of any political party, found after due inquiry to have contravened sections 221, 225 (3) and 227 of the constitution.

Section 87 of Electoral Act 2010 (as Amended), requires parties to conduct direct or indirect primaries for aspirants to elective positions. It further elaborates the procedures for indirect primaries for positions at various levels and institutions of government. Unlike the 2002 and 2006 Acts it did not provided financial grants to political parties, a provisions that is believed to have accounted for proliferation of weak parties before 2007.

The Electoral Act 2010 (as amended) provides copiously for campaign finance regulations that expand the provisions of the Constitution. Section 90 of the Electoral Act, provides penalties for offences relating to finances of political party, including any party that contravenes section 225 (3) of the constitution, with regard to money transferred from abroad commits an offence. Section 92 of the Act make it mandatory for parties to provide statement of election expenses to INEC.

Related to these provisions is the Companies and Allied Matters Act (CAMA), 1990. Section 38 (2) of this Act, precludes companies from making a donation or gift of any of its property or funds to a political party or association for political purpose. The law provides that officers in default shall be liable to refund to the company the sum or gift so donated. The company/ officers shall also be guilty of an offence and liable to fine.

Sections 88-93 of the Electoral Act deal with campaign contributions. Each party is to keep a record of all contributions and the amount contributed. Section 91 puts a ceiling on maximum expenditure to be incurred by candidates according to the offices they are vying for. This is presented in the table below:

Table 1: Ceiling on Campaign Expenditure by Candidates

Candidates	Maximum Election Expenses 2006 Act ₦	Maximum Election Expenses 2010 Act ₦
Presidential Candidates	500,000,000.00	1,000,000,000.00
Gubernatorial Candidates	100, 000,000.00	200,000,000.00
Senatorial Candidates	20,000,000.00	40,000,000.00
Candidates for the House of Representatives	10,000,000.00	20,000,000.00
Candidates for State House of Assembly	5,000,000.00	10,000,000.00
Candidates for Chairman of Local Government	5,000,000	10,000,000.00
Councillorship Candidates	500,000.00	1,000,000.00

Section 91(12) of the Electoral Act 2010 (as amended) stipulates that any accountant who “falsifies or conspires or aids a candidate to forge or falsify a document relating to his expenditure at an election or receipt or donation for the election commits an offence that is liable to 10 years imprisonment”. It is important to note that there have been changes in the ceilings from 2006 Act to 2010 Act

Part VII, sections 117-132, of the Electoral Act 2010 (as amended) provided a detailed list of electoral offences from Improper use of voters cards to disorderly behaviour at political meetings, wilful defacement or destruction of nomination paper; forgery of registration card; or knowingly giving false information or making false statement with reference to any application for registration, and so on. The penalties for these offences are also clearly stated. Section 139 of the Act asserts that these offences apply to the recall of a member of the legislature and Local Government Councillors.

Part IX Section 285 of the Constitution is devoted to the determination of election petitions. It makes elaborate provisions for the establishment of electoral tribunals

Section 137 states clearly those with *locus standi* to present an election petition:

(a) A candidate in an election (b) a political party which participated in the election.

According to Section 138, election can only be questioned on the following grounds

- (a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;
- (b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act
- (c) that the respondent was not duly elected by majority of lawful votes cast at the election; or
- (d) That the petitioner or its candidate was validly nominated but unlawfully excluded from the election.

Section 147 (1) empowers the tribunals to nullify an election if it determines that an elected candidate was not validly elected. Subsection 2 empowers the tribunal or court to declare as elected another candidate who is determined to have scored the highest number of valid votes cast in an election where the candidate who was returned as elected did not win majority of valid

votes. Section 149 gives 21 days from date of decision for appeal against a decision made by election tribunal or the court. The rules of procedures for election petition and appeals are set forth in the first schedule of the Electoral Act 2010 (as amended).

Key innovations in the Constitution (as amended) and Electoral Act (as amended)

Some of the constitutional changes in the constitution and the electoral acts that had consequences for the success of the 2011 and 2015 elections include the following Constitutional amendments. The first areas of intervention was the adjustment of the timing of elections to address the contingencies around the 2011 elections. The amendment to section 81 guaranteed the financial autonomy of INEC by providing that INEC funds be paid directly from the consolidated Revenue Fund of the federation. The First Alteration Act amendment No.15 to the Constitution (section 156) qualified the eligibility requirements for membership of INEC to make it non- partisan while No. 16 strengthened the operational independence of INEC and gave the organisation power to make its own rules to regulate its own procedures without the approval or control of the President (section 160).

Furthermore, amendment 22 of the First Alteration Act empowered of the National Assembly to provide guidelines and rules regarding internal democracy on parties, and covered powers on INEC to be more effective in ensuring internal democracy and transparency in party congresses and primaries (section 228 (a) & (b)).

The first and second alteration acts dealt extensively with election disputes and the jurisdictions of the courts and tribunals. The first alteration gave the Court of Appeal original jurisdiction to determine whether any person has been validly elected governor or deputy governor, including petitions arising from governorship election. The second alteration act reversed this provision and restores the Governorship Election Tribunals as the Tribunal with original jurisdiction, but appeal proceeds to the Court of Appeal and the Supreme Court. Previously, appeals on governorship elections terminate at the Court of Appeal.

- Provisions for continuous registration exercise, annual publication of registration, transfer of registration location, release of a copy of voters' register on the payment of a fee.

- The act also guaranteed that elections results are announced from the polling unit, collation centres and the final constituency levels these enables access to the results from the lowest level of the polling unit to highest constituency level. It promotes transparency.
- With regard to political parties the Act empowers INEC to deregister parties. It also requires that parties must hold primaries and provide penalties for not observing rules.
- There is also a ceiling on campaign or party finance, penalty for failure to provide accurate audited financial record as outlined. These provide the legal basis for prosecution. There are also changes in the penalty on electoral offences.
- The requirement that a tribunal should declare a written judgement on election petition 180 days from petition filling date and any appeal within 90 days. The court may in all appeals from election tribunal adopt the practice of first giving its decision and reserving the reasons for the decision to a later date.
- A tribunal cannot declare any person a winner if such a person has not fully participated in all stages of the said election, provide guidelines for hearing of petitions.

These changes have gone a long way in impacting on the peaceful and fairly credible outcome of the 2011 elections and the 2015 elections. Apart from clarifying some of the rules of the electoral games they provided the environment for innovative technical and organisational reforms spearheaded by the leadership of INEC. These include the compiling of a credible voting register and the introduction of permanent voter cards with biometric data. Others are the internal review of administrative, financial, and operational processes, strategic plan for INEC, reconstitution and strengthening of electoral institute as an in-house training and research and development institution on electoral governance and political behaviour. These reforms reduced electoral fraud and increased the acceptability of the final outcome.

Additional changes were envisaged in the stalled constitutional proposals that President Jonathan refused to sign. INEC had submitted some 19 proposals to the National Assembly's Constitutional Review Committee. INEC sought powers to disqualify candidates or political parties from participating in an election as a regulatory agency. INEC want to be able to disqualify a candidate who evidently does not satisfy the requirements for the position he or she

is vying for. It would also be able to disqualify parties with flawed and undemocratic primaries from fielding candidates for any election. The latter power is a corollary to the request that section 87(9) be amended to make it mandatory for all candidates to emerge through a free and fair political process.

INEC also sought the power, in consultation with political parties, to determine the criteria by which political parties get on the ballot, a process it states is consistent with best practices in many parts of the world. Comparing itself to such regulatory agencies as the Central Bank of Nigeria and the National Agency for Food Drug Administration and Control (NAFDAC), the commission is seeking an amendment to section 31 of the Electoral Act. Furthermore, it argued that although the clamour for the registration of more political parties had continued to gain momentum, it is practically impossible for all registered political parties in Nigeria to be on the ballot.

INEC also asks for a constitutional guarantee of its independence beyond what it currently enjoys. It has asked that, like the National Population Commission, its independence should be constitutionally guaranteed in all its operations and in its management and control of the electoral process. It argues that this independence will enable the Commission to determine the procedure for the conduct of election in such a way that no political party would have undue advantage over others.

Other proposals by INEC include the establishment of an Electoral Offences Commission (EOC) and Electoral Offences Tribunal (EOT). The electoral offences commission will be responsible for investigation and prosecution of breaches of electoral laws. The electoral tribunals are to help guarantee timely prosecution of electoral offenders. INEC wants Sections 76(2) and 116(2) of the Constitution to be further amended to allow for only two periods in a year within which it can conduct elections to fill vacancies so as to engender certainty in the electoral timetable. It requested that any person convicted of an electoral offence (including registration offences, campaign finances breaches and breach of political party finance provisions) should be disqualified for a period of 10 years from the date of conviction from contesting any election or holding any party position. Importantly too, it calls for an amendment to the constitution so that interested Nigerian citizens who are of age but resident abroad can participate in the governance of their country by being allowed to register and vote at elections.

Conclusion

From the second Republic till date, Nigeria has demonstrated the capacity to learn from experience in terms of electoral engineering. Institutional changes witnessed included changes in the powers and responsibilities of the EMB, the formation and regulation of political parties, the electoral formula, ballot structure and political finance. The consequences have been uneven. The experience in the Third and fourth Republic show that such changes take time before they become very consequential. Previous changes are strengthened by subsequent ones. In the Fourth Republic, significant changes have been made before the 2015 elections to strengthen changes that came with the previous electoral acts and in particular the constitutional amendments and the amendments to the 2010 Electoral Act that preceded the 2011 elections. The amendment strengthened the independence of the INEC and contributed largely to Jega's ability to resist pressures that came with the 2015 elections. It also facilitated the use of innovative measures INEC introduced to upgrade production of a permanent and incremental voters' register, with biometrical permanent voters' card, and the subsequent use of card readers for the accreditation of voters during elections. These coupled with the adjusted voting procedure that enabled the announcement of results from the polling units to the final constituency enhanced transparency of the voting and vote count procedures and the credibility of the election results.

As we have noted concerning institutional change in the literature the process has been slow and incremental. Nigerian experience exhibited elements of path dependency, with previous changes providing the framework for subsequent changes. Significant changes have occurred at critical junctures. The first which we traced to the second republic were informed by the failures of the first republic and the general re-engineering of institutions as part of the programme of transition from military to civil rule in 1979. The changes were indeed very broad covering state creation, model of executive, electoral formula, power-sharing and electoral management. The second juncture was the failed and violence ridden 1983 election and the subsequent coup. The findings of the Babalakin Committee of 1984 is critical in this regard. Its impact was to be seen in the organisation of the NEC in the Third Republic. The third, which occurred in the fourth republic is the muddled 2007 elections, which provoked the setting up of the Justice Uwais

electoral reform committee, whose recommendation remains the benchmark against which criticism of the limited institutional change effected so far is measured against.

Beyond these changes that are considered far reaching, there are some issues that have not been addressed at all because no situation have arisen to catalysed their use. For instance, the Electoral Act 2010 requires that a run-off election, if needed for the Presidency, must be conducted within seven days. This is very challenging considering the logistical requirement for a national election that the presidential election is. Professor Jega note that some lost sleep over this particular provision. The time frame is too short to be realistic. There is also statutory provisions for the inter-party interactions to promote collaboration and interaction to advance peace among political parties. The interparty advisory council needs to be strengthened to make it more effective, especially as a framework of conflict resolution and management, and for setting and applying standards.

INEC has had challenges monitoring political parties, their finances and other issues. The Head of the Legal Unit of INEC has also complained that organization is perpetually bogged down with litigation arising from electoral offences, and often had to hire private lawyers to help. He also added that its staff suffer from prosecutorial capacity deficit. Of the more than a thousand persons arrested for offences in the 2011 elections, only about two hundred have been prosecuted. Thus, the recommendation of the Uwais committee on the establishment of electoral offences commission and Party registration needs to be revisited. Another important set of electoral reforms to consider is how voters' engagement can be enhanced. Voters' turnout has been very low. The extent to which the use of card readers has disenfranchised many is yet to be ascertained.

A common code of electoral conduct was agreed by political parties in 2013, and there is also an Inter-Party Advisory Council of Nigeria. There is a need to recognize the voter as a key stakeholder in the outcome of election. The right to challenge the outcome of election should be extended to the voter in an election. This will underscore the fact that elections are public interest issue. It will also meet international standard of access of the voter to participate in dealing with disputed elections.

In general, Nigerian 2015 election represent the outcome of the series of institutional changes that have taken place over a long period. The core values that have driven the Nigerian

process include the need for conciliation and descriptive representation, finance and capacity of administration, and promotion of internal party democracy and strengthening of participation. Nigeria has been sluggish in terms of values of party proportionality, victory of the Condorcet winner, and accountability. However, there are several issues that require attention to further strengthen institutions and processes. For instance, the amendments have not touched the core of the issues relating to the winner takes all electoral system, the independence and professionalization of INEC is yet to be taken to its logical conclusion. There are still a lot that can be done by means of institutional change to improve on elections in Nigeria in the core area identified. The debates and the process of institutional change must continue.

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