

## **Chapter 3**

# **THE ELECTORAL FRAMEWORK AND ELECTION ADMINISTRATION**

### **BACKGROUND**

Nigeria is a Federal Republic consisting of 36 States and the Federal Capital Territory (FCT) of Abuja.

The President is the Head of State, the Chief Executive of the Federation and Commander-in-Chief of the Armed Forces. He or she is also the Head of Government and appoints Ministers. The President is elected for a four-year mandate and can serve a maximum of two terms in office.

For the Presidential election the country is a single national constituency and a candidate only requires a simple majority to win. However, there is a further requirement that the candidate must secure at least one-quarter of the votes cast in two-thirds of the 36 States. If no such majority is attained then the leading two candidates contest a run-off. If in the run-off neither candidate secures the still required one-quarter of the votes cast in two-thirds of the States then a second run-off is held. For the second run-off whichever candidate secures the most votes is the winner.

Legislative powers of the Federal Republic are vested in the National Assembly, which consists of a Senate and a House of Representatives. The Senate has a total of 109 members elected from single-member constituencies and the House of Representatives has 360 members, also elected from single-member constituencies. Members of both houses of the National Assembly are elected for a four-year mandate.

Electoral constituencies for the House of Representatives are to be roughly equal in terms of population size and must also respect State boundaries. Therefore the number of constituencies per State varies substantially to reflect the variances in population size. However, for the Senate constituencies it is fixed that there shall be three per State plus one for the FCT of Abuja, and therefore the variance is in the population size of the respective constituencies. The electoral system for both Houses of the National Assembly is first-past-the-post.

Each State has an elected Governor, who has executive authority for the State. Legislative powers of a State are vested in its House of Assembly. The powers of a State's House of Assembly are subject to the laws made by the National Assembly.

The key legal instruments for the conduct of the elections are the Constitution (1999, as amended) and the Electoral Act (2010, as amended). In addition, INEC issued a series of guidelines and procedures, including a Manual for Election Officials (2011). INEC and the Political Parties also developed a Code of Conduct for Political Parties (2011) under which the Inter Party Advisory Council (IPAC) was established.

The Electoral Act 2010 provides the general framework for the organisation and conduct of elections. It regulates the voter register, qualifications to be registered as a voter, the right to vote. It further stipulates that INEC shall have the responsibility for the overall conduct of elections and shall be entitled to make regulations for the conduct of elections.

The Electoral Act (2010) made some key changes to the electoral framework. The features of the Act include the order in which the elections are held; that only aspiring candidates with the highest number of votes cast at the party primary should be submitted to INEC as candidates for the elections; there is a ceiling on the level of expenditure for the campaign by political parties and their candidates; INEC can de-register political parties if there is a breach of registration requirements or failure to win a seat in the National or State Assembly election; and, polling station results now have to be posted at the place of polling. The Act also makes a provision for continuous voter registration. The Electoral Act 2010 was amended in January 2011 to extend the registration period by one week and to postpone the elections from January to April 2011.

### **International and Regional Commitments**

Nigeria has signed and ratified the core regional and international treaties establishing the standards for the conduct of elections. These include:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination Against Women
- International Convention on the Elimination of All Forms of Racial Discrimination
- African Charter on Human and Peoples' Rights
- ECOWAS Protocol on Democracy and Good Governance

Nigeria is also party to important Commonwealth declarations, including the 1971 Singapore Declaration, the 1991 Harare Declaration and the 2009 Affirmation of Commonwealth Values and Principles.

### **Structure and Functions of the Independent National Electoral Commission**

Article 153 of The Constitution provides for the 'Establishment of Certain Federal Executive Bodies', including an Independent National Electoral Commission (INEC). INEC's function is to organise, undertake and supervise all elections. Other key responsibilities of INEC are to:

- Register political parties
- Regulate the conduct of parties, including auditing their accounts for income and expenditure
- Maintain on a continuous basis a National Register of Voters
- Establish rules and regulations for the election campaign
- Conduct voter and civic education
- Fix dates for elections
- Delimit constituencies.

The present INEC was inaugurated on 30 June 2010. It is a permanent body composed of a Chairman and 12 Commissioners. The current Chairman is Professor Attahiru Jega and the Commissioners are selected on the basis of two from each of the six geo-political zones.

All Commission members are directly appointed by the President, after consultation with the Council of State and approval of the Senate. Members are to be persons of unquestionable integrity and, in the case of the Chairman not less than 50 years of age and for other Commissioners not less than 40 years of age.

INEC has permanent offices in all 36 States and the FCT. Each State-level and FCT office is managed by a Resident Electoral Commissioner (REC), who is also appointed directly by the President but without need for Senate approval.

According to the administrative structure of the country each State is sub-divided into Local Government Areas (LGAs), totalling 774 in all. For electoral purposes, at the LGA level INEC has an Electoral Officer who is responsible to the REC. Each LGA is then sub-divided into Wards. There are 8,074 Wards in total, staffed by ad hoc INEC personnel. In addition, for each election Returning Officers and staff are appointed for Senate and House of Representative constituencies. For the purpose of the Presidential election the Chairman of INEC is the Returning Officer.

### **Voter Eligibility and Voter Registration**

In order to be eligible as a voter for the elections a person must be:

- A citizen of Nigeria
- At least 18 years of age
- Ordinarily resident in, working in, or originating from the area covered by the registration centre<sup>1</sup>
- Registered to vote

Voter registration is continuous and stops not less than 90 days before an election.

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<sup>1</sup> If before an election a voter is resident in a different constituency to the one in which they are registered it is possible to apply to an REC for a transfer of registration.

The register used for the 2007 elections was severely criticised and as a consequence INEC undertook a new registration of voters early in 2011. Voter registration was conducted using Direct Data Capture machines at some 120,000 registration centres. Registration started on 15 January 2011 and was initially scheduled to last for 15 days. This period was later extended by a week across the country and again by a further 48 hours in some States.

At the completion of registration on 7 Feb 2011, preliminary figures indicated 67,764,327 registered voters had been captured. Following a period of verification and cleaning of the register, and some final submissions from States, this figure had risen to 73,528,040 by the time INEC published the certified voter register on 2 March 2011. This met the stipulated legal deadline for publication of the final voter register.

Political parties or any person can obtain a certified copy of the voter register, for a State or LGA, from INEC for a charge.

### **Candidate Eligibility and Nomination**

To be eligible as a candidate for the presidential elections a person must be a citizen of Nigeria; at least 40 years old; and educated to at least School Certificate level or its equivalent. In addition, candidates have to be proposed by a registered political party and be a member of that party. Independent candidates are not allowed.

To be a candidate for the National Assembly elections a person must be a citizen of Nigeria, at least 35 years of age and educated to at least School Certificate level or its equivalent.

### **Complaints and Appeals**

The Electoral Act provides for election petitions, but they can only be filed by candidates and political parties contesting the election, not by voters or other interested organisations. Such petitions have to be made within 21 days of the declaration of results. Petitions regarding the presidential election are to be made to the Court of Appeal. Petitions concerning the National Assembly elections are to be made to National Election Tribunals, which are 3-member bodies created especially for the elections. These Tribunals can hear and determine petitions regarding whether or not a person has been validly elected.

Judgements on petitions are required to be delivered within 180 days from the date of filing of the petition and any appeal is to be heard within 60 days of the judgement. Members of a Tribunal are appointed by the President of the Court of Appeal. The Chair of a Tribunal is to be a Judge of a High Court and the two other members are drawn from members of the judiciary.

In addition, the Electoral Act includes a list of electoral offences and empowers INEC to prosecute offenders. Further, as electoral offences are crimes they can also be prosecuted by the appropriate authority. Such offences include dereliction of

duty by election officials, disorderly conduct, voting by unregistered persons and multiple voting.

## **KEY ISSUES**

### **1. Voter Registration**

As noted earlier, the voter register used for the 2007 elections was severely criticised as being inaccurate and containing numerous anomalies, such as double entries, fictitious names and underage voters. In past elections it is widely believed that inflated registers have been used to cover fraudulent results. As a consequence, INEC concluded that there would not be political or public confidence in the election if it was held using the 2007 register and therefore sought a brand new registration of voters. This required an amendment to the electoral timeframe and the National Assembly agreed on a series of amendments to the Electoral Act enabling registration to take place in January and pushing the date of the election back from January to April. It is clear that the registration process was a massive undertaking but one which INEC felt was required in order to increase confidence in the process from the outset. It was also seen as a major test of the credibility and capacity of the new electoral commission.

The amendments to the Electoral Act also included a series of procedural changes to the registration aimed at providing more safeguards and therefore greater integrity. These included prohibiting proxy registration and a more explicit requirement for formal ID to be produced at the point of registration.

Registration commenced on 15 January 2011 and was originally scheduled to last for 15 days. Some 240,000 ad hoc staff was recruited to run registration units, mostly drawn from the National Youth Service Corps. However, the training for them was compressed from the planned four days to just a single day. As in 2007, INEC opted for a biometric system of registration, utilising some 130,000 Direct Data Capture (DDC) machines, which had to be purchased for the task. The process involved capturing not only the pertinent details of name, date of birth, address but also a photo and on this occasion all ten finger prints of each voter. The process was slow at first, experiencing delays due to late delivery of some of the DDCs and the length of time it took to capture all ten fingerprints<sup>2</sup>.

According to reports, by the end of the first week INEC had secured most of the required machines and made some adjustments to the system, enabling a more rapid registration. The National Assembly amended the law, providing a further week nationally for the registration<sup>3</sup>.

At the outset INEC had set a target figure of registering some 70 million persons. By the end of registration on 7 February preliminary figures issued by INEC showed

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<sup>2</sup> INEC based the distribution of machines and registration staff on figures from the 2007 election. However, since that time there had been significant population shifts in some urban areas, such as Lagos and Abuja. As a consequence some registration centres found themselves dealing with several thousand registrants as opposed to the expected several hundred.

<sup>3</sup> A further 48 hours on top of the extra week was provided in ten States and in the FCT.

that 67,764,327 persons had been registered. Following this there was a public display of the register between 14 and 19 February. In addition, some States were cleaning the data and finalising the paper work. But it is not clear how comprehensive the data check was across the country and how many of the anomalies had been identified and addressed.

In accordance with the provision to make the certified voter register public 30 days before the day of the election, INEC published the register at the beginning of March with a final total of 73,528,040 voters.

Many commentators had expressed doubts that INEC would be able to undertake and complete the brand new national registration of voters in time for the April polls, particularly following the initial delays at the outset of the process. However, it was a remarkable achievement in the circumstances to complete the exercise and, whatever its deficiencies, overall the register does seem to provide a better basis for the conduct of the elections and a concomitant higher level of political confidence, than did previous lists.

## **2. The Independent National Electoral Commission**

### *A. Appointment of the Chairman, Commissioners, and Resident Electoral Commissioners*

In terms of INEC's independence the legal and administrative framework provides some positive aspects, but there still remains a key concern.

The Constitution provides that INEC 'shall not be subject to the direction or control of any other authority or person', which gives INEC the legal authority to be independent. As part of the wider amendments made to the Constitution in January 2011, the provisions relating to INEC were also amended. There is now an explicit prohibition in Article 156 of the Constitution against the Chairman, Commissioners or RECs being a member of a political party. Further, INEC's status has been changed to that of a '1st line charge agency', which INEC officials told the COG helps to increase financial independence by reducing the role of government in determining INEC's budget and financial disbursements.

But the existing mechanism for the appointment of the Chairman and Commissioners and RECs remains a concern, reflecting the same concern raised by the 2007 Commonwealth Observer Group. At present the Constitution provides that the Chairman and Commissioners are appointed by the President of the Republic after consultation with the Council of State and with the approval of the Senate.

Further, the Constitution also enables the Chairman and Commissioners to be dismissed by the President for misconduct or being unable to fulfil their duties, albeit that such a procedure requires the support of two-thirds of the Senate.

Such a role for an incumbent President, particularly when he or she may be a contestant in the process, can raise the spectre of political influence or patronage and may also make the body vulnerable to undue influence.

### *B. Public Confidence in INEC*

In the wake of the 2007 elections the reputation of the previous INEC, and particularly its Chairman, was severely tarnished. For the 2011 elections, therefore, the reconstituted INEC carried a major burden of responsibility.

In the build up to the elections it became very clear that the new Chairman of INEC, Professor Jega, was held in high esteem and that he embodied much of the nation's expectations for credible elections. His handling of the process was inclusive and transparent, notably with regard to dealing with political parties, the media and civil society. This proved of great value when he was dealing with the failed 2 April process for the National Assembly elections and the subsequent rescheduling of the same poll initially to 4 April and thereafter to 9 April and the Presidential to 16 April. He inevitably came in for criticism in the wake of the postponed 2 April polls and confidence in him was affected. However, while people may have generally questioned INEC's organisational capacity, they largely appear to have continued to believe in Professor Jega's honesty and integrity.

### **3. Revision of Electoral Timelines and Procedures**

The present INEC has only been established for a relatively short period, particularly if one considers the scale of the tasks facing it, including the national voter registration of some 70 million persons and the triple national elections. As mentioned earlier, INEC was inaugurated on 30 June 2010, and on 6 September it announced that the National Assembly elections would be held on 15 January 2011, the Presidential elections on 22 January and the Governorship and State Assembly elections on 29 January 2011.

On 20 September 2010 the Chair of INEC proposed to push the elections back to April (which still respected the Constitutional timelines and the requirement for the 29 May 2011 inauguration of the new President) to provide for more time for electoral preparations, including the new national voter registration. The National Assembly took some time to debate this proposal and only approved the proposed amendment on 27 October 2010; the amendment was only signed by the President on 10 January 2011.

The Electoral Act of 2006 was replaced by the Electoral Act 2010 to reflect the various constitutional amendments. The 2010 Act was amended on 24 January 2011 to revise respective timelines for INEC to receive nomination of candidates from political parties, among other things. The lack of clarity caused by the late changes to the law is exemplified by the numerous challenges to candidate nominations and the indecision over what INEC's powers in this regard are. There were numerous legal challenges as some of the names INEC received as purported party nominees were contested by others claiming they were the official party nominees. This partly reflects the acrimonious party primaries but also the poor structuring of the timelines and responsibilities for INEC in this regard.

It is clear therefore that not only was the entire process compressed into a relatively short timeframe, allowing little room for error or delay, but a number of key aspects were also revised and potentially unfamiliar to electoral officials and stakeholders alike. Such a series of factors must have impacted on INEC's state of readiness and effectiveness. Having said this, notwithstanding the time pressures placed on the body, there are also concerns regarding INEC's technical capacity and its internal organisational effectiveness, which are addressed elsewhere in this report.

#### **4. Complaints, Appeals and Electoral Offences**

The flawed 2007 elections saw a raft of petitions and the annulment of a number of those elections. By 2009, of the 36 contests for governor, eleven had been annulled, as had 9 of the senatorial races (out of 109). Even so, pending petitions did not prevent successful candidates from taking office and the benefits of incumbency tended to favour defendants, reducing the prospects of justice, and prolonging the process interminably. Petitions contesting the 2007 governorship results in Osun and Ekiti States, for example, were concluded only three and a half years into the two governors' four year terms of office. No other effective redress for the rigging of elections was available; electoral tribunals were overwhelmed by complaints and petitions; and tribunals were not able to prosecute electoral offences, other than by reversing election results.

As regards electoral offences, we understand that few – if any – successful prosecutions have been made in the past. The absence of an effective sanction against those who commit electoral offences remains a major impediment to a credible electoral process. It is unfortunate that the reforms recommended by the Uwais Committee for establishing an Electoral Offences Commission were not accepted. While the new Electoral Act gave a more explicit responsibility to INEC for prosecuting offences and provided time limits for determining petitions, many fear that a culture of impunity remains.

#### **5. Candidate Eligibility**

The law does not provide for independent candidates for either the Presidential election or the National Assembly elections. In both cases candidates have to be nominated by and be a member of a registered political party. This restricts participation rights.

In addition, setting a minimum age of 35 years for candidates for the National Assembly limits participation rights.

#### **6. Disenfranchisement of Persons on Election Duty**

Persons on election duty on polling day, such as INEC polling staff and security officers, have the right to vote as Nigerian citizens but under existing provisions they are not afforded the opportunity to do so. This results in the disenfranchisement of an estimated 412,000 permanent and ad hoc staff of INEC and several hundred thousand more personnel from the various security services



and armed forces deployed across the country during the polls. The law does provide for the transfer of voter registration from one place to another but the existing timeframe for this means that people on election duty, who do not know their place of deployment until just before the election, are not helped by this provision.

## **RECOMMENDATIONS**

It is pleasing that some of the key recommendations from 2007 have been addressed, including improving the voter register and the creation of a more independent mechanism for providing INEC's budget and access to funds. But several concerns remain:

- i. It is important that the appointment mechanism for the Chairman, Commissioners and RECs is inclusive and ensures broad political and public confidence. To reiterate the recommendation from the 2007 COG, there are many different models to achieve this but direct appointment of national Commissioners and RECs by the President should be avoided, unless the shortlist had been provided by a more inclusive, representative body. At the very least, direct appointment by a President who may be a contestant in the poll or otherwise an interested party can raise the spectre of undue political influence over the appointed officials.
- ii. Timelines for the conduct of a poll need to be defined to provide enough time for all stages of the process to be adequately completed so as not to impact negatively on other aspects of the process, notably in confirming candidate nominations in good time for the poll, ballot printing and distribution of materials. Further, all printing of ballots and other sensitive materials should be conducted with safeguards, so as to avoid the damaging delays that affected the 2 April postponed polls.
- iii. Late changes to the Electoral Act need to be avoided. It is undesirable to amend an Act so close to the conduct of the elections, as it creates uncertainty and a lack of clarity and awareness among stakeholders as to the procedures and institutional responsibilities.
- iv. It is important for INEC to regularly clean and verify the voter register, maintaining the continuous process envisaged in the Act. The new register is an improvement, but needs to be properly maintained, with continued checks to address anomalies, thereby making sure that Nigeria maintains a credible voter register and it does not become a fractious issue as it has been for past elections. This will also avoid the enormous expense involved in conducting registration again.
- v. There must be an end to the culture of impunity for those committing electoral offences. Prosecution of such offences needs to be effective and timely, ensuring that serious breaches of the Electoral Act are appropriately dealt with. The creation of a dedicated body capable of handling such matters in an independent and professional manner would be helpful.

- vi. Petitions resulting from disputed elections should be determined within six months, if necessary through an appropriate fast-tracking mechanism.
- vii. Participation rights would also be more fully provided for if the minimum age requirements for National and State Assembly candidates were appropriately reduced. This would offer Nigerians between the ages of 18 and 35 the opportunity to seek elective office.
- viii. There needs to be a mechanism by which persons performing election duty on polling day can exercise their right to vote. There are a number of models providing for this, including advance voting or allowing those on duty to vote at the polling station at which they are serving.