

## All Nigeria Civil Society Post-Election Conference

In July 2007, the National Democratic Institute for International Affairs facilitated an All Nigeria Civil Society Post-Election Conference which was hosted by the Nigerian Bar Association and the Nigeria Labour Congress. This was the natural complement to the November 2006 Pre-Election Conference also hosted by the NBA and the NLC with the support of the NDI.

The conference which NDI supported through a grant from the National Endowment for Democracy in pursuit of its goal of enhancing the process of electoral reform, served as a platform for both a post-mortem on the April 2007 elections and the fashioning out of a strategy to ensure more effective elections in future.

While Hon. Aminu Bello Masari, former Speaker of the House of Representatives chaired the first day's proceedings, former Chief Justice of Nigeria, Justice Mohammed Uwais chaired the second



Day two; from L-R Clement Nwankwo, Esq., Hon. Justice Uwais and Prof. Jadesola Akande



Opening session; from L-R: Dr. Keith Jennings, NDI Country Director; Hon. Bello Aminu Masari, Hon. Joe Clark, and Chief Akuro George, First Vice President, Nigerian Bar Association.

day's deliberations. A keynote address was delivered by Hon. Joe Clark, former Prime Minister of Canada who had served on both

NDI's high profile pre-election assessment mission in May 2006, and its international observer delegation mission to the April 2007 elections. His address underscored the urgent need to address the issues arising from the elections.

The first day of the conference focused on the problems and issues that arose during the elections while the second day was devoted to finding solutions or to some of these issues. Recommendations were issued at the end of the conference some of which are outlined in the box below.

The conference was attended by a wide range of civil society actors including religious leaders, civil society groups, donor agencies, legislators, politicians, and academics as well as members of the two host organizations.

The conference attracted a lot of coverage from the local media, but *NEW* is unable to say whether it was because of his role at the conference, or sheer coincidence, that Justice Uwais was named chairman of the 22-member Electoral Reform Committee established by

### ZONAL CONSULTATIONS ON ELECTORAL REFORM

Following the Post-Election conference, NDI planned to support further consultations on electoral reform across the country. The establishment of the Electoral Reform Committee (the Uwais Panel) by President Yar'Adua with several leading representatives of NDI partners among its members however, provided a golden opportunity to ensure that the results of those consultations would not be lost.

NDI therefore supported its civil society partners to arrange meetings at which members of particular groups would be

able to articulate their own concerns and wishes about electoral reform to those of their members who had been appointed to the Uwais Panel.

The first consultation was held in Lagos by the Nigeria Labour Congress, whose General Secretary, John Odah, is a member of the Uwais Panel. He discussed the Terms of Reference and listened attentively as comrades from various labour unions across the country and the Trade Union Congress identified the issues that they wished him to ensure would be dealt with in the Panel's recommendations.

The second consultation was held in Enugu by the Nigerian Bar Association, whose current President, Olisa Agbakoba SAN, is also a member of the Uwais Panel. Members of the Bar from all parts of Nigeria converged in Enugu for the consultation, which was also graced by the attendance of Chief E.A. Anyemene, the first Senior Advocate of Nigeria in Eastern Union, and himself a former NBA President. INEC officials who are also members of the Bar were present as well, and had some useful insights for their colleagues on the way that the electoral body

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... Zonal Consultations.. (Continued from page 1)

has been functioning.

The third consultation was held in Abuja by the Transition Monitoring Group, whose immediate past Steering Committee Chairman, Festus Okoye Esq., is a member of the Uwais Panel. Civil Society groups, members of TMG came from all parts of the country to brainstorm on their concerns, pool their experiences and develop recommendations for Mr. Okoye to carry forward to the Electoral Reform Panel.

Further consultations on electoral reform with other relevant groups are envisaged, will be held with other sectors in order to reach stakeholder groups keen to see concrete action taken towards electoral reform. Such groups will include religious leaders, women groups, youths and other relevant civil society organizations.

Proposals emanating from these consultations will be synthesized and forwarded to the electoral reform panel and the National Assembly for immediate action ■



*NLC Consultation, L-R; Denja Yaqub, Lucy Offiong, Bodunrin Adebo, John Odah and Festus Iyayi*

## Summary of Recommendations from Zonal Consultations

### **Electoral**

The electorate should be allowed to legally challenge election results.

An Electoral Crimes Commission with the power to prosecute should be established

Electoral materials and collated ballot papers should be delivered into the custody of an independent body or clearly defined institution such as the Chief Judge of a State for safe-keeping, prevention of tampering or alteration and for ease of production before election tribunals.

A recount (where necessary) should be carried out within one week from the initial announcement of the results

### **Constitutional & Statutory**

**Chapter VI section 132:** The rationale for the tight time-frame should be examined, but INEC should have a longer window within which to conduct national and state elections than the 60-30 day period presently prescribed.

#### **Establishment of certain Federal Executive Bodies**

**Section 156(b):** A federal executive body is for the entire federation, not simply an arm of the Federal Government. When it comes to providing funding and clarifying the independence of INEC, it is important to separate the power of the purse by creating two offices: an Accountant General for the Federation to serve the interests of the whole nation and independent bodies such as INEC, and an Accountant General of the Federal Government to serve the Executive.

**Qualifications for Membership of National Assembly and Right of Attendance Section 65 (2b):** The rationale behind appointing political party members to federal executive bodies such as INEC should be examined. Although the current provisions seem to be a legislative drafting error, if it necessary for members of political parties to be nominated to federal executive bodies, there should be a formula to ensure that they are not all from the ruling party.

The President's power to appoint Resident Electoral Commissioners and should be decentralized.

Who appoints the Inspector-General of Police? To whom does he owe his allegiance if he sees himself as the President's appointee? In a hierarchical police force, to whom then does

the entire police force owe its allegiance? The appointment of the IGP should be made by the Police Service Commission and he himself should be subject to the discipline of the PSC as had been the case previously.

**Independent National Electoral Commission Section 14 (2):** The criteria for INEC commissioners should be reviewed particularly the ambiguity regarding political party membership, while the age requirement for appointment to INEC should be examined and reduced.

**Section 86 of the Electoral Act 2006:** INEC did little to monitor campaigns, perhaps a body should be established to monitor the activities of political parties, thus giving INEC time to focus on organizing elections

A candidate whose substitution has been voided by the courts under **section 34 of the Electoral Act 2006** should be qualified to present an election petition under **section 145(1) d** of the same Act.

### **Administrative and Financial**

Questions raised included the following:

- Has provision been made in the Electoral Act for those who will turn 18 and are eligible to vote?
- What is a proper definition for election observers?
- What are the provisions for the appointment of ad-hoc staff?
- Is it good enough for INEC alone to be responsible for announcing results? Polling station results should be announced by INEC as received direct from polling stations before collation of results, since so much goes wrong at the collation stage.
- INEC's finances should be independent, and should be a first line charge on the Federation Account
- The Nigerian Printing and Minting Corporation should be equipped and authorized to print ballot papers and other security materials.
- An arm of INEC should be responsible for ensuring continuous voter registration ■

## ELECTORAL PROCESS: TRIBUNALS TAKE CENTRE STAGE

*“... democracy is not an esoteric or fanciful concept too difficult to grasp. It is practical and down to earth.”*

Justice Helen Moronkeji Ogunwumiju, Court of Appeal, Kwara State.

With the high level of violence that had characterised the April 14<sup>th</sup> state elections, NDI's International Observer Mission to the April 21<sup>st</sup> national elections laid particular emphasis on the need for parties to seek constitutional means of redress for perceived electoral fraud. In its Preliminary Statement on the elections, the IOM urged all aggrieved parties to exercise their constitutional rights peacefully. That call has been heeded by the candidates and the electorate, with 1,250 petitions filed before the election tribunals in the wake of the April elections. But seven months after the elections, how have the tribunals fared?

The first point to note is that with so many petitions still outstanding, those who have been canvassing for pushing back elections so that electoral disputes can be disposed of before the date for swearing-in new administrations, may have to re-think their proposals, unless elections are to be held a year – or even more – before the victors are due to take office.

So far, in addition to a number of legislators, the election victories of five governors have been overturned. But of these, only three were overturned by election tribunals, and the three governors affected, Kogi, Kebbi and Adamawa, have all remained in office, taking advantage of the much-criticised provision of the Electoral Act 2006 which stipulates that a person may remain in office if he has appealed against the decision of the election tribunal nullifying his election, until such appeal is determined. The governors who have been obliged to vacate their seats, in Anambra and Rivers States, did so thanks to highly controversial, yet widely acclaimed decisions of the Supreme Court. In Anambra State, the Supreme Court declared what should have been obvious from the 1999 Constitution: that Governor Peter Obi's term of office would not expire until four years had elapsed from the date on which he was sworn in, i.e. March 2010. The controversy has arisen because the Constitution confers exclusive jurisdiction to determine whether a term of office has expired on election tribunals, from which the final and only appeal is to the Court of Appeal, and many felt that the Supreme Court ought not to have assumed jurisdiction. Even more controversial was the decision of the Supreme Court to declare that because Rotimi Amaechi ought to have been the PDP candidate for the gubernatorial election in Rivers State, the election of Celestine Omehia, the actual candidate on election day, should be voided, and Amaechi sworn in, without having actually contested the election.

It is likely that President Yar'Adua had some of these decisions in mind when, at the Conference of Nigerian Judges in November 2007, he warned against giving judgments for “emotional or sentimental reasons”.

The Jigawa State governor was the only one of the 36 governors whose election was not challenged. However, several of his colleagues whose elections have been upheld because petitions against their victories were dismissed on technical grounds, cannot rest easy yet, because those decisions are all being challenged at the Court of Appeal. Some have also been derided in the court of public opinion. Such a decision is that of the Ogun State Election Tribunal which struck out the AD candidate's petition for the arcane technical reason that he failed to state his nationality, age and the party on whose ticket he contested the election, matters which were not in any way being challenged by the opposing parties, and with-

out which he could not have been cleared as a candidate in any case.

Several of the cases which have been determined against declared winners so far, have turned on the wrongful exclusion of candidates, or questions of who was the rightful candidate of the party, with the conduct of INEC again under scrutiny for allowing the last-minute substitution of names despite the time limits fixed by the Electoral Act. It should be noted that it is not only the ruling PDP candidates whose victories are under threat because of INEC's exclusion of validly nominated candidates: in Osun State, five AC House of Assembly seats are under threat because the PPA and the AD candidates were not on the ballot.

The exclusion of candidates by INEC led to bizarre decisions by some election tribunals, which held that a candidate who had been barred from contesting an election had no *locus standi* to challenge the result of an election in court, and that only the political party could file a petition. It took Justice Helen Ogunwumiju, of the Court of Appeal in Ilorin, to bring common good sense to bear on the issue. In the lead judgment sending the petition of Miss Oyinkansola Saraki back to the Kwara State Election Tribunal which had struck it out for want of standing, for fresh hearing, she said:

*“If the meaning of candidate is limited to those who contested on the day of the polls, how can s. 145(1)(d) a ground for complaint be ever actualized or activated by a candidate since it was not set there without a purpose.”*

But if the learned justice of appeal set the pace on the exclusion of candidates, her junior colleague on the Ekiti State Election Tribunal, Justice Doris Okuwobi of the High Court of Lagos State, was unable to avoid being excluded from membership of the tribunal. Counsel to the PDP successfully argued that as the learned judge came from a state won by the Action Congress in the April elections, she could not be expected to do justice in a petition involving an Action Congress candidate in Ekiti State! Of course, this argument ignores the many judges from the many more states controlled by the PDP who are hearing petitions in other parts of the country. In any event, this ultimately unworkable formula for determining judicial independence and integrity has not been applied elsewhere.

President Yar'Adua, who came under fire for his warning to judges (the NLC accused him of seeking to intimidate election tribunals for self-seeking reasons) was not the only public figure accused of using his office to advance private interests. NBA President Olisa Agbakoba was attacked by politicians in Anambra state for his criticism of the decision by INEC to join Andy Uba in asking the Supreme Court to revisit and set aside its decision that Governor Peter Obi's term of office had not expired. The NBA's contention was that INEC had thereby betrayed what ought to have been its position as an unbiased, non-partisan umpire.

Some petitions have been determined because of strategic withdrawals, none more so than in Rivers State, where Tonye Prince-

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will, the AC candidate, concluded a power-sharing alliance with newly-installed governor Rotimi Amaechi to forestall any attempt by the PDP to outmanoeuvre Amaechi should fresh polls have been ordered as a result of Princewill's petition.

Petitions where the challenger has to prove a wide range of electoral malpractices, ranging from falsification of voters' register, non- or poor accreditation of voters, violence, alteration of results, falsification and outright invention of results, are of course taking much longer to conclude. This is partly due to the sheer scale and widespread nature of the electoral abuse.

In its Preliminary Statement, NDI's IOM also advised that the election tribunals, contesting parties and INEC should cooperate to ensure the speedy judicial resolution of complaints, and in particular, called on INEC to make available all the information and materials needed for the resolution of electoral disputes. But reports from tribunals across the country show that the Commission has been the subject of repeated complaints from petitioners for failing to provide materials. Indeed, delays in commencement of the trials have been overwhelmingly ascribed to INEC's failure or refusal to hand over electoral materials. On one hand, this has prompted calls for electoral materials in future elections to be



Atiku Abubakar, Presidential Candidate

handed over for safe keeping to an impartial body (which INEC was supposed to be) such as the Chief Judge of the state, immediately after the election, and on the other, deep suspicions that papers and ballots were being doctored and prepared to meet the tally of votes declared or awarded at the end of the elections. Certainly, what many see as the Commission's obstructiveness is also being interpreted as an admission of guilt about the arbitrary nature of the results declared in many states. In Ondo state, the tribunal had to reject INEC's application to stay execution of the order granting the Labour Party leave to inspect and scan election materials in its custody while former Vice-President Atiku Abubakar's counsel had earlier described how INEC would 'shamelessly oppose' applications for the production of documents that were meant to assist the tribunal to do justice.

Despite all these hurdles, verdicts are coming in from some of the smaller constituencies, and again, the results have not been flattering to the Commission: in Benue State, the tribunal set aside a legislator's election because, despite results suggesting otherwise, it determined that voting actually took place in only eight of 450 polling stations in the federal constituency!

As for the big one, the presidential election, hearing of the petitions of Buhari of the ANPP and Atiku of the AC has commenced before the Justice James Ogebe led tribunal at the Court of Appeal. The petitions of Ojukwu of APGA and Nwankwo of PMP were dismissed on technical grounds against which they are appealing to the Supreme Court. The ANPP on the other hand, withdrew its petition because it had joined Yar'Adua's 'Government of National Unity', thereby leaving Buhari (who, like Atiku, was reported as having come under pressure from

traditional rulers and others in the northern part of the country to withdraw his petition in the interests of 'northern solidarity') to sink or swim alone. The ANPP Party Chairman was even reported as having directed ANPP members (who must by then



President Umaru Yar'Adua

already have sworn witness statements) not to testify in support of Buhari's petition! After Buhari produced results from several states that were different from those announced by INEC, the Commission went public with what in effect is a plea of *non est factum*: that its officials who certified as true copies the results that Buhari obtained from its own offices, did not know what they were signing! Needless to say, this claim has attracted scathing and contemptuous criticism of the electoral body.

The Court of Appeal has indicated that a verdict on the Buhari and Atiku petitions should be expected early in 2008. President Yar'Adua, who has intervened to ensure that the decisions of the Supreme Court in the Anambra and Rivers state cases were implemented in obedience to his declared intention to uphold the rule of law, has let it be known that he will accept the verdict of the courts. Observers note however, that this does not mean that there will be no appeal against any adverse decision: pointing to the fact that despite his acknowledgement that the April elections were flawed, the President and his lawyers have been vigorously defending the petitions filed against his victory.

For others, with the number of elections that the tribunals have already ordered to be re-run, a burning question is whether the Professor Maurice Iwu-led Commission has the moral authority to conduct such fresh elections, and its request to the National Assembly for half a billion naira for such elections has attracted derision and condemnation from opposition parties. The Constitutional position



Muhammadu Buhari, Presidential Candidate

however, remains that members of the Commission are appointed for a 5 year period, and can only be removed by the President acting after a two-thirds majority vote to that effect by the Senate, an opportunity that was passed up by the outgoing Senate

even though as many as 75% of them were not returning to the National Assembly. Equally, except in cases where the nomination of the actual candidate by the party is in contention (matters which will have been heard in the ordinary courts), any fresh election will be contested by the same candidates cleared to contest the original vote. ■

## NDI Meets House Committee on Electoral Matters

Following the inauguration of the House Committee on Electoral matters on the 18th of September 2007, the National Democratic Institute initiated a meeting with the committee to explore opportunities to assist and collaborate on issues relating to electoral reform. The committee is composed of fifteen members, seven of which are from opposition parties; Action Congress (AC) and All Nigerian Peoples' Party (ANPP) while the remaining eight members are from the Peoples' Democratic Party (PDP). The committee has at its helm Hon. Musa Sarkin Adar an PDP representative from Goronyo Federal Constituency of Sokoto State.

At the meeting, the committee shared its work plan with NDI post-election team and highlighted key areas of electoral reform that require urgent attention. The committee chairman proposed a seminar to serve as a forum to prepare the members for the challenges that may arise in the course of their work by educating them on the Electoral Act, the election-related aspects of the Constitution and the salient issues within them that need to be addressed.



From L-R; Ayo Obe, Prof. Robert Nakamura, NDI Country Director, Hon. Musa Sarkin Adar, House Committee Chairman, and Ibrahim Sidi, Committee Clerk.

enabling environment under which elections can be successfully conducted. The committee Chairman noted that it was expedient that progress be made on electoral matters since the National Assembly's expressed commitment to consider constitutional amendment next year. The forum would therefore serve as a platform for planning, exchange of ideas and experiences as well as an avenue for knowledge building.

Ayo Obe, Senior Program Manager for Elections, NDI stated that the constitutional, legislative and statutory issues in the act need to be considered and that progress on electoral reform should begin regardless of the stage at which the tribunals are. She said that certain provisions should be examined and duly reviewed such as those that pertain to the swearing in of elected officials who have pending cases at the tribunals. The committee was also advised to examine the issues relating to administrative and financial processes of INEC and how they affect the electoral body's autonomy.

The chairman of the committee said that he had conducted a cursory examination of the act and highlighted provisions he thought should be made such as a legal framework to provide ballot papers according to zones and disqualify those used out of their zone, political party involvement in the appointment of electoral officers particularly Resident Electoral Commissioner which should be based on previously agreed upon criteria selected by all political parties. He also noted that need for comparative studies on electoral processes especially in countries with similar democratic challenges.

The seminar is due to be held early in the New Year. ■

NDI support for the committee is therefore based on the crucial role that the National Assembly has to play in improving the electoral process through amending the legal framework and creating an

## Newspaper Headlines

- **Iwu, Mark condemn EU's report on April poll** - *(The Punch, August 23, 2007)*
- **'INEC will not pay ad hoc staff for cancelled elections'** - *(The Punch, September 2, 2007)*
- **Odumegwu-Ojukwu, Nwankwo, lose petitions against Yar'Adua's election**—*(The Guardian, September 4, 2007)*
- **You deserve jail, tribunal chairman tells lawmaker** - *(The Punch, September 20, 2007)*
- **INEC employees testify against commission** - *(The Punch, September 20, 2007)*
- **AC decries harassment of supporter at tribunals** - *(The Guardian, September 22, 2007)*
- **Tribunal Nullifies FCT Senatorial, House Elections**—*(ThisDay, September 30, 2007)*
- **'How we rigged Governorship poll in Ekiti'** - *(ThisDay, October 5, 2007)*
- **Oshiomhole's victory at appeal court paralyzes Benin** - *(ThisDay, October 05, 2007)*
- **Election Petition: Yar'Adua Knows Fate by January** - *(ThisDay, October 17, 2007)*
- **Tribunal Nullifies House of Reps Election in Lagos** - *(ThisDay, October 20, 2007)*
- **Tribunal Nullifies Kogi Gov's election** - *(ThisDay, October 11, 2007)*
- **Tribunals: INEC didn't exclude anyone, politicians did—Igbani**—*(The Punch, October 20, 2007)*
- **Imo State Govt Seeks National Honour for Iwu** - *(ThisDay, October.21, 2007)*
- **Iwu Should not Conduct Fresh Polls, AC Warns**—*(ThisDay, October 22, 2007)*
- **Buhari tenders pre-dated polls' results**—*(The Guardian, October 24, 2007)*
- **INEC Releases Three Results for Benue Constituency**—*(The Guardian, October 28, 2007)*
- **Don't intimidate election tribunals—NLC tells Yar'Adua**—*(The Punch, November 10, 2007)*
- **Election Results Forged in 12 States, Says INEC**—*(ThisDay, November 22, 2007)*

## PRESIDENT YAR'ADUA SETS UP ELECTORAL REFORM PANEL

Following the promise made in his inaugural speech, President Umaru Musa Yar'Adua inaugurated a 22-member Electoral Reform Committee to review the country's electoral system on the 28<sup>th</sup> of August 2007. Also called the "Uwais panel" after its chairman, former Chief Justice of Nigeria, Mohammed Lawal Uwais, the panel has one year to produce a report that will review the whole electoral process and proffer solutions for improving elections in Nigeria.

The President charged the panel to examine electoral systems relevant to Nigeria's experience and identify best practices. It may propose amendments to the 1999 Constitution and the Electoral Act 2006 to improve the credibility of elections and make the Independent National Electoral Commission (INEC) a truly independent body. The mandate of the panel is set out in its Terms of Reference. (see box below)

The composition of the panel, including some prominent pro democracy activists and other leading members of civil society, has been widely welcomed as evidence of the President's commitment to genuine electoral reform although such members are in a decided minority on the panel. Despite the impressive backgrounds of some of those on the Committee, under-represented groups in Nigerian politics and public life still remain marginalized. There are only three women out of the 22 members, although this gender imbalance is one that is reflected throughout the appointments made by the Yar'Adua administration. Representatives of other groups such as youths and disabled persons are conspicuous only by their complete absence.

Another missing group is the political class: President Yar'Adua justified this exclusion on the grounds that politicians were largely responsible for the defects in the electoral system that had been exposed, but the wisdom behind this position has also been questioned by those who consider that the experience of practising politicians would have injected a necessary dose of reality into what might otherwise be unworkable recommendations.

Some commentators have criticised the inauguration of the panel at a time when election tribunals are still sitting, but others have expressed concern that the year given to the panel to conclude its work is too long, having regard to the electoral timetable under the current constitutional arrangements which would posit general elections in 2011 (although elections to some executive offices may be affected if fresh office-holders emerge as a result of election tribunal decisions or re-run elections). Since it is widely ac-

cepted that at least some sections of the 1999 Constitution will have to be amended if the electoral system is to be genuinely reformed, observers consider that if the Uwais Panel does not produce any report before August 2008, it is unlikely that any constitutional and statutory changes necessary to bring about such reform can be enacted before the end of 2009, leaving little time for implementation before the 2011 elections should be in preparation.

The view that the activities of the Uwais Panel might influence or pre-empt the work of the election tribunals has more or less been overtaken by events, particularly as the National Assembly leadership has indicated that it will embark on amendment of the 1999 Constitution in 2008. If anything, this position increases the pressure on the Uwais Panel to produce its report sooner, rather than later if it is not to be rendered irrelevant.

A major concern is that although members of the panel may propose reforms that could significantly improve the electoral system; there are doubts whether the government and legislature will have the political will to implement those recommendations. Opposition parties have expressed fears that the establishment of the panel was a ploy by the Yar'Adua administration—widely denounced as lacking legitimacy—to buy time to gain public acceptance, or at least, public acquiescence, and that by the time the report of the panel emerges, the momentum for change will have been lost.

The panel meanwhile, has commenced work with a thorough examination of the myriad of existing recommendations from previous bodies, and has also made a call for memoranda from members of the public.

While events suggest that the most profound guarantee of genuine electoral reform will lie in the capacity of Nigerians to defend their electoral mandate in 2011 or at any other time, President Yar'Adua, while inaugurating the panel, said that its goal should be to ensure:

- A truly independent electoral commission imbued with administrative and financial autonomy;
- An electoral process that would enable the conduct of elections to meet acceptable international standards;
- Legal processes that would ensure that election disputes are concluded before inauguration of newly-elected officials; and
- Mechanisms to reduce post-election tensions including possibility of introducing the concept of proportional representation in the constitution of governments■

### **TERMS OF REFERENCE OF THE ELECTORAL REFORM PANEL**

- *Undertake a review of Nigeria's history with general elections and identify factors which affect the quality and credibility of the elections and their impact on the democratic process;*
- *Examine relevant provisions of the Constitution, the Electoral Act, and other legislations that have bearing on the electoral process and assess their impact on the quality and credibility of general elections;*
- *Examine the roles of institutions, agencies and stakeholders in shaping and impacting on the quality and credibility of the electoral process. These should include government, electoral commissions, security agencies, political parties, non-governmental organizations, media, general public and the international community;*
- *Examine electoral systems relevant to Nigeria's experiences and identify best practices that would impact positively on the quality and credibility of the nation's electoral process; and*
- *Make general and specific recommendations (including but not limited to constitutional and legislative provisions and/or amendments) and to make any other recommendations deemed necessary by the panel.*

**CHAIRMAN**

**Justice Mohammed Lawal Uwais**, Former Chief Justice of the Nigeria

**MEMBERS**

**Justice Godwin U. Ononiba**, Chief Judge Emeritus of Anambra State

**Sheik Ahmed Lemu**, Grand Khadi of Niger State

**Prof Grace Alele Williams**, Former Vice-Chancellor of the University of Benin

**Prof Attahiru Jega**, Vice-Chancellor of Bayero University Kano and Former President, Academic Staff Union of Universities (ASUU)

**Prof. Gambo Balaraba Abdullahi**, Former Vice-Chancellor of the University of Abuja

**Olisa Agbakoba Esq., SAN**, President of the Nigerian Bar Association and Former President of the Civil Liberties Organisation

**Mrs. Toyin Olakunri**, Former President of The Institute of Chartered Accountants of Nigeria (ICAN)

**Mr. Jibrin Ibrahim**, Director of Centre for Democracy & Development

**Mr. Abdurahim Ujo**, Director of the Centre for Development Studies

**John E. Odah**, General Secretary of the Nigeria Labour Congress

**Festus Okoye**, Former Chairman of the Transition Monitoring Group, TMG

**Hajiya Dije Bala**, Director of Community Participation for Action in Social Sector

**Rev. Fr. Matthew Hassan Kukah**, Former Secretary of the Human Rights Violations and Investigation Commission (Oputa panel), Former Secretary General of the Catholic Secretariat.

**Mr. Ndanusa Alao**, Managing Director of the New Nigerian Newspapers

**Maj. Gen. Oladapo Popoola**, Former Commander of the ECOWAS Monitoring Group, (ECOMOG) and former Military Administrator of the old Oyo State

**Musiliu Smith**, Former Inspector General of Police

**Alhaji Ahmadu Kurfi**, Secretary of the defunct Federal Electoral Commission – (FEDECO)

**Prof. Okon Uya**, Former Chairman of the defunct National Electoral Commission

**Steven Dike Esq.**, Legal Practitioner, Process review expert

**Alhaji Aliyu Umar**, Secretary of the defunct FEDECO

**Prof. Bolaji Akinyemi**, Former Minister of External Affairs, former member of National Democratic Convention (NADECO)

## NDI Nigeria Contributes Observers to Sierra Leone Elections

With a fifth of Africa's population and a leading position in the African Union and the Economic Community of West African States, Nigeria's influence on the trend of affairs in the continent is often seen as pervasive. Thus before the country's April 2007 elections there had been high hopes about the positive effect that successful elections would have on the rest of the continent; and after the elections, deep



L-R: NDI Nigeria's Machill Maxwell, and Delegation Co-leader, Sen. Ken Nnamani.

concern about the negative effect that the flawed process would have on the democratizing trend in Africa.

Sierra Leone's elections, which followed Nigeria's, effectively laid those fears to rest. The elections were hailed across the world as successful and credible. The elections, which featured a run-off election when no candidate met

the requirements for success in the first round, saw opposition leader Ernest Bai Koroma emerging as President.

As the success of Sierra Leone's elections highlighted the failure of Nigeria's, Nigerians were quick to point out differences between the two countries: Sierra Leone with its population of

less than 7 million faces different challenges than Nigeria's 140 million citizens. Still, many agreed that there were important lessons that Nigerians could learn from the war-ravaged country. NDI Nigeria was able to put some of its staff, partners and friends in a position to observe the electoral process in Sierra Leone at first hand, and perhaps bring home some of those lessons.

Former Senate President Ken Nnamani was a co-leader of NDI's International Observer Mission to the Sierra Leone elections, returning for the September run-off, while Machill Maxwell of the NDI Nigeria Elections Team was in Port Loko in northern Sierra Leone from July to September as a long term observer. Maxwell, who worked with the Political Parties Registration Commission (PPRC) the body established to register political parties and monitor their campaigns, notes that the PPRC was quite separate from the National Electoral Commission, which however held weekly meetings with political parties to review the electoral process. Chris Uyot of the Labour Election Monitoring Team, an NDI Nigeria partner, was an NDI short term observer deployed to Bo in southern Sierra Leone for the September run-off elections.

Earlier, in July 2007, then NDI Country Director Keith Jennings and Bode Makinde of the Nigerian Bar Association, another NDI Nigeria partner, had been part of a pre-election assessment mission to Sierra Leone. ■



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## The Electoral Learning Process: The Missing Student

FROM NDI

Surveying the wreckage that trailed the April 2007 elections, many Nigerians consoled themselves that democracy and elections, are a learning process. The country would profit from experience and make corrections so that succeeding elections will be better. Indeed, the Electoral Act of 2006 tried to correct many of the anomalies thrown up by the 2003 elections. For example, in response to the havoc caused by last-minute and even *post-election* substitution of candidates in 2003, the 2006 Act provides strict time limits for change of candidates. The Act also stipulates that the decision of an election tribunal is enough to swear in a candidate who successfully challenges an election result, even if the Independent National Electoral Commission fails to issue a fresh certificate.

It should be understood that this last provision, section 76(2), is a criticism of the Commission's refusal to issue certificates of return to give effect to tribunal verdicts after the 2003 polls. But it appears that the import of this clear indictment of a body that Nigerians should look up to as an impartial umpire, has been completely lost on INEC. Presently it is being proposed that state Chief Judges should take custody of electoral materials immediately after elections. The obvious implication is that CJs are more trustworthy than

the impartial electoral umpire. But if these proposals are accepted by the National Assembly, will INEC recognise them as another blow to its reputation as a supposedly impartial umpire?

Indeed, in the wake of the April 2007 elections, it appears that the Commission – unlike most Nigerians – is unwilling to accept that it is in any way at fault. This attitude first surfaced with INEC's self-congratulatory tone over the presidential ballot papers. Instead of recognising that it had completely failed the nation by its wilful refusal to print ballot papers including the name of the Vice President – who was challenging his purported disqualification in court – the Commission stridently demanded praise for allegedly printing and distributing 60 million ballot papers in five days. The tirade that greeted the presentation of the European Union's report on the elections was another pointer to a body determined to learn no lesson.

INEC has rightly complained about the attacks on its staff, and at a national forum lamented that this had even put some of them in hospital. But despite its announced 'zero tolerance for violence' policy, whereby INEC promised to cancel the results of any election tainted by violence, Nigerians have been bemused by the vigour with which the

Commission is defending such results. The zero tolerance policy seems to have been almost completely discarded except in such cases as the Imo State gubernatorial election, which INEC cancelled for alleged violence while allowing the elections into the state House of Assembly conducted at the same time, to stand.

Now, with a number of elections having been voided because of the wrongful disqualification of candidates by INEC, including those of at least two governors, the Commission still maintains that it did no wrong. Ingenuously disclaiming responsibility for its *ad hoc* staff, INEC ascribes all faults to them and of course, to politicians. In a recent interview in *The Punch* newspaper, a national commissioner maintained that it was the politicians who excluded themselves from the ballot! Yet having failed to take administrative action to check such faults (as it did in Imo State) the Commission's posture at election tribunals is one of unwavering support for the results produced by these erring staff and politicians.

The question for Nigerians is this: can the key player be expected to learn from mistakes in an election for which it has already awarded itself an 80% pass mark? Can it accept the need to correct those mistakes? And if not, what confidence can there be that any future elections will not be as badly compromised as those of April 2007? ■