

## NDI ORGANIZES RETREAT FOR ERC

**P**ursuing its program to strengthen democracy in Nigeria, the National Democratic Institute for International Affairs organized a two-day retreat for members of the Electoral Reform Committee on electoral systems and international best electoral practices. The aim was to enhance the Committee's understanding of certain electoral reform issues and to equip it to make recommendations from the variety of electoral systems and practices that abound, cognizant of their implications.



*Participants at the Retreat.*

Drawing from its pool of international experts, NDI brought in Professor Anne Deysine of Paris X-Nanterre University, Professor Felix Ulloa, former magistrate and president of the Supreme Electoral Tribunal and the Institute of Law in El Salvador, and Honourable Charles Djrekpo, NDI resident director in Côte d'Ivoire to make presentations at the retreat.

Topics covered were Electoral Systems and Impact on Participation, Types and Modes of Proportional Representation in Global Democratic Practice, Regional Perspectives on Proportional Representation, Political Party Thresholds: Methods and Practices in Global Democratic Practice, International Best Practices for Appointing Electoral Bodies and International Best

Practices for Political Party Representation in Election Administration.

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### Newspaper Headlines

● **Poll: INEC sets up panel on Kogi bribery** - *(The Punch, May 2, 2008)*

● **21,805 Policemen, others to monitor Bayelsa elections** - *(Punch, May 23, 2008)*

● **Re-run poll: Sylva, Wamakko win in Bayelsa, Sokoto** - *(Punch, May 26, 2008)*

● **Constitution review: National Assembly moves to enlarge committee** - *(ThisDay, May 26, 2008)*

● **Uwais Committee: Disabled seek Electoral relevance** - *(ThisDay, May 26, 2008)*

● **Save Nigeria from anarchy, Atiku tells Supreme Court** - *(Daily Independent, May 26, 2008)*

● **INEC declares Sokoto re-run election a success** - *(Daily Trust, May 26, 2008)*

● **Tribunal Sacks Edo Speaker** - *(Tribune, June 28, 2008)*

● **INEC abandons probe into Kogi bribery scandal** - *(The Punch, June 28, 2008)*

● **Iwu, Fashola fault constituency delineation in Lagos** - *(The Punch, July 4, 2008)*

● **NBA lauds tribunals, deplores delayed cases** - *(The Guardian, July 4, 2008)*

## NDI OBSERVES BAYELSA RE-RUN

**F**ollowing the nullification of the election of the Bayelsa State governor Timiprye Sylva on April 15 by the Court of Appeal, the Independent National Electoral Commission conducted a re-run of the gubernatorial election on May 24. According to the results declared by INEC, Mr. Sylva of the Peoples Democratic Party received 538,204 out of the total valid votes of 588,399 to emerge winner. NDI and its partner organizations observed the conduct of the election in the state.

A breakdown of the results showed that Sylva won in all the six local governments of the state. The Action Congress (AC) came second with a total of 26,635 votes, All Nigeria Peoples Party (ANPP), 6,892; Democratic Peoples Party (DPP), 1511; New Democratic Party (NDP), 1180; Progressive Peoples Alliance (PPA), 6537; RPN, 630; Labour Party (LP), 1186; MRDD, 1719; African Democratic Congress (ADC), 992; and All Progressive Grand Alliance APGA, 2172. However, the results in Kolokuma/Opokuma Local Government were cancelled by the Commission, due to what INEC described as "noticeable anomalies and contradictions in the figures". Although INEC congratulated itself for conducting a hitch-free election, it was observed by NDI and its partner organizations that the election did not start on



*Voters and Civil Defence Corps at a polling station in Bayelsa State*

time. Voting had not commenced at the stipulated time in any of the polling stations visited between 8 am and 11 am. Despite INEC's claim that it had distributed materials to all parts of the state ahead of the election, NDI partners and observers sighted several INEC officials traveling out of the state capital with election materials well after the time for the commencement of voting on Election Day itself.

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## ELECTION TRIBUNALS: THE VERDICTS ROLL IN

*“Like gullible infants, the losers of the elections have been called upon by pacifists to go to the election tribunals. One may ask whether the judiciary should be over-burdened by electoral crimes deliberately committed by members of the executive and legislative arms of government, egged on by their patrons and godfathers. The judiciary is not a miracle worker. To ask the judiciary to resolve the kind of awesome and obscene violation of electoral processes blatantly displayed by political agents in the last general elections is like asking a physician to raise the dead from the grave.” (Chief Anthony Enahoro, interview in *The Nation*, Tuesday, May 8, 2007).*

When he met NDI’s high profile Pre-Election Assessment Mission in May 2006, the President of the Court of Appeal, Justice Umaru Abdullahi, who has constitutional responsibility for composing election tribunals, reflected on the fate of the election petitions that followed the 2003 general elections. He concluded that the burden on petitioners was extremely heavy and difficult to overcome.

As the verdicts roll in from election tribunals all over the country and from the Court of Appeal (the election tribunal for the presidential election), it seems that although some election results where candidates were wrongly excluded from the poll have been set aside, many Election Tribunals have proved that Chief Anthony Enahoro’s scepticism was well justified. They have done little to alleviate the burden on petitioners, and indeed, in some cases, appear to have gone out of their way to increase it. In Ogun State for example, the tribunal dismissed the petition of the ANPP gubernatorial candidate simply because he had not stated his nationality or that he had contested on the platform of the ANPP, even though none of the respondents had complained, and the tribunal was therefore descending into the arena to embark on a voyage of discovery for itself. Of course, this decision was set aside by the Court of Appeal which ordered that the petition should be re-heard, although the matter is now held up while, – the President of the Court of Appeal having constituted a different panel for the re-hearing, – incumbent governor Gbenga Daniels tries to insist that the tribunal which gave the astonishing decision against the petitioner, should nonetheless sit over the petition itself.

Another petition sent back for re-hearing after the reversal of some election tribunals’ overly technical anti-petitioner approach was that of the People’s Progressive Alliance and Oyinkansola Saraki, who had challenged the declaration of Dr. Bukola Saraki as winner of the Kwara State gubernatorial poll, but which the Kwara State Election Tribunal had rejected on the grounds that as Ms. Saraki’s name did not appear on the ballot paper (the very thing that she was complaining about), she was not a candidate in the election and therefore, had no standing to present a petition since section 144 of the Electoral Act 2006 limits the persons who can bring an election petition to a candidate in an election and a political party which participated in it. In her justly celebrated lead judgment in the decision of the Court of Appeal in *Peoples’ Progressive Alliance and Oyinkansola Saraki v. Dr. Bukola Saraki and 3 others* (CA/IL/EPT/GOV/2/2007 of 2<sup>nd</sup> November 2007) Justice Ogunwumiju debunked this restrictive approach and held that a candidate who was unjustly excluded from the ballot paper remained a candidate. Ms. Saraki’s petition however, has not yet been set down for hearing on its merits.

Because so many candidates were able to challenge election results on the ground that they were excluded from the ballot, the setting aside of

the results of elections from which one or more candidates were excluded might (the Kwara State decision apart) almost be described as a ‘no-brainer’. Little evidence – beyond production of the offending ballot papers used in such elections – is needed. This allowed petitions based on such grounds to be quickly disposed of, and the spate of early decisions which resulted in elections being annulled and re-runs ordered, gave the impression that the election tribunals were continuing the pre-election pace set by the Supreme Court in being independent and dynamic. That some of the elections affected state governors, in Kogi, Adamawa and Bayelsa states, for example, and not just elections to the legislature, only strengthened the satisfaction expressed by many commentators that the electoral process could not be totally condemned since it included the adjudication of electoral disputes, and that this process was demonstrably no respecter of persons.

These ‘candidate-excluded’ cases however, are hardly an acid test of the election tribunals’ determination to correct the ills that attended the April 2007 elections. Many of those ills consisted of outright

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rigging, violence, ballot-box snatching and falsification of results. Proving all these evils is a great deal harder than simple production of a defective ballot paper. It involves producing the correct results – often from individual polling stations – to challenge the collated reports announced by INEC, assuming that signed copies of the results are available in the first place. It requires eye-witness testimony where ballot boxes have been snatched, where there has been multiple or under-age voting, or where voters have been driven away by violence, or wrongly prevented from voting.

Such testimony is also needed where polling started late or not at all, yet results (often claiming an extremely high 90%+ turnout) were declared, as happened in large swathes of Rivers and Bayelsa States. Even more challenging for petitioners are those cases where, having contested the results declared by INEC, they have demanded that the election documents, including ballot papers, be produced for inspection. Some petitioners have been able to secure the permission of tribunals to have such ballot papers inspected by fingerprint experts to see whether they were marked by the thumbs of different persons or (as was widely alleged even on polling days) whether any thumbprint appears on more than one ballot paper. But others have met the stone wall of tribunals hiding behind what they have chosen to interpret as the dictates of the ‘front-loading’ procedure, which requires a petitioner to file the sworn statements of all the witnesses intended to be called at the time of filing the petition, to which a 30 day time limit after the declaration of the result applies. Thus in the gubernatorial petition in Ekiti State, a fingerprint expert was able to examine ballot papers and give evidence, but the tribunal in Osun State rejected a similar attempt by the petitioner.

Another pair of petitions with similar facts but differing outcomes are those of the gubernatorial elections in Kebbi and Sokoto States. While in Kebbi State, the Court of Appeal held that the pre-election eligibility of Governor Sa’idu Usman Dakingari as the nominee of the PDP (who had been a member of the ANPP) was not a basis for

nullifying his election, in Sokoto State, it was held that the pre-election eligibility of Governor Aliyu Magatarda Wammako as the candidate of the PDP was validly challenged because the ANPP had also listed him as their own candidate.

The Electoral Act requires a successful petitioner to not only show that there was a substantial failure to comply with the electoral law and regulations, but that this affected the result of the election. The tribunals have shown little inclination to resolve difficult questions in favour of petitioners. Even in seemingly minor issues such as the decision of INEC in the Lagos State gubernatorial election to print ballot papers which carried the photographs of some of the candidates, including the winner, Babatunde Fashola of the Action Congress, but to exclude the pictures of others, such as Jimi Agbaje of the Democratic People's Alliance, the adjudication process showed its face resolutely against the hapless petitioner whose complaint was dismissed by both the tribunal and the Court of Appeal, leaving the way free for INEC to be even more selective and discriminatory in the design of ballot papers in future elections.

The decision of the presidential election tribunal (the Court of Appeal sitting as the court of first instance) in the petitions brought by ANPP candidate Muhammadu Buhari, and AC candidate Atiku Abubakar, in which evidence was led, showed what an uphill task it is to prove substantial failure to comply with the electoral regulations and an effect on the election result, and highlighted the difficulties faced by petitioners who have to prove the wide range of electoral irregularities and fraud that characterized the April 2007 elections.

No doubt the sheer scale of the amount of evidence that must be produced by a petitioner is daunting enough in itself and there is no doubt that not all petitions – in the rush to beat the 30 day deadline (which applies to presidential petitions as to state legislators, despite the huge difference in the size of the constituencies) – were as well prepared as they might have been. But when, in its judgment, the Court of Appeal disregarded INEC's use of ballot papers that were not serially numbered for the presidential election, and instead, berated Buhari for not tracing the movement of ballot papers through the numbers on the booklets (from which they had in any case been detached!) it is not difficult to appreciate Justice Abdullahi's comments to the NDI Pre-Election Mission, or to appreciate that little had changed since the comments made by Justice Pats-Acholonu in the Supreme Court decision in Buhari's unsuccessful 2003 appeal against decision of the election tribunal on the election of President Olusegun Obasanjo:

"The very big obstacle that anyone who seeks to have the election of the President or Governor overturned is the very large number of witnesses he must call due to the size of the respective constituency. In a country like our own, he may have to call about 250,000 – 300,000 witnesses." (*Buhari v. Obasanjo* [2005] 13 NWLR (Pt 941) 298)

The nature of the irregularities, which often involved violence and falsification of results, presented particular difficulties for petitioners. Judges continue to repeat like a mantra, that even in a civil case (such as an election petition), allegations of crime must be proved beyond reasonable doubt, and without more, proceed to hold such allegations unproven, and to dismiss petitions in which such allegations are made, all because of this supposedly higher standard of proof. This unfortunate situation is largely due to a failure on the part of election tribunals to correctly apply the dictum in the celebrated decision of the Supreme

Court in *Ajasin v Omoboriowo* (1984) 1 SCNLR 108, on the 1983 governorship election in Ondo State, that allegations of crime can and should be severed from proof of the number of votes validly cast and collated.

In a few cases, rather than order a fresh election, the tribunals have set aside the result declared by INEC and upheld the petitioners' contention that they ought to have been declared the winner of the election. Notable cases include those won by Adams Oshiomole of the Action Congress, and Onyeama Ugochukwu of the Peoples Democratic Party in the Edo and Abia State governorship elections respectively, as well as Usman Abubakar in the Benue South senatorial election, seat of Senate President David Mark. In each case, the winner declared by INEC remained in office, taking advantage of section 149(2) of the Electoral Act. However, Governor Theodore Orji of Abia State successfully appealed against the election tribunal's decision that he was disqualified from contesting the election. The appeals of Governor Oserheimen Osunbor of Edo State and the Senate President are still pending, and there is growing disquiet at the failure to constitute a panel to hear Osunbor's appeal.

Even if the Court of Appeal upholds the reversal of the pending cases, it is clear that even the most willing adjudication system could not cope with the extent of electoral fraud that occurred during the last elections under the law as it stands at present. While many recommendations for electoral reform are rightly looking at the conduct of elections themselves, others are also making proposals that would ease the burden on election petitioners. Indeed, one measure of the effectiveness of the electoral reform process will be the extent to which it is able to address the perceived unfairness in the current means of resolving electoral disputes. Failure to address this issue may leave dissatisfied candidates and voters unwilling to remain 'pacifist' and take their grievances to the courts, and instead, result in the sort of post-election violence that has been seen in a country like Kenya, where there was no pre-existing confidence in the judiciary. That Nigeria faces this danger in future elections is an indication of how far short of the earlier popular perception of an independent and activist judiciary the election tribunals have fallen. It underlines the fact that many of the hailed decisions of the pre-election period came from the Supreme Court, and not from the Court of Appeal which, as the only and final destination for appeals from all the election tribunals apart from the Presidential, has shown a much more conservative pro-incumbent/declared winner face, despite some celebrated exceptions. ■

(*Bayelsa Re-run election: continued from page 1*)

By 1 pm on Election Day, less than 10% of the registered voters at the polling stations visited within the state capital had voted. Turnout was extremely low. Most people interviewed attributed the poor turnout to the frustration suffered by voters due to INEC's failure to commence the process on time, which made them stay away from the polling stations.

According to reports from NDI partner organizations that observed the election in other parts of the state, sorting of ballot papers started as early as 1.30 p.m. in Polling Unit 14 of Ward 7 in Igbainwari, Opokuma clan in Kolokuma/Opokuma Local Government Area of the state well ahead of the stipulated closing time. When asked why they had started sorting ballot papers before time, the presiding officer said: "Nobody is coming here again to vote and so, we have started sorting out the ballot papers. But if anyone comes now to vote, there is no problem; we will still allow the person to vote since it is not yet time for us to close for the day." ■

## INEC AND THE ELECTION TRIBUNAL VERDICTS

**A**s several high-profile election tribunal decisions set aside election results from the April 2007 elections, the Independent National Electoral Commission has come in for a great deal of comment and criticism. Apart from the Commission's own response, most reaction has seen the decisions as vindication for the damning reports on the April elections by most national and international election observers.

The fact that as many as ten of the governorship results announced by the Commission have been set aside, with several elections to the national and state legislatures also reversed or annulled, seems to support the view that INEC has been tried in the balance of the election tribunals and has been found wanting. Moreover, since the burden of proof on a petitioner challenging a declared election result is so high that many either declined to try or were unable to meet the stringent front-loading requirements for election petitions, or – having filed their petitions – were unable to sustain them to the high standard demanded by the election tribunals, it can be assumed that the seemingly high number of cancelled election results represents only the tip of the iceberg.

Closer examination of the decisions of the election and appeal tribunals however, shows that the truth lies somewhere between the songs of self-exoneration from the Commission and the total failure denounced by many observers. Two of the gubernatorial elections were set aside as a result of Supreme Court decisions: in Anambra State, the Court held that Peter Obi, having been sworn in as governor only in 2006, still had three years to complete before there could be any election to his seat. The election of 'Andy' Uba as Governor of Anambra State was therefore set aside. INEC can properly be blamed for insisting on conducting this election in the face of clear Constitutional provisions about the length of a governor's term and when it starts to run. But the Commission was not alone in its failure to understand that there is no fault if, in a federation, elections are not all conducted at the same time.

The second election (of Celestine Omeha as Governor of Rivers State) was set aside by the Supreme Court because it held that the rightful candidate of the Peoples Democratic Party (which had won the election) was Rotimi Amaechi, and promptly installed him as governor. The fault here is not INEC's, but the PDP's, since the party ignored its own rules to present Omeha as its candidate in place of Amaechi, who had won the party primary.

Several election results were cancelled because candidates were omitted from the ballot papers. INEC had taken the bold decision to print ballot papers that would be specific to each individual election. Thus if an election to a State House of Assembly constituency had only six candidates, the ballot paper would reflect only those six candidates. But in some elections, candidates were left off the ballot paper, or – as in Adamawa State – INEC declared on the eve of the election that the Action Congress candidate was disqualified, and crossed out his name and party symbol on ballot papers handed to voters. The most notorious case where the INEC proposed to apply this practice of not including disqualified candidates on the ballot paper was the presidential election where, until Monday the 16<sup>th</sup> of April 2007, the law as interpreted by the Court of Appeal, was that the Commission had power to disqualify candidates. While the Supreme Court's decision on that day was able to save the day (to a limited extent) for (then) Vice President Atiku Abubakar, it came too late for those disqualified from the state elections. But those excluded from the April 14<sup>th</sup> state elections were able to bring and succeed in petitions that complained of their having been excluded on

the basis of INEC's now non-existent power to disqualify candidates.

Up to the 16<sup>th</sup> April however, INEC was not only entitled to, but obliged to adhere to the law as interpreted by the Court of Appeal. It is therefore wrong to see the reversal of those decisions as an indictment of INEC.

What INEC *can* be blamed is for the negligence that saw several candidates excluded from the ballot paper simply because the Commission did not have its own records straight, and chose to keep the form of the ballot papers secret, instead of showing specimens to the parties and candidates, or for that matter, the electorate! An-



*INEC poll workers at a polling station in Yenogoa*

other error highlighted by some of the tribunal decisions was INEC's failure to adhere to the deadlines for nomination of candidates. Last-minute substitution of names, which resulted in the reversal of declared results, was entirely the Commission's fault. Candidates of the ruling party, the PDP, were particularly badly affected by this predilection which, in Ondo State, left two people contending that they had won an election.

Many of the April 2007 elections of course, were marred by violence and electoral fraud of various kinds. Although in some cases election results have been set aside because of violence, it is notable that the Commission itself cancelled very few results because of such violence, despite having declared that it would operate a 'zero tolerance' policy towards electoral violence and would cancel the results of any area where violence marred the elections. Indeed, not only did the Commission fail to cancel most of such results, even where its own staff were brutalized or threatened; in the cases where defeated candidates were able to mount a challenge to the results on the ground of such violence, INEC's lawyers were more often found supporting the result!

Equally egregious were the cases where INEC declared a result where no election had been held at all. While the proof of this proved surprisingly difficult for petitioners in several cases, in others – for example senatorial elections in Benue State – the tribunals accepted that the results declared by INEC must be false because no election was conducted where it had somehow managed to produce a result. The embarrassing situation where the Commission certi-

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(... ERC Retreat continued from page 1)

Members of the Committee, led by its Chair, Justice Mohammed Lawal Uwais, attended the retreat. The United States Ambassador to Nigeria, Hon. Robin Sanders, graced the opening ceremony, which started with an address by NDI Country Director, Prof. Robert Nakamura. He noted that NDI had decided to organize the retreat because of its commitment to assisting Nigeria's democratic process to attain strength and acceptability. Reminding the Committee of its responsibility, Prof. Nakamura said that "organizing people to participate in the democratic affairs of the country is crucial to the ERC's task."

In his own opening remarks, Justice Uwais thanked NDI for its support noting that through the assistance, the Committee "... have experts to talk to us about their own electoral systems and to explain the good sides and the bad sides of the systems, just to help us in knowing any differences." He said that despite the Committee's commitment to ensuring that Nigeria has a credible and sustainable electoral process, there had been "... some criticisms from the opposition parties that we were set up to interfere with the course of the electoral tribunals ..." but that

"... as a lawyer, I know that could not be true. Judges are trained to listen to series of evidence adduced before them. They are not to be influenced even by their own views, not to talk of what is presented before a committee like ours. We decided to work silently to get memoranda from the general public and also organize a retreat, and we have made arrangements to reach out to the public for more memoranda. ... After the elections, about 1,200 petitions were filed at the election tribunals and the Committee approached the president of the court of appeal demanding the list of the judgments delivered so far and we have received over 300 judgments which we want to look at and see how the whole thing went."

On whether the Committee would complete its assignment by August, Justice Uwais said:

"We are working on what we have been asked to do for the country. We want to see how far we can go by August when the committee will have spent one year. If we are not able to complete the work, we would approach Mr. President in the middle of the way, explain our difficulties to him and see whether it is necessary to have an extension of period."

In her goodwill message, US Ambassador Hon. Robin Sanders expressed the desire of the US government to support the democratic process in Nigeria, and urged the Committee to ensure that Nigeria has a truly independent electoral commission. She called on the Committee to use its assignment to boost the confidence of Nigerians in the electoral system.

In the presentations that followed, Professor Deysine spoke on Types and Modes of Proportional Representation in Global Democratic Practice, explaining proportional representation as an electoral system that ensures that voters have a fair representation in parliament equal to the proportion of their votes.

Speaking on Regional Perspectives of Proportional Representation, Honourable Djrekpo traced the history of proportional representation to Victor D'Hondt of Belgium, who had devised the system in the

19<sup>th</sup> century. He discussed the different forms of the system: the Party-list, Closed list and Open list, noting that the Republics of Benin and Niger used the Closed list system for parliamentary elections. He said that under the Nigerien system, the law requires that minority ethnic groups must be represented in the legislature, while political parties are obliged to have at least 10% female candidates on their list of candidates.

In his presentation on International Best Practices for Appointing Electoral Bodies and International Best Practices for Political Party Representation in Election Administration Prof. Ulloa listed different ways in which Electoral Management Bodies (EMBs) can be legitimately constituted: non-partisan, multi-partisan, or a mixture of both, noting that the type chosen determines the extent to which political parties and candidates are involved. In non-partisan EMBs, political parties and candidates have no representation, and their members are there in their capacity as election administrators, trusted public figures, election experts, or other professionals seen as impartial and independent of political powers. However, countries that have experienced difficult transitions, particularly from authoritarian rule to multiparty democracy, have often opted for the multiparty or partisan EMBs because the fight against authoritarianism in such countries may have polarized society and made it difficult to find public figures widely accepted as 'independent' to serve on the EMB. Multiparty EMBs comprise a mixture of political party nominees and may also include some technocrats, such as judges, academics, and career public servants. Some electoral legal frameworks specify that mixed EMBs should be drawn partly from independent experts and partly from nominations by political parties, in order to merge the advantages of both models and produce an even-handed body that has both political party buy-in and transparency in operations.



*Electoral Reform Committee Chair, Justice M.L. Uwais and participants at the Retreat*

The retreat also benefited from the input of M. Ide Amadou of the Republic of Niger's Interior Ministry, who gave a detailed description of how the proportional representation system works in that country. Working sessions at the retreat were moderated by Dr. Chris Fomunyoh, NDI's Senior Associate for Africa who had come from NDI's Washington headquarters, Professor Etannibi Alemika of the University of Jos, as well as Ayo Obe and Machill Maxwell of NDI's Elections Team in Abuja.

At the end of the retreat, Dr. Jibrin Ibrahim, a member of the ERC, thanked NDI for its support, saying that members had learned a great deal from the retreat, and that it would help them immensely as they embark upon public hearings, and in making their final recommendations to government ■

## PROPORTIONAL REPRESENTATION AND NIGERIA

One of the recurring themes among the proposals for improving Nigeria's electoral system is the proportional representation system of allocating seats. As simple as the term proportional representation (PR) may appear, its definition is often ambiguous and thus prone to misunderstanding. Simply put, proportional representation is an electoral system in which seats are allocated to each political party in proportion to the votes cast in its favour. For instance if there are 100 available seats in the legislature and a party wins 40% of the votes in the election, it would get 40 seats. This contrasts with the 'first past the post' system, where a winning candidate may secure a legislative seat with as little as 20% of the vote or less, depending on the number of candidates.

The PR system for allocating seats was devised by Victor D'Hondt, a Belgian lawyer, politician and mathematician who believed that a representative body, such as the legislature, should reflect the overall distribution of the public support for each political party. The PR system is practiced in Niger, Benin, South Africa, Belgium, Spain and a several other countries in different forms. All the variants of the PR system have two basic characteristics: first, they use multi-member districts whereby instead of electing one member of the legislature in each small district, PR uses much larger districts that elect several members at once. Second, the number of candidates who win the seats in such multi-member districts is determined by the proportion of votes a party receives. The most common applications of PR are the 'party list' and the 'mixed member' systems.

Proponents of PR believe that it properly reflects the voters' choices, and provides fair representation and inclusiveness to all political parties participating in an election. It builds both the confidence of comparatively weak political parties and that of voters, by ensuring that their votes count.

While PR has many advantages, its disadvantages, particularly with regard to Nigeria, should not be overlooked. Although political parties

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*(INEC and Election Tribunals...continued from page 4)*

fied three different sets of results for the presidential election may not have attracted the censure of the Court of Appeal, but most observers found the Commission's attempts to explain the three sets away certified true copies of presidential election results risible and unworthy of the seriousness with which the errors exposed ought to have been addressed.

There is no doubt that the April 2007 elections were conducted very poorly across the country, and the Commission's failure to understand that the inability of election tribunals to address all the faults that were observed by Nigerians during the elections is not because there were no faults, is deeply disturbing. The somewhat petulant response observed in the re-run elections, where INEC printed ballot papers with the symbols of all parties, rather than correcting its administration and printing ballot papers with only the candidates, but *all* the candidates, or showing specimens to candidates before the election, suggests that the Commission has not understood that it must improve its performance. It continues to award itself a high pass mark and reiterate that 'no election is perfect', without understanding that it should at least aim at perfection, rather than congratulate itself for setting an ever lower benchmark. Nonetheless, it is equally important for INEC's critics to understand those issues for which it was responsible, and can properly be blamed, and those for which, even though the results have been set aside, the responsibility lies elsewhere. ■

## NDI PARTNERS UNIFY ELECTORAL REFORM POSITIONS

In line with the National Democratic Institute's continuing efforts to facilitate sustainable electoral reform in Nigeria, a roundtable consultation was organized for its key civil society partners (Nigerian Bar Association, Labour Election Monitoring Team including the Nigeria Labour Congress and the Trade Union Congress and Transition Monitoring Group) in Jos. The objective was to achieve common ground on which to move forward on electoral reform.

The highly interactive consultation was held from May 8<sup>th</sup> – 9<sup>th</sup>, 2008, and was well received by the partners. Coming as it did, immediately after the retreat held for the Electoral Reform Committee (ERC), the consultation was quite informative. Although the NLC could not be present because the date of the consultation clashed with its anti-corruption rally in Abuja, its memorandum was taken into account, while the TUC held the fort for Labour.

International elections expert, NDI's Haiti Country Director, Professor Felix Ulloa, was present to give an international perspective on electoral reform and how it has been achieved across the Americas, in particular, in Latin American countries such as Mexico, Bolivia, Peru, El Salvador and others. He also shared perspectives drawn from his experiences as a member of the Supreme Electoral Tribunal in his native El Salvador.

The memoranda submitted by the NBA, NLC and TMG to the ERC were studied critically, and the salient points from each were extracted. Common themes were then brought out from these memos, as shown in the table opposite. After extensive discussion, participants were able to agree on ten points which they believe must be addressed if there is to be any genuine reform of the electoral system, and for which they will campaign both during the ERC's deliberations, and the legislative process which must follow the ERC's recommendations. The points are;

### 10 Cardinal Points for Electoral Reform

1. **AUTONOMY (REORGANIZATION) OF INEC**  
Points 1- 6
2. **UNBUNDLING OF INEC**  
Points 8, 11 and 16
3. **ELECTION DISPUTES**  
Points 12, 13 and 20
4. **VOTERS' REGISTRATION**  
Point 7
5. **ELECTORAL SYSTEM:**  
Point 10
6. **TIME FOR HOLDING ELECTIONS**  
Point 9
7. **ELECTION RESULTS**  
Points 17 and 19
8. **RIGHT TO MONITOR ELECTIONS**  
Point 15
9. **PROSECUTION OF ELECTION OFFENCES**  
Point 14
10. **TRANSPARENCY IN INEC**  
Points 18 and 19

*See table opposite*

## ELECTORAL REFORM ISSUES

	Line Items	NBA, NLC & TMG Memoranda	Comments
1	INEC Funding	A First Line Charge on the Consolidated Revenue Account	
2	Composition of INEC Board	a) Multi-stakeholder membership b) Gender balanced	To include Political parties, professions, labour, civil society etc.
3	INEC Chair	INEC should elect and discipline its own Chair	
4	INEC <i>ad hoc</i> staff	List of <i>ad hoc</i> staff to be published <i>Ad hoc</i> staff must be adequately trained	Professions, labour, civil society etc. can nominate volunteers for <i>ad hoc</i> election duty
5	INEC permanent staff	INEC should have power to recruit and discipline its own staff	
6	Resident Electoral Commissioners (RECs)	To be appointed by, INEC, accountable to and disciplined by INEC	
7	Voters Register	To be computerized, biometric-based. To be posted on INEC website	Only limited details to be published on INEC website
8	Constituency delineation	INEC to work with the National Population Commission and the National Boundaries Commission	
9	Time for holding elections	At least 6 months ahead of the expiration of the incumbents' tenure	
10	Preferred Voting/Election system	30% of legislative seats to be filled by proportional representation 70% Majoritarian Single Member Constituencies	The 30% should ensure that Labour, Women, Youth, Persons with Disabilities etc. are represented
11	Political Parties	INEC should recognize coalitions among political parties	
12	Time limit for resolution of Election Petitions	a) No time limit b) While petition pending, no certificate of return should be issued	To speed up procedure and encourage early judgments
13	Burden of Proof in Election Petitions	To be on INEC: Burden of proof to be on balance of probabilities in all matters, whether or not a crime is disclosed	Objective is to speed disposal of petitions. Where crime disclosed, it should be referred to Electoral Crimes Commission for prosecution
14	Prosecution of electoral offences	Election Crimes Commission to be established	Chief Justice of Nigeria should appoint the members
15	Election Monitoring	Right of Nigerians to monitor elections to be guaranteed	
16	Registration of Political Parties	Political Party Registration Commission to be established	To register, regulate, monitor activities including financing Part of the unbundling of INEC and to avoid the current situation where INEC is supposed to be overseeing political parties at the very time when it should be concentrating on preparing for elections
17	Publication of Election Results by INEC	Election results to be posted at polling stations and transmitted and displayed at constituency and INEC Headquarters	Results must be transmitted immediately they are declared at polling station & the media are free to publish the individual results, and collate totals as results emerge so that the process is more transparent.
18	Ballot Papers	INEC must make specimen ballot papers available to parties before voting day	This is to prevent a situation where candidates are omitted from the ballot, or different treatment of candidates (e.g. some with photographs, others without)
19	Transparency in INEC	INEC meetings should be open to the public.	While security should be maintained, INEC's habit of secrecy and selective release of information, as well as opacity in award of contracts must be challenged
20	Custody of Election Materials	After results declared, Election materials to be placed in the custody of the State Chief Judge	These must include forms accompanying election materials, used & unused ballot papers & result sheets

(Proportional Representation ,,,continued from page 6)

are given a fair chance at representation, their lack of proper structures and weak internal democracy may impede the successful implementation of an effective PR system. There are other factors to be considered: political parties may get a shot at inclusion, but since politics in Nigeria continues to be driven by ethnic and religious interests, special provision would need to be made if ethnic minorities, vulnerable and marginalised groups are to have a stake in the process of representation. Moreover, in a country which has found it difficult to count and return genuine results in a simple 'first past the post' system, voters would need a great deal of reassurance, and the electoral management agency a great deal of transparency and basic logistical capacity if the PR system is to deliver.

Is PR a viable option for the Nigerian political environment? For a PR system to be introduced, both the 1999 Constitution and the Electoral Act would need to

be reviewed. In addition, guidelines should be drawn up for political parties to follow in determining who their candidates are and the method for their selection.

PR is one of the many proposed reforms to the Nigerian electoral system. If the goal in introducing it is to more accurately reflect the votes cast by the electorate, then the biggest hurdle will be in improving the logistical capacity of the electoral management body to carry out the task of enabling voters to vote and accurately counting the votes cast. But if the goal is to satisfy disgruntled or disruptive elements in the political class, without fundamental re-orientation of politicians in particular and the nation in general, it may prove a struggle to achieve the overarching goal of a transparent and efficient electoral system that engenders truly democratic principles■



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## HUMPHREY NWOSU: FROM CANONIZATION TO DEMONIZATION

FROM NDI

The decision of Professor Humphrey Nwosu, Chairman of the defunct National Electoral Commission which conducted elections under the transition to civil rule programme of the Ibrahim Babangida-led military dictatorship, to write his account of the June 12, 1993 presidential election, has exposed him to a barrage of criticism. The book: 'Laying the Foundation for Nigeria's Democracy: My Account of June 12, 1993 Presidential Election and its Annulment', was presented to the public on the 12<sup>th</sup> of June 2008. In interviews leading up to the book launch, Nwosu gave the impression that the book would reveal some new facts about the June 12<sup>th</sup> election and its annulment. His failure to do so, coupled with the perception he was absolving Babangida of guilt for the annulment have led many to dismiss the book and its contents as an exercise in whitewashing the image of the ousted dictator. Accused of cowardice for only now announcing the results of that election and writing his book, questions have been asked about why Nwosu should have bothered to do so fifteen years after the election, when the winner, Bashorun M.K.O. Abiola, is dead and buried.

For his part, Nwosu proudly asserts:

"Undoubtedly, the June 12, 1993 presidential election was adjudged by both national and international observers as the freest, fairest, and most peaceful election in Nigerian history."

As is often the case, the truth lies somewhere between the previous canonization and the present demonization. Perhaps more attention ought to have been paid by those asking why Nwosu decided to write the book now, to the reason that he himself gave, namely that he made that decision when President Umaru Yar'Adua declared, upon assuming office, that electoral reform would be part of his seven point agenda.

In other words, the primary purpose of the book is not to offer fresh revelations, denouement or denunciation.

Rather, it was written to assist the task of electoral reform, by highlighting those matters that contributed to the success (up to the point when it was aborted) of the Babangida transition program.

Those who praise the June 12 election often overlook factors such as the imposition of the two party system and that the elections were part of the transition organised by a military dictatorship which was free to re-draw the boundaries and make up fresh rules more or less as it went along. Organising credible elections under a military dictatorship is a great deal easier and less complicated than performing the same task under a civilian incumbency. Indeed, much of the disappointment with the elections conducted under the Olusegun Obasanjo civilian administration stems from the memory of the transition elections he conducted as an outgoing military dictator in 1979, where, although the result of the elections was challenged, the issue at stake was the interpretation of the two-thirds of the 19 states requirement, not basic questions about whether the number of votes cast had been 50 or 500 or 5,000!

Nwosu's book however, has some important lessons about the approach of his own election management body to the conduct of elections. As he notes:

"Adequate organizational, logistical and security facilities were put in place to enhance the conduct of free and fair elections. No opportunities were allowed for stuffing of ballot boxes with fake ballot papers. Electoral results were not written before the election. Real human beings voted ... Electoral outcomes and results were collated with dispatch..."

The debate about whether the number of political parties should be limited will again be a live issue as Nigerians await the result of the deliberations of the Electoral Reform Committee. Whether or not the political engineering that informed the Babangida transition is still relevant to today's Nigeria, Nwosu's book at least shows that as far as an electoral management body is concerned, there are important lessons to be learned and examples to be drawn about logistical competence in organizing elections. It would be a tragedy if the country were to reject those lessons and examples just for the sake of trying something different■