

What Approach for Civil Society Groups on Pending Electoral Amendment Bills

Introduction

Civil society groups and organizations are agreed that a good electoral and constitutional framework is crucial to the actualization of clean elections in Nigeria. This informs and continues to inform the engagement of civil society groups and organizations with the electoral process. In 2015, general elections will be conducted to elect a new set of leaders to pilot the affairs of the country for the next four years. Given the configuration of forces and the near balance of force and terror in the country, civil society groups and organizations must stand firm to make sure that the Independent National Electoral Commission conducts credible elections and that all the major stakeholders in the electoral process conduct their activities in accordance with the law and the constitution. Civil society groups and organizations must therefore be vigilant and make sure that the constitutional and legal framework for the conduct of election are certain and in place within a reasonable time to enable the major actors in the political process perfect their art with certainty.

Amending the Electoral Act and the Constitution

Civil society groups and organizations have continued to play a commanding role in the process of electoral and constitutional amendments. The process of amending the constitution and the electoral act has a long history. The Constitution of the Federal Republic of Nigeria, 1999 came into force on the 5th day of May, 1999. This was through the instrumentality of Decree No. 24 of 1999. The Federal Military Government conducted the 1999 elections using the said Decree and President Olusegun Obasanjo emerged as the President and sworn in on the 29th day of May 1999.

On the coming into force of the 1999 Constitution, the Federal Government on October 19, 1999 set up the Presidential Technical Committee on the Review of the 1999 Constitution which received memoranda from the public, organized public hearings and submitted its report to the government in February 2001. The government processed the report into ***A Bill for An Act to provide for the Amendment of the Constitution of the Federal Republic of Nigeria; 1999 and for Purposes Connected Thereto.*** The National Assembly did not pass the Bill till their tenure expired in 2003

On the 30th day of October 2003, the National Assembly set up the ***Joint Committee on the Review of the 1999 Constitution while on the*** 21st day of February 2005, the Federal Government set up the **National Political Reform Conference**. Both efforts at reform existed side by side and in September 2005, the National Assembly harmonized its report and presented for first reading ***The Constitution of the Federal Republic of Nigeria 1999(Amendment) Bill, 2006.*** Both efforts did not materialize on the expiration of the tenure of the Executive and the legislature in 2007.

On the 27th day of August, 2007, the President Umaru Musa Yar Adua set up the Electoral Reform Committee with the following terms of reference:

- a. 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
- b. Examine relevant provisions of the 1999 Constitution, the Electoral Act, and other legislation that have bearing on the electoral process and assess their impact on the quality and credibility of general elections.
- c. 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 Organisations, Media, General Public and the International Community.

- d. Examine electoral systems relevant to Nigeria's experience and identify best practices that would impact positively on the quality and credibility of the nation's electoral process.
- e. Make general and specific recommendations (including but not limited to constitutional and legislative provisions and/or amendments) to ensure:
 - i. A truly independent Electoral Commission imbued with administrative and financial autonomy;
 - ii. An electoral process that would enable the conduct of elections to meet acceptable international standards;
 - iii. Legal processes that would ensure that election disputes are concluded before inauguration of newly elected officials; and
 - iv. Mechanisms to reduce post-election tensions including possibility of introducing the concept of proportional representation in the constitution of governments.
- f. Make any other recommendations deemed necessary by the Committee

The Electoral Reform Committee concluded its assignment and in December 2008 submitted its report to the President of the Federal Republic of Nigeria and made key recommendations aimed at improving the constitutional and electoral framework of Nigeria.

Thereafter, the Federal Executive Committee set up a Committee to draw up the Federal Governments position on the report. The first Committee

headed by the Minister of Defense Dr. Mustapha accepted almost all the recommendations of the Electoral Reform Committee. A second Committee headed by the Attorney General of the Federation Michael Andoakaa rejected a substantial number of the recommendations of the Electoral Reform Committee and the report of the White Paper Committee.

Finally, the Federal Executive Council and the Council of State accepted proposals relating to independent candidature, the setting up of a Political Parties Registrations and Regulatory Commission; the setting up of an Electoral Offences Commission; additional conditions for the registration of political parties; the re-establishment of the Centre for Democratic Studies; the amendment of the Police Act; the amendment to section 153 of the Constitution and its re-designation as ***Establishment of Certain Executive Bodies for the Federation and the*** re-organization of the States Independent Electoral Commission and their integration into one central electoral management body. The Council of State rejected the re-integration of the States Independent Electoral Commission into one central election management body.

On the 29th day of April 2009, the President of the Federal Republic of Nigeria forwarded six bills to the National Assembly for promulgation into law. The bills include the following:

1. *A Bill for An Act to Amend the Independent National Electoral Commission Act CAP 15 LFN 2004 and for Other Matters Connected Thereto.*
2. *A Bill for an Act to Alter the Provisions of the Constitution of the Federal Republic of Nigeria 1999 and for Other Matters Connected thereto.*
3. *A Bill for an Act to Establish the Electoral Offences Commission and for Other Matters Connected Therewith.*

4. *A Bill for An Act to Establish the Centre for Democratic Studies and Other Related Matters*
5. *A Bill for An Act to Further Amend the Police Act 1967 CAP P 19 2004 LFN and for Other Matters Connected Therewith.*
6. *A Bill for an Act to Establish the Political Parties Registration and Regulatory Commission and for Other Matters Connected Thereto.*
7. Later another Bill for an *Act to Alter the Provisions of the Constitution of the Federal Republic of Nigeria 1999 and for Other Matters Connected thereto(Third Amendment) was also forwarded.*

The National and State Assemblies concluded work on the 1st amendment to the Constitution of the Federal Republic of Nigeria in accordance with the provisions on the alteration of the Constitution as spelt out in section 9 of the Constitution. The National Assembly claimed that the alteration had come into force having been passed by both Houses of the National Assembly and endorsed by 2/3rds of all the State Houses of Assembly. .

However, a Federal High Court sitting in Lagos and presided over by Hon. Justice Okechukwu Okeke in a suit filed by Olisa Agbakoba former President of the Nigerian Bar Association held that the 1st amendment was inchoate without Presidential assent.

The National Assembly appealed the ruling of the Federal High Court and within the same period amended the 1st amendment to bring about a 2nd amendment to the Constitution.

However, on the 10th day of January 2011 the National Assembly forwarded the 1st and 2nd amendment to the Constitution to the President for his assent. The President assented to both documents on the same

day. There are key issues in the 1st amendment to the Constitution. They include the following provisions and sections:

1. Section 135(2)(c) which provides that in the determination of the four year term, where a re-run election has taken place and the person earlier sworn in wins the re-run election, the time spent in the office before the date the election was annulled, shall be taken into account
2. Section 145 (1) and (2) which provides that whenever the President is proceeding on vacation or is otherwise unable to discharge the functions of his office, he shall transmit a written declaration to the President of the Senate and the Speaker of the House of Representatives to that effect, and until he transmits to them a written declaration to the contrary, the Vice President shall perform the functions of the President as Acting President. In the event that the President is unable or fails to transmit the written declaration within 21 days, the National Assembly shall by a resolution made by a simple majority of the vote of each House of the National Assembly mandate the Vice President to perform the functions of the office of the President, as Acting President, until the President transmits a letter to the President of the Senate and Speaker of the House of Representatives, that he is now available to resume his functions as President.
3. Section 228 which provide that the National Assembly may make rules to provide for guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of party primaries, party congresses and party conventions.
4. Section 132(2) and its corresponding sections which provide that an election to the office of the President shall be held on a date not earlier than 150 days and not later than 120 days.

5. The 2nd amendment amended section 132(2) and its corresponding sections to read that the said elections shall be held on a date not earlier than 150 days and not later than thirty days.
6. The 1st amendment made the Court of Appeal as the Court of first instance in Governorship election petitions.
7. The 2nd amendment reversed the earlier position and made the Governorship Election Tribunal the Court of 1st instance while appeals go to the Court of Appeal and to the Supreme Court.

The third amendment to the Constitution brought into being the National Industrial Court of Nigeria as a Court of record.

The Electoral Act, 2010(August 2010)

On the 16th day of August, 2010 the National Assembly enacted the Electoral Act, 2010. On the 20th day of August 2010, the President of the Federal Republic of Nigeria assented to the Electoral Act, 2010.

The Electoral Act 2010 repealed the Electoral Act, No. 2 of 2006 and the Independent National Electoral Commissions Act, Cap 15, Laws of the Federation of Nigeria, 2004 and enacted the Electoral Act, 2010 to regulate the conduct of Federal, State and Area Council Elections.

On December 29, 2010 the National Assembly amended the Electoral Act, 2010 to among other things provide adequate time for the Independent National Electoral Commission to issue notices, receive nomination of candidates from political parties and ensure the proper conduct of political parties.

On the 25th day of January 2011 the National Assembly further amended section 9(5) of the Electoral Act, 2010 to provide more time for the

Independent National Electoral Commission to conclude the registration of voters for the April 2011 elections.

Fundamental Issues in the Electoral Act, 2010(as amended):

1. By the provisions of section 85 of the Electoral Act, 2010 a Political Party wishing to conduct any convention, congress, conference or meeting for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any elective office specified in the Act, **shall** give the Independent National Electoral Commission **21 days notice**.
2. By section 87 of the Act, the nominations of candidates for elections shall be through primaries. The procedure for election to the various positions shall be by **direct or indirect primaries**. A party that adopts the procedure of direct primaries shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.
3. In the case of Indirect Primaries, a Presidential candidate can only emerge through a **Special Convention** in each of the 36 States of the Federation and the Federal Capital Territory, where delegates shall vote for each of the aspirants at designated centres in each State capital on specified dates. Thereafter, a **National Convention** shall be held for the ratification of the candidate with the highest number of votes. The aspirant with the highest number of votes shall be declared the winner and his name forwarded to the Independent National Electoral Commission.
4. **Special** Congresses shall also be held in the case of Governors, Senatorial, House of Representative and House of Assembly aspirants in the Local Government Areas for Governors and in the Senatorial Districts, Federal Constituency and State

Assembly Constituency with delegates voting at designated centers.

5. The name of the candidate with the highest number of votes shall thereafter be forwarded to the Commission as the candidate of the Party.
6. Where there is only one aspirant to the positions enumerated in section 87 of the Act, the Party shall convene a Special Convention or Congress at a designated centre on a specified date for the confirmation of such aspirant and the name of the aspirant shall be forwarded to the Commission as the candidate of the Party.
7. By the provisions of section 87(7) of the Act, a Political Party that adopts the system of indirect primaries shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting.
8. Political appointees at all levels are excluded from being voting delegates at the Convention or Congress of any political party for the purpose of nomination of candidates for any election.
9. By section 87(9) of the Act, ***where a Political Party fails to comply with the provisions of the Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue.***
10. An aspirant can however approach the Federal High Court or the High Court of a State to seek redress for violations of the rules for the conduct of Party primaries.

11. Section 87(11) outs the jurisdiction of Courts to stop the holding of primaries or general election under the Act pending the determination of the suit.
12. By section 31(1) of the Act, every Political Party shall not later than 60 days before the date appointed for a general election under the provisions of the Act, submit to the Commission in the prescribed forms the list of the candidates the party proposes to sponsor at the elections.
13. A nominated candidate may by notice in writing signed by him and delivered by himself to the political party that nominated him for the election withdraw his candidature and the political party shall convey such withdrawal to the Commission not later than 45 days to the election.
- 14.** By section 9(5) of the Electoral Act, 2010 the registration of voters, the updating of the voters register and the revision of the said register shall stop not later than 60 days before the date appointed for general elections.
15. **S**ection 25(1) of the Electoral Act, 2010 provides that "Elections into the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the Houses of Assembly of each State of the Federation shall be held in the following order-
 - (a) Senate and House of Representatives;
 - (b) Presidential Election;

(c) State House of Assembly and Governorship elections.

16. Section 65 of the Act provides that after the recording of the results of the election, the Presiding Officer shall announce the result and deliver same and election materials under security to such persons as may be prescribed by the Commission.
17. By section 140(2) of the Act, where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the election tribunal or the Court shall not declare the person with the second highest votes as elected, but shall order a fresh election.
18. By section 141 of the Act, an election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election.

1st Amendment to the Electoral Act, 2010(December 29, 2010)

On the 21st day of December 2010, the National Assembly made some fundamental changes and adjustments to the Electoral Act, No.6 of 2010. The President of the Federal Republic of Nigeria assented to the said amendments on the 29th day of December 2010.

The National Assembly claimed that the further amendment was aimed at among other things to provide time for the Independent National Electoral Commission to issue notices, receive nomination of candidates from political parties and ensure the proper conduct of political parties.

The amendments introduced fundamental changes to the Electoral process. The Act amended 38 sections of the Electoral Act, 2010 in the following order:

1. Amendment of Electoral Act No.6, 2010

2. Amendment of section 3 of the Principal Act
3. Amendment of section 4 of the Principal Act
4. Amendment of section 10 of the Principal Act
5. Amendment of section 15 of the Principal Act
6. Amendment of section 19 of the Principal Act
7. Amendment of section 23 of the Principal Act
8. Substitution for section 25 of the Principal Act
9. Amendment of section 27 of the Principal Act
10. Amendment of section 31 of the Principal Act
11. Substitution for section 33 of the Principal Act
12. Amendment of section 43 of the Principal Act
13. Substitution for section 47 of the Principal Act
14. Amendment of section 77 of the Principal Act
15. Amendment of section 78 of the Principal Act
16. Amendment of section 82 of the Principal Act
17. Amendment of section 85 of the Principal Act
18. Amendment of section 86 of the Principal Act
19. Substitution for section 87 of the Principal Act
20. Substitution for section 88 of the Principal Act
21. Amendment of section 90 of the Principal Act
22. Amendment of section 91 of the Principal Act
23. Amendment of section 94 of the Principal Act
24. Amendment of section 99 of the Principal Act
25. Amendment of section 102 of the Principal Act
26. Amendment of section 108 of the Principal Act
27. Amendment of section 121 of the Principal Act
28. Amendment of section 122 of the Principal Act
29. Amendment of section 124 of the Principal Act
30. Amendment of section 131 of the Principal Act
31. Amendment of section 133 of the Principal Act
32. Deletion of section 134 of the Principal Act
33. Amendment of section 140 of the Principal Act
34. Amendment of section 144 of the Principal Act
35. Amendment of section 151 of the Principal Act
36. Amendment of section 156 of the Principal Act
37. Amendment of section 157 of the Principal Act
38. Amendment of the First Schedule of the Principal Act
39. Citation

The Electoral Act, 2010(December 2010)

- Section 25 of the Act to restore the discretion of the Independent National Electoral Commission to be the sole determinant of the sequence of elections.
- Section 31(1) making it impossible for the Independent National Electoral Commission to reject the list of candidates a party proposes to sponsor and **shall not reject or disqualify candidates for any reason whatsoever.**
- Section 33 of the Act to provide that a political party can only change or substitute its candidate whose name has been submitted to INEC only in cases of death or withdrawal by the candidate.
- Section 43 of the Act to provide that Polling Agent shall be entitled to be present at the distribution of election materials, voting, counting, collation and the announcement of election results.
- Section 78 of the Act to give the Independent National Electoral Commission the power to de-register political parties on the following grounds—
 - a. breach of any of the requirements for registration;
 - b. Failure to win Presidential or Governorship election or a seat in the National or State Assembly election.
- Section 85 of the Act to provide that the Commission may with or without prior notice to a political party monitor and attend any convention, congress, conference or meeting which is convened by a political party for the purpose of:-
 1. Electing members of its executive committees or other governing bodies;
 2. Nominating candidates for an election at any level;

3. Approving a merger with any other registered political party.

- Section 87(4) on the criteria for the nomination of Presidential candidates and inserted that Political Parties shall hold Special Presidential Convention in the Federal Capital Territory or any other place within the Federation that is agreed by the National Executive Committee of the Party as against the previous provision that required that in the case of Indirect Primaries, a Presidential candidate can only emerge through a **Special Convention** in each of the 36 States of the Federation and the Federal Capital Territory, where delegates shall vote for each of the aspirants at designated centres in each State capital on specified dates. Thereafter, a **National Convention** shall be held for the ratification of the candidate with the highest number of votes. The aspirant with the highest number of votes shall be declared the winner and his name forwarded to the Independent National Electoral Commission.
- Section 87(9) of the Electoral Act, 2010 which gave the Independent National Electoral Commission the power to exclude the candidates of political parties that fail to conduct their primaries in accordance with section 87 of the Act was deleted.
- Section 140 of the Electoral Act, 2010 to provide that where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the election tribunal or the Court shall not declare the person with the second highest votes as elected, but shall order a fresh election.

2nd Amendment to the Electoral Act, 2010(January 25, 2011)

On the 25th day of January 2011 and based on the inability of the Independent National Electoral Commission to conclude the registration of voters between the 15th and 29th January 2011, the National Assembly

amended section 9(5) of the Electoral Act and reduced the period when the registration of voters shall stop from 60 days to 30 days before elections.

Civil Society Strategies on Pending Electoral Bills

A creeping resignation and indifference pervades the electoral and constitutional environment. A certain level of fatalistic resignation and electoral fatigue has taken over the psyche of civil society leaders. Some have worked on the same issues for a long period without seeing any tangible or marked improvement in the electoral and constitutional framework. Rather, they believe that the leadership of the country at the executive and legislative levels are not interested in fundamental changes to the electoral framework of the country.

There is no doubt that designing a credible, acceptable and workable electoral and constitutional framework for Nigeria is a huge challenge and getting it right is a good stimulus for democracy. There is no doubt that getting the political elite to clean up their acts, embrace the concept of free, fair and transparent elections anchored on the rule of law and due process is even a bigger challenge and cracking this will boost the practice of democracy.

We must face the facts. The struggle for genuine constitutional and electoral reform will be hard and painful. The road will be slippery and treacherous. People will take public positions that are contrary to their inner beliefs and practices. Some other persons will support electoral reforms in the morning and finance opposition to it in the evening. If we limit our struggles to it, we will then be very disappointed.

We must from the onset situate the current electoral and constitutional difficulties as part of the difficulties of institutionalizing democracy. There are forces that are uncomfortable with constitutional and electoral reform and some of these forces are also uncomfortable with democracy.

There are forces that dread any form of amendment and believe that any form of amendment no matter how innocuous may open a Pandora box that will destabilize entrenched positions and interests. Others believe that unless they wrap their contentious and sometimes controversial projects around issues Nigerians are agreed upon and are passionate about, it will be difficult to achieve their objective as a single item.

Ordinarily, cleaning up the electoral process, guaranteeing a level playing ground for all and assisting the electoral management body deliver elections that meets the expectations of all would be the ideal thing to do.

Civil society groups and organizations must in the light of the calamity that will befall the country if the political elite stubbornly refuse to release their stranglehold on the electoral and constitutional process remain engaged with the constitutional and electoral process. Civil society groups must see the entire electoral and constitutional exercise as a democratic process and continue to demand genuine, comprehensive and credible constitutional and electoral reform anchored on the struggles for democratic and national liberation.

What is to be done?

Civil society approach to the pending Electoral Bills before both Houses of the National Assembly is interlinked with its approach to engagement with the National Assembly and other critical stakeholders involved in or engaged with the Electoral process. Civil society groups must adopt a flexible and multi pronged strategy in research, strategy and advocacy. Our advocacy must take on board that good practice demands that the constitutional and electoral framework for the conduct of elections must be in place at least six months before elections and if this is not in place, any fundamental change has to secure the agreement of key political parties and stakeholders in the electoral process. The race is on and to be in good standing, all the amendments ought to be concluded on or before August

2014. This timeline as well as our strength will define our approach to pending electoral bills.

Understanding the content and Context of the Bills

Civil society groups must collate, document and analyze all the constitutional and electoral reform bills pending before the National Assembly. They must study the private members bills before the National Assembly. They must study the Amendments forwarded to the National Assembly by the Independent National Electoral Commission. They must study the report of the Belgore Committee. Civil Society groups and organizations must also follow the proceedings of the National Conference that is also dealing with various aspects of the electoral and constitutional process. A good understanding of the Bills and a proper analysis of their content and context will make for a rational and informed input into the process of their transmutation. It means that the overriding consideration is to focus on the amendments that are less controversial but have the tendency to impact positively on the electoral process.

What has been achieved?

Over the years, civil society groups and organizations have articulated their position on constitutional and electoral reforms. It is important to document and isolate what has been achieved and what remains undone. It is also important to understand the rationale behind the failure of some of the key demands of civil society groups and organizations. This analysis is crucial for our understanding of how to proceed with the remaining amendments. It is possible that the non passage of some of the issues we are passionate about is a function of skewed advocacy. It is possible that we did not articulate our issues well or that we articulated them aggressively and scared moderate people away.

We must understand the origin of the Bills pending before the National Assembly. If a Bill is from the Executive or from the Independent National Electoral Commission we must study and analyze them to make sure that they are not self serving. If the Bills are Private Members Bills, we must carry out the same surgical analysis to understand the motive of the sponsors and their ideological orientation.

Engaging the Sponsors and movers of the Bills

Sometimes we are too preoccupied with our own spaces and think that we are more passionate and more patriotic than every other Nigerian. There are Nigerians in different facets of endeavor that are passionate and love Nigeria. Some of them are more passionate than us in seeing to a clean electoral process in Nigeria. We should link up with these people, give them support and make available to them documents and other information necessary for the performance of their work. They may in turn become a huge source of information and linkage with other critical stakeholders in the electoral process.

Sharing the Bills with other stakeholders

The task of advocacy and analysis of Bills dealing with the electoral process is a multi stakeholder venture. We achieve more success when we build coalitions around agreed issues. When we privatize advocacy and hoard information relating to the public good, the successes are limited. We should share information among the different stakeholders in the electoral process and by so doing we are likely to achieve more success.

Media Strategies

We must try to domicile the pending Bills with the media and the Nigerian public through robust media engagement and public advocacy. Media strategies in advocacy are important. Framing our messages for advocacy may make or mar the issues we are canvassing.

The Importance of Public Hearings.

Public hearings should not be avenues for grandstanding or media show. We should on no account go for public hearings without getting our facts together. We must make our presentations in a simple manner. Our presentations must never be aggressive. Our presentations must be backed by facts. We must also learn to give in to superior arguments and reasoning.

Simplify the Bills for Advocacy

We must simplify our advocacy documents. We must make our points clear. The advocacy documents should get to the relevant individuals and committees on time. It is also important to identify the groups and organizations that have the necessary entry point into the National Assembly. The groups must also be open and see the field as open for all relevant groups to operate.

Conclusion

It is therefore in the collective interest of the Nigerian people to design a constitutional and electoral framework that meets acceptable national and international standards. In carrying out this design, Nigerians must be careful not to be trapped in the morbid embrace of design at the expense of real political work to get institutions of democracy off the ground and hold persons in public office accountable for their behavior and deeds.

Barrister Festus Okoye

Executive Director

Human Rights Monitor

June 30, 2014