

Electoral Law Reform in Nigeria.. A Critique.

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“Nigeria is like a Limited Liability Company owned by 120 million shareholders. The company's shareholders elect the company's employees at the Annual General Meeting (AGM). Tasks are shared among the elected employees. Tenure of offices are established with a provision for re-election at the next AGM based on performance. The dilemma in Nigeria is that the elected employees have stolen the electoral process. They do not want to go. How will the shareholders reclaim their company?”

Olisa Agbakoba 1

Introduction

The above quotation captures the dilemma of the Nigerian electorates in contemporary times. Political office holders' seldomly wish to leave office, manipulating the electoral process and subverting electoral laws. There are two options open to the Nigerian electorates. The first is to abnegate their rights and tolerate those manipulations. The second is to contest issues with the political leaders and insist on political and electoral reforms that would safeguard their interests. The electoral reforms being articulated centre on the following issues: independent candidacy, membership of political party to contest election, restriction on political party formation, campaign finance, the immunity and overbearing powers of the Independent National Electoral Commission (INEC) and gender question.

This paper is a critique of the electoral reform Bill proposed by INEC to the National Assembly. I argue that the Bill cannot usher in a democratic and participatory electoral system in Nigeria, rather it would perpetuate old values and advantages in the electoral process.

INEC Electoral Draft Bill

In a bid to reform the electoral process, the electoral body, INEC proposed a bill to the National Assembly in 1999. This draft bill is deficient in many respects, which shall be pointed out. First the INEC bill is against the spirit of participatory democracy. Sections 77 and 116 of the draft INEC Bill, as reinforced by sections 7(4), 65(2)(b), 106(d), 131(c) and 177(c) of the Constitution of Nigeria 1999, prohibits independent candidacy in elections. For a vibrant democracy, independent candidates should be allowed.

There are also unnecessary restrictions on the formation of political parties. Section 78 of the INEC draft Bill provides that a political party must have branches in at least two-thirds of the states of the federation including the federal capital territory, Abuja. This is an unnecessary restriction as regards party formation. This provision should be deleted.

Scrutiny of records for the true source of finance for campaigns is important. It is not enough as stated in Section 100 of the draft Bill that the audited account submitted to INEC after being countersigned by the party leader be accepted. The fine of N10,00 as limit for party donation by individuals is 100 little. This provision should accommodate higher funding levels and stricter penalties laid down for defaulters for the set limit. As the draft Bill is now, "money bags" could still hijack the electoral process by floating the campaign finance limit with impunity.

INEC should be open to judicial review. Section 79 of the draft stipulates that the decision of the commission as to which party to register is final. This could turn INEC into an autocratic "empire". It should be possible for an aggrieved party to question INEC's verdict and have access to fair hearing.

The electoral Bill submitted by INEC has sexist language, which is unacceptable in a modern society. For instance, Section 114 of the draft bill providing for the offices of Chairman and Vice Chairman is to say the least not gender - sensitive. It would have been better if the Bill mentioned the offices of Chair Person and Vice Chair Person.

The words, "recognition" and "registration" are used interchangeably in the draft Bill with regard to political parties. Section 40 talks about recognition, while Sections 15 (b) is about registration. It is important to limit the power of INEC to recognition.

INEC seems to have too many powers. In Sections 86, 87,88,89, 90 etc INEC gives itself extensive powers:

Section 86: Every registered political party shall give INEC at least seven days notice of any convention, conference or meeting for the purpose of electing members of the executive committee.

Section 87: A political party cannot change its registered name without the approval of INEC.

Section 88: Every political party must renew its registration on or before 31st December following every presidential election. The fee to be paid shall be prescribed by INEC, failure to comply leads to disqualification.

Section 89: Political party symbols must be approved by INEC.

Section 90: For two or more political parties to merge, strict requirements must be met for the commission to approve it.

In the spirit of our nascent democracy, the above sections should be deleted. On Local Government Autonomy, the imposition in Section 122 of the draft Bill of three

years' tenure for Area Council Representatives is unacceptable. This is at variance with the tenure for Governor and President of Nigeria, which is four years.

The INEC Bill has many constitutional infringements. On party registration requirements, Section 78 of the draft Bill contradicts Section 222 of the constitution. Section 222 provides the following requirements viz., party constitution, open membership, structure, name/logo/symbols not to have ethnic connotation, Headquarters at Abuja, names and addresses of National officers to be registered at Abuja. INEC has added a draconian dimension to the above in Section 78 (e), (g), compelling a political party to maintain offices in at least two thirds of the states of the federation, including Abuja. This is unnecessary. The provisions in the constitution should suffice.

Emerging Electoral Trends

The weakness of the electoral law has seen the gradual perversion of the electoral process under the present democratic dispensation in Nigeria. For example, there have been proven cases of false documents and certificates presented by elected officials in many of the political parties. All these people were cleared by INEC to contest elections and many of them won. A specific case in point is that of the disgraced former speaker of the House of Representatives, Salisu Buhari, who was indicted for using a forged certificate to contest elections. Many other elected representatives have been alleged to commit similar crimes ranging from forgery of certificates to drug trafficking offences. This is a blatant violation of electoral law, for which a competent electoral body and state security apparatus would have detected and disqualified those involved. Better still, they ought to be prosecuted whenever such crime is detected. However, none of these have happened since those crimes were uncovered.

The trends in the electoral process' currently is very disturbing especially as it relates to preparation for the next general elections in 2003, especially the presidential elections. Incumbent elected representatives from the local government level to the presidency have begun to use public funds to further their campaigns for re-election. Whereas the electoral law does not allow this. Indeed, political campaign should not be allowed two years before the election.

Also, the bid for the presidency in 2003 in Nigeria has begun in earnest, with enormous resources being deployed. Many discredited people, especially retired military officers have taken the center-stage. The most notable of this is General Ibrahim Babangida, the dishonorable military officer who annulled the June 12, 1993 presidential elections. Babangida has launched a full campaign for the presidency. His strategy includes using the Internet facility. A website, www.IbrahimBabangida.com has been created to gauge and mobilize public support for his presidential bid. In response, supporters of General Obasanjo have also started their own campaign process for 2003 for Obasanjo to be re-elected.

Policy Concerns

1. The electoral law as it is currently does not empower the people, but dis-empower them. It has to be reformed to create access and participatory democracy.
2. Independent candidates should be allowed.
3. The electoral law should be gender-sensitive.
4. While been given a high level of autonomy, the powers of the electoral body should be curtailed and its actions open to judicial review.
5. Campaign laws have to be streamlined and strictly enforced.
6. The role of money in politics must be checked through the electoral law.

Conclusion

The litmus test for democracy in Nigeria will be the extent to which the electoral process through the electoral law instituted, is able to engender fair, participatory, and inclusive electoral participation by the people. If the electoral law is weak, deficient, or poorly enforced, the electoral process will be easily subverted. There is need therefore to reform and strengthen the electoral law beyond what is proposed by INEC and ensure full adherence to those laws.

Endnotes

1. Olisa Agbakoba, SAN, made this statement at the "Waterfront Dialogue" organised by THISDAY Newspapers (Lagos) on 03/04/01. The dialogue was to review the state of our Electoral laws and possible amendments to it. I was present at the dialogue.

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