



# NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

Fifth Floor, 1717 Massachusetts Avenue, N.W. Washington, D.C. 20036 (202) 328-3136

■ FAX (202) 939-3166

■ E-Mail 5979039@MCIMAIL.COM

March 3, 1995

## POTENTIAL ELECTORAL DEVELOPMENTS IN NIGERIA

### I. INTRODUCTION

Nigeria is under military rule and is in a state of political crisis. Nigeria's search for democracy is distinguished by a number of setbacks over the years, most recently by the annulment of the June 12, 1993, presidential election. The apparent winner of that election, Chief Moshood K.O. Abiola, remains in prison today despite domestic and international pressure for his release.

There are a significant number of Nigerian political actors who insist that Chief Abiola's release from prison and his inauguration as president are prerequisites for resolving Nigeria's crisis. Others seem to accept Nigeria's National Constitutional Conference as establishing a framework to resolve the crisis through new elections.

Since coming to power in a coup d'état in November 1993, General Sani Abacha, carried out a severe crackdown against political opposition. General Abacha also has taken several steps signaling a possible political opening. In May 1994, General Abacha's government held elections for three-quarters of the seats in a National Constitutional Conference. The elections were boycotted, particularly in the southwestern region of the country; voter turnout was low, and the remaining quarter of the delegates to the Conference were appointed by General Abacha.

The Conference's mandate includes making recommendations to General Abacha on the future shape of Nigeria's government. On December 6, 1994, the Conference approved a recommendation to end military rule on January 1, 1996, even though its political transition committee proposed continuing military rule until 1997. On January 9, 1995, however, a motion was entered to extend military rule until 1997, which approximated the original committee proposal. The original committee proposal called for municipal elections in the beginning of 1996, regional and state elections in November of that year and a full return to civilian government on January 2, 1997. The Conference is scheduled to return from adjournment in early March and is expected to issue its final report soon thereafter.

As 1994 ended, some Nigerians began to form political associations in anticipation of another transition process. General Abacha held closed-door talks with four opposition leaders on January 27, 1995. He dissolved his cabinet on February 8. News reports stated that the dissolution was done to release several ministers to run for office in forthcoming elections. The National Electoral Commission began a survey of its resources, noting



progress by the National Constitutional Conference and the partial lifting of the government's ban on politics, which ban was instituted the day after the present government took power.

Notwithstanding these steps, Nigeria's crisis is not over. Much needs to change before a democratic government assumes power. In any future elections, two approaches are possible:

- 1) a technical approach that *only* considers issues such as timing, administrative procedures and similar matters leading to new elections; and
- 2) an approach that goes beyond these important technical issues and places the question of political will at the center of any steps in a new transition process.

This paper approaches Nigeria's potential electoral developments from the second perspective. Given Nigeria's electoral and political history, Nigeria's political actors and the public at large hold real suspicion of any new electoral developments. In order to advance a genuine democratic transition, extraordinary steps will therefore be necessary to build confidence in the process. This paper does not seek to select or impose any specific steps; rather it is designed to address immediate considerations in hopes of contributing to discussion among those concerned with advancing Nigeria's democratic process.

A timetable of 10 to 20 months to prepare for elections is probably sufficient for technical preparations, and questions such as holding a series of elections or holding consolidated elections should not present major stumbling blocks. Technical preparations, of course, must be addressed seriously and begun as early as possible. The central question, however, is whether the political will is present for all sides to move to new elections.

International experience demonstrates clearly that in situations -- such as in Nigeria -- where the country has experienced anti-democratic trauma, extraordinary steps are necessary to build public confidence that a genuine transition is underway and will result in a democratic government.

Where elections have not been respected previously, simply meeting minimum international legal standards is likely to prove insufficient for resolving a political crisis. Even if new elections are accepted and held, experience confirms that they must be more than a technical exercise. *Elections are part of a political process that, to be successful, requires public confidence.* Steps must, therefore, be taken to ensure that elections -- whenever held -- are not only administratively correct, but are free from the *perception* of manipulation or partisanship. Steps must also be taken to ensure that the results of the elections will be respected.

## II. TRANSITIONAL ARRANGEMENTS

Nigeria has experienced several political transitions: from colonial rule to independence in 1960; from civilian to military rule in 1966; from military to civilian rule in 1979, with elections in 1979 and 1983; and, after a return to military rule in 1985, a transition from 1987 until the annulment of the June 12, 1993 election. The last transitional program included: debate within the construct of the Political Bureau, which received more than 27,000 contributions from the public as input for its Report; the efforts of the Constituent Assembly; the 1987 non-party elections for local government councils; the 1988 elections for delegates to the Constituent Assembly; the 1990 party-based elections for local government; the 1991 state elections for governors and state assemblies; and the June 12, 1993, two-party presidential election and election for the National Assembly.

There are a number of lessons that merit attention from Nigerian and international experiences concerning transitional arrangements. Circumstances differ within a country with each attempt at democratic transition. This is also true when transitions in various countries are compared. Certain points, however, must be considered in any transition.

In order to ensure the success of a genuine democratic transition, at least three things must be present:

- the relevant political actors must be involved in the transition; this includes those presently holding power as well as the opposition;
- all sides must be prepared to make compromises; and
- there must be an earnest dialogue.

These points have been present in successful democratic transitions in all regions of the world irregardless of whether the mechanism facilitating the transition was guided by a negotiated breakthrough agreement, roundtable negotiations, transitional authorities, sovereign national conferences or relatively direct transfers of power from military to civilian rule. This is also true whether the transition was a relatively top-down or a relatively bottom-up process.

Experience demonstrates that there is no single formula for democratic transitions and no perfect mechanism to facilitate them. What is absolutely needed is a genuine dialogue and an open process rather than an attempt to reach a pre-ordained result at the ballot box through a series of calculated maneuvers at different stages of the transitional process.

Those holding power must be willing to provide the opportunity for political dialogue and must be willing to take a long-term view of the best interest of the country in order to arrive at a genuine formula for democratic transitions. The same is true for the opposition. The next step is for all sides to create a mechanism for that dialogue, whether be it a formal



mechanism like a transitional authority or an informal meeting or convocation. The discussion at such meeting usually centers on constitutional provisions and on the election law. Often the election law is the critical component, either because the constitution is to be settled by a constituent assembly after the elections or because elections are the critical point for the transfer of power.

**Election Commissions.** Important aspects of the electoral process are discussed below, but it should be stressed that the body charged with administering the election must be independent and competent to effectively administer the electoral process. If this is not the case, the public and the political competitors will not have confidence in the elections, nor will they have confidence in the resulting government. The public's perception of true independence of electoral authorities is vital in ensuring the legitimacy of the electoral process and the perception of legitimacy of the government that follows the elections.

Responsibilities of election commissions vary among countries and may include: promulgating the election law; interpreting the election law; issuing election regulations; registering political parties, candidates and voters; regulating the election campaign; investigating and adjudicating electoral complaints; preparing electoral materials; carrying out voter and civic education campaigns; recruiting and training election officials; selecting polling places; developing voting and ballot-counting procedures; tabulating and announcing election results.

It is important in any country that the election commission have authority to interpret election laws and to adopt regulations and implementation procedures. Moreover, it is crucial that the commission be empowered to ensure compliance with electoral laws and procedures (discussed below). The election commissioners should be afforded privileges and immunities, as are provided to members of the judiciary, in order to safeguard their independence and impartiality. This also helps to bolster the commission's ability to enforce electoral procedures.

### III. BUILDING CONFIDENCE IN THE ELECTORAL PROCESS

Elections are important milestones in a country's democratic development. They cannot, however, be taken solely unto themselves. Elections must be approached in the context of a country's broader transition toward democracy. A critical gauge of this process is whether the population believes that they are free to *exercise* their rights to political expression, association, assembly and movement as part of the electoral process. Elections, therefore, provide a test of how a range of institutions are functioning in a transitional setting and whether fundamental human rights are being protected and promoted.

A critical element in this process is building public confidence in elections. Unless the electorate feels that it is free to make political choices, is adequately informed to do so



and that its choices will be respected, an election process will not be truly meaningful. At the same time, political contestants must feel that they have a fair chance of reaching and winning support of the voters -- that there is a "level playing field" -- in order to have the incentive to participate in the process and to respect the outcome of the elections. This too is crucial for the public to have confidence in the government that results from the elections. Thus, elections are inextricably linked to what precedes and what follows them.

#### **A. Free and Fair Elections Require an Atmosphere of Respect for Human Rights and an Absence of Intimidation**

"Genuine" elections are both an internationally recognized fundamental right and a key to the exercise of other civil and political rights. The right to free and fair elections is, in part, rooted in the right to self-determination. The exercise of the right to self-determination, however, is carried out in the context of other internationally recognized rights and freedoms. The Universal Declaration of Human Rights, applicable to all Member States of the United Nations, Article 21 states:

"Everyone has the right to take part in the government of his [or her] country, directly or through freely chosen representatives.... The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent voting procedures."

Other international instruments, a convergence of state views (particularly since the end of the Cold War) and a great deal of state practice have marked the rapid development of international standards for holding genuine democratic elections.

**Non-Discrimination.** Central to the precepts for free and fair elections is the exercise of internationally recognized fundamental rights and freedoms -- free from discrimination on the basis of race, color, sex, language, religion national or social origin, birth or other status, property, *or political or other opinion*. This standard is found in every major international human rights instrument.

The non-discrimination standard permeates every aspect of election processes, from delimitation of electoral districts, to voter eligibility and registration, to party and candidate qualification, to allocation of electoral resources, including media exposure, and each other step towards counting ballots and accepting electoral results. The non-discrimination standard is also directly related to the rights to be equal before the law, to receive equal protection of the law and to be provided with an effective remedy for acts violating fundamental rights. These rights relate to providing timely and effective enforcement of electoral and related laws, effective complaint mechanisms and recourse to an independent judiciary.



In the Nigerian context, this means that effective steps are necessary to encourage political participation by members of the more than 250 ethno-linguistic groups and to encourage the political participation of women. Some steps have been taken previously in this area in Nigeria, and there is no official policy of ethnic, religious or gender discrimination in Nigeria. Customary practices unfavorable to women, as well as ethnic and religious tensions, however, have had negative effects on political participation.

Moreover, there has been much speculation that the June 12, 1993, presidential election was annulled because the northern elite would not accept a president from the south. This particularly troubling in light of election results leaked to the press that Chief Abiola received unprecedented cross-regional and cross-ethnic support from the electorate. Any arrangements for moving to new elections, therefore, will need to address non-discrimination in recognizing and respecting electoral results, if the process is to be perceived as free from manipulation.

**Freedom of Opinion and Expression.** Article 19 of the Universal Declaration of Human Rights states:

"Everyone has the right to freedom of opinion and expression; this includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

This, of course, includes the freedom of political contestants to form political opinions and to communicate these opinions to others as part of the electoral process. The freedom to seek and receive information relates to the electorate's right to gather accurate information in order to exercise an informed choice between political contestants. The freedom of expression also is central to the news media's roles in the electoral process.

During 1994, there were crackdowns against expression of political views opposing the present Nigerian government. In August, a series of decrees were issued restricting civil and political rights, including press freedoms. Press closings as well as other forms of direct and indirect censorship took place. Decree 12 of 1994 goes so far as to divest the courts of any jurisdiction concerning the authority of the government to restrict civil liberties. Such decrees and restrictions should be revoked or at a minimum suspended as applied to the exercise of civil and political rights in the electoral context.

**Freedoms of Association, Peaceful Assembly and Movement.** The freedoms to form political parties and associations, to assemble peacefully in order to advance political organization and expression as part of electoral competition and the freedom to move about from municipality to municipality and from door to door are central to free and fair elections.

The present Nigerian government proscribed all political activity when it came to power. In August 1994, General Abacha declared that individuals or groups may "canvass political ideas," but formation of political parties remains illegal. Decree Five of General Babangida's government is in effect, which proscribes gatherings with political, ethnic or religious implications that might cause unrest. Checkpoints, where travelers are often subjected to excessive force, are common

It is without question that the ban on political parties will have to be lifted early in any transition, if Nigeria is to hold genuine democratic elections in the future. The present attempt by the government to restrict political discourse to the confines of the National Constitutional Conference must, therefore, give way to legal recognition of political parties. This is a particularly important issue in light of the controversy that surrounded the dissolution of political associations and the establishment of a two-party system for Nigeria's last set of elections. This issue should be addressed in light of "level playing field" considerations discussed below.

**Rights to Security of the Person and Due Process of Law.** None of the freedoms described above can be exercised meaningfully in the electoral context unless prospective voters, campaigners and political competitors are free from intimidation and violence. This includes freedom from the threats of arbitrary detention, excessive use of force by governmental authorities, mistreatment while in governmental custody and extra-judicial killings. Central to this is the right of prospective voters, campaigners and political contestants to equality before the law, equal protection of the law and due process of law.

The State Security (Detention of Persons) Decree of 1984, known in Nigeria as "Decree Two," remains in effect and was enhanced by in 1994 by new decrees (including Decrees 11, 12 and 14), which provide grounds for detaining persons without charge on suspicion of vaguely defined threats to national security or to the country's economic well-being, deprivation of the civil liberties of such detainees and denial of court jurisdiction over such persons. There were also credible reports of abuse of the police power, upon reasonable suspicion of an offense, to arrest without warrant. In addition, there were instances of mistreatment of prisoners and extra-judicial killings in 1994. It will be necessary to address these problems and to take steps, such as revoking or suspending applicable decrees and providing effective remedies for those subjected to rights violations, to create a heightened sense of security for exercising civil and political rights leading to any new elections.

## **B. Public Confidence in the Electoral Process Is Critical to Democratic Elections**

A consistent lesson in international electoral experience is that elections are not simply a technical process. Elections are part of a political process that, to be successful, requires public confidence. Sound electoral laws and procedures are necessary but are not

enough; the public, including the political contestants, must *believe* that the electoral process will be effectively and impartially implemented. This is particularly true in countries where there were electoral manipulations or where the results of past elections were not respected.

Building public confidence in electoral processes must include:

- setting up an effective and impartial election apparatus that is open and transparent;
- involving the political contestants in all basic elements of the election process;
- opening the election process to the observation of citizens and civic organizations;
- convincing the electorate of the importance of the elections, that their personal safety and ballot secrecy will be secured and that the results of their voting will be respected; and
- ensuring that a trustworthy independent monitoring process will be in place.

**Transparency.** Transparency in electoral administration was a phrase not used frequently a decade ago. "Transparency" is now a byword in election vocabulary. Transparency, in its electoral sense, has numerous aspects.

1) It applies to allowing political contestants to view all aspects of electoral preparations, from the drafting of election laws and selection of electoral administrators all the way through the tabulation and announcement of results as well as to the resolution of electoral complaints.

2) It applies to allowing the public to witness the steps of the election process, usually through domestic nonpartisan election monitors and news media.

3) It may also include allowing the international community to witness the steps of the election process, usually through impartial international election observers.

Transparency applies to a range of activities, including, among others:

- drafting or modifying electoral laws and regulations;
- selecting electoral administrators, from the highest bodies down to the polling sites;
- delimitation of election districts;
- qualification of parties and candidates;
- establishing criteria for voter eligibility;
- establishing the mechanism for voter qualification, such as a voter registry;



- training election officials;
- setting up and running computer systems;
- ballot and voting materials design, production and distribution;
- establishing polling sites;
- voting procedures;
- counting and tabulation procedures;
- complaint mechanisms;
- announcement of results; and
- seating winning contestants.

Transparency builds public confidence under the adage that if you are acting properly you have nothing to hide. Transparency at times adds extra time and requires expending resources, but the cost/benefit ratio of extra time and resources compared to enhanced public confidence almost always favors added transparency.

Nigeria's National Election Commission (NEC) has accumulated electoral experience and maintains a structure between elections. Many national and international observers noted that the administration of the June 12, 1993, elections was administratively acceptable, up to the annulment of the election. The NEC, therefore, has some organizational advantage in approaching future elections. It is faced, however, with the burden of building public confidence in Nigeria's electoral process. Transparent election administration, with participation of the public and political contestants, and a voter motivation campaign (each more fully discussed below) will be critical to its future success.

**Participation of Political Contestants in All Basic Steps of the Election Process.** The political contestants play a crucial role in developing public confidence in the electoral process. If the political contestants are involved in a meaningful way at early stages of the electoral process, including in making decisions about "rules of the game," they will be more trustful of the actions of election administrators, which in turn will greatly affect public perceptions of the election process. Likewise, the involvement of political contestants in each step as the election process unfolds reinforces public confidence.

Involvement of political contestants can take various forms, including, among others:

- deciding fundamental issues concerning election law, regulation and composition of key electoral bodies through the legislative process or through "roundtable" negotiations, transitional government authorities, sovereign national conferences or similar mechanisms;
- including political party representatives as voting members of election bodies at all levels;

- including political party representatives as non-voting members or observers of election bodies at all levels;
- developing a process by which political contestants agree upon a code of conduct to regulate their behavior during the electoral process;
- establishing party liaison committees as adjuncts to electoral bodies at the national, regional and local levels to facilitate communication, conflict avoidance and informal dispute resolution.

More than one of these mechanisms can be employed simultaneously. At the same time, the public must be informed of these steps and of key decisions in the election process in order to enhance and reinforce confidence in the elections.

In Nigeria, some of these points were considered by the Political Bureau, in the last attempt at democratic transition, and are being discussed presently within the National Constitutional Conference. Specific attention to the participation of political contestants in each step of the election process, as outlined above, is warranted. Solicitation of opinions on this topic from Nigerian political actors could be done by the National Constitutional Conference.

Many of these steps can be accomplished by administrative rulings. The NEC, therefore, should also solicit such opinions and participation. This could be done, for example, through a roundtable with key political actors from across the spectrum of Nigerian political life, even before political parties are formally established, and by establishing an advisory committee to the NEC made up of such persons. An advisory committee could be a precursor to a national political party advisory committee to the NEC.

### **C. Participation of Citizen Groups in the Election Process Is Central to Public Confidence**

Another important recent development in international electoral trends is the widespread acceptance of the contribution of domestic nonpartisan election monitors. During the last year, for example, domestic nonpartisan monitors played important roles in elections in countries as diverse as South Africa, Niger, Benin, Mexico, the Former Yugoslav Republic of Macedonia, Ukraine and Nepal. Nonpartisan election monitoring is addressed in the 1990 Copenhagen Document of the Organization on Security and Cooperation in Europe (OSCE). It is also recognized in the recent United Nations publication, UN Professional Training Series No. 2: "Human Rights and Elections," as helpful in securing public confidence in the electoral process.

Election monitoring by impartial domestic nongovernmental organizations (NGOs) adds significantly to public confidence in the election process. Nonpartisan domestic election

monitoring also provides an excellent example of citizen participation in governmental processes and of ensuring governmental accountability. This experience often enhances further citizen participation in government, which helps in the development of civil society.

Nigeria's civic organizations are more developed than in many other countries. A number of NGOs, including labor unions, function nationally and are quite mature. Often such organizations are perceived to favor particular political tendencies. Experience in a large number of countries undergoing democratic transitions, however, confirms that it is possible for at least some NGOs to recognize the importance of nonpartisan electoral activity. This NGO activity has embraced nonpartisan voter education and election monitoring, including parallel vote tabulations (discussed below). Nonpartisan NGOs have developed a professional approach to these activities and have greatly contributed to citizen participation and public confidence in elections.

This activity both builds civil society and helps to bridge the gap that sometimes exists between civil society and the political life of a country. It is particularly important in countries -- such as Nigeria -- where political processes are highly charged to take steps to encourage the involvement of civic groups, labor unions, university centers, news media and other segments of civil society in voter education and nonpartisan election monitoring.

#### **D. Ensuring Due Process and Trustworthy Election Monitoring Are Central to Building Public Confidence**

**Ensuring Due Process.** In addition to being impartial, the election bodies, such as the NEC, must be able to take independent and effective action to protect the integrity of the election process. It is essential that the election system institutionalize guarantees of equal treatment and procedural due process in order to ensure a credible election. Such precautions help ensure the satisfaction of voters and political contestants in situations where they perceive, rightly or wrongly, that they have been unfairly treated.

Appropriate due process guarantees include legislative, regulatory and judicial procedures that provide notice, hearings and appeals and that protect against arbitrary or biased rulings. These guarantees should be present in every aspect of the election process, including appointing staff and election officers, accrediting candidates, registering voters, designing and producing election materials, enforcing election law and adjudicating violations, conducting voting and counting, and announcing final results.

**Trustworthy Election Monitoring.** As stressed above, allowing party representatives to be present at all steps of the election process is an important way to ensure fairness; and, allowing a similar presence of the nonpartisan domestic NGO monitors is also an important way to ensure fairness.



**Parallel Vote Tabulations.** An important device in trustworthy election monitoring is independent, parallel vote tabulations (PVTs, sometimes called "quick counts"). This exercise can be carried out by political parties, news media, nonpartisan domestic election monitors or international election observers. PVTs are important in deterring those who may seek to tamper with election results or in verifying official results for those who may be skeptical about the election process. A significant number of nonpartisan civic organizations have successfully conducted PVTs; Mexico provides a recent example. PVTs also have been successfully conducted under the auspices of the United Nations.

PVTs are not exit polls but are done on the basis of an independent tabulation of actual election results. PVTs may be done on the basis of comprehensive tabulation of results or on the basis of random statistical sampling. They provide an important foundation for independently verifying the accuracy of the official election results and enhancing confidence in the results. In countries such as Mexico in this past year or the Philippines, Chile and Bulgaria in past elections, PVTs did much to raise public confidence in the electoral process. PVTs can easily be provided for by administrative rulings.

Given Nigeria's recent electoral experience, providing for PVTs would be invaluable in building public confidence in future elections. Public knowledge that PVTs will be conducted would assure prospective voters and political competitors that the official results will be independently verified. The design and implementation of PVTs could be accomplished with international technical assistance to help ensure their credibility and to further boost public confidence.

#### **E. Voter and Civic Education Are Critical to Democratic Elections**

Critical to the principal that "the will of the people shall be the basis of the authority of government" and that "this will shall be expressed in periodic and genuine elections" is voter and civic education. The citizenry must be adequately informed in order to provide the basis for making a free choice.

Civic and voter education must cover the basics of why it is important to vote and that the vote will be secret, secure and respected. Civic and voter education must also address how to distinguish between political contestants in order to make an informed choice. These more complicated elements of civic education should not be lost in informing voters about where, when and how to register and to vote.

Additionally, the task of conducting civic and voter education provides roles for the government, election bodies, political contestants, mass media, and nongovernmental organizations alike. Carrying out these activities can raise the civic conscience of actors in each of these sectors. It can also serve to build the capacity of NGOs to carry out programs reinforcing civil society after the elections.

A public education/voter motivation campaign would be a critical component to future Nigerian elections. Such efforts would help remove skepticism and apathy on the part of prospective voters. Experience in other countries has shown that public skepticism and apathy toward political life and elections rises when democratic transitions suffer traumatic setbacks.

#### **F. International Adjuncts to Electoral Bodies and International Election Observers Can Be Important**

The international community can play a supportive role in the electoral process in transitional democracies. The role of providing technical assistance to electoral bodies and others in the election process is clearly established. Such activity not only demonstrates international support for democratic processes and institutions in a country but helps build public confidence in the election process.

**International Adjuncts to Election Bodies.** International non-voting members have been added in some instances to the national election commissions in order to mobilize a valued pool of expertise and to enhance public confidence in the effectiveness and impartiality of the election process. Such international members can provide technical knowledge and help the regular election commission members resolve problems and disputed issues by being present throughout the commission's day-to-day work. In other instances, international advisory committees have been set up for similar purposes. In a third model, election commissions in some countries have added international technical advisors supplied by the intergovernmental and/or nongovernmental organizations.

These mechanisms raise public confidence and the confidence of the international community in the outcome of the elections. This could be particularly important in the present Nigerian context.

**International Election Observers.** Impartial international election observers, organized by intergovernmental organizations and by nongovernmental organizations, can play a constructive -- and sometimes critical -- role in enhancing public confidence in the electoral process. Such efforts demonstrate the interest and concern of the international community in supporting the democratic process in a particular country. This can help deter those who would seek to manipulate the election process and reassure those who may be skeptical of the integrity of the process.

A great deal of experience has been accumulated by international election observers that allows some organizations to act impartially, objectively and professionally in their activities. The role of international election observers, therefore, has become generally accepted in democratic transitions around the world. The activity of international observers is greatly enhanced by and complements the work of domestic nonpartisan election observers.



#### **IV. ELECTION FAIRNESS: THE "LEVEL PLAYING FIELD"**

The genuineness of an election is not often called into question based on election-day problems or fraudulent actions. More commonly, questions about the genuineness of an election focus on the fairness or lack of fairness in the pre-election period. The analogy most often used is to ask whether there was a level playing field for the electoral contestants. This issue relates to a number of considerations.

At the core of the level playing field question is the degree of equity political contestants actually obtain in matters such as campaign financing, media access and coverage, and availability of material resources. A second core issue is the effective compliance with and enforcement of election-related laws and regulations.

These issues pertain not only to fairness in any future Nigerian elections but also to the question of whether it is better to stagger elections to different offices or to consolidate them into one election.

##### **A. Political Party and Candidate Qualification Are Essential Parts of Electoral Fairness**

**Recognition of Political Parties.** The recognition of political organizations as legal entities, with the right to seek governmental power through the electoral process is fundamental to pluralist democracy. The right of each person to take part in the government of his or her country, directly or through freely chosen representatives, and rights to free expression and association are combined in the formation of political parties. Political parties provide a practical vehicle for citizens to pursue a program for contributing to civil, political, social, economic and cultural progress in a country. As such they are a critical part of building civil society.

Accepted international electoral standards establish the precept that no unreasonable limitations may be placed on the right to establish political parties or other associations to seek government offices through the electoral process. This rule would preclude governmental actions to block from political competition legitimate political associations or to somehow limit political competition to creations of the state itself.

Requirements for legal recognition as a political party may be set forth constitutionally. If this is done, it is usually done in general terms. Whether or not the constitution explicitly provides for legal recognition of political parties, the details for party registration and legal recognition are almost always provided for by law. Political party laws usually take one of two basic approaches:

- 1) a minimal requirements approach, with legal recognition granted as a matter of administrative routine upon submission of the party's name, symbol, officers, charter and perhaps a small list of members; and

2) a more stringent approach, with added requirements for evidence (e.g., through signatures or reliable public opinion polls) of a large number of members and/or supporters, perhaps with a minimum geographical distribution in the country, a party manifesto and a significant registration fee.

Additionally, restrictions against anti-democratic platforms or programs may also apply (e.g., fascist parties or parties aimed at fostering racial, ethnic or religious hatred).

The political party law may also define permissible party activities, such as: publishing; recruiting and training campaigners, party functionaries and candidates; fundraising; holding meetings and rallies; distributing literature; and using the mass media. Certain activities, such as engaging in commercial enterprises in order to generate profits for funding party activities, may or may not be addressed. The political party law may also proscribe certain activities, such as use of violence and intimidation, vote-buying, verbal attacks on opponents' character or other types of negative campaigning. The political party law also may require internal democratic organization, regulations and a mechanism for maintaining party discipline as well as financial regulation.

**Party and Candidate Ballot Qualification.** Requirements for qualifying parties and candidates for the ballot present important issues. There may be automatic qualification based on pre-existing actions. It may be necessary to produce a certain number of signatures, which can include specified geographic distributions. Filing fees or deposits may also be required, as may submission of a list of campaign officers and representatives as well as other information. International standards recognize candidate qualifications based on reasonable requirements for such matters as age, citizenship, residence within a jurisdiction, mental and physical competence, and lack of criminal convictions (usually pertaining to serious crimes). Ballot qualification is critical to electoral competition, and the potential for manipulation in this area warrants careful scrutiny.

**Non-Discrimination.** In approaching legal recognition of political parties as well as party and candidate qualification for the ballot, the over-riding fairness consideration is whether the principle of nondiscrimination is respected. If legal recognition is denied or if party or candidate ballot qualification is refused in order to discriminate on the basis of ethnicity, color, race, gender, religion, language, national or social origin, property, birth or other status, or political or other opinions, then the genuineness of an electoral process will be compromised.

These issues are particularly sensitive in a country where political parties and political activity have been banned. The imposition of the two-party system in Nigeria by General Babangida in 1989 was a controversial development. As noted above, accepted international electoral standards reject unreasonable limitations on the right to establish political parties, which would preclude governmental actions to block from political competition legitimate

political associations. While there may be a legitimate concern in a country that a proliferation of parties may have a negative effect on democratic development, international standards would not limit political competition to creations of the state itself -- particularly where a small number of state-created parties would appear to constitute discrimination on the basis of political opinion.

In addition, the question of whether or not Chief Abiola will be inaugurated based on the June 12, 1993, elections remains a contentious issue in Nigeria. The question of whether he or certain other political figures will be allowed to contest any future elections is likely also to be a point of serious contention. The standards concerning non-discrimination in candidate and party qualification for the ballot, therefore, should be very important when approaching potential electoral developments in Nigeria.

## **B. Adequacy of Resources often Determines Electoral Fairness**

Contestants and election administrators need adequate resources to conduct a free and fair election. If there is not adequate resources for training election officials, printing ballots and producing election materials, a genuine election is difficult -- if not impossible -- to achieve. The same is true for the political contestants.

Time may be the most valuable resource. Just as time is needed to prepare the election apparatus (e.g., recruiting and training of officials, printing ballots, selecting voting sites), time is needed for political contestants to set campaign strategy, develop a program and messages, recruit campaigners, raise money and complete many other tasks. Calling elections unexpectedly and setting a very short campaign period could be fatal to a fair electoral contest in a transitional democracy. Holding elections too often can exhaust resources early and can cause voter apathy, both of which undermine the legitimacy of later elections.

Highly unequal resources, especially when incumbent parties have this advantage, pose a critical problem. While it is almost impossible to provide equal resources to every political contestant, equitable resources are necessary to a genuine electoral contest. This does not mean that the government has to provide complete funding to every political contestant. The major contestants, however, either should possess or should be provided with the minimum resources needed to mount a meaningful election campaign, and all qualified contestants either should possess or should be provided with at least those resources necessary to ensure a fair opportunity to compete.<sup>1</sup>

---

<sup>1</sup> In initial or "breakthrough" elections, providing equal and sufficient resources to all political contestants may be the only way to ensure an equitable opportunity to compete. After a few elections, perhaps even in the second, or where there is a prior history of free political competition, it may be possible to differentiate between major and minor contestants



There are various ways to approach this issue:

- by providing full public funding to qualified political contestants and prohibiting other funding;
- by providing more limited public funding and allowing supplemental fundraising by political contestants;
- by matching funds raised by political contestants with public funds, perhaps up to a pre-established limit;
- by providing public funds according to one of these methods, but requiring reimbursement if the political contestant does not reach a pre-determined degree of success in the election; and
- by allowing contestants to finance their election campaign solely with private funds, where such funding is adequate.

In addition, questions of limits for campaign contributions and/or expenditures are important considerations, as are issues of in-kind subsidies, such as tax benefits to contestants and/or contributors, postage discounts and free or discounted media time and materials. Requiring timely and accurate public disclosure of contributions and expenditures can greatly enhance public confidence in the election process. The issues of whether or not to allow contributions from corporations or organizations such as trade unions and foreign contributions are also important.

### **C. Use of Government Resources for Electoral Advantage Undermines Fairness**

Incumbent political contestants, both candidates and parties, have the opportunity to take advantage of access to government resources in order to advance their electoral fortunes. Government resources belong to the citizens of a country, and thus should not be used for the electoral advantage of a particular political contestant (whether a party or candidate). Such resources include:

- use of government employees as campaigners, while working on government time;

---

based on objective and fair criteria. Such criteria could include percent of the vote and/or number of offices won in prior elections, number of persons presented as candidates in the present election, number of signatures collected in a reasonable time, reliable public opinion data or other methods. Where such criteria are used to stratify political contestants into categories, at least the minimum amount of resources for fair competition should be made available for minor, new or independent contestants.

- use of a contestant's government position to capture media attention for campaign purposes;
- use of government moneys, telephones, photocopiers, vehicles or other equipment for campaign purposes;
- use of government programs, such as public works, job creation or social benefit projects, to gain electoral advantage.

The election law as well as government ethical codes should address and proscribe such activities. In addition, there should be effective mechanisms to enforce these prohibitions, such as using government auditors to investigate these matters, allowing citizens and rival political contestants to file complaints with the election authorities and/or the courts concerning these issues and empowering the electoral authorities to investigate these matters on their own initiative.

As part of the 1994 electoral reforms in Mexico, for example, an independent Special Prosecutor's Office for Electoral Crimes was established to pursue, among other offenses, any public servant who: compelled subordinates to vote for or against any specific party or candidate; conditioned the granting of public service, the development of a public program or performance of a public work on the vote for or against any specific party or candidate; assigned resources, goods or services in his or her power due to public functions (such as, vehicles, real estate and equipment) for the purpose of supporting any party or candidate; or gave support to any party or candidate through his or her subordinates' labor.

#### **D. Media Access and Coverage Is an Important Fairness Consideration**

Democracy depends on all contesting points of view being fairly and equitably communicated so that the people may make informed choices. The ability of the political contestants, especially those not in power, to avail themselves of the mass communications media is critical in this regard. There cannot be meaningful and vigorous debate of fundamental issues facing a country without a vehicle for expressing views. The mass communications media provide that vehicle in many instances.

The mass media, to play their roles as conveyors of information and as watchdogs of government processes, must be free from censorship -- in both its direct and indirect forms. The media must also be free from intimidation and attacks from nongovernmental or quasi-governmental forces as well, which goes to the government's obligation to protect freedom of expression.

**Access to the Media by Political Contestants.** Media access by political contestants, whether by paid political advertisements or by government-mandated free access, contains a

number of important sub-issues, including:

- types of access (e.g., live or taped messages, only one person speaking or use of music, images and several speakers);
- amounts of time allocated (e.g., whether the allotted times are sufficient to communicate meaningful messages);
- timing of direct access programming (e.g., in prime listening and viewing hours or at odd times);
- financing minimum time to communicate meaningful messages (e.g., government payment for time, mandating free time on government media, preventing discriminatory pricing of time on private media); and
- criteria for allocating time (e.g., equal time to all qualified contestants or larger blocks for main contestants, established by number of signatures collected, number of candidates qualified, national or wide geographical distribution of supporters, versus smaller blocks for new or weaker contestants);

**News and Information Coverage.** News and information coverage is a more difficult, but no less important, issue to address in ensuring a level playing field. Here too there are a number of important sub-issues, including:

- imbalanced coverage, which favors certain contestants (e.g., allotting more time to one contestant than others or consistently presenting a certain contestant first);
- failure to distinguish between newsworthy government activity and campaigning, which favors incumbent contestants;
- manipulation of coverage to favor certain contestants (e.g., using camera angles that exaggerate or diminish the numbers of supporters at rallies for a contestant or consistently broadcasting the voice of one contestant, while a reporter summarizes what is said by other contestants);
- manipulation of special information programs such as debates and candidate forums (e.g., using biased moderators or questioners, manipulation of camera angles and/or amounts of time given to each contestant); and
- coverage of opinion polls and election projections in a manner that favors or disfavors unfairly the fortunes of one contestant (e.g., exaggerating their reliability, failing to reveal who commissioned the studies, failing to report margins of error or timing of the studies or polling trends).



**Mechanisms for Developing Campaign Broadcasting Policy and Enforcement.** An important aspect of evaluating the media's role in level playing field considerations is whether there are established policy guidelines or regulations for fair media coverage of political contestants. It is also important to examine whether there are mechanisms to address complaints about media coverage of election campaigns, including:

- government mechanisms (parliamentary commissions, courts, election commission);
- self-regulation (extra-legal codes of media conduct and/or journalist association ethical committees); and
- media monitoring by civic organizations and others.

In addition, it is important to evaluate whether there are effective remedies available for media infringements of level playing field considerations. The right of correction and the right to reply are important in this respect as may be ways to request additional time to counter-balance disproportionate coverage given to other contestants.

#### **E. Impediments to Campaigning Can Destroy Fairness**

An election campaign of significant length, which provides equitable resources to the contestants, nonetheless may not be free and fair -- if the political contestants are not able to campaign freely and vigorously. A number of factors come into play in this regard, all of which are related to fundamental rights, including:

- violence against and intimidation of candidates, campaigners and/or prospective voters;
- failure to provide reasonable times and places for peaceful political assemblies;
- failure to guarantee freedom of movement in order to distribute campaign literature or to seek personal contacts;
- failure to protect free expression concerning political matters; and
- failure to provide effective remedies for violation of fundamental rights in the election campaign.

It is important to assess whether electoral authorities and/or police and prosecutors are adequately monitoring these factors and taking effective action to protect against problems and pursuing violations. This is directly related to providing equality before the law and equal protection of the law for all political contestants.

## **F. Party Codes of Conduct, Party Liaison Committees, Complaint and Dispute Resolution Mechanisms Can Promote Fairness**

**Party Codes of Conduct.** Extra-legal party codes of conduct can be important in ensuring a fair election campaign. To be effective, however, such codes should be reached as a result of careful consultations among the parties taking part in the election, even parties that are not putting up candidates. Codes of conduct adopted mechanically from other countries are not as likely to produce positive effects on campaign behavior. Election administrators as well as civic organizations can play essential roles in convening consultations among the parties in order to encourage adoption of codes of conduct through genuine exchanges.

Codes of conduct can address such issues as: not interfering in the campaign activities of other political contestants; enforcing party discipline to prevent violence and intimidation; respecting the rights of voters and other contestants; refraining from negative campaigning; and similar matters. Codes of conduct can also address affirmative requirements, such as stressing ballot secrecy in campaign propaganda and accepting the results of a genuine electoral process -- even if a party fares poorly.

**Party Liaison Committees.** Election administrators can set up party liaison committees at the national, regional and local levels in order to facilitate communication between the parties and election authorities as well as among the parties. Liaison committees can provide the same information to all of the parties simultaneously and in the presence of the other contestants. This may reduce possibilities of giving differing information or advice to contestants. It also has an advantage of preventing a party from claiming it was told something other than what was actually communicated.

A second important function of party liaison committees is that they give party representatives the opportunity to interact regularly and build relationships. They also provide a forum for parties to raise questions and to raise informally complaints concerning the behavior of other political contestants. This can lead to informal and effective conflict avoidance and dispute resolution.

The NEC could begin consultations about electoral preparations, at least at the national level, even before political parties are legally established in Nigeria. Such consultations could lead to the establishment of a national political party advisory committee to the NEC or some other appropriate mechanism.



**Complaint and Dispute Resolution Mechanisms.** Free and fair elections require equality before the law and equal protection of the law for all political contestants. In order to meet this obligation the government and election administration must provide political contestants with impartial and efficient complaint mechanisms and with effective remedies. This is an extension of due process of the law.

Appropriate due process guarantees include legislative, regulatory and judicial procedures that provide notice, hearings and appeals, which protect against arbitrary and/or biased rulings. These procedures should be available to political contestants at each step of the election process, including: party registration; delimitation of districts; appointing election officials; qualifying for the ballot; creating and updating the voter registry; designing, producing and distributing election materials; developing and implementing voting, counting and tabulation procedures; and determining official results.

Three models are generally employed when setting up an election complaint mechanism:

- electoral bodies investigate and rule on electoral complaints, with appeal to the next higher electoral body (certain decisions of the highest electoral body may be reviewable by an appellate or supreme court, but in some cases the highest electoral body has the final say);
- special electoral tribunals process such complaints;
- regular courts process electoral complaints (in this instance, it is crucial to provide for an expedited judicial process to ensure timely resolution of electoral complaints).

In matters concerning delimitation of election districts, sometimes special legislative commissions receive complaints from political contestants, with appeal to the courts.

In any of these circumstances, appropriate legal sanctions must be available in order to deter improper conduct and to punish violators. Fines, ordering a correction or right of reply in the news media, imprisonment, suspension or cancellation of a party or candidate qualification for election, all should be available and applied appropriately, without discrimination and in a manner proportional to the violation. In some instances, it may also be appropriate to hold party leaders or candidates responsible for the actions of their supporters.

As with all other aspects of the election process, complaint mechanisms should be transparent and open to party representatives, domestic nonpartisan election monitors and impartial international observers.

In addition to adjudicatory or formal complaint mechanisms, informal and alternative dispute resolution avenues may be appropriate. As mentioned previously, political party

liaison committees can play an important role in informal conflict avoidance and dispute resolution. Mediation may also be an effective tool, as was seen in the 1994 elections in South Africa. There parties involved in disputes were required to attempt to resolve them through mediation before formal adjudication was undertaken. Such avenues require dialogue between complaining contestants and their having confidence in the election process.

### **G. Holding Staggered Elections or Consolidated Can Affect Electoral Fairness**

There are advantages to holding elections for various offices at different times (so called "staggered elections"). There are distinct disadvantages as well. Staggered elections can provide an opportunity for election officials to solve problems in election administration by learning from earlier elections. They also allow voters to focus attention on issues and candidates associated with different offices. This can be important when principal electoral issues at a local level differ from one geographic area to another, rather than center one or a small number of issues that are common and that could be addressed by a national program. Staggered elections also allow populations unfamiliar with electoral procedures to practice voting in a series of elections.

If elections are to be staggered, the question arises as whether to hold local elections first, then elections to intermediate governmental bodies, and finally elections to national office -- or whether to reverse this order. Democratic transitions usually start with elections to national office. This allows power to be transferred at the center of national political life. The new government then organizes elections down to the local level under "rules of game" that it determines. The advantage of this method is that it allows a rapid transfer of central power. The disadvantage is that it allows officials of the former government to remain in place at the local level, which can inhibit implementation of a transition program. The obvious disadvantage of starting with local elections and building to elections for national offices over time is that it postpones the transfer of central power.

A clear disadvantage to staggered elections is that the process expends much greater resources. Most transitional democracies are resource scarce and cannot easily afford a series of elections. If available resources are depleted in early elections, then it may be impossible to garner sufficient resources for electoral administration and for the political contestants to mount free and fair elections at later stages. In the Nigerian context, with severe economic problems and decreasing per capita income, this issue will demand careful consideration. Also, given the number of previous elections in Nigeria, there may not be a need for the electorate to learn the mechanics of voting through a series of elections. In addition, election administrators have recent electoral experience to examine in approaching new elections.

Consolidated elections have two principal advantages. They conserve resources by avoiding the expense of a series of elections. They also transfer power at more than one level of government simultaneously. The disadvantages of consolidated elections are most



pronounced where the electorate is not familiar with choosing between political contestants and with the mechanics of voting and/or in transitional settings where opposition figures are not well known or organized sufficiently for the electorate to evaluate their merits as compared to incumbents or contestants publicly known from their activities in the prior government.

In the Nigerian context, where a clearly delineated federal and local government structure is in place, one way to approach the question of whether to hold staggered or consolidated elections would be to hold two sets of elections rather than separate elections for each level of government or totally consolidated elections. Holding two sets of elections would hold the advantage of expending fewer resources than fully staggered elections and would present many of the advantages of both staggered and consolidated elections.

Municipal and state elections could be held at the same time. It is likely that there would be a similarity of issues at these two levels, and such elections should provide an opportunity for voters to concentrate on a limited number of candidates. If these elections were held first, they might also allow public confidence to build toward later national elections. National legislative and presidential elections could be held together, either before or after the local and state elections. A similarity of issues would apply also to national elections, and voters could concentrate on a small number of candidates. Elections for Regional Assemblies could be included in either the first or second set of elections; such elections would not be necessary if Regional Assemblies are drawn from members of the State Houses of Assembly, as recommended by the committee on legislatures of the National Constitutional Conference. Resolution of these points, of course, requires earnest dialogue by Nigeria's democratic actors, as do the other considerations addressed in this paper.