

## Free and Fair: The Administration and the Conduct of the 2015 Nigerian General Election

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### Introduction

On April 11, 2011, over 34 million Nigerians went to the polls to elect a new President in succession to President Umaru Yar'Adua who passed away on May 5, 2010 following and after a prolonged illness. The three frontrunners in the election were President Goodluck Ebele Azikiwe Jonathan of the Peoples' Democratic Party (PDP), General Muhammadu Buhari (Rtd.) of the less than six-month old Congress for Progressive Change (CPC) and Nuhu Ribadu of the Action Congress of Nigeria (ACN). To be sure, Nigerians went to the polls in April 2011 amidst growing **uneasiness** and **trepidation** given their harrowing experiences about the administration and conduct of the 1999, 2003 and 2007 General Elections which were fundamentally flawed as not meeting acceptable international minimum standards by Domestic and International Election Observers and Monitors.<sup>1</sup> In the 2011 Presidential Elections conducted by the Independent National Electoral Commission (INEC) chaired by Professor Attahiru Jega and adjudged to be 'free,' and 'fair,' compared with the disgraceful outings in 1965, 1983, 2003 and 2007,<sup>2</sup> Dr. Jonathan polled 22,495,187 Votes or 58.89 percent of the total votes cast while General Muhammadu Buhari (Rtd.) scored 12,214,853 Votes or 31.98 percent of the total votes cast and Mr. Nuhu Ribadu scored 2,079,151 votes.<sup>3</sup> The declaration of Dr. Jonathan as the winner and President-Elect by Professor Jega, Chief Returning Officer of the Presidential Election for a fresh four-year tenure was immediately followed by a spate of violent activities, largely in the Northern States in which more than 800 lives and substantial properties were lost.<sup>3</sup>

It is in order to assess the performance of INEC in the administration and conduct of the 2015 General Elections in view of three sampled post-election comments by Nigerian Commentators, namely:

1. "Voter Suppression through Permanent Voters Card."<sup>4</sup>
  2. "How Jega Defeated Jonathan for Buhari in the Election."<sup>5</sup>
  3. "Observers Describe Rivers Poll "Bloody Election, **Coup-d'e-tat** Against Democracy."<sup>6</sup>
- Are these comments **fair** and **objective** in spite of repeated assurances by the INEC Chairman that the 2015 General Elections will be "flawless or near perfect" given the level of preparedness of the Commission? At a National Stakeholders Summit in Abuja on March 24, 2015 Professor Jega noted:

1. that the Commission commenced preparations for the 2015 Elections immediately after

- the 2011 General Elections;
2. that the Commission succeeded in cleaning up the Voters' Register by identifying and removing four million multiple registrations;
  3. that the Commission succeeded in producing and distributing PVCs with 82 percent collection;
  4. that INEC had procured Smart Card Readers (SCRs), verified and validated Polling Units (PUs), and trained its regular and adhoc staff;
  5. that the poll shift (from February 14 and 28 to March 28 and April 11) gave the Commission additional time "to perfect the electoral process for the delivery of free, fair and credible elections."<sup>7</sup>

While indicating that "accreditation for the elections would start at 8 am and end at 1 pm," and that "voting would start at 1.30 pm and end when the last person votes," Professor Jega disclosed that hard copies of the Result Sheets would be scanned and published on INEC's website.<sup>8</sup> He added that INEC was doing its best to ensure that the elections were free, fair and credible. As he put it: "INEC is determined to be impartial. We will continue to do all that is possible to ensure a level-playing field for all political parties."<sup>9</sup>

### **Theoretical Framework**

It has been said that elections are the litmus test of a democratic political system which can be defined as "liberal democracy," "Westminster democracy" or "polyarchy,"<sup>10</sup> where and when people exercise their inalienable rights at regular intervals to choose among competing leaders and public policies. Robert Dahl has noted three essential conditions:

1. meaningful and extensive competition among individuals and organized groups for positions of government power.
2. A "highly inclusive" level of political participation in the selection of leaders and policies, at least through free and fair elections such that no significant group of adults is excluded.
3. Civil and political liberties sufficient to ensure the integrity of political competition and participation.<sup>11</sup>

A major problem, however, is that no modern political system the world over has yet or ever achieved "a dispersal of power, degree of responsiveness and depth of equality of citizen involvement."<sup>12</sup> As Larry Diamond put it:

For most of its two hundred years, the United States excluded from participation the majority of its adult population, and even when legal and constitutional restrictions were lifted, disadvantaged groups especially American blacks, faced powerful diffuse and often brutal obstacles to participation that have not been completely overcome. Yet the United States has been widely viewed as a symbol of liberal democracy.<sup>13</sup>

The point to emphasise here is that the character of an electoral system and the conduct of an election cannot therefore be meaningfully assessed in the **abstract**. As an Africanist put it:

Despite the pervasive and repeated collapse of multi-party competitive regimes in Africa, successor regimes differ significantly in the choice they afford their citizens... In the contemporary search for limited government and public accountability in African nations, political variants and experiments differ in their proximity to liberal democratic values, as well as in the paths along which they approach them.<sup>14</sup>

Thus, by what standards, and in relation to what body of theory, value or experience can we say that the 2015 General Elections were **free** and **fair**? The concept of **free** and **fair** elections embraces several variables. In a multi-party democracy, parties must be free to compete to organize, recruit members, articulate policies, organize campaign rallies and solicit for votes. Hence, the less the political system restricts opposition parties from organising and campaigning for votes, the freer and fairer the election. Second, individuals must be free to participate in the political process such as joining the party of their choice, campaign for it, seek political office on its platform, articulate their preferences in speech and writing, assemble and organise around them and above all, vote or not vote at all. Third, and more important, each individual should have **one** and only **one** vote, and each must be counted equally. Put differently, no one who satisfies the conditions stipulated for voting must be denied/refused registration; no registered voter should be prevented from voting nor should any votes be counted for a party except those cast legally by individuals nor should any legally and properly cast votes be voided, discarded or disregarded. Fourth, the results of an election must be accurately reported and legitimate winners/victors allowed to assume elective offices.<sup>15</sup>

In a way, an election is **free** and **fair** where there are no restrictions on party competition and political participation; no stuffing of ballot boxes nor snatching of ballot boxes/results sheets. Because electoral malpractices have not been completely eliminated even in advanced liberal democracies “whose populations are so much better educated and remunerated and whose technologies are so much more sophisticated and efficient than those” in the underdeveloped countries of the ‘South,’<sup>16</sup> and because the patterns of campaign financing and mass media control hardly give rise to perfect competition,<sup>17</sup> obviously, we can **not** measure the Nigerian election against the standards of performance obtaining in Western liberal democracies.

Therefore, we assess the performance of the 2015 Nigerian Elections against the values expectations and experiences of the Nigerian political landscape. Elections have been central to regime collapse in Nigeria because they neither passed the citizens’ acceptability nor electro

ral neutrality, always pushing the country to a dangerous brink which she has often survived after serious constitutional and political bruises. The December 1964 Federal, October 1965 Western Nigeria Parliamentary and 1983 General Elections rocked Nigeria's delicate balance leading to the January 15, 1966 and December 31, 1983 **coup d'états**.<sup>18</sup> While the country's restructuring by the military did not go far enough to win the civil confidence of the people, the criminal annulment of the June 12, 1993 Presidential Elections acclaimed to be **free and fair** by International and Domestic Election Observers/Monitors demonstrated that the military was not immune to **civil dishonesty**.<sup>19</sup> By fits and starts, the 1998/9 General Election was tolerated **only** because of citizens' disenchantment with military rule. The 2003 and 2007 Elections were examples of make-belief democracy, with feelings of inequity and marginalization/dominance pervading the political landscape.<sup>20</sup>

Nevertheless, the 1979 Nigerian General Election<sup>21</sup> can be seen as an advance over previous and subsequent experiences if only because the Constitution articulates a strongly democratic set of rules and expectations with regard to electoral competition and the military, in spite of its preference for a successor, organised a free and fair election.<sup>22</sup> In any event, the 2011 General Election, considered a watershed and a trigger to future political events, was better than the worst (2003/2007 General Elections) though an attempt by the North to create a strategic consensus did not save it from being pushed to fringe politics, forcing some of its spokesmen to vow to make governance by the winner impossible. To be sure, the power shift in April 2011 occurred without Northern consent through a combination of fortune, intrigues, arm twisting and trickery, but it is the purveyor of the decline of Northern hegemony and the ascendancy of the South, namely, South-South geo-political zone, which, through acts of omission or commission, wasted the good will.<sup>23</sup>

We have stated above that the concept of free and fair elections embraces several variables in a multi-party democracy. Mackenzie has noted four conditions for **free and fair** elections:

1. an independent judiciary to interpret electoral law and the provisions of the Constitution;
2. an honest, impartial, non-partisan administration to run elections;
3. a developed political system of political parties so that people could have put before them a coherent, workable ideology; and
4. a general acceptance of a vague rule of the game which limits the struggle for power.<sup>24</sup>

Some prerequisites are a **sine qua non** to having free, fair, credible and transparent elections.<sup>25</sup>

<sup>5</sup> First, is a credible Voters' Register that captures all eligible voters. Second, is a clear and unambiguous constitutional, electoral and legal framework guiding the conduct and administration

on of the elections. Third, party primaries must be conducted in accordance with the provisions of the Constitution and the Electoral Law, and they must create a level-playing field and good environment for all contestants. Fourth, is an environment that is not characterized by violence. Fifth, law enforcement agencies must protect contestants in party primaries, INEC staff to conduct voter registration and give confidence to voters that they can go out and exercise their rights without fear of being killed in the process.<sup>26</sup>

### **Constitutional and Legal Framework**

The constitutional and legal framework guiding the administration and conduct of the 2015 General Elections can be found and has been laid in the 1999 Constitution (As Amended) and the 2010 Electoral Act (As Amended) though much still needs to be done. True, it is that the Electoral Reform Committee chaired by former Nigerian Chief Justice Muhammadu Lawal Uwais<sup>27</sup> had made far-reaching recommendations to guarantee the independence and operational efficiency of INEC (such as amending Section 153 of the 1999 Constitution by removing INEC from the List of Federal Executive Bodies and ensuring that election expenses and recurrent expenditure of the Commission including personal emoluments of members of the Commission shall be “first charge” on the Consolidated Revenue Fund of the Federation. The 1999 Constitution (As Amended) through the First and Second Alteration Acts brought significant improvements in the operations of the Independent National Electoral Commission, particularly the election timeline, financial autonomy and administrative independence from the Executive Branch. Section 153 (2) of the Constitution states that the power to appoint the Chairman and twelve members of the INEC and thirty-seven Resident Electoral Commissioners is vested in the President of the Federal Republic of Nigeria in consultation with the Council of State, and subject to confirmation of the Senate pursuant to Sections 154(1) and 154(3) of the 1999 Constitution (As Amended). Section 155(1)(c) of the 1999 Constitution provides that a member of the Commission shall hold office “for a period of five years from the date of his appointment,” and pursuant to Section 157(1) of the Constitution such a person

may only be removed from that office by the president acting on an address supported by two thirds majority of the Senate praying that he be so removed for inability to discharge the functions of the office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

“Misconduct,” as stipulated by the Constitution,

means breach of the Oath of Allegiance or oath of office of a member or breach of the provisions of this Constitution or

a misconduct of such nature that amounts to bribery or corruption or false declaration of assets and liabilities or conviction for treason or treasonable felony.

In order to demonstrate INEC's impartiality and neutrality in the discharge of its onerous responsibilities under the law, the 1999 Constitution (As Amended) as contained in Part I of the Third Schedule of the Constitution provides that members of the Commission including Chairman, National Electoral Commissioners and RECs shall be "non-partisan," be person "of unquestionable integrity and shall not be a member of any political party." Indeed, Section 160(1) of the Constitution states clearly and unambiguously that the powers of the INEC

to make its own rule or otherwise regulate its own procedure shall not be subject to the approval or control of the President.

To be sure, any person employed in the public service of the Federation is disqualified for appointment as Chairman or member of INEC though a person so duly appointed shall, on his appointment, be deemed to have resigned his former office as from the date of the appointment. In the exercise of its powers to make appointments or exercise disciplinary control over persons, the Constitution states clearly that INEC "shall not be subject to the direction or control of any other authority or person."<sup>28</sup>

The 7<sup>th</sup> Session of the National Assembly improved the legal framework for electoral process by amending the 2010 Electoral Act. Entitled the Electoral Act 2010 (As Amended) 2015, the amended Act seeks to improve the legal framework for electoral process by:

1. ensuring a level playing field for all participants in the electoral process, more transparent process of conducting election and gain time to prepare voters and candidates for elections;
2. addressing related issues to facilitate electioneering in Nigeria;
3. determining voting procedure;
4. increasing the number of days for application in respect of issuance of duplicate Voter's Card; and
5. providing for the tenure of office of Secretary to the Independence National Electoral Commission.

Section 8(1) of the Act dealing with the appointment of Secretary and other staff of the Commission states:

There shall be a Secretary to the Commission who shall (a) be appointed by the Commission; (b) have such qualifications and experience to be determined by the Commission as are appropriate for a person required to perform the functions of his office under this Act; and (c) hold office for a period

d of four years from the date of his appointment which may be renewable for another period of four years only.

The Principal Act did not stipulate the tenure for such a sensitive position unlike the tenure of National and Resident Electoral Commissioners stipulated by the Constitution.

On the issuance of a duplicate Voter's Card, Section 18(1) of the Principal Act which was amended provides:

whenever a voter's card is lost, destroyed, defaced, torn or otherwise damaged, the owner of such card shall, not less than thirty (30) days before polling day, apply in person to the Electoral Officer or any other officer duly authorized for that purpose by the Resident Electoral Commissioner, stating the circumstances of the loss, destruction, defacement or damage.

The amendment extended the period from thirty (30) days to sixty (60) days.

On the postponement of elections, Section 26(1) of the Principal Act states:

Where a date has been appointed for the holding of an election, and there is a reason to believe that a serious breach is likely to occur if the election is proceeded with on that date or it is impossible to conduct the election as a result of a natural disaster or other emergencies, the Commission may postpone the election and shall in respect of the area or areas concerned, appoint another date of holding of the postponed election, provided that such reason for the postponement is cogent and verifiable.

The amendment added a clause:

In the event of an emergency affecting an election, the Independent National Electoral Commission shall, as far as possible, ensure that persons displaced as a result of the emergency are not disenfranchised.

In order to ensure that INEC staff do not compromise their integrity in the discharge of their election duties, Section 28(1) of the Act states that:

All staff appointed by the Commission taking part in the conduct of an election shall affirm or swear before any court of law or Commissioner of Oaths.

The Electoral Act 2010 (As Amended) also empowers INEC to determine voting procedure. Section 52(2) of the Principal act has this much to say:

The use of electronic voting machine for the time being is p

rohibited.

The amendment to the Principal Act states that:

Voting at any election under this Act shall be in accordance with the procedure determined by the Independent National Electoral Commission.

This amendment is significant because of the controversies it has engendered between proponents and critics of the deployment of Smart Card Readers or Card Reader Machines introduced by the INEC to facilitate and add **credibility** to the accreditation of voters on Election Day, among other things, and enhance **transparency** in the conduct of elections.

Because of the unsavoury and widely-reported involvement of Armed Forces personnel in the rigging of the Ekiti Gubernatorial Elections on June 21, 2014,<sup>29</sup> and over the objections of some PDP members who argue vainly that the ultimate power of the President by **fiat** to deploy troops under the 1999 Constitution (As Amended) and Section 8 of the Armed Forces Act remained sacrosanct, Section 29(1) of the Electoral Act (As Amended) states unambiguously:

Notwithstanding the provisions of any other law and for the purposes of securing the vote, the Commission shall be responsible for requesting for the deployment of relevant security personnel necessary for election or registration of voters and shall assign them in the manner determined by the Commission in consultation with the relevant security agencies.

**Provided** that the Commission shall request for the deployment of the Armed Forces only for the purpose of securing the distribution and delivery of election materials.

In spite of the divided views on the propriety of deploying troops for election duties, this provision is very significant not only because members of Civil Society Organisations and the INEC Chairman are agreed that the Police is capable of ensuring or providing adequate security during elections since “we are not at war,” the judiciary has also made far-reaching pronouncements on the deployment of troops for election duties. Justice Ayo Salami, JCA in **Yusuf v. Obasanjo** (2005) 18 **NWLR** Part 956 at p.96 has this much to say:

It is up to the Police to protect our nascent democracy and not the military, otherwise the democracy might be wittingly or unwittingly militarised.<sup>30</sup>

Justice Umar Abdullahi, JCA was more forceful:

In spite of the non-tolerant nature of our political class ... we should by all means keep armed personnel ... from being part and parcel of the electoral process. The civilian authorities should be left to conduct and carry out fully the electoral processes at all levels.<sup>31</sup>

Justice Aboki, JCA (Chairman of the Ekiti State Governorship Election Appeal Tribunal) who was visibly worried about the role of Armed Forces personnel during the Ekiti State Governorship Elections, a position vindicated by the Ekitigate Scandal, was more caustic:

Even the President of Nigeria has no powers to call on the Nigerian Armed Forces to unleash them on peaceful citizenry who are exercising their franchise to elect their leaders ... In the event of insurrection or insurgency, the call on the Armed forces to restore order must be with approval of the National Assembly as provided in Sections 217(2) and 218 (4) of the Constitution (As Amended).<sup>32</sup>

The Court of Appeal and Justice Mohammed Rilwan of the Federal High Court, Sokoto had not only invalidated the deployment of soldiers for election duties but also held the view that the effect of the combined provisions of Sections 215 and 217 of the Constitution limit the power of the President to deploy soldiers in the suppression of insurrection and to aid the Police to restore order which has broken down.<sup>33</sup>

Giving his ruling on an Application filed by Femi Gbajabiamila in which he sought a Declaration that the deployment of soldiers for election duties by President Goodluck Jonathan as it was done during the Ekiti and Osun States' Gubernatorial Elections is **unconstitutional** with President Jonathan, Chief of Defence Staff, Chief of Army Staff, Chief of Air Staff, Chief of Naval Staff and the Attorney General of Federation as Respondents/Defendants, Justice Ibrahim Buba of the Federal High Court, Lagos on March 23, 2015 held that President Jonathan cannot deploy soldiers for election duties without authorisation by the National Assembly pursuant to Sections 215 and 217 of the 1999 Constitution (As Amended).<sup>34</sup> He was of the opinion:<sup>35</sup>

1. that any election, which is militarised through the deployment of soldiers where there is no insurrection is anti-democratic and not in consonance with constitutional democracy and civil rule;
2. that the army is not needed for civil duties, nor does the law make any provisions for military involvement in civil duties though soldiers can vote in their barracks.

He declared:

The armed forces/military have no role in the elections. The time has come for us to establish the culture of democratic rule in the country and to start to do the right thing, particul

arly when it has to do with dealing with the electoral process which is one of the pillars of democracy ... we should by all means try to keep armed forces and military from being a part and parcel of the electoral process. The State is obligated to confine the military to their demanding assignment, especially in this time of insurgencies, by keeping them out of elections. The State is also obligated to ensure that citizens exercise their franchise freely and unmolested.<sup>36</sup>

Because of the unsavoury roles played by the National Security Adviser to President Jonathan, Colonel Sambo Dasuki (Rtd.) and Service Chiefs in the postponement of the 2015 General Elections slated for February 14 and 28 by INEC by six weeks, citing security challenges in the NorthEast though the measure was to allow the PDP to do some damage control given the soaring popularity of General Buhari, the APC Presidential candidate in spite of the campaigns of calumny and denigration against his person,<sup>37</sup> the Independent National Electoral Commission restated the role expected of the military during the election. Apart from the **unbecoming** role played by Mr. Sunday Adewusi, then Inspector-General of Police during the controversial 1983 General Elections when he gave a "Shoot-On-Sight" Order during the Election,<sup>38</sup> the position of INEC was that a well-equipped police has always be in charge of providing security during elections while the military has a role restricted to designated checkpoints to ensure that people do not traffic in arms and ammunitions or engage in conduct that would tamper with the electoral process. Nevertheless, INEC maintained that troops, not "hooded troops", could be deployed in "aid" of civil authority, provided the deployment is authorized by the National Assembly.<sup>39</sup>

At a Town Hall meeting organised by REINVENT Media in association with the Ford Foundation and Kukah Centre in Abuja on March 16, 2015 and in furtherance of the admonishment of a Civil Society coalition, One VOICE, which had warned against deployment of soldiers for election duties, enjoining the INEC Chairman to ensure that INEC was not further **blackmailed** by the National Security Adviser to President Jonathan and Service Chiefs from usurping the constitutional responsibilities of INEC and the Police with regards to elections,<sup>40</sup> the INEC Chairman reiterated the position of the law, advising/warning the military to stay away from the elections, emphasizing that the power of the military as enshrined in the 1999 Constitution (As Amended) does not extend to monitoring elections.<sup>41</sup> He maintained:

1. that the military can only intervene by mounting security at the Polling Units if there is a breakdown of law and order and only at the invitation of the Inspector General of Police who would solicit their support for security;
2. that the Police which can handle security during election would only be required to stay some 300 metres from PUs.

He declared:

The Army are not supposed to be visible at any polling unit except there is a breakdown of law and order and they have been invited by the Inspector General of Police.<sup>42</sup>

He added that the military

are there so that if there is a breakdown (sic, of law and order) ... which the Police are unable to contain, then they could be rapidly deployed to be able to assist ... The Army is not supposed to be visible or to be around any polling unit unless there is a breakdown of law and order and they have been invited by the Inspector General of Police. As far as we are concerned, the role of every security agency as it affects the electoral process is to add value but within the constitutionally defined roles.<sup>43</sup>

As a consequence of the apprehensions of CSOs and the Opposition APC on the use of security agents for election duties, the Director (Legal) of the APC Presidential Election Campaign Organisation, Mr. Chukwuma-Machukwu Ume, SAN sent a letter to President Goodluck Jonathan enjoining him to obey the Orders of the Federal High Courts, Lagos and Sokoto to keep Nigerian soldiers out of the elections:

... Your Excellency, may I add this: the restraining phrase ‘security supervision of elections in any matter whatsoever in any part of Nigeria,’ is all-encompassing including absence of armed forces on the roads and streets on the election days and not discriminating as to be limited to polling booths, as some may expediently want the public to believe. I therefore request Your Excellency to instruct the Service Chiefs and all relevant State Officers to diligently comply with the Orders of the Court by ensuring that the Armed Forces are never engaged in the security supervision in the forthcoming elections in any manner and in any part of Nigeria whatsoever. It is the statutory duty of the Nigeria Police Force to carry out this function without having the Army Forces instil fear in the citizenry during the elections.<sup>44</sup>

For inexplicable reasons, and in spite of Court Orders declaring **unconstitutional** the deployment of troops for election duties, President Jonathan on March 22, 2015 ordered the deployment of soldiers in all the States of the Federation and the Federal Capital Territory.<sup>45</sup> It is significant to note that no one was surprised with the decision, principally, because impunity has become the hallmark of the Jonathan Administration. Although spokesmen of the military high command have maintained that soldiers “would stand 300 metres away from the polling booths and would not be involved in anything pertaining to electoral materials, including ballot papers and boxes,”<sup>46</sup> opposition parties and CSOs have warned against their deployment for election duties fearing that they could be used to intimidate voters and supporters of the Opposition. In any event, the Electoral Act (As Amended) has given the INEC the exclusive power to requ

est for deployment of security personnel for election duties and **not** President Jonathan.

It would be recalled that the ERC made far-reaching recommendations on the roles of security agencies which should be clearly defined while their duties should be effectively coordinated. Specifically, the ERC was of the view that while police personnel should not carry weapons when on election duties, Armed Forces personnel should not be deployed to Polling Units.<sup>47</sup> The fears of the ERC were vindicated by the ‘militarization’ of Gubernatorial Elections in Ekiti and Osun States in June and August 2014.<sup>48</sup> It was small wonder then that the National Assembly in an amendment to the Electoral Act 2010 empowered the INEC to exercise control over the use of security agencies on Election Day. We shall **revisit** the issue of deployment or involvement of Armed Forces personnel in the 2015 Elections.

What then are the powers of the Independent National Electoral Commission? The 1999 Constitution (As Amended) states that the Commission shall have power to:

- a. organise, undertake and supervise all elections to 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 House of Assembly of each State of the Federation;
- b. register political parties in accordance with the provisions of this Constitution and an act of the National Assembly;
- c. monitor the organisation and operation of the political parties, including finances, conventions, congresses and party primaries;
- d. arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
- e. arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;
- f. monitor political campaigns and provide rules and regulations which shall govern the political parties;
- g. ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;
- h. delegate any of its powers to any Resident Electoral Commissioner; and
- i. carryout such other functions as may be conferred upon it by an Act of the National Assembly.

Obviously, these powers and/or functions of the INEC are very **overwhelming** and **daunting**. That explains why the Uwais ERC recommended the **unbundling** of the Independent National Electoral Commission and the establishment or creation of:

1. Constituency Delimitation Commission
2. Political Parties Registration Commission
3. Electoral Offences Commission.<sup>49</sup>

Regrettably, the White Paper on the ERC Report watered down far-reaching recommendations of the ERC that would have enhanced the transparency and credibility of future elections in

Nigeria. As we noted elsewhere:

...while President Umaru Yar'Adua lauded the Committee's recommendations which he agreed would enhance the credibility of future elections in Nigeria, for reasons of political expediency and enlightened self-interests, the White Paper on the Report of the Committee watered down the recommendations of the Committee.<sup>50</sup>

We have stated that the concept of free and fair elections embraces four variables. We have also noted four conditions for free and fair elections, emphasising some prerequisites which are a **sine qua non** to having free, fair credible and transparent elections. Also, the State is obligated to ensure that citizens exercise their franchise freely and unmolested, and to do so, the State must refrain from deploying soldiers for election duties. Thus, citizens must be able to exercise their franchise freely and without any fear or molestation by security agents such as Civil Defence, SSS and including soldiers. To be sure, deploying soldiers for election duties compromises the credibility and transparency of such elections as such a deployment causes apprehensions among voters. As Aminu Tambuwal put it:

When the complexion of election conducted by a civilian regime assumes the semblance of that conducted by a military junta, it is obvious that the nation needs help. The nation craves for credible elections, which means elections that are free, fair, transparent and peaceful. Elections which are merely peaceful through the demonstration of force and intimidation are neither democratic nor credible.<sup>51</sup>

Just as the ERC admonished the authorities of the State against the deployment of soldiers during election period, asking the Army Forces and other security agencies to perform election duties including protecting sensitive materials is like putting the State under a **siege**. To ensure free and fair coverage by Election Observers, party agents, CSOs and for the media personnel to be free to monitor election proceedings, the Army should not be involved in election duties. To be sure, there had been reported cases of harassment and intimidation of voters and civilians by soldiers. Thus, the case has been made that a well-equipped Nigeria Police Force is better placed than the Army to carry out election duties.

In spite of misgivings associated with the deployment of troops during election period, and in spite of apprehensions expressed by CSOs with respect to the deployment of troops by President Jonathan, and in spite of the rulings of the Courts forbidding the use of soldiers for election duties, President Jonathan on March 22, 2015 ordered the deployment of soldiers throughout the Federal Republic of Nigeria including the FCT.<sup>52</sup>

## Preparation for the 2015 General Elections

Obviously, the 1999 Constitution (As Amended) and the Elections Act had laid the groundwork for the Independent National Electoral Commission in preparing for the 2015 General Elections. Section 221 of the 1999 Constitution (As Amended) states unambiguously:

No association, other than a political party shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.

With respect to the period of electioneering campaigns by political parties for any candidate for an elective office, Section 99(1) of the Electoral Act put public campaign period by political parties at ninety days before the polling day. Regrettably, these provisions had been honoured more in the breach than in observance. Prior to a warning issued in late September 2014 by the Independent National Electoral Commission drawing the attention of members of the public to strict adherence to the provisions of the 1999 Constitution (As Amended) and the Electoral Act on public political broadcast and campaign, the Transformation Ambassadors of Nigeria (TAN),<sup>52</sup> a body not known in law nor recognized by law since it is not a political party has been running adverts across Nigeria and organising ‘noisy rallies’ across Nigeria, attended by government officials including the Secretary to the Federal Government, Senator Pius Anyim Anyim, ostensibly to benefit the PDP and President Goodluck Jonathan.

Describing the warning as “acting too little, too late,” the APC slammed the INEC:

Is it a ploy by INEC to give undue advantage to the PDP and its adopted sole presidential candidate, President Jonathan, in next year’s elections? .... When did INEC become aware that these actions are illegal ....? What TAN has been doing along is to canvass for votes for President Jonathan in a clear violation of the Constitution as well as the Electoral Act, which bans political campaigns until 90 days before election. Our party, joined by well-meaning Nigerians, had alerted INEC to these campaigns and the fact those behind them are breaking the law, but INEC merely responded with some unbelievable sophistry.<sup>53</sup>

The party added, and this is significant:

Now that those illegal campaigns have run for several months, INEC suddenly awoke from its slumber to issue a warning on illegal campaign. This is unbecoming of an election umpire that expects to be taken seriously, an umpire that is expected not only to be fair but to be seen as such and one that knows its onions. This caution by INEC is coming too little, too late.<sup>54</sup>

The point we want to emphasise here is that INEC, in the exercise of its powers under Sections 78 and 118 of the 1999 Constitution (As Amended) has set February 14 and 28, 2015 as the days for the Presidential and National Assembly as well as Governorship and State House of Assembly Elections respectively pursuant to Sections 76(2), 116(2), 132(2) and 178(2) of the 1999 Constitution (As Amended).

Unlike the situation during the Second Republic when the registration of parties and voters, certification of candidates, conduct of the campaign and role of the State-owned media, timing and sequence of elections, where to count the Vote had engendered much controversies putting the Federal Electoral Commission on the spotlight,<sup>55</sup> the provision of the 1999 Constitution (As Amended) and the 2010 Electoral Act (As Amended) have settled the fine points of law or issues of controversies and INEC has been saved from controversies arising from these issues during the 2015 General Election. Section 78 or 118 of the 1999 Constitution (As Amended) states that:

The registration of voters and the conduct of the elections shall be subject to the direction and supervision of the Independent National Electoral Commission.

Section 15 of the Third Schedule, Part 1 to the Constitution empowers INEC to:

- i. organise, undertake and supervise all elections to all elective offices in the Federal Republic of Nigeria except those at the local government area level;
- ii. register political parties in accordance with the provisions of the Constitution and an Act of the National Assembly;
- iii. monitor the organisation and operation of the political parties including their ... conventions, congresses and party primaries;
- iv. arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election (including local government election) under this Constitution; and
- v. monitor political campaigns and provide rules and regulations which shall govern the political parties.

Because the 2006 Voters Register was irredeemable and could not be “cleaned up” and used for the 2011 General Elections, INEC, pursuant to the First and Second Alteration Acts to the 1999 Constitution and 2006 Electoral Act (As Amended), embarked on a new Voters Registration Exercise for the 2011 General Elections. The 2006 Electoral Act (As Amended) regulates the electoral process including electoral offences, nomination of candidates, registration and de-registration of political parties, party primaries and activities. Again, while the 1999 Constitution (As Amended) enhanced intra-party democracy, the Electoral Act provided detailed regulations for primaries with Section 87(10) of the Act empowering an aggrieved person to seek redress at the Federal High Court while Section 87(11) bars the court from stopping “the holding of primaries or general elections pending the determination of the suit.” To be sur

e, while INEC is empowered by the Act to monitor political parties with a view to ensuring that their activities are not inconsistent with democratic tenets and principles, INEC has no power under the provisions of the 1999 Constitution (As Amended) to **reject** or **disqualify** any candidate submitted by a party for an elective position. Section 31(1) of the 2010 Electoral Act enjoins political parties sponsoring candidates for elective offices to submit not later than sixty (60) days from election such names on the prescribed Forms to INEC while Section 85 of the Act provides that any political party wishing to conduct its primary election must give twenty-one (21) days notice to INEC.

Obviously, registration of political parties is an on-going and continuous process that we have thirty political parties registered for the 2015 General Elections, the last, perhaps, being the Young Democratic Party which on March 4, 2015 was ordered to be issued a Certificate of Registration by Justice Ahmed Mohammed of the Federal High Court, Abuja though its leaders were later asked on March 23, 2015 to retract the claim that the Court had directed INEC to include its name on the ballot papers or risk being sent to jail for contempt or misinforming Nigerians.

A major function/power of the Commission, namely, compilation of a credible Voters Register and related matters ran into a hurricane storm as we shall demonstrate below with respect to INEC's decision to create 30,000 Polling Units to ensure easy access by Voters. Many factors were considered by INEC to enhance easy voters' access to the ballot box after the 2011 Voter Registration Exercise and since the 2011 General Elections when Nigeria's population was put at 160 million and the Polling Units stood at 119,973. As INEC reasoned:

Since 2011, INEC ... employed the strategy of breaking large polling units into manageable structures known as 'voting points.' Under this arrangement, large PUs are disaggregated into multiples of voting points depending on the overall population of voters. These voting points are not autonomous; they remained integral to respective polling unit. Their use ... elicited suspicion from some political parties that have accused the Commission of secretly creating additional PUs. Whereas the electoral law provides for every party to have one polling agent at a PU, some parties are demanding to have polling agents at every polling point!<sup>57</sup>

Given several guidelines for the reconfiguration of PUs such as location as much as possible in enclosures (such as institutions, Town Halls and Community Centres), reasonable distance to the voters, a maximum of 500 registered voters and location in secure environments or places providing easy deployment for staff, equipment and materials or places allowing for effective and efficient management of polling day activities.<sup>58</sup> INEC decided to increase P

Us used during the 2011 General Elections from 119,973 to 150,000 as shown in Table1 for t  
he 2015 General Election.<sup>59</sup>

**TABLE 1**  
**CREATION OF ADDITIONAL POLLING UNITS**  
**BY GEO-POLITICAL ZONE**

ZONE	NUMBER OF POLLING UNITS
North-West	7,906
North-East	5,291
North-Central	6,318
South-West	4,160
South-East	1,167
South-South	3,087
Federal Capital Territory	<u>1,200</u>
	<u>30,000</u>

Source: “2015 ELECTIONS: INEC EXPOSED,” The Nation (Lagos), August 26, 2014.

A proposal, essentially mooted for logistic reasons and enhance easy access of registered voters to PUs and sanitise the PUs was not only **misconstrued** as favouring the North against the South but was also seen as a design to manipulate the electoral process to favour the North in the 2015 General Elections.<sup>60</sup> As the Electoral Integrity Network put it:

The disparities in the new polling units allotted by INEC is an early indication of the consequences of the structural inequities in the Commission .... Since democracy is still taking root in Nigeria many stakeholders do not take important landmark events such as districting or constituency delimitation, which has consequences for the location and spread of polling units as seriously as they should, hence, they often pay scant attention when electoral bodies or political authorities take actions that may alter political constituencies, electoral maps and consequently polling units. The importance of such actions for the outcome of elections only become obvious when election results are released and voters come to find out that the game may have been actually programmed to be won even before the ballots are cast.<sup>61</sup>

It added, and this is very significant:

It is barely five months to the 2015 general elections, a period that all the dimensions required to conduct a free and fair election must be evaluated. Key among the dimensions that determine the outcome of an election are the impartiality, integrity, uprightness and commitment of the headship of the electoral body to be fair to all irrespective of the geopolitical zone of origin of the umpire.<sup>62</sup>

Indeed, the Election Integrity Network attributed, and wrongly in our view, the disparities in the new PUs allotted by INEC to the lopsidedness in the recruitment of key “decision-makers who are predominantly from the Northern part of Nigeria ...”<sup>63</sup> Joining many Nigerians who have accused INEC of favouring some geo-political zones in the number of new PUs allocated to them **vis-a-vis** other zones is the Senate with the Senate Committee on INEC asking INEC to **suspend** the proposal until after the Election in spite of the reasoned case for the proposal as adduced by the INEC Chairman, namely,

to reduce the high number of voters in most polling units to manageable proportions during voting.<sup>64</sup>

According to Senator Andy Uba, Chairman, Senate Committee on INEC:

the Senate would pass a resolution to stop the exercise if Jega fails to heed its advice.<sup>65</sup>

While noting that the proposal was sound, Senator Uba maintained that the “**timing is wrong,**” with a **veiled** threat, Senator Uba added:

If they (INEC) continue with (new polling units) we will pass a resolution to overrule it ... and once we pass our resolution, is he going to go ahead and say he doesn't care. There are consequences when you say you don't care; that is what is it ...<sup>66</sup>

In essence, INEC was literally **blackmailed** in dropping such a laudable proposal that would have reduced the **inconvenience** of having “over 4000 registered voters at Wuse II in Abuja”<sup>67</sup> to queue up for accreditation before voting proper. What needs to be emphasised here is that public reaction to such a **simple** and **innocuous** proposal to create additional PUs to enhance easy access of registered voters to PUs and sanitise the PUs was a **foretaste** of public reaction to other innovations introduced/proposed by INEC to “increase the technology content of the electoral process” through the “use of chip-embedded smart cards (as voter cards) and companion smartcard readers.”<sup>68</sup>

As we noted above, INEC discarded the Voters' Register used for the 2007 General Election and embarked on a fresh VRE on January 15, 2011 at the end of which every eligible voter was issued a Temporary Voter's Card.<sup>69</sup> As it turned out, not only was the Voters Registration Exercise marred and riddled with massive irregularities as INEC later discovered that over 4 million voters were involved in multiple registrations; also that the TVCs were indeed use

d to perpetrate many fraudulent electoral practices in many States during the 2011 General Elections.

Since the Smart Card Readers are expected to authenticate the true owners of Permanent Voters Cards (PVCs), which are to replace TVCs and enhance the credibility of the 2015 General Elections, and since it is an electoral offence for any eligible voter to register more than **once**, it is small wonder then that several millions of PVCs issued by INEC in respect of the 2015 General Elections in many States remained **uncollected**. While one is not surprised that the Commission:

1. commenced preparations for the 2015 General Elections immediately after the 2011 General Elections,
2. cleaned up the Voters Register by identifying and removing over four million multiple registrations,<sup>70</sup>

a major problem confronting the Commission was that data relating to several eligible voters was wiped out from its data base, creating much anxious moments for those whose names were wiped out from the Commission's data, necessitating a fresh Voters Registration Exercise for this category of voters as well as those Nigerians who changed residence or reached voting age of nineteen years. Because the VRE in January 2015 was marred with much shoddiness, and because the distribution of PVCs across the nation was very tardy by the end of January 2015, the Commission became the butt of vitriolic comments by many Stakeholders including public opinion leaders/moulders who accused the Commission and specifically, its Chairman of deliberate attempts to disenfranchise millions of Nigerians particularly those in the Southern States.

Before the end of 2014, the media was awashed with stories credited to Senator David Mark, then President of the Senate that the 2015 General Elections slated for February 14 and 28 would not or might not hold because of the security situation in the North-East, and that the tenure of holders of executive and legislative offices would or might be extended beyond four years, though Senator Mark later stated as saying that he was misquoted. Specifically, the story being bandied around was that insurgency in the North-East amounted to a Declaration of War pursuant to Sections 4(2), 105(2), 135(3) and 180(3) of the 1999 Constitution (As Amended) necessitating tenure elongation. The controversy was only put at bay by leading lights in constitutional law who not only argued that Section 4(2), 105(2), 135(3) and 180(3) being cited are **inapplicable** and that it is **inappropriate** to invoke them because of the insurgency in the North-East; it was also argued that the term "War," **stricto sensu**, means war with another country, and that Nigeria cannot be at war with itself or part of itself, adding that Civil War is not war in the legal sense in which the term was being used in the provisions being cited, maintain

ning that these provisions must be read together with Section 5(4)(a) of the 1999 Constitution (As Amended).

### **INEC In The Throes of Distractions.**

It will be recalled that the first in the series of attacks on INEC by many interested parties and Stakeholders including the Presidency, PDP Governors Forum came when INEC announced last year the creation of 30,000 additional PUs. The Commission Chairman, Professor Attahiru Jega, was accused, **albeit** unfairly, of favouring the Northern States **vis-a-vis** the Southern States. It was argued that INEC lacked the power to create new PUs because the Electoral Act (As Amended) was silent on the matter. While the Commission suspended an otherwise laudable proposal, it came under scurrilous and vitriolic attacks from critics who not only alleged that INEC deliberately skewed the distribution and collection of PVCs to favour the Northern States **vis-à-vis** the Southern States but also questioned the legality, durability and propriety of using PVCs as opposed to TVCs for the 2015 General Elections. Thus, in early February 2015, the Southern Nigeria Peoples Assembly, apparently, a pro-Jonathan group led by Chief Edwin Clark and Dr. Femi Okurounmu, called for the removal/resignation of the INEC Chairman:

We call for the immediate arrest of Jega for criminally mistreating the procurement of PVCs for under-aged pupils in contravention of the provisions of the 1999 Constitution of the Federal Republic of Nigeria and the Electoral Act...<sup>71</sup>

Meanwhile, on January 22, 2015 at the Chatham House in London, Colonel Sambo Dasuku (Rtd.), National Security Adviser to President Jonathan declared that INEC was not ready for the February 14 and 28, 2015 General Elections because a substantial number of registered voters had not collected their PVCs, adding that he had advised that the elections be postponed. Insecurity in the North-East was not an issue then nor was it raised. Obviously, that Statement represents the position of President Jonathan and the PDP, anxious to postpone the election. During his brief visit to Nigeria on January 25, 2015, United States Secretary of State, John Kerry wanted a categorical Statement from President Jonathan that the 2015 General Elections would hold as **scheduled** and Secretary State John Kerry was so assured. At a meeting of the National Peace Committee chaired by General Abdusalaam Abubakar (Rtd.) on February 2, 2015 with representatives of political parties in Abuja, the Service Chiefs gave assurances of their **readiness** for the elections. First, was the Chief of Defence Staff who maintained:

though we are busy in the North-East, we also have capabilities

ities across the nation.<sup>72</sup>

He added that the role of the military is to support the Police in providing security during the election. The Chief of Army Staff declared:

We are aware of the need for security, before, during and after the elections. We will deploy across the States ... in areas as we discover have capacity for violence. We are prepared to ensure we have peaceful election.<sup>73</sup>

The Chief of Air Staff added:

We have commenced the airlift of the materials needed for the elections, starting from Abuja. We will continue with the elections.<sup>74</sup>

Thus, twelve days to the **scheduled** elections, and despite the 'state' of security in the North-East, the entire military high command assured the nation of their readiness to provide security for the elections.

Then came February 5, 2015, when INEC was informed in writing by the Service Chiefs that they would no longer be able to provide the much-needed security for the elections. How do we explain the **volte-face**? In the face of dwindling prospects for the re-election bid of President Jonathan, it was alleged that President Jonathan and hawks within his Administration held a crucial meeting where it was decided that the holding of the February 14 and 28, 2015 General Elections must be **frustrated/scuttled** at all costs<sup>75</sup> using the Council of State to cause a postponement to a time until, perhaps, President Jonathan could be assured a "guaranteed victory" as Governor Bola Tinubu put it, **albeit**, mischievously.<sup>76</sup>

A meeting of the Council of State was summoned by President Jonathan to address urgent national issues relating to the conduct of the Elections pursuant to the powers vested in the President with regard to the appointment of members of INEC including INEC Chairman on the advice of the Council of State. It was alleged that Election strategists in the Presidency mooted the idea of securing the "technical removal" of the INEC Chairman in the same manner that the then CBN Governor, Sanusi Lamido Sanusi was suspended few months to the expiration of his tenure as CBN Governor.<sup>77</sup>

At the Council of State meeting,<sup>78</sup> the INEC Chairman presented his Report, reiterating the readiness of the Commission for the 2015 General Elections followed by presentation by the NSA who harped on renewed efforts by the multinational forces to subdue the Boko Haram insurgents in the North-East and the need to postpone the scheduled elections by six weeks. The Service Chiefs and Director General of the Department of State Security associated themselves with the sentiments expressed by the NSA. The APC Presidential candidate, General Muhammadu Buhari (Rtd.) and a member of the Council dismissed the reasons adduced for the

need to postpone the elections and maintained that soldiers only have a **minimal** role to play in the electoral process. Disagreeing with the presentation of Governor Fashola of Lagos State (PDP) who examined the political and legal consequences of a postponement was Governor Liyel Imoke of Cross River State (PDP) who harped on INEC's ill-preparedness, lopsidedness in the distribution and collection of PVCs and the fact that the SCRs to be used by INEC to authenticate the PVCs had not been test-run nor have INEC staff been trained on the use of SCRs.

In his response, Professor Jega noted that the misgivings expressed by Governor Imoke had been factored into INEC plans, adding that it was **unrealistic** to expect 100 percent voter turnout that was not even obtainable in Communist countries to which the Chairman of the PDP Governors Forum, Mr. Godswill Akpabio of Akwa-Ibom State maintained that there is a difference between Nigerians.

who may choose not to vote even if they have PVCs and those who cannot vote because they have been denied what ordinarily should be their right ... elections cannot be credible in situations where millions of people could not get what should enable them to exercise their franchise.<sup>79</sup>

Enjoining INEC to proceed and hold the elections since the Commission had reiterated its readiness, Mr. Aminu Waziru Tambuwal, then Speaker of the House of Representatives maintained that the **advisory role** of the Council of State does not extend to election matters, a position which led President Jonathan to draw the attention of the Council of State and wrongly in our view, to Part I of the Third Schedule of the 1999 Constitution, especially Section B(6) which states that the Council of State shall have power to:

- (a) advise the President in the exercise of his powers with respect to
- (iv) the Independent National Electoral Commission (including the appointment of members of that Commission).

At the end of its deliberation, the Council of State pushed the decision on holding or postponing the election on the door steps of INEC after consultation with the major Stakeholders.

Obviously, INEC was in **quagmire**. The Service Chiefs had told the Council of State that they were not ready and would play no part in the security arrangements for the 2015 General Elections unless the election was postponed by at least six weeks "in the first instance" to allow for the conclusion of the operations against BH. True, it is that soldiers are not needed for election duties. Raising the possibility of post-election violence as Nigeria witnessed in April 2011 following the declaration of Dr. Goodluck Jonathan as President-Elect which "could lead to a total breakdown of law and order which the Police may not be able to contain," **armtwisted** the INEC Chairman.<sup>80</sup> Just a week before the scheduled elections, and acting on the advi

ce of the Service Chiefs with respect to security challenges in the North-East, the Independent National Commission announced a six-week postponement of the February 14 and 28, 2015, putting the new dates as March 28 and April 11, 2015.

It has been argued or alleged that the postponement of the election which is within the competence of INEC pursuant to the provisions of the 1999 Constitution (As Amended) and the Electoral Act (As Amended) was borne out of the need to **slow** down the momentum of the Opposition APC and give President Jonathan some breathing space to buy time as well as allow the PDP to do some **damage control**, given the soaring popularity of the APC Presidential candidate and the possibility of President Jonathan losing his re-election bid. That is not our concern here.

However, the PDP contrary to INEC's claims of preparedness, held the view that at INEC

was not ready for the elections and lacks the ability and strength to say so. How can INEC say that the basic reason for the shift of the elections was the security crisis in the North-East ... without telling Nigerians the challenges it is facing in the distribution of the PVCs ... Let INEC tell Nigerians the details of the report submitted to it by the ... National Democratic Institute (NDI) and the International Republican Institute (IRI).<sup>81</sup>

The PDP maintained that the NDI and IRI as far back as January 20 or thereafter submitted a Report in which they expressed concerns

that millions of PVCs have not been distributed by INEC. Although the Commission plans to move the distribution of PVCs from the Local Government Area level to the level of wards (which are smaller units under the LGA level down to the polling points) and that exercise has not started in the States ... in a number of States, the distribution exercise has repeatedly been postponed in some locations, leading to further erosion of trust in INEC.<sup>82</sup>

The party added: (1) that about 50 percent of the Voters were yet to collect their PVCs; (2) that INEC has not test-run the SCRs nor trained its adhoc staff the machines of their use; and (3) that INEC has not told Nigerians about the level of preparedness for the distribution of sensitive election materials.<sup>83</sup>

The point we need emphasise here is that the allegation that INEC or INEC Chairman deliberately skewed the distribution of PVCs to favour the Northern States vis-à-vis the Southern States is not borne out from evidence as shown in Table 2.

**TABLE 2**  
**REGISTERED VOTERS AND PVCs COLECTED STATE BY STATE**

<b>State</b>	<b>Registered Voters</b>	<b>Permanent Voters' Cards Collected</b>	<b>%</b>
Abia	1,396,162	1,183,127	84.74
Adamawa	1,559,012	1,381,571	88.62
Akwa-Ibom	1,680,759	1,587,566	94.46
Anambra	1,963,173	1,658,967	84.50
Bauchi	2,054,125	1,967,081	95.76
Bayelsa	610,373	548,585	89.88
Benue	2,015,452	1,607,800	79.77
Borno	1,934,079	1,407,777	72.79
Cross-River	1,175,623	983,968	83.70
Delta	2,275,264	1,939,952	85.26
Ebonyi	1,074,273	848,392	78.96
Edo	1,779,738	1,230,566	68.81
Ekiti	732,021	522,107	71.32
Enugu	1,429,221	1,223,606	85.61
FCT	881,472	569,109	64.56
Gombe	1,120,023	1,070,725	95.60
Imo	1,803,030	1,707,449	94.70
Jigawa	1,831,276	1,757,658	95.98
Kaduna	3,407,222	3,174,519	93.17
Kano	4,975,701	4,112,039	82.64
Kastina	2,827,943	2,620,096	92.65
Kebbi	1,470,648	1,372,630	93.17
Kogi	1,350,883	926,013	68.55
Kwara	1,142,267	889,067	77.83
Lagos	5,822,207	3,799,274	65.25
Nasarawa	1,242,667	1,048,053	84.34
Niger	2,014,317	1,682,058	61.53

Ondo	1,524,655	1,118,479	73.43
Ogun	1,814,130	1,170,710	64.53*
Oyo	2,415,566	1,639,967	67.89
Plateau	2,001,825	1,508,585	75.36
Rivers	2,537,590	2,127,837	83.85
Taraba	1,340,652	1,270,889	94.80
Sokoto	1,611,929	1,527,004	94.73
Yobe	1,099,970	824,401	74.95
Zamfara	1,495,717	1,435,452	95.97

Source: The Nation (Lagos), May 29, 2015, p.30; INEC Office, Abeokuta, Ogun State.

\* PVCs allocated ... 1,670,217 but 499,507 PVCs were not collected at all by the owners, presumably, because of multiple registrations masterminded by desperate politicians.

That the Jonathan Presidency was not happy with the INEC and/or its Chairman for blaming the Service Chiefs, and by extension, President Jonathan for the postponement of the election was not in doubt. Though the elections had been postponed to a time within the time frame allowed by the Constitution, the social media was filled with rumours that Professor Jega was to be replaced by Professor Olufemi Mimiko, brother to the PDP Governor of Ondo State, Dr. Olusegun Mimiko or in the alternative a female National Electoral Commissioner from the North and that in the interim Professor Jega was to be asked to proceed on a so-called Terminal Leave, preparatory to disengagement on June 23, 2015 when his tenure would come to an end. The rumour was so rife that the INEC spokesman issued a Statement denying the story, adding that Professor Jega is not a Civil Servant but a political appointee:

Jega is busy preparing for the elections and you are talking about terminal leave. Does anyone planning to conduct elections go on terminal leave? There is nothing like that. He is not a civil servant. His appointment was not guided by Civil Service Rules and so he would serve until his tenure ends on June 30 this year.<sup>84</sup>

Those who believed the story making the rounds have argued: (1) that Professor Maurice Iwu, the former INEC Chairman was asked to proceed on Terminal Leave on April 28, 2010, less than two months before the end of his tenure and heavens did not fall; (2) that Justice Ayo Salami, PCA was suspended from office by President Jonathan but never returned to his position though the National Judicial Council recommended his reinstatement by President Jonathan; and (3) that Sanusi Lamido Sanusi, CBN Governor was asked to resign his position, and although he refused to resign he was later suspended by President Jonathan who appointed an Actin

g CBN Governor and subsequently recommended a substantive CBN Governor while Sanusi Lamido Sanusi subsequently became the Emir of Kano. Indeed, is it possible, it may be asked, for the INEC Chairman to conduct the March 28 Elections and another INEC Chairman announce the results on March 30 and conduct the April 11 Elections? This is a scenario no one has been able to answer.<sup>85</sup>

In the interim, President Jonathan at a Media Chat Jonathan described as “stupid,” the insinuations that Professor Jega was to be removed as widely rumoured in the social media:

I appointed the INEC Chairman and all the Resident Electoral Commissioners but I also have the constitutional powers to remove them but will not do so.<sup>86</sup>

Although the appointment of INEC members including INEC Chairman was made by President Jonathan, the appointment, to be valid for a period of five years, has to be confirmed by the Senate. Since the appointment of Professor Jega and other INEC members was confirmed on June 24, 2010, their tenure would end on June 23, 2015. Because of the political configuration of the Senate just before the Elections it is doubtful if President Jonathan could secure a two-thirds majority support of the Senate to **hound** out Professor Jega as INEC Chairman. This is the position of the Supreme Court in **Governor of Kwara State v. Ojibor** (2007). More significant, Professor Jega could not be directed to proceed on any Terminal Leave because his appointment ends on June 23, 2015. Simply put, because his appointment is not regulated by Public (Civil) Service Rules of the Federation. Professor Jega is a Public Officer not a Civil Servant and he is not required to go on Terminal Leave before the end of his tenure. In any event, Public Service Rules/Circulars are **inferior** to the provisions of the Constitution by virtue of the doctrine of the supremacy of the Constitution pursuant to Section 1(3) of the Constitution which states that:

if any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

This is the position of the Supreme Court in **INEC v. Musa** (2003), 10 WRN at 125, namely, that Civil Service Rules are **not** legislations and are **inapplicable** to political appointees.<sup>87</sup> Suffice it to say that Professor Jega survived all the intrigues and plots regarding his removal from office and at the end of the day, he became a **hero** rather than the **villain** being used to achieve a Northern Agenda.<sup>88</sup> Undoubtedly, the rumours making the rounds about his imminent removal caused much distractions at the INEC HQ. At a meeting with Resident Electoral Commissioners summoned to review INEC’s preparedness for the 2015 General Elections, particularly outstanding matters such as distribution of PVCs, relocation of PUs, field testing of Smart Card Readers (carried out in two States in each of six geo-political zones on March 7, 2015),<sup>89</sup>

the INEC Chairman urged RECs to remain **focused** and not **distracted** in delivering credible elections. He maintained that the test-runs of the SCRs in twelve States on March 7, 2015 reinforced INEC's confidence that the SCRs would eliminate multiple voting and curb rigging:

We need to continue to engage all stakeholders to inform and carry them along ... to have the best elections that Nigerians want.<sup>90</sup>

Professor Hamman Saad, Resident Electoral Commissioner in Bauchi State noted:

Nothing will further strengthen and deepen democracy in Nigeria better than the use of the card readers.<sup>91</sup>

Mr. Edwin O. Nwatarah, REC in Anambra State maintained that SCRs

will help us to have credible election.<sup>92</sup>

On INEC's 'state' of preparedness, the INEC Chairman added:

We have done everything possible to ensure that the elections are free and fair. We are adequately prepared to deliver free, fair and credible elections and we are sure that the election will be better than that of 2011.<sup>93</sup>

At a Townhall meeting organised by REINVENT MEDIA in association with the Ford Foundation and Kukah Centre in Abuja on March 16, 2015, the INEC Chairman emphasised the point that he had no intention to resign his position. As he put it: "It would be a disservice to do that at this time ... I have a job to do. Nobody has asked me to go on leave. I have a job to do until April 11, 2015."<sup>94</sup>

### **Smart Card Readers and Free, Fair and Credible Elections.**

A major issue which pitted the Independent National Electoral Commission against the Jonathan Presidency, PDP Governors Forum and the PDP **per se** has to do with the proposal to use Smart Card Readers or Card Reader Machines to authenticate PVCs issued by INEC and to verify the rightful owner of PVCs whose biometrics including thumb printing had been stored and in the process ensure free, fair and credible elections. Indeed, since thumb printing will verify the rightful owner of a PVC, that meant that no one can be accredited, and possibly vote in more than one PU. We have stated earlier that the concept of free and fair elections embraces several variables, one of which is that each eligible voter in an election should have one **vote** and only **one** vote. To be sure, **transparency** is the hallmark of **free, fair** and **credible** elections.

The proposal to use SCRs in the 2015 General Elections is certainly borne out of INEC's experiences with the conduct of the 2011 General Elections when TVCs used by eligible voters, who engaged in multiple registrations, contributed largely to glaring electoral fraud in several States. Thus, the use of TVCs must be discarded while PVCs issued by INEC but not cloned/warehoused must be authenticated by SCRs. Notwithstanding the case for the use of S

CRs to conduct free, fair and transparent elections in Nigeria as it is the practice in the United States, Brazil, Ghana, India (in 2014) and the United Kingdom, and because the use of PVCs and SCRs would not only not permit those bent on manipulating the electoral process but also frustrate those bent on perpetrating electoral fraud, the Jonathan Presidency, **albeit** covertly, PDP Governors Forum and other faceless groups and fronts mounted spirited but unsuccessful campaigns against their use in spite of assurances by INEC that holders of genuine in the event of SCRs malfunctioning would be allowed to vote. To be sure, INEC had agreed with political parties in the approved Guidelines for the Conduct of the 2015 Election that:

where biometrics authentication of a **legitimate** holder of a **genuine** PVC becomes challenging, there could be physical authentication of the person and completion of an Incident form to allow the person to vote.<sup>95</sup>

Briefing the Senate shortly after INEC announced the postponement of the scheduled February 14 and 28, 2015 General Elections pursuant to the powers vested in the Commission by the 1999 Constitution (As Amended) and the 2010 Electoral Act (As Amended), the INEC Chairman noted:<sup>96</sup>

1. that over 4 million voters were found to have been involved in multiple registrations during the January 2011 VRE;
2. that SCRs are being introduced to prevent electoral fraud and that accreditation of voters using SCRs would not take more than 30 seconds;
3. that TVCs used in previous elections contributed largely to glaring electoral fraud and their use must be discarded;
4. that over 100,000 ad-hoc-staff would be employed for the March 28 and April 11, 2015 Elections; and
5. that INEC was ready to conduct the 2015 Elections but regretted non-challant attitude of Nigerians with respect to collecting their PVCs.

While the test-runs of SCRs in the six geo-political zones reinforced INEC's confidence in the use of SCRs to ascertain the genuineness of PVCs presented by eligible voters at PUs on Election Day, INEC received much commendation and support from the senate, public opinion moulders/leaders, public-spirited Nigerians, CSOs, civil rights activists, the Conference of Nigerian Political Parties and the APC. Specifically, President Ibrahim Babangida, while denying canvassing for the establishment of an Interim National Government in the event of the 2015 General Elections not being held because the circumstances after the annulment of the June 12, 1993 Elections and the not holding the 2015 General Elections are different, President Babangida commended INEC for introducing SCRs, adding that INEC should be encouraged in preparing for the rescheduled elections. As he put it:

Jega and his colleagues in the Independent National Electoral Commission have to be encouraged, motivated, animated and commended for their sheer courage and determination

shown so far in their preparations for the March 28 and April 11 elections ... We must appreciate the creativity and innovation of the card reader which INEC has introduced to make for better election credibility and transparency. In a digital world where almost everything is driven by technology, the offer of the card reader is a welcome development.<sup>97</sup>

On the propriety of the use of SCRs, Prince Tony Momoh, a leading light in Nigerian journalism, has this to say:

If card readers will help to enhance the democratic process, we should accept it. If that will make us to avoid multiple registration, we should give the benefit of doubt ... It will make the election transparent. The card readers will identify the authentic owner of PVCs.<sup>98</sup>

Festus Keyamo noted:

Smart card readers will prevent rigging and manipulation of the election. The fear of the PDP and their allies is hinged on the old ways; they want to go back to their old ways of writing and falsifying results. That is why they are afraid of the use of card readers.<sup>99</sup>

The Conference of Nigerian Political Parties endorsed the use of SCRs which it believes would engender “free, fair and transparent elections.” As it put it:

... in the absence of a genuine reason, we adopt a device which has been used to conduct free, fair and transparent elections in many countries like the US, UK, Brazil, Ghana and the 2014 Indian General Elections, an election where 600 million Indian voters voted seamlessly ... the use of the Magnetic Card Reader for accreditation of voters will minimize if not eradicate ballot box snatching, thumb printing of ballot papers and snatching of result sheets.<sup>100</sup>

Contributing to the debate, the All Progressives Congress (APC) dismissed the claims by the PDP that the SCR is a compromised instrument and that its use would disenfranchise millions of eligible Nigerian voters in spite of INEC’s assurances that no holders of genuine PVCs would be denied their rights to vote. The APC took the position that the use of SCRs will eliminate rigging and expressed dismay at the opposition of the PDP Governors Forum which at its meeting in Lagos pleaded for the use of TVCs instead of PVCs. It maintained that opposing the use of SCRs “is an attempt to promote electoral fraud and rigging,” adding: 1. that the use of SCRs is time-saving, would eliminate long hours spent on the queue and remove the fears of the health issues staying in the sun for hours; and 2. that the PDP “is not committed to credible election and deepening the country’s democratic process.”<sup>101</sup>

A group of CSOs, the **Nigerian Civil Society Situation Room**, commended the test-runs of SCRs, and urged INEC to intensify its efforts on voter education and civil education programme on why and how citizens must vote with PVCs. It declared that INEC “should provi

de alternative SCRs ... to avoid unnecessary delay in the accreditation process.” INEC should also ensure, where necessary, that SCRs “can be reconfigured in a timely manner ... to avoid disenfranchisement of any voter.”<sup>102</sup>

At a Seminar organised by the Nigerian Labour Congress in Abuja, the leaders of the NLC enjoined President Jonathan to allow Professor Jega unfettered freedom to perform his duties until June 23, 2015 when his tenure is to come to an end, maintaining that any attempt at removing him “might plunge the nation into crisis.”<sup>103</sup> In his own contribution, a spokesman of INEC, Professor Abubakar Momoh, Director-General of the Electoral Institute at the Commission declared:

... if Jega is removed, there will be crisis of confidence. Politicians do not want him because he is a man of integrity. President Jonathan chose him because of his pedigree and impeccable records. In his own (Jonathan’s) interest, he should not listen to politicians calling for Jega’s removal because it will affect his integrity.<sup>104</sup>

He added that INEC was poised to ensuring that the votes of the people count:

Professor Jega wants to show the public that a credible election is possible. So politicians should allow INEC to perform its role in the forthcoming election. The PVC is secure and will also prevent rigging.<sup>105</sup>

He maintained that those opposed to the use of the PVC had intention of rigging the election.

He added:

The PVC has the highest security fortification. Those advocating the use of TVC are insincere because it will pave the way for rigging ... INEC wants to lift the benchmark so that anybody taking over will not do anything less. We want to show the world that it is possible to conduct a credible election in Nigeria. Politicians should allow us to do our job.<sup>106</sup>

As we noted above, the PDP Governors Forum was not only opposed to the use of the PVCs; it was also vehemently opposed to the use of the SCRs which would authenticate its genuineness. Additionally, Vice-President Namadi Sambo whose party **initially** supported the use of SCRs questioned their **legality** and **efficiency**. He expressed serious concerns about the possibility of disenfranchisement of millions of eligible voters. In essence, all critical stakeholders in the Nigeria Project and these include CSOs supported the use of PVCs and SCRs to ensure credible elections. As INEC Chairman maintained, SCRs would add tremendous value to the electoral process because cloned PVCs would not work. To be sure, “without the use of card readers, the accreditation of voters will be prone to alterations.”<sup>107</sup>

While the PDP Governors Forum was opposed to the use of the PVC in the 2015 General Elections and preferred the TVCs much against the tide of public opinion, a so-called PDP

Integrity Vanguard, possibly a front, raised serious issues on the integrity, propriety and appropriateness of deploying PVCs and SCRs for the elections. While taking note of the fact that an eligible voter with a genuine PVC would be allowed to vote if his biometrics cannot be verified/authenticated by a SCR, it then asked:

What then is the essence of the biometrics if they cannot be trusted to provide the last security gateway against electoral fraud? This portends grave danger and is a recipe for unrestrained confusion at the polling stations.<sup>108</sup>

Making a case for a return to the use of TVC, the PDP Integrity Vanguard declared:

Card Readers are arguably a recipe for monumental national disaster and must be discarded at this point because of the intention to use it to rig elections in favour of the APC.<sup>109</sup>

Speaking on the propriety of using PVCs and SCRs for the 2015 General Elections, Chief Olabode George, and Chief Joseph Wayas, both PDP leaders in Lagos State and Cross River State respectively enjoined INEC to ensure that there were sufficient SCRs as back-up in case of failure because asking people to come back and vote the second day was a recipe for chaos.<sup>110</sup> Arguing that millions of eligible voters could have been disenfranchised had the February 14 and 28, 2015 General Elections not been postponed, Chief George declared:

It is brilliant to come up with the card readers. But INEC must come with two, three or four systems per polling unit as back up instead of saying people will vote the next day in a place where if it fails .... Asking people to come back the second day may lead to chaos.<sup>111</sup>

In essence, both PDP leaders were not **per se** opposed to the use of PVCs and SCRs for the elections but wanted contingency plans by INEC to ensure that millions of eligible voters were not disenfranchised.

Since it appeared that Professor Jega and INEC were determined to go ahead with the deployment of the PVCs and SCRs, the battle to stop INEC from using the SCRs moved to the Courts which some forces in the Presidency and PDP were hoping would issue Orders restraining INEC from using SCRs in four separate suits in Abuja and Lagos by four registered political parties, United Democratic Party (UDP), Action Alliance (AA), Allied Congress Party of Nigeria (ACPN) and Alliance for Democracy (AD); Society of Advancement and Protection of Rights and Wasiu Taiwo in which they (the Presidency and PDP) are not parties. To be sure, serious concerns were expressed by CSOs and human rights activists that:

There is a fresh plan by the PDP to scuttle the general election ... by securing an order to restrain the INEC from using the SCRs ... The initial plan was to use the registration of the Young Democratic Party to force the INEC to start planning afresh following the party's new claim that Justice Ah

med Mohammed of the Federal High Court had ordered it to be included in the ballot papers. But the PDP and some forces in the Presidency got a big shock when Justice Mohammed denied issuing such order and summoned YDP leaders for misinforming INEC and Nigerians.<sup>112</sup>

They noted:

They have now resorted to Plan B by taking advantage of the suit on Card readers to frustrate the INEC and Jega. The main fear of the PDP is that the use of Card readers will not enable the party to rig and secure jumbo votes like the case in some geo-political zones in 2011... The PDP and 15 minor parties made the last botched move against the Card Readers on Thursday when political parties met with Jega and the INEC management. Jega stood his ground and the anti-Card Readers lobbyists left the INEC headquarters dejected.<sup>113</sup>

They added:

This is why they have seen the court matters as the last hope to call Jega's bluff... Some forces in the PDP in Abuja are already bragging that the Federal High Court, Abuja will give a ruling on Monday to put paid to the use of Card Readers. They are celebrating as if the court had ruled in a case they are not parties to. It is left to the judiciary to save the nation's democracy and avoid a repeat of June 12, 1993 General Elections where they were conflicting orders.<sup>114</sup>

What were the prayers of the Plaintiffs in seeking **Ex-Parte Order** from Justice Ademola Adeniji of the FHC, Abuja against INEC from using the SCRs in the 2015 General Elections? They were three:

1. An Interim Order restraining INEC from proceeding with arrangement and plan to use the Card Reader Machine for the impending elections;
2. An Order of Interim Injunction restraining the defendants, its agents, servants, privies or assigns, by whatever name, from implementing or commencing or further implementing or further commencing or further directing the use and preparation of the Card Reader Machine or any name of like nature, pending the hearing and determination of the Motion on Notice;
3. An Interim Order that the deployment of the Card Reader Machine for the elections is a violation of the provisions of Section 52(1)(2) of the Electoral Act 2010 (As Amended) which prohibits the use of any electronic method of voting.

Section 52(2) of the Principal Act which states that "the use of electronic machine for the being is prohibited" was amended to read:

Voting at an election under this Act shall be in accordance with the procedure determined by the Independent National Electoral Commission.

That the use of the CRM is to ensure that PVCs are not cloned or that the holders of PVCs are the rightful owners is not in doubt. Obviously, the Presidency or the PDP (which initially approved the use of CRM for the election) should have sought and obtained legal advice that the d

employment of CRM to authenticate the lawful owner of PVCs during accreditation before proper voting **per se** is not prohibited by the extant law. Defending the deployment of SCRs or CRMs to authenticate the true owner of PVCs, while briefing the Senate on the postponement of the scheduled elections of February 14 and 28, the INEC Chairman noted:

... the use of the PVCs and the card readers for the conduct of the 2015 Election ... are in accord with the provisions of the 2015 Electoral Act (As Amended). They were also introduced ... pursuant to the powers granted to the Commission by the 1999 Constitution by Section 16(4) of the Electoral Act 2010 ... 'wherever it considers it necessary, to replace ... any voter card for the time being' ...<sup>115</sup>

He added:

The decision ... to replace TVC with PVC is in accordance with the provisions of the Electoral Act (As Amended). An election is said to be validly conducted if it meets certain basic requirements including accreditation of voters. An election cannot be said to be properly conducted if the steps provided by Section 49 of the Electoral Act 2010 are not complied with.<sup>116</sup>

He emphasised:

This section requires that anybody intending to vote shall present himself with his voter card to a Presiding Officer who shall certify himself or herself that the person is on the register of voters before issuing such a person with ballot paper ... The use of the card reader for the purpose of accreditation of voters is one of the innovations introduced by the commission to improve the credibility of the electoral process, in particular, the accreditation process. It is not offence to the Electoral Act or to the Constitution. It adds value to the desires of Nigerians to have a credible election in line with international best practice.<sup>117</sup>

He declared, and this is very significant:

Whereas Section 52 of the Electoral Act prohibits the use of electronic voting. The Card Reader is not a voting machine and it is not used for voting. It is merely an electronic device introduced to improve the integrity of the voting process. It should be remembered that Section 78 and Section 118 of the Constitution grant INEC powers to register Voters and to conduct election in Nigeria.<sup>118</sup>

In essence, the deployment of SCRs or CRM is not violative of the provisions of the 2010 Electoral Act.

As things turned out, no Court Order was issued stopping INEC from using CRMs or SCRs to authenticate holders of genuine PVCs during accreditation before proper voting **per se**. Apart from the advantages of the use of SCRs alluded above, the deployment SCRs is INE

C's best option to curb electoral malpractices as **only** lawful owners/holders of PVCs can use their PVCs. Second, using SCRs will boost the confidence of Nigerians in the electoral process. Most Nigerians do not vote in previous elections because they believe that their votes do not count. Thus, dropping the use of SCRs as demanded by the PDP and its supporters or surrogates would have decreased voter turnout. Third, other countries including India, Ghana and Brazil have used SCRs in their elections. Fourth, the test-runs carried out by INEC have shown that SCRs would work and are the best optimal option to minimise/curb electoral malpractices and ensure **free, fair, transparent** and **credible** elections.<sup>119</sup>

### **Nigerians At the Polls**

On March 28, 2015, and after many anxious moments, Nigerians went to the polls to elect a new President and members of the National Assembly. The two major political parties nominating candidates for various elective posts are the All Progressives Congress (APC) and the Peoples Democratic Party (PDP) which had controlled the Centre since May 29, 1999. Just before President Goodluck Ebele Jonathan conceded defeat to his rival Presidential candidate, General Muhammadu Buhari (Rtd.) before the final tally of votes and formal announcement of the Winner as shown in Tables 3 and 4, the INEC Collation Centre, Abuja on March 31, 2015 witnessed a disgraceful conduct and drama early in the day by Elder Goodsdan Orubebe, a former Minister, accusing the INEC Chairman of **bias**. Although he later apologised for his unnecessary emotional outbursts,<sup>110</sup> it was Professor Jega's **uncanny** calmness that saved the Day.

**TABLE 3**  
**PRESIDENTIAL ELECTION RESULTS, 2015**  
**MAJOR PARTIES AND STATES**

<b>STATE</b>	<b>APC</b>	<b>PDP</b>
Abia	13,394	368,303
Adamawa	374,701	251,664
Akwa-Ibom	58,411	958,304
Anambra	17,926	660,762
Bauchi	931,598	86,085
Bayelsa	5,194	361,209
Benue	373,961	303,737
Borno	473,543	25,640
Cross-River	28,368	414,863

Delta	48,910	211,405
Ebonyi	19,518	323,658
Edo	208,469	286,869
Ekiti	120,331	176,466
Enugu	14,157	553,003
Gombe	361,245	96,873
Imo	133,253	559,185
Jigawa	885,988	142,904
Kaduna	1,127,760	484,085
Kano	1,903,999	215,779
Kastina	1,345,441	98,937
Kebbi	567,833	100,972
Kogi	264,851	149,987
Kwara	302,146	132,602
Lagos	792,460	632,327
Nasarawa	236,838	273,460
Niger	657,678	149,222
Ogun	308,290	207,950
Ondo	299,889	251,368
Osun	383,603	249,929
Oyo	528,620	303,376
Plateau	429,140	549,615
Rivers	69,238	1,487,075
Sokoto	671,926	152,199
Taraba	261,326	310,800
Yobe	446,265	25,526
Zamfara	612,202	144,833
FCT	146,399	157,195
	15,424,921	12,853,162

Source: **The Nation** (Lagos), April 1, 2015, pp. 1,6.

**TABLE 4**  
**Presidential Election Results 2015:**  
**States Won By Major Parties**

APC	PDP
Kaduna	Enugu
Kwara	Nasarawa
Oyo	Ekiti
Kogi	Abia
Kano	Abia
Jigawa	Akwa Ibom
Ogun	Imo
Osun	Plateau
Ondo	Ebonyi
Kastina	Bayelsa
Niger	Cross River
Gombe	Edo
Adamawa	Taraba
Zamfara	Delta
Kebbi	Anambra
Benue	Rivers
Yobe	FCT
Sokoto	
Borno	

Source: **The Nation** (Lagos), April 1, 2015, p.6.

By 5.15 p.m., President Jonathan made a historic phone call to General Ribadu conceding defeat in the Presidential Elections followed by a Statement:

Fellow Nigerians, I thank you all for turning out enmasse for the March 28 General elections. I promised the country free and fair elections. I have kept my word. I have also expanded the space for Nigerians to participate in the democratic process. That is one legacy I will like to see endure. Although some people have expressed mixed feelings about the results announced by the Independent National Electoral Commission (INEC), I urge those who may feel aggrieved to follow due process based on our constitution and our electoral laws in seeking redress. As I have always affirmed, nobody's ambition is worth the blood of any Nigerian. The unity, stability and progress of our dear country is more important than anything else. I congratulate all Nigerians for successfully going through the process of the March 28<sup>th</sup> General Elections with the commendable enthusiasm and commitment that was demonstrated nationwide. I also commend th

e Security Services for their role in ensuring that the elections were mostly peaceful and violence free. To my colleagues in the PDP, I thank you for your support. Today, the PDP should be celebrating rather than mourning. We have established a legacy of democratic freedom, transparency, economic growth and free and fair elections. For the past 16 years, we have steered the country away from ethnic and regional politics. We created a Pan-Nigerian political party and brought home to our people the realities of economic development and social transformation. Through patriotism and diligence we have built the biggest and most patriotic party in Nigerian history. We must stand together as a party and look to the future with renewed optimism. I thank all Nigerians once again for the great opportunity I was given to lead this country and assure you that I will continue to do my best at the helm of national affairs until the end of my tenure. I have conveyed my personal best wishes to General Muhammadu Buhari. May God Almighty continue to bless the Federal Republic of Nigeria. I thank you all.<sup>120</sup>

It is the first time that a sitting President would be defeated in an election in Nigeria. Thereafter, the Returning Officer of the Presidential Elections, Professor Attahiru Jega announced the Winner of the Election, namely, General Muhammadu Buhari (Rtd.) of the APC who polled 15,424,911 Votes to beat his rival, President Goodluck Jonathan who scored 12,853,162 Votes. At last, millions of Nigerians breathed sighs of relief that the historic election whose campaigns were characterized by hate comments and vitriolic attacks on persons rather than issues had finally come and ended with the announcement of the Winner. And, on April 11, 2015, Nigerians again went to the polls to elect members of the States' Houses of Assemblies and new Governors except in Edo, Ekiti, Ondo, Bayelsa and Kogi States not without problems and incidents.

### **Problems and Prospects of Free and Fair Elections in Nigeria**

Much of the success in conducting free, fair and credible 2015 General Elections depends on committed leadership and followership. The former Inspector-General of Police, Suleiman Abba gave a directive asking voters to go home after voting and not wait for votes to be counted in their presence when the law permits voters to remain within the vicinity of the PUs after casting their votes. The Opposition APC not only urged voters and supporters to ignore any directive not supported by law (Electoral Act); it also urged them to use their phone cameras (without being disruptive) to document proceedings at the PUs.<sup>121</sup> Supporting the APC which warned against a reenactment of the Ekiti State Gubernatorial Election rigging strategy in any form were United States Secretary of State, John Kerry and British Foreign Secretary, Philip Hammond

nd who not only pledged their country's commitment to free, fair and credible elections but w  
arned

any person who incites violence at any stage in the electoral  
process or ... seeks power through unconstitutional means  
should be held accountable and should understand that the  
consequences will be severe domestically and internationall  
y.<sup>122</sup>

The INEC Chairman, Professor Jega, apparently responding to the directive by the IGP, maint  
ained, and rightly too, that voters can wait for their votes to be **counted** in their presence. In a  
ny event, the Nigerians not only refused to be **intimidated** by any **unlawful** orders; they also i  
nsisted on ensuring that their votes count and are counted and not stolen. Despite being captiv  
e of several hawks within the Jonathan Administration and in spite of executive lawlessness w  
hich manifested itself in the deployment of troops in the States of the Federal Republic of Nig  
eria on March 22, 2015 in violation of Court Orders, by and large, the Jonathan Administratio  
n gave INEC a relatively free hand to operate within the ambit of the 1999 Constitution (As A  
mended) and the 2010 Electoral Act (As Amended) to conduct free, fair and credible 2015 Ge  
neral Elections.

However, there are problems. First, is the conduct of many RECs, INEC permanent ( Electoral Officer, etc.) and ad-hoc staff including National Youth Service Corps members. There is no doubt that much of the adverse reports and comments on the conduct of the elections in some **battleground** States such as Rivers, Akwa Ibom and Taraba States would not have been necessary if those charged with the conduct of the elections have lived above board and suspicion. There were reports that NYSC members deployed to serve in some States such as Rivers and Akwa Ibom States failed to turn up for their assignments for no reasons other than the fact that their allowances for election duties were withheld by their State/Zonal Offices while INEC permanent staff compromised their position and integrity, principally, because of lack of supervision by their Superiors including RECs who have had running battles with the Opposition APC because they may well have compromised their integrity for material benefits. The fact that Mike Igini, REC in Edo State was **re-deployed** to complete the **inconclusive** Imo State Gubernatorial Elections is a serious indictment of the REC in Imo State. It must be noted that Mike Igini directed the arrest of some INEC staff and other individuals found thumb printing ballot papers in the residence of a Senator-Elect in Owerri. Second, because members of INEC and RECs are appointed by the President, we need to consider the propriety of reviewing the process of appointing RECs not only because of the conduct of some RECs and because RECs are not accountable to INEC HQ but also because there appears to be no synergy between

RECs and INEC HQ though INEC is empowered to “delegate any of its powers to any Resident Electoral Commission.” Third, a major problem which may militate against the conduct of free and fair elections has to do with the powers of the President over security agencies and this was an issue addressed by the ERC but was brushed aside by the Yar’Adua Presidency for reasons of political expediency. It would be recalled that the Assistant Inspector General of Police, Zone 2 was given a **marching** order to leave the Rivers State capital, Port Harcourt on the eve of the April 11, 2015 Elections because of his spirited efforts to **sanitise** the electoral process. His hurried departure to Calabar on the morning of April 11, 2015 provided a **field day** for Thugs, Politicians including Ministers and Security Agents (whose integrity and professionalism may well have been compromised).<sup>123</sup> Thus, there is an urgent need to revisit the ERC Report with regards to the operational control of the Armed Forces, Police and other security agencies.<sup>124</sup> Fourth, is the deployment of troops by the President to provide security during the elections in spite of misgivings by Stakeholders. There is the need to revisit the recommendations of the ERC on this matter that would entail an amendment to the Constitution, specifically, forbidding the deployment of soldiers except in aid of civil authorities or with the approval of the National Assembly.<sup>125</sup> Fifth, there is also an urgent need to re-visit the Report of the ERC on the establishment of an Election Offences Tribunal and the **unbundling** of INEC to ensure operational efficiency. The Commission, as it is, is not sufficiently equipped to monitor election expenses though it is empowered to “monitor the organisation and operation of the political parties, including those finances, conventions, congress and party primaries.” INEC owes Nigerians the responsibility of investigating those faceless donors of over N21 billion to the election Fund of President Jonathan in addition to sources of advertorials by faceless organisations. Sixth, the poor distribution and collection of PVCs, for which INEC has been unfairly condemned for disenfranchisement of voters brings to the fore the issues of voter apathy and voter turnout. While it is unrealistic to secure 80 percent voter turnout as is the experience in Communist countries and while advanced liberal democracies hardly record more than 45 percent voter turnout in elections, the problem of voter turnout in Nigeria can be laid squarely at the doors of political parties whose major function is voter education and mobilisation. Voter education and civil education programme do not constitute the core of INEC responsibility. Contrary to allegations of underage voting in the Northern States, massive voting in the Northern States, amidst allegations of under-age voting and discrimination in the distribution and collection of PVCs in the Northern States **vis-à-vis** the Southern States is a function/product of a Cult of Personality around General Muhammed Buhari (Rtd.) Northern voters venerate GMB though he has nothing **materially** compared with his military compatriots in the North. All that matters

are his appeal, charm and charisma. Seventh, the Commission, especially the Legal Department must be diligent in the discharge of its responsibility. There is simply no excuse for INEC allowing the rallies organised by the so-called Transformation Ambassadors of Nigeria because TAN is not a body known in law nor recognized by law as a political party. More significant, the ruling of Mr. Justice Ademola Adeniji of the FHC, Abuja invalidating the Certificate of Return issued by INEC to Christian Abah, PDP member (Ado/Okpodwu Constituency) in Benue State returned unopposed for certificate forgery is a serious indictment of the Commission for not exercising due diligence in accepting his nomination when the 2011 NASS Election Tribunal had found him guilty of certificate forgery and should have been disqualified. It was small wonder then that the Court berated INEC and PDP for perpetrating and promoting a culture of impunity.<sup>126</sup>

What are the prospects for free, fair and credible elections? Much depends on the will and ability to institute and implement electoral reforms.<sup>127</sup> First, is a review of the process of appointing INEC members as recommended by the ERC. It might be desirable to take a second look at the 1979 Constitution with a view to dispensing with the appointment of RECs who are not under the supervision and control of INEC HQ. Second, we might revisit the Report of the ERC in respect of financing the operations of INEC, staggering of elections and electronic voting. On electronic voting, CSOs should mobilize popular support for electronic voting in future elections.<sup>128</sup> Third, and on a lighter note, how 'independent' is the Independent National Electoral Commission? Is it not desirable to have just "National Electoral Commission" or "Federal Electoral Commission" and what is in a name? Finally, whoever is going to succeed Professor Attahiru Jega whose tenure comes to an end on June 23, 2015 and who has laid a very good foundation for credible and transparent elections must have uncanny character and determination to remain focused and resist pressures and temptations from nabobs of negativism, for they are a legion.

## NOTES

\* Professor of Political Science.

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98. See, R. Mordi, “INEC Card Reader Passes Litmus Test,” Ibid., March 9, 2015, pp. 2-3.
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123. See Esther Achor, "Interim Report Observation of the Governorship and State Assembly Elections That Held on Saturday 11, April 2015," Accessed May 18, 2015, <http://www.africanexaminer.com/observers-describe-rivers-polls-bloody-election-coup-de-tat/>; Guber Polls: Situation Report Across Rivers State," Accessed, May 18, 2015, <http://africanexaminer.com/guber-polls-situation-report-across-rivers-state/>
124. Akinsanya and Kwon-Ndung, pp. 68-74.
125. See Jibueze, "Jonathan, Tambuwal Disagree On Polls' Credibility," pp. 1,4; Orebe, passim; Ngeme, passim. See Ikuomola, p.5; Editorial, "Jega and Security," passim.
126. The Court imposed 450,000 Naira fine against INEC, PDP and Christian Abah; directed the Inspector-General of Police to prosecute Christian Abah for certificate forgery while Mr. S.I. Ameh, SAN Lawyer for the PDP and Christian Abah, was to face disciplinary proceedings for filing frivolous applications and indulging in tactics to stall the trial. Vanguard (Lagos), May 26, 2015, pp. 2-3.