

Nigeria’s Electoral Laws as Harmonized by the National Assembly: 2006 and 2010 Compared

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Provisions	2006 Provisions	2010 Changes	Implications
PART I: LEGAL STATUS AND ESTABLISHMENT OF INDEPENDENT NATIONAL ELECTORAL COMMISSION FUND (INEC) ETC.	Sub sec 1-3 Sub-sec 4: Maintenance of separate fund by the Commission <ul style="list-style-type: none"> • INEC will establish and maintain a separate fund to defray all expenditure incurred by the Commission except expenditure associated with admin costs, salaries, allowances, and gratuities. • Payments into this fund shall be made by made the Federal Government and by other assets accruing to the Commission. 	Sub sec 1-3: no changes Sub-sec 4 – deleted. <ul style="list-style-type: none"> • 1&2 establish the “INEC Fund” to which monies will accrue by way of investments, interest, aid, grants, and other assets • 5 designates how the funds in 1&2 fund will be applied. • Section 4 regarding the “separate fund” financed by the federal government has been deleted. 	<p>The previous electoral commissioner left INEC in a state of financial disarray, extending a number of contracts as his departure became inevitable. This seemingly minor change could amount to an important oversight improvement of INEC by consolidating its finances into one “INEC Fund” described in Section 3.</p> <p>The additional, “separate fund” authorized in the 2006 Act gave the commissioner broad spending authority for expenses <i>not</i> related to the basic Costs, such as administration or salaries. That Act referred to expenses arising from “all other assets.” In sum, the elimination of this “separate fund” could improve oversight of spending.</p>
PART II — STAFF OF THE COMMISSION	9	No changes.	
PART III:- NATIONAL REGISTER OF VOTERS AND VOTERS’ REGISTRATION	10 – 25	No Changes. Section 10-25 summarized: <ul style="list-style-type: none"> • Each person qualified to vote shall be registered on a continual basis by appearing in person at the venue with proof of identification such as a birth certificate, passport or driver’s license, or any document that will prove the identity, age and nationality of the applicant. 	<p>Preparing a register of voters has become increasingly problematic with each election since 1999.</p> <p>There is a general consensus among international NGOs that the integrity of the registry can be protected without expensive technical investments, such as the biometric system proposed by INEC in 2006.</p> <p>Publishing the voter registry is also an important</p>

		<ul style="list-style-type: none"> • INEC shall make available 60 days after each year, the list of names and addresses of each registered voter within that year. • INEC may appoint any officers it requires to maintain and update the Voter's Register as long as such officer is not a member of any political party. • A person resident in a constituency other than that in which he is registered may apply to be transferred to his place of residency. • Any person or political party upon payment of a fee may obtain a copy of the voter's register. • A copy of the voter's register shall be displayed for no less than 5 days and no more than 14 days by INEC for public scrutiny. 	<p>part of voter education, and preparations for the 2011 election are behind schedule.</p> <p>The residency requirements remain a sensitive issue. As discussed in the Freedom House <i>Countries at the Crossroads 2010</i> report, the relationship between state of residency and state of origin remains a sensitive topic, reflecting unresolved national identity questions.</p> <p>There is a good case to be made that the voter register should be available for a longer period of time. Limiting the publication to a maximum of 14 days arguably creates an unnecessary sense of urgency and scarcity; in 2003 this contributed to confusion and some panic.</p>
<p>PART IV:- PROCEDURE AT ELECTION</p>	<p>26-27-no changes 28- Announcement of election results 29- 31 – no change</p> <p>32-changed: Submission of list of candidates and their affidavits by political parties</p> <p>(no later than 120 days before elections) 33 – fine was 50,000 34-42-no change</p>	<p>28(27 in new) changed: Announcement of election results: there is a slight change in the titles of the officers that will announce the election results: The results of the elections shall be announced by – -the Presiding Officer at the Polling Unit; -the Ward Collation Officer at the Ward Collation Center; -the Local Government or Area Council Collation Officer at the Local Government/Area Council Collation Center; -the State Collation Officer at the State Collation Center;</p>	<p>During his 2010 visit to Washington,D.C., President Goodluck Jonathan publicly pledged that election results will be declared at the polling unit level. This reform is the first step towards making good on that pledge. This should amount to an important check against corruption at the polls, which occurred at the vote <i>tallying</i> stage during every election since 1998.</p>

	<p>42: Ballot boxes: new sub sec 3&4</p> <p>42-76 – no change</p> <p>77-Access to election documents: new section</p>	<p>The Returning Officer shall announce the results and declare the winner of the election at:</p> <ul style="list-style-type: none"> -the Ward Collation Center in the case of Councillorship election in the FCT; -Area Council Collation Center in the case of Chairmanship and Vice Chairmanship election in the FCT; State Constituency Collation Center in the case of the State House of Assembly election; -Federal Constituency Collation Center in the case of elections to the House of Reps -Senatorial District Collation Center in the case of election to the Senate; State Collation Center in the case of election of a Governor of State; -National Collation Center in the case of election of the President; <p>The Chief Electoral Commissioner who shall be the Returning Officer at the Presidential election.</p> <p>Change to section 32 (now 31): Submission of list of candidates and their affidavits by political parties</p> <p>(no later than 60 days before)</p> <p>New Language: (4: anyone can apply to the Commission for a copy of any candidate's information for a fee. 7:candidate must give the Commission an identifiable address in the State where he intends to contest the election where he can receive all correspondence)</p>	<p>Requiring parties to submit their list of candidates four months ahead of time could be an important reform. This gives INEC more time to verify candidate affidavits. Together with other sections of the bill, it adds a stronger emphasis on the primary process, which has been highly problematic in virtually every Nigerian election since independence (except arguably for 1992). It also increases the amount of time for campaigning itself, which could have a positive impact on voter education and civic engagement.</p> <p>Making candidate's information available (hopefully for a nominal fee) should increase transparency, albeit in a small way. It also makes it more difficult for a future INEC administrator to blame ballot problems on administrative delays such as those encountered by Vice President Atiku in 2007, i.e., even if primary candidates go to court against each other this allows much more time for the courts to render a decision.</p>
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PART V:- POLITICAL PARTIES	<p>78-Powers of INEC to register political parties – new section 79-83 – no change</p> <p>84-Merger of political parties: new section.</p> <p>85 – Notice of Convention Congress etc – new section</p> <p>86-no change</p> <p>87 – Nomination of Candidates by</p>	<p>78-Powers of INEC to register political parties – new subsection: 78(7) – INEC can de-register political parties if there is a breach of registration requirements or failure to win a seat in the National or State Assembly election).</p> <p>84-Merger of political parties: new section: (if INEC fails to communicate its decision on a party merger request within 30 days, the merger will be deemed effective).</p> <p>85 – Notice of Convention Congress etc – new section (3-elections of any executive member of a party shall be through a democratic process).</p> <p>87 – Nomination of Candidates by Parties –new section</p>	<p>Election to state or national Assembly effectively sets an electoral threshold reasonably deters frivolous parties from entry. The authority to de-register parties should similarly in theory improve the quality of registration applications. However the authority to de-register, rather than simply deny registration, is a broad power that could be abused and is likely to be challenged in the courts at some point.</p> <p>Discussion about electoral reform in 2009 emphasized the need to increase ballot access for independent candidates. In a dominant party system such as Nigeria’s this would overwhelmingly benefit the largest parties. A default to a merger (Section 84) in the face of INEC inaction could constructively counter party fragmentation which has served the interests of incumbents.</p>

	Parties –new section	<p>1-parties must hold primaries; 2-primaries may be direct or indirect; 3- if direct, all aspirants must have equal opportunity to be voted for; 4-if indirect; -for a Presidential candidate, a party shall: hold special state conventions -a National Convention shall be held to ratify the candidate with the highest votes, who will be declared the winner of the primaries and his name forwarded to INEC as the party candidate. -for the Governorship, Senatorial, Chairmanship and councillorship candidates, a party shall hold special congress, the aspirant with the most votes shall be declared the winner of the primaries, and his name will be forwarded to INEC. 6- Where there is only one aspirant for any of the above posts, the party shall convene a special convention for the aspirant’s confirmation, and the name shall be forwarded to INEC 7- if a party adopts the indirect primaries system, they must clearly outline in their constitution, the rules for delegate democratic elections at the convention. 8-There shall be no delegation of votes. 9-if a party fails to comply with these rules, its candidate will not be included in the election. 10- if an aspirant complains that any Act provision has not been complied with, he may apply to the Federal or State High Court for redress.</p>	<p>Primaries have been contentious in Nigeria since the First Republic. One more than one occasion since then, two rival factions claimed the mandate for the same party; therefore these provisions promise to be some of the most important changes in electoral law.</p> <p>A specific requirement to hold a primary is thus potentially an important reform. The laconic description of direct – compared to indirect - primaries properly reflects the fact that the biggest problems are likely to occur in the latter, which resemble the current system. In this regard though, the bill lacks language for what could have been the single most important reform: transparency of the party conventions and congresses. At present these are closed door affairs in which candidates have literally been shut out; INEC staff who observe the primaries in an official capacity is formally <i>prohibited</i> from disclosing corruption they observe. It is also doubtful that observers, or the media, would have access. As a result, the potential for political abuse or administrative confusion remains significant here.</p> <p>The “non-justiciability” of the primary process (in</p>
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PART VI:- PROCEDURE FOR ELECTION TO LOCAL GOVERNMENT	<p>102-112 – no change</p> <p>113-Dissolution of Area Council: new section</p> <p>114-117 – no changes</p>	<p>113-Dissolution of Area Council: new section</p> <p>2 – when determining a three year term, where a re-run election has taken place and the person earlier sworn in wins the re-run election, the time spent in office before the date the election was annulled, shall be taken into account.</p>	<p>The dissolution of the area councils, followed by the appointment of temporary chairpersons, has been an important tool for political manipulation by parties in recent elections.</p> <p>This provision should help harmonize the terms of area councils should the election of any of them become challenged. It will also help ensure that challenges are not used to conspire to extend terms in office.</p>
PART VII:- PROCEDURE FOR LOCAL GOVERNMENT COUNCIL		<p>The 2006 legislation does not account for this section. This entire</p>	

ELECTIONS		section was removed or merged.	
PART VIII:- ELECTORAL OFFENCES	117-133-mostly changes to penalty years and amounts. No significant changes in language.	117-133-mostly changes to penalty years and amounts. No significant changes in language except in Section 133(3b) – election tribunals shall open their registries for business 7 days before elections).	
PART IX:- DETERMINATION OF ELECTION PETITIONS ARISING FROM ELECTIONS	<p>134-Time for Presenting Election Petition: new section</p> <p>135-139-no change</p> <p>140 – Nullification of elections by tribunal or court: new section.</p> <p>141-Effect of non-participation in an election – new section.</p> <p>142-145 – no change</p>	<p>134-Time for Presenting Election Petition: new section (2,3,4 - An election tribunal shall deliver its written judgment 180 days from petition filing date, and any appeal shall be heard and disposed of 90 days from the above judgment date. The court may give appeal decisions and reserve the reasons for a later date)</p> <p>140 – Notification of elections by tribunal or court: new section (2: if a court or tribunal nullifies elections on the grounds that the candidate most voted for was not qualified to contest they shall order a fresh election).</p> <p>141-Effect of non-participation in an election – new section (a tribunal or court cannot declare any person a winner if such a person has not fully participated in all the stages of the said election).</p>	<p>Hundreds of election results were challenged in 2003. Even with the 2007 presidential election, it took the courts more than a year to render a decision; several gubernatorial results were in fact overturned. The new legislation appears to fix a reasonable timeline for such an appeal process, which sets goals for the courts. This could make it more difficult for petitioners to abuse the appeals process in a way that permanently distracts the office holder from carrying out duties; thus it aims to encourage a swift resolution of disputes.</p> <p>Section 141 appears to again reinforce the importance of primaries since there are cases where candidates took office even though they were not chosen through primaries of any sort. (That spoke to the power of governors and “godfathers” over candidate selection.)</p>
PART X:- MISCELLANEOUS	146-158: no change		
First Schedule	<p>1-5: no change</p> <p>6 – Contents of Election Petitions: new section</p> <p>7-17 – no change</p>	<p>6 – Contents of Election Petitions: new section (The election petition shall be accompanied by-a list of the witnesses, witness statements, copies/list of all documents to be relied on at the hearing of the petition.</p>	

	<p>18-Pre-hearing session and scheduling</p> <p>19-40: no change</p> <p>41: Evidence: new section</p> <p>42-45: no change</p> <p>46 & 47: hearing a petition and motions – new sections</p>	<p>18-Pre-hearing session and scheduling: -7 days after petitioner’s reply to respondent, or 7 days after the respondent files a reply, the petitioner shall apply for a pre-hearing notice, which the court shall issue to both parties. The respondent may also apply for the pre-hearing notice where the petitioner fails to apply for the same or apply for an order to dismiss the petition. If both fail to apply, the court will presume the petition abandoned. If a party fails to attend the pre-hearing sessions or obey a scheduling order or is substantially unprepared or fails to participate in good faith, the tribunal or court shall dismiss the petition or enter judgment against the respondent. But such a judgment or dismissal can be set aside by application made within 7 days and a N20,000 fine.</p> <p>41: Evidence: new section (any fact required to be proved shall be proved by written deposition and oral examination in open court. Real evidence shall be tendered at the hearing. The court may limit the number of witnesses.)</p> <p>46 & 47: hearing a petition and motions – new sections (46-If no party appears along with a petition, it will be struck out. If the petitioner appears and the responder does not, the court can</p>	<p>This new section creates what appears to be a reasonable burden for petitioners to produce in advance the evidence they plan to use. This is potentially important because the courts in the 2007 election petitions had to decide whether election observation reports and similar documents were acceptable supporting evidence at all in such a petition. This language seems to leave the door open to such material as evidence, and also formalizes the use of witnesses in such a way as to discourage frivolous accusations; witnesses will have to openly testify.</p>
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