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CONSTITUENCY DELIMITATION: THE ROLE OF INDEPENDENT NATIONAL ELECTORAL COMMISSION IN NIGERIA

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ABSTRACT

The importance of constituency delimitation, an important role for Independent National Electoral Commission (INEC) is the focus of this article. This subject is a matter of contestation among various stakeholders in Nigeria. It is one of the international parameters for a credible election. Using doctrinal approach, this article interrogates how the Constitution of Nigeria, 1999 set the required parameters for a just and equitable delimitation of constituencies. The author found that focus is usually on the election while the issue of constituency delimitation that validates election is neglected. Further, by the provision of the Constitution, constituency delimitation ought to be at done at an interval of not less than ten years or upon a census being conducted. However, the last delimitation in Nigeria was in 1996 despite the 2006 census because it appears that INEC is overwhelmed resulting in inequality in the size of the constituencies. This article accordingly recommends that the responsibility be taken from INEC because it is not free from political manipulation and given to the Boundary Commission and the need to put in place a legal framework for the conduct of constituency delimitation in Nigeria.

Keywords: *Constituency, delimitation, INEC, election, gerrymandering, census, equality, representativeness, non-discrimination.*

1. INTRODUCTION

Constituency delimitation is one of the attributes of democracy. It is all about setting electoral boundaries for the electorates. It is the basis for the determination of equitable representation as such it aims at achieving fairness of representation. It has consequences for representation in parliament and even for appropriation and is therefore one of the most sensitive matters in a democracy. Because of its legal and political importance, it is a matter of contestations among all the stakeholders and the law tries to set a parameter for a just, transparent, and equitable delimitation of constituencies. If appropriate parameter is not put in place, it can be manipulated and used as a tool of undue dominance and marginalisation by one group against another.

This may result into serious agitation and heat up the political process. It is for this reason that this article is apposite and could not have come at a more auspicious time as this when INEC is embarking on a review of constituencies' delimitation as required by the Constitution.

In fact, two main issues are front burners during preparations for election- the need for electoral reform and the need for constituency delimitation. Constituency delimitation can

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even be said to be part of the electoral reform processes. A review is necessary to address some of grievances from the stakeholder. It is therefore as important as conducting elections. Regrettably, while most people focused on the conduct of election, the constituency delimitation that validates or legitimises elections is neglected. We may therefore continue to discuss electoral reforms for the next decade and not get it right except we are able to interrogate some national questions brought about by undue political gerrymandering in Nigeria.

2. CONSTITUENCY DELIMITATION IN NIGERIA

According to Pate[1], constituency delimitation is the equitable and balanced segmentation of communities into units for electoral representation in the body politics. The idea of constituency delimitation in Nigeria has been traced to the Clifford Constitution of 1922. According to Pate:

> History of constituency delimitation in Nigeria dates back to 1922 during the colonial period. This was repeated in 1954. In post-independent Nigeria, the 1963 National census provided the basis for delimitation for the 1964, 1979 and the 1983 National elections. These exercises consistently attracted virulent condemnations from some stakeholders during the different periods. There were allegations of manipulation, marginalization, unfairness and perceived domination by different segments of the society**.**

There are some international parameters that have been put in place to ensure fair, transparent and equitable delimitation of constituencies. The essence of those international standards is to serve as a benchmark for stakeholders in an electoral process to gauge the fairness of the delimitation practices of a given country. Handley[2] summarises these fundamental principles thus:

1. Impartiality: The boundary authority should be a nonpartisan, independent, and professional body.
2. Equality: The populations of constituencies should be as equal as possible to provide voters with equality of voting strength;
3. Representativeness: Constituencies should be drawn taking into account cohesive communities, defined by such factors as administrative boundaries, geographic features, and communities of interest; Boundary Delimitation.
4. Non-discrimination: The delimitation process should be devoid of electoral boundary manipulation that discriminates against voters on account of race, colour, language, religion, or related status; and

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[1] Pate. U. Understanding Constituency Delimitation in Nigeria: The Quest for An Equitable Democratic System.Available at http://umarpate.blogspot.com.ng/2009/06/understanding-constituency-delimitation.html visited on 25th February 2017.

[2] Op. Cit. at 59-60.

5. Transparency: The delimitation process should as transparent and accessible to the public as possible.

Flowing from above is the need to examine the process of Constituency delimitation with the aim of determining whether some of these fundamental principles are adhered to.

3. ROLE OF THE **INDEPENDENT NATIONAL ELECTORAL COMMISSION**

The Independent National Electoral Commission is constitutionally saddled with the responsibility of constituency delimitation in Nigeria. In some countries, like in the United States, the responsibility of constituency delimitation is that of the parliament. Leaving it in the hand of politicians may result in the manipulation of the whole process (gerrymandering) and may not meet the very first fundamental principles of impartiality highlighted above. For this reason, there is a preference for a nonpartisan, independent, and professional body. This is why the responsibility was given to INEC in Nigeria.

In some others it is the independent Boundary authorities. Britain used the Boundary Commission approach and has been adopted in several commonwealth countries because of the Boundary Commission consists "not only of impartial (nonpartisan) public officials but also of professionals with the requisite skills in election administration, geography, cartography, demography, and statistics.[3]"

Section 71 of the Constitution provides:

> Subject to the provisions of section 72 of this Constitution, the Independent National Electoral Commission shall -
> (a) divide each State of the Federation into three Senatorial districts for purposes of elections to the Senate; and
> (b) subject to the provisions of section 49 of this Constitution, divide the Federation into three hundred and sixty Federal constituencies for purposes of elections to the House of Representatives**.**

In addition, the actual power of review is vested on INEC by section 73 of the Constitution which provides:

> (1) The Independent National Electoral Commission shall review the division of States and of the Federation into Senatorial districts and Federal constituencies at intervals of not less than ten years, and may alter the districts or constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review.
> (2) Notwithstanding subsection (1) of this section, the Independent National Electoral Commission may at any time carry out such a review and alter the districts or constituencies in accordance with the provisions of this section to such extent as it considers necessary, in consequence of any amendment to section 8 of this Constitution or any provision replacing that

[3] See Handley, Op. Cit. at 61.

> section, or by reason of the holding of a census of the population, or pursuant to an Act of the National Assembly.

Despite this constitutional provision, it is sad to report that the last constituency delimitation done by INEC was in 1996 despite the fact that there was a census in 2006 that made the review inevitable. The European Union[4] put it succinctly thus:

> The Constitution mandates that INEC review the delimitation of constituencies whenever a population census has been completed. However, despite a census in 2006, the current delimitation of constituencies dates back to 1996, and is thus overdue by some nine years. During the intervening period, INEC has conducted boundary reviews several times but reportedly has not finally submitted proposals to the National Assembly.

There are currently profound inequalities in the size of constituencies, which is not consistent with equality of the vote or constitutional requirements. The three senatorial districts in a state are to have as nearly equal populations as is reasonably practicable. Similarly, each of the 360 HoR constituencies should have as nearly equal populations across the federation as possible, so that each HoR member represents approximately the same number of people.

Section 74 also states that where there is an alteration of a senatorial district or a federal constituency as a result a review under section 73, there is a need for a parliamentary approval before it can be implemented. The section provides:

> Where the boundaries of any Senatorial district or Federal constituency established under section 71 of this Constitution are altered in accordance with the provisions section 73 hereof, the alteration shall come into effect after it has been approved by each House of the National Assembly and after the current life of the Senate (in the case of an alteration to the boundaries of a Senatorial district) or the House of s (in the case of an alteration to the boundaries of a Federal constituency)

Section 72 also provides:

> No Senatorial district or Federal constituency shall fall within more than one State, and the boundaries of each district or constituency shall be as contiguous as possible and be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable.

The population quota referred to in section 72, in accordance with section 75 shall be ascertained by reference to the 1991 census of the population of Nigeria or the latest census held in pursuance of an Act of the National Assembly.

There are equivalent provisions in sections 91 and 112 of the Constitution on the powers of INEC to delaminate state constituencies. Section 91 provides:

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[4] See European Union Election Observation Mission Final Report on Nigeria General Election, 2015 Available at http://eeas.europa.eu/archives/docs/nigeria/docs/eu-eom-nigeria-2015-final-report_en.pdf. visited on 25th February 2017 at 15.

> Subject to the provisions of this Constitution, a House of Assembly of a State shall consist of three or four times the number of seats which that State has in the House of Representatives divided in a way to reflect, as far as possible, nearly equal population: Provided that House of Assembly of a State shall consist of not less than twenty-four and not more than forty members.

More relevant to INEC powers in relation to state constituency delimitation is section 112 of the Constitution which provides:

> Subject to the provisions of sections 91 and 113 of this Constitution, the Independent National Electoral Commission shall divide every state in the federation into such number of state constituencies as is equal to three or four times the number of Federal constituencies within that state.

In addition, section 114 states that INEC shall review the division of every State into constituencies at intervals of not less than ten years, and may alter such constituencies in accordance with the provisions of the section to such extent as it may consider desirable in the light of the review and such review shall also be done in consequence of any alteration of the boundaries of the State or by reason of the holding of a census of the population of Nigeria in pursuance of an Act of the National Assembly.

In January, 2008 INEC inaugurated a National Advisory Committee on Delimitation of Constituencies (NACDCC). Its mandate was to the review of existing and perceived imbalances in the electoral constituencies to make them consistent with the laws as well as set up a plan of action. However, nothing much was achieved by the Committee. Just like in the case of alteration of a Senatorial district and a federal constituency, the approval of the National Assembly is required before any alteration can come into effect.

The neutrality and impartiality of INEC has been tested through this provision. This is because the Constitution vested in INEC discretion to decide divide a state three or four times the number of Federal constituencies within that state. Accordingly, some states have been divided by three while some have been divided by four without any concrete basis. The Court of Appeal in the case of *Oju Local Government v INEC*[5] held that the above provisions of the constitution are mandatory and the discretion given to INEC must be exercised judiciously and judicially if not, it will be reviewed by the court.

The constitution has given the responsibility to INEC to review constituencies in Nigeria after every ten years or after every census conducted by National Population Commission. In some countries the responsibility is that of the boundary authorities but in Nigeria, it is that of INEC.

4. CORRELATION BETWEEN CONDUCT OF AN ELECTION AND CONSTITUENCY DELIMITATION

[5] [2007] 14 NWLR (Pt.1054), 35.

The responsibility of conducting election in Nigeria and of constituency delimitation is trusted on one and the same body INEC. It is therefore necessary to consider the correlation between the same responsibilities. This works establishes a symbiotic relationship between constituency delimitation and a successful election. INEC is saddled with the responsibility for conducting election in Nigeria. No wonder, it is also saddled with the responsibility of delimiting constituency in Nigeria.

Support for this view is found in the Constitution. INEC is empowered in section 71(a) to divide each State of the Federation into three Senatorial districts and in section 71(b) to divide the Federation into three hundred and sixty Federal constituencies for one and only one purposes of conducting elections to the Senate and the House of Representatives respectively. Moreover section 77(1) of the same Constitution states that:

> Subject to the provisions of this Constitution, every Senatorial district or Federal constituency established in accordance with the provisions of this Part of this Chapter shall return a member who shall be directly elected to the Senate or the House of Representatives in such manner as may be prescribed by an act of the National Assembly.

Subsection 2 also provides that every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for election into the constituency delimitated.

Support is also found in the decision of the courts that constituency delimitation is the very first stage in an election and therefore part of the election process. Lokulo-Shodipe, J.C.A stressed this point clearly in *Okoye v. INEC & Ors*[6] when he said:

> The issue of election respectfully, goes beyond merely casting votes. It is a process commencing with delimitation of constituency, nomination and accreditation of candidates, voting itself, counting and collation of votes culminating in return or declaration of result.

In addition, Hadley[7] also alluded to grave consequences that a malapportioned delimitation could have on an election. In his words:

> Different sets of electoral district boundaries can produce different election outcomes, even if the underlying vote patterns are identical. Electoral abuses such as malapportioned constituencies (electoral districts that vary substantially in population) and electoral districts that have been "gerrymandered" (constituency boundaries intentionally drawn to advantage one political group at the expense of others) can have profound effects on the outcome of an election and the composition of a parliament. If voters and other stakeholders suspect that the electoral boundaries have been unfairly

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6 (2010) LPELR-4728(CA)

7 Hanley, Lisa. Challenging the Norms and Standards of Election Administration: Boundary Delimitation. Published in Challenging the Norms and Standards of Election Administration (IFES, 2007) 59 at 59.

> manipulated to produce a particular political outcome, this will affect the credibility of the delimitation process. The legitimacy of the electoral outcome itself could be questioned.

It was for the same reason that let Pate[8] to state that constituency delimitation is not just a pre-election issue but there have been complaints that bother on the integrity of the delimitation of constituencies accompanies the conduct of elections which can undermine the credibility of the electoral process and indeed democracy in the land. In his words:

> Here, in Nigeria, we are quite familiar with the usual complaints that accompany our elections, some of which bother on the integrity of the delimitation of constituencies. There have been contentions on specific constituencies being unfairly demarcated sometimes based on land mass instead of population; arguments of some majority groups being favored against some minorities; bundling of geographically incompatible groups in to same units; manipulative tendencies of some politicians in the exercises; the cracking of ethnic groups across constituencies rendering them disadvantaged and many more criticisms that tend to undermine the credibility of the electoral process and indeed democracy in the land. In view of the foregoing experiences, it is in the greater interest of the Nation and the healthy sustenance of its democracy to ensure that it gets right the current attempt of realigning the constituencies, of course bearing in mind that the exercise is broad based as well as inclusive and participatory. These are minimum critical elements in a federal state like ours where the federating units are not only diverse and complex but to some extent, volatile.

Also Ozoh[9] explains that constituency delimitation is necessary for effective representation of constituent, smooth logistic for the conduct and timely release of election results and also for ease of accessibility of voters observers and other stakeholders to voting and collation stations.

It was therefore not without basis that the responsibility for constituency delimitation was given to INEC in Nigeria and not to the Boundary Commission because of the close relationship with the conduct of elections.

5. CHALLENGES

How impartial and independent is INEC. Several questions have been raised about INEC's independence in Nigeria. A lot of people feel that INEC is not independent because the Chairman and other members are appointed by the President and as such loyalty goes to the government of the day. In this vein, the government of the day is able to manipulate not only

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[8] Loc. Cit

[9] Ozoh, Frank Electoral Constituency Delimitation: The Paretian Rendition. Available at https://www.academia.edu/28500992/ELECTORAL_CONSTITUENCY_DELIMITATION_IN_NIGERIA_THE_PARETIAN_RENDITION accessed on 25th February 2017.

the process of election but also of constituency delimitation. The requirement of parliamentary approval before the implementation of final electoral boundaries under the constitution has also made INEC not to be truly independent in this task.

In addition, it has been alleged that INEC is also partial because they are influenced by ethnic and religious consideration. In the exercise of its powers under section 112 of the Constitution to divide the State either by 3 or 4, INEC has exercised bias against some states of the federation. Although the Court of Appeal held in the case of *Oju Local Government v. INEC*[10] that the discretion given to INEC must be exercised judiciously and judicially, it is necessary that the discretion be removed and the constitution adopts a particular figure say 4 times without another option to give room for fairness and uniformity.

Another major challenge is the absence of an ideal legal framework for the conduct. As stated earlier on, the conduct of constituency delimitation is as important as the conduct of an election. However, while in the case of the conduct of an election, there detail legal rules and frameworks contained in the Electoral Act, the Manual for the Conduct of Elections and Guidelines for election, the responsibility of constituency delimitation is not taken as a serious responsibility. The parliament did not consider it important to make adequate provisions for in the Electoral Act.

As a result of this there is no proper ventilation process through the courts or Tribunal to entertain cases of complain and malapportioned or improper delimitation of constituencies. In the case of conduct of election, we have election petition tribunals put in place as well as Federal and States High Courts[11]. Even for population Census, there are Census tribunals established to determine complaints from the conduct of census. This therefore gives an impression that INEC cannot be challenged over this very important and sensitive issue. As we reform our electoral process, and based on our demonstration in this paper that there is a symbiotic relationship between the conduct of election and delimitation of constituencies, we also need to include constituency delimitation in the reform. The outcome of this Round table must therefore be passed on to Senator Kan Nnamani Committee on Electoral reforms and the National Assembly Committees on Electoral reforms.

In the same vein, the INEC do not appreciate the importance and weight of constituency delimitation to have made separate Guidelines, Manuals or Rules to guide the conduct of constituency delimitation in Nigeria. According to the Supreme Court in *Honourable James Faleke v. INEC & Anor*[12]

By virtue of section 153(4) and 160(1) of the Constitution of Nigeria 1999 as amended, INEC has powers to make rules regulation its own procedures in the form of subsidiary legislations. No regulating has been made by INEC to incorporate some of the international standards for constituency delimitation. This view was corroborated by European Union Election Observation Mission Final Report on Nigeria General Election, 2015[13] when it reported on the constituency delimitation in Nigeria thus:

> ...this delimitation of constituencies is regulated only in the Constitution with the Electoral Act containing no further

[10] [2007] 14 NWLR (Pt.1054), 35.
[11] See sections 31(5) and 87(10) and 133 of the Electoral Act 2010 as amended.
[12] (2016) 18 NWLR, Pt. 1543 61 at 173
[13] Op. Cit. at 15.

> specifications and INEC not issuing any administrative regulation. Any change in the delimitation of constituencies requires approval of the Senate and HoR, without requirements for multi-party involvement or protections from derailing through non-response by the legislature. Given the context, there is risk of approvals or non-approvals being politically motivated to the benefit of the ruling party.

In addition, INEC has failed in this constitutional responsibility. Despite setting up of National Advisory Committee on Delimitation of Constituencies since 2008 and the meeting with Political Parties in 2015 and the assurance from former INEC Chairman, Professor Attahiru Jega that the review would be done before the 2015, the review of the constituency delimitation dates back to 1996.

The Constitution in section 73 requires a revision every 10 years and whenever the population census was conducted, it is over 20 years since the last review was done and over 10 years since 2006 census and nothing is yet to be done. Another census was due last year but it was not conducted. If the census is delayed it may not be available to INEC for use in the 2019 general election and it may have to fall back to 2006 census which will be unrealistic. Several people have called for the unbundling of INEC so that some of its responsibilities could be taken over by some other agencies. One is accordingly constrained to recommend the Boundary Commission model for the conduct of constituency delimitation in Nigeria with detail framework well spelt out. As is done in the United Kingdom, INEC and political parties can be represented in the Committee to be set up by the Boundary Commission to undertake the task.

6. CONCLUSION

There are presently several security challenges such as Fulani herders' conflict, Boko Haram, communal and ethnic crises, kidnapping and banditry bedevilling the nation. This has been the reason why it is not possible to conduct the population census in Nigeria; although there are other primordial reasons. The fact that there are security challenges is no reason why INEC should not perform its constitutional responsibility of constituency delimitation at an interval of at least ten years. The issue of constituency delimitation is not tied to the conduct of a census. Census is just one of the several factors for constituency delimitation under section 73 of the Constitution.

INEC is involved in several other activities such as registration of political parties, monitoring the activities of registered political parties, registration of voters, display of voters register, participation in political parties primaries, conduct of elections and electoral litigation not to talk of this huge task of constituency delimitation. For this reason, our recommendation that the responsibility, be transferred to the Boundary Commission with a clearly defined legal framework is germane. Boundary commission involvement should be worked out to suit our local circumstances because the political values in other jurisdictions must not be transplanted in Nigeria without taking care of the particular circumstances of

Nigeria. As explained by Lord Denning MR (as he then was) in *Nyali v. A-G*[14] in relation to colonial Africa that:

> The next proviso [the East African Order in Council 1902] provides, however, that the common law is to apply 'subject to such qualifications as local circumstances render necessary'. This wise provision should, I think, be liberally construed. It is recognition that the common law cannot be applied in a foreign land without considerable qualification. Just as with an English oak, so with the English common law. You cannot transplant it to the African continent and expect it to retain the tough character which it has in England. It will flourish indeed, but it needs careful tending. So, with the common law. It has many principles of manifest justice and good sense which can be applied with advantage to peoples of every race and colour all the world over: but it has also many refinements, subtleties and technicalities which are not suited to other folk. These offshoots must be cut away. In these far-off lands the people must have a law which they will respect. The common law cannot fulfil this role except with considerable qualifications.

[14] [1956] 1 Q.B 1 at 16-17.