NATIONAL PEACE COMMITTEE

The Role of the National Peace Committee (NPC) on Electoral Reform and Constitution Review

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REPORT OF THE 3-DAY STAKEHOLDER ENGAGEMENT

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Background

The sudden formation of the National Peace Committee (NPC) in 2014 was necessitated by the divisive politicking, the brazen lack of adherence to electoral regulations and the clear potential for unbridled violence leading up to the 2015 elections. The mandate of the Committee was founded on the need to support and facilitate peaceful elections in Nigeria, at both the national, regional and state levels. Implicitly, this mandate includes intervening in processes that will directly or indirectly contribute to stability and development, before, during and after elections; this includes engagement with security agencies, collaboration with INEC and partnership with agencies involved in Nigeria's democratic growth. Recently, the mandate of the NPC has been extended to include intervention in issues of national importance; issues that may threaten the peace, stability and security of Nigeria.

Prior to the formation of the National Peace Committee, the credibility of the electoral process in Nigeria has remained a contested area since independence, and when Nigeria eventually returned to democratic dispensation in 1999, every democratic election has been predicated on doom, and conducted with varying degrees of violence. The outcome of the elections themselves are constantly contested in the court of law. President Muhammadu Buhari, who contested three times (2003, 2007 and 2011) before he won the 2015 general elections, contested the outcomes of the previous elections in court. Recent judicial pronouncement on elections show that there were 1, 290 judicial pronouncements in 2007, compared to 732 in 2011, 612 in 2015, 809 in 2019 and there is no idea at the moment what will happen in 2023. The late President Musa Yar'Adua is reported to have remarked, in his inaugural address as President, that the election that brought him to office was fraught with irregularities. He followed up with the establishment of the defunct Electoral Reform Committee (ERC) which he tasked with the responsibility of ensuring that Nigeria's electoral landscape can enjoy some level of credibility.

The cost of elections has also gone up substantially. In 2011, One Hundred and thirty-nine billion, One Hundred and Nine three million, Eight Hundred and sixty-six thousand, sixty hundred and sixty-nine naira (N139, 193, 866, 669). By 2019, the cost of elections has gone up to One Hundred and Eighty-two billion, five hundred and eleven million, twelve thousand two hundred and twenty-four naira (N189, 511, 012, 224). This means that increasingly, elections became a money-spinning industry, generating billions in marketing culture and a transactional trend producing thugs, miscreants and violence. Without regulations, this culture will simply grow and spin out of control. The cost and complexity of the 2015 general elections generated so much tension and anxiety that many informed analysts predicted the complete disintegration of Nigeria. The situation was made worse by the very vitriolic tone of the 2019 elections campaigns dominated by hate slurs, ethnic bigotry and religious prejudices.

Against the background of confusion and ambiguity impelled by fragments of the 2010 Electoral Act, the National Assembly is repealing the current electoral law to enact what could pass for a new electoral legislation. The Electoral Bill 2021 (the Bill) is a constellation of the amendments passed in 2010, 2011, and 2015, as well as electoral amendments passed by the eighth National Assembly and proposals from the Independent National Electoral Commission (INEC), political parties, domestic and international observers. In July 2021, the Senate and House of Representatives considered and eventually passed the Electoral Act Amendment Bill, 2021 with some disparities in some clauses between the upper and lower houses of assembly. Due to public outcry, the National Assembly set up a Conference Committee to harmonise the Electoral Act Amendment Bill as passed by both chambers of the National Assembly.

These are the issues on which the mandate of the NPC is predicated. The Committee has continued to act, not just as a purveyor of peace at national level but also in state level elections as witnessed recently in Kogi, Bayelsa, Edo and Ondo states, but also as a critical stakeholder in the electoral process in Nigeria. As part of its mandate, the NPC reached out to critical stakeholders involved in the electoral reform and Constitutional review

processes to identify their challenges. Furthermore, the NPC has taken further steps to sample the opinions of these stakeholders in outlining what strategic interventions could be provided by the NPC to ensure that both the electoral reform and Constitution review processes are successful and impactful as the country moves towards the 2023 elections. Against this background, therefore, the Secretariat of the NPC, with the support from European Union and the Swiss Embassy in Nigeria, organised a three-day dialogue session with diverse array of stakeholders at the Rockview Hotel Classic Abuja from 15th – 17th June, 2021.

The objective of these dialogue sessions, as stated above, is to identify areas of short, medium and long term intervention by the NPC in the on-going electoral reform and Constitutional review processes, two complementary activities that have one aim, to deliver credible elections and ensure that those elected into office reflect substantially the choices of the generality of the Nigeria people and are then able to deliver on their primary Constitutional mandate of ensuring the security and welfare of the people.

Nature of Stakeholders

In view of the task envisaged and the strategy needed for the NPC to have an effective intervention, a significant number of the critical stakeholders involved in the electoral reform and Constitution review processes were invited to the dialogue sessions. These included representatives from relevant government agencies like the Independent National Electoral Commission (INEC) and the National Human Rights Commission (NHRC). Others in attendance were the European Union, the Swiss Embassy, the United Nations Fund for Women (UNIFEM), the Open Society Initiative for West Africa (OSIWA), MacArthur Foundation and the International Dialogue Centre (KAICID). Additionally, there were election focused groups like Centre for Democracy and Development (CDD), Policy and Legal Advocacy Centre (PLAC) and Savannah Centre for Diplomacy Democracy and Development (SCDDD) just to mention but a few. Other important experts included Mr. Babatunde Ogala, Esq SAN former member of the Lagos State House of Assembly, Ms. Abiodun Baiyewu of Global Rights and Mr. Jake Epelle of the Albino Foundation. A detailed list of attendance is attached.

Methodology

Participants were spread across a three-day period with twenty targeted for each day to enable robust and exhaustive deliberations. Clearly, invitations were extended to sixty participants but not all of them attended the sessions. The Head of Secretariat of the National Peace Committee Fr. Athanasius Barkindo delivered an opening remark and a goodwill message from the Chairman of the NPC, His Excellency, General Abdulsalami A. Abubakar. The remarks reiterated the urgency with which the Committee members view their intervention in the electoral reform and Constitution review processes. It also highlighted the significance of the opinions of critical stakeholders in guiding the NPC's interventions. This was followed by two short documentaries highlighting the work of the NPC were shown to participants. The documentaries were important to provide a background information on the work of the NPC and the impact the Committee has had in supporting peaceful elections in the past.

To set the tone for deliberations for the dialogue sessions a short power point presentation by Mr. Saka Azimazi was made on the electoral reform and Constitutional review processes in Nigeria, since independence. This presentation provided a historical analysis of Nigeria's struggle to provide peaceful elections through electoral reforms. It basically highlighted some of the logistical and other challenges that have confronted the electoral process in Nigeria, prior to and after independence, and some of the efforts that have been made to respond to these. This achieved two things; first, it laid down the ground rules for the conversation, and also made it necessary for stakeholders to further expose some of the challenges they faced. Second, it laid out clearly the processes to be undertaken in discussing the possible strategies that the NPC can adopt in supporting the electoral reform and Constitution review processes in Nigeria.

The presentation also highlighted the question of party formation, party supremacy and the twin challenge of internal democratic processes within political parties. It also identified the challenge of elections that are substantially determined by courts of law and the role that the National Assembly is then expected to play given the window of

opportunity that has been provided by the ongoing effort to reform the electoral process and review the 1999 Constitution.

Discussions and contributions by participants were open, frank and robust, sometimes even passionate. Some of the discussions centred around best practices from other countries, lost opportunities, the apprehension, fears and concerns of Nigerians regarding the possibility of holding elections in 2023 and the current spate of insecurity across the country and the tension that this has generated.

Challenges Identified

Following the intense three-day dialogue Sessions organised by the Secretariat of the NPC, some issues were identified as key challenges to the electoral reform and Constitution review processes. These issues, in the opinions of the stakeholders, are critical areas that the NPC could help facilitate deploying their convening and moral influence:

1. **Implementation of Past Electoral Reform Recommendation:** Successive Committees that reviewed past elections made recommendations for electoral reforms. Starting as recently as 2012, those recommendations have not been fully implemented. Indeed, the little that was of such recommendations that were implemented showed remarkable improvement and outcome of the 2015 electoral cycle. In addition, current effort at electoral reforms including the proposed establishment of an Electoral Offences Commission/tribunal have been long in coming. It was observed that it is a colossal waste to set up committees whose recommendations are largely ignored. The accumulated unimplemented recommendations have become a challenge in the electoral reform process.

2. **The Independence of INEC:** The National Election Management Body remains a pillar in the electoral process. Many doubt whether the current reform process can fully guarantee the independence and impartiality of INEC. The professionalism of its staff particularly the ad hoc staff used during elections was questioned by stakeholders and its inclusion in the reform framework. The impact of such doubts on the electoral outcome can lead to conflicts and indeed had led to serious violence in the past. While this is less manifest in the national EMB, it is obvious in the case of State EMBs.

3. **Election Transparency and the Adoption of Technology:** There is a growing desire among Nigerians to achieve electoral transparency and credibility. For many citizens therefore, this can only be achieved if the government and the electoral umpire adopt modern technology to make easy and faster voter registration and verification processes, the transmission of votes and results as well as allowing citizens to vote from wherever they are. However, the current election reform processes is still slow in adopting technology to enhance accuracy and credibility of election is no longer a debate. Even if adopted, political stakeholders are unwilling to approve it. This is a challenge the NPC should be eager to intervene on. The Bill makes provisions for electronic accreditation of voters using the Smart Card Readers or any technological device, as may be determined by INEC. While both chambers voted in favour of the

electronic accreditation of voters, the House of Representatives redrafted the provision and deleted the phrase *'any technological device'* based on a motion for amendment moved by the Speaker of the House, Rt. Hon. Femi Gbajabiamila. The House of Representative's position is too constricting and counterproductive, as it will certainly impede on INEC's ability to deploy new technologies for voter accreditation.

4. **On the electronic transmission of results:** In line with constitutional practice, the Bill conferred INEC with the powers to determine the procedure for the transmission of election results. While the House of Representatives adopted the provision of the Bill, the Senate voted to subject INEC's power to transmit election results electronically to the approval of the National Assembly and the NCC. By all standards, the Senate's position amounts to a constitutional overreach, as it violates Section 78 and Third Schedule Part 1(F) S.15 of the 1999 Constitution, which stipulates that INEC shall not be subject to the direction of anybody or authority.

5. **Electoral Reform and Internal Party Democracy:** The absence of internal party democracy was found to be a major flaw in the electoral process and requires urgent attention. This particular finding was noted as leading many of the other challenges noted earlier. At primary elections to nominate candidates for electoral contest, if a candidate is wrongly excluded, it creates problems. This often lead intra-party conflicts and violence. It is one of the reasons there are fewer women contestants. Further, the absence of internal democracy in political parties affects the outcome of elections. This often meant that an unpopular candidate is foisted on party supporters. For example, **On the nomination of candidates by parties:** Based on a motion for amendment moved by the Speaker of the House, the House of Representatives voted to expunge *'indirect primaries'* as a mode of nomination of candidates. Parties will be legally required to nominate candidates through direct primaries. In contrast, the Senate voted to retain direct and indirect primaries for the nomination of candidates.

6. **Mitigating Post-election Violence:** Nigeria's elections have always been daunted with post-election violence. This seems to come from a presidential premised on winner takes all, with a limited window for all to participate in government after elections. Beyond the Electoral Offences Commissions, the election reform and

Constitution review processes appear to be silent or/and negligent on specific strategies, policies, rules and regulations that will mitigate post-election violence. Rhetorically, the question was asked whether it would be possible for the political party that wins an election to invite the opposition to participate by giving sizeable appointments to such opposition party.

7. **Power of Incumbency and Flagrant use of State Resources for Elections:** Participants noted that there is a general tendency to abuse the power of incumbency by those in power. This finding manifests in use and abuse of government resources, in personnel and other materials, to gain undue advantage against the opposition. This therefore leads deployment of resources beyond opposition parties who lack access to the same public patrimony. It also reinforces unequal platform and limited level playing field for political participation. This also disenfranchises smaller parties and excludes candidates without resources, ultimately placing money at the centre of electoral activities in Nigeria. The election reform and the Constitution review have place less emphasis on this.

8. **The Cost of Elections:** Most of the time beyond what the EMB could control. From the sale of nomination forms to actual campaigns, the cost is usually prohibitive. This locks away the young and especially women contestants. The tendency for money bags to dominate and lead the process is real. Many times, election cycles have been turned into trading periods for party chieftains. Participants were of the view that the amount of money required to contest election is enormous and sacrifices ideology for patronage. The electoral reform processes have not sufficiently addressed this.

9. **Election Compliance with Common Citizenship:** Political activities in Nigeria generally capitalise on identities primordial identities to promote their quest for power. In this case, the use of identities such religion, tribe or ethnicity and race to garner votes and supports defeats nationalism and affects patriotism. Indeed, it was observed by participants that reliance of politicians on such identities often lead to violence and many have been injured or killed on account of any of those identities before and after elections.

10. **Deployment of Security Agencies and Election Impartiality:** Security agencies deployed during elections are usually perceived as biased towards the party in power either at national or state level. This perception is because most of the heads of the security agencies are appointed by the incumbent president either at the beginning of his tenure or shortly before elections. In some cases, violence has been orchestrated by the activities of security agencies. Or where party supporters are in conflict, they show bias of one group against the other. The trust level of the populace on security officials usually dip around election period. The absence of trust on security officials do have negative impact on the integrity of the process. The electoral reform processes and the Constitution review have failed to sufficiently address this.

11. **Election Observation and the Electoral Act:** Election monitoring and observation differ slightly. According to INEC, it is the only body empowered by law to monitor elections. CSOs and others are however free to observe elections. However, Election observers are even less professional than EMB staff. This affects their observation and outcome reports. In most cases, observers witness preparations, arrival of materials and personnel and the voting process. And at times counting of votes. But election observers are absent during transmission and collation of results from the

polling units. And this is the point at which figures are usually alleged to be tampered with or altered. A clause has not been provided in the current electoral reform process, and the intervention of the NPC will be needed in this area.

12. **Current Electoral Bill and Political Will:** Many of the participants at the Sessions noted that the current Electoral Bill at the National assembly is meant to repeal the existing Act and Replace it with a new one. The Bill has gone through First and Second Readings and committed to Committee level. The Committee held public hearings at Zonal and National levels. It even held a well-attended retreat to get inputs from stakeholders. And so it is not clear what the content of the Bill is now. And the national Assembly is keeping the draft to its chest.

13. **Vote Buying in the Electoral Reform Process:** Statute has tried to reduce and indeed criminalise sale and purchase of votes. But it has not stopped. While the reason citizens sell their votes was beyond the remit of the Dialogue Sessions, its impact in swaying votes during elections was noted. Participants were of the view any party caught in the act of vote buying should have its candidate disqualified in that polling unit. **The Senate Version of Clauses 63 and 76 increases the sanctions imposed on a presiding officer who contravenes the Electoral Act** with respect to the proper counting of ballots, the accounting for votes and the announcement of results. We believe that sanctions should place high retributive demand (financial or otherwise) on the offender, in order to discourage electoral offences.

14. **Diaspora Voting:** The issue of Diaspora voting needs to be resolved once and for all so that the large population of Nigerians outside the country can contribute to the political future of the country. Along with this, more opportunities need to be given to Persons with Disability to participate actively in elections. Wheelchair access, facilities for the visually impaired, amongst others not to be taken care of in statute.

15. **Election Workers in the Electoral Reform Process:** It was found that election day workers are excluded from voting. This includes INEC officials, security agents, ad hoc staff, other government officials, CSOs observing elections, etc. It is estimated that more than 4 million voters could be so excluded. Four million votes for any candidate is substantial. In some West African Countries, such population vote a week or two before the general voting.

Strategic Recommendations for NPC Intervention

In line with the mandate of the NPC, it has become expedient for the Committee not only to facilitate peaceful elections, but also to support the electoral process that will deepen the culture of peaceful and non-violent elections in Nigeria. Considering the outcome of the dialogue session organised by the NPC to design strategies to support the electoral reform process, it is necessary to note that the NPC remains an advisory body. It has not judicial, legislative or executive powers. However, the NPC can intervene at two levels: short- and long-term intervention.

NPC Short Term Interventions: In the short term, it is necessary for the NPC to undertake the following interventions.

- The committee should deploy its convening power to carry out back-channelled negotiations, private meetings, and engagements to persuade the National Assembly to protect the constitutional independence of INEC. In this way, the culture of democracy will be deepened, the processes of accountability will be strengthened, and

INEC itself will become more effective in performing its constitutional duty. For example, **The Senate version of Clause 49, which recognizes "other technological devices" alongside "Smart Card Readers" for voter accreditation.** In furtherance of INEC's constitutional responsibility and in line with good practice, the commission should be vested with discretionary powers to deploy effective and efficient technological devices for accrediting voters during elections. For example, INEC tested the new Biometric Voter Accreditation System (BVAS) during the Isoko South 1 Constituency bye-election into Delta State House of Assembly and plans to deploy the same device in subsequent elections.

- The NPC should engage the Conference Committee set up by the National Assembly to harmonise the 2021 electoral bill. This harmonisation should be done in the interest of the public. For instance, the **Senate version of Clause 43, recognizes "voting devices" alongside election materials.** The integration of 'voting devices' integrates electronic voting into the electoral process. At the same time, the **House of Representatives Version of Clause 52, which gives INEC the power to determine the procedure for voting and transmission of election results.** The power to determine the procedure for transmission of results should be vested with INEC without interference from any individual or government agency. This position safeguards INEC's independence.

- Nigeria's elections are probably the most "securitised" election anywhere in the world, and that this situation has absolutely no place in a democracy. Participants were in consensus that the current spate of insecurity in the country has been further exacerbated and in some cases is traceable to free flow of small arms and light weapons during elections and the inability of political actors and perpetrators during elections to mop this up at the end of the election cycle. Consequently, the National Peace Committee was urged to engage the Department of State Services, the Nigeria Police and the Nigeria Immigration Service in developing with a view to developing a strategy of containment of arms flow into the country and mopping up available arms in the hands or under the control of non-state actors.

- Concerns were also expressed regarding whether President Mohammadu Buhari will give presidential assent to the Electoral Act, if and when it is eventually passed by the National Assembly and, here too, the National Peace Committee was requested to engage with the President and secure his unfailing commitment to giving assent to the Electoral Act Repeal and Re-enactment Act 2021.

Long Term Interventions: The long-term interventions of the NPC are linked to its current role and mandate, and therefore, the NPC should continue to use its convening power to engage with key stakeholders in supporting electoral reform process in Nigeria.

- Consistent with 1 above, the National Peace Committee is expected to go beyond the call of duty, as embodied in her initial and narrow mandate of ensuring peaceful transition and the peaceful conduct of free and credible elections and delve into interventions that are geared towards providing a robust response to the prevailing security situation in our country Nigeria. This, stakeholders reasoned, is because we cannot realistically speak about a credible electoral process or an electoral reform process when the nation is in turmoil and experiencing serious challenges characterised by rising tension and fractured relations including calls for disintegration and attacks on public institutions in certain parts of the country.

- Grave reservations have been expressed about the work of the National Assembly with respect to electoral reforms remains shrouded from public view and there are concerns about whether the final document substantially reflects the views and aspirations of the generality of Nigerians who participated in these processes. Accordingly, the National Peace Committee is urged to use the soft power available to it to ensure that the National Assembly adopts an open and democratic approach to the electoral reform and Constitutional review processes and, by so doing, restore the confidence of Nigerians in the processes. Public interest should always supersede partisan private interests. As custodians of the public interest, elected representatives are required to respect the will of the people when making laws. Jettisoning amendments like the electronic transmission of results and electronic voting will betray public trust, considering the current realities and the clamour for these rules.

- The culture of impunity continues to characterise successive elections in Nigeria, since independence in 1960, and specifically welcomed the notion of an electoral offences commission, as proposed under the ongoing electoral reform process, but nevertheless charged the National Peace Committee to step up advocacy efforts towards ensuring that relevant law enforcement agencies revisit the recommendations of such Commissions like the Sheikh Lemu Commission of Inquiry into the 2011 post election crisis in parts of the country, with a view to ensuring implementations of findings and recommendations that are geared towards ensuring a deterrent effect. The shrinking space for women participation in the electoral processes and ultimately in the decision-making processes at various levels, and best practices within and outside the continent of Africa have been called in to illustrate the urgency required. Although expressed opinions were divided, sometimes sharply, on this issue, there was broad based consensus that the National Peace Committee is in a position to engage with the leadership of the various political parties to work out credible, functional and a result-oriented strategy towards ensuring greater inclusion in the political process in Nigeria. In this regard, the concept of priority voting by Nigerians with disabilities was canvassed.

- During the electoral reform dialogue session, participants indicated that "strategy is better than energy" and, consequently urged the National Peace Committee not only to use her convening power to carry along civil society organisations in the envisaged process of engagement, but to equally consider the possibility of establishing a strategic team that will bring about a coordinated civil society response that is rich in experience, exposure, knowledge and expertise with which to engage the various stakeholders towards the early passage of the electoral repeal and re-enactment Act, and the grant of presidential assent thereto. In this connection, influential members of the international community were identified as a critical stakeholder community that ought to be strategically engaged in this process.

- The role of the media as a critical stakeholder in the electoral reform process. The NPC should continuously and in the long-term deploy the voices of its members to call for peaceful election at every stage of the electoral process.

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