

## **Review of the Proposed Presidents Amendment to the Electoral Act 2010**

### **Introduction:**

Recently, the Independent National Electoral Commission (INEC) launched an appeal for the forthcoming 2011 general elections to be moved from January 2011 (in keeping with the time limit of 120 to 150 days for conducting elections before the end of the tenure of current occupant of the office as for provided in Sections 132 (2) and 178 (2) of the amended constitution, 2010) to April 2010. To accomplish this, it became necessary that the National Assembly amends the relevant sections of the Electoral Act 2010 and the amended constitution.

In pursuit of this request by INEC, President Goodluck Jonathan sent an Executive Bill to the National Assembly proposing amendments to the Electoral Act 2010. The said billed titled 'A Bill for an Act to Amend the Electoral Act No. of 2010' has undergone its first reading on the floor of the Senate in the National Assembly.

A close analysis of the amendments being proposed to the Electoral Act 2010, by the President Goodluck Jonathan led Federal Government clearly shows that some of them, particularly those relating to Section 87(7) and (8) of the Electoral Act, 2010, have grave implications for the conduct of credible, free and fair elections in 2011 if enacted into law, as proposed by President Jonathan.

Below are the highlights of the proposed amendments, juxtaposed against the existing Electoral Act 2010 with our note on the implication of this for the conduct of free, fair and credible elections in Nigeria in 2011.

<b><u>Section of Electoral Act 2010</u></b>	<b><u>Provision of the Electoral Act 2010</u></b>	<b><u>Proposed Amendment By The Executive</u></b>	<b><u>Implications of President Goodluck Jonathan's Proposed Amendment</u></b>
Section 25	Elections into 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 shall be held in the following order:	Section 25 (i) should now read: "Elections into the offices of the President and Vice President, Governor and Deputy-Governor of a State and to the Membership of the Senate, House of Representatives, and the House of Assembly of each of State of the Federation shall be held on a date or dates and in a	This amendment is agreeable, as it seeks to promote the independence of the Independent National Electoral Commission (INEC) in determining the dates and sequence of the elections, just as Section 25 (2) of the Electoral Act 2010 allows INEC the freedom to determine the dates for the conduct of elections in the FCT Area Councils.

	<p>a. Senate and House of Representatives;</p> <p>b. Presidential election; and</p> <p>C. State House of Assembly Governorship elections.</p>	<p>sequence to be determined by the Independent National Electoral Commission”</p>	<p>The earlier proposal of the Electoral Act 2010 which details the sequence of the polls does not add value to the elections but only erodes the independence of INEC.</p> <p>We support this proposed amendment and urge the National Assembly to pass it, as it is.</p>
		<p>New Provision: Section 25 subsection (3) of the Electoral Act 2010 to read “provided that the said elections in the case of 2011 shall hold not later than April 30, 2011”</p>	<p>The proposed amendment is important. If passed, it will afford INEC more time to deliver on its core mandate of providing Nigerians with credible, free and fair elections, beginning with the conduct of a credible voter registration exercise, effective civic education and sensitization, while also allowing political parties more time to conduct credible party primaries in keeping with general clamor for the enthronement of internal party democracy as demanded by the generality of Nigerians.</p> <p>We believe this proposal is in keeping with the yearning of Nigerians for credible polls in 2011 and should thus be supported.</p>
Section 87	<p>Section 87 (4) (a) (i) hold special conventions in each of the 36 States of the Federation and FCT, where delegates shall vote for each of the aspirants at designated centres in each State Capital on specified dates.</p> <p>(4) (b) (i) hold special congress in each of the local government areas of the States with delegates voting for each of</p>	<p>Section 87 This section is proposed to be amended as follows:</p> <p>a. “Inserting immediately after the word State Capital insert and “FCT” and after “Specified” the word “date or” in the last line of paragraph (a) (i) of subsection (4)”.</p> <p>b. “Inserting immediately after</p>	<p>The proposed amendments are mostly editorial in nature and are acceptable to us, consequently, we urge the National Assembly to kindly pass them as proposed.</p>

	the aspirants at the congress to be held in designated centres on specified dates.	the word "Specified" the word "date or" in the last line of paragraph (b) (i) of subsection 4."	
Section 87	(7) A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting.	Subsection 7 is proposed to be amended to read: " A political party that adopts the system of indirect primaries for the choice of its candidates shall outline in its constitution or guideline: i. Who shall be a delegate at the congress or convention"; ii. in the case of democratically elected delegates, the procedure for the election of such delegates";	We are appalled by this proposal and call for its total rejection by the National Assembly. Our reasons for this call include: i. It changes the requirement that parties abide their extant rules, to one in which they are only required to give consideration to some rather nebulous guidelines which they are at liberty to jettison at will, as they are not necessarily binding on the parties and do not have same effect as the extant rules of the parties. ii. We are at a loss on the request to delete the expression "clearly" before the word "outline" and would rather request that it be retained as earlier contained in the Electoral Act, 2010, as it reinforces the importance of ensuring that there is absolute clarity on the issues dealt with in this Section, in the constitution of the parties and their accompanying rules. iii. Moreover the changes being proposed under this Section by President Goodluck Jonathan and his team also confers rather significant discretion on the parties in presupposing that the procedure for the democratic choice of

			<p>delegates is optional rather than being compulsory as stipulated in the provision of Electoral Act 2010. Therefore, a party is at liberty to select its delegates without regards to the democratic processes as clearly spelt out in the Electoral Act 2010.</p> <p>iv. If party delegates are to be selected by any means other than through a democratic process that is all inclusive, the effort to instill internal democracy in the management of political party affairs as well as in the selection of candidates for elections would have been truncated and the patriotic effort of the National Assembly in drafting the 2010 Electoral Act would have amounted to nothing.</p> <p>v. The proposed Section 87 (7) (I and ii) sets the stage for god-fatherism and the emergence of candidates through undemocratic means. Unless this is blocked by the National Assembly, it is likely to truncate the effort of INEC to conduct free, fair and credible elections to which President Goodluck Jonathan has repeatedly stated publicly, that he is irrevocably committed to.</p> <p>vi. The proposed Section 87 (7) (i) and (ii) set the tone for a more</p>
--	--	--	--

			<p>undemocratic change as proposed in the next subsection</p> <p>We reject this proposed amendment and argue that Section 87 (7) of the Electoral Act 2010 should be left unchanged.</p>
Section 87 (8)	(8) No political appointee at any level shall be a voting delegate at the Convention or Congress of any political party for the purpose of nomination of candidates for any election.	Deleted	<p>We salute the National Assembly for its effort to ensure a level playing ground for the conduct of the 2011 General Elections beginning with the party primaries. The decision to exclude political appointees from voting in the party primaries was designed to avoid the situation in which party primaries will be flooded by political appointees of the incumbent Executive office holder at the Federal or State level, to the detriment of other contestants.</p> <p>When we remember that there are media reports that are yet to be refuted, to the effect that in a State like Adamawa in North Eastern Nigeria, the current Executive Governor appointed about 1,000 political appointees in the frame of personal assistants, the import of deleting this becomes more glaring as it means that all these political appointees would be eligible to vote in such indirect primaries to the detriment of the other contestants.</p> <p>We insist that Section 87 (8) as contained in the extant Electoral Act 2010, be retained as it is. The effort to amend the Electoral Act should be limited to only issues that would augur well for the conduct of free, fair,</p>

			credible elections in 2011, of which INEC's demand for more time should be the central consideration.
Section 134	<p>134-(1) —(1) An election petition shall be filed within 21 days after the date of the declaration of results of the elections;</p> <p>(2) An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition;</p> <p>(3) An appeal from a decision of an election tribunal or court shall be heard and disposed of within 90 days from the date of the delivery of judgment of the tribunal;</p> <p>(4) The court in all appeals from election tribunals may adopt the practice of first giving its decision and reserving the reasons thereto for the decision to a later date;</p>	Deleted	The provisions of this section is a duplication of the provisions of the amended Constitution (Section 285 (5) (a –d). We agree with the proposal to delete them as the issue is already adequately reflected in the amended Constitution.

**Conclusion:**

We call on the National Assembly and indeed all Nigerians to be vigilant against proposals, suggestions and recommendations that may not be in keeping with our collective desire for free, fair and credible elections in 2011. We note from the ‘Explanatory Memorandum’ to the Executive Bill that it purportedly “seeks to amend the Electoral Act 2010 with a view to streamlining the procedures for the conduct of primary elections by political parties”. In our opinion, some of the proposed amendments as highlighted above do not streamline the procedure for conduct of the elections or the party primaries, but opens up the procedure to non-democratic processes that are at variance with the desire of Nigerians for free, fair and credible elections.