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## Between Illusion and Reality: Interrogating the Independence of State Independent Electoral Commissions in Nigeria

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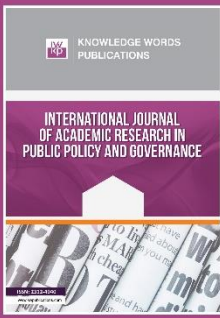
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## Between Illusion and Reality: Interrogating the Independence of State Independent Electoral Commissions in Nigeria

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### Abstract

The question as to whether State Independent Electoral Commissions are truly independent has been a matter of serious concern in Nigeria. This no doubt has resulted in arguments and counter arguments in response and reactions to the prevailing scenario playing itself out across the 36 states of the Federal Republic of Nigeria, with recourse to conduct and outcomes of Local Council elections. Worried by the complexity of the situation, this paper evaluates the legal operational framework of SIECs, its challenges and limitations in the performance of its statutory functions with respect to organizing and conducting free, fair and credible elections at the local council levels and the way forward. It employs qualitative research method, relies on content analysis of documented evidence as well as structural functionalism as a framework of analysis. Thus, it identifies omission on the part of the 1999 Constitution to uphold local government autonomy operationally and financially, which has rendered local councils easy prey in the hands of greedy, overbearing and self-serving state governors as the nemesis of Local council elections in Nigeria. Hence, associating “independence” with State electoral management bodies is an illusion not a reality going by the outcomes of local council polls, which reveal that it has become traditional that the ruling party in the state wins virtually all LG chairmanship and Councillorship positions. In the light of these findings, the paper recommends urgent review of the 1999 constitution to specify a uniform tenure for local councils, ensure financial autonomy for LG councils, scrap State Independent Electoral Commissions and empower the Independent National Electoral Commission to conduct Local Council elections at the same time when State and national elections are conducted.

**Keywords:** Illusion, Reality, Interrogating, Independence, State Independent Electoral Commission, Nigeria.

### Introduction

Experiences over the years have shown that democracy has emerged as the most acceptable form of political organizing all over the world. This is because it confers sovereignty on the people, making them kings in their domains. It gives them the singular power of deciding who rules over them. In short, it makes them active participants in the political process. Some of the cardinal principles of

democracy include free, fair and credible elections; rule of law, fundamental human rights, checks and balances, separation of powers, good governance and accelerated human, political and socio-economic development. Therefore, it is a truism that in all democracies across the globe, the centrality of elections is imperative and must remain so if democracy is to be consolidated (Iwu, 2009).

In all democracies in the world, elections serve two main purposes. First, it affords voters the freedom to choose candidates to manage their affairs for a given period and secondly, it gives the candidates the opportunity to canvass for the votes of the electorate in a free and fair contest. Aligning to the above, Apkotor (2016) asserts, "Elections provide essential validation for democracy by increasing the confidence of individual citizens in their ability to meaningfully participate in public life".

However, when the electorate continuously faces repeated episodes of election rigging, political violence and mismanagement of the electoral process, the vote may not count; then, they lose confidence in the electoral process. Again, when one party is programmed to win in an election as is wont to happen in elections conducted by State Independent Electoral Commissions in Nigeria, the people question the integrity of the electoral management body and opposition parties boycott the polls.

To ameliorate this ugly scenario, the impartiality and fairness of the machinery and institutional processes put in place to regulate the conduct of elections become not only imperative but also essential for a legitimate democratic rule. Unfortunately, elections in Nigeria have been replete with several systemic maladies, namely; malpractices and violence, executive interference or power of incumbency syndrome and connivance of the electoral management body with politicians in perpetuating electoral fraud that have severally threatened and many times successfully truncated democratic rule (Akhaine, 2015).

Despite the fact that election provides a modicum of popular support for political office holders, it is nevertheless disheartening that the management and conduct of elections into leadership positions of Nigerian Local Government councils are far from realizing the goals of free and fair elections. Apropos to the above is the dilemma of independence of the electoral management body for local government elections. There are serious concerns to the above scenario among which is the constitutional lacuna inherent in the 1999 Constitution, which failed to provide in specific terms, the tenure of elected local government council officials. In that vein, it leaves the local government at the whims and caprices of state governors, who are seemingly over bearing and bent on employing the political arsenal at their disposal in the state to consolidate their power base at the local government levels. The scenario creates apparent partisanship of the Chairman and members of SIEC, who succumb to governor's preference for caretaker committees over elected officials in local council administration as a strategy to personalize council funds.

Also, based on how the membership of SIEC is constituted, the tendency is that the electoral malfeasances witnessed in local council polls may not be completely laid on the shoulders of the electoral management body. However, there is no denying the fact that it contributes largely to the wide scale malpractices that characterize elections and the crisis of confidence they generate among the electorate as to the suitability of electoral democracy as a mechanism of choosing leaders and the independence, or ability/ impartiality of the electoral body to conduct free and fair elections.

Some of these issues, though as remote as they might seem, form part of the illusion and reality of the independence of State Independent Electoral Commission, which this paper seeks to interrogate.

### **Conceptualization**

To set and induct the discourse properly, the meanings of certain key words in the paper are clarified for easy comprehension within the context they are used in the paper. Such key words include: Illusion, Reality, Independence and the State Independent Electoral Commission, SIEC.

### **Illusion**

Illusion means a situation whereby something we feel exists does not exist. The Merriam-Webster Dictionary defines it as something that deceives or misleads intellectually, perception of something objectively existing in such a way as to cause misinterpretation of its actual nature. Similar words include hallucination, fantasy, and phantasms, etc. In the context of this paper, the word illusion is used to find out whether associating State electoral management bodies with the word “independent” is the ideal thing if they are not really independent of the State governors who appoint them.

### **Reality**

Reality means the state whereby something we feel exists is actually in existence as against being misled intellectually which amounts to illusion. In the context of this paper, the word, reality is used to find out whether associating the word, “independent” with State electoral management bodies is the ideal thing if they are not independent of the State governors who appoint them.

### **Independence**

Independence means the state or quality of being independent, freedom from the influence, control, or determination of another or others.

(<https://www.collinsdictionary.com/dictionary/english/independence>). When one enjoys independence, it means a state of not being under the control and influence of anybody. When one is independent, it means that one is one’s own master and does not take instruction from any other person. He does whatever he does in the way he feels like doing it. It means that one is responsible for one’s actions and inactions. In the context of this paper, the core concern is to find out whether State electoral management bodies enjoy the ascribed “independence” ascribed to them.

### **State Independent Electoral Commission**

This is a body charged with the responsibility of the management and conduct of elections into the chairmanship and councillorship positions in the Nigerian Local Government system. The State Independent Electoral Commission is a creation of the 1999 Constitution of the Federal Republic of Nigeria, which made provision for a bi-electoral commission. Firstly, Independent National Electoral Commission (INEC) created by Section 153 of the Constitution to organize and conduct elections into federal and state elective positions, and secondly, State Independent Electoral Commission (SIEC) created by Section 3, part II of the Third Schedule of the Constitution, to conduct local government polls. However, while INEC is a Federal Executive Body, SIEC is a State Executive Body. Note that this is treated more elaborately in subsequent parts of this paper.

### **Theoretical Framework**

The theory employed for the analysis of this study, is Structural functionalism, or simply functionalism. The theory sees the society as a complex system whose parts work together to promote solidarity and stability,"*Macionis, John (1944–2011) in Wikipedia. Proponents of Structural*

functionalism, or simply functionalism include *Auguste Comte, Herbert Spencer, Talcott Parsons, Thomas Merton, Almond and Powell*. The theory is used in the analysis of an organization with a view to finding out how things are done; who does what, when and how? It revolves around two major operational concepts, namely, function and structure. In using structural functional analysis, three basic questions are usually asked, namely: (a) What basic functions are fulfilled in any given system, (b) By what structures and (c) Under what conditions? (Varma, 1975:45). "Functions are those observed consequences which make for the adaptation or adjustment of a given system; and dysfunction, those observed consequences which lessen the adaptation or adjustment of the system", (Merton, 1949:51).

Odoziobodo (2015) explains the meaning of a system using various definitions given by scholars. Firstly, Bertalanffy (1956:3) sees a system as "a set of elements standing in interaction". Secondly, Hall and Fagan (1956:18) see it as "a set of objects together with relationships between the objects and between their attributes". Thirdly, Cherry (1961: 307) defines it as "a whole which is compounded of many parts- an ensemble of attributes". The implication of all these definitions is that a system implies the idea of a group of objects or elements standing in some characteristic structural relationship to one another and interacting based on certain characteristic processes, (Varma, 1975: 39). When action takes place in a given system, it is either that a functional and/or a dysfunctional consequence are produced.

Structure on the other hand, refers to those arrangements within the system, which perform the functions. A single function may be fulfilled by a complex combination of structures, just as any given structural arrangement may perform functions, which might have different kinds of consequences for the structure. Structural functionalism is employed as a theoretical framework in order that possible ways of survival of a system can be discovered. The analysis is primarily directed towards the amount of change at the structural level that a system can accommodate without seriously hindering the fulfillment of its basic functional requisites, (Varma 1975: 46).

A political system comprises of many structures, all working or performing certain functions to make the system work. For any political system to work, several activities need to be performed and certain institutions are created to perform each of these roles or functions for the society to keep the system going, (Odoziobodo, 2015).

Nigeria has a government comprising of the federal, state and local governments and for the Nigerian society to maintain itself, certain institutions also known as; structures are created to perform certain roles or functions for the maintenance of the Nigerian society. Now, for the government to function well there is need to have the leadership, the President, Governors and Local Government Chairmen, who are classified as the executive. There are also the legislators comprising of Senators, Honourable members at the national level and the States. In addition, councilors constitute another set of legislators at the Local Government level. There is need for them to have legitimacy also. All these are structures. There is also need to have the structure or institution charged with the role of organizing elections for the leadership of the nation to emerge at all levels. Those institutions in the case of Nigeria are both the Independent National Electoral Commission, which conducts elections into the various elective offices other than for the local government leadership, which is vested in the State Independent Electoral Commission whose responsibility is to conduct election into chairmanship and councillorship seats at the Local Government level.

In this paper, we are concerned with the conditions under which the State Independent Electoral Commission performs its functions, which may have enhanced or lessened the adaptation or adjustment of the system thereby bringing about dysfunction in the system. These intended and

unintended consequences as well as the dysfunctions are analyzed in this research to find out whether the “independent” attached to SIEC is an illusion or a reality.

#### Local Government Elections in Historical Perspective

Local governments in Nigeria have undergone so many transitions since the colonial period. Between 1950 and 1975, the country's systems of local governance moved from the colonial inheritance of indirect rule through Native Authorities to elected councils (Adedeji, 2000). In the same vein, elections into the Local Government leadership positions in Nigeria namely, chairmanship and councillorship have rarely been uniform since most of the Nigerian constitutions have made each state responsible for the conduct of the affairs of its own local Governments.

However, history indicates that during the colonial period, what existed as today's local government system is the native authority. Nigeria practiced regionalism whereby there were mainly, the western, eastern and northern regions and each region determined its own pattern of administration then. This being the case, elections into the local governments did not take a uniform pattern. As it were, the Western Region was the first in 1950s to take a shot at modern government where the people were governed through elected representatives. They passed a legislation which converted the colonial system of native administration, which can be described as administration by traditional rulers, chiefs and elders – into a modern form of grassroots self-government through elected representatives. The Eastern Region immediately adopted this example. The scenario in the Northern Region was different though attempt was made to introduce an elective principle into the native authority system in the non-Moslem areas of the ‘Middle Belt’; but largely as Dudley (1982: 110) opined as quoted by Olaniyi (2017):

For much of the region, the colonial framework was retained with barely any change, what changed there was being simply the conversion of what used to be known as ‘sole native authorities’– the Emir acting as sole administrator– into what was termed ‘Emir-in-Council’ that is a system in which the Emir was to be advised by his ‘council’ though he was under no obligation to accept what advice was proffered.

Dudley (1982) further asserts that even in both western and eastern regions where there was holistic adoption of representative local government administration, local authorities became ‘voting machines’ for the ruling parties. This experience resulted in a scenario where most elected councils were suspended and in their stead ‘caretaker committee’ composed of government nominees appointed. This in the views of Olaniyi (2017), no doubt, laid the foundation for the current experience in Nigeria where most state governments prefer caretaker committees to elected councils in local government administration. We shall come to this later.

With the collapse of the First Republic in 1966 and the takeover of government by the military, the equation changed. As it is customary with the military, they changed the native system of administration to a unitary system, running the native authorities as a unified entity alongside with other levels of government. This continued till 1976 when there was a revolutionary Local Government reform occasioned by the military administration of General Olusegun Obasanjo (rtd.) in which a legal impetus was bestowed on the LGA as the third tier of government as presently constituted in the Nigeria federal structure. One of the major innovations of the reform regime was the provision of a uniform elective local government council in the whole Nigeria. In line with this

development, council polls were held across the country in December 1976. This was the first time a uniform council poll was held in Nigeria.

As the military was on the saddle, the 1976 council polls were contested on a non-party basis. Along the line, the 1979 constitution was promulgated and it bestowed the power of conducting elections into the Federal and State elective positions on the Federal Electoral Commission (FEDECO) that was then the EMB of the country. Section 5 part C of that Constitution lists FEDECO as one of the Federal Executive Bodies. But for the first time in the electoral history of the country, the Constitution ceded the responsibility of conducting local government council elections to a separate Election Management Body (EMB). This was 'State Electoral Commission' (SEC). Section 6 Part II (C) of the Constitution provides for the establishment of SEC. Section 7 Part II (C) of the Constitution defines the powers of the Commission as:

- ✓ to organize, undertake and supervise all elections to local government councils within the state
- ✓ to render such advice as it may consider necessary to the FEDECO on the compilation of the register of voters in so far as that register is applicable to local government elections in the state (Federal Republic of Nigeria 1979:108).

Throughout the Second Republic, no state government organized a Local Government Council election since they preferred to make use of stooges in the form of caretaker committees. With this arrangement, it was possible for them to control the politics and funds of Local Government councils effectively, which would have been otherwise difficult with an elected council in place.

With the coming back of the military in Nigeria politics in 1983, a new constitution, the 1989 constitution was promulgated. This constitution brought about a very remarkable improvement in the fortunes of Local Governments in Nigeria. It made the implementation of the presidential system of government in the local Government system possible through the instrumentality of Section 195 of the 1989 Constitution which listed State Local Government Service Commission as one of the State Executive Bodies (Federal Republic of Nigeria, 1989:75) and Section 283 also provided that there will be a local government council for each LGA in the federation (Federal Republic of Nigeria, 1989:102) thereby separating executive function from legislative duty. Sections 290 and 291 provided for the election of Chairman and Vice-Chairman of a council, respectively. Furthermore, Section 302 further provided for the appointment of 'Supervisory Councilors' which represented the executive arm of the council. Section 298 of the Constitution also provided for the election of councilors, which constituted the legislative arm of a council (Federal Republic of Nigeria, 1989:106).

However, there was a problem with the 1989 constitution in the sense that unlike the 1979 constitution, which created the State electoral commission, it failed to make provision for an electoral management body to superintend the management and conduct of elections in the Local Government level. Government abhors a vacuum. That mistake was therefore tantamount to ceding the responsibility of organizing Local Government elections to the National Electoral Commission, which it created. Thus, NEC in addition to the local government elections it conducted in 1989 on non-party basis conducted the first nation-wide local government election on party basis in December 1990. Some analysts for the way the December 1990 council polls were conducted, commended the NEC. Ibrahim (1993:58) for instance, posits that the conduct of the election was very peaceful and the incidence of rigging was very minimal compared to the past.

Olaniyi (2017) points out that the above position confirms the fact that when a central EMB conducts a local government poll, its outcome will be more credible than a situation in which an SEC or so called SIEC of the present constitutional regime (which is under the control of a state apparatus)

conducts same election. Unfortunately, the 1999 Constitution reverted to the 1979 provision, which provided for the State electoral commission thereby bringing us to the stage we are today- the dilemma of independence of the state electoral management body.

Essentially, the State Independent Electoral Commission is a creation of the constitution of the FRN in Part II (B) of the Third Schedule of the 1999 constitution, which makes provision for its establishment. Its functions are spelt out in Part II (B) (4) ( a-b) of the Third Schedule of the constitution thus:

- a. to organize, undertake and supervise all elections to local government councils within the state
- b. to render such advice as it may consider necessary to the INEC on the compilation of the register of voters in so far as that register is applicable to local government elections in the state (Federal Republic of Nigeria, 1999).

The implication of this provision is that SEIC, even though is solely responsible for the organization and conducts of Local Government elections, is however, deficient as it cannot perform this without the input of the Independent National Electoral Commission, (INEC). Although INEC is a different electoral umpire created by the same constitution for the purposes of managing and conducting federal and state elections, it is vested with the responsibility of compiling the voters' register that SIEC uses for local government elections. Thus, SEIC has to rely on INEC for the voters' register, although it is not answerable to INEC for anything.

Nevertheless, in tracing the history of elections in the Nigerian local government system, it is important to state that many State governments rarely conduct Local Government elections. What is more applicable is the situation whereby the system of democratically elected Local Government Councils as enshrined in Section 7(1) of the 1999 Constitution of the Federal Republic of Nigeria is jettisoned for the Caretaker Committee or the Transition Committee arrangement. The table below buttresses this scenario.

Table showing status of Local Government Elections in Nigeria (as of June 27, 2019)

S/No	STATE	GOVERNING PARTY	PREVIOUS	MOST RECENT	NOTE
1.	Anambra	APGA	January 11, 2014		Local governments run by Caretaker Committees.
2	Akwa Ibom	PDP	June 9, 2012	November 11, 2017	Have elected Chairmen.
3	Adamawa	APC	November 24, 2012		Caretaker Committee appointed to head the administration after the end of elected Chairmen's tenure.
4	Abia	PDP		December 21, 2016	The elected Chairmen have completed their tenure and the governor has appointed Transition Committee Chairmen.
5	Bauchi	PDP			Governor sacked all Caretaker Committee; Director of Administration in each LGA is expected to take over administration.



6	Bayelsa	PDP	March 23, 2013	July 27, 2019	Local governments run by Caretaker Committees.
7	Benue	PDP	November 24, 2012	June 3, 2017	Tenure of elected council officials ended in June 2019, Governor appointed Caretaker Committee to take over administration.
8	Borno	APC			Local governments run by Caretaker Committees.
9	Cross River	PDP	September 21, 2013		Local governments run by Caretaker Committees.
10	Delta	PDP	October 25, 2014	January 6, 2018	Have elected Chairmen.
11	Ebonyi	PDP	October 5, 2013	April 22, 2017	Have elected Chairmen.
12	Edo	APC	April 20, 2013	March 3, 2018	Have elected Chairmen.
13	Ekiti	APC	December 19, 2015	December 23, 2017	The Chairmen were suspended and Governor Fayemi appointed Coordinating Directors to control the affairs of the LGA.
14	Enugu	PDP	November 2, 2013	November 4, 2017	Have elected Chairmen.
14	FCT	APC	March 19, 2016	March 2, 2019	Have elected Chairmen.
15	Gombe	APC	February 23, 2013	February 25, 2017	Governor Yahaya dissolved Council Chairmen and directed Council Secretaries to take over administration.
16	Imo	PDP		August 25, 2018	All local government chairmen are suspended and Deputy Chairmen are Acting Chairmen.
17	Jigawa	APC	July 1, 2017	June 29, 2019	Have elected Chairmen.
18	Kaduna	APC	December 1, 2012	May 12, 2018	Have elected Chairmen.
19	Kano	APC	May 17, 2014	February 10, 2018	Have elected Chairmen.
20	Katsina	APC	August 2, 2014		Local governments run by Caretaker Committees.
21	Kebbi	APC	September 15, 2012	July 15, 2017	Have elected Chairmen.
22	Kogi	APC	May 4, 2013		Local governments run by Caretaker Committees.
23	Kwara	APC	October 26, 2013	November 18, 2017	All local government chairmen suspended and Director of

					Administration in each LGA is expected to take over administration.
24	Lagos	APC	October 22, 2011	July 22, 2017	Have elected Chairmen.
25	Nasarawa	APC	March 22, 2014	May 26, 2018	Have elected Chairmen.
26	Niger	APC	October 8, 2011	January 16, 2016	Have elected Chairmen.
27	Ogun	APC	July 22, 2013	October 8, 2016	State government suspended council boss and directed Head of local government administration to take over.
28	Ondo	APC		April 23, 2016	Governor sacked all elected Chairmen in 2017 and appointed Caretaker Committees. The Caretaker Committees was dissolved on June 13, 2019 and were directed to handover to Directors of Local Government Administration in respective councils.
29	Osun	APC		January 27, 2018	Have elected Chairmen.
30	Oyo	PDP	December 15, 2007	May 12, 2018	
31	Plateau	APC	February 25, 2014	October 10, 2018	Have elected Chairmen.
32	Rivers	PDP	May 23, 2015	June 16, 2018	Have elected Chairmen.
33	Sokoto	PDP	July 23, 2011	March 12, 2016	Caretaker Committee appointed to head the administration after the end of elected Chairmen's tenure.
34	Taraba	PDP	May 12, 2012	February 25, 2017	Caretaker Committee appointed to head the administration after the end of elected Chairmen's tenure.
35	Yobe	APC	December 28, 2013	February 11, 2017	Caretaker Committee appointed to head the administration after the end of elected Chairmen's tenure.
36	Zamfara	PDP	January 2, 2016	April 27, 2019	Have elected Chairmen.

Source: <http://www.shineyoureye.org/info/local-government-elections>

The Caretaker Committee or Transition Committee arrangement is a situation whereby the State governor appoints some card carrying members of his party or some of his associates into a committee in which one person is the Chairman and the rest members, to run the affairs of the Local Government under his watch as against allowing the State Independent Electoral Commission which the Constitution assigns the role of organizing elections into local government councils, to conduct

elections so that a democratically elected local government council will be constituted. A democratically elected local government council is made up of the executive Chairman and his vice as well as councilors who form the legislative arm of the government.

The Caretaker or Transition Committee arrangement is a product of the contradictions and lacuna of the said section 7(1) of the 1999 Constitution which empowers the State House of Assembly to make laws which will ensure the existence of a local government council under a law which provides for the establishment, structure, composition, finance and functions of such councils. Relying on this contradiction, the governor usually tries to justify this illegality by requesting the State House of Assembly to make a law providing for a Transition or Caretaker Committee for a period of time he wants after which another law will be made subsequently to sustain it; thereby harvesting on the contradictions and lacuna which exist in the said section as pointed earlier. However, it is important to note that although the constitution vests in the House of Assembly the power to make laws for the functioning of the council, the House does not have power to make or contemplate any law that conflicts with the provisions of the constitution, as it is the case with caretaker committee.

In any case, experiences over the years especially since uninterrupted democracy returned to Nigeria in 1999 indicate that many state governments have not conducted local council elections in the last ten years. In states where elections have taken place, such so called elections cannot be called elections since there is no evidence of competition as the outcome have been the endorsement of the candidates of the party in power in the state as they normally sweep the polls even in areas where opposition parties have as their strongholds. The only reason that can be adduced for this state of affair is that the electoral management body in the state is dependent on the governor who appointed them and as such, cannot but do his bidding, which is to see his party sweep the polls.

#### Interrogating the Independence of State Independent Electoral Commissions in Local Government Election Management in Nigeria

The conduct of periodic free, fair and credible election is one of the cardinal principles of democracy. Every democratic nation constitutes an electoral management body charged with the responsibility of organizing and conducting elections. It is usually called an electoral commission and the executive head of the country or state normally constitutes it. It is supposed to be a non-partisan body, which determines election procedures and district boundaries and oversees the conduct of elections. It is also supposed to be unbiased and neutral, meaning that it is an umpire; a kind of referee overseeing the contest of election between candidates sponsored by different political parties. It is not supposed to be interested in who wins in the contest but to enforce the rules of the game among the contestants. To achieve this aim, it must be independent, meaning that, it must be itself, not controlled or dictated to by anybody. The electoral management body has to be neutral and in the views of Olaniyi (2017), the major electoral stakeholders must not fault the neutrality of the electoral commission on any ground. Any time the opposite is the case, the election it conducts loses credibility.

Indeed, the importance of independence of an electoral management body, especially one charged with the responsibility of organizing elections for the recruitment of the leadership of a government meant to oversee the affairs of the grassroots cannot be overemphasized. In this regard (Ayorinde, 2013) notes: "Whatever political theorists may say about its propriety, Nigerian courts have held that the primary purpose of an election is to determine the wishes of the majority of the electorate". He uses the case of *GWADABAWA V KWAN* (1998) LREC N 219 at 222 to buttress this. He notes that the

appellate Courts in Nigeria – i.e. the Court of Appeal and Supreme Court of Nigeria – have declared the overriding importance of the actual and perceived independence of electoral umpires.

In Nigeria, there are instances to indicate that most times, the electoral management body does not know its roles to political parties, the contestants as well as the electorates. They fail to understand that their primary role is to conduct an unbiased election in which they are not interested in who wins or loses but to conduct a free and fair election. The electoral body in its ignorance sometimes, goes all out to defend the victory of a candidate in an election they conducted in the Election Petition Tribunal or even in the Appeal and Supreme Courts as in *INEC V. OSHIMOLE (2008) 3 LRECN 649*, in which the Court of Appeal frowned at a separate Appeal filed by the Independent National Electoral Commission (INEC) against the Ruling of a Tribunal. The Court of Appeal had the following to say about the duty of agencies and officials charged with the responsibility of conducting elections for parties. “INEC ... has the exclusive power to conduct elections and declare results; it does not share that power with anyone. It conducts the elections and its mandate is to see that the elections are free and fair. To that end, INEC is expected to and must be seen as an impartial umpire. “Impartial” means, “not supporting one person or group more than another; neutral; unbiased”, Ayorinde (2013).

Ayorinde (2013) also notes that similar observation was made by the Supreme Court in *AG FEDERATION V ABUBAKAR & 3 ORS (2007) 4 SC (PT II) 62* where it was held as follows: “INEC by its statutory existence is an independent body with constitutional powers to conduct elections in Nigeria. It must not only be an umpire, it must be seen, in the eyes of reasonable men, to be an impartial umpire in the conduct of an election. INEC must never by act or omission place itself in a position where imputations of partiality in favour of one party against another is leveled against it. Neutrality must be the watch word of the body – it must always remain fair and focused”.

What is said of the Independent National Electoral Commission, INEC is also applicable to the State Independent Electoral Commission as it is saddled with the same responsibility of conducting elections even though into Local Government leadership positions for both the executive and legislative arms of the Local government council as provided by the 1999 Constitution of the Federal Republic of Nigeria.

Incidentally, any time local government election is mentioned in Nigeria today, opinions are divided on the integrity of the electoral management body that conducts it. The popular opinion of analysts is that elections conducted by SIECs are a sham because it is a rubberstamp of the state governor and the party in power and rarely maintains neutrality. They insist that going by its composition, SIEC cannot organize free, fair and credible election. For instance, in a study on State Independent Electoral Commission and Local Government Elections, Olaniyi (2017) posits: “The findings of this study have revealed that while INEC has been allowed to enjoy some degree of independence in the course of performing its statutory responsibilities, SIECs have become a ready tool of perpetrating electoral frauds during local government elections”.

In states where local government elections have been regular like Enugu, Kwara and Ogun States, the outcome of such elections has clearly shown that they lack independence. A situation where an election is conducted for many political parties and only one party wins all the seats shows that there is no competition and that the organizing body lacks transparency. In elections conducted by the State Independent Electoral Commissions in these states mentioned, the party in power wins all the available positions. For instance, in the November 2017 local government elections in Enugu State, the PDP, being the party in power swept the polls. The main opposition party, the All Progressive

Congress, APC dismissed the election as a fraud since they claimed that all members of the State Independent Electoral Commission were card-carrying members of the PDP, the party in power.

In many States across the country where local government elections are held, the opposition parties normally boycott the elections since they do not have confidence in the State electoral management body. For instance, in elections held in Edo State, the Peoples Democratic Party (PDP) decided to boycott the polls, citing distrust of the composition of Edo State Independent Electoral Commission (EDISEC), and the unwillingness to give credibility to a flawed and predetermined process engineered by the State government. Similarly in Kano State, the PDP, the major opposition party rejected the outcome of the polls which saw the ruling All Progressive Congress (APC) clearing all the chairmanship and councillorship seats. The PDP alleged that the election was orchestrated to give the ruling party undue advantage (Atumeyi, 2018).

The State Independent Electoral Commissions have in many instances demonstrated that they take orders from the State governors. This explains why some State governors would not conduct local government elections until they are about to exit from power. This was exactly what happened in Rivers State where former Governor Rotimi Amechi at the verge of completing his second term in office hurriedly directed the Rivers State Independent Electoral Commission (RSIEC) to organize and conduct Local Government elections and they did that on 23<sup>rd</sup> May 2015 while he was to hand over on 29<sup>th</sup> May 2015. This was while the 2015 governorship elections had taken place and the candidate of his party, the All Progressive Congress (APC), Mr. Peterside lost to the candidate of the Peoples Democratic Party (PDP), Mr. Nyesom Wike. The APC of course, swept the polls, which were boycotted by the main opposition party, the (PDP). The PDP had filled a suit against the elections. It was on the strength of this suit that the local government councils were later dissolved by a ruling of a Port Harcourt High Court, because the elections were conducted in violation of a Court order, (Nigerian Tribune, 10 July 2015).

Another example is that of Ondo State under former Gov. Olusegun Mimiko, who directed his State Independent Electoral Commission (OSIEC) to organize local government elections on 23<sup>rd</sup> April 2016, nine months to the expiration of his second tenure in office as governor of Ondo State. This was after he had stayed in office as governor for seven years without organizing any local government election. He was formerly of Labour Party from where he defected to the Peoples Democratic Party under which he conducted the election. The major opposition in Ondo State, the APC then boycotted the election but 14 other opposition parties participated. The result of the election indicated that the PDP, his party won all the chairmanship and councillorship seats. Incidentally, a governorship election was held in the state seven months after, and the result indicated that the State electoral management body was partial, as they were dependent on the governor. The result was contrary to the Local government election results as the PDP was defeated by the APC. If the PDP were that popular to have won all the chairmanship and councillorship seats in the Local government elections, how come it was defeated in the governorship election?

Nigerian politicians exhibit funny character. Once their party is not in power at the federal level, they criticize to high heavens but no sooner than they are in control, they commit worse crimes than those they were criticizing. While the PDP was in the saddle, the party was vehemently criticized for not conducting local government elections but today, the APC is in control, the same situation has not changed even with the party's change agenda. The situation is such that each time elections are conducted in the local government, the party in power in the state sweeps the polls. Lagos State conducted elections into local government councils and the results indicate that the party in power, the (APC) won the chairmanship in the 20 local government areas and 37 Local Council Development

Areas. The APC also won 369 councillorship seats while the PDP won four seats, and Accord party, three, ([punchng.com/official-lg-election-results-as-released-by-lasiec/](http://punchng.com/official-lg-election-results-as-released-by-lasiec/)). In 2019, local government elections took place in Zamfara State on 27 April. The All Progressive Congress (APC), the party in power won all the 14 chairmanship and 147 councillorship seats. The opposition, (PDP) described the election as a kangaroo election.

The same scenario is trending all over States where local government elections are organized and conducted by the State Independent Electoral Commission. No difference has been discovered in any state and it is not likely that there will ever be. The reason is obvious. Nigerian politicians are intolerant of opposition. No State governor can afford to take the risk of allowing the opposition to control a local government within his State. Therefore, since they control the electoral management body, they make sure that all the chairmanship and councillorship seats in their local governments are won by candidates of their parties.

A salient question that needs to be answered is: Why is it impossible for State Independent Electoral Commissions to conduct free, fair and credible elections in Nigeria? There are issues with the constitutional provision for the existence and operation of SIECs. Firstly, there is a problem with the ontology of SIECs. Nigeria practices federalism and the Local Government is a third tier of government. Therefore, there should be a uniform local government system. The local government should also enjoy a certain degree of autonomy but this is not so with the Nigerian local governments. They do not enjoy both financial and operational autonomy. The constitution made the local governments to exist at the whims and caprices of the State governors. All state institutions like SIECs controlled by the governors also lack autonomy. The governors appoint the Chairmen and members of SIECs; and fund SIECs equally. Since the player of the piper dictates the tune, the governors dictate what happens with their state electoral management bodies and as such, whatever elections they conduct are invariably controlled by the governors who appointed them. If this is the case, elections they conduct, cannot be free and fair.

Again, the tenure of the elected local government officers is not provided in the 1999 Constitution unlike the 1989 Constitution, which categorically provided that local government elections should be held every three years. The 1999 Constitution is silent over this. The implication of this constitutional lacuna is that the conduct of Local government election is at the discretion of the State Governor who appoints the Chairman and members of the SIEC. It also means that elections into the local government councils cannot hold on a uniform day in Nigeria, yet there is a unified local government system, which is the third tier of government. Since this is the case, a governor can decide not to conduct local government election but rather appoint caretaker committees who have no legal powers of their own. Governors therefore capitalize on this opprobrious constitutional defect to scavenge on local government funds using caretaker committees as rubber stamps. The above constitutional gap also created a situation, which seemingly contributed in robbing local councils of their autonomy, and for the same reason jeopardizes the efficiency of the electoral management body at that level.

Equally, the governor as usual, only appoints card-carrying members of his political party in the state or his associates as members of the commission. Olaniyi (2017) reasons that this explains why each time a new SEIC is constituted by any state government; opposition parties usually criticize the exercise. It further shows why members of the public and the opposition parties in particular do not usually have respect for the outcomes of elections conducted by SIECs. It also explains why opposition political parties always boycott elections conducted by SIECs since they do not have the confidence that the State electoral management body will conduct free, fair and credible elections.

### Reactions on the Continued Existence of State Independent Electoral Commission

The issue of SIEC's continued existence is a controversial one in Nigeria today. Some Nigerians support the continued existence of SIEC with the statutory roles the constitution accorded it while others oppose it vehemently. The Justice Mohammed Uwais' Report of the Electoral Reform Committee set up by late President Yar'Adua in 2007 to "examine the entire electoral process with a view to ensuring that we raise the quality and standard of our general elections and thereby deepen our democracy" notes that: "The independence and impartiality of the country's election management bodies, that is, the Independent National Electoral Commission (INEC), State Independent Electoral Commissions (SIECs) and other institutions involved in election matters, have been questioned by the generality of Nigerians who submitted memoranda and made presentations during the public hearings of the Committee. INEC and SIECs have generally been adjudged as operating as appendages of the ruling party and the Executive arms of government. This perception stems mainly from the mode of appointment of key officials of the EMBs and their funding which rest exclusively with the Executive branch of Government".

On the strength of this observation, the Committee with regard to State Independent Electoral Commission, SIEC in particular, recommended that the existing SIEC should be reorganized and integrated into the structure of INEC for greater efficiency and autonomy. The committee noted that this will entail constitutional amendment and statutory provisions integrating and coordinating the activities of the State offices of INEC and SIECs for all elections.

Also, the Nigerian Union of Local Government Employees, NULGE, wants the constitutional provision establishing the State Independent Electoral Commission saddled with the conduct of local government elections in the various states scrapped and their power vested on the Independent National Electoral Commission, INEC in order to save democracy at the local level. According to the National President of NULGE, Comrade Ibrahim Khaleel, "We want the National Assembly to look at the possibility of revisiting the issue of deleting SIEC from the constitution because going by the provisions of the Aberdeen convention which the United Nations provision on the administration of local government, participatory local government is article number one and for you to strengthen the participation democratically at the local government level, SIEC must be scrapped so that INEC will be saddled with the responsibility of organizing elections as and when due. It is only when we have this arrangement that democracy at the local government level will be strengthened," (Akowe, 2017).

In a survey carried out by the Punch Newspaper on whether INEC should take over the duties of SIEC, it is to be noted that even though some people interviewed, did not support the idea owing to the fact that they said INEC is also guilty of mismanagement of elections in Nigeria, yet majority of those interviewed supported the scrapping of SIEC and INEC taking over its roles. According to one of the respondents, "Many people have lost confidence in the State Independent Electoral Commission because we all know that what they are doing in the name of elections are not elections at all. They simply allocate votes in favour of the ruling party in their states of operations." Another respondent said: "From our experience, the State Independent Electoral Commissions have proven incapable of conducting free, fair and credible elections. So, I am in full support of INEC taking over the process from the states. If INEC takes over, it will go a long way in boosting the credibility of elections at the local government level. It will also improve participation at the grass roots level", (The Punch, 2018).

## Conclusion

From the issues reviewed in this paper, a number of deductions are made. First, the appellation, “independent” attached to State Independent Electoral Commissions in Nigeria is an illusion. Second, the reality is that they are dependent on the State governors who appoint them. Ample evidences as have been discussed in this paper buttress this fact. As at the time of carrying out this study, there is no state in Nigeria where the State Independent Electoral Commission conducted local government election and the ruling party in the state did not sweep the polls. The only reason is that they are dependent on the governor who appointed them and the elections are programmed to favour the governors and their parties. This being the case, State Independent Electoral Commissions cannot conduct free, fair and credible elections in the local government councils in Nigeria.

## Recommendations

Going by the foregoing observations, the following recommendations are made for policy improvement.

1. The 1999 Constitution of the FRN should be reviewed and Local government councils granted both operational and financial autonomy so as to be independent of State governments.
2. State Independent Electoral Commissions should be scrapped.
3. The Independent National Electoral Commission (INEC) should be constitutionally empowered to conduct local government elections preferably at the time when both federal and state elections are conducted.
4. Local government councils should have a uniform tenure for all its elected officers in Nigeria.

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