



Legislative Digest

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NEITI Bill

CSOs commend Senate Committee, express concern

By Boniface Kassam

A coalition of civil society organisation led by Civil Society Legislative Advocacy Centre (CISLAC) has commended the Senate Committee on Establishment and Public Services for presenting its report on the Nigerian Extractive Industry Transparency Initiative (NEITI) which led to the recent passage of the bill into law by the Senate.

However, they equally expressed concern on some recommendations made by the committee. "We are concerned that these provisions will continue to give operators and certain government officials the room to perpetuate non-compliance with the international best practices in the sector", they remarked.

NEITI is the domestication of the International Extractive Industries Transparency Initiative, EITI, a global initiative to engender transparency and accountability in the extractive industry. It was referred at its second reading to the Senator Felix Ibru's Committee on Establishment and Public Service on Wednesday 29th March 2006.

The Senate had on the 13th March 2007 in its Committee of



**Senator Felix Ibru
Chairman, Senate
Committee on Establishment
and Public Service**

whole passed the bill into law with some stringent measures for offending companies and individuals.

For instance, Section 16 of the Bill stipulates that "an extractive company which gives false information or report to the federal government or its agency regarding its volume of production, sales and income; or renders false statement of account or fails to render a statement of account requiring under this Act to the federal government or its agencies, resulting in the underpayment or non-payment of revenue

accruable to the federal government or statutory recipients commits an offence and shall be liable on conviction to a fine not less than N30,000,000:00.

The civil society group said that the intendment of the proposed law is to bring the extractive industry inline with the transparency and accountability regime of the democratic process, including disclosure of figures and compliance of the operators with due process.

While presenting the bill for passage, the Chairman, Senate Committee on Establishment and Public Service, Senator Felix Ibru said, "the bill was aimed at following due process and achieving transparency and accountability in the payments of extractive industry companies (oil, gas and solid minerals companies) to the federal government or its statutory recipients and the management of revenue.

But the Civil Society Legislative Advocacy Centre, Abuja, on behalf of some civil society groups in a statement recently expressed reservation on the Committee's recommendations on sub-clauses 3(d) and (e) which has to do with the

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Polls 2007: Stick-to-the-Issues

On December 8, 2006, USAID, in concert with some indigenous civil society groups, particularly the Zero Corruption Coalition (ZCC), launched the stick-to-the-issues campaign in Abuja. The idea was to sensitise politicians and the electorate on main agenda for the electioneering campaigns.

The Institute for Democracy in South Africa (IDASA), NDI, the European Union, Canadian High Commission and Pact-Nigeria are some of the international bodies partnering with Nigerian civil society groups on how best to advance democratic culture in the country.

Beyond the stick to the issues campaign, other groups like the West African Civil Society Forum (WACSOFF), with support from UNDP, is monitoring the role of the media in the electoral process, to ensure that all stakeholders have access to free, balanced and fair space in the media. The Alliance for Credible Elections (ACE) is also educating the citizens on how to defend their mandate at the polls, to avoid manipulation by corrupt politicians.

The gist of the matter is that many stakeholders are concerned about the history of elections in Nigeria, and would want a change for greater credibility in the process. This is why attention is focused on how to limit the impact of thugs, money-for-votes, god-fatherism, and other primordial sentiments. People want to see and hear about the quality of leadership to be rendered and not attacks.

We acknowledge ongoing comments by politicians to the effect that their supporters

should shun violence during the campaigns and elections. In spite of this, however, reports of attacks at campaign rallies, party offices, homes of targeted politicians and induced assassinations are rife in the media.

On the critical issue of April's general elections, most of the presidential candidates and their managers continue to whip up sentiments at their rallies. They talk on power, agriculture, water supply, education, environment and welfare in the old tradition of military budgets. None of them has told Nigerians how the incoming government would implement UNESCO standard of education; how farmers will be free from exploitation by middlemen; how the Millennium Development Goals (MDGs) will be achieved; or how to respond to the serious issue of global warming and alternative sources of energy.

At the community level, aspirants for the local government chairmanship and councillorship positions should let the people know how they intend to manage primary schools - classrooms, books, feeding, teachers' salaries and recreational facilities, as well as clean water, rural roads and town hall meetings.

At the state and federal levels, those angling for executive and legislative offices should articulate their programmes in advance, so that the electorate can have choices of who they want to govern them and make laws for good governance of the country.

Specifically Chapter Two of the Constitution, dealing with the directive

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2007 Movement says elections must hold

The crisis of confidence over INEC in respect of the 2007 elections once again drew the attention of the members of the 2007 Movement of the House of Representatives.

Addressing members of the media recently, the group based on the insincerity of INEC, said the briefing was meant to raise issues, alert the nation and avert a crisis waiting to happen.

Among the issues raised by the Movement were; INEC flagrant dismissal of procedures and processes regarding the display of the register of voters as provided by Sections 20 and 21 of the Electoral Act 2006. They therefore called on Nigerians to insist that INEC does display the voters register as required by the Electoral Act and do so along with the 2003 Voters Register which according to them, was better than the current electronic register.

According to them, refusal by

the electoral body to comply with court orders and attempt to disqualify some candidates from contesting the elections was a



*Dr. Usman Bugaje
Member, House of Representatives*

violation of the law and also courting anarchy, they pointed out.

While expressing their worry about the arrogant and dismissive behaviour of INEC, they said some of the major crises in the African continent have their roots in the bungling of the electoral process. The crises in Congo and Cote d'Ivoire were specifically mentioned.

"We do not want our country to go that road and we must do everything necessary to stop the ambition of one person to rule forever, to truncate our hard-earned democracy and throw us into confusion," they added.

The Movement therefore called on the civil society to mobilise all their resources to demand and ensure that credible elections hold, and said Nigerians must not lose sight of the quality of elections by insisting on free, fair and credible elections.

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functions of the NEITI.

Sub-clause (d) says "obtain, as may be deemed necessary, from any extractive industry company an accurate record of the cost of production and volume of sale of oil, gas or other minerals extracted by the company at any period; provided that such information shall not be used in any manner prejudicial to the contractual obligation or propriety interests of the extractive industry company."

According to the statement, the proviso that says; 'provided that such information shall not be used in any manner

prejudicial to the contractual obligation or propriety interests of the extractive industry company' is a contradiction to the disclosure provision in the bill, which may give undue protection to the extractive companies.

They argued that while the Freedom of Information Act demands full disclosure, recommending this proviso may turn out to contravene the objectives of the Act which is not in tandem with the principle of transparency and accountability.

"We wish to draw the attention of the Senate on two key recommendations that emanated from the civil society-

legislature dialogue on the NEITI held in Port Harcourt last year; a) full disclosure of all payment made to communities in form of corporate social responsibilities and other social expenditure, including contracts, grants that benefit local communities and companies, b) the documentation of the certificate of transparency as is the case in Ghana and South Africa", they further urged.

The civil society group therefore called on the Senate to reconsider such provisions before the bill is harmonised by both chambers for presentation to the President for his assent.

HURILAWS advocates for abolition of death penalty

By Boniface Kassam

“The global trends on death penalty is now moving towards the abolition of capital punishment. These trends also include a reduction in capital offences and making death penalty sentences discretionary rather than mandatory in most jurisdictions.”

This disclosure was made by the Executive Secretary, National Human Rights Commission, Mrs. K.F. Ajoni in a paper titled, “Nigeria and the Death Penalty: contradiction to reform and global trends” and presented at a one-day public dialogue on the death penalty in Nigeria held in Abuja recently.

She said the concerns about retention or abolition of death penalty have also become an issue for the Nigerian government. That was why according to her, the federal government set up a National Study Group on death penalty to seek the opinions of Nigerians.

In conclusion she called for a

concerted effort by stakeholders to ensure that the rights of death row inmates and other citizens facing similar faith are considered in the light of global trends on capital punishment. That reforms should not run against the global trends on capital punishment.

Earlier in her welcome remarks, the Executive Director of the Human Rights Law Service (HURILAWS), Ms Frances Ogwo said that the dialogue was organised at a time when the death penalty was receiving worldwide attention.

“We firmly believe that the death penalty is inhuman and degrading, it is not justice, it does not deter criminals and there always exists the possibility, as facts have shown, that the innocent sometimes get sacrifice on the alter of justice. It involves the taking of human life, it involves people like you and me”, she stressed.

She further disclosed that her organisation believes that a reappraisal of Nigeria’s penalty policy is required, one that will be uniquely Nigerian. This, she

added, does not necessarily mean that the new penal policy will not be retributive, but emphasis must not be placed solely on retribution alone.

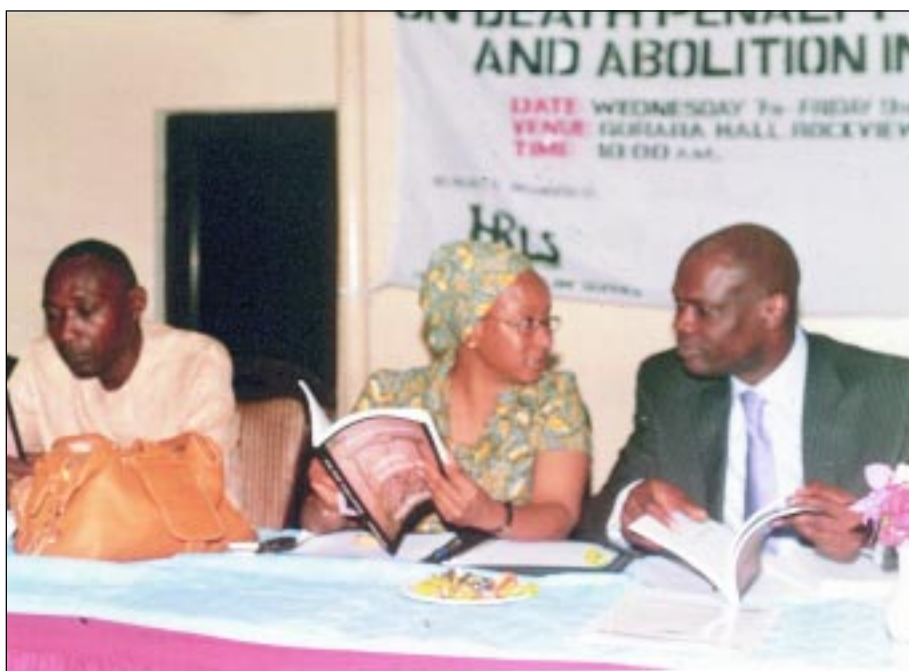
While giving a background to the Death Penalty in Nigeria and alternatives, the President, Nigerian Bar Association, Olisa Agbakoba said the impediments to challenging the death penalty include; religion, high rate of crimes, the constitution, public awareness and lack of funds.

Speaking on the alternatives to the death penalty, the NBA President suggested that as next step, the economy has to be improved, the justice system, law enforcement and security sectors must be overhauled, a reorientation on the sanctity of human life, there should be alternative punishments such as, life imprisonment, suspended life sentence, life with hard labour and lastly a moratorium and eventual abolition of the death penalty.

In his brief presentation, Wale Fapohunda, Secretary, Presidential Commission on Reform of the Administration of Justice observed that it was wrong for civil society to conduct an opinion poll on abolition of death penalty, but rather work with government.

He said two issues have continued to dominate the debate on death penalty, these are crime and religion. He stated that the government has carried out two activities which include; the study group and Presidential Committee on Administration of Justice System in Nigeria.

Also, a condemned inmate, Pastor Sunday Bisong made a presentation titled, “From the Gallows to Glory; The tale of a Survivor”. The Legal/Programme Officer of HURILAWS, Udo J. Ilo presented a book titled, “On the Gallows” and “The Rope” during the dialogue.



From left: Pastor Sunday Bisong, a survivor, Mariam Uwais, member National Human Rights Commission, Wale Fapohunda, Secretary, Presidential Commission on Reform of the Administration of Justice during the dialogue on death penalty.

Political parties tasked on MDGs

Governments both at national and state levels have been urged to move away from so much talking and begin to take decisive steps and definite actions that can address the strategies for achieving the Millennium Development Goals.

This was part of the resolution reached at the end of a one-day national dialogue with political parties on the MDGs and 2007 elections. The event which took place on 26th March, 2007 at Chelsea Hotel, was organised by the Global Call to Action Against Poverty/Millennium Development Goals working group with support from the Joint Donor Basket Fund managed by UNDP.

Participants at the dialogue included, national planning commission, office of the Special Assistant to the President on the MDGs, political parties, civil society organisations and the media.

The dialogue however, observed that there is need for political parties, government, private sector and civil society organisations to continue to work together towards the development of its people, there

is need for a revised NEEDS framework which influences greater human development in order to realise the MDGs, that there is so much focus on the central government to the neglect of states and local government areas where the larger percentage of citizens resides, that corruption is a poverty perpetuating factor in Nigeria and for any party to succeed, it must have clear strategies for curbing it, and that the MDGs are achievable if the government

exhibits the political will.

At the end of the session, participants resolved that; all stakeholders - government, political parties, CSOs and the media should continue to partner together to achieve the MDGs, that CSOs should continue to demand for good governance and accountability from political parties and the need to de-bureaucratise the government to enhance implementation of development plan.



Sarah Ocheke, Coordinator, GCAP/MDGs Working Group-Nigeria addressing participants.

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principle of state policy is non-justiceable. What proposals do the campaigners have to improve on this clause? How can local government administration and creation be better managed in the spirit of devolution of powers? What can be done to enforce true federalism in the country? How can the knotty issue of indigeneity be resolved?

Apart from the erosion and deforestation in many parts of the country, Nigeria loses an average of one kilometre to desertification annually. We are yet to

hear how our campaigners intend to halt this issue. Security of life and property is on the edge, to the extent that citizens seek divine support for the next minute. What measures do the politicians have to negate this heinous trend?

These and many more questions are reasons why we insist that politicians should screen themselves properly before offering themselves for the polls. They should be transparent in their campaigns, accountable to the people after the elections, and should embrace an inclusive culture of governance.

ZCC writes NASS leadership on EFCC amendment

The Zero Corruption Coalition (ZCC), a coalition of over one hundred and fifty civil society organisations and individuals has commended the National Assembly for taking bold steps to make the EFCC independent and guarantee security of tenure for the staff of the Commission.

This was contained in an open letter signed by the National Coordinator, Ms. Lilian Ekeanyanwu and Zonal Coordinator, North Central, Auwal Musa Rafsanjani and sent to the Senate President and Speaker House of Representatives and their members on the amendments to the Economic and Financial Crimes Commission Act 2004.

They disclosed that in June 2006, the coalition convened an expert meeting where lawyers versed in legislative, constitutional and other issues deliberated on the EFCC Establishment Act 2004. The meeting, according to them analysed the projected impacts both on the operations of the

agency, and the entire anti-corruption agenda and produced a report, and recommendations.

They further revealed that the coalition produced a draft amendment to selected sections of the EFCC Act as well as recommendations on new additions to the act. The highlight of the recommendations include; a provision to give the Commission legal independence, a provision to guarantee security of tenure for the chairperson of the Commission, reconstitution of composition of membership of the Commission to remove overbearing executive influence, financial autonomy for the Commission.

Others include; creation of recovered proceeds fund, provision for the submission and presentation of quarterly reports to the National Assembly, tracking of recovered assets, tracking and audit of independent and external funding sources, institutionalising a case management

system, rights of citizens to compel investigation of corruption, board meetings and provision of the appointment of an independent counsel to investigate allegations against the President and Vice President.

In conclusion, the coalition said that, to set the records straight, the esteemed National Assembly should in furtherance of its oversight functions, interrogate and demand that "the EFCC make appropriate disclosure of the amount and current status of all assets recovered by it in the course of investigation and prosecution since inception."

They also stated that some of the gaps in the legal framework of the anti-corruption agencies and the anti-corruption campaign generally are attributable to the failure to consult and harness opinions of stakeholders in the past. They added that the opportunity provided by the proposed amendment must be utilised to access and harness input and opinions.



Ken Nnamani, Senate President



Aminu Masari, Speaker House of Representatives

Nigeria 2025 Scenarios

These are uncertain times for Nigeria. Not only because of the uncertainties surrounding the upcoming elections and government transitions but also for the outcomes of the ongoing efforts at economic reform. Also critical are the agenda for economic revitalization and diversification, development of effective institutions, ensuring good governance, the development of a national innovation and technological capacity, and the need to address the values deficit and the fundamental causes of poverty, conflicts and disorder in various parts of the country. How will these issues turn out and how will the outcomes shape the future of Nigeria? In short, Nigeria, as a nation, is today at a crossroad: What are the possibilities of the future? Where does the nation go from here? What kind of nation should Nigerians aspire to build? How can the vision be turned into reality?

Although no one can foretell the future, these important questions have been successfully addressed in other countries by the use of the scenario methodology, using high level cross-representative teams to explore, debate, argue and finally reach consensus on alternative paths their nation could take to the future. The Nigeria 2025 Scenarios exercise was conceived as a platform to explore these important questions, debate the future and provide a springboard for action by helping to:

- forge a shared vision among Nigeria's current and future leaders,
- identify possible strategic

paths for critical areas of transformation, as a basis for building consensus on a transformational strategy, and

- develop an agenda for change.

The exercise was launched in November 2006 and expected to



President Olusegun Obasanjo

be completed in August 2007. A team of 36 potential future leaders which represent a cross section of the nation is developing the scenarios. The team was selected through nominations and a rigorous review process. The team have met four times in workshops and have also invited experts in various domains to speak on key issues and examine perceptions and challenge accepted wisdom. A sub-committee has now been setup to undertake some key assignments and further develop the four scenarios before the next team meeting in May.

An Advisory Board consisting

of eminent representatives from civil society, government and private sector is providing leadership and guidance for the Nigeria 2025 project. They include Engr. Mansur Ahmed (Chairperson), Mrs. Morin Desalu (Deputy Chairperson), Mallam Nasir El-Rufai, Rev Fr Matthew Hassan Kukah, Mr. Frank Nweke Jr., Ms. Ifueko Omogui, Dr. Adhiambo Odaga, and Mr. Eamon Cassidy. The Advisory Board is supported by the African Leadership Institute (AfLI) and LEAP Africa. AfLI is a not-for-profit network, with considerable experience in the application of the scenario methodology to national development planning. AfLI is providing overall technical guidance and facilitation for the exercise while LEAP Africa, a not-for-profit organization which is committed to inspiring, empowering and equipping a new cadre of African leaders, is providing managerial and administrative support.

The results of the exercise will be scenarios which present alternative images of the future and an exploration of how various decisions, actions and inactions could play out into the future. These stories of the future will be presented in various formats. The outputs will be used as a catalyst to stimulate debate and new thinking amongst decision makers in government and elsewhere, and with the public, on different strategies for the future development of the Nation. The outputs will be widely disseminated and used to engage the nation and the various segments of society, from the public and private sectors to the civil society and community leaders, in a national dialogue.



From left: Ayodele Omotoso, Coordinating Director, National Planning Commission, The Presidency, representing Prof. Monye, Mohammed Aboki, MDGs Specialist and Dr. Otiye Igbuzor, Country Director, ActionAid

A drama presentation during the Stick-to-the-Issues campaign launch by Zero Corruption Coalition in Minna recently.

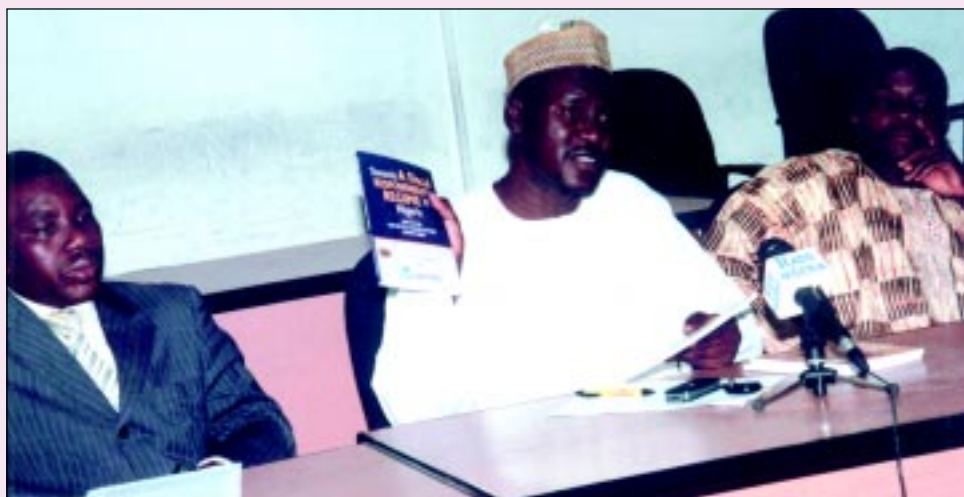


Chief Philip Asiudu, Chairman, Coalition on Issues-Based Politics and Good Governance (COPGG) addressing participants during the launching of the coalition held at Golden Gate Paradise Restaurant, Ikeja, Lagos.



Participants at the zonal launch of the Stick-to-the-Issues campaign by Zero Corruption Coalition which took place at U.K. Bello Theatre, Minna recently.

Participants at the one day dialogue on Death Penalty organised by HURILAWS at Rockview Hotel, Abuja recently.



The Executive Director, CISLAC, Auwal Musa Rafsanjani displaying a publication on the outcome of the FRB engagement to members of the Senate Press Corp recently. On his right is the Legal Adviser, Barrister Adeshina Oke while on his left is the Programme/ Media Officer, Boniface Kassam.

The powers of the legislature

Sen. Jonathan Silas Zwingina

The role of the Legislature is similar in all democracies, but the Nigerian experience is moderated and, sometimes, obstructed by political peculiarities. It is no surprise that the first casualty of anti-democratic aggression is usually the Legislature. The role of our Legislature has usually been described in a limited manner mostly as a lawmaking body. In actual fact, its role goes beyond and include:

- * Representing the interest of the constituencies,
- * Providing an avenue for the articulation and expression of various interests and political view points in the polity,
- * Being the first port of call for aggrieved citizens seeking redress outside the judicial system,
- * Confirmation of executive appointments such as Ministers and Ambassadors by the Senate
- * Providing, through its various resolutions, checks and balances to improve the performance of the executive as well as the judiciary, and
- * Being the true theatre of politics, where genuine debates are conducted and where free expression is protected by the law.

The powers of the Nigerian National Assembly can be classified into: expressed powers by the constitution, implied powers arising from extensions of the provisions of the constitution, and assumed powers as a result of lacunae in the constitutional provisions.

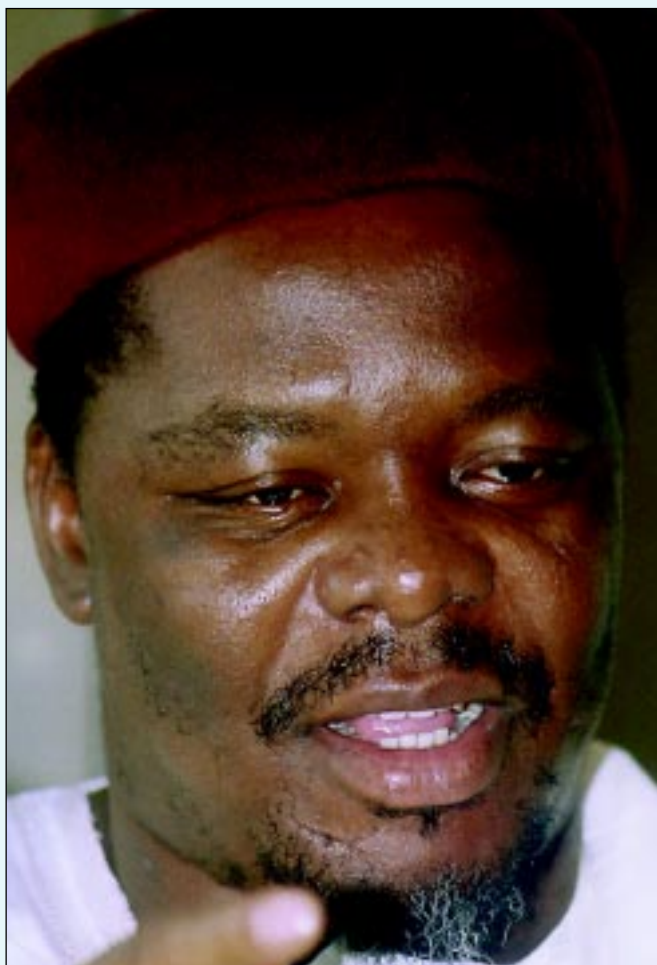
Expressed powers

The 1999 constitution that ushered in the presidential system of government vested legislative powers in a bicameral National Assembly consisting of the Senate and the House of Representatives. These powers, expressly stated, are conferred on the Legislature as of right by the constitution so as to enable it perform its functions without hindrance.

The constitution also states the scope and limitations of these powers. In Chapter One, Part II, Section 4, it is stated:

The National Assembly shall have the power to make laws for the peace, order and good government of the federation or any act thereof with respect to any matter included in the Exclusive Legislative List;

The power of the National Assembly to make laws for the peace, order and good government of the federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise



Sen. Jonathan Silas Zwingina

provided in this constitution, be to the exclusion of the Houses of Assembly of states; The National Assembly shall have power to make laws with respect to the following matters, that is to say:

- (a) any matter in the Concurrent Legislative List set and
- (b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.

Save as otherwise provided in the constitution, the exercise of legislative powers by the National Assembly or by a state House of Assembly shall be subject to the jurisdiction of courts of law and judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or a judicial tribunal established by law. Also, Section 1 (3) asserts the supremacy of the constitution by limiting the powers of the Legislature as follows: "If any other law is inconsistent with the provisions of this constitution, this constitution shall

prevail and that other law shall, to the extent of the inconsistency, be void”.

There are a number of issues that need to be explained in the above categorization. First, the power to make law conferred on the National Assembly is sometimes obstructed or diluted by the jurisdiction of the courts on matters that may affect the lawmaking process. There have been times when some courts have attempted to stop the Legislature from proceeding with a Bill or a matter before it, in clear breach of the principle of separation of powers. We have tended to ignore such interventions and have always insisted that the judiciary can only act on a law that has been passed rather than on the process of the passage of such law. Secondly, some interpretations from the judiciary have tended to act in such a manner as to subvert the spirit and the intention of the lawmakers. Thirdly, at the level of Supreme Court, the court can make such interpretations that in essence transforms that court to a legislative body, often superior to the formal Legislature.

The other problem relates to the Exclusive and Concurrent Legislative Lists. While the Exclusive List enumerates items on which the National Assembly can legislate, the Concurrent List implies a list of items on which the National and state Assemblies can concurrently legislate. However, where there is a conflict between state and federal Law, the federal law becomes superior to the extent of that conflict. The practical effect of this arrangement is that the Concurrent List becomes an extension of the Exclusive List, especially in areas where the federal Legislature has expressed interest.

The Legislature in Nigeria, as we have stated above, acts on powers directly expressed by the constitution.

Power over public funds

In most countries, the control of public funds is in the hands of the elected representatives of the people. Section 80 of the constitution states that: “No moneys shall be withdrawn from any public fund of the federation, other than the Consolidated Revenue Fund of the federation, unless the issue of those moneys has been authorized by an Act of the National Assembly. No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the federation, except in the manner prescribed by the National Assembly.”

Power to alter the constitution

The National Assembly is empowered to alter any of the provisions of the constitution. However, such alterations should be in the best interest of the people. In order to check a possible abuse of this power, the constitution has prescribed stringent procedure for its alteration. For example, it is stated that no Bill for the alteration of the constitution shall be passed in either the Senate or the House of Representatives unless the proposal is supported by the votes of not less than two-

“The powers of the National Assembly to conduct investigations on any matter in respect of which it is empowered to make laws are provided in Section 88 of the constitution.”

thirds majority of all Members of the Senate and the House of Representatives and approved by resolution of the Houses of Assembly of not less than two-thirds of all states.

Creation of new states

The constitutional requirements and procedures for the creation of new states are cumbersome. Section 8 (a) provides that a request for the purpose of creating a new state shall only be passed if it is supported by at least two-thirds of Members representing the area demanding the creation of the new state in: (i) the Senate and the House of Representatives, (ii) the House of Assembly in respect of the area, and (iii) the local government Councils in respect of the area.

Thereafter, the proposal will have to be approved in a referendum by at least two-thirds of the people of the area where the demand for the creation of state is required.

Furthermore, the result of the referendum will have to be approved by a simple majority of all the states of the federation, supported by a simple majority of Members of the Houses of Assembly. However, that is not the end. The proposal will also have to be approved by a resolution passed by two-thirds majority of Members of each House of the National Assembly. From the foregoing, it is clear that creating a new state is a Herculean task that requires total harmony in the socio-political milieu. (The procedure for altering the provisions of Chapter 4 on fundamental human rights is even more cumbersome.)

Ratification of treaties

Where it concerns treaties entered into by the executive on behalf of Nigeria, Section 12 (1) of the constitution states that: “No treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.”

Oversight of the executive

The powers of the National Assembly to conduct investigations on any matter in respect of which it is empowered to make laws are provided in Section 88 of the constitution. These powers enable the National Assembly to gather information on proposed Bills, prevent and expose corruption, inefficiency or waste, in the execution or administration of laws within its legislative competence and in the administration of funds appropriated by it. These powers are usually

exercised through investigations and committee hearings.

Appointment of judicial officers

The power to interpret laws enacted by the National Assembly is vested in the judiciary. The constitution has also provided for the establishment of hierarchy of courts as follows: The Supreme Court, the Court of Appeal, the Federal High Court, the Court of Appeal of the Federal Capital Territory, the Sharia Court of Appeal of the Federal Capital Territory and the Customary Court of Appeal of the Federal Capital Territory. However, the composition of courts must be in accordance with what is prescribed in an Act of the National Assembly.

The Nigeria Police Force and Armed Forces

Section 214 provides for the organization, administration and formation of the branches in the Nigeria Police Force as may be prescribed by an Act of the National Assembly.

The constitution also provides for the establishment and composition of the Armed Forces of the federation. Section 217 (2) specifically empowers the National Assembly to enact laws that will equip and maintain the Armed Forces as may be considered adequate and effective for the purpose of defending Nigeria from external aggression, and maintaining its territorial integrity and securing its borders from violation on land, sea or air; and for the purpose of suppressing insurrection and acting in aid of civil authorities, to restore order when called upon to do so by the President.

Also, Section 218 (4) empowers the National Assembly to make laws for the regulation of the powers exercised by the President as Commander-in-Chief of the Armed Forces of the federation and the appointment, promotion and disciplinary control of members of the Armed Forces.

The President, under Section 5, cannot declare a state of war between the federation and another country without the approval of the National Assembly. Section 5 makes it mandatory for prior approval of the Senate to be obtained before any member of the Armed Forces is deployed on combat duty outside Nigeria

Appointments and removal

Section 143 of the constitution stipulates conditions under which the President or the Vice-President may be removed from office.

Further powers exclusively devolved on the Senate include: confirmation of any appointment to the office of Minister of government of the federation and of any

appointment to the office of Ambassador, High Commissioner or other Principal Representatives of Nigeria abroad.

Section 231 deals with the appointment of the Chief Justice of Nigeria and Justices of the Supreme Court, who are subject to confirmation by the Senate. Similarly, the approval of the Senate is required for the appointment of the following judicial officers: the President and Justices of the Court of Appeal, the Chief Judges of the Federal High Court, the Chief Judge and Judges of the High Court of the Federal Capital Territory, the Grand Khadi and Khadis of the Sharia Court of Appeal of the Federal Capital Territory; and the President and Judges of the Customary Court of Appeal of the Federal Capital Territory

Powers for the removal of judicial Officers is also provided for in Section 292, as for the confirmation of

appointment and removal of the Auditor-General in Sections 87.

Section 154 and 157 empowers the Senate to confirm the appointments of and to remove Chairmen and Members of the following bodies: the Code a Conduct Bureau, the Federal Character Commission,

the Federal Judiciary Service Commission, the Independent National Electorate Commission, the Federal Civil Service Commission, the National Economic Council, the National Judicial The Council, the National Population Commission, the Nigeria Police Council, the Police Service Commission and the Revenue Mobilization, Allocation and Fiscal Commission.

Impeachment

As can be seen from. the above, the National Assembly enjoys wide powers. However, we must comment on powers expressed in Section 143 dealing with impeachment. In all Legislatures, the act of impeachment is a penalty of last resort and it is detailed in such a manner as to prevent an easy subversion of the will of the people who elected a President or Governor. The problem in the Nigerian constitution is that there are no remedial penalties against the head of the executive. It is merely assumed that the President or Governor will agree to be morally bound by the resolution of the Legislature. Where the head of executive ignores resolutions, the Nigerian constitution is powerless unless it can transform the resolution into a Bill and pass it by overriding any executive veto with the two-thirds majority, a difficult option.

There is therefore a need for remedial penalties to be specified in our constitution such as censure motions and the removal of executive agents through binding resolutions of the Legislature. Otherwise, it must be

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noted that the Nigerian National Assembly does not have the capacity to punish any officer of the executive, no matter what their misdemeanor, other than to refer them to the President for executive discipline or to the judiciary for judicial action.

A point of interest at this juncture is the meaning of a two-thirds majority in the Nigerian constitution. Section 58 stipulates that a Bill that has been vetoed by the President in the Senate or the House can be passed by two-thirds majority, without the need of the President's assent. We in the National Assembly interpreted this to mean two-third of a sitting that has a quorum of at least 36 Members in the Senate for instance. We believe this because Section 59 of the constitution specifies that each Chamber of the National Assembly will need two-thirds majority Members to neutralize a presidential veto on money Bills. Our interpretation here is that the Senate, for instance, will need at least 72 Members to override a veto on money Bills, which is a difficult target compared to the two-thirds of at least 36 Senators required to override the veto on ordinary Bills.

Following our interpretation, the National Assembly overrode the veto of the President on a number of Bills in 2003. The High Court, however ruled that the two-thirds required in both Sections 58 and 59 was two-thirds of the 109 Senators, without distinction. The Senate has not yet appealed this matter in order to determine the final interpretation.

Implied powers

Under implied powers the National Assembly enjoys additional responsibilities. These are a creation of the powers granted to the National Assembly by the constitution. They cannot stand on their own and in effect, are ancillary to assist in carrying out the express powers enunciated by the constitution. For example, Section 89 of the constitution empowers the Senate or the House of Representatives to procure all such evidence, written or oral, direct or circumstantial, as it may think necessary or desirable, and to examine all persons as witnesses whose evidence may be material or relevant to the subject matter. Inherent in this provision is the power to order arrest and incarceration of any such person who impedes the procurement of such evidence.

Another illustration is the creation of new ministries or any governmental agency. Such creation must get the approval of the Legislature as it is against the spirit of the constitution for the executive to unilaterally create ministries and other governmental

organizations. Indeed, it is implied in the express powers granted the Legislature to appropriate funds for the running of the institutions when established. (The Legislature cannot provide for what it has not created).

Assumed powers

The assumed powers are rights claimed by the Legislature that, though not tenable as rights, are not unconstitutional since there is no provision in the constitution prohibiting them. In the Second Republic, for example, the 1979 constitution was silent as to who should determine the personal emoluments of legislators, while Section 78 of that constitution empowered the National Assembly to determine the

remuneration of the President and other specified political functionaries (including the Vice President, Chief Justice and Justices of the Supreme Court and the Court of Appeal, the Chief Judge and Judges of the High courts, and the Chairmen and Members of certain executive bodies).

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Consequently, the National Assembly took it upon itself to decide the remunerations of the President and Deputy President of the Senate, the Speaker and Deputy Speaker of the House of Representatives, and other principal political functionaries and Members. The state Houses of Assembly took their cue from this. This issue has, however, been resolved in Section 70 of the 1999 constitution which states that “A Member of the Senate or of the House of Representatives shall receive such salary and other allowances as the Revenue Mobilization and Fiscal Allocation Commission may determine.”

In spite of the above constitutional clarification there is still a dispute between the National Assembly and the Revenue Mobilization, Allocation and Fiscal Commission on the interpretation of Section 70 of the 1999 constitution. The National Assembly believes that Section 70 gives the commission the power to determine salaries and allowances of Senators and Members of House of Representatives only.

However, the commission in exercising its authority has repeatedly exceeded its limit by determining salaries and allowances of the staff of the Legislators, including the compliment of official vehicles to be used by officers and Members of the National Assembly. Even as we discuss, the matter has not been satisfactorily resolved.

Sen. Zwingina is Deputy Majority leader in the Senate. He represents the state of Adamava for the People's Democratic Party and was first elected in 1999

THE ROLE OF POLITICAL PARTIES IN THE ELECTORAL PROCESS IN NIGERIA

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determined by the attitude of political parties to the moderating rules of the process. Accordingly, adherence to the moderating rules presents a best case scenario while disregard for the same rules leaves the system with a worst case scenario.

As the major institutional gladiators in the electoral process, political parties are in the final analysis, the originators and finishers of breaches of the electoral process. In the course of doing this, they involve electoral officials who rig elections by publishing fictitious results, political thugs for violence, security agencies who serve as rigging observers and some sections of the press legitimize the process through the media. This is made easy if the party in power has candidates for the election and of course they always do. Simply put, the state apparatus is more often than not mobilized for electoral fraud by political parties especially where the regulatory agencies are weak.

The Character of Political Parties in Nigeria and Implications for the Electoral Process

The character of political parties in Nigeria can best be explained in the context of the Nigerian state. The characterization of the ruling group in Africa by Ake (1978) would aptly capture the Nigerian circumstance. He posits that primitive accumulation is taking place all over Africa. For the ruling group, "... what really counts is political power ... once one has political power, one can have everything else including economic wealth" (Ake, 1978:71-72). Political power then offers chances for building strong economic base by the ruling group. But the security of the economic base so built lies in the

possession of political power. The result is desperate pursuit or fatal contest for power and hence, breach of the legitimate norms of the electoral process.

Political parties in Nigeria have historically, been at the center of these breaches of the electoral process. In Nigeria's immediate post independent experience, the major political parties in the country, Northern Peoples Congress (NPC), the National Council of Nigerian Citizens (NCNC) and the Action Group (AG) are indicted for the massive electoral fraud that touched off events which led to the collapse of the first civil rule in independent Nigeria (cf Ibrahim and Egwu,

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2005). The second experiment at civil rule between 1979 and 1983 indicated marked similarity in the attitudes of the political parties to the electoral process. Competitive rigging especially in the 1983 elections became more diverse and sophisticated.

The Babalakin Commission of Enquiry enumerates the forms of rigging of the electoral process as follows:

- Compilation of fictitious names on voters' registers.
- Illegal compilation of separate voters list.
- Abuse of the voters registration / revision exercise.
- Illegal printing of voters' cards.
- Illegal possession of ballot boxes.
- Stuffing of ballot boxes with ballot papers.
- Falsification of election results.
- Illegal thumb-printing of ballot papers.

- Voting by under age children.
- Printing of form EC8 and EC8A used for collation and declaration of election results.
- Deliberate refusal to supply election materials to certain areas.
- Announcing results in places where no elections were held.
- Unauthorized announcement of election results.
- Harassment of candidates, agents and voters.
- Change of list of electoral officials.
- Box-switching and inflation of figures.

The above breaches of the electoral process as we may see spans the period before during and after elections. It constitutes a paradigm for rigging and breaches of the electoral process in Nigeria till the present time. Emphasis and desperate drive for winning the votes tend to obscure what the political parties ought to do for a smooth electoral

process. The prevent trend therefore re-enacts the essence of the previous unsuccessful attempts at civil democratic governance. The 1999 elections were reported to have experienced rigging, but the 2003 elections, twenty years after the 1983 electoral fiasco, was as contentious as that of two decades behind. The problem lies in the lack of commitment towards the emergence of best practices by the political parties regarding the electoral process. It is the neglect of efforts to legitimately win votes which proceed from neglect of primary roles of political parties in the state that cause the parties to seek to short change the electoral process by recourse to bizarre options.

Strategies for the Emergence of Best Practices by Political Parties in the Electoral Process

The guarantee of acceptable standard of roles in the electoral process by Nigerian political parties will paradoxically come from the political parties. This is not to underplay the role of other agencies in the ensuring the smoothness of the process. But the role of the political parties is key to the success of the electoral process. Beginning from the pre-election, election and post-election phases, the parties should revisit the traditional role of political parties and use that as a basis of what they do in the entire process. Specifically:

- the political parties have to rediscover the value of political education. Members of the parties (both candidates for election and other members) should be educated on what constitute acceptable practices at all the stages of the electoral process. More than that, the political education could beyond the immediate members of the party to include the general public. It is in fact necessary that parties also engage in awareness creation on the need for registration for vote of qualified citizens. Building on that, they could confidently canvass for votes at the appropriate time. Part of why parties including otherwise popular ones engage in widespread rigging of elections is the uncertainty that there may not be adequate qualified voters including among their supporters.
- Perhaps by engaging in political education their supporters and indeed all citizens who are qualified to vote, the same task (political education) which is statutorily that of the Independent National Electoral Commission (INEC) (see 2003 Electoral Act 8.162) is

meaningfully assisted. The current blame on INEC for inadequate mobilization of citizens to register for voting is inappropriate. Political parties should actually facilitate that role by encouraging their potential supporters and members to register.

- Political parties should discover their roles as institutional guardians of the political process. As each places itself in this role, they together present a situation of each being a guard guarded by another guard. By this, what is meant is that a collective vigilance of the political parties is necessary, to prevent anyone

“It is expected that the checks and balances against breaches of the electoral process would lead to sanctity of mandates as expressed in votes and consequently, sanctity of the electoral process.”

from a breach of the electoral process. This is particularly necessary in the light of Nigeria's experience where the tendency exists for the ruling party to turn into an uncontrollable behemoth. The point is that if unchecked, political parties with the capacity to employ state machinery could at any level of the electoral process, do so to its advantage and the detriment of other parties in disregard of the operational regulations.

- For mutual check on one another, the smaller parties should discover the strength in coalitions. Alliances should be formed not only for electoral victory, but also to ensure fairness of the electoral process beginning from registration through voting, to declaration of results.

- Beyond coalitions and alliances among the political parties to enable a free and fair electoral process, there should be synergy of the political parties, civil society groups and security agencies. They should collectively constitute monitors and observes of the electoral process. Reports of breaches of the electoral process should be sent to both INEC and the security agencies.
- To ensure that results declared at the polling station is the same as what is reported. The political parties should insist through their agents that the election results are recorded at the appropriate forms after counting of votes at the polling station. It might be necessary to work out modalities by which duly certified copies of such results are given to all party agents at the polling station.

CONCLUSION

Political parties are at the heart of the electoral process. What they do or fail to do largely determine the nature of the process. Political parties in Nigeria have conditioned the electoral process to a less than satisfactory character. However, they are not the sole culprits for the nature of the process even though their stakes are quite high. To be sure, remediation for the inadequacies is quite possible. The solution and indeed a lasting one could proceed from the parties themselves. But to successfully do this, a synergy is also required of both the political parties and all stakeholders (including state agencies and citizens at institutional, informal, semi-formal groups or private capacities). It is expected that the checks and balances against breaches of the electoral process would lead to sanctity of mandates as expressed in votes and consequently, sanctity of the electoral process.

THE ROLE OF POLITICAL PARTIES IN THE ELECTORAL PROCESS IN NIGERIA

Ben. U. Nwosu

INTRODUCTION

This paper is arranged into sections comprising the introduction, meaning of the electoral process, political parties and the electoral process, the character of political parties in Nigeria and implications for elections and electoral process and strategies for the emergence of best practices. While the progression of the paper takes off from a theoretical premise briefly sketched, the main thrust of the work is on what the practical issues are and what is to be done regarding the role of political parties on Nigeria's electoral process.

The paper would have achieved its aim if the issues raised in broad themes and solutions similarly advanced stimulate discourses leading to workable remedies to the problems associated with the political parties and the electoral process in Nigeria.

Meaning of the Electoral Process:

Electoral process refers to the chain of activities spanning the period prior, during and after the expression of free choice by voters to offer the mandate of leadership to an individual aspiring to such position who has satisfied legitimate requirements for such office. The import of this conception is that the electoral process is wider than the election. Election is itself a part of the electoral process. No less in importance are the delimitation of constituencies, registration of voters before the casting of ballots, political education, electoral campaign and issuance of certificate of return. These are the salient constituents of the electoral process.

Wanyande (cited in Wanyonyi, 1997:26) points out that "the key to mass participation in democracy is

the electoral process. Elections represent a way of making a choice that is fair to all-one that leaves each member of the electorate reasonable hope of having his alternative elected". The above idea among other things is suggestive of a fair process whose results should necessarily represent the choices as expressed in the ballots. In a sense, the events prior, during and after election are reducible to the extrapolation of the



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norms of the market society to the political realm in which choices are influenced by the rational considerations of a buyer (voter) with expectations of certain benefits (political goods in terms of good government). As in a market (arena of political contest) the buyer (the voter in the context of political competition is supposed to be uncoerced (Not subjected to violence, any form of siege) or compelled to a choice. Like the impartial laws of demand and supply, the moderating rules of political competition (rule of law) must be allowed a free reign before the electoral process is admissible as free and fair. Voters are posed as the buyers in this market of political values (party programmes, campaign promises

and candidates for election). However, the other party to this exchange is the political party. It might be reasonable to observe that one party or no party systems are possible options, but since contemporary democracies are built on pluralism and in several cases multi-party system, the latter reflects the concern of the present discourse as it is the current option in Nigeria and hence my point of departure.

Political Parties and the Electoral Process

Political parties seek to acquire the state power. The scope of functions performed by the institution are roles targeted at the above purpose (state power). But the roles towards acquisition of state power make more meaning within the framework of the electoral process. Indeed, the crucial functions of political parties are targeted at the electoral processes for the purpose of acquiring state power. Some of the general roles of political parties include;

- Interest Articulation
- Interest aggregation
- Provision of personnel of government by fielding candidates in election (electoral competition)
- Political education for both its members and other citizens.
- Institutional platform for opposition against dictatorship, etc.

In one way or the other, most of these roles impinge on the electoral process. Perhaps interest articulation provision of personnel of government and fielding candidate for political offices bear most significant impact on the electoral process. The nature of the electoral process is really

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