



## PRELIMINARY STATEMENT

### Important step towards strengthening democratic elections, but challenges remain

Abuja, 18 April 2011

*The European Union Election Observation Mission (EU EOM) is present in Nigeria since 1 March 2011 following an invitation from the Government of the Federal Republic of Nigeria and the Independent National Electoral Commission (INEC). The EU EOM is led by Chief Observer, Alojz Peterle, a Member of the European Parliament. It comprises a Core Team of nine analysts based in Abuja, 52 Long-Term Observers (LTO), 60 Short-Term Observers (STO) and 15 Locally-recruited Short-Term observers (LSTO) from the diplomatic missions of the EU Member States, and of Norway and Switzerland present in Nigeria. Shortly before the Presidential elections, the EU EOM was joined by a four-member delegation from the European Parliament, led by Mariya Nedelcheva. The delegation of the European Parliament endorses this preliminary statement. In total, for the Presidential elections the EU EOM deployed 141 observers from the 27 EU Member States, as well as from Norway and Switzerland to all the States and the Federal Capital Territory (FCT) of Nigeria. The mission will remain in country to observe the Governorship and State House of Assembly elections and post-polling developments. This statement is preliminary. At the time of printing, the collation process and the petitions and appeals phase was still open. A final report with recommendations will be presented to the authorities of Nigeria within two months after the departure of the mission from Nigeria. The EU EOM operates autonomously under its specific mandate and in compliance with the Declaration of Principles for International Election Observers, commemorated at the United Nations in New York in October 2005.*

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## PRELIMINARY CONCLUSIONS

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- The appointment of Professor Attahiru Jega as the new Chairman of the Independent National Electoral Commission (INEC) improved the confidence of the electorate. The voters' registration conducted between January and February 2011 further increased this trust in the process. The postponement of the 2 April's elections was presented as a means to protect the integrity of the process and the conduct on 9 April of the National Assembly resulted in a boost of public confidence, increasing expectations for the Presidential elections.
- The 2011 Presidential election day showed a generally peaceful and orderly process with enthusiastic voters committed to patiently attend accreditation and voting from the early hours on Saturday 16 April.
- On election day, violence was not as intense as during previous elections. The authorities were serious in their commitment to minimise the escalation of clashes between political rivals. However, during the election campaign serious violent confrontations occurred.



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- If compared with the National Assembly elections held on 9 April, the Independent National Electoral Commission (INEC) managed to improve the overall organisation of the polling day, mainly during the accreditation and counting phases. Nevertheless during voting, inconsistent implementation of procedures and attempts to influence voters were noted. Moreover, the INEC results coming from the States in South-South and South-East show percentages close to 100 percent.
- The accuracy of the voters' register appears to have improved since the National Assembly elections. Yet problems remain and INEC should continue addressing this issue before the next elections. The decision of INEC to divide polling units into manageable voting points, with a maximum of 300 voters per unit was to allow for smoother accreditation and voting. However, INEC did not manage to consistently implement this decision. Although in the observed cases, the display of the results at the polling units improved significantly, more efforts are needed for the display of results at ward and local government areas (LGA) collation centres.
- The EU EOM considers that generally the work of the National Youth Service Corps (NYSC) is commendable as they endeavoured to perform their duties with courage and to their best capacity.
- Nigeria's vibrant and diverse media spectrum offered a pluralistic political discourse and an intense pre-election campaign coverage to the electorate. However, only the persons residing in urban zones could become familiar with the political parties and their candidates, as in these areas access to a wider range of information sources was available. The broadcast media coverage of the pre-election campaign differed according to the media houses and in general, did not comply with the provisions on equal and equitable coverage of the political parties and candidates, as stipulated in the Electoral Act 2010, as amended.
- Women remain under-represented in public and political life. Only one presidential candidate and nine per cent of the candidates for the National Assembly contested in the polls. In general, female candidates faced economic and social constraints to be nominated by parties. They lacked financial resources to equally compete with men. Some female candidates were victims of threats and physical violence.
- Civil Society Organizations (CSO) were engaged in a positive dialogue with INEC. They played an important role in promoting an orderly electoral process. CSO's brought to public attention among other issues, the timely address of logistical challenges, the need for civic education on voting procedures and the establishment of INEC Election Day hotlines.
- In general, the legal framework appears to provide a reasonable basis for the conduct of democratic elections. The 1999 Constitution, as amended, guarantees fundamental freedoms, while election-related legislative provisions are generally in line with international standards for election. The channels for addressing election-related petitions and appeals also appear to be clear. Nevertheless, the Electoral Act 2010, as amended does not provide for voters to lodge a complaint when an infringement of their electoral rights has occurred.
- Recent amendments to the Constitution and the Electoral Act provide for procedures, aiming to increase the internal parties' democracy during their primaries. However, further improvements and commensurate political will are required to address remaining challenges, such as the absence of provisions for independent candidates to run for office.



- The judiciary is playing a critical role in the process, being inundated so far with petitions lodged after political parties' primaries. Nevertheless, the absence of time limits for the resolution of electoral disputes by the courts before the election days delayed legal redress during a time-sensitive period and led to a number of judgements being delivered by the courts only a few days before the polls.

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## PRELIMINARY FINDINGS

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### BACKGROUND

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The 2011 General Elections of the Federal Republic of Nigeria follow the widely rigged and disputed 2007 elections and are the fourth elections since the country's return to democracy in 1999. The death of President Umaru Yar'Adua in May 2010 determined the succession of the Vice-president Goodluck Jonathan in the same year.

In June 2010, President Jonathan appointed Professor Attahiru Jega as the new Chairman of Independent National Electoral Commission (INEC) for his reputation and competency, marking a change with the previous INEC Chair. He was designated in recognition of the role he played in the Electoral Reform Committee that was established to review the electoral process and the legal framework after the 2007 elections.

INEC scheduled the 2011 elections for three consecutive weekends in April<sup>1</sup>. On 2 April, on the National Assembly election day, during a live broadcast at noon, Prof. Jega informed the public that due to the late arrival of the result sheets in many parts of the country, the National Assembly elections were postponed to 4 April. On 3 April in another televised speech, Prof. Jega announced that after consultations with the political parties all the elections were shifted by a week from the original schedule: on 9 April the National Assembly, on 16 April the Presidential elections and on 26 April, after Easter holiday the Governorship and State House of Assembly elections. The need to re-print a number of ballot papers was announced on 7 April and caused a third postponement for 15 Senatorial Districts and 48 Federal Constituencies, which are to be held simultaneously with the gubernatorial polls.

### LEGAL FRAMEWORK

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Nigeria follows the common law legal system and has ratified the international instruments relevant to the protection of civil and political rights related to elections. The legal framework for the 2011 General Elections appears to provide an adequate basis for the conduct of democratic elections in accordance with international principles. Nevertheless, a number of issues remain to be addressed and an exercise of political will by all stakeholders is required to ensure proper implementation. The legal framework comprises mainly the 1999 Constitution, as amended<sup>2</sup>, and the 2010 Electoral Act, that underwent a series of revisions since its enactment.

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<sup>1</sup> On 2 April the elections for the National Assembly (Senate and the House of Representatives), on 9 April the Presidential elections and on 16 April for the Governorship and State House of Assembly elections.

<sup>2</sup> The 1999 Constitution of the Federal Republic of Nigeria underwent a series of significant revisions, first in July 2010 and again in December 2010, coming into force on 10 January 2011.



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Among the major improvements of the 1999 Constitution, as amended, is the regulation of the financial and administrative independence of INEC from the executive, the establishment of Election Tribunals for each State and for the Federal Capital Territory (FCT) and shortened deadlines for filing petitions after the declaration of results. Regrettably, the amendments failed to introduce some of the recommendations suggested by national and international observers, and by the Electoral Reform Committee, such as the establishment of an Electoral Offences Commission<sup>3</sup>. Existing shortcomings in the legal framework include the INEC Commissioners appointment process and the absence of provisions for independent candidates to run for office, thus restricting the effective rights to stand for elections and limiting the voters' choice of candidates.

The Electoral Act 2010, as amended, includes detailed provisions for post-election litigation and places emphasis on the pre-hearing of petitions. Under the provisions of the Act, election petitions can only be filed by candidates and political parties, which participated in the elections, within 21 days of the declaration of results. The deadlines for the dispute-resolution process are significantly shortened. Although the new and comprehensive Electoral Act 2010<sup>4</sup> further strengthened the electoral process, some concerns remain, particularly in regard to not providing for filing of complaints by voters on breaches of the law during polling and counting, and the absence of time limits for the filing, consideration and adjudication of election complaints and appeals prior to polling. Furthermore, in relation to polling, counting and collation of results the Act is relatively vague, this negatively affecting the transparency of the electoral process.

## **ELECTION ADMINISTRATION**

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INEC, inaugurated on 30 June 2010, is mandated to conduct elections to the offices of the President, the Governor, to the Senate, the House of Representatives and the House of Assembly of each State of the Federation. INEC is a permanent body, composed of twelve Commissioners and headed by a Chairperson who is the Chief Electoral Commissioner. All members are directly appointed by the President after consultation with the Council of State and confirmation by the Senate for a five-year tenure. INEC meetings are closed sessions. Quorum requires a third of Commissioners to be present and decisions are taken by majority.

The offices in all 36 States and in the FCT, staffed by Resident Electoral Commissioners (REC), also appointed by the President, manage State level election administrative duties. Lower level organizational structures include 774 LGA offices, further sub-divided into 8,809 wards, these without permanent INEC structures. Approximately 120,000 polling units were made operational for voting and generally they were the same locations used for the voter registration exercise conducted from January to February 2011. A final polling unit list was made public, but a breakdown of assigned voters to each unit is still not available.

Voting was organised in separate phases throughout the election days simultaneously around the country: in the morning for the accreditation of registered voters and in the afternoon for voting. Only accredited voters were allowed to cast a ballot.

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<sup>3</sup> The Nigerian Bar Association and Human Rights Watch jointly called on the National Assembly on 14 March to pass the Electoral Offences Commission Bill (presented to the National Assembly in April 2009) that would establish the Electoral Offences Commission for investigating and prosecuting electoral offences under the Act, stating that INEC does not have the resources or capacity to prosecute all election-related abuses.

<sup>4</sup> The Electoral Act 2006 was amended in August 2010, primarily to reflect the relevant changes to the Constitution and was further amended on 29 December 2010 and on 24 January 2011, in order to accommodate INEC's request for extension of the timeline for the conduct of the registration and polling.



Adequate, timely training and staffing of polling units was a considerable challenge. The training of trainers was conducted in Abuja on 8 and 9 March. Cascade training on State level took place between 15 and 25 March, just a week before the initially scheduled election day. In all, INEC planned to train approximately 325,000 polling workers and 1,497 Returning Officers. Similarly to the voter registration exercise, polling staff was drawn from the National Youth Service Corps (NYSC). Where the EU EOM observed the training, it considered it to be insufficient and poorly conducted, with overcrowded halls and lacking reading material. Nevertheless, the Mission considers that generally the work of NYSC is commendable as they endeavoured to perform their duties with courage and to their best capacity.

The decision of INEC to divide polling units into manageable voting points, with a maximum of 300 voters per unit was to allow for smoother accreditation and voting. However, INEC did not manage to consistently implement this decision.

The legal requirement to conclude the revision of the register not later than 30 days before the first elections was not met. The number of omissions on the voters' register was an indicator that INEC experienced persistent difficulties to timely edit a comprehensive list. The number of disenfranchised voters cannot be ascertained at this point. INEC stated that it would endeavour to continuously improve on the inclusiveness and accuracy of the register. Varying procedures at polling units in regard to voters not found on the register but in possession of a voters' card were observed. In some instances, these voters were allowed to cast a ballot, though INEC guidelines clearly state the contrary.

Despite repeated public appeals made by INEC's Chairman asking for the engagement of community leaders in preventing underage voting, the problem persisted both during National Assembly and Presidential elections. The full extent of this phenomenon, its regional or national dimension, cannot be ascertained. Underage participation stems from the voter registration exercise. However, the voter identification safeguards, combined with the presiding officers authority to remove any underage voter from the voting unit should have been a sufficient preventive measure.

The Presidential partial results from all the States and the FCT are collated and announced by the Chief Electoral Officer, the INEC's Chairman. A National Collation Centre was established for that purpose in Abuja. No definitive time line for the complete announcement of results is provided in the electoral framework, other than the provision of issuing a certificate to every winning candidate within seven days of the return of results.

Both for the National Assembly and the Presidential elections, INEC declared that it would investigate instances of reported irregularities and disruption of the election process. It is noteworthy that INEC announced its intention to disclose the nature of the submitted complaints.

## **VOTER REGISTRATION**

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In accordance with the recommendations of the EU EOM 2007 Final Report and the Electoral Reform Committee's report, INEC considered that a new register was crucial to improve the confidence of the electorate, despite the very tight schedule. Approximately 240,000 ad hoc staff were recruited and trained, mostly enrolled from the NYSC. On 2 March INEC released the certified register: 73,528,040 voters.



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Compared to the 2007 voters' register, the EU EOM noted a significant increase of registered electors of over 40 per cent in States such as Adamawa, Yobe, Zamfara, Niger, Nassarawa, Plateau, Lagos and Oyo, and conversely a decrease of voters in States as Enugu and Bayelsa.

Multiple registrations were a concern and attempts were made to remove false and duplicated names. The de-duplication process reportedly involved matching registration data across LGA's, States and Federal level. To this end, INEC declared to have used specific software and identified 870,612 duplicates. INEC stated that it intends to prosecute all double registrants.

Despite good cooperation with INEC, the EU EOM was not granted sufficient access to be in the position to assess neither the process of de-duplication nor about how INEC reached the final number of 73 million registered voters. INEC claimed to post relevant information timely on its website. Nevertheless, a full breakdown of the voters' register was not made available.

## **CAMPAIGN ENVIRONMENT**

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Parties in general conducted a campaign at grass-root level and rallies or street parades at State and LGA level. The most active presidential candidates were the ruling party's President Goodluck Jonathan of the Peoples Democratic Party (PDP), the former Head of the Economic and Financial Crimes Commission (EFCC) Nuhu Ribadu of the Action Congress of Nigeria (ACN), the former Head of State General Muhammadu Buhari of the Congress for Progressive Change (CPC) and the Governor of Kano State, Ibrahim Shekarau of the All Nigeria Peoples Party (ANPP).

With the growth of Internet accessibility<sup>5</sup>, the on-line media were used as an innovative tool to reach youth electorate. All major presidential candidates had their Facebook pages and Twitter accounts. Since there are no specific regulations about campaign silence for the online media, mobilisation messages on the web and via SMS were sent on election days.

Canvassing in Nigeria can be very expensive. The pre-condition for a presidential candidate is to campaign in all 36 States and in the FCT. The Nigeria Television Authority (NTA) broadcast paid rallies, the longest one, five hours of live transmission was televised on 26 March on the occasion of the final rally of President Jonathan. Posters were mainly visible in urban areas. Mobile phones and pre-paid cards, and gadgets were distributed during rallies. Local communities were reported to receive from candidates carloads of goods, such as oil and rice, water pumps and gifts in general. The Electoral Act 2010, as amended contains detailed provisions for campaign expenditure. However, INEC admitted not to have the capacity to enforce the legal provisions.

Despite the public rejection by the major candidates of the "do or die" election approach, the intense political competition provoked in many instances violent confrontations during the election campaign. However, during the Presidential election day violence was not as intense as during previous elections. The authorities appeared to be seriously committed to minimise the escalation of clashes between political rivals.

At the beginning of March, the majority of the political parties signed the INEC Code of Conduct, which regulates a common agreement among the parties regarding rule of law, campaign issues, election day and post election issues, and party finance. The Code is not legally binding.

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<sup>5</sup> According to Internetworldstats, in December 2009, 16 percent of the Nigerians were online.



A few days before the Presidential elections, around 40 parties announced publicly their support for the re-election of President Jonathan. One party, the Social Democratic Mega Party (SDMP) declared its backing to the Presidential ANPP candidate, Ibrahim Shekarau. During the same days, CPC and ACN tried to form a coalition in order to secure the votes from the Northern regions, but the tentative failed.

## **MEDIA ENVIRONMENT**

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Though the legal framework generally respects the freedom of speech, it suffers from intimidation<sup>6</sup> and self-censorship. The Nigerian Union of Journalists is taking a firm stand on this matter by filing petitions<sup>7</sup> and raising public awareness.

According to the Electoral Act 2010, media time shall be allocated equally among political parties and candidates. However, the coverage of the candidates differed according to the media houses. The state-owned Nigerian Television Authority (NTA) lacked balance towards the candidates. Only 21 parties and their representatives were mentioned during the NTA prime time. 80 percent of the coverage allocated to the political actors was devoted to PDP, a five percent to ACN and CPC each, and ANPP gained a three percent. Twelve out of the 20 presidential candidates were mentioned during the NTA prime time. With regard to direct speech in the NTA news bulletins, 75 percent of it was dedicated to the incumbent President Jonathan.

Abuja based state-owned radio Kapital FM provided political parties with more equitable coverage in the examined period: 57 percent was devoted to PDP, ten percent to the National Transformation Party (NTP), nine percent to Social Democratic Mega Party (SDMP), seven to CPC, six percent to the ACN. However, the proportion of the direct speech in the news on Kapital FM was similar to the one on NTA: 86 percent was assigned for President Jonathan.

A promising, but deficient initiative to broaden political diversity in broadcast media was the presidential and vice-presidential debate organised by the Nigeria Elections Debate Group (NEDG)<sup>8</sup>. However, since PDP refused to participate in a similar debate conducted by the privately owned TV station NN24, the candidates from ACN, CPC and ANPP ignored the NEDG debate.

While the privately owned broadcasters with nation-wide coverage<sup>9</sup> tend to follow a pattern similar to NTA, in the Northern States of the country there were radio stations favouring opposition. The Kano based, privately owned radio station Freedom Radio allotted to Muhammadu Buhari around 80 percent of the direct speech given to the presidential aspirants during the news. In the South-West region the privately owned TV station Channels TV was more balanced: 46 percent of the direct speech in the news was given to President Jonathan, 18 percent to Muhammadu Buhari and ten percent to Ibrahim Shekarau.

Print media targeting urban elites offered a profound analysis and an equitably wide palette of the political discourse. In the last weeks of the campaign, all the major presidential candidates were

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<sup>6</sup> There were reports of twelve cases involving journalists for being assaulted, arrested and questioned by security forces in nine different States.

<sup>7</sup> On 28 March 2011 petition was filed to INEC against Osun State REC, who humiliated "Leadership" reporter; another petition on 7 April to the Nasarawa State police on the armed attack on a correspondent in Lafia.

<sup>8</sup> For presidential and vice-presidential aspirants from PDP, ACN, ANPP, CPC, MPP, SDMP, UNPD and NTP.

<sup>9</sup> African Independent Television and radio Ray Power, both owned by DAAR Communications.



equitably exposed, although incumbent President received larger coverage thanks to institutional activities.

Paid political advertisement in mass media is permitted by the law. In the print media an awry development was negative campaign advertisements targeting three out of four major presidential aspirants and their political parties. In the broadcast media, despite the law prohibiting political advertisements beyond 60 seconds, telecasting of much longer political rallies were monitored<sup>10</sup>. Lack of credible identification of the sponsoring organisation, as stipulated in the law, has been a common practice. This downscals the political accountability and transparency of the campaign expenditures, as well as confines INEC's ability to control compliance of campaign expenses with the limitations stated in the Electoral Act 2010.

## **VOTER EDUCATION**

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INEC carried out a voter education campaign in the print and audio-visual media. Furthermore, INEC indicated that direct public outreach activities were decentralised to community level engaging traditional leaders, religious groups and non-governmental organisations (NGO). The messages delivered to the public presented the voting procedures, discouraged violence and urged people to go out and vote. INEC broadcasts its public service announcement (PSA) in English and four local languages<sup>11</sup>. Additionally, some broadcasters<sup>12</sup> took the initiative to produce their own PSA. Voter education programmes were also conducted by the Ministry of Information and the National Orientation Agency, as well as local NGO's.

## **PETITIONS AND ELECTORAL OFFENCES**

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The law does not provide specific procedures for the submission and adjudication of petitions prior to the elections. These are treated as any other cases in ordinary civil litigation; therefore they were filed with INEC and the Federal, and State High Courts. Following the conduct of the primaries of the political parties, aggrieved aspirants filed approximately 375 petitions directly with INEC<sup>13</sup> and more than 400 others in different courts throughout the country. The vast majority of the pre-election cases concerned allegations of illegal substitution of aspirants by the parties. INEC is mandated by the Electoral Act 2010, as amended, to monitor political parties to ensure that all their activities are conducted in a democratic manner. However, with the 2010 amendments, INEC does no longer have the power to disqualify candidates, so the aggrieved parties ultimately may seek legal redress at the courts.

The absence of time limits for the resolution of electoral disputes by the courts before the election days delayed legal redress during a time-sensitive period and made it difficult for INEC to keep pace with the barrage of ex-parte orders<sup>14</sup> and judgments to which it was a defendant. Overall, the

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<sup>10</sup> During the time of observation NTA broadcasted six PDP, three ACN, two CPC and one ANNP rally. The longest live transmission of Jonathan final rally lasted five hours and was broadcast on NTA and AIT on 26 March 2011.

<sup>11</sup> Pidgin English, Hausa, Yoruba and Ibo.

<sup>12</sup> NTA, Freedom Radio and radio Ray Power.

<sup>13</sup> The complaints submitted to INEC involved: disqualification, ex-convicts contesting contrary to the law, parties forwarded names of candidates who did not contest any primaries, exclusion of names after winning the primaries, no primaries held yet parties forwarded fictitious names, illegal nullification of primaries' results, wrongful publication of names, wrongful imposition of names, forced letters of withdrawal.

<sup>14</sup> An ex-parte order is an order granted by a court upon the application of one party in an action without notice to the other party.





courts functioned in a transparent manner and demonstrated a considerable degree of impartiality in upholding the constitutional and legal framework with regard to elections, issuing a number of judgments in accordance with procedures and with a generally sound evidentiary and legal basis. So far, the courts have been making commendable efforts to timely adjudicate the volume of petitions filed at the pre-election period. Nevertheless, the lack of deadlines for filing, consideration and determination of complaints prior to polling trailed the results of the primaries<sup>15</sup>, producing a large number of judgments delivered by the courts only a few days before the polls<sup>16</sup>. The persistent court litigation poses a considerable challenge, while the number of still pending petitions is negatively contributing to the voters' awareness over the electoral contestants.

In a notable case, an Abuja Federal High Court ruled on 3 March, on a petition submitted by the Labour Party (LP), that Section 25(1) of the Electoral Act 2010 is illegal and unconstitutional, and subsequently nullified the National Assembly's amendment of the Act, which places the Presidential election before the gubernatorial elections. The Court ruled that the National Assembly lacks the mandate to determine the order of the elections and that INEC is the only body empowered to schedule the elections in the order it deems fit. Subsequently, INEC announced on 18 March that it was too late to alter the sequence of the polling.

In the run-up to the polls, much legal and public attention was drawn to the tenure elongation case of the Governors of five States<sup>17</sup>, whose tenure, according to a judgment of an Abuja Federal High Court, only began after they won the run-off in their States, so it should not be terminated in April 2011. INEC appealed on 9 March, requesting the Court of Appeal to overturn the lower court's verdict. The appellate court delivered its judgment on 15 April, upholding the lower court's ruling and dismissing INEC's appeal on lack of merit.

In another judgment also examining tenure elongation, a Federal High Court in Asaba, Delta State, ruled on 15 March that the tenure of the Governor will end on 29 May 2011 and subsequently, ordered that Gubernatorial election must be conducted in the State. The Court rejected the Governor's argument that his tenure should start counting from 10 January 2011, when he was sworn in after winning the re-run Governorship elections.

A controversial case concerned the Akwa Ibom State ACN Governorship candidate, Senator Akpan Udoedehe, who was re-arrested on 31 March immediately after an Abuja Federal High Court granted him bail, following his initial arraignment for treason. On 5 April he was brought before a Magistrates' Court in Uyo for alleged murder and arson even though the Court lacked the jurisdiction to hear such case. An Abuja Federal High Court issued on 6 April a mandatory order directing the police to release him unconditionally from custody. However, a few hours after the Abuja Federal High Court granted the order releasing him, the Uyo Chief Magistrates' Court passed a conflicting judgment remanding Udoedehe in prison custody for 14 days; it is notable that the law

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<sup>15</sup> The Federal High Court in Kogi State ruled on 4 April 2011 for a fresh primary to select the PDP candidate for the Western Senatorial District, invalidating the primaries held on 28 January 2011, which produced Senator Adeyemi. The new primary was held only one day before the polls, on 8 April, and Senator Adeyemi won the PDP ticket.

<sup>16</sup> For instance, in regards to the National Assembly elections, the Court of Appeal, Abuja Division, declared on 8 April Alhaji Usman as the PDP candidate for Kogi Central Senatorial District in 9 April's elections, affirming the decision of an Abuja Federal High Court. In Taraba State, a Federal High Court in Yola affirmed on 1 April, Alil Tutare as the PDP senatorial candidate for Taraba Central Senatorial District and El-Sudi as the House of Representatives candidate for Gassol constituency in the National Assembly elections. In Sokoto, a Federal High Court declared on 7 April Halima Tukur as the lawful PDP candidate for Yauri/Shanga/Ngaski Federal constituency of Kebbi State in the National Assembly elections.

<sup>17</sup> Kogi, Sokoto, Adamawa, Cross Rivers and Bayelsa States.



that empowered the Magistrates' Court to remand him for 14 days was passed by the Akwa Ibom State House of Assembly on 31 March, while the offence he was charged with was allegedly committed on 22 March, nine days before the new law was passed<sup>18</sup>. Udoedehe was finally released on 8 April.

Following the publicly expressed commitment of INEC's Chairman to the prosecution of electoral offences, two persons found guilty of multiple registration in Adamawa State were sentenced to imprisonment, while the REC's in Rivers<sup>19</sup> and Bauchi<sup>20</sup> States announced that they would prosecute those involved in multiple registration. From media reports, several arrests took place after the National Assembly elections for electoral malpractices in a large number of States<sup>21</sup>.

Until 15 April, apparently no petitions contesting the National Assembly Elections were filed with the Election Tribunals; however, separate complaints alleging serious irregularities in Taraba State were submitted to INEC by CPC and ACN, while ACN also filed complaints with the REC on electoral malpractices, requesting invalidation of results in various LGA's in Benue and Jigawa States, and DPP contested the results in two wards in Delta State through a complaint to the REC.

## HUMAN RIGHTS AND GENDER ISSUES

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Nigeria has an active civil society, which plays an important role in monitoring human rights. The enactment of the Amendment Bill to the National Human Rights Commission Act, which provides for an independence of this body<sup>22</sup>, was noted as a significant step towards strengthening the protection of human rights. However, respect for fundamental rights still remains insufficient. Several acts of political violence and intimidation of candidates were reported throughout the electoral period. Instances of disenfranchisement of voters were also observed, notably omissions in the voters' register and lack of provisions enabling polling workers to vote.

Despite a general commitment to the principle of non-discrimination enshrined in the Constitution and various activities to promote gender equality, women remained under-represented in public and political life. The National Gender Policy aimed at providing 35 percent affirmative action for women for appointive positions has not been implemented yet.

In general, female candidates faced economic and social constraints to be nominated by parties. They lacked financial resources to equally compete with men. In the primaries, some women candidates experienced intimidation and pressure to step down in favour of male candidates. Only one presidential candidate and nine per cent of the candidates for the National Assembly contested

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<sup>18</sup> The law empowers the governor to detain anybody for up to 14 days, in the first instance. The detention is also renewable. The House of Assembly passed the bill on 31 March; however the legislators declined to give it retroactive effect till January as requested by the Executive bill.

<sup>19</sup> In Rivers State, INEC's REC stated on 23 March that the 48,000 persons involved in multiple registrations have been blacklisted and will be prosecuted after the elections.

<sup>20</sup> The REC of Bauchi State threatened to prosecute more than 7,000 people discovered to have registered twice in the State, saying on 15 March that those involve would be arrested when found and would be made to pay a fine or spend two years in prison, or both.

<sup>21</sup> It was reported in the news that several people were arraigned in Adamawa, Akwa Ibom, Bayelsa, Bauchi, Borno, Benin, Benue, Edo, Enugu, Jigawa Oyo, Ogun and Sokoto States.

<sup>22</sup> The National Human Rights Commission (Amended) Bill 2010 was signed by the President Jonathan on 25 February 2011. It provides for inter alia: the independence in the conduct of the affairs of the Commissions, the funds to be direct charged on the Consolidated Revenue Fund of the Federation, establishment of the Human Rights Fund, and recognition of an enforcement of the awards and recommendations of the Commission as decisions of the High Court.



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in the polls. Female candidates were also victims of threats and physical violence. The largest number of violent incidents took place during political campaigns or rallies. The perpetrators were identified as primarily party supporters or agents<sup>23</sup>.

### **CIVIL SOCIETY AND ELECTION OBSERVATION**

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Civil Society Organisations (CSO) were engaged in a positive dialogue with INEC. They played an important role in promoting an orderly electoral process. CSO's brought to public attention among other issues, the timely address of logistical challenges, the need for civic education on voting procedures and the establishment of INEC Election Day hotlines.

Worth mentioning is the Election Situation Room, its main concerns being the performance of the law enforcement agencies and political parties, and the role of the judiciary in the electoral process; the CSO Working Party Groups, identifying security hotspots ahead of the polls and called on political parties to condemn violence; the 2011 Swift Count with real-time information on the conduct of the polls; the National Elections Incident Centre (NEIC) with an Internet based map on incidents<sup>24</sup>. A number of State based and regional CSO's were noted to observe the electoral process throughout the country. The EU EOM regrets that on 16 April several domestic observers were arrested and the mission encourages the authorities to do everything in order that any similar occurrence is prevented in the future.

By 23 March, INEC published a list of the accredited organisations, 313 in total, which intended to observe the elections and the deadline to submit the individual accreditations was set for two days later. Respecting this tight schedule was a serious challenge and criticism was voiced over INEC's poor capacity to timely organise the accreditation process. In addition to the EU EOM, there were other international observation groups deriving from the African Union (AU), Economic Community of West African States (ECOWAS), the Commonwealth, the National Democratic Institute (NDI), the International Republican Institute (IRI) and the Organisation of the Islamic Conference (OIC).

### **ACCREDITATION, VOTING, COUNTING AND COLLATION**

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For the Presidential elections, the EU EOM observers visited in total 633 polling units in all 36 States and the FCT covering both urban and rural areas. The observation indicated that the Presidential elections held on 16 April were conducted in a generally calm and peaceful atmosphere. Voters demonstrated genuine commitment and patience, having to queue throughout the morning accreditation process and once again during the afternoon voting. INEC's logistical preparations substantially improved since the National Assembly elections and only a limited number of polling units opened late due to a shortage of essential material or absence of polling staff. Similarly, the set-up of polling units was generally improved and positively rated for an efficient flow of voters. Only 14 percent of the observed polling units were split into the so-called voting points, even though the average number of voters in the visited polling unit was 860, which is in contradiction to the objectives declared by INEC.

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<sup>23</sup> Preliminary statement of a coalition of civil society in Nigeria with support of UN Women and UNDP/DGD on Violence Against Women in Politics (VAWiP) issued on 1 April.

<sup>24</sup> So far the incidents from the registration period are displayed on <http://nigeriawatch2011.org/>. The 2011 Swift Count and NEIC are National Democratic Institute (NDI) supported projects.



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Women were well represented among the polling workers: in total 40 percent of the staff and 36 percent of the presiding officers were female. However, the proportion of women was substantially lower among collation officers. Party agents were present in 96 percent and domestic observers in 35 per cent of the sampled Polling Units.

The presence of voters on the voters' register was generally well checked: their names ticked off in the register and fingers marked. However, in a few polling units, voters were allowed to be accredited either without being on the voters' register or holding their voters' cards.

While the shift from accreditation to voting was smooth and carried out in a timely manner, shortcomings were noted during voting. In 17 percent of the sampled polling units, attempts to influence voters were observed; in 26 percent there were instances of interference by party agents in the process and in 47 percent the secrecy of vote was not respected. General lack of organisation was noticed in 19 percent. These figures indicate deterioration since the National Assembly elections. The share of underage voting remained constant in both elections at 12 percent, while in a few cases serious malpractices, such as double voting and ballot snatching were observed.

The observed polling units closed on average around 16:00 hours, leaving time for the counting to be conducted during daylight. In a sixth of the observed polling units, the unused ballots were not properly accounted for and their number was not recorded. The copies of the results were in general distributed to all party agents and the official results were posted outside the polling unit in 87 percent of the cases, which is a remarkable improvement over the National Assembly elections (when the procedure had been followed in only 54 percent). Nevertheless, the results forms were packed in tamper-proof envelopes only in two-thirds of the observed polling units. In spite of some procedural deficiencies, counting was overall evaluated positively in 91 per cent.

Arithmetic errors were noted in 70 percent of the visited ward collation centres and in 87 percent of the observed LGA collation centres. This demonstrated insufficient training of the Collation Officers. The results were posted outside the ward collation centres only in 49 percent, which is still a tangible improvement compared to the 9 April elections. However, at the LGA level results were posted outside only in 35 per cent of the cases. This had a clear negative impact on the transparency of the election process. It is commendable that the final stage of the collation of the Presidential results and its announcement was broadcast live on NTA and AIT.

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The EU EOM wishes to express its appreciation to the authorities of Nigeria. The EU EOM is also grateful to the EU Delegation in Abuja for their support during the course of the mission.

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