



## **FIRST PRELIMINARY STATEMENT**

### **Strong electoral competition and commitment demonstrated despite systemic problems**

**Abuja, 30 March 2015**

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#### **Summary**

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- Election day overall passed peacefully with appropriate performance by security agencies and EU EOM observers saw no evidence of systematic manipulations, although generally the process may be characterized as disordered and prolonged. The highly competitive 2015 elections tested the Nigerian electoral arrangements. Systemic weaknesses leave the process open to abuse by political contenders, however the Independent National Electoral Commission (INEC) made commendable attempts to strengthen the electoral arrangements. There was misuse of incumbency by parties at federal and/or state levels, and there were escalating incidents of violence and intimidation. Excessive deference to judicial mechanisms for enforcement and corrective action risks protracted resolution.
- Nigeria is State Party to the key human rights instruments relevant to democratic participation, and the right to vote and be elected is established in the Constitution. However, various legal shortcomings remain, weakening the electoral process and the full enjoyment of democratic rights. These include inadequate legal provisions for the right to stand, campaign finance, transparency, and opportunity for remedy.
- INEC appears to have performed impartially in difficult circumstances, and generally stakeholders at a local level report confidence in its work. However the law overly-restricts its powers. Shortcomings were evident, with preparations only improving after postponement. INEC regulatory guidelines include polling safeguards, however procedural weaknesses persist particularly in regards to transparency and collation rigor.
- Positively INEC attempted to improve the integrity of voter registration and identification by introducing biometric measures. Approximately 82% of permanent voter cards (PVCs) were collected, although in 11 states over 92% collection was reported, which is implausible given that the deceased have not been removed from the list since 2010. Regrettably, up to 100,000 PVCs remained unproduced one day before election day. The final number of registered voters is 68.8 million, representing an estimated 78% of the total voting age population.
- Given the lack of possibility to run as an independent candidate, the Nigerian system of primaries overly excludes and concentrates unchecked power in the parties, thereby reducing the choices available to voters on election day and weakening the accountability function of elections. There is insufficient legal regulation with INEC lacking powers of enforcement. EU experts observed parties establishing excessive non-refundable fees, subjective party criteria risking arbitrary application, and parties not respecting the results of their own primaries.

- There were increasing violent campaign incidents in all parts of the country resulting in more than 82 persons reported killed since early January. The escalating violence and hate speech took place despite the Abuja Accord and the adoption of equivalent peace accords in all 36 states and the Federal Capital Territory (FCT). Campaign violations, mostly related to incumbency advantage, remained unaddressed.
- Voters were able to access a variety of views through the media. However government-controlled broadcast media failed to comply with legal requirements on equitable coverage, clearly advantaging the incumbent at federal or state level. Such bias remained essentially unchallenged by the regulatory body, the National Broadcasting Commission. Positively some private media offered relatively balanced and diverse coverage of election campaigns.
- Voters displayed commendable commitment on election day, patiently waiting for accreditation and polling. Overall in sites visited, polling passed peacefully with appropriate performance by security forces, although over 19 killings were reported on election day. Generally the process may be characterized as disordered and prolonged. Although polling procedures were insufficiently followed, EU EOM observers saw no evidence of systematic manipulations. The use of the biometric card readers was problematic, resulting in manual voter identification being undertaken. For voting, 10% of sites were assessed by EU EOM observers as “*very bad*”. Counting procedures were not always followed and results were not generally publicly displayed. Collation was further problematic with results not always arriving intact and some repeated alterations results forms observed.
- The judiciary has made serious efforts to provide timely administration of justice of a high number of pre-election suits, and has demonstrated respect for due process. In the absence of legal provisions on administrative complaints mechanisms, there is extensive reliance on judicial arbitration which risks protracted processes in which there are varying levels of confidence. While the police reported more arrests and criminal investigations being undertaken, the consistency of such actions was not always evident and the lack of election-related prosecutions by INEC so far contributes to a continued sense of impunity.

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*The European Union Election Observation Mission (EU EOM) has been present in Nigeria following an invitation from the INEC. The mission is led by Chief Observer, Santiago Fisas, Member of the European Parliament (MEP), Spain. A team of experts observed the party primaries in November and December 2014. The EU EOM was then established from 6 January with a core team of 9 analysts and 30 long-term observers deployed across the country. For security reasons EU EOM observers were not deployed to the northeast geo-political zone, could not go to all parts of all states visited, and only attended a limited number of rallies. For the 28 March election day the mission was composed of over 90 observers from 25 EU Member States, Norway and Switzerland. A delegation of the European Parliament, headed by Javier Nart MEP, also joined the mission and fully endorses this Statement. On the 28 March election day, observers visited 357 polling, counting and collation sites in 76 local government areas in 19 states. The security conditions further limited the locations visited thus the observation sample is not fully representative.*

*This preliminary statement is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, in particular, the collation of results and the handling of election petitions. The EU EOM remains in country to observe the 11 April elections for the State Governors and Houses of Assembly as well as post-election developments. The EU EOM will publish a final report, containing detailed*

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*recommendations, within two months of the conclusion of the electoral process. The EU EOM assesses the whole electoral process against international obligations and commitments for democratic elections as well as the laws of Nigeria. The EU EOM is independent in its findings and conclusions and adheres to the Declaration of Principles for International Election Observation signed at the United Nations in October 2005.*

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## Preliminary Findings

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### Background

The security situation, the large population, infrastructure challenges, and the fierce political competition, make for an extremely challenging election environment. On 7 February INEC postponed the elections scheduled for 14 and 28 February by six weeks. This followed the National Security Advisor and all the Armed Services and Intelligence Chiefs stating that they could not guarantee security for the proposed election days as six weeks was needed to conclude military operations against the insurgency. Later Boko Haram explicitly threatened the elections.

For the first time since the transition from military rule in 1999, the ruling People's Democratic Party (PDP)<sup>1</sup> has been challenged by a new unified opposition party, the All Progressives Congress (APC), which formed in February 2013. There is a head-to-head competition between the PDP incumbent candidate, President Goodluck Jonathan, and the APC candidate, former military head of state General Buhari.<sup>2</sup> Voting took place also for 109 Senatorial and 360 House of Representatives seats.<sup>3</sup> On 11 April, gubernatorial and State House of Assembly elections are scheduled. Candidates of 27 political parties are participating in the elections.

### Legal Framework

Nigeria is State Party to the key universal and regional human rights instruments relevant to democratic participation.<sup>4</sup> The right to vote and to be elected in periodic elections through universal suffrage are established in the Constitution and the Electoral Act.<sup>5</sup> The fundamental freedoms of assembly, association<sup>6</sup>, expression and movement, are also provided for as well as access to justice and legal remedy.

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<sup>1</sup> PDP has won all presidential races and the majority of gubernatorial seats in all four previous elections.

<sup>2</sup> For the presidential election, there is a majority run-off system. If the highest-scoring candidate does not obtain at least 25% of the votes cast in at least two-thirds of the states and the FCT, a run-off takes place between the candidate who scored the highest number of votes and the candidate who has the majority of votes cast in the highest number of states.

<sup>3</sup> For the Senate and the House of Representatives candidates are elected using a first past the post (FPTP) system.

<sup>4</sup> Including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities, the African Charter on Human and Peoples' Rights, and also the Convention Against Corruption (CAC).

<sup>5</sup> The Constitution of the Federal Republic of Nigeria 1999 (As Amended) hereafter referred to as the Constitution. The Electoral Act 2010 (As Amended) hereafter referred to as the Electoral Act.

<sup>6</sup> However freedom of association may be seen as limited in regard to the formation of political parties, for which there are arguably overly-burdensome requirements. For example parties' governing bodies are required to "reflect the federal character of Nigeria" in order to promote national unity.

However various shortcomings mean the legislative framework is not fully in line with universal and regional standards for elections committed to by Nigeria. In particular the lack of provision for independent candidacy fundamentally undermines the right to stand<sup>7</sup>, voters and civil society organisations (CSOs) are unable to file petitions against the results, and there are weak transparency requirements for the publication of results (thereby limiting *de facto* access to information).<sup>8</sup>

Other shortcomings in the legislation profoundly weaken the effectiveness of the electoral process. For instance, the lack of an effective monitoring mechanism for internal party democratic processes for candidate nomination, INEC's inability to reject nominated aspirants who do not fulfill legal requirements, and the absence of provisions empowering INEC to sanction campaign violations. Such problems result in enforcement of the law instead being deferred to litigation, which can be protracted and complex. Furthermore, the legislation does not include provisions explicitly providing for voting by persons detained in prison, or polling or security personnel working away from home on election day. Regrettably, recommendations of the 2011 EU EOM that required amendments of the legal framework, have not been implemented, except for the passing of the Freedom of Information Act in 2011.<sup>9</sup>

Several legal provisions aim to enhance campaign finance transparency and accountability; however these are insufficient, thereby rendering requirements essentially ineffective. Positively there is a ban on anonymous contributions to political parties exceeding 100,000 Naira (approximately €460), parties are required to submit financial reports to INEC 3 and 6 months after the elections, and INEC is obliged to publish these reports. However as the donation and expenditure ceilings are only for candidates and not for political parties<sup>10</sup>, they can be circumvented, and there are also no disclosure requirements for candidates. Positively, INEC introduced some reporting obligations for candidates, but these are not legally binding. To date monitoring of party finances has not been effective, with the last external audit of party funds, in 2011, showing that out of the then 23 parties, all except 2 had no audited statement, improperly maintained accounts, no internal control procedures, and no register of membership.

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<sup>7</sup> The authoritative interpretation of ICCPR article 25, General Comment 25 of the UN Human Rights Committee (HRC), states "*The right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties*". Also the African Charter On Human And Peoples' Rights states: "*Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law*" (article 13).

<sup>8</sup> General Comment 34 of the UN HRC specifies "*To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information.*" Also CAC article 7.4 "*Each State Party shall... endeavor to adopt, maintain and strengthen systems that promote transparency*". CAC article 10 "*Taking into account the need to combat corruption, each State Party shall... take such measures as may be necessary to enhance transparency in its public administration*".

<sup>9</sup> Some amendments of the Constitution were finally passed by the legislature in February 2015 and now await presidential assent to enter into force. These include provision for the right of independent candidates to stand for office, extension to 21 days of the time limit for the INEC to conduct a presidential or governorship run-off, and establishment of time limits for pre-election suits.

<sup>10</sup> The Electoral Act foresees a fine for parties exceeding campaign spending ceilings; however it fails to specify the limit, and INEC has not used its regulatory powers to establish any such limit.

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## Election Administration

INEC has overly-restricted powers under the law rendering it weak in challenging inappropriate actions of political contenders. The presidential mechanism for appointment of the INEC Chairperson and the 12 National Commissioners does not provide for cross-party consensus, thereby leaving the institution vulnerable to actual and/or perceived executive influence. Similarly for the 37 state-level Resident Electoral Commissioners, which potentially also weakens the authority and effectiveness of the INEC leadership's command. INEC's reduced budget has limited its ability to operate, including in regard to voter registration services and the prosecutions of electoral offences. However, under the current INEC leadership, the institution has appeared to perform its duties in an impartial way in difficult circumstances.

Commendably INEC has attempted to introduce various innovations and additional safeguards into the electoral process, most notably with the biometric card readers. INEC has also engaged regularly with political parties and civil society at central and state levels, although the degree of substantial bi-lateral engagement with the two main parties was not clear. EU EOM long-term observers (LTOs) report that, with few exceptions, key electoral stakeholders at a local level appear to date to have confidence in the work of INEC.

Despite INEC's strong pronouncements on its readiness to conduct elections as originally scheduled in February, shortcomings were evident. These included: extensive under-collection of permanent voter cards (PVCs), incomplete distribution of card readers, no publication of the final list of polling units (PUs)<sup>11</sup>, apparently incomplete recruitment of temporary staff, late approval and printing of training manuals<sup>12</sup>, inadequate training of polling staff, and observer accreditations not being distributed. Following the postponement INEC preparations improved.

INEC regulatory guidelines and the manual for election officials include a number of safeguards for polling.<sup>13</sup> However procedural weaknesses persist, particularly in regard to transparency and collation rigor. These include: no requirement for distribution and display of copies of voting point results forms<sup>14</sup>, no double-blind data entry during collation, an insufficient system for dealing with anomalies or suspicious results, and no requirement for display of PU results at the first-level of collation (thereby breaking the chain of results data compromising stakeholders' ability to check the veracity of announced totals).

The reported number of identified internally displaced persons (IDPs) in northern Nigeria is over 1.2 million<sup>15</sup> although some unofficial estimates are higher. In the run-up to elections there was considerable political interest in the issue of IDP voting but this was not translated into legislative provisions. Nevertheless, based on a consultative process, INEC eventually

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<sup>11</sup> Section 46(1)(c) of the Electoral Act requires publication of PU locations not later than 14 days before election day.

<sup>12</sup> The final version was approved on 30 January, more than a week after the cascade training of staff started.

<sup>13</sup> For example voting only in the PU where a voter is registered (as required by law), mandatory use of biometric PVCs, card reader verification, separate accreditation and voting on election day, and the use of indelible ink.

<sup>14</sup> Voting points are established in PUs with more than 750 registered voters.

<sup>15</sup> The IOM Displacement Tracking Matrix Round II Report - February 2015 puts the total number of identified IDPs in northern Nigeria to 1,235,294, with 1,028,683 of them identified in Borno, Yobe and Adamawa. The total number of registered voters in these three states is 4,593,061.

established special arrangements whereby IDPs in the three north-eastern states most affected by Boko Haram insurgency could vote in alternative locations within their state of origin. However all remaining IDPs who left their state of origin and were unable to travel back to collect the PVCs and vote on election day were disenfranchised<sup>16</sup> unless they had managed to apply for a transfer by 26 February.<sup>17</sup> As for all voters, PVCs for IDPs were mandatory for voting, which maintained integrity in the process but was problematic for those who fled without their documentation. Stakeholders appeared to endorse this attempt at inclusion and maintenance of the safeguards in the process. INEC did not provide full data on the number of IDP registrants.

## Voter Registration

Voter registration is extremely challenging in Nigeria, due to the lack of reliable identification documents, very limited population registration, and an absence of systematised recording of births and deaths. On 13 January INEC announced the final number of registered voters to be 68,833,476. This is a 6.4% reduction from 2011, and represents an estimated 78% of the total voting age population of some 88.5 million.<sup>18</sup> The lack of a system for removal of the deceased from the register means that the number of living registrants is lower, raising further issues about enfranchisement. The shortfall in those registered is in part due to the limited opportunity provided during the so-called “*continuous voter registration*” (CVR) exercise undertaken in 2014, which only lasted for up to seven days in each location.<sup>19</sup> EU experts observed the process to be cumbersome, crowded, and marred by technical and staffing issues.

Positively INEC attempted to improve the integrity of the voter register and voter identification process for the 2015 elections by introducing biometric measures to stop multiple voting prevalent in earlier elections. A card reader in each PU was introduced to check the biometric data stored on each person’s PVC against a scan then undertaken of their fingerprints, with each PVC being only valid in the PU where the voter is registered. Mandatory use of PVCs meant that distribution and collection of PVCs was critical.

By the originally scheduled 14 February election day only 75.56% of PVCs had been obtained by registrants, with 16.8 million cards remaining uncollected. However the postponement allowed for extended opportunity for registrants to obtain their PVCs, resulting in approximately 82% collected by 21 March.<sup>20</sup> Overall EU LTOs found the opportunities given to registrants and the effectiveness of INEC PVC distribution varied, with some services working every day while others were centralised<sup>21</sup> and not always open during advertised hours. The late arrival of a large number of PVCs (those from later CVR phases, transferees and lost cards) caused frustration and increased tension in the run up to the elections. Regrettably up to 100,000 PVCs remained unproduced one day before the polling.

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<sup>16</sup> This is not consistent with the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa – the “*Kampala Convention*” - which binds States Parties to take necessary measures to ensure that IDPs can enjoy their civic and political rights including the right to vote.

<sup>17</sup> Transfer application has to be accompanied by the applicant’s temporary or permanent voters card.

<sup>18</sup> The World Factbook as of March 2015.

<sup>19</sup> INEC reported registering a total of 11,464,690 new voters in the CVR, from which 1,551,292 duplicate registrations and registrations that did not meet biometric quality requirements were later removed.

<sup>20</sup> PVC collection was due to cease on 22 March but RECs were given discretion to extend to allow for collection of newly arrived PVCs until the eve of the election.

<sup>21</sup> PVC distribution was at PU level only for a short period, and then at local government area (LGA) or ward levels.

Further concerning was the reliability of INEC's PVC collection updates. States sometimes reported zero progress since the last update, implausibly high increases between two updates, and in four states collection rates went down between two updates without any explanation provided. Eleven states reported implausibly high collection rates of between 92.65 and 95.98%. Such rates are highly questionable given that the deceased have not been removed from the list since 2010 and migration rates are often high. There are strong indications of proxy PVC collection in these states as well as persistent allegations of on-going organised PVC buying across the country.

### **Party Primaries and the Registration of Candidates**

Given the lack of possibility to run as an independent candidate, the Nigerian system of primaries overly excludes and concentrates unchecked power in the parties, thereby reducing the choices available to voters on election day and the effectiveness of the election process. The total party control over candidate nomination is especially problematic given the widely reported culture of corruption within parties.<sup>22</sup> There is insufficient legal regulation with INEC lacking powers of enforcement.<sup>23</sup>

Leading parties established excessive non-refundable fees of between 550,000 and 27 million Naira (approximately €2,700 to €134,000) for interested aspirants, leaving the opportunity to stand beyond the reach of the vast majority of citizens (nearly 80% of whom live below \$2 a day).<sup>24</sup> The dominant role of money in electoral politics exacerbates exclusion and risks corruption in office. Additional party nomination requirements, such as party loyalty, lack objectivity risking selective application. The lack of safeguards in the process resulted in various problems being widely reported and observed by EU experts. For example arbitrary party "screening", "zoning" and rejection of aspirants, corrupted election and participation of voting delegates, and inadequate voting procedures that lack transparency and certainty. Also parties did not always respect the results of their own primaries.

Overall the primaries process passed relatively peacefully and according to schedule, and some examples of improved practice were referred to, notably the APC presidential primary. However the lack of provision for independent candidates and the deficiencies in the current system of primaries compromise the choices available to voters and weakens the accountability function of elections. This in turn increases the risk of ineffectiveness in office and consequent disillusionment with the state.

As INEC is legally barred from disqualifying candidates, the candidate nomination procedure is essentially a clerical exercise. INEC published all candidate lists within the prescribed

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<sup>22</sup> For example Transparency International's 2013 Global Corruption Monitor found that 94% of respondents in Nigeria felt that "*political parties were corrupt/extremely corrupt*". Parties had a worse rating than any state institution or non-government entity.

<sup>23</sup> General Comment 25 of the UN HRC: "*States should ensure that, in their internal management, political parties respect the applicable provisions of article 25 in order to enable citizens to exercise their rights thereunder*".

<sup>24</sup> The UN 2014 Human Development Report shows that 67.98% of the Nigerian population are living below purchasing power parity (PPP) of \$1.25 a day, and 79.2% below PPP \$2 a day.

timeframe. In total there were 14 candidates for the presidency, 745 for the 109 senatorial seats, and 1,772 for the 360 House of Representatives seats.

## The Campaign

Both APC and PDP carried out large-scale campaigns with presidential rallies undertaken in all 36 states and the FCT, attended by tens of thousands of supporters, albeit with allegations of payments made. EU LTOs reported some cases of restriction of freedom to campaign, with opposition parties denied access to prime public places in both PDP and APC controlled states.<sup>25</sup> Some processional campaigning was banned by the police for security reasons in Kano and Ogun states. In the areas most affected by Boko Haram, presidential rallies were held, although at least three were cancelled for security reasons.

The campaign was tense and with increasing violent incidents occurring across all parts of the country. Since the official launch of the presidential campaigns in early January until 27 March, the EU EOM noted reports of 60 election-related violent events with more than 82 persons killed, although the actual number of incidents and casualties is likely higher.<sup>26</sup> Both PDP and APC are accused of deploying thugs to intimidate opponents and attack party rallies, convoys, members and offices.<sup>27</sup> Armed attacks increased, especially in Rivers, Lagos and Kaduna states.

The controversial postponement interrupted the campaign in its most heated phase.<sup>28</sup> Despite its strong opposition to any delay in the elections, the APC, appealed to supporters to “*desist from violence*” and the situation after the announcement remained calm. Following a week’s break, both the main parties changed campaign strategies, focusing on particular groups such as traditional leaders, socio-political associations, youth and women groups.

By signing the Code of Conduct political parties agreed to respect the legal campaign regulations and INEC’s Guidelines for Campaigning. However, the mechanisms for monitoring and sanctioning non-compliance are *de facto* non-existent. There are many reports of campaign violations, mostly relating to the widespread abuse of incumbency. EU LTOs observed biased police activities and misuse of administrative offices and state vehicles in both PDP and APC controlled states. Allegations were made of civil service salaries, sometimes unpaid for several months, being syphoned off for party campaign activities. INEC attempts at monitoring campaign funding have very limited value under the existing legal framework.

Issue-based campaigning was overshadowed by prevailing negative tactics, with escalating

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<sup>25</sup> For example, the PDP presidential campaign was permitted to use the stadium in Calabar, Cross River, while the APC presidential candidate was not. Also on 28 January the APC governor of Rivers state denied PDP access to the stadium in Port Harcourt.

<sup>26</sup> NB. The National Human Rights Commission report on pre-election violence identified 60 incidents and 58 persons killed over a 50 day period from December 2014.

<sup>27</sup> There have been reports of at least 28 cases of shootings at rallies and convoys, 12 cases of stoning/mob attacks on campaign convoys, 5 cases of bomb explosions at party offices, and 15 cases of destruction of vehicles, bill boards and other properties of parties.

<sup>28</sup> The APC and various civil society groups criticised the use of security as a pretext by the ruling PDP to interfere with the electoral process.

mutual accusations and fierce personal attacks.<sup>29</sup> Inflammatory language and hate speech were increasingly used in the campaign. Most dramatically the First Lady, Patience Jonathan, stated that anyone who says “*change*”, the campaign slogan of the opposition APC, should be stoned.<sup>30</sup> Ex-militant leaders from the Niger Delta threatened war and the breakup of the nation should PDP not win the elections.<sup>31</sup> The PDP leadership was negligent in its lack of reaction to such inflammatory speech.

There was also an increase in the use of religious, ethnic and sectional sentiments and appeals in the campaign with both parties accusing the other of dividing the nation on religious grounds. Ethnic militant groups<sup>32</sup> have also been involved in the campaign. Allegations and counter-allegations of financial inducement of religious and traditional leaders and ethnic minority groups have been made in media and at rallies.

The growth in hate speech and violence took place despite the signing of the Abuja Accord, on 14 January, and comparable peace accords in all 36 states and the FCT.<sup>33</sup> However, stakeholders refer to a lack of political ownership, with for example EU LTOs reporting that copies of the accords were not always available, even to signatories.

## Media

While broadcast media, radio in particular, still remains the key source of information, social media played a significant role as an open platform to exchange opinions, contributing to diversity of views available to voters. Media practitioners referred to freedom of the media steadily improving, although self-censorship remains common. Instances of harassment and attacks against journalists were reported during the campaign.

Coverage of PDP and APC campaigns dominated news broadcasts. This may in part be due to reported payment by contenders for news and editorial coverage. Paid for advertising of key contestants, predominantly PDP, was very extensive. Presidential and vice-presidential candidates were given access to televised programming to present their views<sup>34</sup>; however discussion of substantive issues was rare. Positively, after the election postponement, media provided notably more information about the election process.

The results of the EU EOM media monitoring<sup>35</sup> demonstrate the failure of federal and state

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<sup>29</sup> For example there were several so-called “*death treat*” advertisements by the PDP Ekiti state Governor against the APC presidential candidate Buhari, insinuating he would die while in office if elected.

<sup>30</sup> Rally in Calabar, 4 March, captured in a video (available on YouTube).

<sup>31</sup> The threats were made at a meeting hosted by the PDP Governor of Bayelsa on 23 January.

<sup>32</sup> In particular the O’odua Peoples Congress (OPC) and the Movement for the Actualisation of the Sovereign State of Biafra (MASSOB) in the south-west and south-east respectively.

<sup>33</sup> The Abuja Accord commits candidates and parties to refrain from inflammatory language, hate speech, religious incitement, and ethnic or tribal profiling.

<sup>34</sup> Televised debate between main presidential contenders did not take place despite media efforts.

<sup>35</sup> On 16 January the EU EOM commenced monitoring of three TV channels, two national radio stations and three daily newspapers. In addition, since 26 January the EU EOM has been monitoring six state-controlled radio stations representing all geopolitical zones. The monitored TV stations are: federal-government controlled TV - NTA, privately owned TV AIT and TV Channels (all monitored during the evening prime time - 5pm till 11pm). The radio stations are: federal-government controlled radio Kapital FM (part of FRCN) and privately owned radio Ray Power

government-controlled broadcast media to adhere to the existing legal framework requiring equitable coverage of the political contestants and stipulating that the state media shall not be employed to the advantage or disadvantage of any contestant. The media bias remained essentially unchallenged by the regulatory body, the National Broadcasting Commission (NBC), which lacks capacity to systematically monitor broadcast media.

The Nigerian Television Authority (NTA) and the Federal Radio Corporation of Nigeria (FRCN), the only media with nation-wide reach, clearly favored the ruling PDP. In prime-time news, PDP received 57% of NTA's political coverage, and 43% of FRCN's. Additionally the incumbent gained extra airtime through coverage of Presidential and Federal Government activities, which amounted to another 27% of NTA airtime and 35% FRCN's. In contrast to PDP's total 84% coverage APC received 11% on NTA, and on FRCN PDP's 78% contrasts with APC's 13%. Inequalities were even more apparent in other prime-time programmes.

Similarly, monitored state-government controlled radio stations favored the party in power (either PDP or APC). Plateau, Enugu and Kaduna based radios each provided over 80% of their news coverage to PDP and its officials; likewise the Borno state radio dedicated 95% of its news airtime to APC and associated officials. Rivers and Lagos based state radios also showed preference for the ruling APC; however towards the 28 March election day their coverage became more balanced.

Private TV AIT and radio Ray Power, both owned by DAAR Communications, also failed to offer equitable coverage, providing significantly larger shares of their editorial coverage to PDP. TV AIT, and to some extent NTA, aired sponsored programmes that damned APC's key political figures, further inflaming a tense volatile campaign environment. In contrast, Channels TV demonstrated generally balanced reporting of key political contestants. Similarly, the monitored newspapers offered relatively balanced and diverse coverage, in particular Daily Trust.

### **Participation of Women**

Nigeria ratified the Convention Against All Forms of Discrimination against Women (CEDAW), which establishes obligations to take all appropriate measures to eliminate discrimination against women, including in regards to political participation. Nigeria has also ratified the Protocol to the African Charter on Human and Peoples Rights, which requires "*the equal participation of women in the political life*". There are no specific legislative provisions for the promotion of women in political life. The 35% affirmative action for female representation provided by the 2006 National Gender Policy (NGP) has not been achieved in elected positions. Currently, approximately seven percent of National Assembly members are women. Thus to date any measures taken to promote women's participation have not been sufficient.

There is no legal requirement for parties to have a minimum proportion of women in their leadership or as candidates, or to have policies on the promotion of women's political participation. State media outlets interviewed also report no special measures and overall there

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(both radio stations are monitored daily from 6am till 8am and from 4pm till 6:30pm). The daily newspapers monitored are *The Guardian*, *This Day* and *Daily Trust*. The EU EOM is also monitoring morning and evening programmes (two hours) of state-controlled radio stations in Borno, Enugu, Kaduna, Lagos, Plateau and Rivers.

was limited media coverage of female political actors. Positively INEC has developed a comprehensive gender policy; however this was only after the official start of the campaign.

PDP and APC waved nomination fees for female aspirants, but this did not increase the number of female candidates. Only one woman ran for the presidency (out of 14 candidates in total) and only four vice-presidential candidates were female. For the Senate elections, 16.1% of the candidates were female, and for the House of Representatives 15.3%. This is far below the 30% Beijing Declaration and Platform for Action and NGP targets. Most of the female candidates in the 2015 elections were running for small parties.

### **Civil Society and Citizen Observation**

Two umbrella CSOs, the Transition Monitoring Group (TMG) and the Situation Room, undertook large-scale election observation, voter education and violence prevention, through their networks of grass-roots organisations. On 28 March TMG deployed over 3,000 observers who scrutinised polling and conducted a parallel vote tabulation (or “*quick count*”) of presidential election results. Situation Room organisations deployed individually on election day several thousand observers who reported findings to a central operations room with real-time referral of problems to relevant authorities. Such observation enhanced the transparency of the electoral process and contributed to electoral discussion. However, such CSOs command mixed levels of confidence in their political impartiality, with various groups being regarded as aligned to one of the parties and/or over-loyal to the election administration.

### **Polling and Counting**

Nigerian voters showed a commendable commitment to fulfilling their democratic right in a generally peaceful manner. However there were at least 20 incidents of violence reported on election day, resulting in 19 deaths, including 4 apparent terrorist attacks. Otherwise election day may be characterized as disordered and prolonged, despite the generally very positive efforts and often innovative actions of polling staff who were partly drawn from the Nigerian Youth Service Corps. Although polling procedures were insufficiently followed, EU EOM observers saw no evidence of systematic manipulations. INEC gave insufficient information and explanation on challenges encountered and to date no turnout data has been made available. Positively party agents were mostly present, with PDP seen in 80% and APC in 81% of the more than 300 sites visited by over 90 EU EOM observers. Overall in sites visited, polling passed peacefully with appropriate performance by security forces.

A lack of ballot papers resulted in postponed elections in 13 House of Representative constituencies in three states. Polling started late in virtually all sites visited, largely due to material distribution failure, which persisted into the accreditation phase.<sup>36</sup> During accreditation, 20% of sites visited were rated as “*bad*” or “*very bad*” by EU EOM observers. In 12% of observed locations essential material was missing, typically ballot papers. Obviously-underage voters were seen accredited in 9% of sites visited. Use of the card-readers was evidently

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<sup>36</sup> During accreditation registrants are verified and marked on the voter register, and then return at 1.30pm to queue for voting.

problematic, with 18% malfunctioning and 91% not being able to consistently verify fingerprints,<sup>37</sup> and consequently manual voter identification being undertaken.

Approximately two hours after the scheduled end of accreditation, INEC announced that in case of card reader failure, their use would no longer be required and registrants would be manually accredited. In so doing, INEC expedited accreditation, but removed the safeguard of electronically checking for authentic PVCs allocated to that PU.<sup>38</sup> At 9pm INEC announced that re-polling would take place in approximately 300 sites due to malfunctioning card-readers.

For voting, 10% of sites were assessed by EU EOM observers as “*very bad*”. In 13% of visits unauthorized persons, mostly party agents, were interfering in the polling work. Ballot boxes were not sealed in 37% of sites visited. Basic integrity checks were commonly missing, for example in 60% of locations the staff did not record the number of ballots received, ink was not consistently checked in 58%, and PVCs were not always checked in 25%. In 59% of sites voting was not always in secret, with for example group voting seen in 10% of cases.

Counting procedures were not always followed in the 29 sites observed<sup>39</sup>, with basic ballot reconciliation not undertaken in 11 counts, and in 7 cases the results form figures contained anomalies. Mostly results were not publicly displayed as required, although positively in nearly all cases agents received a copy. The collation was assessed as “*bad*” or “*very bad*” in 14 out of 36 collation centres visited. Significant procedural problems included results not always arriving intact in tamper evident envelopes and some repeated alterations results forms. Presence of agents was limited with APC and PDP agents only observed in 27 and 26 centres respectively.

### **Electoral Disputes and Offences**

The right to legal remedy is provided for, in compliance with the principles of judicial review before the courts. However the law does not foresee any administrative complaint mechanisms.<sup>40</sup> Thus election-related disputes are resolved only by the judiciary, risking protracted processes that are costly and adversarial. Contrary to international standards, there is no provision for individual voters or CSOs to file post-election petitions challenging the results.<sup>41</sup> Moreover the lack of constitutional independence in the appointment of the judiciary<sup>42</sup> and instances of past misconduct result in varying confidence in the judicial system as was reported by a number of EU EOM interlocutors.

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<sup>37</sup> In six percent of sites voters were accredited without the card reader being used.

<sup>38</sup> No information is available on how many registrants were accredited manually without the check of a card-reader.

<sup>39</sup> For example in 8 out of 24 counts observed unused ballots were not cancelled.

<sup>40</sup> General Comment 31 of the UN HRC, requires states “*to ensure that individuals have accessible and effective remedies... Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.*”

<sup>41</sup> ICCPR article 2(3)(a) “*To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.*”

<sup>42</sup> The judges of all courts are appointed by the President on the recommendation of the National Judicial Council (composed of 23 members who are presidentially appointed subject to a confirmation by the Senate); for the Presidents of the courts, approval by the Senate is also required.

The judiciary made serious efforts to provide timely administration of justice of the high volume of pre-election suits, which have to be dealt with in addition to their ordinary workload. However the lack of time limits for filing and adjudicating of pre-election suits, in combination with loopholes allowing lawyers to prolong the administration of justice<sup>43</sup>, compromises the right to a timely remedy. Furthermore, the overlapping jurisdiction of the Federal and State High Courts (SHCs) on pre-election cases opens up the possibility of abuse of the system by plaintiffs as well as contradictory rulings. Positively the Federal High Courts (FHCs) and a few SHCs have established review mechanisms to avoid duplication. So far, the courts demonstrated respect for due process, and all cases analysed appeared sufficiently documented. The courts also demonstrated a positive tendency of not granting interim or *ex-parte* orders, and instead offered defendants the opportunity to participate in hearings.

To date, the number of pre-election disputes is lower than in 2011<sup>44</sup>, with the vast majority of cases examined relating to party primaries.<sup>45</sup> Other suits filed with the FHCs include challenges to the eligibility of the PDP and APC presidential candidates and on the use of card readers and PVCs. The controversial issue of deployment of the military was also challenged in the courts.<sup>46</sup>

The Electoral Act specifies a wide range of electoral offences and correlated sanctions, and mandates INEC to initiate the prosecution of offenders. Concurrently such acts may be criminal offences that are subject to prosecution under criminal laws. INEC has up to this point not pursued the prosecution of the offenders during this election, even when arrests were made by the police. This is partly attributed to INEC's lack of human resources, financial capacity and time to effectively pursue prosecutions, but issues of political will are also raised. While the police reported more arrests and investigations and more charges brought under the criminal laws than in previous elections, the consistency of such actions was not always evident to LTO interlocutors. The lack of election offence prosecutions by INEC to date contributes to a continued sense of impunity.

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This Preliminary Statement is available on the Mission website ([www.eueomnigeria.eu](http://www.eueomnigeria.eu)).

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<sup>43</sup> These include: unnecessary adjournments, delays in filing replies to opposite lawyers, needless applications by parties to be joined in the case, and notices of discontinuance of the process.

<sup>44</sup> From September 2014 to date some 460 election-related cases were filed at the FHCs visited across the country. The lower number than in 2011 is partly due to a judicial workers strike that lasted for the FHC from 5 until 25 January, and in most SHCs is still continuing. Also reportedly many aggrieved aspirants from PDP primaries defected to the APC as an alternative platform instead of seeking legal redress.

<sup>45</sup> For example challenging illegal substitutions of winning aspirants, non-conduct of the primaries, inconclusive primaries, non-authentic lists of delegates and parallel primaries.

<sup>46</sup> The Constitution and the Electoral Act provide no specific role for the military in the conduct of elections. Three courts pronounced on the unconstitutionality of involving the armed forces in the elections without a law of the National Assembly, or without insurrection that cannot be suppressed by the police.