

## Nigeria's Elections: Reversing the Degeneration?

### I. OVERVIEW

The April 2011 general elections – if credible and peaceful – would reverse the degeneration of the franchise since Nigeria returned to civilian rule in 1999, yield more representative and legitimate institutions and restore faith in a democratic trajectory. Anything similar to the 2007 sham, however, could deepen the vulnerability of West Africa's largest country to conflict, further alienate citizens from the political elite and reinforce violent groups' narratives of bad governance and exclusion. Flawed polls, especially if politicians stoke ethnic or religious divides, may ignite already straining fault lines, as losers protest results. Despite encouraging electoral preparations, serious obstacles remain. Many politicians still seem determined to use violence, bribery or rigging to win the spoils of office. In the remaining weeks, national institutions, led by the Independent National Election Commission (INEC), should redouble efforts to secure the poll's integrity, tackle impunity for electoral crimes, increase transparency and bolster safeguards, including by publicising results polling station by polling station and rejecting bogus returns.

With Laurent Gbagbo's attempt to defy democracy in Côte d'Ivoire casting a shadow throughout the continent, the elections will resonate, for good or ill, well beyond national borders. Nigeria's prestige and capacity to contribute to international peace and stability are at stake. The reputation of President Goodluck Jonathan, the generally favoured incumbent, is at stake too. He took a tough stance for respecting election results in Côte d'Ivoire, and his promise to respect rules for these polls contrasts starkly with former President Olusegun Obasanjo's "do or die" language in 2007. Jonathan's victory in an orderly (at least in Abuja) People's Democratic Party (PDP) presidential primary and subsequent wooing of northern powerbrokers seem thus far to have averted dangerous north-south splits within the ruling party. He appointed a respected academic and civil society activist, Professor Attahiru Jega, to chair the INEC and seems inclined to respect its autonomy, including by providing timely funding for elections. Jega's leadership offers some protection against the wholesale manipulation of results that blighted previous polls.

But huge challenges remain. Jega carries the expectations of the nation, but – as he emphasises – is no magician. He assumed office only in June 2010 and has juggled much

needed reforms against the imperative of actually holding elections in 2011. He inherited an organisation complicit in the 2007 fraud, exposed to manipulation outside the capital and over which the new Electoral Act denies him full control. To his – and the nation's – credit, a gamble to conduct a risky voter registration exercise seems to have paid off, but its shaky start was a reminder of challenges, even in simply delivering materials around the vast country in a timely manner.

Underlying causes of electoral flaws, however, run deeper than election administration. Stakes are high: the state is the principle means of generating wealth; vast oil revenues are accessed through public office. Extreme poverty makes voters vulnerable to bribes and intimidation. The election takes place against an upsurge in violence, including attacks in Borno, communal violence in Jos and explosions in Abuja and elsewhere. Politicians and their sponsors habitually exploit violent groups and social divisions to win elections, so many Nigerians perceive that upsurge as linked to April's polls. A number of incumbent governors face bruising contests, and the threat of bloodshed hangs over many states. Security is crucial to electoral integrity, but security forces have traditionally done little to prevent rigging or violence and have often been bought by politicians and complicit. Lower-level courts are often corrupt, impunity is insidious and the rule of law at best weak. No one has been convicted of an electoral offence since independence.

Elections, therefore, traditionally offer Nigerian politicians a choice: respect the rules and risk losing to an opponent who does not; or avoid the political wilderness by rigging or violence, knowing that to do so is easy, and you are unlikely to be punished. Shifting these incentives is essential to holding better elections. Tackling underlying issues – unchecked executives, frail institutions, rampant impunity and inequitable distribution of power and resources – requires reforms of a scope not feasible by April. But by bolstering safeguards, rigorous planning, ensuring better security, acting against bogus results and beginning to convict electoral offenders, INEC and other institutions can at least make cheating less attractive.

Further recommendations are given throughout this briefing, but the following are priorities:

- ❑ To dent the pervasive impunity that drives rigging and violence, INEC must prosecute electoral offenders, including its own staff, security officials and politicians. The police must assist in gathering evidence. Task forces at federal and state level bringing together INEC, public prosecutors and police should be established to facilitate prosecutions. These measures should be widely publicised, with the attorney general and inspector general of police echoing Chairman Jega's tough language against electoral offences.
- ❑ INEC should bolster electoral safeguards to make cheating more difficult. It must plan a transparent, efficient system for collating returns, post results in every polling unit and publish a full breakdown by polling unit at every level of tabulation – ward, local government area, state and federal – and provide party agents, observers and accredited media access to all collation centres. Learning from the chaotic start to voter registration, it must tighten plans for timely procurement, delivery, retrieval and management of materials, with resident election commissioners in each state submitting plans to it well ahead of elections. Temporary staff must be well trained on new polling and counting procedures and permit only those whose names appear on rolls to vote in each polling unit.
- ❑ INEC should suspend announcing results where suspicious returns may have affected the outcome, then investigate and, where necessary, repeat the election. Judges on the Court of Appeal and the specially-established electoral tribunals should have the resources and training necessary to adjudicate petitions within the new Electoral Act's timelines and without interference. But wherever possible, INEC should itself act to avert protracted legal disputes against powerful incumbents.
- ❑ State-level security consultative committees should submit detailed plans for federal-level review well before April. The committees should establish links with civil society groups monitoring violence and community leaders able to reduce it. Security forces should deploy based on risk analysis. Training for, and monitoring of, security officials, especially police, should be increased. The inspector general of police should say publicly that security personnel complicit in rigging will be prosecuted – then ensure they are.
- ❑ The leadership of all political parties should, publicly and together, commit to respect rules, campaign peacefully, avoid inflammatory identity-based rhetoric and use only peaceful, legal means to contest results. Candidates at all levels, starting with presidential candidates in Abuja and gubernatorial candidates in each state capital, should sign in public ceremonies the code of conduct being prepared by INEC.

- ❑ International actors should make clear and in public to elites the implications of another sham election. Diplomats can remind the president that his and Nigeria's prestige are dependent on him meeting his promises to respect rules, allow credible polls and not exploit state machinery. Chaotic and rigged elections would tarnish the government, undermine confidence in its stability and stall investment.

The bar for these elections seems set at “better than 2007”. That may be realistic, given Jega's late arrival, the INEC's internal constraints, the stakes of office, entrenched patterns of rigging and violence and fragile rule of law. But such a modest standard – well below Nigeria's own regional and international commitments for democratic elections – should not disguise that the choices of elites, not an innate Nigerian resistance to democracy, drive shoddy polls. If the country's politicians want to meet their citizens' increasingly desperate aspirations for a free and fair vote, nothing stops them from doing so.

## II. THE RISKS OF VIOLENCE

The 2011 general elections are a crucial test for Nigeria.<sup>1</sup> Democratic government has been uninterrupted for more than a decade, but the quality of elections since the return to civilian rule in 1999, of which these are the fourth, has declined continually.<sup>2</sup> The 1999 polls that swept General

<sup>1</sup> Nigerians vote over three consecutive Saturdays. Elections for 109 senators in the upper house and 360 representatives in the lower house of the National Assembly, and for legislators in 36 state Houses of Assembly take place on 2 April. Presidential elections are on 9 April. State governor elections are on 16 April: 31 of 36 governorships are up for election (in five of the remaining states – Anambra, Ekiti, Ondo, Osun and Rivers – tribunals overturned in subsequent years election results from 2007, and the new governors will see out their four-year terms. Nigerian newspapers are reporting that a Federal High Court has ruled that INEC cannot hold gubernatorial elections in another five states – Kogi, Sokoto, Adamawa, Cross Rivers and Bayelsa – for the same reason, in which case they will take place in only 26 states. See Lemmy Ughegbe, “Court stops guber elections in five states”, *Nigeria Guardian*, 23 February 2011). Senators, federal representatives and state legislators are elected according to the first-past-the-post electoral system in single-member constituencies. The president is also elected by first-past-the-post, but must also win one-quarter of votes in two-thirds of the states or else face a run-off. Gubernatorial contests are likewise decided by first-past-the-post, but in addition to a plurality of votes in that state, the leading candidate must win one-quarter of votes in two-thirds of the state's local government areas to avoid a run-off.

<sup>2</sup> The 30 years prior to the return to civilian rule had seen instability punctuated by coups, repressive military governments and a civil war.

Olusegun Obasanjo and the PDP party to power were flawed but generally accepted by Nigerians glad to see the back of a repressive military dictatorship.<sup>3</sup> Over subsequent years, Obasanjo and the ruling party – an alliance of oligarchs with close links to the military – consolidated their grip on power. In 2003 his mandate was renewed in a vote that was decried by observers as heavily rigged.<sup>4</sup>

With his attempts to change the constitution to allow a third term thwarted by civil society and legislators, including those of his own party, Obasanjo in 2007 threw his weight and the state machinery behind an anointed successor, Umara Musa Yar'Adua, former governor of Katsina state. Yar'Adua won handily, but the elections, despite transferring power from one civilian to another for the first time since independence, were universally condemned as a farce.<sup>5</sup> Yar'Adua, in ill-health even before assuming the presidency, was soon forced to seek

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<sup>3</sup> Former U.S. President Jimmy Carter, whose Carter Center observed the polls, refused to endorse them. Obasanjo won 62 per cent of the vote, with PDP picking up 21 of 36 governor offices, 23 state assemblies and clear majorities in both House (214 of 360 seats) and Senate (63 of 109 seats) of the federal legislature. For an overview of elections since independence, see Darrew Kew, "Nigerian Elections and the Neo-Patrimonial Paradox: In Search of the Social Contract", *Journal of Contemporary African Studies*, vol. 28, no. 4, October 2010, pp. 499-52; and Adekunle Amuwo, "The Political Economy of Nigeria's Post-Military Elections, 1999-2007", *Review of African Political Economy*, vol. 36, no. 119, March 2009, pp. 37-61.

<sup>4</sup> Obasanjo again won 62 per cent. This time PDP captured 28 of 36 governorships, notably picking up states in the South-West from Alliance for Democracy (the precursor to today's Action Congress of Nigeria) but losing Kano to the All Nigeria People's Party (ANPP); its majorities in the House and Senate also slightly increased. In its preliminary statement, the European Union (EU) Election Observation Mission said the polls were "marred by serious irregularities and fraud". "Nigeria Presidential and Gubernatorial Elections 2003 Second Preliminary Statement Presidential and Gubernatorial Elections", Abuja, 22 April 2003.

<sup>5</sup> The 2007 elections were so universally condemned as the most violent, poorly organised and massively rigged in Nigeria's troubled electoral history that even the winner, President Musa Yar'Adua, conceded flaws. Yar'Adua (PDP) won 24.6 million votes, over Muhammadu Buhari (ANPP), with 6.6 million. Vice President Atiku Abubakar, of Action Congress (AC), was third with 2.6 million. After tribunals overturned some of the elections, PDP captured the governorships in 29 of 36 states. The polls were denounced not only by opposition leaders, but by virtually all stakeholders, including some ranking PDP members. Buhari said he "completely and wholeheartedly" rejected the results. Abubakar called the elections "a sham". At its first meeting after the elections, the Coalition of Opposition Candidates (COC) said they were "worse than military coups". National and international observers were unanimous in their condemnation. See Crisis Group Africa Report N°126, *Nigeria: Failed Elections, Failing State*, 30 May 2007.

care abroad, leading to extended absences. After a medical crisis in November 2009 left him incapacitated, the Senate transferred powers to Vice President Goodluck Jonathan, from the Niger Delta state of Bayelsa, who like Yar'Adua was a relative unknown. Jonathan was sworn in formally after Yar'Adua's death in May 2010. While seeking to gain control over the PDP, Jonathan has at the same time made repeated promises domestically and abroad to allow credible elections.

Despite swift economic growth and visible development in some states, notably under a reform-minded governor in Lagos, the years since the 2007 polls have increased the country's vulnerability to conflict. Oil revenues drive staggering corruption and politics based exclusively on patron-client relations. Those outside patronage networks are bereft of opportunities – a dangerous pattern in a country of tremendous ethnic diversity. The oil revenues are considerable – nearly \$74 billion in 2008 alone – but 92 per cent of Nigerians live on less than \$2 a day and 70 per cent on less than \$1.<sup>6</sup> Social indicators, especially in the north, are among the world's worst. In some regions, the state offers no water, electricity or education. Unemployment, especially among youths, is widespread.<sup>7</sup> A recent survey claimed that 55 per cent of Nigerians thought "things were heading in the wrong direction".<sup>8</sup>

Attacks by radical groups like Boko Haram in the far north have surged.<sup>9</sup> The middle belt, especially Jos and Plateau state, suffers intensified conflict that is rooted in competition for land or other resources but takes an ethnic or religious dimension. The ceasefire and amnesty in the Niger Delta have, since July 2009, quieted violence but not addressed root causes or led to wide demobilisa-

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<sup>6</sup> For oil revenues see OPEC website at [http://www.opec.org/opec\\_web/en/publications/202.htm](http://www.opec.org/opec_web/en/publications/202.htm). For figures on poverty, "Final Report", Independent Electoral Assessment Team, January 2010, quoting 2006 World Bank development indicators.

<sup>7</sup> Finance Minister Dr Olusegun Aganga, at a seminar organised by the International Monetary Fund (IMF) in Washington DC, in October 2010, claimed the unemployment rate had hit 19.7 per cent. 49 per cent of the unemployed are between the ages of eighteen and 24. Samuel Ibiyemi, "Unemployment rate hits 19.7 per cent", *Saturday Tribune*, 19 February 2011.

<sup>8</sup> Nigerian National Survey, International Republican Institute/U.S. Agency for International Development, 29 November-7 December 2010. Only 41 per cent thought things were headed "in the right direction". In the same survey, respondents listed as the most important issue facing Nigeria: corruption among leaders (16 per cent); unemployment (15 per cent); bad leadership (14 per cent); poverty (13 per cent); and lack of power supply (8 per cent).

<sup>9</sup> See Crisis Group Africa Report N°168, *Northern Nigeria: Background to Conflict*, 20 Dec 2010, for comprehensive analysis of violence in the far north.

tion and still threaten to unravel.<sup>10</sup> Nigeria's conflicts are varied, complex and frequently aggravated by politicians for their own ends. But a common thread of fury at exclusion and abusive governance runs through the narratives of violent groups.

Elections are intrinsic to the conflict dynamics. The patronage politics, grotesque inequality and denial of basic public goods that drive conflict both subvert elections and are, in turn, exacerbated by their rigging. High-stakes electoral contests over power and spoils trigger horrific bloodshed, again mostly orchestrated by politicians. Observers reported hundreds of incidents of election-related violence, including at least 105 deaths, in 2003 and more than 300 deaths in 2007.<sup>11</sup> Recent months have seen the assassination of at least one candidate, fatal intra-party attacks during primaries and scores of other deaths that appear election related. On 11 February, Chairman Jega warned: "We are already seeing the ugly head of electoral violence around the country, not only in areas that are experiencing communal and political violence unrelated to elections, like Jos Plateau, Niger Delta and Borno States, but in other relatively quiet parts of the country".<sup>12</sup>

## A. THE BREAKDOWN OF ZONING

The 2011 polls have been cast as especially risky due to the president's backtracking on "zoning", an informal power-sharing deal, mostly within the PDP, that has rotated senior offices among Nigeria's six geo-political zones and alternated the presidency between the political north and south.<sup>13</sup> Jonathan, as vice president from the south, became accidental president when Yar'Adua, a northern politician, died in May 2010. Under zoning, the north's turn should have lasted until 2015, since the south

had enjoyed eight years under Obasanjo between 1999 and 2007. Northern leaders reportedly expected Jonathan to step down after completing Yar'Adua's term. Although a violation of the constitution's spirit – since in effect a PDP clique, not the electorate, decided who ruled – zoning was thought to provide a degree of sharing, predictability and stability to elite struggles over power and oil money. Jonathan's candidacy for a term in his own right has shattered the concept.

Jonathan's resounding victory in the January PDP primaries,<sup>14</sup> however, and subsequent moves to win over powerful potential northern spoilers, including his chief rival, former Vice President Atiku Abubakar, seem to have dampened risks of fatal splits among the ruling party elite.<sup>15</sup> Riots that broke out immediately after Jonathan's victory against governors in those PDP-controlled northern states that had supported his bid probably reflected intra-party disputes or manoeuvres by power brokers to gain leverage in internal PDP bargains rather than genuine popular outrage.<sup>16</sup>

Nonetheless, Nigerian newspapers still report meetings of northern leaders to consider how best to counter Jonathan's candidacy.<sup>17</sup> Mass text messaging campaigns, often used to incite communal violence, warn Muslims not to vote for Christian candidates, like Jonathan, and explicitly refer to the president's backtracking on zoning.<sup>18</sup> Even with a violent north-south split within the PDP unlikely, the collapse of zoning remains a festering grievance that disgruntled elites may yet exploit – including through identity-based rhetoric. Significantly, the major opposition parties have all chosen northern presidential candidates.<sup>19</sup> While the overwhelming advantage of incumbency and the opposition's failure to unite behind a single candidate mean a run-off in the presidential contest is unlikely, a

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<sup>10</sup> For the Niger Delta, see Crisis Group Africa Briefings N°60, *Seizing the Moment in the Niger Delta*, 30 April 2009; N°54, *Nigeria: Ogoni Land After Shell*, 18 September 2008; and N°35, *Nigeria: Ending Unrest in the Niger Delta*, 5 December 2007.

<sup>11</sup> Sam Unom and Jide Ojo, "Election 'Hot Spot' Analysis: a study of election-related violence ahead of the 2011 elections in Nigeria", February 2010, unpublished.

<sup>12</sup> Chuks Okocha, "Display of voters' register begins Feb 14", *This Day*, 11 February 2011.

<sup>13</sup> Nigeria's six geo-political zones are South-South, South-East, South-West, North-Central, North-East and North-West. Section 14(3) of the constitution requires that the "federal character" should be reflected, which is generally interpreted to mean that all public offices should be fairly distributed. However, the internal PDP deal mostly concerned which part of the country could contest for the top job, from which all other positions flow. Therefore, zoning was largely seen – as shown by debates over Jonathan's candidacy – as a pact between the north and south to rotate the presidency. See also former U.S. Ambassador to Nigeria John Campbell's articles on zoning on his Council of Foreign Relations blog, <http://blogs.cfr.org/campbell/>.

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<sup>14</sup> See Section III.B below.

<sup>15</sup> Crisis Group interviews, conflict analyst and civil society groups, Abuja 21-22 January 2011; phone interviews, 13 February 2011.

<sup>16</sup> After the PDP primaries, violence broke out in PDP-controlled states that had voted for Jonathan. See, for example, "More protests in Kaduna, Bauchi", *Daily Trust*, 17 January 2011.

<sup>17</sup> For example, "North in fresh moves to stop Jonathan", *Vanguard*, 10 February 2011.

<sup>18</sup> Crisis Group interview, state chairman, opposition party, Kano, 18 January 2011. Crisis Group was shown a number of SMS messages.

<sup>19</sup> Muhammadu Buhari is the candidate of the Congress for Progressive Change (CPC). Mallam Nuhu Ribadu, former head of the Economic and Financial Crimes Commission, is on the Action Congress of Nigeria ticket. Ibrahim Shekarau, current governor of Kano, is the presidential candidate of the All Nigeria People's Party (ANPP).

second round, should it come to that, could prove especially divisive.<sup>20</sup>

## B. BRUISING AND DIVISIVE STATE RACES

With the presidency traditionally decided in backroom deals within the PDP, violence during previous elections has been concentrated chiefly at state level, especially over gubernatorial contests. Extensive powers of patronage, control over state spending, immunity from prosecution and influence over other elections in the state make the governor's job particularly prized.<sup>21</sup> Powerful interests, or "godfathers", often bankroll or provide the political muscle behind the campaigns.<sup>22</sup>

Especially susceptible to election-related violence are states with vulnerable governors, strong challengers, personal rivalries between candidates or their backers; politicians who have broken with their sponsors or exploit social cleavages; or that lack respected peacemakers.<sup>23</sup> Such violence in past years has included assassinations, kidnapping, arson, bombings, random shootings and pitched battles between armed gangs.<sup>24</sup>

A number of incumbent governors, especially from the PDP, face tough contests. Recent years have seen a surge in grassroots support, especially in the North-West, for the Congress for Progressive Change (CPC), due in large part to the reputation for austerity and incorruptibility of its leader and presidential candidate, Muhammadu Buhari.<sup>25</sup> Both the CPC and the Action Congress Nigeria (ACN), which controls Lagos and other states in the South-West and South-South, are optimistic about their prospects.<sup>26</sup>

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<sup>20</sup> See fn. 1 above for run-off requirements.

<sup>21</sup> Though much of their power is derived from the constitution, governors also accumulated power when the shaky transition from Yar'Adua to Jonathan weakened the federal executive. Governors likewise control the party machinery in their states and use it to determine who is elected to the state and national assemblies, serve as state delegates to party congresses, conventions and primaries and receive nominations for federal positions, such as ambassadors and ministers.

<sup>22</sup> "Criminal Politics: Violence, 'Godfathers' and Corruption in Nigeria", Human Rights Watch, October 2007.

<sup>23</sup> For a list of and brief commentary on the states most at risk, see Appendix B below.

<sup>24</sup> Crisis Group Report, *Nigeria: Failed Elections*, op. cit.

<sup>25</sup> Buhari was military ruler of Nigeria from 1983 to 1985. He stood for the ANPP in 2007, but formed the CPC after subsequently falling out with that party.

<sup>26</sup> Buhari said, "the fate of this country will be decided by the people in April .... Anybody who stands in the way of the people will be crushed by the people". "Buhari – Country's fate will be decided in April", *This Day*, 31 January 2011. A determined campaign by PDP to retake Lagos could be especially explosive. Although for the most part Jonathan has toned down

The exodus from the PDP of disgruntled politicians – especially losers of party primaries – frequently to stand for other tickets, is commonly portrayed as a crisis for the ruling party.<sup>27</sup>

The PDP's weakening grip on power and the opening of political space to increasingly potent opposition parties could bode well for democracy over the long term – even where opposition leaders may not themselves be rigorous upholders of democratic principles. A reasonably credible vote would usher in more representative state and federal institutions, especially legislatures keener to check executive power. But shifts in the political landscape are likely to prove destabilising over the coming months. On the one hand, threatened incumbents may step up efforts to win with the aid of violence or rigging or become dangerous spoilers if defeated. On the other, opposition hopefuls may orchestrate violent protests against disappointing results they consider have been manipulated.<sup>28</sup>

## C. NARROWING THE MARKET FOR POLITICAL VIOLENCE

Politicians' use of armed militias or youth gangs as protection and to harass opponents, intimidate voters and snatch ballot boxes is an ingrained campaign pattern in parts of the country. Many states have organised suppliers of violence for hire, fed by high youth unemployment and easy availability of weapons: from cults, areas boys and local chapters of the National Union of Road Transport Workers in the south to radical and other armed groups in the far north.<sup>29</sup> Assassinations by radical groups, like the murder allegedly by Boko Haram on 28 January of the All Nigeria People's Party (ANPP) gubernatorial candidate in Borno, Modu Fannami Gubio, are widely perceived

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the PDP's 2010 rhetoric on wresting Lagos away from the ACN, he recently warned; "I can assure you that we will take back Lagos, Ekiti and Osun; we will control the entire South-West. Lagos is important to us, and I am happy that we have presented our flag to a capable candidate [Dr Ade] Dosunmu. The entire South-West is too important, too sophisticated and too educated to be in the hands of rascals". Wole Shadare, Iyabo Lawal and Mohammed Abubakar, "Fashola, Aregbesola, others tackle Jonathan's 'recklessness' in calling South West leaders 'rascals'", *Nigeria Guardian*, 9 February 2011.

<sup>27</sup> Crisis Group interviews, Abuja, Port Harcourt, Calabar, Lagos, Ado-Ekiti, Abeokuta, Ile-Ife and Ibadan, 14-28 January 2011.

<sup>28</sup> Crisis Group interviews across the country, 11-31 January 2011.

<sup>29</sup> Crisis Group interview, conflict expert, Abuja, 13 January 2011. Also see Unom and Ojo, "Election 'Hot Spot' Analysis", op. cit. With respect to violence by local chapters of the National Union of Road Transport Workers, see Olalekan Olabulo, "Mushin: Notorious haven of violence", *Sunday Tribune*, 23 January 2011; and "NURTW crisis: More clashes in Ibadan", *Nigerian Compass*, 20 August 2010.

as linked to local politics.<sup>30</sup> In some states surges of violence in pre-election months are due to rival gangs vying for use by politicians.<sup>31</sup>

Violence, however, is also demand driven, with politicians funding, arming and retaining thugs, at times in response to perceptions opponents are doing so. In some cases these groups, cast off by or beyond the control of their benefactors, carry on their violence after elections. The ranks of Niger Delta militant groups are swelled by individuals originally armed for electoral purposes.<sup>32</sup>

Politicians exploit identity to bolster their support bases. Communal tensions, frequently related to competition for land or resources, can erupt into bloodshed during election season. Killing and destruction after local polls in Jos, Plateau state in 2008 left, according to some estimates, between 400 and 600 dead.<sup>33</sup> Violence there illustrates the role played by politicians in aggravating stresses. The state governor reportedly not only favours members of his own ethnic group but also manipulates their perceived grievances and negative stereotypes against other groups.<sup>34</sup> Such reckless campaign tactics deepen societal divisions and subvert formal institutions to propagate rather than resolve local conflicts.

Violence will not be removed from the electoral environment in the brief remaining period before Nigerians go to

the polls in April, not least because it is an entrenched aspect of the fierce winner-takes-all style that characterises political competition in the country more generally. Politicians have regularly ignored codes of conduct in past elections. All 36 state governors did sign on 8 February a Nigeria Governors' Forum "commitment to a free and fair electoral process", though this has not been widely broadcast.<sup>35</sup> Further public and better-publicised commitments by presidential, gubernatorial and other candidates to refrain from using violence or divisive campaign rhetoric may at least deter the most flagrant abuses. The following steps would offer some hope of progress:

- Party leaderships and all candidates should sign the new code of conduct INEC is preparing.<sup>36</sup>
- Observers of previous elections have reported on the intimidating presence of politicians and their thugs around polling facilities. INEC's code of conduct should prohibit all politicians – especially governors – from roaming the state on election days with heavily armed escorts. The only polling unit politicians need to visit is the one in which they are registered to vote.
- Implicating politicians in rigging or violence is often difficult, but arresting their thugs – ahead of election day – would send a clear warning against impunity.
- INEC's inter-agency consultative committees on election security – already established at federal and state level to coordinate the work of state security agencies – must develop and roll out detailed plans for securing the polls and preventing violence. Police and other security forces should deploy based on risk analysis, rather than simply sending two officials to every polling station.
- Links should be established between the state inter-agency committees, civil society groups working on tracking and preventing electoral violence and religious and community leaders who may be capable of de-escalating tensions. The state is primarily responsible for security, but it should tap the expertise and peacekeeping potential of other actors.

#### D. LONG-TERM VULNERABILITIES

The most significant consequence of rigged elections is the central contribution they make to the corruption and clientelism that fuel Nigeria's conflicts. Vast oil revenues,

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<sup>30</sup>The ANPP national party chairman, Dr. Ogbonnaya Onu, said, "it appears as if there is a conspiracy that if they cannot get us by the votes, they will get us by the bullets ...." Former President Ibrahim Babangida (PDP), responding to the attack, said, "the spate of politically motivated killings and assassinations in the country has assumed a frightening dimension. What has happened in Borno is not an isolated case. Just recently the ANPP Chairman in Tafawa Balewa Local Council of Bauchi State, Alhaji Isiaku Mohammed, was killed along with his three children". "ANPP, Babangida condemn violence, killing in the polity", *Nigeria Guardian*, 31 January 2011. Borno state governor, Ali Modu Sheriff, whose brother was killed along with Gubio, claimed that politicians, not Boko Haram, were responsible for the killings. Gbenga Akingbule, "'Desperate' politicians, not Boko Haram, killed my brother", *Nigerian Compass*, 1 February 2011.

<sup>31</sup>Crisis Group interview, conflict expert, Abuja, 13 January 2011.

<sup>32</sup>See Unom and Ojo, "Election 'Hot Spot' Analysis", op. cit., p. 18; also Crisis Group interview, conflict expert, Abuja, 24 January 2011.

<sup>33</sup>Philip Ostien, "Jonah Jang and the Jasawa: Ethno-religious conflict in Jos, Nigeria", August 2009, [www.sharia-in-Africa.net](http://www.sharia-in-Africa.net), p. 1.

<sup>34</sup>Unpublished conflict analysis by a Western donor made available to Crisis Group. See also Ebere Onwudiwe and Chloe Berwind-Dart, "Breaking the Cycle of Electoral Violence in Nigeria", U.S. Institute for Peace, December 2010; also Ostien, "Jonah Jang", op. cit.

<sup>35</sup>The commitment document was shared with Crisis Group; see also [www.imostate.gov.ng/news/704](http://www.imostate.gov.ng/news/704).

<sup>36</sup>Discussions are ongoing between INEC and political parties over a code of conduct prepared by INEC with the support of the U.S. International Republican Institute and the Commonwealth Secretariat.

zoning deals and stolen elections may have produced a degree of elite stability since the return to civilian rule, but the heavy price of this “rogue’s peace” has been increasing polarisation and instability.<sup>37</sup> Armed groups, from Delta militias to Boko Haram, share a narrative of rage at bad governance, of which elections that should forge a tangible link between Nigerians and their rulers are instead the most visible expression.

Leaders who lack legitimate popular mandates from credible elections have struggled to resolve the country’s conflicts. Especially in the Delta, fraudulent elections have regularly been followed by sharp escalations of violence.<sup>38</sup> Neither the 2007 elections nor, in much of the country, those of 2003, offered citizens a genuine opportunity to hold their leaders to account or provided the winners much incentive for better performance in office. The horse-trading and godfatherism on which many politicians rely to win leave incumbents beholden to powerful interests that demand returns on their investments in the form of contracts, public funds or control over appointments. In this light, although the 2011 primaries were in places less violent than those of 2007, the deals and large sums of money reportedly doled out to secure support bode poorly for improved delivery of public goods.

### III. RULES AND UMPIRES

#### A. LEGAL REFORMS

In response to stinging domestic and international condemnation of the 2007 polls, newly-elected President Yar’Adua established a 22-member Electoral Reform Committee, chaired by respected former Chief Justice Mohammed Uwais. Based on broad consensus across society, the Uwais Committee’s final report laid out a sweeping agenda for reform.<sup>39</sup> Yar’Adua and the PDP-dominated legislature received the report tepidly, and the president’s illness and subsequent death further stalled debate, but reforms since Goodluck Jonathan assumed of-

fice have incorporated some of the committee’s recommendations.<sup>40</sup>

Constitutional amendments made the INEC a first-line budget item, guaranteeing its funding in the federal budget and thus reducing its dependency on the executive.<sup>41</sup> Further amendments shortened deadlines for action on petitions against results and reduced quorums for electoral tribunals, aiming to avoid the drawn-out cases against powerful incumbents that marked previous polls.<sup>42</sup> In response to calls for greater internal party democracy, the new Electoral Act introduced detailed requirements for primaries<sup>43</sup> and for the merger of political parties<sup>44</sup> and outlawed “carpet crossing”, a common practice of standing for one party, then switching to another after winning office.

But crucial recommendations were shelved. The president still appoints the INEC chair, which, despite the well-received choice of Jega, leaves the body’s credibility to executive whim. Lawmakers scrapped the Uwais proposal to establish two new entities: an Electoral Offences Commission with widespread powers to prevent, investigate and prosecute electoral crimes and a Political Parties Commission to accredit observers and oversee party registration and compliance with laws. Many, including reportedly Uwais himself, consider the failure to create the former a lost opportunity to reverse impunity for electoral crimes.<sup>45</sup> Without the offences commission, an INEC already burdened with running elections and whose own staff in the past has committed or been complicit in offences is responsible for bringing offenders to book.<sup>46</sup>

<sup>37</sup> Darren Kew, “Nigerian Elections”, op. cit.

<sup>38</sup> For a fuller discussion on how the rigged 2007 elections undermined the capacity of the government to tackle Nigeria’s conflicts, see Crisis Group Report *Nigeria: Failed Elections*, op. cit.

<sup>39</sup> The Electoral Reform Committee consulted broadly, holding public hearings in twelve of Nigeria’s 36 states and receiving 1,466 memorandums from various political interests. “Final Report, Volume 1 Main Report”, Electoral Reform Committee, December 2008, unpublished.

<sup>40</sup> On assuming office, President Jonathan invited an independent international electoral assessment team to make recommendations for credible elections in 2011. Led by the Ghanaian election commission chairman Dr Kwadwo Afari-Gyan, it reviewed the recommendations of the Uwais Committee and made a set of prioritised recommendations of its own. “Final Report”, Independent Electoral Assessment Team, op. cit.

<sup>41</sup> Amendments to Section 84 of the constitution, new subsection 8.

<sup>42</sup> See Section II.C below.

<sup>43</sup> Electoral Act 2010, Article 87.

<sup>44</sup> Electoral Act 2010, Article 84.

<sup>45</sup> Crisis Group interview, diplomat, Abuja, 23 January 2011.

<sup>46</sup> “Final Report”, Electoral Reform Committee, op. cit., p. 38. Also discarded were a staggered calendar for executive and legislative elections – which would have seen presidential and gubernatorial polls taking place two years apart from elections to federal and state legislatures – a clear calendar for local elections and integration into INEC structures of the bodies responsible for running local polls, which are currently appointed and controlled by state governors. According to the Electoral Reform Committee, local elections should “serve as a crucible for nurturing conditions for credible elections in the country”.

Lawmakers also rejected Uwais proposals to allow independent candidates to contest elections, which could have expanded the public space to include individuals popular in their constituencies but without partisan affiliation. Plans to hold elections sufficiently ahead of the end of office holders' terms to make it more feasible for tribunals to rule on appeals before winners were sworn in were dropped when INEC opted to conduct a full re-registration of voters, then realised it made a January elections date impractical. This forced a constitutional amendment that the president signed only in early January and which, along with late revisions to the Electoral Act, meant that electoral authorities and parties prepared for elections uncertain over applicable rules.<sup>47</sup>

Legislators did, however, change the schedule so that state and federal legislative elections are held before the presidential vote that in turn takes place a week ahead of the gubernatorial contests. Reportedly the result of a deal between the legislature and Jonathan, this likely benefits him, because governors seeking his support for their re-election can be expected to be more determined in "delivering" votes for him.<sup>48</sup>

Proposals were also dropped that aimed at increasing representation for opposition parties, women and marginalised groups by injecting into the first-past-the-post (FPTP) electoral system an element of proportionality for legislative contests.<sup>49</sup> Modifying voting systems should be approached cautiously, and the Uwais proposal may not have broadened participation as its designers forecast.<sup>50</sup> But, as the commission report attests, FPTP in Nigeria exacerbates the winner-takes-all, divisive nature of elec-

toral competition and does nothing for the representation of women – chronically underrepresented in Nigeria's institutions – and other marginalised groups.<sup>51</sup>

New laws only matter, of course, if they are enforced, and Nigerian elections traditionally suffer as much from politicians ignoring laws as from weakness in the formal legal framework. Nonetheless, closing legal gaps that facilitate manipulation is important. After April, the Uwais Committee's report, which languishes unpublished in the National Assembly, should be put in the public domain and reform efforts renewed. For future elections, rules of the game should be established well ahead of time to avoid confusion.

## **B. CHAIRMAN JEGA AND THE INEC**

The most significant change ahead of elections, however, came with President Jonathan's surprise appointment in June 2010 of Professor Jega, a former member of the Uwais Committee, as INEC chair. His tenure as vice-chancellor at Bayero University and active opposition to military rule as president of the Academic Staff Union of Universities had earned him a deserved reputation for integrity. He assumed office with the trust and high expectations of civil society and opposition parties. His predecessor, Maurice Iwu, was widely seen as a PDP stooge after flagrant rigging benefited that party in 2007.<sup>52</sup> Jega's arrival did much to restore public confidence in INEC and was the first clear sign that Jonathan intended to respect repeated promises to allow credible polls.<sup>53</sup> The legislature's timely passage of INEC's budget without executive interference – in sharp contrast to Obasanjo's blocking of funds so as to exert control over the body in both 2003 and 2007 – was another positive sign.<sup>54</sup>

Jega, however, faced an uphill struggle. By his own admission, INEC's task is "a challenging one in the context of failures and disappointment in the elections and larger body politic". He inherited a dysfunctional organisation hollowed out by corruption during the 2007 polls and riddled with patronage links to senior politicians. The lateness of his appointment forced him to perform a "balancing act" between much-needed internal purges and preparations for a testing general election.<sup>55</sup>

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<sup>47</sup> Especially relevant was an amendment to the law that denied INEC the ability to reject the nomination papers of candidates not elected in primaries run according to the law or party rules. See Section III.B below.

<sup>48</sup> Crisis Group phone interviews, civil society leaders, 14 February 2011. Jonathan can rely on the support of governors who in turn hope for his help for their re-election. In 2007 gubernatorial and state assembly elections were held first, followed by presidential and national assembly votes a week later, risking recalcitrance by governors who had already enjoyed presidential support.

<sup>49</sup> The Uwais Committee proposed increasing the number of seats in both houses of the National Assembly and state legislatures by 30 per cent. These additional seats would be allocated to parties in order to address disproportional results in the first-past-the-post contests – though only to parties that won more than 2.5 per cent of the votes. Parties would have to include on their candidate lists for these proportional seats at least 30 per cent female candidates and 2 per cent physically challenged candidates. "Final Report", Electoral Reform Committee, op. cit., p. 53.

<sup>50</sup> "Final Report", International Electoral Assessment Team, 10 December 2010.

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<sup>51</sup> "Final Report", Electoral Reform Committee, op. cit., p. 38.

<sup>52</sup> Crisis Group Report, *Nigeria: Flawed Elections*, op. cit.

<sup>53</sup> A credible election commission chair trusted by all factions is a crucial variable in the success of difficult elections: polls in Sierra Leone and Ghana are recent examples in West Africa.

<sup>54</sup> The constitutional changes that make INEC a first-line budget item come into force in 2012.

<sup>55</sup> Crisis Group interview, Chairman Attahiru Jega, Abuja, 21 January 2011. Supporters argue that he has softened internal



The chair has strong authority to manage the commission, but the Electoral Act still mandates the president, rather than INEC, to appoint resident election commissioners (RECs) in each state. This leaves them entrenched – only the president and a senate majority can fire them – but susceptible to the influence of powerful governors.<sup>56</sup> Below state level, many staff complicit in the 2007 rigging remain, especially election officers in local government areas, some of whom fiddled results for their political masters.<sup>57</sup>

Jega has taken some measures to remove the rot. As per Uwais Committee recommendations, INEC this year has recruited youth corps members as temporary registration and polling staff, instead of civil servants and teachers who may be beholden to politicians.<sup>58</sup> There are plans for respected citizens, drawn from civil society and academia, to replace electoral officials as returning officers. Internal investigations and strong personal pressure from Jega forced the December resignation of Mrs Ayoka Adebayo, a resident electoral commissioner named by courts for taking bribes and fixing results.<sup>59</sup> The case illustrates the difficulties INEC faces removing suspect staff, especially RECs. But Adebayo's exit, widely reported in the Nigerian press, may deter similar malfeasance in April.

INEC can do more, however, even in the limited time before polls, to tackle impunity within its ranks and make good on Jega's repeated promises to bring electoral offenders to book. Furthermore, despite its operational demands, INEC should not lose sight of the centrality of its own transparency to public trust in elections. A number of stakeholders, including among Jega's civil society allies, warn against the commission's recent unwillingness to

share information or be frank about flaws.<sup>60</sup> Observers have reported delays and muddles in receiving accreditation. Additional measures to increase transparency might also mitigate the excessive expectations that, Jega warns, threaten confidence in the coming elections.<sup>61</sup>

To increase confidence in the polls by tackling impunity within its ranks and increasing transparency INEC should:

- ❑ instruct its legal department to prosecute staff whom courts or tribunals have identified in electoral offences, expediting cases where rulings already attest to the validity of evidence;
- ❑ provide regular, timely and comprehensive information about the elections, especially changes in policy and regulations, to all stakeholders in easily accessible formats through weekly formal multi-party and civil society forums at federal and state level;
- ❑ make its decisions public by posting them on its website;
- ❑ publish on its website the names of all candidates contesting the 2011 elections; and
- ❑ disclose which groups have been accredited to observe the registration process, publish clear guidelines for accreditation and accredit further observers and party agents in a timely and efficient manner.

And Jega must be permitted to continue reforms beyond April. International pressure was a factor in initiating reform after the last polls and should be maintained after these. A common refrain across Crisis Group's interviews is that the change at the top of INEC will fully bear fruit only at the next round of elections, in 2015.

## C. ELECTORAL JUSTICE

The electoral justice system involves the prosecution of offences and the resolution of petitions against results. Petitions have, especially in 2007, led to the annulment of a number of rigged elections. However, as noted above, no Nigerian since independence has been convicted of an electoral offence, despite such ballooning malpractice that the Uwais Committee described polls as suffering "a progressive degeneration of outcomes".<sup>62</sup> Tackling this impunity, which fuels rigging and violence, is central to improving elections.

reforms to avoid alienating so much of the organisation as to undermine its capacity to conduct the elections.

<sup>56</sup> Two thirds of resident commissioners have been appointed since 2007. For an account of how governors control RECs, see Donald Duke, "How governors rig elections", *Nigeria Guardian*, 19 July 2010. Not all current RECs are problematic: in Cross River state, for example, the new REC, whose predecessor had a questionable reputation, is an ex-human rights activist. Crisis Group interview, scion of the Nigerian left, Calabar, 16 January 2011.

<sup>57</sup> Crisis Group interviews, civil society leaders, Abuja, 12 January 2011.

<sup>58</sup> All Nigerian university and polytechnic graduates perform a full year's public service in a youth corps. According to the original rules of the National Youth Service Commission (NYSC), members are supposed to be posted to states other than their own. INEC has leverage over such young people: if they do not respect rules, their term in the corps can be extended.

<sup>59</sup> Crisis Group interview, civil society figure close to INEC, Abuja, 13 January 2011. Also Fidelis Soriwei, "Ayoka Adebayo's exit: Signal to other errant RECs", *Nigeria Punch*, 11 December 2010.

<sup>60</sup> Crisis Group phone interviews, civil society leaders, 11 February 2011.

<sup>61</sup> Crisis Group interview, Chairman Jega, Abuja, 21 January 2011.

<sup>62</sup> "Final Report", Electoral Reform Committee, op. cit., p. 19.

Shortfalls in electoral justice reflect the weakness of rule of law in the country more broadly. The powerful are rarely held to account. That executive office-holders enjoy legal immunity from prosecution for a wide range of crimes<sup>63</sup> in itself raises the stakes of elections and encourages cheating: in some cases politicians have avoided jail sentences by winning office.<sup>64</sup> The judiciary, which is central to electoral dispute resolution, enjoys a degree of probity and independence at federal level – although this may be eroding in the face of recent attempts to shift Justice Ayo Isa Salami from the Court of Appeal.<sup>65</sup> Lower levels of the bench, over whose budgets and appointments governors exert control, are prone to corruption and vulnerable to executive interference.<sup>66</sup>

The Electoral Act lays out a comprehensive list of electoral offences and their penalties. It does not however, set specific procedures for complaints, beyond that INEC should prosecute offences in the courts. Confusion over this gap marked previous polls, with complaints submitted to a range of institutions, including the various levels of INEC, the police and federal and state courts.

Within INEC, the legal department leads in preparing cases for prosecution. However, INEC lawyers inevitably rely on the police to collect evidence. Furthermore, electoral offences are crimes, so according to the constitution can also be prosecuted by the police and Attorney General's office. The prosecution of electoral offences is regarded as something of a hot potato.<sup>67</sup> INEC perceives itself overburdened with electoral preparations, so unable to dedicate resources to pursuing offenders. The inspector general of police is reportedly relieved that the new Electoral

Act gives INEC more explicit responsibility for prosecution.<sup>68</sup> Establishing task forces at federal and state level, comprised of INEC lawyers and representatives from the police and Attorney General's office, could offer a way through the impasse. The Nigerian Bar Association has also offered to assist in providing members to prosecute offenders so could also join. Prosecution of electoral staff and others implicated in electoral offences in previous tribunal rulings would be a good entry point for these task forces.

Petitions against results, which can be filed by candidates and political parties but not voters, civil society or other stakeholders, are resolved by specially-established electoral tribunals composed of high court judges, or higher levels of the judiciary. By 2009, eleven of 36 gubernatorial races and nine of 109 senate contests from 2007 had been annulled, arguably the sole institutional check against the theft of those elections. The petitions system, however, is heavily skewed in favour of defendants. Under the 1999 constitution, elections were and – due to the late reconstitution of INEC and thus late electoral preparations – will again be held within a month of the end of office-holders' terms, leaving insufficient time for tribunals to resolve disputes before winning candidates take their seats, even with petitions pending.<sup>69</sup> Once in office, politicians, especially state governors, control the resources and coercive instruments of the state, harming prospects of a fair hearing. A high burden of proof falls on the petitioner.

Tribunals were inundated with petitions in 2003 and 2007, reflecting both the massive flaws in the elections and a tradition of contesting results. The disputed legal framework and scores of cases lodged after party primaries suggest that courts will again be overwhelmed after these polls.<sup>70</sup> In 2007 rulings were long-delayed: petitions against the Delta and Osun 2007 gubernatorial polls, for example, were resolved only three and a half years into the new governors' terms. Furthermore, electoral offences are prosecuted in a judicial process, described above, separate from that for petitions. Tribunals cannot punish electoral offenders – even when clearly implicated – other than by overturning results. Often the chief beneficiaries and architects of rigging are thus able to compete again in reruns of annulled elections and win.

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<sup>63</sup> Section 308 of the constitution defines the immunity of executive office-holders, including the president and state governors.

<sup>64</sup> The current Abia governor, for example, was granted bail and thus freedom from detention on criminal charges days before he was sworn into office. Unom and Ojo, "Election 'Hot Spot' Analysis", *op. cit.*, p. 16.

<sup>65</sup> The recent attempt to shift the independent-minded Justice Ayo Isa Salami, who was previously involved in cases that overturned the fraudulent elections of a number of PDP governors, from the Court of Appeal, which is central to resolving petitions and appointing judges to tribunals, failed, but it has been portrayed as politically motivated. In response to attempts to move him, Justice Salami accused the Chief Justice of trying to influence the decision on the Sokoto State governorship election appeal. Crisis Group phone interviews, diplomats and civil society leaders, 14-15 February 2011. See also, Joseph Adeyeye, "Katsina-Alu vs. Salami: More than a family affair", *Punch*, 18 February 2011; and Felix Nnamdi, "Katsina-Alu asked me to compromise Sokoto gubernatorial petition – Ayo Salami", *Sahara Reporters*, 8 February 2011.

<sup>66</sup> See, for example, A. Carl LeVan and Patrick Ukata, "Nigeria: Countries at the Crossroads", Freedom House.

<sup>67</sup> Crisis Group interviews, Abuja and Kano, 12-17 January 2011.

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<sup>68</sup> Crisis Group interview, diplomat, Abuja, 14 January 2011.

<sup>69</sup> In line with recommendations of observers and the Uwais Committee, initial constitutional amendments in 2010 advanced the date of polls to between three and six months ahead of the end of office-holders' terms. This would have allowed for resolution of petitions before winners were sworn in. However, Jega's late appointment and his decision to hold a full re-registration exercise forced another constitutional amendment that pushed dates back again.

<sup>70</sup> See Section III.B below.

Some measures have been taken since 2007 to expedite rulings on petitions. Constitutional amendments reduced the number of judges in tribunals from five to three, which increases the number of tribunals and should make for quicker decisions, and shifted responsibility for petitions involving gubernatorial elections from state tribunals to the Court of Appeal.<sup>71</sup> Judges selected by the Court of Appeal to serve on tribunals will receive special training.<sup>72</sup> The new Electoral Act includes detailed procedures and shortened deadlines. Petitions must be submitted within three weeks of polling and adjudicated within four months, with further appeals resolved within two months.<sup>73</sup>

However, despite recent reforms, many stakeholders fear that with tribunals and courts inundated with petitions, complainants will again face protracted cases against powerful incumbents.<sup>74</sup> INEC may be able to reduce the number of petitions by taking action itself against obviously flawed results. During previous elections, it has simply accepted all returns – however much they beggared belief – leaving unhappy losers to pursue redress through petitions. Professor Jega has, however, said he intends to suspend announcement of results in which suspicious returns may have been influential.<sup>75</sup> This would allow INEC to conduct its own investigations and, if necessary, annul results and hold elections again, rather than leave tribunals or courts to do the same years later.

To dent pervasive impunity:

- task forces should be established at federal and state level between INEC, public prosecutors and the police to facilitate prosecutions. Electoral offenders, including INEC staff, security officials and politicians, must be prosecuted, ideally early enough to achieve decisions before elections;
- the Court of Appeal and electoral tribunals must receive adequate resources and training to resolve petitions within the new legal timeframes;
- INEC could utilise Project 2011 Swift Count, organised by four civil society groups, as an independent means for verifying suspicious results;<sup>76</sup> and

- domestic and international observer groups should share with INEC through regular, formalised forums information that may assist it to investigate bogus results and electoral offenders.

Reversing the culture of impunity requires systematic reform, including better balancing executive power and strengthening rule-of-law institutions. That cannot happen in the next weeks, but some ground can still be gained in tackling electoral crimes in 2011. More effective dispute resolution would also encourage losers to use only peaceful means to challenge results.

## IV. ELECTION PREPARATIONS

### A. LEARNING FROM THE DELTA STATE RE-RUN

The extent to which Chairman Jega's integrity will translate into improved general elections was given a tough early trial by the re-run of the Delta State gubernatorial race on 6 January 2011. The state is an oil producer, whose governor controls annual revenues of over a billion dollars, with minimal oversight from a pliant legislature.<sup>77</sup> PDP's stranglehold – the state governor, at least twenty of 29 legislators, all ten of its representatives in the National Assembly's lower house and two of its three senators are of that party or its affiliates – makes it a virtual one-party state.<sup>78</sup>

Spoils of office in Delta State are so extensive that politicians rarely leave voters to decide who gets them. Local and international observers concur that its elections since 1999 have been abysmal.<sup>79</sup> Election-season there, as in

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atic Institute. Project Swift Count deployed about 1,000 observers to all 774 LGAs during voter registration and will send out some 8,000 for election days. These observers will report results from a representative sample of polling units and the project will collate these independently from INEC, providing a useful means for INEC's leadership to verify suspicious returns from its offices. See [www.pscnigeria.org](http://www.pscnigeria.org).<sup>77</sup> In 2010, the Delta State budget was 210 billion naira (\$1.36 billion). Expenditures have, however, been opaque, with the state government refusing to publish a breakdown; see, "Delta Budget Analysis", Niger Delta Citizens Budget Platform, [http://citizensbudget.org/citizensbudget/citizens\\_image/Delta%20Budget.pdf](http://citizensbudget.org/citizensbudget/citizens_image/Delta%20Budget.pdf).

<sup>78</sup> Delta State House of Assembly and National Assembly official websites. Even the third senator elected in 2007, Chief Patrick Osakwe, is a former PDP member, with close links to the party, who missed a place on its ticket as a result of an internal party dispute. "Delta – the PDP hurdle before Uduaghan", *Nigeria Tribune*, 18 February 2011.

<sup>79</sup> See "Special Report", Centre for Environment Human Rights and Development, 1-27 April 2007; and Patrick Naagbantou,

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<sup>71</sup> Amendments to constitution, Sections 246 and 285.

<sup>72</sup> The training is organised by the International Foundation for Election Systems (IFES), a U.S. based non-profit specialising in electoral assistance.

<sup>73</sup> Electoral Act 2010, Article 134.

<sup>74</sup> Crisis Group interviews. Abuja and Kano, January 2011.

<sup>75</sup> Crisis Group interview, Chairman Jega, Abuja, 21 January 2011.

<sup>76</sup> The four groups are the Federation of Muslim Women's Associations in Nigeria, Justice Development and Peace/Caritas Nigeria, the Nigerian Bar Association and the Transitional Monitoring Group. They are supported by the U.S. National Democ-

several other parts of the country, sees a sharp uptick in violence. Politicians and their sponsors arm and fund youth or other gangs to influence outcomes; they also exploit insecurity to rig blatantly. Thugs hired by candidates – frequently working with security forces – steal election materials or scare voters away and stuff ballot boxes. In some local government areas (LGAs), results are fabricated wholesale, usually with the connivance of electoral officials who are bribed or PDP cronies. In 2003 and 2007, results indicated turnouts approaching 100 per cent and huge majorities for PDP incumbents in areas observers could not visit because of insecurity or in which they witnessed scant voting.<sup>80</sup>

On 9 November 2010, an Appeal Court in Benin City, Edo state threw out results from the 2007 Delta State gubernatorial election, suspended the sitting PDP governor, Dr Emmanuel E. Uduaghan, then more than three and a half years into his term, and ordered a re-run within 90 days. Uduaghan is a close ally of his predecessor, cousin and sponsor, James Ibori, who faces charges of money laundering in the UK.<sup>81</sup> Despite being chief beneficiary of the 2007 rigging, the Appeal Court's ruling did not prevent Uduaghan from standing in the re-run.<sup>82</sup>

Civil society groups and opposition candidates pressed for a vote in early February 2011, after voter registration, that would have avoided using the old, discredited voter rolls.<sup>83</sup> INEC commissioners instead set the January date, a decision perceived to benefit President Jonathan by ensuring that he would be able to count on Uduaghan's support to mobilise the state's delegates ahead of the PDP presidential primary later that month.<sup>84</sup> Sources close to

INEC suggest that Jega pressed for February but respected the commission's majority vote to advance the date.<sup>85</sup>

Preparations took place over the holiday season, with the days immediately preceding the vote marked by chaotic and in places late delivery of election materials. On election day itself, however, voting was orderly in parts of the state. INEC used a methodology known locally as the modified open ballot system, whereby citizens presented their voter cards and were checked on lists (or "accredited") during the morning, waited nearby to vote – supposedly in secret – after lunch and were permitted to watch electoral officials count their ballots after the polls closed. It is unorthodox, may disenfranchise those who arrive too late to be accredited and involves milling crowds of potentially volatile voters. But it has been used before in Nigeria and, with its roots in community mandate protection, enjoys public trust.<sup>86</sup> It was, for the most part, applauded by local observer groups.<sup>87</sup>

Familiar patterns of malpractice emerged in other parts of the state, however, with reports of vote buying, thugs attacking polling units, electoral officials and voters and snatching materials and many voters disenfranchised because their names were missing from the rolls. In some polling units, booths that allow voters to cast their ballots in secret were reported missing. Returns from riverine areas around Warri, often remote and inaccessible to observers and opposition party agents, indicated voter turnouts of 60 to 70 per cent, with votes overwhelmingly for Uduaghan. These were below the risible 90 to 100 per cent figures reported in previous elections but sufficiently high compared with the 20 to 30 per cent turnout in other LGAs to merit suspicion.<sup>88</sup>

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"Delta re-run election; gloom cloaks the big heart special pre-Election edition", *Sahara Reporters*, 4 January 2011; also, "Final Report, Gubernatorial and State Houses of Assembly Elections", 14 April 2007; and "Presidential and National Assembly Elections", 21 April 2007, European Union Election Observation Mission, pp. 6-7, 28. The same report (p. 40) notes that the "INEC Chairman announced the gubernatorial results in Delta and Ondo States even though the Resident Electoral Commissioners in both states had not yet announced the results at state level".

<sup>80</sup> See, for example, "Special Report", Centre for Environment, Human Rights and Development, 1-27 April 2007.

<sup>81</sup> "Nigeria ex-governor Ibori faces extradition to the UK", BBC, 13 December 2010.

<sup>82</sup> The court decided an appeal to a petition against results, not the prosecution of an electoral offence.

<sup>83</sup> See, for example, the conclusions of the Stakeholder Democracy Network, at [www.stakeholderdemocracy.org/delta-state-election-re-run-observation.htm](http://www.stakeholderdemocracy.org/delta-state-election-re-run-observation.htm).

<sup>84</sup> Uduaghan did "deliver" Delta State for Jonathan; 144 of 151 delegates supported his nomination, *This Day*, 14 January 2011.

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<sup>85</sup> Although some commissioners reportedly decided on January to benefit Jonathan, others were worried about potential legal implications related to the electoral calendar. Crisis Group interview, civil society leader, Abuja, 12 January 2010.

<sup>86</sup> The idea of community mandate protection is that local communities are present around the polling units to prevent malfeasance. With ballot counting done in public view and results posted in the polling unit immediately after, the onus is on the community or neighbourhood to protect its votes. The open ballot system was used during the 1993 elections, widely thought to be the freest in Nigeria's history.

<sup>87</sup> Crisis Group interview, civil society representative and election observer, Abuja, 21 January 2011; also see, for example, the Stakeholder Democracy Network Conclusions, op. cit.

<sup>88</sup> Warri South returned 56,854 votes (86 per cent for PDP, 52 per cent turnout), Warri North 37,609 votes (99 per cent PDP, 64 per cent turnout) and Warri South West 53,769 votes (95 per cent PDP, 60 per cent turnout). The average turnout across all other LGAs was 26 per cent. Uduaghan won the re-run with 285,995 votes to his main opponent, Ovedje Ogboru's 138,244. Results shared with Crisis Group by observer group, 10 February 2011.

Rather than investigate suspect returns, INEC's resident election commissioner included them in vote totals and declared a victory for Uduaghan. This was the familiar INEC practice of accepting figures even where they defied plausibility and leaving losers to petition overburdened electoral tribunals. Although INEC staff posted results in some polling units, INEC ward, LGA and state offices further up the results chain did not release polling unit breakdowns, which prevented observers and opposition party agents from identifying inflated numbers and verifying the accuracy of results. An observer subsequently photographed used ballots dumped outside INEC offices in Warri South LGA – another familiar pattern precluding use of the ballots as evidence in INEC or tribunal investigations.<sup>89</sup>

The Delta re-run thus revealed a mixed picture. Despite media reports of rigging and violence, seasoned state observers contend that residents in parts of the state had the chance – for the first time – to cast ballots and have them counted.<sup>90</sup> Uduaghan's main opponent, Chief Great Ovedje Ogboru of the Democratic People's Party (DPP), received more votes than Uduaghan in almost half of Delta's 25 LGAs. This suggests that if a similar process is followed in April, it could produce more representative institutions.

Significantly, some observers complimented the role of the security agencies.<sup>91</sup> The over 20,000 police who flooded in did not prevent a wave of electoral offences and violence but did create safer conditions in parts of the state than previously. Free phone lines established by the Police Service Commission for members of the public to report lawbreaking carried almost 200 calls on election day, of which only two condemned the behaviour of security officials.<sup>92</sup> Despite flaws, observer groups rated the polls an improvement on 2003 and 2007.<sup>93</sup>

But the election also was a stark reminder of the hurdles INEC faces, both internally and in a context of lawlessness. Determining what happened in remote creek areas,

especially in the three Warri LGAs, is not possible without investigations; but those areas returned a sufficient number of votes to have impacted who won.<sup>94</sup> Patterns of manipulation in Delta suggest that – as in the past – politicians can target distant, dangerous areas, stuff ballots or fabricate results there and thus swing results. INEC's reluctance to delay announcing results pending investigation of suspicious returns or provide a polling-station breakdown at each stage of tabulation thus is worrying.

Learning from the Delta State re-run, INEC should:

- ❑ investigate, and if necessary prosecute, election officers from LGAs that returned suspicious results;
- ❑ plan rigorously for timely procurement, delivery, retrieval and management of election materials; use hand-over documents for sensitive materials; instruct all INEC staff that such materials must be stored safely, ideally at a secure location in the state capital, with materials from each polling unit kept together in resealed ballot boxes; and discard such polling unit materials only if no petition has been submitted by the deadline against results of a constituency of which that polling unit forms part;
- ❑ grant access to those electoral materials to would-be petitioners so that they can examine and compare what their own agents have with what makes up the collated results declared by INEC;
- ❑ ensure all polling units have booths or other means of ensuring the secrecy of the ballot;
- ❑ plan carefully a transparent and efficient system of results management for the April elections; in addition to posting results in each polling unit and giving copies to accredited party agents, publish a polling-unit breakdown – ideally in electronic spreadsheet format – at each level of tabulation; and
- ❑ put in place systems to identify suspicious returns, suspend the announcement of results where those returns may have affected who won, conduct its own investigations and, if necessary, hold new elections.

The Delta experience suggests that, by concentrating its resources and those of the state security agencies, INEC can run more credible and peaceful elections and go some

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<sup>89</sup> Crisis Group interview, Delta election observer, Abuja, 21 January 2011.

<sup>90</sup> See "Preliminary Report of Transitional Monitoring Group (TMG) on the Gubernatorial Election Held in Delta State on 6th January 2011: Delta Election – A Template for a New Dawn"; and the Stakeholder Democracy Network Conclusions, op. cit.

<sup>91</sup> Crisis Group interview, civil society representative and election observer, Abuja, 24 January 2011.

<sup>92</sup> Crisis Group interview, Human Rights Commission representative on the Police Services Commission, Abuja, 13 January 2011.

<sup>93</sup> For example, the Transitional Monitoring Group, the largest observer group in Delta, entitled its preliminary report "Delta Election – A Template for a New Dawn", [www.channelstv.com/media/documents/Delta%20state%20rerun%20election%20-%20Jan%206,%202011-1.pdf](http://www.channelstv.com/media/documents/Delta%20state%20rerun%20election%20-%20Jan%206,%202011-1.pdf).

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<sup>94</sup> Some election observers expressed a belief that the wrong candidate was declared the winner of the Delta re-run. Crisis Group interviews, observer of Delta elections, Abuja, 24 January 2010; and phone interviews, 15-16 February 2011. Ogboru has petitioned the Delta State Governorship Election Tribunal, claiming to have evidence proving massive rigging in the three Warri and the Bomadi LGAs. "Ogboru challenges Delta rerun at election tribunal", *Nigeria Guardian*, 1 February 2011.

way toward avoiding protracted cases resulting from floods of petitions, at least in a state or smaller unit.

## B. PARALLEL PRIMARIES AND ANOINTED STANDARD BEARERS

In contrast to previous years, parties generally held their primaries on schedule.<sup>95</sup> Reflecting recommendations from the Uwais Committee, the new Electoral Act adopted stricter procedures for primaries. Initial changes to the law mandated INEC to monitor that parties followed these procedures and their own constitutions.<sup>96</sup> A little-publicised late amendment to the Electoral Act, however, appears to have stripped INEC of the power to refuse the nominations of candidates where parties did not follow rules, thus denying it a vital tool of enforcement.<sup>97</sup>

Primaries overall were as manipulated as ever, many were violent, and party mandarins rather than the rank and file usually decided nominations. Many were characterised by confusion, chaos and frustration and trailed by allegations and counter-allegations of rigging, annulment of results that did not please the party hierarchy, carpet crossing and violence. Litigation against the results of particularly rancorous contests is causing delays that strain INEC's operational timelines and threaten a repeat of 2007, when court rulings forced it to change the ballot design at the last minute.<sup>98</sup> Unruly primaries were not the sole preserve of the ruling party: the ACN, CPC and smaller parties all experienced divisive, contested and manipulated battles for the party ticket.

Most interest surrounded the PDP presidential primary. Abuja elites and party delegates from across the country gathered in the capital's Eagle Square on 13-14 January 2011. Despite fears of violence, the ruling party put on a tidy show, albeit with a heavy security presence. The orderly process, however, was preceded by weeks of horse-trading – by many accounts facilitated with large sums of

money – between presidential aspirants and governors.<sup>99</sup> Jonathan reportedly cut a deal with governors whereby he pledged to support their re-election campaigns in return for their backing. Although delegates' individual votes were secret, the collective vote of each state was cast in public, which increased pressure on the governors to deliver the full delegation. The result was a decisive victory for the incumbent president.<sup>100</sup>

Some primaries did produce visible – though also occasionally violent – competition involving several candidates, with losers accepting the results: PDP gubernatorial contests in Akwa Ibom, Kaduna, Gombe, Lagos, Taraba, Kano and Yobe states are examples. Even in these races, however, the delegates who elected party candidates were frequently selected by the party hierarchy rather than elected by party card holders in local government areas.<sup>101</sup>

Other primaries were swept by incumbents, often with losers then switching parties. For example, in Ebonyi, PDP Governor Martin Elechi won all but four of the 638 votes, after his main challenger, Frank Ogbuwu, a former minister, withdrew. In Rivers, another incumbent governor, Rotimi Amechi, bested a former governor, Celestine Omehia, and others, losing the vote of only one of the 1,141 delegates. In Nasarawa, Governor Aliyu Doma also received all but one of the 557 valid votes, precipitating the defection of his main challenger, Tanko Almakura, to the CPC.<sup>102</sup> In a number of the states where PDP governors face a tough re-election contest, their principle challengers are former party members standing for other party tickets.

Some results were simply overturned by party godfathers. For example, Lekan Abiola, a hopeful for the House of Representatives in Ogun, switched from the ACN to the CPC after being forced to step down for the handpicked son of one of the party's leaders, Chief Segun Osoba.<sup>103</sup> In Ondo state, Dr Olu Agunloye, a former power and steel minister, was replaced as candidate for the Senate by party leadership, him to defect from the ruling Labour Party

<sup>95</sup> Party primaries were held from 26 November 2010 to 15 January 2011.

<sup>96</sup> Most parties use indirect primaries to determine candidates, in which members elect delegates, who then elect candidates at party congresses at state and federal level.

<sup>97</sup> "Power over candidates: NASS has castrated INEC", *The Will*, 8 February 2011; Crisis Group phone interviews and correspondence, civil society groups, February 2011. There is, however, still confusion over which version of the law applies.

<sup>98</sup> On 23 February 2011, Chairman Jega wrote to the Chief Justice calling on him to halt "frivolous granting of contradictory ex-parte court orders regarding the nomination of election candidates". Habeeb I. Pindiga, "Jega to CJN: Call judges to order", *Daily Trust*, 23 February 2011.

<sup>99</sup> Crisis Group interview, civil society leaders and journalists, Calabar and Lagos, 16, 24 January 2011; see also, Caroline Duffield, "Nigeria's 'cash and carry' politics", BBC News Africa, 14 January 2011.

<sup>100</sup> Jonathan won the votes of 2,736 delegates to 805 who voted for Atiku. "Jonathan floors Atiku", *This Day*, 14 January 2011.

<sup>101</sup> Crisis Group interviews, Abuja, Kano, Calabar and other states, 11 January-3 February 2011.

<sup>102</sup> Chioma Gabriel, "Ahead of elections 2011: Party primaries of intrigues, disputes", *Vanguard*, 15 January 2011; "Party primaries and electoral violence", *Punch* (editorial), 10 January 2011; "Party congresses and undemocratic acts", *Daily Sun* (editorial), 10 January 2011.

<sup>103</sup> Niyi Odebo and Fidelis Soriwei, "How I was forced to step down for Osoba's son", 9 February 2011.

to ACN.<sup>104</sup> CPC leaders disputed Mohammed Abacha's victory in the party's primary for the Kano state governor nomination. A tussle involving Abacha, the courts, INEC and the party saw Abacha first off the ticket, then back on, before he was replaced by the party hierarchy's favourite, Lawal Ja'afaru Isa.<sup>105</sup>

As a result of intra-party squabbles in some states, parallel primaries were held by competing factions that each selected their own slates of candidates. This was the case with the PDP's effort to nominate gubernatorial candidates in Zamfara, Enugu, Abia, Osun, Oyo and Ogun. In Ogun, President Obasanjo's faction (also known as the Martins-Kuye faction),<sup>106</sup> whose candidate, Yemi Oke, was accepted by INEC, is embroiled in a court battle over the party ticket with the faction of the incumbent governor, Gbenga Daniel.<sup>107</sup> In Oyo state, the re-nomination of the incumbent PDP governor, Adebayo Alao-Akala, is being contested in court by three of his most formidable opponents – Hazeem Gbalorumi, a former deputy governor, Wole Oyelese, a former minister, and Yekeen Adejo, who lost in the previous primary – and 34 other party members. Armed hoodlums invaded a local PDP congress in Oyo; the resultant violence left at least three dead and a number wounded.<sup>108</sup>

Despite the orderly show in Abuja, therefore, primaries gave a taste of the challenges ahead for INEC and Nigerian democracy. Many – especially those for “safe” seats – were marked by flagrant disregard for rules, wilful violence and godfather domination. Despite calls by the Uwais Committee and others for enhanced internal party democracy, they mostly failed to connect candidates with party rank and file. The slew of court cases, some still ongoing, against their results illustrate how flawed they were and may presage an avalanche of similar judicial proceedings after April's polls. That the grip exerted by the party hierarchy over nominations continues to prevent the emergence of new leaders without patronage links to mandarins is especially worrying, as poor leadership is perceived to underlie many of the country's problems. Parties again showed themselves to be alliances of con-

venience for the powerful, to be adopted and discarded at will, rather than platforms for policy.

### C. VOTER REGISTRATION

Voter registration since 1999 has been as flawed as elections. In parts of the country, manipulation of the process is part of a deliberate rigging strategy. In both 2003 and 2007, media reports and observers noted widespread incidents of names missing from the rolls and of rolls inflated with underage or ghost voters.<sup>109</sup> Politicians encourage supporters to register multiple times; bribe electoral officials to register bogus voters; or steal registration materials to produce illegal voter cards or compile illegal lists.<sup>110</sup> Areas with inflated registration figures then receive more ballots, allowing politicians, working with electoral staff, to engineer higher turnouts and swing results. Insecurity, thugs who scare away voters and corrupt electoral officials are integral to the mix; but, especially in 2007, inflated registration statistics have given numeric cover for massive fraud.

Chairman Jega thus inherited a register that was inaccurate, discredited and perceived by many as symbolic of broader electoral flaws. He and his fellow commissioners decided to scrap it and undertake a countrywide re-registration using biometric technology. This ran contrary to the advice of international experts, who argued there was not enough time, and the old register, despite its flaws, could be salvaged, at least for 2011.<sup>111</sup> Most Nigerian analysts, however, considered that public confidence in the old register was so low that it was politically impossible for Jega to use it.<sup>112</sup> The significance of the January registration exercise to the credibility of the April elections went beyond guaranteeing the franchise and tackling fraud. Politicians and voters alike saw it as the first major test of the new

<sup>104</sup> Dayo Johnson, “Agunloye dumps LP for ACN”, *Vanguard*, 10 January 2011.

<sup>105</sup> Atika Balal, “Kano CPC candidate: INEC reverses self, drops Abacha's name”, *Daily Trust*, 11 February 2011.

<sup>106</sup> Jubril Martins-Kuye is a minister in President Jonathan's cabinet.

<sup>107</sup> Kolade Larewaju, “Ogun guber tussle: I'll fight till the end – Daniel”, *Vanguard*, 22 February 2011.

<sup>108</sup> “PDP primaries of intrigues, controversies”, *Vanguard*, 6 January 2011. Two others died in a similar attack on a PDP congress in Niger State; primaries were interrupted by men with guns in Benue, *ibid*.

<sup>109</sup> Crisis Group Report, *Nigeria: Failed Elections*, *op. cit.* Also see EU and other observer reports from 2007. The EU document, for example, called the registration exercise “marred by delays due to a lack of available direct data capture machines, technical breakdowns and establishment of illegal voter registration centres”; it said the voter register was “poor and included underage voters, double entries, missing and blurred pictures of voters”. “Final Report”, *op. cit.*

<sup>110</sup> Crisis Group Report, *Nigeria: Failed Elections*, *op. cit.*

<sup>111</sup> Crisis Group interviews, international advisers and donors, Abuja, 11-17 January 2011. International experts issued similar warnings against costly, high-technology systems before the disastrous 2006-2007 voter registration.

<sup>112</sup> Crisis Group interviews, Nigerian analysts, 11-20 January 2011.

INEC.<sup>113</sup> Jega, on whom Nigerians pinned their hopes of better elections, invested much of his own authority in it.

It was big gamble. Biometric technology has a mixed track record in Africa and elsewhere.<sup>114</sup> An attempt to use it in 2007 failed, with INEC ordered midway through the exercise by lawmakers to revert to a manual paper-based system.<sup>115</sup> The 2011 timeline was tight. Registration was scheduled for two weeks in January, scant time to register the estimated 70 million eligible voters. There was also barely time to purchase data capture kits and design software. INEC planned to open 119,973 registration units and use the same locations for voting in April. Because of time constraints, it also bought expensive data capture kits for each unit, thus raising further both costs and stakes.<sup>116</sup> It recruited two staffers for each unit, almost a quarter-million mostly youth corps members, few of whom had previous electoral experience.

Registration got off to a wobbly start. INEC failed to deliver kits to registration units countrywide or delivered

them late.<sup>117</sup> Collecting fingerprint scans from registrants took longer than anticipated.<sup>118</sup> Planned four-day training for staff had been compressed into a single day, with the result that many were unfamiliar with equipment or procedures. Citizens, including some prominent personalities, waited hours to register, and many were forced to return on subsequent days.<sup>119</sup> In some urban centres, notably Abuja and Lagos, planned registration units did not reflect recent population shifts, with the result that there were too few units in some heavily populated areas.<sup>120</sup> An observer group estimated only 16 per cent of units opened on the first two days.<sup>121</sup> The exercise was denounced in the press, and Jega was singled out for criticism.

Over the first week, however, INEC made some headway. Software was adjusted so fingerprints could be collected more quickly. Most data capture machines arrived. Average daily registrations increased dramatically, as did the number of units open. By the end of the first week, the same observer group reported more than 90 per cent of units open.<sup>122</sup> Parliament amended the law, allowing INEC to extend registration into a third week. By the end of the exercise, criticism had eased.

Registration figures currently stand at 67.8 million, just short of INEC's 70 million target.<sup>123</sup> There are significant anomalies compared with the population statistics collected during the 2006 census, with wide variance in the percentage of each state's population that has registered.<sup>124</sup>

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<sup>113</sup> Crisis Group interviews, opposition politicians, Kano, 17-18 January 2011. A CPC state party boss, for example, expressed the party's intention to judge the new INEC both at national and state level by its performance, notably on voter registration.

<sup>114</sup> The rapid growth in Africa and elsewhere over the last decade in the use of biometric technology is in large part a response to manipulated registration exercises. Authorities have adopted biometrics in the hope they can prevent bogus registrations and produce accurate voter and civil registers. Data capture machines collect biometric data – fingerprints, photos or iris scans – from each registrant. Once all the data is collected in a central database, scans are run to weed out duplicates. The systems make sense on paper but frequently break down. Common problems include that kits do not function in dusty field conditions; staff collect insufficient data for the scans and that as kits are expensive, a limited number are purchased and then rotated around the country, which can limit the time voters have to register and increase the distance they must travel to do so – which in turn may drive down participation. Expensive biometric systems often prove unsustainable, as election commissions that enjoy substantial international support for one election may lack the capacity or money to continue to use them for subsequent polls. In some places, commissions run into copyright problems, with companies that designed biometric systems owning a national voter register. (INEC designed its own software to avoid this.) On balance, the technology has not yet increased confidence in registers or diminished the potential for violence around elections, mostly because registration problems tend to be political, so require more than technical solutions. Also see, Astrid Evrensel (ed.), "Voter Registration in Africa: A Comparative Analysis", Electoral Institute for Sustainability in Africa, 2010.

<sup>115</sup> See Crisis Group Report, *Nigeria: Failed Elections*, op. cit.

<sup>116</sup> INEC ordered 132,000 data capture kits: one for each unit and approximately 12,000 spares. Because of the cost, election organisers usually buy fewer kits, then rotate them.

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<sup>117</sup> INEC purchased data capture kits through three different suppliers, one of which delivered them late. For INEC's own explanation, see Kayode Idowu "Voter Registration: A Contextual Review", [www.inecnigeria.org/voter-registration-a-contextual-review-by-kayode-idowu/](http://www.inecnigeria.org/voter-registration-a-contextual-review-by-kayode-idowu/).

<sup>118</sup> Unusually, registration teams collected scans of all ten fingerprints from registrants, which lengthened the process.

<sup>119</sup> For example, former President Olusegun Obasanjo and Senate President Daniel Mark waited at registration units for hours.

<sup>120</sup> Because time was short, INEC opened registration units in the same locations used for polling in 2007. Crisis Group interview, INEC senior adviser, 13 January 2011.

<sup>121</sup> "Interim Report on the Voter Registration Exercise for the 2011 General Elections", Project 2011 Swift Count, 24 January 2011.

<sup>122</sup> "Interim Report", Project 2011 Swift Count, 29 January 2011.

<sup>123</sup> Jide Babalola, "Lagos, Kano, Kaduna top voters' lists", *The Nation*, 22 February 2011: press coverage of INEC press conference.

<sup>124</sup> For example, less than 20 per cent of Niger State's population recorded in the 2006 census have registered; more than 60 per cent of the population has registered in Abuja, Borno, Nasarawa and Plateau states. Almost 70 per cent has registered in Lagos, a state that has seen its population rise dramatically in recent years. On 23 February 2010, Niger State Governor Muazu Babangida Aliyu called the figures for his state "ridiculous and unacceptable". John Ogiji, "Aliyu faults INEC voters' figure in Niger State", *Nigeria Guardian*, 23 February 2011.



But as the 2006 census is disputed and old registration figures inflated – and the intermittent years have seen people move – a reliable benchmark is difficult.<sup>125</sup> Reports from around the country indicate widespread but not yet systematic fraud, mostly involving theft of data capture machines or their relocation to the homes of politicians, presumably to manufacture illegal voter cards; registration of the underaged or foreigners; and purchase of voter cards. As yet there are no major allegations of communities excluded, deliberately or otherwise. There was, however, occasional violence.<sup>126</sup>

It is unclear whether registration teams collected sufficient data to run effective biometric checks in the time remaining before polls. During the chaotic first days, many registrants received temporary cards without having their fingerprints scanned. INEC called for them to register again, but it is not apparent all did. Ahead of the display of the voter rolls, supposedly in registration units countrywide 14-18 February, only the Cross Rivers REC had installed the necessary software and run checks to identify duplicate registrations in that state. Reports suggest that those scans identified many duplicates.<sup>127</sup> This raises fears that if a similar pattern emerges in other states, many names will be removed from the rolls, leaving those excluded without recourse to appeal and causing confusion on election day.<sup>128</sup> On 22 February civil society organisations expressed concern about failure to run

scans and remove duplicates before display of the rolls.<sup>129</sup> Even if scans are run, they will not catch underage registrants or foreigners. ACN in particular has been vocal in denouncing the commission for misleading the nation about the biometric system.<sup>130</sup>

The slow pace at which INEC has collated registration data from across the country is also of concern. The week after voter registration saw the number of registrants rise steadily, with initial figures of just over 61 million eventually augmented by more than a further 6 million.<sup>131</sup> INEC's apparent inability to retrieve accurate information from across the country augurs badly for results management, which also requires the timely management of large quantities of sensitive data. Its display of the voter rolls should have been a welcome measure to give voters the opportunity to check their names and for parties to challenge any duplicates or false entries. But the start of the exercise mirrored the start of registration and was marked by disorganised and late delivery of material.<sup>132</sup>

Throughout the exercise, however, INEC did demonstrate the will – absent four years ago – to overcome problems. Despite flaws, the exercise was a significant improvement on the incompetent organisation and purposeful manipulation that plagued its predecessor. INEC has charged a number of its own staff and others with theft of equipment and illegal production of voter cards.<sup>133</sup> Perhaps most promising was the enthusiasm shown by millions of citizens who turned out and waited for hours, even days, to get their names on lists, including groups known not to have participated in past elections. Overall, registration appears to have increased confidence in INEC's ability to protect the April polls, but it should build on this relative success by:

- ❑ publishing and publicising a breakdown of registration statistics by state, LGA and ward;
- ❑ instructing those RECs who have already not done so to immediately install software and run biometric scans to identify duplicates in the voter register at state level; then publishing and publicising the results of the bio-

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<sup>125</sup> Claims by parties with respect to dips in registration figures between the 2007 and 2011 exercises should be approached with caution, as those same parties may have benefited from inflated figures in previous years.

<sup>126</sup> For example, three people were reportedly killed and several others injured following a row between some youths and soldiers protecting INEC ad hoc staff. "Voter registration – three killed", *This Day*, 18 January 2011.

<sup>127</sup> The REC's decision to run biometric scans and eliminate duplicates ahead of the display of the voter rolls was applauded by civil society groups but condemned by political parties. See Ayo Okulaja, "Civil society groups fault display of voter list", *Next*, 22 February 2011. Following the display period, some other RECs appear to have started scans. For example, "INEC uncovers 11,000 names in Imo", *Nigeria Guardian*, 20 February 2011.

<sup>128</sup> Duplicates are simply removed from the register. The Independent Electoral Assessment Team recommended leaving the last entry and removing others, which would have avoided disenfranchising eligible voters, albeit those who have broken the law by registering more than once. While many duplicates are likely to have been mass produced by local leaders or parties, rather than the result of genuine voters registering more than once, the Assessment Team's recommendations should be reviewed again after the 2011 polls, when new reforms are considered. Those who register multiple times should be sanctioned but not necessarily deprived of their right to participate, especially considering the weak public awareness campaigns that frequently precede registration exercises.

<sup>129</sup> Ayo Okulaja, "Civil Society Groups", op. cit.

<sup>130</sup> See, for example, Mohammed Abubakar, "ACN doubts INEC's capacity to detect multiple registration", *Nigeria Guardian*, 1 February 2010.

<sup>131</sup> On 16 February INEC announced registration figures of 61 million (Official INEC figures, see <http://www.inec.gov.ng/newsview.php?news=21&newsid=246>). These now stand at almost 68 million. Jide Babalola, "Lagos, Kano", op. cit.

<sup>132</sup> "Logistic challenges reduce effectiveness of expanded display exercise", Press Release, Project 2011 Swift Count, 21 February 2011.

<sup>133</sup> See "Voter registration: Oyo, Ogun, Anambra top list of offenders", *The Punch*, 15 February 2011.

- metric checks and new registration statistics by state, LGA and ward;
- ❑ resolving speedily the cases of those who, during the display period, objected to their exclusion from the list, so that eligible voters can exercise their right to participate;
  - ❑ ensuring voter lists are available in every polling unit, and that only voters on those lists who appear in person on election day can vote in that unit;
  - ❑ providing sufficient polling units on election day for those locations that have large numbers of registrants; clearly listing these units and publicising them in advance; and discontinuing satellite polling units now that a more accurate voter register exists;<sup>134</sup> and
  - ❑ ensuring that staff are especially vigilant to prevent underage voting, against which biometric scans are not effective; observers, too, should be vigilant against underage voting and the misuse of registration cards.

## V. CONCLUSION

The 2011 polls could be a turning point for Nigeria. Only weeks ahead of the April general elections, many citizens express cautious optimism that although they will be flawed, they will not suffer a repeat of the massive rigging of four years ago.<sup>135</sup> Jega's appointment and his reforms, the Delta re-run, voter registration and increasingly activist courts – as well as ordinary citizens' determination to protect their right to participate – have raised hopes of reversing the progressive degeneration of elections since the return to civilian rule. These factors, combined with internal struggles within the ruling PDP, suggest that the post-election political landscape may look at least somewhat different and more representative. Shifts in power can be destabilising, but an increase in political space outside the PDP should bode well for democratic development.

Flaws in polls, as Jega points out, are often symptoms of deeper malaise in society beyond the control of their organisers. But while elections are a shared responsibility,

INEC can make, indeed has already made, a difference. Jega's challenge is to maintain momentum behind logistical preparations while recognising that INEC's own openness, safeguards, transparent and efficient results management and ability to tackle impunity – in addition to the security forces' ability to secure the polls – will define the credibility of these elections as much as getting ballots and staff to polling units. Electoral reform must continue after the voting. The Uwais Committee's report, whose recommendations are almost all solid,<sup>136</sup> already provides a template for electoral reform – including for internal party democracy and political financing – that could shift the incentives that drive politicians' electoral violence and rigging.

Beyond electoral reform, however, Nigeria needs to better regulate the distribution of power and resources. There are signs that – especially in Lagos – improvements are possible within the existing framework. But development there takes place despite the political system, not because of it. Winning politicians need after these polls to start governing for all their citizens, by tackling the exclusive and divisive patronage networks and the dismal provision of public goods that undermine elections and governance more broadly and fuel Nigeria's multiple conflicts.

**Abuja/Dakar/Brussels, 24 February 2011**

<sup>134</sup> Satellite polling units are designed to accommodate surplus numbers of voters allocated to one polling unit. During previous elections they have been set up at the last minute, with their location frequently unpublicised. They are especially prone to hijacking by party supporters. See Independent Electoral Assessment Team, op. cit.

<sup>135</sup> A recent survey found that 77 per cent of Nigerians somewhat or strongly agreed the elections will be "mostly free, fair and credible". Nigerian National Survey, International Republican Institute/U.S. Agency for International Development, op. cit.

<sup>136</sup> The Independent Electoral Assessment Team identified the Uwais Committee recommendations that it considered might present problems. See "Final Report", op. cit.

APPENDIX A  
 MAP OF NIGERIA



## APPENDIX B

### STATES MOST AT RISK OF ELECTORAL-RELATED VIOLENCE

#### North-Central

##### 1. Plateau

Communal violence has surged over recent years. PDP Governor Jonah Jang, who is up for re-election, has been accused of manipulating identity for his own political ends. Hundreds were killed in violence related to the local polls in 2008. Jang's deputy, Pauline Tallen, is contesting the election against him on the ACN ticket.

#### North-West

##### 2. Katsina

Katsina is home state to CPC presidential candidate Buhari. PDP Governor Ibrahim Shema is likely to face a tough contest, probably against Yakubu Lado, former PDP senator and ally of the Yar'Adua faction with which Shema has clashed. Lado won a disputed CPC primary against former PDP House of Representatives Speaker Aminu Bello Masari. However, INEC is still deciding whether CPC can field a candidate because of its flawed primaries.

##### 3. Kano

ANPP has controlled the state since 2003. Its candidate, Alhaji Takai, is backed by the current governor, Shekarau, who is seeking the presidency. Shekarau's deputy governor, Alhaji Sani Gwarzo, is the ACN candidate. PDP has publicly vowed to win back the state; its candidate, Alhaji Rabiu Kwankwaso, was governor 1999-2003 and subsequently defence minister. CPC is also popular; party mandarins forced out Mohammad Abacha and chose Lawal Ja'afaru Isa as its candidate.

#### North-East

##### 4. Borno

ANPP controls the state. Its candidate, an ally of outgoing Governor Ali Modu Sheriff, was assassinated, allegedly by Boko Haram, in January 2011. ANPP decried the attack as politically motivated. Both PDP and CPC are strong contenders for the governorship.

##### 5. Bauchi

The state suffers fierce PDP intra-party rivalry and saw protests by youths against President Jonathan's primary victory. Governor Isa Yuguda faces a difficult contest against Senator Baba Tela, who left the PDP for the ACN.

#### South-West

##### 6. Oyo

The state saw violence during PDP parallel primaries, and powerful PDP figures are still contesting in court the candidacy of the party's incumbent governor, Adebayo Alao-Akala. Senator Abiola Ajimobi, the governor's main rival in 2007, is again the ACN candidate. Alao-Akala's former boss, Senator Rasheed Ladoja, the Accord Party candidate, may be an even more formidable opponent.

##### 7. Ogun

A bitter intra-party struggle continues between factions backed by former President Obasanjo and the outgoing PDP governor, Gbenga Daniel. INEC accepted the candidacy of Yemi Oke, of the Obasanjo faction, despite court proceedings initiated by Daniel. The response of the Daniel faction is not yet known.

#### South-South

##### 8. Bayelsa

Incumbent PDP Governor Timpire Silva won a convincing primary victory but cannot count on the support of President Jonathan, who is from Bayelsa and has been feuding with him for years. Timi Alaibe, former managing director of the Niger Delta Development Commission is a serious Labour Party contender. However, Nigerian newspapers are reporting that a Federal High Court has ruled that INEC cannot hold gubernatorial elections in Bayelsa, which may reduce risks of violence.

##### 9. Delta

Incumbent Governor Uduaghan (PDP) is in a rematch with the DPP's Chief Great Ovedje Ogboru, whom he defeated in a court-ordered January 2011 re-run of the 2007 election. The state, like others in the Niger Delta, traditionally suffers electoral violence.

##### 10. Akwa Ibom

2010 saw large defections of senior PDP members. Incumbent PDP Governor Godswill Akpabio is seriously challenged by Chief Larry Esin (CPC), Sam Ewang (ANPP) and Senator John James Akpan Udoedehe (ACN).

#### South-East

##### 11. Abia

Incumbent Theodore Orji, who won the governorship on the People's Progressive Alliance ticket but switched in 2010 to PDP, faces a tough contest from former Deputy Governor Chris Akomas. He also is being challenged in court by Chief Ikechi Emenike over his nomination in the PDP primary.

##### 12. Anambra

Gubernatorial elections will not be held this year, but senatorial elections threaten to be divisive contests.

##### 13. Enugu

A rancorous primary in which incumbent Governor Sullivan Chime defeated Anayo Onwuegbu, backed by Chime's former sponsor, Chief Okwesilieze Nwodo, the ex-PDP national chairman, has deepened bitter rivalries between two PDP factions in the state.

## APPENDIX C

### ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

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Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh,

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**February 2011**

## APPENDIX D

### CRISIS GROUP REPORTS AND BRIEFINGS ON AFRICA SINCE 2008

#### Central Africa

- Congo: Four Priorities for Sustainable Peace in Ituri*, Africa Report N°140, 13 May 2008 (also available in French).
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