

Nigeria Presidential and National Assembly Elections

25 February 2023



The Commonwealth

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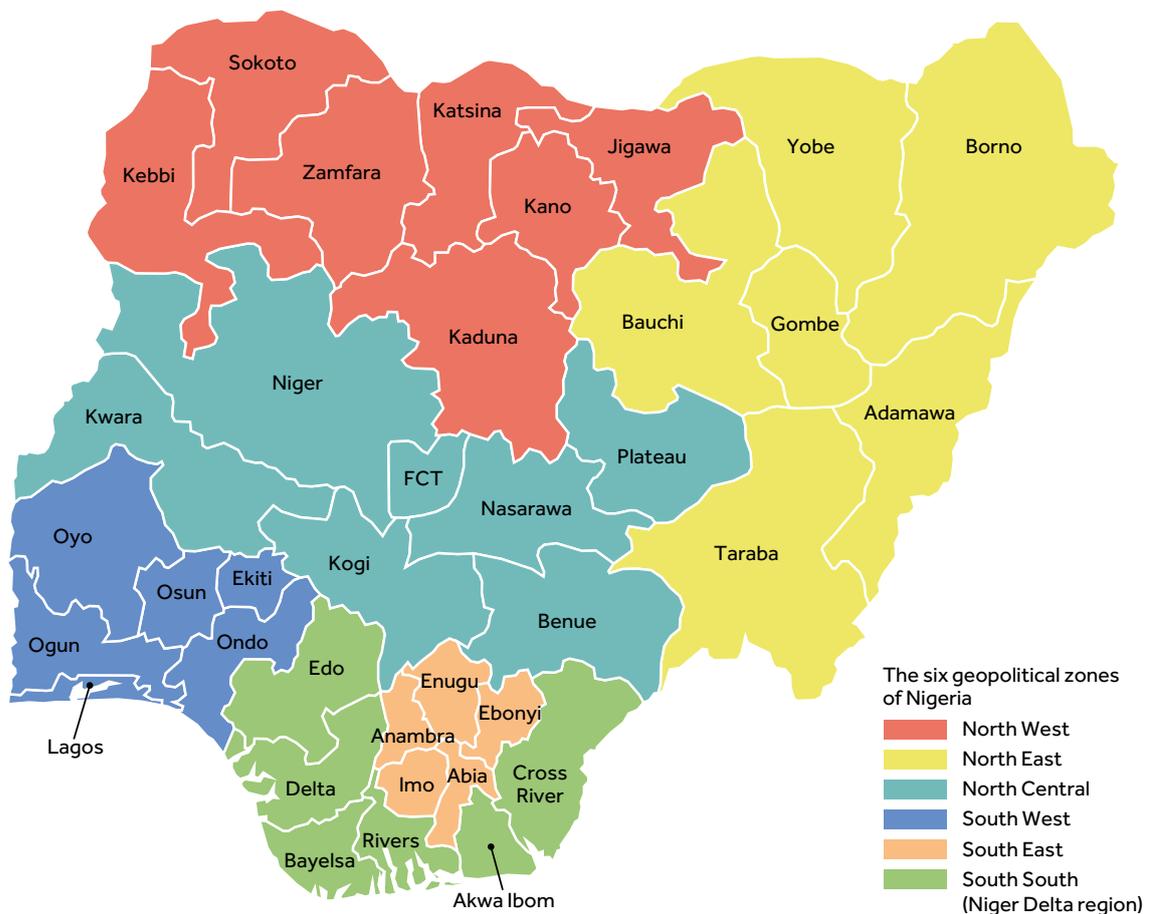
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Map of Nigeria



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Letter of Transmittal

**Commonwealth Observer Group
Nigeria Presidential and National
Assembly Elections
25 February 2023**

16 February 2024

Dear Secretary-General,

I am pleased to forward to you the final report of the Commonwealth Observer Group to the Nigerian presidential and National Assembly Elections that were held on 25 February 2023. It was an honour to chair this Group of eminent individuals, each of whom brought invaluable expertise and wisdom to bear in undertaking this task.

These were the seventh elections that the Commonwealth had observed since 1999. Elections are inherently complex processes involving many stakeholders and several distinct phases. To administer an election in any country is thus a considerable undertaking. To administer an election in one of the world's largest democracies, with its attendant security challenges, is truly a mighty task. The Independent National Electoral Commission is thus to be commended for its significant efforts to deliver credible, transparent and inclusive elections in very challenging conditions.

Electoral reform is an unending process, requiring stakeholders to build on past successes and rectify weaknesses. To this end, our Group formed a nuanced view of each of the constituent elements of the electoral process and produced a number of recommendations that we hope will be valuable to Nigeria through the next electoral cycle.

The Electoral Act 2022 represented a significant step forward for Nigeria. It introduced a number of positive reforms that benefited the process as a whole. The Group has provided some

recommendations for further strengthening the legal and institutional framework, including in relation to the registration of political parties, campaign finance, electoral offences and electoral dispute resolution.

Although women, youth and persons with disabilities demonstrated a keenness to participate in the electoral process, there remains significant scope to broaden their participation, particularly as candidates. The Group has offered recommendations that we hope will help produce more inclusive elections for marginalised groups in years to come.

The introduction of new electoral technologies could play a significant role in improving voters' trust in the credibility and transparency of the voter registration, counting and results transmission processes. Unfortunately, there were some significant shortcomings with regard to the deployment of these technologies in these elections. Our Group has made some recommendations on how to overcome these challenges in future elections, including through improved testing and training and greater transparency and co-operation with civil society.

Nigeria's vibrant political landscape and engaged civil society remain its greatest strengths. I have no doubt that, so long as the country can continue to benefit from these invaluable resources, it will make great strides on its unending journey of democratic consolidation and electoral reform.

Yours sincerely,



His Excellency Thabo Mbeki
Former President of the Republic of South Africa
Chair of the Commonwealth Observer Group



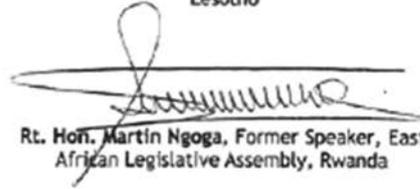
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Fulbright scholar and expert in terrorism and
security, Canada



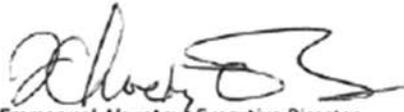
Hon. Sarah Flood-Beaubrun, Former House
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Affairs and Former Deputy Permanent
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Linda Bonyo, Legal and data analytics expert,
Kenya

Acronyms and Abbreviations

AC	Action Congress
ACDEG	African Charter on Democracy, Elections and Governance
ACHPR	African Charter on Human and Peoples' Rights
ACLED	Armed Conflict Location & Event Data Project
ACN	Action Congress of Nigeria
AD	Alliance for Democracy
ANPP	All Nigeria Peoples Party
APC	All Progressives Congress
APO	Assistant Presiding Officer
APP	All People's Party
AU	African Union
BVAS	Bimodal Voter Accreditation System
CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act
CDD	Centre for Democracy and Development
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPC	Congress for Progressive Change
CSO	civil society organisation
CVR	continuous voter registration
DSS	Department of State Services
ECOWAS	Economic Community of West African States
EFCC	Economic and Financial Crimes Commission
EU	European Union
FA	failed accreditation
FCT	Federal Capital Territory
GBV	gender-based violence
HEAT	Holistic Exposure and Adaption Testing
ICCPR	International Convention on Civil and Political Rights
ICPC	Independent Corrupt Practices and Other Related Offences Commission

IDP	internally displaced person
IFES	International Foundation for Electoral Systems
IGP	Inspector General of Police
INEC	Independent National Electoral Commission
IOM	International Organization for Migration
IPOB	Indigenous People of Biafra
IPU	Inter-Parliamentary Union
IReV	INEC Results Viewing Portal
KDI	Kimpact Development Initiative
LGA	local government area
LGBT+	lesbian, gay, bisexual, transgender/transsexual +
LP	Labour Party
MAF	misinformation amplification factor
NBC	National Broadcasting Commission
NDPB	National Data Protection Bureau
NDPR	Nigerian Data Protection Regulation
NGO	non-governmental organisation
NGP	National Gender Policy
NGSF	National Gender Strategic Framework
NNPP	New Nigeria People's Party
NOA	National Orientation Agency
NTA	Nigerian Television Authority
OTP	one-time password
PDP	People's Democratic Party
PO	Presiding Officer
PVC	Permanent Voter's Card
PWD	person with disabilities
RATECH	Registration Area Technical Support
SADC	Southern African Development Community
SADC-CNGO	SADC Council of Non-Governmental Organisations
SCR	Smart Card Reader
UK	United Kingdom
UN	United Nations
US	United States
VIN	Voter Identification Number

Executive Summary

In line with the provisions of the 2018 Revised Commonwealth Guidelines for the Conduct of Election Observation in Member Countries, the Commonwealth Secretary-General, Rt Hon Patricia Scotland KC, constituted an Observer Group for the 25 February 2023 presidential and National Assembly elections in Nigeria, following an invitation from the Chair of the Independent National Electoral Commission (INEC).

The Commonwealth Observer Group (COG, or 'the Group') was led by His Excellency Thabo Mbeki, former President of the Republic of South Africa, and comprised 16 other eminent Commonwealth citizens. A staff team of 11 from the Commonwealth Secretariat provided technical support to the Group.

The Group was present in Nigeria from 18 February to 2 March 2023. In carrying out its Terms of Reference, it was briefed on the preparations and the political environment ahead of the elections by INEC, senior government officials, the Inspector General of Police and police management, representatives of political parties, international observers, the media, members of the Commonwealth diplomatic corps and civil society organisations (CSOs) representing citizen observers, women, persons with disabilities (PWDs) and youth.

Given the inherently complex and multi-phased nature of elections, observers assessed the broader political, legal and human rights landscape in which the administration of the elections took place. As such, the Group considered a wide array of factors affecting the credibility, transparency and inclusivity of the Nigerian general elections, including the protection of fundamental political and human rights, such as freedom of expression and assembly; institutional independence and capacity; the right to vote and stand for election; the equality of the vote; media freedoms and campaign coverage; the role of and freedoms of civil society; and the inclusion of women, youth, PWDs and other marginalised groups. In considering these elements, the Group formed a nuanced view of the entire electoral process in order to be able to provide targeted and context-specific recommendations.

The 2023 elections took place against a challenging security backdrop, with the country continuing to face numerous threats within its borders. These included secessionists in the South and South East, as well as Islamic insurgency that, since the election in 2019, had spread beyond the North West towards other parts of the country. Crime and banditry continued to be a pervasive challenge. The country was also experiencing economic hardship as a result of rising living costs, food insecurity, low oil production and a stalled post-Covid economic recovery.

In this context, the 2023 presidential election, in particular, was more competitive than in previous cycles, with three of the four presidential candidates garnering significant numbers of votes across the country. Many of the country's youth were enthused by the campaign of Peter Obi (a new and younger entrant to the race), as well as the introduction of new electoral technologies, which they believed would ensure transparency and credibility in the voting, counting and results transmission processes.

Unfortunately, the campaign period saw significant and varied forms of electoral violence, particularly in South South, South East, South West and North Central. This included attacks on INEC's offices, which numbered more than 40 in January and February 2023 alone. The number of instances of electoral violence was more or less in line with in previous elections; the vast majority of victims were unarmed civilians whereas the majority of perpetrators were party-affiliated individuals. If Nigeria is to reverse the trend of ever-decreasing voter turnout figures, particularly among youth, the leadership of political parties must do more to ensure that those who campaign in their name do so peacefully.

The Electoral Act 2022 represented the most significant change to the legislative framework since 2010. Among other provisions, the Act's reforms included changes to the funding and reporting requirements of INEC; a requirement that party primaries take place within 180 days of an election; an increase in candidate expenditure limits; and the mandating of INEC to make use of electoral technologies in the voter registration, verification

and results transmission processes. Regulations on the conduct of party primaries were incorporated into the Act, giving the provisions greater legal weight. Overall, the Electoral Act represented a very positive step forward in the country's electoral reform process.

Yet the Act failed to incorporate temporary special measures for increasing women's political representation and participation, as recommended by previous COG reports. Indeed, in the same year as the Electoral Act was passed, five Bills were tabled in Parliament, each of which aimed to increase the participation of women, including through the introduction of reserved seats. The National Assembly rejected all Bills, resulting in public outcry. These elections also saw, for the second time in succession, a reduction in the number of women candidates, and in the number of elected women. This is a deeply concerning trend that runs counter to Nigeria's commitments under international law and casts a shadow over its democratic credentials. The legislature's failure to support the aforementioned Bills represented a missed opportunity to give full effect to the provisions of the Convention on the Elimination of All Forms of Discrimination Against Women, the African Charter on Human and Peoples' Rights and Article 42 of the Constitution of Nigeria. Parliament and political parties must take seriously the need to increase women's political participation within its houses, in local government and in the executive structures of political parties.

The electoral reforms also did little to address longstanding concerns regarding the regulation of political parties, particularly in terms of campaign finance, electoral offences and candidate nomination disputes. INEC failed to adequately enforce the law on donations, and on party and candidate expenditures; political parties were not compelled to submit campaign expenditure reports; INEC did not make any reports available for public scrutiny. This has contributed to the continued impact of 'godfatherism' on Nigerian politics, including in party primary processes. Access to financial resources continues to be a more significant determinant of an aspirant's success than his or her capabilities, policies and party manifesto. Electoral offences, both in the pre-election period and on election day, often passed without sanction, with the police making few arrests. Regarding candidate nomination disputes, INEC lacks the authority to decide such cases.

Instead, the institution found itself enjoined in more than 1,200 court cases in these elections, putting a significant strain on its time and resources.

While INEC was not without fault, particularly in relation to campaign finance, a combination of resource constraints and insufficient legal powers mean that its ability to enforce the law in these areas is inhibited. In the months prior to the election, INEC Chair Professor Yakubu stated on multiple occasions his belief that the institution was overburdened by the breadth of its responsibilities. Such a view was also expressed in the 2008 Uwais Report and the 2017 Nnamani Report into electoral reform, and was referenced by previous COG reports. A Bill on the establishment of a separate electoral offences commission has been tabled but at the time of writing it has still not passed into law. In order to make progress in these areas, the Group recommends that Parliament continue its deliberation on the establishment of such a commission, so long as the commission's appointments process is designed to ensure its independence, non-partisanship and probity.

The 2023 elections took place using boundaries that were last delimited in 1996, using data from the 1991 census, which put the country's population at 87 million. Today, the population is estimated to be more than 200 million. A census was held in 2006 but this was not followed by a boundary delimitation process. Clearly, there is a pressing need to undertake a thorough delimitation exercise following the next census.

Voter registration figures of 77 per cent, of whom 76 per cent were youth, were very encouraging, suggesting a citizenry keen to participate in the electoral process. Unfortunately, there were widespread reports of voters not receiving their Permanent Voter's Card (PVC) for one reason or another, while a reported 7 per cent of PVCs went uncollected. Election day turnout figures were lower than expected, with just 29 per cent of registered voters casting ballots. Delays in the opening of polling units, and the long queues that resulted from this, were likely part of the reason, although other factors, such as fears of electoral violence, may also have played a part.

Women, PWDs and youth demonstrated a commitment to representative democracy, as the high registration figures show. However, each cohort continued to face distinct as well as overlapping cultural and economic barriers to their participation. Despite legislative reforms in 2018 aimed at

increasing youth participation, the number of young candidates was lower than in the previous electoral cycle. As mentioned above, the number of women candidates also declined for the second successive electoral cycle. INEC made some attempts to increase PWD participation, including through collecting disaggregated data, a targeted voter education programme and efforts to implement the 2018 Framework on Access and Participation of Persons with Disabilities in Electoral Processes. However, the delivery plan for this policy was not made public. On election day, INEC officials gave priority to PWD voters, albeit inconsistently. There were physical barriers in many polling stations; some were positioned on the other side of deep roadside gutters, with no ramps for wheelchair users.

Nigeria has one of the most vibrant and fast-developing media industries in Africa, with a plethora of private print, broadcast and online outlets. Unfortunately, despite constitutional freedoms, journalists in Nigeria are inhibited by intimidation, arrests, violence and the use of defamation laws to stifle freedom of expression. In 2022, the country was ranked 129/180 by Reporters Without Borders. Section 24 of the Cybercrime Act 2015 includes vague wording that allows for the criminalisation of legitimate comment. Despite an Economic Community of West African States (ECOWAS) Court of Justice judgement, the Act has not been amended to bring it in line with Nigeria's commitments under international law.

Individual media houses demonstrated bias in their coverage of the election. Indeed, the Group was concerned that the state broadcaster demonstrated bias towards the incumbent party in its election coverage. In print media, there was a blurring of the line between editorial content and political advertising. Many newspapers published political ads on front pages that were neither as paid adverts nor as an editorial position. Some stakeholders were of the view that the bias of media houses, both public and private, was somewhat offset by the wide variety of news sources. However, the Group was concerned by the lack of action taken by media regulators. The Group was also concerned that smaller parties and women and PWD candidates received proportionately less coverage than their counterparts.

Media professionals lauded INEC for the timely provision of information in the pre-election period. However, the Group noted some exceptions,

particularly with regard to electoral technologies. First, INEC was not sufficiently forthcoming regarding the procurement process for electoral technologies, contrary to public procurement law. Second, while acknowledging that cybersecurity concerns preclude complete transparency regarding the technical specifications of electoral technologies, the Group is of the view that INEC failed to provide the necessary transparency to build trust in these technologies. The lack of adequate testing of the technologies, and the limited training of polling staff, were likely contributing factors in the failure of some Bimodal Voter Accreditation System (BVAS) devices and the IReV (INEC Results Viewing) portal on election day.

Third, while INEC's communication strategy in the pre-election period was for the most part positive, its communication on and after election day was found wanting. INEC was slow to provide updates to the media on the causes of delays in the uploading of results forms to IReV, allowing rumour and speculation to fill the information void. Technologies that had been adopted with the express purpose of building trust in the electoral process thus became the subject of suspicion. The experience of the 2023 elections therefore shone a rather stark light on the need for greater interrogation and testing of electoral technologies, an approach that necessitates a greater degree of transparency. In order to avoid technological failure in future elections, INEC should work more closely with CSOs, academics and other relevant stakeholders on penetration testing in the pre-election period.

As noted above, elections are highly complex processes that defy reductive statements as to their credibility, transparency and inclusivity. The Group formed nuanced views on each phase of the election, and placed these observations within the broader political, social and legal framework in which they took place. Nigeria is one of the world's largest democracies; this poses significant challenges for the administration of the election. The situation is made more difficult by the prevailing security environment in various parts of the country. INEC is thus to be commended for its significant efforts to deliver credible, transparent and inclusive elections in very challenging conditions.

It was also encouraging to see such a vibrant campaign and an increasingly competitive presidential election. The high voter registration

figures bore testament to an electorate that was keen to engage in the electoral process, despite its misgivings about some aspects of Nigerian democracy. CSOs played an invaluable role in numerous ways, including in voter education and advocacy for legal and policy reform. Indeed, the passing of the Electoral Act 2022 was a significant development that demonstrated a willingness of political parties to engage in meaningful electoral reform. INEC, for its part, is to be commended for its administration of these elections under very challenging conditions.

However, a number of significant shortcomings detracted from the overall credibility, transparency and inclusivity of the elections. Although the Electoral Act represented a significant step forward, further institutional and legal reform is necessary if Nigeria is to make lasting progress on issues such as campaign finance, electoral offences and inclusion. The introduction of additional technologies in this election raised voters' hopes regarding the credibility and transparency of the counting and results processes, yet the failures of BVAS devices and the IReV portal on and after election day highlighted the need for greater testing, training and transparency in the adoption of these technologies. The various challenges experienced on election day, including delays in the provision of materials and late starting times, likely resulted in significant numbers of voters being unable or unwilling to cast their vote.

Nevertheless, the vibrancy of Nigeria's political landscape and the quality of its civil society remain the country's biggest strengths. So long as Nigeria can continue to tap into these most cherished and valuable resources, its ongoing journey of democratic consolidation and electoral reform will bring significant benefits for its people in years to come. To this end, it is hoped the Group's recommendations on electoral reform are received in the spirit of mutual support in which they are offered, and we hope they may be of use in the years to come.

Recommendations

Legal framework and electoral administration

- In order to foster greater transparency and independence, Parliament should consider amending the Constitution to establish an independent panel, such as a public

appointments commission, to facilitate an application and screening process for the appointment of national and resident electoral commissioners. As well as professional and technical competencies, the screening process should ideally include criteria such as evidence of probity and integrity in public life. The panel could then submit a shortlist of names of qualifying candidates to the President and Senate, who would then agree on the selected appointees.

- The National Assembly should consider passing legislation that establishes a separate body for the regulation of campaign finance and electoral offences, and ideally the registration of political parties. Members of the committee should not be active members of any political party and should be appointed by an independent panel, with probity, integrity and non-partisanship given significant weight alongside professional competencies.
- The National Assembly should deliberate further on the establishment of a multistakeholder body for the delimitation of boundaries.
- The National Assembly should deliberate further on the establishment of a multistakeholder body for the delivery of voter and civic education.
- Political parties should strengthen their capacity for internal dispute resolution.
- Parliament should consider amendments to the Constitution and the Electoral Act 2022 to empower INEC, or any body as may be established to determine pre-electoral intra-party disputes, to reject or disqualify candidates on the basis of non-compliance with the legal and regulatory framework. The law should proscribe for the resolution of such disputes in a timely manner.
- In order to address capacity issues relating to election litigation, judicial appointments to courts and election tribunals should be increased. The Government should increase funding for election tribunals and courts, including for training of the judiciary on specialist areas such as the use of electoral technologies and the collection of digital evidence.

- In order to mitigate conflicting judgements, orders and decisions, which have negative impacts on INEC's preparedness, practice directions and guidance from superior courts should both be given consideration.
- Parliament should consider legislative amendments to grant INEC (or any body as may be established to prosecute electoral offences) appropriate investigatory powers.
- Parliament should consider amendments to the Constitution and the Electoral Act to shorten timelines for presidential petitions, so as to ensure that judgements are provided prior to the inauguration of the President-Elect. Timelines for post-election petitions, including appeals processes, for other elective positions should also be decreased significantly.
- In future, greater care should be given to ensure INEC's ability to administer elections and other stakeholders' ability to participate are not unduly affected by executive branch decisions relating to demonetisation.
- In advance of future elections, a number of electoral stakeholders, including INEC, the Supreme Court, federal high courts, the Law Reform Commission and CSOs should play their part in ensuring all relevant and up-to-date electoral laws and regulations, and pertinent reports and other resources, are made easily accessible on their respective websites.
- In order to foster greater transparency and entrench deeper understanding of the legal process, Supreme Court hearings on presidential petitions should be broadcast live.
- INEC, or such a body as may be established to undertake boundary delimitation, should undertake a boundary delimitation exercise ahead of the next national elections in 2027.
- The National Assembly should consider amendments to constitutional provisions relating to boundary delimitation to include maximum, rather than only minimum, intervals between such exercises.
- The National Assembly should consider amending the Constitution to stipulate essential criteria for the delimitation of boundaries, such as allowing for a percentage of deviation between urban and rural populated areas.
- To reduce the gap between the number who register and the number who pick up their PVCs, INEC should consider amendments to the process that would allow for instant issuance/collection of the PVC at the time of registration. The small number of registered voters who are subsequently expunged during the claims and objections periods can be notified that their PVC has been removed from the register. INEC could also consider extending timelines, increasing the number of distribution centres, employing mobile units and targeting outreach to marginalised groups and voters with limited mobility.
- INEC, political parties and civil society each has a role to play in reducing the gap between male and female voter registration figures in states with wide differentials, such as through expending greater resources on gender-sensitive voter education programmes in these states.
- There is a pressing need for legislative reform that places caps on party primary nomination fees in order to afford genuine opportunities for political participation for all and to encourage a more participatory and grassroots-driven funding model for political parties.
- INEC should ensure the timely issuing of relevant regulations, and that these regulations are thoroughly checked for accuracy and alignment with primary legislation.
- The Electoral Act should be amended to remove the consensus method of candidate nomination.
- As part of efforts to address the manipulation of political primary processes, as well as to uphold Article 25 (b) of the International Convention on Civil and Political Rights (ICCPR), which guarantees the rights of every citizen to stand for election, the National Assembly should consider a constitutional amendment to allow citizens to stand as independents, ideally for all elective positions but at least for executive positions.

- The National Assembly should consider amending the Electoral Act to remove the option of consensus-based candidate nomination.
- The National Assembly should consider legislative reform that stipulates that aspirants to all elective positions can stand in a primary for only one political party.
- The judiciary should make greater efforts to ensure consistency in the interpretation and application of the law as regards political party defections.
- INEC should ensure the procurement of electoral technologies is carried out in line with both the spirit and the letter of the Public Procurement Act 2007.
- In order to build confidence in the veracity of the voter register, including biometrics, INEC should consider subjecting the voter register to an external audit by a reputable organisation.
- To promote transparency in verifying voter turnout, INEC should publicly release PVC data at the polling unit level well in advance of an election and in an open data format.
- INEC should be more transparent regarding the technical specifications and calibration of software and hardware underpinning biometric verification.
- INEC should conduct testing of electoral technologies (i) further in advance of an election; (ii) in a larger sample size of polling stations; (iii) with election day polling staff; and (iv) with a greater degree of transparency and multistakeholder engagement, in order to ensure a more holistic interrogation of the technical, legal, human and operational frameworks underpinning the electoral technologies.
- The Electoral Act, the Regulations and Guidelines and the Manual should be reviewed to ensure greater legal clarity and alignment on the electronic results transmission and collation processes. Such issues should also form part of INEC's holistic (technical, legal, operational and human) approach to the testing of electoral technologies.
- INEC should provide greater transparency regarding the storage of data that comprises the voter register, as well as its protocols for the safe storage and accessing of the register.
- Parliament should consider passing federal law on data protection that is aligned with international good practice.
- The National Data Protection Bureau, or whichever body is granted oversight powers by a new federal data protection act, should be sufficiently resourced to allow it to enforce the law with regard to the collection, processing and storage of personal data by INEC and political parties in respect of voter registration.
- The National Data Protection Bureau, or whichever body is granted oversight powers by a new federal data protection act, should undertake civic education to inform citizens about data protection, privacy and data rights in the context of elections.
- The Electoral Act should be amended to include campaign expenditure limits for political parties.
- INEC, or such a body as may be established to monitor campaign finance, should make greater efforts to track campaign expenditure, compel political parties to submit the requisite reports and ensure campaign finance violations are sanctioned in accordance with the law.
- INEC, or such a body as may be established to monitor campaign finance, should ensure maximum transparency with regard to its efforts to enforce campaign finance laws, including by ensuring all political party expenditure reports and all notices of fines are easily accessible on its website.
- Parliament should consider amending the law to include limits on expenditures made on behalf of candidates and political parties, in order to buttress existing provisions regarding limits on donations made directly to the candidate or political party.
- Parliament should consider amending either the Electoral Act, or both the Nigerian Press Council Act and the National Broadcasting Commission Laws of the Federation 2004, to provide media regulators with the

responsibility to monitor, record and make public a list of all political advertisements purchased by political parties.

- INEC should consider convening a multistakeholder consultation, including with CSOs and political parties, to analyse issues related to campaign expenditure levels, sources of funding, non-compliance and enforcement, and to propose possible legislative or policy amendments to ensure greater compliance in the future.

Participation and inclusion

Civil society

- The Companies and Allied Matters Act 2020 should be amended, or alternative legislation should be drafted, that ensures appointments to the Corporate Affairs Committee or its successor are removed from ministerial and presidential oversight. The appointments process should be via an application process overseen by an independent panel, with the principles of probity, integrity and non-partisanship given significant weight in the candidate selection criteria.
- Section 839 of the Companies and Allied Matters Act should be repealed and replaced with provisions that more fully to Article 36 of the Constitution on the right to a fair trial.
- The Companies and Allied Matters Act, or any such law as may be passed that regulates non-governmental organisations (NGOs) and CSOs, should be amended or drafted with the principles of proportionality and non-discrimination at its core in order to cultivate and support a vibrant and fruitful civil society.

Women

- The Group reiterates and updates its 2019 recommendation that, in order to address the concerning lack of women's political representation, the National Assembly should revisit the previously tabled Bills on seat quotas and other temporary special measures, as referenced in the National Gender Policy, with a view to passing such legislation in the current Parliament.
- The Group reiterates the 2019 COG's recommendation to political parties that encourages them to undertake

comprehensive strategies to achieve greater engagement and inclusion of women as candidates and in party decision-making processes.

- The Group reiterates and updates its 2019 recommendation that the Government should work with all relevant stakeholders to ensure the revised 2021–2026 National Gender Policy and Strategic Framework are fully implemented.
- INEC should ensure timely publication of sex-, youth- and PWD-disaggregated voter turnout data in order to inform multistakeholder efforts to increase electoral participation by marginalised groups.
- INEC, other relevant government agencies and civil society should work collectively on a whole-of-election-cycle civic and voter education programme to support greater participation of women, both as voters and as aspirants.

Youth

- Political parties should redouble their efforts to increase the number of youth candidates standing for election.
- Political parties should engage youth throughout the electoral cycle in order to arrest the decline in youth voter turnout.
- Future conflict prevention endeavours, such as the signing of a pre-election Peace Accord, should engage the youth as a distinct stakeholder in order to achieve a greater level of buy-in.
- Political parties should conduct a thorough review into why youth candidacy declined in the 2023 elections in spite of the relatively recent passing (2018) of the Not Too Young to Run Act. The review should examine possible causes, including youth apathy, a lack of support from political parties, concern over electoral violence and so on.
- The National Peace Committee should consider including youth groups to sign on as observers to the Peace Accord, as a way to meaningfully engage young people in the process.

PWDs

- INEC should consider the provision of passes to allow PWDs to use vehicles/transport during the period of restricted vehicle movement on election day.
- Polling units need to be made more uniformly accessible; INEC and relevant government departments and agencies should undertake an audit to identify suitable locations and lay out polling units with PWDs and elderly persons in mind.
- Political parties, civil society and INEC should consider undertaking whole-of-election cycle programming to encourage candidates with disabilities, and greater engagement of PWDs in all aspects of the electoral process.
- INEC should consider drawing on recommendations from CSOs and disability 'situation rooms' to inform any post-election review process.
- Political parties should consider developing new strategies, beyond a reduction in candidate nomination form fees, for encouraging PWDs to stand in party primaries.
- In order for PWDs to have greater representation in political parties and to ensure their voices are heard in the development of new policies, parties should consider strategies for increasing the inclusion of PWDs in party hierarchies and decision-making positions.
- Political parties should train party agents on PWD access to polling stations – specifically, Section 54 of the Electoral Act – in order to lower the number of instances of party agents objecting to PWDs being accompanied to the booth.

Prison voting

- INEC, political parties and the Correctional Service should convene a multistakeholder committee to discuss the legal and operational issues that need to be addressed in order to facilitate voting by prisoners.

Campaign and the media

Campaign

- In order to uphold constitutional provisions on freedom of assembly, Parliament should consider amending the Public Order Act 1986

such that political parties and candidates need only inform authorities of planned events in good time rather than seek permission through licence applications.

- The National Assembly should consider appending the Code of Conduct for Political Parties to the Electoral Act, in order to give greater legal weight to its provisions and to compel all political parties contesting the election to sign up to it.
- Political parties and the Indigenous People of Biafra (IPOB) must denounce attacks against INEC offices and officials in the strongest terms, and take greater steps to prevent such attacks by individuals aligned to their parties and movements.
- Nigeria's various security services should review the security arrangements for INEC offices in the 12 months prior to an election, with a view to decreasing attacks on INEC offices and officials.
- Parliament should consider amending Section 121 (6) of the Electoral Act such that it reverts to the wording in Section 124 (6) of the 2010 Act, to ensure candidates are liable for actions amounting to bribery and corruption undertaken by individuals acting for or on behalf of the candidate.
- Political party leadership should take – and be seen to take – concerted steps to eradicate the culture of vote-buying, which is currently either ignored, tolerated or even encouraged by political parties.
- INEC should proactively engage CSOs on the establishment of a sustained voter and civic education programme on vote-buying/selling, with a particular emphasis on the short- and long-term negative effects to people's lives of selling their votes for short-term material gain.

Media

- In line with the ruling of the ECOWAS Court of Justice, the Government should propose and seek to pass amended wording of Section 24 of the Cybercrime Act 2015 to bring it in line with Nigeria's international commitments under the African Charter on Human and Peoples' Rights and ICCPR.

- State-owned and private media should be held to the standards contained in the Professional Code of Ethics, the Nigerian Media Code of Election Coverage and INEC's Media Guidelines, particularly to ensure impartiality and equitable coverage for all political parties and candidates during future campaigns. It is crucial that violations are penalised impartially from the outset.
- Media outlets, especially newspapers, should add clear disclaimers to separate paid political ads from reported news and editorial content.
- The National Broadcasting Commission and the Nigerian Press Council should be transformed into fully independent bodies in order to improve reporting on elections.
- INEC should consider working more closely with the media as part of its communications strategy to ensure journalists fully understand the various components of the electoral process and are able to accurately inform the public and minimise the risk of misinformation. This could be supported by a memorandum of understanding between INEC and media unions, and could include training sessions.
- The media should try to be more sensitive in how it reports on women and women's issues as well as on PWDs.
- The media should try to ensure greater representation of women in newsrooms, as well as among presenters and guests.
- The media should consider a sign language interpreter, especially in information-critical situations.
- Unions of journalists should step up ongoing efforts to offer journalists adequate resources, especially when journalists are attacked or arrested on duty.
- Upcoming journalists should receive training to enhance their basic journalistic principles and skills, including how to report impartially during an election.
- INEC should redouble its efforts to counter hate speech by deepening its co-operation with CSOs, social media platforms and law enforcement.

Voting, Counting And The Results Process

- For future elections, INEC should consider introducing advance/special voting for polling staff, security personnel and other essential workers deployed on election day.
- INEC should review training for polling staff with a view to strengthening adherence to the procedural protocols in future elections.
- INEC should consider reducing the maximum number of voters per polling unit in order to ensure shorter queues and avoid disenfranchising voters.
- In order to improve security, alternative authentication models should be considered, such as two-factor authentication and one-time password (OTP) systems for real-time password generation at the polling unit. Passwords should not be printed on paper.
- In order to improve real-time results transmission, INEC should work with the Nigeria Communications Commission and telecommunications companies to increase the capacity and bandwidth of servers used to upload results to IReV. In particular, connectivity should be improved in areas with little or no mobile network coverage. INEC may also wish to consider the use of satellite phones for polling units in areas of poor coverage.
- INEC should consider greater training on BVAS for polling agents.
- INEC should consider the introduction of alternative offline back-up options for BVAS.
- In order to facilitate ease of identification of each party/candidate, INEC should consider including the name and acronym of political parties alongside their logo. INEC could also consider including photos of candidates alongside the logo and party name.
- In order to apprise the media and public in a timely and sufficient manner, INEC should review its communications strategy for future elections to ensure greater adherence to ACHPR's principle of 'proactive disclosure.'

- In its post-election review, INEC should assess factors that influence voter turnout and implement any appropriate reforms within its mandate that would encourage higher voter turnout in future elections.
- INEC should consider ensuring that all party agents are accredited and have INEC accreditation badges on them at all times at polling units.
- Political parties and INEC should collectively ensure that party agents are adequately trained for future elections.
- INEC and relevant security agencies should continue inter-agency security co-ordination and planning for elections, and strengthen any areas where shortcomings have been identified.
- Parliament should consider amending the Electoral Act to provide INEC with legal authority to commandeer appropriate public buildings, such as schools and other neutral structures, for use as polling units.
- INEC should make greater use of indoor spaces for polling units, where possible. Where public buildings cannot be identified, INEC should consider erecting temporary structures outside.
- INEC should make greater efforts to ensure, where possible, that only PWD-accessible buildings are selected to be used as polling stations. Where this is not possible, INEC should consider additional measures to aid PWD voting, such as the provision of ramps. INEC and relevant local government bodies responsible for public buildings should consider how best to co-operate on this task, both logistical and budgetary terms. INEC should also consider consulting local PWD groups on this issue.
- All polling units should be provided with a portable lamp to aid voting and counting after dark.
- Additional training should be provided to polling staff to ensure voters correctly fold their ballot papers and do not compromise the secrecy of their own ballot.
- INEC should ensure clear directional and identification signage of polling units for future elections.
- INEC should review training procedures for future elections to enhance adherence to procedures and guidelines for the opening and closing of polls.
- Parliament should consider amending the Electoral Act to extend polling to 17:00 or even 18:00 in order to allow more voters to exercise their franchise.
- INEC should put in place sufficient logistical arrangements to facilitate timely delivery of polling unit and state results to the collation centres, respectively.

1. Introduction

To provide readers with important background information on the context in which Commonwealth Observer Groups (COGs) operate, this introductory chapter begins with a brief summary of COG methodology. It concludes with an overview of this methodology as applied to the 2023 Nigerian presidential and National Assembly elections.



International election observation methodology

Since 1980, the Commonwealth has observed just under 200 elections in 39 countries.¹ International election observation serves a number of purposes, including:

- promoting the openness and transparency of the electoral process
- deterring improper practices and attempts at fraud
- enhancing public confidence in the process, thereby contributing to acceptance of election results
- diffusing political tensions through diplomacy and mediation
- strengthening international standards on electoral good practices.

The Commonwealth Revised Guidelines: key provisions

The *Revised Commonwealth Guidelines for the Conduct of Election Observation in Member Countries* ('Revised Guidelines') were agreed by Heads of Government at the 2018 Commonwealth Heads of Government Meeting (CHOGM) in London, United Kingdom.² The key provisions include the following:

COGs are independent, including of the Secretariat

'Members of a COG are invited by the Secretary-General... in their personal capacity as an eminent Commonwealth citizen, not as a representative of any member country, government or political group.'

Observers, not monitors

Unlike some citizen observer groups (monitors), which are permitted to intervene or offer assistance to electoral officials in a limited manner, Commonwealth observers - as with all international observers - cannot and do not interfere in any way with any aspect of the electoral process.

Taking forward COG recommendations

The Revised Guidelines encourage member countries to establish '**domestic mechanisms,**' such as multistakeholder meetings or committees, to review and take forward recommendations made by a COG.

Whole-of-election-cycle approach

Election observation is ideally not a standalone activity. Where possible, the Secretariat seeks to support stakeholders in the implementation of these recommendations through a range of methods, including the production of expert publications, the training of election management body staff, the facilitation of peer-to-peer knowledge exchange and, crucially, bespoke technical assistance to national stakeholders upon the submission of a formal request.

¹ To access the Commonwealth's collection of COG reports dating back to 1967, see <https://library.commonwealth.int/Portal/External/en-GB/Collections/Collection/135>

² CHOGM (2018) 'Revised Commonwealth Guidelines for the Conduct of Election Observation in Member Countries'. <https://bit.ly/3Oy0cqc>

The Strength of Commonwealth Observer Groups

While all international election observer missions adhere to the 2005 *Declaration of Principles for International Election Observation*,³ each organisation's methodology has slight variances that reflect its unique strengths. The strength and value of Commonwealth observer missions lie in three key characteristics:

1. *Eminent observers*

While COGs are smaller in size than some other international observer missions, they comprise eminent persons from across the Commonwealth in their respective fields of expertise, such as senior politicians; electoral commissioners; diplomats; and human rights, legal and media experts. Biographies of all observers can be found in Annex I.

2. Diversity and peer-to-peer learning

COGs reflect the geographical diversity of the Commonwealth itself, with observers selected from each of the world's five continents. This inculcates a genuine spirit of peer-to-peer learning on election administration and democratic reform.

3. *Political mediation through the Chair's Good Offices*

COGs are normally chaired by a former head of state or senior diplomat, invited based on careful consideration of a number of factors that ensure they are a 'good fit' for the election in hand. The respect afforded to such high-profile leaders allows COG chairs to enter into a 'good offices' role in instances of post-election political disputes and non-acceptance of election results. Such good offices roles have played a vital part in ensuring peaceful transitions between governments on many occasions.

More information on the role and mandate of observers can be found in the *Commonwealth Handbook on Election Observation*.⁴ For more

3 United Nations (2005) 'Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers'. <https://bit.ly/43p4uV6>

4 The Commonwealth (2019) 'The Commonwealth Handbook on Election Observation'. https://staging-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/2022-01/GPD_Handbook_Election_Observation.pdf

information on the Commonwealth's efforts to promote democracy, please visit the Commonwealth Secretariat website.⁵

Deployment of Commonwealth Observer Group to the 2023 Nigerian elections

In line with the provisions of the 2018 Revised Commonwealth Guidelines for the Conduct of Election Observation in Member Countries, the Commonwealth Secretary-General, Rt Hon Patricia Scotland KC, constituted an Observer Group for the 25 February 2023 presidential and National Assembly elections, following an invitation from the Chair of the Independent National Electoral Commission (INEC).

The COG was led by His Excellency Thabo Mbeki, former President of the Republic of South Africa, and 16 other eminent Commonwealth citizens (Annex I). A staff team of 11 from the Commonwealth Secretariat provided technical support to the COG.

Terms of Reference

The Terms of Reference for the Observer Group were as follows:

'The Group is established by the Commonwealth Secretary-General at the invitation of the Chairperson of the Independent National Electoral Commission of Nigeria (INEC). The Group is to consider the various factors impinging on the credibility of the electoral process as a whole.

It will determine in its own judgement whether the elections have been conducted according to the standards for democratic elections to which Nigeria has committed itself, with reference to national election-related legislation and relevant regional, Commonwealth and other international commitments.

The Group is to act impartially and independently. It has no executive role; its function is not to supervise but to observe the process as a whole and to form a judgement accordingly. It would also be free to propose to the authorities concerned such action on institutional, procedural and other matters as would assist the holding of such elections.

5 See <https://thecommonwealth.org/our-work/promoting-democracy>

The Group is to submit its report to the Commonwealth Secretary-General, who will forward it to the Government of Nigeria, INEC, political parties taking part in the elections and thereafter to all Commonwealth Governments.'

Activities

The COG was present in Nigeria from 18 February to 2 March 2023. It was briefed on the preparations and the political environment ahead of the 2023 presidential and National Assembly elections by INEC, senior government officials, the Inspector General of Police (IGP) and police management, representatives of political parties, international observers, the media, members of the Commonwealth diplomatic corps and civil society organisations (CSOs) representing citizen observers, women, persons with disabilities (PWDs) and youth.

The Group released its Arrival Statement on 20 February 2023 (Annex II).

On election day, members of the Group observed polling in seven states and the Federal Capital Territory (FCT), and visited more than 75 polling units (Annex III).

The Group released an Interim Statement on 27 February 2023 (Annex IV), highlighting its preliminary findings and observations.

A draft report was prepared in Nigeria prior to the Group's departure on 2 March 2023, finalised in London, signed off by observers and thereafter transmitted to the Commonwealth Secretary-General. Throughout 2023, the Group continued to receive correspondence about these elections from political parties related to their court challenges of the results.

2. Political Background

Historical background

Nigeria achieved its independence on 1 October 1960. Following this, persistent military coups challenged the country's democratic dispensation. A breakthrough came in 1999 when a new Constitution was adopted, and a civilian government was elected that year. Since then, Nigeria has experienced uninterrupted civilian rule.

To understand the significance of the 2023 general elections in Nigeria, it is important to place this event in the context of the country's electoral and political landscape from 1999, when democracy was reinstated after a generation of military coups and rule.

The 1999 elections and the return to multiparty democracy

General Abdulsalami Abubakar came into office as Head of State following the death of General Sani Abacha in June 1998. Thereafter, he announced a plan for the restoration of a democratic, civilian government by 29 May 1999. He established INEC, which announced a timetable for elections, beginning with local elections on 5 December 1998 and culminating in a presidential election on 27 February 1999.

INEC granted full registration to three parties: the People's Democratic Party (PDP), the All People's Party (APP) and the Alliance for Democracy (AD). The PDP and the APP both had a national support base; the AD's support was predominantly from the six South West states.

The presidential election of 20 February 1999 was won by Chief Olusegun Obasanjo (PDP) with 62 per cent of the total national vote. Chief Olu Falae, the joint AD and APP candidate, gained 37 per cent. President Obasanjo was sworn in on 29 May 1999. Domestic and international observers, including a COG, witnessed irregularities in the poll but concluded that the result broadly reflected the will of the Nigerian people.

Presidential elections from 2003 to 2019: a brief overview

2003

- These were the first elections administered under a civilian administration.
- Olusegun Obasanjo (PDP) beat General Muhammadu Buhari (All Nigeria Peoples Party, ANPP) by 62 per cent to 39 per cent, to serve a second term.
- The COG concluded that, although a genuine attempt was made to ensure the will of the people was reflected, 'there were parts of Nigeria in which many Nigerians were denied the right to participate in an authentic democratic process.'

2007

- President Obasanjo initially sought a constitutional amendment to allow him to run for a third term. His Vice President, Alhaji Atiku Abubakar, publicly opposed this. The two fell out and the Constitution was not amended.
- Owing to the fallout over corruption allegations, Abubakar left the PDP and stood as presidential candidate for the newly formed Action Congress (AC). Other contenders included Alhaji Umaru Yar'Adua (PDP), then Governor of Katsina state, with Dr Goodluck Jonathan, Governor of Bayelsa state, as his running mate. General Muhammadu Buhari stood on the ANPP ticket.
- Yar'Adua (PDP) won with 70 per cent but violence and widespread electoral irregularities marred the election. Abubakar and Buhari submitted a petition but the Supreme Court ruled in Yar'Adua's favour.

2010 electoral reform

- During Yar'Adua's tenure, he established a 22-person committee on electoral reform led by Justice Muhammed Uwais, former Chief Justice. The Committee made a series of positive and democratic recommendations.

- President Yar'Adua presented a modified version of the Uwais Report but died before any electoral reform was passed into law.
- Goodluck Jonathan succeeded Yar'Adua as President and submitted the report on electoral reform to the National Assembly. The Electoral Act was passed in 2010. The Act included shorter timeframes for determining petitions but failed to include (among other things) provisions for ending presidential appointment of INEC commissioners or establishing a committee on electoral offences.

2011

- President Jonathan's candidacy was stymied by northern PDP colleagues, who complained that such a candidacy would violate the 'zoning arrangement,' whereby the party alternates between northern and southern candidates (they argued that, since Yar'Adua had not completed his term, it was not Jonathan's/the south's turn).
- Jonathan nonetheless won the primaries, albeit under a controversial process. He went on to receive 58.9 per cent in the presidential race, beating General Muhammadu Buhari of the Congress for Progressive Change (CPC), Mallam Nuhu Ribadu of the Action Congress of Nigeria (ACN, formerly the AC) and Mallam Ibrahim Shekarau (ANPP), who received 31.98 per cent, 5.41 per cent and 2.4 per cent, respectively.
- Following the announcement of the results, about 800 people were reportedly killed during protests by those who did not accept the outcome.

2015

- The 2015 elections saw the first-ever united opposition, composed of three major opposition parties – the CPC, the CAN and the ANPP – and a faction of the All-Progressives Grand Alliance. The All Progressives Congress (APC) was established in 2013.
- A lawsuit was filed challenging President Jonathan's eligibility to run for office in 2015, with the opposition arguing his period in office prior to the 2010 election was a *de facto* first term. The Supreme Court rejected this argument and Jonathan stood for election.

- General Muhammadu Buhari (APC) won the 2015 election and Nigeria experienced its first peaceful transition of power between democratically elected governments.

2019

- The 2019 presidential and National Assembly elections were a two-horse race between the ruling APC and the main opposition PDP, notwithstanding that a total of 91 political parties and 73 presidential candidates were registered. Both President Buhari and Atiku Abubakar are Hausa Fulani Muslims from Northern Nigeria.
- President Buhari won election for a second term.

Background to the 2023 elections

The 2023 elections were significant for several reasons. These were transitional elections, as the incumbent, President Muhammadu Buhari, was not running, having completed his two terms in office. The year 2023 also marked a milestone in Nigerian politics: this was the seventh consecutive democratic election since the end of military rule in 1999.

As the most populous country in Africa and a major economy, Nigeria and its political and economic condition have consequences for the stability of the sub-region and the continent. Nigeria is projected to be the world's fourth most populous country by 2050. Whatever happens in the country therefore has broader implications for the region and the continent at large. Nigeria sits in a fragile neighbourhood and has acted as a stabilising force in a region that has seen coups d'état since 2020 in nearby Burkina Faso, Guinea, Mali and Niger, and attempted coups in Guinea⁶, Guinea-Bissau, Niger and arguably The Gambia and São Tomé and Príncipe.

Nigeria has also played an important role in world politics. Nigeria is the largest contributor to the budget of the Economic Community of West African States (ECOWAS) and the Regional Standby Force, and currently chairs that body; it is the only African country to have provided a Secretary-General of the Commonwealth (Chief Emeka Anyaoku) to date. Currently, there is a Nigerian at the helm of the World Trade Organization (Ngozi Okonjo-Iweala). Additionally, the Deputy Secretary General of the

6 A coup d'état in 2021 and an attempted coup in 2023.

United Nations (Amina Mohammed), the President of the African Development Bank (Dr Akinwumi Adesina) and the African Union Commissioner for Political Affairs, Peace and Security (HE Bankole Adeoye) are Nigerians. These are among other contributions that Nigeria has brought in the sporting, art, culture and creative industries.

There was thus a lot at stake for Nigeria and the future of its democracy in the 2023 general election. This event was also set against the backdrop of persistent insecurity, separatist agitation, economic challenges, inflation and the depreciating value of the naira, divisive ethnic and religious politics, and weakening infrastructure and institutions, which all threatened the progress made since the return to democracy in 1999.

Nigeria is Africa's largest economy, though it ranks just 133/184 worldwide in terms of gross domestic product per capita (at \$2,429). Corruption is pervasive, Nigeria ranking 145 out of 180 countries in 2023 on Transparency International's Annual Corruption Perceptions Index. The economic conditions also reflect low growth and a rapid increase in population, from 45 million at independence in 1960 to 215 million 60 years later. Now six out of 10 Nigerians live below the poverty line, many – especially in the north – lacking education and access to basic infrastructure, including potable water, electricity and sanitation. Most are engaged in subsistence activities, with just 17 per cent holding wage jobs. Young people under the age of 35 comprise 76.5 per cent of the population – yet politics have been notable for low levels of youth participation and representation. Youth unemployment is estimated to be 42.5 per cent. This is juxtaposed with rising costs of living, (food) insecurity, a post-Covid economic downturn and a brain drain, with Nigerians increasingly migrating to the United Kingdom, Canada or the United States to *japa*, or escape.

Threats to security in the 2023 elections

The state of insecurity was another key issue that shaped the political landscape of the 2023 elections. Nigeria has been grappling with insurgency and violence perpetuated by extremists, bandits, secessionists and opportunistic criminals. There is endemic insecurity in parts of the country, which has produced 3.3 million internally displaced persons (IDPs). This influenced the turnout, which, at 26.8 percent, was lower than in 2019.

The issues and the drivers of insecurity are not new and have been in existence since 2012; what changed in 2023 was that all six geopolitical zones of the country faced one or another insecurity threat.

Religious extremists

Unlike in 2019, when violence was concentrated mostly in the North East, perpetrated mostly by Boko Haram terrorists, there are now multiple actors and groups with varying interests, operating in all parts of the country. The Ansaru group, an offshoot from Boko Haram since 2012, is affiliated to Al-Qaeda and operates in the North West, concentrated in Kaduna. Islamic State – West Africa Province, another offshoot of Boko Haram in existence since 2015, also affiliated to Al-Qaeda, focuses its operations on the North East, in Maiduguri and along the borders with Cameroon.

Farmers-herders

In addition to Boko Haram terrorism, the farmers-herders conflict has also escalated in the past five years. This centres on violent disputes over land resources between nomadic animal herders on the one hand and farmers on the other. Climate change and the expansion of the Sahara Desert have exacerbated demands on land use, limited water resources and changed grazing patterns and routes, forcing herders to go further south in search of greener pastures and, resulting in clashes with farmers.

Banditry and kidnapping

Armed bandits have run opportunistic operations in the North West and some parts of the South West. Zamfara and Niger states have been the epicentres of these attacks. Their operations have taken the form of kidnapping of relatives of prominent persons and school children for ransom, and raiding villages. According to some media sources, more than 1,000 students have been abducted from their schools since December 2020, with many released only after thousands of dollars were reportedly paid as a ransom.

Separatists

The Indigenous People of Biafra (IPOB) has been agitating for separation and clashing with security forces. IPOB wants a group of states in the South East, mainly made up of people from the Igbo ethnic group, to break away and form the independent

state of Biafra. IPOB was formed in 2014 by Nnamdi Kanu, agitating for an independent Igbo state able to control itself and its resources. The orders of the IPOB to stay at home on Mondays were regularly obeyed, and the extent to which its influence may have affected registration and voter turnout in the five South East states of Anambra, Ebonyi, Enugu, Rivers and Imo warrants further analysis.

Oil militants

Militants in the Niger Delta, which contains significant oil deposits and upon which Nigeria's economy depends, have long agitated for a greater share of oil revenues. The extraction of oil from their region, and the historical environmental damage caused by its extraction, has devastated communities and made it impossible for them to fish or farm, causing pollution of waterways and illness. The militants have been pressurising the government by kidnapping oil workers and launching attacks on security personnel and oil infrastructure. Though an amnesty programme was put in place in 2009 by the Yar'Adua administration, these militants continue to pose a security threat in the region.

Main political parties

It is noteworthy that this 2023 election was not another two-horse race between the APC and the PDP. The emergence of the Labour Party (LP) and the New Nigeria People's Party (NNPP) altered the electoral dynamics. Youth voters, at least in the lead-up to the elections, were a potential galvanising and political force.

INEC registered a total of 18 political parties for the National Assembly elections and 18 presidential candidates. The media reported that the four most prominent candidates in the presidential elections were from the APC, PDP, LP and NNPP.

Though some of the dynamics in the elections were different, some elements remained constant. The sensitive fault lines of religion, ethnicity and region still played a vital role in the elections. The nature of Nigerian politics is one based on identity and cult of personality rather than ideology, and that remained unchanged. The candidates and the parties reflected the significant roles that ethnicity, region, religion and, to some extent, class continue to play in Nigerian politics.

Presidential candidates

Asiwaju Bola Ahmed Tinubu

Tinubu was the presidential candidate for the APC. Tinubu, former Governor of Lagos state, founder of the APC and businessperson, was running with Kashim Shettima as his running mate, both being Muslim. This was considered a daring choice given the historical role that ethnicity and religion play in Nigerian political sentiments and psychology, with speculation that the APC campaign might lose the Christian vote.

Tinubu was regarded as a king maker (or 'godfather'), having successfully formed the coalition APC that brought General Muhammadu Buhari into power and backed or stymied the careers of a number of politicians over the years. His popularity stemmed from his days as the Governor of Lagos: tax revenues quadrupled during his tenure from 1999 to 2007 and development and infrastructural works improved. He influenced successive choices of Lagos Governors and enjoyed popularity in the state.

Tinubu's *e mi lo kan* ('It's my turn now') politics elicited accusations of dynastic and despotic tendencies and a backlash from political contemporaries and youth alike.

Atiku Abubakar

Atiku ran on the PDP ticket. He is considered a seasoned politician and businessperson, having served as Vice President under Olusegun Obasanjo from 1999 to 2007. He contested for President unsuccessfully in 1993, 2007, 2011, 2015 and 2019. In 2023, he was 76 years, so this election was regarded as his final opportunity to contest. He was a strong proponent of restructuring Nigeria's Constitution to devolve more political powers from the federal government to the states and of the establishment of state-controlled security forces, to better handle the various security threats at the sub-national level. This message resonated with the PDP's traditional popular base in the South East and South South geopolitical zones.

Peter Obi

Obi of the LP is a businessperson and former Governor of Anambra state. In the 2019 elections, he was Atiku's running mate under the PDP umbrella. For the 2023 elections, he joined the LP

and was running with Yusuf Baba-Ahmed, a former Senator from Kaduna, as his running mate. As the youngest of the four leading presidential candidates, he was highly popular among youth. He garnered endorsements from prominent Nigerians like former President Olusegun Obasanjo; this was seen as a slight against his former Vice President, Atiku, and the party that had propelled him to his presidency.

Rabiu Kwankwaso

Kwankwaso of the NNPP, 66, is a former Governor of Kano and a former Senator. He was formerly a member of the APC and the PDP, serving as Minister of Defence in President Obasanjo's administration.

3. Legal Framework and Electoral Administration

System of government

President

The executive power of the Federal Republic of Nigeria is vested in the President, who is the Head of State, Head of Government and Commander in Chief of the armed forces. Having been elected and served two four-year terms of office, the incumbent President Muhammadu Buhari has served his maximum term.

Regulation 2 of the INEC Regulations and Guidelines for the Conduct of Elections 2022 stipulates that elections shall be held quadrennially on the third Saturday in February of any general election year. However, because of the late enactment of the Electoral Act (on 25 February 2022), and the Act's requirement that the election be announced at least 360 days in advance, the 2023 elections were held on 25 February 2023, which was the fourth, rather than the third, Saturday in the month.

For a candidate to be elected President, he/she must have the highest number of votes cast, and must also have won at least a 25 per cent of the vote 'in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.'⁷ Section 134(4) of the Constitution stipulates that, if a presidential candidate is not duly elected in accordance with the constitutional requirement, then the two leading candidates contest a run-off within 21 days of the result of the first election. If neither of the two candidates secures victory in the run-off, by winning one-quarter of the votes cast in two-thirds of the

states together with the FCT, a second run-off is held. The candidate who secures the most votes in the second run-off wins the elections and will be inaugurated as President.



National Assembly

The National Assembly of the Federation consists of a Senate and a House of Representatives. The Senate has a total of 109 members, elected from single-member constituencies. The House of Representatives has 360 members, also elected from single-member constituencies. Members of both houses are elected for a four-year term.

The electoral constituencies for the House of Representatives per state vary to reflect the variations in population size. The number of senatorial districts, however, is fixed at three per state, plus one for the FCT.

The electoral system used for both Houses of the National Assembly is the first-past-the-post system.

Legislative framework

The core legislative and regulatory framework applicable to the 2023 presidential and National Assembly elections comprised:

- 1999 Constitution (as amended)
- Electoral Act 2022
- Regulations and Guidelines for the Conduct of Elections 2022
- Regulations and Guidelines for Voting by Internally Displaced Persons 2018
- INEC Framework on Voting by IDPs

⁷ There were differing interpretations of this constitutional provision, with some arguing that the words 'and the Federal Capital Territory' meant that garnering at least 25 per cent of the vote in the FCT was necessary in order to win the presidential election, with others arguing that the provision meant only that the FCT may or may not be among the two-thirds of states. In light of the fact Tinubu did not secure 25 per cent of votes in the FCT, this issue formed part of Peter Obi's presidential petition to the Supreme Court. The Supreme Court dismissed this argument and upheld the Appellate Court's decision that garnering at least 25 per cent of the FCT is not a prerequisite for winning the presidential election.

International standards, commitments and instruments

Nigeria has signed, committed, or agreed to the major regional and international commitments and instruments relating to democracy, human rights and the conduct of elections. These include:

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (ICCPR) (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (1966)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)
- African Charter on Human and Peoples' Rights (ACHPR) (1981)
- Convention on the Rights of People with Disabilities (2006)
- African Charter on Democracy, Elections and Governance (ACDEG) (2007)
- Port of Spain Affirmation of Commonwealth Values and Principles (2009)
- Commonwealth Charter (2012)

Electoral Act 2022

The 25 February 2023 elections were conducted under a new Electoral Act, enacted in late February 2022. This Act replaced the Electoral Act 2010 and was intended to increase confidence in the electoral process by clarifying the grounds for declaring an election inconclusive (a bone of historical contention), by providing scope for INEC to adopt electoral technologies to improve the integrity and security of the process, and by clarifying procedures for the transmission of results.

Some of the key provisions of the Electoral Act 2022 include the following, with regards to INEC funding, campaign funding and election administration:

- INEC is no longer required to submit to the Ministry of Finance estimates of its financial expenditure and income for the succeeding financial year, thus allowing it greater autonomy and financial independence.
- Election funds due to the Commission for any general election are to be released not later than one year before the next election.

- Parties must conduct primaries and submit their list of candidates at least 180 days before an election.
- The campaign period commences 150 days before election day and ends 24 hours before election day.
- The campaign finance limit for presidential candidates is increased from ~~₦1~~ to ~~₦5~~ billion.
- Legislative backing is introduced for the use of smart card readers or any other technological device that INEC may proscribe.
- INEC is empowered to determine the form of transmission of election results, thus allowing it to adopt technologies for electronic transmission.
- PWDs, those with special needs and vulnerable persons are to be assisted at polling places through the provision of suitable means of communication or offsite voting in appropriate cases.

Positively, the new Electoral Act includes trust-building measures, involving the extension of timeframes for election planning and introducing public access to key election results data.

Independent National Electoral Commission

Appointments and structure

INEC comprises a Chairperson, who is the Chief Electoral Commissioner, and 12 National Electoral Commissioners, who are appointed by the President, subject to confirmation by the Senate, for a five-year term, which is renewable. The current Chairperson is Professor Mahmood Yakubu. Resident Electoral Commissioners for each state of the Federation and the FCT are also appointed by the President, following confirmation by the Senate.

The Chairpersons and Commissioners of INEC enjoy security of tenure and can be removed from office only by the President with the support of a two-thirds majority of the Senate on the grounds of inability to discharge the functions of the office arising from infirmity of mind or body, or for misconduct or any other cause.

While the Group does not have any reason to doubt the probity or professionalism of Commissioners, at either the state or the federal level, it notes that the appointments process could benefit from

reforms to strengthen public confidence in the institution, such as ensuring that an independent panel, rather than the Senate and President, provide a shortlist of names to be considered for appointment.

Recommendation:

- In order to foster greater transparency and independence, Parliament should consider amending the Constitution to establish an independent panel, such as a public appointments commission, to facilitate an application and screening process for the appointment of national and resident electoral commissioners. As well as professional and technical competencies, the screening process should ideally include criteria such as evidence of probity and integrity in public life. The panel could then submit a shortlist of names of qualifying candidates to the President and Senate, who would then agree on the selected appointees.

Mandate of INEC

INEC is empowered under the Constitution to organise, undertake and supervise all elections to the offices of the President and Vice President, the Governor and Deputy Governor of the state, and the membership of the Senate, the House of Representatives and the House of Assembly of each state of the Federation. Its other key functions include:

1. oversee the registration of political parties
2. monitor the activities of political parties, ensure their compliance with the constitution and Electoral Act, and issue sanctions for electoral offences.
3. monitor political campaigning and provide rules and regulations for political parties
4. monitor the candidate nomination process (whether direct or indirect primaries or consensus) and ensure compliance with Section 84 of the Act
5. monitor and enforce the Act's provisions on campaign finance
6. conduct voter and civic education
7. procure and deploy electoral technologies as per the Act
8. recruit and train the temporary workforce
9. maintain on a continuous basis a National Register of Voters
10. fix dates for elections
11. facilitate the observation and monitoring of elections
12. undertake periodic delimitation of constituency boundaries.

The Group takes note of the findings and recommendations of both the 2009 Uwais Report and the 2017 Nnamani Report. These reports both concluded that INEC was overburdened with the sheer number of responsibilities under its purview. They both recommended the establishment of new bodies to take on certain responsibilities, thereby 'limiting [INEC's] power to [the] conduct of elections and referendum [sic].'⁸

The Nnamani Report called for the establishment of a Political Parties and Electoral Offences Commission, which would have responsibility for political party registration, monitoring of political party activities, sanctioning of electoral offences, monitoring of candidate nomination processes, and monitoring and enforcement of campaign finance (i.e., points 1–5, above).

The Report also suggested that a separate committee be established to undertake voter education, comprising members of the National Orientation Agency (NOA), INEC, political parties and civil society. Lastly, the Report recommended that boundary delimitation be undertaken by a Constituency Delimitation Centre, comprising representatives of INEC, the National Population Commission, the National Boundary Commission, the Office of the Surveyor-General, the National Bureau of Statistics and the National Identity Management Commission.⁹

The Group concurs with the general thrust of these recommendations for three reasons. First, as shall be explained in greater detail in further sections of this report, it seems evident that INEC is indeed overburdened with the sheer quantity and breadth of each of its areas of responsibility. INEC has itself acknowledged this challenge, with Professor

8 Report of the Constitutional and Electoral Reform Committee ('the Nnamani Report') (April 2017), p. 9. <https://library.commonwealth.int/Portal/External/en-GB/DownloadImageFile.ashx?objectId=13147&ownerType=0&ownerId=73985>

9 Ibid., p. 10.

Yakubu calling its task 'Herculean' and, on multiple occasions, supporting calls for the establishment of a political party and electoral offences commission through the passing of the Electoral Offences Commission and Tribunal Bill that was before Parliament prior to the election.¹⁰

This lack of capacity is seen most acutely in the areas of campaign finance, electoral offences and candidate nomination dispute resolution. Regarding the latter, Professor Yakubu stated on 6 February 2023 that the Commission was, at that time, joined in a total of 1,241 intra-party pre-election lawsuits.¹¹ The Commission's overall burden may also have had knock-on effects on its overall preparations, and may have contributed to some of the operational and technological shortcomings witnessed on election day and in the results tabulation and announcement phase (discussed in Chapter 6).

Second, the Uwais and Nnamani recommendations represent a pragmatic and logical solution to the identified challenges. Simply increasing the budget and resources of INEC may do little to resolve the issue of the INEC Chair and Commissioners being overburdened by a vast array of legal and regulatory functions over which they have oversight. A separate body that is able to focus on political party registration, candidate nomination and electoral offences (the latter with the assistance of, among others, the police and the Economic and Financial Crimes Commission) would free up INEC to focus on election administration and may also bring about more effective oversight of political parties. Likewise, the recommendations on voter education and boundary delimitation are similarly pragmatic. These activities are each, by their very nature, multistakeholder efforts; the proposed commissions are responsive to this reality.

Third, there is already a significant level of traction for the establishment of an electoral offences commission, with the Electoral Offences Commission and Tribunal Bill currently under consideration in the National Assembly. The Group notes that the proposed commission envisioned by this Bill would not have oversight of political party registration, as per the Uwais and

Nnamani recommendations. The Group believes it would seem logical that the same body that is responsible for oversight of electoral offences also be responsible for their registration.

The Group further acknowledges that the establishment of a separate body will not on its own lead to an automatic increase in the number of prosecutions and convictions of electoral offences. For this body to be effective, it is vital that the appointments process for its members be undertaken by an independent selection panel via an open application process, with probity, integrity and non-partisanship given significant weighting alongside professional competencies in the panel's selection criteria. The successful prosecution of electoral offences also relies on a judiciary that is well trained on electoral law and able to apply the law consistently and with deference to established precedent. Consistency of court judgements is discussed in greater length further on in this chapter.

The Group wishes to commend the efforts of Nigerian stakeholders thus far, and calls on the National Assembly to continue its deliberations on the proposed Bill and other Uwais and Nnamani recommendations.

Recommendations:

- The National Assembly should consider passing legislation that establishes a separate body for the regulation of campaign finance and electoral offences, and ideally the registration of political parties. Members of the committee should not be active members of any political party and should be appointed by an independent panel, with probity, integrity and non-partisanship given significant weight alongside professional competencies.
- The National Assembly should deliberate further on the establishment of a multistakeholder body for the delimitation of boundaries.
- The National Assembly should deliberate further on the establishment of a multistakeholder body for the delivery of voter and civic education.

Dispute resolution and electoral offences

Intra-party candidate nomination disputes

The constitutions of the APC, PDP and LP each contains provisions and mechanisms for the

10 <https://main.inecnigeria.org/?news=address-by-the-hon-chairman-independent-national-electoral-commission-inec-prof-mahmood-yakubu-at-a-one-day-public-hearing-on-the-national-electoral-offences-commission-establishment-bill-2021>

11 Jimoh, A. (2023) 'We Are Joined in over 1200 Pre-Election Cases – INEC'. *Daily Trust*, 9 February.

resolution of intra-party disputes.¹² Such disputes commonly arise in relation to candidate nomination processes. Where dispute resolution mechanisms fail, aspirants or political parties can petition the Federal High Court in accordance with Section 285 (10–14) and the Sixth Schedule of the Constitution, and Section 29 (5-7) of the Electoral Act.

Given the inadequate, ineffective and, in some cases, undemocratic nature of such internal dispute resolution mechanisms in many parties, many disputes end up in court. Indeed, Professor Yakubu confirmed in his speech at Chatham House, London, on 17 January 2023, that INEC was joined in some 791 pre-election lawsuits in relation to intra-party candidate nomination disputes.¹³

The reasons for, and impact of, this status quo deserve attention. While the Electoral Act gives broad oversight powers to INEC, including to monitor some aspects of party primaries, INEC does not have the authority to reject or disqualify any candidate duly submitted to the Commission on the grounds of non-compliance with the legal and regulatory framework. In addition to INEC's legal constraints regarding its monitoring of the candidate nomination process, two recent court cases, regarding the primary processes of Ahmad Lawan and Godswill Akpabio, in effect upheld the principle of the 'supremacy of the party' – that is, that political parties should, as a matter of principle, be almost entirely unencumbered in the selection of their candidates, and INEC should have almost no regulatory role as regards the validity of candidate lists. These cases are discussed in greater length later in this chapter.

Candidate nomination lists must be submitted to INEC a minimum of 180 days before the date set for the poll. Section 285 (10) of the Constitution, meanwhile, states that pre-election cases must be heard within 180 days. Thus, unresolved pre-election lawsuits, many of which are relatively simple administrative or procedural disputes that could otherwise be determined by INEC in a regulatory capacity, are instead resolved via protracted and costly judicial processes, which often mount towards election day. Consequently,

INEC's time and resources are diverted away from pressing election day preparations, and the late determination of such cases has the potential to have a negative impact on INEC's ability to print accurate ballot papers.

Where internal party dispute mechanisms fail, it is inevitable that decisions on the validity of candidates must be made by an adjudicating body of some sort. With political parties having attained the backing of the Supreme Court with regard to control over candidate nomination processes, the weaknesses of intra-party dispute resolution mechanisms mean that parties themselves frequently and voluntarily surrender their 'supremacy' to the courts on matters of candidate nomination. The Group is of the view that such decisions would be better made by INEC or a political parties commission, for four reasons: (i) many intra-party candidate nomination disputes are straightforward enough as to preclude the need for lengthy judicial processes; (ii) the impact of protracted judicial processes is injurious to INEC's ability to prepare for elections; (iii) either INEC, or any body as may be established to determine such cases in the future, should be sufficiently trusted to determine cases with impartiality and probity in accordance with their constitutional mandate; and (iv) INEC is sufficiently equipped with legal expertise on issues of electoral law as to be able to ensure consistency and accuracy in the application of the law.

Consistent with its earlier recommendation on INEC's mandate, and in line with the recommendations of the Uwais and Nnamani reports, the Group recommends that due consideration be given to the establishment of a separate political parties and electoral offences commission that shall have the authority to fully regulate political party nomination processes and make determinations on the validity of candidate nomination lists in an expeditious manner. This would necessarily entail amendments to both the Constitution and the Electoral Act, and possibly standalone legislation.

Recommendations:

- Political parties should strengthen their capacity for internal dispute resolution.
- Parliament should consider amendments to the Constitution and the Electoral Act 2022 to empower INEC, or any body as may be established to determine pre-electoral

12 The Group was not able to review the constitutions of all registered political parties.

13 Suleiman, Q. (2023) 'INEC Joined in 791 Pre-Election Suits ahead of 2023 Elections – INEC Chair'. *Premium Times*, 17 January. www.premiumtimesng.com/news/top-news/576316-inec-joined-in-791-pre-election-suits-ahead-of-2023-elections-inec-chair.html

intra-party disputes, to reject or disqualify candidates on the basis of non-compliance with the legal and regulatory framework. The law should proscribe for the resolution of such disputes in a timely manner.

Role and capacity of courts and election tribunals

The Group was made aware of various issues regarding the capacity of courts to deal with pre-election disputes, as well as the consistency of court decisions and their adherence to precedents. Regarding capacity, the Group notes that Section 285 (9-12) of the Constitution, as amended by the Fourth Alteration Act 2017, now includes timelines for the filing, hearing and judgment of pre-election disputes, which has had a positive impact on courts' ability to hear petitions in a more orderly and timely manner. However, the Group understands that the sheer volume of election litigation still presents challenges.

The Group takes note of the differing viewpoints regarding the pros and cons of various mechanisms for determining such disputes, including between greater funding of election tribunals versus the establishment of election divisions within state and federal high courts. The Group does not take a particular view on the mechanism itself. However, it recommends that judicial appointments to these mechanisms be increased (including to appellate courts), along with an increase in funding. Such funding should cover training of the judiciary on specialist areas such as the use of electoral technologies and the collection of digital evidence.

The Group is aware of apparent inconsistencies in court decisions in recent electoral cycles, in terms of either courts' application of different principles/interpretations or the issuing of conflicting orders or rulings.¹⁴ Where such conflicts arise from recondite areas of law, such cases could be elevated to superior courts for guidance. The judiciary could likewise issue practice directions to mitigate such conflicting judgments

Recommendations:

- In order to address capacity issues relating to election litigation, judicial appointments to courts and election tribunals should be increased. The Government should increase

funding for election tribunals and courts, including for training of the judiciary on specialist areas such as the use of electoral technologies and the collection of digital evidence.

- In order to mitigate conflicting judgments, orders and decisions, which have negative impacts on INEC's preparedness, practice directions and guidance from superior courts should both be given consideration.

Electoral offences

The majority of electoral offences are set out in Sections 114–129 of the Electoral Act. These provisions cover, among others, offences in relation to voter registration, candidate nomination, bribery and conspiracy, wrongful and illegal voting, undue influence and numerous election day offences.

Based on discussions with stakeholders, as well as observations by the Group, it seems evident that there exists a culture of relative impunity with regard to electoral offences, particularly campaign finance violations, vote-buying, bribery and theft of ballot boxes, among others. As has been noted, INEC's lack of internal capacity is a significant factor. The legal framework underpinning the investigation and prosecution of electoral offences presents additional challenges to INEC's ability to effectively enforce these provisions. The responsibility to prosecute electoral offences rests solely with INEC, yet INEC is unable to fully investigate electoral offences since it lacks the constitutional authority to summon witnesses or procure any evidence as it may see fit. Additionally, INEC relies on the police for the arresting of suspects – yet the Group understands that very few arrests are made. These legal lacunae, coupled with INEC's constrained internal capacity, hamstring INEC's ability to prosecute electoral offenders and contribute to the perpetuation of the culture of impunity.

As noted elsewhere in this chapter, the Group concurs with the recommendations of the Uwais and Nnamani reports, and with INEC's own statements, regarding the establishment of a separate electoral offences commission, ideally one that encompasses the registration of political parties. While noting concerns of some stakeholders regarding a further increase to the size of the federal bureaucracy, the Group is of the view that there is enough justification for the establishment of such a body, given the

14 Nnamani Report, pp. 46–51.

challenges faced by INEC in prosecuting electoral offences and the impact of this regulatory burden on INEC's ability to focus on other aspects of the electoral process.

Recommendation:

- Parliament should consider legislative amendments to grant INEC (or any body as may be established to prosecute electoral offences) appropriate investigatory powers.

Post-election petitions

Section 285 of the Constitution, as well as the Sixth Schedule of the Constitution, sets out the composition and membership of election tribunals for National Assembly and gubernatorial post-election petitions, as well as the timelines for the submission of petitions as well as the hearing, ruling and appeals process for such petitions.

Sections 130–131 and Section 133 of the Act specify who can be party to a post-election petition, either a petitioner or a respondent. Categories include a candidate, a political party, a person whose election is being complained of and INEC. Sections 134–140 set out the grounds for petition, the circumstances in which an election cannot be invalidated and provisions for the nullification of an election. Procedures for election petitions are set out in the First Schedule of the Act.

Election petitions must be filed within 21 days of the declaration of results. Election tribunals must deliver their judgment 180 days after the filing of the petition, and any appeal against a judgment must be 'heard and disposed of' within 60 days of the judgment of the tribunal (Section 285 (7)). The maximum time that might pass between the initial declaration of results and the final judgment of an appellate court or tribunal is therefore 261 days.

The Group has a number of concerns with regard to the current legal framework and operational aspects of the petition process. The timelines for the filing, hearing and determination of petitions, including appeals, are too long. In the case of a presidential petition, the Group notes that the inauguration of Presidents-Elect takes place roughly 90 days after the election. This means that presidential election petitions are decided many months after the newly or re-elected President takes office. It is conceivable that Supreme Court judges will take into account in their judgments

the level of disruption that a decision to annul a presidential election result three months after the inauguration of the incumbent might cause, thus placing petitioners at a possible disadvantage regardless of the merits of their case.

Further still, on taking office, the President obtains executive powers, including the authority to dismiss judges of the Supreme Court with the support of two-thirds of the Senate. Thus, there is the potential for executive interference in judicial processes that concern the election of the President. Lastly, a period of 180 days to determine presidential election petitions places the country in limbo for this period, during which time tensions can rise along with the risk of post-election violence.

While lengthy timelines for presidential petitions can carry additional potential consequences beyond those of National Assembly or gubernatorial petitions, those for the latter petitions also introduce long periods of uncertainty, and with this the attendant risk of rising tensions. The Group therefore avers that timelines for the latter elective positions should also be reduced by a concomitant amount.

Recommendation:

- Parliament should consider amendments to the Constitution and the Electoral Act to shorten timelines for presidential petitions, so as to ensure that judgments are provided prior to the inauguration of the President-Elect. Timelines for post-election petitions, including appeals processes, for other elective positions should also be decreased significantly.

Funding

A key change introduced by the Electoral Act is that INEC is no longer required to submit to the Ministry of Finance estimates of its financial expenditure and income for the succeeding financial year. This affords it a greater level of autonomy and independence than before. This is a significant and positive change, which is to be commended. In addition, the Act now states that INEC must receive funds owed to it no later than one year before the election. This, again, is a welcome step.

INEC acknowledged that it had been provided with the necessary funding for the conduct of elections as prescribed by the Act, in spite of the prevailing challenges of the naira demonetisation policy. INEC informed the Group that it had met with the Central

Bank of Nigeria to request that cash be set aside for it to undertake its activities. INEC informed that the Central Bank provided 'a fraction' of the requested amount for two specific purposes: the payment of vehicle providers and the provision of cash to polling staff to purchase food. INEC stated that the money provided was nonetheless sufficient to allow the Commission to undertake its activities.¹⁵ However, INEC's disbursement of the funds did not appear to have reached all INEC offices across the country in a timely manner. This may have contributed to the delay in commencing voting on time at many polling stations.

Recommendation:

- In future, greater care should be given to ensure INEC's ability to administer elections and other stakeholders' ability to participate are not unduly affected by executive branch decisions relating to demonetisation.

Accessibility of the law

In order to increase transparency and foster greater understanding of the electoral process, all relevant laws, regulations and key documents must be made easily accessible online. The Group experienced significant difficulties in obtaining up-to-date copies of certain laws and regulations. In addition, INEC's website contains press releases regarding a number of important documents, including INEC's two post-election reports into the conduct of the 2019 election, yet these do not link to the reports, nor can they be found online elsewhere. Other key resources, such as the 2009 Uwais Report and the 2017 Nnamani Report, both of which should be accessible to all Nigerians, cannot be found online easily (if at all). The lack of easy access to such documents severely hampers the degree to which citizens can engage in discourse on electoral and democratic reform.

In addition, the Group is aware of the discourse following the submission of presidential election petitions as to whether or not the Supreme Court case should be broadcast live. While it may be impractical to televise petitions further down the ballot, the Group believes that broadcasting hearings on presidential petitions would play an important role in fostering transparency and entrenching a deeper level of understanding of the legal process.

Recommendations:

- In advance of future elections, a number of electoral stakeholders, including INEC, the Supreme Court, federal high courts, the Law Reform Commission and CSOs should play their part in ensuring all relevant and up-to-date electoral laws and regulations, and pertinent reports and other resources, are made easily accessible on their respective websites.
- In order to foster greater transparency and entrench deeper understanding of the legal process, Supreme Court hearings on presidential petitions should be broadcast live.

Election administration

Boundary delimitation

Article 8 of the Constitution sets out the legislative procedures for the establishment or amendment of boundaries of states and local government areas (LGAs). Articles 71–75 of the Constitution provide for INEC to undertake boundary delimitation of the 109 Senate seats and 360 House of Representative seats. Reviews are to take place 'at intervals of not less than ten years' and should aim to ensure an equal population size per senatorial or federal constituency based on census data. The Constitution does not define the maximum interval between boundary delimitations.

Despite these provisions, the last boundary delimitation exercise in Nigeria took place in 1996, using census data from 1991. Since then, it is highly probable that spatial and numerical changes to the population will have resulted in constituencies of significantly varied population sizes. With the last census having taken place in 2006, the moment is ripe for a thorough boundary delimitation exercise.

It is also notable that the Constitution does not stipulate any essential criteria for the delimitation of boundaries, such as allowing for a percentage of deviation between urban and sparsely populated areas or accounting for geographical features, communities of interest or historical sites.

The Group reiterates its earlier recommendation that the National Assembly should deliberate further on the establishment of a multistakeholder body for the delimitation of boundaries.

¹⁵ Interview with the Commonwealth Secretariat, 8 May 2023.

Recommendations:

- INEC, or such a body as may be established to undertake boundary delimitation, should undertake a boundary delimitation exercise ahead of the next national elections in 2027.
- The National Assembly should consider amendments to constitutional provisions relating to boundary delimitation to include maximum, rather than only minimum, intervals between such exercises.
- The National Assembly should consider amending the Constitution to stipulate essential criteria for the delimitation of boundaries, such as allowing for a percentage of deviation between urban and rural populated areas.

Voter eligibility and registration

Article 77 (2) of the Constitution states that, 'Every citizen of Nigeria, who has attained the age of eighteen years, residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election.' Voters are required to present one of the following: a birth certificate, passport, national ID card or driving licence.

The Electoral Act 2022 provides for continuous voter registration up until 90 days before the election, an increase from the 30-day cut-off period provided for in the 2010 Electoral Act. In practice, INEC instituted a four-phase continuous voter registration (CVR) exercise over a period of 13 months, beginning on 28 June 2021. This consisted of four three-month periods of voter registration punctuated by four one-week displays of the register for claims and objections. Voters could register at a polling unit of their choice in the area of their residence and were thereafter not allowed to cast their vote at any other polling unit (Section 47 (1) of the Act). Each registered voter was issued by INEC with a Permanent Voter's Card (PVC) containing their biometric data (discussed in more detail below). Voters were required to present these to the Presiding Officer (PO) on election day for accreditation. INEC enlisted the support of media houses in sensitising voters on the CVR exercise.¹⁶

16 Oyekanmi, R. (2023) 'Continuous Voter Registration: Media Professionals, INEC Agree to Sensitise Citizens'. INEC News, 22 June. <https://inecnews.com/continuous-voter-registration-media-professionals-inec-agree-to-sensitise-citizens/>

Voter registration statistics

The total number of registered voters for the 2023 elections was 93,469,008, or 77 per cent of eligible voters, and an increase of 9.5 million (11.27 per cent) from the 84,004,084 who registered to vote in 2019. INEC Commissioner Professor Yakubu stated that, while 12.3 million citizens had newly registered to vote, 2.8 million names were removed during scrutiny of the register.¹⁷ During the four week-long claims and objections periods, a further 53,264 names were expunged.

Youth¹⁸ represented 76.5 per cent of newly registered voters; there were slightly more new female voters (50.8 per cent) than males. While men represent a fraction more than 50 per cent of the population of Nigeria,¹⁹ they accounted for a full 52.5 per cent of all registered voters. As such, there was a slight deficit of registered female voters proportionate to the population. In some regions of the country, the difference was significantly more pronounced, with the widest differential being in Yobe state, where 59.7 per cent of voters were male. In accordance with Section 9 (b) of the Electoral Act, INEC also disaggregated PWD voters by type of disability (see Chapter 4 for more details).

Collection of permanent voter's cards

In the weeks leading up to the election, there were widespread reports of voters being unable to collect their PVC from INEC, despite having received confirmation that they had successfully registered or that their card was ready to collect. The Group was not able to ascertain the number of voters affected by this, but reports indicate that 6,259,229 voters (6.7 per cent) did not collect their PVC, despite INEC extending the deadline for collection by one week to 5 February. The Group was also made aware of allegations that, in some cases, INEC withheld PVCs without due reason, and saw videos that seemed to show INEC staff unlawfully requesting payment for PVCs. The Group was not able to independently confirm these reports.

17 Oyekanmi, R. (2022) 'Preliminary Voters' Register Hits 93.52M, INEC Insists on BVAS, IReV for 2023 Polls'. INEC News, 26 October. <https://inecnews.com/voters-register-hits-93-52m-inec-insists-on-bvas-irev-for-2023-polls/>

18 Defined by INEC as between the ages of 18 and 34.

19 See <https://data.worldbank.org/indicator/SP.POP.TOTL.FE.ZS?locations=NG>

Recommendations:

- To reduce the gap between the number who register and the number who pick up their PVCs, INEC should consider amendments to the process that would allow for instant issuance/collection of the PVC at the time of registration. The small number of registered voters who are subsequently expunged during the claims and objections periods can be notified that their PVC has been removed from the register. INEC could also consider extending timelines, increasing the number of distribution centres, employing mobile units and targeting outreach to marginalised groups and voters with limited mobility.
- INEC, political parties and civil society each has a role to play in reducing the gap between male and female voter registration figures in states with wide differentials, such as through expending greater resources on gender-sensitive voter education programmes in these states.

Registration of political parties

Article 221 of the Constitution states that, 'No association, other than a political party, shall canvass for votes for any candidate at any election.' Articles 222–224 outline certain requirements for the registration of political parties, including that parties must have a party constitution that reflects Chapter 2 of the Constitution of Nigeria; an executive that is reflective of the federal character of Nigeria; and a headquarters in Abuja. INEC has the sole authority to approve the registration of political parties.²⁰

A total of 18 political parties contested the presidential and National Assembly elections in 2023, a sharp drop from the 91 political parties that contested in 2019. This drop is attributable to Article 225 (a) of the Fourth Constitution Alteration Act of 2017, which vested INEC with the power to deregister parties that failed to win 25 per cent of votes in at least one state in the presidential election or one seat in the National Assembly election or one seat in the LGA in the gubernatorial election. Using this provision, INEC deregistered 74 political parties in February 2020.²¹

²⁰ See section entitled 'INEC mandate' for further discussion on this point.

²¹ Oyeleke, S. (2020) 'Full List: 74 Deregistered Political Parties'. *Punch*, 6 February. <https://punchng.com/full-list-74-deregistered-political-parties/>

Candidate eligibility and registration

Articles 131–138 of the Constitution set out the qualifying and disqualifying criteria for presidential aspirants, while Articles 65 and 66 set out the criteria for membership of the National Assembly.

To stand for President, an individual must be a citizen of Nigeria aged 35 years or above, belong to and be sponsored by a political party and have attained at least a School Certificate educational qualification.

To stand for the Senate or the House of Representatives, an individual must be a citizen of Nigeria, belong to and be sponsored by a political party and have attained at least a School Certificate educational qualification. A Senate candidate must be at least 35 years of age; a candidate for the House must be at least 25 years of age.

Owing in no small part to a sustained civil society campaign labelled #NotTooYoungToRun, both the Fourth Alteration Act 2017 and the Not Too Young to Run Act 2018 included the lowering of minimum age requirements for certain elective positions, as follows:

- President: lowered from 40 years to 35 years
- House of Assembly: lowered from 30 years to 25 years
- House of Representatives: lowered from 30 years to 25 years

These provisions represent a commendable effort to promote increased youth participation in the political process, and demonstrate the value of engaging civil society in electoral reforms. However, the participation of young people as candidates in these elections was still very low. This issue is discussed in more detail in Chapter 4.

In accordance with Section 29 of the Electoral Act, political parties must submit to INEC a list of all candidates not later than 180 days prior to the election,²² following the completion of party primaries in accordance with Part 5 of the Electoral Act and INEC's Regulation for the Conduct of Political Party Primaries. Provisions relating to the holding of party primaries are also contained in the constitutions of the respective parties.

²² Elections must be announced 360 days in advance of election day.

A summary of the candidates in each of the elections is provided below (gender aspects

of candidate nomination will be discussed in Chapter 4):

Political position	Number of positions	Total candidates	Male	Female
President	1	18	17	1
Vice President	1	18	18	0
Senate	109	1,101	1,009	92
House of Representatives	469	3,107	2,821	286

Section 84 (12) Electoral Act: 'Political appointee not eligible as a voting delegate or aspirant'

Section 84 (12) of the Electoral Act states that, 'No political appointee at any level shall be a voting delegate or be voted for at the Convention or Congress of any political party for the purpose of the nomination of candidates for any election.' The effect of this clause is to cause all political appointees, such as ministers and those appointed to head statutory bodies, to demit office in order to contest a political party primary. Having signed the Act into law in February 2022, President Buhari petitioned the National Assembly to strike Section 84 (12) from the Electoral Act, a request the National Assembly twice denied.²³

President Buhari and the Attorney-General and Minister of Justice, Abubakar Malami, later sought the Supreme Court's interpretation as to the constitutionality of this section.²⁴ The Court ruled unanimously that, since President Buhari had signed the Act into law, he could not soon after seek its removal, as this would amount to approbating and reprobating at the same time. Thus, the Court ruled the case was non-justiciable as President Buhari lacked jurisdiction to bring the case.²⁵ The impact of this provision was to drastically reduce the number of delegates, from over 7,800 to just 2,322 elected 'ad hoc delegates.'

23 Sahara Reporters (2022) Buhari, Malami Ask Supreme Court to Change Electoral Act to Favour Attorney-General, Central Bank Gov to Stay in Office While Contesting for Elections'. 15 May. <https://saharareporters.com/2022/05/15/exclusive-buhari-malami-ask-supreme-court-change-electoral-act-favour-attorney-general>

24 SC/CV/504/2022, 29 April 2022. <https://sabilaw.org/wp-content/uploads/2022/09/The-President-of-Nigeria-V.-National-Assembly-2-Others-1.pdf>

25 Law Pavilion (2022) 'Electoral Act: Supreme Court Strikes out Buhari's Suit Challenging Section 84(12)'. 22 June. <https://lawpavilion.com/blog/electoral-act-supreme-court-strikes-out-buharis-suit-challenging-section-8412/>

Political party candidate nomination fees

Each political party in Nigeria sets its own nomination fees for those wishing to contest party primaries. Parties are often required to purchase an expression of interest form in addition to a candidate nomination form, with prices fixed for both. The Group was not able to ascertain figures for all political parties, but the combined costs of expression of interest forms and nomination forms of two of Nigeria's largest parties are provided below:²⁶

Candidate nomination fees for APC and PDP ²⁷		
Political position	APC	PDP
Presidential	₦100m (~US\$216,000)	₦40m (~US\$87,000)
Senatorial	₦20m (~US\$43,000)	₦3.5m (~US\$7,500)
House of Representatives	₦10m (~US\$21,000)	₦2.5m (~US\$5,500)

Note: All US dollar figures listed in this report are based on estimated exchange rates as of late February 2023.

The two political parties both offered a 50 per cent discount for youth candidates. The APC stipulated that women and PWDs had to pay only for the expression of interest form, while the PDP also offered reductions for women aspirants.

For context, the average annual salary in Nigeria is just under US\$10,000. Political parties aver that such high nomination costs are an

26 Maishanu, A. (2022) 'Why We Are Charging ₦100m for Presidential Nomination Form – APC National Chairman'. *Premium Times*, 28 April. www.premiumtimesng.com/news/top-news/526573-why-we-are-charging-n100m-for-presidential-nomination-form-apc-national-chairman.html?tztc=1

27 Ibid.

important income stream for them. The Group appreciates the vast costs associated with political campaigning, and understands that nomination fees represent a sizeable proportion of party income. However, it is of the view that such prohibitively expensive nomination fees are anathema to a healthy representative democracy. A revised funding model that puts greater emphasis on widespread grassroots support would inculcate a more participatory political environment. This will not happen overnight but, in the interests of the long-term democratic health of the country, parties should take seriously the need to further diversify and democratise their income streams.

Political parties also aver that high nomination fees act as a mechanism for weeding out less serious aspirants. However, such a viewpoint depends on a belief that financial resources, rather than ideas or a sense of civic duty, are the best determinants of an aspirant's commitment to elective office. Furthermore, the negative effects of the high nomination fees are numerous: they can encourage corruption, as individuals (particularly those seeking re-election) may be tempted to make use of public funds for personal campaigns; they can shrink political space and prevent the political participation of all but the most wealthy Nigerians; they can reinforce the lack of ideological identities and coherent policy platforms of political parties by ensuring that wealth is the main precondition and determinant of political opportunity; they can invert the ideal relationship between party and candidate by ensuring that candidates fund political parties, rather than the other way around; and they can damage voters' faith in the social contract that exists between themselves and their elected representatives.

In the case of women candidates, who may be dependent on family income, the decision to run for office will depend on how far the husband is willing to finance their election bid. Unmarried women, who may have dependent family, may have to prioritise the welfare of their family over political ambitions. These factors may contribute to the low number of women contesting for political office.

Recommendation:

- There is a pressing need for legislative reform that places caps on party primary nomination fees in order to afford genuine opportunities for political participation for

all and to encourage a more participatory and grassroots-driven funding model for political parties.

Political party primaries

Section 84 (1) of the Act stipulates that political parties wishing to field candidates in any election must nominate candidates through one of three methods: direct or indirect primaries, or through consensus.²⁸ The Act sets out basic legal requirements for each of the three sanctioned methods, including that, if written agreement from all cleared aspirants to participate in a consensus arrangement is not provided to the Commission, the party must revert to either direct or indirect primaries. Section 84 (13) of the Act states, 'Where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue.'

In previous elections, the Act's provisions were accompanied by regulations on the conduct of political party primaries. In this case, the late passing of the new Electoral Act (in February 2022) affected the timeline for the drafting of new regulations, such that they were issued only in May 2022, when party primaries were already under way. The regulations contained some inaccuracies, such as referring to incorrect sections in the new Act. INEC also released a Guide for the Conduct of 2023 Political Party Primaries and Nomination of Candidates for Election. This Guide, which to the best of the Group's understanding had no legal standing, listed the old regulations as forming part of the current legal framework for the conduct of party primaries, despite the old regulations being subsidiary to the 2010 Act.

Recommendation:

- INEC should ensure the timely issuing of relevant regulations, and that these regulations are thoroughly checked for accuracy and alignment with primary legislation.

²⁸ The initial Electoral Bill prescribed only direct primaries. This version was vetoed by President Buhari, who requested the inclusion of both the indirect and the consensus methods. The House made an amendment to the 2010 Act to include indirect primaries and the Senate amended the Bill to include both indirect and consensus methods. The amended Act and Bill were later harmonised, with both indirect and consensus included. See Baiyewu, L. (2022) 'National Assembly Agrees on Consensus, Others, Lists Conditions'. *Punch*, 26 January. <https://punchng.com/national-assembly-agrees-on-consensus-others-lists-conditions/>

The Group was informed by some stakeholders that the candidate nomination process may be open to abuse, with instances of aspirants purchasing candidate nomination forms for more than one party in order to hedge their bets. Political parties seeking to limit the possibility of a losing aspirant participating in a subsequent primary of an opposing party have been known to choose to hold their primaries as close as possible to INEC's 180-day cut-off date for the submission of candidate lists in order to constrain the ability of the losing aspirant to present themselves elsewhere.

While these are not identical to the above scenario, the Group was made aware of two relevant cases in the 2023 elections that shed light not only on deficiencies in the primary process but also on the judicial handling of such cases. Senator Ahmad Lawan, representing Yobe North, initially sought his party's (APC) candidacy for the presidential election, with the party subsequently holding a primary for the Senate seat he was vacating, won by Bashir Machina. Having lost the presidential primary, Lawan's APC later held a second primary for the Yobe North senatorial district, at which Lawan emerged the winner. Following a protracted legal battle that reached the Supreme Court, the Court ruled in a split decision in favour of Senator Lawan on the basis of an apparent procedural flaw in Machina's petition. Senator Lawan later won re-election in the 25 February senatorial election.

Similarly, Godswill Akpabio, former Minister of the Niger Delta, also contested the APC presidential primary and did not contest the APC's senatorial primary for Akwa-Ibom North West, held on 27 May 2022 and won by Udom Ekpudom. Following the selection of Tinubu as APC presidential candidate, the party held a second party primary in June 2022, which Akpabio won. The Federal High Court dismissed Ekpudom's case and, in line with the Court's ruling, INEC confirmed Akpabio as the APC candidate. Akpabio subsequently won election to the senate.

While the Group is loath to opine on Federal High Court decisions, it is moved to comment on these particular judgments as they appear to be problematic. The judgments did not appear to consider the process by which the party primaries were held, and appeared to disregard arguments that INEC has the authority to reject a candidate via Section 84 (13) of the Act if the primary process is not conducted in accordance with the law. Similar inconsistencies in the application of

law are apparent in suits concerning political party defections (see sections below).

Both the 2009 Uwais Report and the 2017 Nnamani Report extolled the values of direct primaries, noting that this method maximised transparency, accountability and inclusivity. The Uwais Report acknowledged, however, that the direct method placed a greater logistical and financial burden on political parties, particularly those with very large memberships. Thus, the Report recommended that parties be able to decide which of either the direct or indirect method to choose, so long as either process was transparent. The provisions of the subsequent 2010 Act gave parties this same binary choice. The Nnamani Report, however, advocated for the holding of direct primaries only.

The Group is of the view that the nomination of candidates through the consensus method is the least democratic, transparent and inclusive of the methods, and recommends a legislative amendment to strike this option from the Act. In seeking to weigh up the various pros and cons of the direct and indirect methods, the Group is of the view that the law should continue to grant parties the flexibility to choose either direct or indirect processes as befits their circumstance, but the regulatory framework, particularly for indirect primaries, should be significantly strengthened to enhance the transparency, accountability and participatory nature of the process.

Recommendation:

- The Electoral Act should be amended to remove the consensus method of candidate nomination.

Political party defections

The right to freedom of association is enshrined in Article 40 (6) of the Constitution, which states that, 'Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.' Those who have switched from one party to another may point to this constitutional freedom as the basis for their right to do so. Indeed, there are many legitimate reasons to switch parties, including disagreements on law and policy.

Nigeria's Parliament does not dissolve at the commencement of the campaign period. As such, members of the National Assembly remain in office throughout the campaign period. Article 66 (1) (g)

of the Constitution stipulates that members of the Senate and House of Representatives must vacate their seat if they are elected to the National Assembly under the sponsorship of a political party, and choose to join another party prior to the expiration of the period for which that legislative body was elected. Since the law applies only to individuals who have been elected to the National Assembly, it provides scope for non-sitting candidates and candidates to other elective positions to switch parties prior to an election. The Group would aver that the legal requirement to submit to INEC the names of candidates at least 180 days prior to the election should preclude the ability of any candidate to defect after this point, yet this provision does not seem to have prevented such defections. The Group is aware of reports that candidates in Ondo switched from the APC and the PDP to the LP at the beginning of February,²⁹ and that other candidates switched from the LP to the APC in mid-February.³⁰

The Group is aware of recent legislative efforts to expand the limitations on party defections to presidential, vice-presidential and gubernatorial candidates. A 2021 Bill, sponsored by Rimande Kwewum, PDP member for Taraba state, was rejected by both chambers of Parliament in March 2022.³¹ That same month, the Federal High Court in Abuja vacated the seats of Ebonyi State Governor David Umahi, his deputy Kelechi Igwe and 15 other state lawmakers over their defection from the APC to the PDP, with Justice Inyang Ekwo asserting that, 'the votes in any election in Nigeria are to political parties, and not candidates.'³² By contrast, a month earlier, the Federal High Court in Zamfara state struck out a suit filed by the PDP against Governor Bello Matawalle over his defection to the APC the year before.³³

29 Ufuoma, V. (2023) 'APC, PDP, SDP members defect to Labour Party in Ondo'. ICIR, 1 February. www.icirnigeria.org/apc-pdp-sdp-members-defect-to-labour-party-in-ondo/

30 Oluwole, J. (2023) '2023: Labour Party leaders in South-west defect to APC'. *Premium Times*, 13 February.

31 Sahara Reporters (2022) 'National Assembly 'Kills' Bill Compelling Political Office Holders To Vacate Seat After Defection To Another Party'. 22 March. <https://saharareporters.com/2022/03/15/national-assembly-%E2%80%98kills%E2%80%99-bill-compelling-political-office-holders-vacate-seat-after>

32 Ejekwonliyo, A. (2022) 'Court Sacks Ebonyi Governor Umahi, Deputy, 15 Lawmakers over Defection'. *Premium Times*, 8 March. www.premiumtimesng.com/news/headlines/515947-updated-court-sacks-ebonyi-governor-umahi-deputy-15-lawmakers-over-defection.html

33 Maishanu, A. (2022) 'Court Okays Zamfara Governor's Defection to APC'. *Premium Times*, 8 February. www.premiumtimesng.com/news/headlines/510380-court-okays-zamfara-governors-defection-to-apc.html

There are three issues of import here: (i) the Electoral Act seems to lack both clarity and consistency with regard to the permissibility or otherwise of defections; (ii) despite fundamental similarities in the basic facts of some suits, federal high courts have arrived at very different conclusions based on differing interpretations of the law; and (iii) INEC would appear hampered in its ability to enforce all provisions of the Act but may also be inconsistent in its efforts to pursue such enforcement.

The relative lack of political party ideologies and the desire to ensure a return on investment on nomination fees may both be contributing factors to the willingness of candidates to switch parties so close to an election. Other factors may include weak or insufficient internal dispute resolution mechanisms within political parties.

In order to inculcate a stronger culture of political party loyalty and ideology, the Group recommends that candidates be encouraged to give greater consideration to their accountability to the electorate, and ensure the health of Nigeria's democracy is foremost in their minds as they make decisions on their political party affiliation.

Recommendations:

- As part of efforts to address the manipulation of political primary processes, as well as to uphold Article 25 (b) of ICCPR, which guarantees the rights of every citizen to stand for election, the National Assembly should consider a constitutional amendment to allow citizens to stand as independents, ideally for all elective positions but at least for executive positions.
- The National Assembly should consider amending the Electoral Act to remove the option of consensus-based candidate nomination.
- The National Assembly should consider legislative reform that stipulates that aspirants to all elective positions can stand in a primary for only one political party.
- The judiciary should make greater efforts to ensure consistency in the interpretation and application of the law as regards political party defections.

Electoral technologies: legal framework, procurement and privacy

The Electoral Act makes provision for the integration of technology into Nigeria's electoral processes, in some cases by compelling the use of technology and in other cases by providing scope for INEC to adopt technology if it so desires. For the first time in a national election, INEC adopted a technology called the Bimodal Voter Accreditation System (BVAS) for three electoral processes: voter registration, voter accreditation and (partial) digital results transmission.³⁴ INEC also introduced a web-based public portal called the INEC Results Viewing Portal (IReV), to which scanned copies of results forms were uploaded. Aside from the Act, the provisions for BVAS and IReV's use were set out in the Regulations and Guidelines for the Conduct of Elections 2022, while detailed instructions and procedures for polling staff were set out in the Manual for Election Officials 2023.

This section sets out the legal and regulatory framework underpinning the use of technology, and details pre-election issues such as procurement, training, penetration testing and data protection.

Procurement

INEC requested and was granted a total budget of ₦305 billion for the 2023 general election.³⁵ According to INEC's Election Project Plan, ₦117 billion of this was allocated to the procurement of electoral technology, with the procurement of BVAS devices totalling ₦105 billion, or 34.5 per cent of the total budget. Despite the introduction of BVAS for this election, INEC calculated that the US\$5.39 cost per voter for the 2023 election was a decrease from the US\$9.62 and US\$7.38 cost per voter for the 2015 and 2019 general elections, respectively.³⁶

INEC's procurement of election materials, both sensitive and non-sensitive, is subject to the provisions of the Public Procurement Act 2007. This lists transparency as one of the core objectives and functions of the Bureau of Public Procurement (Section 57 (2)).

34 While polling unit-level results in the form of EC8A were uploaded to IReV, ward-level collated results (form EC8B) were not.

35 <https://main.inecnigeria.org/wp-content/uploads/2022/04/ELECTION-PROJECT-PLAN.pdf>

36 Ibid., pp. 80–83.

The Chair of INEC indicated that the BVAS devices were designed in-house by the Commission but manufactured abroad.³⁷ The Group was told that the devices used were EMP2920 tablets, produced by a Chinese manufacturer called Shenzhen Emperor Technology. However, the Group was not able to obtain this information directly from INEC and was unable to confirm its veracity. Indeed, the Group was not able to identify any documentation or information relating to the procurement of such technologies. There appears to be very little information in the public domain in this regard, contrary to the provisions of the country's procurement law.

The Group acknowledges that the procurement of such sensitive electoral materials brings with it significant electoral cybersecurity considerations, and appreciates the degree of hesitancy in disclosing certain information. However, the Group believes that a balance must always be struck between the legitimate desire to protect sensitive information and the need to engender public trust in technologies by demonstrating transparency and accountability in the procurement process.³⁸ It is the Group's view that INEC did not strike this balance effectively.

Recommendation

- INEC should ensure the procurement of electoral technologies is carried out in line with both the spirit and the letter of the Public Procurement Act 2007.

Voter registration

INEC is mandated via Section 9 of the Act to keep and maintain the register of voters both in hardcopy format and in electronic format in a central database. The Act provides scope for INEC to determine the method of data collection for the purposes of voter registration.

Voter registration involved the use of BVAS to collect the biometric data of new voters, including scans of fingerprints and photos of faces for

37 Hersey, F. (2023) 'Nigeria Biometric Voter Register "99.94% Solid," with Local Tech, 10M New Sign-ups'. *Biometric Update*. 20 January. www.biometricupdate.com/202301/nigeria-biometric-voter-register-99-94-solid-with-local-tech-10m-new-sign-ups

38 See Commonwealth Secretariat (2020) *Cybersecurity for Elections: A Commonwealth Guide on Best Practice*, p. 100. See also IFES (2018) *Cybersecurity in Elections: Developing a Holistic Exposure and Adaptation Testing (HEAT) Process for Election Management Bodies*.

fingerprint and facial recognition. Voters were then issued with a PVC containing this biometric data. INEC also used fingerprint biometrics of those voters already registered to vote prior to adoption of BVAS. The Group was not able to determine the source of biometric data used for facial recognition for already registered voters.

Recommendations:

- In order to build confidence in the veracity of the voter register, including biometrics, INEC should consider subjecting the voter register to an external audit by a reputable organisation.
- To promote transparency in verifying voter turnout, INEC should publicly release PVC data at the polling unit level well in advance of an election and in an open data format.

Voter verification and accreditation

The deployment of BVAS as the only mode for voter accreditation in Nigeria aimed to curtail incidence of multiple voting and other illegal practices. The technology was credited with contributing to a high number of newly registered voters, especially among youth.³⁹



Section 47 (1) of the Electoral Act states that POs must use a 'smart card reader' or any other technological device to verify the voter. For the 2023 election, BVAS fulfilled this function. On election day, voters were required to present their PVC to the Assistant Presiding Officer (APO), who either entered the voter's surname or the last six digits of the voter's Voter Identification Number (VIN) or scanned the PVC's barcode using the BVAS device. The APO then used BVAS to cross-reference these particulars against the voter register contained on the device. The BVAS device was then used to check whether the biometric data of the voter matched the

biometric data contained on the PVC. If fingerprint recognition did not work, facial verification could be used in its stead. If a voter could not be verified after three attempts, the individual was prevented from voting. At the end of voting, the PO was mandated to use the BVAS device to transmit accreditation data to INEC's headquarters.⁴⁰

In instances of persistent malfunctioning of BVAS, the Regulations stipulated that POs were required to halt accreditation and voting until a replacement BVAS device was provided. If no such replacement arrived before the close of polls, the election was required to be postponed until the following day, with data from both machines merged to determine the total number of verified voters.

Results transmission and collation

The Electoral Act tasks INEC with the responsibility of compiling, maintaining and continuously updating a register of election results, known as the National Electronic Register of Election Results (Section 62). In order to enhance the transparency and integrity of the process, for the 2023 election INEC introduced a web-based platform called IReV. Following the count, the PO was required to take a photo of the EC8A results form with BVAS and thereafter use the machine to upload the scanned image to IReV in accordance with the Commission's guidelines. The PO was also required to use BVAS to transmit accreditation data for that polling unit.

According to the same section of the Act, for the results form to be uploaded, the device was to be connected to the 3G or 4G network. If network availability was poor in that area, the results were to be submitted using an offline function, whereby the scanned image would be automatically uploaded as soon as the BVAS device was in a location with network coverage. Finally, the PO would transport the BVAS device and the originals of each form in tamper-evident envelopes, accompanied by security agents, to the Registration Area/Ward Collation Officer.

The purpose of IReV was to allow voters real-time access to results forms and to limit opportunities for manipulation or swapping of results forms between polling units and collation centres. IReV was developed to allow voters to check whether results forms matched the results forms they had witnessed at polling units, and to allow for the

39 Angalapu, D. (2023) 'Will Technology Deliver a Clean Election for Nigeria?' *African Arguments*, 24 February. <https://africanarguments.org/2023/02/will-technology-deliver-a-clean-election-for-nigeria/>

40 Section 2.1.2.10 (a) XVII of the Manual for Election Officials 2023.

detection of any inconsistencies or anomalies in the calculations that could then be brought to the attention of the Commission.

Nigeria had nearly 122.5 million internet users as of 2022, which translates to internet penetration of about 55 per cent.⁴¹ Concerns were raised about the country's internet infrastructure and its capacity to handle data transmission - that is, the transmission of all data to the INEC server from the BVAS devices.⁴² According to INEC, even though BVAS devices do not require internet connectivity for voter accreditation, the machine requires internet connectivity for results transmission. Thus, in instances where the polling units do not have sufficient internet connections, there could be issues with results transmission.

Penetration testing

In order for electoral technologies to be effectively and adequately tested, and for vulnerabilities to be identified and addressed, it is important that such technologies be interrogated holistically, in terms of both the technology itself and the broader human, legal and operational frameworks in which they exist. Effective and adequate penetration testing therefore depends on multistakeholder engagement, in which external experts and relevant stakeholders are invited to work with an electoral management body to help identify weaknesses from all angles and improve the integrity and security of systems.⁴³

INEC conducted two public testing exercises: the testing of BVAS devices for 31 states at INEC's headquarters between 4 and 11 January 2023 and a mock accreditation exercise on 4 January 2023. The latter was carried out in 436 polling stations

across all 36 states and the FCT. The Group was informed that, while a number of CSOs followed the mock accreditation exercise closely, only one CSO was made aware of, and was invited to observe, the BVAS testing. The CSO observing the BVAS testing found that the vast majority of BVAS devices were configured in line with the guidelines and that INEC staff had a good understanding of the systems. The mock accreditation exercise, meanwhile, identified a number of challenges and vulnerabilities with both the hardware and the software that INEC sought to rectify before polling day, including issues with fingerprint scanning and blurred images of results sheets.

Unfortunately, however, these exercises were found wanting. While INEC afforded one CSO the opportunity to observe the BVAS testing, this did not include a satisfactory level of transparency regarding the technical specifications and functionality of the devices. The BVAS testing also only included INEC staff member and not election day polling workers. The exercises were also conducted too close to the election for sufficient remedial action to be taken to address the identified challenges, which resulted in these same challenges – and new ones – occurring on election day. The sample size of the accreditation exercise was also too low, and voter participation was limited.

On election day, the Group noted widespread failure of the fingerprint scanning functionality of BVAS devices. In such instances, facial recognition was used instead, with much faster and better results. Yet fingerprint scanning is widely regarded as being more stable than facial recognition. Thus, the speed and consistency with which the facial recognition software worked raises questions about the calibration and sensitivity of the software, and whether it was providing false positives. The lack of publicly available information about BVAS' software calibration means such a determination cannot be made.

While the Group did not observe the gubernatorial elections that took place on 18 March 2023, reports from citizen observer groups suggest that the refresher training provided to polling staff in advance of the election may have contributed to an apparent improvement in the conduct of the election.⁴⁴ This would seem to suggest that refresher training may be of value in advance of future elections.

41 Kemp, S. (2023) 'Digital Nigeria: 2023'. Datareportal, 13 February. <https://datareportal.com/reports/digital-2023-nigeria>

42 Chukwu, N. (2023) 'INEC's BVAS Seems Reliable, But Can We Trust Nigeria's Internet?' TechCabal, 24 February. <https://techcabal.com/2023/02/24/is-the-internet-ready-for-bvas-election/>

43 The EU's Network and Information Security Cooperation Group recommends that election management bodies' cybersecurity strategies include, among other things, systems security testing by an independent review team; penetration testing by 'red team' testers; the public testing of systems by a wide range of experts; and exercises – both technical and non-technical – that simulate various scenarios that could occur on election day. The International Foundation for Electoral Systems (IFES) Holistic Exposure and Adaption Testing (HEAT) process and the Commonwealth Secretariat's Cybersecurity for Elections guide likewise recommend broad and transparent penetration testing regimes. See IFES (2018) and Commonwealth Secretariat (2020), pp. 100–104.

44 See www.youtube.com/watch?v=4awbLmC1CKo

Recommendations:

- INEC should be more transparent regarding the technical specifications and calibration of software and hardware underpinning biometric verification.
- INEC should conduct testing of electoral technologies (i) further in advance of an election; (ii) in a larger sample size of polling stations; (iii) with election day polling staff; and (iv) with a greater degree of transparency and multistakeholder engagement, in order to ensure a more holistic interrogation of the technical, legal, human and operational frameworks underpinning the electoral technologies.

Results transmission and tabulation: legal ambiguities and inconsistencies

Section 64 of the Act envisaged the comparison of hard copy polling station results forms with electronically transmitted forms (Section 64 (4) (a-b)); Section 50 of the Regulations also envisaged such a comparison. While Section 38 of the Regulations envisaged the electronic transmission of polling station results to the collation system and the uploading of results forms to IReV using BVAS, Section 60 of the Electoral Act lacks clarity as to the method of results transmission – that is, ‘in a manner prescribed by the Commission.’

Further, while the Regulations envisaged the electronic transmission of results from the first collation level to the next (Section 50 (xx) of the Regulations and page 75 of the Manual), on election day this did not happen as the collation was conducted manually. Indeed, in advance of the election, the Commission confirmed that, contrary to common interpretation of the Regulations and the Manual, while BVAS was to be used to transmit polling unit results forms to IReV, the collation of results forms would remain a manual process undertaken by Ward and Registration Area Collation Officers.⁴⁵

Section 62 (2) of the Act states that INEC must keep an electronic database of results, known as the National Electronic Register of Election Results. It was not clear at the time of writing whether such a database was kept.

45 Adenekan, S. (2023) ‘INEC Clears Air on Mode of Transmitting Election Results’. *Premium Times*, 21 August. www.premiumtimesng.com/news/top-news/549890-2023-inec-clears-air-on-mode-of-transmitting-election-results.html?tztc=1

Recommendation:

- The Electoral Act, the Regulations and Guidelines and the Manual should be reviewed to ensure greater legal clarity and alignment on the electronic results transmission and collation processes. Such issues should also form part of INEC’s holistic (technical, legal, operational and human) approach to the testing of electoral technologies.

Network connectivity: digital results transmission

As we have seen, Nigeria had nearly 122 million internet users as of 2023, which translates to internet penetration of about 54 per cent. Concerns were raised regarding the country’s internet infrastructure and network coverage, and the implications for the transmission of results to the INEC server from the BVAS devices.⁴⁶ According to INEC, even though BVAS devices do not require internet connectivity for voter accreditation, they do require internet connectivity for results transmission. Thus, in instances where the polling units do not have sufficient internet connections, polling staff were required to utilise the ‘offline’ function.

Data protection and information security

With 93.4 million records that carry names, addresses, passport photographs and biometrics (fingerprint and facial), the Nigerian voter register is purported to be the largest database of citizens in Africa and one of the largest in the world.⁴⁷ The Group was unable to determine whether all records were indeed contained in one central database, or whether there existed multiple databases.

Recommendation:

- INEC should provide greater transparency regarding the storage of data that comprises the voter register, as well as its protocols for the safe storage and accessing of the register.

Nigeria signed the Budapest Convention on Cybercrime in 2015. Its provisions require parties

46 Chukwu, N. (2023) *INEC’s BVAS seems reliable, but can we trust Nigeria’s internet?*, *TechCabal*. TechCabal. Available at: <https://techcabal.com/2023/02/24/is-the-internet-ready-for-bvas-election/> (Accessed: March 1, 2023).

47 Macdonald, A. (2023) ‘Biometrics Used at 98% of Nigerian Polls; Advocates Concerned for Safety of Voters’ Data’. *Biometric Update*, 27 February. www.biometricupdate.com/202302/biometrics-used-at-98-of-nigerian-polls-advocates-concerned-for-safety-of-voters-data

to adopt appropriate measures to protect personal data against unauthorised access, alteration or disclosure. In line with the Convention, Nigeria enacted the Nigerian Data Protection Regulation (NDPR) in January 2019, which regulates the collection, processing and storage of personal data in Nigeria. It also established the National Data Protection Bureau (NDPB) as the body responsible for regulatory oversight.

To ensure compliance with the Convention and NDPR, INEC claimed to have put in place measures to protect personal data, including designing BVAS to store biometric data in a secure manner and restricting access to authorised personnel only. INEC also stated the system was equipped with features that enabled the encryption of data transmitted over the network, ensuring its confidentiality and integrity.⁴⁸ The Group was not able to independently verify these statements.

Yet, at present, the country lacks primary legislation on data protection. In October 2022, a draft Federal Data Protection Bill was tabled in Parliament, but this had not passed into law by the time of the election. Lagos, meanwhile, has made efforts to pass state-wide data protection legislation; this also not passed into law. As such, in the 2023 elections, there was no firm legal framework underpinning the collection, processing and secure storage of personal data, including temporal limitations on the processing and storage of data or clear data minimisation laws to ensure only necessary and proportionate data was collected.

These deficiencies in the legal and procedural frameworks underpinning data protection and information security mean that the biometric data contained on the voter register remained at an increased risk of exposure to cyberattacks or data breaches.

Recommendations:

- Parliament should consider passing federal law on data protection that is aligned with international good practice.
- The National Data Protection Bureau, or whichever body is granted oversight powers by a new federal data protection act, should be

sufficiently resourced to allow it to enforce the law with regard to the collection, processing and storage of personal data by INEC and political parties in respect of voter registration.

- The National Data Protection Bureau, or whichever body is granted oversight powers by a new federal data protection act, should undertake civic education to inform citizens about data protection, privacy and data rights in the context of elections.

Campaign finance

Article 225 of the Constitution vests INEC with the power to request ad hoc reports from political parties on their assets and liabilities, as well as annual reports into their sources of funds, assets and expenditures. The same article prohibits foreign sources of funding and the retaining of any party funds outside of Nigeria. The Electoral Act stipulates maximum fines of ₦5m (~US\$10,800) for political parties that violate either of these provisions.

Article 226 of the Constitution compels INEC to submit to the National Assembly an annual report of the 'accounts and balance sheet' of all political parties, and vests INEC with the power to carry out any investigations as may be necessary to establish the degree of financial probity of party books.

Despite these constitutional provisions, and other provisions contained in the Electoral Act (see below), a combination of factors means that campaign finance laws are rarely adhered to or enforced. As such, dynastic and corrupt practices are in reality synonymous with the democratic process, while representation remains skewed in favour of vested interests. 'Democracy has been commercialised,' noted a non-governmental organisation (NGO) promoting government accountability interviewed by the Group.

Limitations on campaign donations

Section 88 of the Act stipulates that donations from either individuals or entities cannot exceed ₦50m (~US\$110,000). The Act provides for sanctions against any candidate that knowingly accepts such donations. The maximum fine is '1% of the amount permitted as the limit of campaign expenditure under this Act or imprisonment for a term not more than 12 months or both.'

Additionally, any individual or entity who knowingly donates more than the permitted amount may receive a fine of ₦500,000 (~US\$1,100), or a

48 Itodo, S. (2022) 'Inspiring Confidence in the BVAS and Electronic Transmission of Election Results: Seven Urgent Actions for INEC'. International IDEA, 25 October. www.idea.int/news-media/news/inspiring-confidence-bvas-and-electronic-transmission-election-results-seven-urgent

prison term of up to nine months, or both. Harsher sanctions (N3m/~US\$6,500, or up to three years in prison, or both) exist for any accountant who 'who falsifies, or conspires or aids a candidate to forge or falsify a document... or in any way aids and abets the contravention of the provisions of this section.'

Limitations on campaign expenditures

In accordance with Section 88 of the Act, limitations for campaign expenditures are as follows:

Limits on campaign expenditures per candidate	
Election	Expenditure limit per candidate
President	N5 billion (~US\$10.8m)
Senate	N100m (~US\$216,000)
House of Representatives	N70m (~US\$150,000)

Any violation of this section by a political party incurs a maximum fine of not more than N10m and forfeiture of the amount donated. Any violation of this section by an individual incurs a fine of five times the amount donated in excess of the limit placed by the Commission.

The maximum campaign expenditure for presidential candidates of N5 billion (US\$10.8m), an increase from the N1 billion (US\$2.2m) limit under the old legal framework, has attracted some negative attention, with suggestions that the increased limits are in service to sybaritic and ostentatious campaigns. An equally – perhaps *more* - common view is that these limits remain infeasibly low. Indeed, the Chairman of a leading political party told the COG that, 'Funding limits are observed more in the breach than compliance. If you were able to stick to them you would not actually be able to run any elections ... No serious political party observes these limits.'

By way of example, Section 89 of the Electoral Act defines 'campaign expenses' as those incurred between the announcement of and the holding of the election, inclusive of election day. This, therefore, includes payment of political party agents. A presidential candidate hoping to have two party agents at each of the more than 176,000 polling units might, hypothetically, expect to have to pay party agents a daily wage of N20,000 (US\$43). This expenditure alone would amount to a little more than N7 billion (US\$15.2m), already N2 billion beyond the legal campaign expenditure limit for presidential candidates.

Furthermore, the Group acknowledges that the vastness of Nigeria's landmass and the increased campaign period of five months, as well as security considerations in some parts of the country, make overland transport between campaign events across the country an impractical prospect. As such, presidential candidates and their teams often make use of expensive air transportation to traverse the country. In addition, the cost of paying for hotels, billboards, radio advertisements and other typical campaign expenditures can often be exorbitant.

The increase to limits on campaign expenditure under the new Act might therefore be justifiably regarded as a necessary corrective to the infeasibly low limits under the former legal regime, and yet still as impossibly low. Based on INEC's analysis of campaign expenditure in previous electoral campaigns, political parties are likely to have vastly exceeded even the new limits by a significant margin.

A possible, albeit partial, solution may be for the definition of 'campaign expenditure' under Section 89 of the Act to be amended so that this term does not include the two or three days before election day. This would mean that any necessary election day expenses incurred in the 48-72 hours before election day, such as payment of party agents, printing of voter registers and election day transportation costs, could be excluded from the definition of 'campaign expenditures.'

As for the limits on non-election day campaign expenditures, the common expectation that the limits will be vastly exceeded may be one of many contributing factors resulting not only in political parties' lack of compliance with the Act's provisions but also in INEC's lack of intensity in enforcing them. As noted above, political parties are required to submit annual reports on assets, liabilities, sources of funds and expenditure to INEC. The 2010 Act contained this same provision. Yet the Group understands that few of the main political parties had submitted any such reports to INEC for the years between 2019 and 2023 in the manner prescribed by the law (including submitting an accompanying sworn affidavit).

Further, INEC's Election and Party Monitoring Department, which monitors the finances of political parties, does not appear to have fully utilised its powers to compel parties to submit these reports. Nor has INEC provided sufficient

clarity as to which political parties and candidates have been issued fines for infractions and whether these have been paid.

The Act sets campaign expenditure limits for candidates, yet it does not appear to set limits for political parties. Section 89 (2) states that, 'Election expenses incurred by a political party for the management or the conduct of an election shall be determined by the Commission in consultation with the political parties,' while Section 89 (7) imposes penalties for failure to comply with Section 89 (2). The Group has not been able to determine the precise meaning of 'election expenses... shall be determined,' and what factors are considered when determining limits on political party election expenditure.

As a consequence of the lack of clarity in Section 89, the Group understands that candidates and political parties have been able to make use of 'creative accounting' practices to disguise the true expenses of political parties. Thus, while the Act's provisions on campaign finance are somewhat strengthened compared with its 2010 predecessor, significant loopholes remain.

However, the Group acknowledges a number of INEC's efforts to track campaign expenditure in the face of significant challenges. INEC has sought close co-operation with the police, the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and media regulators in order to track flows of funds and expenditure on political advertisements. The Group observed the presence of EFCC officials at many LGA tallying centres on and after election day. INEC also stated it had established a public portal that allowed members of the public to submit details of known campaign expenditures across the country. It is not known how effective this was or the extent to which citizens made use of it, but this is demonstrable of INEC's efforts to use innovative ideas to track campaign expenditure. These are commendable efforts and should be continued in future elections.

The Group is fully cognisant of the many challenges confronting INEC with regard to the monitoring and enforcement of campaign finance. These include:

1. a lack of capacity within INEC to enforce the provisions of the Act, given the size of the country, the number of elections and the number of candidates
2. an inability to accurately track expenditure within Nigeria's largely cash-based economy⁴⁹
3. the use of 'supporter groups' by candidates, to whom funds are funnelled for the payment of billboards, advertisements and other campaign expenditures that will therefore not be included in candidate expenditure reports
4. political parties' lack of compliance with the Act
5. legal loopholes that benefit political parties and candidates

The Group reiterates its recommendation that a separate body be established to undertake enforcement of campaign finance. If established, such a body should likewise seek close co-operation with police, EFCC, ICPC, media regulators and citizens in enforcing the Act.

The Act should be amended to regulate the expenditure of candidate 'supporter groups.' The law should also compel donors to submit information on such advertisements and other campaign expenditures to INEC in order for a record to be updated and made available online. The law should also be amended to include limits on expenditures made on behalf of candidates and political parties, in order to buttress existing provisions regarding limits on donations made directly to the candidate or political party.

Recommendations:

- The Electoral Act should be amended to include campaign expenditure limits for political parties.
- INEC, or such a body as may be established to monitor campaign finance, should make greater efforts to track campaign expenditure, compel political parties to submit the requisite reports and ensure campaign finance violations are sanctioned in accordance with the law.
- INEC, or such a body as may be established to monitor campaign finance, should ensure maximum transparency with regard to its efforts to enforce campaign finance laws,

⁴⁹ In 2021, President Buhari launched the eNaira, a Central Bank Digital Currency that aims to reduce the size of Nigeria's cash economy. Some commentators noted that this might afford greater opportunities for more effective tracking of campaign expenditure.

including by ensuring all political party expenditure reports and all notices of fines are easily accessible on its website.

- Parliament should consider amending the law to include limits on expenditures made on behalf of candidates and political parties, in order to buttress existing provisions regarding limits on donations made directly to the candidate or political party.
- Parliament should consider amending either the Electoral Act, or both the Nigerian Press Council Act and the National Broadcasting Act, to provide media regulators with the responsibility to monitor, record and make public a list of all political advertisements purchased by political parties.
- INEC should consider convening a multistakeholder consultation, including with CSOs and political parties, to analyse issues related to campaign expenditure levels, sources of funding, non-compliance and enforcement, and to propose possible legislative or policy amendments to ensure greater compliance in the future.

Polling unit selection

The establishment and selection of polling units is provided for in Section 40 of the Electoral Act and Section 7 of the Regulations and Guidelines for the Conduct of Elections 2022. The latter states:

7 (a) Polling Units shall be located within enclosures in public places accessible to every voter, including Persons with Disability (PWDs). Where they are in open spaces, canopies may be provided.

(b) Public places include public schools, civic centres, town halls and communal open spaces. Polling Units shall not be in places of worship, palaces of traditional rulers and private homes.

For the 2023 elections, INEC gazetted a total of 176,846 polling units across the country. INEC confirmed that 240 of these went unused on election day owing to a lack of registered voters.⁵⁰ (See Chapter 6 for election day observations of polling units.)

Recruitment and training of the temporary workforce

In mid-October, INEC announced the commencement of its training of polling staff. The training for this year's election was particularly important given the introduction of BVAS for voter accreditation and results transmission to IReV. Polling staff had to be trained not only in how to operate the devices in accordance with the law and regulations but also in how to resolve or escalate instances of glitches with the device.

INEC utilised a Training of Trainers model, beginning with the training of 82 master trainers to serve as Registration Area Technical Support (RATECH). These master trainers undertook a three-day training course, which they then rolled out to all 8,809 wards. Training at the ward level was subsequently rolled out to polling agents at all 176,606 polling units.

In total, INEC stated it intended to recruit a total of 1.26 million ad hoc staff, with a significant number of these recruited from serving members and alumni of the Nigeria Youth Service Corps. The temporary workforce was to be paid a wage for its efforts, although the Group was informed that the naira shortage presented some challenges in this regard.

Voter education

Section 2 of the Act gives INEC the responsibility to undertake voter and civic education and 'promote knowledge of sound democratic election processes.' The experiences of successive elections have highlighted the need for voter education in order to address challenges such as a trend of decreasing voter turnout in every election since 2003, high numbers of rejected votes (3.2 per cent – more than 1 million – in 2019), lack of awareness of voting procedures and election day violence.

INEC prescribed voter education as one of its five main goals in both its 2017–2021 and its 2022–2026 strategic plans. INEC's approach to voter education is outlined in depth in its Voter Education Manual 2021, which was validated two years in advance of the 2023 election with the assistance of the Westminster Foundation for Democracy and funding from the EU's Support for Democratic Governance.⁵¹ INEC's Voter

⁵⁰ INEC (2023) 'Briefing for Observers to the 2023 General Election'.

⁵¹ WFD (2021) 'Improving Voter Education to Increase Voter Turnout in Nigerian Elections'. 10 February. www.wfd.org/story/improving-voter-education-increase-voter-turnout-nigerian-elections

Education Implementation Framework for the 2023 election included 21 distinct activities and engagements, which were rolled out, as appropriate, throughout the second half of the electoral cycle, particularly in the final 12 months. INEC undertook these activities in collaboration with an array of domestic and international stakeholders:

- Seven of these activities included support from international implementing partners, including the EU, the International Foundation for Electoral Systems (IFES) and the United Nations Development Programme.
- Five of these activities included co-operation with CSOs, including Yiaga and the Centre for Democracy and Development (CDD).
- INEC also provided funding to the National Orientation Agency (NOA) on grassroots voter education outreach.

INEC's activities included (among other things):

- a multistakeholder implementation meeting to sensitise state officials and staff as to INEC's voter education programme
- capacity-building for INEC electoral officers
- the production of information fliers covering basic facts, the voting procedure, anti-electoral violence and vote-buying
- the development of radio jingles, billboards and banners
- social media messages and concerts to target youth
- community voter education grants to CSOs
- engagement of traditional rulers by INEC Regional Electoral Commissioners
- door-to-door voter education outreach

- voter education via SMS to registered voters
- training of staff for INEC's Citizen Contact Centre
- an online tool for voters to check their voter registration status and polling unit registration
- voter education and voter registration information on INEC's website

INEC's efforts appear to have had some success, as demonstrated, for instance, by the high numbers of youths who registered to vote for the first time, and by the relative lack of electoral violence across the country during and in the days following the 25 February elections. Heading into the election, youth expressed significant levels of confidence in INEC's ability to administer the election, not least because of INEC's deployment of election day technologies, of which they had been made aware through INEC's voter education programme.

The low voter turnout seen on election day might therefore be the result of other factors beyond voter education, such as late commencement of polling, lengthy queues, security concerns, the impact of naira shortages and various political factors that may have kept voters at home. On the issue of voter education specifically, therefore, INEC is to be commended for its concerted efforts to work with CSOs, the media and other stakeholders to provide voters with thematic and timely information on each aspect of the electoral process. The Group appreciates the considerable effort that undertaking such a voter education programme entails. It is for this reason that the Group reiterates its earlier recommendation that the National Assembly continue its deliberations regarding the establishment of a standalone, multistakeholder commission to undertake voter education efforts, in line with the recommendation of the Nnamani Report.

4. Participation and Inclusion

Participation and inclusion are underlying principles of democracy. For democracy to be fully realised, all eligible citizens should have an equal right and opportunity to participate in democratic processes, and to effectively engage in and contribute to decision-making processes. This is demonstrated through the participation and inclusion of the most marginalised groups, such as PWDs, socio-economically disadvantaged persons, women, young people and other socially excluded groups.



A healthy democracy also relies on a thriving civil society, with organisations that are free to advocate for democratic and electoral reform, conduct research on issues affecting the full participation of marginalised groups, promote laws and policies aimed at closing these gaps and undertake voter and civic education.

Nigeria has a thriving civil society. Organisations such as Yiaga Africa, CDD, the Nigeria Women Trust Fund, ElectHER and dozens of others continue to play a vital role in fostering greater accountability of electoral stakeholders, advocating for greater participation and inclusion, and providing voter education. Despite these positive contributions, and notwithstanding some notable electoral reforms on youth participation, the Group is concerned that Nigeria has, on the whole, failed to make significant progress towards achieving greater participation and inclusion in the electoral process. The Group regards the lack of affirmative action to guarantee human, civic and political rights and freedoms as a major concern.

Barriers to effective political participation experienced by marginalised communities in Nigeria include the following:

- The framework for the registration and oversight of CSOs includes vague, disproportional and potentially discriminatory criteria and processes for removing trustees and sequestering CSO assets.
- There has been a sustained rejection of legislative reform aimed at increasing the inclusion of women in national and local governments and political party hierarchies.
- Pervasive practices like 'godfatherism'⁵² and 'money bag politics' often preclude women, youth and PWDs from standing for office and deny voters a choice of candidates from across Nigeria's socio-economic spectrum.
- Implementation of the provisions of the Disability Act, the Electoral Act and the INEC Disability Framework has been poor, hindering inclusion in the electoral process.

This chapter addresses each of these points in detail and makes recommendations for increasing participation and inclusion in electoral and democratic processes.

Civil society

The Nigerian Civil Society Situation Room is a collaboration between more than 60 CSOs in Nigeria, covering a plethora of election-related issues and interests.⁵³ However, the prevailing legal and operational environment heavily constrains CSOs' ability to undertake their roles. According to Monitor Civicus, an organisation that tracks the

52 'Godfatherism' is defined in the Oxford Dictionary of African Politics as, 'A term used primarily in Nigeria to refer to wealthy and powerful figures who exert political influence behind the scenes while often remaining out of the limelight. A classic 'godfather' will have earned their money through government contracts or access to the country's oil wealth and will have used their largesse to establish a network through which they can influence political developments. A successful godfather, for example, will be able to shape not only who is nominated to contest elections but also who wins.' Cheeseman, N., Bertrand and, E. and Husaini, S. (2019) *A Dictionary of African Politics*. Oxford: Oxford University Press. [www.oxfordreference.com/display/10.1093/acref/9780191828836.001.0001/acref-9780191828836-e-156;jsessionid=3C78BB633EDFCDC43A6B09AFEF47EF87](https://www.oxfordreference.com/display/10.1093/acref/9780191828836.001.0001/acref-9780191828836-e-156?sessionid=3C78BB633EDFCDC43A6B09AFEF47EF87)

53 See <https://situationroomng.org/csos-list/>

health and openness of countries' civic space, Nigeria scores just 35 out of 100, thus situating it in the 'Repressed' category.⁵⁴

From 2016, the Government undertook successive efforts to pass standalone legislation on the regulation of NGOs. Whilst these efforts faced stiff resistance from civil society, and ultimately failed at committee stage, key provisions appear to have been subsumed within the Companies and Allied Matters Act (CAMA) 2020, which regulates a broader category of associations, including companies as well as NGOs. Of particular concern are Sections 8 and 839 of the Act, which empower the Corporate Affairs Commission (CAC) to investigate the activities of NGOs. The CAC is clothed with the authority to seek the suspension, by court order, of the trustees of an association and replace them with interim managers on the grounds of vague criteria, including if it 'reasonably believes... there is or has been any misconduct or mismanagement in the administration of the association' or if it is desirable out of 'public interest' (Sections 8 (c), 839 (1) (a) and 839 (1) (b) (iii)).

These provisions cannot be exercised without the authority of the minister responsible for trade, thus opening up the potential for government interference in the process. Indeed, all appointments to the Board of CAC are made either by the minister responsible for trade or by the President on the recommendation of the minister (Section 2 of the Act). The Act does not clearly define the burden of proof for the various criteria by which a court order can be sought, and does not afford the opportunity for remedial action in advance of a court order.

Since the passing of CAMA in 2020, there have been successive efforts to amend it, most recently in the form of the CAMA Bill 2022. This Bill, which has reached the committee stage, would see the minister appoint an NGO representative to the Board of CAC. The Bill arguably increases the burden of proof required of CAC when submitting a motion on notice for a court order, and also deletes Section 842 of the principal Act, which currently grants CAC the authority to seize control of assets of associations under certain conditions. However, the Group is concerned that these amendments, while in a positive direction, are not sufficient to assuage fundamental concerns regarding various provisions of the Act.



The Group appreciates that the regulation of charities is a legitimate, and indeed necessary, pursuit. Such legislation can be vital for fostering and supporting the third sector and addressing financial irregularities and illegalities. However, any such regulations must be proportional, necessary, non-discriminatory and conducive to a vibrant civil society. In reviewing the totality of CAMA, the Group is deeply concerned that the provisions therein provide scope for undue and arbitrary government interference in the affairs of civil society, in potential contravention with the provisions, and spirit, of (among others) Articles 36 (right to a fair trial), 38 (freedom of thought, conscience and religion) and 40 (right to peaceful association and assembly) of the Constitution. It is particularly important to address this in the context of the electoral process, given civil society's critical role in a healthy democracy and in encouraging an engaged and informed voting population.

Recommendations:

- The Companies and Allied Matters Act 2020 should be amended, or alternative legislation should be drafted, that ensures appointments to the Corporate Affairs Committee or its successor are removed from ministerial and presidential oversight. The appointments process should be via an application process overseen by an independent panel, with the principles of probity, integrity and non-partisanship given significant weight in the candidate selection criteria.
- Section 839 of the Companies and Allied Matters Act should be repealed and replaced with provisions that adhere more fully to Article 36 of the Constitution on the right to a fair trial.
- The Companies and Allied Matters Act, or any such law as may be passed that regulates NGOs and CSOs, should be amended or

54 See <https://monitor.civicus.org/country/nigeria/>

drafted with the principles of proportionality and non-discrimination at its core in order to cultivate and support a vibrant and fruitful civil society.

Women

Nigeria is party to several international and regional commitments for the promotion of gender equality and women's empowerment, including (among others) the Protocol to the ACHPR on the Rights of Women in Africa (the Maputo Protocol) and CEDAW. To date, however, Nigeria has failed to domesticate many of CEDAW's provisions, including in relation to political representation.

Status of women's political representation

In the 2023 elections, women represented 47.5 per cent of registered voters. The voter register included a total of 3.29 million newly registered female voters since 2019, compared with 3.2 million newly registered male voters. While these registration figures show a strong desire among women voters to participate in the election, various factors contributed to a much wider differential in the number of female and male candidates in each of the elective positions, with women candidates representing just 9.2 and 8.4 per cent of all candidates in the House of Representatives and the Senate, respectively. With this percentage dropping to just 5.5 per cent

for the presidential election, it appears there may be a correlation between the increasing costs associated with running for each level of elective position⁵⁵ and the proportion of women candidates contesting those positions. The differential increases further when analysing the percentages of women subsequently elected, with women representing just 3.4 per cent of those elected.

The Group was deeply concerned not only by the low number of women candidates but also that these figures are on a steady downward trend. The percentages of women Senate candidates in 2015 and 2019 were 16.3 and 12.3 per cent, respectively, compared with just 8.4 per cent in 2023. Similarly, the percentages of women candidates to the House of Representatives in 2015 and 2019 were 15.1 and 11.4 per cent, respectively, compared with 9.2 per cent in 2023.⁵⁷

In terms of successful women candidates, the percentages fall further. According to the most recent statistics, 'the national average for women's participation has hovered around 6 per cent for elective and appointive offices, which is below the West African sub-regional average of 15 per cent.'⁵⁸ In January 2021, 'Nigeria had a 10.3 per cent representation of women in ministerial positions (three out of 29) and 5.8 per cent among members of parliament.'⁵⁹ In 2021, Nigeria was ranked 184th out of 190 nations for women's political representation by the Inter-Parliamentary Union

Women candidates in the 2023 presidential, vice-presidential and National Assembly elections⁵⁶

Elective position (total no. seats or positions)	No. of women candidates/total candidates	Women as % of total candidates	No. of elected women candidates	Women as % of total elected
President (1)	1/18	5.5	0	0
Vice President (1)	0/18	0	0	0
Senate (109)	92/1101	8.4	3/109	2.8
House of Representatives (360)	286/3107	9.2	13/360	3.6
Total	379/4244	8.9	16/471	3.4

55 Including candidate nomination fees and access to campaign funds.

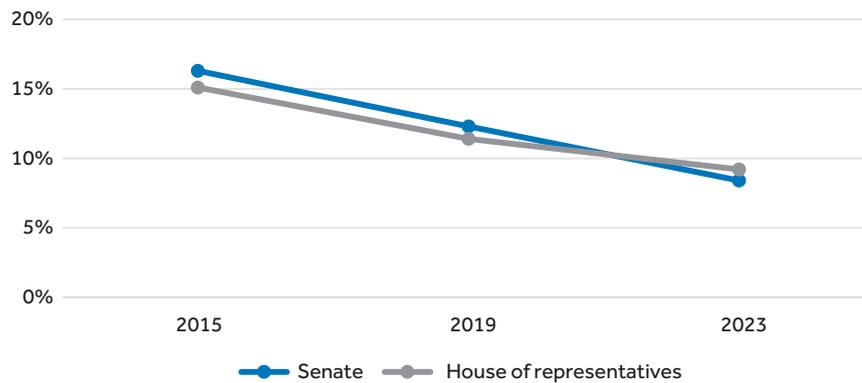
56 Source: INEC/CDD.

57 Afolabi, E. (2022) 'Analysis: Female Candidature and Nigeria's 2023 Elections'. CDD, 22 December. www.cddwestafrica.org/reports/analysis-female-candidature-and-nigeria-s-2023-elections/

58 Ette, E. and Akpan-Obong, P. (2022) 'Negotiating Access and Privilege: Politics of Female Participation and Representation in Nigeria'. *Journal of Asian and African Studies* 58(7): 1291–1306.

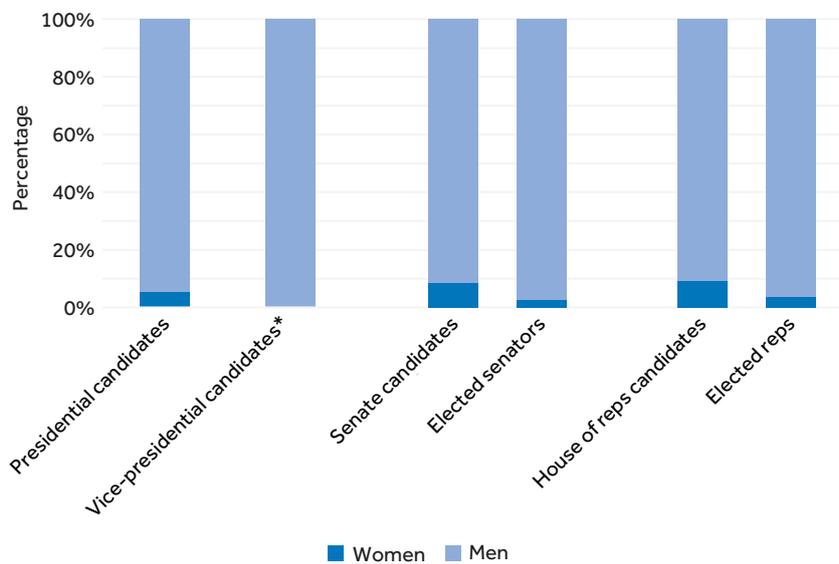
59 Ibid.

Women as a share of total National Assembly candidates, 2015–2023⁶⁰



Source: Centre for Democracy and Development

Share of women versus men candidates and electees, 2023⁶¹



Note: For the Senate and House of Representatives elections (bars 3-6), this graph shows the total number of candidates disaggregated by sex, followed by the breakdown of those who were subsequently elected. Since there is only one seat for each of the presidential and vice-presidential elections (bars 1-2), the graph shows the sex disaggregation only for candidates.

(IPU).⁶² The same year, it was ranked 149th out of 155 countries on political empowerment in the 2021 World Economic Forum Global Gender Gap Report.⁶³



Women’s voter turnout

The Group has not had sight of any disaggregated data on gender, youth or PWD turnout. Given that such data would have been generated automatically by BVAS devices at the point of accreditation, it is possible that the lack of publication of such data (so far as the Group is aware) owes to broader issues with BVAS devices and the transmission of data. Whatever the reason, it is important that such disaggregated data be published in a

60 Source: CDD.

61 Source: INEC/CDD.

62 IPU (2021) 'Women in Politics: 2021'. www.ipu.org/women-in-politics-2021

63 In Ette and Akpan (2022).

timely fashion following future elections in order to inform multistakeholder efforts to increase electoral participation by marginalised groups, including women.

Barriers to women's political representation

Advocacy to increase women's political participation faces entrenched barriers, including:

- pervasive patriarchy, including in political parties, and the associated traditional, religious and cultural norms that underpin the lack of support for women candidates among women and men
- bullying, intimidation and the 'politics of insult' – male politicians, commentators and other actors casting aspersions on and berating female aspirants, including with threats and hate speech
- financial factors, such as 'godfatherism'; the high cost of candidate nomination forms and campaign expenditure; and gendered factors affecting financial status of women, such as unequal inheritance
- the gendered care burden (including unpaid childcare and elder care undertaken by women, and other household work that reduces time available for engaging in political processes)
- the poor coverage of women candidates in the media

Over successive electoral cycles, citizen and international observers (including the Commonwealth), along with women's rights advocacy groups and IGOs, have also reported instances of gender-based violence (GBV). GBV appears to be a complex issue. On the one hand, the International Federation of Women Lawyers stated it witnessed violence against women voters on election day in various states, including Borno, Edo, Kaduna and Lagos.⁶⁴ The Group was also aware of at least one video circulating on social media that appeared to show a female voter who had been stabbed near her polling unit.

64 Ejekwonyilo, A. (2023) '#NigeriaDecides2033: FIDA Decries Election Violence against Women in Lagos, Others'. *Premium Times*, 6 March. www.premiumtimesng.com/news/more-news/586564-nigeriadecides2033-fida-decries-election-violence-against-women-in-lagos-others.html

ElectHER, meanwhile, noted limited instances of violence against women on election day, citing four instances of GBV, with just one of these physical.⁶⁵ ElectHER pointed to a number of factors that might have contributed to the low number of instances of violence they witnessed on election day, including:

- the use of separate lines for women at polling units
- the fact that most attention was on the presidential election, in which there was only one woman candidate
- the fact of there being very few women candidates for the legislature, thus reducing the likelihood of violence being perpetrated at either women candidates or female voters in support of women candidates

This last point indicates that a relative lack of physical gender-based violence on election day may be symptomatic of the ways in which the broader electoral landscape is not propitious to women's participation and inclusion.

Legislative reforms

In March 2022, a number of Bills were tabled that would have introduced temporary special measures to increase women's political participation and representation as voters, candidates and within political parties. These Bills would have responded to previous COG recommendations on women's political representation and participation. These bills were:

- Bill No. 35, for an Act to provide special seats for women in the National and State House of Assembly
- Bill No. 36, for an Act to expand the scope of citizenship by registration
- Bill No. 37, for an Act to provide for affirmative action in political party administration
- Bill No. 38, for an Act to provide criteria for qualification to become an indigene of a state in Nigeria
- Bill No. 68, for an Act to give women a quota in the federal and state executive councils or ministerial and commissionership seats

65 Commonwealth Secretariat interview with ElectHER, 14 March 2023.

All five Bills were initially rejected by the National Assembly, having received only ~50 per cent of the required two-thirds. Protests in three states and pressure from CSOs on International Women's Day forced a volte-face on three of these bills, with the House of Representatives promising to debate them during the following parliamentary session. The House's rescission did not extend to the two Bills – 35 and 68 – on seat quotas.⁶⁶

The legislature's failure to support such measures represents a missed opportunity to give full effect to the provisions of CEDAW, ACHPR and Article 42 of the Constitution of Nigeria. Further, the rejection of these Bills, inadvertently or otherwise, may further discourage women from seeking office, even within the limitations of the current legal and policy framework. The Group understands that some legislators regard such temporary special measures as surplus to requirements given that Article 42 of the Constitution already outlaws discrimination based on sex. The Group avers, however, that the practical realisation of Article 42 has not been given full effect in all instances and would benefit from being supported by more detailed and affirmative legislation. It is vital that women be able to participate in politics at the highest levels not only as a matter of principle but also in order to bring attention to issues that uniquely affect them.

Recommendations:

- The Group reiterates and updates its 2019 recommendation that, in order to address the concerning lack of women's political representation, the National Assembly should revisit the previously tabled Bills on seat quotas and other temporary special measures, as referenced in the National Gender Policy, with a view to passing such legislation in the current Parliament.
- The Group reiterates the 2019 COG's recommendation to political parties that encourages them to undertake comprehensive strategies to achieve greater engagement and inclusion of women as candidates and in party decision-making processes.

Policy reforms

Nigeria adopted its first National Gender Policy in 2006, and has revised it to produce successive policies in the intervening years. The purpose of the NGP and its attendant Strategic Framework (NGSF) is to mainstream gender responsiveness in both public and private spheres and achieve full implementation of the provisions of CEDAW and other international commitments on women's political representation.

The Group notes that, on 2 March 2022, shortly after the rejection by the National Assembly of the five Bills on gender equality, Minister of Women Affairs Dame Pauline Tallen announced that the Federal Executive Council had approved a revised NGP for the years 2021–2026. Yet, the Group was informed that both of the NGPs that had been in effect between the 2019 and 2023 elections had failed to gain significant traction and many of their objectives remain unfulfilled. Certainly, the statistics on women's political representation bear this out. The Group was also informed by stakeholders that government programmes on gender equality had become fragmented and lacked effective central co-ordination.

Recommendations:

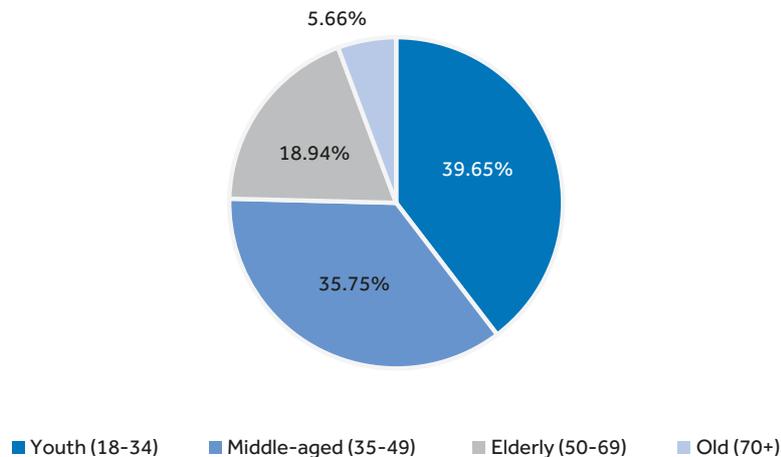
- The Group reiterates and updates its 2019 recommendation that the Government should work with all relevant stakeholders to ensure the revised 2021–2026 NGP and NSGF are fully implemented.
- INEC should ensure timely publication of sex-, youth- and PWD-disaggregated voter turnout data in order to inform multistakeholder efforts to increase electoral participation by marginalised groups.

Civil society efforts

In the run-up to the 2011 elections, the Ministry of Women and Social Development launched the Nigerian Women Trust Fund to provide financial support to female candidates, while the Women for Change Initiatives sought to encourage women to participate in politics. Both of these initiatives are still in operation today, with support from a range of international donors. Along with others such as ElectHER, these women CSOs have an important role to play in advocating for legal and policy reform, and should be supported in their efforts to do so,

66 Adetayo, A. and Egbejule, E. (2022) 'Nigerian Parliament Rescinds Decision on Gender Equality Bills'. Aljazeera, 8 March. www.aljazeera.com/news/2022/3/8/nigerian-parliament-rescinds-decision-on

Registered voters by age distribution⁶⁷



Source: INEC

including through the aforementioned reforms to the legislation governing CSOs in Nigeria as well as full implementation of the NGP.

Gender-responsive voter education

While INEC did undertake some advocacy and civic education activities, and had mainstreamed gender into its Voter Education Manual, the Group was informed that these activities were short in term and relatively limited, and happened very late in the election cycle. Based on discussions with civil society stakeholders, there is scope for greater collaboration and co-ordination on targeted voter and civic education programmes, and there is a need for such collaboration to occur earlier on in the electoral cycle.

Recommendation:

- INEC, other relevant government agencies and civil society should work collectively on a whole-of-election-cycle civic and voter education programme to support greater participation of women, both as voters and as aspirants.

Youth

Over 52 million Nigerians are aged between 18 and 35, which accounts for 28 per cent of Nigeria's total population. The 2023 elections were notable for the high level of youth engagement; youth formed the largest voting cohort, with INEC data citing

37,060,399 registered voters between the ages of 19 and 29, representing 39.65 per cent of all registered voters.

Yet, despite the significance of the youth cohort in terms of its proportion of the voting population, young people face considerable barriers to their full and meaningful participation in electoral processes, including:

- high levels of youth poverty and unemployment, which, when coupled with the high cost of candidate nomination forms and campaigns, often preclude their ability to stand for election
- multiple and intersectional forms of discrimination
- inadequate support by political parties, in terms of either standing for elections or being included in political party decision-making processes
- vulnerability to mis- and disinformation as a digitally active population

Legislative reform

As noted in Chapter 3, Nigeria has enacted a number of legislative measures to increase the participation of youth in elections, both as voters and as aspirants. This has included the 2018 Not Too Young to Run Act, which reduced the age requirement for contesting for the Office of the President, the House of Representatives and the State Houses of Assembly. In addition, prior to the elections, a number of stakeholders had noted the use of technology as a possible pull factor in

⁶⁷ Source: INEC.

attracting young voters, who saw BVAS and IReV as improving the accessibility and integrity of the process. While such changes were not primarily aimed at increasing youth participation, they may have had a positive impact.

Engagement by civil society

In other positive developments since 2019, the Group notes the considerable efforts of CSOs in engaging youth, particularly in terms of encouraging them to register to vote, as well as voter education on the use of electoral technologies and the electoral process more broadly. Further, the Group wishes to commend youth for their active and valuable participation within these CSOs, including the vital role they played as citizen observers (including the more than 4,500 who conducted parallel vote tabulation and data clerking for Yiaga) and in various CSO situation rooms in Abuja and across the country on election day.

Engagement by INEC

The Group wishes to commend the tens of thousands of young people were recruited to the temporary workforce throughout the election, including those sourced from current and former members of the Nigeria Peace Corps. The Group also notes INEC's Voter Education Manual, which set out strategies for conducting targeted youth voter education. The Manual rightly noted that, 'There needs to be constant engagement with young people in places that they frequent and through mediums that they understand.' The strategy noted the value of using sporting events, music and other forms of entertainment to reach youth. Indeed, INEC partnered with Yiaga and the EU on the 'Youth Vote Counts' mega concerts focussed on increasing youth over registration.⁶⁸

Crucially, the Manual noted the positive role social networks could play in reaching young voters, while cautioning that the low penetration of social media in some areas necessitated the ongoing use of traditional media, such as radio, to reach some young voters.⁶⁹ The Group also commends

INEC for its engagement of CSOs on a number of voter education efforts, including door-to-door voter education campaigns, collaboration on the production of banners and billboards, training of staff for INEC's Citizen Contact Centre and community grants to CSOs.

The Group was concerned, however, by the lack of progress in facilitating early or special voting for poll workers, most of whom are young. Given that the total temporary workforce recruited by INEC tops one million, this is not an insignificant number of potentially disenfranchised voters. For future elections, it is recommended that this be rectified as a matter of urgency.

Engagement by political parties

Political parties also appear to have engaged youth as voters, through employing a number of similar methods such as social media and campaign events. Yet, the Group notes with regret that the engagement of the youth was, on the whole, limited to their participation as voters, rather than as candidates or within senior ranks of the party. Despite some political parties lowering the cost of candidate nomination fees for young people, the Group notes youth candidacy declined from 34 per cent in 2019 to 28.6 per cent in the 2023 elections, thus representing less than a third of the 15,336 candidates.⁷⁰ Further, given the proportion of registered voters who are young, it is likely that the low turnout of just 29 per cent on election day could have been driven in part by low youth turnout. Yet, given the enthusiasm of youth in the campaign period, it is possible that other factors besides youth voter apathy, such as long queues or fears over electoral violence, could have played a significant role.

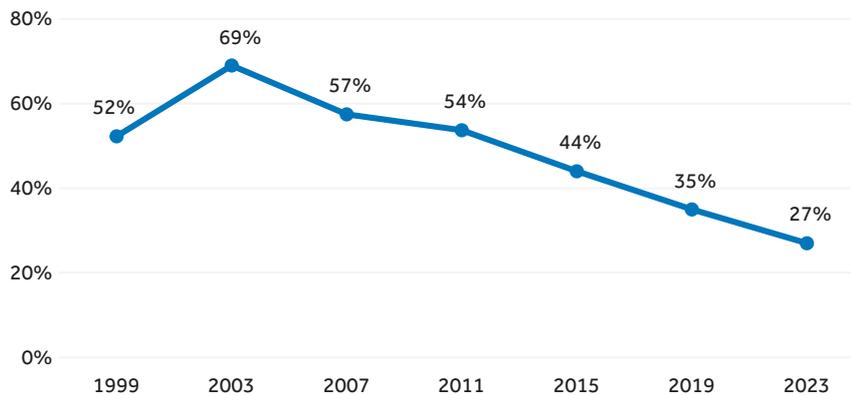
Of course, voter apathy itself remains a concern. Voter turnout has been on a steady decline for successive electoral cycles, in part because of perceptions among youth – and more broadly – that their participation in electoral processes does not translate to improvements in their own lives. In order to arrest and reverse this decline, it is vital that politicians not only engage youth during election periods but also ensure they maintain their side of the social contract that exists between politicians and those they represent.

68 INEC Voter Education Implementation Framework for the 2023 General Election. See also Olatunji, K. and Ogunniyi, O. (2023) 'EU, INEC Organise Free "Youth Vote Count" Concert in Nigeria'. *The Guardian*, 8 June. <https://guardian.ng/politics/eu-inec-organise-free-youth-vote-count-concert-in-nigeria/>

69 INEC Voter Education Manual 2021, pp. 84–85.

70 Ewepu, G. (2023) '2023: Not-Too-Young To Run Movement Assures Support for Youths'. *Vanguard*, 5 February. www.vanguardngr.com/2021/02/2023-not-too-young-to-run-movement-assures-support-for-youths/

Voter turnout in successive elections⁷¹



Recommendations:

- Political parties should redouble their efforts to increase the number of youth candidates standing for election.
- Political parties should engage youth throughout the electoral cycle in order to arrest the decline in youth voter turnout.

Lastly, in relation to the involvement of youth in the process of signing the Peace Accords, the Group notes that all political parties were engaged, but that there was no specific youth engagement, either as observers or signatories. In order to achieve greater youth buy-in with regard to the Peace Accords, it is vital that they be included in future conflict prevention endeavours.

Recommendations:

- Future conflict prevention endeavours, such as the signing of a pre-election Peace Accord, should engage the youth as a distinct stakeholder in order to achieve a greater level of buy-in.
- Political parties should conduct a thorough review into why youth candidacy declined in the 2023 elections in spite of the relatively recent passing (2018) of the Not Too Young to Run Act. The review should examine possible causes, including youth apathy, a lack of support from political parties, concern over electoral violence and so on.

- The National Peace Committee should consider including youth groups to sign on as observers to the Peace Accord, as a way to meaningfully engage young people in the process.

Persons with disabilities

As Africa's largest democracy, Nigeria has a robust and diverse civil society, with a range of sub-national, national and regional organisations working on a host of human rights, equity and inclusion issues. These include CSOs that advocate for the rights of PWDs and focus on implementing rights enshrined in the Constitution and on legislation that prohibits discrimination on the basis of disability.

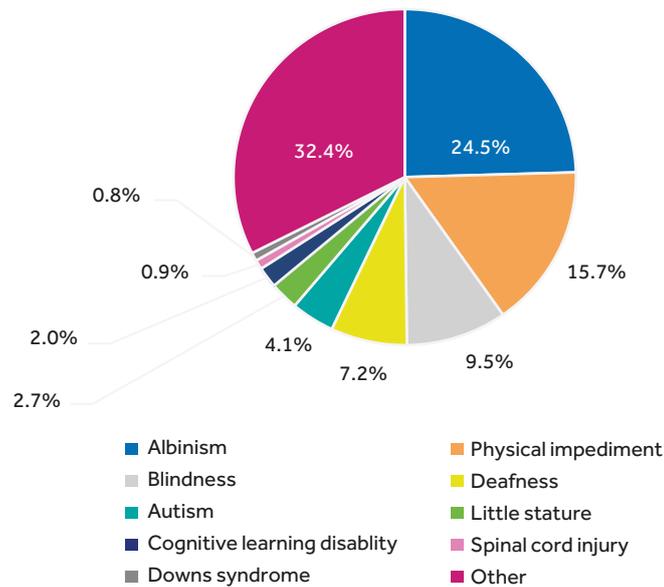
Article 42 of the Constitution of Nigeria prohibits discrimination or special privileges on the basis of being of a 'particular community, ethnic group, place or origin, sex, religion or political opinion.'

The Discrimination against Persons with Disabilities (Prohibition) Act 2018 provides much more detailed protections for PWDs. Section 1 of the Act criminalises discrimination on the basis of disability, with sanctions including fines or imprisonment or both. A body corporate could also be liable for a significant fine (₦1 million) on conviction.

Section 26 of the Act states that, 'In queues, persons with disabilities shall be given first consideration and, as much as possible, be attended to outside the queue.' While this section does not specifically mention elections, these sections would also apply during elections.

⁷¹ Source: INEC.

Registered voters with disabilities by category⁷²



Note: INEC's figures cover new registrations in the period from January to July 2022.

The Electoral Act 2022 contains detailed provisions for PWDs, in a marked progression from previous legislation. The Act provides a detailed definition of a 'person with disability' and a further definition of a 'person with special needs' as:

'a person who requires assistance for disabilities that may be medical, mental, emotional, physical or psychological.'

Section 9 (1) (b) of the Electoral Act empowers INEC to collect data on PWDs who are eligible to vote, disaggregated by type of disability. The Act also makes specific provision for persons with visual disabilities or visual impairment during elections. Section 54 allows for a voter with visual impairment to be accompanied by a person of their choosing into the polling unit, to assist them in casting their vote. The section also calls on INEC to:

'take reasonable steps to ensure that persons with disabilities, special needs and vulnerable persons are assisted at the polling place by the provision of suitable means of communication, such as Braille, large, embossed print, electronic devices, sign language interpretation, or off-site voting in appropriate cases.'

The Group notes that some progress has been made on previous COG recommendations, from 2019. In giving effect to its constitutional

and legislative obligations, INEC adopted a Framework on Access and Participation of Persons with Disabilities in Electoral Processes in 2018. This is aimed at the inclusion of PWDs in all aspects of the electoral process, as well as reducing the barriers they face as voters, aspirants, candidates, party officials and staff within the Commission.

The objectives of the INEC Framework are:

- to strengthen the Commission as an institution that is inclusive in its human and financial resources as well as in its practices and process
- to work with relevant stakeholders in facilitating the development of accessible electoral facilities and infrastructure
- to encourage the participation of PWDs in all aspects of the electoral process
- to establish strong partnerships with relevant stakeholders in promoting access and participation of PWD's in the electoral process
- to encourage political parties to grant access and participation of PWD's in the electoral process

Overall, the objectives of the Framework focus on multistakeholder engagement to bolster the participation of PWDs both in electoral processes

⁷² Source: INEC.

and within the Commission. The Framework also contains a number of strategic actions for INEC to undertake, with greater detail contained in a delivery plan. However, it should be noted that the delivery plan has not been shared externally.

INEC has started undertaking disability-disaggregated voter registration, and has made the data available. It should be noted that the numbers reflect only new registrations and are therefore lower than the actual number of PWD voters.



In relation to voter education, the Group notes that INEC has taken steps to address voter education strategies to include PWDs. The 2021 Voter Education Manual describes seven different models for conceiving of the issue of disability, including the medical model, the rights model and the social model, each of which were to be used to inform INEC's targeted voter education drive.⁷³

Despite these positive efforts, in the months leading up to the election CSOs expressed a lack of confidence in INEC's efforts to implement its PWD Framework, particularly at the state level. The Executive Director of CDD was quoted as saying in August 2022, 'The major issues include, absence of disability friendly election frameworks at the state level, little or no involvement or consultation of organisations representing persons with disabilities before and during elections, and absence of information, education and communication materials targeting the disability community.'⁷⁴ These concerns were somewhat substantiated by a number of observations made by the Group on election day.

73 INEC Voter Education Manual 2021, pp. 79–80.

74 Nwokoro, S. (2022) 'CCD Tasks INEC on Full Political Participation for PWDs'. *The Guardian*, 9 August. <https://guardian.ng/features/law/ccd-tasks-inec-on-full-political-participation-for-pwds/>

Election day observations

- In relation to the 2019 COG's recommendation to review transport restrictions, the Group did not see changes in this area. The Group did observe in some places an informal relaxation of transportation restrictions, but this was not official or managed.
- INEC POs gave first consideration to PWDs, along with elderly persons and visibly pregnant women, in many of the polling units observed. This was sometimes through the creation of a separate queue or by calling these persons up to the front of the general queue.
- There appeared to be a general commitment to providing this access; however, where voting was chaotic or disorderly, this was not observed. Some polling stations had physical barriers to access (e.g., large drainage ditches).
- The Group observed persons with visual impairment being permitted to bring one person into the polling unit to assist them. However, this was not consistently applied. The Group also observed instances of persons with visual impairment being denied the opportunity to vote with their designated aide owing to objections by party agents. The fact that polling agents did not stand firm in the face of this could be indicative either a lack of training or feelings of intimidation. It certainly suggests the need for political parties to provide their agents with greater voter education on PWD access.
- The Group did not have the opportunity to observe the distribution or use of assistive devices but it notes that both INEC and organisations for PWDs stated that these preparations were in place for the elections.

Recommendations:

- INEC should consider the provision of passes to allow PWDs to use vehicles/transport during the period of restricted vehicle movement on election day.
- Polling units need to be made more uniformly accessible; INEC and relevant government departments and agencies should undertake an audit to identify suitable locations and lay out polling units with PWDs and elderly persons in mind.

- Political parties, civil society and INEC should consider undertaking whole-of-election cycle programming to encourage candidates with disabilities, and greater engagement of PWDs in all aspects of the electoral process.
- INEC should consider drawing on recommendations from CSOs and disability 'situation rooms' to inform any post-election review process.
- Political parties should consider developing new strategies, beyond a reduction in candidate nomination form fees, for encouraging PWDs to stand in party primaries.
- In order for PWDs to have greater representation in political parties and to ensure their voices are heard in the development of new policies, parties should consider strategies for increasing the inclusion of PWDs in party hierarchies and decision-making positions.
- Political parties should train party agents on PWD access to polling stations – specifically, Section 54 of the Electoral Act – in order to lower the number of instances of party agents objecting to PWDs being accompanied to the booth.

Internally displaced persons

Owing to various security challenges, mostly in the North East, the North West and the Middle Belt regions of the country, Nigeria has one of the highest numbers of IDPs in Africa. The International Organization for Migration (IOM) puts the figure at 2.3 million as of November 2022,⁷⁵ although INEC itself estimated there were around three million IDPs registered to vote.⁷⁶

Section 24 (1) of the 2022 Electoral Act states, 'In the event of an emergency affecting an election, the Commission shall, as far as practicable, ensure that persons displaced as a result of the emergency are not disenfranchised.' This legal provision was first included in the 2015 Electoral Act (as amended), and empowered INEC to establish a framework for

the inclusion of IDPs in the electoral process. To this end, in 2018 INEC issued a Framework, along with Regulations on the same.⁷⁷ These were developed by a multi-agency Technical Group on IDP Voting, and reflected INEC's commitment to 'inclusivity, the prevention of discrimination in the electoral process, and in accordance with international standards on internally displaced persons (IDPs) as provided by the United Nations Guiding Principles and the Kampala convention.'

The Framework and Regulations provide for the categorisation of IDPs into two broad groups – intrastate and interstate – with the former group allowed to vote in all elections and the latter allowed to vote only in presidential elections. The Framework and Regulations also provide for:

- collaboration and information sharing between Resident Electoral Commissioners on interstate IDPs
- continuous voter registration for IDPs
- the establishment of IDP voting centres
- the use of INEC's risk management tools to determine the suitability of IDP voting centre locations
- the engagement of key stakeholders, including (among others) security agencies; political parties; traditional, community and religious leaders; CSOs; the media; state and local governments; women's groups; and schools
- the development of targeted voter education programming for IDPs

The Group was not able to observe voting at IDP voting centres but wishes to commend INEC and other relevant stakeholders for their joint efforts to ensure the franchise of IDPs was unaffected by security issues.

Prison voting

At present, prisoners are not able to vote in elections in Nigeria. It is worth noting that, as well as convicts, prison populations include those who are awaiting trial and have not yet been convicted of an offence.

The right of prisoners to vote is one that has received support from several key stakeholders. The Correctional Service has called on INEC

75 IOM (2023) 'Nigeria Displacement Report 43 – February'. <https://dtm.iom.int/reports/nigeria-displacement-report-43-february-2023>

76 Raji, M. (2022) 'Estimated 3 Million IDPs to Participate in 2023'. Vanguard, 7 September. www.vanguardngr.com/2022/09/estimated-3-million-idps-to-participate-in-2023/

77 Both the Framework and the Regulations are accessible at https://inecnigeria.org/?page_id=2458

to facilitate voting for prisoners to vote, while on 8 March 2022 the Nigerian Senate passed a resolution likewise calling on INEC to make such provisions.⁷⁸ INEC Chair Professor Yakubu has also stated his support for prison voting in principle but has pointed to the legal and logistical hurdles that first need to be overcome. Regarding the former, while the Constitution does not explicitly proscribe voting by convicts, Section 12 (1) (e) of the Electoral Act states that a person shall be qualified to register to vote if they are 'not subject to any legal incapacity to vote under any law, rule or regulations in force in Nigeria.' Further, the law states that a voter cannot vote at any polling station other than the one at which they are registered. As such, any move to allow prisoners to vote would likely entail the need for the Act to be amended to provide legal backing for this. Only then could operational and logistical issues be given proper consideration.

The Group commends the above stakeholders for their commitment to extending the right to vote

to prisoners, and encourages further discussion on the legal and operational issues that need to be addressed in order for this to be realised.

Recommendation:

- INEC, political parties and the Correctional Service should convene a multistakeholder committee to discuss the legal and operational issues that need to be addressed in order to facilitate voting by prisoners.

Inclusion of other marginalised groups

The COG received very little information on the inclusion of LGBT+ persons. The Group is therefore not able to make any observations or recommendations on the inclusion of this group. The Group encourages future observation groups to continue to seek information on the inclusion of these LGBT+ Nigerians.

⁷⁸ <https://placng.org/Legist/will-prison-inmates-be-voting-in-2023/>

5. Campaign and the Media

The campaign

INEC originally set the date for the 2023 general elections for 18 February 2023 but revised it in accordance with Section 28 (1) of the Electoral Act 2022, which states that INEC must issue the notice of election not later than 360 days before the election date. As a result, Nigerians went to the polls on Saturday 25 February 2023 to elect a president and National Assembly. The official campaign period for the elections began on 28 September 2022 and ended on 23 February 2023, thus lasting 150 days – a significant increase on the 90-day campaign period in 2019.

Legal framework

Aside from constitutional provisions relating to fundamental political rights and the role of security forces, the legal framework underpinning the campaign activities of political parties and candidates includes, among others, the Electoral Act 2022, the Police Act 2020, the Evidence Act 2011, the Public Order Act 1986, the Penal Code 1960 and the Criminal Code Act 1916.⁷⁹

INEC's timetable was determined by the provisions and timelines set by the Electoral Act, as well as guidelines that the Commission issued in accordance with the powers granted to it by the Constitution.

Timetable and schedule of 2023 elections⁸⁰

S/N	Activity	Date
1	Publication of notice of election	28 February 2022
2	Collection of relevant forms for election by political parties from INEC website	1 March 2022
3	Conduct of party primaries, including resolution of disputes arising from these	Commencement date 4 April 2022; end 3 June 2022
4	Submission of relevant forms online (nomination portal)	Presidential and National Assembly: 9:00 10 June 2022 to 18:00 17 June 2022 Governorship and State Houses of Assembly: 9:00 1 July 2022 to 18:00 15 July 2022
5	Publication of personal particulars of candidates (EC9) by INEC	Presidential and National Assembly 24 June 2022 Governorship and State Houses of Assembly 22 July 2022
6	Last day for withdrawal by candidate(s)/ replacement of withdrawn candidate(s) by political parties	Presidential and National Assembly 15 July 2022. Governorship and State Houses of Assembly 12 August 2022
7	Last day for submission of nomination forms by political parties	Presidential and National Assembly 8 August 2022 Governorship and State Houses of Assembly 18 August 2022
8	Publication of final list of nominated candidates by INEC	Presidential and National Assembly 20 September 2022 Governorship and State Houses of Assembly 4 October 2022
9	Commencement of campaign by political parties in public	Presidential and National Assembly 28 September 2022 Governorship and State Houses of Assembly 12 October 2022

⁷⁹ The Penal Code applies to northern states while the Criminal Code Act applies to southern states.

⁸⁰ Source: INEC.

Timetable and schedule of 2023 elections⁸⁰

S/N	Activity	Date
10	Last day for submission of names of polling agents for the election to the electoral officer of the LGA by political parties through INEC's dedicated portal	Presidential and National Assembly 30 December 2022 Governorship and State Houses of Assembly 6 January 2023
11	Publication of official register of voters for the election by INEC	12 January 2023
12	Publication of notice of poll by INEC	30 January 2023
13	Last day for campaigns by political parties	Presidential and National Assembly 23 February 2023 Governorship and State Houses of Assembly 9 March 2023
14	Election	Presidential and National Assembly 25 February 2023 Governorship and State Houses of Assembly 11 March 2023

This schedule was the reverse of that in previous elections in Nigeria; for this electoral cycle, presidential and National Assembly elections preceded governorship and State Assembly elections. The objective was to ensure that governments could not unilaterally alter the arrangements.

Under Section 28 (1) of the Electoral Act, publication of the election date must occur at least a year before the election. Other provisions are determined by INEC, which include the period for the conduct of party primaries, the registration of candidates and the potential withdrawal of candidates and replacement by their parties. Section 94 (1) of the Electoral Act determines the length of the campaign period – to commence 150 days before election day and end 24 hours before the opening of polls.

Primaries

The primaries, along with any potential challenges to primary results, were to take place between 4 April and 3 June 2022 but the deadline was extended to 9 June 2022. An informal understanding among Nigeria's political leadership assumed that the South (the South East, South South and South West) would stand the next presidential candidate as the outgoing incumbent, Buhari, is a northerner. Another informal convention calls for nominees to have vice presidential

running mates from a different region and religion as themselves. Despite this arrangement, most parties did not formally close their primaries to non-southern candidates or officially designate that they could not have running mates of the same religion.

In 2021–2022, ahead of the commencement of primaries, there were heated internal debates, particularly within the APC and the PDP, over zoning and religious criteria. The PDP declined to formally zone its nomination in early May 2022, and then went against convention to nominate northerner Atiku Abubakar; the APC also declined to formally zone its nomination but later nominated a southerner, Asiwaju Bola Ahmed Tinubu. The APC did break convention, however, by picking a single religion (Muslim-Muslim) ticket; the PDP did not.

All Progressives Congress

With Buhari having been elected to the presidency twice, he was ineligible for renomination. On 20 April 2022, the APC National Executive Committee announced the party timetable for the presidential primary and that the primary would use the indirect primary method. The announcement set the party's expression of interest form price at ₦30 million (~US\$65,000) and the nomination form price at ₦70 million (~US\$150,000), with a 50 per cent nomination form discount for candidates younger than 40 while women and candidates with disabilities got free nomination forms.

Forms were to be sold from 26 April to 6 May but the deadline was extended twice until 12 May. After the submission of nomination forms by 13 May, candidates were to be screened by a party committee. Candidates approved by the screening process were to advance to a primary, eventually held on 6–8 June 2022.

Tinubu prevailed as the presidential candidate of the APC for the 2023 elections. The former governor defeated 13 other aspirants. He polled 1,271 votes to emerge winner, while his closest rival, former Minister of Transportation Rotimi Amaechi, received 316 votes. Vice President Yemi Osinbajo came third, with 253 votes. The Electoral Committee voided 13 votes after the exercise.

People's Democratic Party

In October 2021, the PDP agreed to the indirect primary method of nominating its presidential candidate. On 16 March 2022, the national PDP announced its primary schedule, setting its expression of interest form price at ₦5 million (~US\$12,000) and the nomination form price at ₦35 million (~US\$84,000), with a 50 per cent discount for candidates between 25 and 30. Forms were to be sold between 18 March and 22 April 2022. After the submission of nomination forms by 25 April, candidates were screened by a party committee. Ward congresses were set for 29 April but plans to elect 'ad hoc delegates' for the primary were abandoned following aborted efforts to expunge Section 84 (12) of the Electoral Act (see Chapter 3).

The process, which was observed by the EFCC, was derided as 'obscenely monetised' by Mohammed Hayatu-Deen, who subsequently withdrew his candidacy in protest. When collation was completed, Abubakar emerged on 27 May 2022 as nominee after results showed him winning just under 50 per cent of the votes. He polled a total of 371 votes to defeat his closest challenger, Governor Nyesom Wike of Rivers state, who garnered 237 votes. In third place was former Senate President Bukola Saraki, who polled 70 votes.

The weeks after the primary were dominated by the search for Abubakar's running mate. Since Abubakar is a Muslim from the North East, it was expected that his running mate would be a southerner and a Christian. On 16 June, Abubakar announced that Ifeanyi Okowa would be his vice presidential running mate.

Party primaries are administered by the parties themselves but must be monitored by INEC observers and fall inside the timetable set by INEC, which was amended several times. After the primaries, focus shifted to voter registration and the logistical issues surrounding it.

In the wake of the incidents, INEC deployed extra registration machines to Lagos state, Kano state and some states of the South East. INEC, following public and political pressure, extended its registration deadlines on several occasions, up to 31 July 2022, while simultaneously extending daily registration hours from 18:00 to 20:00. Ahead of the deadline, 11 states declared public holidays for voter registration to increase public participation. After the deadline, INEC announced that nearly 12.3 million new voters registered during the exercise.

Some 8.75 million of the new voters were younger than 34, a figure noted as a potential sign of increased youth participation ahead of the election. After the registration drive, the total number of registered voters was 93.4 million, with the North West and South West geopolitical zones having the most voters.

Labour Party

The LP conducted the primary for its presidential ticket on 29 May 2022 in Asaba, the capital of Delta state. A total of 185 delegates had been accredited to vote in the exercise to elect one of four aspirants seeking to clinch the party's presidential ticket. All three co-contenders – Pat Utomi, Olubusola Emmanuel-Tella and Faduri Joseph – stepped down for Peter Obi, former Governor of Anambra state. Earlier, in a letter dated 24 May 2022, Obi lamented recent developments within the PDP and resigned from the party; three days later he announced he had joined the LP.

New Nigeria People's Party

A total of 774 party delegates from 36 states and the FCT Abuja elected the NNPP's presidential candidate on 8 June 2022. Former Governor of Kano State Rabiu Kwankwaso emerged as the presidential aspirant.

Security context of electoral campaigns

Before the election, Nigeria continued to grapple with a host of security challenges country-wide. The northern states faced enduring struggles against

violent jihadist groups such as Boko Haram and Islamic State, and IPOB continued to play a political spoiler role in the South East. Data from CDD and the Armed Conflict Location & Event Data Project (ACLED)'s Nigeria Electoral Violence Tracker shows that other forms of electoral violence, such as attacks on civilians and political thuggery, occurred more or less in line with trends from previous elections, with the majority of incidents occurring in South South, South East, South West and North Central.

Campaign rallies and freedom of assembly

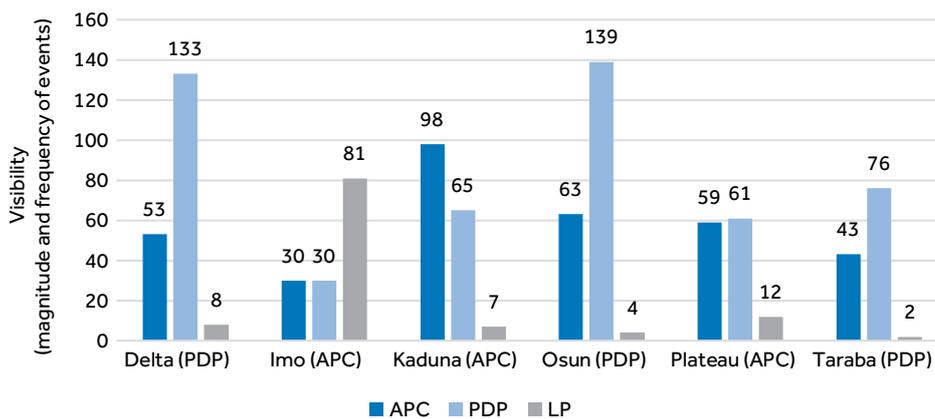
Candidates vying for the Office of President advertised in the media, stating their manifestos on various platforms. There were also multiple rallies and marches. Colourful posters and billboards adorned Nigeria's streets, showing candidates decked out in traditional attire. In many regions, campaign rallies and town hall meetings were mostly peaceful, although there were reports of ripping down of posters and scuffles. However, the holding of rallies by political parties was not without issue, with several incidences of violence despite provisions in the law for security to prevent such occurrences.

Section 91 (1) of the Electoral Act compels state police commissioners to 'provide adequate security for proper and peaceful conduct of political rallies

and processions in their respective jurisdictions' and provides for the police to be supported by 'the Nigerian Security and Civil Defence Corps and any other security agency of the Federal Government.' The Public Order Act (Section 1 (1–5), meanwhile, sets out the conditions for political parties or other associations wishing to hold public gatherings, including the requirement to make an application for a licence to the Governor of the state, who may in turn direct the police to issue a licence to said individual or party. The Governor may also delegate these powers directly to the Commissioner of Police of the state. Any individual wishing to appeal a decision relating to a licence must do so within 15 days of the decision. Determinations on appeals are made by the Governor, whose decision is final.

The Kimpact Development Initiative (KDI)'s Election Violence Monitoring and Mitigation programme included the deployment of 276 long-term monitors to six states.⁸¹ KDI's findings show that, in four of the six states monitored, the political party of the Governor had higher visibility (as measured by size and frequency) than did other political parties.⁸² The lower visibility of opposition parties could therefore be attributable to a disproportionate number of rejections of licence applications filed by these opposition parties.⁸³

Campaign visibility of parties in relation to party control by state⁸⁴



Note: Party in brackets beside each state denotes the party controlling state governorship.

81 The six states were Delta, Imo, Kaduna, Osun, Plateau and Taraba. Since the programme focused on just one state from each of Nigeria's six geopolitical zones, it is important to note that the data represents only a snapshot of election-related violence in the 2023 election. The Group therefore stops short of extrapolating country-wide trends from this limited dataset. Nonetheless, KDI's findings are worthy of consideration.

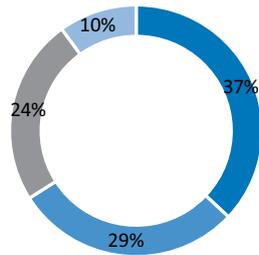
82 KDI (2023) 'The Quest for Peaceful Election: The Report and Documentation of KDI's 2023 General Election Security Interventions and Assessments'.

83 Commonwealth Secretariat discussion with CSO representative.

84 Source: KDI.

Indeed, KDI's study further shows that the causative factor in 37 per cent of all incidents of electoral violence recorded in these six states was 'government restrictions' – that is, incidents of electoral violence occurred as a consequence of decisions by the authorities to prevent rallies and place limits on freedom of assembly.⁸⁵

Causes of electoral violence⁸⁶



- Government restriction
- Protests/civil disobedience
- Recruitment and arming of thugs
- Incitement

Source: Kimpact Development Initiative

Discussing this phenomenon with CSOs in the post-election period, the Commonwealth Secretariat was informed by one CSO that it was not uncommon for state Commissioners of Police to operate in service to the state Governor rather than in line with the directives of the Inspector General of Police (IGP), Usman Alkali Baba. Indeed, refusal to grant licences would appear out of step with the IGP's public statements on freedom of assembly. Here, the IGP is worth quoting at length:

The campaigns commenced and what we realised initially was inter and intra-party disputes. We realised that members of political parties were destroying billboards, posters and campaign offices in some parts of the states. We quickly alerted the commissioners of police in charge of the commands and gave them a clear directive that it is the right of every political party to go to all the nooks and crannies of society and campaign. It is a constitutional right, so on no account should a state governor or any state actor prevent political parties from moving about to do their campaigns.⁸⁷

⁸⁵ Commonwealth Secretariat discussion with CSO representative.

⁸⁶ Source: KDI.

⁸⁷ Baiyewu, L. (2022) 'Politicians, Others behind Attacks on INEC Offices – IGP'. *Punch*, 17 December. <https://punchng.com/politicians-others-behind-attacks-on-inec-offices-igp/>

The Group appreciates that security concerns represent a legitimate reason for officials to be aware of planned campaign events, yet it is concerned that certain provisions of the Public Order Act could be used unduly to stifle opposition campaigning, contrary to constitutional protections on freedom of assembly. Allowing parties and candidates to simply inform authorities of planned events in good time would ensure these constitutional freedoms are protected whilst allowing authorities adequate time to consider security requirements.

Recommendation:

- In order to uphold constitutional provisions on freedom of assembly, Parliament should consider amending the Public Order Act 1986 such that political parties and candidates need only inform authorities of planned events in good time rather than seek permission through licence applications.

Perpetrators and victims of electoral violence

As campaigning intensified in late 2022, fears rose over electoral violence based on ethnic, regional and religious sentiments, as candidates and their supporters began extensively using identity politics during campaigning. The Electoral Act contains various provisions aimed at preventing hate speech in electoral campaigns and ultimately curtailing electoral violence.

Section 94 (4) states, 'Masquerades shall not be employed or used by any political party, aspirant or candidate during political campaigns or for any other political purpose.' Section 92 (5) says, 'A political party, aspirant or candidate of a political party shall not retain, organise, train or equip any person or group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interests, or in such manner as to arouse reasonable apprehension that they are organised, trained or equipped for that purpose.'

The data collected by KDI's monitors shows that, in all but one of the six states, there were more instances of electoral violence perpetrated by APC and PDP-aligned individuals than by those aligned with other parties.⁸⁸ However, CDD also notes

⁸⁸ KDI 'The Quest for Peaceful Elections'.

that 'members and candidates of Nigeria's biggest political parties – the APC and PDP – were among the most frequent targets of this violence.'⁸⁹ CDD also notes that, in 80 per cent of cases, the victims of electoral violence were unarmed civilians,⁹⁰ a point that is backed up by KDI's data, which shows that voters were victims in 71 per cent of cases.⁹¹ KDI's data shows that 'party thugs' were the most frequent perpetrators of electoral violence, accounting for 70 per cent of all cases.⁹²

KDI's data also shows that, in the 14 months of recorded data (January 2022 to February 2023), the month with the highest frequency of instances of electoral violence was May, suggesting that intra-party violence associated with party primaries was also a significant issue. This is somewhat buttressed by CDD and ACLED's Nigeria Election Violence Tracker, which found upticks in certain types of political party-related electoral violence in May 2022, although CDD's data notes a general increase in electoral violence in January and February 2023.⁹³

In surveying the level of political violence in successive Nigerian elections, including in 2023, one is left to consider whether political parties are unable to control violence perpetrated in their name or whether they choose not to. Neither option reflects well on political parties. If Nigeria is to reverse the trend of ever-decreasing turnout, and if Nigeria's democracy is to reap the benefits of an engaged and enthused citizenry who believe in the value of representative democracy, the onus is on the leadership of political parties to stem the violent actions of political thugs, who tarnish the image of political parties by carrying out attacks in their name. The stemming of political violence is crucial to enhancing public confidence in Nigerian representative democracy and reversing the trend of decreasing electoral turnouts.

Recommendation:

- The National Assembly should consider appending the Code of Conduct for Political Parties to the Electoral Act, in order to give

greater legal weight to its provisions and to compel all political parties contesting the election to sign up to it.

Attacks on INEC

Attacks on INEC offices and officials were up on 2019. In the 12 months preceding the election, there were 23 violent events involving INEC offices compared with 11 in the same period in 2019. Both elections witnessed similar spikes in violence targeting INEC offices in the two months leading up to the election, with a recorded 44 attacks in January and February 2023 compared with 40 in the same period in 2019.⁹⁴ A significant number of these attacks occurred in the South East, including a number of attacks in Imo state in December 2022. Such was INEC's concern regarding these attacks that one official warned the election could be forced into postponement if they did not stop.⁹⁵ While INEC soon retracted this comment and assured the country the election would proceed as planned, it nonetheless reflected INEC's anxieties regarding the use of attacks to delegitimise the electoral process and boost the separatist agenda. Again, the IGP, speaking in December 2022, is worth quoting at length:

We now come to the immediate attacks on INEC facilities. Of recent, the ones that took place in Osun and Ogun, then last week in Ebonyi, Imo and Enugu; it is a well-known fact that in the South-East geopolitical zone, we have issues of secessionists – the IPOB and ESN. These groups are bent on stopping elections from taking place in the South-East. They have been attacking our personnel; they have been retrieving arms from members of the security agencies, not only the police but the military and other paramilitary organisations that are there. They have been doing it, especially now that the embargo on campaigns has been lifted.⁹⁶

In the wake of the attacks, CDD called for conflict-sensitive media reporting on the election to avoid further violence.

Recommendations:

- Political parties and IPOB must denounce attacks against INEC offices and officials in the strongest terms, and take greater steps to prevent such attacks by individuals aligned to their parties and movements.

89 ACLED (2023) 'Political Violence and the 2023 Nigerian Election'. <https://acleddata.com/2023/02/22/political-violence-and-the-2023-nigerian-election/>

90 Ibid.

91 KDI 'The Quest for Peaceful Elections'.

92 Ibid.

93 See <https://acleddata.com/nigeria-election-violence-tracker/#dashboard>

94 ACLED (2023).

95 Baiyewu (2022).

96 Ibid.

- Nigeria's various security services should review the security arrangements for INEC offices in the 12 months prior to an election, with a view to decreasing attacks on INEC offices and officials.

Electoral offences

Section 95 (1) of the Electoral Act says, 'A candidate and his or her party shall campaign for the elections in accordance with such rules and regulations as may be determined by the Commission.' Section 22 proscribes the buying and selling of voter ID cards, while Section 121 details electoral offences relating to bribery and corruption, including vote-buying. The Group notes that the wording of Section 121 (6) is weaker than its equivalent provision in the 2010 Act (Section 124 (6)). While the 2010 Act stated that, 'A candidate shall be deemed to have committed an offence if it was committed with his knowledge and consent *or the knowledge and consent of a person who is acting under the general or special authority of the candidate with reference to the election* [italics added]', the new Act does not include the text in italics, thus reducing candidate liability for acts of bribery or corruption carried out by members of a campaign. The Group regards this legislative amendment as a step backwards in the fight against vote-buying and bribery, and recommends reintroduction of text in the Act.

Recommendation:

- Parliament should consider amending Section 121 (6) of the Electoral Act such that it reverts to the wording in Section 124 (6) of the 2010 Act, to ensure candidates are liable for actions amounting to bribery and corruption undertaken by individuals acting for or on behalf of the candidate.

In advance of the election, INEC raised the alarm about vote-buying, as the practice had been a significant issue in 2021 and 2022. On 23 November 2022, President Buhari and Central Bank Governor Godwin Emefiele unveiled redesigned 200-, 500-, and 1,000-naira notes. The old notes were to be removed from circulation and banned from being used as legal tender, although this ban was later rescinded by successive court judgments.⁹⁷ While the Group is not aware of any statements by Buhari in which he explicitly

said that the prevention of vote-buying was a specific rationale of the naira redesign, there was widespread acknowledgement that the move was partly aimed at preventing parties from using pre-gathered cash intended to be distributed for vote-buying as the elections neared.

While the new law and the naira redesign did not stop vote-buying altogether, it significantly reduced the price, which at times was down to ₦500–1,000. The Group notes that, in some cases, US dollars, Cameroonian francs or other in-kind incentives were offered in lieu of naira.

EFCC officials were deployed to all 36 states and the FCT in an effort to disrupt vote-buying schemes. EFCC officials made a number of arrests in advance of the election, including of a suspect caught in possession of ₦32.4, which officials believed was intended for the purpose of vote-buying in Lagos.⁹⁸ On election day itself, EFCC reported that its officials had been attacked in Abuja and Imo state.⁹⁹ The Group was not able to obtain statistics on the number of arrests made by EFCC in advance of or on election day.

The Group notes research by Chatham House that found people were more likely to be dissuaded from selling their vote if the practical benefits of doing so reduced. As such, voter education and community action to combat vote-selling should focus on practical considerations rather than appeals to morality or civic duty.¹⁰⁰

Recommendations:

- Political party leadership should take – and be seen to take – concerted steps to eradicate the culture of vote-buying, which is currently either ignored, tolerated or even encouraged by political parties.

[cbn-from-implementing-deadline-for-old-naira/](#) and Ebiwei, T. (2023) 'Supreme Court Fix Date for Judgement on Naira Design'. BBC, 22 February. www.bbc.com/pidgin/articles/cn0512e69680

98 Sanni, K. (2023) 'EFCC Intercepts ₦32.4m Allegedly Meant for Vote-Buying'. *Premium Times*, 24 February. <https://www.premiumtimesng.com/news/more-news/583980-efcc-intercepts-n32-4m-allegedly-meant-for-vote-buying.html>

99 EFCC (2023) 'EFCC's Election Monitoring Teams Attacked in Abuja, Imo'. 25 February. www.efcc.gov.ng/efcc/news-and-information/news-release/8937-efcc-s-election-monitoring-teams-attacked-in-abuja-imo

100 Kofi-Hoffman, L. and Patel, R. (2022) 'Vote-Selling Behaviour and Democratic Dissatisfaction in Nigeria. Is Democracy Really for Sale?' Chatham House Briefing, 28 July. www.chathamhouse.org/2022/07/vote-selling-behaviour-and-democratic-dissatisfaction-nigeria.

97 Obaje-Daniels, E. and Oyero, K. (2023) 'Supreme Court Restrains CBN from Implementing Deadline for Old Naira Notes Validity'. *Channels*, 8 February. www.channelstv.com/2023/02/08/breaking-supreme-court-restrains-

- INEC should proactively engage CSOs on the establishment of a sustained voter and civic education programme on vote-buying/selling, with a particular emphasis on the short- and long-term negative effects to people's lives of selling their votes for short-term material gain.

Civil society groups informed the Group that vote-buying was just one of a number of electoral offences that affected the election. Indeed, the Group was made aware of allegations of abuse of incumbency at the state level, such as the use of state-owned vehicles for political campaigning and use of official sources of money for campaign expenditure. Political parties and contestants need to internalise what constitute electoral offences as contained in Part VII (Sections 114–128) of the 2022 Electoral Act, and take concrete steps to ensure candidates and party officials desist from such offences in the future. The Group reiterates its earlier recommendation that either INEC, or any body as may be established to oversee the monitoring and sanctioning of electoral offences, should be adequately resourced to meet the scale of the challenge presented by the flagrant disregard of the law on electoral offences demonstrated by political parties and candidates. Such a body should seek close cooperation with the EFCC on this endeavour.

The media

Overview

Nigeria has one of the most vibrant and fast-developing media industries in Africa, with a plethora of private print, broadcast and online outlets.

Radio is a primary source of information for most Nigerians as it is not limited by electricity and reaches some of the most remote areas. More than 625 publicly and privately owned radio stations operate in the country. Nigeria was among the first countries in Africa to establish television broadcasting with the launch of the Nigerian Television Authority (NTA) in 1959. NTA today operates stations in all 36 states and the FCT.

Following deregulation in the early 1990s, many television stations emerged to compete with the state-controlled NTA. Today, more than a hundred television stations operate in Nigeria. Private television stations, such as Channels Television, Africa Independent Television and ARISE News, have

gained greater viewership by covering the news that the state-owned broadcaster tends to avoid.

Nigeria has more than 100 print and online newspapers. Most newspapers are privately owned, and rely on government patronage, commonly in the form of advertising, to keep business running. The Group heard from stakeholders that media coverage in Nigeria was influenced by the political affiliations of media owners or major advertisers. Limited human and financial resources, coupled with a general lack of journalistic training, especially among small outlets, further affect the impartiality of reporting. Nevertheless, several major media organisations told the Group that they aspired to be balanced in their reporting. Almost all print and broadcast outlets have some form of an online presence.

The dominance of print and broadcast outlets has been disrupted by the emergence of online platforms driven by growing internet penetration, which, in turn, has affected the quality of journalism and how news is gathered and distributed. Increasingly, Nigerians are consuming news and information through 'on-the-go' online platforms using internet-enabled mobile phones and computers.

According to Datareportal's January 2023 figures, Nigeria has 122.5 million internet users, or 55 per cent of the population. Of these, 31 million (14 per cent) are active social media users.¹⁰¹ Social media brings with it a number of benefits: it can increase political participation by facilitating citizen engagement in political discourse; it can facilitate the rapid sharing of information between users; and it can allow politicians to connect with voters. However, it can also facilitate the spread of hate speech and mis- and disinformation, and is thought to contribute to political polarisation in some contexts.

Nigeria is ranked 129th out of 180 countries in the 2022 Reporters Without Borders Press Freedom Index.¹⁰² Despite its relative size and maturity, according to the US-based Freedom House, the vibrant media landscape is impeded by 'criminal defamation laws, as well as the frequent harassment and arrests of journalists who cover politically sensitive topics.'¹⁰³ The Group was informed that journalists in Nigeria felt that security

101 Kemp (2023).

102 See <https://rsf.org/en/index>

103 See <https://freedomhouse.org/country/nigeria/freedom-world/2022>

concerns were among the main challenges affecting their work, especially in the North East.

Media legal framework

Section 22 of Nigeria's Constitution states that, 'The press, radio and television and other agencies of the mass media shall at all times be free to uphold the responsibility and accountability of the government to the people.' Section 39 guarantees the right to freedom of expression. The 2011 Freedom of Information Act compels public institutions to make available to the public a diverse class of records and documents. Nigeria is also a signatory to various regional and international laws that uphold freedom of expression, including ACHPR, ACDEG and ICCPR.

Media conduct is regulated by the National Broadcasting Commission (NBC), established by the National Broadcasting Commission Act and responsible for licensing broadcast media and upholding the Nigeria Broadcast Code. The NBC routinely fines broadcasters for non-compliance with the Code.

The National Press Council of Nigeria is a self-regulating body guided by the Code of Ethics for Nigerian Journalists. It regulates media policy, including ownership, registration and journalistic practices. It is also tasked with arbitrating disputes and exercising disciplinary control over journalists by enforcing a Professional Code of Ethics.

Specific to the elections is the Nigerian Media Code of Election Coverage (Revised Edition) 2018. This covers, among other issues, equitable access, the safety of journalists, INEC's role in informing the press, fairness, accuracy and balance in coverage, access to political debates, opinion polls, endorsement, the prevention of hate speech and conflict sensitivity. Monitoring and enforcement are left to the media organisations.

Sections 99–101 of the 2022 Electoral Act outline parameters for media coverage of political parties during elections. These sections speak to ensuring free airtime and its equal distribution and the paid advertisements for political parties.

Cybercrime Act 2015

In 2022 a case brought by the Socio-Economic Rights and Accountability Project, one of Nigeria's prominent CSOs, to the ECOWAS Court of Justice ruled that Section 24 of Nigeria's 2015 Cybercrime Act on 'Cyberstalking' was not in alignment with

Article 9 of ACHPR, nor with Article 19 of ICCPR. Accordingly, the Court ruled that the Government should amend Section 24 to be in line with its international commitments. Section 24 includes the criminalisation of any online message that is 'grossly offensive, pornographic or of an indecent, obscene or menacing character,' or sending a message knowingly containing false information in order to cause 'annoyance, inconvenience, danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another.' The maximum penalty is three years' imprisonment.

The Group agrees that Section 24 does not align with Nigeria's commitments on freedom of expression under international law, and that the vague wording of Section 24 could be used to stifle freedom of expression of media professionals, or unduly criminalise legitimate comment. The Group notes that the Government has not complied with the order to amend the Act.

Recommendation:

- In line with the ruling of the ECOWAS Court of Justice, the Government should propose and seek to pass amended wording of Section 24 of the Cybercrime Act 2015 to bring it in line with Nigeria's international commitments under ACHPR and ICCPR.

Media bodies

The Nigerian Guild of Editors is an independent and nonpartisan network of print and electronic media editors. It seeks to build the capacity, promote the economic empowerment and support the protection of its members. In 2022, the network hosted its annual conference under the theme of '2023 General Elections and Security: What Editors Need to Know,' aiming to promote how journalists should covered the 2023 elections.

The Nigeria Union of Journalists is an independent network of media professionals, established to advance the safety and welfare of Nigerian journalists. According to local journalists, it is largely active in more populous areas, such as Abuja and Lagos, and does adequately support reporters working in remote and rural areas of the country.

Media coverage of the campaign

The media gave the party campaign substantial coverage, with most newspapers, magazines, television and radio stations, and online news

websites dedicating many broadcast hours and column inches to it. Notwithstanding the challenges, there was a genuine effort by many journalists to cover the election in a balanced way, fulfilling an important role in informing voters about the electoral process, while disavowing hate speech.

INEC demonstrated a strong commitment to keeping the press informed by regularly organising press briefings and providing spokespersons for interviews, responding to inquiries from readers and listeners, and participating in discussions and call-in programmes. Media stakeholders who interacted with the Group expressed their appreciation for the significant level of access granted to them. The Group applauds INEC for its efforts in keeping the media up to date. However, INEC's communication with the media became less consistent after election day.

In the run-up to the election, panel interviews and phone-in programmes were a regular feature on television stations. However, the Group observed that, despite the mandate by the Nigerian Media Code of Election Coverage to provide equitable time to all political parties, a vast majority of media coverage, particularly as polling day approached, focused on the APC, PDP and LP. Nevertheless, stakeholders who briefed the Group did not raise any concerns over this practice. They were also not concerned about the state-owned NTA favouring the incumbent party in its coverage, given the alternatives provided by private media. The Group was informed that media organisations routinely invited all political parties for interviews; not all had accepted the offers, including the candidate of the party in government.

In addition, the Group noted the absence of women in televised debates as panellists, as well as concerning lapses where overtly biased statements were made. The Group was concerned that women and PWDs were largely under-represented in election-related media coverage and were far less quoted in news reports.

Political advertisement dominated both print and broadcast media throughout the election campaign. In print media, there was a blurring of the line between editorial content and political advertising. Many newspapers published political ads on front pages that were marked neither as a paid advert nor as an editorial position. As a result, readers were not always informed that they were consuming paid political advertising. It is concerning

that newspapers were allowed to run these ads without censure by regulatory authorities. Despite these issues, the group commends the NBC for removing a political advertisement that relied on identity politics and could have incited violence.

The media also played a significant role in keeping the public informed throughout the electoral process, with major broadcast and print outlets reporting from around the country on election day and providing live coverage of the results.

In general, journalists expressed that they were allowed to conduct their duties freely. However, the group was particularly concerned to learn about the harassment and attacks endured by some journalists during the election campaign. On election day alone, the Committee to Protect Journalists reported that at least 14 journalists were detained, attacked or harassed while covering the election.¹⁰⁴ Some journalists also informed the group about the difficulty in gaining access to public information, despite the provisions of the Freedom of information Act.

In September 2022, a US-based news agency reported that foreign journalists had met difficulties in getting visas. The majority of issues were addressed, and various foreign journalists were in Nigeria covering election day. The Group urges the relevant authorities to ease visa restrictions for journalists, as doing so will enhance the transparency of the electoral process.

Recommendations:

- State-owned and private media should be held to the standards contained in the Professional Code of Ethics, the Nigerian Media Code of Election Coverage and INEC's Media Guidelines, particularly to ensure impartiality and equitable coverage for all political parties and candidates during future campaigns. It is crucial that violations are penalised impartially from the outset.
- Media outlets, especially newspapers, should add clear disclaimers to separate paid political ads from reported news and editorial content.
- The National Broadcasting Commission and the Nigerian Press Council should be

104 CPJ (2023) 'At Least 14 Journalists Detained, Attacked, or Harassed Covering Nigeria's Election', 27 February. <https://cpj.org/2023/02/at-least-14-journalists-detained-attacked-or-harassed-covering-nigerias-election/>

transformed into fully independent bodies in order to improve reporting on elections.

- INEC should consider working more closely with the media as part of its communications strategy to ensure journalists fully understand the various components of the electoral process and are able to accurately inform the public and minimise the risk of misinformation. This could be supported by a memorandum of understanding between INEC and media unions, and could include training sessions.
- The media should try to be more sensitive in how it reports on women and women's issues as well as on PWDs.
- The media should try to ensure greater representation of women in newsrooms, as well as among presenters and guests.
- The media should consider a sign language interpreter, especially in information-critical situations.
- Unions of journalists should step up ongoing efforts to offer journalists adequate resources, especially when journalists are attacked or arrested on duty.
- Upcoming journalists should receive training to enhance their basic journalistic principles and skills, including how to report impartially during an election.

Social media

Before, during and after the elections in Nigeria, there was a massive amount of social media usage in the country. A majority of young citizens and some of the adults used social media as a means of campaigns and communication through the election period. However, usage of these platforms comes with issues such as misinformation, false information, hate speech and others that interfere with the security and credibility of elections. Some of the platforms, such as Facebook, have a significantly lower misinformation amplification factor than X (formerly known as Twitter) in Nigeria, but WhatsApp is a significant vector for misinformation with 16 per cent of fact checks debunking misinformation spread on the platform.¹⁰⁵

Mis- and disinformation

Mis- and disinformation was widespread during the 2023 elections in Nigeria, both in traditional media and on online platforms. All major political parties were involved in generating manipulative and discrediting content online. Closed messaging platforms, such as WhatsApp and Telegram, provided an environment for rumours and divisive narratives to thrive, especially in local languages.

False information originating from social networks often leaked into offline media and became entrenched in the political debate. The emergence of mis- and disinformation about the voting process, such as on the use of PVCs or how voting, counting and results transmission would function on election day, was also reported. Furthermore, campaigns pushed absolutist narratives of victory, implying that any loss would be a result of electoral fraud.

A media investigation discovered that political parties in Nigeria were secretly paying social media influencers to spread disinformation about their opponents ahead of the election. The whistle-blowers referred to cash handouts, lavish gifts, government contracts and even political appointments for their work.¹⁰⁶ It is not illegal in Nigeria for political parties to hire social media influencers but spreading disinformation on social media is a breach of the country's laws and X's policy.

Social media platforms put in place some measures to prevent abuse, including flagging frequently forwarded content and giving selected state authorities and some fact-checking organisations access to report content for faster verification. However, the level of capacity devoted to verification of mis- and disinformation appeared insufficient. X's engagement on information integrity was negligible.

The Nigerian Fact Checkers Coalition, which consists of 12 separate civil society and media organisations, tackled the large amount of false online content and contributed to raising awareness of the dangers of disinformation.

The Nigerian Department of State Services (DSS) warned politicians not to publish false or harmful

105 Allen, J. (2023) 'Misinformation Amplification in the Nigerian Election'. Integrity Institute, 22 February. <https://integrityinstitute.org/our-ideas/hear-from-our-fellows/misinformation-amplification-in-the-nigerian-election>.

106 Nwonwu, C., Tukur, F. and Oyedepu, N. (2023) 'Nigeria Elections 2023: How Influencers Are Secretly Paid by Political Parties'. BBC, 18 January. www.bbc.co.uk/news/world-africa-63719505

information in the run-up to the presidential election. This warning came after Femi Fani-Kayode, Campaign Director for the ruling APC, accused the military and an opposition candidate of plotting a coup. Fact-checkers also worked overtime to debunk false news ahead of the elections, but the proliferation of false information made it difficult for them to verify everything. The Nigerian Fact Checkers Coalition set up centres in Lagos and Abuja to monitor the elections and information about voting in real time. The warning from the DSS shows there have been instances of politicians spreading misleading information in the past.¹⁰⁷

Prohibition of certain conduct at political campaigns has been expanded in the new Electoral Act to include political parties, candidates and even aspirants. Section 92 (1) mandates that political campaigns or slogans 'shall not be tainted with abusive language directly or indirectly likely to injure religious, ethnic, tribal or sectional feelings.' Section 92 (2) says, 'Abusive, intemperate, slanderous or base language or insinuations or innuendoes designed or likely to provoke violent reaction or emotions shall not be employed or used in political campaigns.' Section 92 (3) states that, 'Places designated for religious worship, police stations and public offices shall not be used for political campaigns, rallies and processions; or to promote, propagate or attack political parties, candidates or their programmes or ideologies.'

Throughout the election period, it became increasingly clear that hate speech on social media was having a detrimental impact.¹⁰⁸ Unlike in previous elections, the 2023 Nigerian presidential election featured three main contenders instead of the typical two-party race. The three front-runners were Tinubu of the APC, Abubakar of the PDP and Obi of the LP. The campaigns were marred by incitement and hate speech, particularly from the APC and PDP, with supporters of all three candidates contributing to the spread of such content on social media.¹⁰⁹ These campaigns

exacerbated existing communal tensions, as each candidate drew support primarily from their respective ethnic, religious and regional base. There were several instances of hate speech across the republic and the varied online platforms.

During a campaign gathering of the APC presidential candidate Tinubu with the business community in Lagos, a cameraman working for ARISE TV was ejected from the event.¹¹⁰ The incident reignited apprehensions about the willingness of political figures and parties to uphold press freedom and safeguard the well-being of journalists.¹¹¹ Media freedom was highly constrained as a result of government interference, pressure on news outlets and harassment of journalists.

Nigerian authorities had made efforts to put forward several legislative initiatives with the potential to curb internet freedom, but these have not been enacted and the online environment is still largely unregulated.¹¹² Legislation to reshape the legal landscape for internet content in Nigeria remains under consideration, including Bills on data protection, the regulation of online content hosts and the expansion of criminal penalties for online speech. Any such additional legislation should ensure the principles of privacy and freedom of expression are not unduly curtailed.

Overall, hate speech contributed to voter intimidation and exacerbated underlying cultural and ethnic tensions. Such barriers to direct, unfettered and policy-driven communication with the public can undermine voters' ability to make an informed choice on election day. It is necessary to address these challenges to ensure credible, transparent, inclusive and peaceful elections in Nigeria.

Recommendation:

- INEC should redouble its efforts to counter hate speech by deepening its co-operation with CSOs, social media platforms and law enforcement.

107 Obiezu, O. (2023) 'Nigerian Politicians Warned about Misinformation Ahead of Elections'. VOA, 15 February. www.voanews.com/a/nigerian-politicians-warned-about-misinformation-ahead-of-elections/6964340.html

108 Crisis Group (2023) 'Mitigating Risks of Violence in Nigeria's 2023 Elections'. 10 February. www.crisisgroup.org/africa/west-africa/nigeria/311-mitigating-risks-violence-nigeria-2023-elections

109 Kwen, J. (2023) 'Election: 87.2 Million PVCs Collected'. Businessday NG, 23 February. <https://businessday.ng/politics/article/election-87-2-million-pvcs-collected/>

110 MRA (2023) 'MRA Condemns Expulsion of ARISE TV Cameraman from APC Presidential Campaign Meeting'. 16 January. <https://mediarightsagenda.org/media-rights-agenda-condemns-expulsion-of-arise-tv-cameraman-from-apc-presidential-campaign-meeting/>

111 IPI (2023) 'Nigeria: IPI Urges Increased Protection of Press Freedom as Elections Approach'. 31 January. <https://ipi.media/nigeria-ipi-urges-increased-protection-of-press-freedom-as-elections-approach/>

112 See <https://freedomhouse.org/country/nigeria/freedom-net/2021>

6. Voting, Counting and Results Process

The INEC Chair announced the date for the presidential and National Assembly elections on 26 February 2022, following enactment of the Electoral Act 2022. The original date for the 2023 elections had to be revised and fixed for 25 February 2023, to comply with the provisions of the new electoral law, which stipulates that an elections notice must be published at least 360 days before the elections.

For the conduct of elections, INEC produced Regulations and Guidelines in accordance with Section 149 of the Electoral Act 2022, as well as a Manual for Election Officials.

Though a total of 176,846 polling units were established in all 36 states and in the FCT, polling was to be conducted in 176,606 polling units, with polling in 240 polling units not conducted because of a lack of registered voters.



Pre-polling arrangements

In accordance with INEC's protocol for handling election materials, sensitive election materials were stored with the Central Bank of Nigeria. Prior to election day, sensitive materials were sent to Central Bank branches at the state level. From there, they were delivered by INEC officials to INEC offices in LGAs for onward distribution to regional area centres. On the morning of the election, all materials, both sensitive and non-sensitive, were to be taken to polling units in time for the scheduled opening at 8:30.

The official INEC accreditation and voting process required that voting be in accordance with the Continuous Accreditation and Voting System procedure, as specified in various guides issued by the Commission, that no person should be allowed to vote at any polling unit other than the one at which their name appeared in the register of voters and that each voter should cast their vote in person at the polling unit where they registered or were assigned.

Prior to the opening of polls, at 8:30 (or at a time prescribed by INEC), the PO of a polling unit was to introduce himself/herself to all present and cross-check the adequacy of electoral materials; invite polling agents to observe the electoral materials to be used for the elections; record the quantity, serial numbers and other particulars of the inspected sensitive materials on the prescribed forms for the conduct of the election; explain the accreditation and voting procedures to all present; separate the queue between men and women, where the culture does not allow the mingling of the sexes; create a separate queue for PWDs, visibly pregnant women and breastfeeding mothers as well as the elderly; allow voters into the polling unit in an orderly queue; and then declare the polling unit open for accreditation and voting.¹¹³



113 INEC Manual for Election Officials 2022, p. 57.

Procedure for accreditation and voting

For accreditation, the Regulations stipulated that a polling unit was to open at 8:30 and close at 14:30, or when the last person in the queue at or before 14:30 voted, also allowing all eligible voters in the queue at 14:30 to vote. BVAS was to be used to verify a voter as the valid owner of the PVC and that the voter's name was on the register of voters in that polling unit. BVAS was to match a voter's fingerprints and (or) face, one of which had to successfully identify the voter as the owner of the PVC presented to the official, before the voter was allowed to vote. The Regulations also stipulates that, if BVAS failed to recognise a voter's fingerprint, the facial recognition function of BVAS should be used to verify and accredit them.

If these steps were successfully completed, a poll official would then check for a voter's name was on the register of voters and tick it. Indelible ink would be applied on the cuticle of a voter's finger. A stamped, signed and dated ballot paper would then be issued to the voter. If BVAS failed to recognise a voter's fingerprint as well as facial photograph, the voter would not be allowed to vote. In this situation, the APO would advise the voter to inform INEC through appropriate channels of their failure to accredit, ask the voter to leave the polling unit in a polite manner and mark the appropriate box labelled FA ('failed accreditation') next to the voter's name on the register in the left margin.¹¹⁴

The voter would proceed to the voting cubicle to mark their choice on the ballot paper in secret, ensuring the ink did not smear other parts of the ballot paper, to avoid the ballot being rejected. The ballot paper was then be folded vertically. No photography of the ballot paper was to be allowed in the voting cubicle. The voter was then to drop the marked ballot paper into the ballot box in full view of all present. After casting the vote, voters were then free to remain 300 metres from the polling area to witness sorting, counting and results announcement, provided they were orderly and did not disrupt the process.

According to clause 23, in the case of continuous malfunction of a BVAS device, the PO would immediately notify relevant officials for a replacement, suspend accreditation and voting

until a new BVAS device was provided, prepare a report on the incident and inform voters and polling agents. If a replacement device was not available by 14:30, the PO would then inform officials, submit a report and notify voters and polling agents of a postponement to the following day. In the event of a device being replaced during an ongoing election, verified voter data from the faulty device would be merged with the data from the replacement device to determine the number of verified voters.

Assessment of pre-poll arrangements, accreditation and voting

Pre-poll procedures and opening of polls

The Group noted significant delays in the opening of polls in most of the polling units observed, which affected pre-poll procedures. In some instances, polling officials arrived late at their designated polling unit; in other instances, there were gaps observed in the timely supply and delivery of essential materials. The Group also observed that, even in polling units that opened on time, there were deficiencies with regard to adherence to laid procedures and guidelines.

Lack of advance/special voting

The Group noted that polling staff, security personnel and other essential workers deployed on election day were unable to vote and were therefore disenfranchised from the process. INEC may wish to consult international good practice on advance/special voting for such categories of voter in order to maximise enfranchisement on election day.

Recommendation:

- For future elections, INEC should consider introducing advance/special voting for polling staff, security personnel and other essential workers deployed on election day.



114 Ibid., p. 64.

Role of polling staff and polling procedures

Polling staff conducted their duties diligently, although in some cases there were inconsistencies in the applied procedures.



At some polling units, voters were encouraged to check their names on the voter register before they could join the queue to avoid being turned away for being at the wrong polling unit. This was commendable.

Recommendation:

- INEC should review training for polling staff with a view to strengthening adherence to the procedural protocols in future elections.

Role of police on election day

In the final days of the campaign period, the IGP confirmed that there would be a total of 311,000 police officers operating across the 176,606 polling stations, working alongside an additional 94,000 officials from other security services.

KDI's findings show a correlation between the number of security officers deployed to a particular location and lower instances of electoral violence, thus underscoring the need for significant security presence at election-related activities. The data also shows that the police were perpetrators of electoral violence in only 4 per cent of instances (and were victims in 3 per cent), compared with violence perpetrated by 'political thugs' representing 70 per cent of all instances, and that by party members and agents a combined 23 per cent of all instances.¹¹⁵ While some may regard

even 4 per cent as too much, on the whole the data would appear to reflect a relatively professional approach by the police force in the 2023 elections.

The reasons for this may be varied. On the one hand, the police appear to have made significant efforts to entrench professionalism around their conduct in the elections, and also appear to have co-ordinated well with a host of other security bodies, including the military, the DSS and the Civil Defence. However, some CSOs suggested that the lack of police interference may instead be the result of the police 'turning a blind eye' to political party violence.¹¹⁶ The Group was not able to substantiate this assertion. On election day itself, police were not allowed to be armed at polling stations, which may also have contributed to their lack of undue force. On the whole, the police should be commended for their efforts to maintain law and order on election day.

Use of technology

The Manual for Election Officials detailed the use of technology in different aspects of Nigeria's election process. With regard to identification, the APO 1 was to collect the PVC from the voter and enter their last name or the last six digits of their VIN, or scan the bar/QR code on the PVC or register of voters to access the Accreditation Dashboard and then click the 'Accreditation' button to search for the voter's record. If the voter was duly registered, their information would be displayed and they would be verified. The PVC is embedded with a chip containing the fingerprints, facial image and other biometric features of the card holder. The card is used for the authentication of each voter by being swiped through a Smart Card Reader.

In the case of the verification and authentication exercise, there were two available options for voter authentication as per the notes in the Manual: fingerprint or facial authentication. To initiate the authentication process, the APO 1 would click on the voter's image on the BVAS device screen and then 'Verify.' Thereafter, for fingerprint authentication, the APO 1 activated the fingerprint scanner and asked the voter to place their finger on the fingerprint window on the BVAS device. If successful, the Dashboard would indicate verification was successful. If it failed,

115 See <https://acleddata.com/nigeria-election-violence-tracker/#dashboard>

116 Commonwealth Secretariat discussion with CSO representative.

the APO 1 could attempt verification again or use the 'Verify photo' option to authenticate using the voter's facial features. Alternatively, for facial authentication, the voter had to face the sun or light and stand against a plain background. The camera had to align with the voter's face before it would capture the photo. On confirmation, the device would return a 'Verification successful' message. At the end of accreditation and voting, the PO would transmit accreditation data using the BVAS device and upload a scanned copy of the forms and electronically transmit the election results. The upload was done on the INEC backend using the 'Export data' tab under the 'Elections' tab on the BVAS application's home screen.

The deployment of BVAS as the only mode for voter accreditation was aimed at curtailing multiple voting and enhancing the accuracy of registered voters. The technology has been credited with contributing to a high number of newly registered voters especially among youth: INEC's report released in January 2023 shows that 93.46 million Nigerians were eligible to vote in the 2023 general election. However, the PVC distribution and collection process was termed poor by many citizens, who complained about delays experienced in picking up their cards. As of mid-February 2023, INEC reported that only 87.2 million PVCs had been collected by Nigerians ahead of the elections, out of the 93.4 million registered voters.

On election day, while BVAS functioned satisfactorily in most polling units, glitches were experienced in various units across the country. The Group observed a large number of instances of the BVAS device's fingerprint scanner failing to accredit voters, although the facial recognition function was more successful. However, since the Group was unable to obtain information on how the facial recognition technology was calibrated, it was unable to establish whether there had been false positives. The requirement to first try fingerprint recognition slowed down the process, as did issues related to connectivity and training. Despite these issues, on election day itself there appeared to be a general sense of trust by officials, agents and voters in the integrity of BVAS pre-polling and during voting. The Group observed that it took an average of five minutes to accredit each voter, which affected the voting process in polling units with hundreds of people.

In two states, Delta and Katsina, polling units were attacked and at least eight BVAS devices were stolen soon after the exercise commenced. In some regions, the BVAS device malfunctioned; in other instances, sensitive election materials either arrived late or were only partially received. In some cases, BVAS passwords were missing. Passwords were visible to the public in certain polling units, thus compromising security. In some areas, like Benue, a number of devices could not connect to the server, forcing the returning officers to leave the polling station in order to attempt to find an area with connectivity.

Some voters experienced challenges in locating their polling units and could not access the backup locator online owing to connectivity challenges. Others failed completely to locate them in time, even after INEC created a portal for the location of polling units on its website.¹¹⁷

Recommendations:

- INEC should consider reducing the maximum number of voters per polling unit in order to ensure shorter queues and avoid disenfranchising voters.
- In order to improve security, alternative authentication models should be considered, such as two-factor authentication and one-time password (OTP) systems for real-time password generation at the polling unit. Passwords should not be printed on paper.
- In order to improve real-time results transmission, INEC should work with the Nigeria Communications Commission and telecommunications companies to increase the capacity and bandwidth of servers used to upload results to IReV. In particular, connectivity should be improved in areas with little or no mobile network coverage. INEC may also wish to consider the use of satellite phones for polling units in areas of poor coverage.
- INEC should consider greater training on BVAS for polling agents.
- INEC should consider the introduction of alternative offline back-up options for BVAS.

117 See <https://cvr.inecnigeria.org/pu>

Results management

Accompanying BVAS was the introduction of the IReV portal, to facilitate the real-time uploading of polling unit results accessible by the public, to ensure greater transparency in the results management process and to reduce the risk of manipulation of results forms.

The Group witnessed a number of instances of polling staff heading to the collation centre without having uploaded the results forms or transmitted accreditation data. This raises questions as to how collation officers were able to compare physical results forms with those uploaded to the e-transmission server and to compare BVAS accreditation data with the total number of votes recorded on the results forms, as is required by law.



The day following election day saw the public experience challenges with the portal, which was relatively slow and unsteady. Although INEC had offered assurances that results forms would be available in real time on IReV, results forms instead were uploaded in a relatively slow trickle over the following days. Indeed, only 45 per cent of Nigeria's election results were available on the IReV portal three days after the elections closed. The delayed uploading of results forms was particularly slow for presidential results forms, of which none had been uploaded as of 22:00 on election day. Once presidential results forms did begin to appear, they appeared in a steady trickle, which may suggest they were being uploaded by INEC. INEC stated that results were first uploaded to the e-transmission server and were thereafter mirrored on IReV, and that technical challenges arose with the mirroring process. Through a press release, INEC said that technical challenges were related to the scaling of the platform to the management of a nationwide general election and not to any tampering or discrepancy with physical results.

Ballot papers

The Group observed that challenges were encountered with ballot papers. The colour coding of the ballot boxes did not complement that of the ballot papers. This was confusing to certain voters, leading to stray ballots.

The Group observed that, although party logos were visible on ballot papers, the ballots lacked the names or acronyms of parties alongside their logos, and also lacked photos of candidates, thus making identification of parties and candidates more difficult for voters.

Recommendation:

- In order to facilitate ease of identification of each party/candidate, INEC should consider including the name and acronym of political parties alongside their logo. INEC could also consider including photos of candidates alongside the logo and party name.

Communications strategy of INEC

INEC provided public assurances of its preparedness and readiness to conduct the elections as scheduled, including recruitment and training of polling staff, distribution of materials and other logistics, in advance of election day. However, INEC's communication on and after election day was not as strong. While the Group commends the fact that INEC conducted press conferences at various intervals, INEC's identification and measures to address various logistical challenges experienced on election day were not always communicated in real time. Given that electoral technologies had been adopted with the stated purpose of increasing transparency and bolstering trust in the integrity of the process, failure to communicate in a transparent and timely manner the causes of such delays was injurious to the public's level of confidence in the Commission. Given the potential for mis- and disinformation to fill the void left by an absence of official information, it is important that INEC take greater steps to implement the principle of 'proactive disclosure' as outlined in the ACHPR's Guidelines on Access to Information and Elections in Africa.¹¹⁸

118 ACHPR (2017) 'Guidelines on Access to Information and Elections in Africa'. <https://achpr.au.int/en/node/894>

Recommendation:

- In order to apprise the media and public in a timely and sufficient manner, INEC should review its communications strategy for future elections to ensure greater adherence to ACHPR's principle of 'proactive disclosure.'



Voter turnout

The final turnout for the presidential election as per the announced results by INEC was reported at 26.71 per cent, representing a decrease of 8 per cent since the 2019 election. This is now the fifth successive presidential election in which turnout has declined since a high of 69 per cent in 2003. The turnout of 26.71 per cent, taken together with the voter registration figure of 77 per cent, means that only 20.6 per cent of all eligible citizens cast their vote.

Recommendation:

- In its post-election review, INEC should assess factors that influence voter turnout and implement any appropriate reforms within its mandate that would encourage higher voter turnout in future elections.

Role of party agents

Agents of political parties were present in many polling stations. Party agents are an important element of the electoral process but the Group observed that some polling units had more than one agent per party/candidate (as permitted by the current INEC Guidelines) and that their interventions were not always in accordance with the polling manual.

The Group witnessed a number of polling units with significant numbers of party agents, many of whom were not wearing INEC accreditation badges and were also not fully aware of the procedures.

Recommendation:

- INEC should consider ensuring that all party agents are accredited and have INEC accreditation badges on them at all times at polling units.

- Political parties and INEC should collectively ensure that party agents are adequately trained for future elections.

Security

The Group observed the presence of security officials at most polling stations. They were professional and unobtrusive, carried out their duties diligently and respected the right of voters to cast their ballots. The security environment on election day was varied, with reports of attempts at voter suppression through intimidation in parts of the country and other reports of ballot box snatching and attacks on voters and INEC officials.

Recommendation:

- INEC and relevant security agencies should continue inter-agency security co-ordination and planning for elections, and strengthen any areas where shortcomings have been identified.

Vote-buying

Despite the demonetisation policy, which aimed to limit vote-buying by constraining the amount of cash in circulation, there were several reports of vote-buying in various parts of the country. While the Group did not observe any instances of this in the areas covered in the observation, it notes that instances of vote-buying were observed by citizen observers, with mobile money apps and food items being used in lieu of cash.¹¹⁹ The Group also notes the interception and seizure by EFCC of ₦32.4 million on 24 February, which was allegedly to be used for vote-buying.¹²⁰ The Group commends the presence of EFCC agents at many polling stations on election day.

Selection and layout of polling units and secrecy of the ballot

The selection of polling units is an activity that must typically be undertaken far in advance of the election so it is possible to undertake an audit of said units and to ensure timely gazetting of their location for public sensitisation. The Group observed a number of significant deficiencies with the selection of some polling units, both with regard to INEC's own regulations as well as in relation to international good practice. The Group observed the following:

119 Yiaga (2023) 'Dashed Hopes: Report on the 2023 General Election'. https://yiaga.org/wp-content/uploads/2023/07/Dashed-Hopes-Yiaga-Africa-Report-on-the-2023-General-Election_.pdf

120 Sanni (2023).

- All polling units were outdoors or were partially exposed to the elements. In Akure, Ondo, minutes before polls were due to open, polling officials had to consider whether or not to move the unit to a different location because of rainfall, thus causing disruption for voters and stress for polling officials.
- Many polling units were located in small and cramped roadside shops or stalls, rather than public buildings, in contravention of INEC regulations.
- In instances where roadside polling units were used, deep rainwater gutters often ran between voter queues and the polling unit, presenting significant obstacles for PWDs (particularly those in wheelchairs), the elderly and mothers with small children. Indeed, observers in Akure North, Ondo, witnessed one mother, baby in arms, fall into the gutter.
- In many cases, the layout of the polling units was such that voters and agents were within one or two feet of the ballot boxes, and sometimes three or four feet of the voting booth, thus compromising the security of sensitive materials and the secrecy of the ballot.
- In a number of instances, canopies were not provided for outdoor polling units, in contravention of INEC regulations.
- In at least one instance (Akure North, Ondo), the palace of a traditional ruler was used as a polling unit, in contravention of INEC regulations.
- The layout of many polling units precluded the ability of party agents to be seated at a table in order to effectively undertake their duties. At most polling stations, there were only two chairs available, and none for the elderly waiting in line or polling agents.
- As the voting and counting process continued beyond sunset, polling units had no access to lighting and had to rely on mobile phones to continue the process, and in one case benefited from torches provided by a local resident.

It was encouraging to note that priority was accorded to visibly pregnant and nursing mothers, PWDs and the elderly. INEC is also to be commended for its efforts at fostering greater inclusion, especially for PWDs, by providing assistive devices at polling units,

including braille ballot guides and magnifying glasses. However, the Group observed that most of the polling units were not easily accessible for PWDs.

The Group was informed by stakeholders that Nigeria had historically chosen not to use indoor polling units owing, at least in part, to popular belief that irregularities could occur more easily within a closed space. However, this does not account for the fact that open spaces may afford bystanders sufficient view of voting booths to determine, with a significant degree of certainty, which candidate the voter has voted for. This is particularly easy with lengthy ballot papers, where the position of the voter's hand can easily reveal for whom they are casting their vote. In this way, the secrecy of the ballot and the sanctity of the electoral process are seriously jeopardised, and electoral offences such as vote-buying and intimidation may be facilitated, rather than prevented by the use of outdoor spaces.

Using closed spaces such as classrooms allows for the positioning of booths such that the voter's back is facing the wall, thus precluding the ability of onlookers to see where on the ballot the voter places their thumbprint and therefore removing a key component of vote-buying practice. The use of classrooms or other indoor spaces also affords a number of other benefits, including a greater level of standardisation and consistency between polling units; more space compared with cramped roadside polling units; better access for PWDs; better protection from the elements; more effective queue management, with voters entering the classroom in a steady stream; and the positioning of desks for polling staff and party agents to enable them to carry out their respective duties. Desks may also limit opportunities for party agents to get close to booths and interfere with the voting process.

While the Group acknowledges the enduring appeal of certain traditional practices, it is of the belief that the downsides to using outdoor polling units are so great and varied as to require a change in direction. It therefore strongly encourages INEC to ensure that conditions and layout of polling units are conducive to facilitate the secure and accessible administration of elections.

The Group appreciates that, in some regions of the country, where infrastructure is lacking and suitable public buildings are scarcer, it may not be possible to identify appropriate indoor spaces. In such instances, INEC may consider the provision of temporary structures that can be erected outside,

such as tents, that would at least ensure secrecy of the ballot and that would protect voters and voting equipment from inclement weather.

The Group acknowledges that neither the Act nor the Regulations and Guidelines confer INEC with the explicit authority to commandeer public buildings. Instead, the selection of polling units has to be agreed between INEC and local officials, thus limiting INEC's ability to select polling units as it sees fit. Therefore, the Group recommends a legislative amendment to grant INEC greater authority in this regard.

The Group observed that no polling units had signage showing where registrants needed to vote. This led to several voters going to the wrong polling units, which could potentially have disenfranchised citizens.

Recommendations:

- Parliament should consider amending the Electoral Act to provide INEC with legal authority to commandeer appropriate public buildings, such as schools and other neutral structures, for use as polling units.
- INEC should make greater use of indoor spaces for polling units, where possible. Where public buildings cannot be identified, INEC should consider erecting temporary structures outside.
- INEC should make greater efforts to ensure, where possible, that only PWD-accessible buildings are selected to be used as polling stations. Where this is not possible, INEC should consider additional measures to aid PWD voting, such as the provision of ramps. INEC and relevant local government bodies responsible for public buildings should consider how best to co-operate on this task, in both logistical and budgetary terms. INEC should also consider consulting local PWD groups on this issue.
- All polling units should be provided with a portable lamp to aid voting and counting after dark.
- Additional training should be provided to polling staff to ensure voters correctly fold their ballot papers and do not compromise the secrecy of their own ballot.
- INEC should ensure clear directional and identification signage of polling units for future elections.

Procedure for closing the poll, counting and results tabulation



The Group observed that, in most polling units, closing procedures were not fully adhered to, especially the official declaration of closure of the poll. In some cases, voters were allowed to join the queue after the stipulated 14:30 closure time. Counting was done in a transparent manner and in full view of party agents, observers and voters. The tabulation was largely done in line with laid-down protocols.

Recommendations:

- INEC should review training procedures for future elections to enhance adherence to procedures and guidelines for the opening and closing of polls.
- Parliament should consider amending the Electoral Act to extend polling to 17:00 or even 18:00 in order to allow more voters to exercise their franchise.

Assessment of close and count

Because of the late start, there were still long queues at some polling units at the time of the closing of the polls. However, it was observed that those who were in the queue at 14:30 when the polls closed were allowed to vote, as stipulated in the Electoral Act.

Though various polling units experienced significant delays in closing because of their late opening, we found that the management of closing and count procedures varied in consistency. One of the marked challenges we noted was the fact that, as those in the queue at 14:30 waited into the evening to cast their vote, the close and count had to take place in the dark in many cases. At some polling units, there was no proper lighting to facilitate counting at night. We noted that lamps were not provided to polling staff to assist them in carrying out duties at this crucial phase of the process.

The Group noted that, following the close and count at a number of polling units, results were not uploaded on the IReV portal in real time as expected. There were numerous reports and expressions of concern, especially on social media, about the slow uploading of results on the IReV portal. The Group also noted that, on 27 February, the agents of at least 10 political parties staged a walkout at the National Collation Centre in Abuja in protest at the management of this aspect of the process.

The Group welcomed the decision by INEC to acknowledge this issue publicly, attributing the delay to technical hitches related to scaling up IReV and assuring Nigerians that the challenges did not owe to any 'intrusion or sabotage' of its systems.

While INEC's stated intention to address the matter speedily was prudent, it should have ideally been done earlier to minimise undue speculation and potential stoking of tension. It was essential that, at such a critical stage of the electoral process, INEC scaled up its communication and demonstrated transparency as much as possible, to foster a peaceful environment as it continued to manage the final phases of the results process.

Procedure for collation

As relates to collating the election results, the Electoral Act tasks INEC with the responsibility for compiling, maintaining and continuously updating a register of election results, known as the National Electronic Register of Election Results.

Upon completion of all voting and results procedures at the polling unit, the PO is required to electronically transmit or transfer the polling station results directly to the collation system as specified by INEC. The PO uses BVAS to upload a scanned copy of the EC8A to IReV in accordance with the Commission's guidelines. Finally, the PO must transport the BVAS device and the original copies of each form in tamper-evident envelopes, accompanied by security agents, to the Registration Area/Ward Collation Officer.

Assessment of collation

The Group observed that most BVAS devices were unable to upload and transmit a scanned copy of the EC8A to IReV, which was attributed to network unavailability and login passcode errors. The Group further noted that POs took time to physically deliver the polling unit and state results to the collation centres as prescribed.

Recommendation:

- INEC should put in place sufficient logistical arrangements to facilitate timely delivery of polling unit and state results to the collation centres, respectively.

Procedure for announcement of results

The results of all the elections were to be announced by the PO at the polling unit; the Ward Collation Officer at the registration area or ward collation centre; the Local Government or Area Council Collation Officer at the LGA or area council collation centre; and the State Collation Officer at the state collation centre. The returning officer was to announce the result and declare the winner of the election at the registration area or ward collation centre in the case of a councillorship election in the FCT; the area council collation centre in the case of chair and vice chair election in the FCT; the state constituency collation centre in the case of the State House of Assembly election; the federal constituency collation centre in the case of election to the House of Representatives; the senatorial district collation centre in the case of election to the Senate; the state collation centre in the case of election to Governor of a State; the state collation centre in the case of a presidential election; and the national collation centre in the case of election of the President. The Chief Electoral Commissioner was to be the returning officer in the presidential election.

Assessment of announcement of results

The Group observed that result announcement was carried out in line with laid-down procedures and guidelines, especially for the presidential election. However, it was observed that most of the POs at polling units did not formally declare the results following the count.

Situation rooms

The Group had the opportunity to visit several situation rooms on election day. These initiatives should be encouraged, as they enhance transparency and provide a national perspective on key data emerging from the electoral process, especially on election day. This instils a degree of confidence in the electoral process.

Annex I. Composition and Biographies of the Group

Chairperson of the Commonwealth Observer Group

H.E. Thabo Mbeki, Former President of South Africa

Mr Mbeki read Economics at Sussex University in the UK up to Masters' level. Mr Mbeki has been a member of the African National Congress National Executive Committee since 1975. He was appointed Deputy President of South Africa in 1994 and was twice elected President, in 1999 and 2004. On 23 September 2008, Mr Mbeki resigned as President of South Africa after being asked to do so by the African National Congress National Executive Committee.

Mr Mbeki is currently Chair of the AU High Level Implementation Panel for Sudan and South Sudan, of the AU High Panel on the Security of the Horn of Africa and of the AU-UN High Level Panel on Illicit Financial Outflows from Africa. In addition, he is Chair of the Board of the South Center, a think tank comprising countries of the Global South, based in Geneva, Switzerland.

Mr Mbeki has previously facilitated peace negotiations in various African countries, including Burundi, Côte d'Ivoire, Comoros, Democratic Republic of Congo, Lesotho and Zimbabwe.

Upon his retirement as President of the Republic of South Africa, Mr Mbeki set up the Thabo Mbeki Foundation, of which he is a patron, to pursue the ideals of Africa's Renaissance and through which he undertakes various activities consistent with these ideals. He is currently Chancellor of the University of South Africa.

Observers

Ian Browne (Barbados)

Mr Browne is Deputy Chief Electoral Officer with the Electoral and Boundaries Commission of Barbados, with 36 years' experience in the electoral process,

including 18 years as an administrator. He is a graduate of the University of the West Indies, with a Bachelor of Science in Public Sector Management.

Mr Browne has attended a number of conferences and training seminars in the management of the electoral process hosted by various agencies, including the Commonwealth Secretariat.

Mr Browne has been a member of several Observer Missions for the Caribbean Community Secretariat, heading the Missions on two occasions; a member of The Delian Project for the US presidential elections in 2016; and Electoral Registry Specialist with the Organization of American States for the general elections in Guyana in 2020.

Mr Browne has supervised the electronic tabulation process in elections for the University of the West Indies campuses in Barbados, Jamaica, and Trinidad and Tobago, as well as for credit unions and workers' unions in Barbados.

Hon. Dr Pelonomi Venson-Moitoi (Botswana)

Pelonomi Venson-Moitoi is ranked among Africa's forerunners in the field of governance, particularly local government. She holds a Master of Science degree in Administration and another in Human Resource Development. She served the Botswana Government as a public officer for 20 years, a role she left at the rank of Permanent Secretary. She was then recruited by the African National Congress to help set up local government in the new South Africa. At the end of that contract, she was honoured with a Service Excellence award by the South African Local Government Association.

Upon returning home, Dr Venson-Moitoi joined politics and, after initially being specially elected to Parliament, she won three consecutive elections before retiring in 2019. During her term of office, she was appointed to various Cabinet portfolios, including Education, Science and Technology, and Foreign Affairs, as well as Local Government. The Botswana Local Authority

Association has also honoured Dr Venson-Moitoi for her contribution to the restructuring of local government in Botswana. Dr Venson-Moitoi is an accredited trainer recognised by the Botswana Qualifications Authority.

Dr Andy Knight (Canada)

Andy Knight is Distinguished Professor in International Relations in the Political Science Department, University of Alberta, and the Department's past Chair. A former Director of the Institute of International Relations, University of the West Indies, Trinidad & Tobago, and co-founder and former Head of the Diplomatic Academy of the Caribbean, Dr Knight is a Fellow of the Royal Society of Canada. He has been named among Alberta's 50 most influential people by *Venture Magazine*. In 2021–2022, he was Fulbright Distinguished Chair in International and Area Studies at Yale University. He was appointed University of Alberta Provost Fellow in January 2023.

Tara Chetty (Fiji)

Tara Chetty is a gender and social inclusion specialist, supporting the delivery of a regional gender equality programme in the Pacific. She previously worked for feminist and human rights organisations in Fiji and has close to 20 years' experience in democratisation, policy reform, regional and international advocacy, sexual and reproductive rights, and young women's leadership. Tara holds a Master of Arts in Women's and Gender Studies from Rutgers University and is a Fulbright alumna. In her current role as Manager of Programmes, she is responsible for implementing the Pacific Women Lead programme in the Pacific Community's Human Rights and Social Development Division.

Dr Emmanuel Akwetey (Ghana)

Emmanuel O. Akwetey is a political scientist and founding Executive Director of the Institute for Democratic Governance, Accra. He holds Doctorate (1994), Masters (1989) and Bachelor of Arts (Hons, 1982) degrees from the Universities of Stockholm, Sweden and Ghana, Legon, respectively. He has participated in various international election Observation Missions in Kenya (AU 2013, 2017, 2022), South Africa (AU 2014, 2019) and Nigeria (Commonwealth, 2019). He has served on the Commonwealth Eminent Persons Group (2010–2011) and is a member of the Ministerial Advisory Board of the Ministry of Foreign Affairs and Regional Integration (2021–2024).

Dr Mohamed Chambas (Ghana)

Mohamed Ibn Chambas served as Special Representative of the Secretary-General and Head of the UN Office for West Africa and the Sahel from 2014 to 2021. He has extensive experience from a long and distinguished career in governmental and international service. He was also the AU-UN Joint Special Representative for Darfur and Head of the AU-UN Hybrid Operation in Darfur. From 2010 to 2013, he was Secretary-General of the African, Caribbean and Pacific Group of States. Prior to that, he held the positions of Executive Secretary (2002–2005) and President (2006–2009) of the Economic Community of West African States. In Ghana, he held several governmental positions including the position of Deputy Foreign Minister.

Ambassador Dr Amina C. Mohamed, EGH, CAV (Kenya)

Ambassador Amina Mohamed has had a distinguished career in the public service spanning over 35 years. She has served in three Kenyan ministerial portfolios, as Cabinet Secretary in the Ministries of Foreign Affairs and International Trade; Education, Science and Technology; and Sports, Culture and Heritage. She has also been Permanent Secretary for Justice, National Cohesion and Constitutional Affairs, Assistant Deputy-General/Deputy Executive Director of the United Nations Environment Programme and Permanent Representative in Geneva.

She holds a Masters in Law, a Doctorate in Humane Letters and a Doctor of Letters degree.

Linda Bonyo (Kenya)

Linda Bonyo is a digital law and data governance expert working on the confluence of law and technology. She is CEO and founder of the Lawyers Hub, a Pan-African digital policy and justice innovation think tank established in 2018. She has consulted on the drafting of the AU's Data Policy Framework endorsed by Heads of State in 2022, and platformised tech election observation for the 2022 Kenyan elections through the Lawyers Hub in tracking social media platform accountability, misinformation and electoral technology.

Ms Bonyo is a passionate policy innovator and sits at the cusp of technology, society and law. As a thought leader in tech regulation, she has consulted for the UN, German co-operation, the African Continental Free Trade Area and

the Council of Europe, among many others, on Artificial Intelligence policy, digital identity laws and internet governance. Ms Bonyo is a Tech Women Fellow 2020 and a Schmidts Futures Fellow, and was globally recognised in 2020 as a Good ID Community Champion on Privacy. She is a respected tech lawyer and a licensed attorney of the High Court of Kenya.

Seabata Motsamai (Lesotho)

Seabata Motsamai is a governance and development specialist with experience in rights-based policy advocacy, public policy analysis, poverty reduction strategies and trends analysis in policy development. He has management and leadership experience for both local and international organisations spanning over 21 years. Mr Motsamai has developed new governance and development projects in Lesotho and has extensive experience training civil society on issues of governance and leadership, civic education, election observation, democracy, human rights and poverty analysis. Further, he has developed training manuals for local and regional consumption on election management and has facilitated political dialogues that have resulted in reducing political tensions in Lesotho.

He has vast experience in regional engagement strategies, including with respect to the Southern African Development Community (SADC) and civil society organisations such as the SADC Council of Non-Governmental Organisations (SADC-CNGO). Mr Motsamai has participated in different election Observation Missions, carried out by NGOs, the Commonwealth, SADC and regional and continental bodies such as the Electoral Institute for Sustainable Democracy, SADC-CNGO and the Lesotho Council of NGOs, in numerous countries, including Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Namibia, South Africa and Zimbabwe.

Rt Hon. Martin Ngoga (Rwanda)

Martin Ngoga served as Speaker of the East African Legislative Assembly between 2017 and 2022. Prior to that, he was Prosecutor General of the Republic of Rwanda from 2006 to 2013. From 1999 to 2003, he represented the Government of Rwanda at the International Tribunal for Rwanda, established to try perpetrators of the 1994 genocide against the Tutsi. Since 2017 he has served on the Federation of International Football Association Ethics Committee, which he currently chairs. He

holds a degree in Law from the University of Dar es Salaam and a Masters degree from the University of Rwanda.

Hon. Sarah Flood-Beaubrun (Saint Lucia)

Sarah Flood-Beaubrun qualified as a barrister-at-law in 1995. She was called to the Bar of England and Wales and to the Bar of the Organisation of East Caribbean States Supreme Court in 1995. She is a member of the Honourable Society of Lincoln's Inn.

She has held the positions of elected Member for Castries Central (1997–2004); Minister for Health and Human Services (1997–2001); Minister for Home Affairs and Gender Relations (2001–2004); Speaker of the House of Assembly (2006–2008); Deputy Permanent Representative of Saint Lucia to the United Nations (2008–2011); and Minister for External Affairs (2016–2021).

Dr Gregory Mills (South Africa)

Gregory Mills heads the Johannesburg-based Brenthurst Foundation, established in 2005 by the Oppenheimer family, to strengthen African economic performance. Before this, he was National Director of the South African Institute of International Affairs. He has directed numerous reform projects in Africa and sat on the Danish Africa Commission and the African Development Bank's High-Level Panel on Fragile States.

On the Advisory Board of the Royal United Services Institute, Dr Mills is the author of the best-selling books *Why Africa Is Poor* and *Africa's Third Liberation*, and, together with former President Olusegun Obasanjo of Nigeria, of *Making Africa Work: A Handbook for Economic Success*. His writings have won him the Recht Malan Prize.

His latest books are *Expensive Poverty*, which suggests ways to improve development outcomes, published in 2021, and *The Ledger: Accounting for Failure in Afghanistan*, published in 2022.

Josephine Karungi (Uganda)

Josephine Karungi is a Ugandan journalist. She has worked in the media industry for over 15 years as a news reporter, news editor and news manager with the Nation Media Group, NTV Uganda. She has moderated and facilitated a number of events and conversations on various topical issues, including health, migration, politics, environment, gender, education and society. She has communications experience with different organisations where

she has consulted and at the NU-Tec MD project with the Palladium Group, where she was Communications Manager. She now works with The Hope Parade, an organisation that documents and preserves stories.

Dr Alex Vines OBE (United Kingdom)

Alex Vines is Director of the Africa Programme at Chatham House, London, and also Managing Director for Risk, Ethics and Resilience at the institute. He is also an assistant professor at Coventry University, has chaired the UN Group of Experts on Côte d'Ivoire and has been a member of the UN Panel of Experts on Liberia.

Dr Vines has more than 25 years' experience working on African peace, security and governance issues, including as a senior researcher for Human Rights Watch. He sits on a number of editorial boards, including for the South African Journal of International Affairs, the Journal of Southern African Studies and Africa Review (African Studies Association of India).

Kryticous Patrick Nshindano (Zambia)

Kryticous Patrick Nshindano is a public policy and electoral management expert. He served as the Chief Electoral Officer of the Electoral Commission of Zambia and oversaw the successful conduct of the country's 2021 general elections and the peaceful transition of government administration. He also served as the Southern Africa Regional Representative for the Global Civil Society Partnership for Development Effectiveness, as well as the AU Economic, Social and Cultural Council Economic Affairs Cluster National Chair.

Mr Nshindano has also served on numerous boards and technical committees in both government and civil society, including as the Operations and Technical Committee Board Chair for the Millennium Challenge Account Zambia. He has also served on the External Advisory Panel of the International Monetary Fund on social safeguards in Fund programmes. He was external expert to the National Democratic Institute, providing policy and technical support to political parties in Zambia on

electoral governance and national development. He also led the co-ordination of non-state actors' input in Zambia's development of the revised Sixth and Seventh National Development Plans.

Mr Nshindano was a Doctoral candidate in Business Management and holds a Masters in Business Administration and a Bachelor of Arts degree in Economics. He is finalising a Masters in Electoral Policy and Administration.

Commonwealth Secretariat support staff

Joseph Setipa (Staff Team Leader)

Senior Director, Strategy, Portfolio, Partnerships and Digital Division

Linford Andrews

Adviser and Head, Electoral Support Section

Abiola Sunmonu

Adviser and Head, Africa Section

Lindiwe Maleleka

Political Adviser, Electoral Support Section

Gary Rhoda

Adviser, Human Rights Section

Snober Abbasi

Senior Communications Officer,
Communications Division

Andy Baines

Programme Officer, Electoral Support Section

Lehlohonolo Makoti

ICT Systems Specialist, ICT Section

Zippy Ojago

Executive Officer, Electoral Support Section

Lisa Tran

Finance, Administrative and Logistics Assistant,
Finance Division

Annex II. Arrival Statement



The Commonwealth

Arrival Statement of the Commonwealth Observer Group

Nigeria Presidential and National Assembly Elections

Statement by HE Thabo Mbeki, Former President of the Republic of South Africa

Chairperson of the Commonwealth Observer Group

Abuja, 20 February 2023

It is my honour and privilege to serve as Chairperson of the Commonwealth Observer Group to Nigeria's 2023 Presidential and National Assembly Elections.

The Group was constituted by the Commonwealth Secretary-General, the Rt Hon Patricia Scotland KC, at the invitation of the Chairperson of the Independent National Electoral Commission (INEC) of Nigeria.

The Commonwealth Observer Group comprises eminent persons from around the Commonwealth, including politicians, diplomats and experts in law, human rights, gender equality and election administration.

The group is supported by a staff team from the Commonwealth Secretariat led by Mr Joshua Setipa, Senior Director of the Strategy, Portfolio, Partnerships and Digital Division. Nigeria is Africa's largest democracy and a valued member of the Commonwealth. The Commonwealth has a long tradition of supporting the country's democratic development through election observation. This will be the seventh time a Commonwealth Observer Group will be observing elections in Nigeria, since 1999.

Our Commonwealth Observer Group has been in Abuja since 18 February. Our mandate is to observe and assess the pre-election period, activities on polling day and the post-election period.

Throughout, we will consider all factors relating to the credibility of the electoral process.

We will assess whether the elections are conducted according to the standards for democratic elections to which Nigeria has committed itself, including the constitutional framework and national legislation as well as Commonwealth and other international commitments. As we undertake this assessment and conduct our duties, we will be objective, independent and impartial.

Later today, my fellow observers and I will meet with the Chairman of INEC, Professor Mahmood Yakubu, to learn more about preparations for polling day.

We will deploy our observers to different parts of the country, to observe the campaigning, voting, counting and results process, having taken into account the need to receive briefings from relevant stakeholders, including representatives of political parties, the government, independent institutions, Commonwealth high commissioners and various civil society organisations, including groups representing gender, youth and people with disabilities.

Among other aspects, we will consider whether the conditions exist for credible elections; and whether the voting process is transparent and inclusive.

The Commonwealth Observer Group has no executive role; our function is not to supervise but to observe the process as a whole and to form a judgment accordingly. We are here in our individual capacities as eminent and experienced Commonwealth citizens. As such, our assessment will be our own and not that of any Commonwealth member government or organisation.

Following election day, we will deliver an interim statement, which provides our group's preliminary assessment of the electoral process, at a press conference on 27 February in Abuja. More details of the press conference will be shared by the staff team supporting the Observer Group in due course.

Upon completion of our assignment, we will submit our recommendations in a report to the Commonwealth Secretary-General, who will forward it to the Government of Nigeria, the country's Independent National Electoral Commission, the leadership of political parties taking part in the elections, and then to all Commonwealth governments. The report will be made public afterwards.

When we make our observations known, our intent is to offer constructive support to help strengthen the democratic culture, processes and institutions in Nigeria. In doing so, the Commonwealth Observer Group will make recommendations to the authorities concerned on institutional, procedural and other matters as would assist the holding of such elections in future.

This month's elections will be Africa's largest democratic exercise. It is clear that the outcomes of the elections will be significant not only for Nigeria, but also for the entire continent.

Therefore, we urge all stakeholders in Nigeria to uphold their commitment to ensure a peaceful and inclusive election in which the people of Nigeria are able to freely exercise their right to vote, with the fundamental freedoms of expression, association and assembly fully respected.

On behalf of my fellow observers, I wish Nigeria well as it holds the polls this Saturday. The Nigerian people expect all stakeholders involved to play their part in ensuring that this month's elections are peaceful, transparent and credible.

Thank you for coming to this Commonwealth Observer Group Press Conference.

Annex III. Deployment Plan

State	City/town	Observers & Staff
FCT Team 1	Abuja	Thabo Mbeki (Chair)
		Joshua Setipa (Staff Team Leader)
		Linford Andrews (Staff)
		Snober Abbasi (Staff)
FCT Team 2	Abuja	Mohamed Chambas
		Hon. Amina Mohamed
		Andy Knight
FCT Team 3	Abuja	Abiola Sunmonu (Staff)
		Lindiwe Maleleka (Staff)
		Zippy Ojago (Staff)
		Lisa Tran (Staff)
		Lehlohonolo Makoti (Staff)
Benue	Makurdi	Kryticous Nshindano
		Linda Bonyo
Rivers	Port Harcourt	Sara Flood-Beaubrun
		Gary Rhoda (Staff)
Edo	Benin City	Martin Ngoga
		Tara Chetty
Ondo	Akure	Josephine Karungi
		Andy Baines (Staff)
Lagos	Lagos	Emmanuel Akwetey
		Pelonomi Venson-Moitoi
Sokoto	Sokoto	Alex Vines
		Seabata Motsamai
Kano	Kano	Greg Mills
		Ian Browne

Annex IV. Interim Statement



The Commonwealth

**Interim Statement of the Commonwealth
Observer Group
Nigeria Presidential and National
Assembly Elections
Held on 25 February 2023**

**Statement by HE Thabo Mbeki
Former President of the Republic of South Africa
Chairperson of the Commonwealth
Observer Group**

Abuja, 27 February 2023

Introduction

The Commonwealth is honoured to have been invited by the Independent National Electoral Commission of the Federal Republic of Nigeria (INEC) to observe these significant elections. These are the seventh successive elections that the Commonwealth has been invited to observe in Nigeria since 1999. Our Group began arriving in Abuja on 18 February, and will depart by 2 March after we have finalised our report.

The Group was briefed by key Nigerian stakeholders including INEC, the police, political party representatives, the judiciary, civil society organisations, youth representatives, media and citizen observers, other regional and international observer missions and Commonwealth High Commissioners.

Our observers were deployed across Nigeria from 23 February covering the Federal Capital Territory (Abuja), Benue (Makurdi), Edo (Benin City), Kano, Lagos, Ondo (Akure), Rivers (Port Harcourt), and Sokoto states.

Following our deployment, we met with citizen, regional and international observers, to build a comprehensive picture on the conduct of the electoral process. We observed INEC preparations for the distribution of sensitive and non-sensitive materials, as well as preparations by local security agencies.

On 25 February, the observers visited polling units to observe the opening, accreditation, voting, counting and collation of results, following which they returned to Abuja for debriefing and preparation of our final report.

Our preliminary findings will be shared in the following manner: We will first provide our key findings on the pre-election environment, after which we will focus on our observations on Election Day. Finally, we will share our reflections on the post-election environment. This approach is in line with our mandate, as underscored in the arrival statement we issued on 20 February 2023.

The final report, setting out our full findings on the entire process and our detailed recommendations, will be submitted to the Commonwealth Secretary-General.

I will now turn to the initial observations of the Commonwealth Observer Group:

Pre-election environment

As Africa's largest democracy and a valued member of the Commonwealth, the eyes of the continent, and the world, have been on Nigeria. It is noteworthy that there was a marked increase in the number of registered voters from the previous election from 84 million in 2019 to more than 93 million voters.

It is noted that these elections took place following the enactment of a new Electoral Act, signed into law exactly a year prior to the conduct of these elections. Important amendments include funds for the elections that have to be disbursed to INEC a year in advance of the elections; the requirement for political parties to conduct their primaries much earlier to allow INEC to effect better planning in advance of elections; and legal backing for the use of electronic accreditation of voters and digital results transmission; and assistance to People with Disabilities, among others.

We welcome the signing of the National Peace Accord on 22 February by all political parties shortly before the elections, which was witnessed by the Commonwealth Secretary-General, and other leaders.

We note incidences of election-related violence and insecurity, some of which regrettably resulted in the loss of life and postponement of elections in some polling units. We also observed that these elections took place amidst a Naira demonetisation policy and fuel scarcity. This notwithstanding, we observed that Election Day proceeded largely peacefully. The determination, patience and resilience of all those Nigerians who turned out to vote in these elections, are to be highly commended.

We note that there was only one-woman presidential candidate out of the total of 18. While there have been concerted efforts to advance progress in increasing women's political participation as candidates since the 2019 elections, including the tabling of a private member's bill in parliament to promote gender equality, we note that this bill was not passed.

The vibrant participation by the youth in these elections was evident, especially in campaigns and on social media. We observed the significant role of youth as INEC officials.

We note that the campaign was vibrant and colourful, with the adoption of robust campaign methods, including numerous billboards, posters and large, very well attended rallies, as well as active social media campaigns. We welcome the role played by the media in covering the elections, but also note several challenges which were reported to the observers, including concerns about the safety of journalists, disinformation and incidences of hate speech on social media.

Election Day Observations

Pre-poll procedures and opening of the polls

Our observers noted significant delays in the opening of polls in most of the polling units observed, which impacted on pre-poll procedures. In some instances, polling officials 27 February 2023 Commonwealth Observer Group 25 February 2023 Nigeria General Elections 3 arrived late at their designated polling units, while in other instances, there were gaps observed in the timely supply and delivery of essential materials.

Lack of Advance Voting

We noted that polling staff, security personnel and other essential workers deployed on Election Day were unable to vote and were therefore disenfranchised from the process.

Role of polling staff and polling procedures

Polling staff conducted their duties transparently, although in some cases there were inconsistencies in applied procedures.

At some polling units, voters were encouraged to check their names on the Voter Register before they could join the queue to avoid being turned away for being at the wrong polling unit. This is commendable.

Use of Technology

While the Bimodal Voter Accreditation System (BVAS) functioned satisfactorily in most polling units, our observers reported that the BVAS was faster on facial recognition than on detecting fingerprints of the voters during the accreditation process. The requirement to first try fingerprint recognition slowed down the process, as did issues of connectivity and training. There was general trust by officials, agents and voters in the integrity of the BVAS.

Ballot papers

Several challenges were encountered with ballot papers. The Group has not been able to establish the full details regarding these issues, but will make more substantive comments in the final report, where necessary.

Communication strategy of INEC

INEC provided public assurances of its preparedness and readiness to conduct the elections as scheduled, including recruitment and training of polling staff, distribution of materials and other logistics, in advance of Election Day. While we commend the fact that INEC conducted press conferences at various intervals, we noted that INEC's identification and measures to address various logistical challenges, which were experienced on Election Day, were not always communicated in real time.

Voter turnout

We observed that there was variation in voter turnout. We will explore this aspect further and provide an assessment in our final report.

Participation and Inclusion

It was encouraging to note that priority was accorded to pregnant and nursing mothers, persons with disabilities and elderly people. INEC is also to be commended for its efforts at 27 February 2023 Commonwealth Observer Group 25 February 2023 Nigeria General Elections 4 fostering greater inclusion, especially for persons with disabilities, by providing assistive devices at polling units, including braille ballot guides and magnifying glasses.

Role of party agents

Party agents of political parties were present in many polling units. Party agents are an important element of the electoral process, but their behaviour as observed was not always positive. We witnessed a number of polling units with significant numbers of party agents, many of whom were not wearing INEC-accreditation badges.

Security

The Group observed the presence of security officials at most polling units. They were professional, unobtrusive, carried out their duties diligently, and respected the right of voters to cast their ballots.

Secrecy of the ballot

Some polling units observed were in open spaces while others were in tents and indoors, in public buildings. Therefore, the layout varied from polling unit to polling unit. For the most part, the secrecy of the ballot was assured, though we noted in some cases that the positioning of polling booths potentially compromised secrecy. In a number of polling stations, voters could have benefitted from more voter education on the folding of ballot papers, as some voters were unintentionally exposing their vote on their ballot papers.

Situation Rooms

As Chairperson, I had the opportunity to visit several situation rooms on Election Day, including the Nigeria Civil Society Situation Room, the Gender and Election Watch Situation Room

and the Inclusive Friends Data Center. Some of our observers also managed to visit other situation rooms, including YIAGA Africa and the CLEEN Foundation Situation Rooms. These initiatives should be encouraged, as they enhance transparency and provide a national perspective on key data emerging from the electoral process, especially on Election Day. This instils a degree of confidence in the electoral process.

Close and Count

Due to the late start, there were still long queues at some polling units at the time of the closing of the polls. However, it was observed that those who were in the queue at 2:30 pm when the polls closed, were allowed to vote. The close and count followed the due process for the most part, with a high degree of transparency.

Though various polling units experienced significant delays in closing due to their late openings, we found that the management of closing and count procedures varied in consistency. One of the marked challenges we noted was the fact that, as voting hours were extended, the close and count had to take place in the dark in many cases. It was noted that, at some polling units, there was no proper lighting to facilitate counting at night. We note that lamps were not provided to polling staff to assist them in carrying out their crucial duties at this phase of the process.

Results Management

We observed that the results were not uploaded on the INEC Results Viewing (IReV) Portal in real time, as expected. We acknowledge the statement released by INEC in this regard.

Conclusion

As the results process continues, let me end by reiterating the desire that all Nigerians, especially the candidates who contested the elections, continue to uphold their pre-election commitment to peace. The Group strongly encourages all Nigerians to exercise patience to allow INEC and its staff across the country to conclude the results process effectively and peacefully.

We wish to reiterate the assessment of the previous Commonwealth Observer Group in 2019, that electoral reform remains a continuous process, building on what has worked successfully, addressing

shortcomings in an inclusive and transparent manner that is welcomed by all relevant interested parties to various aspects of the electoral process.

We encourage INEC to conduct a thorough post-election review of the electoral process to draw constructive lessons from previous elections, and would also encourage consideration for the establishment of appropriate domestic mechanisms to take forward recommendations proposed by all citizen and international observer missions.

The Commonwealth Observer Group will make relevant recommendations in its final report.

Notwithstanding the shortcomings identified in these elections, Nigerians were largely accorded the right to vote. We trust that the final stages of

collation and announcement of results will continue to be handled in a transparent, peaceful and credible manner.

We congratulate all Nigerians for their determination, patience and resilience displayed throughout the electoral process. We call on all Nigerians to maintain the same commitment in the post-election period, especially as Nigeria prepares to return to the polls on 11 March for the gubernatorial elections. We call on all those with grievances to address disputes through prescribed legal channels. The time now is for restraint and continued patience as we await the final results.

I thank you.

Abuja, 27 February 2023

Annex V. Nigeria Recommendations Tracker

Commonwealth Observer Group report on the Nigeria general election 2019: Status of COG recommendations

The 2019 Nigeria COG Report is available [here](#)

Summary:

• Total recommendations	24
• Fully implemented	0
• Mostly implemented	2
• Partially implemented	5.5
• Not implemented	14.5
• Not yet determined or N/A	2

Note: Given the particular way in which they were drafted, three of the 2019 recommendations comprised two separate recommendations within one overall recommendation. In order to accurately assess the status of implementation of these three recommendations, it was necessary to provide a split status – e.g., 0.5 'not implemented' and 0.5 'partially implemented.' This explains why the total number of 'Not implemented' recommendations is 14.5 rather than a whole number.

Table V1 Nigeria Recommendations Tracker

2019 COG Report recommendation	Status of implementation	Comments
Electoral framework and electoral administration		
<p>A comprehensive and independent review should be carried out on the operational and logistical difficulties which led to the postponement of the elections and the problems that occurred on Election Day. This might include an assessment of whether INEC's wide-ranging functions are imposing too great a burden on the Commission.</p>	<p>Mostly</p>	<p>To the extent this recommendation sought a review of the 2019 election, this recommendation has been mostly implemented. The Commission has been unable to identify the existence of an <i>official, independent</i> review of the 2019 election. However, INEC published two reports in November 2020: 'The Report of the 2019 General Election' and 'The Review of the 2019 Election.' These reports represented a comprehensive post-election review. One of the reports contained 180 recommendations across 13 chapters, including a recommendation to establish a separate electoral offences commission to reduce the burden on INEC. This particular recommendation was not implemented, although, at the time of writing, a Bill is before Parliament.</p>
<p>Progressive reforms to strengthen the electoral process, including those contained in the Electoral Amendment Bill (2018), which was passed by the outgoing National Assembly but not enacted, should be revisited by the National Assembly and national leaders following the 2019 elections.</p>	<p>Mostly</p>	<p>The Electoral Act 2022 has been passed by Parliament. The Act includes a number of important reforms, as detailed in Chapter 3 of this report. However, the Act does not include all of the provisions in the 2018 Electoral Amendment Bill, which was vetoed by President Buhari on a number of grounds.</p>
Participation and inclusion		
<p>The government should fully implement all existing gender policies to increase the political participation and representation of women, and consideration should be given to implementing the measures proposed in the Women Participation in Elective Office Support Bill 2018.</p>	<p>Not implemented</p>	<p>The Group was informed that both of the NGPs that had been in effect between the 2019 and 2023 elections had failed to gain significant traction and many of their objectives remained unfulfilled. The Group was also told that government programmes on gender equality had become fragmented and lacked effective central co-ordination. On 1 March 2022, the National Assembly rejected Bills 35, 36, 37, 38 and 68. Following public outrage, National Assembly resolved to reconsider Bills 36 and 38 but it declined to reconsider the other bills.</p>

(Continued)

Table V1 Nigeria Recommendations Tracker

2019 COG Report recommendation	Status of implementation	Comments
The government is encouraged to be more Supportive of efforts of women's organisations to increase women's participation in politics and leadership.	Not implemented	Despite its majority in both the Senate and the House of Representatives, the Government failed to pass the five Bills on gender equality, and failed to ensure full implementation of the two NGPs in place during the Ninth National Assembly.
Political parties should increase the number of women in leadership and decision-making roles within their party, as well as the number of women candidates nominated for election. Political parties should also support them to access campaign funds.	Not determined, no data or not applicable	The Group was unable to collect data on the number of women in political party executives compared with the previous electoral cycle. The number of women candidates decreased from the previous electoral cycle and there were no significant policy changes with respect to the provision of campaign funds to women candidates.
Political parties should adopt measures to increase the number of young people in leadership and decision-making roles within their party.	Not determined, no data or not applicable	The Group was unable to collect data on the number of youth in political party executives compared with the previous electoral cycle. The number of youth candidates declined from 2019 to 2023.
Civil society organisations should implement programmes throughout the election cycle, in partnership with INEC, to educate first-time voters and build youth confidence in the democratic process.	Not implemented	While INEC did engage CSOs on voter education, it did so towards the very end of the electoral cycle rather than via a full-cycle programme of engagement. The onus is on INEC to implement such a full-cycle engagement.
Youth involvement in and buy-in to peace accords should be sought, precluding involvement in electoral violence/thuggery/turf conflict.	Not implemented	The youth were not engaged in the peace accord as a distinct stakeholder.
All stakeholders are urged to fully implement the provisions of the Discrimination Against Persons with Disabilities (Prohibition) Act 2018 to ensure equal treatment and participation of PWDs, and also provide disaggregated data on PWDs to support electoral planning.	Not implemented	INEC made some positive steps towards implementing the provisions of the Act, such as collecting and publishing disaggregated data on PWD voter registration and enacting targeted PWD voter education, but it failed to implement all aspects of the Act and its own PWD Framework. Some political parties offered reduced candidate nomination fees for PWDs but parties failed to take broader steps to increase PWD participation and inclusion.

(Continued)

Table V1 Nigeria Recommendations Tracker

2019 COG Report recommendation	Status of implementation	Comments
INEC and security agencies should review the transportation restrictions on Election Day to allow PWDs the right to travel to and from their polling unit.	Not implemented	While rules on transportation were relaxed for PWDs, this arrangement was unofficial; there was no formal announcement by INEC to give full effect to this recommendation.
The Group urges INEC to do more to tailor voter education programmes to meet the needs of PWDs and provide more comprehensive training for its officials on disability.	Partially	INEC has made considerable efforts to develop a targeted PWD voter education strategy but stakeholders noted INEC's failure to fully implement this strategy.
Electoral campaign and media		
All political parties must take greater responsibility for public messaging to ensure that there is zero tolerance of violence and hate speech. Greater effort is needed to moderate the tone of the campaign, including enforcing penalties against those engaging in hate speech and inflammatory language, in compliance with the Electoral Act and INEC's updated Code of Conduct for Political Parties.	Not implemented	While political parties signed the peace accord, this was done days before the election and therefore had no consequence with regard to hate speech and inflammatory language during the majority of the campaign period. On the whole, it cannot be reasonably claimed that hate speech was considerably diminished during this election.
Political parties should adopt more issue-based, as opposed to personality-dominated, campaigns in future elections.	Not implemented	Political campaigns continue to be based on ethnic and sectarian identity, personalities of candidates and godfatherism rather than policy positions or party ideology.
INEC should enforce its regulatory role on campaign financing to ensure greater transparency, accountability and a level playing field for all political parties and candidates.	Not implemented	INEC has failed to enforce provisions on campaign finance, and has lacked transparency on issues such as political party disclosure of financing and expenditure. However, the Group appreciates this is a complex issue involving a constellation of interlocking issues. The 2023 Group has made a number of recommendations in this regard.
Consideration should be given to further promote equal access to publicly owned electronic media, by addressing the impediment of payment of fees which puts candidates with less financial resources at a disadvantage.	Not determined, no data or not applicable	No data collected.

(Continued)

Table V1 Nigeria Recommendations Tracker

2019 COG Report recommendation	Status of implementation	Comments
Fact-checking initiatives and investigative journalism capacity should be supported and developed further by government agencies, media organisations and civil society to counter fake news.	Partially	Civil society fact-checking initiatives played a positive role in this election, but relevant stakeholders could have done more to support these efforts.
Voting, counting and results		
Improved facilities for the storage, organisation and distribution of materials at all levels should be provided for INEC to deliver on schedule. Equally, improved transport arrangements, including on Election Day, need to be ensured.	Not implemented	While the 2023 elections did not see a repeat of the postponement that bedevilled the 2019 election, there were nonetheless widespread and significant logistical challenges on election day that led to the late opening of polling stations, which in turn affected people's ability to exercise their franchise.
In light of technical difficulties with Smart Card Readers (SCRs), INEC should build in adequate maintenance capacity and have sufficient reserve SCRs, along with technical support, to be deployed at short notice.	Partially	BVAS fulfilled the role of the SCR in this election. While there were no issues with the quantity of devices, other technical issues and poor training of polling staff meant that BVAS was in many cases not successfully deployed.
The location and layout of polling units need to be improved to ensure adequate space for all participants, and to safeguard the secrecy of the ballot, in line with INEC's guidelines. Locating polling units within buildings, where possible, to protect officials and voters from the elements, and to improve access by the elderly and PWDs, should be considered. This would also enable advance layout of the polling unit.	Not implemented	The Group appreciates that INEC lacks the legal authority to commandeer public buildings, and some parts of the country lack sufficient numbers of appropriate buildings. However, the Group was not aware of any legislative efforts to grant INEC powers to commandeer buildings, and there do not appear to have been any efforts made towards locating polling stations in buildings in any part of the country. Moving polling units into public buildings is essential to address myriad issues such as queueing, access, security, effective performance of party agents and secrecy of the ballot.
The capacity of polling officials should be enhanced through training and retraining. Greater attention to their welfare, improved supervision and lines of communication would strengthen performance.	Partially	While polling officials received training, the performance of many officials on election day suggests this was not sufficient.

(Continued)

Table V1 Nigeria Recommendations Tracker

2019 COG Report recommendation	Status of implementation	Comments
<p>Political parties must ensure that their polling agents are properly accredited, fully trained on electoral procedures and operate in a manner consistent with all election regulations.</p>	<p>Not implemented</p>	<p>Polling agents sometimes lacked accreditation; agents did not have copies of the voter register in order to count voters; the Group was told that it was common for agents to switch the party for which they worked on election day in order to optimise their payment; some polling agents were intimidating and disruptive. Moving polling units inside buildings would allow agents to be seated at desks, which in turn may inculcate calmer behaviour and allow agents to record the number of voters on printed copies of the register.</p>
<p>In light of the fires that occurred ahead of elections, INEC needs to strengthen the security of its offices.</p>	<p>Partially</p>	<p>There were several dozen attacks on INEC offices leading up to the elections. INEC should not be blamed for this, however. The onus is on the Government to provide INEC with adequate funding for security, and on the security forces themselves to undertake a needs assessment and ensure adequate security.</p>
<p>Ways should be found to enable polling officials, security staff and other essential workers to vote.</p>	<p>Not implemented</p>	<p>No such provisions exist for early or special voting of polling officials, security staff, essential workers or citizen observers.</p>
<p>INEC should identify ways to speed up the collation process and provide prompt announcement of results in order to reduce tension in the post-election environment.</p>	<p>Not implemented</p>	<p>IReV failed to work effectively, particularly with respect to the presidential election.</p>

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