



SECOND PRELIMINARY STATEMENT

Abuja, 20 March 2023

Obstruction and organised violence limited the free expression of the will of the voters, despite efforts by civil society to promote democratic standards

This second preliminary statement of the EU Election Observation Mission (EU EOM) is delivered before the completion of the entire electoral process. Critical stages of the state elections remain, including collation of results and adjudication of petitions. The EU EOM is now in a position to comment only on observation undertaken to date, and will later publish a final report, including full analysis and recommendations for electoral reform. The EU EOM may also make additional statements on election-related matters as and when it considers it appropriate.

Summary

This governorship and State House of Assembly elections, postponed from 11 to 18 March 2023, followed the presidential and National Assembly elections held on 25 February. This second EU Election Observation Mission preliminary statement supplements the first issued on 27 February.

Elections for 36 State House of Assembly (SHoA) and 28 Governors took place on 18 March after contentious presidential polls. Opposition parties had gone to court to seek access to key election technology linked presidential data, precipitating a chain of events that led to the postponement of state elections by one week. The postponement was observed to have a calming effect on the highly charged political environment, shifting public attention to gubernatorial polls. Low-key canvassing replaced costly large-scale rallies, but some incumbents used their powers to tilt the playing field. Civil society called for INEC's accountability; media fostered voter awareness, while fact-checkers stood up against disinformation. Shortly before, and on election day, incidents of organised violence in several states created an environment of fear for voters.

Public confidence and trust in INEC were severely damaged on 25 February due to lack of transparency and operational failures in the conduct of the federal level polls. Up until the postponement, INEC continued to abstain from providing information, limiting its communication to a few press releases and ceremonial statements and hence failing to address public grievances and rebuild confidence in the electoral process. From 11 March onwards, despite compressed timeframes, INEC introduced various corrective measures to render a timely delivery of electoral materials, efficient use of election technologies, and ensure prompt publication of result forms, some of which were effective.

Overall, on election day, multiple incidents of thuggery and intimidation interrupted polling in various locations, primarily across the south but also in states in the central and northern areas. There were reportedly some 21 fatalities. In polling units in several states, violent incidents targeted voters, INEC personnel, citizen observers and journalists. Most polling units opened with materials and personnel deployed on time, although a dismal level of voter participation meant less pressure on INEC operations throughout the day. Vote-buying, also observed by EU EOM observers, further detracted from an appropriate conduct of the elections.

The 18 March elections did not face the same problems with the use of the Bimodal Voter Accreditation System (BVAS) as on 25 February. Result forms for the gubernatorial races were uploaded and displayed for public scrutiny. At the time of the declaration of presidential results only

one quarter of result forms were visible; by midday 19 March, gubernatorial race result forms available online ranged from 62 to 97 per cent depending on the state.

There were some 11,000 candidates competing for state elections, among whom a bare 10 per cent were women. Notably, leading political parties fielded only two female candidates for highly prized governor seats. This demonstrates a radical underrepresentation of women in political life and lack of internal party policies to support constitutionally prescribed inclusion and is contrary to Nigeria's international commitments to eradicate discrimination against women.

Intraparty conflicts, compounded by protracted legal deadlines for solving candidacy disputes, created uncertainty for voters and electoral contestants alike. Some court decisions were taken only a few days before the polls, effectively reducing candidates' prospects to meaningfully campaign.

The campaign for state-level elections was highly competitive and interlinked with parties' canvass for votes at the federal level. Fundamental freedoms of assembly and movement were largely respected, with the latter being impeded in some states by insecurity and state executive actions. There were defections and switching support by state branches of parties, especially in the aftermath of the federal-level results. EU EOM observers noted that in several states the abuse of incumbency gave an undue advantage to the party in power.

Voters in 15 out of 28 states benefited from professionally organised media debates, during which journalists questioned leading gubernatorial candidates on issues of local concern, while fact-checkers probed their responses for accuracy. It helped voters make a better-informed choice on election day even if most incumbents rebuffed media offers, showing a disregard for an inclusive political debate. Attacks, harassment of journalists that occurred on 25 February went unprosecuted.

Gubernatorial candidates' online communication was more issue focused than that of presidential contestants. However, disinformation contaminated the online information space and contributed to confusing voters, with some dangerous rhetoric aiming to foment ethnic divisions also being observed. Positively, fact-checking initiatives continued to debunk such content and strived to preserve the integrity of the online space.

Between the elections, civil society played a crucial positive role in raising awareness and providing electoral information of public interest to voters. Their statements highlighted INEC's failures, while their leadership actively participated in online and offline discussions, calling for greater transparency and accountability of INEC ahead of the state elections. After the polls, CSOs raised further concerns for the conduct of polling and collations, but with a clear focus on the impact of thuggery, violence and intimidation.

The European Union Election Observation Mission (EU EOM) has been in Nigeria since 11 January 2023. The mission includes a core team of 11 experts and 40 long-term observers deployed to 20 locations on 29 January. The EU EOM issued its first preliminary statement on 27 February after the presidential and National Assembly elections. On 18 March, the EU EOM deployed 63 observers from 25 EU member states, Canada, Norway and Switzerland across 20 states. On election day, observers visited 183 polling units in 20 states. Observers assess the whole electoral process against international obligations and commitments for democratic elections to which Nigeria is signatory, as well as the laws of Nigeria. The EU EOM is independent from EU institutions and member states. EU EOMs adhere to the Declaration of Principles for International Election Observation endorsed at the United Nations in 2005.

Findings

CONTEXT

On 18 March, State House of Assembly (SHoA) elections held in all 36 states, while there were 28 governorship elections as eight others follow different timelines due to various court rulings. The elections took place against a backdrop of economic hardship exemplified by sharpened fuel and cash shortages and a volatile security environment in a number of states across the country with cases of violence resulting in multiple fatalities. A widespread sense of expectation for well managed elections ahead of the 25 February polls had been dashed by failures leading to a tangible public disappointment and concerns about increasing voter disillusionment. The dramatically decreased trust in and mounting public criticism of INEC led to calls, including by civil society, for the resignation of its Chairman.

The results process leading to the declaration of Bola Tinubu as winner were disputed by the opposition Peoples Democratic Party (PDP), the Labour Party (LP) and the New Nigeria Peoples Party (NNPP). PDP and LP headed to the Court of Appeal (CoA). Acting expeditiously, the CoA on 8 March granted the PDP and LP access to certified copies of INEC materials and technological data used in the 25 February elections. It also enabled INEC to prepare its election technology for the 11 March polls. However, the timelines were too tight and resulted in the postponement. INEC communicated the postponement via a press release, without offering the opportunity for a press conference where media and stakeholders could ask questions. Nevertheless, stakeholders considered the postponement as an unavoidable outcome.

Meanwhile, LP and PDP continued to allege INEC was not complying with court orders made in their favour, raising concerns for further court interventions. PDP returned to the CoA but, on 15 March withdrew again, stating that INEC had started to provide the materials sought. However, as late as 16 March the LP was still alleging non-compliance by INEC, despite getting assurances that the requested information would be provided. LP also stated that the lack of information was impeding their ability to conclude the preparation of their petition.

The 25 February post-election environment was largely peaceful, with parties appealing to supporters for calm. However, a few days before the 18 March elections, violence abruptly increased with more than a dozen attacks and abductions of candidates by thugs and unidentified gunmen, some of which resulted in fatalities. Violence shortly before and on election day appeared to strategically suppress voter participation.

For voters, state elections are particularly important, especially as governors hold extensive executive powers and influence over state resources and development. Prior to these elections, PDP held 11 of the 28 contested governor seats and APC 17 governors.

PRESIDENTIAL AND NATIONAL ASSEMBLY RESULTS

On 1 March, INEC declared that Bola Tinubu (APC) obtained 8,894,726 votes (36.61 per cent), Atiku Abubakar (PDP) came in second with 6,984,520 votes (29.07 per cent), and Peter Obi (LP) came third with 6,101,533 votes (25.40 per cent). Rabiú Kwankwaso (NNPP) was declared to have obtained 1,496,687 votes (6.23 per cent). The results showed that among some 93.5 million registered PVC card holders, only some 25 million (27 per cent) had cast their vote. Based on its parallel vote tabulation, YIAGA Africa found that presidential results for Imo and Rivers states were not consistent with its findings.

On 7 March, the INEC published the lists with winners of 428 out of 469 National Assembly seats on its Twitter account. Results in seven senatorial districts and 32 House of Representatives (HoR) constituencies were declared inconclusive and supplementary elections will be held after the state-level polls. Following the killing of the LP senatorial candidate in Enugu-East on 22 February, INEC postponed the elections in this district to coincide with the state-level polls.

Announced results showed that APC were returned with a majority 55 Senate seats and 160 HoR. PDP obtained 33 and 105, respectively, LP was returned with 7 Senate and 35 HoR seats, while the NNPP won two senatorial and 18 HoRs seats. In total, eight parties are now represented in the National Assembly. Only three senatorial and 14 HoR seats were won by women, the lowest female representation in the National Assembly since Nigeria's return to democracy in 1999.

Without a specific timeline, the law mandates INEC to publish the names of candidates elected and their scores. So far, INEC has not published the manner of calculation of the declared presidential and National Assembly winners, the turnout per state, number of accredited voters, total votes cast, rejected ballots, votes attributed to each party, as well as the list of polling units where elections were cancelled, postponed, or not held. The absence of this information undermines the possibility for independent verification of the outcome.

LEGAL FRAMEWORK AND ELECTORAL SYSTEM

According to the Constitution, governors are elected based on the highest number of votes cast and a minimum 25 per cent of the votes cast in two-thirds of the Local Government Areas (LGA) in a state. However, the two-thirds requirement is not clearly articulated in law, and thus leaves scope for arbitrary interpretation.

If no governor candidate is deemed a winner in a first round, the law foresees a run-off between the two leading contestants, with the winner then decided based on the same threshold as the first round and, failing that, only then a third round based on the highest vote. Governors emerging victorious from the 2023 election are expected to take the oath of office on the same date as the new president.

State assembly seats are elected based on the first-past-the-post in single seat constituencies. Larger populated states such as Kano and Lagos have assemblies with 40 seats, while lesser populated states, such as Bayelsa, Yobe and Ekiti, among others, have 24 seat assemblies. The first sessions of the newly elected houses of assembly of the states, will be proclaimed by the governor elect.

CANDIDATE REGISTRATION

Inconsistent party oversight of candidate selections, weak political loyalties, and bitter rivalries between aspiring candidates were demonstrated by the many legal disputes following candidate selection primaries held in mid-2022. The submission of candidate information to INEC by parties was at times inaccurate and thus contributed to uncertainty for candidates at both governorship and SHoA level. Many losing aspirants lodged legal challenges against registered candidates and, in various courts, judges subsequently ordered re-runs of party primaries, threw out vexatious legal challenges or directed INEC to list or de-list specific candidates. Such orders were often appealed and, in sometimes reversed, leaving uncertainty for candidates seeking to get on with campaigning.

Eighteen political parties sponsored candidates for the 18 March polls, with approximately 11,000 candidates registered with INEC to compete for state elections. These included some 1046 women candidates in the running for seats in the 36 state assemblies. Out of a total 419 contestants for 28 gubernatorial posts, 25 were women. All governorships posts are presently and have always been

occupied by men. In the original list of 837 governor and deputy governor candidates published by INEC, only 53 were of the minimum legal 35 years of age. Almost half of candidates for the SHoA, where the minimum age to contest is 25, were aged between 25 and 34 years, showing a clear appetite among young people to be to take an active part in state level decision-making.

The extremely low level of women's candidacies and consequent concerns for an expected low return of female representatives follows dismal outcomes for women in the national assembly elections. The lack of representation highlights an abject failure of political parties and lawmakers in the states, contrary to international commitments and the Constitution, to confront obstacles to meaningfully progress equal representation for an entire half of the population of Nigeria.

ELECTION ADMINISTRATION

In the aftermath of the presidential and National Assembly elections, EU EOM observers witnessed trust in the electoral process decrease significantly due to a lack of transparency and operational failures on and after election day and INEC's delayed and insufficient explanations for those failures. INEC stated that some logistical and technological problems were unforeseen. It also blamed party agents, party supporters and lower level election personnel for shortcomings.

Resident Electoral Commissioners (RECs) operating at state level were mandated by INEC to bar all staff found to be negligent from conducting the state-level elections. However, only a few key electoral officials were held accountable, despite the scale of election day failings across the country, as observed by the EU EOM in particular in the South-East, the South-South, Kano and Lagos. The RECs in Abia and Sokoto were suspended without clear public explanations and their role filled by administrative secretaries. INEC has the power to delegate to and withdraw powers from the RECs but cannot legally dismiss these presidentially-appointed officers. This exposes systemic weakness in the electoral institutional design that obstructs fostering of professionalism and trust.

Overall, stakeholders were observed to welcome the postponement of the state elections as it provided a window of opportunity to INEC to deliver a better managed election. INEC invested some efforts in addressing the failures of the 25 February elections, but communications to the public on these initiatives was limited and came too late to regain stakeholders' full confidence in the electoral and results processes. Most polling staff who participated in the federal level elections were re-deployed for the 18 March whereas, positively, some ad hoc staff who performed poorly on the 25 February were replaced. According to EU EOM observers, INEC conducted refresher trainings in some states, including for Registration Area Technicians (RATECHs), poll workers, and collation officers. The trainings were focused on the use of BVAS, as well as on procedures for efficient and timely distribution of materials to polling units. In some states, sensitive materials had already been transported to the LGAs before the postponement but were then returned to the Central Bank of Nigeria offices in state capitals. EU EOM observers reported very little voter education devoted to the state elections.

Election Technology

The certainty and integrity of the INEC Result Viewing (IReV) portal, promoted as a real-time public viewing platform for results transmitted directly from polling units, was greatly tarnished due to failures of prompt transmission and publication of presidential results. In the run-up to the state elections, information about the functionality and specifics of the use of BVAS and transmission of the result forms remained unclear and non-transparent. INEC missed the opportunity to adequately inform the public on these aspects, although stating in the media that it had reviewed its technology to guarantee that issues with the upload of results on 25 February would not be repeated.