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Subcommittee on Africa and Global Health
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Mr. Chairman and members of the Subcommittee, on behalf of the National Democratic Institute (NDI), I appreciate the opportunity to speak about “Nigeria at the Crossroads” and the challenges facing democracy in Nigeria in the wake of the April national elections.

On May 29, a new government took office in Nigeria when the declared winner of the April 21 presidential election, Umaru Yar’Adua, was sworn in. Although his inauguration represented the first time in Nigerian history that a civilian government served two full terms and then transferred power to another without the military’s interference in the political process, serious electoral irregularities marred what could have been a landmark achievement. The April gubernatorial and legislative elections were also characterized by pervasive irregularities, which cast a shadow over the recent inauguration of many state governors and the induction of many national and state legislators.

Eight years and three general elections after the country’s transition from military to civilian rule, Nigeria should have had the experience necessary to conduct democratic polls. Certainly Nigerians had every right to expect credible elections. Instead, the 2007 polls represent a significant step backward in the conduct of elections in the country. And, given the serious, widespread problems witnessed by international and domestic observers alike, it is unclear whether the elections reflected the will of the Nigerian people. Now, fundamental flaws in the electoral process decried by civil society and opposition political parties, religious bodies and even some members of the ruling People’s Democratic Party (PDP) threaten to undermine the new government’s legitimacy.

In the lead-up to the April polls, the democratic trends were not all negative. A more positive role was played by the National Assembly, the judiciary, civil society and the media, which took steps to reinforce the rule of law and to prepare for the 2007 elections. For example, in May 2006, following a rigorous debate, the National Assembly voted down an attempt to amend the country’s constitution, whereby term limits for the president and state governors would have been extended. The high courts also asserted their independence, strictly and impartially applying the country’s laws. The courts overturned impeachments of state governors, confirmed that the then-vice president’s tenure in office would continue after he switched his party affiliation, and reversed the Independent National Electoral Commission’s (INEC) disqualification of candidates, including the vice president. Nigerian civil society organizations, including trade unions, inter-faith religious bodies and the media, undertook extraordinary efforts to inform citizens about, and encourage their participation in, the electoral process.

NDI Election Observation

In April, I joined 60 civic and political leaders, academics and election experts from 16 countries in Africa, North America, Europe and Asia in an NDI international delegation to observe the presidential and National Assembly polls. The delegation was co-led by Madeleine Albright, Chairman of NDI and former US Secretary of State; Mahamane Ousmane, Speaker of the Economic Community of West African States (ECOWAS) Parliament and former President of Niger; Amos Sawyer, former President of Liberia; Joe Clark, former Prime Minister of Canada; Jeanne Shaheen, Director of the Institute of Politics at the John F. Kennedy School of Government of Harvard University and former Governor of New Hampshire; Yvonne Mokgoro, Justice of the Constitutional Court of South Africa; and myself.

The delegation visited polling sites in 14 states covering all six geopolitical zones. NDI's observer group built on the work of long-term NDI observers who monitored the registration process, the campaign period, and the April 14 state elections. It also drew on the findings and recommendations of an earlier NDI mission that visited Nigeria in May 2006, at the peak of the debate over constitutional amendments that included a controversial proposal to extend presidential and gubernatorial term limits. That delegation included Ketumile Masire, former President of Botswana; Karl Auguste Offmann, former President of Mauritius; Hage Geingob, former Prime Minister of Namibia; Joe Clark; Jeanne Shaheen; and Martin Luther King III.

The April 2007 delegation was NDI's 10th international election-related mission to Nigeria since the country's transition from military to civilian rule in 1998/99. The Institute also fielded international observer delegations to monitor national elections in Nigeria in 1998, 1999, and 2003. NDI has maintained an in-country presence in Nigeria since 1998, supporting Nigerian efforts to develop the National Assembly and civil society organizations. The Institute's work in Nigeria has been funded by the U.S. Agency for International Development (USAID), the National Endowment for Democracy (NED), the UK Department for International Development (DFID), and other donors.

For their part, Nigerian civil society groups, many of whom were NDI partners, deployed more than 50,000 domestic election monitors nationally for the state and national elections. In the lead-up to the polls, these nonpartisan observer groups agreed upon a common "checklist" to capture election day observations and developed a unified system for reporting data collected on election day. NDI facilitated and provided technical assistance and logistical support for these important efforts.

Nigeria's 2007 Electoral Process

High Stakes for Stability and Democracy

As we all know, Nigeria is an important country, not only in Africa but for a world experiencing rapid political and economic globalization. What happens in Nigeria, for good or for bad, has an impact far beyond its borders. When she served as secretary of state, NDI's chairman, Madeleine Albright, identified Nigeria as one of the world's four most important developing democracies, along with Colombia, Indonesia and Ukraine -- countries that were "each at a

critical point along the democratic path,” and that “could be a major force for stability and progress in its region.” With 140 million inhabitants, Nigeria matches the combined population of the other West African countries. One out of every five Africans is a Nigerian. Nigeria has played, and continues to play, a leadership role within the African Union and in peacekeeping efforts in Liberia, Sierra Leone, the Democratic Republic of Congo, Sudan (Darfur) and other trouble spots across the continent. It also is a major supplier of oil to the United States: by some estimates, accounting for close to 10 percent of oil imports into this country.

Nigerian Elections in the African Context

The Nigerian elections took place against the backdrop of advances in democratic governance and competitive elections across Africa since the early 1990s, during what has been termed the “third wave of democratization.” Despite ongoing conflicts and stalled transitions in countries such as Sudan, Somalia and Zimbabwe, overall, Africa has moved from a situation in which only four countries practiced some level of multipartism in 1990 -- Botswana, Mauritius, Senegal and The Gambia -- to one in which 34 countries were rated ‘free’ or ‘partly free’ by Freedom House in its 2006 *Freedom in the World* publication. Increasingly, African countries such as Ghana, Benin, Botswana, Mali, South Africa, Zambia, Namibia, and just weeks ago, Mauritania, to name a few, demonstrate to the continent and to the rest of the world the universal nature of democratic principles and practices, including the desire of peoples to freely choose those who govern them through regular and credible elections.

Consider this one stark reminder of the changing political face of Africa. Between 1960 and 1990, only three African heads of state and government had retired voluntarily or left office after losing an election. Since 1990, that number has soared to nearly 40. Two years ago, NDI brought together nearly one half of these leaders in Bamako, where they pledged to advance democracy and good governance on the continent. The Bamako gathering, called the African Statesman Initiative, has now spawned another important effort by former elected leaders -- the Africa Forum -- led by former president Joaquim Chissano of Mozambique.

The Nigerian Electoral Context

Following a series of military coups and failed attempts to establish civilian rule, Nigeria made another transition in 1999, with elections that are best seen in the context of the broader impetus to end military rule. Nigerian and international observers viewed those elections as the beginning of a process of democratization and the rebuilding of a political infrastructure that would sustain and broaden the efficacy of civilian rule. Consequently, the flaws of a rushed electoral process were largely overlooked or otherwise tolerated.

Expectations for the electoral process were higher for the 2003 polls, which were seen as an opportunity to further advance democratic gains. While those elections were successful in some respects, there were also serious problems that compromised the integrity of the process. Those elections tested the viability of many of Nigeria’s weak public institutions, most notably INEC, which was criticized for its institutional and professional shortcomings and perceived lack of independence. Moreover, there were delays and lack of transparency in the voter registration process that disenfranchised eligible voters; high levels of political violence; vandalized, stolen

and stuffed ballot boxes, particularly in Rivers, Kogi and Enugu states; and altered results during the multi-tiered tabulation, or “collation” process, all of which took place against a background of last-minute transfers of State Resident Electoral Commissioners. These problems and irregularities were identified by NDI and other international observers, as well as by Nigerian monitoring organizations. While the election observers sharply criticized the integrity of the process, they did not challenge the outcome of the 2003 elections.

The cumulative effect of the problems in 2003 contributed to a serious lack of public confidence in elections. A public opinion poll conducted last year by *Afrobarometer* revealed that only 9 percent of Nigerians believed that the 2003 polls were “free and fair.”

Given these electoral experiences, Nigeria needed successful elections in 2007, not only to ensure the legitimacy of the new government and build public confidence in the country’s nascent political institutions, but also to demonstrate the country’s continued leadership on the continent. Shortly before the elections, I noted in a speech at the Council on Foreign Relations that “fatally flawed elections in Nigeria could derail the still fragile democratic transition underway, with grave consequences, including increased potential for violence and instability for the country, much of surrounding West Africa and beyond.” Unfortunately, the 2007 electoral process failed the Nigerian people in many ways.

Pre-Election Period

The failures of the April elections, however, began long before election day. It was only after the National Assembly voted down constitutional amendments to the Electoral Act was finally passed in June 2006. Party primaries were often contentious and lacked transparency. Moreover, a lack of preparation early in the electoral process raised concerns about INEC’s ability and commitment to conduct credible elections. The electoral calendar was announced late and the voter registration process was characterized by an inability to assemble adequate registration equipment and insufficient publicity about the process. INEC announced that 61 million Nigerians had registered to vote, but never made public the complete voter registry or explained the process by which the 61 million voters had been listed.

The location and number of polling stations was also not adequately publicized, while the voting and tabulation procedures were circulated belatedly and to a limited audience. The inability or refusal of election authorities to release basic information about the electoral process to the public in the pre-election period undermined transparency and hampered participation. Information that presidential ballots were still being printed in South Africa 48 hours before the election day added to the confusion, uncertainty and anxiety about fundamental aspects of the process.

INEC’s decision, later overturned by the courts, to disqualify a number of candidates, including the then-vice president, on the grounds of indictment by a federal government administrative panel was one of many factors that cast doubt on the Commission’s impartiality in the pre-election period. When the Supreme Court ruled that the vice president should appear on the ballot five days before the April 21 election, INEC had to rush to print new presidential ballots, which lacked serial numbers as required by law and arrived in the country so late that voting was

officially postponed by two hours. In many polling sites, the delay was much longer, and in some places ballots never arrived.

In addition, the accreditation of tens of thousands of domestic election monitors was delayed unnecessarily by INEC. It was a sad irony that these monitoring groups, which had fought for the restoration of civilian, democratic government in Nigeria during the difficult period of military rule and were accredited in 1998/99 when the military was in power, were now being impeded by an elected government.

Election Day

During both the state and national elections, NDI and other observers noted a range of irregularities, many of which led to severe voter disenfranchisement. Problems witnessed included late opening of polls and, in some cases, failure to open at all; inadequate quantities of ballots and reporting forms at polling stations; inaccurate ballot papers in many legislative races; lack of secrecy of voting; a non-transparent and multi-tiered collation process that was vulnerable to manipulation; errors in the voter register; and inconsistency in the voter verification process. Most significantly, the nearly 60 percent voter turnout announced by INEC was more than double what domestic and international observers had witnessed. The delay in the delivery of essential electoral materials and in the opening of polling sites was unprecedented in all of the elections that NDI has observed in every region of the world, including previous elections in Nigeria.

The observations of the NDI delegation mirrored those of other observer groups, including the European Union, the Commonwealth, the Economic Community of West African States (ECOWAS) and the International Republican Institute, all of which were critical of the conduct of the elections. All of these international observer groups concurred that the 2007 electoral process had failed the Nigerian people and that the polls did not meet minimum international standards for democratic elections. The conclusions reached by international observers echoed the findings of the domestic observer groups. Following the elections, the European Parliament issued a resolution recommending that European Union aid be withheld from Nigeria until “new, credible elections have been held.”

The cumulative effect of the serious problems that NDI and other domestic and international observers witnessed substantially compromised the integrity of the electoral process. What is so troubling about the electoral process is that, as NDI’s delegation noted, “the 2007 polls represent a step backward in the conduct of elections in Nigeria,” jeopardizing the forward trajectory of democratic consolidation. In sharp contrast with many of its poorer neighbors, such as Benin, Ghana, Mali, Mauritania, Niger, and Sierra Leone -- that have managed to conduct credible elections in a short period of time following democratic transitions -- eight years later, Nigeria still lacks the political will to do so.

Post-Election Situation

The most critical question today is whether the new Nigerian government can take the extraordinary steps needed to redress its flawed electoral process in order to serve the public

interest and recover the important, yet fragile, gains made by the country's fledging democratic institutions.

Certain positive trends in Nigeria's democratization process give reason to hope that the concerns resulting from the recent elections can be overcome. As noted above, the Nigerian judiciary performed admirably in rulings that enhanced its credibility and independence in the eyes of many Nigerians. The outgoing National Assembly exercised considerable oversight over an attempted expansion of executive powers, and an energized civil society mobilized in large numbers to monitor the elections and to educate voters. The media also created channels for the expression of diverse views and the dissemination of information. Most importantly, millions of Nigerian voters waited patiently to exercise their fundamental political and civic rights, showing a strong desire to participate in the democratic process.

All of these institutions will once again be challenged in the post-election environment. The election tribunals are already deluged with petitions. As of last week, over 1,250 election petitions had been filed with the election tribunals, including eight that dispute the results of the presidential race, 106 challenging the gubernatorial outcomes, 130 cases against Senate races, 292 related to the House of Representatives results, and 724 cases regarding state legislatures. Even with tribunals based in each of Nigeria's 36 states and new rules to speed the processing of claims, the sheer number of petitions -- which is more than double the number filed in 2003 -- could overwhelm the legal system.

Many Nigerians hope that the adjudication process will resolve election-related complaints, but are apprehensive that justice can be rendered soon enough, given the delays experienced in resolving such disputes following past polls. In one notable case after the 2003 elections, it took three years for the election tribunals to finally hold that the true winner of the gubernatorial elections in Anambra State was not the candidate sworn into office. The rightful winner of the 2003 election was finally inaugurated in 2006, and has since petitioned the courts to serve his full four-year term, which was cut short by the 2007 elections. The tribunals also took almost three years to rule on the case brought after the 2003 election by the opposition presidential candidate, Muhammadu Buhari.

In addition, guidelines for filing election petitions, although designed to speed up the process of adjudication, have drawn criticism. Critics cite difficulties in meeting filing requirements, the potential for intimidating witnesses (whose details and sworn statement must be disclosed upon filing) and a lack of cooperation from INEC in providing required documentation as serious obstacles. The adjudication of electoral disputes is an integral part of the electoral process, but to ensure stability and the sustainability of democracy in Nigeria, the election tribunals must process complaints expeditiously and in a transparent manner. Should the adjudication process fail, there could be an escalation of frustration across the country, leading to increased tension.

The new National Assembly will face a turnover rate of approximately 75 percent of House and Senate members. Many candidates for the new National Assembly emerged from controversial primary contests within the political parties. Also, some of the legislative races were marred by serious irregularities on election day and petitions have been filed with tribunals in these cases. To inspire public confidence and continue the past legislature's steps towards independence from

the executive branch, the new Assembly will have to demonstrate its competence, effectiveness and commitment to the democratic reforms of its predecessor.

With regard to civil society, post-election protests organized by civil society groups, labor and some opposition parties resulted in the arrest of more than 300 people, including some civil society leaders who spoke out publicly on the failings of the elections. Anxieties were further heightened when agents of the Nigerian security services raided the offices of some civil society groups in the weeks following the announcement of elections results. Meanwhile, some opposition parties and civil society groups continue to demand a re-run of the elections. The government needs to recognize civil society's role in advocating for constructive and meaningful reforms, and its right to do so.

In the aftermath of these failed elections, millions of Nigerians are left wondering whether to keep faith in the country's electoral process and to believe that their votes count, or to succumb to apathy and disaffection with democracy. If Nigerians lose faith in the democratic process as a means for resolving disputes, the potential for tensions and instability will inevitably grow. Almost immediately after the April polls, violence increased in the Niger Delta, and no visible efforts have been made to disarm militias that perpetrated violence against political opponents and threatened stability and general security across the country.

The Way Forward

NDI's delegation co-leader, former Canadian Prime Minister Joe Clark, emphasized in a keynote address at the Woodrow Wilson International Center for Scholars on May 18, "Nigeria failed the electoral test in April. It cannot afford to fail the governance test now." The coming months could be a turning point for Nigeria's democratic development. On one hand, the period could serve as an opportunity for rebuilding shattered citizen confidence in the electoral process, and as an occasion to undertake profound reforms that could help build legitimacy in the country's newly-elected leadership. On the other hand, failure to expeditiously and fairly resolve electoral complaints and engage in reform could send the country's democratic development into a backward slide, undoing progress made since the transition from military to civilian rule.

Mr. Chairman, I am not here to propose a specific remedy. Ultimately, Nigerians must find viable and sustainable solutions to these very serious problems. However, from NDI's experience in past elections worldwide, political will and broad-based dialogue are necessary to address what everyone agrees are urgent issues. NDI has worked with democrats in countries around the world to peacefully resolve crises such as the one in which Nigeria finds itself. For example, the Institute's experience in the Dominican Republic shows that reconciliation is possible, if a genuine effort is made to reach out to representatives of all sectors of society. In 1994, after seriously flawed national elections, the government of the Dominican Republic, along with religious, business, political party and civic leaders, held a series of roundtables to develop what they called the Pact for Democracy. It included far-reaching electoral and constitutional reforms, followed by early elections two years into the four-year term. The Pact changed the political face of the Dominican Republic and ended a legacy of undemocratic elections. "No one would pretend that the complexities of those two countries are comparable,"

said Joe Clark, “but the crisis of legitimacy is similar, and the lesson is that unconventional responses can have a better chance of working than following old ways that are known to fail.”

In his inaugural address, the new Nigerian president declared, “our [election] experiences represent an opportunity to learn from our mistakes. Accordingly, I will set up a panel to examine the entire electoral process with a view to ensuring that we raise the quality and standard of our general elections, and thereby deepen our democracy.” Nigerians and friends of Nigeria are all too aware that similar promises of reform made after the 1999 and 2003 elections were not kept. The Nigerian government must translate these words into actions, as soon as possible, if it is to gain trust and confidence among its fellow citizens and the community of democratic nations. Such a panel must have credibility and power, and its recommendations must include immediate, far-reaching reforms in order to overcome a growing crisis of confidence.

Questions about legitimacy could impede the new administration’s ability to govern decisively on issues of critical importance to Nigeria’s future, including much needed economic reforms and efforts to fight corruption. In democracies, elections are a key component of the social compact between the governed and the citizenry, and the one contract that is negotiated in public view. A flawed electoral process therefore affects the legitimacy of any government that emerges from it and, in the case of Nigeria, can also infect other institutions and efforts to fight corruption. After all, if votes can be stolen with impunity, why should anyone take seriously efforts to stop the theft of money? These festering problems can only lead to further indifference, apathy and cynicism.

International and domestic condemnation of the April elections is helping to sustain calls for electoral reform. It is critical that the international community remains committed to broad-based dialogue and that these issues remain high on the agenda in bilateral discussions with the new Nigerian government. While the Yar’Adua government has pledged to bring Nigeria’s general elections to international standards by 2011, meaningful reforms must be initiated now if they are to impact the country’s next elections. Many voices are calling for cancellation and re-run of the elections, but simply organizing new elections within the current electoral framework would likely produce a similar, flawed outcome.

Electoral reform efforts must begin immediately. I would offer the following recommendations as a starting point.

Recommendations

The new government needs to adopt constitutionalism and the fair application of the rule of law for all Nigerian citizens as a guiding principle. The profound lack of democratic legitimacy, and the skepticism that accompanied the current government’s entrance into public office, place a tremendous cloud over what was to have been a crucial moment in Nigeria’s political history. Immediate steps to undertake broad and genuine reform of the electoral process may provide an opportunity to regain some of the lost trust and confidence of the Nigerian people and democrats around the world.

The Nigerian Government and Other Stakeholders

- An open, inclusive and comprehensive dialogue needs to begin internally with members of all sectors of Nigerian society, including the executive branch, elected officials, leaders of the political majority and opposition, members of civil society, and representatives of professional associations and religious bodies, to work out a detailed diagnosis of existing impediments to credible elections and agree on concrete steps and benchmarks for effective electoral reform.
- The electoral framework, including the Electoral Act of 2006, needs to be overhauled in light of the lessons learned from the 2007 elections.
- Once a new electoral law is enacted, the National Assembly and Nigerian civil society organizations and professional associations such as the Nigerian Bar Association should exercise appropriate oversight over its implementation and the actions of INEC.
- Political parties should develop internal procedures for candidate selection that are transparent and democratic, and exclude those who use intimidation, violence or bribery to gain nomination or office. Nigerian women and youth should be encouraged to participate more actively and to seek public office.
- Civil society organizations should continue and expand their broad civic education efforts to include monitoring and reporting on the adjudication process for election-related disputes.
- Religious leaders should use their considerable moral authority and speak with one voice to demand a sound and credible electoral process and to promote non-violence throughout the election process.
- Elections bring to the fore the strengths and weaknesses of a democracy, and in the case of Nigeria highlighted the challenges of corruption and impunity that political leaders must address. Unless alleged perpetrators of electoral fraud, violence and associated violations of the Electoral Act and the Nigerian criminal law are quickly brought to justice, irrespective of their official positions or political associations, the specter of corruption and impunity that has marred Nigeria's electoral process to date will continue to threaten and undermine citizen confidence in the country's political institutions as a whole.
- To be effective, Nigeria's anti-corruption policy must be fair and devoid of partisan political motivation in charges against members of the ruling and opposition parties, and former and current public officials.

INEC

- As a first and basic step, INEC should release results by polling site, and post these figures publicly as stipulated by the Electoral Act. This will enable citizens to independently verify the accuracy of the announced results.

- INEC must cooperate fully with the election tribunals and must desist from actions or statements that could call into question its impartiality during the adjudication process.
- Where results declared by INEC are set aside by the decisions of election tribunals, INEC should conduct internal investigations and take steps to sanction those members of its staff and/or pollworkers found to have been involved in electoral malpractices, and initiate criminal prosecution where appropriate.
- INEC became what one observer called “the symbol and the instrument” of the failed election. It must be reorganized and reformed before new elections are held. The constitutional provisions that vest so much power for the appointment of INEC Commissioners and Resident Electoral Commissioners in the president should be revisited, as an electoral commission whose members are perceived as beholden to an individual or a particular party will never have the confidence of the Nigerian people to conduct credible elections.
- INEC must adopt regulations and procedures that allow effective observation of counting, transportation, transmission, tabulation and announcement of results to address concerns about the manipulation of election results during the collation process.
- Specific administrative, legislative and/or constitutional measures also must be adopted to ensure the financial autonomy of INEC.

Conclusion

Given that Nigerian and international groups identified and publicly raised the main shortcomings with the current electoral framework a year prior to the April 2007 elections, the Nigerian authorities chose to preside over an electoral process that was virtually designed to fail. The current crisis has resulted from a lack of political will to fully embrace the tenets of democratic governance.

As such, the current crisis of legitimacy can only be overcome by an urgent commitment and extraordinary steps to strengthen the country’s democratic institutions. At this critical juncture in history, Nigeria’s government must demonstrate the political will necessary to implement reforms that would once more place Nigeria on a positive trajectory towards democratic consolidation. The Nigerian people also must come together to ensure that these issues are not allowed to go unaddressed. Civic and political leaders in society must work together, with a common purpose and sense of urgency, to move the country forward.

The international community must remain engaged diplomatically and provide the needed support to a genuine and immediate electoral reform process. Disengagement or disinterest would send a signal that the international community has lost interest in the conduct and integrity of electoral processes in Nigeria. It would undercut the confidence of millions of Nigerians who expect such attention from the international community and negate the work of the international observation missions to the elections. Disengagement also would be interpreted by other

countries as a sign that international support for the development of democracy is hollow or short-lived.

The African continent needs a democratic, stable Nigeria that can serve as a positive force for change. To allow a crisis of legitimacy in Nigeria to persist or worsen will only exacerbate existing problems, and create serious obstacles for the Nigerian state in serving its people. The citizens of Nigeria and the people of Africa deserve better.