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SUBMISSION OF THE REPORT OF THE ELECTORAL REFORM COMMITTEE

Your Excellency will recall that on the 28th August, 2007, you set-up a 22-member Electoral Reform Committee 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”. The Committee was given twelve months to complete its assignment. However, due to unavoidable delays at the beginning, and the large number of memoranda received at the public hearings, the Committee was unable to meet this deadline, and it was compelled to seek for, and obtain, Your Excellency’s kind approval for extension from September – December, 2008.

2. In order to carry out this assignment effectively, the Committee consulted widely with individuals, institutions and governments. The Committee sought for and received a total of 1466 memoranda from the general public. The Committee also held public hearings in two capital cities in each of the six geo-political zones and the Federal Capital Territory during which a total of 907 presentations were made. Although the Committee shunned overseas travel as a matter of principle, it benefitted from foreign expertise by inviting for interaction, experts from Botswana, Cameroun, Canada, Cote D’Ivoire, France, Ghana, India, Lesotho, Mexico, Niger Republic and South Africa. The Committee interacted with former Heads of State and
Presidents to benefit from their wealth of experience in election matters. The Committee also consulted other stakeholders including State Governments, Political Parties, National Independent Electoral Commission, State Independent Electoral Commissions, Security Agencies, Civil Society Groups, Women Organisations, the Media and the General Public.

3. Having reviewed Nigeria's history with problematic elections along the lines specified in its Terms of Reference, the Committee has established that the lack of independence of the Electoral Commissions at both the Federal and State levels is a key deficiency of our electoral process. Accordingly, the Committee has made appropriate recommendations to address the focal issues of the composition, administrative autonomy and funding of the electoral commissions. The Committee has also made recommendations to improve the performance of various institutions and stakeholders in the electoral process. These include the Legislature, Judiciary, Executive, Political Parties, Security Agencies, Civil Society Organisations, Media and Nigerian citizens. The Committee has found that election mindsets are one of the critical elements that determine the success of electoral practices, and the election mindsets of Nigerians are not only largely negative; they are also largely irrational. Appropriate recommendations have therefore been made to change the election mindsets of Nigerians in order to minimise violence and rigging in elections and build lasting democratic institutions and culture.

4. The Committee has examined the strengths and weaknesses of our present electoral process in relation to electoral best practices in countries similarly placed as Nigeria, and made appropriate recommendations aimed at promoting greater inclusiveness and minimizing both pre- and post-election tension.

5. Some of the recommendations in this Report require changes in existing electoral procedures, reallocation of electoral functions or creation of new institutions. Where such changes require new legislation or amendments to existing laws, the Committee has prepared appropriate drafts of the required
legislation, in order to facilitate and speed-up the implementation process. The draft legislations which are annexed to the Main Report are:-

(i) Draft of a Bill for an Act to Amend the Constitution of the Federal Republic of Nigeria, 1999;
(ii) Draft of a Bill for an Act to Amend the Electoral Act, 2006; and
(iii) Draft of a Bill for an Act to Establish the Electoral Offences Commission.

6. The Report of the Committee is structured into the following six volumes:
   Volume I: Main Report
   Volume II: Memoranda (22 Parts)
   Volume III: Analysis of Public Hearings
   Volume IV: Verbatim Report of Public Hearings (13 Parts)
   Volume V: Reports of Retreats (2 Parts)
   Volume VI: Appendices (2 Parts)

7. The Committee is firmly convinced that the acceptance and implementation of the recommendations contained in this Report will significantly restore credibility in the electoral process and usher in an era of free, fair and credible elections in the country.

8. We thank Your Excellency most sincerely for giving us this opportunity to serve our nation. We have the pleasure to inform you that the Committee has now completed its work and is hereby submitting its final report.

Hon. Justice Muhammad Lawal Uwais, GCON

Former Chief Justice of Nigeria

Chairman
Alh. Ahmadu Kurfi, OFR
Retired Federal Permanent Secretary and
Former Chief Electoral Officer of the
Federation
Member

Prof. A. Bolaji Akinyemi
Former Minister of Foreign Affairs
Member

Hon. Justice Godwin U. Ononiba
Former Chief Judge of Anambra State
Member

Alh. Musliu A. K. Smith, CFR
Former Inspector-General of Police
Member

Mr. Olisa Agbakoba, OON, SAN, FCIArb
Former President, Nigerian Bar Association
Member

Dr. Sheikh Ahmed Lemu, OON, OFR
Former Grand-Khadi of Niger State
Member
Prof. Attahiru M. Jega, OFR
Vice Chancellor Bayero University
Member

Prof. Grace A. Alele-Williams, OFR
Former Vice Chancellor University of Benin
Member

Chief Mrs. Toyin Olakunri, OFR
Former President Institute of Chartered Accountants of Nigeria
Member

Dr. Jibrin Ibrahim
Associate Professor and Director
Centre for Democracy and Development
Member

Prof. Okon E. Uya, FNAL, FHSN, FCPA, FABI
Former Chairman National Electoral Commission
And former Ambassador to Argentina
Member
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Former Minister of Women Affairs
Member

Mr. Ndunusa O. Alao, FNGE, MNIPR, MCIAC
Managing Director, New Nigerian Newspapers Ltd
Member

Mr. John E. Odah, mni
General Secretary Nigeria Labour Congress
Member

Hajiya Dije J. Bala, mni
Former Permanent Secretary Niger State
Member

Maj. Gen. Oladayo Popoola (Rtd), OFR, mni
Former Military Governor Oyo and Ogun States
Member

Dr. Stephen Dike
Chairman Advanced Management and Technology Solutions Limited
Member
Prof. Abdulhameed A. Ujo
Dean Faculty of Social Sciences,
University of Abuja and former Resident
Electoral Commissioner Kaduna State
Member

Mr. Festus Okoye
National Publicity Secretary NBA and
Chairman Transition Monitoring Group
Member

Alh. Aliyu Umar
Former Secretary National Electoral Commission
Member

Msgr. Matthew Hassan Kukah
Former Secretary-General Catholic Secretariat of Nigeria
and Vicar-General Archdiocese of Kaduna
Member

Prof. Philip T. Ahire
Director, Political Affairs Office
The Presidency
Secretary
ACKNOWLEDGMENT AND APPRECIATION

In the course of its work, the Committee received valuable support and assistance from individuals, institutions and governments. We gratefully acknowledge the significant contributions made by our former Heads of State and Presidents who, either through the submission of memoranda or physical interactions, offered the Committee useful insights by sharing their wealth of experience on election matters.

2. The Committee would like to thankfully acknowledge the audience granted to it by the Senate President, Distinguished Senator David Mark, GCON and the Speaker of the House of Representatives, Right Honourable Dimeji Bankole, CFR. The Committee is also pleased to acknowledge receipt of a memorandum from the Chief Justice of Nigeria, Honourable Justice Idris Kutigi, GCON. The Committee was also received in audience, during its countrywide public hearings, by the following distinguished traditional rulers:

a) His Eminence, Alhaji Sa’ad Abubakar III, CFR, mni, the Sultan of Sokoto

b) HRM, Omo N’Oba N’Edo Uku Akpolokpolo, CFR, Oba Erediauwa III, the Oba of Benin

c) HRM, Oba Rilwan Akiolu, CFR, mni, the Oba of Lagos

d) HRH, Igwe Onoro, Chairman, Enugu State Council of Traditional Rulers

e) HRH, Alhaji (Dr.) Mustapha El-Kanemi, CFR, the Shehu of Borno

f) HRH, Alhaji (Dr) Ado Bayero, CFR, LLD, JP, the Emir of Kano

g) HRM, Oba Samuel Odulana, CFR, the Olubadan of Ibadan

h) HRH, Ndidem Thomas Ika Ika Qua III,Ndidem of the Quas
i) HRH Alhaji Aliyu Modibbo Mustapha, CFR, the Lamido of Adamawa

j) HRH, Da Victor Pam, mni, Gbong Gwom Jos

k) HRH, Justice Alhaji Ibrahim Sulu Gambari, CFR, the Emir of Ilorin

l) HRH, Eze Emmanuel Emeghonu Njemanze, OON, Ozuruigbo V of Owerri Municipal

3. The Committee is also grateful to all the State Governors in the country for mobilizing their citizens to support the work of the Committee. Some of the Governors went as far as setting-up their Electoral Reform Committees to collate the suggestions of people in their respective States, and forward reports to the Committee. We are particularly grateful to the Governors of the States where public hearings were held, namely: Adamawa, Borno, Cross-River, Edo, Enugu, Imo, Kano, Kwara, Lagos, Oyo, Plateau and Sokoto. These Governors did everything possible to accord Committee members very warm and hospitable reception, in addition to mobilizing the people in their respective States to actively participate in the public hearings. The Committee is deeply grateful to each of them.

4. The Committee would also like to register its appreciation to various donors for their support and assistance. Out of these, the Joint Donor Basket Fund (JDBF) funded by the European Union (EU), United Kingdom Department for International Development (DFID), Canadian International Development Agency (CIDA), and United Nations Development Programme (UNDP) deserve special mention. The JDBF partnered the Committee throughout the assignment, and took responsibility for sponsoring the thirteen consultants who worked for the Committee, in addition to sponsoring the publicity for the public hearings.
and providing logistical assistance. It also played a key role in organising the retreat on Electoral Systems and Processes for the benefit of the Committee.

5. We are also indebted to the National Democratic Institute (NDI) not only for organising the retreat on Electoral Systems and International Best Practices, but also for making available to the Committee useful source materials and reports. The International Republican Institute (IRI) sponsored various civil society groups to participate in the Committee’s public hearings. Other international organisations that supported the work of the Committee include the International Foundation for Electoral Systems (IFES) and the Carter Centre. The Committee is grateful for the cooperation and support of the Civil Society Coordination Committee which mobilised and coordinated the participation of civil society groups in the entire process.

6. In the course of its work, the Committee had cause to consult various public institutions for their views and suggestions. These institutions include Independent National Electoral Commission (INEC), Nigeria Police Force, Defence Headquarters, Court of Appeal, State Security Service, National Population Commission, National Boundary Commission, National Bureau of Statistics, Office of the Surveyor-General of the Federation. The Committee also met with Nigerian inventors of electronic voting devices, Dr. Jonathan A. Anokela and Engr. B. A. Aghanya to assess the relevance and applicability of their devices in future elections. We are grateful to all of these for their cooperation and valuable suggestions.
7. The Committee is also grateful to the Inspector-General of Police, the Director-General of State Security Service and the Director-General of the National Security and the Civil Defence Corps for providing security to the Committee wherever and whenever it was needed.

8. Finally, the Committee is highly indebted to the Nigerian public for turning out in large numbers to support its work, and thus demonstrating a strong commitment to the desirability and feasibility of having free, fair and credible elections in the country.
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### ABBREVIATIONS AND ACRONYMS

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<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples’ Rights</td>
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<td>AD</td>
<td>Alliance for Democracy</td>
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<td>AG</td>
<td>Action Group</td>
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<td>ANC</td>
<td>African National Congress</td>
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<tr>
<td>ANPP</td>
<td>All Nigeria Peoples Party</td>
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<tr>
<td>APP</td>
<td>All Peoples Party</td>
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<tr>
<td>AU</td>
<td>African Union</td>
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<tr>
<td>AV</td>
<td>Alternative Vote</td>
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<tr>
<td>BON</td>
<td>Broadcasting Organization of Nigeria</td>
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<tr>
<td>CBO</td>
<td>Community Based Organization</td>
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<td>CCB</td>
<td>Code of Conduct Bureau</td>
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<tr>
<td>CCT</td>
<td>Code of Conduct Tribunal</td>
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<tr>
<td>CDS</td>
<td>Chief of Defence Staff</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of Discrimination Against Women</td>
</tr>
<tr>
<td>CERD</td>
<td>Convention on the Elimination of all Forms of Racial Discrimination</td>
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<tr>
<td>CFR</td>
<td>Commander of the Federal Republic</td>
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<td>CIDA</td>
<td>Canadian International Development Agency</td>
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<tr>
<td>CON</td>
<td>Commander of the Order of the Niger</td>
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CSCC  Civil Society Co-ordinating Committee
DFID  Department for International Development
ECN   Electoral Commission of Nigeria
ECOWAS Economic Community of West African States
EFCC  Economic and Financial Crimes Commission
EMB   Election Management Body
EOC   Electoral Offences Commission
ERC   Electoral Reform Committee
EU    European Union
FABI  Fellow, American Biographical Institute
FCI Arb Fellow, Chartered Institute of Arbitrators
FCPA  Fellow, Corporate Institute for Local Government and Administration
FCT   Federal Capital Territory
FEDECO Federal Electoral Commission
FHSN  Fellow, Historical Society of Nigeria
FNAL  Fellow, Nigerian Academy of Letters
FNGE  Fellow, Nigerian Guild of Editors
FPTP  First Past the Post
GCFR  Grand Commander of the Federal Republic
GCON  Grand Commander of the Order of the Niger
GNPP  Great Nigeria Peoples Party
<table>
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<td>ICCPR</td>
<td>International Covenant for Civic and Political Rights</td>
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<td>ICG</td>
<td>International Crisis Group</td>
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<td>ICPC</td>
<td>Independent Corrupt Practices and Other Related Offences Commission</td>
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<tr>
<td>IDEA</td>
<td>International Institute for Democracy and Electoral Assistance</td>
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<td>IFES</td>
<td>International Foundation for Electoral Systems</td>
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<td>Independent National Electoral Commission</td>
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<td>JDBF</td>
<td>Joint Donor Basket Fund</td>
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<td>JP</td>
<td>Justice of the Peace</td>
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<td>Local Government Area</td>
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<td>Doctor of Letters</td>
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<td>MAMSER</td>
<td>Mass Mobilization for Social and Economic Recovery</td>
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<td>MIICA</td>
<td>Member, Institute of Industrial and Corporate Administrators</td>
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<td>MMP</td>
<td>Mixed Member Proportional</td>
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<td>mni</td>
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<td>Member, Nigerian Institute of Public Relations</td>
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<td>National Boundary Commission</td>
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<td>NC</td>
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<td>NCNC</td>
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<td>NCP</td>
<td>National Conscience Party</td>
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<td>National Democratic Institute</td>
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<td>National Democratic Party</td>
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<td>NEEDS</td>
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<td>NEPAD</td>
<td>New Partnership for Africa's Development</td>
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<td>NEPU</td>
<td>Northern Elements Progressive Union</td>
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<td>NGO</td>
<td>Non-Governmental Organization</td>
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<td>National Judicial Council</td>
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<td>Northern Peoples Congress</td>
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<td>NPM</td>
<td>Nigeria Police Medal</td>
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<td>NRC</td>
<td>National Republican Convention</td>
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<td>NW</td>
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<td>Officer of the Federal Republic</td>
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<td>PAC</td>
<td>Progressive Action Congress</td>
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<td>PDP</td>
<td>Peoples Democratic Party</td>
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<td>PPRRC</td>
<td>Political Parties Registration and Regulatory Commission</td>
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<td>PR</td>
<td>Proportional Representation</td>
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<tr>
<td>PRP</td>
<td>Peoples Redemption Party</td>
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<tr>
<td>SAN</td>
<td>Senior Advocate of Nigeria</td>
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<td>SAP</td>
<td>Structural Adjustment Programme</td>
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<td>SDP</td>
<td>Social Democratic Party</td>
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<td>SIEC</td>
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<td>United Nations Electoral Assistance Division</td>
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<td>UPN</td>
<td>Unity Party of Nigeria</td>
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STRUCTURE OF THE REPORT

Volume 1: Main Report

Volume 2: Memoranda (22 Parts)

Volume 3: Analysis of Public Hearings

Volume 4: Verbatim Report of Public Hearings (13 Parts)

Volume 5: Reports of Retreats (2 Parts)

Volume 6: Appendices (2 Parts)
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   (ii) List of Members of the Secretariat
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   (iv) Minutes of Sub-Committees Meetings
   (v) Sub-Committee Reports
CHAPTER ONE
INTRODUCTION

1.1 INTRODUCTION
Free and fair elections are the cornerstone of every democracy and the primary mechanism for exercising the principle of sovereignty of the people. Through such elections, citizens participate in the governance of their country by choosing those who govern in the quest for development. By their choices, the citizens confer legitimacy and authority on those who govern, making it easier for them to mobilize public support and cooperation for the implementation of development programmes. Free, fair and credible elections are therefore a crucial requirement for good governance in any democracy.

1.2 PROBLEMS WITH GENERAL ELECTIONS IN NIGERIA
Nigeria’s experience with democratic elections since independence has been rather mixed. Although the country has managed to transit from one administration to another, hardly any election conducted in the country has been completely free of charges of irregularities, electoral malpractices, violence and various degrees of disruptions. The factors responsible for this state of affairs include, among others, the character of the Nigerian State as the arena for electoral contests; the existence of weak democratic institutions and processes; negative political culture; weak legal/constitutional framework; and lack of independence and capacity of the Election Management Bodies.

1.2.1 The Nigerian State as the Arena of Electoral Contests
1.2.1.1 Elections do not take place in a political vacuum. On the contrary, the character of the particular state, her specific material and historical circumstances, as well as the nature of politics all affect the conduct of elections.
1.2.1.2  Nigeria is a plural and diverse country with over 350 linguistic groups. However, the numerical and political preponderance of the three majority groups (Hausa, Yoruba and Igbo), and the tendency of many minority groups to cluster around the big three have given Nigeria a tripolar structure which, despite significant changes, continues to endure.

1.2.1.3  The colonial administration played an important role in consolidating linguistic and cultural differences into the structure of the Nigerian state. Colonial rule assumed an unbreakable trinity between chief, land, and people, thereby bringing cultural and linguistic differences into the core administrative structures of the colonial state. Different systems of law, land tenure, local government, administrative services and education obtained in the two halves of the country (North and South).

1.2.1.4  The psychological divide thus woven into the very structure of the colonial state permeated the society and remains engrained in Nigerian political life. To make matters worse, the regional cleavages also correspond with significant socio-economic inequalities, creating fertile grounds for political entrepreneurs to exploit and turn regional differences and inequalities into political capital. Managing diversity has thus been one of the major challenges of the political administration of the Nigerian state.

1.2.1.5  As a consequence, Nigeria has had problems with democratic governance and the conduct of elections since the 1950s. Heated political struggles between regional elites and the emergence of regionally based political parties have been thorny issues. Political division is reflected in the cries of marginalization, power shift and “do or die” politics. What some people perceive to be the centralization of control over key national resources is the main reason for their desperate efforts to win and retain power at whatever cost.
1.2.1.6 The lessons learnt from a review of the history of Nigeria with elections are presented and discussed in Chapter 3 of this Report.

1.2.2 **Weak Democratic Institutions**

1.2.2.1 The practice of democracy requires the establishment and effective functioning of a wide range of democratic institutions within the state and civil society. These include an independent Judiciary, a vibrant Legislature, law abiding Executive, vibrant Political Parties, efficient Security Agencies, public spirited Civil Society Organizations, and so on. It also requires the entrenchment of the rule of law and respect for the fundamental rights and freedoms of all citizens.

1.2.2.2 Many of these institutional prerequisites are weakly developed, posing special challenges for democracy and the conduct of free, fair and credible elections. The principle of checks and balances which is central to the Presidential System has been difficult to practice, largely because the Executive overshadows the Legislature and the Judiciary, a legacy of the long period of military rule. By 1999, at the return of civilian rule, Nigeria had been ruled by military regimes for 29 of its first 39 years of independence. The years of military rule impeded the development of democratic institutions and leaders, and hampered the emergence of a democratic culture. Corruption and an authoritarian culture resulted in weak political institutions, a decaying infrastructure, a feeble and non-diversified economy and an impoverished population.

1.2.2.3 Despite noticeable improvement in certain areas such as human rights, equitable distribution of resources, civil control of the security forces and their professionalisation during the period of civilian governance, there are significant gaps such as the slow response of government to cases of human rights violation, the weakness in the legal system, and poor observance of the rule of law, especially the disobedience of court orders by government.
1.2.2.4 One of the most crucial and yet least developed democratic institutions in the country is the political party system. There are currently 50 registered political parties in the country, most of which are an assemblage of people who share the same level of determination to use the party platform to get to power. As such, it is usually difficult to identify any party programmes or ideologies. The structure of the political parties is such that internal democracy is virtually absent. The political parties are very weak and unable to effectively carry out political mobilization, political education and discipline.

1.2.2.5 The impact which various institutions, agencies and stakeholders exert on the quality and credibility of elections is critically assessed in Chapter 5 of this Report.

1.2.3 **Negative Political Culture**

1.2.3.1 The long period of military rule, coupled with weaknesses of democratic institutions and processes and a host of other historical factors, have led to the emergence of a weak political culture characterized by electoral violence, monetized politics, poor and low political accountability, abuse and personalisation of power, zero-sum approach to politics, general apathy towards elections and low participation of critical segments of the society such as women, the disabled and internally displaced persons.

1.2.3.2 This negative political culture has led to a crisis of confidence in the country’s electoral process.

1.2.4 **Weak Constitutional/Legal Framework**

1.2.4.1 Legal/constitutional framework for the conduct of elections in Nigeria consist of the Constitution of the Federal Republic of Nigeria 1999, the Electoral Act 2006 and other laws regulating the conduct of institutions and agencies involved in elections. There is the general feeling that the 1999 Constitution contains several defects which need to
be amended in order to facilitate our unfolding democratic culture. It is also generally accepted that several provisions of the Constitution need to be amended to guarantee both administrative and financial autonomy of the Election Management Body.

1.2.4.2 The Electoral Act 2006 is a significant improvement over the Electoral Act 2002. It closed a loophole that allowed parties to change candidates even after polling had ended; reinforced the supremacy of election tribunal judgments over INEC’s certification process in instances of contested election results; limited campaign funding; and empowered INEC to appoint its own Secretary. The Act failed, however, to address fundamental problems relating to the independence of INEC’s operations or budgeting delays and shortfalls.

1.2.4.3 Details of the shortcomings in the legal framework are examined in Chapter 4 of this Report and appropriate amendments recommended.

1.2.5 

**Lack of Independence and Capacity of the Election Management Bodies (EMBs)**

1.2.5.1 The independence and impartiality of the country’s election management bodies, that is, the Independent National Electoral Commission (INEC), State Independent Electoral Commissions (SIECs) and other institutions involved in election matters, have been questioned by the generality of Nigerians who submitted memoranda and made presentations during the public hearings of the Committee. INEC and SIECs have generally been adjudged as operating as appendages of the ruling party and the Executive arms of government. This perception stems mainly from the mode of appointment of key officials of the EMBs and their funding which rest exclusively with the Executive branch of government.

1.2.5.2 The same perception of partiality, ineffectiveness and inefficiency affects the other institutions, especially the security agencies, critical for
the successful conduct of credible, free, fair and acceptable elections that meet international standards and best practices.

1.2.5.3 The limitations of INEC and other institutions involved in the conduct of elections are critically examined in Chapter 5 of this Report and appropriate recommendations made.

1.3 SETTING-UP OF THE ELECTORAL REFORM COMMITTEE

In his Inaugural Address on the 29th May 2007, President Umaru Musa Yar’Adua GCFR acknowledged the shortcomings in the country’s electoral process and promised to “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.” Consequently, on the 28th of August, 2007, the President formally inaugurated the Electoral Reform Committee with the following membership:

(1) Hon. Justice Muhammadu L. Uwais, GCON- Chairman
(2) Alhaji Ahmadu Kurfi, OFR - Member
(3) Prof. A. Bolaji Akinyemi - Member
(4) Hon. Justice Godwin U. Ononiba - Member
(5) Alhaji Musiliu A.K. Smith, CFR - Member
(6) Mr. Olisa Agbakoba, OON, SAN, FCIArb - Member
(7) Dr. Sheikh Ahmed Lemu, OON, OFR - Member
(8) Prof. Attahiru M. Jega, OFR - Member
(9) Prof. Grace A. Alele-Williams, OFR - Member
(10) Chief (Mrs) Toyin Olakunri, OFR - Member
(11) Dr. Jibrin Ibrahim - Member
(12) Prof. Okon E. Uya, FNAL, FHSN, FCPA, FABI - Member
(13) Prof. Gambo Laraba Abdullahi, OON - Member
(14) Mr. Ndanusa O. Alao, FNGE, MNIPR, MIICA - Member
(15) Mr. John E. Odah - Member
(16) Hajiya Dije J. Bala, mni - Member
1.4 TERMS OF REFERENCE

1.4.1 The Terms of Reference given to the Committee were as follows:

(a) Undertake a review of Nigeria’s history with general elections and identify factors which affect the quality and credibility of the elections and their impact on the democratic process.

(b) Examine relevant provisions of the 1999 Constitution, the Electoral Act, and other legislation that have bearing on the electoral process and assess their impact on the quality and credibility of general elections.

(c) Examine the roles of institutions, agencies and stakeholders in shaping and impacting on the quality and credibility of the electoral process. These should include Government, Electoral Commissions, Security Agencies, Political Parties, Non-Governmental Organisations, Media, General Public and the International Community.

(d) Examine electoral systems relevant to Nigeria’s experience and identify best practices that would impact positively on the quality and credibility of the nation’s electoral process.

(e) Make general and specific recommendations (including but not limited to constitutional and legislative provisions and/or amendments) to ensure:

(i) A truly independent Electoral Commission imbued with administrative and financial autonomy;
(ii) An electoral process that would enable the conduct of elections to meet acceptable international standards;

(iii) Legal processes that would ensure that election disputes are concluded before inauguration of newly elected officials; and

(f) Mechanisms to reduce post-election tensions including possibility of introducing the concept of proportional representation in the constitution of governments.

(g) Make any other recommendations deemed necessary by the Committee.

1.4.2 The Committee was given twelve (12) months within which to complete its assignment.

1.5 METHODOLOGY AND SCOPE OF INVESTIGATION

Soon after its inauguration, the Committee closely examined its Terms of Reference and their ramifications. The Committee also discussed the appropriate mode of operation and considered issues related to the early take-off of its work. Thereafter, it adopted a Work Plan with clear time lines. The Committee used a variety of complementary methodological approaches to execute its assignment. These were as follows:

1.5.1 Meetings of the Committee and Sub-Committees

1.5.1.1 At the beginning, the Committee agreed to meet fortnightly. During its second regular meeting, the Committee divided itself into five (5) Sub-committees in accordance with its Terms of Reference. The Sub-committees and their membership were as follows:
a) HISTORY SUB-COMMITTEE

Prof. A. Bolaji Akinyemi - Chairman
Alhaji Ahmadu Kurfi - Deputy Chairman
Prof. Abdulhameed Ujo - Member
Msgr. Matthew H. Kukah - Member
Prof. Okon E. Uya - Member
Chief (Mrs.) Toyin Olakunri - Member
Prof. Grace A. Alele-Williams - Member
Mr. Ndunusa O. Alao - Member
Mr. Ibim W. Franks - Secretary

b) LEGAL/CONSTITUTIONAL SUB-COMMITTEE

Hon. Justice G. U. Ononiba - Chairman
Mr. Olisa Agbakoba - Deputy Chairman
Maj. Gen. Oladayo Popoola (Rtd) - Member
Alhaji Ahmadu Kurfi - Member
Prof. A. Bolaji Akinyemi - Member
Prof. Grace A. Alele-Williams - Member
Barrister Festus Okoye - Member
Mr. Ndunusa O. Alao - Member
Dr. Stephen Dike - Member
Dr. I. Viashima - Secretary

c) INSTITUTIONS/STAKEHOLDERS SUB-COMMITTEE

Msgr. Matthew H. Kukah - Chairman
Maj. Gen. Oladayo Popoola (Rtd) - Deputy Chairman
Hajiya Dije J. Bala - Member
Prof. Gambo Laraba Abdullahi - Member
Dr. Jibrin Ibrahim - Member
Mr. John E. Odah - Member
Prof. Grace A. Alele-Williams - Member
Barrister Festus Okoye - Member
Mr. Ndunusa O. Alao - Member
Dr. Stephen Dike - Member
Prof. Attahiru M. Jega - Member
Hon. Justice G.U. Ononiba - Member
Alhaji Musiliu Smith - Member
Mrs. C.C. Ekaro - Secretary

d) ELECTORAL SYSTEMS SUB-COMMITTEE

Prof. Abdulhameed Ujo - Chairman
Alhaji Musiliu Smith - Deputy Chairman
Hajiya Dije J. Bala - Member
Dr. Jibrin Ibrahim - Member
Mr. John E. Odah - Member
Prof. Okon E. Uya - Member
e) MEMORANDA SUB-COMMITTEE
Prof. Gambo Laraba Abdullahi - Chairman
Alhaji Aliyu Umar - Deputy Chairman
Prof. A. Bolaji Akinyemi - Member
Alhaji Ahmadu Kurfi - Member
Mr. Olisa Agbakoba - Member
Prof. Okon E. Uya - Member
Prof. Grace Alele-Williams - Member
Dr. Sheikh Ahmed Lemu - Member
Mr. Ndanusa O. Alao - Member
Alhaji Ahmed M. Tahir - Secretary

The Chairman and Secretary of the Committee were members of all Sub-Committees.

1.5.1.2 During each fortnightly meeting, the five (5) Sub-Committees met, discussed matters related to their specific terms of reference and submitted a report to the main Committee. The meetings of the Sub-committees therefore preceded those of the Committee.

1.5.2 Call for Public Memoranda
1.5.2.1 The Committee extended a call to members of the Public, Political Parties, Governments, Electoral Commissions, Security Agencies, Women Organisations, Media, Civil Society Organizations and other stakeholders who were interested in contributing to the work of the Committee to submit memoranda. A website, e-mail address and post office box number were provided to enable stakeholders who were within or outside the country to submit memoranda. Although a time frame of six weeks was initially specified for the submission of
memoranda, the Committee reviewed its position on this and allowed memoranda to be submitted throughout the duration of the exercise. In all, a total number of 1466 memoranda were received.

1.5.3 **General Research and Literature Review**

1.5.3.1 Soon after its inauguration, the Committee embarked on the identification and collection of basic documents required for its work. These documents were:

(a) The President’s Inauguration Address containing the Terms of Reference
(b) Electoral Acts 2002 and 2006
(c) Constitution of the Federal Republic of Nigeria, 1999 and those of some Selected Countries
(d) Judgments of Election Petitions Tribunals
(e) Electoral Acts of selected countries
(g) Electoral Laws of the 36 States of the Federation
(h) Books and Publications

1.5.3.2 The materials collected were shared among the five Sub-committees based on the subject matter in question. Each of these Sub-committees, in turn, assigned its members specific aspects of the materials to study and to make presentations. The presentations made were discussed by each Sub-committee and the decisions reached were presented to the Committee for consideration.

1.5.4 **Retreats**

As a matter of principle, the Committee decided not to undertake any overseas trips in the course of its assignment. The Committee preferred to invite experts from countries whose electoral process it wanted to examine to come to Nigeria and interact with it.
Consequently, two retreats were organised to enable external resource persons and experts to interact with members of the Committee here in Abuja. The first retreat on the theme **Electoral Systems and Processes** was supported by the Joint Donor Basket Fund (JDBF) funded by European Union (EU), Department of International Development (DFID), Canadian International Development Agency (CIDA), and United Nations Development Programme (UNDP), in collaboration with Carter Centre and International Foundation for Electoral Systems (IFES). This retreat involved experts from Ghana, India, Canada, Mexico, South Africa, Lesotho and Botswana, whose electoral systems and processes were examined from 19th to 21st January, 2008. The second retreat on the theme **Electoral Systems and International Best Electoral Practices** which was supported by the National Democratic Institute (NDI), was held from 5th to 6th May, 2008, and involved experts from Mexico, Cameroun, France, Niger Republic and Cote D’Ivoire.

### 1.5.5 Use of Consultants

1.5.5.1 The Committee used consultants to investigate the wide range of issues within its purview. In all, five teams of consultants were used to handle the following tasks:

a) examine the history of Nigeria with general elections;

b) examine the roles of various institutions and stakeholders in the electoral process;

c) examine comparative electoral systems and identify best practices worthy of adoption;

d) analyze judgments of election petitions tribunals; and

e) analyze memoranda and work with the Secretariat.
1.5.6 **Public Hearings**

1.5.6.1 The commencement of the public hearings was delayed, in deference to the fear expressed by some politicians, so that its conduct would not be deemed to influence the outcome of the election petitions before the tribunals which have been sitting since the conclusion of the April 2007 elections. For this reason, the Committee waited until the 12th of May, 2008 before it commenced the public hearings.

1.5.6.2 The Committee organized public hearings in two State capitals cities of each of the six geo-political zones of the country to provide further opportunity to members of the general public, particularly those who could not or had not submitted memoranda to make their inputs into the reform process.

1.5.6.3 In order to conduct the public hearings expeditiously, the Committee divided itself into two teams so that each team could handle the hearing in designated cities as shown in Table 1.1 and Table 1.2:

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**Table 1.1: Venues and Dates of Public Hearings Covered by Team A**

<table>
<thead>
<tr>
<th>CITY</th>
<th>ZONE</th>
<th>VENUE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maiduguri</td>
<td>NE</td>
<td>Maiduguri Int’l. Hotel</td>
<td>12 – 14 May, 2008</td>
</tr>
<tr>
<td>Ibadan</td>
<td>SW</td>
<td>Cultural Centre</td>
<td>19 – 21 May, 2008</td>
</tr>
<tr>
<td>Jos</td>
<td>NC</td>
<td>Conference Hall, Hill</td>
<td>26 – 28 May, 2008</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Station Hotel</td>
<td></td>
</tr>
<tr>
<td>Calabar</td>
<td>SS</td>
<td>Main Bowl Cultural Centre Complex</td>
<td>2 – 4 June, 2008</td>
</tr>
<tr>
<td>Sokoto</td>
<td>NW</td>
<td>Giginya Hotel</td>
<td>9 – 11 June, 2008</td>
</tr>
<tr>
<td>Owerri</td>
<td>SE</td>
<td>Conference Hall, Concorde Hotel</td>
<td>16 – 18 June, 2008</td>
</tr>
<tr>
<td>Abuja</td>
<td>FCT</td>
<td>ECOWAS Secretariat</td>
<td>24 – 27 June, 2008</td>
</tr>
</tbody>
</table>
Table 1.2: Venues and Dates of Public Hearings Covered by Team B

<table>
<thead>
<tr>
<th>CITY</th>
<th>ZONE</th>
<th>VENUE</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lagos</td>
<td>SW</td>
<td>Planet One Hall</td>
<td>14 – 16 May, 2008</td>
</tr>
<tr>
<td>Yola</td>
<td>NE</td>
<td>Women Multi-Purpose Hall</td>
<td>21 – 23 May, 2008</td>
</tr>
<tr>
<td>Benin City</td>
<td>SS</td>
<td>Main Hall, Oba Akenzua Cultural Centre</td>
<td>28 – 30 May, 2008</td>
</tr>
<tr>
<td>Ilorin</td>
<td>NC</td>
<td>Hall A, Kwara Hotel</td>
<td>4 – 6 June, 2008</td>
</tr>
<tr>
<td>Enugu</td>
<td>SE</td>
<td>Conference Hall, Hotel Presidential</td>
<td>11 – 13 June, 2008</td>
</tr>
<tr>
<td>Kano</td>
<td>NW</td>
<td>Mambayya Auditorium</td>
<td>18 – 20 June, 2008</td>
</tr>
<tr>
<td>Abuja</td>
<td>FCT</td>
<td>ECOWAS Secretariat</td>
<td>24 – 27 June, 2008</td>
</tr>
</tbody>
</table>

1.5.6.4 The composition of the two teams was as shown in Table 1.3:

Table 1.3A: Composition of Team A

Name
Hon. Justice Muhammad Lawal Uwais - Chairman
Alh. Ahmadu Kurfi - Team Leader
Alh. Musiliu A.K. Smith - Deputy Team Leader
Dr. Sheikh Ahmed Lemu - Member
Prof. Okon E. Uya - Member
Mr. Olisa Agbakoba - Member
Prof. Abdulhameed A. Ujo - Member
Dr. Jibrin Ibrahim - Member
Prof. Grace A. Alele Williams - Member
Mr. Ndanusa O. Alao - Member
Hajiya Dije Bala - Member
Prof. Philip T. Ahire - Secretary

Secretariat
Dr. Iorwuese Viashima
Mrs. Comfort C. Ekaro
Mallam Ahmed Tahir
Table 1.3B: Composition of Team B

Name
Hon. Justice Muhammadu Lawal Uwais - Chairman
Prof. A. Bolaji Akinyemi - Team Leader
Hon. Justice G.U. Ononiba - Dep. Team Leader
Maj. Gen. Oladayo Popoola (Rtd) - Member
Msgr. Matthew H. Kukah - Member
Alh. Aliyu Umar - Member
Prof. Attahiru Jega - Member
Dr. Stephen Dike - Member
Chief Mrs. Toyin Olakunri - Member
Barr. Festus Okoye - Member
Prof. Gambo Laraba Abdullahi - Member
Mr. John E. Odah - Member
Prof. Philip T. Ahire - Secretary

Secretariat
Mr. Ibim W. Franks
Mr. Peter S.O. Emuze

1.5.6.5 In each hearing venue, the Committee spent three days: the first day was devoted to presentations from members of general public; the second day was for governments, political parties, electoral commissions and security agencies to make their presentations; the final day was for civil society organizations, women, the media and others to make presentations.

1.5.6.6 The number of presentations made in each city as well as the total number of presentations made throughout the public hearings can be seen in 1.4:
<table>
<thead>
<tr>
<th>Venue/City</th>
<th>Day 1</th>
<th>Day 2</th>
<th>Day 3</th>
<th>Day 4</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maiduguri</td>
<td>13</td>
<td>18</td>
<td>22</td>
<td>-</td>
<td>53</td>
</tr>
<tr>
<td>Lagos</td>
<td>31</td>
<td>18</td>
<td>29</td>
<td>-</td>
<td>78</td>
</tr>
<tr>
<td>Ibadan</td>
<td>15</td>
<td>21</td>
<td>28</td>
<td>-</td>
<td>64</td>
</tr>
<tr>
<td>Yola</td>
<td>13</td>
<td>11</td>
<td>25</td>
<td>-</td>
<td>49</td>
</tr>
<tr>
<td>Jos</td>
<td>21</td>
<td>22</td>
<td>30</td>
<td>-</td>
<td>73</td>
</tr>
<tr>
<td>Benin City</td>
<td>12</td>
<td>16</td>
<td>20</td>
<td>-</td>
<td>48</td>
</tr>
<tr>
<td>Calabar</td>
<td>24</td>
<td>15</td>
<td>44</td>
<td>-</td>
<td>83</td>
</tr>
<tr>
<td>Ilorin</td>
<td>20</td>
<td>14</td>
<td>22</td>
<td>-</td>
<td>56</td>
</tr>
<tr>
<td>Sokoto</td>
<td>15</td>
<td>27</td>
<td>30</td>
<td>-</td>
<td>72</td>
</tr>
<tr>
<td>Enugu</td>
<td>20</td>
<td>24</td>
<td>27</td>
<td>-</td>
<td>71</td>
</tr>
<tr>
<td>Owerri</td>
<td>22</td>
<td>24</td>
<td>35</td>
<td>-</td>
<td>81</td>
</tr>
<tr>
<td>Kano</td>
<td>25</td>
<td>37</td>
<td>37</td>
<td>-</td>
<td>99</td>
</tr>
<tr>
<td>Abuja</td>
<td>15</td>
<td>21</td>
<td>31</td>
<td>13</td>
<td>80</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>246</strong></td>
<td><strong>268</strong></td>
<td><strong>380</strong></td>
<td><strong>13</strong></td>
<td><strong>907</strong></td>
</tr>
</tbody>
</table>

1.5.6.7 The Committee was impressed with the enthusiasm shown by members of the general public in coming forward in large numbers to point out what had gone wrong and to make suggestions to improve the electoral process. Their presentations showed a clear understanding of the issues involved. The Committee was also encouraged by the strong commitment exhibited by Nigerians to the desirability and feasibility of having free and fair elections. Generally, Nigerians have a profound commitment to deepening our democracy and the rule of law.
1.5.7 **Interaction with Stakeholders**

1.5.7.1 Although the Committee had collected a large number of memoranda from the general public and also listened to what the public had to say through public hearings, it still felt the need to interact with key stakeholders whose role in the electoral process was deemed to be critical. In this regard, the Committee held interactive sessions with the following stakeholders:

a) Chief of Defence Staff, General Andrew Azazi, CFR.
b) Inspector-General of Police, Mr. Mike Okiro, CFR, NPM, mni.
c) Chairman INEC, Prof. Maurice Iwu.
d) Director-General State Security Service, Mr. A.A. Gadzama, mni.
e) President Court of Appeal, Hon. Justice Umaru Abdullahi, CON.
f) Chairman, National Population Commission, Chief Samu’ila Danko Makama.
h) Office of the Director-General National Bureau of Statistics, represented by Mr. Foluoso B. Ladejobi and Mr. Chuba Moneke.

1.5.7.2 The Committee also met with Nigerian inventors of electronic voting devices, Engr. (Dr) Jonathan A. Anokela and Engr. B.A. Aghanya. The purpose of the meeting was to examine the relevance and applicability of their devices in future elections. During this meeting representatives of INEC were in attendance to assist the Committee in assessing these electronic voting devices.

1.5.8 **Visits to Former Heads of State and Presidents**

1.5.8.1 As part of its nationwide consultations, the Committee decided to visit all former Heads of State and Presidents to benefit from their
experience in election matters and obtain their inputs into the reform process.

1.5.8.2 Although all the former Heads of State and Presidents were requested to indicate when they could receive the Committee, only three were available to meet with the Committee. President Shehu Shagari, GCFR, not only accepted to meet with the Committee, but graciously undertook to come down to Abuja from Sokoto to make it easier for the Committee to meet with him. President Olusegun Obasanjo, GCFR, and General Ibrahim Babangida, GCFR, warmly received the Committee in their homes in Abeokuta and Minna respectively. Although General Abdulsalami Abubakar, GCFR, and Chief Ernest Shonekan, GCFR, were not available at the time of the proposed visits, they, nevertheless, sent memoranda to the Committee.

1.5.9 Analysis of Election Tribunal Judgments

One of the modes of data collection utilized by the Committee was the analysis of some of the judgments delivered by the various Election Petition Tribunals, in the country. Through such judgments the Committee was able to obtain information on the nature of complaints made by petitioners, nature of malpractices, whether the petitions were proved or not and the reasons for upholding or dismissing such petitions. These judgements were obtained, courtesy of the President of the Court of Appeal.

1.6 CONCLUSION

The combination of these approaches yielded rich inputs which have enhanced the Committee’s understanding of the issues involved in its work and placed it in a vantage position to make the recommendations contained in this Report.
2.1 REVIEW OF NIGERIA’S HISTORY WITH ELECTIONS

The review of Nigeria’s history with elections has revealed the following lessons:

(a) **Degeneration of Electoral Outcomes**

The 85-year-old history of Nigeria’s elections shows a progressive degeneration of outcomes. Thus, the 2007 elections are believed to be the worst since the first elections held in 1922. The compelling need to embark on electoral reforms is thus obvious.

(b) **Role of Politicians and their Perception of Power**

The history also shows that elections conducted by the military tended to be more credible than those conducted by civilian authorities. The primary reason for this has been the effort by politicians to perpetuate their hold on power at all cost. Over the years, the politicians have become more desperate and daring in taking and retaining political power; more reckless and greedy in their use and abuse of power; and more intolerant of opposition, criticism and efforts at replacing them. The electorate, seeing their hopes dashed with each set of elections, have come to believe that politicians lack the will to use state power to transform the lives of ordinary citizens. This loss of confidence in governments by the electorate is a threat to our democratic project.

(c) **Expectations of Nigerians**

Historical evidence shows that Nigerians have always had very high expectations from their intercourse with politics and democracy. However, these expectations have, more often than
not, been dashed as politicians and political office holders seem to have less faith in properly conducted elections as a foundation for democratic governance than the electorate. Arising from the above, the electorate have become more vocal in their demand for positive action that will sanitize the electoral process. Using non-governmental and faith-based platforms as well as corporate and professional associations, a growing network or coalition of forces has emerged aimed at checking some of the excesses of the political class. This trend should be encouraged as the vigilance of the populace is the greatest insurance for good governance.

(d) **Role of Election Management Bodies and Other Agencies**
A review of the history of elections in Nigeria shows that a strong relationship exists between election management bodies (EMBs), security agencies and legal provisions that guide the conduct of elections. These institutional arrangements have over the years become the focal points at which elections are compromised. In the past 50 years, the country’s EMBs have functioned for only 30 years and have been reconstituted five times and had eleven different Chief Executives, giving an average of 2.7 years tenure. The Committee’s review also shows that the EMBs have been overburdened with too many responsibilities which has affected their performance. The historical analysis shows clearly that there is the need to reform aspects of the 1999 Constitution as well as the existing electoral laws, where they are inadequate or insufficient to guarantee the conduct of free, fair, credible and acceptable elections. An important target of such review should be the provisions for the appointment, membership, mandate, and funding of election management bodies as well as the roles of the security and other agencies.
Conflicts over Electoral Outcomes

Historical evidence confirms that most political actors have often contested electoral outcomes. From the first election petitions of the 1950’s to date, the judiciary has always provided a last port of call when out-of-court settlements could not resolve post election challenges. While the courts have discharged this important responsibility creditably, care should be taken not to drag the judiciary into the political arena too often as this can affect its credibility.

Civic, Moral and Political Education

The historical review shows clearly that there is the compelling need for massive investment in the institutionalization of broad based civic, moral and political education of Nigerians, politicians as well as the electorate, to inculcate norms, values and God consciousness. The pre-colonial emphasis on honesty and integrity, as well as balance between power and authority, on the one hand, and service, accountability and responsibility, on the other, should be restored and institutionalized in the political system. It is important that the teaching of civic, moral and political education grounded in Nigerian history should be made compulsory at the primary and secondary school levels. A people, largely ignorant of their past cannot defend their present and future.

Poverty and Corruption

Poverty and corruption have been shown in this analysis to undermine democratic ethos and practice. Poverty breeds corruption and both undermine and threaten the foundations of democratic institutions and frustrate the will of the people.
expressed in elections. Accordingly, the efforts to fight poverty and corruption should be intensified.

(h) **Welfare of Nigerians**
There is urgent need to reform and transform the Nigerian economy so as to improve the welfare and well-being of Nigerians and thus restore their confidence in government. Good governance, economic empowerment of the people and accountability must remain the yardstick for measuring the success of governments. When Nigerians are economically empowered, they will be better able to defend democracy especially when threatened by blundering politicians.

(i) **Inclusiveness**
One of the major problems of our electoral system over the years has been the near exclusion of critical sectors of the population such as women from governance. There is urgent need to evolve an electoral system which ensures that while elections are free, fair and acceptable, all major stakeholders in the electoral process, especially the political parties that perform creditably, women and other interest groups, are not sidelined in the emerging governments.

(j) **Tenure and Incumbency**
Incumbency and self succession have been shown in the analysis to be major factors in the corruption of the electoral processes and the violence that always features in elections. The new electoral system should thus aim at either eliminating both or reducing their impact to the barest minimum. This may require amendments of the 1999 Constitution and the Electoral Act 2006.
Military Interventions
The military, from this analysis, always intervened when the institutions of democratic governance had broken down or the nation was facing possible disintegration. Therefore, the new political system, in its manner of operation, must be such as to make military intervention in governance and politics unnecessary and unattractive. New laws are needed to curb the mounting and increasing impunity with which politicians have breached existing electoral laws. It is significant to note that despite the well-documented acts of electoral malpractices, no Nigerian has ever been convicted and punished for electoral offences since independence.

Civil Society
Our analysis shows that civil society, especially the media and labour unions, have played an important role in the agitation for the expansion of political space for Nigerians and in monitoring the performance of governments. Civil Society Organizations should be empowered legally to enable them effectively discharge their functions as sentinels and watchdogs of democracy.

Multi-Party System
We should review the inherited multi-party political system, especially given the performance of the existing fifty (50) parties which has tended to push the country towards becoming a one-party state. The views expressed by Nigerians during the public hearingss were overwhelmingly in favour of reducing the number of political parties to between two and seven. It is not a mere coincidence that the relatively freest elections in Nigeria were those conducted under the two party system between 1989 and 1993.
2.2 THE ROLE OF INSTITUTIONS, AGENCIES AND STAKEHOLDERS IN SHAPING THE ELECTORAL PROCESS

From the examination of the role of institutions, agencies and stakeholders in the electoral process, the following recommendations are made:

2.2.1 The Role of the National Assembly
a) The National Assembly should undertake a comprehensive review of the provisions of 1999 Constitution, Electoral Act 2006 and other laws to effect changes that are required to ensure free and fair elections as recommended in this Report.
b) The National Assembly should review laws relating to appointment and qualifications of the Chairman and members of the Electoral Commission.
c) The National Assembly should amend the 1999 Constitution to provide for the appropriation of funds for INEC in a manner that will guarantee its independence. In this respect, the funding of INEC should be first-charge on the Consolidated Revenue Fund of the Federation.

2.2.2 The Role of the Executive
a) The 1999 Constitution should be amended to guarantee the independence of INEC.
b) The agencies under the Executive that are involved in elections shall not be used to undermine free and fair elections. Such agencies include the security bodies and the public service.
c) The provisions of the Electoral Act 2006 which prohibit the abuse of the powers of incumbency, including the misuse of official powers and resources should be strengthened and enforced.
2.2.3 **The Role of the Judiciary**

**Determination of Election Petitions**

a) The judiciary should ensure prompt resolution of election-related disputes by increasing the number of election petition tribunals and consolidating petitions.

b) The Electoral Act 2006 should be amended to shift the burden of proof from the petitioners to INEC to show, on the balance of probability, that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate.

c) The procedure for producing evidence before tribunals should be re-examined in order to speed-up the hearing of electoral cases. Specific procedure rules should be made for election petitions.

2.2.4 **Independent National Electoral Commission**

2.2.4.1 **Re-organisation of INEC**

a) INEC should be re-organized and re-positioned to ensure its independence and professionalism in the conduct of elections in the country.

b) The 1999 Constitution should be amended to ensure that INEC becomes truly independent, non-partisan, impartial, professional, transparent, and reliable as an institution and in the performance of its constitutional functions.

c) INEC should consist of:

i) a Board that formulates broad electoral policy and direction for the Commission; and

ii) a professional/technical election management team to handle the actual conduct of elections.
2.2.4.2 **Composition of INEC Board**

The membership of the Board of INEC should consist of the following:

a) a Chairman - who must be a person of unquestionable integrity;

b) a Deputy Chairman – who must be a person of unquestionable integrity. However, the Chairman and Deputy must not be of the same gender;

c) six persons of unquestionable integrity, 2 of whom must be women and 1 of whom must come from each of the six geo-political zones of the Federation;

d) one nominee of Civil Society Organizations working in the area of elections and accredited by the proposed Political Parties Registration and Regulatory Commission;

e) one nominee of Labour Organizations;

f) one nominee of Nigerian Bar Association;

g) one nominee of Women Organizations; and

h) one nominee of the Media.

Once appointed, no organisation shall have the power to recall its nominee.

2.2.4.3 **Qualifications of Members of INEC’s Board**

a) Members of INEC’s Board mentioned in 2.2.4.2 (a – b) above should be persons of integrity who are non-partisan, possess vast professional/administrative/academic experience, and are not less than 50 years of age.

b) Members of INEC’s Board mentioned in 2.2.4.2 (c – h) above should possess all the qualities mentioned in 2.2.4.3(a) above and they should not be less than 40 years of age.

2.2.4.4 **Nomination Process**

a) For 2.2.4.2 (a - c) above, the National Judicial Council (NJC) should:
i. advertise all the positions, spelling out requisite qualifications;

ii. receive applications/nominations from the general public;

iii. shortlist three persons for each position; and

iv. send the nominations to the National Council of State to select one from the shortlist and forward to the Senate for confirmation.

b) For 2.2.4.2 (d - h) above:

i. each of the professional bodies should send 3 nominations to the NJC for screening;

ii. the NJC shall screen the nominations and make appropriate recommendations to the National Council of State which shall further screen and recommend one name for each category to the Senate for confirmation.

2.2.4.5 Tenure of Office

The tenure of office of the members of INEC’s Board should be five years subject to renewal for another five years.

2.2.4.6 Composition of INEC’s Profession/Technical Management Team

a) At the national level INEC’s management team should consist of professional/technical/operational officers as follows

i) A Secretary

ii) Departmental Directors

b) At the State level, the State Independence Electoral Commission (SIECs) should be re-organized and incorporated within the structure of the INEC to form a single election management body for the country. The State level Secretariat of INEC should therefore consist of 37 Directors of Elections, one for each State and the FCT, appointed by INEC, trained and posted to States
other than their States of origin. These Directors should be career officers, and non-partisan persons of integrity.

c) At the Local Government level, full time 774 Local Electoral Officers should be appointed by INEC after public advertisement inviting applications and posted outside their own Local Government Area. At least one-third of these Local Electoral Officers should be women.

d) At the Ward level, full time 8814 career Assistant Electoral Officers should be appointed by INEC after public advertisement inviting applications and posted outside their wards but within the Local Government Area.

2.2.4.7 Other Recommendations

a) Section 153 of the 1999 Constitution which lists INEC as a federal executive body should be amended by deleting Sub-section 1(f) thereof.

b) As consequential to the recommendation under paragraph 2.2.4.7(a) above wherever INEC appears in sections 153 – 158, it should be deleted.

2.2.4.8 Unbundling of INEC

For INEC to function efficiently, some of the functions currently performed by it should be assigned to other agencies as follows:

a). Political Parties Registration and Regulatory Commission should be established and empowered to:

i) register political parties in accordance with the provisions of the 1999 Constitution and the Electoral Act 2006;

ii) monitor the organization and operation of the political parties, including their finances;

iii) arrange for the annual examination and auditing of the funds and accounts of political parties;
iv) monitor political campaigns and provide rules and regulations which shall govern the political parties;

v) accredit domestic civil society groups and organizations working in the area of elections and provide rules and regulations which shall govern their observation of elections;

vi) accredit international election observers and provide rules and regulations which shall govern their conduct and observation of elections;

vii) accredit national and international media organizations observing elections and provide rules and regulations which shall govern their activities; and

viii) all the functions listed in section 46, 78 – 105 of the Electoral Act 2006.

b) The Political Parties Registration and Regulatory Commission shall comprise the following members who should be non-partisan.

i) A Chairman who must be a person of unquestionable integrity.

ii) A Deputy Chairman who must be a person of unquestionable integrity. However, the Chairman and the Deputy must not be of the same gender.

iii) Six persons of unquestionable integrity, 2 of whom must be women and 1 of whom must come from each of the six geopolitical zones.

c) The mode of appointment of the Chairman and members of the Board of the Political Parties Registration and Regulatory Commission shall be as follows:

i. the National Judicial Council shall advertise the positions of the Chairman, Deputy and the 6 National commissioners;

ii. the National Judicial Council shall screen the application received and recommend to the President for appointment subject to confirmation by the Senate;
d) The Tenure of office of members of the Board of Political Parties Registration and Regulatory Commission shall be 5 years renewable only once.

e) The Chairman, Deputy Chairman and Members of the Board shall be removed from office by the President acting on the recommendations of the National Judicial Council that the member be so removed for his/her inability to discharge the functions of his/her office or appointment (whether arising from infirmity of mind or body) or for misconduct or contravention of the Code of Conduct.

f) The Political Parties Registration and Regulatory Commission shall have power to appoint, dismiss, and exercise disciplinary control over its own staff.

g) Sections 221 – 229 of the 1999 Constitution should be amended to replace all references to INEC with the Political Parties Registration and Regulatory Commission.

h) Section 15 of the 3rd Schedule to the 1999 Constitution should be amended to reflect the new roles and functions assigned to the Political Parties Registration and Regulatory Commission.

i) An autonomous and constitutionally recognized Electoral Offences Commission should be established through a bill of the National Assembly and empowered to perform the following functions:

   i) enforcement and administration of the provisions of the Act establishing the Commission;

   ii) investigation of all electoral frauds and related offences;

   iii) coordination, enforcement and prosecution of all electoral offences;

   iv) enforcement of the provision of the Electoral Act 2006, the constitutions of registered political parties and any other Acts or enactments;
v) adoption of measures to identify, trace and prosecute political thuggery, electoral fraud, political terrorism and other electoral offences;

vi) adoption of measures to prevent and eradicate the commission of electoral malpractices;

vii) adoption of measures which include but are not limited to coordination, prevention and regulatory actions;

viii) introduction and maintenance of investigative and control techniques towards the prevention of electoral malpractices and fraudulent election;

ix) the facilitation of rapid exchange of scientific and technical information among other democracies on the conduct of joint operation and training geared towards the eradication of electoral malpractices and fraudulent election;

x) the examination and investigation of all reported cases of electoral offences with the view to identifying electoral officers and staff of the electoral commission, individuals, corporate bodies or groups involved in the commission of electoral offences; and

xi) collaboration with election observing authorities within and outside Nigeria.

j) The composition of the Electoral Offences Commission should be as follows:

i. the Chairman who shall be the Chief Executive Officer and a person of unquestionable character;

ii. a Deputy Chairman who shall be a person of unquestionable character;

iii. six Nigerians of unquestionable character, 1 from each of the six geopolitical zones of the Federation;

iv. the Attorney-General of the Federation or his nominee not below the rank of a Director;
v. the Inspector-General of Police or his nominee not below the rank of Assistant Inspector General;
vi. the Secretary to the Commission who shall be the head of the administration;

k) The Chairman and members of the Commission who shall be non-partisan shall be appointed by the President subject to the confirmation of the Senate.
l) The Commission shall make standing order regulating its proceedings or those of any of its committees.
m) The Chairman and Deputy Chairman shall be non-partisan persons not below 45 years of age, and the members shall be non-partisan persons not below 40 years of age.
n) The Chairman and Deputy Chairman shall hold office for a period of 5 years term and upon satisfactory performance may be re-appointed for another period of 5 years term and no more.
o) Members of the Commission shall hold office for a period of 5 years and upon satisfactory performance may be re-appointed for another period of 5 years and no more.
p) The Chairman, Deputy Chairman and Members of the Commission may at any time be removed from office by the President for inability to discharge the function of his/her office (whether arising from infirmity of mind or body or any cause) or for misconduct or acting on the advise of two-thirds majority of the Senate confirming that he/she be so removed for acts inconsistence with the Constitution or this Act.
r) A Centre for Democratic Studies should be established to undertake broad civic and political education for legislators, political office holders, security agencies, politicians, political parties and the general public.

2.2.4.9  Ensuring Efficient Electoral Administration and Management by INEC

2.2.4.9.1  Voter Registration

(a) There should be adequate logistics for a continuous voter registration exercise. Work on the voters’ register needs to continuously update the current level of registration, ensuring that all persons properly qualified and wanting to be registered have the chance to do so, thus achieving universal suffrage in Nigeria.

(b) After the public verification period, INEC should undertake all necessary corrections and again display the voters’ register at the voter registration centres. Permanent voter registration cards should be issued once the process has been concluded well in advance of election.

2.2.4.9.2  Design and Handling of Ballot Papers/Boxes

(a) INEC should ensure that ballot papers have watertight security features and should institute a transparent tracking system.

(b) Ballot boxes should be placed in polling stations away from officials and party agents but in full view of the Presiding Officer.

(c) The security of ballot boxes needs to be improved including the provision of seals and locks.

(d) Ballot papers should be stored and distributed from locations within a reasonable distance of their appropriate polling stations. The desire to protect the sanctity of the ballot should not preclude ballots from reaching their destinations.
(e) Ballot materials should be under the protection and oversight of security agencies and electoral officials in order to prevent local political leaders from obstructing their distribution.

2.2.4.9.3 Polling Booths/Stations

(a) An accurate list of polling stations, including locations and the number of registered voters, should be made available to political parties and observers before elections.

(b) INEC should ensure that voting booths, where applicable, are distributed in sufficient time to all polling stations and all polling staff are trained to erect them and fully implement all procedures designed to ensure secrecy of the vote.

(c) INEC should identify all satellite polling stations so that voters will be properly directed to where they will cast their vote.

(d) INEC should ensure that each polling station has a manageable number of registered voters, at most 500 to avoid congestion and delays in casting and counting votes on polling days.

2.2.4.9.4 Distribution of Election Materials

(a) Adequate and timely preparation should be made with respect to election materials and the conduct of elections. The fire brigade approach adopted by INEC in 2007 is unacceptable. It is submitted that preparation for the next election should commence immediately.

(b) INEC should identify its needs early enough and make arrangements for their procurement in good time to avoid logistics problems.

(c) Election materials should be transported to the States early enough to ensure that voting commences at the scheduled time.

(d) Adequate voting materials should be provided to the polling stations so that all eligible voters can exercise their civic rights.
(e) INEC should develop and use suitable hand-over documentation for sensitive polling materials (result forms, ballot boxes, ballot papers etc).

2.2.4.9.5 Voting Process and Procedure

(a) The use of electronic voting machines is recommended for future elections but this should be introduced gradually after a period of limited testing and experimentation.

(b) In future elections, accreditation should take place first within a defined time-frame, to be followed by voting within a defined time-frame. Agents of political parties should be given copies of results and have the right to demand a re-count on the spot.

(c) The Electoral Act 2006 should be amended to ensure secrecy of the vote for tendered ballots.

d) INEC and other agencies involved in elections should make necessary information available to the media on time to avoid speculations

2.2.4.9.6 Collation and Declaration of Results

(a) Contingency plans should be made for alternative power supply to collation centres where it may become necessary for collation to be done in the dark.

(b) INEC should swiftly and publicly display detailed results of the elections, including all polling station results as well as collated information on the number of voters, votes cast, invalid votes etc.

(c) All election results should be announced at the polling stations by the Presiding Officer, duly signed by and copies given to:

i. the accredited agents of the political parties that have entered for that election;

ii. the Police;

iii. the SSS.

(d) Transparency in the results process in particular but also in the
general work of INEC should be improved. Results broken down by polling stations should be provided at each superior level. Final published results should be more comprehensive in terms of providing full information on number of voters, votes cast, invalid votes, votes scored etc.

(e) INEC should publish presidential election results down to the lowest level prior to declaring a winner in order to demonstrate that the results are accurate and within expectations. This is very important since without vote analysis, at least at the State level, it is impossible to determine whether all the constitutional requirements for an election have been met.

2.2.4.9.7 Stakeholder Meetings and Consultations
There should be closer interactions between INEC and other stakeholders in a bid to build confidence and minimize suspicion and enhance their complimentary roles.

2.2.4.9.8 Electoral Officers
(a) INEC should ensure that the manual for election officials should be available in each polling station and is followed closely by the officials.
(b) The stipulated number of INEC staff should be present at each polling station.
(c) INEC should use its Electoral Institute to establish a permanent pool of well trained and qualified electoral trainers to undertake continuous training of INEC staff.
(d) For future elections, INEC should ensure that election officials, including ad-hoc staff are recruited and trained in good time, to ensure a more professional handling of the process.
2.2.4.9.9 **Ad-Hoc Staff**

(a) For its *ad-hoc* staff to be accountable, INEC should use National Youth Service Corps members and public servants as ad-hoc staff during elections. The list of ad-hoc staff should be published to enable the public raise objections to those with questionable character or partisan interests.

(b) INEC should design a process of monitoring its ad hoc staff to ensure strict compliance with election guidelines. INEC should also ensure that election materials arrive poling stations on time.

2.2.4.9.10 **Party Agents**

(a) Party Agents should have clear official identification and should receive training regarding their roles and responsibilities.

(b) All agents should be accredited at least 14 days before election and authenticated before the commencement of the election day.

2.2.4.10 **Composition and Functions of State Independent Electoral Commissions (SIECs)**

It is recommended that the existing SIEC should be reorganized and integrated into the structure of INEC for greater efficiency and autonomy. This will entail constitutional amendment and statutory provisions integrating and coordinating the activities of the State offices of INEC and SIECs for all elections.

2.2.5 **Political Parties**

2.2.5.1 **Additional Conditions for Registering Political Parties**

In addition to the existing provisions of the 1999 Constitution and the Electoral Act 2006, any political association wishing to be
registered as a political party must meet the following additional criteria and other regulations that will be made from time to time by INEC or the Political Parties Registration and Regulatory Commission.

i. The association must maintain functional and verifiable offices in at least two-thirds of the States of the Federation.

ii. The association should maintain 20% women in the membership of all its governing bodies.

2.2.5.2 Independent Candidature

Independent candidates should be allowed to contest elections under the following conditions:

i. Constituency based nomination by verifiable signatures of 10 registered voters in each ward in the constituency.

ii. Payment of financial deposit which will be subject to refund if the independent candidate scores at least 10% of the total valid votes cast in that election in the constituency. The rate of deposit should be equal to 10% of the approved election expenses for the various offices as provided in Section 93 of the Electoral Act, 2006.

iii. In addition to items (i) and (ii) above, the candidate must meet all other conditions for eligibility stipulated in the Constitution, the Electoral Act or any other laws.

2.2.5.3 Party Ideologies and Programmes

(a) All political parties should have identifiable ideologies and ideals which shall inform their programmes and the way and manner they intend to operationalise ‘the fundamental objectives and directive principles of state policy’ as contained in Chapter 2 of the 1999 Constitution. In furtherance of the above, parties should
be encouraged to establish think tanks at all levels to generate ideas. It is from such ideas that party manifestos are developed.

(b) Encouragement should be given to policy-based, rather than personality-based politics.

(c) Parties should be issue-based and should distinguish themselves from each other based on substantive issues of concern to voters rather than the personalities of their leaders. Parties are encouraged to seek to improve their understanding of voter concerns, address those concerns, and adopt responsive policies into their party platforms and manifestos.

(d) There should be no dual leadership of political parties and primary election into offices should not only be conducted at all levels, but should also be open, monitored and their rules enforced by the electoral bodies.

(e) All political parties participating in elections should send the names, photographs and specimen signature of their polling agents for appropriate authentication, to any election. Polling agents of the parties should authenticate the result sheets of the election by initialing them prior to the election and counter-sign them after the recording of results of the election.

(f) Only parties contesting elections should have their names, symbols or logos on the ballot paper or electronic voting machine.

2.2.5.4 Public Funding of Political Parties

(a) Political parties, for purposes of transparency and accountability, shall publicly disclose to INEC all sources of funding including donations.

(b) Government should continue to fund political parties either directly or through the INEC. The political parties should be encouraged to raise funds of their own through sale of forms to candidates, fund-raising exercises, individual or corporate donations as well
as undertaking commercial activities. On donation by individuals for purposes of supporting elections, the following ceilings should apply:

(i) President = N20 million  
(ii) Governor = N15 million  
(iii) Senate = N10 million  
(iv) House of Representatives = N5 million  
(v) State Houses = N2.5 million  
(vi) Chairmanship of Local Government = N3 million  
(vii) Councillorship = N500,000.00

(c) The funding of political parties should be based on their performance in general elections. After the 2011 election, only parties that score a minimum of 2.5 per cent of the votes should be eligible to receive grants from public funds.

(d) The Political Parties Registration and Regulatory Commission (PPRRC) should ensure that legal provisions to check political party financing and expenditure are fully enforced and the findings published in an open and transparent manner to ensure accountability.

(e) Financing regulations established by the Electoral Act 2006 should be fully enforced by PPRRC. After the submission of annual financial returns by political parties, PPRRC should produce an audit report on the returns which should be made public. The requirement to submit a financial report on campaign expenditures should be enforced.

2.2.5.5 Jurisdiction of the Courts in Party Matters

(a) Political parties should establish internal machinery for
determining nominations of candidates in party elections.

(b) In case of disputes, political parties should exhaust all party machinery available in resolving such disputes before going to court.

(c) Disqualification of candidates fielded for any election should be done on the basis of the provisions of the 1999 Constitution and the electoral law by the Courts.

2.2.5.6 Enhancing Internal Democracy in the Political Parties

(a) There should be reform of political parties with more insistence on intra-party democracy.

(b) Party conventions, congresses and meetings should be held regularly at all levels and should be free from undue interference. Such party conventions, congresses and meetings should adhere to the scope of their power and authority as entrenched in the party constitution.

(c) Party organs should play active roles in determining who is nominated to contest for positions in the party, appropriate to their levels.

(d) There should be no cross-carpeting under any circumstance.

(e) Given past internal problems concerning nomination of candidates, political parties should develop internal procedures for candidate nomination that are open, transparent, inclusive and democratic and require that those seeking nominations do not use intimidation, violence, bribery or similar unacceptable methods to gain nomination or office.

(f) Reports of Administrative Panels should not be used to disqualify candidates. Section 182(1)(i) of the 1999 Constitution should be amended to allow only Judicial Reports and Tribunals to be so used.

(g) Appropriate legal framework should be provided to support
justiceability of party nomination. There is no need to expend time and resources on a primary election that will be discarded while courts stand helpless. Section 86 of the 1999 Constitution should be amended to allow a candidate who feels aggrieved in a primary election to go to court.

(h) The nomination process needs to be clarified and rationalised, ensuring that the procedures for nomination, complaints and appeals can be properly dealt with according to the timelines for the election, ensuring the timely identification of contestants and printing of ballots. The law should be clarified to properly, fairly and definitively identify the qualifications for candidates and the respective responsibilities with regard to verifying and confirming eligibility. In this regard, INEC should not be seen as the adjudicator in such cases, but rather as the recipient of legal decisions by a qualified court.

(i) Political parties should give more attention to the nomination of women and youths as candidates.

(j) Political parties should ensure that women have equal access to leadership opportunities within party organizations. To this end, political parties are encouraged to examine party structures and procedures to remove barriers that directly or indirectly discriminate against the participation of women in politics.

2.2.5.7 **Party Supremacy**

(a) Only credible and tested party members should emerge as party candidates for elections.

(b) In order to discourage people joining parties solely for the purpose of contesting election, there should be a qualifying period of membership of the party in addition to other criteria.

(c) The party should carry out continuous monitoring of the performance of elected officers in relation to the party’s manifesto.
(d) In order not to undermine the party’s capacity to enforce party supremacy at all levels, no office holder in the party should hold any position in government.

2.2.5.8 Guaranteeing the Survival of Multi-Party Democracy

(a) There should be a forum of all political parties to assess and evaluate on a regular basis the political situation in the country including the prospect of the survival of the multi-party democracy.

(b) All political parties should respect the right of other parties to exist without being subverted or intimidated in any form.

(c) Political parties should accept the outcomes of free and fair elections.

(d) The Code of Conduct for political parties should not be limited to the party leadership but should be used as a civic education tool to help reduce tension and prevent or mitigate violence throughout the country. Concerted effort should be made within each electoral constituency to bring together electoral authorities, political parties, security forces, civil society, religious leaders and traditional leaders to implement the letter and spirit of the code. Women and the youth should be actively involved in this effort.

(e) In order to enhance commitments that political parties have made in the Code of Conduct against violence and intimidation and to promote the active participation of women in the electoral processes, the Code of Conduct should include meaningful sanctions in cases of non compliance.

(f) Parties should refrain from all acts of violence and inflammatory rhetoric and should discipline those candidates, representatives or members who encourage or participate in such activities.
All participants in the electoral process (Political Parties, Candidates, and Security Agencies) should obey all the laws governing elections.

2.2.6 The Role of Security Agencies

2.2.6.1 Nigeria Police Force

a) The roles of each of the various security agencies during elections should be clearly defined.

b) There should also be an effective coordination of the work of the various security agencies during elections.

c) The curricula for the training of the police at all levels (basic/entry, intermediate and command courses) should include modules on democracy, elections, political parties and constitutional/statutory provisions on elections.

d) The independence of the Police Force should be guaranteed by strengthening its autonomy from the control of the government of the day. The security of tenure of top police officers and the prevention of harassment of Police officers on account of professional discharge of their duties should also be guaranteed.

e) The Police Force should be strengthened in the areas of communication, weaponry and transportation for effective mobilization, deployment and enhanced performance.

f) Adequate provisions should be made for the safety, transportation and feeding of all security and law enforcement officials on electoral duties. This will reduce the likelihood of the officials succumbing to temptations from the politicians.

g) The police force should organize training, lectures and workshops for its personnel prior to major elections.

h) Provisions of the Police Act which vest operational control of the Police in the President of the Federal Republic of Nigeria are in
contravention of the 1999 Constitution. The former should therefore be amended.

i) A Code of Conduct should be issued to police officers involved in election duties. Compliance should be monitored by a team set up by the Police Service Commission consisting of police officers, members of civil society organizations (NBA, human rights NGOs, observers, etc.). Violation of the code should be sanctioned.

j) Considering that there are no less than 120,000 polling stations throughout the country, the size of the Nigeria Police Force should be significantly increased from the present total strength of 371,000 to enable the Police maintain presence at each polling station during elections.

k) The law enforcement agencies should be properly oriented to appreciate the need for neutrality during elections. The Police in particular should be adequately funded and equipped to maintain law and order during elections.

l) The Inspector-General of Police, the Chairman of INEC and other appropriate officials should establish comprehensive and effective measures for providing public security during each stage of the electoral process, from candidate selection, to voter registration, election campaigning, election day and the immediate post election day periods. The public should be informed of the existence of adequate security arrangements.

m) The Nigerian Police Force and other security agencies should give adequate protection to electoral officials and materials as well as voters during elections to prevent criminal gangs from hijacking or tampering with the process.

n) Contact telephone numbers of all supervising police officers in each division should be made public by INEC to enable observers and citizens place calls for assistance and/or re-enforcement as the need arises.
o) The police should not carry weapons when they are on duty at polling stations.

p) The role of security agencies especially the Police who must be posted to the Polling Units and Collation Centres should be limited to keeping law and order. Within the Polling Units and Collation Centres, the Police and personal security of politicians or any person, should not be allowed within the radius of 20 metres of Polling Units and Collation Centres. Security agencies must not be seen to tamper with or have anything to do with election results or materials.

2.2.6.2 Armed Forces

a) The armed forces should provide assistance to the electoral body in conveying electoral officials, registration and voting materials, when necessary.

b) The leadership of the armed forces should not make statements that may be seen as intimidation of opposition political parties and the electorate.

c) The armed forces personnel should not be deployed to polling centres or stations.

d) The armed forces should discontinue acts of psychological warfare, including show of force through patrols in convoys of armoured personnel carriers and lorries, days prior to or on the eve or day of election, which may be construed as intimidation of opposition parties.

e) The air force may provide assistance in the form of aerial surveillance to assist the police to detect sites of disorder during elections.

f) The Navy may assist in conveying electoral and voter registration materials and officials in difficult or dangerous areas.
g) The Armed Forces may offer assistance to the electoral body and the police force. However, they should be professional and impartial in doing so.

h) Other than exercising their individual rights to vote, members of the Armed Forces should not be involved in the conduct of elections.

i) As Commander-in-Chief of Nigeria’s Armed Forces, the President should take concrete steps to ensure the neutrality of security forces during the election period.

2.2.6.3 The Role of Other Security Agencies

a) Enact law strengthening proper oversight of security agencies by the National Assembly.

b) Armed orderlies should not go to polling areas in uniform on election days.

c) Civic education should be intensified so that the personnel of security agencies can also imbibe democratic culture.

d) The security personnel to be mobilised for elections must be selected or screened through a rigorous process to determine their suitability in terms of value, knowledge, orientation, discipline, competence and integrity. Selected officers should be adequately trained well in advance.

e) An effective coordination of personnel from the different agencies must be ensured in order to enhance efficiency, accountability and discourage impunity.

f) During elections, dignitaries should be restrained from moving about with armed security details.

g) In the discharge of their duties, security services should:

(i) not interfere in the balloting procedures on election day, but should ensure that voters feel safe and are
unhindered to exercise their rights and civic responsibility through the ballot box;

(ii) take all appropriate measures to curb electoral violence, including ensuring timely deployment of adequately equipped and briefed personnel, and cooperate with other security agencies including the Nigerian Security and Civil Defence Corps; and

(iii) work cooperatively with other stakeholders to provide proactive, and impartial policing and to ensure that existing laws are enforced without fear or favour.

h) During elections, security agencies should not be placed under the direction of INEC.

2.2.7 The Role of the Media

a) Media practitioners should be adequately trained in the provisions of the electoral law so that they can appropriately enlighten the public and be guided by them. The Nigerian Union of Journalists, National Broadcasting Commission, Broadcasting Organisation of Nigeria, and the Independent National Electoral Commission should conduct such training.

b) The National Broadcasting Commission and the Nigerian Press Council should be strengthened so that they can effectively monitor the activities or programmes of the media to ensure that they conform to the provisions of the electoral law. Violations should be promptly sanctioned in accordance with the law.

c) The media should intensify its exposure of violations of the electoral laws.

d) The media should play an advocacy role for dialogue and debate and ask questions of all aspirants on their manifestos and ideologies.
(e) The media should promote politics of ideas and issues, not name-calling or invectives.

(f) The media should act as a buffer against tension created by the political class by presenting the issues as they are, not garnished with embellishment or undue sensationalism.

(g) The media should be able to proactively detect the fault lines in the electoral process before electoral hills develop into electoral mountains.

(h) The media should consistently highlight the things that unite the country, namely national peace, national security, national integration, and ethno-religious tolerance, rather than the things which divide the country.


(j) A print or electronic medium shall give access and equal opportunity to all political parties or candidates of such political parties and independent candidates:
   i. A denial of such access and equal opportunity constitute an offence punishable in the first instance with N1,000,000.00 and on any subsequent violation with a fine of N5,000,000.00;
   ii. Staff of a radio or television station should not be sanctioned in any manner for giving access or equal opportunity to any registered political party of candidate including independent candidate.

(k) The media should be encouraged to continue its vigorous free debate, while tempering passionate reporting with the need to respect the truth and adhere to international standards of journalistic integrity. Media outlets should act in a non-partisan manner and remember their responsibility to provide the most accurate unbiased information to the general public.
(l) The NBC should ensure that publicly funded media allocate equal airtime to political parties and candidates competing in an election in order to ensure equity of coverage for all.

(m) Prior to elections, state media should provide the electorate with an impartial and accurate voter education campaign, aired during peak viewer/listener times, informing voters in detail about the voting process.

(n) The government and other stakeholders should demonstrate genuine commitment to promote press freedom.

2.2.8 The Role of Religious and Traditional Institutions

(a) The role of religious and traditional leaders in public enlightenment, civic education, voter education and mass participation in the political process should be promoted.

(b) Religious leaders should use their considerable moral authority to speak with one voice and strongly encourage political party leaders to eschew violence and obey the provisions of the Constitution and Electoral Law.

(c) Traditional leaders should be encouraged to be non-partisan and neutral in the political process and to continue to educate their people to actively participate in the electoral process in a peaceful manner.

2.2.9 The Role of Civil Society Organisations

a) Electoral legislations should guarantee the participation of civil society at relevant stages of the electoral process, including:

   i. monitoring of campaign financing;

   ii. monitoring unlawful use of public facilities for election campaigns and electioneering;

   iii. monitoring of electoral violence, malpractices, and those behind them and issuing reports on them;
iv. monitoring the enforcement of sanctions against persons who have violated the electoral laws; and
v. Civil society organizations should continue and expand their broad civic and voter education about the importance of the elections, the voter registration process, and where, when and how to register and to vote.

(b) Civil society organizations interested in election observation should strengthen their capacity to coordinate and cooperate in such endeavours in order to maximize their coverage of the entire process.
(c) Civil society organizations should take advantage of their capabilities to help educate and inform voters on the mechanisms and importance of registering to vote and in the significance of the elections to the consolidation of Nigeria’s young democracy.
(d) Civil society organizations should be encouraged to actively engage in exercising their “watchdog function” and work to hold politicians and political institutions accountable during the electoral process.
(e) The right of domestic observers to observe the entire election process should be guaranteed by law.
(f) The Electoral Act 2006 should be amended to establish a clear procedure, including appropriate criteria, for approval or rejection of an application for accreditation.

2.2.10 The Role Of International Organisations
a) Contributions of international organisations and NGOs should be recognized and utilized for the development of the electoral process in the country.

b) Accreditation of international organisations as observers should be encouraged.
c) Financial and material contributions already received from these organisations should be properly accounted for by INEC to ensure transparency and accountability.

d) INEC should be fully independent and should not receive funds from any international bodies.

2.3 THE ELECTORAL SYSTEM

2.3.1 Applying a Combination of First-Past-The-Post and Modified Proportional Representation for Legislative Elections at the Federal, State and Local Government Levels

(a) Nigeria should retain the First-Past-The-Post electoral system but should also inject a dose of Proportional Representation based on closed party lists, thus evolving a mixed system.

(b) The First-Past-The-Post system shall continue to be used for all elections in the country, but for elections to the House of Representatives, State Houses of Assembly and Local Government Councils, the mixed system shall be used.

(c) For elections to the House of Representatives, the existing 360 seats would be retained and filled by the First-Past-The-Post system. In addition, 108 additional seats (i.e. 30% of the existing 360 seats in the House of Representatives) will be created and filled through the Proportional Representation system.

(d) The arrangement in (c) above will be replicated in State Assemblies and Local Government Councils throughout the Federation. This implies that in each of these legislatures, additional seats representing 30% of existing ones shall be created and filled through the Proportional Representation system.

(e) Performance of political parties in an election conducted under the mixed system shall be the basis for allocating the Proportional
Representation seats. The threshold to be met by parties for sharing the Proportional Representation seats shall be the total number of valid votes cast in the entire First-Past-The-Post election divided by the number of available Proportional Representation seats for that election. This threshold will represent the minimum number of votes a party must win to be allocated a Proportional Representation seat.

(f) Political parties shall nominate for the Proportional Representation election at least 30% female candidates and 2% physically challenged candidates for legislative elections.

(g) If a political party wins up to 70% of the seats in an election conducted under the First-Past-The-Post, it should be excluded from benefiting from the Proportional Representation.

(h) The Electoral Act 2006 should be amended to establish criteria for the production of party lists for the allocation of Proportional Representation seats in a manner that will ensure the inclusion of women and disadvantaged groups.

2.3.2 Proportional Representation and the Under-Representation of Women and other Disadvantaged Groups

(a) The Electoral Act 2006 should be amended to ensure that 30% of party lists under the proposed Proportional Representation system are reserved for women and 2% for physically challenged persons, without prejudice to their right to also compete for representation under the First-Past-The-Post system.

(b) Civil society and the United Nations Development Fund for Women (UNIFEM), in close collaboration with the Ministry of Women’s Affairs and the National Commission of Human Rights, should continue their efforts to enhance the participation of women in public life. In particular, a permanent, sustained and effective nationwide grassroots campaign targeting the
participation of women as voters and as candidates should be undertaken.

(c) In making appointments of Ministers and Commissioners, special consideration should be given to women.

2.3.3 System of Voting

There are practices associated with the current voting system that are worthy of retention. The following are recommended for retention:

(a) Open Secret Ballot System: This allows a voter to go into a polling booth to mark his ballot in secrecy and drop it in the ballot box in the open.

(b) Provision of fixed polling booths: The use of institutional buildings such as schools, community centres etc which are centrally located, where available, or permanent polling locations should be encouraged.

(c) Accreditation of registered voters prior to the commencement of voting for the purpose of tracking how many people cast their ballot in a polling station.

(d) Display of voter’s register prior to the elections to enable registered voters, political parties, and the electorate generally make claims and objections.

2.3.4 Voter Education

The current system provides for voter education to be undertaken by the Election Management Bodies, civil society and relevant government agencies. This is a positive element that is worthy of retention. There is the need for a sustained campaign of civic and political education to enable the electorate understand the electoral system as well as their rights and obligations in the entire electoral process.
2.4 ENSURING THAT THE ELECTORAL PROCESS MEETS INTERNATIONAL STANDARDS

a) Nigeria should ratify the African Charter on Democracy, Elections and Governance.

b) The 2002 OAU/AU Declaration on Principles Governing Democratic Elections in Africa should be made part of the Code of Conduct for Political Parties.

c) The Nigerian Government and the Election Management Body should create a conducive environment for independent and impartial national observation of elections.

2.5 ENSURING THE CONCLUSION OF ELECTION DISPUTES BEFORE SWEARING IN OF NEWLY ELECTED OFFICIALS

(a) There is need to produce rules and procedures that enhance speedy disposal of election petitions.

(b) The law should shift the burden of proof from the petitioners to INEC to show that disputed elections were indeed free and fair and complied with the provisions of the Electoral Act.

(c) Rules of evidence should be formulated to achieve substantive justice rather than mere observance of technicalities.

(d) Elections to the office of President and Governors should be held at least six months before the expiration of their terms. A maximum of four months should be devoted to hearing petitions by the tribunals and another two months for hearing appeals by the Court of Appeal or Supreme Court. No executive should be sworn in before the conclusion of the cases against him/her. In the case of legislators, no one should be sworn in before the determination of the case against him/her.

(e) INEC should have no right of appeal.
2.6 DEALING WITH POST-ELECTION TENSION

2.6.1 Adjudication of Election Disputes and Reduction of Post-Election Conflict

(a) The adjudication of presidential and gubernatorial election disputes should be concluded expeditiously, before swearing-in of winners of the elections. This will require the amendment of Section 132(2) and Section 178(2) of the 1999 Constitution and section 149 of the Electoral Act 2006.

(b) All offences committed within the electoral context should be prosecuted expeditiously. The prevailing atmosphere of impunity with regard to election offences should be ended by prosecuting and holding accountable those responsible for electoral offences, including those of a criminal nature. This would reduce the impunity which has marred Nigeria’s electoral process to date, and which threatens to undermine citizens’ confidence in the country’s political institutions.

(c) The Rules of Procedure in the First Schedule to the 1999 Constitution and the Practice Directions 2007 are inadequate for quick and effective disposal of election petitions. A new exhaustive body of Rules is required to address shortcomings.

(d) The legal burden of proof to show that election was not mismanaged should always be on INEC. The petitioner only needs to introduce evidence of mismanagement to shift the burden.

(e) Corrupt practices per se, once shown to be widespread, should invalidate elections.

(f) Aggrieved parties in electoral matters should be encouraged to continue to respect the rule of law and exercise their constitutional rights peacefully and where necessary, seek redress through constitutional means.
(g) Infringement of laws and regulations concerning the funding of political parties and electoral campaigns should be subject to effective sanctions. Greater effort should be made by INEC and the relevant prosecuting authorities to initiate criminal proceedings for serious violations.

(h) A special prosecutorial body to be known as Electoral Offences Commission should be established to work independently in the arraignment and prosecution of electoral offenders. This will include offences arising from failings of INEC before, during and after voting day.

(i) The Electoral Offences Commission should cooperate closely with security agencies to prosecute persons accused of committing such offences.

(j) A candidate shall be deemed to have committed a corrupt practice if it was committed with his knowledge and consent.

(k) When the Court of Appeal sits to hear appeals on election petitions, at least five judges should sit.

2.6.2 Diluting the Zero-Sum Approach to Electoral Politics

(a) Political parties that secure at least 2.5% of national assembly seats during general elections should be considered for cabinet level appointments. This strategy will help to reverse the zero-sum approach to competitive electoral politics among the political class, which the FPTP system has historically encouraged in the country, and attenuate the consequential post-election tension it tends to create.

(b) To the same end of diluting the zero-sum approach to competitive electoral politics and therefore of attenuating post-election tension in the country, a modified form of proportional representation to
make the country’s electoral process more competitive by being more reflective of the relationship between proportion of electoral votes won by a political party and its legislative representation should be adopted.

2.6.3 Long-term Measures to Reduce Post-election Tension

(a) In the long run, the best approach to reduce pre- and post-election tension is to pursue more aggressively, confidence-building measures in the electoral system. Once people believe that elections are by and large free and fair; and therefore credible, they will more readily accept their outcomes.

(b) In addition, the following recommendations, which focus more on preventive measures to reduce pre- and post-election tension are made.

i. Sustained civic education and public enlightenment on the responsibilities and duties of the electorate in ensuring credible elections.

ii. Encouraging a culture which views elections, not as war, but as part of a wider and continuous process of ensuring accountability in public life.

iii. A process of piloting or sequencing change in the conduct of elections, such that trial elections can be held to test out the feasibility of proposed changes. It is for this reason that elections at the local government level can serve as crucible for nurturing the conditions for credible elections in the country.

(c) Improving popular perception of election as free and fair by:

i. ensuring that voting takes place with minimal hitches, in other words ensuring an efficient and competent administration of elections, by making it easy for the electorate not only to know well-ahead their polling centers but also how to vote;
ii. reduction or elimination of wasted votes by adopting the Proportional Representation system;

iii. releasing results in a timely fashion and making them accessible to the public.

2.7 POLITICAL AND CIVIC EDUCATION

2.7.1 Changing the Election Mindset of Nigerians

(a) There is need for all stakeholders to see elections as only a part of a process and not a terminal point in the development of politics. Citizens need to be assured that Term Limits will always be respected as a means of building confidence. Certainty and predictability have to be introduced into the system, that is, the belief that if we lose, we can try again. In this way, both the winners and the losers can become learners in the game of imbibing political culture. This will make politics a game to be enjoyed, not a war to be fought.

(b) Money bags and godfathers thrive where the State and its influence are absent. Government should therefore take seriously a broad policy of service delivery to prevent desperate politicians from exploiting the prospects of these services to intimidate and blackmail our people into submission.

(c) There is the need for serious sanctions and punishment for electoral malfeasance. Political parties that show a proclivity to violence or intolerance in ideology, policy or the kind of candidates they field should be sanctioned.

(d) There is the need to ensure that the laws guiding the electoral body and political parties are in conformity with the fundamental laws of the land, capable of promoting justice and fairness for all. When laws are weak and electoral bodies have too much power, there will be the temptation for the competitors to take the law into their hands by falling back on their thugs.
(e) As a long term measure, there is the need for political socialization of the youth in school and the political education of adults to understand the negative consequences of electoral fraud and violence.

(f) There is the need to change the attitudes of the political class, to abide by the rules of the game, perceive politics as a game and not a battle, and to appreciate the dangers of the “winner takes all” approach.

(g) The political parties must be strengthened and their officials regularly trained.

(h) The police force should be strengthened to check the activities of hoodlums and thugs, and prosecute of all politicians with militias or armed gangs.

(i) There should be massive disarmament of all political touts, and curbing illegal possession of firearms and other instruments of violence. We should reverse the democratization of violence, and allow only the State to wield legitimate violence.

(j) Reform of the electoral process requires an enlightened and socially conscious electorate that is empowered morally and materially to make informed choices and resist manipulation of the process. In this regard, a Centre for Democratic Studies should be established to facilitate inter-agency cooperation and engage with civil society in the conduct of civic and political education.

(k) The Centre for Democratic Studies, INEC and other stakeholders should engage in sustained public education campaigns in the period leading up to the 2011 elections, including mass media campaigns on registration and voting processes and procedures. These campaigns should be supplemented with individualized information efforts to allow Nigerians to know the location of their registration and voting
2.8 CURBING VIOLENCE IN ELECTIONS

(a) There is the need to deal with incidences as well as the root causes of violence related to elections. Quite often, attention is focused on incidences without a longer term view of how to address the root causes of the problem. For example, only sustainable, systemic reform measures can provide employment and curtail the profound phenomenon of youth unemployment, which feeds into, and fans violence related to elections.

(b) There is the need to effectively regulate behaviour and actions of contestants, voters, officials, etc in the entire electoral process and to carefully frame rules and regulations covering all aspects of the electoral process. No stone should be left unturned in this regard.

(c) There is the need to effectively police the election process and enforce rules and regulations by assigning well trained, impartial and honest law enforcement and security agents and agencies to help police and secure the electoral process. In particular, the Nigeria Police Force should wake up to its responsibility in law enforcement, in prevention as well as detection of crimes.

(d) There is the need to ensure proper and adequate training of all personnel involved in election matters, both permanent and ad hoc staff. We have cogent lessons to learn from places such as India, which have very small number of permanent elections staff and deploy enormous numbers of ad hoc staff in short periods of electoral duties, yet with requisite professionalism, decency, honesty and neutrality in the management of elections.

(e) There is the need to involve credible stakeholders, especially Non-Governmental Organisations (NGOs) and Community Based Organisations (CBOs) in the electoral process, particularly in voter...
education and general public enlightenment. This is essential given the serious need for a positive change of attitude from fatalistic resignation to democratic assertiveness.

(f) Involving other credible partners, especially the Media, to preach peace and due process, and to be effective whistle-blowers against those who facilitate or engage in violence and fraud is imperative.

(g) Political parties must be positively engaged in the political process so as to promote dialogue, tolerance and peaceful inter-party relations.

(h) There is the need to positively engage the traditional institutions in the electoral process, especially to promote peace and harmony in local communities.

(i) There is the need to generally dignify but demystify public office and make contestants and the general public realize that winning an elective office is a call to public service, and not a ticket for self-aggrandizement.

(j) Politicians found using thuggery or any form of election violence should be severely sanctioned. Political parties should draw up a code of conduct to be subscribed to by candidates standing on their platforms.

2.9 PERSONS WITH DISABILITIES

The National Assembly should enact laws appropriate for the protection of persons with disabilities to enable them exercise their rights to register and to vote.

2.10 PROVISIONS OF THE 1999 CONSTITUTION WHICH IMPACT ON THE QUALITY AND CREDIBILITY OF ELECTIONS

2.10.1 Domestication of International Standards Applicable to Elections
There should be enactments to ensure full adherence to the principles of political rights and freedoms related to elections contained in declarations, conventions, protocols and other instruments adopted by the UN, AU, ECOWAS and the Commonwealth.

2.10.2 Provisions with Respect to Qualification for Elections

Independent Candidacy

Sections 65 (2)(b) and 106 of the 1999 Constitution should be amended to make provisions for an individual to run as an independent candidate.

2.10.3 Provisions with respect to the independence of INEC

(a) Section 153 of the 1999 Constitution should be amended to remove INEC from the list of Federal Executive Bodies.

(b) The composition of INEC’s board should be as follows.

   i. Chairman, who must be a person of unquestionable integrity.

   ii. Deputy Chairman, who must be a person of unquestionable integrity. However, the Chairman and Deputy must not be of the same gender.

   iii. Six persons of unquestionable integrity, two of whom must be women and one of whom must come from each of the six geo-political zones.

   iv. One nominee of Civil Society Organizations working in the area of elections and accredited by the proposed Political Parties Registration and Regulatory Commission.

   v. One nominee of Labour Organizations.

   vi. One nominee of Nigerian Bar Association.

   vii. One nominee of Women Organizations.

   viii. One nominee of the Media.

Once appointed, no organization should have the power to recall its nominee.
(c) The appointment procedure for the Chairman and members of the Board should be as follows:

For 2.10.3 b (i - iii) above, the National Judicial Council (NJC) should:

i. Advertise the positions, spelling out requisite qualifications.
ii. Receive applications/nominations from the general public.
iii. Shortlist three persons for each position.
iv. Send the nominations to the National Council of State to select one and forward to the Senate for confirmation.

(d) For 2.10.3 b (iv – viii) above:

i. Each of the bodies should send three nominations to the National Judicial Council for screening.

ii. The NJC shall screen the nominations and forward them to the National Council of State which shall further screen and send one name for each position to the Senate for confirmation.

2.10.4 Security of Tenure of INEC Chairman and Members (Section 155 & 157)

a) The Chairman and members of the Board of INEC may only be removed by the Senate on the recommendation of the National Judicial Commission (NJC) by two-thirds majority of the Senate which shall include at least 10 members of the minority parties in the Senate.

b) Section 155 of the 1999 Constitution should be amended to provide that the tenure of office of the Chairman and members of the Board of INEC shall be five years from the date of appointment, renewable only once.

c) The process of renewal of the appointment of members of the Board of INEC shall be by the Senate on the recommendation of the NJC.
2.10.5 **Funding of INEC**

Section 84 of the 1999 Constitution should be amended by adding subsection (8) to read as follows:

“The election expenditure and the recurrent expenditure of the Independent National Electoral Commissioners offices (in addition to salaries and allowances of the Chairman and members mentioned in subsection 4 of this section) shall be first charge on the Consolidated Revenue Fund of the Federation.”

2.10.6 **Provisions with Respect to Delimitation of Constituencies**

A Constituency Delimitation Commission with institutional representation from INEC, National Population Commission, National Boundary Commission, Office of the Surveyor-General of the Federation, National Bureau of Statistics and National Identity Management Commission should be established to handle the task of constituency delimitation and the complaints that arise from it.

2.10.7 **Provision with Respect to INECs Power to Register Political Parties**

(a) Amend Section 222 of the 1999 Constitution to add two more conditions to be met by Associations seeking registration as political parties, namely:

i) The associations must maintain functional and verifiable offices in at least two-thirds of the States of the Federation.

ii) The associations must maintain 20 percent women in the membership of all their Governing Bodies.

(b) Establish a Political Parties Registration and Regulatory Commission which shall be empowered to perform the following functions:
i. Register political parties in accordance with the provisions of the 1999 Constitution and the Electoral Act 2006;
ii. Monitor the organization and operation of the political parties, including their finances;
iii. Arrange for the annual examination and auditing of the funds and accounts of political parties;
iv. Monitor political campaigns and provide rules and regulations which shall govern the activities of political parties;
v. Accredit domestic civil society groups and organizations working in the area of elections and provide rules and regulations which shall govern their observation of elections;
vi. Accredit international election observers and provide rules and regulations which shall govern their observation of elections;
vii. Accredit national and international media organizations observing elections and provide rules and regulations which shall govern their activities.

2.10.8 **Provisions with Respect to the Finances of Political Parties**

Amend Section 225 (b) of the 1999 Constitution so that political parties are not allowed to receive funds from any source abroad.

2.10.9 **Provisions with Respect to Dates of Presidential and Gubernatorial Elections (Section 132-134, 178-179) and National and State Assembly Elections (Section 76, 116)**

Sections 132 (2) and 178 (2) of the 1999 Constitution should be amended to appoint a single date for Presidential and Gubernatorial elections which should be held at least six months before the expiration of the term of the current holders of the offices. Similarly section 64(1) and 105(1) of the 1999 Constitution should also be amended to appoint a single date for National and State Assembly elections which should hold two years after the Presidential and Gubernatorial elections.
2.10.10  **Provisions with Respect to Election Tribunals and Determination of Election Petitions (Section 285 and the 1999 Constitution)**

a) The number of tribunals should be increased by reducing the number of judges that sit on a tribunal from five to three, so that more tribunals can be established per State.

b) In order to minimize the filing of frivolous petitions, the Electoral Act 2006 should be amended to provide that if a petitioner loses a case, he should be ordered by the court or tribunal to bear the full expenses of the respondent.

2.10.11  **Provisions with Respect to Prosecution of Electoral Offences**

a) Amend Section 174 (c) of the 1999 Constitution such that the constitutional power of *nolle prosequi* vested in the Attorney-General of the Federation or of a State does not apply to electoral offences.

b) Amend the Electoral Act 2006 to establish an Electoral Offences Commission to perform the following functions:

i. enforcement and administration of the provisions of the Electoral Act;

ii. investigation of all electoral frauds and related offences.

iii. Coordination, enforcement and prosecution of all electoral offences;

iv. enforcement of the provisions of the Electoral Act, the constitution of registered political parties and any other Acts or enactments;

v. adoption of measures to identify, trace and prosecute political thuggery, electoral fraud, political terrorism and other electoral offences;
vi. adoption of measures to prevent and eradicate the commission of electoral malpractices;

vii. adoption of measures which include but are not limited to coordination, prevention and regulatory actions;

viii. introduction and maintenance of investigative and control techniques towards the prevention of electoral malpractices and fraudulent election;

ix. the facilitation of exchange of scientific and technical information with other democracies on the conduct of joint operations and training geared towards the eradication of electoral malpractices and fraudulent election;

x. the examination and investigation of all reported cases of electoral offences with the view to identifying electoral officers and staff of the electoral commission, individuals, corporate bodies or groups involved in the commission of electoral offences; and

xi. collaboration with election observers within and outside Nigeria.

2.11 PROVISIONS IN THE ELECTORAL ACT, 2006 WHICH IMPACT ON THE QUALITY AND CREDIBILITY OF ELECTIONS

2.11.1 Funding INEC

The funding of INEC should be first charge on the Consolidated Revenue Fund of the Federation.

2.11.2 Appointment of Chairman and Members of the Board of INEC

The appointment of the Chairman, Deputy Chairman and members of the Board of INEC shall be channeled through the National Judicial Council which should be empowered to:
i. advertise the positions, spelling out requisite qualifications;
ii. receive applications/nominations from the general public/specified civil society groups;
iii. shortlist three persons for each position;
iv. send the nominations to the National Council of State to select one for each category and forward to the Senate for confirmation.

2.11.3 National Register of Voters and Voters’ Registration
(a) Voter registration should be fully computerized and based on biometric data to detect and eliminate multiple registration. The process should be ongoing to ensure that Nigerians upon attaining the age of 18 can register in their constituencies. INEC should take advantage of the data and mandate of the National Population Commission and National Identity Management Commission so that routine cross-referencing can be made on a sustained basis.
(b) There should be a comprehensive public verification of the voters’ register through a simplified process which should be done in good time prior to elections to provide eligible voters with the opportunity to transfer their registration, scrutinize the voter register for false entries and register for the first time.
(c) Political parties should be provided with copies of the voters register in a timely manner and, in order to ensure accountability and transparency, a full breakdown of figures should be published.

2.11.4 The Offence of Buying and Selling Voter’s Card
The penalty for anyone convicted of certain offences relating to a voter’s card as set out in Section 24 of the Electoral Act 2006 should be extended to include legal disability to participate in elections conducted under the Act for a period of ten years.
2.11.5 Date for Elections

(a) Amend Section 26 of the Electoral Act 2006 to take away from INEC the power to fix dates for elections. Also amend the Constitution to fix dates for elections which should hold at least six months before the date of swearing in to provide adequate time for concluding all election petitions before swearing in of elected candidates.

(b) The Presidential and Gubernatorial elections should take place in the first week of November of the election year; Friday, Saturday and Sunday excluded in deference to the religious sensibilities of Moslems, Seventh-Day Adventists and Christians respectively. The elected chief executives should be sworn-in in May the following year, an interval of six months to allow for the disposal of election petitions arising from the elections.

(c) National and State Assembly elections should take place in the second week of November and should be held two years after Presidential and Gubernatorial elections i.e. in 2013, assuming that the next Presidential Election is held in 2011.

(d) Transitional provisions should be made in the Constitution for the next set of National and State Legislators due to be elected in 2011 to serve a term of two years.

(e) Local Government Elections should hold within the third week of November, 2010.

2.11.6 Establishment of Polling Stations

(a) Section 43 of the Electoral Act 2006 should be amended to provide detailed specifications including number of voters per polling station, layout of a standard polling station and adaptation of polling stations to accommodate the needs of disabled voters.

(b) Polling stations should be located at institutional buildings such as schools, community centres etc, which are centrally located.
Where these are not available, INEC should set-up temporary polling stations at permanent locations.
(c) Each polling station should consist of not more than 500 voters.

2.11.7 Voting Procedure: Open Secret Ballot
(a) The use of the Open Secret Ballot system should be continued.
(b) Amend Section 53 (2) of the Electoral Act 2006 to lift prohibition on the use of Electronic Voting Machines.

2.11.8 Political Parties
(a) The 1999 Constitution and the Electoral Act 2006 should be amended to remove from INEC the power to register and monitor political parties. This power should be vested in a new body to be known as Political Parties Registration and Regulatory Commission.
(b) In addition to the conditions stipulated in the 1999 Constitution, the Electoral Act 2006 and any other laws, any association seeking registration as a political party should meet the following conditions:
   i. the association must maintain functional and verifiable offices in at least two-thirds of the States of the Federation;
   ii. the association should maintain 20% women in the membership of all its Governing Bodies.

2.11.9 Campaign for Elections
(a) Regulations should be developed by the legislature to provide proportional access to radio and television for political parties and candidates competing in elections, not only stipulating fair and equitable coverage but also providing a framework where these provisions are guaranteed. In cases where candidates and
political parties purchase airtime for their advertisements and coverage of their rallies, these programmes should be clearly signposted as such.

(b) The sanctions provided under Sections 101 – 105 of the Electoral Act 2006 should be enforced by the Political Parties Registration and Regulatory Commission.

2.11.10 **Independent Candidature**

The 1999 Constitution should be amended to allow independent candidates to contest elections under the following conditions:

a) constituency based nomination by verifiable signatures of 10 registered voters from each ward in the electoral constituency;

b) payment of financial deposit which will be subject to refund if the independent candidate scores at least 10% of the total valid votes cast in that election in the constituency. The rate of deposit should be equal to 10% of the approved election expenses for the various offices as provided in Section 93 of the Electoral Act 2006;

c) in addition to items (i) and (ii) above, the candidate must meet all other conditions for eligibility stipulated in the Constitution, the Electoral Act or any other laws.

2.11.11 **Procedure for Local Government Council Elections**

The Electoral Act 2006 in Section 120 – 123 has dealt with the procedure for Area and Local Government Council elections. The Committee observes that States have their individual laws for Local Government Council elections. In view of the doctrine of covering the field, the provisions of the Electoral Act should apply to all Local Government and Area Council elections.
2.11.12 **Electoral Offences**
All offences relating to registration of voters by a candidate should, upon conviction, in addition to other penalties in the Act, carry a period of ten years disqualification from contesting any election.

2.11.13 **Bribery and Conspiracy**
The disqualification period for any candidate, upon conviction, for corrupt practices under section 131 of the Electoral Act 2006 should be increased to ten years.

2.11.14 **Determination of Election Petitions**
The 1999 Constitution should be amended to specify the period for considering petitions as follows: The determination of cases by tribunals should take four months and appeals should take a further two months, a total of six months.

2.11.15 **Persons Entitled to Defend Election Petitions**
Amend Section 144 (2) of the Electoral Act 2006 so that only the electoral commission is joined as respondent in an election petition. The joinder of electoral officials and ad hoc staff that took part in the conduct of elections should be dispensed with once the electoral body is made a party in the election petition.

2.11.16 **Time Limit for Disposing of Election Petitions**
A time limit should be set for disposing of election petitions and appeals from the decision of the Tribunal by amending the 1999 Constitution to provide that
(a) An Election Tribunal should deliver its judgment in writing within one hundred and twenty days from the date of the election.
(b) An appeal from a decision of an Election Tribunal should be heard and disposed of within sixty days after the judgment of the election tribunal.

(c) The Court in all appeals, should adopt the practice of first giving its verdict and reserving the reasons for the verdict to a later date.

2.11.17 The Issue of Elected Persons Remaining in Office Pending Determination of Appeal

(a) Repeal Section 149 of the Electoral Act 2006.

(b) No elected person should assume office until the case against him/her in the Tribunal or Court is disposed of.

2.12 PROVISIONS OF OTHER LAWS WHICH IMPACT ON THE QUALITY AND CREDIBILITY OF ELECTIONS

2.12.1 Election Petition Tribunals and Court Practice Directions 2007

The President of the Court of Appeal should take necessary measures to protect witnesses in election petitions by concealing their identity to ensure their safety.

2.12.2 The Police Act and Guidelines for the Conduct of Police Officers on Electoral Duty

a) The functions of police officers on election duties listed in paragraph 4.4.3.3 (a) – (f) of this report should be incorporated into the Police Act.

b) The Inspector-General of Police should be appointed by the President on the recommendation of the Police Service Commission to the National Police Council, which in turn, shall forward its nomination to the Senate for confirmation. His/her
removal from office should also be by two-thirds vote of the Senate after an investigation establishing his/her misconduct.

c) The Nigeria Police Force should include in its training curriculum a course on the role of the police during elections. The guidelines for the conduct of police officers on election duties as published by the Police Service Commission should provide a framework for this curriculum.

d) Section 9 (4) of the Police Act which provides that the President shall be charged with the operational control of the Nigeria Police Force is in conflict with Section 215 (2) of the 1999 Constitution and should be accordingly amended.

2.13 THEMATIC AMENDMENTS TO THE CONSTITUTION

There is the need for a thematic Constitutional review relating to all provisions that have direct bearing on the electoral process without waiting for wholesale review of the 1999 Constitution.

2.14 IMPLEMENTATION OF THE REPORT

The Committee is convinced that the recommendations contained in this Report are necessary and sufficient to improve the quality of our elections. To this extent, the Committee recommends that there should be urgency on the part of the President, the National Assembly, Governors, State Assemblies and others in effecting the constitutional, statutory, administrative and institutional changes required to achieve the desired effect.
CHAPTER THREE
REVIEW OF NIGERIA’S HISTORY WITH GENERAL ELECTIONS

Term of Reference:

Undertake a review of Nigeria’s history with general elections and identify factors which affect the quality and credibility of the elections and their impact on the democratic process.

3.1 INTRODUCTION

The intrinsic relationship between the successful conduct of free, fair, credible and acceptable elections and the institutionalization and consolidation of democracy in nations is widely acknowledged. This arises from the notion that in a democracy, “the role of the people is to produce a government” and elections are “the institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of competitive struggle for the people's votes”. Elections are thus perceived often as a procedure for regulatory competition for political power through competition for votes. Within this conception, elections are fundamental building blocks of democracy. Failure to conduct credible and acceptable elections in a polity often generates outcomes that stunt the growth of democracy, on the one hand, and the development of the nation, on the other.

3.1.1 Democratizing a Polity

Democratizing a polity involves more than the successful conduct of elections which, in some instances, can lead to the emergence of dictatorships. It involves, among others:

a) implanting and institutionalizing, on an enduring basis, the love for freedom and equality;

b) encouraging dissent and respect for different and often competing opinions within the polity;
c) empowering individuals to free themselves from the constraints of poverty and their many other associated manifestations;
d) respect for the rule of law and the equality of all before the law;
e) cultivating and inculcating in the citizenry a sense of honest, faithful, selfless and dedicated service; and
f) a deliberate move towards the creation of a society bound together by shared sentiments and outlook.

3.1.2 Put differently, the significance of elections must always be situated within the context of their contributions to the overall political, economic, and social development of the polity. Our survey of the history of past elections in Nigeria is thus intended to identify and highlight the political, social and economic environments which conditioned such elections. This will enable us suggest important lessons that guide the design of a road map for future elections capable of guaranteeing the consolidation and maturation of the Nigerian democratic project.

3.2 EVOLUTION OF THE NIGERIAN STATE

3.2.1 How Nigeria evolved from about 1849 until the attainment of independence in 1960 is largely the story of the transformational impact of the British on the peoples and cultures of the Niger-Benue area in their quest to define, protect, and realize their imperial interests. In 1849, as part of the efforts to sanitize the Bights of Benin and Biafra which were notorious for the slave trade, Britain created a Consulate for the two Bights. This led to deeper involvement resulting in the conversion of the coastal consulates into the Oil Rivers Protectorate in 1885, which transformed into the Niger Coast Protectorate in 1893. This was what later became Eastern Nigeria. Similar developments took place in the western axis following the British annexation of the Lagos lagoon area and its environs and their conversion into a Crown Colony largely to protect British trade in 1861. By 1897, when British influence and power had overflowed the frontiers of Lagos to affect the whole of Yorubaland,
all the areas were constituted into a Protectorate. This would later become Western Nigeria. To the north, in 1888, the British took over the National Africa Company of George Taubman Goldie which had dominated the trade of the area and converted it into the Royal Niger Company, chartered and limited. From here, British power and influence flowed to the vast area which later became known as Northern Nigeria. These three blocks of territories were brought together administratively by Fredrick Lord Lugard in 1914.

3.2.2 Pre-Colonial Nigeria

3.2.2.1 Before their constitution into a single political entity by the British, the Niger-Benue valley region contained a number of autonomous nationalities each identified by a distinct culture and political system. The bulk of the groups, both in the savannah and forest regions who were predominantly sedentary farmers, lived in small scale societies, varying from a few hundred people to large compact villages where the kinship idiom dominated political and social life. In such societies, emphasis was placed on leadership, performance and achievement. In such a situation, the elective principle was weak or non-existent.

3.2.2.2 In the Northern and Western areas, however, there were a number of large – scale political structures, some extensive enough to be designated empires. Smaller city states also existed in the Niger-Delta area. In these states and empires, emphasis was on authority as occupants of the highest political offices came to be regarded more or less as “divine kings” There existed appropriate institutions of succession with governing rules and regulations that evolved to confine rulership to particular families and lineages. The elective principle was thus weak, especially where primogeniture was the preferred mode of succession.

3.2.2.3 Despite variations in scale and complexity of the political systems, governance in pre-colonial Nigeria shared certain important
characteristics which could be usefully husbanded to establish
democracy on an enduring basis. These include:

a) an ethos of governance which insisted on a balance between
power and authority, on the one hand, and service and
accountability, on the other;

b) rulers being judged and continuing in power on the basis of the
extent to which they served “the public good”. Thus, even “divine
kings” judged to have compromised the welfare of the people
were removed, exiled, or worse, killed;

c) however powerful or weak the rulers were, there was emphasis on
real consensus building to arrive at decisions;

d) there was a common acceptance, by the ruler and the ruled, that
“the promotion of the welfare and wellbeing of the populace was
the most fundamental raison d’être for government. This gave
governance a moral anchor;

e) even in states where rulership was hereditary, those in authority
were judged by such characteristics as honesty, integrity and
uprightness. Where they fulfilled these conditions, they emerged
as “strongmen”, to whom the entire population looked up and paid
obeisance;

f) religion, however defined and designated, played a prominent role
in the governance of all pre-colonial Nigeria peoples. Indeed, the
kings, chiefs and other important personages who wielded
political authority and power, were, more often than not, also the
heads of their religious institutions. This also gave governance a
moral anchor.

Generally, the above values and ethos of governance were gradually
distorted, discarded or subverted during the period of colonial rule and
after.
3.2.3 COLONIAL POLITICAL, ECONOMIC AND SOCIAL FRAMEWORK FOR ELECTIONS

3.2.3.1 Elections, like any other human activity, take place within a particular setting and have expected outcomes. Undoubtedly, the political, economic and social environments as well as the expectations of the electorate are important considerations in assessing the success or failure of elections.

3.2.3.2 The Political/ Economic Environments

3.2.3.2.1 British colonialism which began in the 1860’s was motivated by and directed towards exploiting our enormous agricultural, mineral, commercial, and labour resources for British gain. British firms dominated the import and export trade, the basis of wealth creation at the time. Only small and medium scale, low technology industries were established under import substitution schemes. Emphasis was on the production of cash crops for export which accounted for the emergence of the palm oil and palm kernel, cocoa, and groundnuts pyramids in the East, West and North respectively.

3.2.3.2.2 Undoubtedly, few Nigerian entrepreneurs were able to take advantage of the situation. By and large, most Nigerians were frozen out of the economic system and thus had weak economic basis to participate in the emerging electoral system which came to be dominated by the traditional political class and later the educated elite or both. As practised in Nigeria and elsewhere, British rule was essentially undemocratic, the claims of those who see colonialism as a “school for democracy” notwithstanding. It undermined the sovereignty of the pre-colonial polities. Ethnic boundaries were more firmly drawn in the 1920’s and 30’s and hostilities between the ethnic groups were encouraged as a means of “divide and rule”. In varying degrees, the colonial chiefs and rulers, whatever their designations in the Native Authorities system (Indirect Rule), lost their legitimacy and were perceived by the people,
by and large, as agents for the mediation of colonially sanctioned polices such as tax collection, recruitment of forced labour and maintenance of law and order.

3.2.3.2.3 The new native authority institutions such as native courts, native treasuries, the police and prisons etc. were perceived as instruments of social control and law and order by an alien authority. All in all, institutions through which governance was mediated during the colonial period lacked the legitimacy of the pre-colonial ones and were regarded by the people as vehicles for their exploitation. This dis-connect between the government and the people, the governor and the governed, has remained one of the most crucial problems confronting the democratic project in Nigeria.

3.2.3.2.4 Not surprisingly, none of the important constitutions used to run the colonial Nigerian state was designed to build a Nigerian nation. Thus, though colonial rule witnessed the introduction of some progressive measures, however limited, such as Western education and health and other social services, it was essentially disruptive and subversive of the ethos, norms, and values of traditional Nigerian society.

3.2.3.3 The Electoral Principle

3.2.3.3.1 The Electoral principle was introduced in Nigeria in 1923 to elect three unofficial representatives from Lagos and one from Calabar to the new Legislative Council established by the Clifford Constitution of 1922. Only residents of the two towns with minimum incomes of 100 pounds sterling per annum were entitled to the franchise. The restricted nature of the franchise attracted attacks from the emerging educated political elite which became increasingly vocal during the Second World War. In the wake of these, political formations emerged to co-ordinate the agitations, the first being the Nigerian Democratic Party of Herbert Macaulay in 1922. Others like the Nigerian Youth Movement, the
National Council of Nigeria and the Cameroons (NCNC), the Action Group (AG) and the Northern Peoples Congress (NPC) were to follow between 1930 and 1950.

3.2.3.3.2 The labour unions and the emerging media, especially the newspapers, were important fora for the agitation for the expansion of political space for Nigerians. Gradually, new reforms were effected especially that of 1946, usually designated the Richard’s Constitution. The reforms were aimed at promoting the unity of Nigeria, providing adequately within that unity for the diverse elements that make up the country, and securing greater participation by Africans in the discussion of their own affairs. A new Legislative Council with competence and membership which covered the whole country was established. Four of the members, three from Lagos and the other from Calabar, would continue to be directly elected on a reduced franchise qualification of 50 pounds sterling.

3.2.3.3.3 The 1951 McPherson Constitution represented important changes in acceding to the demands of Nigerians for greater participation. This time around and unlike the Richard’s Constitution which was designed without consultation with Nigerians, there was significant participation of Nigerians from the village level to the Ibadan Conference of 1950.

3.2.3.3.4 The new constitution provided for:

a) The establishment of a 145-member House of Representatives (136 of them to be elected) to replace the Legislative Council.

b) A bi-cameral legislature for both the North and the West, while the East was to retain the unicameral system.

c) Under this constitution, the regional houses were elected indirectly through a system of electoral colleges of three stages (primary, intermediate and final) in the East and West and four or five in the North. Only tax payers could participate. In the North also the process began with open voting in about 20,000 villages and ward
areas at the primary stage. Every final college elected one or more persons to the House of Assembly through secret ballot. Here lies the genesis of the open secret ballot system. Significantly too, the elections did not pass without allegations of bribery, corruption, and “treating” by one party against another.

3.2.3.4 The 1954 Constitution

3.2.3.4.1 Between 1951 and 1954, there were two important constitutional conferences held in London and Lagos between Nigerian political leaders and the British government whose focus was on expansion of the political space for more Nigerians and increasing areas of competence for the Nigerian Legislative Houses. These resulted in the 1954 Constitution. For the impending 1954 General Elections, the electoral regulations were altered to permit any ten members of a final college to nominate a non-member as candidate. This allowed the governing party in the regions to eliminate candidates of any opposing party as was experienced by the Northern Elements Progressive Union (NEPU) in elections in the North. In response, Universal Adult Suffrage, which had earlier been used in the Lagos Town Council Election of 1950, was introduced to elect members to the Federal House of Representatives voting in multi-member constituencies. It was also used in the Eastern Region election of 1957, while a single member constituency system with direct quasi-universal, quasi-taxpayer suffrage was introduced in the West. However, by 1956, the principle of universal adult suffrage except for women in the Moslem North, qualified by 21 year age limit, two year period of residence in an electoral district and “nativity” was introduced.

3.2.3.4.2 The arrangement under which Federal Elections were conducted on behalf of the Federation by the three regional governments under separate regulations came under attack, especially in the Nigerian Constitutional Conference of 1957-58. It was decided that federal elections should be conducted in accordance with uniform principles and
methods under the supervision of an impartial body free from any political bias and suspicion. This decision was given legal backing by the Nigerian Electoral Provisions, Order-in-Council (House of Representatives) Regulations, 1958. It was under these regulations that the 1959 General Election was conducted. Unfortunately, despite the elaborate provisions, that election was attended by instances of violence, banning of public processions, and inter-party accusations.

3.2.3.5 Features of Colonial Politics and Elections

From our historical analysis, the following appear to be the major features of elections conducted during the colonial period.

a) The domination of the colonial economy by the British restricted access of most Nigerians to the benefits of the economic system and this restricted their ability to take part in political affairs of their nation.

b) Restrictions placed on the electoral franchise meant that it was not until the late 1950’s that the franchise was available to most Nigerians. This did not provide adequate period to learn the ropes of the new system.

c) The political environment was suffocated by inter-ethnic and inter-regional suspicions which the British deliberately husbanded and this prevented the emergence of a common political culture for Nigerians, regardless of their ethnic and regional origins.

d) The formation of political parties reflected these ethnic and regional cleavages to the extent that the commendable strides towards forming parties with national platforms and outlook in the 1920’s and 1930’s were frustrated. Thus, the major Nigerian political parties of the colonial period were largely regionally based. A multi-party system not based on ideologies but primordial platforms are thus one feature of the colonially inherited political traditions in Nigeria.
e) By the time national elections which ushered in independence were held in 1959, regional consciousness was firmly established in the politics of Nigeria. Mutual fears of domination existed between the North and South, East and West, and between the Majorities and Minorities of each region.

f) The above political and economic setting provided the framework for electoral irregularities from 1951 as transparent, free, fair and acceptable polls were compromised by local politicians and the British.

g) Up to the 1940’s, the desire for increased participation in the colonial administration and reform of the colonial system to bring this about were the main agenda of Nigerian political leaders.

h) From the late 1940’s, independence and the “good life” were the expectations of Nigerians from the political process. Independence was achieved in 1960, and Nigerian elites ascended the positions previously occupied by colonial officials.

i) The minorities in each of the three regions couched their agitation for independence in terms of self determination to be achieved in the creation of their own regions. This was not achieved at the time of independence in 1960.

j) Elimination of “oppression” by the Native Authorities and the establishment of a free, fair and transparent electoral process leading to good governance were equally important expectations. Unfortunately these were not achieved at independence.

k) The major political legacies of the colonial period can be summarized as follows: weak constitutional and institutional basis for development -oriented politics; an unbalanced federation; regionalism which engendered mutual jealousy and fear, governance system in which the masses were perceived as an exploitable lot, leadership unaccountable to the people; and regionally based political constituencies.
3.2.4 POST-COLONIAL ECONOMIC, POLITICAL AND SOCIAL ENVIRONMENT OF ELECTIONS AND EXPECTATIONS OF NIGERIANS

In the post-colonial era, two key factors define the environment of elections: economy and military rule.

3.2.4.1 Economy

On the economic plane, there was the shift from a largely agricultural economy to an oil-dependent economy in which other vital sectors were largely neglected. Thus, while agriculture remained the mainstay of the economy during the First Republic, oil revenues have sustained the succeeding military and civilian regimes from the civil war period to date. From the 1970’s, oil replaced agriculture as the leading foreign exchange earner of the economy. Given the fluctuations in the price of oil in the international market place, completely outside the control of the producers, when oil prices were favourable, as was the case in the 1970’s, the economy boomed resulting in Nigeria’s rating as a middle income country in those years. The collapse in the price of oil from the 1980’s until recently created substantial weakness in the economy. The attempted reforms by the governments of General Olusegun Obasanjo (1976-79), Alhaji Shehu Shagari (1979-1983), and General Muhammadu Buhari (1983-1985) failed substantially to revive the economy. General Ibrahim Babangida administration’s efforts through the Structural Adjustment Programme (SAP) had at best mixed results and distorted rather than adjusted the economy.

1. The withdrawal of subsidies and the privatization of public enterprises created more suffering for Nigerians and poverty has become endemic. Efforts by successive governments since SAP to reduce poverty through programmes like National Directorate of Employment, Petroleum Trust Fund, National Poverty Alleviation
Programme and National Economic Empowerment and Development Strategies (NEEDs) have largely failed to tame the monster of poverty. Thus, Nigeria has earned the distinction of being one of the most endowed and yet one of the poorest countries of the world.

2. There is a link between pervasive poverty in a country and the inability to establish democracy on a firm and enduring footing. It is generally accepted that poverty is the principal obstacle to democratic development. The poor are susceptible to political manipulation by the rich and this encourages the emergence of political warlords or “godfathers” in the polity. Poverty prevents the emergence of a citizenry imbued with a strong sense of self-reliance and control over their own lives in such critical and basic needs areas as food, shelter, education, and health. Although poverty can also create a revolutionary situation, generally a people so occupied with the struggle to conquer poverty, understood as the inability to provide or secure basic needs, hardly have the time or courage to defend democracy when threatened. This, along with other factors can lead to general apathy towards election by the electorate. Poverty of the masses enables the wealthy to capture the democratic institutions and use them to promote their selfish ends.

3. This has been the experience in Nigeria over the years as witnessed by the growing incidences of “elections without the electorate” and “cash and carry go” politics. Unarguably, democracy cannot take firm roots and flourish in an environment of hunger, poor health, inadequate shelter, social injustice and physical insecurity. Indeed, poverty and its twin brother, corruption, have been the banes of Nigerian politics and electoral processes in the post independence period.
3.2.4.6 **Military Rule**

The second major development in the Nigerian political landscape since 1966 has been the emergence of the military in the governance of the country. Military rule, whatever its attractions, essentially undermines the growth of constitutional and democratic governance in the country in the following ways:

a) denying even blundering politicians the chance to learn from experience and correct their mistakes;

b) weakening commitment to the constitutional order since important provisions of the constitution are often suspended at the advent of every military regime;

c) implanting a “command and obey” attitude towards political affairs completely at variance with the emphasis on discussion, disagreements and dialogue in a democracy;

d) encouraging the emergence of unitarism consistent with the command structure of the military. This undermines the basic foundations and principle of federalism to which the country has been committed since 1954;

e) encouraging the emergence of ex-military godfathers since some military men appear to have invested the enormous wealth they accumulated while in power into funding and controlling political parties;

f) frequent military coups retard the development and maturation of a virile political and democratic culture;

g) suppressing vibrant civil society organizations, especially the media, and thus preventing them from functioning as effective sentinels of democracy; and

h) the long sojourn of the military in politics (1966-1979; 1983-1998) which coincided with the cold war years and the decreasing popularity of military rule even in Africa has always had the effect
of attracting negative publicity and presenting the nation as a pariah state in the comity of democratic nations.

3.2.4.7 It is within the context of the two developments sketched above, namely poor economy and increasing poverty, on the one hand, and military rule, on the other, that one can best appreciate the travails of democracy in Nigeria in the post colonial period.

3.2.4.8 **Electoral Politics in the Post-Colonial Period**

a) The political environment in the First Republic before the advent of military rule in 1966 was crisis-ridden, marked by victimization of the opposition by the governments at the federal and regional levels. Disputes over census results, the 1964 General Election results, the Western Regional crisis, the Tiv Riots, among others, very early dispelled the optimism that greeted the nation’s independence. It was ostensibly to arrest the drift towards disintegration of the country that the military intervened in governance. During the first period of military rule, all electoral political activities were banned.

b) When the ban on politics was lifted in 1978, elections were to be conducted based on the new 1979 constitution. Among its main provisions, the new constitution provided for an American-type presidential system to replace the parliamentary system of the First Republic. To ensure the emergence of truly national parties, national spread provisions were made in the constitution. Unfortunately, however, parties formed to contest the impending elections were re-incarnations of the old regionally based parties of the First Republic with new names but about the same leadership and the same regional outlook. As in the First Republic, allegations of rigging, electoral fraud, and other malpractices were rampant. Apparently, because the elections were conducted by the military and given the desire of Nigerians
to rid the nation of military rule, the transition to civilian rule took place in 1979, but not before a major legal battle settled the issues involved.

c) The 1983 elections conducted by an incumbent civilian administration in which nearly all the incumbent executive office holders were candidates, were not so fortunate. The second term issue thus emerged as a major factor generating massive irregularities, tension and violence in the electoral process. Amidst allegations of massive corruption by the incumbent government, the military once more intervened and would remain in the saddle till 1999.

d) In preparation for military disengagement from politics, the Babangida Administration embarked on an elaborate and drawn out transition programme based mainly on the report of the Political Bureau it had set up in 1986. New democratic institutions were set up to prepare the nation for military handover. In an effort to ensure that political parties functioned as agents for national mobilization and consolidation, two national political parties, National Republican Convention (NRC) and Social Democratic Party (SDP), were established by decree and funded by government. Provisions were made to ensure that nobody would emerge as leader of Nigeria without grassroots support from the ward through the local government, state and national levels. The newly established National Electoral Commission experimented with a variety of voting systems and finally settled on the open ballot and the modified open ballot system which it used for the conduct of elections between 1989 -1992. The elections were staggered in a system of diarchy and were generally declared successful, free, fair and acceptable. Unfortunately, the June 12, 1993, presidential election was annulled and this led to what is
generally referred to as “the June 12 crisis”. Most of the gains of the democratic experiments, especially the new democratic institutions, were lost. In November 1993, General Abacha, the new head of state, returned the country to the multiparty system, but elections conducted under him were teleguided as he planned self-succession in a rather tensed political atmosphere.

e) General Abdulsalami Abubakar maintained the multi-party political tradition by registering three political parties, Peoples Democratic Party (PDP), All Peoples Party (APP) and Alliance for Democracy (AD) for the 1999 elections. Though the electoral outcome was generally favourable, it was clear that the parties lacked internal democracy and discipline. Most participants appeared to have seen their involvement as avenues to reap bountiful monetary harvests from their political offices. Thus, corruption of the electoral processes was widespread despite the half-hearted efforts of the succeeding Obasanjo regime to curb it. Poverty of many in the midst of the opulence of the political office holders has become a common feature of the political system. The re-election bid of President Obasanjo in 2003 and even more important, his failed third term bid in 2007, poisoned the political atmosphere and prepared the grounds for the 2007 General Elections. Fifty political parties participated in those elections which have come to be seen by many as arguably the worst in the nation’s history.

3.2.4.9 **Main Features of the Post Colonial Elections**

a) There exists a relationship between the weak economic and unstable political environments that characterized the post-colonial period and the poor electoral outcomes of the period.
b) The free market driven economy, characteristic of the period after 1980 as well as the mono-product, weak, dependent and mismanaged economy which Nigeria has come to be, breeds poverty and political instability which affect the electoral process.

c) During the military conducted elections of 1978, 1987-1993, 1996, 1998 and 1999, Nigerians rallied to put an end to military rule and to the enthroning of democracy and the rule of law. In other words, the commitment of Nigerians to democracy as the best system to manage their affairs is unmistakable.

d) In civilian-to-civilian supervised elections like those of the First Republic, 1983, 1999, 2003 and 2007, expectations of good governance, equity, development, fiscal federalism and constitutional reforms have formed the core interests of Nigerians.

e) Desperate self-succession, “god-fatherism” and corruption of the electoral process by incumbents of political offices heighten political tension in the country.

f) The financial attractions and rewards of political office holding are major factors in the “do or die” approach of Nigerians to the political game.


g) Unfair electoral processes create political disputes and erode the legitimacy in the system.

h) Military interventions in governance, however inevitable, retarded the development of a virile and mature political culture in the country.

i) Frequent interference in the affairs of civil society organizations, especially the media, women groups, and the labour unions through re-organizations during the military era prevented the maturation of these important organs into vibrant watchdogs of democracy, despite their valiant efforts to do so.
3.3 THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR ELECTIONS

3.3.1 Electoral Laws and Features in the Colonial Period

3.3.1.1 Election, as known today, was introduced into Nigeria by the British colonial administration. Although by 1881 there were demands for elective principle of representation in Lagos, it was in 1886 that a Legislative Council was established in Lagos. This first Legislative Council was not representative of the people. All the members were appointed by the colonial administration. They were mainly Europeans, a few indigenous rulers and repatriates who had no legislative powers. With the amalgamation of the country in 1914, the Nigerian Council was created. It had jurisdiction over the whole country with the exception of Lagos. The new Nigerian Council had similar features as the Lagos Council. The only major difference was that membership was drawn from the entire country by appointment. Contrary to their names, both houses had neither legislative powers nor control over finance.

3.3.1.2 In 1922, Governor Hugh Clifford abolished the Nigerian Council and expanded the jurisdiction of the Lagos Council to cover the entire Southern Nigeria Protectorate while Northern Nigeria was to be governed by proclamation. The main novelty of the 1922 Constitution was that the elective principle was enshrined in it. Of its forty-six members, the principle of elective representation applied to just four members. Franchise was based on adult male suffrage (had to be at least 21 years old), residential qualification for a year and gross income of 100 and 20 pounds sterling per annum in Lagos and Calabar respectively.

3.3.1.3 The next major development with regard to the evolution of Nigeria’s electoral laws were in the provisions of the 1946 Arthur Richard’s Constitution. It provided for a Nigerian House of Representatives whose jurisdiction covered the entire country. However, only Lagos and Calabar continued to have direct elective representation in the new House of Representatives. Three regional legislative
assemblies were created in the Eastern, Northern and Western regions. Although members of the regional assemblies were nominated, they constituted an electoral college for the election of members to the central legislature i.e. the House of Representatives. The House of Representative members were produced by the different regional electoral laws. More importantly, there was a widening of the electoral scope. For Northern Nigeria, it was the first time that elective principle of representation would be introduced into the region. Civil servants were used as electoral officials; tenure was reduced from five to three years and the income qualification to 50 pounds sterling. Also, the electoral rule allowed for the participation of independent candidates in the electoral process. Apart from the fact that most of the electoral officers were of high integrity, the politicians were elites who were men of substance who had records of achievement before venturing into politics. The regulations provided for annual registration of voters. However, the onus for registration lay with the individual and not the state. Electoral offences were prosecuted and punished with strict jail terms and fines.

3.3.1.4 The McPherson Constitution of 1951 introduced universal adult suffrage. While direct election into the central legislature took place in the Eastern and Western Regions, membership in the Northern Region legislative assembly was constituted by nomination. There was significant increase in hooliganism and violence as epitomized by cases in Benin, Okitipupa, Ikenne and Ibadan.

3.3.1.5 The 1954 Littleton Constitution scrapped the Electoral College system for elections into the House of Representatives in the three regions. Members of the Houses of Assembly and Chiefs in the three regions were now required to resign their membership if elected into the House of Representatives. Also, in the Eastern Region and Lagos, taxation was no longer a prerequisite for voting. In 1958, as Nigeria prepared for independence, the first Electoral Commission was set up.
The commission was to conduct the registration of voters and organize elections. This marked the beginning of the centralization of the management of electoral matters in Nigeria. The commission conducted the 1959 and 1964 elections. During these two elections, there was intensified electoral violence and allegations of rigging became more prominent features of the electoral process. The harassment, intimidation, thuggery, violence, arrests and detention of political opponents eventually led to the collapse of the First Republic and the outbreak of the Nigerian civil war. The appreciable development in the formation of political parties that had taken place resulted in the demise of independent candidates provision in Nigerian’s electoral laws.

3.3.2 The Post Independence Electoral Laws

3.3.2.1 In 1975, a 50-member Constitution Drafting Committee was set up and enjoined to evolve a political system that would eliminate cut-throat competition and the winner-takes-all phenomena and discourage other electoral malpractices. Other challenges facing the body included establishing the principles of accountability for public office holders; eliminating concentration of power in a few hands, and as a matter of principle, decentralizing power wherever possible.

3.3.2.2 In 1977, a new electoral body called Federal Electoral Commission (FEDECO) was established. Unlike the earlier body, FEDECO had the added duty of not just conducting elections, but also of delimiting the electoral constituencies for the whole federation. The FEDECO guidelines for the 1979 elections provided that all contestants should be elected on party platforms and parties were required to be present in all states of the federation. It conducted the 1979 elections successfully. However, section 126 of the 1979 Constitution requiring a presidential candidate to have not less than one-quarter of the votes cast at the election in each of at least two-thirds of all states in the federation became the basis of the most celebrated electoral petition of
the era. Furthermore, there were allegations of massive rigging; electoral fraud and violence that marred the subsequent 1983 elections and provided a justification for a military take over.

3.3.2.3 In 1987, the Babangida administration established the National Electoral Commission (NEC) which conducted subsequent elections under the two-party system. It successfully conducted elections at local government and state levels. However, the general election of 1993, meant to produce the president, and adjudged to be free and fair was annulled by the Armed Forces Ruling Council.

3.3.2.4 In 1996, a new electoral body called National Electoral Commission of Nigeria (NECON) was established. The chairman of the body who was an appointee of the president had to be ratified by the Senate. The Commission effected a change in the two-party political system structure of the country. Multipartism was reintroduced. However, the Independent National Electoral Commission and the state Independent Electoral Commission replaced the body. The introduction of Electoral Commissions in each state to conduct local government elections was a novelty. The challenging issue in this era was the length of time taken to dispose of election petitions.

3.3.3 Security and Elections in Nigeria
Over the years, the key security institutions during elections in Nigeria have been the police, army and state security service. The initial involvement of security personnel was limited to police for maintenance of law and order during the colonial era. The post-independence era witnessed the descent of the security agencies into the electoral arena with partisan interests. Also, there was increased manipulation of the security agents by politicians and political parties in power. With military rule came increased participation of the army during elections. Orderlies and security escorts of top government officials began to be used to
intimidate and scare the electorates. Thus, from 1983, security agencies lost their aura of impartiality. Their presence on the streets during elections has curtailed effective participation of frightened electorates and has contributed in heightening tension during elections.

3.3.4 Issues in the Legal and Institutional Framework for Elections

3.3.4.1 From the above historical exposé, the under listed are the major issues arising from the legal and institutional framework for elections in Nigeria:

a) the crafting of electoral laws to promote the unity while respecting the federal character of the nation;

b) the strengthening of electoral bodies to resist dictates from any quarters; particularly the ruling government’s control. The challenge is to reform the enabling Act establishing the body in such a way as to guarantee its financial autonomy and administrative independence;

c) revisiting the provision for Independent Candidature in the country’s electoral system;

d) more vigorous determination to uphold and enforce the rule of law and punish electoral offenders by the State;

e) enacting laws which ensure that persons eligible to hold political offices are sufficiently educated, competent and prepared for such offices; and

f) devising ways to curb the growing culture of impunity by politicians.

3.4 Nigeria’s Election Management Bodies in Historical Perspective

3.4.1 Introduction

For modern democracies, the holding of periodic and regular elections which has become part and parcel of the process of expanding and
decreasing the democratic space requires Election Management Bodies (EMB) to conduct, and supervise all elections within the polity. Electoral Management Bodies, when properly constituted and guaranteed requisite autonomy, promote transparency, ensure technical efficiency in the electoral process, and give legitimacy to the electoral process in addition to stabilizing the polity. The nature and character of these bodies as well as the way and manner they are established affect their performance capacity.

3.4.2 The Evolution of Election Management Bodies in Nigeria

3.4.2.1 Electoral bodies in Nigeria have a chequered history. Between 1958 to date, the country has had a total of six electoral bodies that have been reconstituted eleven times as detailed below:

Table 3.1: Election Management Bodies in Nigeria: 1958 - Date

<table>
<thead>
<tr>
<th>NAME OF BODY</th>
<th>Chairperson</th>
<th>TENURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Electoral Commission of Nigeria (ECN)</td>
<td>Mr. R. E. Wraith</td>
<td>1958-1959</td>
</tr>
<tr>
<td>National Electoral Commission (NEC)</td>
<td>Prof. Eme E. Awa</td>
<td>1987-1989</td>
</tr>
<tr>
<td>National Electoral Commission (NEC)</td>
<td>Prof. Okon Edet Uya</td>
<td>1993</td>
</tr>
<tr>
<td>(NECON)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Independent National Electoral Commission (INEC)</td>
<td>Akpata</td>
<td></td>
</tr>
<tr>
<td>Independent National Electoral Commission (INEC)</td>
<td>Prof. Maurice Iwu</td>
<td>2005-date</td>
</tr>
</tbody>
</table>

3.4.2.2 A cursory look at the history of the nation’s electoral bodies suggests a clear pattern: Although Nigeria was one the earliest African
countries to evolve a centralized electoral management system, this has not impacted positively on the nation’s political process and therefore the institutionalization of democratic governance. The frequent changes in the nation’s electoral management system have not translated into an anticipated stable electoral process. As a result, Nigeria’s electoral management system has so far manifested the following negative features: (i) the absence of continuity; (ii) resistance to change and modern methods of operations; (iii) the overbearing consequence of the military as a factor in their emergence and development.

3.4.3 Challenges
3.4.3.1 Election Management Bodies in Nigeria have had to contend with a number of challenges, some of which have also defined the extent of their capacity or incapacity to manage elections. Some of these challenges are

a) The Challenge of Autonomy: Our electoral bodies have not been independent of the Executive arm of government since 1976 when they were centralized by the military. Before this time, regional governments managed elections in Nigeria on behalf of the federal electoral body. The challenge of autonomy was central to the outcomes of the 1983, 1991/2, 2003 and 2007 elections and the acrimonies they generated.

b) The Challenge of Funding: Generally, the nation’s electoral bodies have been poorly funded. Their funding pattern has been determined first and foremost by the state of the economy, the interest of the state and those of its ruling class and of course, the realities of what is at stake (power), and its associated benefits.

c) The Challenge of Logistics and Staffing: The performance of our electoral bodies over the years has been marred by poor preparations for the challenges inherent in conducting elections in a multi-ethnic polity. The poor staffing profile of the organizations
further compound the problem. For example, most of the election-day functions are managed by ad-hoc staffs, who are usually poorly trained.

d) The challenge of modernizing the electoral system to reflect changing realities of contemporary Nigeria: Over the years, the country has operated the First-Past the Post (FPTP) or simple majority system, the basis of which is the winner takes all, while the loser loses completely. This system has been largely responsible for the acrimonies that have characterized our polities since independence.

e) The Challenge of Automation: The ever-increasing population and consequent enlargement of the electoral space of the country and therefore its voters have thrown up the challenge of automating the electoral process as other democracies are already doing.

f) The Image Question: The nation’s electoral bodies have been stereotyped and prejudiced against as a result of their long history of being incapable of managing the electoral system. The image crisis and consequent loss of confidence of the electorate have negatively affected the Electoral Management Bodies.

3.4.3.2 The broad historical canvass painted above reveals a lot about electoral management bodies from which a number of lessons could be distilled in the interest of a stable electoral process in Nigeria. Two of these are: Electoral bodies are critical for a stable electoral process and therefore sustainable democratic transition; and an independent and technically efficient and professionally managed electoral body gives legitimacy to the electoral process and consequently stabilizes the democratization process.
3.5 FEATURES OF NIGERIA’S EMERGING DEMOCRATIC POLITICAL CULTURE

3.5.1 The political behaviour of the individual is germane to the sustainability of democratic governance and the electoral system. Democratic governance requires that people should be governed on the basis of their wish; be given the opportunity to freely choose those they wish to govern them; and that those chosen on the basis of their consent and mandate should be responsible and accountable to them.

3.5.2 For this type of democracy to survive, it must be entrenched in political behaviour that is deeply rooted in an enduring political culture defined by some as composed of the attitudes, beliefs, emotions and values of society that relate to the political system and to political issues. Political culture is reflected in a nation’s ideology; in the duties of citizenship; in the conduct and style of political activity; and in the attitudes towards the political leaders and followers. The political culture of a country determines the behavior and attitude of the population towards the political system. It creates, shapes, influences and sustains the citizen’s political cognitive map of the state of affairs.

3.5.3 Nigeria’s Political Culture

3.5.3.1 Since independence, the political scene in Nigeria has been that of a nation that is yet to institutionalize basic norms and values of democracy. This has resulted in “low political culture”, characterized by military coups, vote buying, “godfatherism” and all such vices that convulse the political environment. Table 3.1 presents the picture of the prevalence of these vices in the Nigerian political environment through various periods.
Table 3.2: Features of Nigeria’s Political Culture in Historical Perspective

<table>
<thead>
<tr>
<th>FEATURES</th>
<th>COLONIAL PERIOD</th>
<th>1ST REPUBLIC</th>
<th>VARIOUS MILITARY ERAS</th>
<th>2ND REPUBLIC</th>
<th>3RD REPUBLIC</th>
<th>1999 TO DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ethnic politics</td>
<td>Slightly prevalent</td>
<td>Very prevalent</td>
<td>Not prevalent</td>
<td>Prevalent</td>
<td>Not prevalent</td>
<td>Prevalent</td>
</tr>
<tr>
<td>Election rigging</td>
<td>Prevalent</td>
<td>Very prevalent</td>
<td>Not prevalent</td>
<td>Prevalent</td>
<td>Not prevalent</td>
<td>Very prevalent</td>
</tr>
<tr>
<td>Political violence</td>
<td>Slightly prevalent</td>
<td>Very prevalent</td>
<td>Not prevalent</td>
<td>Very prevalent</td>
<td>Very prevalent</td>
<td>Very prevalent</td>
</tr>
<tr>
<td>Monetization politics</td>
<td>Not prevalent</td>
<td>Slightly prevalent</td>
<td>Slightly prevalent</td>
<td>Very prevalent</td>
<td>Very prevalent</td>
<td>Very prevalent</td>
</tr>
<tr>
<td>Weak ideological frame</td>
<td>Not prevalent</td>
<td>Slightly prevalent</td>
<td>Not prevalent</td>
<td>Slightly prevalent</td>
<td>Very prevalent</td>
<td>Very prevalent</td>
</tr>
<tr>
<td>Godfatherism</td>
<td>Not prevalent</td>
<td>Slightly prevalent</td>
<td>Not prevalent</td>
<td>Slightly prevalent</td>
<td>Not prevalent</td>
<td>Very prevalent</td>
</tr>
</tbody>
</table>

3.5.3.2 Various governments since independence have in one way or another recognized the need to mobilize the populace as a way of changing the prevalent negative value system. The various programmes of the past regimes have included the following: Code of Conduct for public officers and the Code of Conduct Bureau of the Murtala/Obasanjo military regime; The National Ethical Re-orientation Committee of the Shagari regime; The War Against Indiscipline of the Buhari regime; the Political Bureau, Directorate of Social Mobilization (MAMSER) and Centre for Democratic Studies of the Babangida regime; and the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC) of the Obasanjo regime.

3.5.3.3 In retrospect, the efforts of these bodies appear to have had minimum effects on the negative political culture of Nigerians. This can be explained largely by:

a) the absence of common cultural tradition and pattern to which all Nigerians are expected to conform;

b) poor institutionalization of inherited colonial values such as legal systems and the position of opposition in a democracy. This
explains the continuous replay of a democracy devoid of tolerance and accommodation;
c) obsession of the political elites over the years with the acquisition of power, not for promoting growth but for amassing wealth. It is this perception of power that leads to desperation and a fierce “do or die” approach to partisan politics;
d) rated 13th poorest nation in the world despite abundant resources, Nigeria’s pauperized economy and impoverished populace cannot evolve positive political culture and behavior; and
e) lack of continuity in the various programmes of political education. The challenge here is to institutionalize on a permanent basis programmes of civil, political and moral education.

3.6 HANDLING OF POST-ELECTION CHALLENGES
Post election challenges refer to the environment created following the conduct of elections. In fact, the environment can be gauged by the nature of the pre-election arrangement. The announcement of results creates challenges requiring resolution. These include acceptance or rejection of results, petitions, violence, out of court settlements, inter-party relations, management of victory and management of international responses.

3.6.2 Accepting or Rejecting Results
Post election challenges begin with the announcement of results by the election management body. It determines the different options employed in the resolution of election related crisis. This situation is common to all democracies whether established or emerging. Over time the nature of the response has differed. The initial response of rejection by political parties had been the case in all democracies until it became a pattern associated with emerging democracies. The oldest example is the 1876 presidential election in the United States of America. There was slight
repeat of this in 2000. In Africa, there are the recent cases of Kenya and Zimbabwe. In Nigeria, results have been rejected in almost all the elections, more especially 1959, 1964, 1965, 1979, 1983, 2003 and 2007. These have thrown up the judiciary as the main institution for settling election disputes.

3.6.3 Complaints and Petitions
The rejection of election results have produced other outcomes in Nigeria’s history. There were references to fraud in correspondence between colonial officials over the 1959 elections. Increasingly, as the country grew, fears were expressed concerning electoral malpractices. The petitions emanating therefrom were handled by the established courts. The determination of what was “two thirds of nineteen states” was the highlight of the 1979 petition. There was no definite time limit to determine a case as for instance the National Party of Nigeria suit challenging the election of Chief Solomon Lar instead of Mr. John Kadiya. The judgment was delivered in 2004! Opinions differed on the elections conducted in 1979 and 1983.

3.6.4 Violence
Violence has featured in all elections in Nigeria especially since 1959. Five key causes can be identified as responsible. Among these are historical context of state creation in Nigeria; the structural imbalance of the Nigerian federation; the nature and character of the Nigerian state and its ruling elites; inter-ethnic competition; and the role of the military and militarization of the polity. In the 2003 elections, for example, no state was spared the orgy of election related bloodletting. This was repeated in 2007. Apart from the effect on life and property, violence dissuades interest in election and remains the potent pretext for military intervention.
3.6.5 **Out of Court Settlement**

Out of court settlement has been a feature of Nigerian elections and has been on the increase in recent years. It is the consequence of the rejection of results. The alleged winner of the election proposes negotiation to avoid litigation. It could be in the form of financial payment, patronage or appointment. Out of court settlement is an offshoot of the traditional method of conflict resolution employing traditional rulers and influential elders within the community. The parties also use traditional sanctions such as taking of oaths to ensure compliance with agreements.

3.6.6 **Inter-Party Relations**

One of the features of post election controversies in Nigeria is the tendency by individuals to cross carpet by declaring for the winning party. There is also the strategic need on the part of parties to form temporary alliance towards challenging the hold of the dominant party in power. This was the case in the First and Second Republics but it did not work. Politicians in past elections consciously promoted this process and used it temporarily to their advantage.

3.6.7 **Management of Victory**

Most claims of landslide victory have been shown to be mere pronouncements. The post election analysis showed elections were rigged and such announcements spurious, exaggerated or unsubstantiated. Since no election in Nigeria ever occurred without foul play, the pronouncement of outright victory makes the management of such victory difficult. Thus, post election governments in Nigeria have drawn on compromises, extending friendships, coalition and national government. In most cases the distribution of patronage and appointment often set off crisis within political parties when not properly managed. The tradition established in Nigeria since 1959 is that of
forming all-embracing governments after elections and it has continued till date with mixed results. This achieves the purpose of reducing tension by soothing frail nerves temporarily. However, it never works since there are ulterior motives and the benefit is targeted at the individual rather than the community.

3.6.8 Managing International Response
Managing international response is an emerging issue in the democratization process. It is a function of the changing operating environment after the Cold War. The presence of observers and monitors is a constant feature and standard requirement in elections in emerging democracies. International observers include the Commonwealth, European Union, National Democratic Institute, International Republican Institute, United Nations Development Programme complemented by local groups such as the Transition Monitoring Group, Media Monitoring Group etc. The relationship between international observers and their domestic counterparts with the local authority has not been cordial. In Nigeria, it has worsened with each election since the 1980’s. The relationship between the body conducting elections and by extension the government and the observers kept deteriorating and it reached an all time low following the 2007 election. Managing these groups properly is crucial as worsening relation can endanger long-term growth.

3.7 Lessons from History of Elections in Nigeria
(a) Degeneration of Electoral Outcomes
The 85-year-old history of Nigeria’s elections shows a progressive degeneration of outcomes. Thus, the 2007 elections are believed to be the worst since the first elections held in 1922. The compelling need to embark on electoral reforms is thus obvious.

(b) Role of Politicians and their Perception of Power
The history also shows that elections conducted by the military tended to be more credible than those conducted by civilian authorities. The primary reason for this has been the effort by politicians to perpetuate their hold on power at all cost. Over the years, the politicians have become more desperate and daring in taking and retaining political power; more reckless and greedy in their use and abuse of power; and more intolerant of opposition, criticism and efforts at replacing them. The electorate, seeing their hopes dashed with each set of elections, have come to believe that politicians lack the will to use state power to transform the lives of ordinary citizens. This loss of confidence in governments by the electorate is a threat to our democratic project.

(c) **Expectations of Nigerians**

Historical evidence shows that Nigerians have always had very high expectations from their intercourse with politics and democracy. However, these expectations have, more often than not, been dashed as politicians and political office holders seem to have less faith in properly conducted elections as a foundation for democratic governance than the electorate. Arising from the above, the electorate have become more vocal in their demand for positive action that will sanitize the electoral process. Using non-governmental and faith-based platforms as well as corporate and professional associations, a growing network or coalition of forces has emerged aimed at checking some of the excesses of the political class. This trend should be encouraged as the vigilance of the populace is the greatest insurance for good governance.

(d) **Role of Election Management Bodies and Other Agencies**

A review of the history of elections in Nigeria shows that a strong relationship exists between election management bodies (EMBs), security agencies and legal provisions that guide the conduct of
elections. These institutional arrangements have over the years become the focal points at which elections are compromised. In the past 50 years, the country’s EMBs have functioned for only 30 years and have been reconstituted five times and had eleven different Chief Executives, giving an average of 2.7 years tenure. The Committee’s review also shows that the EMBs have been overburdened with too many responsibilities which has affected their performance. The historical analysis shows clearly that there is the need to reform aspects of the 1999 Constitution as well as the existing electoral laws, where they are inadequate or insufficient to guarantee the conduct of free, fair, credible and acceptable elections. An important target of such review should be the provisions for the appointment, membership, mandate, and funding of election management bodies as well as the roles of the security and other agencies.

(e) Conflicts over Electoral Outcomes

Historical evidence confirms that most political actors have often contested electoral outcomes. From the first election petitions of the 1950’s to date, the judiciary has always provided a last port of call when out-of-court settlements could not resolve post election challenges. While the courts have discharged this important responsibility creditably, care should be taken not to drag the judiciary into the political arena too often as this can affect its credibility.

(f) Civic, Moral and Political Education

The historical review shows clearly that there is the compelling need for massive investment in the institutionalization of broad based civic, moral and political education of Nigerians, politicians as well as the electorate, to inculcate norms, values and God consciousness. The pre-colonial emphasis on honesty and integrity, as well as balance between power and authority, on the
one hand, and service, accountability and responsibility, on the other, should be restored and institutionalized in the political system. It is important that the teaching of civic, moral and political education grounded in Nigerian history should be made compulsory at the primary and secondary school levels. A people, largely ignorant of their past cannot defend their present and future.

(g) Poverty and Corruption
Poverty and corruption have been shown in this analysis to undermine democratic ethos and practice. Poverty breeds corruption and both undermine and threaten the foundations of democratic institutions and frustrate the will of the people expressed in elections. Accordingly, the efforts to fight poverty and corruption should be intensified.

(h) Welfare of Nigerians
There is urgent need to reform and transform the Nigerian economy so as to improve the welfare and well-being of Nigerians and thus restore their confidence in government. Good governance, economic empowerment of the people and accountability must remain the yardstick for measuring the success of governments. When Nigerians are economically empowered, they will be better able to defend democracy especially when threatened by blundering politicians.

(i) Inclusiveness
One of the major problems of our electoral system over the years has been the near exclusion of critical sectors of the population such as women from governance. There is urgent need to evolve an electoral system which ensures that while elections are free, fair and acceptable, all major stakeholders in the electoral process, especially the political parties that perform creditably,
women and other interest groups, are not sidelined in the emerging governments.

(j) **Tenure and Incumbency**
Incumbency and self succession have been shown in the analysis to be major factors in the corruption of the electoral processes and the violence that always features in elections. The new electoral system should thus aim at either eliminating both or reducing their impact to the barest minimum. This may require amendments of the 1999 Constitution and the Electoral Act 2006.

(k) **Military Interventions**
The military, from this analysis, always intervened when the institutions of democratic governance had broken down or the nation was facing possible disintegration. Therefore, the new political system, in its manner of operation, must be such as to make military intervention in governance and politics unnecessary and unattractive. New laws are needed to curb the mounting and increasing impunity with which politicians have breached existing electoral laws. It is significant to note that despite the well documented acts of electoral malpractices, no Nigerian has ever been convicted and punished for electoral offences since independence.

(l) **Civil Society**
Our analysis shows that civil society, especially the media and labour unions, have played an important role in the agitation for the expansion of political space for Nigerians and in monitoring the performance of governments. Civil Society Organizations then should be empowered legally to enable them effectively discharge their functions as sentinels and watchdogs of democracy.

(m) **Multi-Party System**
We should review the inherited multi-party political system, especially given the performance of the existing fifty (50) parties
which has tended to push the country towards becoming a one party state. The views expressed by Nigerians during the public hearings were overwhelmingly in favour of reducing the number of political parties to between two and seven. It is not a mere coincidence that the relatively freest elections in Nigeria were those conducted under the two party system between 1989 and 1993.

The above are some of the lessons which have guided the design of a new electoral system for Nigeria. The specific ways in which particular challenges have been tackled are indicated in the subsequent relevant Chapters of this Report.
CHAPTER FOUR

THE LEGAL FRAMEWORK FOR ELECTORAL REFORM

Terms of Reference:

Examine relevant provisions of the 1999 Constitution, the Electoral Act, and other legislation that have bearing on the electoral process and assess their impact on the quality and credibility of general elections.

4.1 INTRODUCTION

4.1.1 The Importance of a Legal Framework in Electoral Reform

An effective regime of electoral laws is vital for the integrity of any democratic system. One of the key challenges facing the electoral process in Nigeria is the need to develop a comprehensive legal framework that guarantees the independence and integrity of the electoral process, promotes consistency and equality in electoral management, and facilitates full and informed participation in electoral events by political parties, civil society organisations, and the electorate. The legal framework for elections in Nigeria consists of international and national components.

4.1.2 International Legal Framework on Elections

4.1.2.1 Nigeria has ratified the key international and regional treaties which provide the basic civic and political rights related to elections and the democratic process. These include: The International Covenant on Civic and Political Rights (ICCPR), the Convention on the Elimination of all Forms of Racial Discrimination (CERD), and the African Charter on Human and Peoples Rights (ACHPR).

4.1.2.2 Nigeria has also ratified the Convention on the Elimination of Discrimination Against Women (CEDAW) and signed the Protocol to the African Charter on Human and Peoples Rights on the rights of women in
Africa, which, together with the ICCPR, prohibit discrimination against women in the exercise of their rights to vote.

4.1.2.3 Nigeria has made further commitments to good governance, human rights, rule of law and democratic elections under the 2001 Protocol on Democracy and Good Governance of the Economic Community of West African States (ECOWAS), the strategic framework for the 2001 New Partnership For Africa’s Development (NEPAD), and the Harare Commonwealth Declaration of 1991.

4.1.2.4 The Universal Declaration of Human Rights specifies six universal standards in relation to elections. These are as follows: elections are held periodically; elections are genuine; there is a right to universal suffrage; there is a right to equal suffrage; elections are based on the free will of voters; and the right to a secret ballot.

4.1.2.5 The provisions contained in the Universal Declaration on Human Rights and these international and regional instruments together constitute the regional and international standards for democratic elections.

4.1.3 The National Legal Framework on Elections

The national legal framework for the conduct of elections consists of

(a) Constitution of the Federal Republic of Nigeria, 1999
(b) Electoral Act, 2006
(c) Police Act, 1943
(d) Guidelines for the Conduct of Police Officers on Electoral Duty issued by Police Service Commission
(e) Guidelines and Regulations for the Conduct of Federal, State and Area Council Elections by INEC.
(f) Other Laws and Regulations
4.2 PROVISIONS OF THE 1999 CONSTITUTION WHICH IMPACT ON THE QUALITY AND CREDIBILITY OF ELECTIONS

4.2.1 Domestication of International Standards Applicable to Elections

The 1999 Constitution provides that the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice. Political rights such as the right to form and join political parties, to take part in political campaigns, to vote and be a candidate, amongst others, are guaranteed. The 1999 Constitution however does not specifically establish the fundamental principles and standards that apply to elections outlined in the Universal Declaration of Human Rights which prescribe that elections should be periodic, genuine, based on universal and equal suffrage, secret ballot, and the free will of the people.

4.2.2 Recommendation

There should be enactments to ensure full adherence to the principles of political rights and freedoms related to elections contained in declarations, conventions, protocols and other instruments adopted by the UN, AU, ECOWAS and the Commonwealth.

4.2.3 Provisions With Respect to Qualification for Elections

Independent Candidacy

Section 65 (2)(b) of the 1999 Constitution states that only a person who is a member of a political party and is sponsored by that party shall be qualified for election to the National Assembly. This provision prevents independent candidacy. The proposed amendment to Section 65 of the Constitution is aimed at permitting a person who is not a member of a political party and is not sponsored by a political party to contest as an independent candidate. The ability of an individual to run as an independent candidate is an important attribute of the democratic process. This practice is consistent with the best practice in
guaranteeing the rights of the individual to participate in the democratic process at all levels.

4.2.4 **Recommendation**

Sections 65 (2)(b) and 106 of the 1999 Constitution should be amended to make provision for an individual to run as an independent candidate.

4.2.5 **Provisions with respect to the independence of INEC**

An important area of concern with respect to the quality and credibility of elections in Nigeria is the perceived lack of independence of INEC. This concern hinges on the perceived influence of the ruling party and the executive arm of Government on INEC’s performance. In order to correct this perception, some stakeholders have proposed a three-pronged approach, namely: (a) modification of the terms for the appointment of the Chairman and other members of the Commission; (b) granting INEC financial independence so that it can carry out its functions in a timely manner; and (c) giving INEC unfettered control over the appointment, discipline and removal of all its staff, subject only to the establishment of clear, written regulations to be followed in disciplining any staff member.

4.2.6 Implementing these suggestions would require amendments to the 1999 Constitution. Without such fundamental changes to the Constitution, the reform of the legal framework cannot be as far reaching and as effective as it should be.

4.2.7 **Appointment of the Chairman and Members of INEC**

Section 154 of the 1999 Constitution empowers the President to appoint the Chairman and other members of INEC. The President is required to exercise this power in consultation with the National Council of State. The appointments are subject to confirmation by the Senate. This procedure is not popular with many people who see it as capable of
compromising INEC’s confidence in the appointments procedure. The impartiality and independence of INEC could be enhanced if the appointment of its Chairman and members was handled by a neutral and non-partisan agency, subject to the approval of the Senate.

4.2.8 **Recommendation**

(a) Section 153 of the 1999 Constitution should be amended to remove INEC from the list of Federal Executive Bodies.

(b) The composition of INEC’s board should be as follows:

   i. a Chairman, who must be a person of unquestionable integrity;
   
   ii. a Deputy Chairman, who must be a person of unquestionable integrity. However, the Chairman and Deputy must not be of the same gender;
   
   iii. six persons of unquestionable integrity, two of whom must be women and 1 of whom must come from each of the six geo-political zones;
   
   iv. one nominee of Civil Society Organizations working in the area of elections and accredited by the proposed Political Parties Registration and Regulatory Commission;
   
   v. one nominee of Labour Organizations;
   
   vi. one nominee of Nigerian Bar Association;
   
   vii. one nominee of Women Organizations; and
   
   viii. one nominee of the Media.

Once appointed, no organization should have the power to recall its nominee.

(c) The appointment procedure for the Chairman and members of the Board should be as follows:

   For 4.2.8 b (i - iii) above, the National Judicial Council (NJC) should:
   
   i. Advertise the positions, spelling out requisite qualifications.
ii. Receive applications/nominations from the general public.

iii. Shortlist three persons for each position.

iv. Send the nominations to the National Council of State to select one for each position and forward to the Senate for confirmation.

(d) For 4.2.8 b (iv – viii) above:

i. Each of the bodies should send 3 nominations to the National Judicial Council for screening.

ii. The NJC shall screen the nominations and forward them to the National Council of State which shall further screen and send one name for each position to the Senate for confirmation.

4.2.9 Security of Tenure of INEC Chairman and Members (Section 155 & 157)

The tenure of office of the Chairman and other members of the INEC is not adequately safeguarded and the terms and conditions of appointment, as stated under these provisions are not transparent, since they are only set out in each letter of appointment. The Act does not set out the procedure that should be followed if a member of INEC were to be removed. The absence of a proper procedure for the removal of the Chairman or any other member of the INEC from office impacts adversely on the security of tenure of the office, and hence on the perceived independence of the INEC. Furthermore, these provisions fall short what is required to meet the standard of good practice internationally.

4.2.10 Recommendation

a) The Chairman and members of the Board of INEC may only be removed by the Senate on the recommendation of the National Judicial Commission (NJC) by two-thirds majority of the Senate
which shall include at least 10 members of the minority parties in the Senate.

b) Section 155 of the 1999 Constitution should be amended to provide that the tenure of office of the Chairman and members of the Board of INEC shall be five years from the date of appointment, renewable only once.

c) The process of renewal of the appointment of members of the Board of INEC shall be by the Senate on the recommendation of the NJC.

4.2.11 **Funding of INEC**

Sections 81 and 84 of the 1999 Constitution provide the legal framework for funding INEC. Public demand for adequate funding of INEC has been a reoccurring issue. The absence of a clear framework for funding INEC and bureaucratic delays in approval and disbursement of funds has frequently affected schedules for Nigeria’s major elections. It is suggested that INECs funds should be first-charge on the Consolidated Revenue Fund of the Federation. The aim of this is to confer financial independence on INEC.

4.2.12 **Recommendation**

Section 84 of the 1999 Constitution should be amended by adding subsection (8) to read as follows:

“The election expenditure and the recurrent expenditure of the Independent National Electoral Commissioners offices (in addition to salaries and allowances of the Chairman and members mentioned in subsection 4 of this section) shall be first charge on the Consolidated Revenue Fund of the Federation.”
4.2.13 **Provisions with Respect to Delimitation of Constituencies**

Section 71 and 72 of the 1999 Constitution give INEC the power to divide each State of the Federation into senatorial districts and federal constituencies for purposes of elections to the Senate and House of Representatives. Section 73 of the 1999 Constitution gives INEC the power to review the division of States and the Federation into Senatorial districts and federal constituencies at intervals of not less than 10 years, or at such times as it considers desirable as a consequence of the amendment of section 3 of the 1999 Constitution or any provision replacing that section or by reason of the holding of a census of the population, or pursuant to an Act of the National Assembly. Sections 112 – 115 of the Constitution also make provision for the creation of State constituencies, the size of such constituencies and their periodical review by INEC. The task of constituency delimitation is demanding, and involves divergent skills and competencies. INEC does not currently have the expertise, political will, competence, staff strength and funds to effectively carry out such a sensitive assignment. However, it is possible to aggregate expertise from existing federal government agencies to carry out such a task.

4.2.14 **Recommendation**

A Constituency Delimitation Commission with institutional representation from INEC, National Population Commission, National Boundary Commission, Office of the Surveyor-General of the Federation, National Bureau of Statistics and National Identity Management Commission should be established to handle the task of constituency delimitation and the complaints that arise from it.

4.2.15 **Provision with Respect to INECs Power to Register Political Parties**

Paragraph 15 (b) of the Third Schedule to the 1999 Constitution empowers INEC to register political parties and to monitor their
organizations, operations, finances and campaigns. Section 222 of the 1999 Constitution also specifies the conditions to be met by Associations seeking to be registered as political parties. The responsibilities placed on INEC by these provisions are enormous, and the Commission has to date not performed them satisfactorily. It is necessary to limit the proliferation of political parties and to put in place an effective mechanism for monitoring their activities, finances and campaigns.

4.2.16 **Recommendation**

(a) Amend Section 222 of the 1999 Constitution to add two more conditions to be met by Associations seeking registration as political parties, namely:

i) The associations must maintain functional and verifiable offices in at least two-thirds of the States of the Federation.

ii) The associations must maintain 20 percent women in the membership of all their Governing Bodies.

(b) Establish a Political Parties Registration and Regulatory Commission which shall be empowered to perform the following functions:

i) Register political parties in accordance with the provisions of the 1999 Constitution and the Electoral Act 2006;

ii) Monitor the organization and operation of the political parties, including their finances;

iii) Arrange for the annual examination and auditing of the funds and accounts of political parties;

iv) Monitor political campaigns and provide rules and regulations which shall govern the activities of political parties;

v) Accredit domestic civil society groups and organizations working in the area of elections and provide rules and regulations which shall govern their observation of elections;
vi. Accredit international election observers and provide rules and regulations which shall govern their observation of elections;

vii. Accredit national and international media organizations observing elections and provide rules and regulations which shall govern their activities.

4.2.17 Provisions with Respect to the Finances of Political Parties

Section 225 of the 1999 Constitution provides for monitoring and auditing of the assets, finances, and accounts of political parties. In subsection (4), it is provided that “any funds or other assets remitted or sent to a political party from outside Nigeria shall be paid over or transferred to the Commission within twenty-one days of its receipt with such information as the Commission may require.” The receipt by political parties of funding from foreign sources poses a danger to our democracy.

4.2.18 Recommendation

Amend Section 225 (b) of the 1999 Constitution so that political parties are not allowed to receive funds from any source abroad.

4.2.19 Provisions with Respect to Dates of Presidential and Gubernatorial Elections (Section 132-134, 178-179) and National and State Assembly Elections (Section 76, 116)

By the provisions of sections 132(2) and 178(2) of the 1999 Constitution, an election to the office of the President and Governor of a State shall be held on a date not earlier than sixty days and not later than thirty days before the expiration of the term of office of the last holder of that office. The term of office of the President and Governors will expire on the 29th day of May 2011.
4.2.20 Furthermore, sections 64(1) and 105(1) of the 1999 Constitution make it mandatory for the National and State Assemblies to stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House. These sections read together with sections 76 and 116 make it mandatory for elections to the National and State Assemblies to be held not earlier than sixty days before and not later than 30 days to the date when the House stands dissolved.

4.2.21 The implication of these provisions is that if all the elections under the 1999 Constitution are held in April 2007 and the swearing in of a new President and Governors takes place on the 29th day of May 2007 and the National and State Assemblies convened on the 3rd day of June, 2007, it is unlikely for all the political parties and their candidates to gather all their evidence and conclude hearing of petitions before the swearing in of the President and Governors and convocation of the National and State Assemblies.

4.2.22 **Recommendation**

Sections 132 (2) and 178 (2) of the 1999 Constitution should be amended to appoint a single date for Presidential and Gubernatorial elections which should be held at least six months before the expiration of the term of the current holders of the offices. Similarly section 64(1) and 105(1) of the 1999 Constitution should also be amended to appoint a single date for National and State Assembly elections which should hold two years after the Presidential and Gubernatorial elections.

4.2.23 **Provisions with Respect to Election Tribunals and Determination of Election Petitions (Section 285 and the 1999 Constitution)**

Section 285 of the 1999 Constitution provides for the establishment and jurisdiction of electoral tribunals. The speedy and transparent resolution
of electoral disputes is necessary for the peaceful resolution of disputes arising from elections. This procedure needs to be speedy, efficient and transparent in order to win the confidence of the generality of the people.

4.2.24 One of the problems faced by Election Petition Tribunals is that the number of petitions filed by defeated candidates at elections have risen sharply over the years. In the general election held in 2003, a total of 574 petitions were filed throughout the federation. In the elections of 2007, a total of 1475 petitions were filed. Disposing of this large number of petitions within a limited time frame has posed a serious challenge to the available election petition tribunals. After judgment, the parties chose to go on appeal. The analysis of 426 judgments at first instance delivered by Election Petition Tribunals that sat throughout the country reveals that:

i) The number of petitions that succeeded was 96.
ii) The number of petitions that failed for lack of merit was 222.
iii) The number of petitions that were dismissed on technicalities was 108.

4.2.25 **Recommendations**

a) The number of tribunals should be increased by reducing the number of judges that sit on a tribunal from five to three, so that more tribunals can be established per State.

b) In order to minimize the filing of frivolous petitions, the Electoral Act 2006 should be amended to provide that if a petitioner loses a case, he should be ordered by the court or tribunal to bear the full expenses of the respondent.

4.2.26 **Provisions with Respect to Prosecution of Electoral Offences**

An important concern with respect to the conduct of all elections in Nigeria is the climate of impunity and the failure to prosecute electoral
offences. Section 211 of the 1999 Constitution vests in the Attorney-
General of the Federation and of a State the power of public
prosecutions as well as the powers of entering *nolle prosequi*. It has
been suggested that the reason why electoral offences go unpunished
in Nigeria is as a result of the failure of the respective Attorneys-General
to prosecute offenders especially if those involved are members of the
ruling party or were acting in the interest of the ruling party.

4.2.27 **Recommendations**

a) Amend Section 174 (c) of the 1999 Constitution such that the
constitutional power of *nolle prosequi* vested in the Attorney-
General of the Federation or of a State does not apply to electoral
offences.

b) Amend the Electoral Act 2006 to establish an Electoral Offences
Commission to perform the following functions.

i) Enforcement and administration of the provisions of the
Electoral Act.

ii) Investigation of all electoral frauds and related offences.

iii) Coordination, enforcement and prosecution of all electoral
offences.

iv) Enforcement of the provisions of the Electoral Act, the
constitution of registered political parties and any other Acts
or enactments.

v) Adoption of measures to identify, trace and prosecute
political thuggery, electoral fraud, political terrorism and other
electoral offences.

vi) Adoption of measures to prevent and eradicate the
commission of electoral malpractices.

vii) Adoption of measures which include but are not limited to
coordination, prevention and regulatory actions.
viii) Introduction and maintenance of investigative and control techniques towards the prevention of electoral malpractices and fraudulent election.

ix) The facilitation of exchange of scientific and technical information with other democracies on the conduct of joint operations and training geared towards the eradication of electoral malpractices and fraudulent election.

x) The examination and investigation of all reported cases of electoral offences with the view to identifying electoral officers and staff of the electoral commission, individuals, corporate bodies or groups involved in the commission of electoral offences.

xi) Collaboration with election observers within and outside Nigeria.

4.3. PROVISIONS IN THE ELECTORAL ACT, 2006 WHICH IMPACT ON THE QUALITY AND CREDIBILITY OF ELECTIONS

The Electoral Act 2006 regulates the conduct of elections at the Federal and State levels. The 2007 elections revealed a number of weaknesses in the Electoral Act 2006, key among which was the perception that INEC was neither independent nor impartial. Furthermore, many of the important election processes revealed obvious limitations in planning, organization and execution.

4.3.1 Funding INEC

Sections 3-5 of the Electoral Act, 2006 deal with the establishment and maintenance of a fund by INEC, as well as expenditure, annual estimates and accounts. These provisions are intended to enable INEC to improve its financial administration and accountability. However, the provisions do not confer financial autonomy on INEC. Currently, it is the Executive that determines the budget of INEC. This adversely affects
the planning and execution of INEC’s activities since such activities must conform to federal political interests. The financial dependence of INEC on the Executive is an important contributing factor in compromising its independence.

4.3.2 **Recommendation**
The funding of INEC should be first charge on the Consolidated Revenue Fund of the Federation.

4.3.3 **Appointment of Chairman and Members of the Board of INEC**
Section 7 of the Electoral Act 2006 deals with the appointment of Resident Electoral Commissioners. The mode of appointment of Resident Electoral Commissioners is contained in paragraph 14 (2) of the Third Schedule to the Constitution which empowers the President of the Federal Republic to appoint Resident Electoral Commissioners for all the 36 States of the Federation and the Federal Capital Territory, Abuja without any recourse to the National Assembly for approval. It has been suggested that this method of appointment induces allegiance between these appointees and the Federal Executive. This further compromises the independence of INEC.

4.3.4 **Recommendation**
The appointment of the Chairman, Deputy Chairman and members of the Board of INEC shall be channeled through the National Judicial Council which should be empowered to

a) Advertise the positions, spelling out requisite qualifications;
b) Receive applications/nominations from the general public/specified civil society groups;

c) Shortlist three persons for each position;
d) Send the nominations to the National Council of State to select one for each category and forward to the Senate for confirmation.
4.3.5 **National Register of Voters and Voters’ Registration**

4.3.5.1 Section 10 (1) of the Electoral Act 2006 empowers INEC to compile, maintain and update on a continuous basis, a National Register of Voters. The Act also provides that the registration of voters shall stop not later than 120 days before any election and the register should be displayed 60 days before the election to enable claims and objections to be dealt with and the revision of the register. The Act also requires INEC, 60 days after the end of each year, to make available to each political party, the names and addresses of all persons registered.

4.3.5.2 INEC has not complied with most of these provisions. During the 2007 General Elections, INEC introduced electronic data capturing machines for voter registration and claimed that these would check multiple registration and impersonation during elections. INEC indicated that it would need 30,000 of the machines for registration of all eligible voters across the country. However, about 100 days before the elections, INEC claimed it had 10,000 machines which were being rotated around registration centres. The late commencement of registration and the inadequate logistics meant that many Nigerians were disenfranchised. INEC could not display the voters register 60 days before the election as stipulated by law. Consequently, the electorate and political parties could not verify the list and confidence in the process was eroded.

4.3.6 **Recommendations**

(a) Voter registration should be fully computerized and based on biometric data to detect and eliminate multiple registration. The process should be ongoing to ensure that Nigerians upon attaining the age of 18 can register in their constituencies. INEC should take advantage of the data and mandate of the National
Population Commission and National Identity Management Commission so that routine cross-referencing can be made on a sustained basis.

(b) There should be a comprehensive public verification of the voters’ register through a simplified process which should be done in good time prior to elections to provide eligible voters with the opportunity to transfer their registration, scrutinize the voter register for false entries and register for the first time.

(c) Political parties should be provided with copies of the voters register in a timely manner and, in order to ensure accountability and transparency, a full breakdown of figures should be published.

4.3.7 The Offence of Buying and Selling Voter’s Card

This is a well known phenomenon in Nigeria which affects the quality and credibility of elections. It is suggested that the offence provided for in Section 24 of the Electoral Act 2006 should attract stiffer penalties than those proposed therein. A person who is convicted of an offence relating to a voter’s card, be it stealing, selling or buying or attempting to do any such acts should, in addition to any other sentence, be deemed to be guilty of a corrupt practice for the purposes of Part VIII Section 131 of the Act and be disqualified from contesting any election for a period of ten years.

4.3.8 Recommendation

The penalty for anyone convicted of certain offences relating to a voter’s card as set out in Section 24 of the Electoral Act 2006 should be extended to include legal disability to participate in elections conducted under the Act for a period of ten years.
4.3.9 **Date for Elections**

Section 26 the Electoral Act 2006 empowers INEC to appoint days for elections into the offices of President, Vice President, Governor, Deputy Governor, Senate, House of Representative, House of Assembly of a State, Chairman, Vice Chairman and membership of an Area Council. The fixing of date for elections should not be left to the discretion of INEC. It would be preferable for election dates to be provided in the Constitution.

4.3.10 **Recommendation**

(a) Amend Section 26 of the Electoral Act 2006 to take away from INEC the power to appoint dates for elections. Also amend the Constitution to fix dates for elections which should hold at least six months before the date of swearing in to provide adequate time for concluding all election petitions before swearing in of elected candidates.

(b) The Presidential and Gubernatorial elections should take place in the first week of November of the election year; Friday, Saturday and Sunday excluded in deference to the religious feelings of Moslems, Seventh-Day Adventists and Christians respectively. The elected chief executives should be sworn-in in May the following year, an interval of six months to allow for the disposal of election petitions arising from the elections.

(c) National and State Assembly elections should take place in the second week of November and should be held two years after Presidential and Gubernatorial elections i.e. in 2013, assuming that the next Presidential Election is held in 2011.

(d) Transitional provisions should be made in the Constitution for the next set of National and State Legislators due to be elected in 2011 to serve a term of two years.

(e) Local Government Elections should hold within the third week of November, 2010.
4.3.11 Establishment of Polling Stations

Section 43 of the Electoral Act 2006 provides for the establishment of sufficient number of polling stations in each Registration Area. The section however fails to provide detailed specifications which the design of such polling station should meet. Additional issues which should be taken into account in this provision include the following:

a. the maximum number of voters per polling station;
b. the layout of a standard polling station should be stipulated, for example, a door for entry and a separate door for leaving the station;
c. the establishment of central polling stations in appropriate cases, provided that there is a stipulated maximum number of stations at any particular polling centre; and
d. giving due consideration to access by disabled voters to and from polling stations.

4.3.12 Recommendations

(a) Section 43 of the Electoral Act 2006 should be amended to provide detailed specifications including number of voters per polling station, layout of a standard polling station and adaptation of polling stations to accommodate the needs of disabled voters.

(b) Polling stations should be located at institutional buildings such as schools, community centres etc, which are centrally located. Where these are not available, INEC should set-up temporary polling stations at permanent locations.

(c) Each polling station should consist of not more than 500 voters.

4.3.13 Voting Procedure: Open Secret Ballot

Section 53 of the Electoral Act 2006 provides that voting at an election shall be by Open Secret Ballot, and the use of Electronic Voting
Machine is prohibited. The Open Secret Ballot voting system allows the marking of the ballot to be done in secret, and casting of the ballot to be done in open view of the public. This system therefore combines the need of secrecy with the imperative of transparency. Utmost care needs to be taken in operating this voting system since most irregularities that took place in previous elections were associated with ballot papers.

4.3.14 **Recommendations**
(a) The use of the Open Secret Ballot system should be continued.
(b) Amend Section 53 (2) of the Electoral Act 2006 to lift prohibition on the use of Electronic Voting Machines.

4.3.15 **Political Parties**
Section 78 of the Electoral Act 2006 empowers INEC to register political parties and Section 15 of the Third Schedule to the 1999 Constitution stipulates the functions of INEC which include, among others, monitoring political campaigns, monitoring the organization and operation of political parties, including their finances; and auditing their accounts. The nature and activities of political parties have raised important concerns. There is what some consider unwieldy number of political parties and the fact that some parties have mere legal existence without any electoral value. There is also the issue of the appropriate mechanism for funding political parties. Another key concern is the lack of capacity and will on the part of INEC to undertake all the activities prescribed for it in the Constitution in relation to monitoring and supervising the activities of political parties.

4.3.16 **Recommendations**
(a) The 1999 Constitution and the Electoral Act 2006 should be amended to remove from INEC the power to register and monitor political parties. This power should be vested in a new body to be
known as Political Parties Registration and Regulatory Commission.

(b) In addition to the conditions stipulated in the 1999 Constitution, the Electoral Act 2006 and any other laws, any association seeking registration as a political party should meet the following conditions:

i. The association must maintain functional and verifiable offices in at least two-thirds of the States of the Federation;

ii. The association should maintain 20% women in the membership of all its Governing Bodies.

4.3.17 Campaign for Elections
A scheme to regulate the public media in its reporting and coverage of parties’ and candidates’ campaigns during elections period is essential. Such a scheme should deal with the following issues:

a) Equitable media access for all registered political parties and/or the candidates of such parties;

b) Neutrality and objective reporting of campaign messages by public media;

c) Appropriate sanctions for serious breaches of the provisions of the regulatory regime for public media.

4.3.18 Recommendations
(a) Regulations should be developed by the legislature to provide proportional access to radio and television for political parties and candidates competing in elections, not only stipulating fair and equitable coverage but also providing a framework where these provisions are guaranteed. In cases where candidates and political parties purchase airtime for their advertisements and coverage of their rallies, these programmes should be clearly signposted as such.
(b) The sanctions provided under Sections 101 – 105 of the Electoral Act 2006 should be enforced by the Electoral Offences Commission.

4.3.19 **Procedure for Election to Area Councils in the Federal Capital Territory (FCT)**

Part VI of the Electoral Act 2006 deals with the role of INEC in respect of the conduct of elections to the offices of Chairman, Vice Chairman and a member of an Area Council, as well as the recall of a member of an Area Council.

Section 109 of the Electoral Act 2006 stipulates requirements for contesting an election to an Area Council. The contestant is required to be:

i. a Nigerian citizen;

ii. a registered voter;

iii. aged 25 years for Councillor and 30 years for Chairman and Vice Chairman;

iv. a School Certificate holder or its equivalent level; and

v. a member of a political party and is sponsored by that party.

4.3.20 **Recommendation**

The 1999 Constitution should be amended to allow independent candidates to contest elections under the following conditions:

a) Constituency based nomination by verifiable signatures of 10 registered voters from each ward in the electoral constituency.

b) Payment of financial deposit which will be subject to refund if the independent candidate scores at least 10% of the total valid votes cast in that election in the constituency. The rate of deposit should be equal to 10% of the approved election expenses for the various offices as provided in Section 93 of the Electoral Act 2006.
c) In addition to items (i) and (ii) above, the candidate must meet all other conditions for eligibility stipulated in the Constitution, the Electoral Act or any other laws.

4.3.21 **Procedure for Local Government Council Elections**
The procedure for conducting elections in Local Government Councils is similar to what obtains in Area Councils. Under the Concurrent List, both the National Assembly and States Assemblies have the power to make laws for Local Government elections. But in view of the doctrine of covering the field, the provisions of the Electoral Act will apply to all Local Governments and Area Council elections.

4.3.22 **Recommendation**
The Electoral Act 2006 in Section 120 – 123 has dealt with the procedure for Area and Local Government Council elections. The Committee observes that States have their individual laws for Local Government Council elections. In view of the doctrine of covering the field, the provisions of the Electoral Act should apply to all Local Government and Area Council elections.

4.3.23 **Electoral Offences**

**Observation**
4.3.23.1 The issue of effective sanctions for breaches of election laws, rules and procedures poses an important challenge to the credibility of elections in Nigeria. The debate in Nigeria with respect to the administration of electoral justice relates not only to the adequacy or inadequacy of existing provisions on electoral offences but the seeming inability to prosecute and secure convictions of electoral offenders.

4.3.23.2 It is submitted that the punishment for electoral offences committed by political parties, candidates and their representatives should be stiffened and be reinforced through disqualification for a
stipulated period from exercising certain political rights. The general approach here should be to identify those offences relating to the election processes which are sufficiently serious to attract legal incapacity to exercise the franchise or disqualification from contesting any election for a period of time.

4.3.24 **Recommendation**
All offences relating to registration of voters by a candidate should, upon conviction, in addition to other penalties in the Act, carry a period of ten years disqualification from contesting any election.

4.3.25 **Bribery and Conspiracy**
Section 131 of the Electoral Act proscribes bribery and conspiracy aimed at distorting electoral outcomes such as attempting to procure the return of a person as a member of a Legislative House. The Act provides that anyone who commits this offence is liable on conviction to a maximum fine of N100,000 or 12 months imprisonment or both. Considering the seriousness of this offence, it is felt that the punishment should be increased.

4.3.26 **Recommendation**
The disqualification period for any candidate, upon conviction, for corrupt practices under section 131 of the Electoral Act 2006 should be increased to ten years.

4.3.27 **Determination of Election Petitions**
The 1999 Constitution, Electoral Act 2006 and the Practice Directions issued by the President of the Court of Appeal regulate the handling of election petitions and procedures for the administration of electoral justice. Section 141 of the Electoral Act stipulates a period of 30 days within which an election petition should be presented. After the expiry of
this period, more time is spent in determining the petition at first instance, and possibly on appeal. The number of petitions has continued to rise steadily. For example, in the General Election held in 2003, a total of 574 petitions were filed. The figure rose to 1475 petitions during the 2007 elections. It is therefore necessary to amend the 1999 Constitution to specify a time limit for concluding election petitions.

4.3.28 **Recommendation**

The 1999 Constitution should be amended to specify the period for considering petitions as follows: The determination of cases by tribunals should take four months and appeals should take a further two months, a total of six months.

4.3.29 **Persons Entitled to Defend Election Petitions**

By Section 144 of the Electoral Act 2006, an election petition may be presented by a candidate or a political party which participated in the elections. Where the petition complains of the conduct of an electoral officer or any other person who took part in the conduct of the elections, the senior electoral officer involved, for the purposes of the Act shall be deemed to be a respondent and shall be joined in the election in his/her official status as a party. One of the intractable causes of delay in the determination of election petitions is the large number of persons joined as respondents i.e the Electoral Officers, Presiding Officers, Returning Officers, Polls Clerks and all other persons against whom allegations of impropriety are made. Until the respondents are served either personally or through substituted service, the election petition will not be ripe for hearing.
4.3.30  **Recommendation**
Amend Section 144 (2) of the Electoral Act 2006 so that only the electoral commission is joined as respondent in an election petition. The joinder of electoral officials and ad hoc staff that took part in the conduct of elections should be dispensed with once the electoral body is made a party in the election petition.

4.3.31  **Time Limit for Disposing of Election Petitions**
Section 148 of the Electoral Act 2006 provides that an election petition and an appeal arising there from shall be given accelerated hearing and shall have precedence over all other cases or matters before the Court. Many stakeholders have expressed the view that this provision has not proved effective in practice. In the past, the Supreme Court would announce its verdict immediately after the parties addresses are concluded and reasons for the judgment reserved to a later date. This practice helped to speed up the disposal of cases.

4.3.32  **Recommendation**
A time limit should be set for disposing of election petitions and appeals from the decision of the Tribunal by amending the 1999 Constitution to provide that.

(a) An Election Tribunal should deliver its judgment in writing within one hundred and twenty days from the date of the election.

(b) An appeal from a decision of an Election Tribunal shall be heard and disposed of within sixty days after the judgment of the election tribunal.

(c) The Court in all appeals, should adopt the practice of first giving its verdict and reserving the reasons for the verdict to a later date.
4.3.33 The Issue of Elected Persons Remaining in Office Pending Determination of Appeal

Section 149 of the Electoral Act 2006 allows persons whose elections have been nullified to remain in office pending the conclusion of appeal if their appeal was filed within a period of 21 days of the delivery of the judgment. Prior to the inclusion of this section in the Act, the practice was to conclude all election petitions before swearing in any elected persons. The provisions of Section 149 of Electoral Act 2006 are deeply unpopular and have generated serious public condemnation. The retention of the section accounts for the foot dragging and the delays encountered in the disposal of election petitions. It also accounts for the spate of appeals that attend the judgments of election tribunals.

4.3.34 Recommendation

(a) Repeal Section 149 of the Electoral Act 2006.

(b) No elected person should assume office until the case against him/her in the Tribunal or Court is disposed of.

4.4 PROVISIONS OF OTHER LAWS WHICH IMPACT ON THE QUALITY AND CREDIBILITY OF ELECTIONS

4.4.1 Election Petition Tribunals and Court Practice Directions 2007

4.4.1.1 In order to accelerate the hearing of election petitions, the President of the Court of Appeal has issued the *Election Petition Tribunals and Court Practice Directions 2007*. Under these Directions, election petitions are to be accompanied by the list of witnesses and their written statements on oath as well as copies or list of all documents to be relied upon at the trial. The Respondent’s reply shall also be a statement in summary form supported by copies of documentary evidence, list of witnesses and their written statements on oath. This, in legal terminology, is called *front loading*. 
4.4.1.2 While the idea of front loading accelerates the hearing of election petitions, it should be noted that witnesses stand a lot of risks once their names and addresses are disclosed in a petition. Indeed, witnesses who may wish to give evidence may be victimized.

4.4.2 **Recommendation**
The President of the Court of Appeal should take necessary measures to protect witnesses in election petitions by concealing their identity to ensure their safety.

4.4.3 **The Police Act and Guidelines for the Conduct of Police Officers on Electoral Duty**
4.4.3.1 The main role of the police during elections is to maintain public order and to create a favorable climate in which a democratic election can take place.

4.4.3.2 An appropriate legal framework for the police is necessary for the effective policing of elections. The Police Act which is a key component of this framework was enacted in 1943, and to date there has not been any comprehensive review of the Act. There is presently a Police (Amendment) Bill under consideration in the House of Representatives.

4.4.3.3 The Police Act provides wide discretion for the Police Force in the discharge of its functions which could be subject to abuse. It is for this reason and in order to ensure that the Nigeria Police Force discharges its electoral functions, effectively that the Police Service Commission developed **Guidelines for the Conduct of the Police Officers on Election Duties**. The Guidelines stipulate six functions for police officers on electoral duty as follows:

a) Safeguarding the security of the lives and property of citizens during the campaign and voting so that citizens will not feel unsafe on account of holding, associating with or expressing a political opinion;
b) Ensuring the safety of electoral officers before, during and after elections;

c) Providing security for candidates during campaigns and elections;

d) Ensuring and preserving a free, fair, safe and lawful atmosphere for campaigning by all parties and candidates, without discrimination;

e) Maintaining peaceful conditions, law and order around the polling and counting centres;

f) Providing security for electoral officials at voting and counting centres; and ensuring the security of election materials at storing, voting and counting centres, and also in transit. It is the duty of the Police to ensure that election materials are not stolen, hijacked, destroyed or fraudulently altered by any group or person.

4.4.3.4 Stakeholders have expressed concern over police performance of their electoral responsibilities. It has been observed that the mode of appointment of the Inspector General of Police by the President does not guarantee his/her security of tenure which is necessary for him/her to act impartially. Some are concerned about perceived executive interference in operational activities of the police, and the failure of the police to remain neutral, impartial and non-partisan in the conduct of their election related activities. Others have expressed concern over the inadequate logistics provided to the police in relation to enormous challenges inherent in our electoral environment. The failure of the police to arrest and prosecute electoral offenders has also been condemned by many stakeholders.

4.4.3.5 Recommendations

a) The functions of police officers on election duties listed in paragraph 4.4.3.3 (a) – (f) of this report should be incorporated into the Police Act.
b) The Inspector-General of Police should be appointed by the President on the recommendation of the Police Service Commission to the National Police Council, which in turn, shall forward its nomination to the Senate for confirmation. His/her removal from office should also be by two-thirds vote of the Senate after an investigation establishing his/her misconduct.

c) The Nigeria Police Force should include in its training curriculum a course on the role of the police during elections. The guidelines for the conduct of police officers on election duties as published by the Police Service Commission should provide a framework for this curriculum.

d) Section 9 (4) of the Police Act which provides that the President shall be charged with the operational control of the Nigeria Police Force is in conflict with Section 215 (2) of the 1999 Constitution and should be accordingly amended.
CHAPTER FIVE
ROLE OF INSTITUTIONS, AGENCIES AND STAKEHOLDERS IN SHAPING THE QUALITY AND CREDIBILITY OF ELECTIONS

Term of Reference:

Examine the roles of institutions, agencies and stakeholders in shaping and impacting on the quality and credibility of the electoral process. These should include Government, Electoral Commissions, Security Agencies, Political Parties, Non-Governmental Organisations, Media, General Public and the International community.

5.1 INTRODUCTION

5.1.1 Nigeria is a federal republic operating a presidential system of government. It has 36 Federal States and the Federal Capital Territory (FCT) Abuja. The tiers layers of government are the Federal Government (FG), the 36 State Governments and the 774 Local Government Areas (LGAs). The States within the federation are administered by Governors who control about 50 per cent of the nation’s public funds and are responsible for the state’s education, health systems and transport infrastructure, etc. The FCT is administered by the Federal Government and it has six elected area councils. Administratively Nigeria is further subdivided into 8,813 wards and 120,000 polling units.

5.1.2 Chapter II of the Constitution of the Federal Republic of Nigeria, 1999, spells out the country’s Fundamental Objectives and Directive Principles of State Policy to guide all government policies and programmes. Section 14 (1 – 2) provide that:

a) “The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice.

b) It is hereby accordingly, declared that:
i. sovereignty belongs to the people of Nigeria from whom government through this Constitution derives its powers and authority;

ii. the security and welfare of the people shall be the primary purpose of government; and

iii. the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution."

5.1.3 Elections are a means of giving effect to the peoples’ sovereignty and ensuring their participation in governance with a view to guaranteeing their security and welfare. The country’s electoral process and outcomes must promote the enumerated fundamental objectives of the Constitution. In this chapter, the roles of institutions and stakeholders in the electoral process are critically examined in relation to these fundamental objectives and appropriate recommendations made.

5.2 THE ROLE OF THE NATIONAL ASSEMBLY

5.2.1 The legislature is one of the three arms of government. The legislature at the federal level comprises a National Assembly with two chambers, the Senate with 109 members and the House of Representatives with 360 members. Members of Senate and House of Representatives are elected for a four-year term. The Senate comprises three senators elected from each of the 36 States and one from the FCT. For the senatorial elections, the territory of each State is divided into three senatorial districts.

5.2.2 Each State House of Assembly comprises a number of members, which is three to four times the number of seats a State has in the Federal House of Representatives, subject to this being no less than 24 and not more than 40 members. The territory of each State is divided into a number of constituencies equal to the number of members in its House
of Assembly. Members of a State House of Assembly have a four-year mandate.

5.2.3 Section 4(1) of the 1999 Constitution provides that “The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly which shall consist of a Senate and a House of Representatives.” Further, section 4(2) states that “The National Assembly shall have power to make laws for the peace, order and good governance of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List…” Section 4(7) also provides that “The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State”.

5.2.4 Observations

By virtue of the powers vested in the Legislature, it is responsible for the enactment of laws that are necessary for the conduct of free and fair elections. Its powers include making laws for the electoral agencies and processes within the provisions of the Constitution. The legislature has established the necessary regulatory framework for the conduct of credible elections, and seriously pursued its oversight functions over the electoral process in general and INEC in particular. However, there exist critical gaps in the existing legal framework which the legislature needs to urgently address to ensure free, fair and credible elections. For instance the continuing involvement of the President in the appointment of the INEC Chairman and members of the Commission as well as Resident Electoral Commissioners deprives the electoral body of the autonomy it requires to conduct free and fair elections. The present arrangement whereby the Executive arm of government provides the funding for INEC also deprives the electoral body of financial autonomy and independence. The review of existing laws should therefore target the following areas:
a) Appointment of the Chairman and members of the Electoral Commission, Resident Electoral Commissioners and staff (permanent and ad-hoc)
b) Funding of the Electoral Commission and election activities
c) Making laws to guide the electoral process and activities, including electoral disputes resolution
d) Clearly specifying electoral offences, their enforcement and applicable punishments

5.2.5 **Recommendations**

a) The National Assembly should undertake a comprehensive review of the provisions of 1999 Constitution, Electoral Act 2006 and other laws to effect changes that are required to ensure free and fair elections as recommended in this Report.

b) The National Assembly should review laws relating to appointment and qualifications of the Chairman and members of the Electoral Commission.

c) The National Assembly should amend the 1999 Constitution to provide for the appropriation of funds for INEC in a manner that will guarantee its independence. In this respect, the funding of INEC should be first-charge on the Consolidated Revenue Fund of the Federation.

5.3 **THE ROLE OF THE EXECUTIVE**

5.3.1 The Executive is one of the arms of government. At the federal level, the President is the Head of State, Chief Executive and Commander-in-Chief of the Armed Forces of the Federation. He/she is elected for a four-year term with a maximum of two terms in office. The President appoints at least one Minister from each State upon confirmation by the Senate. Ministers do not have to be elected members of the National Assembly or a State House of Assembly. Each of the 36 States has a
Governor who is the Chief Executive and is elected for a four-year term with a maximum of two terms in office. Each Local Government Area is headed by an elected Chairman with executive powers and elected Councilors.

5.3.2 Section 5 of the 1999 Constitution states that:

a) “Subject to the provisions of this Constitution, the executive powers of the Federation:
   i. shall be vested in the President and may, subject as aforesaid and to the provisions of any law made by the National Assembly, be exercised through the Vice President and Ministers of the Government of the Federation or officers in the public service of the Federation; and
   ii. shall extend to the execution and maintenance of the Constitution and all laws made by the National Assembly…”

Further, section 5(2) provides that:

b) “Subject to the provisions of this Constitution, the executive powers of a state-
   a. shall be vested in the Governor of that State and may, subject as aforesaid and to the provisions of any law made by the House of Assembly, be exercised through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State; and
   b. shall extend to the execution and maintenance of the Constitution and all laws made by the House of Assembly of the State…”

5.3.3 With regard to elections, the Executive arm exercises a rather overbearing influence over the appointment of the INEC Chairman and Commissioners, control of INEC’s funding and control of State resources particularly State media, vehicles, civil servants, public funds, aid programmes and buildings. These forms of control tend to confer
unfair advantage on incumbent political parties to the disadvantage of other parties. The Executive also controls the security agencies whose inputs are required for elections. Therefore, the roles of the Executive in elections must be further curtailed to ensure free and fair elections.

5.3.4 Recommendations
a) The 1999 Constitution should be amended to guarantee the independence of INEC.
b) The agencies under the Executive that are involved in elections shall not be used to undermine free and fair elections. Such agencies include the security bodies and the public service.
c) The provisions of the Electoral Act 2006 which prohibit the abuse of the powers of incumbency, including the misuse of official powers and resources should be strengthened and enforced.

5.4 THE ROLE OF THE JUDICIARY
5.4.1 The Judiciary is one of the arms of government. Section 6 of the 1999 Constitution provides that:
   a) “The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.
   b) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a state.”

5.4.2 Observations
5.4.2.1 The role of the judiciary in elections is to ensure prompt and just resolution of electoral disputes. Although some election petition tribunals have delivered qualitative rulings, the process of adjudicating election petitions is still defective in many respects. Members of the public consider the period for determination of election disputes as too lengthy.
In particular, the current practice whereby candidates are sworn in despite pending petitions against them is considered unhealthy. Another serious problem with the petition process is the reign of technicalities, which impede the capacity of tribunals to dispense justice. Thus, tribunals which should offer a veritable forum for Nigerians to ventilate their grievances and obtain justice often deliver judgments which confound the public. Allegations have sometimes been made that corruption is responsible for some of the tribunal verdicts that the public have found incredible and distasteful. Another problem is that the burden of proof is placed on a petitioner who lost the election or who was a victim of rigging to establish non-compliance with the Electoral Act. Many have argued that it is unfair to require a petitioner to prove the failings of INEC beyond a reasonable doubt. Again, it has been alleged that INEC frustrates the petition process, often preventing access to critical documentary evidence or manipulating them while in its custody. It is therefore observed that since the conduct of INEC as the umpire is the issue in many petitions, INEC should bear the burden of proving compliance with the Electoral Act.

5.4.2.2 It is noted that the number of election petitions being filed by defeated candidates at elections has been rising over the years. In the general elections held in 2003, a total of 574 petitions were filed throughout the federation. However, in the elections of 2007, a total of 1,475 petitions were filed. This figure almost tripled the petitions filed in 2003.

5.4.2.3 The Committee obtained from the President of the Court of Appeal 426 judgments at first instance delivered by the Election Petition Tribunals. The judgments came from the Tribunals that sat in the following 23 States and the Federal Capital Territory: Adamawa, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Kebbi, Kogi, Nasarawa, Niger, Plateau,
Sokoto, Taraba, Yobe, Zamfara. The petitions as revealed by the judgments, were based on various grounds that include:

(i) The opposing candidates were not qualified to contest the election on the date of the election held.

(ii) Unlawful disqualification of the petitioner by INEC to contest the election by his name, photograph and party logo missing on the ballot papers.

(iii) The election was marred by malpractices such as rigging, snatching of ballot boxes, thuggery, violence, declaration of false results, exclusion of lawful votes from counting, falsification and forgery of result sheets, corrupt practices, over-voting, under-age voting and multiple voting.

(iv) Non-compliance with the provisions of the Electoral Act, 2006.

(v) Indictment of the successful candidate before the election by a Judicial Commission of Inquiry or an Administrative Panel or Tribunal of Inquiry.

(vi) The successful candidate was not lawfully elected by reason of irregularities such as dumping of ballot papers in the ballot boxes, tampering with ballot boxes, general intimidation of the petitioner’s agents and supporters at polling units.

(vii) Election was held on a day different from the date fixed by INEC without adequately informing the electorates of the substituted date.

(viii) The Respondent was member of a secret society.

(ix) Results from certain electoral wards were unlawfully omitted in collating the final result of the election.

(x) The votes cast exceeded the number of ballot papers issued by INEC for the election.

(xi) All the presiding officers at the election were card-carrying members of the PDP.
(xii) The elections were invalid by reason of corrupt practices by the successful candidate.

(xiii) Votes were cast at the polling centres where there was no registration of voters during the last exercise for the registration of voters.

(xiv) Some results of the elections were yet to be declared by the time of filling petition.

(xv) Falsification and inflation of figures at Polling Units and collation centres on Form EC8(1) and Form EC8BG.

5.4.2.4 After analysis of the 426 judgments, the following picture emerged:

(i) Number of Petitions that succeeded (i.e. proved) before the Tribunals = 96

(ii) Number of Petitions that failed for lack of merit (i.e. not proved) = 222

(iii) Number of Petitions that were dismissed on technicality (i.e. not for lack of merit) = 108

Total = 426

5.4.3 Recommendations

5.4.3.1 Determination of Election Petitions

a) The judiciary should ensure prompt resolution of election-related disputes by increasing the number of election petition tribunals and consolidating petitions.

b) The Electoral Act 2006 should be amended to shift the burden of proof from the petitioners to INEC to show, on the balance of probability, that disputed elections were indeed free and fair and candidates declared winners were truly the choices of the electorate.
c) The procedure for producing evidence before tribunals should be re-examined in order to speed-up the hearing of electoral cases. Specific procedure rules should be made for election petitions.

5.4.3.2 **Complaints and Appeals**

(a) The Electoral Act 2006 should be amended to specifically indicate where a complaint should be lodged in the first instance and in what circumstances a complaint may be submitted directly to INEC. Clear information should be provided to the public about the process and, in particular about how to make a complaint or appeal effectively.

(b) A reasonable and appropriate time period should be established in the Electoral Act 2006 for complaints and appeals to be lodged and addressed. Adequate time should be allowed for information to be gathered and investigated.

(c) Particular attention should be paid to establishing and enforcing appropriate mechanisms for appeals against decisions related to inaccuracies in the voters register, the refusal of nomination of candidacy and the de-certification of candidates before and after an election.

(d) Efforts should be made to ensure that the complaints and appeals system is transparent and publicly accountable. A centralized record of all complaints and appeals, grounds for the complaints and their outcome should be developed and maintained. These records should be regularly made public.

(e) Appropriate penalties and administrative actions should be applied by INEC against those who have not complied with the electoral legislation.

(f) INEC should not have the right to appeal in any election petition. It should be seen to be neutral. As an umpire, it should not be seen to support the case of a political party or candidate.
5.5 THE ROLE OF ELECTION MANAGEMENT BODIES

5.5.1 Introduction

5.5.1.1 INEC is currently established in accordance with Section 153 (1)(f) of the 1999 Constitution. The key functions are described in Part F paragraph 14 of the Third Schedule to the 1999 Constitution. It is to organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, as well as to the Senate, the House of Representatives and the House of Assembly of each State of the Federation. The other functions assigned to INEC in the Constitution are the registration of political parties and candidates, the monitoring and audit of political party expenditure, the registration of voters, the determination and periodical revision of the sizes of the various levels of electoral constituencies, the monitoring of the political campaign and the enactment of by-laws and guidelines to regulate all the matters that fall within its sphere of competence.

5.5.1.2 INEC is composed of a Chairman and 12 Commissioners, made up of two from each of the six geo-political zones of the Federation. The Chairman and Commissioners are directly appointed by the President after consultation with the Council of State and subject to confirmation by the Senate. INEC maintains a permanent office in all 36 States and the FCT. These offices are headed by Resident Electoral Commissioners (RECs) who are directly appointed by the President without Senate approval. They discharge all INEC functions delegated to them. The State INEC offices have Administrative Secretaries who serve as Deputy Resident Electoral Commissioners. Below the State level, Electoral Officers and Assistant Electoral Officers staff the 768 Local Government Authorities and are answerable directly to the REC. Each Local Government Authority is further divided into a number of
Wards or Registration Areas. No permanent electoral authority is present at the Ward level.

5.5.2 Observations

5.5.2.1 There is an overwhelming perception by the public that the composition and funding of INEC render it vulnerable to manipulation by the Executive. Specifically, the failure of INEC to conduct credible, free and fair elections in 2003 and 2007 has largely been attributed to the following:

a) composition and appointment of National and Resident Electoral Commissioners in which the President plays a dominant role.

b) manipulation by the government in power and ruling party resulting in bias against opposition parties and candidates.

c) Involvement in intra-party disputes over nomination of candidates

d) engaging in litigations on issues which ought to be the concern of parties and candidates.

e) poor logistics arrangements during elections

f) failure of the Commission to compile a credible voters register.

5.5.2.2 The public attributed some of these actions to its subservience to the Presidency and recommended measures to enhance the independence of the electoral commission.

5.5.2.3 There are four principal modes of constituting the membership of an Election Management Bodies. These are:

a) Independent non-partisan model: the electoral body is independent of the executive branch of government in terms of funding, appointment and oversight. Members are non-partisan with guaranteed tenure. Appointments may be confirmed by the legislature.
b) Independent partisan model: the electoral body is independent of the executive branch in matters of funding, appointment and oversight. Members are representatives of political parties, though a non-partisan Chairman may be appointed.

c) Judicial model: the electoral body is independent of the executive organ of government though dominated by judicial officers (serving or retired), although non-judicial officers may also serve on the body.

d) Government model: the electoral body is a department of government; the executive branch is responsible for the appointment of officials and the funding of the electoral organisation.

5.5.2.4 The Committee received memoranda and oral submissions recommending all the alternatives, except the last. However, the preponderance of opinion falls on the side of the independent non-partisan model.

5.5.3 Recommendations

5.5.3.1 Re-organisation of INEC

a) INEC should be re-organized and re-positioned to ensure its independence and professionalism in the conduct of elections in the country.

b) The 1999 Constitution should be amended to ensure that INEC becomes truly independent, non-partisan, impartial, professional, transparent, and reliable as an institution and in the performance of its constitutional functions.

c) INEC should consist of:

i) a Board that formulates broad electoral policy and direction for the Commission; and

ii) a professional/technical election management team to handle the actual conduct of elections.
5.5.3.2 **Composition of INEC Board**

The membership of the Board of INEC should consist of the following:

i. a Chairman, who must be a person of unquestionable integrity;

ii. a Deputy Chairman, who must be a person of unquestionable integrity. However, the Chairman and Deputy must not be of the same gender;

iii. six persons of unquestionable integrity, 2 of whom must be women and 1 of whom must come from each of the six geopolitical zones of the Federation;

iv. one nominee of Civil Society Organizations working in the area of elections and accredited by the proposed Political Parties Registration and Regulatory Commission;

v. one nominee of Labour Organizations;

vi. one nominee of Nigerian Bar Association;

vii. one nominee of Women Organizations;

viii. one nominee of the Media; and

ix. once appointed, no organisation shall have the power to recall its nominee.

5.5.3.3 **Qualifications of Members of INEC’s Board**

a) Members of INEC’s Board mentioned in 5.5.3.2 (i – ii) above should be persons of integrity who are non-partisan, possess vast professional/administrative/academic experience, and are not less than 50 years of age.

b) Members of INEC’s Board mentioned in 5.5.3.2 (iii – viii) above should possess all the qualities mentioned in 5.5.3.3(a) above and they should not be less than 40 years of age.
5.5.3.4 **Nomination Process**

   a) For 5.5.3.2 (i - iii) above, the National Judicial Council should:
      i. Advertise all the positions, spelling out requisite qualifications;
      ii. Receive applications/nominations from the general public;
      iii. Shortlist three persons for each position;
      iv. Send the nominations to the National Council of State to select one for each category from the shortlist and forward to the Senate for confirmation.

   b) For 5.5.3.2 (iv – viii) above:
      i. Each of the professional bodies should send 3 nominations to the National Judicial Council for screening;
      ii. The NJC shall screen the nominations and make appropriate recommendations to the National Council of State which shall further screen and recommend one name for each category to the Senate for confirmation.

5.5.3.5 **Tenure of Office**

   The tenure of office of the members of INEC’s Board should be five years subject to renewal for another five years.

5.5.3.6 **Composition of INEC’s Profession/Technical Management Team**

   a) At the national level INEC’s management team should consist of professional/technical/operational officers as follows:
      i) A Secretary
      ii) Departmental Directors

   b) At the State level, the State Independence Electoral Commission (SIECs) should be re-organized and incorporated within the structure of the INEC to form a single election management body for the country. The State level Secretariat of INEC should
therefore consist of 37 Directors of Elections, one for each State and the FCT, appointed by INEC, trained and posted to States other than their States of origin. These Directors should be career officers, and non-partisan persons of integrity.

c) At the Local Government level, full time 774 Local Electoral Officers should be appointed by INEC after public advertisement inviting applications and posted outside their own Local Government Area. At least one-third of these Local Electoral Officers should be women.

d) At the Ward level, full time 8814 career Assistant Electoral Officers should be appointed by INEC after public advertisement inviting applications and posted outside their wards but within the Local Government Area.

5.5.3.7 Other Recommendations

a) Section 153 of the 1999 Constitution which lists INEC as a federal executive body should be amended by deleting Sub-section 1(f) thereof.

b) As consequential to the recommendation under paragraph 5.5.3.7(a) above wherever INEC appears in sections 153 – 158, it should be deleted.

5.5.4 Functions of the Independent National Electoral Commission

5.5.4.1 Paragraph 15 to the Third Schedule (Part I) of the 1999 Constitution stipulates the functions and power of INEC.

The Commission shall have the power to:

i) organize, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives, and the House of Assembly of each State of the Federation.
ii) register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly.

iii) monitor the organization and operation of the political parties, including their finances.

iv) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report of such examination and audit for public information.

v) arrange and conduct registration of persons qualified to vote, and prepare, maintain, revise the register of voters for the purpose of any election under this Constitution.

vi) monitor political campaigns and provide rules and regulations which shall govern the political parties.

vii) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe to the oath of office prescribed by law.

viii) delegate any of its powers to any Resident Electoral Commissioner.

ix) carry out such other functions as may be conferred upon it by an Act of the National Assembly.

5.5.4.2 In addition, section 73 (1) of the 1999 Constitution provides that:

“The Independent National Electoral Commission shall review the division of States and of the Federation into Senatorial districts and Federal constituencies at intervals of not less than ten years, and may alter the districts or constituencies in accordance with the provisions of this section to such extent it may consider desirable in the light of the review”.

5.5.4.3 The 1999 Constitution also charged the Commission with the following responsibilities:

a) direct and supervise registration of voters and conduct of elections (s.118);

b) determine date of election to state Houses of Assembly (s.116);

c) periodically review state constituencies (s.114);

d) determine date of election into the National Assembly (s.76);
e) periodically review senatorial and federal constituencies (s.73);
f) demarcate States into three senatorial districts (s.71), and
g) conduct of recall of representatives and senators (s.69).
h) INEC has been assigned important and wide-ranging functions.

5.5.5 **Functional Performance by INEC**

(a) INEC is overburdened with many functions. This has undoubtedly contributed to its poor performance. The Commission has tried to carry out the various functions assigned to it by the 1999 Constitution, especially the following:

(b) registration of political parties;
(c) voter registration for the 2003 and 2007 elections;
(d) conduct of by-elections in many constituencies;
(e) receiving and validating of nominations of candidates for elections
(f) conduct of 1999, 2003 and 2007 general elections;
(g) efforts to introduce electronic voter registration, though largely unsuccessful yet;
(h) attempt to introduce electronic voting system in 2007 election, though not implemented;
(i) provision of materials and logistics for elections, though often with serious difficulties and lapses;
(j) monitoring of party primaries;
(k) monitoring and auditing of party finances, though not effectively; and
(l) civic education with assistance from foreign organisations and Nigerian civil society organizations.

5.5.5.2 These activities were undertaken in an environment characterised by several challenges like infrastructural (electricity, transport and communication) inadequacies; interference by the Executive, ruling political parties and politicians; cynicism by citizens, and antagonism by INEC leadership towards the public and civil society organisations.
5.5.5.3 **Observations**

There is substantial dissatisfaction with the level of effectiveness, efficiency and impartiality of INEC, especially in the areas of party registration, voter registration, monitoring of party activities and accounts, location of polling stations and booths, supply of voter registration and ballot materials, validation of the nomination of candidates, and especially the conduct of elections. Domestic and foreign election observers described the 2003 and 2007 elections as neither credible nor free and fair. Generally, the Commission was accused of failure in the very critical requirements of impartiality, effectiveness and efficiency.

5.5.5.4 The poor performance of the INEC has been attributed to several factors, the major ones being as follows:

- a) inability to cope with broad and demanding functions;
- b) infrastructural inadequacies in the country in the areas of electricity, transportation and communication;
- c) corruption of some INEC officials resulting in malpractices at different stages of electoral process;
- d) inadequate capacity of staff and equipment;
- e) delay in release of funds due to the Commission;
- f) lack of transparent and cost-efficient procurement system;
- g) non-observance of the rule of law (including disregard of court orders);
- h) lack of accountability, especially in relation to funds and assistance received from foreign donor agencies; and
- i) alienation of the public and hostility towards civil society organisations.
5.5.5.5 **Recommendations**

For INEC to function efficiently, some of the functions currently performed by it should be assigned to other agencies as follows:

**a)** Political Parties Registration and Regulatory Commission should be established and empowered to:

i) register political parties in accordance with the provisions of the 1999 Constitution and the Electoral Act 2006;

ii) monitor the organization and operation of the political parties, including their finances;

iii) arrange for the annual examination and auditing of the funds and accounts of political parties;

iv) monitor political campaigns and provide rules and regulations which shall govern the political parties;

v) accredit domestic civil society groups and organizations working in the area of elections and provide rules and regulations which shall govern their observation of elections;

vi) accredit international election observers and provide rules and regulations which shall govern their conduct and observation of elections; and

vii) Accredit national and international media organizations observing elections and provide rules and regulations which shall govern their activities.

**b)** An autonomous and constitutionally recognized **Electoral Offences Commission** should be established through a bill of the National Assembly and empowered to perform the following functions.

i) Enforcement and administration of the provisions of this Act.

ii) Investigation of all electoral frauds and related offences.

iii) Coordination, enforcement and prosecution of all electoral offences.
iv) Enforcement of the provision of the Electoral Act 2006, the constitutions of registered political parties and any other Acts or enactments.

v) Adoption of measures to identify, trace and prosecute political thuggery, electoral fraud, political terrorism and other electoral offences.

vi) Adoption of measures to prevent and eradicate the commission of electoral malpractices.

vii) Adoption of measures which include but are not limited to coordination, prevention and regulatory actions.

viii) Introduction and maintenance of investigative and control techniques towards the prevention of electoral malpractices and fraudulent election.

ix) The facilitation of rapid exchange of scientific and technical information among other democracies on the conduct of joint operation and training geared towards the eradication of electoral malpractices and fraudulent election.

x). The examination and investigation of all reported cases of electoral offences with the view to identifying electoral officers and staff of the electoral commission, individuals, corporate bodies or groups involved in the commission of electoral offences.

xi) Collaboration with election observing authorities within and outside Nigeria.

c) The composition of the Electoral Offences Commission should be as follows:

i. a Chairman who shall be the Chief Executive Officer and a person of unquestionable character;

ii. a Deputy Chairman who shall be a person of unquestionable character;
iii. six Nigerians of unquestionable character, 1 from each of the six geopolitical zones of the Federation;

iv. the Attorney-General of the Federation or his nominee not below the rank of a Director;

v. the Inspector-General of Police or his nominee not below the rank of Assistant Inspector General; and

vi. the Secretary to the Commission who shall be the head of the administration.

d) The Chairman and members of the Commission who shall be non-partisan shall be appointed by the President subject to the confirmation of the Senate.

e) The Commission shall make standing order regulating its proceedings or those of any of its committees.

f) The Chairman and Deputy Chairman shall be non-partisan persons not below 45 years of age, and the members shall be non-partisan persons not below 40 years of age.

g) The Chairman and Deputy Chairman shall hold office for a period of 5 years term and upon satisfactory performance may be re-appointed for another period of 5 years term and no more.

h) Members of the Commission shall hold office for a period of 5 years and upon satisfactory performance may be re-appointed for another period of 5 years and no more.

i) The Chairman, Deputy Chairman and Members of the Commission may at any time be removed from office by the President for inability to discharge the function of his/her office (whether arising from infirmity of mind or body or any cause) or for misconduct or acting on the advise of two-thirds majority of the Senate confirming that he/she be so removed for acts inconsistency with the Constitution or this Act.

j) A Constituency Delimitation Commission should be established with institutional representation from INEC, National Population
k) A Centre for Democratic Studies should be established to undertake broad civic and political education for legislators, political office holders, security agencies, politicians, political parties and the general public.

5.5.6 Ensuring Efficient Electoral Administration and Management

5.5.6.1 Election administration and management is a key component of the electoral process. It includes, among others, the rules and regulations governing voters registration, voter eligibility, nomination processes, balloting system, vote counting process, declaration of results, adjudication of disputes, voter education etc. The inputs received from the general public through memoranda and presentations at the public hearings suggest that INEC has performed below expectation with regard to election administration and management. The Committee has considered this issue and made appropriate recommendations to address it.

5.5.6.2 Recommendations

5.5.6.2.1 Voter Registration
(a) There should be adequate logistics for a continuous voter registration exercise. Work on the voters’ register needs to continuously update the current level of registration, ensuring that all those persons properly qualified and wanting to be registered have the chance to do so, thus achieving universal suffrage in Nigeria.
(b) After the public verification period, INEC should undertake all necessary corrections and again display the voters’ register at the voter registration centres. Permanent voter registration cards
should be issued once the process has been concluded well in advance of election.

5.5.6.2.2 Design and Handling of Ballot Papers/Boxes
(a) INEC should ensure that ballot papers have watertight security features and should institute a transparent tracking system.
(b) Ballot boxes should be placed in polling stations away from officials and party agents but in full view of the Presiding Officer.
(c) The security of ballot boxes needs to be improved including the provision of seals and locks.
(d) Ballot papers should be stored and distributed from locations within a reasonable distance of their appropriate polling stations. The desire to protect the sanctity of the ballot should not preclude ballots from reaching their destinations.
(e) Ballot materials should be under the protection and oversight of security agencies and electoral officials in order to prevent local political leaders from obstructing their distribution.

5.5.6.2.3 Polling Booths/Stations
(a) An accurate list of polling stations, including locations and the number of registered voters, should be made available to political parties and observers before elections.
(b) INEC should ensure that voting booths, where applicable, are distributed in sufficient time to all polling stations and all polling staff are trained to erect them and fully implement all procedures designed to ensure secrecy of the vote.
(c) INEC should identify all satellite polling stations so that voters will be properly directed to where they will cast their vote.
(d) INEC should ensure that each polling station has a manageable number of registered voters, at most 500 to avoid congestion and delays in casting and country votes on polling days.

5.5.6.2.4 **Distribution of Election Materials**
(a) Adequate and timely preparation should be made with respect to election materials and the conduct of elections. The fire brigade approach adopted by INEC in 2007 is unacceptable. It is submitted that preparation for the next election should commence immediately.
(b) INEC should identify its needs early enough and make arrangements for their procurement in good time to avoid logistics problems.
(c) Election materials should be transported to the States early enough to ensure that voting commences at the scheduled time.
(d) Adequate voting materials should be provided to the polling stations so that all eligible voters can exercise their civic rights.
(e) INEC should develop and use suitable hand-over documentation for sensitive polling materials (result forms, ballot boxes, ballot papers etc).

5.5.6.2.5 **Voting Process and Procedure**
(a) The use of electronic voting machines is recommended for future elections but this should be introduced gradually after a period of limited testing and experimentation.
(b) In future elections, accreditation should take place first within a defined time-frame, to be followed by voting within a defined time-frame. Agents of political parties should be given copies of results and have the right to demand a re-count on the spot.
(c) The Electoral Act 2006 should be amended to ensure secrecy of
the vote for tendered ballots.

d) INEC and other agencies involved in elections should make necessary information available to the media on time to avoid speculations

5.5.6.2.6 Collation and Declaration of Results

(a) Contingency plans should be made for alternative power supply to collation centres for instances where it may become necessary for collation to be done in the dark.

(b) INEC should swiftly and publicly display detailed results of the elections, including all polling station results as well as collated information on the number of voters, votes cast, invalid votes etc.

(c) All election results should be announced at the polling stations by the Presiding Officer, duly signed by and copies given to:

i. the accredited agents of the political parties that have entered for that election;
ii. the Police;
iii. the SSS.

(d) Transparency in the results process in particular but also in the general work of INEC should be improved. Results broken down by polling stations should be provided at each superior level. Final published results should be more comprehensive in terms of providing full information on number of voters, votes cast, invalid votes, votes scored etc.

(e) INEC should publish presidential election results down to the lowest level prior to declaring a winner in order to demonstrate that the results are accurate and within expectations. This is very important since without vote
analysis, at least at the State level, it is impossible to determine whether all the constitutional requirements for an election have been met.

5.5.6.2.7 **Stakeholder Meetings and Consultations**
There should be closer interactions between INEC and other stakeholders in a bid to build confidence and minimize suspicion and enhance their complimentary roles.

5.5.6.2.8 **Electoral Officers**
(a) INEC should ensure that the manual for election officials should be available in each polling station and is followed closely by the officials.
(b) The stipulated number of INEC staff should be present at each polling station.
(c) INEC should use its Electoral Institute to establish a permanent pool of well trained and qualified electoral trainers to undertake continuous training of INEC staff.
(d) For future elections, INEC should ensure that election officials, including ad-hoc staff are recruited and trained in good time, to ensure a more professional handling of the process.

5.5.6.2.9 **Ad-Hoc Staff**
(a) For its ad-hoc staff to be accountable, INEC should use National Youth Service Corps members and public servants as ad-hoc staff during elections. The list of ad-hoc staff should be published to enable the public raise objections to those with questionable character or partisan interests.
(b) INEC should design a process of monitoring its *ad hoc* staff to ensure strict compliance with election guidelines. INEC should also ensure that election materials arrive poling stations on time.

5.5.6.2.10 Party Agents

(a) Party Agents should have clear official identification and should receive training regarding their roles and responsibilities.

(b) All agents should be accredited at least 14 days before election and authenticated before the commencement of the election day.

5.5.7 Composition and Functions of State Independent Electoral Commissions (SIECs)

5.5.7.1 The 1999 Constitution provides for the establishment of State Independent Electoral Commissions (SIECs), which have the function of conducting elections of Chairmen and Councilors into the Local Government Councils. Paragraph 3 to the Third Schedule (Part II) of the 1999 Constitution provides that “A State Independent Electoral Commission shall comprise the following members (a) a Chairman; and (b) not less than five but not more than seven other persons” who are to be appointed by the State Governor and confirmed by the House of Assembly for the State.

5.5.7.2 Observations

Many people who submitted memoranda expressed dissatisfaction with the performance of SIECs which were considered mere organs of the incumbent State Governors and the ruling parties. Unfortunately, the conduct of the local government elections by them in 2004, and more recently in 2008 in many States of the Federation tended to support the negative perception of the SIECs. In most of the States where local
government elections were conducted, candidates of the ruling parties won virtually all the seats. Often such results do not reflect the voting pattern in federal elections. In view of the performance of the SIECs in 2004 and 2008 elections, there have been popular suggestions at the public hearings, in some of the memoranda submitted, and also in the media for their abrogation.

5.5.7.3 The poor performance of SIECs gives cause for concern given the significance of local governments in a democratic society. The local government tier should be the foundation of democratic governance for the citizens. It is the closest level of government to the citizens. Therefore, it should be seen to address the basic needs of the citizens. Further, it provides citizens with more direct representation and opportunity for political participation. However, in its present form, the operators of the Local Government tier are seen as mere nominees of State Governors who lack the autonomy to implement popular and democratic programmes.

5.5.7.4 **Recommendation**

It is recommended that the existing SIEC should be reorganized and integrated into the structure of INEC for greater efficiency and autonomy. This will entail constitutional amendment and statutory provisions integrating and coordinating the activities of the State offices of INEC and SIECs for all elections.

5.6 **THE ROLE OF SECURITY AGENCIES**

5.6.1 The security agencies in the country have an important role to play in the conduct of free and fair elections in the country. Nigeria has several security agencies, each performing specific functions. The security agencies in Nigeria include (a) *armed forces* (army, navy air force); (b) *intelligence and law enforcement agencies* (Nigeria Police Force, State Security Services, Defence Intelligence Agency, Nigerian Intelligence

5.6.2 The examination of the laws of other countries reveals that security agencies were not specifically tasked with election duties. The electoral laws in some countries, however, require the police and other security agencies to render assistance to the electoral agencies and provide security for politicians, party offices etc. They are also expected to guarantee the safety of election officials and materials. A significant finding, however, is that in some countries (e.g. India) the security personnel involved in election duties are brought under the control of either the electoral commission or an independent agency instead of under the Executive throughout the election period.

5.6.3 Safety and security of persons and properties is important for the conduct of free and fair elections. Therefore, security agencies in various countries play important roles in ensuring safety and security at various stages of the electoral process when conflict is endemic, especially in new democracies. Such critical and violence-prone stages in Nigeria include delimitation of constituencies; voter registration; party primaries and nominations; campaigns and rallies; display of voters register; polling; counting of voters; declaration of results; proceedings and verdict at tribunals.

5.6.4 During the 2003 and 2007 elections, there were widespread reports of violence at various stages of the electoral process. Several politicians were killed. Voter registration, party primaries and polling were
characterized by corruption, intimidation, violent disruptions and assault. Electoral violence disenfranchises a significant proportion of the population who are afraid of being victimized in the process of trying to register as voters, attend rallies and party conventions, or cast their votes.

5.6.5 Since 1999, the personnel of the various security agencies have been mobilised to provide security during elections. Until then, the police were largely responsible for ensuring security during elections. The increasing involvement of other security agencies in election duty may be attributed to the high incidence and threat of violence at various stages of the electoral process. However, the deployment of security agencies has in some cases, been associated with irregularities by incumbent authorities such as intimidation (especially of opponents of the ruling parties at the national and state levels), electoral fraud, collusion with politicians to undermine free and fair elections and incompetence in handling problems at polling stations.

5.6.6 **Nigeria Police Force**

5.6.6.1 The Nigeria Police Force, being the nation’s primary civil force, has the following wide responsibilities in elections or the electoral process:

a) guaranteeing safety and peace throughout the election process;
b) restoring peace and safety after disorder that may be engendered by delimitation of constituencies;
c) safeguarding the security of personnel, materials and venues for voter registration;
d) safeguarding the security of the life and property of citizens during voter registration, political campaign and voting;
e) ensuring the safety of electoral officers before, during and after elections;
f) providing security for politicians during campaigns;
g) ensuring and preserving a free, fair and safe atmosphere for election campaigns by all parties and politicians, without discrimination;

h) maintaining peaceful conditions, law and order around the polling and collation or counting centres;

i) ensuring the security of sensitive election materials at voting and collating or counting centres and during transportation. The Police have responsibility for ensuring that election materials are not hijacked, destroyed or fraudulently altered by any group or person;

j) ensuring that politicians do not intimidate, corruptly induce or manipulate the electorate at voter registration and polling centres, and

k) maintaining security around the election petition tribunals

5.6.6.2 It is also the responsibility of the Nigeria Police Force to enforce the various provisions in the Electoral Act 2006 concerning:

a) obstruction of registration of voters;

b) destruction or forging of nomination papers;

c) disorderly behaviour at political meetings and campaigns;

d) improper use of voters cards;

e) improper use of vehicles;

f) impersonation and voting when not qualified or underage;

g) dereliction of duty;

h) bribery and corruption;

i) voting by unregistered persons;

j) disorderly conduct at elections;

k) threatening of voters and contestants, and

l) undue influence by contestants, their agents or supporters.

5.6.6.3 The police have tried to discharge these responsibilities effectively. However, there have been several complaints by members of the public
and especially by politicians. The most important allegation against the police is that they do not maintain impartiality in dealing with all political parties. It is alleged that the leadership of the police force often issues instructions before elections which tend to portray the opposition as troublemakers and enemies that must be conquered with force. This encourages policemen on electoral duty to intimidate and harass people on the day of the polling. Even in granting permits to hold rallies, the police have been accused of discrimination against opposition parties.

5.6.6.4 There have also been complaints about functional ineffectiveness of the police during elections. This problem may be attributed to several factors including inadequate personnel, lack of intelligence capability, inadequate transportation and communication facilities, and neglect of the welfare of the deployed personnel. Further, the officers deployed for election duties are sometimes ineffective because they were not adequately trained for their roles. Other complaints against the police include unprofessional conduct like brutality, intimidation, facilitating the snatching and destruction of ballot boxes, multiple and under-age voting, mass thumb printing of ballot papers, forgery of results in exchange for bribes etc.

5.6.6.5 Recommendations

In order to solve these problems, the following measures are recommended:

a) the roles of each of the various security agencies during elections should be clearly defined;

b) there should also be an effective coordination of the work of the various security agencies during elections;

c) the curricula for the training of the police at all levels (basic/entry, intermediate and command courses) should include modules on democracy, elections, political parties and constitutional/statutory provisions on elections;
d) the independence of the Police Force should be guaranteed by strengthening its autonomy from the control of the government of the day. The security of tenure of top police officers and the prevention of harassment of Police officers on account of professional discharge of their duties should also be guaranteed;

e) the Police Force should be strengthened in the areas of communication, weaponry and transportation for effective mobilization, deployment and enhanced performance;

f) adequate provisions should be made for the safety, transportation and feeding of all security and law enforcement officials on electoral duties. This will reduce the likelihood of the officials succumbing to temptations from the politicians;

g) the police force should organize training, lectures and workshops for its personnel prior to major elections;

h) provisions of the Police Act which vest operational control of the Police in the President of the Federal Republic of Nigeria are in contravention of the 1999 Constitution. The former should therefore be amended;

i) a Code of Conduct should be issued to police officers involved in election duties. Compliance should be monitored by a team set up by the Police Service Commission consisting of police officers, members of civil society organizations (NBA, human rights NGOs, observers, etc.). Violation of the code should be sanctioned;

j) considering that there are no fewer than 120,000 polling stations throughout the country, the size of the Nigeria Police Force should be significantly increased from the present total strength of 371,000 to enable the Police maintain presence at each polling station during elections;

k) the law enforcement agencies should be properly oriented to appreciate the need for neutrality during elections. The Police in
particular should be adequately funded and equipped to maintain law and order during elections;
l) the Inspector-General of Police, the Chairman of INEC and other appropriate officials should establish comprehensive and effective measures for providing public security during each stage of the electoral process, from candidate selection, to voter registration, election campaigning, election day and the immediate post election day periods. The public should be informed of the existence of adequate security arrangements;
m) the Nigerian Police Force and other security agencies should give adequate protection to electoral officials and materials as well as voters during elections to prevent criminal gangs from hijacking or tampering with the process;
n) contact telephone numbers of all supervising police officers in each division should be made public by INEC to enable observers and citizens place calls for assistance and/or re-enforcement as the need arises;
o) the police should not carry weapons when they are on duty at polling stations; and
p) the role of security agencies especially the Police who must be posted to the Polling Units and Collation Centres should be limited to keeping law and order. Within the Polling Units and Collation Centres, the Police and personal security of politicians or any person, should not be allowed within the radius of 20 metres of Polling Units and Collation Centres. Security agencies must not be seen to tamper with or have anything to do with election results or materials.

5.6.7 Armed Forces
5.6.7.1 The personnel of the armed forces were mobilised in 1999, 2003 and 2007 to assist the police to provide security during elections. The armed
forces can legitimately aid electoral authority during elections, especially in such areas like conveying voter registration and election materials and officials to areas that are difficult to reach due to topography or other access challenges. However, the involvement of the armed forces in elections should not be aimed at intimidating politicians and the electorate or construed to suggest that only the ruling party should be voted for. Unfortunately, the leadership of the armed forces has, in the past been credited with statements after elections, which were interpreted by the public as intimidation of opposition parties and endorsement of the ruling party.

5.6.7.2 Recommendations

It is recommended that:

a) the armed forces should provide assistance to the electoral body in conveying electoral officials, registration and voting materials, when necessary;

b) the leadership of the armed forces should not make statements that may be seen as intimidation of opposition political parties and the electorate;

c) the armed forces personnel should not be deployed to polling centres or stations;

d) the armed forces should discontinue acts of psychological warfare, including show of force through patrols in convoys of armoured personnel carriers and lorries, days prior to or on the eve or day of election, which may be construed as intimidation of opposition parties;

e) The Air Force may provide assistance in the form of aerial surveillance to assist the police to detect sites of disorder during elections;

f) The Navy may assist in conveying electoral and voter registration materials and officials in difficult or dangerous areas;
g) The Armed Forces may offer assistance to the electoral body and the police force. However, they should be professional and impartial in doing so;

h) other than exercising their individual rights to vote, members of the Armed Forces should not be involved in the conduct of elections; and

i) as Commander-in-Chief of Nigeria’s Armed Forces, the President should take concrete steps to ensure the neutrality of security forces during the election period.

5.6.8 **Roles of Other Security Agencies**

5.6.8.1 **Observations**

Other security agencies are mandated to carry out several functions, which can be performed to assist in the conduct of free and fair elections in the country. Some of the relevant ones are discussed below.

a. The State Security Service gathers intelligence on the subversion of several provisions of the electoral laws such as manipulation of ethnicity and religion; arming thugs, corruption and imposition of candidates on parties and the electorate by people in power. The information may be used to prevent the intended mischief.

b. The Nigeria Custom Service has the capacity for monitoring, detection and prevention of the importation of unauthorised goods (such as ballot boxes, ballot papers, arms and ammunition, etc.) that may be used to subvert free and fair elections.

c. The Nigerian Immigration Service prevents ‘the illegal importation’ of non-Nigerians from neighbouring countries to register and vote in the country’s elections.

d. The Economic and Financial Crimes Commission (EFCC), the National Drug Law Enforcement Agency (NDLEA) the Independent Corrupt Practices and Other Related Offences Commission (ICPC), Code of Conduct Bureau (CCB) and the
Code of Conduct Tribunal (CCT) monitor the financial transactions of Nigerians who occupy strategic positions in the country’s polity, public bureaucracy and economy. Those found to violate the country’s law are swiftly prosecuted in accordance with the rule of law and due process.

e. The Federal Road Safety Commission complements the effort of the police in checking vehicles for illegal possession and conveyance of electoral materials, arms and ammunitions.

5.6.8.2 Recommendations

In order to improve the effectiveness and impartiality of security agencies during elections, the following preventive and punitive measures should be introduced:

a. enact law strengthening proper oversight of security agencies by the National Assembly;

b. armed orderlies should not go to polling areas in uniform on election days;

c. civic education should be intensified so that the personnel of security agencies can also imbibe democratic culture;

d. security personnel to be mobilised for elections must be selected or screened through a rigorous process to determine their suitability in terms of values, knowledge, orientation, discipline, competence and integrity. Selected officers should be adequately trained well in advance;

e. an effective coordination of personnel from the different agencies must be ensured in order to enhance efficiency, accountability and discourage impunity.

f. during elections, dignitaries should be restrained from moving about with armed security details.

g. in the discharge of their duties, security services should:
(i) not interfere in the balloting procedures on election day, but should ensure that voters feel safe and are unhindered to exercise their rights and civic responsibility through the ballot box;

(ii) take all appropriate measures to curb electoral violence, including ensuring timely deployment of adequately equipped and briefed personnel, and cooperate with other security agencies including the Nigerian Security and Civil Defence Corps;

(iii) work cooperatively with other stakeholders to provide proactive, and impartial policing and to ensure that existing laws are enforced without fear or favour; and

(h) during elections, security agencies should not be placed under the direction of INEC.

5.7 THE ROLE OF THE MEDIA

5.7.1 Of all civil society organisations, only the media has constitutional recognition. Section 22 of the 1999 Constitution provides thus: “The press, radio, television, and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this Chapter and uphold the responsibility and accountability of the Government to the People."

5.7.2 The 1999 Constitution in Section 39 guarantees the right to freedom of expression and freedom of the press, including the right “to own, establish, and operate any medium for the dissemination of information, ideas and opinions”

5.7.3 The media provides the platform for public debates, dissemination of information, expression of opinions on political and social issues, setting agenda for discourse on societal issues and enlightenment. The role of the media is critical in facilitating the participation of citizens in public
discourse. Properly employed, the media would contribute to the development of a consensus on national issues.

5.7.4 There are several other legal provisions and professional precepts on the role of the Nigerian media in the electoral process. The Political Parties (Registration and Activities) Decree No. 35, of 1998 outlines the roles of the radio and television stations in the electoral process to include: (a) enlightening the citizens on the provisions of the Constitution on parties and elections; (b) promoting the interest and consciousness of citizens in democratic participatory politics; (c) enlightening the citizens concerning their political rights and duties; (d) promoting issue based political competition and choices instead of ethnic or primordial driven politics. The National Broadcasting Commission regulates the activities of the electronic news media (radio and television stations), and issues the Nigeria Broadcasting Code. The principal aim of the legal provisions and the Code is to ensure fair coverage of the political parties and prevent the broadcasting of programmes that can undermine the conduct of democratic elections. The code seeks to prevent the broadcast of inciting materials, or information capable of undermining inter-group harmony and political stability.

5.7.5 Observations

a) There are numerous provisions for the regulation of the media, especially the radio and television stations.

b) Notwithstanding these provisions, the media in the country are accused of unfair and inequitable coverage of political parties. Government media are also accused of giving undue prominence to the ruling parties while the private ones are accused of ethnic and regional prejudices in their reportage of political events.

c) The media can be a source of conflict and instability in society. This danger is due, partly, to the nature of ownership in a free enterprise society. Owners and employees of the media outfits
can use them for partisan purposes that may endanger national unity and stability.

d) The enforcement of the legal provisions and the Broadcasting Code is largely ineffective

5.7.6 **Recommendations**

a) Media practitioners should be adequately trained in the provisions of the electoral law so that they can appropriately enlighten the public and be guided by them. The Nigerian Union of Journalists, National Broadcasting Commission (NBC), Broadcasting Organisation of Nigeria, and INEC should conduct such training.

b) The National Broadcasting Commission and the Nigerian Press Council should be strengthened so that they can effectively monitor the activities or programmes of the media to ensure that they conform to the provisions of the electoral law. Violations should be promptly sanctioned in accordance with the law.

c) The media should:

   i) intensify its exposure of violations of the electoral laws;

   ii) play an advocacy role for dialogue and debate and ask questions of all aspirants on their manifestos and ideologies;

   iii) promote politics of ideas and issues, not name-calling or invectives;

   iv) act as a buffer against tension created by the political class by presenting the issues as they are, not garnished with embellishment or undue sensationalism;

   v) be able to proactively detect the fault lines in the electoral process before electoral hills develop into electoral mountains;

   vi) consistently highlight the things that unite the country, namely national peace, national security, national
integration, and ethno-religious tolerance, rather than the things which divide the country.

vii) abide by the Code of Ethics for Nigerian journalists drawn by the Nigerian Press Organisation and the Nigerian Press Council;

viii) give access and equal opportunity to all political parties or candidates of such political parties and independent candidates:

- A denial of such access and equal opportunity constitute an offence punishable in the first instance with N1,000,000.00 and on any subsequent violation with a fine of N5,000,000.00;
- Staff of a radio or television station should not be sanctioned in any manner for giving access or equal opportunity to any registered political party of candidate including independent candidate.

d) The media should be encouraged to continue its vigorous free debate, while tempering passionate reporting with the need to respect the truth and adhere to international standards of journalistic integrity. Media outlets should act in a non-partisan manner and remember their responsibility to provide the most accurate unbiased information to the general public.

e) The NBC should ensure that publicly funded media allocate equal airtime to political parties and candidates competing in an election in order to ensure equity of coverage for all.

f) Prior to elections, state media should provide the electorate with an impartial and accurate voter education campaign, aired during peak viewer/listener times, informing voters in detail about the voting process.

g) The government and other stakeholders should demonstrate genuine commitment to promote press freedom.
5.8 THE ROLE OF POLITICAL PARTIES.

5.8.1 Sections 221 to 227 of the 1999 Constitution regulate the organisation, governance, programmes, funding and operations of political parties. These sections provide that:

a) political parties are the only platform for contesting elections (s.221);

b) membership of political parties must be open to every citizen of Nigeria irrespective of place of origin, circumstance of birth, sex, religion or ethnic grouping (s.222);

c) name, symbol or logo of political parties shall not contain any ethnic or religious connotation (s.222);

d) political parties are required to elect their principal officers and members of the governing bodies on a democratic basis and periodical basis not exceeding four years (s.223);

e) membership of the Executive Committee and governing bodies of political parties must reflect federal character;

f) programmes, aims and objectives of political parties must ‘conform with the provisions of Chapter II’ of the Constitutions of the Federal Republic of Nigeria, 1999 (s. 224);

g) political parties shall maintain proper account records and are obliged to report same to INEC (s.225);

h) political parties are obliged to grant INEC access to their financial accounts for purposes of their examination (s.226);

i) political parties are prohibited from receiving funds and other assets from outside Nigeria (s.225); and

j) the political parties are prohibited from establishing or using armed organisations to pursue political or other objectives (s.227).

5.8.2 The principal functions of political parties are

a) Canvassing for votes in support of candidates for elections.
b) Aggregation of interests and opinions.
c) Linking the government with the governed.
d) Widening political participation.
e) Educating, enlightening, integrating and mobilizing the populace.
f) Setting goals and values for the society.
g) Nominating and recruiting people into public office.

5.8.3 Observations

5.8.3.1 The 1999 Constitution prescribes

a) Parties as the only platform for contesting elections.
b) National parties.
c) Democratic election of party leaders.
d) Provisions of chapter II of the Constitution as the minimum programmes to be articulated in the manifestoes.
e) Financial accountability by parties.
f) That parties shall not establish or use armed groups for political purposes, e.g. thuggery during elections.

5.8.3.2 Notwithstanding these provisions, memoranda and testimonies from the citizens during public hearings suggest that:

a) political parties do not always elect their leaders on democratic basis but adopt contrivances like “consensus candidates” arrived at through coercion and corrupt practices;
b) political parties do not have properly articulated manifestoes and ideologies to reflect differences between them in visions of government, economy and service;
c) political parties do not always maintain credible accounting procedures and do not present their election finance report to INEC within the time stipulated by law;
d) political parties establish, hire and use armed groups, sometimes disguised as youth wings, to perpetrate political violence; and
e) the public is in favour of legal provisions that would allow independent candidates to contest elections.

5.8.4 Recommendations

5.8.4.1 Establishment of the Political Parties Registration and Regulatory Commission

a) Establish a Political Parties Registration and Regulatory Commission which shall be empowered to perform the following functions:

i) register political parties in accordance with the provisions of the 1999 Constitution and the Electoral Act 2006;

ii) monitor the organization and operation of the political parties, including their finances;

iii) arrange for the annual examination and auditing of the funds and accounts of political parties;

iv) monitor political campaigns and provide rules and regulations which shall govern the activities of political parties;

v) accredit domestic civil society groups and organizations working in the area of elections and provide rules and regulations which shall govern their observation of elections;

vi) accredit international election observers and provide rules and regulations which shall govern their observation of elections;

vii) accredit national and international media organizations observing elections and provide rules and regulations which shall govern their activities; and

viii) all the functions listed in section 46, 78 – 105 of the Electoral Act 2006.

b) The Political Parties Registration and Regulatory Commission shall comprise the following members who should be non-partisan:
i. a Chairman who must be a person of unquestionable integrity;
ii. a Deputy Chairman who must be a person of unquestionable integrity. However, the Chairman and the Deputy must not be of the same gender; and
iii. six persons of unquestionable integrity, two of whom must be women and 1 of whom must come from each of the six geopolitical zones.

c) The mode of appointment of the Chairman and members of the Board of the Political Parties Registration and Regulatory Commission shall be as follows:

i. the National Judicial Council shall advertise the position of the Chairman, Deputy and the 6 National commissioners;

ii. the National Judicial Council shall screen the application received and recommend to the President for appointment subject to confirmation by the Senate;

iii. the Tenure of office of members of the Board of Political Parties Registration and Regulatory Commission shall be 5 years renewable only once; and

iv. the Chairman, Deputy Chairman and Members of the Board shall be removed from office by the President acting on the recommendations of the National Judicial Council that the member be so removed for his/her inability to discharge the functions of his/her office or appointment (whether arising from infirmity of mind or body) or for misconduct or contravention of the Code of Conduct.

v. The Political Parties Registration and Regulatory Commission shall have power to appoint, dismiss, and exercise disciplinary control over its own staff.
vi. Sections 221 – 229 of the 1999 Constitution should be amended to replace all references to INEC with the Political Parties Registration and Regulatory Commission.

vii. Section 15 of the 3rd Schedule to the 1999 Constitution should be amended to reflect the new roles and functions assigned to the Political Parties Registration and Regulatory Commission.

5.8.4.2 Additional Conditions for Registering Political Parties
In addition to the existing provisions of the 1999 Constitution and the Electoral Act 2006, any political association wishing to be registered as a political party must meet the following additional criteria and other regulations that will be made from time to time by INEC or the Political Parties Registration and Regulatory Commission:

i. the association must maintain functional and verifiable offices in at least two-thirds of the States of the Federation; and

ii. the association should maintain 20% women in the membership of all its governing bodies.

5.8.4.3 Independent Candidature
Independent candidates should be allowed to contest elections under the following conditions:

i. constituency based nomination by verifiable signatures of 10 registered voters in each ward in the constituency;

ii. payment of financial deposit which will be subject to refund if the independent candidate scores at least 10% of the total valid votes cast in that election in the constituency. The rate of deposit should be equal to 10% of the approved election expenses for the various offices as provided in Section 93 of the Electoral Act, 2006; and
iii. in addition to items (i) and (ii) above, the candidate must meet all other conditions for eligibility stipulated in the Constitution, the Electoral Act or any other laws.

5.8.4.4 Party Ideologies and Programmes

(a) All political parties should have identifiable ideologies and ideals which shall inform their programmes and the way and manner they intend to operationalise ‘the fundamental objectives and directive principles of state policy’ as contained in Chapter 2 of the 1999 Constitution. In furtherance of the above, parties should be encouraged to establish think tanks at all levels to generate ideas. It is from such ideas that party manifestos are developed.

(b) Encouragement should be given to issue-based, rather than personality-based politics.

(c) Political parties should distinguish themselves from each other based on substantive issues of concern to voters rather than the personalities of their leaders. Parties are encouraged to seek to improve their understanding of voter concerns, address those concerns, and adopt responsive policies into their party platforms and manifestos.

(d) There should be no dual leadership of political parties and primary election into offices should not only be conducted at all levels, but should also be open, monitored and their rules enforced by the electoral bodies.

(e) All political parties participating in elections should send the names, photographs and specimen signature of their polling agents for appropriate authentication, to any election. Polling agents of the parties should authenticate the result sheets of the election by initialing them prior to the election and counter-sign them after the recording of results of the election.

(f) Only parties contesting elections should have their names,
symbols or logos on the ballot paper or electronic voting machine.

5.8.4.5 **Public Funding of Political Parties**

(a) Political parties, for purposes of transparency and accountability, shall publicly disclose to INEC all sources of funding including donations.

(b) Government should continue to fund political parties either directly or through INEC. The political parties should be encouraged to raise funds of their own through sale of forms to candidates, fund-raising exercises, individual or corporate donations as well as undertaking commercial activities. On donation by individuals for purposes of supporting elections the following ceilings should apply:

(i) President = N20 million  
(ii) Governor = N15 million  
(iii) Senate = N10 million  
(iv) House of Representatives = N5 million  
(v) State Houses = N2.5 million  
(vi) Chairmanship of Local Government = N3 million  
(vii) Councillorship = N500,000.00  

(c) The funding of political parties should be based on their performance in general elections. After the 2011 election, only parties that score a minimum of 2.5 per cent of the votes should be eligible to receive grants from public funds.

(d) The Political Parties Registration and Regulatory Commission (PPRRC) should ensure that legal provisions to check political party financing and expenditure are fully enforced and the findings published in an open and transparent manner to ensure accountability.
(e) Financing regulations established by the Electoral Act 2006 should be fully enforced by PPRRC. After the submission of annual financial returns by political parties, PPRRC should produce an audit report on the returns which should be made public. The requirement to submit a financial report on campaign expenditures should be enforced.

5.8.4.6 Jurisdiction of the Courts in Party Matters
(a) Political parties should establish internal machinery for determining nominations of candidates in party elections.
(b) In case of disputes, political parties should exhaust all party machinery available in resolving such disputes before going to court.
(c) Disqualification of candidates fielded for any election should be done on the basis of the provisions of the 1999 Constitution and the electoral law by the Courts.

5.8.4.7 Enhancing Internal Democracy in the Political Parties
(a) There should be reform of political parties with more insistence on intra-party democracy.
(b) Party conventions, congresses and meetings should be held regularly at all levels and should be free from undue interference. Such party conventions, congresses and meetings should adhere to the scope of their power and authority as entrenched in the party constitution.
(c) Party organs should play active roles in determining who is nominated to contest for positions in the party, appropriate to their levels.
(d) There should be no cross-carpeting under any circumstance.
(e) Given past internal problems concerning nomination of candidates, political parties should develop internal procedures for
candidate nomination that are open, transparent, inclusive and
democratic and require that those seeking nominations do not use
intimidation, violence, bribery or similar unacceptable methods to
gain nomination or office.

(f) Reports of Administrative Panels should not be used to disqualify
candidates. Section 182(1)(i) of the 1999 Constitution should be
amended to allow only Judicial Reports and Tribunals to be so
used.

(g) Appropriate legal framework should be provided to support
justiceability of party nomination. There is no need to expend time
and resources on a primary election that will be discarded while
courts stand helpless. Section 86 of the 1999 Constitution should
be amended to allow a candidate who feels aggrieved in a
primary election to go to court.

(h) The nomination process needs to be clarified and rationalised,
ensuring that the procedures for nomination, complaints and
appeals can be properly dealt with according to the timelines for
the election, ensuring the timely identification of contestants and
printing of ballots. The law should be clarified to properly, fairly
and definitively identify the qualifications for candidates and the
respective responsibilities with regard to verifying and confirming
eligibility. In this regard, INEC should not be seen as the
adjudicator in such cases, but rather as the recipient of legal
decisions by a qualified court.

(i) Political parties should give more attention to the nomination of
women and youths as candidates.

(j) Political parties should ensure that women have equal access to
leadership opportunities within party organizations. To this end,
political parties are encouraged to examine party structures and
procedures to remove barriers that directly or indirectly
discriminate against the participation of women in politics.
5.8.4.8 **Party Supremacy**

(a) Only credible and tested party members should emerge as party candidates for elections.

(b) In order to discourage people joining parties solely for the purpose of contesting election, there should be a qualifying period of membership of the party in addition to other criteria.

(c) The party should carry out continuous monitoring of the performance of elected officers in relation to the party’s manifesto.

(d) In order not to undermine the party’s capacity to enforce party supremacy at all levels, no office holder in the party should hold any position in government.

5.8.4.9 **Guaranteeing the Survival of Multi-Party Democracy**

(a) There should be a forum of all political parties to assess and evaluate on a regular basis the political situation in the country including the prospect of the survival of the multi-party democracy.

(b) All political parties should respect the right of other parties to exist without being subverted or intimidated in any form.

(c) Political parties should accept the outcomes of free and fair elections.

(d) The Code of Conduct for political parties should not be limited to the party leadership but should be used as a civic education tool to help reduce tensions and prevent or mitigate violence throughout the country. Concerted efforts should be made within each electoral constituency to bring together electoral authorities, political parties, security forces, civil society, religious leaders and traditional leaders to implement the letter and spirit of the code. Women and youth should be actively involved in this effort.

(e) In order to enhance commitments that political parties have made
in the Code of Conduct against violence and intimidation and to promote the active participation of women in the electoral processes, the Code of Conduct should include meaningful sanctions in cases of non compliance.

(f) Parties should refrain from all acts of violence and inflammatory rhetoric and should discipline those candidates, representatives or members who encourage or participate in such activities.

(g) All participants in the electoral process (Political Parties, Candidates, and Security Agencies) should obey all the laws governing elections.

5.9 THE ROLE OF RELIGIOUS AND TRADITIONAL INSTITUTIONS

5.9.1 In a democratic society, the role of traditional and religious institutions is vital for the mobilisation of the electorate to participate at all phases of the electoral processes. However, religious and traditional leaders lead people who may have diverse political opinions and varied political preferences. Therefore, traditional and religious leaders should be non-partisan.

5.9.2 Observations

i. Traditional and religious leaders have in the past contributed admirably to the mobilisation of the electorate for participation in the electoral process.

ii. Traditional rulers, many being recipients of salaries and allowances from state governments, were coerced by the ruling parties to mobilise their people to vote for the candidates of the party in government. In some cases, political parties also corruptly induced religious and traditional leaders to mobilise their followers to vote for them. These practices undermine free and fair elections because they mitigate free choice by the electorate.
5.9.3 **Recommendation**

(a) The role of religious and traditional leaders in public enlightenment, civic education, voter education and mass participation in the political process should be promoted.

(b) Religious leaders should use their considerable moral authority to speak with one voice and strongly encourage political party leaders to eschew violence and obey the provisions of the Constitution and Electoral Law.

(c) Traditional leaders should be encouraged to be non-partisan and neutral in the political process and to continue to educate their people to actively participate in the electoral process in a peaceful manner.

5.10 **THE ROLE OF CIVIL SOCIETY ORGANISATIONS**

5.10.1 There are divergent views on the meaning of civil society. However, for the purpose of this Report, civil society refers to the sum total of those organizations and networks which lie outside the formal state apparatus. It includes, but is not limited to, the following:

a) social groups such as those representing women, children, the youth, the elderly and people with disability and special needs;

b) professional groups such as associations of artists, engineers, health practitioners, social workers, media, teachers, sport associations, legal practitioners, social scientists, academia, business organizations, national chamber of commerce, accountants, workers, employers, industry and agriculture, as well as other private sector groups;

c) non-Governmental Organizations (NGOs), community-based organizations (CBOs) and voluntary organizations;

d) cultural organizations;

e) faith based organizations;
f) students groups;
g) sports clubs; and
h) informal associations.

5.10.2 **Role of Civil Society in Nigeria’s Electoral Process**
Organized civil society plays the following roles in a democratic polity.
a) Serves as a watchdog to check abuse of power by government –
human rights violation and abuse of the rule of law.
b) Increases the participation and skills of all the various segments of
society in the democratic process. Civil Society Organisations
supplement the role of political parties in stimulating political
participation, increasing political efficacy and skills and promoting
appreciation of the obligations of democratic citizens.
c) It helps in the recruitment and training of new political leaders in
technical and administrative skills and normative standards of public
accountability, transparency, responsiveness and inclusiveness.
d) It is an important channel of information dissemination and thus helps
citizens to collectively pursue and defend their interests and values.
e) It enhances voters’ confidence in the electoral process through voter
education.
f) It promotes the credibility of elections by exposing electoral fraud and
other undemocratic activities.

5.10.3 **Observations**
Civil Society organizations in Nigeria have so far played the following
roles in the Nigerian electoral process.
a) sensitization and mobilization of voters through voter education;
b) making proposals for electoral reforms;
c) advocacy for electoral reforms;
d) monitoring of party primaries;
e) building the capacity of disadvantaged groups, especially women to participate in the electoral process;

f) monitoring/observation of elections;

g) issuing reports on the conduct of elections;

h) monitoring the proceedings of electoral tribunals;

i) organising mass rallies, protests, and strikes against electoral malpractices;

j) exposure of flaws and fraud in the electoral processes;

k) exposure of violations of electoral laws and regulations; and

l) monitoring of the voter registration exercise.

5.10.4 Recommendations

a) Electoral legislations should guarantee the participation of civil society at relevant stages of the electoral process, including:

i. monitoring of campaign financing;

ii. monitoring unlawful use of public facilities for election campaigns and electioneering;

iii. monitoring of electoral violence, malpractices, and those behind them and issuing reports on them;

iv. monitor the enforcement of sanctions against persons who have violated the electoral laws; and

v. Civil society organizations should continue and expand their broad civic and voter education about the importance of the elections, the voter registration process, and where, when and how to register and to vote.

b) Civil society organizations interested in election observation should coordinate and cooperate in such endeavours in order to maximize their coverage of the entire process.

c) Civil society organizations should take advantage of their capabilities to help educate and inform voters on the mechanisms and importance of registering to vote and in the
significance of the elections to the consolidation of Nigeria’s young democracy.

d) Civil society organizations should be encouraged to actively engage in exercising their “watchdog function” and work to hold politicians and political institutions accountable during the electoral process.

e) The right of domestic observers to observe the entire election process should be guaranteed by law.

f) The Electoral Act 2006 should be amended to establish a clear procedure, including appropriate criteria, for approval or rejection of an application for accreditation.

5.11 THE ROLE OF INTERNATIONAL ORGANISATIONS

5.11.1 The roles of international organisations in the conduct of elections in different countries vary depending on the political and economic contexts, including the stage and extent of democratic development. In developed democracies, the international organisations play the role of watchdog through election observation. However, the organisations play several roles in emerging democracies transiting from either authoritarian political system or conflicts. Generally, international organisations may be classified into two broad categories. The first group consists of institutions of foreign governments, regional and international agencies. Examples of these are Britain, United States of America, Canada, Germany, etc; African Union; Economic Community of West African States (ECOWAS); European Union; the Commonwealth Secretariat and organs of the United Nations (e.g. United Nations Development Programme (UNDP), United Nations Electoral Assistance Division (UNEAD)). In the second category are the non-governmental organisations (NGOs) like the International Federation of Electoral Studies (IFES), National Democratic Institute (NDI), International Republican Institute (IRI), Carter Centre,
International Crisis Group (ICG) and Human Rights Watch. For better understanding, we will refer to the former as international organisations and the latter as international NGOs.

5.11.2 In emerging democratic societies like Nigeria and most African, Latin American, Asian and Eastern European nations, the international organisations play diverse roles including provision of human, financial, technical and material assistance. During 1999, 2003 and 2007 elections, Nigerian governments and civil society organisations received significant financial assistance from the UNDP, United States Agency for International Development (USAID), and the European Union. Assistance to the domestic NGOs is mainly for civic education and election observation. Other emerging democracies in Africa such as Ghana, Tanzania, Uganda, and Kenya receive similar assistance to conduct their elections. In addition to providing assistance, many international organisations, especially the African Union, the Commonwealth of Nations, and European Union deploy observers during elections in democratic transitional societies. The overall objective is to strengthen institutional capacity to conduct credible elections.

5.11.3 The roles of international NGOs in the electoral process of emerging democracies include technical assistance through information sharing with the electoral commission and civil society organisations, training of electoral staff and the staff of NGOs and election observation. Some of them like the Human Rights Watch and the International Crisis Group monitor and issue reports on events and conditions before, during and after elections, focusing especially on the credibility of the entire electoral process. The international NGOs have made valuable contributions to the conduct of elections in Nigeria since 1999. Similar contributions have been made to most African countries that embarked on democratization since late 1980s.
5.11.4 **Observation**

The role of the international organisations must be understood against the background of globalisation and global wave of liberal democratic governance. It is also important to recognize that there are now international minimum standards for democratic elections, including Declarations by African Union and the ECOWAS.

5.11.5 **Recommendations.**

a) Contributions of international organisations and NGOs should be recognized and utilized for the development of the electoral process in the country.

b) Accreditation of international organisations as observers should be encouraged.

c) Financial and material contributions already received from these organisations should be properly accounted for by INEC to ensure transparency and accountability.

d) INEC should be fully independent and should not receive funds from any international bodies.
CHAPTER SIX
REVIEW OF ELECTORAL SYSTEMS RELEVANT TO
NIGERIA’S EXPERIENCE

Terms of Reference:
Examine electoral systems relevant to Nigeria’s experience and identify best practices that would impact positively on the quality and credibility of the nation’s electoral process.

6.1. INTRODUCTION
6.1.1 The Electoral Process
6.1.1.1 A country’s electoral process is a complex web of activities which involves more than its electoral and voting systems. The electoral process includes a broad set of activities, including the creation and maintenance of the legal and political framework for the design of the country’s electoral system, and more generally for the regulation, management and administration of elections.

6.1.1.2 The most significant components of the electoral process are (i) the electoral system; and (ii) election administration and management, which include constituency delimitation, size of the legislature, voter eligibility rules, voter registration and party system. Election administration and management also include party funding, party access to the mass media, party nomination processes, electioneering, balloting system, distribution of polling centres, vote counting process, announcement of results, adjudication of election disputes, and voter education.

6.1.1.3 The design of the electoral process, and of its outcomes, is related to the dynamic unfolding of power struggles, which are mediated by economic, historical, political, and socio-cultural forces.
6.1.2 **The Electoral System**

6.1.2.1 The electoral system is a component of the electoral process, and is designed to provide the framework within which the electorate chooses among competing political parties and their candidates, contesting for elective political offices. In other words, the term, *electoral system*, is used to indicate how many of such offices are to be contested, how votes are to be cast and counted, and what formula or rules and regulations governing the voting process are used in transforming votes cast into winners of the elections into the offices. There are different types of electoral systems, but the principal ones are First-Past-The-Post (FPTP) or winner takes all system, Proportional Representation, and various combinations of these.

6.1.2.2 There are, therefore, two basic approaches to, or strategic considerations in, the design and classification of electoral systems. One approach is the inter-party one, which distinguishes between a majoritarian system, with plurality or First-Past-The-Post seat-allocation rules, and which generally favours a single-party government, and a proportional one which, in allocating seats in proportion to votes won by a political party, tends to encourage multi-party governments or coalitions. The second approach is the intra-party one, which provides a choice between candidate-focused systems, where the electorate is offered a choice between candidates from the same party, and party-focused ones, where the electorate votes for the party list and not party candidates. The choice of a country’s electoral system is, however, generally influenced by its history.

6.1.3 **Nigeria’s Current FPTP Electoral System**

6.1.3.1 Nigeria’s current electoral system is based on the majoritarian or First Past the Post (FPTP) system. The system is usually based on simple majority, that is, in an electoral contest, the candidate with the
highest score or plurality of votes irrespective of the margin of victory is declared the winner in the contest.

6.1.3.2 Under this system, it is possible for a candidate in theory to win an election with only one or two votes more than the opposing candidates. However, in addition to scoring a simple majority, the Nigerian Constitution prescribes a minimum level of vote spread for victory in presidential and gubernatorial elections. Specifically, Section 134 (2) of the 1999 Constitution provides that:

A candidate for an election to the office of the president shall be deemed to have been duly elected where there being more than two candidates for the election, (a) he has the highest number of votes at the election and (b) he has not less than one quarter of the votes cast at the election in each of at least two thirds of all the states in the federation and the Federal Capital Territory Abuja.

6.1.3.3 Similarly, the Constitution stipulates in Section 179 (2) for office of the Governor; that:

A candidate for election for an office of Governor of a state shall be deemed to have been duly elected to such office, where being the only candidate nominated for the election, (a) he has a majority of Yes votes over No votes cast at the election and (b) he has not less than one quarter of all the votes cast in each of at least two thirds of all the local government areas in the state.

6.2 BEST PRACTICE INDICATORS OF GOOD ELECTORAL SYSTEMS

The following are the best practice indicators which a good electoral system should satisfy:

a) **Representation**

Ensuring that parliaments are as representative as possible. In the case of elected executives like the President and Governors, an important objective is to ensure that those elected command the support of the majority rather than a minority of electors.
b) **Accessibility**
Ensuring that the voting process and its outcomes are easy for the electorate to understand; and the voting/polling centers are widely publicized and accessible to the electorate.

c) **Conciliation**
Providing opportunities for reconciliation after the electoral contests, especially in countries where there are deep-seated cleavages and divisions, as well as for political conflict resolution, generally.

d) **Stability**
Ensuring that governments are stable. Electoral systems that tend to produce hung parliaments are prone to governmental instability.

e) **Accountability**
Ensuring not only that elected officials are responsible and responsive to their constituents as much as possible but also that in reality, voters are able to change their representatives through elections.

f) **Integration**
Encouraging parties with crosscutting, broad and integrative values and ideologies to emerge, rather than those with a fragmented, parochial and exclusive orientation.

g) **Opposition**
Encouraging the growth of effective opposition in parliament.

h) **Efficiency**
Ensuring that elections are cost-efficient and not too expensive to administer.
6.3 TYPES OF ELECTORAL SYSTEMS

6.3.1 There are three types of electoral systems in operation around the world namely, Plurality-Majority systems, Semi-Proportional Representation and Proportional Representation.

6.3.2 There are various combinations and modifications of these three types to suit national experiences. Fig. 6.1 graphically illustrates the varieties of each of the major electoral systems and their combinations. Table 6.1A summarizes the details of each of these major systems, while Table 6.1B illustrates the distinguishing features and differences between the three genres of electoral systems.

**Figure 6.1: Types of Electoral Systems**

![Diagram of Types of Electoral Systems](Image)
### Table 6.1A: Summary of types of World Electoral Systems.

<table>
<thead>
<tr>
<th>Genre</th>
<th>Type</th>
<th>Brief Description</th>
<th>Major Advantages</th>
<th>Major Disadvantages</th>
<th>Countries</th>
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<tbody>
<tr>
<td>Plurality-Majority</td>
<td>First Past the Post (FPTP)</td>
<td>Based on single-member districts Winner is candidate with most votes though not necessarily an absolute majority FPTP applied to multi-member district. Voters have as many votes as seats to fill. Candidates with most votes are elected. Candidates must win absolute majority. Voters’ second preferences used to produce majority winner if none emerges from first round. Candidates must win absolute majority. Voters’ second preferences used to produce majority winner if none in first round.</td>
<td>➢ Simple to be implemented, used and understood by the electorate. ➢ Provides clear-cut choice between two major parties. ➢ Produces single party governments that are more likely to be stable. ➢ Produces coherent parliamentary opposition. ➢ Advantages broad-based parties. ➢ Excludes extremist parties from parliament, but could allow strong local parties to gain seats. ➢ Maintains strong links between constituents and members of parliament since they represent defined geographical areas. ➢ Voters choose between candidates rather than parties. ➢ Where applicable, it gives a chance to popular independent candidates.</td>
<td>➢ Most likely to exclude minority parties and minority groups from fair representation. ➢ Excludes women from parliament. ➢ Encourages political parties based on sectionalism – clan, ethnic groups or religion. ➢ Exaggerates regional machine politics and “godfatherism”. ➢ Produces a large number of wasted votes. ➢ Slow to respond to changes in public opinion. ➢ Could disillusion voters who see their candidates constantly lose in close votes. ➢ Increases rejection of election results by parties and candidates where counts are close. ➢ Encourages manipulation of district sizes by ruling parties whereby smaller districts are created in ruling party strongholds and large districts in opposition areas.</td>
<td>➢ UK ➢ Ireland ➢ Palestine ➢ Maldives</td>
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<td>Block Vote</td>
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<td>Nauru Australia</td>
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<td>Alternate Vote</td>
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<td>Mali France</td>
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<td>Two Round</td>
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<td>Semi-PR</td>
<td>Parallel</td>
<td>➢ Combine PR list and winner takes all (majoritarian) districts.</td>
<td>➢ Improves on the proportionality of parliamentary seats. ➢ SNTV is simpler to administer than PR.</td>
<td>➢ Does not fully guarantee proportionality. ➢ Not much incentive for</td>
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<td>PR</td>
<td>Mixed Member Proportional (MMP)</td>
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<td>Combines PR list and winner takes all (majoritarian) districts</td>
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<td></td>
<td>Awards PR list seats to compensate for disproportional distribution of seats in majoritarian districts</td>
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<td>Political parties present lists of candidates to voters on a national or regional basis.</td>
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<td>Voters vote for parties and at the end seats are allocated in proportion to votes won by the parties.</td>
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<td>Candidates are selected in the order they appear on the party list.</td>
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<td>May use droop quota</td>
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<td>Faithfully translates votes cast into seats won.</td>
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<td>Encourages or requires the formation of political parties or groups of like-minded candidates.</td>
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<td>Gives rise to very few wasted votes.</td>
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<td>Facilitates minority parties’ access to representation.</td>
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<td>Encourages the emergence of nationally oriented parties.</td>
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<td>Leads to greater continuity and stability of policy.</td>
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<td>Makes power sharing between parties and interest groups more likely.</td>
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<tr>
<td></td>
<td>Produces coalition governments that are likely to be unstable.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>In Presidential system could create frictions between President and a fractious parliament.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Fragmented and incoherent opposition.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Destabilizes the party system.</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Provides platform for extremist parties.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Difficult to throw a party out of power.</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Weakens link between MPs and constituents.</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>More difficult to implement, use and understand by the electorate. Some of them involve complex mathematical formulas that may increase suspicions of manipulation.</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List Proportional Representation (List PR)</th>
<th>Single Transferable Vote (STV)</th>
</tr>
</thead>
<tbody>
<tr>
<td>compensate for disproportional distribution of seats in majoritarian districts</td>
<td>Parallel system makes it possible to correct the disproportionality of FPTP by fixing the number of seats allocated to party list</td>
</tr>
<tr>
<td>Each voter has 1 vote but there are several seats in the district</td>
<td>parties campaign in areas other than where they are strong.</td>
</tr>
<tr>
<td>Candidates with highest votes are elected</td>
<td>In the Parallel system, the balance between FPTP and Party list differ markedly and may not be based on any objective criteria</td>
</tr>
<tr>
<td></td>
<td>Jordan</td>
</tr>
<tr>
<td></td>
<td>Vanuatu</td>
</tr>
<tr>
<td></td>
<td>New Zealand</td>
</tr>
<tr>
<td></td>
<td>Germany</td>
</tr>
<tr>
<td></td>
<td>South Africa</td>
</tr>
<tr>
<td></td>
<td>Finland</td>
</tr>
<tr>
<td></td>
<td>Ireland</td>
</tr>
<tr>
<td></td>
<td>Malta</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Electoral System Families</th>
<th>Types</th>
<th>Distinguishing Features</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plurality-Majority</td>
<td>a) First Past the Post (FPTP)</td>
<td>Plurality-Majority almost always uses single-member districts, i.e., districts from which only one member is elected to parliament.</td>
</tr>
<tr>
<td></td>
<td>b) Alternative Vote AV)</td>
<td>- FPTP: winner is candidate with most votes, not necessarily an absolute majority of the votes.</td>
</tr>
<tr>
<td></td>
<td>c) Block Vote</td>
<td>- The AV and Two Round System, ensure that winning candidates receive absolute majorities (over 50%). Voters’ second preference is used to produce a winner if one does not emerge from the first round of voting.</td>
</tr>
<tr>
<td></td>
<td>d) Two Round</td>
<td>- The Block Vote is used in multiple-member districts, i.e. districts where more than one member is elected to parliament. Under it, voters have as many votes as there are seats to be filled, and the highest-polling candidates fill the positions regardless of the percentage of the vote they actually won.</td>
</tr>
<tr>
<td>Semi-Proportional</td>
<td>(a) Single Non-Transferable Vote (SNTV)</td>
<td>- In SNTV, each voter has one vote but there are several seats in the district to be filled. The candidate with the highest number of votes fill the seats. In practical terms, in a four-member district, for example, a candidate only needs just over 20% of the vote to be elected. This allows the election of minority parties’ candidates and improves parliamentary proportionality.</td>
</tr>
</tbody>
</table>
|                           | (b) Parallel or Mixed System | - Parallel system uses both PR lists and plural-majority districts, but unlike Mixed Member Proportionality (MMP), under the parallel system the PR lists do not compensate for any disproportionality within the
Proportional Representation (PR)

(a) List PR
(b) Mixed Member Proportionality (MMP)
(c) The Single Transferable Vote (STV)

PR systems consciously try to reduce the disparity between a party’s share of the national/state or regional vote and its share of national or state parliamentary votes.

- Under Party list, political parties present candidates to the voters on a national, state or regional basis.
- The MMP can also give the same result, if the proportional component of the system compensates for disproportionality arising out of the majoritarian districts results.
- The STV allows voters to rank order candidates in multi-member districts.

Source: Abstracted from International IDEA, *Handbook of Electoral System Design*, pp.18-19

6.3.3 The most popular type of plurality-majority system is the First-Past-the-Post. Of the 211 countries studied by the International IDEA in May 2007, 68 or 32% were using the FPTP.

6.3.4 Other types of the Plurality-Majority genre include the Block Vote, used by the Palestinian Authority and the Maldives, the Australian Alternative Vote and the Two Round System (TRS), used in France and Mali.

6.3.5 Semi-Proportional Representation systems combine the Plurality-Majority (essentially FPTP) system and the Proportional Representation system. Some of the better-known Semi-PR systems include the Parallel Vote (Japan and Georgia) and Single Non-transferable Vote (Jordan and Vanuatu).

6.3.6 The PR system is increasingly becoming popular around the world. Fig. 6.2 shows that in the International IDEA study of 1997, 45% of the countries studied were either using the PR (35%) or Semi-PR (10%),
suggesting an increasing movement away from pure Plurality-Majority systems.

**Figure 6.2 World Electoral Systems (1997)**

6.3.7 There are three main types of PR systems namely, the Mixed Member Proportional (MMP) used in New Zealand, Germany and more recently Lesotho, List PR used in South Africa and Finland and the Single Transferable Vote (STV) used in Ireland and Malta. Among the PR types, the most popular is the List PR system, with about 31% of countries adopting it in 1997.

6.3.8 It is important, however, to note that it is not the type of electoral system per se that matters. The critical consideration should be what best suits the constitutional and political objectives which a country seeks to achieve, in the broader context of its specific historical experiences and complexion.

6.3.9 The political will to faithfully pursue a country’s objectives by the political class is also a critical success factor in the choice of an electoral system. For instance, although the apartheid regime in South Africa used the FPTP system for about four decades, the African National Congress (ANC) supported PR, notwithstanding the fact that the FPTP would have put it at an advantage. The decision of the ANC to support
the adoption of PR was based on the need for national reconciliation and inclusiveness, a decision that has been widely applauded for being responsible for the relative stability South Africa has enjoyed in spite of deep socio-economic and racial divisions in the country.

6.3.10 **Major Advantages of Plurality/Majority Systems**

The major advantages of the plurality/majority systems include the following:

a) It is simple to implement and easy to understand by the electorate.
b) It provides a clear-cut choice between two or more major parties.
c) It produces single party governments that are more likely to be stable.
d) It encourages the emergence of a coherent parliamentary opposition.
e) It is advantageous to broad-based parties.
f) It tends to exclude extremist parties from parliament, although it can allow strong local parties to gain seats.
g) It is predisposed to establishing strong links between constituents and members of parliament, since they represent defined geographical areas.
h) It enables voters to choose between candidates rather than parties.
i) Where applicable, it gives a chance to popular independent candidates to run for and win elections.

6.3.11 **Disadvantages of Plurality/Majority Electoral System**:

The major disadvantages of the plurality/majority electoral system are:

a) It excludes minority parties and minority groups from fair representation in the legislature.
b) It places women candidates at a disadvantage and tends to exclude them from parliament.
c) It tends to encourage political parties based on sectionalism – clan, ethnic groups or religion.
d) It exaggerates regional machine politics and “godfatherism”.

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e) It produces a large number of wasted votes.
f) It is slow to respond to changes in public opinion, and can lead to the disillusionment of voters who see their candidates constantly lose in close electoral contests.
g) It increases rejection of election results by parties and candidates, where counts are close.
h) It encourages the manipulation of district sizes by ruling parties whereby smaller districts are created in ruling party strongholds and large districts in opposition areas.

6.3.12 **Advantages of Proportional Representation**

The major advantages of proportional representation electoral system include:

(a) It faithfully translates votes cast into seats won.
(b) It encourages or requires the formation of political parties or groups of like-minded candidates.
(c) It results in very few wasted votes. It facilitates minority parties’ access to representation.
(d) It encourages the emergence of nationally oriented parties.
(e) It can lead to greater continuity and stability of policy.
(f) It makes power sharing between parties and interest groups more likely.

6.3.13 **Disadvantages of Proportional Representation**

The major disadvantages of the proportional representation electoral system are:

(a) It produces coalition governments that are likely to be unstable.
(b) In Presidential systems it could create frictions between the President and a fractious parliament. It tends to encourage fragmented and incoherent opposition.
(c) It may destabilize the party system and provide a platform for extremist parties.
(d) It makes it difficult to throw a party out of power.
(e) It tends to weaken the link between representatives and their constituents.
(f) It is more difficult to implement, use and understand by the electorate.

6.4 CONSIDERATION OF ADOPTING THE PROPORTIONAL REPRESENTATION SYSTEM IN NIGERIA

6.4.1 Introduction
6.4.1.1 The FPTP, single-member district electoral system has been in use in Nigerian elections since competitive electoral politics was introduced in the country. The system has its advantages, as was pointed out above. One of the strongest points in its favour is the fact that it is simple to use and candidates are tied to specific geographical constituencies which they represent. This offers the possibility of producing dedicated representatives who master their constituencies and their interests and work to serve them.

6.4.1.2 However, the FPTP system has also deepened cleavages, resulted in large numbers of wasted votes, unduly advantaged sectional, especially ethnic-based parties that have no need to seek votes outside their ethnic homelands, and excluded minority interests, especially when they are embedded in majority districts. It has also tended to encourage the manipulation of electoral districts to favour dominant interests, while also creating one-party dominant legislatures, at the federal and state levels, with weak opposition parties, because of the winner-takes-all principle, which undergirds it.

6.4.2 Issues for Determination
6.4.2.1 The PR system in its pure or mixed forms offers a high probability for the reduction of these flaws and their consequential imbalances.
Generally speaking, its main advantage is that it corrects the anomaly of parties receiving disproportionate number of seats in parliament compared to the votes cast for them by voters. Since a candidate could be elected by a single vote under the FPTP system, it is possible for a party to win elections in a constituency, without securing the highest number of votes cast. PR is able to correct this and therefore produce more representative Assemblies.

6.4.2.2 The results of the 1979, 1999 and 2003 National Assembly elections also amply demonstrate the contrasts between the FPTP and PR as shown in Tables 6.2A - 6.2E, and in Figures 6.3 and 6.4.

Table 6.2A: Senate and House of Representatives Seats of the Three Major Parties under FPTP and PR in the 1999 General Election

<table>
<thead>
<tr>
<th>Party</th>
<th>Senate votes</th>
<th>% Total Senate Votes</th>
<th>Senate seats (FPTP)</th>
<th>Projected Senate seats (PR)</th>
<th>House votes</th>
<th>% Total House votes</th>
<th>House seats (FPTP)</th>
<th>Projected House seats (PR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>PDP</td>
<td>13,917,193</td>
<td>57.07</td>
<td>59</td>
<td>59</td>
<td>13,289,938</td>
<td>56.38</td>
<td>206</td>
<td>196</td>
</tr>
<tr>
<td>APP</td>
<td>7,453,227</td>
<td>30.56</td>
<td>24</td>
<td>31</td>
<td>7,364,763</td>
<td>31.24</td>
<td>74</td>
<td>109</td>
</tr>
<tr>
<td>AD</td>
<td>3,015,827</td>
<td>12.37</td>
<td>20</td>
<td>13</td>
<td>2,918,614</td>
<td>12.38</td>
<td>68</td>
<td>43</td>
</tr>
<tr>
<td>Total</td>
<td>24,386,247</td>
<td>100.00</td>
<td>103</td>
<td>103</td>
<td>23,573,315</td>
<td>100.00</td>
<td>348</td>
<td>348</td>
</tr>
</tbody>
</table>

Table 6.2B: Senatorial Election Result and Distribution of Seats in the 1979 General Elections

<table>
<thead>
<tr>
<th></th>
<th>GNPP</th>
<th>UPN</th>
<th>NPN</th>
<th>PRP</th>
<th>NPP</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total votes</td>
<td>1,930,875</td>
<td>3,025,117</td>
<td>4,152,686</td>
<td>1,293,263</td>
<td>2,156,724</td>
<td>12,558,665</td>
</tr>
<tr>
<td>% vote</td>
<td>15.37</td>
<td>24.09</td>
<td>33.07</td>
<td>10.30</td>
<td>17.17</td>
<td>12.558,665</td>
</tr>
<tr>
<td>Seats won</td>
<td>8</td>
<td>28</td>
<td>36</td>
<td>7</td>
<td>16</td>
<td>95</td>
</tr>
<tr>
<td>% All seats</td>
<td>8.40</td>
<td>29.50</td>
<td>37.9</td>
<td>7.30</td>
<td>19.90</td>
<td>95</td>
</tr>
<tr>
<td>Seats – PR</td>
<td>15</td>
<td>23</td>
<td>31</td>
<td>10</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>Differential</td>
<td>+7</td>
<td>-5</td>
<td>-5</td>
<td>+3</td>
<td>-</td>
<td>16</td>
</tr>
</tbody>
</table>

6.4.2.3 Table 6.2A and Figures 6.3 and 6.4 show a comparison of the composition of the party membership of the Senate and House of Representatives in Nigeria after the 1999 federal legislative elections.

6.4.2.4 First, it is clear that the All People’s Party (APP) would have had more Senators than the Alliance for Democracy based on the votes cast for the parties in the Senatorial (Upper House) election. Thus, PR would
have produced a Senate that better captures the voting preferences of Nigerians.

6.4.2.5 Secondly, the House of Representatives would have had a much stronger opposition given that the PDP would have lost some 10 seats to the Opposition. This would have reduced the near complete dominance of the House by the PDP and therefore ensured a more democratic and responsive House of Representatives.

6.4.2.6 The same trend could be seen from the outcome of the 1979 Senatorial election (Table 6.2B). Had PR been applied, both the NPN and UPN would have lost five seats each, while GNPP, which made a good showing across the country and therefore showed more representation would have gained seven seats.

6.4.2.7 Table 6.2C also shows that in the 2003 elections to the House of Representatives, the PDP received a total of 54.49% of the votes cast, but won 64% of the seats, a discrepancy of 10%. In fact the distribution of seats shows that the FPTP system denied some fairly popular parties seats in the legislative house, and gave undue advantage to bigger parties like the PDP, which had 229 members instead of 196 that would have been its share on the basis of PR system.

6.4.2.8 It is also clear from Table 6.2C that minority parties that did not have representation in the House of Representatives would have been represented, such as the National Conscience Party (2 seats), Progressive Action Party (2 seats) and the Peoples Redemption Party (3 seats).
Table 6.2C: Distribution of House of Representatives Seats under FPTP and PR in the 2003 General Elections

<table>
<thead>
<tr>
<th>Party</th>
<th>% Votes won</th>
<th>House Seats (FPTP)</th>
<th>% House Seats (FPTP)</th>
<th>Projected House Seats (PR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alliance For Democracy (AD)</td>
<td>9.33</td>
<td>33</td>
<td>9</td>
<td>33</td>
</tr>
<tr>
<td>All Nigerian Peoples Party (ANPP)</td>
<td>27.44</td>
<td>92</td>
<td>26</td>
<td>99</td>
</tr>
<tr>
<td>All People Grand Party (APGA)</td>
<td>1.36</td>
<td>2</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>National Conscience Party (NCP)</td>
<td>0.48</td>
<td>-</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>National Democratic Party (NDP)</td>
<td>1.92</td>
<td>2</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Progressive Action Congress (PAC)</td>
<td>0.47</td>
<td>-</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Peoples Democratic Party (PDP)</td>
<td>54.49</td>
<td>229</td>
<td>64</td>
<td>196</td>
</tr>
<tr>
<td>People Redemption Party (PRP)</td>
<td>0.76</td>
<td>-</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>UNPP</td>
<td>2.75</td>
<td>2</td>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>OTHERS</td>
<td>0.72</td>
<td>-</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100</td>
<td>360</td>
<td>100</td>
<td>360</td>
</tr>
</tbody>
</table>

6.4.2.9 The results of the 1979 elections further illustrate the advantages of PR over FPTP in terms of being representative and inclusive.

6.4.2.10 In Benue State, the House of Assembly, which became totally dominated by the NPN, would have been different in terms of balance if PR and not FPTP had been used. In the Assembly, notwithstanding the fact that NPN scored about 72% of votes, it had 84% of the seats (See Table 6.2D). If we apply PR, NPN would have had 42 seats instead of 48 seats, conceding four seats to NPP and two to UPN.
Table 6.2D: Benue State House of Assembly Election Result in the 1979 General Elections

<table>
<thead>
<tr>
<th>BENUE STATE</th>
<th>GNPP</th>
<th>UPN</th>
<th>NPN</th>
<th>PRP</th>
<th>NPP</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Votes in State Assembly election</td>
<td>66,796</td>
<td>21,678</td>
<td>471,178</td>
<td>8,972</td>
<td>79,815</td>
<td>648,439</td>
</tr>
<tr>
<td>%</td>
<td>10.30</td>
<td>3.34</td>
<td>72.66</td>
<td>1.38</td>
<td>12.31</td>
<td></td>
</tr>
<tr>
<td>Seats won State House of Assembly</td>
<td>6</td>
<td>0</td>
<td>48</td>
<td>0</td>
<td>3</td>
<td>57</td>
</tr>
<tr>
<td>% All seats</td>
<td>10.5</td>
<td>0.0</td>
<td>84.2</td>
<td>0.0</td>
<td>5.3</td>
<td></td>
</tr>
<tr>
<td>Seats – PR</td>
<td>6</td>
<td>2</td>
<td>42</td>
<td>0</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Differential</td>
<td>+2</td>
<td>-6</td>
<td>0</td>
<td>+4</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


6.4.2.11 Table 6.2E, which shows the outcome of the Kaduna State House of Assembly election and the distribution of seats in 1979, gives an insight into how PR could potentially lead to reduction of instability. Had PR been used in 1979, NPN would have had 46 seats as against 64 seats. Consequently, to successfully impeach Governor Balarabe Musa, it would have required the support of all members of the PRP or all members of the GNPP.

Table 6.2E: Kaduna State House of Assembly Election Result in the 1979 General Elections

<table>
<thead>
<tr>
<th></th>
<th>GNPP</th>
<th>UPN</th>
<th>NPN</th>
<th>PRP</th>
<th>NPP</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Votes</td>
<td>245,733</td>
<td>75,683</td>
<td>537,618</td>
<td>246,038</td>
<td>62,415</td>
<td>1,167,487</td>
</tr>
<tr>
<td>% Vote</td>
<td>21.05</td>
<td>6.48</td>
<td>46.05</td>
<td>21.07</td>
<td>5.35</td>
<td></td>
</tr>
<tr>
<td>Seats won</td>
<td>10</td>
<td>3</td>
<td>64</td>
<td>16</td>
<td>6</td>
<td>99</td>
</tr>
<tr>
<td>% Seats won</td>
<td>10.1</td>
<td>3.0</td>
<td>64.6</td>
<td>16.2</td>
<td>6.1</td>
<td></td>
</tr>
<tr>
<td>Seats – PR</td>
<td>21</td>
<td>6</td>
<td>46</td>
<td>21</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Differential</td>
<td>+11</td>
<td>+3</td>
<td>-18</td>
<td>+5</td>
<td>-1</td>
<td></td>
</tr>
</tbody>
</table>

6.4.2.12 In addition, for countries like Nigeria characterized by deep-seated cleavages, the inclusiveness of the PR system is a desideratum for stability and reduction of tensions. It is generally accepted that a major reason for the war-like character of politics in Nigeria is the winner-take-all dynamics, and the consequential contradictions, produced by the FPTP system. This has a tendency to favour ethnic majority tendencies and to increase the sense of exclusion among minorities. This feeling is worsened by the fact that access to state power in Nigeria guarantees access to resources, both for individuals, groups and communities.

6.4.2.13 To summarize, the specific advantages of the PR system for a country like Nigeria are that it:

(a) Faithfully translates votes cast into seats won, and thus potentially avoids some of the more destabilizing and ‘unfair’ results of FPTP and other plurality/majority electoral systems. Principles are consciously devised to ensure fair representation and to match votes won and seats secured. In Mexico, the proportion by which seats won can exceed votes won is set at not more than 8%.

(b) Encourages or requires the formation of political parties or groups of like-minded candidates to put forward lists. One weakness of the party system in Nigeria is the tendency for everybody to gravitate towards large parties that have the best chance of winning in an FPTP system. Consequently, parties tend not to have unifying ideologies and so easily become internally fragmented.

(c) It gives rise to very few wasted votes in the sense that as many votes as possible become relevant in electing candidates. In South Africa in 1994, the percentage of wasted votes was as low as 0.8%. Compare this to the 53.5% and 50.7% of wasted votes in the Adamawa Central and Abia Central Senatorial Districts respectively in the April 2007 elections in Nigeria. In fact, wasted votes in Nigeria’s FPTP system averages between 45% and 50%. 
(d) Facilitates small and minority parties’ access to representation. Unless the threshold is unduly high, or the district magnitude is unusually low, then any political party with even a small percentage of the vote can gain representation in the legislature. In Lesotho, following the near political annihilation of the opposition parties by the ruling Basotho Congress Party as a result of FPTP, parliamentary seats were increased to 120, thus allocating 40 new seats to be filled by a PR party list from which the ruling party was excluded.

(e) Encourages the emergence of nationally oriented parties that campaign beyond the districts in which they are strong or where the results are expected to be close.

(f) Leads to greater continuity and stability of the polity.

(g) Makes power sharing between parties and interest groups more feasible, thereby leading to a reduction of exclusion. The South African example in which all races and all ethnic groups are represented in the government as a result of a consciously designed and systematic application of PR system is well known.

6.4.2.14 To these advantages must be set the following weaknesses, which have been associated with the PR system

(a) Its propensity to produce coalition governments that are likely to be unstable. However, this will be of minimal effect in a Presidential system, where the President and Governor exercise executive functions of State relatively separate from Parliament. In fact, having many parties represented will enable the President or Governor to rise above partisan politics and emerge as a true symbol of the entire nation and State.

(b) It produces a fragmented and incoherent opposition. A solid and coherent opposition is very important in checking the excesses of both the ruling party and the executive. Where opposition is fractious and weak, there is a tendency for the ruling party and executive to
become meddlesome in parliament. This is also conducive to executive overhang and abuses.

(c) It sometimes destabilizes the party system by supporting too many parties, many of which are unable to provide meaningful articulation and aggregation of interests of the electorate.

(d) As a result of the multiplicity of parties in parliament, it is often difficult to remove a party in power through a vote of confidence, since the opposition is usually fragmented. It is also difficult to remove a party through elections since the multiplicity of parties and candidates favour the major parties. In addition, only few parties will ever be in a position to win power.

(e) It weakens the link between representatives and constituents for at least two reasons. First, voting is essentially for the party rather than candidates. Secondly, because representation is not necessarily tied to geographical constituencies, there is a weak commitment to specific areas by those who represent them in parliament.

(f) In a Presidential system, it can create frictions between parliament and President because the latter may not enjoy the level of party majority necessary to push through executive bills.

(g) Generally, it tends to be more difficult to implement, use and understand by the electorate. Some forms of Proportional Representation entail complex mathematical formulas that may increase suspicions of manipulation of outcomes.

6.4.3 Proportional Representation and Presidential/Governorship Elections

6.4.3.1 The foregoing discussion has focused on legislative elections and the distribution of legislative seats. There remains the question of how electoral systems would affect the election of the President or Governor of a State. A critical consideration is the need to ensure that only candidates who best represent the wishes of the absolute majority of the electorate should emerge. The Alternative Vote and Two Round systems are common
examples of Plurality-Majority systems that have been used to ensure this. However, the Transferable Vote version of Proportional Representation could also serve the same purpose.

6.4.3.2 A look at the 1999 Constitution suggests that it recognizes this need. Sections 133/134 relating to the election of President and Section 179 dealing with the election of Governors modify the FPTP, by requiring representation and spread in addition to majority votes.

6.4.3.3 For example, Section 134(2a-2b) of the 1999 Constitution provides that, “where there being more than two candidates [for the presidential] election,” the duly elected candidate, in addition to securing “the highest number of votes cast at the election,” must also have “not less than one quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital City, Abuja.”

6.4.3.4 However, this modification of the FPTP may still not ensure that the candidate with the absolute majority of votes cast across the country gets elected, since the entire country in the case of the President and the entire State in the case of Governor are regarded as single constituencies.

6.4.3.5 Furthermore, there are constitutional provisions for what is in effect the Two Round System in the form of a runoff, in case there is no clear winner in the Presidential or Gubernatorial elections. Thus, for Presidential elections, Section 134 (3) of the 1999 Constitution provides that:

> In default of a candidate duly elected in accordance with subsection (2) of this section there shall be a second election in accordance with subsection (4) of this section at which the only candidate shall be -

> (a) the candidate who scored the highest number of votes at any election held in accordance with the said subsection (2) of this section; and
(b) one among the remaining candidates who has a majority of votes in the highest number of States, so however that where there are more than one candidate with majority of votes in the highest number of States, the candidate among them with the highest total of votes cast at the election shall be the second candidate for the election.

6.4.4 **Issues for determination: Combination of First-Past-The-Post and Proportional Representation**

6.4.4.1 Table 6.3 provides a summary comparison of FPTP and PR in relation to the objectives that electoral formulas should generally seek to achieve, as summarized earlier.
Table 6.3: Comparison of FPTP and PR on the Objectives of Electoral Formula

<table>
<thead>
<tr>
<th>Objectives</th>
<th>FPTP</th>
<th>Proportional Representation</th>
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<tbody>
<tr>
<td><strong>Representativeness:</strong></td>
<td></td>
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| Ensuring that parliaments (Assemblies) are as representative as possible. In the case of elected executives like the President and Governors, to ensure that those elected command the support of the majority rather than minority of electors. | (a) Weaker than PR on representativeness as a result of:  
  i. Wasted votes  
  ii. Winner only has to score a simple majority rather than absolute majority. Some forms of FPTP like Alternative Vote could be used to correct for this.  
  iii. Seats won do not necessarily match votes scored.  
  iv. For Presidency and Governorship where the entire country and State are single constituencies, simple majority means that the elected candidate could represent only a minority of voters  
  v. However, FPTP could strengthen representativeness because candidates are tied to specific constituencies and build a bond with their constituents.  
  vi. Also voters vote for candidates and therefore feel a stronger allegiance to them as their representatives. | (a) Stronger than FPTP on representativeness because it:  
  i. Reduces wasted votes to a minimal  
  ii. Faithfully allocates seats proportionate to votes won. In Mexico for instance, the ceiling of percentage of votes won over percentage of seats received is fixed at not more than 8%  
  iii. Encourages minority interests to be represented.  
 (b) However, where PR is not tied to geographical representation, it could weaken the bond between constituents and representatives.  
 (c) Where PR involves voting for parties rather than candidates, it weakens the bond between voters and their representatives. |
| **Accessibility:** | (a) Very accessible and easy for voters to understand and follow.  
 (b) Its simplicity reduces suspicion of manipulation.  
 (c) Paradoxically, its simplicity | Some pure PR types are difficult to understand by voters. If this is adopted for Nigeria, it would take some time for voters to master the process and the calculation of outcomes. |
sometimes makes it easy to manipulate by falsification of results

**Conciliation:** Providing opportunities for reconciliation after the electoral contests or in countries where there are deep-seated cleavages and divisions, as well as for political conflict resolution, generally.

Since it does not support as broad based representation as possible, FPTP is weak as an instrument of reconciliation. Ethnic and religious minorities and women mostly feel unrepresented.

Supports reconciliation by encouraging broad based representation and inclusiveness.

**Stability:** Ensuring that the State and governments are stable.

(a) Tends towards instability from:

i. Excluded groups like minorities who feel marginalized by dominant interests.

ii. Manipulation of outcomes and gerrymandering.

iii. Lack of party discipline arising from parties that are not internally cohesive ideologically.

iv. Cutthroat competition arising from its winner-takes-all approach

(a) Improves stability through:

i. Its tendency to be inclusive.

ii. Reducing competition by fairer allocation of seats.

iii. Encouraging more disciplined and internally cohesive parties.

(b) However, multiplicity of parties could lead to governmental instability, particularly in parliamentary systems.

(c) Its proneness to hung parliaments could also be a source of instability.

**Accountability:** Ensuring that elected officials are responsible and responsive to their constituents as much as possible. Ensures that in reality, voters are able to change their representatives through elections.

a) High on accountability since officials are tied to specific geographical constituencies.

b) Also because voters vote for candidates, they feel more accountable to their constituents than when voters only vote for parties.

c) However, it supports the emergence of regional party leaders and political notables or "godfathers" who are often not accountable.

a) High on accountability because seats won correctly reflect the wishes of the electorate.

b) Produces small and accountable political parties. Discourages the emergence of regional fiefdoms.

c) On the con side, however, because in some PR systems voters vote for parties rather than candidates, the accountability of elected
d) Reduces accountability of the entire system because seats won may not reflect the wishes of the majority of voters.

Integration: Encouraging parties with crosscutting, broad and integrative values and ideologies, rather than those with a fragmented and exclusive orientation. Since it does not encourage parties to seek votes outside areas where they are strong, its integrative value is low. It tends to support ethnic, regional and religious parties. Since it encourages parties to seek votes outside their strongholds, it tends to be an integrative mechanism. It also improves integration by encouraging minority interests to get represented.

Opposition: Encouraging the growth of effective opposition in parliament. Tends to produce stronger oppositions because of its inclination to privilege strong parliamentary parties. (a) Could lead to weak and fragmented opposition because of multiplicity of opposition parties. (b) However, the fact that many more opposition elements get elected means that it increases the numerical strength of the opposition.

Efficiency: Ensuring that elections are cost-efficient and not too expensive to administer. (a) Generally more cost effective than to administer than PR. (b) However, the multiplicity of single-member districts means that it could require more resources to administer. (a) Most PR systems are more expensive to administer than FPTP. (b) However, the use of multi-member districts reduces cost e.g. of ballot papers, numerous polling stations, staff, etc.

6.4.4.2 What Table 6.3 illustrates is that each electoral system has its strong and weak points. In fact, every supportive argument for each system, seems to have a counterfactual argument against it. This is why some observers argue that it is not First-Past-The-Post or PR electoral system per se, but the practitioners, that primarily constitute the heart of the problem of elections in the country.

6.4.4.3 However, there are some major issues for determination as part of the country’s electoral system reform agenda. Top among these is the
instability that has been directly and indirectly associated with the First-Past-The-Post in Nigeria.

6.4.4.4 Of particular importance is the cutthroat competition associated with electoral politics under the First-Past-The-Post system. Other important consequences of the First-Past-The-Post system are the emergence of indiscipline and internally fractious parties and the lingering feeling of marginalization among minority groups, including women.

6.4.4.5 In this respect, it seems the adoption of a modified form of Proportional Representation system, combining some elements of First-Past-The-Post and Proportional Representation systems is worthy of adoption to address the weaknesses and problematic nature of the First-Past-The-Post.

6.4.5 Recommendations

6.4.5.1 Applying a Combination of First-Past-The-Post and Modified Proportional Representation for Legislative Elections at the Federal, State and Local Government Levels

Based on the foregoing analysis, the following recommendations are made:

(a) Nigeria should retain the First-Past-The-Post electoral system but should also inject a dose of Proportional Representation based on closed party lists, thus evolving a mixed system.

(b) The First-Past-The-Post system shall continue to be used for all elections in the country, but for elections to the House of Representatives, State Houses of Assembly and Local Government Councils, the mixed system shall be used.

(c) For elections to the House of Representatives, the existing 360 seats would be retained and filled by the First-Past-The-Post system. In addition, 108 additional seats (i.e. 30% of the existing 360 seats in the
House of Representatives) will be created and filled through the Proportional Representation system.

(d) The arrangement in (c) above will be replicated in State Assemblies and Local Government Councils throughout the Federation. This implies that in each of these legislatures, additional seats representing 30% of existing ones shall be created and filled through the Proportional Representation system.

(e) Performance of political parties in an election conducted under the mixed system shall be the basis for allocating the Proportional Representation seats. The threshold to be met by parties for sharing the Proportional Representation seats shall be the total number of valid votes cast in the entire First-Past-The-Post election divided by the number of available Proportional Representation seats for that election. This threshold will represent the minimum number of votes a party must win to be allocated a Proportional Representation seat.

(f) Political parties shall nominate for the Proportional Representation election at least 30% female candidates and 2% physically challenged candidates for legislative elections.

(g) If a political party wins up to 70% of the seats in an election conducted under the First-Past-The-Post, it should be excluded from benefiting from the Proportional Representation.

(h) The Electoral Act 2006 should be amended to establish criteria for the production of party lists for the allocation of Proportional Representation seats in a manner that will ensure the inclusion of women and disadvantaged groups.

6.4.6 Proportional Representation and the Under-Representation of Women and other Disadvantaged Groups

6.4.6.1 As is the case in Argentina, Bangladesh, India, Tanzania, Uganda, and the United Kingdom, and in line with the emerging international consensus, there is a compelling case for the reservation of
a proportion of electoral representation for women and disadvantaged groups in the country.

6.4.6.2 For example, in Bangladesh, the country’s constitution provides for 30 co-opted women members of parliament in a 330-member parliament. In Argentina, the law on quota requires all political parties to nominate 30% women in electable positions on their list of candidates. In 1993 the Labour Party in the United Kingdom introduced a women-only shortlist in 50% of their “winnable” and “inheritor seats” (i.e. safe constituencies), from which Labour Members of Parliament were retiring. By the time this practice was ruled unlawful in 1995, Labour had had 35 women elected using the practice. However, by the 1997 election, the percentage of Labour Party women MPs had nearly doubled from 9.2% to 18%

6.4.6.3 It is pertinent to mention, in this respect, that quite a sizeable number of memoranda submitted to the ERC included recommendations that:

a) Women’s agenda should be entrenched in political party manifestoes;

b) Financial resources should be made available to women for effective political participation;

c) The Electoral Act 2006 should be more gender sensitive in addressing: women’s under-representation in the main organs of the political parties, gender equity in the structure, programmes and manifestoes of political parties, entrenched patriarchal attitudes that discourage women’s involvement in politics;

d) Gender parity in the composition of the electoral commission, its staffing and committees.

e) Gender balance in the nomination and selection of candidates for party offices and elective public political offices.

6.4.6.4 Recommendation

(a) The Electoral Act 2006 should be amended to ensure that 30% of party lists under the proposed Proportional Representation system
are reserved for women and 2% for physically challenged persons, without prejudice to their right to also compete for representation under the First-Past-The-Post system.

(b) Civil society and the United Nations Development Fund for Women (UNIFEM), in close collaboration with the Ministry of Women’s Affairs and the National Commission of Human Rights, should continue their efforts to enhance the participation of women in public life. In particular, a permanent, sustained and effective nationwide grassroots campaign targeting the participation of women as voters and as candidates should be undertaken.

(c) In making appointments of Ministers and Commissioners, special consideration should be given to the female gender.

6.7 KEY CONSIDERATIONS IN ELECTORAL SYSTEM CHANGE

6.7.1 System of Voting

6.7.1.1 The system adopted for voting has remained a part and parcel of the challenges of the present electoral process. Despite Nigeria’s commitment to a number of international conventions and instruments, which make the secrecy of voting and the integrity of the ballot imperative, the country has experimented with Open Ballot System in the past.

6.7.1.2 Recommendations

There are practices associated with the current voting system that are worthy of retention. The following are accordingly recommended:

(a) Open Secret Ballot System: This allows a voter to go into a polling booth to mark his ballot in secrecy and drop it in the ballot box in the open.

(b) Provision of fixed polling booths: The use of institutional buildings such as schools, community centres etc which are centrally
located, where available, or permanent polling locations should be encouraged.

(c) Accreditation of registered voters prior to the commencement of voting for the purpose of tracking how many people cast their ballot in a polling station.

(d) Display of voter’s register prior to the elections to enable registered voters, political parties, and the electorate generally make claims and objections.

6.7.2 **Voter Education**

The current system provides for voter education to be undertaken by the Election Management Bodies, civil society and relevant government agencies. This is a positive element that is worthy of retention. There is the need for a sustained campaign of civic and political education to enable the electorate understand the electoral system as well as their rights and obligations in the entire electoral process.

6.8 **CONCLUSION**

The First-Past-The-Post which Nigeria has operated since Independence has the notable advantages of simplicity, fostering stable governments, and establishing strong links between members of parliament and their constituents. However, it has the major disadvantage of heightening post-election tension by excluding women, minority parties and marginalized groups from fair representation. To address these weaknesses, a simple form of closed list Proportional Representation has been proposed to operate alongside the First-Past-The-Post system. The major advantage of this mixed arrangement is that it retains all the advantages of the First-Past-The-Post system, and seeks to promote greater inclusiveness and to reduce post-election tension by enhancing the representation of women, minority parties and marginalized groups.
CHAPTER SEVEN
SANITIZING NIGERIA’S ELECTORAL PROCESS

Term of Reference:
Make general and specific recommendations (including but not limited to constitutional and Legislative provisions and/or amendments) to ensure:
(a) A truly Independent Electoral Commission imbued with administrative and financial autonomy
(b) An electoral process that would enable the conduct of elections to meet acceptable international standards
(c) Legal processes that would ensure that election disputes are concluded before inauguration of newly elected officials; and
(d) Mechanisms to reduce post-election tensions including possibility of introducing the concept of proportional representation in the constitution of government.

7.1 INTRODUCTION
The thrust of this chapter is to critically examine a number of crucial issues which, taken together, provide answers to the major problems afflicting Nigeria’s electoral process. These issues, as outlined in the above Term of Reference, include:
(a) Ensuring a truly independent Electoral Commission
(b) Electoral process that would enable the conduct of elections that meet international standards
(c) Ensuring the conclusion of election disputes before swearing in of elected officials
(d) Dealing with post-election tensions

7.2 ENSURING A TRULY INDEPENDENT ELECTORAL COMMISSION
7.2.1 Members of the public have largely attributed the poor performance of INEC to its lack of independence. In order to ensure the independence
of the Commission, several suggestions were made through oral and written submissions to the Committee covering the composition, appointment and funding of the Commission.

7.2.2 Observations

The perceived lack of independence of INEC was attributed by the public to the following:

a) the composition of the Commission which did not guarantee non-partisanship and impartiality of its Chairman, members and the Resident Electoral Commissioners;
b) the appointment of the Chairman and members of the Commission by the President deprives them of the autonomy and independence necessary to function as impartial umpires in the electoral process;
c) the classification of the Commission as a federal executive body in section 153 of the 1999 Constitution brings it under the oversight of the Executive arm of government;
d) the funding of the Commission through the Executive arm of government renders it vulnerable to manipulation and undue influence by that organ; and
e) absence of effective democratic oversight of the Commission, for example by parliamentary committees.

7.2.3 Recommendations

(a) In terms of qualifications, the Chairman, Deputy Chairman, members of INEC should:
   i) be persons of integrity.
   ii) be non-partisan.
   iii) possess vast professional/administrative/academic experience.
   iv) be not less than 50 years of age for Chairman and Deputy and not less than 40 years for the others; and
v) the Chairman and Deputy Chairman should not be of the same gender.

(b) The composition of the membership of the Commission should be reviewed to ensure that the Chairman, Deputy Chairman and other members are non-partisan and have not been registered members of any political party during the preceding five years.

(c) The appointment of the Chairman, Deputy Chairman and members of the Commission should be transparently handled in the following manner. The National Judicial Council should:

i. Advertise the positions, spelling out requisite qualifications.

ii. Receive applications/nominations from the general public.

iii. Shortlist three persons for each position.

iv. Send the nominations to the National Council of State to select one of the nominees and forward his/her name to the Senate for confirmation.

(a) Section 153 of the 1999 Constitution which classifies INEC as a federal executive body should be amended by deleting INEC.

(b) The funding of the Commission shall be first charge on the Consolidated Revenue Fund of the Federation.

7.3. **ENSURING THAT THE ELECTORAL PROCESS MEETS INTERNATIONAL STANDARDS**

7.3.1 Increasing regional and international consensus is emerging as to standards that countries should satisfy for their elections to meet the basic requirements of free and fair elections. “Fair elections have become an increasingly critical requirement for governments to have legitimacy in the eyes of the international community and their own citizens. Electoral legitimacy and outcomes, in turn, greatly affect the prospects for effective governance.”
7.3.2 Regional and international treaties, declarations, agreements, and norms have expressly established that sovereignty belongs to the people through whom governments derive their legitimacy and authority. They have also established that legitimate governments must be anchored on democratic elections.

7.3.3 The New Partnerships for Africa’s Development (NEPAD) commits the whole of Africa, including Nigeria to “respect the global standards of democracy, the core components of which include political pluralism, allowing for the existence of several political parties and workers unions, and fair, open and democratic elections periodically organized to enable the people to choose their leaders freely.”

7.3.4 In the African Charter on Democracy, Elections and Governance adopted by the Eighth Ordinary Session of the Assembly of Heads of States of the African Union, the State Parties re-affirmed their commitment to regularly holding transparent, free and fair elections in accordance with the Unions Declaration on the Principles Governing Democratic Elections in Africa. To this end, State Parties shall:

(a) “Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.

(b) Establish and strengthen national mechanisms that redress election-related disputes in a timely manner.

(c) Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.

(d) Ensure that there is a binding code of conduct governing legally recognized political stakeholders, government and other political actors prior, during and after elections. The code shall include a commitment by political stakeholders to accept the results of the election or challenge them through exclusively legal channels.
(e) Create conducive environment for independent and impartial national monitoring or observation mechanism.

(f) The promotion of democracy, the principle of the rule of law and human rights.

(g) The recognition of popular participation through universal adult suffrage as the inalienable right of the people”.

7.3.5 The **Organisation of African Unity/African Union** Declaration on the Principles Governing Democratic Elections in Africa details in more specific terms the responsibility of member States in ensuring democratic elections. The member States commit their Governments to:

   a) “Take necessary measures to ensure the scrupulous implementation of the above principles, in accordance with the constitutional processes of our respective countries.

   b) Establish where none exist, appropriate institutions where issues such as codes of conduct, citizenship, residency, age requirements for eligible voters, compilation of voters' registers, etc would be addressed.

   c) Establish impartial, all-inclusive, competent and accountable national electoral bodies staffed by qualified personnel, as well as competent legal entities including effective constitutional courts to arbitrate in the event of disputes arising from the conduct of elections.

   d) Safeguard the human and civil liberties of all citizens including the freedom of movement, assembly, association, expression, and campaigning as well as access to the media on the part of all stakeholders, during electoral processes.

   e) Promote civic and voters' education on the democratic principles and values in close cooperation with the civil society groups and other relevant stakeholders.

   f) Take all necessary measures and precautions to prevent the perpetration of fraud, rigging or any other illegal practices
throughout the whole electoral process, in order to maintain peace and security.

g) Ensure the availability of adequate logistics and resources for carrying out democratic elections, as well as ensure that adequate provision of funding for all registered political parties to enable them organize their work, including participation in electoral process.

h) Ensure that adequate security is provided to all parties participating in elections.

i) Ensure the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and/other observers/monitors.

j) Encourage the participation of African women in all aspects of the electoral process in accordance with the national laws.”

7.3.6 The Universal Declaration of Human Rights also provides that the “will of the people” as “expressed in periodic and genuine elections”, shall be the basis of the authority of government. The International Covenant on Civil and Political Rights which is a binding International Treaty provides that “Every citizen shall have the right and the opportunity…to vote and to be elected at genuine periodic elections”.

7.3.7 Similar international declarations are made in other documents such as:


d) Constitutive Act of the African Union.
f) American Declaration of the Rights and Duties of Man (1948).

7.3.8 As part of international standards, for an election to be free, citizens must have the right and opportunity to choose. There must be freedom of assembly, association, movement, and speech, for candidates, parties, voters, media, observers and others. The political environment should be free of intimidation. To be fair, an election must have honest balloting and counting, and be administered without fraud or manipulation by impartial election authorities. Political parties and individuals must have reasonable opportunities to stand for election, and there must be prompt and just resolution of election related disputes and grievances, before and after Election Day. Fairness also requires a “level playing field”. Specifically, there can be no misuse of public resources for campaigns, and all parties and candidates must have an adequate chance of communicating with the voters and winning their support, including reasonably equitable access to media.

7.3.9 Countries and people have achieved varying degrees of success in meeting all the set criteria and international standards of what constitutes free and fair elections. Few countries meet all the aspirations. What is important is a commitment to holding generally acceptable elections that meet minimum international standards.

7.3.10 Recommendations

a) Nigeria should ratify the African Charter on Democracy, Elections and Governance.
b) The 2002 OAU/AU Declaration on Principles Governing Democratic Elections in Africa should be made part of the Code of Conduct for Political Parties.

c) The Nigerian Government and the Election Management Body should create a conducive environment for independent and impartial national observation of elections.

7.4 ENSURING THE CONCLUSION OF ELECTION DISPUTES BEFORE SWEARING IN OF NEWLY ELECTED OFFICIALS

7.4.1 Since 1959, election disputes had always trailed the holding of elections in Nigeria. In the early stages, such disputes were determined by the normal or standard courts. However, the Electoral Act 1977 (which was a Decree) introduced the use of Tribunals, consisting of a chairman and two members each appointed by the Chief Justice of Nigeria, for the purpose of determining any election dispute. The decisions of the Tribunals were final as there was no appeal to any other court except in respect of an election to the Office of the President and the Vice President, in which case, appeal lay to the Supreme Court within 14 days of the decision of the Tribunal and the Supreme Court was bound to give its decision in the appeal not later than 14 days from the date on which the appeal was filed.

7.4.2 The 1977 Act was replaced by the Electoral Act, 1982 which was enacted by the National Assembly. This Act gave the first instance jurisdiction to hear election petitions to the State High Courts and the High Court of the Federal Capital Territory, Abuja. These were constituted in each case by a single judge, except with regard to the petitions in respect of the Office of the President, Vice President, Governor or Deputy Governor, in which case the Chief Judge was given the power to determine the number of judges to constitute the court. Appeals from the decision of the High Courts were to the Court of Appeal and from thence to the Supreme Court as of right. Sections
129(3), and 132(1) and (2) of the 1982 Act, provided time limits for the completion of the case in the High Court, the Court of Appeal and the Supreme Court, being not later than 30 days from the date of the election, and not later than 7 days from the date on which the appeal in either case was filed, respectively. Other time dealt with: the presentation of a petition by a candidate (14 days from declaration of the result of the election); filing a reply to the petition (6 days after the service of the petition on the respondent); and notice of the hearing of the service of the petition be given by the Registrar (not later than 10 days before the hearing); contained in Section 119(4), 135 and 139(1) of the 1982 Act.

7.4.3 However, all the time limits were declared unconstitutional by the Supreme Court in the case of Paul Unongo v Aper Aku and others (1983)2 SCNLR 332, for offending the Principles of Separation of Powers between the Executive, Legislature and the Judiciary and the fundamental right of the parties to fair hearing under Section 33(1) of the 1979 Constitution.

7.4.4 The Constitution of the Federal Republic of Nigeria, 1999, introduced a departure from the past practice of providing for the composition of Election Tribunal in a legislation, by providing in section 285 and the Sixth Schedule, the jurisdiction and composition of the Election Tribunals – namely, the National Assembly Electoral Tribunals and the Governorship and Legislative Houses Election Tribunals. Although the Constitution increased the membership of the Tribunals from hitherto 3 to 5, it is significant to note that the quorum provided for the Tribunals by the Constitution is the Chairman and two other members. This conforms with the suggestions made at the Committee’s Public hearings that the membership of the Tribunals be reduced to 3 so that the extra 2 members can constitute the nucleus of an additional tribunal to speed up the determination of petitions.
7.4.5 It is noted that the number of election petitions being filed by defeated candidates at elections has been rising in subsequent elections. In the general elections held in 2003, a total of 574 petitions were filed throughout the federation. However, in the elections of 2007, a total of 1,475 petitions were filed.

7.4.6 **Observations**

The following major problems have been observed by the public concerning the handling of electoral disputes in the country:

a. discrepancy between the ineffectiveness, violence and fraud observed by members of the public on election days on one hand and the judgment of the Election Petition Tribunals that people see as validation of fraudulent elections on the other;

b. delay in the conclusion of election petitions;

c. allegations of corrupt inducement of tribunal members;

d. undue emphasis on technicalities instead of substantive matters resulting in judgments that do not satisfy public expectation;

e. the use of state resources by persons declared winners (respondents) after gubernatorial and presidential elections to prosecute their cases while petitioners depend on their own resources;

f. number of election tribunals is inadequate resulting in heavy caseload;

g. contradictory judgments by same panels on similar cases and by different panels on similar cases;

h. members of the public consider the period for determination of election disputes as too lengthy; and

i. difficulty of obtaining election documents by petitioners.
7.4.7 **Recommendations**

- There is need to produce rules and procedures that enhance speedy disposal of election petitions.
- The law should shift the burden of proof from the petitioners to INEC to show that disputed elections were indeed free and fair and complied with the provisions of the Electoral Act.
- Rules of evidence should be formulated to achieve substantive justice rather than mere observance of technicalities.
- Elections to the office of President and Governors should be held at least six months before the expiration of their terms. A maximum of four months should be devoted to hearing petitions by the tribunals and another two months for hearing appeals by the Court of Appeal or Supreme Court. No executive should be sworn in before the conclusion of the cases against him/her. In the case of legislators, no one should be sworn in before the determination of the case against him/her.
- INEC should have no right of appeal.

7.5 **DEALING WITH POST-ELECTION TENSION**

7.5.1 There is an important sense in which electoral systems can serve, in their deliberate design, as conflict management or prevention mechanisms. Elections can generate conflict. Indeed, pre- and post-election tensions created by electoral competition are not unique to Nigeria. Most countries experience such tensions as parties and candidates come to terms with the aftermath of winning and losing elections. How well or poorly countries cope with such tensions depends partly on their political culture, and partly on their electoral systems.

7.5.2 At the heart of post-election tensions are considerations of the degree to which the populace view elections as free and fair, and their outcomes as credible. The level of post-election tensions is also a function of feelings of exclusion or inclusion among different groups in the society.
7.5.3 How parties and candidates see their political future is also important in predicting levels of post-election tension. Where in winner-takes-all situations, under the FPTP system, candidates figure that losing an election is akin to political and economic annihilation, they tend to see elections as war. In the process, political supporters, ethnic compatriots and the media become phalanxes in this war. The history of political relations among parties and candidates prior to elections is also important in understanding post-election tensions. Where pre-election relations are charged and have crossed a threshold of civility, tensions are likely to be high in the aftermath of elections.

7.5.4 The character of arbitration after elections, particularly by the judiciary, is yet another important factor in accelerating or defusing post-election tensions. Where election petitions become a tortuous, slow and technical process, tensions are likely to increase. The misuse of power of incumbency also serves to increase tensions before, during, and after elections. Finally, the level of conscious post-election confidence-building among political opponents is very important in predicting tensions in the aftermath of elections. In Nigeria, we have practiced democracy without politicians who have the temperament of democrats characterized by willingness to bargain, negotiate, accommodate and accept election outcomes.

7.5.5 The foregoing predictors of the level and intensity of pre-and post-election tensions should guide the mechanisms and good practices for reducing tensions in the aftermath of elections, and for providing incentives for conciliation.

7.5.6 The importance of free and fair elections in a democracy need no exaggeration. It is only when elections meet the criteria of free and fair contest, reflecting the will of the people that democracy could be said to be truly consolidated.
7.5.6.1 Nigeria’s electoral process needs to be sanitized by making INEC more independent and autonomous of the executive; by upgrading the electoral process to meet international standards; by ensuring that all election disputes are concluded before any elected officials are sworn-in, and by introducing a host of novel ideas presented in this chapter to reduce post-election tensions. Some of these recommendations would require amendments in the laws while others involve more meticulous application and implementation of existing laws, regulations and procedures.

7.5.6.2 Sanitizing the electoral system requires renewed commitment not just by electoral bodies but also by political parties, contestants and other stakeholders. When these groups, individually and collectively, demonstrate true commitment to the laws and principles which guide the electoral process, and above all, to political stability and the deepening of democracy, the purpose of the electoral reform exercise would have been achieved.

7.6 Recommendations

7.6.1 Adjudication of Election Disputes and Reduction of Post-Election Conflict

(a) The adjudication of presidential and gubernatorial election disputes should be concluded expeditiously, before swearing-in of winners of the elections. This will require the amendment of Section 132(2) and Section 178(2) of the 1999 Constitution and section 149 of the Electoral Act 2006.

(b) All offences committed within the electoral context should be prosecuted expeditiously. The prevailing atmosphere of impunity with regard to election offences should be ended by prosecuting and holding accountable those responsible for electoral offences, including those of a criminal nature. This would reduce the impunity which has marred Nigeria’s electoral process to date,
and which threatens to undermine citizens’ confidence in the country’s political institutions.

(c) The Rules of Procedure in the First Schedule to the 1999 Constitutions and the Practice Directions 2007 are inadequate for quick and effective disposal of election petitions. A new exhaustive body of Rules is required to address shortcomings.

(d) The legal burden of proof to show that election was not mismanaged should always be on INEC. The petitioner only needs to introduce evidence of mismanagement to shift the burden.

(e) Corrupt practices should invalidate election per se once shown to be widespread.

(f) Aggrieved parties in electoral matters should be encouraged to continue to respect the rule of law and exercise their constitutional rights peacefully and where necessary, seek redress through constitutional means.

(g) Infringement of laws and regulations concerning the funding of political parties and electoral campaigns should be subject to effective sanctions. Greater efforts should be made by INEC and the relevant prosecuting authorities to initiate criminal proceedings for serious violations.

(h) A special prosecutorial body to be known as Electoral Offences Commission should be established to work independently in the arraignment and prosecution of electoral offenders. This will include offences arising from failings of INEC before, during and after voting day.

(i) The Electoral Offences Commission should cooperate closely with security agencies to prosecute persons accused of committing such offences.

(j) A candidate shall be deemed to have committed a corrupt practice if it was committed with his knowledge and consent.
When the Court of Appeal sits to hear appeals on election petitions, at least five judges should sit.

### 7.6.2 Diluting the Zero-Sum Approach to Electoral Politics

(a) Political parties that secure at least 2.5% of national assembly seats during general elections should be considered for cabinet level appointments. This strategy will help to reverse the zero-sum approach to competitive electoral politics among the political class which the FPTP system has historically encouraged in the country, and attenuate the consequential post-election tension it tends to create.

(b) To the same end of diluting the zero-sum approach to competitive electoral politics and therefore of attenuating post-election tension in the country, a modified form of proportional representation to make the country’s electoral process more competitive by being more reflective of the relationship between proportion of electoral votes won by a political party and its legislative representation should be adopted.

### 7.6.3 Long-term Measures to Reduce Post-election Tension

(a) In the long run, the best approach to reduce pre- and post-election tension is to pursue more aggressively, confidence-building measures in the electoral system. Once people believe that elections are by and large free and fair, and therefore credible, they will more readily accept their outcomes.

(b) In addition, the following recommendations, which focus more on preventive measures to reduce pre- and post-election tension are made:
i. Sustained civic education and public enlightenment on the responsibilities and duties of the electorate in ensuring credible elections.

ii. Encouraging a culture which views elections, not as war, but as part of a wider and continuous process of ensuring accountability in public life.

iii. A process of piloting or sequencing change in the conduct of elections, such that trial elections can be held to test out the feasibility of proposed changes. It is for this reason that elections at the local government level can serve as crucible for nurturing the conditions for credible elections in the country.

(c) Improving popular perception of election as free and fair by:

i. ensuring that voting takes place with minimal hitches, in other words, ensuring an efficient and competent administration of elections, by making it easy for the electorate not only to know well-ahead their polling centers but also how to vote;

ii. reduction or elimination of wasted votes by adopting the Proportional Representation system;

iii. releasing results in a timely fashion and making them accessible to the public.
CHAPTER EIGHT
GENERAL RECOMMENDATIONS

Term of Reference:
Make any other recommendations deemed necessary by the Committee

In addition to the specific recommendations made in the preceding chapters, the Committee makes the following general recommendations:

8.1 POLITICAL AND CIVIC EDUCATION
8.1.1 Changing the Election Mindset of Nigerians
8.1.1.1 Elections and electoral practices lie at the heart of representative democracy. The success or failure of elections is therefore central to the success or failure of democracies. Election mindsets are the critical elements that determine electoral practices and behaviour and therefore the failure or success of democracies.

8.1.1.2 In Nigeria today, election mindsets are not only largely negative; they are also largely irrational. Without changing these mindsets, we cannot limit violence and rigging in elections; we cannot stop political assassinations before, during and after elections; we cannot move to a form of politics that places the interests of the country above those of the individual; we cannot build lasting political institutions that will promote peaceful change and democratic governance and a nation that has one destiny. Without changing election mindsets, politics would not only continue to be “business as usual”, it will ultimately undermine the very foundations of the Nigerian State. There is therefore a sense of urgency about the need to change the mindset of Nigerians.

8.1.1.3 The change should be comprehensive in scope. It should target the mindsets of the electorate, the politicians, the managers of the Nigerian State, the judiciary, the security services, the media, civil
society and of course, officials of INEC. The process will require self-enlightened action on the part of members of the ruling class. It will require courage on the part of INEC. It will require hard work on the part of all those involved. But the benefits will be more than just reward for hard work. Democracy will not only be saved in Nigeria; the Nigerian State itself will be saved.

8.1.1.4 Recommendations

(a) There is need for all stakeholders to see elections as only a part of a process and not a terminal point in the development of politics. Citizens need to be assured that Term Limits will always be respected as a means of building confidence. Certainty and predictability have to be introduced into the system, that is, the belief that if we lose, we can try again. In this way, both the winners and the losers can become learners in the game of imbibing political culture. This will make politics a game to be enjoyed, not a war to be fought.

(b) Money bags and godfathers thrive where the State and its influence are absent. Government should therefore take seriously a broad policy of service delivery to prevent desperate politicians from exploiting the prospects of these services to intimidate and blackmail our people into submission.

(c) There is the need for serious sanctions and punishment for electoral malfeasance. Political parties that show a proclivity to violence or intolerance in ideology, policy or the kind of candidates they field should be sanctioned.

(d) There is the need to ensure that the laws guiding the electoral body and political parties are in conformity with the fundamental laws of the land, capable of promoting justice
and fairness for all. When laws are weak and electoral bodies have too much power, there will be the temptation for the competitors to take the law into their hands by falling back on their thugs.

(e) As a long term measure, there is the need for political socialization of the youth in school and the political education of adults to understand the negative consequences of electoral fraud and violence.

(f) There is the need to change the attitudes of the political class, to abide by the rules of the game, perceive politics as a game and not a battle, and to appreciate the dangers of the “winner takes all” approach.

(g) The political parties must be strengthened and their officials regularly trained.

(h) The police force should be strengthened to check the activities of hoodlums and thugs, and prosecute of all politicians with militias or armed gangs.

(i) There should be massive disarmament of all political touts, and curbing illegal possession of firearms and other instruments of violence. We should reverse the democratization of violence, and allow only the State to wield legitimate violence.

(j) Reform of the electoral process requires an enlightened and socially conscious electorate that is empowered morally and materially to make informed choices and resist manipulation of the process. In this regard, a Centre for Democratic Studies should be established to facilitate inter-agency cooperation and engage with civil society in the conduct of civic and political education.

(k) The Centre for Democratic Studies, INEC and other stakeholders should engage in sustained public education
campaigns in the period leading up to the 2011 elections, including mass media campaigns on registration and voting processes and procedures. These campaigns should be supplemented with individualized information efforts to allow Nigerians to know the location of their registration and voting stations.

8.2 CURBING VIOLENCE IN ELECTIONS

8.2.1 Recommendations

In order to devise an effective strategy to curb election related violence, the Committee recommends as follows:

(a) There is the need to deal with incidences as well as the root causes of violence related to elections. Quite often, attention is focused on incidences without a longer term view of how to address the root causes of the problem. For example, only sustainable, systemic reform measures can provide employment and curtail the profound phenomenon of youth unemployment, which feeds into, and fans violence related to elections.

(b) There is the need to effectively regulate behaviour and actions of contestants, voters, officials, etc in the entire electoral process and to carefully frame rules and regulations covering all aspects of the electoral process. No stone should be left unturned in this regard.

(c) There is the need to effectively police the election process and enforce rules and regulations by assigning well trained, impartial and honest law enforcement and security agents and agencies to help police and secure the electoral process. In particular, the Nigeria Police Force should wake up to its responsibility in law enforcement, in prevention as well as detection of crimes.

(d) There is the need to ensure proper and adequate training of all personnel involved in election matters, both permanent and ad
hoc staff. We have cogent lessons to learn from places such as India, which have very small number of permanent elections staff and deploy enormous numbers of ad hoc staff in short periods of electoral duties, yet with requisite professionalism, decency, honesty and neutrality in the management of elections.

(e) There is the need to involve credible stakeholders, especially Non-Governmental Organisations (NGOs) and Community Based Organisations (CBOs) in the electoral process, particularly in voter education and general public enlightenment. This is essential given the serious need for a positive change of attitude from fatalistic resignation to democratic assertiveness.

(f) Involving other credible partners, especially the Media, to preach peace and due process, and to be effective whistle-blowers against those who facilitate or engage in violence and fraud, is imperative.

(g) Political parties must be positively engaged in the political process so as to promote dialogue, tolerance and peaceful inter-party relations.

(h) There is the need to positively engage the traditional institutions in the electoral process, especially to promote peace and harmony in local communities.

(i) There is the need to generally dignify but demystify public office and make contestants and the general public realize that winning an elective office is a call to public service, and not a ticket for self-aggrandizement.

(j) Politicians found using thuggery or any form of election violence should be severely sanctioned. Political parties should draw up a code of conduct to be subscribed to by candidates standing on their platforms.
8.3 **PERSONS WITH DISABILITIES**

The National Assembly should enact laws appropriate for the protection of persons with disabilities to enable them exercise their rights to register and to vote.

8.4 **THEMATIC AMENDMENTS TO THE CONSTITUTION**

There is the need for a thematic Constitutional review relating to all provisions that have direct bearing on the electoral process without waiting for a wholesale review of the Constitution.

8.5 **IMPLEMENTATION OF THE REPORT**

The Committee is convinced that the recommendations contained in this report are necessary and sufficient to improve the quality of our elections. To this extent, the Committee recommends that there should be urgency on the part of the President, the National Assembly, Governors, State Assemblies and others in effecting the constitutional, statutory, administrative and institutional changes required to achieve the desired effect.
ANNEXURE ONE

THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA
(AMENDMENT) ACT 2008

A BILL
FOR

AN ACT TO AMEND THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 SO AS TO FURTHER STRENGTHEN NIGERIA’S DEMOCRATIC FOUNDATION IN GENERAL AND, IN PARTICULAR, TO RAISE THE QUALITY AND STANDARD OF GENERAL ELECTIONS TOGETHER WITH THE REINFORCEMENT OF THE CROSS-CUTTING INSTITUTIONAL FRAMEWORK ALREADY DELINEATED IN THAT BEHALF AND PROVIDE FOR OTHER MATTERS CONNECTED THEREWITH.

Commencement. [ ]

Whereas the President of the Federal Republic of Nigeria had, in full realization that the proper conduct of general elections constitutes the bedrock of democracy, set up the Electoral Reform Committee as of 28th August, 2007, to examine the entire electoral process with a view to ensuring the enhancement of the quality and standard of general elections in Nigeria so as to deepen the country’s democracy;

And whereas, as required by part of its terms of reference, the Electoral Reform Committee has undertaken a comprehensive review of Nigeria’s history with respect to general elections and has, as an outcome, identified a number of factors which have been affecting the quality and credibility of the elections and their impact on the democratic process;

And whereas the Electoral Reform Committee has inter alia examined the relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 that have a bearing on the electoral process and has assessed their impact on the quality and credibility thereof;

And whereas the Electoral Reform Committee has also examined the roles of institutions, agencies and stakeholders in shaping the electoral process and its credibility;

And whereas the Electoral Reform Committee has, on the conclusion of its assignment, made certain recommendations encompassing the need for real independence for the electoral management body and an electoral process that would enable the conduct of elections that meet acceptable international standards as well as legal processes and mechanisms that would assure their realization;
And whereas the Federal Government has reviewed the totality of the recommendations made by the Electoral Reform Committee and has concluded that, in order to achieve the main objectives set out therein, it would be necessary and expedient for the National Assembly to undertake a thematic restructuring and amendment of the relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 pursuant to Section 9 thereof;

NOW, THEREFORE, BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:


Amendment of section 49 of the Constitution. 2. For section 49 of the Constitution, there shall be substituted the following:

“Composition of the House of Representatives on the basis of a mixed member proportional system.

49. -- (1) Subject to the provisions of this Constitution, the House of Representatives shall consist of three hundred and sixty members representing constituencies of nearly equal population as far as possible, provided that no constituency shall fall within more than one State.

(2) Notwithstanding any other provision of this Constitution, the House of Representatives shall also consist of one hundred and eight additional members based on and in proportion to the number of valid votes cast and attributed to the respective candidates of the political parties; so however that if a political party wins less than 2.5% or more than 70% of the number of members elected under subsection (1) of this section, such political party shall not be entitled to any additional member based on proportional representation.

(3) Every political party entitled to a share in the number of additional members based on proportional representation shall nominate women candidates who shall constitute 30% of the list of additional members to which such party is entitled while another 2% of the list shall be candidates nominated to
Amendment of section 64 of the Constitution.

3. Section 64 of the Constitution is hereby amended by the substitution for subsection (1) thereof of the following –

“(1) The Senate and the House of Representatives shall each stand dissolved at the expiration of a period of four years from the date of the first sitting of the House:

Provided that in relation only to the first set of elections held after the coming into force of this section, half of the membership of each House shall stand dissolved at the expiration of a period of two years from the date of the first sitting of the House and in accordance with such formula as may be determined by the Independent National Electoral Commission after consultation with all the political parties with members in each House.”

Amendment of section 65 of the Constitution.

4. Section 65 of the Constitution is hereby amended -

by the addition after the words “sponsored by that party” of the words “or he is an independent candidate”; and

by the addition of the following new subsection (3) -

“(3) A person standing for an election as an independent candidate shall be qualified for election if he is nominated by not less than ten registered voters, each of whose signatures on the nomination form shall be verified and authenticated as provided by law, from at least two-thirds of the electoral wards in the relevant electoral constituency and subject to the payment of such deposit as may be prescribed by an Act of the National Assembly which shall also prescribe the conditions for the refund of such deposit.”

Amendment of section 66 of the Constitution.

5. Subsection (1) of section 66 of the Constitution is hereby amended –

(a) by the insertion after the words “Code of Conduct” in paragraph (d) thereof, of the words “or of any Act of the National Assembly or any other law relating to electoral offences”; and

(b) by the deletion of the words “or an Administrative Panel of Inquiry” from paragraph (h) thereof.

Amendment of section 68 of the Constitution.

6. Subsection (1) of section 68 of the Constitution is hereby amended by the substitution of a semi-colon for the colon in paragraph (g) thereof and the deletion of the proviso thereto.
| Amendment of section 71 of the Constitution. | 7. | In section 71 of the Constitution, for the words “Independent National Electoral Commission” there shall be substituted the words “Constituency Delimitation Commission”. |
| Amendment of section 73 of the Constitution. | 8. | In subsections (1) and (2) of section 73 of the Constitution, for the words “Independent National Electoral Commission” there shall respectively be substituted the words “Constituency Delimitation Commission”. |
| Amendment of section 76 of the Constitution. | 9. | For section 76 of the Constitution, there shall be substituted the following -

> “76. - (1) Elections to each House of the National Assembly shall be held on a date to be appointed by the Independent National Electoral Commission falling within the second week of the month of November of the year preceding the year prescribed in this Constitution for dissolution of each House:

> Provided that such date shall not fall on a Friday, Saturday or Sunday.

> (2) Where an election is to fill a vacancy occurring more than three months before the date mentioned in subsection (1) of this section, the Independent National Electoral Commission shall appoint a date for such election which shall not be later than one month after the vacancy occurred.” |
| Amendment of section 79 of the Constitution. | 10. | Section 79 of the Constitution is hereby amended by the substitution for the expression”; and” at the end of paragraph (b) thereof of a full stop and the deletion of paragraph (c). |
| Amendment of section 81 of the Constitution. | 11. | Section 81 of the Constitution is hereby amended by the addition after subsection (3) thereof of the following new subsection (3A) –

> “(3A) Any amount standing to the credit of the Independent National Electoral Commission in the Consolidated Revenue Fund of the Federation shall be paid directly to the Commission.” |
| Amendment of section 84 of the Constitution. | 12. | Section 84 of the Constitution is hereby amended by the addition after subsection (7) thereof of the following new subsection (8) -

> “(8) The recurrent expenditure of the Independent National Electoral Commission (in addition to the salaries and allowances of the members of the Commission) shall be a charge on the Consolidated Revenue Fund.” |
Amendment of section 91 of the Constitution.

13. “Composition of the House of Assembly on the basis of a mixed member proportional system.

14. Section 105 of the Constitution is hereby amended by the substitution for subsection (1) thereof of the following –

“(1) A House of Assembly shall stand dissolved at the expiration of a period of four years commencing from the date of the first sitting of the House:

Provided that in relation only to the first set of elections held after the coming into force of this section, half of the membership of each House of Assembly shall stand dissolved at the expiration of a period of two years from the date of the first sitting of the House and in accordance with such formula as may be determined by the
Amendment of section 106 of the Constitution.

Section 106 of the Constitution is hereby amended –
(a) by re-numbering the existing section as subsection (1);
(b) in paragraph (d) of subsection (1), as so re-numbered, by the addition after the words “sponsored by that party” of the words “or he is an independent candidate”; and
(c) by the addition of the following new subsection (2) -
“(2) A person standing for an election as an independent candidate shall be qualified for election if he is nominated by not less than ten registered voters, each of whose signatures on the nomination form shall be verified and authenticated as provided by law, from at least two-thirds of the electoral wards in the relevant electoral constituency and subject to the payment of such deposit as may be prescribed by an Act of the National Assembly which shall also prescribe the conditions for the refund of such deposit.”

Amendment of section 107 of the Constitution.

Subsection (1) of section 107 of the Constitution is hereby amended –
(a) by the insertion after the words “Code of Conduct” in paragraph (d) thereof, of the words “or of any Act of the National Assembly or any other law relating to electoral offences”; and
(b) by the deletion of the words “or an Administrative Panel of Inquiry” in paragraph (h) thereof.

Amendment of section 109 of the Constitution.

Subsection (1) of section 109 of the Constitution is hereby amended by the substitution of a semi-colon for the colon in paragraph (g) thereof and the deletion of the proviso thereto.

Amendment of section 112 of the Constitution.

In section 112 of the Constitution, for the words “Independent National Electoral Commission” there shall be substituted the words “Constituency Delimitation Commission”.

Amendment of section 114 of the Constitution.

In subsections (1) and (2) of section 114 of the Constitution, for the words “Independent National Electoral Commission” there shall respectively be substituted the words “Constituency Delimitation Commission”.

Amendment of section 116 of the Constitution.

For section 116 of the Constitution, there shall be substituted the following –

| Amendment of section 119 of the Constitution. | 21. Section 119 of the Constitution is hereby amended by the substitution for the expression “; and” at the end of paragraph (b) thereof of a full stop and the deletion of paragraph (c). |
| Amendment of section 124 of the Constitution. | 22. Subsection (4) of section 124 of the Constitution is hereby amended by the deletion therefrom of the words “the State Independent Electoral Commission.” |
| Amendment of section 131 of the Constitution. | 23. Section 131 of the Constitution is hereby amended – (a) by renumbering the existing section as subsection (1); (b) by the addition after the words “sponsored by that political party” in paragraph (c) of subsection (1), as so renumbered, of the words “or he is an independent candidate”; and (c) by the addition of the following new subsection (2) - “(2) A person standing for an election to the office of President as an independent candidate shall be qualified for election if he is nominated by not less than ten registered voters, each of whose signatures on the nomination form shall be verified and certified as provided by law, from at least two-thirds of the electoral wards of the electoral constituency referred to in subsection (4) of section 132 of this Constitution and shall be subject to the payment by the independent candidate of such deposit as may be prescribed by an Act of the National Assembly which shall also prescribe the conditions for the refund of such deposit.” |
| Amendment of section 132 of the Constitution. | 24. Section 132 of the Constitution is hereby amended – (a) by the substitution for subsection (1) thereof of the following - |
“(1) An election to the office of President shall be held on a
date to be appointed by the Independent National Electoral
Commission falling within the first week of the month of
November of the year preceding the year prescribed in
section 135 of this Constitution:
Provided that such date shall not fall on a Friday, Saturday
or Sunday.”; and
(b) by the deletion of subsection (2).

| Amendment of section 137 of the Constitution. | 25. | Subsection (1) of section 137 of the Constitution is hereby amended –
| | | (a) by the insertion after the words “Code of Conduct” in paragraph (e) thereof, of the words “or of any Act of the National Assembly or any other law relating to electoral offences”; and
| | | (b) by the deletion of the words “or an Administrative Panel of Inquiry” from paragraph (i) thereof.

| Amendment of section 139 of the Constitution. | 26. | Section 139 of the Constitution is hereby amended by the substitution for the expression “; and” at the end of paragraph (b) thereof of a full stop and the deletion of paragraph (c).

| Amendment of the headings to sections 153-161 and Third Schedule of the Constitution. Cap. 192 LFN. | 27. | Notwithstanding that section 3(2) of the Interpretation Act (which applies to the Constitution) provides that “A heading or marginal note to an enactment does not form part of the enactment and is intended for convenience of reference only” -
| | | (a) the heading to sections 153 to 161 of the Constitution is hereby amended to read “B – Establishment of Certain National Bodies”; and
| | | (b) the heading under Part I of the THIRD SCHEDULE to the Constitution is hereby amended to read “NATIONAL BODIES”.

| Amendment of section 153 of the Constitution. | 28. | Subsection (1) of section 153 of the Constitution is hereby amended by the substitution for paragraphs (m) and (n) thereof of the following -
| | | “(m) Police Service Commission;
(n) Revenue Mobilization Allocation and Fiscal Commission;
(o) Political Parties Registration and Regulatory Commission; and
(p) Constituency Delimitation Commission.”

| Amendment of section 154 of the Constitution. | 29. | Subsection (3) of section 154 of the Constitution is hereby amended by the deletion therefrom of the expression “Independent National
Amendment of section 157 of the Constitution.

30. Subsection (2) of section 157 of the Constitution is hereby amended by the deletion therefrom of the expression, “Independent National Electoral Commission.”

Amendment of section 158 of the Constitution.

31. Section 158 of the Constitution is hereby amended –
(a) by the deletion from subsection (1) thereof of the expression, “and the Independent National Electoral Commission”; and
(b) by the addition thereto of the following new subsection (3) –
“(3) The Independent National Electoral Commission shall not be subject to the direction or control of any other authority or person –
(a) in exercising its power to make appointments or to exercise disciplinary control over the staff of the Commission; and
(b) in conducting any election as provided in this Constitution or pursuant to an Act of the National Assembly.”

Amendment of section 161 of the Constitution.

32. Section 161 of the Constitution is hereby amended by the substitution for paragraph (c) thereof of the following –
“(c) any reference to “member” of a body established by section 153 of this Constitution shall be construed as including a reference to the Chairman or Deputy Chairman of that body; and.”

Amendment of section 174 of the Constitution.

33. Subsection (1) of section 174 of the Constitution is hereby amended by the substitution of a colon for the full stop at the end of paragraph (c) thereof and the addition of the following proviso –
“Provided that the power conferred on the Attorney-General of the Federation under paragraph (c) of this subsection shall not extend to criminal proceedings instituted or undertaken in relation to any electoral offence created by or under an Act of the National Assembly.”

Amendment of section 177 of the Constitution.

34. Section 177 of the Constitution is hereby amended –
(a) by renumbering the existing section as subsection (1);
(b) in paragraph (c) of subsection (1), as so renumbered, by the addition after the words “sponsored by that political party” of the
words “or he is an independent candidate”; and
(c) by the addition of the following new subsection (2) -
“(2) A person standing for an election to the Office of Governor of a State as an independent candidate shall be qualified for election if he is nominated by not less than ten registered voters from each electoral ward, each of whose signatures on the nomination form shall be verified and certified as provided by law, from at least two-thirds of the electoral wards of the electoral constituency referred to in subsection (4) of section 178 of this Constitution and shall be subject to the payment by the independent candidate of such deposit as may be prescribed by an Act of the National Assembly which shall also prescribe the conditions for the refund of such deposit.”

Amendment of section 178 of the Constitution.

Section 178 of the Constitution is hereby amended –
(a) by the substitution for subsection (1) thereof of the following -
“(1) An election to the office of Governor of a State shall be held on a date to be appointed by the Independent National Electoral Commission falling within the first week of November of the year preceding the year prescribed in section 180 of this Constitution:
Provided that such date shall not fall on a Friday, Saturday or Sunday.”; and
(b) by the deletion of subsection (2).

Amendment of section 182 of the Constitution.

Subsection (1) of section 182 of the Constitution is hereby amended –
(a) by the insertion after the words “Code of Conduct” in paragraph (e) thereof, of the words “or of any Act of the National Assembly or any other law relating to electoral offences”; and
(b) by the deletion of the words “or an Administrative Panel of Inquiry” from paragraph (i) thereof.

Amendment of section 184 of the Constitution.

Section 184 of the Constitution is hereby amended by the substitution for the expression “; and” at the end of paragraph (b) thereof of a full stop and the deletion of paragraph (c).

Amendment of section 197 of the Constitution.

Subsection (1) of section 197 of the Constitution is hereby amended by the deletion therefrom of the expression “(b) State Independent Electoral Commission.”
Amendment of section 201 of the Constitution.

39. Subsection (2) of section 201 of the Constitution is hereby amended by the deletion therefrom of the expression, “State Independent Electoral Commission.”

Amendment of section 211 of the Constitution.

40. Subsection (1) of section 211 of the Constitution is hereby amended by the substitution for the full stop at the end of paragraph (c) thereof of a colon and the addition of the following proviso -

“Provided that the power conferred on the Attorney-General of a State under paragraph (c) of this subsection shall not extend to criminal proceedings instituted or undertaken in relation to any electoral offence created by or under a law of the House of Assembly.”

Amendment of section 215 of the Constitution.

41. Section 215 of the Constitution is hereby amended by the substitution for paragraph (a) of subsection (1) thereof of the following –

“(a) an Inspector-General of Police who shall be appointed by the President on the recommendation of the Nigeria Police Council from among serving members of the Nigeria Police Force, which Council shall base its own recommendation on that submitted to it by the Police Service Commission; and the appointment shall be subject to confirmation by the Senate;” and

(b) by the addition after subsection (1) of a new subsection (1A) as follows –

“(1A) A person holding office as the Inspector-General of Police shall not be removed from his office or appointment before his age of retirement except by the President acting on an address supported by two-thirds majority of the Senate.”

Amendment of section 216 of the Constitution.

42. Section 216 of the Constitution is hereby amended by re-numbering the existing subsection (1) thereof as section 216 and deletion of subsection (2).

Amendment of section 221 of the Constitution.

43. Section 221 of the Constitution is hereby amended by the substitution for the existing provisions thereof of the following –

“221. Without prejudice to the provisions of this Constitution relating to independent candidates, no association, other than a political party, shall canvass for votes for any candidate at any election or
Section 222 of the Constitution is hereby amended -
(a) by the substitution for the words “Independent National Electoral Commission” where they occur respectively in paragraphs (a), (c) and (d) thereof of the words “Political Parties Registration and Regulatory Commission”; and
(b) by the substitution for paragraph (f) thereof of the following-
“(f) the association has functional and verifiable offices in at least two-thirds of the States of the Federation and its headquarters is situated in the Federal Capital Territory, Abuja.”

Subsection (2) of section 223 of the Constitution is hereby amended by the addition after “Abuja” in paragraph (b) thereof of the words “and, by the same token, has 20% of the total number of such members as women representatives”.

Section 225 of the Constitution is here amended -
(a) by the substitution for the words “Independent National Electoral Commission” where they occur respectively in subsections (1) and (2) thereof of the words “Political Parties Registration and Regulatory Commission”; and
(b) by the substitution for subsections (3) and (4) thereof, of the following subsection (3) -
“(3) No political party shall receive or be entitled to receive any funds from outside Nigeria, or hold or possess any funds or other assets outside Nigeria.”

Subsection (1) of section 226 of the Constitution is hereby amended by the substitution for the words “Independent National Electoral Commission” of the words “Political Parties Registration and Regulatory Commission”.

Section 228 of the Constitution is hereby amended by the substitution for the words “Independent National Electoral Commission” in paragraph (c) thereof of the words “Political Parties Registration and Regulatory Commission.”
Amendment of section 285 of the Constitution.

49. Section 285 of the Constitution is hereby amended by the substitution for subsection (4) thereof of the following new subsections (4) and (5) -

“(4) For the purpose of exercising any jurisdiction conferred upon it by section 246 (1) (b) of this Constitution or any other law, the Court of Appeal shall be duly constituted if it consists of not less than five Justices of the Court of Appeal.

(5) Subject to the provisions of any Act of the National Assembly, the President of the Court of Appeal may, in addition to the powers conferred upon him under section 248 of this Constitution, make rules for regulating the practice and procedure of the Court of Appeal and of election tribunals under sections 79, 119, 239 and 246 of this Constitution and under this section.”

Amendment of section 294 of the Constitution.

50. Section 294 of the Constitution is hereby amended -

(a) by the substitution of a colon for the fullstop at the end of subsection (1) thereof and the addition of the following proviso –

“Provided that in any appellate proceedings relating to election petitions, the Supreme Court or the Court of Appeal may first pronounce its decision orally as soon as may be after the conclusion of final addresses and give its reasons for the decision at a later date.”; and

(b) by the addition thereto of new subsections (7) and (8) as follows -

“(7) Notwithstanding the foregoing provisions of this section, where an Election Tribunal or the Court of Appeal has original jurisdiction to hear and determine election petitions, the Election Tribunal or, as the case may be, the Court of Appeal shall deliver its decision in writing not later than one hundred and twenty days after the conclusion of the election concerned, including furnishing the parties to the election petition with duly authenticated copies of the decision of the Election Tribunal or Court of Appeal.

(8) Notwithstanding any provision of this Constitution, and in consideration of the inherent non-partisanship of the Independent National Electoral Commission in the conduct of elections under this Constitution, it shall be lawful for an Act of the National Assembly to make
provision to foreclose or otherwise derogate from the right of appeal by Commission, in such circumstances as may be prescribed in any such Act, in proceedings relating to election petitions instituted under or pursuant to this Constitution.”

Amendment of section 318 of the Constitution.

Subsection (1) of section 318 of the Constitution is hereby amended by the addition of the words “or Deputy Chairman” after the word “Chairman” in the definition of “member”.

Amendment of Item B of the Third Schedule to the Constitution.

Item B of the Third Schedule to the Constitution is hereby amended by the deletion of sub-paragraph (iv) of paragraph 6 thereof.

Amendment of Item F of the Third Schedule to the Constitution.

Item F of the Third Schedule to the Constitution is hereby amended by the substitution for paragraphs 14 and 15 thereof of the following –

“14(1) The Independent National Electoral Commission shall comprise the following members -

(a) a Chairman, who shall be the Chief Electoral Commissioner and a Deputy Chairman, so however that they shall not both be of the same gender;

(b) six persons, two of whom shall be women;

(c) one nominee of civil society organizations working in the area of elections;

(d) one nominee of labour organizations;

(e) one nominee of the Nigerian Bar Association;

(f) one nominee of women’s organizations; and

(g) one nominee of the media.

(2) Every member of the Commission shall -

(a) be non-partisan and shall be a person of unquestionable integrity;

(b) be in possession of commensurate professional, administrative or academic experience; and

(c) not be less than forty years of age but fifty years in the case of the Chairman and Deputy Chairman.

(3) Members of the Commission shall be appointed by the Council of State on the recommendation of the National Judicial Council and the appointment shall be subject to confirmation by the Senate.
(4) No organization mentioned in sub-paragraphs (c) to (g) of paragraph 14(1) from which a nominee is selected for appointment to the Commission shall be entitled to recall any such member; and such member may only be removed from office in accordance with the provisions of sub-paragraphs (5) and (6) of this paragraph and other provisions of this Constitution.

(5) Each member of the Commission shall hold office for a period of five years from the date of his appointment and shall be eligible for re-appointment for successive terms of five years but shall vacate office upon reaching the age of seventy years.

(6) Notwithstanding sub-paragraph (5) of this paragraph, a person holding office as a member of the Commission may be removed from office by the Council of State acting on an address supported by two-thirds majority of the Senate praying that he be so removed for inability to discharge the functions of the office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

15. The Commission shall have power to -

(a) organize, undertake and supervise all elections to the office of the President and Vice President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives, the House of Assembly of each State of the Federation and of the Local Government and Area Councils;

(b) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters, in consultation with the National Population Commission and other competent bodies in the area of civic identification or registration established by an Act of the National Assembly or any law;

(c) ensure that all members of the Commission, electoral and returning officers take and subscribe the oath of office prescribed by law;

(d) delegate any of its powers to members or staff of the Commission; and

(e) carry out such other functions as may be conferred upon it by an Act of the National Assembly."
Amendment of Item I of the Third Schedule to the Constitution.

54. Item I of the Third Schedule to the Constitution is hereby amended by the insertion after paragraph 21 thereof of the following new paragraph 21A -

"21A. The National Judicial Council shall have power to -

(a) recommend to the Council of State from amongst persons which the National Judicial Council would have screened for that purpose, including persons submitted to it by the organizations entitled to do so, for appointment as Chairman, Deputy Chairman and other members of the Independent National Electoral Commission;

(b) advise the Council of State on any matter relating to the re-appointment of any member of Independent National Electoral Commission or on the removal from office of any such member on the grounds specified in paragraph 14(6) of this Schedule; and

(c) establish such rules as the National Judicial Council may consider appropriate for the screening and selection of candidates and their eventual recommendation to the Council of State for appointment."

Additional provisions in Part I of the Third Schedule to the Constitution.

55. Part I of the Third Schedule to the Constitution is hereby further amended by the insertion of the following new Items O and P -

"O --Political Parties Registration and Regulatory Commission

33. (1) The Political Parties Registration and Regulatory Commission shall comprise the following members -

(a) a Chairman and Deputy Chairman, so however that both of them shall not be of the same gender; and

(b) six other persons, of whom two shall be women.

(2) Members of the Commission, who shall be non-partisan and shall be persons of unquestionable integrity, shall be appointed by the President for a term of five years and may be re-appointed for a further term of five years only.

(3) Every appointment made by the President under subparagraph (2) of this paragraph shall be subject to confirmation by the Senate.

(4) Any person holding office as a member of the Commission may only be removed from that office by the President acting on an address supported by two-thirds majority of the Senate praying that he be so removed for inability to discharge the functions of the office (whether arising from
infirmity of mind or body or any other cause) or for misconduct.

34. The Commission shall have power to –

(a) register political parties in accordance with this Constitution and an Act of the National Assembly;
(b) monitor the organization and operation of the political parties, including their finances;
(c) arrange for the annual examination and auditing of the funds and accounts of political parties and publish a report on such examination and audit for public information;
(d) monitor political campaigns and provide rules and regulations which shall govern the political parties and independent candidates running for any election under this Constitution;
(e) accredit domestic civil society organizations working in the area of elections;
(f) accredit international election observers;
(g) accredit domestic and international media organizations observing elections;
(h) issue such rules and regulations which the Commission may consider appropriate in relation to the conduct and activities of the organizations and persons mentioned in sub-paragraphs (e) to (g) of this paragraph;
(i) appoint, promote, dismiss and exercise disciplinary control over the staff of the Commission in accordance with the provisions of an Act of the National Assembly; and
(j) carry out such other functions as may be conferred upon it by the National Assembly.

“P -- Constituency Delimitation Commission

35. The Constituency Delimitation Commission shall comprise the following members -

(a) a Chairman and Deputy Chairman, so however that both of them shall not be of the same gender;
(b) a representative of the Independent National Electoral Commission;
(c) a representative of the National Population Commission;
(d) a representative of the National Boundary Commission;
(e) a representative of the National Identity Management Commission;
(f) a representative of the Office of the Surveyor-General of the Federation; and

(g) a representative of the National Bureau of Statistics;

so however that no representative mentioned in sub-paragraphs (b) to (g) of this paragraph shall be below the rank of Director or its equivalent.

(2) The Chairman and Deputy Chairman, who shall be persons of unquestionable integrity, shall be appointed by the President for a term of five years and may be re-appointed for a further term of five years only.

(3) The Chairman or Deputy Chairman may be removed from office by the President for inability to discharge the functions of the office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

36. The Constituency Delimitation Commission shall have power to:

(a) appoint, dismiss and exercise disciplinary control over members of staff of the Commission; and

(b) carry out such other functions as may be conferred on it by an Act of the National Assembly.

Amendment of Part II of the Third Schedule to the Constitution.

56. Part II of the Third Schedule to the Constitution is hereby amended –

(a) by the deletion of Item B, that is to say the heading and paragraphs 3 and 4 thereof; and

(b) by re-numbering the existing heading “C” as “B”; and

(c) by re-numbering paragraph 5 of Item B (as so re-numbered) as paragraph 3.

Amendment of the Sixth Schedule to the Constitution.

57. The Sixth Schedule to the Constitution is hereby amended by the substitution, in each case, for the word “four” which occurs respectively in paragraphs 1(1), 1(2), 2(1) and 2(2) thereof, of the word “two”.

Citation.

58. This Act may be cited as the Constitution of the Federal Republic of Nigeria (Amendment) Act 2008.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Constitution of the Federal Republic of Nigeria 1999 so as to further reinforce Nigeria’s democratic foundation which, to a large extent, can be sustained through the conduct of free and fair elections. On that and other considerations, the Bill provides, amongst other
things, for stronger autonomy for the Independent National Electoral Commission, extending to the
dispersal of its non-core functions to new agencies, independent candidacy, a mixed member
proportional system which makes room for proportional representation in elections, mainstreaming of
women and physically challenged persons as well as the staggering of general elections and the
establishment of a firm timeframe for the conclusion of election petitions.
ANNEXURE TWO

A BILL

FOR

AN ACT TO AMEND THE ELECTORAL ACT, 2006 SO AS TO REFLECT THE CONTEMPLATED RESTRUCTURING OF THE INDEPENDENT NATIONAL ELECTORAL COMMISSION, PROVIDE FOR GENERAL IMPROVEMENTS IN THE ELECTORAL PROCESS, INCLUDING THE ADJUDICATION OF DISPUTES AND PROSECUTION OF ELECTORAL OFFENCES, AND ALSO PROVIDE FOR OTHER MATTERS CONNECTED THEREWITH

Commencement. [ ]

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:


1. The Electoral Act, 2006 (in this Act referred to as the “Principal Act”) is hereby amended as set out in this Act.

Repeal of sections 3, 4, and 5.

2. Sections 3, 4, and 5 of the Principal Act are hereby repealed.

Amendment of section 7.

3. For section 7 of the Principal Act, there shall be substituted the following –

“7. There shall be established in each State of the Federation and the Federal Capital Territory, an office of the Commission, to be headed by a Director of Elections, which shall perform such functions as may be assigned to it, from time to time, by the Commission.”

Amendment of section 9.

4. Section 9 of the Principal Act is hereby amended:

(a) by the addition after subsection (2) thereof of the following new subsection (2A) -

“(2A). The Commission shall appoint for each State of the Federation and the Federal Capital Territory a Director of Elections each of whom shall be posted to a location other than that of his origin.”; and

(b) by the deletion of the words “subsection (3) of” in subsection (4) thereof.

Amendment of section 10.

5. Section 10 of the Electoral Act is hereby amended by the addition of the following new subsections (7) to (9) -
“(7) The registration of voters shall be ongoing and shall be computerized and shall, in addition to the other requirements mentioned in section 11(2) of this Act, be based on biometric data.

(8) The Commission shall establish a simplified and comprehensive procedure for the public verification of the voters register and shall provide eligible voters access thereto so as to enable any one of them to scrutinize the voters register for false entries or register for the first time or transfer his registration within a reasonable period before any election conducted under this Act.

(9) The Commission shall provide all political parties with copies of the voters register and shall also publish a full breakdown of figures relating to the voters register to which the public shall have access.”

Amendment of section 13.

6. Section 13 of the Principal Act is hereby amended by the addition after subsection (1) thereof of the following new subsection (1A) -
“(1A) The Commission shall take reasonable steps and establish procedures to ensure that any person who is qualified for registration as a voter and who is blind or suffers other physical disability is assisted, when he presents himself for registration, to accomplish that objective.”

Amendment of section 17.

7. Section 17 of the Principal Act is hereby amended by the addition after subsection (2) of a new subsection (2A) -
“(2A) At the conclusion of the registration exercise, the Commission shall issue to every voter a permanent voter’s registration card within a reasonable period prior to any election to be conducted under this Act.”

Amendment of section 24.

8. Section 24 of the Principal Act is hereby amended by the addition after the words “two years or both” at the end thereof, of the words “and shall, in addition, be disqualified from participating, as a candidate, in any election conducted under this Act for a period of ten years from the date of his conviction.”

Amendment of section 26.

9. Section 26 of the Principal Act is hereby amended by the substitution for the word “Elections” therein of the words “Subject to the respective prescriptions established in that behalf by the Constitution and in this Act, elections”.

Amendment of section 30.

10. Section 30 of the Principal Act is hereby amended -
section 30.  

(a) by the insertion after the words “such officers” in subsection (1) thereof, of the words “, including ad hoc or temporary staff drawn from the public service of the Federation or of a state or serving members of the National Youth Service Corps”; and  

(b) by the addition of the following new subsection (3):  

“(3) The list of ad hoc or temporary staff to be employed by the Commission pursuant to subsection (1) of this section shall be published by the Commission so as to enable members of the public to raise objections as to the character or partisanship in relation to any such person.”

Amendment of section 43.  

11. Subsection 43 of the Principal Act is hereby amended by re-numbering the existing provisions thereof as subsection (1) and the addition of the following new subsections (2), (3) and (4):  

“(2) Notwithstanding subsection (1) of this section, the Commission shall ensure that the number of voters allotted to each polling station shall not be more than 500.  

(3) Polling stations shall be located in schools, community centres or other institutional buildings with convenience of access thereto by voters in the respective localities but where such facilities are not available, then the Commission shall set up temporary polling stations at or in the vicinity of permanent premises.  

(4) The Commission shall take reasonable steps to ensure that polling stations are adapted to accommodate the needs of voters who are blind or who suffer other physical disability.”

Amendment of section 45.  

12. Subsection (1) of section 45 of the Principal Act is hereby amended by the insertion at the end thereof of the words “and the Commission shall ensure that all ballot papers have watertight security features and transparent tracking system”.  

Amendment of section 46.  

13. For subsection (1) of section 46 the Principal Act, there shall be substituted the following:  

“(1) Each Political Party may by notice in writing addressed to the Electoral Officer of the Local Government or Area Council appoint a person (in this Act referred to as a “polling agent”) to attend at each polling unit in the Local Government or Area Council for which it has a candidate and the notice shall include the name, address, photograph and specimen signature of the polling agent and be given to the Electoral Officer for authentication at least
Amendment of section 48.  
14. Section 48 of the Principal Act is hereby amended by the substitution for the word “Voting” of the words “Accreditation and voting.”

Amendment of section 49.  
15. Section 49 of the Principal Act is hereby amended:
   (a) by the substitution for the words “all present” in subsection (2) thereof, of the words “the Presiding Officer but away from other officials and party agents”; and
   (b) by the addition thereto of the following new subsection (3) -
   “(3) In order to prevent the obstruction of their distribution and consequent disruption of the voting process, ballot materials shall be placed under the protection of electoral officers with the support and assistance of members of the security agencies.”

Amendment of section 53.  
16. For subsection (2) of section 53 of the Principal Act, there shall be substituted the following -
“(2) It shall be lawful for the Commission to use Electronic Voting Machines in any election conducted under this Act, so however that the Commission shall have full discretion as to the timing and location of their use such that, as a transitional measure, the Commission may start using Electronic Voting Machines in some Local Government and Area Council elections until such time as the Commission deems it appropriate to migrate fully and exclusively to the use of Electronic Voting Machines in all elections conducted under this Act.”

Amendment of section 60.  
17. Subsection (1) of section 60 of the Principal Act is hereby amended by the addition at the end thereof of the expression “but, in the alternative, a police officer, acting on his own initiative, may effect such arrest.”

Amendment of section 61.  
18. Section 61 of the Principal Act is hereby amended by the addition thereto of the following new subsection (5) -
“(5) In discharging his functions under this section of this Act, the Presiding Officer shall take all reasonable steps to ensure secrecy of the vote for tendered ballots.”

Amendment of section 64.  
19. For subsection (2) of section 64 of the Principal Act, there shall be substituted the following:
“(2) The form shall be signed and stamped by the Presiding Officer and countersigned by the candidates or their polling agents where available at the polling station both immediately before the commencement of voting and at the close of the poll.”

Amendment of section 70.  
Section 70 of the Principal Act is hereby amended by the insertion after the words “the result shall” therein, of the expression “subject as prescribed in sections 74 and 75 of this Act”.

Amendment of section 74.  
Section 74 of the Principal Act is hereby amended by the addition at the end thereof of the expression “including information on the number of voters, votes cast, invalid votes and tendered ballots”.

Amendment of section 76.  
For section 76 of the Principal Act, there shall be substituted the following -

“76. Every Result Form completed at the ward, local government, state and national levels in accordance with the provisions of this Act or any guidelines issued by the Commission shall be stamped, signed and countersigned by the relevant officer, police officer, State Security Service officer and, where available, polling agent at any such level and copies thereof shall be given to the concerned police officer, State Security Service officer and polling agent while another copy shall be posted at the relevant polling station.”

General modification of Part IV.  
As provided in the Constitution of the Federal Republic of Nigeria (Amendment) Act 2008, the participation by independent candidates in all elections conducted under this Act shall as from the commencement of that Act be allowed; accordingly -

(a) all references in this Part IV of this Act to “political parties” shall, unless the context otherwise requires, be construed as also being references to “independent candidates”; and

(b) there shall be inserted the following new section 76A after section 76 of the Principal Act –

76A. --- (1) An independent candidate shall not be considered as having fulfilled all the conditions for an election under this Act if, in addition to the applicable provisions of the Constitution and this Act, he has not paid, at the time of the submission of his nomination papers, the required deposit to the Commission for the purposes of the election concerned.

(2) The amount of the deposit required to be paid pursuant to subsection (1) of this section shall be -

(a) in the case of a presidential election, N2,000,000;
(b) in the case of a governorship election; N1,500,000;
(c) in the case of a senatorial election, N1,000,000;
(d) in the case of a House of Representatives election, N500,000; and
(e) in the case of a State House of Assembly election, N250,000."

As provided in the Constitution of the Federal Republic of Nigeria (Amendment) Act 2008, the functions hitherto conferred upon the Independent National Electoral Commission in relation to the registration of political parties and matters connected therewith shall, as from the commencement of that Act, be conferred upon and be exercisable by the Political Parties Registration and Regulatory Commission; accordingly, all references to the "Independent National Electoral Commission", whether express or implied, in sections 78 to 105 of this Act shall, unless the context otherwise requires, be construed as being references to the "Political Parties Registration and Regulatory Commission."

Section 78 of the Principal Act is hereby amended:
(a) by the substitution for the figure “6” in subsection (1) thereof of the figure “12”; and
(b) by the substitution for the figure “30” which occurs respectively in subsections (3) and (4) thereof of the figure “60”.

The Political Parties Registration and Regulatory Commission shall at the appropriate time and, specifically, following the conduct of the next set of elections after the coming into force of this Act, adopt a new formula (in replacement of that prescribed in section 91 of this Act) for the distribution of any grant to registered political parties thereafter made available for that purpose by the National Assembly, which formula shall take due cognizance of the performance of such parties in elections.

Accordingly, for subsection (2) of section 91 of the Principal Act, there shall be substituted the following -
“(2) The Commission shall distribute such grant only to the political Parties that score not less than 2.5% of all the eligible votes cast in elections to the National Assembly as follows:
(a) 10% of the grant shall be shared equally among all eligible political parties; and
(b) the remaining 90% shall be shared among the eligible political parties in proportion to the total number of eligible votes cast for its candidates in the elections to the National Assembly.”

Amendment of section 93.

Section 93 of the Principal Act is hereby amended:

(a) by the substitution for subsection (9) thereof, of the following:

“(9) It shall be lawful for any individual to make donations to any candidate but subject, in each case, to the following respective ceilings:

(a) in the case of a presidential election, N20,000,000;
(b) in the case of a governorship election, N15,000,000;
(c) in the case of a senatorial election, N10,000,000;
(d) in the case of a House of Representatives election, N5,000,000;
(e) in the case of a State House of Assembly election, N2,500,000;
(f) in the case of a Local Government Chairmanship election, N3,000,000; and
(g) in the case of a Local Government Councillorship election, N500,000.”; and

(b) by the substitution for the amounts of the respective fines prescribed in paragraphs (a) to (g) of subsection (10) thereof, of the new amounts of N20,000,000; N15,000,000; N10,000,000; N5,000,000; N2,500,000; N3,000,000; and N500,000, respectively.

Amendment of section 103.

Section 103 of the Principal Act is hereby amended -

(a) by the substitution for subsection (2) thereof of the following:

“(2) State human and material resources, including state-owned media, shall not be employed to the advantage or disadvantage of any political party or candidate at any election.”; and

(b) by the substitution for “N500,000” and “N1,000,000” in subsection (6) thereof of “N1,000,000” and “N10,000,000, respectively.

Unification of Local Government and Area Council elections.

(1) Paragraph 14 in Item F of the Concurrent Legislative List in Part II of the Second Schedule to the Constitution empowers the National Assembly to make laws for the Federation regulating elections to a local government council in addition to those in respect of area
councils in the Federal Capital Territory and, pursuant thereto, the Electoral Act, 2006, has made provisions in that behalf in Parts VI and VII of that Act which overlap.

(2) Accordingly, further amendments to the Electoral Act shall be made to streamline Parts VI and VII as specified hereunder -

(a) Sections 120 to 123 of the Principal Act are hereby repealed.

(b) In sections 106 to 119 of the Principal Act, all references therein, whether express or implied, to -

(a) “Area Council” shall be construed to include references to “Local Government Council” in a State; and

(b) “Federal Capital Territory” shall be construed to include references to “State.”

(c) There shall be inserted after section 107 of the Principal Act, the following new section 107A -

“Mixed member proportional system for Councils.

107A __ (1) Subject to the provisions of this Act, every Local Government or Area Council shall, in addition to the members elected to the Council, also consist of additional members based on proportional representation the number of which shall be 30% computed by reference to the number of members in each Council (as provided under the applicable law) and to be shared amongst political parties based on and in proportion to the number of valid votes cast and attributed to the respective candidates of the political parties; so however that if a political party wins less than 2.5% or more than 70% of the number of members elected under this subsection such political party shall not be entitled to any additional member based on proportional representation.

(2) Every political party entitled to a share in the number of additional members based on proportional representation shall nominate women candidates who shall constitute 30% of the list of additional members while another 2% of the list shall be candidates nominated to represent physically challenged persons.”; and

(d) Section 109 of the Principal Act is hereby amended –

(i) by re-numbering the existing provisions thereof as subsection (1); and

(ii) by the insertion at the end of paragraph (e) of subsection (1), as so re-numbered, of the words “or is an independent candidate”; and
(iii) by the addition thereto of following new subsections (2) and (3) -

“(2) A person standing for an election to a council as an independent candidate shall be qualified for election if he is nominated by not less than ten registered voters, each of whose signatures on the nomination form shall be verified and authenticated as provided by law, from at least two-thirds of the wards in the electoral constituency where he intends to stand and subject to the payment of a deposit as prescribed in subsection (3) of this section.

(3) The amount of deposit to be paid pursuant to subsection (2) of this section shall be -

(a) N300,000 in the case of candidacy for Chairman;
(b) N50,000 in any other case,

but such deposit shall be refunded to the candidate if he secures not less than 10% of the total eligible votes cast in the concerned election.”

New Part VIIA. 30. The Principal Act is hereby amended by the addition of the following new Part VIIA –

“PART VIIA – PROPORTIONAL REPRESENTATION

123A -- (1) Every political party shall, in addition to the submission to Independent National Electoral Commission of the list of candidates which the political party proposes to sponsor at the elections to the House of Representatives under section 32 of this Act, at the same time submit a list of 108 candidates, arranged in order of preference, from which the political party intends to fill the seats of additional members in the House of Representatives as prescribed in section 49 of the Constitution (hereinafter referred to as the “additional members list”).

(2) So soon as may be after the declaration of the results of the elections to the House of Representatives, the Commission shall determine, by reference to the additional members list, the candidates that qualify to fill the additional members list in respect of each eligible political party and thereafter transmit the list to the Clerk of the National Assembly within a reasonable time before the first session of the National Assembly.

123B. -- (1) Every political party shall, in addition to the submission to Independent National Electoral Commission of the list of
additional members of a House Assembly.

candidates which the political party proposes to sponsor at the elections to the House of Assembly under section 32 of this Act, at the same of time submit a list of candidates, which shall be equal to 30% of the number of members of the House of Assembly, arranged in order of preference, from which the political party intends to fill the seats of additional members in the House of Assembly as prescribed in section 91 of the Constitution.

(2) So soon as may be after the declaration of the results of the elections to the House of Assembly, the Commission shall determine, by reference to the additional members list, the candidates that qualify to fill the additional members list in respect of each eligible political party to the House of Assembly and thereafter transmit the list to the Clerk of the House of Assembly within a reasonable time before the first session of the House of Assembly.

Procedure in relation to additional members to Councils.

123C. -- (1) Every political party shall, in addition to the submission to Independent National Electoral Commission of the list of candidates which the political party proposes to sponsor at the elections to a Local Government of Area Council under section 122 of this Act (read together with section 32 thereof), at the same time submit a list of candidates, which shall be equal to 30% of the number of members of the Council, arranged in order of preference, from which the political party intends to fill the seats of additional members in the Council.

(2) So soon as may be after the declaration of the results of the elections to the Council, the Commission shall determine, by reference to the additional members list, the candidates that qualify to fill the additional members list in respect of each eligible political party to the Council and thereafter transmit the list to the Secretary of the Council within a reasonable time before the first session of the Council.

Definition.

123D. In this Part of this Act, “eligible political party” means any political party that scores more than 2.5% of the total number of eligible votes cast in the relevant election and which, in each case, does not have or (in the case of delays or uncertainty arising out of election petitions) eventually have more than 70% of the number of members in the House of Representatives, House of Assembly of a State or in a Local Government or Area
Amendment of section 124.

31. Section 124 of the Principal Act is hereby amended by the addition at the end thereof the words “and shall, in addition be disqualified from participating in any election conducted under this Act, as a candidate, for a period of ten years from the date of his conviction.”

Amendment of section 131.

32. Section 131 of the Principal Act is hereby amended by the addition thereto of the following new subsection (7) -

“(7) Any person convicted of an offence under subsection (1) or (2) of this section shall, in addition to the penalties prescribed thereunder, be disqualified from participating in any election conducted under this Act, as a candidate, for a period of ten years from the date of his conviction.”

Amendment of Section 141

33. For the period “thirty (30) days” in section 141 of the Principal Act, there shall be substituted “seven (7) days”

Amendment of section 144.

34. Section 144 of the Principal Act is hereby amended by the substitution for subsection (2) thereof of the following:

“(2) The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petitioner complains of the conduct of an Electoral Officer, a Presiding Officer, a Returning Officer or any other person who took part in the conduct of an election under the direction or control of the Commission, such officer shall not, for the purposes of this Act, be deemed to be a Respondent and, accordingly, it shall be sufficient for such a complainant to join only the Commission as a Respondent; so however that where such officers or persons are joined in the petition, the Tribunal or Court shall strike them out.”

Amendment of section 145.

35. Subsection (1) of section 145 of the Principal Act is hereby amended by the insertion, after paragraph (b) thereof, of the following new paragraph -

“(bb) that the election was invalid by reason of the use of State resources under section 103(2) of this Act;”;

Amendment of section 146.

36. Section 146 of the Principal Act is hereby amended by the addition thereto of the following new subsection (3):

“(3) Notwithstanding the provisions of the Evidence Act, the burden of proof in relation to the fact that an election was conducted substantially in accordance with the principles of this
Amendment of section 147.  
Section 147 of the Principal Act is hereby amended -
(a) by the insertion after subsection (2) thereof of the following new subsection (2A):

“(2A) If the Tribunal or the Court determines that the election of a candidate who was returned as elected was invalid by reason of the use of State resources under paragraph (bb) of section 145 of this Act, the Tribunal or the Court, as the case may be, shall nullify the election and, in addition, such candidate shall be disqualified from standing in any election conducted under this Act for a period of ten years from the date of such determination.”; and

(b) by the substitution for the expression “subject to the provisions of subsection (2) of section 149 of this Act, on the motion” in subsection (3) thereof, of the words “On the Motion.”

Amendment of section 149.  
Section 149 of the Principal Act is hereby amended by the substitution for the existing provisions thereof of the following –

“149. If the Election Tribunal or the Court, as the case may be, determines that a candidate returned as elected was not validly elected, the notice of appeal against that decision shall be given within seven days of the decision.”

Transitional provisions relating to section 151.  
Section 151 of the Principal Act is hereby amended by the substitution therefor of the following -

“151. Pending the issue of new rules in that behalf by the President of the Court of Appeal, the rules of procedure to be adopted for election petitions and appeals arising therefrom shall be those set out in the First Schedule to this Act.”

Amendment of section 158.  
Section 158 of the Principal Act is hereby amended by the substitution for the existing provision thereof of the following:

“158 - (1) An offence committed under this Act shall be triable in a Chief Magistrates Court or a High Court of a State or, as the case may be, of the Federal Capital Territory.

(2) Any prosecution under this Act shall be undertaken by legal officers of the Electoral Offences Commission or any legal practitioner appointed by it.”

Amendment of section 164.  
Section 164 of the Principal Act is hereby amended:
section 164. a) by the substitution for the definition of “Commission” therein of the following -

“Commission” means the Independent National Electoral Commission or, as the context may otherwise require, the Political Parties Registration and Regulatory Commission or the Electoral Offences Commission”; and

(b) by the deletion of the definitions of “Resident Electoral Commissioner” and “State Commission.”

Citation. 42. This Act may be cited as the Electoral (Amendment) Act 2008.

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Electoral Act, 2006 as a consequence of certain improvements introduced into the electoral process by the Constitution of the Federal Republic of Nigeria (Amendment) Act 2008, including independent candidacy, proportional representation and the creation of new agencies. Other modifications to the Act are in the nature of corrective measures flowing from the conduct of some recent general elections. It also provides for the unification of the conduct of Local Government and Area Council elections.
ANNEXURE THREE

ELECTORAL OFFENCES COMMISSION ACT, 2008

A BILL

FOR

AN ACT TO ESTABLISH THE ELECTORAL OFFENCES COMMISSION
AND FOR OTHER MATTERS CONNECTED THEREWITH.

Commencement. [ ]

BE IT ENACTED by the National Assembly of the Federal Republic of
Nigeria as follows:

1. Establishment of the Electoral Offences Commission and general powers.

__ 1 (1) There is hereby established a body to be known as the
Electoral Offences Commission (in this Act referred to as “the
Commission”) which shall be constituted in accordance with and shall
have such functions as are conferred upon it by this Act.

(2) The Commission shall be a body corporate with perpetual
succession and a common seal and may sue and be sued in its
name.

(3) The Commission shall be charged with the responsibility of
enforcing the provisions of this Act and of the Electoral Act, 2006 in so
far as they relate to the investigation and prosecution of electoral
offences set out in Part VIII of that Act and in accordance with the
provisions of this Act and any other law relating to electoral offences.

2. Composition of membership and tenure.

__ (1) The Commission shall consist of the following members:
(a) a Chairman and Deputy Chairman, so however that they
shall not both be of the same gender;
(b) six persons, of whom two shall be women;
(c) a representative of the Federal Ministry of Justice not
below the rank of a Director nominated by the Attorney-
General of the Federation; and
(d) a representative of the Nigeria Police Force not below the rank of an Assistant Inspector-General of Police
nominated by the Inspector General of Police.

(2) The members of the Commission, other, than ex-officio members,
shall be appointed by the President but subject to confirmation by
(3) The members of the Commission, other than ex-officio members, shall be appointed for a term of five years and may be re-appointed for a further term of five years only; but any such member may be removed from office by the President acting on an address supported by two-thirds majority of the Senate praying that he be so removed for inability to discharge the functions of the office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

(4) Members of the Commission shall be non-partisan and shall be persons of unquestionable integrity and:

(a) in the case of the Chairman or the Deputy Chairman be not less than forty-five years in age; and

(b) in other cases be not less than forty years in age.

Offices in the States and Federal Capital Territory.

The Commission may establish an office in each State of the Federation and in the Federal Capital Territory which shall perform such functions as the Commission may, from time to time, assign to such office.

Appointment of Secretary.

(1) There shall be established for the Commission a secretariat which shall be headed by a Secretary who shall be appointed by the Commission.

(2) The Secretary shall be:

(a) the head of the secretariat of the Commission;

(b) responsible for the administration of the secretariat and the keeping of the books and records of the Commission;

(c) be appointed for a term of five years in the first instance and may be reappointed for a further terms of five years subject to satisfactory performance; and

(d) subject to the supervision and control of the Chairman and the Commission.

(3) The Commission may, from time to time, appoint such other staff or appoint officers on secondment from government security or law enforcement agencies or such other private or public services as it may deem necessary, to assist the Commission in the performance of its functions under this Act.

(4) The staff of the Commission appointed under subsection (3) of this section, shall be appointed upon such terms and conditions as the Commission may, after consultation with the Federal Civil
service Commission, determine.

Staff regulations.

5. (1) The Commission may, subject to the provisions of this Act, make staff regulations relating generally to the conditions of service of the employees of the Commission and, without prejudice to the generality of the foregoing, the regulations may provide for:
   (a) the appointment, promotion and disciplinary control (including dismissal) of employees of the Commission; and
   (b) appeals by such employees against dismissal or other disciplinary measures,

and until the regulations are made, any instrument relating to the conditions of service of officers in the Civil Service of the Federation shall be applicable, with such modifications as may be necessary, to the employees of the Commission.

5. (2) Staff regulations made under subsection (1) of this section shall not have effect until approved by the Commission, and when so approved the regulations may not be published in the Gazette but the Commission shall cause them to be brought to the notice of all affected persons in such manner as it may, from time to time, determine.

Pensionable service.

6. (1) It is hereby declared that service in the Commission shall be public service for the purposes of the Pensions Reform Act 2004 and, accordingly, officers and other persons employed in the Commission shall in respect of their service in the Commission, be entitled to pensions, gratuities and other retirement benefits as are prescribed thereunder, so however that nothing in this Act shall prevent the appointment of a person to any office on terms which preclude the grant of a pension or gratuity in respect of that office.

6. (2) For the purposes of the application of the provisions of the Pensions Reform Act 2004, any power exercisable under the Act by a Minister or other authority of the Government of the Federation (not being the power to make regulations under the Act by a Minister) is hereby vested in and shall be exercisable by the Commission and not by any other person or authority.

Funds of the Commission.

7. (1) The Commission shall establish and maintain a fund from which there shall be defrayed all expenditures reasonably incurred by the Commission for the execution of its functions
(2) There shall be paid and credited to the fund established pursuant to subsection (1) of this section, such monies as may, in each year, be approved by the Federal Government for the purposes of the Commission.

Accounts and audit. 8. The Commission shall keep proper accounts, in a form which conforms to accepted commercial stands, of its receipts, payments, assets and liabilities and shall submit the accounts annually for auditing by a qualified auditor appointed from the list of external auditors and in accordance with the guidelines supplied by the Auditor-General of the Federation.

Annual reports. 9. The Commission shall, not later than 30th September in each year, submit to the National Assembly a report on its activities during the immediately preceding year and shall include in such report the audited accounts of the Commission.

Training programme. 10. The Commission shall initiate, develop or improve specific training programmes for its law enforcement and other personnel charged with responsibility for the eradication of offences created by this Act and such programmes shall include:
(a) methods used in the detection of electoral offences or offences created under this Act;
(b) techniques used by persons involved in electoral offences or offences under this Act and appropriate counter-measures;
(c) collection of evidence;
(d) law enforcement techniques; and
(e) dissemination of information on electoral and related offences.

Powers and immunities of officers. Cap. 359 LFN. 11. (1) Subject to the provisions of this Act, an officer of the Commission when investigating or prosecuting an electoral offence shall have all the powers and immunities of a police officer under the Police Act and any other laws conferring power on the police or empowering and protecting law enforcement agents.

(2) If, in the course of any investigations or proceedings in a court in respect of the commission of an electoral offence or an offence under this Act by any person, there is disclosed an offence under any other written law, not being an electoral offence or offence under this Act, irrespective of whether the offence was committed
by the same person or any other person, the officer of the
Commission responsible for the investigation or proceedings, as
the case may be, shall notify the Director of Public Prosecutions
or any other officer charged with responsibility for the prosecution
of criminal cases, who may issue such direction as shall meet the
justice of the case.

Special powers. 12. It shall be the duty of the Commission:
(a) where reasonable grounds exist for suspecting that any person
has conspired to commit or has attempted to commit or has
committed an electoral offence or an offence under this Act to
receive and investigate any report of the conspiracy to commit,
attempt to commit or the commission of such offence and, in
appropriate cases, to prosecute the offenders;
(b) to examine the practices, systems and procedures of any
electoral entity and where, in the opinion of the Commission, such
practices, systems or procedures aid or facilitate electoral
offences to advise and assist on ways by which electoral offences
may be eliminated or minimized by such entity;
(c) to advise the electoral entities of any changes in practices,
systems or procedures compatible with the effective discharge of
the duties of electoral entities as the Commission thinks fit to
reduce the likelihood or incidence of electoral and related
offences;
(d) to educate the public on and against electoral and related
offences; and
(e) to enlist and foster public support in combating electoral offences.

Attempt or conspiracy. 13. Any person who:
(a) attempts to commit any electoral offence;
(b) does any act preparatory to or in furtherance of the commission of
any electoral offence; or
(c) abets or is engaged in a criminal conspiracy to commit any
electoral offence;
(d) commits any electoral offence;
shall be guilty of an offence and shall, on conviction, be liable to the
punishment provided for such offence.

Power to investigate. 14. (1) Every report relating to the commission of an electoral offence
or any offence under this Act may be made orally or in writing to
an officer of the Commission, and if made orally shall be reduced into writing and read over to the person making the report; and every such report shall be signed or thumb-printed by the person making it; and where the person making the report is an illiterate the officer obtaining the report shall endorse that fact on the report together with a statement to the effect that it was read over and interpreted to the maker.

(2) Every report, whether in writing or reduced into writing, shall be entered in a book kept at the office of the Commission and there shall be appended to such entry the date and hour at which such report was made.

(3) Where an officer of the Commission has reason to suspect the commission of an offence following a report made under subsection (1) or information otherwise received by him, he shall cause investigation to be made and for such purpose may exercise all the powers of investigation provided for under this Act or any other law.

(4) A report made under subsection (1) of this section shall not be disclosed by any person other than to the officers of the Commission until the accused person has been arrested or charged to court for an offence arising from such report.

(5) Any document certified by any officer of the Commission under subsection (2) in respect of a report under subsection (1) shall be admissible as evidence of the contents of the original and of the time, place and manner in which the report was recorded.

Power to examine persons.

15. ___ (1) An officer of the Commission investigating an electoral offence or an offence under this Act may:

(a) order any person to attend before him for the purpose of being examined in relation to any matter which may, in his opinion, assist in the investigation of the offence;

(b) order any person to produce before him any book, document or any certified copy thereof, or any other article which may, in his opinion, assist in the investigation of the offence; or

(c) by written notice require any person to furnish a statement in writing made under oath or affirmation setting out therein all such information required under the notice, being information which, in such officer's opinion, would be of assistance in the investigation of the offence.
(2) Subsection (1) (b) shall not apply to banker’s books save in accordance with the provisions of the Evidence Act.

(3) A person to whom an order under subsection (1) (a) has been given shall:
   (a) attend in accordance with the terms of the order to be examined, and shall continue to attend from day to day where so directed until the examination is completed; and
   (b) during such examination disclose all information which is within his knowledge.

(4) A person to whom an order has been given under subsection (1) (b) shall not conceal, destroy, remove from Nigeria, or mulate, expunge or dispose of any book, document or article specified in the order or relevant to the investigation, or alter or deface any entry in such book or document, or cause such act to be done, or assist or conspire to do such act.

(5) A person to whom a written notice has been given under subsection (1) (c) shall, in his statement, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him.

(6) A person to whom an order or a notice is given under subsection (1) shall comply with such order or notice and with subsections (3), (4) and (5).

(7) Any person who contravenes any provision of this section shall be guilty of an offence punishable with a term of imprisonment not exceeding three months.

General provisions as to summons.

16. (1) Subject to the provisions of subsections (1) to (6) of this section, the Commission may issue a summons directed to a person complained against or any other person to attend before the Commission for the purpose of being examined in relation to the complaint or in relation to any other matter which may aid or facilitate the investigation of the complaint; and a summons so issued shall state the substance of the complaint, and the time and place at which the inquiry is to be held.

(2) Every summons issued by the Commission under this Act shall be in duplicate and signed by the Chairman or such other officer as the Chairman may authorize to issue summons.

(3) Every summons issued by the Commission under this Act shall be served by an officer of the Commission in the manner prescribed.
in the Sheriffs and Civil Process Act and any other law relating to
the service of process and the person effecting the service shall
have and exercise all the powers conferred by that Act and any
other law relating to the service of process.

(4) Where the person summoned by the Commission is in the service
of Government, the Commission may deliver the summons in
duplicate to the Head of the Department in which such person is
employed for the purpose of its being served on that person and
such officer shall thereupon cause the summons to be served on
that person.

(5) Where a summons has been served upon the person to whom it
is addressed or is delivered to any other person, the person to
whom it is addressed or delivered, as the case may be, shall sign
a receipt therefor on the duplicate; and where service is not
effected by handing the summons to an individual but by some
other method approved by this Act, the person effecting service
shall endorse on the duplicate particulars of the method by which
the service was effected.

(6) A person required to sign a receipt on the back of the duplicate
summons to the effect that he has received the summons who
refuses to do so may be arrested by the person serving the
summons and shall be guilty of an offence and upon conviction
be liable to one month imprisonment or a fine of five thousand
Naira.

(7) Where the Commission is satisfied that a summons directed to a
person complained against or any person has been served and
that person does not appear at the time and place appointed in
the summons, the Commission shall have power to arrest and
detain any such person.

Warrant to
search premises

17. (1) Whenever is appears to the Chairman upon information, and
after such inquiry as he shall consider necessary, that there is
reasonable cause to suspect that in any place there is any
evidence of the commission of an electoral offence or offence
under this Act, he may by written order direct an officer of the
Commission to obtain a court order to:

(a) enter any premises and there search for, seize and take
    possession of any book, document or other article evidencing
    the commission of such offence;

(b) inspect, make copies of or take extracts from any book,
record or document;
(c) search any person who is in or on such premises and, for the purpose of such search, detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain any article found on such person;
(d) break open, examine, and search any article, container or receptacle; or
(e) stop, search and seize any vehicle or conveyance.
(2) Whenever it is necessary so to do, an officer of the Commission exercising any power under subsection (1) shall obtain a warrant from a judge or magistrate to:
(a) break open any outer or inner door or window of any premises and enter thereto, or otherwise forcibly enter the premises and every part thereof;
(b) remove by force any obstruction to such entry search, seizure or removal as he is empowered to effect; or
(c) detain any person found in or on any premises or in any conveyance searched under subsection (1) or until such premises or conveyance has been searched.
(3) No person shall be searched under this section except by a person who is of the same gender as the person to be searched.

18. Subject to such limitation as is provided under this Act, every person required by an officer of the Commission to give any information on any subject which it is the duty of such officer to inquire into under this Act and which is in that person’s statutory power to give, shall be bound to give such information, failing which he shall be guilty of an offence and on conviction liable to imprisonment for six months or a fine of ten thousand Naira.

19. Any person who:
(a) refuses any officer of the Commission access to any premises or fails to submit to a search by any person authorized to search him under this Act;
(b) assaults or obstructs any officer of the Commission or any person authorized by the Commission in the execution of his duty under this Act;
(c) fails to comply with any lawful demand, notice, order or requirement of an officer of the Commission in the execution of his duty under this Act;
(d) fails to produce, or conceals or attempts to conceal from an officer of the Commission, any book, document, or article, in relation to which such officer has reasonable grounds for suspecting or believing that an electoral offence or offence under this Act has been or is being committed, or which is liable to seizure under this Act;

(e) rescues or endeavours to rescue or causes to be rescued any person who has been duly arrested or anything which has been duly seized; or

(f) destroys anything to prevent the seizure thereof or the securing of the thing, shall be guilty of an offence punishable with imprisonment for one year without the option of a fine.

20. (1) Every electoral offence or offence under this Act shall be a bailable offence for the purposes of the Criminal Procedure Act or Code.

(2) Every person arrested under this Act may be released from custody on his executing a bond with sureties, as an officer of the Commission may require.

(3) Any person who has been released from custody under subsection (2) may be re-arrested without warrant by any officer of the Commission -

(a) if such officer has reasonable grounds for believing that any condition on which such person was released or otherwise admitted for bail has been broken; or

(b) on being notified in writing by the surety of such person that such person has broken or is likely to break any condition on which such person was released and that the surety wishes to be relieved of his obligation as surety.

(4) Any person arrested under subsection (3) who is not released on bail shall, without unreasonable delay, and in any case within twenty-four hours (excluding the time for any necessary journey) be produced before the Court and if it appears to the Court that any condition on which such person was released or otherwise admitted for bail has been or is likely to be broken, the court may:

(a) remand such person in custody; or

(b) admit such person to bail on the same conditions or on such other conditions as it thinks fit.

(5) Where a person who is arrested for an electoral offence or offence under this Act is serving a sentence of imprisonment or is
in detention under any law relating to preventive detention, or is otherwise in lawful custody, he shall, upon an order in writing by an officer of the Commission, be produced before such officer or before any other officer of the Commission for the purpose of investigation and for such purpose he may be kept in lawful custody for a period not exceeding fourteen days.

(6) A person who is detained in lawful custody under subsection (5) or otherwise under any other written law may, at any time, be made available to an officer of the Commission for the purpose of investigation, or may be taken to any other place for the purpose of searching the place, or seizing any property, or identifying any person or for any other purpose related to the investigation.

(7) The period during which a person is under lawful custody under subsection (6) shall count towards the period of his imprisonment, detention or other custody.

21. Any part-heard proceedings pending before any court, in relation to any electoral offence, immediately before the coming into force of this Act, shall be continued and completed as if this Act had not been made.

22. This Act and the Electoral Act, 2006 as amended by the Electoral (Amendment) Act, 2007 and the Electoral (Amendment) Act, 2008 shall be read and construed together in so far as it is necessary to give effect to the intendment and tenor of this Act.

23. In this Act, unless the context otherwise requires:
“Commission” means the Electoral Offences Commission” as defined in the Electoral Act, 2006 and constituted in this Act;
“electoral entity” means any association or organization which participates in the electoral process, including but not limited to the Independent National Electoral Commission, the Political Parties Registration and Regulatory Commission, political parties and civil society organizations or groups;
“electoral offence” means any offence prescribed in sections 124 to 139 of the Electoral Act, 2006 or under any Act of the National Assembly or other law;
“public officer” means any person employed in the public service of the Federation or of a State.
This Act may be cited as the Electoral Offences Commission Act, 2008.

EXPLANATORY MEMORANDUM

This Bill seeks to establish the Electoral Offences Commission with powers to investigate offences committed in relation to the conduct of general elections and undertake the prosecution of persons found contravening any of the comprehensive penal provisions set out in the Electoral Act, 2006 as supplemented by this Act.