

**NIGERIA CIVIL SOCIETY**

**INPUT TO THE**

**ELECTORAL BILL 2004**

**Electoral Reform Network (ERN)**

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## **Preface**

When changes to Nigeria's political institutions are contemplated, whether by politicians or civil society in general, electoral reform is often near the top of the list. Establishing an appropriate legal framework is an important step towards achieving a credible electoral process.

This publication is the response of the ERN to debates surrounding the adoption of an acceptable legal framework for the conduct of elections in Nigeria. This is a commentary on the draft Electoral Bill 2004 as proposed by INEC. The 2003 elections generated a flurry of comments in favour of major changes to our electoral process. We have tried to include as far as possible many of these key concerns. We acknowledge the fact that while there appears to be a general consensus on the need for electoral reform, there is no unanimity on the nature of reform that is required. We also note that the contributions made by advocates of change following the 2003 elections have not generated much reaction among politicians. While all the three opposition parties represented in the National Assembly have expressed concern about the existing system and shown interest in change, none has been formally committed to a specific proposal. In addition, it is regrettable that at present few Nigerians seem to care deeply about electoral reform. Cynicism still dominates discussions about electoral outcomes.

Over the next two years the ERN is committed to ensuring that the issue of electoral reforms dominate political discussions in Nigeria. Key issues that will be subject of our advocacy will include Political Parties and Campaign Finance, Equal Gender Representation in Political Life and the Administration of Electoral Justice. We are also concerned with the failure of the existing system to provide political parties with representational correspondence to their electoral support in the country as a whole. We have previously advocated for some form of proportional representation as a remedy to this problem. The ERN would in subsequent publications and through our advocacy activities take up the debate of finding an appropriate electoral system for Nigeria by assessing the merits of different electoral systems in the Nigerian context.

We are grateful for the support provided by the Open Society Initiative for West Africa {OSIWA} for this publication as well as our public education activities.

**Olawale Fapohunda**  
Chairperson  
Advocacy Committee

**ELECTORAL BILL 2004**  
**AN ACT FOR THE ESTABLISHMENT OF**  
**INDEPENDENT NATIONAL ELECTORAL**  
**COMMISSION AND TO REGULATE THE CONDUCT**  
**OF FEDERAL, STATE AND AREA COUNCIL**  
**ELECTIONS AND TO REPEAL THE ELECTORAL**  
**ACT 2002, AND FOR CONNECTED PURPOSES**

**BE IT ENACTED** by the National Assembly of the Federal Republic of Nigeria

(Commencement)

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**PART 1**

**ESTABLISHMENT AND FUNCTIONS, ETC OF THE  
INDEPENDENT NATIONAL ELECTORAL COMMISSION**

(1) Without prejudice to the provisions of Section 153 of the 1999 Establishment of Constitution and item F in part one of the third Schedule to the Independent Constitution, there is hereby established a body to be known as the National Electoral Independent National Electoral Commission (in this Act referred to as “the Commission”)

(2) The Commission -

- (a) shall be a body corporate with perpetual succession; and
- (b) may sue and be sued in its corporate name.

(1) The Commission shall consist of Chairman who shall be the Chief

National Electoral Commissioner and the Chief Executive of the Commission twelve other members to be known as National Electoral Commissioners.

(2) The Chairman and members of the Commission shall not be less than 50 and 40 years of age respectively.

(3) The Chairman and members of the Commission shall be -

(b) appointed by the President Commander-in-Chief of the Armed Forces subject to confirmation by the Senate.

(c) In exercising his powers to appoint a person as Chairman or member of the Independent National Electoral Commission, the President shall consult the Council of State.

(1) The Chairman and members of the Commission shall each hold office for a period of live years and on such terms and conditions as may be specified in their letters of appointment.

(2) A member may resign his membership by notice in writing addressed to the President, Commander-in-Chief of the Armed Forces and that member shall, on the date of the receipt of the notice by the President, Commander-in-Chief of the Armed Forces, cease to be a member.

(3) there shall be paid to every member of the Commission such salaries and allowances as the Revenue Mobilization Allocation and Fiscal Commission may from time to time provide.

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Section 2 of the Bill duplicates section 15 and item F in part three of the 3<sup>rd</sup> schedule to the 1999 Constitution. It is bad for duplicity. See AG. Abia State vs. AG Fed. (2002) 6 NWLR (part 763) 265at 265-511.

Section 2 of the Bill should be expunged as the 1999 Constitution provides for the membership and functions of the Commission in section 153 and item F in part three to the 3<sup>rd</sup> schedule of the Constitution

(a) persons of unquestionable integrity, and

emolument whether in the Federal or State public service.

4. - (1) The functions of the Commission shall be to
- (a) organize, conduct and supervise all the elections and matters pertaining to elections into all the elective offices provided in Paragraph 15(a) of the Third Schedule to the Constitution of the Federal Republic of Nigeria 1999 and under this Act.
  - (b) register political parties in accordance with the provisions of the Constitution and other relevant enactment or law;
  - (c) monitor the organization and operation of the political parties including their finances;
  - (d) arrange for the annual examination and auditing of the funds and accounts of the political parties and publish a report on such examination and audit for public information;
  - (e) conduct the registration of persons qualified to vote and the preparation, maintenance and revision

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(4) A member shall not while holding office hold any other office of

Section 4 of the Bill should be expunged as the 1999 Constitution provides for the functions of the Commission Section 153 and item F in part three to the 3<sup>rd</sup> schedule of the Constitution

Section 2 of the Bill duplicates section 15 and item F in part three of the 3<sup>rd</sup> schedule to the 1999 Constitution and is therefore bad for duplicity. See AG. Abia State vs. AG Fed. (2002) 6 NWLR (part 763) 265at 265-511

(f) conduct voter and civic education;

(g) monitor political campaigns and provide rules and regulations which shall govern the political pallies;

(h) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe to the Oath of Office prescribed by law; and

(i) delegate any of its powers to any State Resident Electoral Commissioner;

(j) carry out such other functions as may be conferred upon it by an Act of the National Assembly.

(2) Notwithstanding the functions of the Commission specified under subsection (1) of this section, the Commission shall have power to divide the area of the Federation or as the case may be, the area of a State or an Area Council into such number of constituencies as may be prescribed by law for the purpose of elections to be conducted by the Commission.

5 (1) There shall be established for the Commission a fund to be known as

of the register of voters for the purpose of any election;

Item 4(1)(f) should be expunged from the Bill

Item 4(1)(f) is unconstitutional. Civic and Voter Education are not part of the functions of the Commission as specified in item F in part 3 of the 3<sup>rd</sup> schedule to the Constitution. The Commission cannot add to or subtract from its Constitutional functions. Although it is desirable to amend the Constitution to accommodate this function

(2) There shall be paid into the fund established in pursuance to subsection (1) of this Section

(a) such sums as may be made available to the Commission for the purpose of carrying out its functions in pursuance of Section 4 of this Act; and

(b) such sums as may, from time to time, be credited to the fund by way of payment of the principal and interest on and other charges in respect of any loan made out of the fund, and also interest from investments made from the fund.

(3) Disbursements from the fund shall be made in accordance with rules established by the Commission.

6 - (1) The Commission shall establish and maintain a separate fund from which there shall be defrayed all expenditure incurred by the Commission except such expenditure as may be incurred by it pursuant to Section 5 of this Act.

(2) There shall be paid and credited to the fund established in pursuance of subsection (1) of this Section, such payments as may be made to it by the Federal Government for the running

Independent National Electoral Commission fund.

expenses of the Commission and all other assets from time to time accruing to the Commission otherwise than in pursuance of Section 5 of this Act

7 - The Commission may, from time to time, apply the proceeds of the fund established in pursuance of Section 6 (1) of this Section

(a) to defray the cost of administration of the Commission;

(b) for reimbursing members or members of any Committee set up by the Commission for such expenses as may be expressly authorized by the Commission in accordance with the rates approved by it;

(c) to the payment of the salaries, fees or other remuneration or allowances and pensions, superannuation allowance and gratuities payable to the officers and servants of the Commission, so however that no payment of any kind under this paragraph (except such as may be expressly authorized as aforesaid) shall be made to any person who is in receipt of emoluments from the Government of the Federation or the Government of a State.

(d) for the maintenance of any property vested in the Commission; and

(e) for and in connection with all or any of its functions under this Act.

8 - (1) The Commission shall submit to the Ministry of Finance not later than 31<sup>st</sup> October in each financial year an estimate of its expenditure and income (Including payments to the National Electoral Commission Fund) during the next succeeding financial year.

(2) The Commission shall keep proper accounts in respect of each financial year (and proper records in relation thereto) and shall cause its accounts to be audited as soon as may be after the end of each financial year by the Auditor-General of the Federation.

9.- (1) The Commission shall make a proposed review of the constituencies of each State. The proposed review shall set out the proposed changes to the boundaries of the constituencies of the States pursuant to section 114 of the constitution.

10.-(1) There shall be established in each State of the Federation and FCT, an office of the Commission which shall perform such functions as may be assigned to it, from time to time, by the Commission.

(2) There shall be for each State of the Federation and the Federal Capital Territory, Abuja, a Resident Electoral Commissioner who shall -  
(a) be a person of unquestionable integrity;  
(b) not be less than 40 years of age; and  
(c) be appointed by the President, Commander-in-Chief of the Armed Forces.

(3) The Resident Electoral Commissioner appointed pursuant to subsection (2) of this section, may be removed by the President, Commander-in-Chief of the Armed Forces.

11 - In the discharge of its functions under this Act, the Commission shall not be subject to the direction or control of any other person or authority.

12. - (1) The Commission shall meet for the conduct of its business at such times, places and on such days as the Chairman may appoint.

(2) The Chairman shall preside at all meetings of the Commission but if he is absent from any meeting of the Commission the members present shall

The powers of the Independent National Electoral Commission are enormous and they do not have the capacity and expertise to delimit constituencies effectively. Constituency Delimitation is a constitutional matter and only the National Assembly can amend the Constitution divesting the Commission of this power

Sections 71-74 and 112-115 of the 1999 Constitution should be amended divesting the Independent National Electoral Commission of the power to delimit constituencies. A separate Constituency Delimitation Commission should be created in the Constitution

elect one of their number to preside at that meeting.

(3) During the Chairman's absence on leave or if the Chairman is otherwise not available or is unable to perform his functions, the President, Commander-in-Chief of the Armed Forces may appoint any member of the Commission to act as Chairman for any specified period.

(4) The quorum for meetings of the Commission shall be as provided in section 159 (1) of the Constitution.

(5) Questions put before the Commission at a meeting shall be decided by consensus failing which decision shall be by simple majority of members present and voting."

(6) The Chairman shall in the case of an equality of votes have a casting vote in addition to his deliberative vote.

(7) Subject to this section, the Commission shall have power to regulate its proceedings and may make standing orders with respect to the holding of meetings, the notice to be given, the procedure thereat, the keeping of minutes of such proceedings and the

custody and production for inspection of such minutes.

(8) The validity of any proceedings of the Commission shall not be affected by any vacancy in its membership or any defect in the appointment of a member or by reason that a person not entitled to do so took part in the proceedings.

(9) Where the Commission desires to obtain the advice or service of any person on a particular matter, the Commission may co-opt him to attend the Commission's meeting for such period as it thinks fit; but a person who is in attendance by virtue of this subsection shall not be entitled to vote at any meeting of the Commission and shall not count towards a quorum.

13. - (1) The Commission may appoint one or more committees to carryout out any of its functions under this Act.

(2) A committee, appointed pursuant to subsection (1) shall consist of such number of persons as may be determined by the Commission.

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## PART II

## **STAFF OF THE COMMISSION**

- 14.- (1) There shall be a Secretary to the Commission who shall
- (a) be appointed by the Commission;
  - (b) have such qualifications and experience to be determined by the Commission as are appropriate for a person required to perform the functions of his office under this Act.
- (2) Subject to the general direction of the Commission, the Secretary shall be
- (a) responsible for keeping of proper records of the proceedings of the Commission;
  - (b) the head of the Commission's secretariat and be responsible for the administration thereof; and
  - (c) responsible for the direction and control of all other employees of the Commission with the approval of the Commission.
- (3) The Commission shall have power to appoint, dismiss and exercise disciplinary control over its staff as may be prescribed by this Act or any other enactment or law.
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(4) All employees of the Commission appointed pursuant to subsection (3) of this section excluding such as are appointed on a temporary basis for an honorarium shall have the same right and obligation as provided for in the Pension Act.

### **PART III**

#### **NATIONAL REGISTER OF VOTERS AND VOTERS' REGISTRATION**

15. - (1) The Commission shall compile, maintain and update on a continuous basis, a National Register of Voters, in this Act referred to as the "Register of Voters" which shall include the names of all persons entitled to vote in any Federal, State or Local Government/Area Council Elections.
- (2) The Commission shall maintain as part of the National Register of Voters, a register of voters for each State of the Federation and for the Federal Capital Territory.
- (3) The Commission shall maintain as part of the Register of Voters for each State and the Federal Capital Territory, a Register of Voters for each Local Government/Area Council within

the State and the Federal Capital Territory.

- (4) The register shall contain in respect of every person the particulars required in the Form prescribed by the Commission.
- (5) The registration of voters, updating and revision of the register of voters under this section shall stop not later than 120 days before any election covered by this Act.
- (6) The registration of voters shall be at the registration centres designated for that purpose by the Commission and notified to the public.

16.- There shall be continuous registration of all persons qualified to be registered as voters in each constituency on a date to be fixed by the Commission.

- (a) Each applicant for registration under the continuous registration system shall appear in person with the documents, namely: birth or baptismal certificate, passport or driver's license containing his photograph or any other document required by the registration officer that will prove the identity, age and nationality of the applicant.

(b) The Commission may within sixty days after each year make available to every political party, the names and address of each person registered during that year.

(c) The procedure applicable to claims and objections made hereunder may be elaborated in the Registration Rules.

(d) As soon as claims and objections have been dealt with or the period for making claims and objections has expired, the supplementary list shall be included in the revised register, which shall be certified by the Commission as the official register of voters for the purposes of any election conducted under this Act and supercedes all previous registers certified by the Commission.

(e) When a general election is notified by the Commission pursuant to section 33(1) of this Act, the current official register of voters certified by the Commission in accordance with sub-section (5) of this section shall be the official voters' register for those elections. In the case of every by-election conducted under this Act, the official voters' register for use at such elections shall be the existing current

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Fixing a date for the registration makes the registration a fixed event and no longer a continuous process

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Section 16 of the Bill should be amended to provide as follows” *There shall be continuous registration of all persons qualified to be registered as voters*

The word **may** immediately after The Commission should be expunged and replaced with the word **shall**

All parties are entitled to the voters register as of right. The discretion must not lie with the Commission as they have abused such discretion in the past

register relating to the Senatorial district or the constituency concerned.

17-(1) For the purpose of maintaining and updating the Voters' Register, the Commission shall appoint such registration, revision or update officers as it may require, provided that such officers shall not be members of any political party.

(2) Any person may raise an objection against any officer during the registration or updating exercise and failure to raise such objection shall not vitiate the register.

(3) The officers appointed under subsection (1) of this section shall exercise such functions and duties as may be specified by the Commission, in accordance with the provisions of this Act, and they shall not be subject to the direction or control of any person or authority other than the Commission in the performance of their functions and duties.

18-(1) A person shall be qualified for registration as a voter if such a person:

- (a) is a citizen of Nigeria
- (b) has attained the age of eighteen years

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- (c) is ordinarily resident, works in, originates from the Local Government/Area Council or Ward covered by the registration centre;
- (d) presents himself to the registration officers of the Commission for registration as a voter within the period stipulated by the Commission for registration of voters; and
- (e) is not subject to any legal incapacity to vote under any law: rule or regulations in force in Nigeria.
- (2) No person shall register in more than one registration centre or register more than once in the same registration centre.
- (3) Any person who contravenes the provisions of subsection (2) of this section commits an offence and is liable on conviction to a fine not exceeding #100,000 or imprisonment for a term not exceeding one year or both.
- 19.-(1) A person who before the election is resident in a constituency other than the one in which he was registered may apply to the Resident Electoral Commissioner of the State where he is currently resident for his
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name to be entered on the Transferred Voters List for the constituency.

(2) An application under subsection (1) of this section shall be accompanied by the applicant's voter's card and be made not less than 30 days before the date of an election in the constituency where the applicant is resident.

(3) The Resident Electoral Commissioner to whom an application is made under the provision of this section shall cause to be entered the applicant's name in the Transferred Voters' List if he is satisfied that the applicant is resident in a polling area in the constituency and is registered in another constituency. .

(4) Whenever an Electoral Officer on the direction of the Resident Electoral Commissioner enters the name of any person on the Transferred Voters' List for his constituency he shall

(a) assign that person to a polling station or a polling area in his Constituency and indicate in the list the polling area or polling station, to which that person is assigned.

(b) issue the person with a new voter's card; and

(c) send a copy of the entry to the Electoral Officer of the constituency where the person whose name has been so entered was originally registered and upon receipt of this entry, the Electoral Officer shall delete the name from his voters' list.

20.- In the performance of his or her duties under this Act, a registration officer and an update officer may,

(a) demand from any applicant the information necessary to enable him to ascertain whether the applicant is qualified to be registered as a voter in accordance with the provisions of this Act; and

(b) require any voter or applicant to complete an application form within a period specified by the Commission.

21.- The Commission shall cause a voters' register for each State to be printed, and any person may obtain from the Commission, on payment of such charges and subject to such conditions as may be prescribed, copies of any voters' register for the State or for a Local Government! Area Council or Registration Area within it:

22.-(1) The Commission shall design, print and control the issuance of voters'

cards to voters whose names appear in the register.

(2) No voter shall hold more than one valid voter's card.

(3) Any person who contravenes subsection (2) of this section commits an offence and is liable on conviction, to a fine not exceeding #100,000 or imprisonment not exceeding one year or both.

(4) The Commission may, whenever it considers it necessary, replace all or any voters' cards for the time being held by voters.

23.-(1) Each Electoral Officer shall take custody of the voters' register for his Local Government Area under the general supervision of the Resident Electoral Commissioner.

24.-(1) Whenever a Voter's card is lost, destroyed, defaced, torn or otherwise damaged, the voter shall, at least thirty (30) days before polling day, apply in person to the Electoral Officer or any other officer duly authorized for that purpose by the Resident Electoral Commissioner, stating the circumstances of the loss, destruction, defacement or damage.

(2) If the Electoral Officer or that other officer is satisfied as to the circumstances of the loss, destruction, defacement or damage of the Voter's card, he shall issue to the voter another copy of the voter's original voter's card with the word "DUPLICATE" clearly marked or printed on it, showing the date of issue.

(3) No person shall issue a duplicate voter's card to any voter on polling day or within thirty (30) days before polling day.

(4) Any person who contravenes subsection (3) of this section - commits an offence and is liable on conviction, to a fine not exceeding #100,000 or imprisonment not exceeding one year or both.

25.- (1) Subject to the provisions of section 16 (I) of this Act, the Commission shall, by notice appoint a Period of not less than 5 days and not exceeding 14 days, during which a copy of the voters' register for each Local Government/Area Councilor Ward shall be displayed for public scrutiny and during which period any objection or complaint in relation to the names omitted or included in the voters'

register or in relation to any necessary correction, shall be raised or filed.

(2) During the period of the display of the supplementary Voters' register under this Act, any person may:

(a) raise an objection on the form prescribed by the Commission against the inclusion in the supplementary Voters' register of the name of a person on grounds that the person is not qualified to be registered as a voter in the State, Local Government/Area Councilor Registration Area or that the name of a deceased person is included in the register; or

(b) make a claim on the form prescribed by the Commission that the name of a person registered to vote has been omitted.

(3) Any objection or claim under subsection (2) of this section shall be addressed to the Resident Electoral Commissioner through the Electoral Officer in charge of the Local Government/Area Council.

26.- Not later than 60 days before a general election, the supplementary voters' list shall be integrated with the voters' register and published.

The section should make provision for the display of the voters register in the internet, Local Government Headquarters and offices of the Independent National Electoral Commission

The display of the voters register in the internet, Local Government Headquarters and the offices of INEC will make the process transparent

- 27 -. The Commission may appoint as a Revision Officer any person to hear and determine claims for and objection to any entry in or omission from the preliminary list and may appoint such number of other persons as it deems necessary to assist the Revision Officer.
28. The proprietary rights in any voters' card issued to any voter shall vest in the Commission.
29. Any person who -
- (a) is in unlawful possession of any voter's card whether issued in the name of any voter or not; or
  - (b) sells or attempts to sell or offers to sell any voter's card whether issued in the name of any voter or not; or
  - (c) buys or offers to buy any voter's card whether on his own behalf or on behalf of any other person, commits an offence and is liable, on conviction, to a fine not exceeding N200,000 or imprisonment not exceeding two years or both.
- 30.-(1) Any person who
- (a) makes a false statement in any application for registration as a voter knowing it to be false or;
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- (b) after demand or requisition made to him under Section 19 (a) or (b) without just cause, fails to give any such information as he possesses or does not give any such information as he possesses or does not give the information within the time specified;
- (c) in the name of any other person, whether living, dead or fictitious, signs an application form for registration as a voter to have that other person registered as a voter.
- (d) transmits or is concerned in transmitting to any person as genuine a declaration relating to registration which is false in any material particular, knowing it to be false;
- (e) by himself or any other person procures the registration of himself or any other person on a voters' register for a State, knowing that he or that other person is not entitled to be registered on that voters' register or is already registered on it or on another voters' register; or
- (f) by himself or any other person procures the registration of a fictitious person, commits an offence and is liable on conviction to a fine not exceeding N100,000 or imprisonment not exceeding one year or both.
-

(2) Any person who

- (a) by duress, including threats or any kind, causes or induces any person or persons generally to refrain from registering as a voter or voters;
- (b) in any way hinders another person from registering as a voter, commits an offence and is liable on conviction, to a fine not exceeding # 200,000 or imprisonment not exceeding two years,

#### **Part IV**

#### **PROCEDURE AT ELECTION**

- 31. Elections into 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 and Chairman and Vice-Chairman and Membership of an Area Council shall be held on the dates' to be appointed by the Independent National Electoral Commission.
- 32.- (1) Where a date has been appointed for the holding of an election, and there is reason to believe that a serious breach of the peace is likely to

occur if the election is proceeded with on that date or it is impossible to conduct the election as a result of natural disasters or other emergencies, the Commission may postpone the election and shall in respect of the area, or areas concerned, appoint another date for the holding of the postponed election.

(2) Where an election is postponed under this Act on or after the last date for the delivery of nomination papers, and a poll has to be taken between the candidates then nominated, the Electoral Officer shall on a new date being appointed for the election, proceed as if the date appointed were the date for the taking of the poll between the candidates.

(3) Where the Commission appoints a substituted date in accordance with subsections (1) and (2) of this section, there shall be no return for the election until polling has taken place in the area or areas affected.

(4) Notwithstanding the provision of subsection (3) of this section, the Commission may, if satisfied that the result of the election will not be affected by voting in the area or areas in respect of which substituted dates have been appointed, direct that a return of the election be made.

(5) The decision of the Commission under subsection (4) may be challenged by any of the contestants at a Court of Law or Tribunal of competent jurisdiction and on such challenge, the decision shall be suspended until the matter is determined.

33.- (1) The Electoral Officer shall act as Returning Officer for election to the office of Chairman of Area Council.

(2) Results of all elections shall be announced by

- (a) the Presiding Officer at the polling station;
- (b) the Ward Returning Officer at the ward collation centre;
- (c) the Returning Officer at the Local Government/ Area Council
- (d) the Returning Officer at the State Constituency collation centre;
- (e) the Returning Officer at the Federal Constituency collation centre
- (f) the Returning Officer at the Senatorial District collation centre;
- (g) the Resident Electoral Commissioner who shall be the Returning Officer at the Governorship election; and
- (h) the Chief Electoral Commissioner who shall be the Returning Officer at the Presidential election

- (3) The Commission may as it deems fit, introduce technology applicable to mechanized or electronic voting and counting of votes, and announce election results in a manner and by means other than as set out in sub-section (2) of this section.
- (4) No person who is a member or a political party or who has openly expressed support for any candidate shall be appointed into any position for the purposes of registration of voters or election under this Act.
34. All Electoral Officers, Presiding Officers and Returning Officers shall affirm or swear to an Oath of Loyalty and Neutrality indicating that they would not accept bribe or gratification from any person, and shall perform their functions and duties impartially and in the interest of the Federal Republic of Nigeria without fear or favour.
35. The Commission shall for the purpose of an election under this Act appoint such other officers as may be required provided that they shall not be registered members of any Political Party.
- 36.-(1) The Commission shall not later than 150 days before the day appointed for holding of an election under this Act publish a notice in each State of the
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Federation and the Federal Capital Territory

- (a) stating the date of the election: and
  - (b) appointing the place at which nomination papers are to be delivered.
- (2) The notice shall be published in each constituency in respect of which an election is to be held.
  - (3) In the case of a by-election, the Commission shall, not later than 14 days before the date appointed for the election, publish a notice stating the date of the election.
- 37.-(1) Every Political Party shall not later than 120 days before the date appointed for a general election under the provisions of this Act, submit to the Commission in the prescribed forms the list of the candidates the Party proposes to sponsor at the elections.
- (2) The list shall be accompanied by an affidavit it sworn to by each candidate at the High Court of a State, indicating that he has fulfilled all the constitutional requirements for election into that office.
  - (3) The Commission shall, within 7 days of the receipt of the personal particulars of the candidate, publish

same in the constituency where the candidate intends to contest the election.

(3) Any person who has reasonable grounds to believe that any information given by a candidate in the Affidavit it is false may petition the Commission.

(5) If the Commission determines that any of the information contained in the Affidavit it is false the Commission shall disqualify the candidate from contesting the election.

(6) A Political Party which presents to the Commission the name of a candidate who does not meet the qualifications stipulated in this Section, shall be

(a) guilty of an offence and on conviction shall be liable to a fine of N500,000; and

(b) disqualified from participating in that particular election for that office in the Same Constituency.

38. - (1) Subject to the provision to the Section 36 of this Act. no interim, interlocutory or any other order, decision or judgment by any Court or Tribunal after commencement of this Act in respect of any intra-party or Inter-party dispute or any other proceedings or matter pertaining to an

election under this Act shall affect the candidature or any person cleared by the Commission to contest an election or the timing of an election under this Act.

(2) No person or authority shall be liable to prosecution, contempt charge, sanction or penalty by reason only that he conducted an election on the day or time appointed by the Commission for the election.

39.-(1) A candidate for an election under this pm1 of the Act shall be nominated in writing by such number of persons as prescribed by the Commission whose names appear on the register of voters in the constituency.

(2) No person shall nominate more than one person for an election to the same office.

(3) A person who contravenes subsection (2) of this Section shall be guilty of an offence and on conviction be liable to a fine of N20,000 or 1 month imprisonment or both but his action shall not invalidate the nomination.

(4) No account shall be taken of the signature of a person on a nomination

Section 38(1) should be expunged as it offends the provisions of section 4(8) of the 1999 Constitution

By the provisions of section 4(8) of the 1999 Constitution, the National Assembly shall not enact any law that ousts or purports to oust the jurisdiction of a court of law or of a judicial Tribunal established by Law

paper where the candidate had died, withdrawn or where the nomination paper was held invalid.

(5) No person who has subscribed as a nominator shall so long as the candidate stands nominated withdraw his nomination.

(6) The Commission shall declare invalid any nomination that violates any provision of this Act.

40- (1) A Political Party intending to change any of its candidates for any election shall inform the Commission of such change not later than 90 days to the election.

(2) Any application made pursuant to subsection 1 of this section shall give cogent and verifiable reasons for the change.

(3) There shall be no substitution or replacement of any candidate whatsoever after the date referred to in subsection (1) of this section.

(4) The Commission shall issue a certificate of clearance to any candidate that has been validly nominated.

41. The Commission shall, at least thirty (30) days before the day of the

election publish by displaying or causing to be displayed at the place or places appointed for the delivery of nomination paper and in such other places as it deems fit, a statement of the full names of all candidates standing nominated and the persons nominating them with their respective addresses and occupations.

42.-(1) A candidate may withdraw his candidature by notice in writing signed by him and delivered by himself to the Political Party that nominated him for the election and the Political Party shall convey such withdrawal to the Commission and which shall only be allowed not later than 70 days to the election.

(2) Where the Commission is satisfied that a candidate has withdrawn as provided in subsection ( 1 ) of this section, his Political Party shall be allowed to nominate another candidate not later than 60 days before the date of election.

43.-(1) If after the time for the delivery of nomination paper and before the commencement of the poll, a nominated candidate dies, the Chief National Electoral Commissioner or the Resident Electoral Commissioner shall, being satisfied of the fact of the death,

countermand the poll in which the deceased candidate was to participate and the Commission shall appoint some other convenient date for the election.

(2) The list of voters to be used at a postponed election shall be the official register of voters, which was to be used if the election had not been postponed.

44. Where a candidate is nominated in more than one constituency his candidature shall be null and void in each of such constituencies.

45. Where at the close of nomination there is no candidate validly nominated, the Commission shall extend the time for nomination and fix a new date for the election.

46. Subject to the other provisions of this Act, if after the latest time for the delivery of nomination paper and the withdrawal of candidates for an election under this Act, more than one person remains validly nominated, a poll shall be taken.

47. A poll shall take place in accordance with the provisions of this Act with  
Respect to the following, that is -

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- (1) in the case of an election to the office of President or Governor of a State, whether or not only one person is validly nominated in respect of such office; and
- (b) in the case of an election of any other office, if after the expiry of the time for delivery of nomination papers there is more than one person standing nominated.
- 48.-(1) If After the expiry of time for delivery of nomination papers and withdrawal of candidates and the extension of time as provided for in this Act there is only one person whose name is validly nominated in respect of an election, other than to the office of the President or Governor, that person shall be declared elected.
- (2) Where a person is declared elected under the provisions of subsection (1) of this section, a declaration of Result Form as may be prescribed shall be completed and copy thereof issued to the person by the Returning Officer while the original of the form shall be returned to the Commission as in the case of a contested election.
49. The Commission shall establish sufficient number of Polling Stations in
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each Registration Area and shall allot voters in such Polling Stations.

50.- The Commission shall provide suitable boxes for the conduct of elections.

51.-(1) The Commission shall prescribe the format of the ballot papers which shall include the symbol adopted by the Political Party of the candidate and such other information as it may require.

(2) The ballot papers shall be bound in booklets and numbered serially with differentiating colours for each office being contested.

52.-(1) Each Political Party may by notice in writing addressed to the Electoral Pc Officer of the Local Government! Area Council appoint a person (in this Act referred to as a "Polling Agent") to attend at each polling unit in the Local Government! Area Council for which it has candidate and the notice shall set out the name and address of the polling agent and be given to the Electoral Officer at least 30 (thirty) days before the date fixed for the election.

**PROVIDED** that no person presently serving either as Chairman or member or a Local Government or Area

Council, Commissioner of a State, Deputy Governor, or Governor of a State, Minister or any other person holding political office under any tier of Government and who has not resigned his appointment at least three (3) months before the election shall serve as a polling agent of any Political Party, either at the polling station or at any centre designated for collation of results of an election.

(2) Notwithstanding the requirement of subsection (1) of this section, a candidate shall not be precluded from doing any act or thing which he has appointed a polling agent to do on his behalf under this Act.

(3) Where in this Act, an act or thing is required or authorized to be done by or in the presence of a Polling Agent, the non-attendance of the Polling Agent at the time and place appointed for the act or thing or refusal by the Polling Agent to do the act or thing shall not, if the act or thing is otherwise done properly, invalidate the act or thing.

53. The Commission shall, not later than 14 days before the day of the election, cause to be published, in such manner as it may deem fit, a notice specifying (the following matters, that is to say)

(a) the day and hours fixed for the poll;  
(b) by way of indication, the persons entitled to vote; and (c) the location of the polling stations.

54. Voting in any particular election(s) under this Act shall take place on the same day and the same time throughout the Federation.

55.-(1) At the hour fixed for opening of the poll, before the commencement of voting, the Presiding Officer shall open the empty ballot box and show same to such persons as may lawfully be present at the Polling Station and shall then close and seal the box in such manner as to prevent its being opened by unauthorized person(s).

(2) The ballot box shall then be placed in full view of all present, and be so maintained until the close of poll.

56. -(1) Every person intending to vote shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voter's card.

(2) The Presiding Officer shall, on being satisfied that the name of the person is on the Register of Voters, issue him a ballot paper and indicate on the Register that the person has voted.

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57. A candidate or a Polling Agent may challenge the right of a person to receive a ballot paper on such grounds and in accordance with such procedures as are provided for in this Act.
58. The Presiding Officer shall separate the queue between men and women if in that area of the country the culture, is such that it does not permit the mingling of men and women in the same queue.
- 59.-(1) Voting at an election under this Act shall be by open secret ballot.
- (2) A voter on receiving a ballot paper shall mark it in the manner prescribed by the Commission.
- (3) All ballots at an election under this Act at any polling station shall be deposited in the ballot box in open view of the public.
- 60.-(1) No voter shall vote for more than one candidate or record more than one vote in favour of any candidate at anyone election.
- (2) Where the votes cast at an election in any constituency or polling station exceed the number of registered voters in that constituency or polling station, the election for that constituency or polling station shall be
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declared null and void by the Commission and another election shall be conducted at a date to be fixed by the Commission.

(3) Where an election is nullified in accordance with subsection (2) of this section, there shall be no return for the election until another poll has taken place in the affected area.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section the Commission may, if satisfied that the result of the election will not substantially be affected by voting in the area where the election is cancelled, direct that a return of the election be made.

61.-(1) Where a voter makes any writing or mark on a ballot paper by which he may be identified, such ballot paper shall be rejected provided that any print resulting from the staining of the thumb of the voter in the voting compartment shall not be or be deemed to be a mark of identification under this section.

(2) The Commission shall use indelible ink for any thumb mark by voters on ballot papers.

62. A voter who by accident deals with his ballot paper in such a manner that it may not be conveniently used for voting, may deliver it to the Presiding Officer and if the Presiding Officer is satisfied that the ballot paper is spoilt he shall issue another ballot paper to the voter in place of the ballot paper delivered up, and the spoilt ballot paper shall be immediately marked cancelled by the Presiding Officer.

63. (1) A voter who is blind or is otherwise unable to distinguish symbols or who suffers any other physical disability may be accompanied into the polling station by a person chosen by him and the person shall, after informing the Presiding Officer of the disability, be permitted to accompany the voter into the voting compartment and assist the voter to make his mark in accordance with the procedure prescribed by the Commission.

(2) The Commission may take reasonable steps to ensure that voters with disabilities are assisted at the polling place by the provision of suitable means of communication, such as Braille, Large print or electronic devices or sign language interpretation, or off-site voting in appropriate cases.

64. No voter shall record his vote

otherwise than by personally attending at the Polling Station and recording his vote in the manner prescribed by the Commission.

65. No person shall be permitted to vote at any polling station or unit other than the one to which he is allotted.

66.-(1) If at the time a person applies for a ballot paper and before he has left the polling station or unit, a polling agent, polling station official or security agent informs the Presiding Officer that he has reasonable cause to believe that the person is under the age of 18 years or has committed the offence of impersonation and gives an undertaking on a prescribed form to substantiate the charge in a court of law, the Presiding Officer may order a police officer to arrest that person and the Presiding Officer's order shall be sufficient authority for the police officer so to act.

(2) A person in respect of whom a polling agent, polling official, or security agent gives an information in accordance with the provisions of subsection (1) of this section shall not be prevented from voting, but the Presiding Officer shall cause the words "protested against for impersonation" to be placed against his name in the

marked copy of the register of voters or part of the register of voters.

(3) Where a person in respect of whom a declaration is made under subsection (2) of this section, admits to the Presiding Officer that he is not the person he held himself out to be, he shall not be permitted to vote and shall be handed over to the Police.

(4) A person arrested under the provisions of this section shall be deemed to be a person taken into custody by a police officer.

67.-(1) If a person claiming to be entitled to vote applies for a ballot paper after some other person has voted in the name given by the claimant he shall, upon satisfactory answers given to any questions put to him by a poll clerk be entitled to receive a ballot paper in the same manner as any other voter but the ballot paper (in this Act referred to as "the tendered ballot paper") shall be of a colour different from the ordinary ballot papers.

(2) The Presiding Officer shall require the voter to deliver the tendered ballot paper to him instead of allowing it to be put in the ballot box, and the Presiding Officer shall endorse on it the name of the voter and his number in the register of voters.

(3) The ballot paper shall, on delivery to the Presiding Officer and in view of all present, be set aside by the Presiding Officer in a packet intended for tendered votes and no tendered ballot paper shall be counted by the Returning Officer.

(4) The Presiding Officer shall, when he tenders a ballot paper under this section, enter the name of the voter and his number in the register of voters on the list to be called tendered vote list and the tendered vote list shall be produced in any legal proceedings arising out of the election.

68.-(1) The Presiding Officer shall regulate the admission of voters to the polling station and shall exclude all persons other than the candidates, polling agent~, poll clerks and persons lawfully entitled to be admitted including accredited observers, and the Presiding Officer shall keep order and comply with the requirements of this Act at the polling station.

(2) The Presiding Officer may order a person to be removed from a polling station or unit, who behaves in a disorderly manner or fails to obey a lawful order.

Section 67 should be expunged

The section is redundant and does not add value to the electoral process

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- (3) A person removed from a polling station or unit under this section shall not, without the permission of the Presiding Officer, again enter the polling station or unit during the day of the election and if charged with the commission of an offence in that polling station or unit, the person shall be deemed to be a person taken into custody by a police officer for an offence in respect of which he may be arrested without a warrant.
- (4) The provisions of subsection (3) of this section shall not be enforced so as to prevent a voter who is otherwise entitled to vote at a polling station or unit from having an opportunity of so voting.
- (5) The Poll Clerk shall enjoy and exercise all the powers of the Presiding Officer in respect of a Polling Station or Unit except that he shall not order the arrest of a person or the exclusion or removal of a person from the polling station or unit without the authority of the Presiding Officer.
- 69.-(1) At the prescribed hour for the close of poll, the Presiding Officer shall declare the poll closed and no more person(s) shall be admitted into the Polling Station and only those already inside the Polling Station shall be allowed to vote.
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(2) After the declaration of the close of polls, no voter already inside the polling station shall be permitted to remain in the polling station unless otherwise authorized under this Act.

70. - (1) The Presiding Officer shall, after counting the votes at the polling station or unit, center the votes scored by each candidate in a form to be prescribed by the Commission as the case may be.

(2) The Form shall be signed and stamped by the Presiding Officer and counter-signed by the candidate or their polling agents where available at the polling station.

(3) The Presiding Officer shall give to the polling agents and the police officer where available a copy each of the completed Forms after it has been duly signed as provided in subsection (2) of this section.

(4) The Presiding Officer shall count and announce the result at the polling station.

71. A candidate or a Polling Agent may, where present at a polling station when counting of votes is completed by the Presiding Officer, demand to have the votes recounted, provided that the

Presiding Officer shall cause the votes to be so recounted only once.

72. After the recording of the result of the election, the Presiding Officer shall announce the result and deliver same and election materials under security to such persons as may be prescribed by the Commission.

73.-(1) Subject to subsection (2) of this section, a ballot, which does not bear the official mark, shall not be counted.

(2) If the Returning Officer is satisfied that a ballot which does not bear the official mark was from a book of ballot papers which was furnished to the Presiding Officer of the polling station in which the vote was cast for use at the election in question, he shall, notwithstanding the absence of the official mark, count that ballot.

74.-(1) The Presiding Officer shall endorse the word "rejected" on the ballot rejected under Section 61 and for any other reason, and the ballot papers shall not be counted except otherwise allowed by the Returning Officer who may overrule the Presiding Officer.

(2) If an objection to the decision of a

Presiding Officer to reject a ballot paper is raised by a candidate or a polling agent at the time the decision is made, the Presiding Officer shall add to the word "rejected", the phrase "but objected to".

(3) The Presiding Officer shall prepare a statement on rejected ballot papers, stating the number rejected, the reason for rejection and their serial numbers; he shall on request allow a candidate or a polling agent to copy the statement.

75. The decision of the Returning Officer on any question arising from or relating to

(a) unmarked ballot;

(b) rejected ballot; and

(c) declaration of scores of candidates and the return of a candidate, shall be final subject to review by a tribunal or court in an election petition proceedings under this Act.

76. In an election to the office of the President or Governor, whether or not contested, and in any contested election to any other elective office, the result shall be ascertained by counting the votes cast for each candidate and

subject to the provisions of Sections 133, 134 and 179 of the Constitution, the candidate that receives the highest number of votes shall be declared elected by the appropriate Returning Officer.

77. Where two or more candidates poll equal number of votes being the highest in an election, the Returning Officer shall not return any of the candidates and a fresh election shall be held for the candidates on a date to be appointed by the Commission. .

78. The Commission shall cause to be posted on its notice board a notice showing -

(a) the candidates at the election and their scores;

(b) the person declared as elected or returned at the election.

79. The Chief National Electoral Commissioner or any officer authorized by him shall keep official custody of all the documents, including statement of the results and ballot papers relating to the election, which are returned to the Commission by the Returning Officers.

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80. Subject to the provisions of this Act, the Commission shall issue and publish in the Gazette, guidelines for the elections which shall make provisions, among other things, for the step by step recording of the poll in the electoral forms as may be prescribed beginning from the polling station or unit to the last collation centre for the ward or constituency where the result of the election shall be declared.
81. 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 officers and polling agents at those levels and copies given to the police officers and the polling agents, where available.
82. A sealed Certificate of Return at an election in a prescribed form shall be issued to every candidate who has won an election under this Act.
83. - (1) The forms to be used for the conduct of elections to the offices mentioned in Section 47 of this Act and election petitions arising there from shall be determined by the Commission.
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(2) The Polling Agents shall be present at the distribution of the election materials from the office to the polling booth.

**Part V**

**POLITICAL PARTIES**

84.-(1) Any political association which complies with the provision of the constitution and of his Act for the purposes of registration, shall be registered as a political party. Provided however, that the application by political association for registration as a political party shall be duly submitted to the Commission not later than 6 months before a general election.

(2) - The Commission shall on receipt of the documents in fulfillment of the conditions stipulated by the Constitution immediately issue the applicant with a letter of acknowledgement stating that all the necessary documents had been submitted to the Commission.

(3) Any political association that meets the conditions stipulated in the Constitution and this Act shall be registered by the Commission as a political party within 30 days and if after the 30 days the association is not

registered by the Commission it shall be deemed to be so registered.

(4) If the Association has not fulfilled all the conditions under this section, the Commission shall within 30 days from the receipt of application notify the Association in writing stating the reasons.

(5) Any association which through the submission of false or misleading information pursuant to the provisions of this section procures a certificate of registration shall have such certificate cancelled.

(6) No application for registration as a political party shall be processed unless there is evidence of payment of administrative fee as may be fixed from time to time by the Commission.

85. The decision of the Commission not to register any association as a political party may be challenged in a court of law, provided that any legal action challenging the decision of the Commission shall be commenced within 14 days from the date of receipt of the letter of notification of non registration from the Commission or the expiration of the 30 days referred to in section (4) of this Act.

Section 84(5) should provide for fair hearing before the Certificate of an Association is cancelled while section 84(6) should provide for administrative charges not exceeding N30, 000.00 per political association

Section 85 should be amended to substitute 14 days with 90 days within which a political association refused registration can challenge the decision in a court of law

The Independent National Electoral Commission shall not be the sole determinant in the determination whether a political association submitted false or misleading information for purposes of registration. The political association must be given an opportunity to make representation on what INEC may term false and misleading information

14 days is inadequate for purposes of documenting, processing and sourcing for funds for purposes of mounting a legal challenge against the decision of INEC not to register a political association

86. Every political party registered under this Act shall be a body corporate with perpetual succession and common seal and may sue and be sued in its corporate name.

87.- (1) Any political party or association which contravenes the provisions of section 227 of the Constitution is guilty of an offence and liable on conviction to a fine of

(a) N500,000.00 for the first offence;  
(b) N700,000.00 for any subsequent offence; and (c) N50,000 for every day that the offence continues.

(2) Any person or group of persons who aids or abets a political party in contravening the provisions of section 227 of the Constitution shall be guilty of an offence and be liable on conviction to a fine of N200,000 or two years imprisonment or both.

88.- (1) The Commission shall keep a register of symbols for use at elections.

(2) The Commission shall register the symbol of a political party if it is satisfied that

(a) no other symbol of the same design

is registered;  
(b) the symbol is distinctive from any other symbol already registered; and.  
(c) its use will not be offensive or otherwise objectionable.

(3) The Commission shall remove a symbol from the register of symbols if

- (a) a political party in whose name it is registered requests the removal; or
- (b) the Commission is of the opinion that the political party in whose name the symbol is registered has ceased to exist or to use the symbol.

(4) Nothing in this section shall authorize the allotment or registration for use at any election of a symbol or material as symbol of a party, if it portrays

- (a) the Coat of Arms of the Federation;
- (b) the Coat of Arms of any other country;
- (c) any device or emblem which in the opinion of the Commission is normally associated with
  - (i) the official acts of Government;
  - (ii) any of the Armed Forces of the Federation or the Nigerian Police Force or other uniformed service;
  - (iii) the regalia of a chief;
  - (iv) any tribe or ethnic group;
  - (v) any religion or cult;

Section 88(2)© should be expunged

The section is ambiguous and subject to different interpretations without a uniform yardstick

(vi) any portrait of a person living or dead.

(d) any symbol or part of a symbol which under the provisions of this section continues to be registered by another political party.

(5) Subject to the provisions of this section, the symbol allotted to a political party and in use immediately before the coming into force of this Act shall continue to be available to, and be used by, that political party without payment of the fee mentioned in sub-section (2) of this Section.

89. Where a symbol is registered by a political party in accordance with this Act, the Commission shall allot the symbol to any candidate sponsored by the political party at any election.

90.-(1) Any two or more registered political parties may merge on approval by the Commission following a formal request presented to the Commission by the political parties for that purpose. PROVIDED that there shall at no time be less than three political parties registered in the country.

(2) Political Parties intending to merge shall each give to the Commission 6

months days notice of their desire to do so before a general election.

{3} The written request for merger shall be sent to the Chairman of the Commission and shall be signed jointly by the National Chairman, Secretary and Treasurer for the time being of the different Political Parties proposing the merger and shall be accompanied by:

- (a) a special resolution passed by the National Convention of each of the parties proposing to merge, approving the merger;
- (b) the proposed full name and acronym, Constitution, manifesto, symbol or logo of the party together with the addresses of the National office of the merged party; and
- (c) evidence of payment of processing fee of N100,000 or as may be fixed from time to time by an Act of the National Assembly.
- (d) On receipt of the request for merger of any Political Parties the Commission shall consider the request; and if the parties have fulfilled the requirements of the Constitution and this Act, approve the proposed merger and communicate its decision to the Parties concerned before the expiration

Merger of Political Parties are part of their rights to freedom of association and they should only notify INEC of their decision and INEC would ensure that their merger conforms to the provisions of the law and the Constitution

INEC should encourage the re-alignment of political parties and by the dynamics of Nigerian politics, 3 months notice is more realistic

Section 90 (1) should be amended to remove the need for the approval of mergers of political parties by INEC. Political Parties intending to merge should rather notify INEC of their decision to merge

The length of notice to INEC for the merger of political parties should be reduced from 6 months to 3 months

Section 90(3) should be amended to substitute the word **request** with the word **notice**

Section 90(4) should be amended to substitute request with notice and “the requirements of the Constitution and this Act’ should be expunged

Request before merger amounts to seeking for permission, which may be refused. The 1999 Constitution provides clear guidelines and directives for the formation of political parties

of thirty (30) days from the date of the receipt of the formal request.

(e) Where the request for the proposed merger is approved, the Commission shall forthwith withdraw and cancel the certificates of registration of all the Political Parties opting for the merger and substitute therefore, a single certificate of registration in the name of the merged Party.

(f) Notwithstanding the provisions of subsection (2) of this section no merger of Political Parties received by the Commission less than six months before any general election in the country shall be considered by the Commission.

91.-(1) Every registered political party shall give the Commission at least 21days notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under this Act.

(2) The Commission may with or without prior notice to the political party monitor and attend. any convention, congress, conference or

The processing fee for the merger of political parties should be pegged and must not exceed N30, 000.00

Excessive processing charges may prevent parties that are not well resourced from merging. Nigeria should have a liberal political regime that accommodated financially strong and weak parties

meeting which is convened by a political party for the purpose of

- (a) electing members of its executive committees or other governing bodies;
- (b) nominating candidates for an election at any level; or
- (c) approving a merger with any other registered political party.

(3) Notice of any congress, conference or meeting for the purpose of nominating candidates for Area Council elections shall be given to the Commission at least 21 days before such congress, conference or meeting.

92.-(1) The Commission shall monitor and keep records of the activities of all the registered political parties.

(2) The Commission may seek information or clarification from any registered political party in connection with any activity of the political party which may be contrary to the provisions of this Act or any other law, guidelines, rules or regulations.

(3) The Commission may direct its enquiry under subsection (2) of this section to the Chairman or Secretary of the Political Party at the National, State, Local Government or Area Councilor Ward level, as the case may be.

(4) A Political Party which fails to provide the required information or clarification under subsection (2) of this section or carry out any lawful directive given by the Commission in conformity with the provisions of this section is guilty of an offence and liable on conviction to a fine of not more than N500,000.00

93. Any Political Party that

(a) holds or possesses any fund outside Nigeria in contravention of section 225(3)(a) of the Constitution of the Federal Republic of Nigeria 1999 commits an offence and shall forfeit the funds or assets to the Commission and on conviction shall be liable to a fine of not more than N500,000.00;

(b) retains any fund or other asset remitted or sent to it from outside Nigeria in contravention of section 225(3)(b) of the Constitution of the Federal Republic of Nigeria 1999 is guilty of an offence and shall forfeit the funds or assets to the Commission and on conviction shall be liable to a fine of not more than N500,000.00.

(2) Any Political Party that contravenes the provisions of subsection 1 of this section shall not be eligible to receive a grant under section 94 of this Act.

94.-(1) Every political party shall submit to the Commission a detailed annual statement and analysis of its sources of funds and other assets together with statement of its expenditure in such a form as the Commission may from time to time require.

(2) The Statement of Assets and Liabilities referred to in sub section (1) of this section shall be in respect of the period 1<sup>st</sup> January to 31<sup>st</sup> December in each year, and that in the year in which this Act comes into operation, it shall be for the period beginning with the registration of such party and ending on the following 31<sup>st</sup> December.

(3) Every political party shall grant to any officer authorized in writing by the Commission, access to examine the records and audited accounts kept by the political party in accordance with this section and no request shall give all such information as may be requested in relation to all contributions received by or on behalf of the party.

(4) The Commission shall publish the report on such examinations and audit in three National Newspapers.

95.-(1) Notwithstanding any other provision of this Act, the statement relating to the election expenses of a political party as prescribed in section 92 of this Act shall be submitted to the Commission in a separate audited account as in the prescribed form not later than 90 days from the date of the election.

(2) Any political party which commits a breach of this section is guilty of an offence and shall be liable on conviction to a fine of (N1,000,000) and in the case of failure to submit an accurate audited return within the stipulated period, the court may impose a penalty of (N 200,000) a day on any party for the period after the return was due until it is submitted to the Commission.

96.- The National Assembly may approve a grant for disbursement to the political parties contesting elections after the coming into force of this Act.

97.-(1) Notwithstanding the provisions of this Act: the National Assembly may make an annual b'l'ant to the Commission for distribution to the registered political parties to assist them in their operation.

(2) The Commission shall distribute such grant as follows

- (a) 30% of the grant shall be shared equally among all the registered political parties.
- (b) The remaining 70% of the grant shall be shared among the registered political parties in proportion to the number of seats won by each party in the National
- (c) Any Political Party that contravenes the provision of section 87 of this Act, shall not be eligible to receive a grant under this section.

98.-(1) The Commission shall have power to place limitation on the amount of money or other assets, which an individual or group of persons can contribute to a political party.

(2) Every political party shall maintain a record of all contributors and the amounts contributed.

99.-(1) Election expenses shall not exceed the sum stipulated in subsection (2) of this section.

(2) The maximum of election expenses to be incurred by a candidate at a

Section 97(2)(a)&(b) should be amended to provide for 50% of the grant to registered political parties and the remaining 50% to be shared to parties in accordance with the number of votes secured during a general election

50% of the grant will put all political parties on equal footing for purposes of campaign and the number of seats secured by Political Parties is not a true reflection of the strength and acceptability of parties

presidential election shall be (N 50,000,000)

(3) The maximum of election expenses to be incurred by a candidate at a Governorship election shall be (N 20,000,000)

(4) The maximum amount of election expenses to be incurred in respect of senatorial seat by a candidate at an election to the National Assembly shall be (N 8,000,000). While the seat for House of Representative shall be (N5,000,000) respectively.

(5) In the case of a State Assembly election, the maximum amount of election expenses to incurred shall be N 2,000,000

(6) In the case of Chai1111anship election, the maximum amount of election expenses to be incurred shall be N 2,000,000

(7) In the case of Councillorship election the maximum amount of election expenses to be incurred shall be N 500,000

(8) In determining the total expenditure incurred in relation to the candidature

of any person at any election no account shall be taken of:

- (i) any deposit made by the candidate on his/her nomination in compliance with the law
  - (ii) any expenditure incurred before the notification of the date fixed for the election with respect to services rendered or material supplied before such notification.
- (9) A candidate who knowingly acts in contravention of this section commits an offence and on conviction is liable to a fine of N 500,000 or nine (9) months imprisonment or both..
- (10) No individual or other entity shall donate more than N 100,000 to any candidate
- (11) Any individual who knowingly acts in contravention of subsection 10 shall be liable to N 500,000 fine or 9 months imprisonment or both.
- 100:- (1) Every candidate at an election shall submit an audited return of his election expenses to the Commission within two months after the result of the election are published.
- (2) Every return shall be supported by a declaration sworn to before a

Commissioner of Oath by the candidate stating:

(a) that the return fully and accurately sets out all payments made by the candidate himself; and  
(b) that to the best of his knowledge, information and belief the return is a full and accurate return of all expenditure incurred by any person and of all monies, securities or equivalent of money received by the candidate from any source in connection with the election, provided that where a candidate acts as his own agent these provisions do not apply.

(3) The Commission, within ten days after it receives any return shall publish a summary thereof.

101.- (1) For the purposes of an election, "election expenses" means expenses incurred by a political party within the period from the date notice is given by the Commission to conduct an election up to, and including, the polling day in respect of the particular election.

(2) Election expenses incurred by a political party for the management or the conduct of an election shall not exceed in the aggregate the sum determined by multiplying 10 Naira by the number of names appearing in the

final voters' list for each constituency where there is a candidate, sponsored by the political party.

(3) Election expenses of a political party shall be submitted to the Commission in a separate audited return within three months after an election and such return shall be signed by the party's auditors and counter-signed by the Chairman of the Party as the case may be and shall be supported by a sworn affidavit by the signatories as to the correctness of its contents.

(4) The return referred to in subsection (3) of this section shall show the amount of money expended by or on behalf of the party on election expenses, the items of expenditure and commercial value of goods and services received for election purposes.

(5) The political party shall cause the return submitted to the Commission pursuant to subsection (4) of this section to be published in at least two National Newspapers.

(6) Any political party which incurs election expenses beyond the limit stipulated in this Act is guilty of an offence and shall be liable on conviction to a fine of N 1,000,000.00,

and forfeiture of the excess amount to the Commission.

(7) The Commission shall make available for public inspection during regular business hours at its Headquarters and state offices the audit returns of the political parties required by subsection (3) of this section which shall include the name, address, occupation, and amount contributed by each contributor to a party.

102.- (1) No individual or other entity shall donate more than N 2m to any Political Party

(2) Every political party shall keep an account book into which shall be recorded:

(a) all monetary and other forms of contribution received by the party for the purposes of the election campaign; and

(b) the name and address of any person or entity that contributes any money or other thing which exceeds (N 1,000,000)

(3) No political party shall accept any monetary or other contribution exceeding (N 100,000) unless it can identify the source of the money or other contribution to the Commission.

(4) Every political party procuring the election of a candidate shall, within three months after the announcement of the results of the election, file a report of the contributions made by individuals and entities to the Commission.

103.- (1) For the purpose of the proper and peaceful conduct of political rallies and processions, the Commissioner of Police in each state of the Federation and the Federal Capital Territory, Abuja, is by this Act empowered to provide adequate security for processions at political rallies in the states and the Federal Capital Territory, Abuja.

(2) A person who, while present at a political rally or procession or voting centre, has with him any offensive weapon or missile otherwise than in pursuance of a lawful duty is guilty of an offence and liable on conviction to a fine of N1,000,000.00 or imprisonment for a term of 2 years or both.

(3) For the purpose of subsection (2) of this Section, a person shall be deemed to be acting in pursuance of a lawful duty if he is acting in his capacity as a police officer or as a member of a security agency authorized to carry arms and is specifically posted to be

present at that political rally or procession.

(4) In this section:- "offensive weapon or missile" includes any cannon, gun, rifle, carbine, revolver, pistol or any other firearm, bow and arrow, spear, cutlass, knife, dagger, axe, cudgel, or any other thing capable of being used as an offensive weapon or missile, including teargas, acid, and any inflammable substance capable of injuring a person.

104. -(1) No political campaign or slogan shall be tainted with abusive language directly or indirectly likely to injure religious, ethnic, tribal or sectional feelings.

(2) Abusive, intemperate, slanderous or base language or insinuations or innuendoes designed or likely to provoke violent reaction or emotion shall not be employed or used in political campaigns.

(3) Places designed for religious worship, palaces of traditional rulers, army formations or barracks, police station, public offices and educational institutions shall not be used

(a) for political campaigns, rallies and processions; or

(b) to promote, propagate or attack political parties, candidates or their programmes or ideologies.

(4) Masquerades shall not be employed or used by any political party, candidate or person during political campaigns or for any other political purpose.

(5) No political party or member of a political party shall retain, organize, train or equip any person or group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest, or in such manner as to arouse reasonable apprehension that they are organized, trained or equipped for that purpose.

(6) No political party, person or candidate shall keep or use private security organization, vanguard or any other group or individual by whatever name called for the purpose of providing security, assisting or aiding the political Party or candidate in whatever manner during campaigns, rallies, processions or elections.

Sections 104(1)&(2) should be redrafted for purposes of certainty

Abusive and intemperate language are subjective variables and may mean and be interpreted differently by people

(7) Notwithstanding the provision of subsection (6) of this section a candidate at an election may keep or use a private security or individual for his personal protection during campaigns, rallies or processions.

(8) A political party or person who contravenes any provision of this section is guilty of an offence and liable on conviction

(a) in the case of an individual, to a fine of N50,000 or imprisonment for a term of 6 months; and

(b) in the case of a political party, to a fine of N500,000 in the first instance, and N 1,000,000 for any subsequent offence, payable jointly by the Chairman, Secretary and Treasurer of the Political Party at the National, State, Local Government Area, Area Councilor Ward level, as the case may be.

105. - (1) No candidate, person or group of persons shall directly or indirectly offer or aid in offering inducement in any form whatsoever to a person at a political campaign for the purpose of corruptly influencing that person or any other person to support or

refrain from supporting a political party or candidate.

(2) No candidate, person or group of persons shall directly or indirectly give or offer to give any money or valuable consideration to any person during a political campaign in order to induce that person or any other person to support or refrain from supporting a political party or candidate.

(3) No candidate, person or group of persons shall directly or indirectly threaten any person with the use of force or violence during any political campaign in order to compel that person or any other person to support or refrain from supporting a political party or candidate.

(4) No person or group of persons shall accept any inducement, money or valuable consideration from any person, candidate or political party. In order to compel that person or any other person to support or refrain from supporting a Political party or candidate.

(5) Any person or political party that contravenes the provisions of this section is guilty of an offence and liable on conviction

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- (a) in the case of an individual, to a fine of N100,000 or imprisonment for a term of one year; and
- (b) in the case of a political party, to a fine of N250,000 in the first instance, and N500,000 for any subsequent offence payable jointly by the Chairman, Secretary and Treasurer of the political party at the National, State, Local Government Area, Area Councilor Ward level as the case may be.
106. No candidate, person or group of persons shall directly or indirectly threaten any person with the use of force or violence during any political campaign w  
in order to compel that person or any other person to support or refrain from supporting a political party or candidate.
107. All political parties, candidates, agents and supporters of political parties shall conform with the provisions of this Act guidelines on political campaigns and all party activities.
108. Where a Political Party ceases to exist in accordance with any provisions E of this Act, a person elected on the platform of the Political Party in an election under this Act shall remain
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validly elected, complete his tenure, and for purposes of identification, be regarded as a member of the political party under which he was elected, but such a person can not stand for re-election in the name of that political party.

109.- (1) Any political party registered by the Commission in accordance with the provisions of any law in force immediately before the coming into force of the Constitution of the Federal Republic of Nigeria 1999 and this Act shall be deemed to have been duly registered under this Act.

110.- (1) For the purposes of this Act. The period of campaigning in public by every political party shall commence 45 days before polling day and end 24 hours prior to that day.

(2) A registered political party which through any person acting on its behalf during the 24 hours before polling day

(a) advertises on the facilities of any broadcasting undertaking; or

(b) procures for publication or acquiesces in the publication of an advertisement in a Newspaper for the purpose of promoting or opposing a particular candidate, is guilty of an offence under this Act and upon

conviction shall be liable to a, fine of N500,000.

111. A candidate who directly or through any person acting on his behalf

(a) during 24 hours immediately preceding polling day, or on polling day advertises on the facilities of any broadcasting undertaking; or

(b) procures for publication or acquiesces in the publication during the period

described in paragraph (a) of an advertisement in a newspaper for the purpose of promoting or opposing a particular registered party or the election of a particular candidate, is guilty of an offence under this Act and on conviction shall be liable to a fine of N50,000 or to imprisonment for six months.

112.- (1) A government owned print or electronic medium shall give equal access on daily basis to all registered political parties or candidates of such political parties.

(2) A denial of such access and equal time constitute an offence punishable in the first instance with a fine of N500,000 and the withdrawal of the license of the offending electronic media house by the National

Broadcasting Commission for a period of 12 months on any subsequent violation.

(3) A person other than a political party or a candidate who procures any material for publication for the purposes of promoting or opposing a particular political party or the election of a particular candidate over the radio, television, newspaper, magazine, handbills or any print or electronic medium whatsoever called during 24 hours immediately preceding or on polling day is guilty of an offence and liable on conviction to a fine of N50,000 or imprisonment for six (6) months or to both.

113.- (1) A candidate and his party shall campaign for the elections in accordance with such rules and regulations as may be determined by the Commission

(2) State apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate at any election.

(3) Media time shall be allocated equally among the political parties at similar hours of the day.

(4) At any public electronic media, equal airtime shall

- (5) At any public print media, equal coverage and conspicuity shall be allotted to all political parties.
- (6) Any public media that contravenes subsections 3 and 4 of this section shall be guilty of an offence and on conviction be liable to a fine of N500,000 in the first instance and to a fine of N 1,000,000 for subsequent conviction.
- 114.- (1) A person, print or electronic medium who broadcasts, publishes, advertises or circulates any material for the purpose of promoting or opposing a particular political party or the election of a particular candidate over the radio, television, newspaper, magazine, handbills, or any print or electronic medium whatsoever called during twenty four hours immediately preceding or on polling day is guilty of an offence under this Act.
- (2) Where an offence under subsection (1) of this section is committed by a body corporate, every principal officer of that body is equally guilty of an offence under this Act.
- (3) Where a person is convicted of an offence under this section he shall be liable
- (a) in the case of a body corporate to a

fine of N500,000; and  
(b) in the case of an individual to a fine of N1,000,000 or to imprisonment for 12 months.

115. Any candidate, person or association who engages in campaigning or broadcasting based on religious, tribal, or sectional bias for the purpose of promoting or opposing a particular political party or the election of a particular candidate is guilty of an offence under this Act and on conviction shall be liable to a fine of N100,000 or imprisonment for 12 months or to both.

## **PART VI PROCEDURE FOR ELECTION TO AREA COUNCIL**

116.- (1) The conduct of elections into the offices of Chairman, Vice Chairman and a member of an Area Council and the recall of a member of an Area Council shall be under the direction and supervision of the Commission in accordance with the provisions of this Act.

(2) The Register of Voters compiled and the polling units established by the Commission and any other regulation. guideline. rule or manual issued or made by the Commission shall be used

for elections into the Area Councilor recall of a member.

117.- (1) There shall be elected for each Area Council in the Federal Capital Territory a Chairman and a Vice-Chairman.

(2) There shall be elected from each Registration Area in an Area Council, Councilors.

118.- (1) Subject to the provision of this section, the Commission shall divide each Area Council into such number of Registration Area not being less than 10 and not more than 20 as the circumstance of each Area Council may require.

(2) The boundaries of each ward shall be such that the number of inhabitants of the Registration Area is as nearly equal to the population quota of the Registration Area as is reasonably practicable.

(3) The Commission shall review the division of every Area Council into wards at intervals of not less than 10 years and may alter such Registration Area in accordance with the provisions of subsection (1) of this Section to such extent as it may consider desirable in the light of the review.

(4) Notwithstanding the provisions of subsection (3) of this section, the Commission may, at any time, early out such a review and alter the registration Area in accordance with the provisions of this section to, such extent as it considers necessary in consequence of any amendment to section 3 of the Constitution or any provision replacing that provision, or by reason of the holding of a National Population Census or pursuant to an Act of the National Assembly.

119. A person shall be qualified for election under this part of this Act if he

- (a) is a citizen of Nigeria;
- (b) is registered as a voter;
- (c) has attained the age of 25 years;
- (d) is educated up to at least the School Certificate level or its equivalent;
- (e) is a member of a political party and is sponsored by that party.

120.-(1) A person shall not be qualified to contest an Area Council election under this Act if

- (a) subject to the provisions of section 28 of the Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, has made a declaration of allegiance to such a country;
- (b) under any law in force in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind;
- (c) he is under a sentence of death imposed on him by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for an offence involving dishonesty or fraud (by whatever name called) or any other offence imposed on him by such a court or tribunal constituted by a competent authority for any other sentence imposed on him by such a court or tribunal;
- (d) within a period of less than 10 years before the date of an election to the Area Council, he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty

of contravention of the Code of Conduct;

- (e) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Nigeria;
  - (f) he is a person employed in the public service of the Federation or of any State or Area Council (other than a person holding elective office) and he has not resigned, withdrawn or retired from such employment 30 days before the date of election;
  - (g) he is a member of any secret society;
  - (h) he has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunal of Inquiry Law or any other Law by the Federal or State Government which indictment has been accepted by the Federal or State Government, as the case may be;
  - (i) he has within the preceding period of 10 years presented a forged certificate to the Commission;
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- (j) he has been dismissed from the public service of the Federation or a State; or
- (k) he has been elected to such office at any two previous elections in the case of Chairman.
- (2) Where in respect of any person who has been
- (a) adjudged to be a lunatic;
  - (b) declared to be of unsound mind;
  - (c) sentenced to death or imprisonment; or
  - (d) adjudged or declared bankrupt,
- any appeal against the decision is pending in any court of law in accordance with any law in force in Nigeria, subsection (1) of this section shall not apply during a period beginning from the date when such appeal is lodged and ending on the date when the appeal is finally determined or as the case may be, the appeal lapses or is abandoned, whichever is earlier.
- (3) For the purpose of subsection (2) of this section, an "appeal" includes any application for an injunction or an order of certiorari, mandamus, prohibition, or
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habeas corpus, or any appeal from any such application.

121.- (1) Election to all the Area Councils shall be held on the same date and day throughout the Federal Capital Territory.

(2) By-elections to fill vacancies that occur in Area Councils shall be held within 30 days from the date the vacancy occurred.

(3) The date mentioned in subsection (1) of this section shall not be earlier than sixty days before and not later than 30 days before the expiration of the term of office of the last holder of that office.

(4) Where a vacancy occurs less than 3 months before the day on which the Area Council stand dissolved there shall be no by-election to fill the vacancy.

(5) Where a vacancy occurs more than three months before the day the Area Council stands dissolved there shall be a by-election to fill the vacancy not later than 30 days from the date the vacancy occurred.

(6) Voting shall be by open-secret ballot.

122.- The procedure for filing nominations and the casting and counting of votes for Area Council elections shall be the same as is applicable to other elections under this Act.

123.- (1) If after the expiration of time for the delivery of nomination papers and the withdrawal of candidates for election of Councilors under this Act only one candidate remains duly nominated, that candidate shall be declared returned unopposed.

(2) If after the expiration of time for the delivery of Nomination Papers and the withdrawal of candidates for election of Councilors under this section more than one candidate remain duly nominated, a poll shall be taken in accordance with the provisions of this Act.

(3) Where at the close of nomination for election to the office of Chairman, only one candidate

(a) has been nominated; or

(b) remains nominated by reason of the disqualification, withdrawal, incapacitation, disappearance, "f death of the other candidate, the Commission shall extend the time for nomination by

seven days, **PROVIDED:** that where after the extension, only one candidate remains validly nominated there shall be no further extension.

124. - (1) A candidate for an election to the office of Chairman shall be deemed to have been duly elected to the office where being the only candidate nominated for the election he has -

(a) a majority of YES votes over NO votes cast at the election; and

(b) not less than one-third of the votes cast at the election in each of at least two-thirds of all the wards in the Area Council, **PROVIDED:** that where the only candidate fails to be elected in accordance with this subsection then there shall be fresh nomination.

(2) A candidate for an election to the office of the Chairman shall be deemed to have been elected where there being only two candidates for the election

(a) he has a majority of the votes cast 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 wards in the Area Council, as the case may be.

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- (3) If no candidate is duly elected under subsection (2) of this section, the Commission shall within 7 days conduct a second election between the two candidates, and the candidate who scored the majority of votes cast at the election shall be deemed duly elected at the election.
- (4) A candidate for an election to the office of Chairman 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 cast 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 wards in the Area Council, as the case may be.
- (5) If no candidate is duly elected in accordance with subsection (4) of this section, there shall be a second election in accordance with subsection (6) of this section at which the only candidates shall be
- (a) the candidate who scored the highest number of votes at the election held under subsection (4) of this section; and
  - (b) one among the remaining candidates who has the majority of
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votes in the highest number of wards so that where there are more than one candidate, the one among them with the highest total number of votes cast at the election shall be the second candidate for the election.

(6) In default of a candidate duly elected under this section, the Commission shall within 7 days of the result of the election held under the said subsections of this section arrange for another election between the two candidates and a candidate at such an election shall be deemed to have been duly elected to the office of a Chairman of the Area Council if he has

(a) a majority of the votes cast at the election; and

(b) not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the wards in the Area Council, as the case may be.

(7) If no candidate is duly elected under subsection (6) of this section, arrangements shall be made within 7 days of the result of the last election for another election between the two candidates specified in subsection (6) of this section, and a candidate at this last election shall be deemed duly elected to the office of Chairman of a Local

Government if he scores a simple majority of votes cast at the election.

125.- (1) If a person duly elected as Chairman dies before taking and subscribing the Oath of Allegiance and the Oath of Office, the person elected with him as Vice-Chairman shall be sworn in as Chairman who shall then nominate and with the approval of a majority of the members of the Area Council appoint a new Vice-Chairman. .

(2) When: the Vice-Chairman is appointed from among the Councilors as the new Vice-Chairman the Commission shall conduct a bye-election to fill the vacant seat created in the Ward from which the new Vice-Chairman has been appointed.

(3) Where the persons duly elected as Chairman and Vice-Chairman of an Area Council die before taking and subscribing the Oath of Allegiance and Oath of Office during which period the Area Council has not been inaugurated, the Commission shall within 21 days conduct an election to fill the vacancies

126. An Area Council shall stand dissolved at the expiration of a period of three years commencing from the date -

(a) when the Chairman took the oath of office; or

(b) when the legislative arm of the (council was inaugurated), whichever is earlier.

127.- (1) A member of an Area Council shall vacate his seat in the Council

(a) on the date given in his letter of resignation; or

(b) if he becomes Vice President, Deputy Governor, Vice Chairman of the Area Council, Minister of the Government of the Federation or Commissioner of a State; or

(c) being a person whose election was sponsored by a Political Party, he resigns from that party or becomes a member of another Political Party before the expiration of the period for which the Area Council was elected;

**PROVIDED:** that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored; or

(d) if he becomes a member of a secret society or does any other thing disqualifying him from holding the office of Chairman or Councilor under this Act; or

(e) if the Speaker of the Area Legislative Council receives a certificate under the hand of the Commission stating that the provisions of section 129 of this Act have been complied with in respect of the recall of that member.

(2) The Speaker of the Area Legislative Council shall give effect to subsection (1) of this section, so that the Speaker shall first present evidence satisfactory to the Area Council that any of the provisions of that subsection has become applicable in respect of that member.

128. - (1) The Chairman or Vice-Chairman may be removed from office in accordance with the provisions of this section.

(2) Whenever a notice of any allegation of gross misconduct in writing signed by not less than one-third of the members of the Area Legislative Council stating that the holder of the

office of Chairman or Vice-Chairman is guilty of misconduct in the performance of the functions of his office detailed in the schedule. The name of the member is presented to the Speaker of the Area Legislative Council.

(3) The Speaker of the Area Legislative Council shall within 7 days of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the Area Legislative Council and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the Area Legislative Council.

(4) Within 14 days of the presentation of the notice, (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice) the Area Legislative Council, shall resolve by motion on without any debate whether or not the allegation shall be investigated.

(5) A motion of the Area Legislative Council that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of not less than two-thirds majority of all the members of the Area Legislative Council.

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- (6) Within 7 days of the passing of a motion under subsection (4) of this section, the Speaker of the Area Legislative Council shall inform the Chief Judge of the Federal Capital Territory, Abuja, who shall appoint a Panel of seven persons who in the opinion of the Chief Judge are of unquestionable integrity not being members of
- (a) any public or civil service;
  - (b) a legislative house; or
  - (c) a political party to investigate the allegation as provided in this section.
- (7) The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person or be represented before the Panel by a legal practitioner of his own choice.
- (8) A Panel appointed under this section shall
- (a) have such powers and exercise its functions in accordance with such procedure as may be prescribed by an Act of the National Assembly; and
  - (b) within three months of its appointment, report its findings to the Area Legislative Council.
- (9) Where the Panel reports to the Area Legislative Council that the
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allegation has not been proved no further proceedings shall be taken in respect of the matter.

(10) Where the report of the Panel is that the allegation against the holder of the office has been proved, then within 14 days of the receipt of the report, the Area Legislative Council shall consider the report with the holder of the office being present at the meeting and if by a resolution of the Area Council supported by not less than two-thirds majority of all its members, the report of the Panel is adopted then the holder of the office shall stand removed from office as from the date of the adoption of the report.

129.- A member of an Area Council may be recalled as a member if-

(a) there is presented to the Chairman of the Commission a petition in that behalf signed not less than one half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member; and

(b) the petition is thereafter approved in a referendum conducted by the Commission within 90 days of the date of the receipt of the petition by a

simple majority, of the votes of the persons registered to vote in that member's constituency.

**PART VII:  
PROCEDURE FOR LOCAL  
GOVERNMENT COUNCIL  
ELECTIONS**

130.- Voting in Local Government Council elections shall be by open-secret ballot.

131.- The procedure for filing nominations and the casting and counting of votes for Local Government Council elections shall be the same as is applicable to other elections under this Act.

132.- (1) If after the expiration of time for the delivery of nomination papers and the withdrawal of candidates for election of Councilors under this Act only one candidate remains duly nominated, that candidate shall be declared returned unopposed.

(2) If after the expiration of time for the delivery of nomination papers and the withdrawal of candidates for election of Councilors under this section more than one candidate are duly nominated, a poll shall be taken in accordance with the provisions of this Act.

(3) Where at the close of nomination for election to the office of Chairman, only one candidate (a) has been nominated or (b) remains nominated by reason of disqualification, withdrawal, incapacitation, disappearance, or death of the other candidates, the State Independent Electoral Commission shall extend the time for nomination by 7 days, PROVIDED: that where after extension only one candidate remain validly nominated there shall be no further extension.

133.-(1) A candidate for an election to the Office of the Chairman shall be deemed to have been duly elected to the office where being the only candidate nominated for the election he has (a) A majority of YES votes over NO votes cast at the election; and (b) Not less than one-third of the votes cast at the election in each of at least two-thirds of all the wards in the Local Government.  
But where the only candidate fails to be elected in accordance with this subsection then there shall be fresh nominations.

(2) A candidate for an election to the office of the Chairman shall be deemed to have been elected where,

there being only two candidates for the election

- (a) he has a majority of the votes cast at the election;
- (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 wards in the Local Government Council, as the case may be.

(3) If no candidate is duly elected under subsection (2) of this section, the State Commission shall within 7 days conduct a second election between the two candidates, and the candidate who scored the majority of votes cast at the election shall be deemed duly elected at the election.

(4) A candidate for an election to the office of Chairman 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 cast 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 wards in the Local Government, as the case may be.

(5) If no candidate is duly elected in accordance with subsection (4) of this section, there shall be a second election

in accordance with subsection (6) of this section at which the only candidates shall be

- (a) the candidate who scored the highest number of votes at the election held under subsection (4) of this section; and
- (b) one among the remaining candidates who has the majority of votes in the highest number of wards so however that where there are more than one candidate, the one among them with the highest total number of votes cast at the election shall be the second candidate for the election.

(6) In default of a candidate duly elected under this section, the State Independent Electoral Commission shall within 7 days of the result of the election held under the said subsections arrange for another election between the candidates and a candidate at such Election shall be deemed to have been duly elected to the office of a Chairman of a Local Government if he has

- (a) a majority vote cast at the election; and
- (b) not less than one-quarter of the vote cast at the election in each of at least two-thirds of the wards in the Local Government Area.

(7) If no candidate is duly elected under subsection (6) of this section, arrangements shall be made within 7 days of the result of the last election, for another election between the two candidates specified in subsection (6) of this section, and a candidate at this last election shall be deemed duly elected to the office of Chairman of a Local Government if he scores a simple majority of votes cast at the election.

## **PART VIII**

### **ELECTORAL OFFENCES**

134.- Any person who

- (a) without authority, destroys, mutilates, defaces or removes or makes any alteration in any notice or document required for the purpose of registration under this Act;
- (b) knowingly gives false information or makes a false statement with reference to any application for registration of his name or with reference to any objection to the retention of the name of a person in the register of voters;
- (c) presents himself to be or does any act whereby he is by whatever

name or description howsoever, included in the register of voters for a constituency in which he is not entitled to be registered or causes himself to be registered in more than one registration or revision centre;

(d) publishes any statement or report which he knows to be false or does not believe to be true so as to prevent persons who are qualified to register from registering as voters;

(e) makes in any record, register or document which he is required to prepare, publish or keep for the purpose of registration, any entry or statement which he knows to be false or does not believe to be true;

(f) impedes or obstructs a registration or a revision officer in the performance of his duties;

(g) without proper authority, wears the identification of a registration officer or assistant registration officer or wears any other identification purporting to be the identification of a registration officer or assistant registration officer.

(h) Forges a registration card; or

(i) Carries out registration or revision of voters at a centre or place not

Citizens of the Federal Republic of Nigeria have a duty to prevent the commission of a crime. The exercise must be lawful otherwise the citizens can exercise their right of arrest and obstruct a registration exercise being carried out contrary to law

The onus of proving the guilt of an accused person rests with the prosecution.

The word "unlawfully" should be added before the beginning of the paragraph. Otherwise it is a strict liability provision as it places on the accused the onus of proving his/her innocence

The words *without lawful authority* and *unknowingly* should be added at the beginning of the proviso

designated by the Commission, commits an offence and liable on conviction to a fine of N1,000,000.00 or to 12 months imprisonment or to both.

135.-(1) A person commits an offence if he

- (a) forges any nomination paper;
- (b) willfully defaces or destroys any nomination paper;
- (c) delivers to an electoral officer any nomination paper knowing it to be forged
- (d) signs a nomination paper as a candidate in more than one constituency at the same election;
- (e) forges any ballot paper or official mark on any ballot paper or any certificate of return;
- (f) willfully destroys any ballot paper or official mark on any ballot paper or any certificate of return;
- (g) without authority gives a ballot paper to any person;
- (h) willfully places in any ballot box any unauthorized paper;
- (i) willfully removes from a polling station any ballot paper whether or not the ballot paper was issued to him in that polling station;
- (j) without authority destroys or in any other manner interferes with a ballot box or its contents or any ballot paper then in use or likely to be used for the purpose of an election;

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- (k) signs a nomination paper consenting to be a candidate at an election knowing that he is ineligible to be a candidate at that election;
- (2) A person who commits an offence under subsection (J) is liable on conviction to a fine of N200,000 or to imprisonment for 2 years or to both.
- (3) A person commits an offence if:
- (a) without proper authority prints a ballot paper or what purports to be or is capable of being used as a ballot paper at an election;
  - (b) being authorized by the Commission to print ballot papers prints more than the number or quantity the Commission authorized;
  - (c) without authority, is found in possession of a ballot paper when he is not in the process of voting and at a time when the election for which the ballot paper is intended is not yet completed;
  - (d) manufactures, constructs, imports into Nigeria, has in his possession supplies to any election official or uses for the purpose of an election or causes to be manufactured, constructed or imported into Nigeria, supplies to any election official for use for the purpose of any election, any ballot box including any compartment, appliance device or mechanism on or by which a ballot
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paper may or could be secretly placed or stored in, or having been deposited during polling may be secretly diverted, misplaced or manipulated.

(4) A person who commit an offence under subsection (3) of this section is liable on conviction to a fine of N5,000,000 and imprisonment for 5 years

(5) An attempt to commit any offence under this section shall be punishable in the same manner as the offence itself

136.- Any person who, at a political meeting held after the date for an election has been announced

(a) acts or incites another to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was convened; or

(b) has in his possession an offensive weapon or missiles, commits an offence and liable on conviction to a fine of N 100,000 or imprisonment for 12 months or both,

137.- Any person who

- (a) being entitled to a voters card, gives it to some other person for use at election other than an officer appointed and acting in the course of his duty under this Act;
- (b) not being an officer acting in the course of his duty under this Act, receives any voters card in the name of some other person for use at an election;
- (c) without lawful excuse has in his possession more than one Voters card; or
- (d) buys, sells, procures or deals, with a voters card otherwise than as provided in this Act, commits an offence liable on conviction to a fine of N100,000 or imprisonment for 12 months or both.

138.- (1) No person shall provide for the purpose of any other person to a registration office or to a polling station any government vehicle or boat, or belonging to a public corporation except in respect of a person who is ordinarily entitled to use such vehicle or boat and in emergency in respect of an election officer.

(2) Any person who contravenes the provisions of this section commits an offence and liable on conviction to a fine of N50,000 or to imprisonment for six months or to both.

139.- (1) Any person who

- (a) applies under this Act to be included in any list of voters in the name of some other person, whether such name is that of a person living or dead or of a fictitious person;
  - (b) having once to his knowledge been properly included in a list of voters under this Act as a voter entitled to vote at any election, applies, except as authorized by this Act, to be included in any other list of voters prepared for any constituency as a voter at an election;
  - (c) applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead or of a fictitious person;
  - (d) having voted once at an election applies at the same election for another ballot paper;
  - (e) votes or attempts to vote at an election knowing that he is not qualified to vote at the election; or
    - (1) induces or procures any other person to vote at an election knowing that such other person is not qualified to vote at the election, commits an offence and is liable on conviction to a fine of N 100,000 or 12 months imprisonment or both.
    - (2) Any person who commits the offence of impersonation or who aids, abets, counsels or procures the
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commission of that offence, shall be guilty of an offence and be liable on conviction to a fine of N 1000,000 or imprisonment for twelve months or both.

(3) No person charged with the offence of impersonation shall be convicted except on the evidence of at least two witnesses.

140. - (1) Any officer appointed for the purposes of this Act, who without lawful excuse commits any act or omits to act in breach of his official duty commits an offence and is liable on conviction to a fine of N 100,000 or to imprisonment for twelve months or both.

(2) Any polling officer who fails to report promptly at his polling station on an election day without lawful excuse commits an offence of dereliction of duty and on conviction is liable to a fine of N 100,000 or 12 months imprisonment or both.

(3) Any polling officer who fails to discharge his lawful duties at his polling station without lawful excuse commits an offence of dereliction of duties and on conviction is liable to a fine of N 100,000 or 12 months imprisonment or both:

(4) Any person who announces or publishes an election result knowing same to be false or which is at variance with the signed certificate of return commits an offence and on conviction is liable to 36 months imprisonment.

(5) Any Returning or Collation Officer who delivers or causes to be delivered a false certificate of return knowing same to be false to the Commission or a State Independent Electoral Commission, commits an offence and on conviction is liable to and 36 months imprisonment.

(6) Any person who delivers or causes to be delivered a false Certificate of Return knowing same to be false to any news media commits offence and on conviction is liable to 24 months imprisonment.

141 . - (1) Any person who does any of the following

- (a) directly or indirectly by himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers, promises;
- (b) promises to procure or to endeavor to procure, any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to

The words “without lawful excuse” should be expunged from the subsection

The Act provides an officer accused of dereliction of duty a ready excuse

The words “declares or” should be added between “who” and “announces” in section 140(4)

This provision is aimed at the media and opposing political parties and members. It is important to make INEC officers subject to the proviso

vote, to refrain from voting, or corruptly does any such act on account of such voter having voted or refrained from voting, at any election;

(c) directly or indirectly, by himself or by any other person on his behalf, corruptly makes any gift, loan, offer, promise, procurement or agreement to or for any person, in order to induce such person to procure or to endeavor to procure the return of any person as a member of a Legislative House or to an elective office or the vote of any voter at any election;

(d) upon or in consequence of any gift, loan, offer, promise, procurement or procure the return of any person as a member of a Legislative House or to an elective office or the vote of any voter at any election;

The word *person* should be specifically defined to include natural and artificial persons

A political party can engage in corruption and corrupt practices and it is important to define the word *person* specifically to avoid electoral confusion and also deter parties from corrupt practices

(e) advances or pays or causes to be paid any money to or for the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election; or after any election directly, or indirectly, by himself, or by any other person on his behalf receives any money or valuable consideration on

account of any person having voted or refrained from voting, or having induced any other person on to vote or refrained from voting, or having induced any candidate to refrain from canvassing for votes for himself at any such election, commits an offence and on conviction is liable to a fine of N1,000,000 or twelve months imprisonment or both.

(2) A voter commits an offence of bribery who before or during an election directly or indirectly himself or by any other person on his behalf receives, agrees or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for retraining or agreeing to refrain from voting at any such election.

(3) Nothing in this section shall extend or apply to money paid or agreed to be paid for or on account of any lawful expenses bona fide incurred at or concerning any election.

(4) Any person who commits the offence of bribery is liable on conviction to a fine of N 100,000 or imprisonment for 12 months or both.

- (5) Any person who conspires, aids or abets with any other person to commit any of the offences under this part of this Act shall be guilty of the same offence and punishment thereto.
- (6) For the purposes of this Act, a candidate shall be deemed to have committed an offence if it was committed with his knowledge and consent or the knowledge and consent of a person who is acting under the general or special authority of the candidate with reference to the election.
- 142.- (1). Any person who is convicted of an offence under this part of this Act which amounts to corrupt practice or is convicted of aiding, abetting, counseling or procuring the commission of such offence shall, in addition to any other penalty, be disqualified during a period of four years from the date of his conviction from being.
- (a) registered as a voter or voting at any election; and
- (b) elected under this Act or, if elected before his conviction, from retaining the office to which he was elected.
- (2) For the purposes of this section, a candidate shall be deemed to have committed a corrupt practice if it was committed with his knowledge and

consent or the knowledge and consent of a person who is acting under the general or special authority of the candidate with reference to the election.

143.- (1) Every person in attendance at a polling station including every officer charged with the conduct of an election and his or her assistants and every polling agent and candidate in attendance at a polling station or at the collation centre, as the case may be, shall maintain and aid in maintaining the secrecy of the voting.

(2) No person in attendance at a polling booth under this section shall, except for some purpose authorized by law, communicate to any person information ~s to the name or number on the register of any voter who has or has not voted at the place of voting.

(3) No person shall

(a) interfere with a voter casting his vote, or by any other means obtain or attempt to obtain in a polling station information as to the candidate for whom a voter in that place is about to vote for or has voted for; or

(b) communicate at any time to any other person information obtained in a polling station as to the candidate to

whom a voter is about to vote or has voted for.

(4) Any person acting contrary to the provisions of this section commits an offence and is liable upon conviction to a fine of N50,000 or to imprisonment for six months or both.

144.- Any person who

(a) votes at an election or induces or procures any person to vote at an election, knowing that he or such person is prohibited from voting thereat; or

(b) before or during an election, publishes any statement of the withdrawal of a candidate at such election knowing it to be false or reckless as to its truth or falsity; or

(c) before or during an election publishes any statement as to the personal character or conduct of a candidate calculated to prejudice the chance of election of the candidate or to promote or procure the election of another candidate and such statement is false and was published without reasonable grounds for belief by the person publishing it that the statement was true, commits an offence and is liable on conviction to a fine of N50,000 or imprisonment for a term of 6 months or both.

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A proviso should be added at the end of the section to the effect that *if it is the Independent National Electoral Commission or a political party, it shall on conviction be sentenced to a fine of N5, 000,000 and N2, 000,000 respectively or two years imprisonment or both such fine and imprisonment If carried out by a political party.*

The addition will make INEC carry out its functions more meticulously. The proviso will also promote internal party democracy

145.- (1) Any person who knowingly votes or attempts to vote in a Constituency in respect of which his name is not on the register of voters commits an offence and is liable on conviction to a fine of N50,000 or to imprisonment for 6 months or both.

(2) Any person who knowingly brings into a polling station during an election a voters card issued to another person commits an offence and is liable on conviction to a fine of N50,000 or to imprisonment for 6 months or both.

146. Any person who at an election acts or incites others to act in a disorderly manner commits an offence and is liable on conviction to a fine of N50,000 or imprisonment for a term of 6 months or both.

147.- (1) No person shall on the date on which an election is held do any of the following things in a polling station or within a distance of 300 meters of a polling station  
(a) canvass for votes;  
(b) solicit for the vote of any voter;  
(c) persuade any voter not to vote for any particular candidate;  
(d) persuade any voter not to vote at the election;  
(e) shout slogans concerning the election;

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- (f) be in possession of any offensive weapon or wear any dress or have any facial or other decoration which in any event is calculated to intimidate voters;
- (g) exhibit, wear or tender any notice, symbol, photograph or party card referring to the election;
- (h) use any vehicle bearing the colour or symbol of a political party by any means whatsoever;
- (i) loiter without lawful excuse after voting or after being refused to vote;
- (j) Blare siren.
- (2) Any person who snatches or destroys any election materials shall be liable to 24 months imprisonment.
- (3) No person shall in the vicinity of a polling unit or collation centre on the day of which an election is held:
- (a) convene, hold or attend any public meeting during the hours of poll as may be prescribed by the Commission; or
- (b) unless appointed under this Act to make official announcements, operate any megaphone, amplifier or public address apparatus; or
- (c) wear or carry any badge, poster, banner, flag or symbol relating to a political party or to the election.
- (4) A person who contravenes any of the provisions of this section
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commits an offence and is liable on conviction to a fine of N50,000 or imprisonment for 6 months for every such offence.

148.- A person who -

(a) corruptly by himself or by any other person at any time after the date of an election has been announced, directly or indirectly gives or provides or pays money to or for any person for the purpose of corruptly influencing that person or any other person to vote or refrain from voting at such election, or on account of such person or any other person having voted or refrained from voting at such election; or

(b) being a voter, corruptly accepts or takes money or any other inducement during any of the period stated in paragraph (a) of this section, commits an offence and is liable on conviction to a fine of N100,000 or 12 months imprisonment or both.

149.- A person who

(a) directly or indirectly, by himself or by another person on his behalf, makes use of or threatens to make use of any force, violence or restraint;

(b) inflicts or threatens to inflict by himself or by any other person, any temporal or spiritual injury, damage, harm or loss on or against a person in order to induce or compel that person to vote or refrain from voting, or on account of such person having voted or refrained from voting; or

(c) by abduction, duress, or a fraudulent device or contrivance, impedes or prevents the free use of the vote by a voter or thereby compels, induces, or prevails on a voter to give or refrain from giving his vote;

(d) by preventing any political aspirants from use of the media, designated vehicles, mobilization of political support and campaign at an election, commits the offence of undue influence and is liable on conviction to a fine of N I 00,000 or imprisonment for twelve months, and shall in addition be guilty of corrupt practice under Section 133 of this Act and the incumbent be disqualified as a candidate in the election.

150.- The offences referred to in this Act apply to recall of a member of a Legislative House and a member of a Local Government Council.

**PART IX:**

**DETERMINATION OF ELECTION  
PETITIONS ARISING FROM  
ELECTIONS**

151. - (1) No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition") presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a Party.
- (2) In this section "tribunal or court" means:
- (a) in the case of Presidential election, the Court of Appeal; and
  - (b) in the case of any other elections under this Act, the Election Tribunal established by the Constitution or by this Act.
- (3) The Election Tribunals provided for under the Constitution and this Act shall be constituted not later than 14 days before the Election.
152. - An election petition under this Act shall be presented within thirty (30) days from

the date the result of the election is declared.

153.- (1) There shall be established for the Federal Capital Territory one or more Election Tribunals (in this Act referred to as the Area Council Election Tribunal) which shall, to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine any question as to whether

- (a) any person has been validly elected to, the office of Chairman, Vice-Chairman or Councilor;
- (b) the term of office of any person elected to the office of Chairman, Deputy Chairman or Councilor has ceased;
- (c) the seat of a member of an Area Council has become vacant; and
- (d) a question or petition brought before the Area Council Election Tribunal has been properly or improperly brought.

(2) An Area Council Election Tribunal shall consist of a Chairman and four other members.

(3) The Chairman shall be a Chief Magistrate and four other members shall be appointed from among Magistrate of the Judiciary of the Federal Capital Territory, Abuja and legal practitioners of at least 10 years

The section should be amended making it mandatory for the President of the Court of Appeal to constitute Election Petitions Tribunals established in accordance with sections 285 and the sixth schedule to the Constitution not later than 30 days before the Election

The early establishment of the Tribunals will allow them establish structures and source for funds and logistics for election petitions.

post-call experience. non-legal practitioners of unquestionable integrity or other members of the Judiciary of the Federal Capital Territory not below the rank of a Magistrate.

154.- (1) There shall be established for the Federal Capital Territory (FCT) the Area Council Election Appeal Tribunal which shall to the exclusion of any other court or tribunal hear and determine appeals arising from the decision of the Area Council Election Petition Tribunal.

(2) The decision of the Area Council Election Appeal Tribunal in respect of Area Council elections shall be final.

(3) An Area Council Election Appeal Tribunal shall consist of a Chairman and four other members and the Chairman shall be a Judge of the High Court and the four other members shall be appointed from among judges of the High Court of the Federal Capital Territory. Abuja, Kadis of the Sharia Court of Appeal of the Federal Capital Territory, Abuja, Judges of the Customary Court of Appeal or other members of the Judiciary of the Federal Capital Territory, Abuja not below the rank of a Chief Magistrate.

(4) The quorum of an Area Council Election Tribunal shall be the Chairman

and two other members.

155.- (1) An election petition may be presented by one or more of the following persons:

(a) a candidate at an election;

(b) a Political Party which participated at the election.

(2) The person whose election is complained of is, in this Act, referred to as the Respondent, but if the petition 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, such officer or person shall for the purpose of this Act be-deemed to be a Respondent and shall be joined in the election petition in his or her official status as a necessary party.

156- (1) An election may be questioned on any of the following grounds, that is to say:

(a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;

(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;

(c) that the respondent was not duly elected by majority of lawful votes cast at the election; or

(d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

(2) An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election but which is not contrary to the provisions of this Act shall not of itself be a ground for questioning the election.

157.- (1) An Election shall not be liable to be invalidated by reason of non compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non compliance did not affect substantially the result of the election.

(2) An election shall not be liable to be questioned by reason of a defect in the title, or want of title of the person conducting the election or acting in the office provided such a person has the right or authority of the Commission to conduct the election.

158.- (1) Subject to subsection (2) of this section, if the Tribunal or the Court as the case may be, determines that a candidate who was returned as elected was not validly elected on any ground,

The section should be amended to read as follows: *An Election shall not be liable to be invalidated by reason of non compliance with certain requirements of this Act if it is shown to the Election Tribunal or Court that the election was conducted substantially in accordance with the provisions of this Act and that the non compliance did not affect substantially the free and fair conduct of the election.*”

Elections must articulate the genuine wishes of the people through free, fair and transparent elections. The results of an election must be expressed as the aggregate of issues brought to bear on an election and not just the result of the election.

the Tribunal or the Court shall nullify the election.

(2) If the Tribunal or the Court determines that a candidate who was returned as elected was not validly elected on the ground that he did not score the majority of valid votes cast at the election, the Election, Tribunal or the Court, as the case may be, shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the Constitution and this Act.

(3) On the motion of a respondent in an election petition, the election petition Tribunal or the Court, as the case may be, may strike out an election petition on the ground that it is not in accordance with the provisions of this Part of this Act, or the provisions of First Schedule of this Act.

159.- Without prejudice to the provisions or section 294 subsection (1) or the

Constitution of the Federal Republic of Nigeria 1999 an election petition and an appeal arising therefrom under this Act shall be given accelerated hearing and shall have precedence over all other cases or matters before the Tribunal or Court.

160.- (1) If the Election Tribunal or the Court, as the case may be determines that a candidate returned as elected was not validly elected, and if notice of appeal against that decision is given within 21 days from the date of the decision, the candidate returned as elected shall, notwithstanding the contrary decision of the Election Tribunal or the Court, remain in the office pending the determination of the appeal.

(2) If the Election Tribunal or the Court as the case may be determines that a candidate returned as elected "as not validly elected, the candidate returned as elected shall notwithstanding the contrary decision of the Election Tribunal or the Court, remain in office pending the expiration of the period of 21 days within which an appeal may be brought

161.- The rules of procedure to be adopted for election petitions and appeals arising there from shall be those set out in First Schedule to this Act.

## **PART X MISCELLANEOUS**

162.- No person holding an elective office to which this Act relates or a registered member of a Political Party shall be eligible for or be appointed to

*Subsection 3 should be amended to read: The Electoral Tribunal or the Court shall hear and determine an election petition, once the petition is brought in substantial compliance with the provisions of the Act and raises issues worthy of determination.*

*The Tribunal should aim at promoting substantial justice and avoid the use of technicalities to defeat an election petition that otherwise merits a hearing.*

carry out the duties of a returning officer, an electoral officer, presiding officer or a poll clerk; and any officer appointed to carry out any of those duties shall be ineligible for nomination as a candidate for election while he continues to hold any such appointment.

163.- If the registration card of a voter is lost or accidentally destroyed the voter may attend in person at the office of the registration officer and apply for another registration card and the registration officer shall make such enquires as the Commission may prescribed for the purpose; and where the registration officer is satisfied as to the loss or accidental destruction of the registration card, he may issue another card to the voter.

164.- (1) The Commission may prescribe:

- (a) a scale of remuneration for officers appointed under this Act for the conduct of elections;
- (b) a scale of maximum charges in respect of other expenses incurred by an Electoral Officer, a Presiding Officer or a Returning Officer in connection with an election, and may revise the scale as it thinks fit or expedient.

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The word *while continues to hold any such appointment* should be expunged and replaced with the following: *in the last four years such a person must not have been involved in partisan politics.*

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A stringent provision is required to avoid the opportunism of some persons who may deliberately put themselves forward for political appointments after corrupting the electoral process in favor of a candidate or a political party.

The provision should be amended to read as follows: *if the registration card of a voter is lost or accidentally destroyed the voter may attend in person at the office of the registration officer and apply for another registration card. The registration officer shall, **within three days**, make such inquiries as the Commission may prescribe for the purpose, and where the registration officer is satisfied as to the loss or accidental destruction of the registration card, he **shall** issue another card to the voter.*

The additions will make for certainty and prevent a situation where a registration officer will deliberately frustrate the issuance of a new registration card to a voter with a genuine complaint.

(2) An Electoral Officer, Presiding Officer, or Returning Officer shall, in addition to any remuneration prescribed under paragraph (a) of subsection (1) of this section be entitled to such sums in respect of expenses not exceeding the prescribed scale, in connection with the conduct of an election as are reasonable.

(3) The Commission may pay such honoraria as it may determine to all other persons and officers who may be involved in one way or the other in conducting an election under this Act, or in carrying out any task in connection with an election or election petitions arising therefrom.

(4) All fees and other remuneration approved under subsection (1) of this section shall be charged upon the Consolidated Revenue Fund of the Federation and shall be paid in such manner as the Commission deems fit.

165.- No person who has voted in any election under this Act shall, in any legal proceedings arising out of the election, be required to say for whom he voted.

166.- The Commission shall consider any recommendation made to it by a Tribunal with respect to the prosecution by it of any person for an offence disclosed in any election petition.

167.- (1) An offence committed under this Act shall be triable in a Magistrate Court of the State in which the offence is committed or the Federal Capital Territory. Abuja.

(2) A prosecution under this Act shall be undertaken by Legal Officers of the Commission or any Legal Practitioner appointed by it.

168. - (1) An order for an inspection of a polling document or an inspection of a document or any other packet in the custody of the Chief National Electoral Commissioner or any other officer of the Commission may be made by the Election Tribunal or the Court if it is satisfied that the order required is for the purpose of instituting or maintaining an election petition.

(2) A document other than a document referred to in subsection (1) of this section relating to an election and which is retained by the Chief National Electoral Commissioner or any other officer of the Commission in accordance with this section shall be open for inspection on an order made by the Election Tribunal or a Court in exercise of its powers to compel the production of documents in legal proceedings, but shall not otherwise be open for inspection.

The section be should amended to read:  
*The Commission shall prosecute any person for an offence disclosed in any election petition if any recommendation to that effect is made to it by a Tribunal.*

Prosecution for an offence disclosed in an election petition should not be at the discretion of the Commission. It is for the courts to determine whether a prima facie case has been made out.

169.- Without prejudice to other provisions of this Act the Commission may delegate any of its powers and functions to any National Electoral Commissioner, Resident Electoral Commissioner, Electoral Officer, any other officer of the Commission or any other officer appointed under the provision of this Act subject to any conditions or limitations which it may consider necessary or expedient to impose and no such delegation shall be construed, to limit the right of the Commission to exercise such power itself.

170.- The Commission may subject to the provisions of this Act issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of this Act and for its due administration thereof.

171.- The Commission shall have power to conduct civic education and enlightenment in the print and electronic media to enhance its functions.

172 - Notwithstanding any defect or error in any notice, form or document made or given or other thing whatsoever done in pursuance of the provisions of this Act or rules made

The word “*but shall not otherwise be open for inspection*” should be expunged

The integrity of the electoral process depends substantially on its transparent nature. Political parties must be given access to inspect documents in the possession of the Commission.

there under, such notice, form or document, is hereby validated with effect from the date on which it was made, given or done respectively.

## **INTERPRETATION**

173.-(1) In this Act, unless the context otherwise requires:

"appointment" includes appointment to an office conlillation of appointment promotion or transfer:

"Area Council" means Area Councils recognized and existing by virtue of section J «(,) of the 1999 Constitution and as set out in Part 11 of the First Schedule thereof and any additional Area Councils provided for by an Act of the National Assembly in accordance with section 8(5) of the Constitution:

"Association" means a body of persons (corporate or otherwise) who agree to act together for any common purpose and includes an association formed for any ethnic, social, cultural, occupational or religious purpose;

"Attorney-General of the Federation" means the Chief Law Officer of the Federation;

This particular provision should be expunged.

The conduct of civic education is not part of the functions assigned to the Commission by the 1999 Constitution. The Commission cannot add to or subtract from its Constitutional functions. Although it is desirable to amend the Constitution to accommodate this function.

"authority" includes government or government agency:

"Chief Electoral Commissioner" means the Chairman of Independent National Electoral Commission:

"Civil Service" means service of the Federation. State or Local Government in a civil capacity as staff of the Federal, State, or Local Government assigned with the responsibility of any business of the Government;

"Clerk" means the Clerk of the National Assembly, Clerk of the State House of Assembly and Clerk of the Legislative House of the Local Government or Area Councilor any person acting in that capacity;

"Commission" means the Independent National Electoral Commission established by the Constitution;

"Constitution" means the Constitution of the Federal Republic of Nigeria 1999;

"Decision", means in relation to court or tribunal, any determination of that court or tribunal and includes a judgment, decree, conviction, sentence, order or recommendation;

"Electoral Officer" means a staff of the Commission who is the head of the Commission's office at a Local Government Area or Area Council level;

"Federation" means the Federal Republic of Nigeria;

"Function" includes power and duty;

"General Election" means an election held in the Federation at large and at all levels, a regularly recurring election to select officers to serve after the expiration of the full terms of their predecessors;

"Government" includes the Government of the Federation, of a State or of a Local Government Area or Area Council, or any person or organ exercising power or authority on its behalf;

"House" or Legislative House" means the House of Assembly of a State, the House of Representatives or the Senate and includes the Legislative House of Local Government Area or Area Council;

"Leader of an association" means every person holden an executive position in that association, including in particular,

the Chairman, Secretary or Treasurer of the association and every member of its committee of management, however, described;

"Leader of a Political Party" means every person holding an executive position in that Political Party, including in particular, the Chairman, Secretary or Treasurer of the Political Party and every member of its committee of management, however described;

"Legal Incapacity" means a person disqualified under the Constitution or the present Act or any other Law, Rules and Regulation from Registering as a voter or from contesting elections;

"Local Government" means Local Government recognized and existing by virtue of section 3(6) of the 1999 Constitution and set out in Parts I and II of the First Schedule thereof and any additional Local Government provided for by an Act of the National Assembly in accordance with Section 8(5) of the Constitution.

"National Assembly" means the Senate and the House of Representatives;

"Offensive weapon or missiles" includes any cannon, gun, rifle, carbine, machine gun, cap-gun, flint-lock gun,

revolver, pistol, air gun, air pistol, or other firearms (whether whole or in detached pieces) bow and arrow, spear, cutlass, machete, knife, dagger, cudgel, or any piece of wood, metal, bottle, or stone, acid, corrosive powder, irritating pressurized gaseous liquid.

"Office" or "Public Office" means any of the offices the occupation to which. is by election or appointment under this Act;

"Petition" means an election petition under this Act;

"Political Party" includes any association of persons whose activities include canvassing for votes in support of a candidate for election under this Act and registered by the Commission;

"Polling Station" means the place, enclosure, booth, shade or house at which, voting takes place under this Act and includes polling unit:

"Power" includes function and duty:

"President" means the President of the Federal Republic of Nigeria:

"Registrar" includes Chief Registrar, Deputy Chief Registrar of other grades of the Supreme Court of Appeal, Federal High Court and the High Court

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of a State:

"Registration Officer" includes supervisory assistant registration officer and assistant registration officer:

"Resident Electoral Commissioner" means the Commissioner deployed for the time being to a State.

"Return" means the declaration by a Returning Officer of it candidate in an election under this Act as being the winner of that election;

"School Certificate or its equivalent" means the following

(a) a Secondary School Certificate or its equivalent or Grade II Teachers' Certificate  
the City and Guilds Certificate; or

(b) education up to Secondary School Certificate level; or

(c) Primary Six School Leaving Certificate or its equivalent and:

(i) service in the public or private sector of the Federation in any capacity acceptable to the Commission for a minimum of 10 years; and

(ii) attendance at courses and training in such institutions as may be acceptable to the Commission for periods totaling

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up to a minimum of 1 year; and

(iii) the ability to read, write, understand and communicate in the English Language to the satisfaction of the Commission; and

(d) any other qualification acceptable to the Commission;

"Secret Society" includes any association, group or body of persons (whether registered or not):

(a) that uses secret signs, oaths, rites or symbols and which is formed to promote a cause, the purpose or pm1 of the purposes of which is to foster the interest of its members and to aid one another under any circumstances without due regard to merit, fair play or justice to the detriment of the legitimate interest of those who are hot members;

(b) the membership of which is with the function or dignity of any public office under this Act or any other enactment and whose members are sworn to observe oaths of secrecy;

(e) the activities of which are not known to the public at large;

(d) the names of whose members are kept secret; and

(e) whose meetings and other activities are held in secret;

"State" when used otherwise than in reference to one of the component parts of the Federal Republic of Nigeria shall include government of a State;

"State Commission" means State Independent Electoral Commission established by section 197 of the Constitution.

All references in this Act to a State in the Federation shall, where appropriate, be deemed to include references to the Federal Capital Territory

174.- The following enactments are hereby repealed

(a) The Electoral Act of 2002 is hereby repealed.

(b) INEC Estab. Act No. 17 of 1998

(c) INEC (Amendment) Act No. 33 of 1998

175.- This Act may be cited as the Electoral Act 2004.

## **SCHEDULE**

### **PROCEDURE FOR ELECTION PETITIONS**

1. In this Schedule:

"Attorney-General" means the Attorney-General of the Federation and includes the Attorney-General of a State where the context admits;

"Civil Procedure Rules" means the Civil Procedure Rules of the Federal High Court the time being in force;

"Election" means any election under this Act to which an election petition relates;

"Registry" means a Registry set up for an Election Tribunal established by the Constitution or this Act or the Registry of the Court of Appeal;

"Secretary" means the Secretary of an Election Tribunal established by the Constitution or this Act and shall include the Registrar of the Court of Appeal or any officer or Clerk acting for him;

"Tribunal" means an Election Tribunal established under this Act or the Court of Appeal;

"Tribunal Notice Board" means a notice board at the Registry or a notice board at the place of hearing where notice of presentation of election petition or notice of hearing an election petition or any other notice may be given or posted.

2. - (1) At the time of presenting an election petition, the petitioner shall give security for all costs which may become payable by him to a witness.4i summoned on his behalf or to a respondent.
  - (2) The Security shall be of such amount not less than N5,000.00 as the Tribunal or Court may order and shall be given by depositing the amount with the Tribunal or Court.
  - (3) Where two or three persons join in an election petition, a deposit as may be ordered under Sub-paragraph (2) of this paragraph of this Schedule shall be sufficient.
  - (4) If no security is given as required by this paragraph, there shall be no further proceedings on the election petition.
- 3 (1) The presentation of an election petition under this Act shall be made by the petitioner (or petitioners if more than one) in person, or by his Solicitor, if any, named at the foot of the election petition to the Secretary, and the Secretary shall give a receipt.
  - (2) The Petitioner shall, at the time of presenting the election petition, deliver to the Secretary a copy of the
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election petition for each respondent and ten other copies to be preserved by the Secretary.

(3) The Secretary shall compare the copies of the election petition received in accordance with sub-paragraph (2) of this paragraph with the original petition and shall certify them as true copies of the election petition on being satisfied by the comparison that they are true copies of the election petition.

(4) The petitioner or his Solicitor, as the case may be, shall, at the time of presenting the election petition, pay the fees for the service and the publication of the petition, and for certifying the copies and, in default of the payment, the election petition shall be deemed not to have been received, unless the Tribunal or Court otherwise orders.

4 (1) An election petition under this Act shall

- (a) specify the parties interested in the election petition;
- (b) specify the right of the petitioner to present the election petition;
- (c) state the holding of the election, the scores of the candidates and the person returned as the winner of the election; and

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- (d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioner.
- (2) The election petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the election petition, and every paragraph shall be numbered consecutively.
- (3) The election petition shall further
- (a) conclude with a prayer or prayers, as for instance, that the petitioner or one of the petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast at the election or that the election may be declared nullified, as the case may be; and
- (b) be signed by the petitioner or all petitioners or by the Solicitor, if any, named at the foot of the election petition.
- (4) At the foot of the election petition there shall also be stated an address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier.
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- (5) If an address for service is not stated as specified in sub-paragraph (4) of this paragraph, the petition shall be deemed not to have been filed, unless the Tribunal or Court otherwise orders.
- (6) An election petition which does not conform with sub-paragraph (1) of this paragraph or any provision of that sub-paragraph is defective and may be struck out by the Tribunal or Court.
5. Evidence need not to be stated in the election petition, but the Tribunal or Court may order such further particulars as may be necessary
- (a) to prevent surprise and unnecessary expense;
  - (b) to ensure fair and proper hearing in the same way as in a civil action in the Federal High Court; and
  - (c) on such terms as to costs or otherwise as may be ordered by the Tribunal or Court.
- 6.- For the purpose of service of an election petition on the respondents, the petitioner shall furnish the Secretary with the address of the respondents' abode or the addresses of places where personal service can be effected on the respondents.
- 7.- (1) On the presentation of an election petition and payment of the
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requisite fees, the Secretary shall forthwith -

(a) cause notice, of the presentation of the election petition, to serve on each of the respondents;

(b) post on the tribunal notice board a certified copy of the election petition; and.

(c) set aside a certified copy for onward transmission to the person or persons required by law to adjudicate and determine the election petition.

(2) In the notice of presentation of the election petition, the Secretary shall, state a time, not being less than five days but not more than seven days after the date of service or the notice, within which each of the respondents shall enter an appearance in respect of the election petition.

(3) In fixing the time within, which the respondents are to enter appearance, the Secretary shall have regard to

(a) the necessity for securing a speedy hearing of the election petition; and

(b) the distance from the Registry or the place of hearing to the address furnished under sub-paragraph (4) of paragraph 4 of this Schedule.

8.- (1) Subject to Sub-paragraph (2) and (3) of this paragraph, service on the respondents

(a) of the documents mentioned in Sub-paragraph (1) (a) of paragraph 7 of this Schedule; and

(b) of any other documents required to be served on them before entering appearance, shall be personal.

(2) Where the petitioner has furnished, under paragraph 6 of this Schedule, the addresses of the places where personal service can be effected on the respondents and the respondents or any of them cannot be found at the place or places, the Tribunal or Court on being satisfied, on an application supported by an affidavit showing that all reasonable efforts have been made to effect personal service, may order, that service of any document mentioned in sub-paragraph (1) of this paragraph be effected in any ways mentioned in the relevant provisions of the Civil Procedure Rules for effecting substituted service in Civil cases and that service shall be deemed to be equivalent to personal service.

- (3) The proceedings under the election petition shall not be vitiated notwithstanding the fact that
- (a) the respondents or any of them may not have been served personally; or
  - (b) a document of which substituted service has been effected pursuant to an order made under sub-paragraph (2) of this paragraph did not reach the respondent, and in either case, the proceedings may be heard and continued or determined as if the respondents or, my of them had been served personally with the document and shall be valid and effective for all purposes.
- 9.- (1) Where the respondent intends to oppose the election petition, he shall
- (a) within such time after being served or deemed have been served with the election petition; or
  - (b) where the Secretary has stated a time under sub-paragraph (2) of paragraph 7 of this Schedule, within such time as is stated by the Secretary, enter an appearance by filing in the Registry a memorandum of appearance stating that he intends to oppose the election petition and giving the name and address of the Solicitor, if any,

representing him or stating that he acts for himself, as the case may be, and, in either case, giving an address for service at which documents intended for him may be left or served.

- (2) If an address for service and its occupiers are not stated, the memorandum of appearance shall be deemed not to have been filed, unless the Tribunal or Court otherwise orders.
  - (3) The memorandum of appearance shall be signed by the respondent or his Solicitor, if any,
  - (4) At the time of filing the memorandum of appearance, the respondent or his Solicitor, as the case may be, shall
    - (a) leave a copy of the memorandum of appearance for each of the other parties to the election petition and three other copies of the memorandum to be preserved by the Secretary; and
    - (b) pay the fees for service as may be prescribed or directed by the Secretary; and in default of the copies being left and the fees being paid at the time of filing the memorandum of appearance, the memorandum of appearance shall be deemed not to have been filed, unless the Tribunal or Court
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otherwise orders.

- (5) A respondent who has a preliminary objection against the hearing of the election petition on grounds of law may file a conditional memorandum of appearance.
- 10.-(1) If the respondent does not file a memorandum of appearance as required under paragraph 9 of this Schedule, a document intended for service on him may be posted on the Tribunal notice board and that shall be sufficient notice of service of the document on the respondent.
- (2) The non-filing of a memorandum of appearance shall, not bar the respondent from defending the election petition if the respondent files his reply to the election petition in the Registry within a reasonable time, but, in any case, not later than twenty one (21) days from the receipt of the election petition. .
11. The Secretary shall cause copies of the memorandum of appearance to be served on, or its notice to be given to the other parties to the election petition.
- 12.-(1) The respondent shall, within fourteen (14) days of entering an appearance file in the Registry his Reply, specifying in it which of the fact

alleged in the election petition he admits and which he denies, and setting out the facts on which he relies in opposition to the election petition.

(2) Where the respondent in an election petition, complaining of an undue return and claiming the seat or office for a petitioner intends to prove that the claim is incorrect or false, the respondent in his reply shall set out the facts and figures clearly and distinctly disproving the claim of the petitioner.

(3) The reply may be signed by the respondent or the Solicitor representing him, if any.

(4) At the time of filing the reply, the respondent or his Solicitor, if any, shall leave with the Secretary copies of the reply for services on the other parties to the election petition with ten (10) extra copies of the reply to be preserved by the Secretary, and pay the fees for service as may be prescribed or directed by the Secretary, and in default of leaving the required copies of the reply or paying the fees for service, the reply shall be deemed not to have been filed, unless the Tribunal or Court otherwise orders.

13. The Secretary shall cause a copy of the reply to be served on each of the other parties to the election petition.

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- 14.-(1) Subject to sub-paragraph (2) of this paragraph, the provisions of the Civil Procedure Rules relating to amendment of pleadings shall apply in relation to an election petition or a reply to the election petition as if for the words "any proceedings" in those provisions there were substituted the words "the election petition or reply."
- (2) After the expiration of the time limited by
- (a) Section 152 of this Act for presenting the election petition, no amendment shall be made
- (i) introducing any of the requirements of sub-paragraph (1) of paragraph 4 of this Schedule not contained in the original Election petition filed, or
- (ii) effecting a substantial alteration of the ground for, or the prayer in, the election petition; or
- (iii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph, effecting a substantial alteration of
- or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition; and
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- (b) paragraph 12 of the Schedule for filing the reply, no amendment shall be made
- (i) alleging that the claim of the seat or office by the petitioner is incorrect or false; or
- (ii) except anything which may be done under the provisions of sub-paragraph (3) of this paragraph, effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply.
15. When a petitioner claims the seat alleging that he had the highest number of valid votes cast at the election, the party defending the election or return at the election shall set out clearly in his reply particulars of the votes, if any which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the petitioner is not entitled to succeed.
- 16.-(1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the Registry, within five (5) days from the receipt of the respondent's reply, a petitioner's reply in
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answer to the new issues of fact, so however that

(a) the petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him; and

(b) the petitioner's reply does not run counter to the provisions of sub-paragraph (1) of paragraph 14 of this Schedule.

(2) The time limited by sub-paragraph (1) of this paragraph shall not be extended.

17.-(1) If a party in an election petition wishes to have further particulars or other direction of the Tribunal or Court, he may, at any time after entry of appearance but not later than ten days after the filing of the reply, apply to the Tribunal or Court specifying in his notice of motion the direction for which he prays and the motion shall, unless the Tribunal or Court otherwise orders, be set down for hearing on the first available day.

(2) If a party does not apply as provided in sub-paragraph (1) of this paragraph, he shall be taken to require no further particulars or other directions and the party shall be barred from so

applying after the period laid down in sub-paragraph (1) of this paragraph has lapsed.

(3) Supply of further particulars under this paragraph shall not entitle the party to go beyond the ambit of supplying such further particulars as have been demanded by the other party, and embark on undue amendment 01: or additions to, his petition or reply, contrary to paragraph 14 of this Schedule.

18. Every election petition shall be heard and determined in an open Tribunal or Court.

19.- (1) Subject to the provisions of sub-paragraph (2) of this paragraph, the time and place of the hearing of an election petition shall be fixed by the Tribunal or Court and notice of the time and place of the hearing, which may be as in Form TF. 005 set out in Schedule 2 of this Act, shall be given by the Secretary at least five days before the day fixed for the hearing by

(a) posting the notice on the Tribunal notice board; and

(b) sending a copy of the notice by registered post or through a messenger to

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- (i) the petitioner's address for service;
  - (ii) the respondent's addresses for service, if any; or
  - (iii) the Resident Electoral Commissioner or the Commission as the case may be;
- (2) In fixing the place of hearing, the Tribunal or Court shall have due regard to the proximity to and accessibility from the place where the election was held.
20. The Resident Electoral Commissioner or Commission as the case may be shall publish the notice of hearing by causing a copy of the notice to be displayed in the place which was appointed for the delivery of nomination papers prior to the election or in some conspicuous place or places within the constituency, but failure to do so or any miscarriage of the copy of notice of hearing shall not affect the proceedings if it does not occasion injustice against any of the parties to the election petition.
21. The posting of the notice of hearing on the Tribunal notice board shall be deemed and taken to be good notice, and the notice shall not be vitiated by any
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miscarriage of the copy or copies of the notice sent pursuant to paragraph 19 of this Schedule.

22.- (1) The Tribunal or Court may, from time to time, by order made on the application of a party to the election petition or at the instance of the Tribunal or Court, postpone the beginning of the hearing to such day as the Tribunal or Court may consider appropriate having regard at all times to the need for speedy conclusion of the hearing of the election petition.

(2) A copy of the order shall be sent by the Secretary by registered post or messenger to the Electoral Officer or the Resident Electoral Commissioner or the Commission who shall publish the order in the manner provided in paragraph 20 of this schedule for publishing the notice of hearing, but failure on the part of the Electoral Officer or Resident Electoral Commissioner or the Commission to publish the copy of the order of postponement shall not affect the proceedings in any manner whatsoever.

(3) The Secretary shall post or cause to be posted on the tribunal notice board a copy of the order.

(4) Where the Tribunal or Court gives an order of postponement at its

own instance a copy of the order shall be sent by the Secretary by registered post or messenger to the address for service given by the petitioner and to the address for service, if any, given by the respondents or any of them.

(5) The provisions of paragraph 21 of this Schedule shall apply to an order or a notice of postponement as they do to the notice of hearing.

23. If the Chairman of the Tribunal or Presiding Justice of the Court has not arrived at the appointed time for the hearing or at the time to which the hearing has been postponed, the hearing shall be by reason of that fact stand adjourned to the following day and from day to day.

24.-(1) No formal adjournment of the Tribunal or Court for the hearing an election petition shall be necessary, but the hearing shall be deemed adjourned and may be continued from day to day until the hearing is concluded unless the Tribunal or Court otherwise directs as the circumstances may dictate.

(2) If the Chairman of the Tribunal or the Presiding Justice of the Court who begins the hearing of an election petition is disabled by illness or otherwise, the hearing may be

recommended and concluded by another Chairman of the Tribunal or Presiding Justice of the Court appointed by the appropriate authority.

25.-(1) After the hearing of an election petition has begun, if the inquiry cannot be continued on the ensuing day or, if that day is a Sunday or a Public holiday, on the day following the same, the hearing shall not be adjourned *sine die* but to a definite day to be announced before the rising of the Tribunal or Court and notice of the day to which the hearing is adjourned shall forthwith be posted by the Secretary on the notice board.

(2) The hearing may be continued on a Saturday or a on a public holiday if circumstances dictate.

26.-(1) All interlocutory questions and matters may be heard and disposed of by the Chairman of the Tribunal or the Presiding Justice of the Court who shall have control over the proceedings as a Judge in the Federal High Court.

(2) After the hearing of the election petition is concluded, if the Tribunal or Court before which it was heard has prepared its judgment but the Chairman or the Presiding Justice is unable to deliver it due to illness or any other

cause, the judgment may be delivered by one of the members, and the judgment as delivered shall be the judgment of the Tribunal or Court and the member shall certify the decision of the Tribunal or Court to the Resident Electoral Commissioner, or to the Commission.

27-(1) At the conclusion of the hearing, the Tribunal shall determine whether a person whose election or return is complained of or any other person, and what person, was validly returned or elected, or whether the election was void, and shall certify the determination to the Resident Electoral Commissioner or the Commission.

(2) If the Tribunal or Court has determined that the election is invalid, then, subject to Section 160 of this Act where there is an appeal and the appeal fails, a new election shall be held by the Commission.

(3) Where a new election is to be held under the provisions of this paragraph, the Commission shall appoint a date for the election which shall not be later than 3 months from the date of the determination

28-(1) An election petition shall not be withdrawn without leave of the Tribunal or Court.

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- (2) Where the petitioners are more than one no application for leave to withdraw the election petition shall be made except with the consent of all the petitioners.
- (3) The application for leave to withdraw an election shall be made by motion after notice of the application has been given to the respondents.
- (4) The notice of motion shall state the grounds on which the motion to withdraw is based, supported with affidavit verifying the facts and reasons for withdrawal signed by the petitioner or petitioners in the presence of the Secretary.
- (5) At the time of filing the notice of motion the petitioner or petitioners shall leave copies for service on the respondent.
- (6) The petitioner or petitioners shall also file the affidavits required under paragraph 29 of this Schedule together with copies for each respondent and pay the fees prescribed or directed by the Secretary for services.
29. Before the leave for withdrawal of an election petition is granted, each of the parties to the petition shall produce an affidavit stating that
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- (a) to the best of the deponent's knowledge and belief no agreement or term of any kind whatsoever has been made; and
- (b) no undertaking has been entered into in relation to the withdrawal of the petition but if any lawful agreement has been made with respect to the withdrawal of the petition, the affidavit shall set forth that agreement and shall make the foregoing statement subject to what appears from the affidavit.
- 30.-(1) The time for hearing the motion for leave to withdraw the election petition shall be fixed by the Tribunal or Court.
- (2) The Secretary may give notice of the day fixed for the hearing of the motion to the respondents and post or cause to be posted on the Tribunal notice board a copy of the notice.
31. If the election petition is withdrawn, the petitioner shall be liable to pay appropriate costs to the respondents or any of them unless the Tribunal or Court otherwise orders.
- 32.-(1) If a sole petitioner or the survivor of several petitioners dies then, subject to sub-paragraph (2) and (3) of this paragraph, there shall be no fill her proceedings on the election petition and

the Tribunal or Court may strike it out of its cause list.

(2) The death of a petitioner shall not affect his liability for the payment of costs previously incurred in the course of proceedings in respect of the election petition prior to its abatement.

(3) Where notice, with copies for each party to the election petition supported by the affidavit of two witnesses testifying to the death of a sole petitioner or of the survivor of several petitioners, is given to the Secretary, he shall submit the notice to the Tribunal or Court and if the Tribunal or Court so directs, the Secretary shall

(a) serve notice thereof on the other parties to the petition;

(b) post or cause to be posted a notice thereof on the Tribunal notice board;  
and

(c) cause notice thereof to be published in conspicuous places in the constituency, in such form as the Tribunal or Court may direct.

33. -(1) If before the hearing of an election petition, a respondent, other than the Electoral Officer, the Returning Officer or Presiding Officer, gives to

the Tribunal or Court notice in writing signed by him or his Solicitor before the Secretary that he does not intend to oppose the election petition, the Secretary shall

- (a) serve notice thereof on the other parties to the election petition; and
- (b) post or cause to be posted a notice thereof on the Tribunal notice board.

(2) The respondent shall file the notice with a copy for each other party to the election petition not less than six days before the day appointed for hearing of the election petition.

(3) A respondent who has given notice of his intention not to oppose the election petition shall not appear or act as a party against the election petition in any proceeding on it, but the giving of the notice shall not of itself cause him to cease to be a respondent.

34.-(1) Where a notice of

- (a) the petitioner's intention to apply for leave to withdraw an election petition; or
- (b) the death of the sole petitioner or the survivor of several petitioners; or
- (c) the respondent's intention not to oppose an election petition, is received after notice of hearing of the election

petition has been given, and before the hearing has begun, the Secretary shall forthwith countermand the notice of hearing.

(2) The countermand shall be given in the same manner, and, as near as may be, as the notice of hearing.

35. Where the respondent has not entered an appearance, or has not filed his reply within the prescribed time or within such time as the Tribunal or Court may have allowed, or has given notice that he does not intend to oppose the petition, then if

(a) there remains no more than one other candidate in the election who was not returned; or

(b) the election petition contains no prayer for a determination that the election was void; or

(c) there are no facts or grounds stated in the election petition or in the reply, if any, or stated in any further particulars filed in the proceedings or otherwise appearing on proof of which it ought to be determined that election was void; or

(d) the election petition is one complaining of undue return and claiming the seat or office for the

candidate who was not returned and the respondent has not raised any formal or written objections to any of the votes relied on by the petitioner, the Tribunal or Court may, if it deems fit determine the proceedings on the election petition without hearing evidence or further evidence, and in any case, the proceedings shall be continued and determined on such evidence or otherwise as the Tribunal or Court may deem necessary for the full and proper determination of the election petition.

36.- (1) The fee payable on the presentation of an election petition shall not be less than N1,000.00.

(2) A hearing fees shall be payable for the hearing at the rate of N40 per day or the hearing but no exceeding N2000 in all, but the Tribunal or Court may direct a different fee to be charged for any day of the hearing.

(3) For the purpose of sub-paragraph (2) of this paragraph, the petitioners shall make a deposit of not less than N200 at the time of presenting his petition.

(4) Subject to the provisions of this paragraph, the fees payable in connection with an election petition

shall be at the rate prescribed for civil proceedings in the Federal High Court.

(5) No fees shall be payable by the Attorney-General of the Federation (acting in person or through any other legal officer) or by a respondent who was the Commission or any of its officers appointed pursuant to the provisions of this Act.

(6) No fees shall be payable for the summoning of witnesses summoned by the Tribunal or Court at its own instance.

37.-(1) All costs, charges and expenses of and incidental to the presentation of an election petition and to the proceedings consequent thereon, with the exception of such as are otherwise provided for, shall be defrayed by the parties to the election petition in such manner and in such proportions as the Tribunal or Court may determine, regard being had to -

(a) the disallowance of any costs, charges or expenses, which may in the opinion of the Tribunal or Court have been caused by vexatious conduct, unfounded allegation or unfounded objection on the part of the petitioner or of the respondent, as the case may be; and

(b) the discouragement of any needless expenses by throwing the burden of defying the expenses on the Party by whom it has been caused; whether that Party is or is not on the whole successful.

(2) Where the Tribunal or Court declare an election to be void, it may, if satisfied that the invalidity was due either wholly or in part to culpable default of an officer responsible for the conduct of the election in the performance of his duties imposed by this Act order that the whole or part of the cost awarded to the successful petitioner be paid by that officer.

38. Money deposited as security shall, when no longer needed as security for costs, charges or expenses, be returned to the person in whose name it deposited or to the person entitled to receive it by order of the Tribunal or Court which may be made on motion after notice and proof that all just claims have been satisfied or otherwise sufficiently provided for as the Tribunal or Court may require.

39.-(1) The Tribunal or Court may, on application made by a person to whom my costs, charges or expenses is payable, order it to be paid out -of a deposit made to secure it, after notice to the party by or on whose behalf the

deposit was made, requiring him to file a statement within a specified time whether he opposes the application and the ground of his opposition. .

(2) Where a dispute arises on an application under sub-paragraph (1) of this paragraph, the Tribunal or Court shall afford every person affected by the dispute an opportunity of being heard and shall make such order there on as it may deem fit.

(3) A person shall be deemed to have been afforded the opportunity or being heard if notice of the appointed time for the inquiry into the dispute was given to him, though the person may not have been present at the making of the inquiry.

(4) A notice to be given to a person under this paragraph may be given by the Secretary handing him the notice or sending it to him by registered letter

(a) in the case of a party, at the address for service;

(b) in the case of an application for payment, at the address given in his application, so however, that the provisions of this sub-paragraph shall not preclude the giving of notice in any other manner in which notice may be

given or which may be authorized by the Tribunal or Court.

(5) Execution may be levied under an order for payment made by the Tribunal or Court under this paragraph in the same manner and to the same extent as execution may be levied under judgment for the payment of money.

40.-(1) On the hearing of an election petition, the Tribunal or Court may summon a person as a witness who appears to the Tribunal or Court to have been concerned in the election.

(2) The Tribunal or Court may examine a witness so summoned or any other person in the Tribunal or Court although the witness or person is not called and examined by a party to the election petition, and thereafter he may be cross-examined by or on behalf of the petitioner and the respondent.

(3) The expenses of a witness called by the Tribunal or Court at its own instance shall, unless the Tribunal or Court otherwise orders, be deemed to be costs of the election petition and may, if the Tribunal or Court so directs, be paid in the first instance by the Secretary in the same way as State witness expenses and recovered in such manner as the Tribunal or Court may direct.

(4) Where the Tribunal or Court summons a person as a witness under this paragraph, the provisions of the Civil Procedure Rules relating to the expenses of persons ordered to attend a hearing shall apply as if they were part of this paragraph.

(5) The Tribunal or Court shall

(a) in making and carrying into effect an order for the production and inspection of documents used in the election; and

(b) in the examination of any witness who produces or will produce a document, ensure that the way in which the vote of a particular person has been given shall not be disclosed.

41.-(1) A person called as a witness in a proceeding in the Tribunal or Court shall not be excused from answering a question relating to an offence or connected with an election on the grounds that the answer thereto may incriminate or tend to discriminate him, or on the ground of privilege.

(2) A witness who answers truly all questions which he is required by the Tribunal or Court to answer shall be entitled to receive a certificate of indemnity under the hand of the Chairman or the Tribunal or Presiding

Justice of the Court stating that the witness has so answered.

(3) An answer by a person to a question before the Tribunal or Court shall not, except in the case of a criminal proceeding for perjury in respect of the answer, be admissible in any proceeding, civil or criminal, in evidence against him.

(4) When a person has received a certificate of indemnity in relation to an election and legal proceedings are at any time brought against him for an offence against the provisions of this Act, committed by him prior to the date of the certificate at or in relation to that election, the Tribunal or Court having cognizance of the case shall, on proof of the certificate, stay the proceeding, and may, at its discretion award to that person such costs as he may have been put to in the proceeding.

42. At the hearing of an election petition complaining of an undue return and claiming the seat or office for a petitioner, the respondent may, subject to the provisions of sub-paragraph (2) of paragraph 12 of this Schedule, give evidence to prove that the election of the petitioner was undue in the same manner as if he were the person presenting the election petition complaining of the election.

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- 43.-(1) The Tribunal or Court shall have power, subject to the provisions of section 152 of this Act; and paragraph 14 of this Schedule, to enlarge time for doing any act of taking any proceedings on such terms (if any) as the justice of the case may require except otherwise provided by any other provision of this Schedule.
- (2) An enlargement of time may be ordered although the application for the enlargement is not made until after the expiration of the time appointed of allowed.
- (3) When the time for delivering a pleading of document or filing any affidavit, answer or document, or doing anything or act is or has been fixed or limited by any of the sections paragraphs or rules under or in pursuance of this Act or by a direction or an order of the Tribunal or Court, the costs of an application to extend the time, where allowed or of an order made there on shall be borne by the party making the application unless the Tribunal or Court otherwise orders.
- (4) Every application for enlargement or abridgement of time shall be supported by affidavit.
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- (5) In application for abridgement of time may be ex parte, but the Tribunal or Court may require notice of the application to be given to the other parties to the election petition.
- (6) An application for enlargement of time shall be made by motion after notice to the other party to the election petition but the Tribunal or Court may, for good cause shown by affidavit or otherwise, dispense with the notice.
- (7) A copy of an order made for enlargement or abridgement of time shall be filed or delivered together with any document filed or delivered by virtue of the order.
- 44.-(1) Where a summons, notice or document, other than a notice or document mentioned in subparagraph I of paragraph 7 of this Schedule, is required to be served on a person for a purpose connected with an election petition, it may be served by delivering it to the person or by leaving it at his last known place of abode in the constituency with any person there found who is a resident of the abode and appears to be 18 years of age or more.
- (2) After a party has given an address for service it shall be sufficient if, in lieu of serving him personally with
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a document intended for him, the document is served

(a) on the person appearing on the paper last filed on his behalf as his Solicitor wherever the person may be found or, if the person is not found at his office, on the clerk there apparently in charge; or

(b) on the person named as occupier in his address for service wherever the person may be found or, if the person is not found at the address, on

(i) the person there found apparently in charge, if such address is a place or business, or

(ii) a person other than a domestic servant, there found who is a resident of the address and appears to be 18 years of age or more.

(3) A party may change his address for service by giving notice not in his new address for service and its occupier to the Secretary and to each party to the election petition but until notice is received by the Secretary, his old address for service shall continue to be his address for service.

(4) Where service by one of the modes specified in this paragraph has proved impracticable, the Tribunal or Court may, on being satisfied, on an

application supported by an affidavit showing what has been done, that all reasonable efforts have been made to effect service -

(a) an order that service be effected in any of the ways mentioned in the provisions of the Civil Procedure Rules relating to substituted service which service shall be sufficient; or

(b) dispense with service or notice as the Tribunal or Court deems fit.

45. Two or more candidates may be made respondents to the same petition and their case may for the sake of convenience be heard at same time but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition against each of the respondents

46. Where two or more petitions are presented in relation to the same election or return, all the petitions shall be consolidated, considered and be dealt with as one petition unless the Tribunal or Court shall otherwise direct in order to do justice or an objection in line against one or more of the petitions has been upheld by the Tribunal or Court.

47.-(1) Where an election petition complains of the conduct of an Electoral Officer, a Presiding Officer,

Returning Officer or any other official of the Commission he shall for all purposes be deemed to be a respondent and joined in the election petition as a necessary party, but an Electoral Officer, a Presiding Officer, Returning Officer or any other official of the Commission shall not be at liberty to decline from opposing the petition except with the written consent of the Attorney-General of the Federation.

(2) If consent is withheld by the Attorney-General under, sub-paragraph (1) of this Paragraph the Government of the Federation shall indemnify the Electoral Officer, Presiding Officer, Returning Officer or such other official of the commission against any costs which may be awarded against him by the Tribunal or Court in respect of the election petition.

(3) Where the Commission an Electoral Officer, Presiding Officer, Returning Officer or any other official of the Commission has been joined as a respondent in an election petition, a Legal Officer of the Commission or a Legal Practitioner engaged by the Commission or the Attorney-General of the State cancelled (acting in person or through any of his legal Officers) or the Attorney-General of the Federation (acting in person or through any of his legal Officers) shall represent the

Commission Electoral Officer,  
Presiding Officer, Returning Officer or  
other official of the Commission at the  
Tribunal or Court.

(4) A private Legal Practitioner  
engaged by the Commission under sub-  
paragraph

(3) of this paragraph shall be entitled to  
be paid his professional fees and a  
Legal Officer so engaged shall be paid  
such honorarium as may be approved  
by the Commission.

48. In the absence of express  
provision in this Schedule, a party filing  
any document or process paper in  
connection with any step being taken in  
the proceedings of an election petition  
shall, unless the Secretary otherwise  
directs, leave with the Secretary copies  
of the document or process paper for  
service on each of the parties to the  
election petition in addition to three  
copies which the Secretary may  
preserve.

49.-(1) Non-compliance with any of the  
provisions of this Schedule or with a  
rule of practice fix the time being  
operative except otherwise stated or  
implied, shall not render any proceeding

void, unless the Tribunal or Court so directs. but the proceeding may be set aside wholly or in part as irregular, or amended, or otherwise dealt with in such manner and on such terms as the Tribunal or Court may deem fit and just.

(2) An application to set aside an election petition or a proceeding resulting there from for irregularity or for being a nullity, shall not be allowed unless made within a reasonable time and when the petitioner making the application has not taken any fresh step in the proceedings after knowledge of the defect.

(3) An application to set aside an election petition or a proceeding claiming thereto shall show clearly the

legal grounds on which the application is based.

(4) An election petition shall not be defeated by an objection as to form if it is possible at the time the objection is raised to remedy the defect either by way of amendment or as may be directed by the Tribunal or Court.

(5) An objection challenging the regularity or competence of an election petition shall be heard and determined before any further steps in the

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proceedings if the objection is brought immediately the defect on the face of the election petition is noticed.

50. Subject to the express provisions of this Act, the practice and procedure of the Tribunal or the Court in relation to an election petition shall be as nearly as possible, similar to the practice and procedure of the Federal High Court in the, exercise of its civil jurisdiction, and the Civil Procedure Rules shall apply with such modifications as may be necessary to render them applicable having regard to the provisions of this Act, as if the petitioner and the respondent were respectively the plaintiff and the defendant in an ordinary civil action.

51. Subject to the provisions of this Act, an appeal to the Court of Appeal or to the Supreme Court shall be determined in accordance with the practice and procedure relating to appeals in the Court of Appeal or of the Supreme Court as the case may be regard being had to the need for urgency on electoral matters.

