



**REPORT OF THE SENATE
COMMITTEE ON THE
INDEPENDENT NATIONAL
ELECTORAL COMMISSION
(INEC) ON A BILL FOR AN ACT
TO AMEND THE ELECTORAL
ACT NO. 6, 2010 AND FOR
OTHER RELATED MATTERS
(S.B. 231 AND S.B. 234)**

1.0. INTRODUCTION

1.1. This is a report of the Senate Committee on the Independent National Electoral Commission (INEC) ("the Committee") on two Orders of Referral of this 8th Senate of the Federal Republic of Nigeria. The referrals are in respect of the:

- (a) ***Electoral Act, No. 6, 2010 (Amendment) Bill, 2016 (SB. 231)***, sponsored by **Distinguished Senator Tijani Y. Kaura**; and
- (b) ***Independent National Electoral Commission Bill, 2016 (SB. 234)***, sponsored by **Distinguished Senator Ubali Shitu**.

1.2. The Senate referred the two Bills to the Committee for further legislative action and to report back with recommendations after taking the Second Reading of each Bill at its Plenary Sitting of **March 17, 2016**.

2.0. MEMBERSHIP OF THE COMMITTEE

2.1. The membership of the Committee is as follows:

S/N	NAME	DESIGNATION
1.	Senator Abubakar Kyari	Chairman
2.	Senator Olusola Adeyeye	Vice Chairman
3.	Senator James Manager	Member
4.	Senator Hope Uzodinma	Member
5.	Senator Gilbert Nnaji	Member

6.	Senator Abdullahi Gumel	Member
7.	Senator Mallam Ali Wakili, <i>mni</i>	Member
8.	Senator Shehu Sani	Member
9.	Senator Ovie Omo-Agege	Member

3.0. **BACKGROUND**

3.1. Mr. President; Distinguished Colleagues, the Distinguished Senators Tijani Kaura and Ubali Shitu sponsored ***Senate Bills (SBs.) 231*** and ***234*** respectively to amend the Electoral Act No. 6, 2010 (as amended) (the "Electoral Act") to cure certain mischiefs identified by them in our electoral system. This commendable initiative by the two Distinguished Senators touches squarely on the Senate's Legislative Agenda on comprehensive Electoral Reform.

3.2. Ultimately, the objective of the Senate's Agenda on Electoral Reform is to update, clarify and strengthen our electoral laws so that they can respond adequately to current and evolving realities and challenges in the national socio-political space. Comprehensive Electoral Reform will help INEC to deliver greater efficiencies and lead to transparent, credible and generally acceptable electoral outcomes. This is the bedrock of democratic stability and sustenance.

3.3. Proper Electoral Reform often creates huge positive multiplier impacts in terms of good public governance. It requires a broad legislative action founded on a detailed,

careful study, review and amendment of relevant laws. In our case, the key laws to review and amend are the Electoral Act and the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the "Constitution").

3.4. In terms of purpose, Electoral Reform will enable us build an enduring national electoral system that has the requisite capacity and integrity to deliver free, fair and credible elections in line with global best practices. It requires an extraordinary spirit of courage, patriotism, and selflessness. To achieve meaningful Electoral Reform, we must put the Nation first. This Committee is honoured to serve this Senate in these regards.

4.0. **BILLS REFERRED TO COMMITTEE**

4.1. Mr. President; Distinguished Colleagues, may I at this point comment summarily on the Bills referred to the Committee.

4.2. Broadly, **SB. 231** is a proposal to amend a paragraph of **section 49** of the Electoral Act, with regards to the processes of voter accreditation using the popular Smart Card Readers (SCRs) introduced by INEC in the 2015 General Elections. On the other hand, **SB. 234** is a Bill to insert four (4) new subsections into, and amend one (1) subsection of the Electoral Act, with regards to –

- (a) criminal penalty for a member of a political party who misrepresents his status for the purpose of being engaged in INEC;
- (b) replacement of a candidate at an election who dies between commencement of polls and declaration of the result of the election;
- (c) proceeding with an election where there is only one valid nomination;
- (d) criminal penalty for obtaining registration of a political party fraudulently; and
- (e) granting INEC power to overrule manipulation of results of primaries by party officials.

4.3. In all, both Bills were intended to make six (6) amendments to the Electoral Act.

5.0. METHODOLOGY

5.1. Mr. President; Distinguished Colleagues, in carrying out this very important assignment, the Committee held several meetings to extensively review and enrich the referred Bills. These meetings were avenues to review electoral processes, specific laws and events with electoral colorations. The Committee considered past and contemporary experiences, challenges, tools, and methods in relation to the management of elections by national election bodies. We

examined successful legislative processes in some national jurisdictions with respect to electoral reforms and legal frameworks. During these meetings, Distinguished Senators made inputs that are consistent with the overall objective of reforming, elevating and increasing the efficiency of our national electoral system in order for it to earn greater public confidence.

5.2. Arising from these meetings and guided by a compelling need to elevate electoral standards in our Nation, the Committee decided to adopt a holistic approach to its legislative action on the referred Bills, by –

- (a) organising a ***Summit on Elections*** for a broad-based public consultation on Electoral Reform ahead of the 2019 General Elections by obtaining expert and non-expert views and advice from stakeholders and members of the public that will feed into the generally desired amendment of the Electoral Act and related laws and, very importantly, reduce to the barest minimum chances of ambiguity and conflicts in our electoral jurisprudence and outcomes of electoral litigations by evolving a more generally acceptable electoral law;

- (b) collating inputs and memoranda arising from the ***Summit on Elections***;
- (c) holding further meetings of the Committee to, among other issues, review the Summit; and
- (d) consulting a Technical Team of experts, academics and practitioners across the country who have robust qualifications and experiences in Law, Politics, Political Science, Election Management Systems, Data Management and Computing to review the Committee's work;
- (e) holding further meetings of the Committee to, among other issues, review recommendations made by the Technical Team; and
- (f) consulting legal draftsmen on a harmonised Bill for an Act of the National Assembly to amend the Electoral Act.

6.0. THE SUMMIT ON ELECTIONS

6.1. Mr. President; Distinguished Colleagues, consistent with the methodology we adopted, the Committee organised a ***Summit on Elections*** on the theme, ***Legislating for Electoral Reform*** on **Monday, June 6, 2016**. Clearly

committed to the Senate's Legislative Agenda on Electoral Reform, the **President of the Senate, His Excellency Senator (Dr.) Bukola Saraki** personally attended and opened the Summit. The **Senate President** was joined by the **Deputy Senate President, His Excellency Senator (Dr.) Ike Ikweremadu** and the **Speaker of the House of Representatives, the Rt. Hon. Yakubu Dogara**, ably represented by the Chairperson, House Committee on Electoral Matters. Together, they enriched the Committee's perspectives on Electoral Reform.

6.2. The Summit provided an important platform for leaders, practitioners, professionals, stakeholders, and the general public to present memoranda and oral submissions on the amendment of the Electoral Act and chart a roadmap for comprehensive Electoral Reform and the management of elections in Nigeria.

6.3. The Committee received written and oral presentations and memoranda from these organisations and individuals:

S/N	ORGANISATION/INDIVIDUAL
1.	President of the Court of Appeal, represented by Hon. Justice Monica Dogban-Mensem
2.	Prof. Mahmood Yakubu, Chairman, Independent National Electoral Commission (INEC)
3.	Mr. Clement Nwankwo, Exec. Dir., Policy & Legal Advocacy Centre

4.	Barr. Festus Okoye, Executive Director, Human Rights Monitor
5.	Oliver Blake, Team Leader, Department of International Development (DFID), Nigeria
6.	Mr. Austin Aigbe, International Republic Institute
7.	Dr. Nwachukwu Orji, Research Fellow, Institute of Development Studies, University of Nigeria, Nsukka.
8.	The Director General, Department of State Security, represented by Mrs. Betty Adoki.
9.	Inspector General of Police, represented by ACP Philip A. Ogbaudu
10.	United Progressive Party (UPP), represented by Chief Ogbuefi Dike (National Publicity Secretary)
11.	Mr. Jideani Arinze Stephen, representing Civil Liberties Organisation, Anambra State Branch
12.	Mr. Abiodun Ajojola, representing Election Monitor
13.	National Youth Service Corps (NYSC)
14.	Mr. Olusola Suleiman Bashiri, Assistant Controller-General, Federal Fire Service
15.	Mr. Nuhu Ibrahim Zuru, Assistant Controller-General, Nigerian Prison Service
16.	Mr. Ariyo Daria Toye, Director, Adopt a Goal for Development Initiative
17.	Ester Uzoma, representing Proactive Gender Initiative
18.	Mr. Usugo Usugoh
19.	Mr. Adeleke Damian, Programme Officer, Civil Society Coalition on Education for All
20.	Mr. Alfa Mohammed, National Publicity Secretary, Social Democratic Party (SDP)
21.	Mrs. Regina Oke, President, Mechanised Female Farmers of Nigeria

7.0. **SUMMIT OUTCOMES AND REVIEW**

7.1. Mr. President; Distinguished Colleagues, the Summit was incisive in engagement and enriching in outcome. The general consensus is that Nigerians expect the National Assembly to urgently pass an updated electoral law ahead of the 2019 General Elections. They expect a clear departure from the immediate past whereby the **Electoral (Amendment) Act, 2015** was assented to by **President Goodluck Jonathan** on **March 26, 2015** (after the original dates for the 2015 General Elections) and only made public almost a year thereafter! This time just has to be different.

7.2. In terms of specific outcomes, these are some of the major issues canvassed and suggestions made at the Summit, including items borne out of the Committee's further meetings and reviews:

(a) **Use of Smart Card Readers and other Technological Devices for Elections**

Mr. President; Distinguished Colleagues, there was a consensus on the necessity of legislative action on INEC's use of Smart Card Readers (SCRs) and other innovative election management devices and technologies in our elections. A plethora of judicial pronouncements up to the Supreme Court of Nigeria

have particularly made this issue a bounden duty on the National Assembly. In the case of **WIKE v. PETERSIDE** (SC.1002/2015), the Supreme Court had this to say:

"It has to be appreciated that from the outset that Smart Card Reader Machine is an innovation in our electoral process. ... INEC's motive, which became public in introducing the technologically based device baring any technical mishap, breakdown or malfunction, was to ensure a credible, transparent, free and fair election for the country."

By this, the Supreme Court clearly recognized and affirmed INEC's purpose for introducing Smart Card Readers in our national election. That purpose is the guarantee of "**credible, transparent, free and fair election**[s]". In spite of this patriotic purpose, the apex Court is still of the view that the National Assembly's inaction in not amending **section 49** of the Electoral Act prior to the 2015 General Elections to specifically accommodate the use and significance of the Smart Card Reader device was unhelpful for this innovation by INEC. This essentially explains the unanimous call for an urgent amendment of **section**

49 of the Electoral Act to accommodate the Card Reader and other technological devices for managing elections in our modern world.

(b) Where a Candidate Dies Before Announcement of Result

The sad demise of His Excellency Prince Abubakar Audu, just before the announcement of the result of the last Governorship Election in Kogi State, brought to focus a major *lacuna* in the law that requires quick legislative action. To this end, it was discussed that **section 36** of the Electoral Act should be amended with respect to the death of a nominated candidate who dies before the declaration of the result of an election.

(c) Direct Primaries System

Nigerians want true internal democracy in our political parties. They want a more open democratic party system that actively engages the participation of party members in party primaries. They want direct primaries where party members freely elect their candidates in order to limit systemic overbearing control of a few persons on the outcomes of primaries. The overwhelming view is that some form of conclaves of political party operatives, however configured, all-

knowing or benevolent, should not determine outcomes of party primaries and the fate of aspiring political leaders.

Mr. President; Distinguished Colleagues, as we all know, flaws in our party primaries system have led to instances where elected public leaders are removed by Tribunals or Courts and replaced by candidates who were adjudged to be the winners of party primaries but were not voted for by the public.

Also, it is important to note that the powers of the court to enquire into the conduct of primaries is limited. In the case of **SHINKAFI v. YARI**, the Supreme Court held that:

"It is settled law that the issue of nomination of a candidate by a political party for an election is within the exclusive preserve of the political parties and that the courts have no jurisdiction to interfere therein. ... [O]nly aspirants in the primary election conducted by the political party can question the result"

The near impossibility of even judicial inquiry into party primaries is itself the compelling need for the establishment of an open, transparent and all-inclusive process that guarantees fair and credible outcomes as adjudged by majority of party members, not a select, privileged few. That way, the need to even approach the Courts at all will be largely diminished. It was to these ends that a complete amendment of **section 87** of the Electoral Act was advised.

(d) **Qualification of Persons to Contest Elections**

It was submitted that the Constitution provides very clear qualification criteria to be satisfied by political aspirants and candidates. Explicit disqualification criteria are also stated in the Constitution. However, extraneous conditions under the pretext of 'qualifications criteria' are often applied by political parties, the Tribunals and Courts and, sometimes, controlled State apparatuses to 'disqualify' aspirants, candidates or winners of elections, thus subordinating the Constitution – the very **grund norm** of the Land – to party rules, inferior statutes and the whims and caprices of coercive State machinery. This, it is argued, is an anathema in our constitutional democracy and must stop.

Therefore, it was suggested that **section 138** of the Electoral Act requires amendment to clarify and restrict the qualification or disqualification of a person for an elective office provided under the provisions of **sections 65, 106, 131** and **177** of the Constitution in terms of 'qualification' and sections **66, 107, 137** and **187** of the Constitution in terms of 'disqualification'.

(e) Independent Candidacy

It was submitted that a citizen's personal character, qualifications, experiences, patriotism, and public support are the true measurements of public service readiness; not political party membership, necessarily. It was further noted that the tenets of freedom and liberty impose an obligation on truly democratic nations not to limit political participation of citizens to partisanship by foreclosing independent candidacy. That the fundamental essence of independent candidacy is to open the political space beyond partisan interests to individual citizens who have leadership strengths to deliver for the good of the Nation but not necessarily within political parties. **Sections 65 (2)(b), 106 (d), 131 (c)** and **177(c)** with **142(1)** and **122** of the Constitution require amendments in this regard.

Mr. President; Distinguished Colleagues, I shall return to issues requiring constitutional amendments later in this Report. Though identified by the Committee, they are nonetheless outside our mandate.

(f) Avoiding Rerun Elections - Issuance of Certificates of Return to First Runner Up

It was suggested that the incessant conduct of fresh or rerun elections by INEC arising from cases where an elected person is declared by a Tribunal or Court to be unqualified for any reason is an avoidable waste of public resources. That the fundamental question to answer with patriotism is, whether the Nation must continue to spend its limited resources on costly rerun elections whenever one unqualified contestant out of several qualified ones is detected by the law? Should we continue to waste taxpayers' monies and other public resources on account of the failure of political parties and their candidates to satisfy qualification criteria that are clearly spelt out in the Constitution?

Mr. President; Distinguished Colleagues, the consensus is that if, as national leaders, we answer these

questions conscientiously, we would urgently amend **section 140** of the Electoral Act to mandate a Tribunal or Court of competent jurisdiction to direct INEC to issue a certificate of return to a runner up in an election (subject to the runner up remaining, at the time of the court or tribunal's decision, a member of the political party on which he contested the election), where an initially declared winner of the election is removed from office by the Tribunal or Court on the ground that the initial winner was not **qualified** to contest the election.

(g) **Avoiding Rerun Elections - Inspection of Sample Ballots by Parties**

Certainty, it was submitted, is required in all sustainable electoral processes. That election of serving political leaders are often nullified by Tribunals or Courts for no fault of some winners and on grounds of unexpected technicalities brought forward for adjudication by contestants who, usually, do not make significant showing in the elections. A recurring example is the exclusion or misrepresentation of the identities (names/logos) of political parties on ballots. Though this may be an error by INEC, it is election winners who suffer. It was therefore suggested that **sections 44** of the Electoral Act should be amended to mandate

political parties to inspect samples or dummy designs of ballot papers intended to be used by INEC for elections. This is to enable the parties to certify the sample ballots for correctness of their identities. It was advised that this will reduce the incidents of fresh or rerun elections at huge costs to the Government, political parties and candidates.

(h) Timeframe to Conduct Rerun Election

It was submitted that the number of current vacant legislative seats in the National Assembly and States Houses of Assembly speak of a major *lacuna* in the law with respect to INEC's conduct of fresh or rerun elections. INEC's inaction on these crucial elections is a major concern to Nigerians. Given INEC's inaction on many pending National Assembly and Houses of Assembly rerun elections, this has been identified as a dangerous mischief and a possible systemic attack against the Legislative Arm of Government which must not be allowed in our democracy. It was therefore suggested that **section 140** of the Electoral Act should be amended to provide a definite timeframe for INEC to conduct fresh or rerun elections ordered by a Tribunal or Court, as circumstances may warrant.

(i) **Unbundling of INEC**

It was discussed that INEC as an institution is saddled with unduly 'burdensome responsibilities' outside its core constitutional mandate of conducting elections. Therefore, it has become necessary to enact new laws as well as amend the Electoral Act and the Constitution to streamline the functions of INEC to the conduct of elections. To this end, it is now necessary to enact a new law establishing an **Electoral Offences Commission** to investigate and prosecute electoral offences. For more effective **Voter Mobilisation**, it has also become necessary to amend **sections 3 and 4** of the National Orientation Agency Act to specifically mandate the **National Orientation Agency (NOA)** to undertake the additional function of mobilising voters for elections. It needs to be emphasised that **Voter Mobilisation** is a separate and distinct function from **Civic and Voter Education** which is inextricably tied to INEC being a sensitive electoral function relating directly to electoral materials which are within the exclusive purview of INEC.

Mr. President; Distinguished Colleagues, it needs to be emphasised that the proposed **Electoral Offences Commission** will not, of necessity, be a new cost

center. As INEC is divested of the functions to be assigned to this body so will INEC be divested of funds hitherto meant for such functions. In other words, budget heads for these functions under INEC will be transferred to this Commission to operate. To this end, may I inform this Noble Senate that work is already at an advanced stage on the Bill for the establishment of the **Electoral Offences Commission**. This Senate must send a powerful message of reassurance to the Nigerian public and the international community that we are irrevocably committed to electoral democracy at its finest. Persons who sponsor or live by electoral impunity, violence or manipulation must know that this is a proactive Senate that is determined to clean our electoral system and put them out of business by the force of law. We owe this as solemn duty to our Nation.

(j) Extension of Timelines for Electoral Matters

The issue of insufficient time for the determination of electoral matters was also canvassed. This debate touches on the question of substantial justice against injustice (or perceptions thereof) with respect to the principle of *sui generis* in our electoral jurisprudence. There may not be a convergence of thought in this debate, but the National Assembly has a duty to deal

with even perceptions of injustices while striking a careful balance to preserve speedy dispensation of justice in electoral matters. To this end, amendment of **section 285** of the Constitution was suggested to extend the time for the determination of election petitions and appeals arising from them.

(k) **AGF's Power of *Nolle Prosequi* Inapplicable to Electoral Offences**

It was noted that electoral offences are quasi-treasonable because the offenders often tend to scuttle the sovereign electoral will of the people with respect to the governance of parts of the Nation State. Therefore, the prosecutorial powers of the Attorney-General of the Federation (AGF) ought to be preserved and exercised against offenders in full measure, as deterrence for future offenders. This is the basis for the suggestion for an amendment to **sections 174(c)** of the Constitution for the *nolle prosequi* power vested in the AGF not to be exerciseable in respect of electoral offences.

(l) **Court Sanctions for Breach of Tribunal Orders**

It was suggested that **section 151** of the Electoral Act should be amended to clearly provide for Tribunal or Court sanctions (including committal to prison) against

INEC's officials who disobey Tribunal or Court orders, particularly in respect of inspection of electoral documents.

(m) Clarity on Over-voting

At the moment, under **section 53** of the Electoral Act, over-voting at an election is defined only with respect to total number of registered voters. An election where the total votes presumably cast are more than the total number of accredited voters is deemed to be a valid election. This is absurd because the total number of valid votes cast should not exceed the number of accredited voters under any reasonable circumstance. This is the basis for the call for an amendment of **section 53** of the Electoral Act to also make 'total number of accredited voters' a determining factor in the validity of votes in an election.

(n) Compliance with INEC's Election Manuals

It was noted that lawful regulations are made to guide proper human conduct and it is therefore fundamentally important that INEC complies with its own rules, guidelines, regulations, procedures or directives for the conduct of elections. This should apply with equal force to political parties, election contestants and party

agents. This is the basis for the suggestion that **sections 78** and **138** of the Electoral Act should be amended to mandate compliance with manuals, guidelines, regulations or directives published and issued by INEC for the conduct of elections.

(o) **Secured Transmission of Polling Unit Results**

It was discussed that for the integrity of the election process, it is necessary to have requisite checks and balances in INEC's votes reporting system. It is for this reason that it was suggested that **sections 49** and **63** of the Electoral Act should be amended to mandate secured electronic transmission of accreditation data, votes and election results from polling units to INEC's collation centers and central database and mandate each level of collation to accept only accreditation data, votes and results that are consistent with those transmitted from the units or reinstate them if manipulated.

Further, it was observed, that audio-visual recording of the accreditation of voters, counting of votes and collation and announcement of results at polling units will increase transparency and provide compelling corroborative evidence of the truth or falsity of election

results. This is to check instances where ballot boxes are snatched and results are written and announced in places other than at designated places. The amendment is to also provide a timeframe for INEC to shut down its central database after an election and introduce criminal penalties for failure to comply with the proposed amendments.

(p) **Early Submission of Candidates to INEC**

For adequate preparation for General Elections by INEC, political parties and candidates, it was suggested that **section 31** of the Electoral Act should be amended to mandate political parties to submit the lists of their nominees for elective offices to INEC not later than 150 days before the date of General Elections. There was however a reasoned counter view that given the peculiarities of the Nigerian political environment, such a scenario could unduly expose candidates for too long to possible dangers and avoidable costs before elections are conducted.

7.3. Furthermore, participants at the Summit urged the National Assembly to consider, and accordingly amend the Electoral Act and/or the Constitution in respect of voting by Nigerians in the Diaspora, prisoners, security personnel engaged during elections and Nigerians engaged as electoral officers

during elections; determination of election petitions on the merit only; and a code of conduct for election observers.

8.0. **OBSERVATION**

8.1. Mr. President; Distinguished Colleagues, without question, Nigerians overwhelmingly support bold, comprehensive legislative actions on Electoral Reform. They demand that this 8th Senate lead the way on Electoral Reform and come up with a modern and better electoral law altogether. One that will deliver credible electoral outcomes through processes that are sustainable and consistent with global best practices. One whose spirit and letters will promote the emergence of true, credible and popular Nigerian leaders through free, fair and credible elections.

9.0. **FINDINGS**

9.1. Mr. President; Distinguished Colleagues, the gravamen of **SB. 231** is to solidly ground the Smart Card Reader in the Electoral Act as an approved election tool for the purpose of accreditation of voters. On the other hand, **SB. 234** is a response to five (5) specific issues, as highlighted in **Paragraph 3.6** above.

9.2. Weighed against the totality of the several outcomes of, and litany of submissions and suggestions made at the Summit

on Election, it is quite clear that there is a need to broaden the scope of **SB. 231** and **SB. 234** with regards to the Senate's Legislative Agenda for Electoral Reform and expectations of Nigerians. Herein lies the very task of the Committee.

10.0. **RECOMMENDATIONS**

10.1 Mr. President; Distinguished Colleagues, the Committee received proposed amendments to **SIX (6)** distinct sections of the Electoral Act in **SB. 231** and **SB. 234** taken together. Upon a thorough distillation of the major issues that are germane to comprehensive Electoral Reform and a careful consideration and consolidation of **SB. 231** with **SB. 234**, the Committee has come up with a **SINGLE** enriched Bill with proposed amendments to **TWENTY-FIVE (25)** sections of the Electoral Act, including new sections. With humility and for the greater good of our Republic, the Committee recommends all the amendments contained in the draft Bill accompanying this Report for passage by the Senate.

10.2 As I move to conclude, may I humbly highlight some specific recommendations in the Bill (as redrafted):

- (a) **Clause 2 (section 2 of SB. 234)** amends **section 8** of the Electoral Act by inserting a new **subsection "(5)"**

which prescribes imprisonment of at least five (5) years or a fine of at least N5,000,000, or both for a member of a political party who is guilty of misrepresenting himself in order to secure an appointment with INEC.

- (b) **Clause 6 (section 3 of SB. 234)** amends **section 36** of the Electoral Act by inserting a new **subsection "(3)"** which provides for the substitution of a candidate of a political party who dies before the declaration of the result of an election with the first runner up in the party's primaries (which was won by the deceased candidate).
- (c) **Clause 7 (section 4 of SB. 234)** on the amendment of **section 38** of the Electoral Act was deleted, as it is in conflict with **sections 132(3)** and **178(3)** of the Constitution.
- (d) **Clause 10 (section 2 of SB. 231)** amends **section 49** of the Electoral Act with regards to the use Smart Card Readers and other technological devices for elections by INEC.
- (e) **Clause 17 (section 5 of SB. 234)** amends **subsection 78(5)** of the Electoral Act with regards to provision of

false and misleading information by an Association to INEC for the purpose of registration as a political party.

- (f) **Clause 18 (section 6 of SB. 234)** amends **section 87** of the Electoral Act by substituting for the existing section, a new **section 87** altogether.

10.3 Mr. President; Distinguished Colleagues, let me say at once that this Bill has much more. It is comprehensive and detailed.

11.0. **REFERRALS TO CONSTITUTION REVIEW COMMITTEE AND OTHER ISSUES**

11.1. Mr. President; Distinguished Colleagues, as indicated in **Paragraph 6.2 (e)** above, some of the issues ventilated by Nigerians at the **Summit on Election** and reviewed by the Committee require constitutional reviews/amendments. In that regard, the Committee recommends that this Senate refers the matters stated separately in **Appendix A** to the Constitution Review Committee for consideration and further action.

11.2. On Diaspora Voting and voting by prisoners, it is the Committee's view that there should be further study on these matters in view of the logistical challenges

envisaged. The question of voting by electoral officials and security personnel during elections also requires further study, particularly given the statutory demands of neutrality imposed on election officials under **section 28** of the Electoral Act.

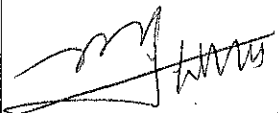
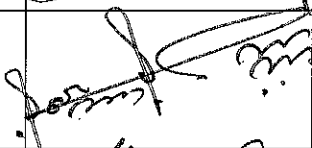
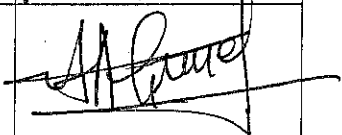
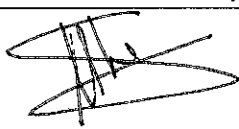
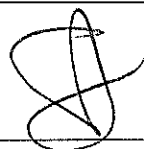
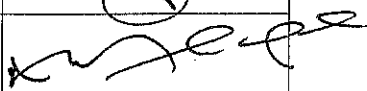
12.0. CONCLUSION

12.1. Finally, we wish to use this opportunity to thank the President of the Senate and our Distinguished Colleagues for the opportunity to serve in this capacity. We humbly recommend the passage of this Bill to the Senate. It will strengthen our democracy.



.....
Senator Abubakar Kyari
Committee Chairman

Signature page

S/N	NAME	DESIGNATION	SIGNATURE
1.	Senator Abubakar Kyari	Chairman	
2.	Senator Olusola Adeyeye	Vice Chairman	
3.	Senator James Manager	Member	
4.	Senator Hope Uzodinma	Member	
5.	Senator Gilbert Nnaji	Member	
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7.	Senator Malam Ali Wakili, <i>mni</i>	Member	
8.	Senator Shehu Sani	Member	
9.	Senator Ovie Omo-Agege	Member	


Philip Fayam
Committee Clerk

Appendix A:

MATTERS REFERRED TO THE SENATE CONSTITUTIONAL REVIEW COMMITTEE

- (a) Review of **section 294(1)** of the Constitution for accelerated hearing of pre-election matters.
- (b) Review of sections **65 (2)(b), 106 (d), 131 (c)** and **177 (c)** with **142(1)** and **122** of the Constitution, with respect to independent candidacy.
- (c) Review of **section 285** of the Constitution on timelines for the determination of election petitions and appeals.
- (d) Review **sections 174(c)** of the Constitution for the AGF's power of *nolle prosequi* not to be exerciseable in respect of electoral offences.
- (e) Review of **subsection 134(4)** and **(5)** of the Constitution with respect to the number of days (presently 7 days) within which INEC is to conduct a rerun presidential election if a winner did not emerge under **subsection 134(2)** of the Constitution, taking into account logistical challenges to organise a fresh election within 7 days, as currently provided in the Constitution.
- (f) Review of **sections 15(c), (d), and (f), 225, 226 and 228** of the Constitution to support the unbundling of INEC with regards to regulation of political parties.

REPORT OF THE SENATE COMMITTEE ON THE INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) ON A BILL FOR AN ACT TO AMEND THE ELECTORAL ACT NO. 6, 2010 AND FOR OTHER RELATED MATTERS (S.B. 231 AND S.B. 234)

CLAUSES	PROVISIONS OF THE PRINCIPAL ACT	PROVISIONS OF BILLS	COMMITTEE'S RECOMMENDATION	COMMITTEE'S REMARKS/ JUSTIFICATIONS
		LONG TITLE: SB. 231: A Bill for an Act to Strengthen the Independent National Electoral Commission by giving it more Powers, and Providing for the Substitution of Candidates after the Conduct of Primary Election in the event of Death; and for Related Matters SB. 234: A Bill for an Act to Amend the Electoral Act No. 6, 2010 and for Other Matters Connected Therewith	A Bill for an Act to amend the Electoral Act No. 6, 2010 and for Other Related Matters.	Justification: The consolidated Bill (SB. 231 and SB 234, as redrafted) seeks to amend the Electoral Act No. 6, 2010 and will overall strengthen the capacity of INEC ("the Commission") to conduct free, fair and credible elections.

		ENACTED by the National Assembly of the Federal Republic of Nigeria as Follows -	Retained	
1.		1. (SB. 234) The Electoral Act No. 6 of 2010 (in this Bill, referred to as "the Principal Act") is further amended as set out in this Bill.	Retained	
2.		2. (SB. 234). Section 8 of the Principal Act is amended by inserting a new subsection "(5)" - "(5) A person, who being a member of a political party misrepresents himself as such in order to secure an appointment with the Commission in any capacity, commits an offence and shall be liable on conviction to imprisonment for a term not below five (5) years without an option of fine".	Section 8 of the Principal Act is amended by inserting after subsection (4), a new subsection "(5)", as follows: <i>"(5) A person, who being a member of a political party, misrepresents himself by not disclosing his membership, affiliation, or connection to any political party in order to secure an appointment with the Commission in any capacity, commits an offence and shall be liable, on conviction, to imprisonment for at least five (5) years or a fine of at least N5,000,000, or both."</i>	Justification: a. This new insertion is to deter political party members from fraudulently gaining access into the Commission as staff or appointee in pursuit of partisan interests. b. It imposes a duty on persons seeking to be engaged in the Commission in any capacity to make full disclosure of their political interests or affiliations (if any) to the Commission.

3.	9 (5) The registration of voters, updating and revision of the register of voters under this section shall stop not later than 30 days before any election covered by this Act.		Section 9 of the Principal Act is amended by – (a) inserting, after subsection (1), a new subsection “(1A)” – “(1A) The Commission shall keep the Register of Voters as the National Register of Voters in its National Headquarter and other locations as the Commission may determine from time to time: PROVIDED that the Commission shall keep the Register of Voters in – (a) electronic format in its central database; and (b) manual, printed, paper-based record or hard copy format.”; and (b) in subsection (5) in line 2, by substituting for the figure “30”, the figure “60”.	Justification: a. The amendment in subsection (1A) grounds the electronic format of the Register of Voters in law. b. The amendment in subsection (5) gives the Commission enough time to concentrate on other issues relating to a general election – having updated and revised the register of voters 60 days before the election.
4.	15. The Commission shall cause a voters' register for each State to be printed, and any person or political party may obtain from		Section 15 of the Principal Act is amended by inserting after the word “printed” in line 1, the expression “or reproduced, copied, duplicated or saved in an electronic format”.	Justification: This amendment grounds application for certified electronic copies of the register in law because it takes certification beyond “printed” copies.

	the Commission, on payment of such fees as may be determined by the Commission, a certified copy of any voters' register for the State or for a Local Government or Area Council or registration area within it.			
5.	19. (1) Subject to the provisions of section 9(5) 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 Council or ward shall be displayed for		Section 19 of the Principal Act is amended by: (a) substituting for subsection (1), a new subsection "(1)", as follows: <i>"(1) Subject to the provisions of section 9(5) of this Act, the Commission shall, not later than 30 days to a general election, appoint a period of 7 days during which a copy of the voters' register for each Local Government, Area Council or Ward shall be displayed or published for public scrutiny at every Registration Area and on its official website or any website established by the Commission for that purpose."</i>	Justification: This insertion gives registered voters who may be absent from their areas of registration but who intend to vote at an election, to check online for their names on the voters' register, from wherever they may be.

	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.		(b) inserting, after subsection (1), a new subsection "(1A)" - <i>"(1A) Upon displaying or publishing the voters register in accordance with this section, the Commission shall accept and consider objections and complaints in relation to the names omitted or included in the voters' register or in relation to any necessary correction, within 14 days of publishing the voters register in accordance with this section."</i>; and (b) inserting after subsection (3), a new subsection "(4)", as follows: <i>"(4) Failure to display or publish the voters' register as provided under subsection (1) of this section shall constitute an offence for which any official or staff of the Commission responsible for such default shall be guilty and liable, on conviction, to imprisonment for a term of 6 months or a fine of N100,000."</i>	
6.		3. (SB. 234). Section 36 of the Principal Act is amended by inserting new subsection "(3)" - "(3) where a nominated candidate	Section 36 of the Principal Act is amended by: (a) deleting the words "or the Resident Electoral Commissioner" in line 2/3 of subsection (1); and	Justification: This insertion imposes greater responsibility on officials of the Commission to ensure the integrity of the voters' register before an election. Justification: a. The deletion of the words "or the Resident Electoral Commissioner" in subsection (1) removes ambiguity on who the duty lies to

		dies in the circumstances stated under sub-section 1 of this section, the next person, from the same political where the deceased emerged, with the highest number of legal votes in the primary election shall be submitted to the Commission to replace the deceased, and the Commission shall accept such replacement as if the deceased is alive."	(b) inserting after subsection (2), a new subsection "(3)", as follows: <i>"(3) If after the commencement of poll and before the announcement of the final result and declaration of a winner, a nominated candidate dies, the Chief National Electoral Commissioner shall, being satisfied of the fact of the death, proceed with the election after allowing the Political Party whose candidate died to substitute the late candidate with the person who scored the next highest number of lawful votes in the primaries, which was won by the deceased candidate, as if the substituted person was the candidate originally nominated by that party."</i>	act in the circumstances stated. b. The new insertion [section (3)] fills a <i>lacuna</i> in the law – which was recently made manifest in Kogi State where a candidate died before the final result of the governorship election was announced.
7.		4. (SB. 234). Section 38 of the Principal Act is amended by inserting a new subsection "(2)" – "(2) Where there is a valid nomination by at least one political party, failure of a political party to validly nominate a candidate shall not constitute ground for extension of time for nomination or	Deleted	Justification: This amendment is in conflict with sections 132(3) and 178(3) of the Constitution.

		postponement of election".		
8.			Section 43 of the Principal Act is amended by inserting after subsection (4), new subsections "(4A)", "(4B)", and "(4C)", as follows: <i>"(4A) Polling Agents who are in attendance at a polling unit, shall be entitled, before the commencement of the election, to have originals of electoral materials, including ballot papers, result sheets, ballot papers' account and verification documents and other electoral forms to be used by the Commission for the election inspected; and this process may be recorded in writing, on video or by other means by any Polling Agent, accredited observer or official of the Commission.</i> <i>(4B) An election conducted at any polling unit in violation of subsections (3), (4), (4A) or (5) of this section this of this section shall be invalid.</i> <i>(4C) A Presiding Officer who contravenes subsections (3), (4), (4A) or (5) of this section commits an offence and shall be liable, on conviction, to at</i>	Justification: a. These new insertions will assure all party agents that electoral documents have not been tampered with and also prevent monopoly of control of election at the polling unit by any dominant party. b. The attachment of criminal sanction to the exclusion of other parties from the election is a deterrence for the Commission's staff – and this is particularly significant in view of the expected greater attention to such issues from the proposed Election Offences Commission. c. Also, recording of the election process will provide electronic evidence to checkmate

			<i>least one (1) year imprisonment or a fine of N1,000,000, or both."</i>	electoral irregularities and for the prosecution of alleged electoral offenders.
9.			Section 44 of the Principal Act is amended by inserting after subsection (2), new subsections "(3)", "(4)" and "(5)" respectively, as follows: <i>"(3) The Commission shall, not later than 20 days to an election, invite in writing, a political party that nominated a candidate in the election to inspect its identity appearing on samples of relevant electoral materials proposed for the election; and the political party shall state in writing within 2 days of being so invited by the Commission that it approves or disapproves of its identity as it appears on the samples.</i> <i>(4) Unless the political party disapproves of its identity under subsection (3) of this section, it shall not complain of unlawful exclusion from the election under this Act in relation to its identity appearing on electoral materials used for the election.</i> <i>(5) A political party that fails to comply with an invitation by the Commission under subsection (3) of this section shall be deemed to have approved its identity on samples of electoral materials proposed to be used for an election."</i>	Justification: These insertions are intended to reduce election petitions/rerun elections predicated on unlawful exclusion due to the Commission's omission or misstatement of parties' identities on election materials, names and logos especially.

10.	49. (1) Any person intending to vote with his voter's card, 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.	2. (SB. 231) Section 49 of the Principal Act is amended by inserting a paragraph (a) as follows: "49 (i) (a) the Electoral Presiding officer shall accredit every voter the accreditation process shall comprise verification of voters using the card reader. Checking of the register of voters and linking of the outside of the specified finger."	Substitute for Section 49 of the Principal Act a new Section "49", as follows: "49. Accreditation of Voters, Transmission of accreditation data, Issuance of ballot papers to voters, etc (1) A person intending to vote in an election shall present himself with his voter's card to a Presiding Officer for accreditation at the polling unit in the constituency in which his name is registered. (2) The Presiding Officer shall use a Smart Card Reader or any other technological device that may be prescribed by the Commission from time to time for the accreditation of voters, to verify, confirm or authenticate - (a) the genuineness or otherwise of the voter's card; (b) that the voter's card presented by the voter is registered at the polling unit in the constituency in which the card is presented; (c) the biometric connection or otherwise of the intending voter with the voter's card; and	Justification: This substitution – a. gives solid legal footing and clarity to the Commission's introduction of Smart Card Readers for accreditation of voters during elections; b. makes room for introduction of other election devices by the Commission, as may be necessary, in the future; c. makes allowance for the likelihood of failure of Card Readers and mandates the Commission to remedy such a situation if it is substantial above 10%; d. makes it almost impossible for people to vote outside polling units where they are registered to vote; e. provides sanctions for violating the sanctity of
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			<i>(d) the number of duly accredited voters in the polling unit.</i> <i>(3) An intending voter shall not be accredited to vote in an election if the voter's card presented by him to the Presiding Officer is not -</i> <i>(a) a genuine voter's card issued by the Commission to the intending voter;</i> <i>(b) registered at the polling unit in the constituency in which the card is presented, and</i> <i>(c) biometrically connected to the intending voter.</i> <i>(4) Notwithstanding paragraph (3) (c) of this section, the Presiding Officer on being satisfied that an intending voter is the owner of the voter's card, may accredit the intending voter to vote in the election:</i> <i>PROVIDED that where the number of voters accredited under this subsection exceeds ten percent (10%) of the total number of registered voters in the polling unit, the Commission shall suspend the election in that unit and comply with subsection (3) (c) of this section at a later date, if the result of the election at that polling unit may</i>	the accreditation process – being the very fulcrum of the election process itself.
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			<i>affect the overall result in the Constituency.</i> <i>(5) The Commission shall continue the conduct of an election suspended under subsection (4) of this section within 7 days of the suspension if the result of the election at that polling unit may affect the overall result in the Constituency:</i> <i>PROVIDED that the Commission shall comply with subsection (3) (c) of this section.</i> <i>(6) Subject to subsections (1), (2), (3) and (4) of this section, the Presiding Officer shall, upon confirming that the intending voter's name is on the Register of Voters, issue him with a ballot paper and record by ticking on the Register of Voters that the intending voter, having been accredited, received a ballot paper to vote in the particular election.</i> <i>(7) The number of intending voters whose names are ticked for accreditation on the Register of Voters under subsection (6) of this section shall not be inconsistent with the number of intending voters accredited under subsections (3) and (4) of this section.</i>	
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			<i>(8) At the end of accreditation of voters, the Presiding Officer shall instantly transmit the total number of intending voters accredited to vote with all other voter accreditation data captured under subsection (3) and (4) of this section by secured mobile electronic communication to the:</i> <i>(a) collation center at each level of collation of results to which the polling unit belongs in the constituency where the election is held; and</i> <i>(b) central database of the Commission kept at the National Headquarter of the Commission:</i> <i>PROVIDED that the Presiding Officer shall first record the total number of intending voters accredited to vote, with other relevant voter accreditation data from the polling unit, in forms or electoral documents as shall be prescribed by the Commission for this purpose from time to time.</i> <i>(9) In respect of data of accreditation of voters, including polling unit results, for a particular election, the Commission shall not shut down its central database kept at its National Headquarter, until all election petitions and appeals pertaining to that election are heard and</i>	
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			determined by the Tribunal or Court, as the case may be. (10) Notwithstanding any provision to the contrary in this Act, a report issued by the Commission and certified by a designated official in the National Headquarter of the Commission showing the number of voters accredited under subsections (3) and (4) of this section shall be the conclusive record of accreditation of voters in an election. (11) The result of an election in a polling unit shall be declared invalid, null and void either by the Commission or Tribunal or Court, as the case may be, if, — (a) in the case of the Commission, there is no record of accreditation directly from the Smart Card Reader or any technological device used by the Commission in that polling unit for accreditation of voters, or (b) in the case of the Tribunal or Court, there is no certified report of accreditation issued by the Commission under subsection (11) of this section. (12) A Presiding Officer who wilfully and knowingly contravenes any provision of this section that applies to him shall be guilty of an offence and shall be liable,	
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			<i>on conviction, to imprisonment for at least 5 years, without an option of fine."</i>	
11.	52. (1) (a) Voting at an election under this Act shall be by open secret ballot.		Section 52 of the principal Act is amended by: (a) substituting for subsection (2), a new subsection "(2)", - "(2) The Commission shall adopt electronic voting in all elections or any other method of voting as may be determined by the Commission from time to time."	Justification: This amendment mandates e-voting without ambiguity but also give the Commission discretion to use other methods if it is impracticable to use e-voting in any election.
12.	53. (2) Where the votes cast at an election in any polling unit exceeds the number of registered voters in that polling unit, the result of the election for that polling unit shall be declared null and void by the Commission and another election may be conducted at a date to be fixed by the		Section 53 (2) of the Principal Act is amended by inserting after the word: (a) "exceeds" in line 1, the word "either"; and (b) "of" in line 2, the words "accredited or".	Justification: This amendment makes 'total number of accredited voters', a determining factor in the validity of votes in an election since total valid votes cast at an election cannot reasonably exceed total number of accredited voters.

	Commission where the result at that polling unit may affect the overall result in the Constituency.			
13.	63. (4) The Presiding Officer shall count and announce the result at the Polling unit.		Section 63 of the Principal Act is amended by: (a) substituting for subsection (4), a new subsection (4), as follows: <i>"(4) Except electronic voting is adopted by the Commission and does not permit manual counting of votes, the Presiding Officer shall count the votes and announce the result at the polling unit and, instantly thereafter, transmit the votes and result of the election in the polling unit by secured mobile electronic communication to the:</i> <i>(a) collation center at each level of collation of results to which the polling unit belongs in the constituency where the election is held; and</i> <i>(b) central database of the Commission kept at the National Headquarter of the Commission:</i>	Justification: a. Electronic transmission of results, as proposed, will checkmate falsification of results. b. Recording of happenings in polling units will limit incidences of malpractices, as such recording may be used as evidence from proper custody in relation to electronic evidence under sections 84 and 258 of the Evidence Act, 2011.

			<i>PROVIDED that the Presiding Officer shall first record the votes and result in forms or electoral documents as shall be prescribed by the Commission for this purpose from time to time."</i>; and (b) by inserting after subsection (4), a new subsection <i>"(5)"</i>, as follows: <i>"(5) The process and procedure in subsections (1) to (4) may be recorded by any member of the public, party agent, accredited observer or official of the Commission."</i> (c) by inserting after subsection (5), a new subsection <i>"(6)"</i>, as follows: <i>"(6) A Presiding Officer who wilfully and knowingly contravenes any provision of this section shall be guilty of an offence and shall be liable, on conviction, to imprisonment for at least 5 years, without an option of fine."</i>	
14.			Insert after section 65, a new section 65A: <i>"National Electronic Register of Election Results"</i> <i>"65A. (1) The Commission shall compile, maintain and update on a continuous basis, a Register of Election Results to be known as the National Electronic</i>	Justification: This new insertion creates a new National Electronic Register of Election Results for proper digital archiving and ease of access to results.

			<i>Register of Election Results which shall be a distinct database or repository of polling unit by polling results, including collated election results, of each election conducted by the Commission in the Federation, and the Register of Election Results shall be kept in electronic format by the Commission at its National Headquarter.</i> <i>(2) Any person or political party may obtain from the Commission, on payment of such fees as may be determined by the Commission, a certified true copy of any election result kept in the National Electronic Register of Election Results for a State, Local Government, Area Council, Ward or Polling Unit, as the case may be and the certified true copy may be in printed or electronic format."</i>	
15.			Insert after section 67, a new section 67A: <i>"Verification and confirmation of results</i> <i>67A. (1) A Collation Officer or Returning Officer at an election shall collate and announce the result of an election, subject to his verification and confirmation that the:</i> <i>(a) number of accredited voters stated on the collated result are correct and consistent with the number of</i>	Justification: This amendment is to enhance the integrity of the process of reaching the final result of an election and its breach attracts a criminal sanction.

			accredited voters recorded and transmitted directly from polling units under section 49(8) of this Act; and (b) the votes stated on the collated result are correct and consistent with the votes or results recorded and transmitted directly from polling units under section 63(4) of this Act. (2) Subject to subsection (1) of this section, a Collation Officer or Returning Officer shall use the number of accredited voters recorded and transmitted directly from polling units under section 49(8) of this Act and the votes or results recorded and transmitted directly from polling units under section 63(4) of this Act to collate and announce the result of an election if a collated result at his or a lower level of collation is not correct. (3) Where during collation of results, there is a dispute regarding a collated result or the result of an election from any polling unit, the Collation Officer or Returning Officer shall use the following to determine the correctness of the disputed result: (a) the original of the disputed collated result or result for each polling unit where the election is disputed;	
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			<i>(b) the Smart Card Reader or other technological device used for accreditation of voters in each polling unit where the election is disputed for the purpose of obtaining accreditation data directly from the Smart Card Reader or technological device;</i> <i>(c) data of accreditation recorded and transmitted directly from each polling unit where the election is disputed, as prescribed under section 49 (8) of this Act; and</i> <i>(d) the votes and result of the election recorded and transmitted directly from each polling unit where the election is disputed, as prescribed under section 63(4) of this Act.</i> <i>(4) If the disputed result under subsection (3) were otherwise found not to be correct, the Collation Officer or Returning Officer shall re-collate and announce a new result using the information in subsection (3)(a), (b), (c) and (d) of this section.</i> <i>(5) Where the dispute under subsection (3) of this section arose at the final level of collation and the Returning Officer has satisfied the provision of subsection</i>	
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			<i>(3) of this section, the Returning Officer shall accordingly declare the winner of the election.</i> <i>(6) A Returning Officer or Collation Officer, as the case may be, who wilfully and knowingly contravenes a provision of this section that applies to him shall be guilty of an offence if the results he collated or announced are false and he shall be liable, on conviction, to at least 5 years' imprisonment, without an option of a fine."</i>	
16..			Insert after section 76, a new section "76A", as follows: <i>"Recording of details of electoral materials</i> <i>76A. (1) An election conducted at a polling unit without the prior recording in the forms prescribed by the Commission of the quantity, serial numbers and other particulars of results sheets, ballot papers and other sensitive electoral materials made available by the Commission for the conduct of the election shall be invalid.</i> <i>(2) A Presiding Officer who wilfully and knowingly announces or signs any election result in violation of subsection (1) of this section is guilty of an offence and shall be liable, on conviction, to</i>	Justification: This new insertion will enhance accountability and tracing of the movement of electoral materials as a result of proper documentation of identities of the materials.

			<i>imprisonment for at least one (1) year without an option of fine."</i>	
17.	78. (5) An 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.	5. (SB. 234) Section 78(5) of the Principal Act is amended by after the word "cancelled" by inserting the words "and the said Association shall, on account of such false or misleading information, commits an offence and shall be liable on conviction to a fine of N1,000,000 and the executives of the said Association shall be imprisoned for a period not exceeding 2 months.	Section 78(5) of the Principal Act is amended by inserting after the word " cancelled " in line 3, the words " and the Association and each of its executives or principal officers shall, on account of such false or misleading information, be guilty of an offence and be liable, on conviction, - (a) in the case of the Association, to a fine of N5,000,000; and (b) in the case of each executive or principal officer of the Association, to imprisonment for at least 6 months or a fine of N1,000,000 or both."	Justification: This amendment would make promoters of political associations seeking to be registered as political parties to ensure full compliance with lawful registration requirements.
18.	87. (1) A political party seeking to nominate candidates for elections under this Act shall hold primaries for aspirants to all elective positions.	6. (SB. 234) The Principal Act is amended, in section 87 by inserting a new subsection "(9) (a)" after the existing subsection (9) – "(9)(a) Where a primary election is conducted, and duly attended and certified by the Commission in	Substitute for section 87 of the Principal Act a new section "87" as follows: "Nomination of Candidates by Parties 87. (1) A political party seeking to nominate candidates for elections under this Act shall hold direct primaries for aspirants to all elective positions, which shall be monitored and supervised by the Commission.	Justification: a. This amendment guarantees an all-inclusive primaries process for members of a political party. b. It will forestall systemic control of parties' primaries processes by a select few.

(2) The procedure for the nomination of candidates by political parties for the various elective positions shall be by direct or indirect primaries. (3) A political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party. (4) A political party that adopts the system of indirect primaries for the choice of its candidate shall adopt the procedure outlined below:	compliance with this Act, and the result is subsequently changed or altered by a political party, the Commission shall have the power to overrule the alteration made by the political party and uphold such primaries.	<i>(2) All members of a political party shall be eligible to vote in the primaries of the party in the registration area where they are registered as members of the party.</i> <i>(3) A political party shall ensure that all aspirants in its primaries are given equal opportunity of being voted for by members of the party.</i> <i>(4) A political party shall publish the venues, dates, times, guidelines, procedures and other relevant information of its primaries, conventions or any event conveyed for the purpose of nominating candidates for the party in, at least, three (3) national newspapers and, at least, seven (7) days before the date of the event to nominate candidates for the party.</i> <i>(5) For the purpose of nomination of candidates, the total fees, charges, dues and any payment howsoever named imposed by a political party on an aspirant shall not exceed:</i> <i>(a) One Hundred and Fifty Thousand Naira (N150,000) for a Ward Councillorship aspirant in the FCT;</i> <i>(b) Two Hundred and Fifty Thousand Naira (N250,000) for an Area Council Chairmanship aspirant in the FCT;</i>	c. It will limit internal party crises arising from exclusion of candidates or manipulation of processes leading to the emergence of delegates for congresses under the indirect primaries system.
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(a) In the case of nominations to the position of Presidential candidate, a party shall, (i) hold a special presidential convention in the Federal Capital Territory or any other place within the Federation that is agreed by the National Executive Committee of the party where delegates shall vote for each of the aspirants at the designated centre; and (ii) the aspirant with the highest number of votes at the end of voting shall be declared the winner of the Presidential primaries of the political party and the aspirant		<i>(c) Five Hundred Thousand Naira (N500,000) for a House of Assembly aspirant;</i> <i>(d) One Million Naira (N1,000,000) for a House of Representatives aspirant;</i> <i>(e) Two Million Naira (N2,000,000) for a Senatorial aspirant;</i> <i>(f) Five Million naira (N5,000,000) for a Governorship aspirant; and</i> <i>(g) Ten Million Naira (N10,000,000) for a Presidential aspirant.</i> <i>(6) A political party shall not impose nomination qualification or disqualification criteria, measures or conditions on any candidate for elections in its constitution, guidelines for nomination of candidates for elections or wherever, except as prescribed under sections 65, 66, 106, 107, 131, 137, 177 and 187 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).</i> <i>(7) Any requirement for the nomination of candidates for elections outside the provision of subsection (6) of this section shall be invalid, null, void and of no effect whatsoever.</i>	
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name shall be forwarded to the Independent National Electoral Commission as the candidate of the party (b) In the case of nomination to the position of Governorship candidate, a political party shall, where it intend to sponsor candidates: (i) hold a special congress in the state capital with delegates voting for each of the aspirants at the congress to be held on a specified date appointed by the National Executive Committee (NEC) of the party; and		<i>(8) In the case of nominations to the position of Presidential Candidate, a political party shall, where it intends to sponsor a candidate:</i> <i>(a) conduct direct primaries in the registration areas in the 36 States of the Federation and the FCT where, subject to subsection (2) of this section, members of the party shall be eligible to vote and may vote for any Presidential Aspirant of their choice;</i> <i>(b) declare the Presidential Aspirant with the highest number of valid votes cast during the primaries across the 36 States of the Federation and the FCT as the winner of the primaries;</i> <i>(c) hold a National Convention where it shall present the winner of the primaries to the public as the Presidential Candidate of the party; and</i> <i>(d) forward the name of the winner of the primaries to the Commission as the Presidential Candidate of the party.</i> <i>(9) In the case of nominations to the position of Governorship Candidate, a political party shall, where it intends to sponsor candidates:</i> <i>(a) conduct direct primaries in the registration areas in each Local</i>	
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(ii) The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and aspirant's name shall be forwarded to the Commission as the candidate of the party, for the particular State. (c) In the case of nomination to the position of a candidate to the Senate, House of Representatives and State House of Assembly a political party shall, where it intends to sponsor candidates: (i) hold special congresses in the Senatorial		<i>Government Area in the particular State where, subject to subsection (2) of this section, members of the party in the State shall be eligible to vote and may vote for any Governorship Aspirant of their choice;</i> <i>(b) declare the Governorship Aspirant with the highest number of valid votes cast in all Local Government Areas in the particular State as the winner of the primaries in the State;</i> <i>(c) hold a State Congress where it shall present the winner of the primaries to the public as the Governorship Candidate of the party; and</i> <i>(d) forward the name of the winner of the primaries to the Commission as the Governorship Candidate of the party.</i> <i>(10) In the case of nominations to the position of Senatorial Candidate, House of Representatives Candidate and State House of Assembly Candidate, a political party shall, where it intends to sponsor candidates:</i> <i>(a) conduct direct primaries in the registration areas in each Local Government Area in the particular:</i> <i>(i) Senatorial District where, subject to subsection (2) of this section, members</i>	
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District, Federal Constituency and the State assembly constituency respectively, with delegates voting for each of the aspirants in designated centre on specified dates. (ii) The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party. (d) In the case of the position of a Chairmanship candidate of an Area council a political party shall,		<i>of the party in the Senatorial District shall be eligible to vote and may vote for any Senatorial Aspirant of their choice;</i> <i>(ii) Federal Constituency where, subject to subsection (2) of this section, members of the party in the Federal Constituency shall be eligible to vote and may vote for any House of Representatives Aspirant of their choice; and</i> <i>(iii) State Assembly Constituency where, subject to subsection (2) of this section, members of the party in the State Assembly Constituency shall be eligible to vote and may vote for any State House of Assembly Aspirant of their choice;</i> <i>(b) declare the Senatorial Aspirant with the highest number of valid votes cast in all Local Government Areas in the particular Senatorial District constituency as the winner of the primaries in the Senatorial District and forward the name of the winner to the Commission as the Senatorial Candidate of the party for the Senatorial District;</i> <i>(c) declare the House of Representatives Aspirant with the highest number of votes in all Local Government Areas in the House of Representatives</i>	
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where it intends to sponsor candidates: (i) hold special congresses in the Area Councils, with delegates voting for each of the aspirants at designated centres on a specified date, and (ii) The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Commission as the candidate of the party. (5) In the case of a councillorship candidate, the procedure for the nomination		<i>constituency as the winner of the primaries in the House of Representatives Constituency and forward the name of the winner to the Commission as the House of Representatives Candidate of the party for the House of Representatives Constituency;</i> <i>(d) declare the State House of Assembly Aspirant with the highest number of votes in all Local Government Areas in the House of Assembly Constituency as the winner of the primaries in the House of Assembly Constituency and forward the name of the winner to the Commission as the State House of Assembly Candidate of the party for the House of Assembly Constituency.</i> <i>(11) In the case of the position of a Chairmanship Candidate of an Area Council in the FCT, a political party shall, where it intends to sponsor candidates:</i> <i>(a) conduct direct primaries in the registration areas in the particular Area Council, where all members of the party shall be eligible to vote and may vote for any Chairmanship Aspirant of their choice;</i> <i>(b) declare the Chairmanship Aspirant with the highest number of votes in all registration areas in the particular Area</i>	
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of the candidate shall be by direct primaries in the ward and the name of the candidate with the highest number of votes shall be submitted to the commission as the candidate of the party. (6) Where there is only one aspirant in a political party for any of the elective positions mentioned in paragraph (4)(a), (b), (c) and (d), the party shall convene a special convention or congress at a designated centre on a specified date for the confirmation of		<i>Council as the winner of the primaries in Area Council and forward the name of the winner to the Commission as the Chairmanship Candidate of the party for the Area Council.</i> <i>(12) In the case of nominations to the position of Councillorship Candidate in the FCT, a political party shall, where it intends to sponsor candidates,</i> <i>(a) conduct direct primaries area in the Ward constituencies where all members of the party shall be eligible to vote and may vote for any Councillorship Aspirant of their choice in their registration Areas;</i> <i>(b) declare the Councillorship Aspirant with the highest number of votes in the particular Ward constituency as the winner of the Direct Primaries and forward the name of the winner to the Commission as the Councillorship Candidate of the party for the registration area.</i> <i>(13) Where there is only one Aspirant in a political party for any of the aforesaid positions, such an Aspirant shall be deemed to be unchallenged for the purpose of direct primaries and the party shall forward the name of the Aspirant to the Commission as the</i>	
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such aspirant and the name of the aspirant shall be forwarded to the commission as the candidate of the party. (7) A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting, in addition to delegates already prescribed in the constitution of the party.		<i>Candidate of the party for the particular position and constituency.</i> <i>(14) Where a political party conducts its primaries with the Commission in attendance and the result of the primaries is endorsed or certified by the Commission, this shall be prima facie proof of the result of the election and shifts the burden of proof wholly on a person challenging the result so endorsed by the Commission.</i> <i>(15) Nothing in this section shall prevent a political party from organising staggered primaries.</i> <i>(16) Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act or rules of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or the FCT for redress.</i> <i>(17) Nothing in this section shall empower the Courts to stop the holding of primaries or general election or the processes thereof under this Act pending the determination of the suit.</i>	
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(8) A political appointee at any level shall not be an automatic voting delegate at the Convention or Congress of any political party for the purpose of nomination of candidates for any election, except where such a political appointee is also an officer of a political party. (9) Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in			
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	the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress. (10) Nothing in this section shall empower the Courts to stop the holding of primaries or general election under this Act pending the determination of the suit.			
19.			Section 112 of the Principal Act is amended by inserting after subsection (3), a new subsection "(4)", as follows: <i>"(4) If after the commencement of poll and before the declaration of results a nominated candidate dies, the Resident Electoral Commissioner shall, being satisfied of the fact of the death, proceed with the election and allow the Political Party whose candidate died to make a substitution with the person who scored the next highest number of</i>	Justification: This new insertion makes similar provisions in respect of Area Council elections to take care of gaps in the law, as exposed during the last governorship election in Kogi State.

			<i>lawful votes in the primaries which was won by the deceased candidate as if the substituted person was the candidate originally nominated by that party."</i>	
20.	138. (1) An election may be questioned on any of the following grounds, that is to say - (b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; (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		Section 138 of the Principal Act is amended by: (a) inserting after the word "Act" in line 2 of subsection (1)(b), the words "and published manuals, guidelines, regulations, procedures or directives issued by the Commission for the conduct of the election."; (b) inserting after the word "Act" in line 4 of subsection 2, the words "and with published manuals, guidelines, regulations, procedures or directives issued by the Commission for the conduct of the election."; and (c) inserting after subsection (2), a new subsection "(3)", as follows: "(3) With respect to subsection (1) (a) of this Section, a person shall be deemed to be qualified for an elective office and his election shall not be questioned on grounds of qualification if, with respect to the particular election in question, he meets the applicable requirements of sections 65, 106, 131 or 177 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)	Justification: a. The new insertion (subsection (3)) defines with clarity the qualifications to be met in order to contest an election. b. The amendments in subsections (1)(b) and (2) will guarantee compliance with guidelines issued by the Commission under the Constitution subject to publication or gazetting before the elections.

	provisions of this Act shall not of itself be a ground for questioning the election.		<i>and he is not, as may be applicable, in breach of sections 66, 107, 137 or 182 of the Constitution of the Federal Republic of Nigeria, 1999."</i>	
21.	139. (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.		Section 139 of the Principal Act is amended by: (a) inserting after the word "Act" in line 4 of subsection (1), the words "and published manuals, guidelines, regulations, procedures or directives issued by the Commission for the conduct of the election"; and (b) inserting after the word "election" in line 5 of subsection (1), the expression "provided that the onus of proving that the non-compliance is not substantial to invalidate the election shall be on the respondents who affirm the election and stand to benefit if the affirmation were upheld by the Election Tribunal or Court."	Justification: a. Insertion (a) is for consistency in section 138(1) and (2). b. Insertion (b) correctly brings electoral litigation to speed with a plethora of decided authorities: Imana v. Robinson (1974) 6 SC 83; Ukpo v Imoke [2009] 1 NWLR (Pt. 1121); Ogboru v. Uduaghan (2011) 2 NWLR (Pt.1232) 538, Elemo & Ors V Omolade & Ors (1968) NMLR 359; Atane v. Amu (1974) 10 SC 237; Fashanu v. Adekoya (1974) 6 SC 83; Kate Enterprises Ltd v. Daewoo Nig Ltd

				(1985) 2 NWLR (PT 5) 116, <i>Igbeke v. Emordi</i> CA/E/EPT/04/2009 delivered on 25/3/10. c. In <i>Imana v. Robinson</i>, the Supreme Court, per Aniagolu JSC, stated that: "<i>The burden of proof ... rests upon the party ... who substantially asserts the <u>affirmative of the issue</u>. It is an ancient rule founded on consideration of good sense, and it should not be departed from without strong reasons. It is fixed at the beginning of the trial by the <u>state of the pleadings</u>, and it is settled as a question of law, remaining unchanged</i>"
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				<i>throughout the trial exactly where the pleadings place it, and never shifting in any circumstances whatever. If when all the evidence, by whosoever introduced, is in, the party who has this burden has not discharged it, the decision must be against him."</i> d. In <i>Igbeke v. Emordi</i>, the Court of Appeal followed the decision of the Supreme Court when it held as follows: "<i>It behoves the Respondents ... who claimed there was election ... to call credible evidence and tender documents, such as the Voters Register and Form EC25 to justify the source of</i>
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				<i>the purported result of election The Respondents ... who asserted the positive fact of holding election had the burden to prove that fact"</i> e. This view was further restated by the Court of Appeal in <i>Ogboru v. Uduaghan</i>, per Dongban-Mensem JCA: "<i>What is, perhaps, not well-known is that there is yet another kind of burden which is dictated by the <u>nature of the pleadings</u>. This is known as the burden of proof on the pleadings. Unlike the general burden referred to earlier, <u>the burden of proof on the pleadings rests on any party ...</u></i>"
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				<u>who substantially asserts the affirmative of the issue."</u>
22.	140(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 Tribunal or the Court shall nullify the election. 140(2) Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to		Section 140 of the Principal Act is amended by: (a) adding the small letter "s" to the word "subsection" in line 1 of subsection (1); (b) inserting after the expression "subsection (2)" in line 1 of subsection (1), the expression "and (4)"; (c) inserting after the word "election" in line 4 of subsection (1), the words "and shall order the Commission to conduct a fresh election not later than ninety (90) days after the decision if an appeal is not filed against the decision, or not later than ninety (90) days after the nullification of the election by the court having final appellate jurisdiction in respect of the said election."; (d) substituting for subsection (2) a new subsection "(2)", as follows: "(2) Where an election Tribunal or Court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the election	Justification: a. The amendment in section 140(1) gives certainty by limiting time for fresh or rerun elections to 90 days after a decision by a tribunal (where there is no appeal) or a decision by a final appellate court. It will cure the current mischief of having vacancies in legislative houses all over the country because of the absence of clear statutory provisions mandating the Commission within stipulated timeframes. b. The amendment in section 140(2) separates the effect of nullification of an election, as a result of non-qualification of the winner, from the effect

	contest the election, or that the election was marred by substantial irregularities or non-compliance with the provisions of this Act, the election tribunal or court shall not declare the person with the second highest votes or any other person as elected, but shall order for a fresh election		<i>Tribunal or Court shall declare the person with the second highest number of valid votes cast at the election and satisfies the requirements of the Constitution and this Act as elected:</i> <i>PROVIDED that the person with the second highest number of valid votes cast at the election remains a member of the political party on which he contested the election; otherwise, the candidate with the next highest number of votes in the election and who satisfies the same conditions herein shall be declared the winner of the election.”; and</i> (e) inserting after subsection (3), new subsections “(4)” and “(5)”, as follows: <i>“(4) Where an election Tribunal or Court nullifies an election on the ground that the election was marred by substantial irregularities or non-compliance with the provisions of this Act, the election tribunal or court shall not declare the person with the second highest votes as elected:</i> <i>PROVIDED that where the election Tribunal or Court finds the irregularities or non-compliance to be non-substantial to affect the overall result of the election, it shall not nullify the election</i>	of nullification of an election on grounds of non-compliance and irregularities. The rationale is that the Electoral Act imposes obligations on Parties and their Candidates to satisfy relevant qualification criteria with added sanctions for defaulting. Public resources should not be wasted on fresh or rerun elections where a party and its candidates fail to comply with the law. Those who complied should not be subjected to another costly election process. In athletics, where the winner of a race fails a doping test, the race is not retaken; the gold medal is awarded to a runner up. c. The amendment in section 140(4) is sound in that no winner can reasonably emerge from an election that was
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			<i>but shall declare the person with the highest number of votes as elected.</i> <i>(5) No election petition filed within the constitutional time shall be defeated or struck out on any technical ground but the Tribunal or Court shall hear and determine the petition on the merits on the basis of evidence led and not otherwise."</i>	marred by substantial irregularities and noncompliances.
23.			Insert after section 142, a new section "142A", as follows: "Sufficiency of documentary evidence 142A. It shall not be necessary for a petitioner who alleges non-compliance with the provisions of this Act and the published manuals, guidelines, regulations, procedures or directives issued by the Commission for the conduct of elections to call oral evidence if originals or certified true copies of electoral documents or materials used by the Commission to conduct the election in the polling unit where the noncompliance is alleged are listed in the petition and tendered at the trial of the petition by the petitioner in proof of the non-compliance complained of."	Justification: This new insertion makes the determination of election petitions on the merit a matter of substantive law rather than a procedural one. This is founded on the reasoned view that unjust determination of election petitions using procedural technicalities defeats the fundamental essence of justice. It will give clarity to the courts rather than the discretionary approach being applied presently.

24.			Section 151 of the Principal Act is amended by inserting after subsection (2), a new subsection "(3)", as follows: <i>"(3) Where there is a breach of an order of a court or tribunal directed at the Commission particularly, order to produce, inspect or take copies of electoral materials, such disobedience shall attract court sanctions, which shall include the committal by the Tribunal or Court of the Commission's official to whom the order is directed to summary conviction to imprisonment for at least two (2) years, without an option of fine."</i>	Justification: This new insertion will check the impunity of officials of the Commission of not complying with orders of tribunals or courts, directed at frustrating litigants in election cases, who have limited time under the Constitution to litigate issues.
25.			Paragraphs 46(4) of the First Schedule to the Principal Act is amended by inserting after the word "consent" in line 2, the expression <i>"; such documentary evidence shall be deemed demonstrated in open court; the parties in the petition shall be entitled to address and urge argument on the content of the document; and the tribunal or court shall scrutinize or investigate the content of the documents as part of the process of ascribing probative value to the documents or otherwise."</i>	Justification: The reading of documentary evidence entails a practical demonstration of their contents and it is of the essence that parties are given opportunity to address a tribunal or court on the document for the purpose of giving or not giving probative value to the documents.
26.			Section 156 of the Principal Act is amended by:	

			(a) inserting after the definition of the words "Electoral Officer", the definition of the expression "electronic format", as follows: <i>"electronic format" refers to the electronic version of the Register of Voters or National Electronic Register of Election Results, as the case may be, created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means and which may be converted to or reproduced in a paper document.</i> (b) inserting after the definition of the word "President", the definition of the expression "Presiding Officer", as follows: <i>"Presiding Officer" means a person appointed by the Commission to be in charge of the conduct of election in a polling unit or polling station, and this shall include persons who may be under different titles but who are charged by the Commission with the same responsibilities at a polling unit or polling station as a Presiding Officer."</i>; and	
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			(c) inserting after the definition of the words "Presiding Officer", the definition of the expression "published manuals, guidelines, regulations, procedures or directives issued by the Commission for the conduct of the election", as follows: "published manuals, guidelines, regulations, procedures or directives issued by the Commission for the conduct of the election" means any book, booklet or manual published by the Commission - (a) that is consistent with the provisions of this Act; (b) for the purpose of guiding the conduct of free, fair and credible elections; and (c) which is made public by the Commission at least seven (7) days before the date of general elections." (d) inserting after the definition of the word "Return", the definition of the expression "Returning Officer", as follows: "Returning Officer" means a person appointed by the Commission to be in charge of the conduct of election in a constituency, and this shall include persons who may be under different titles but who are charged by the	
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			<i>Commission with the same responsibilities in a constituency as a Returning Officer."</i>	
27.		7. (SB. 234) This Bill is cited as the Electoral Act (Amendment) Bill, 2016. 3. (SB. 231) This Bill may be cited as the Electoral Act No. 6 2010 (Amendment) Bill, 2016	This Bill may be cited as the Electoral Act No. 6, 2010 (Amendment) Bill, 2016.	
28.		EXPLANATORY MEMORANDUM SB. 231: This Bill seek to amend the 2010 Electoral Act No. 6 to make provisions for the use of card reader for election in Nigeria SB. 234: The Bill seeks to amend the Electoral Act No. 16 of 2010 to strengthen Independent National Electoral Commission to properly the provision of the Act in	The Bill seeks to amend the Electoral Act No. 6 of 2010 to make provisions for the restriction of the qualification for elective office to relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended); use of Card Readers and other technological devices in elections; and other matters.	

		relation to substitution of candidates in the event of death or otherwise after the conduct of primary elections.		
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