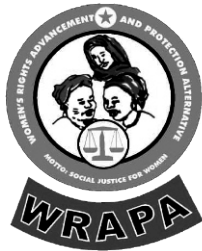


# MEMORANDUM FOR CONSTITUTIONAL ALTERATION TO IMPROVE TRUST IN INEC LEADERSHIP SELECTION



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## MEMORANDUM FOR CONSTITUTIONAL ALTERATION TO IMPROVE TRUST IN INEC LEADERSHIP SELECTION

### FOREWORD

Nigeria's constitutional democracy is hinged on the franchise it gives its citizens to freely elect those that will govern them. This is based on the establishment of the Independent National Electoral Commission (INEC). This is the main Electoral Management Body (EMB) responsible for the conduct of elections in Nigeria. The concept of an electoral commission in Nigeria dates to 1958 when the Electoral Commission of Nigeria (ECN) was established to conduct the 1959 federal elections. ECN was headed by an expatriate, Ronald Edward Wraith.

Over the years, different electoral commissions were set up and dissolved, including:

- Electoral Commission of Nigeria (ECN): Conducted 1959 federal elections
- Federal Electoral Commission (FEDECO): Constituted in 1978 by General Olusegun

### **Obasanjo's regime to organize 1979 elections**

- National Electoral Commission of Nigeria (NECON): Established in 1995 under General

### **Sani Abacha's regime, dissolved in 1998**

- The current INEC was established in 1998 by General Abdulsalam Abubakar's administration, replacing the National Electoral Commission of Nigeria (NECON) set up by General Sani Abacha in 1995. Throughout its history, INEC has faced challenges in ensuring free and fair elections, but it continues to play a crucial role in Nigeria's democratic process.

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### BACKGROUND

The Independent National Electoral Commission (INEC) remains the only body in Nigeria constitutionally empowered to conduct Federal and State level elections. To this end, the position of its Chairman, who is the Chief EXECUTIVE AND THE Returning Officer in Presidential Elections is of strategic importance. It is in view of this that whoever is to be appointed must fulfil certain pre-agreed upon criteria and pass some level of integrity tests.

Currently the appointment of the INEC Chairman in Nigeria is guided by the country's constitution. This stipulates that the President appoints the INEC Chairman, subject to confirmation by the Senate. The process involves:

**Nomination:** The President nominates a candidate for the position.

**Security Screening:** The nominee undergoes security screening by the Department of State Services (DSS).

**Council of State Review:** The President consults the Council of State, which reviews the nominee's credentials and DSS report.

**Senate Confirmation:** The nominee must be confirmed by the Senate.

Furthermore, for Appointment of the INEC Chairman and Commission members they must meet some specific criteria, including:

- **Integrity:** Be Persons of unquestionable integrity.
- **Age:** The Chairman must be at least 50 years old, while members must be at least 40 years old.

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While the appointment process has evolved over time, concerns persist about the President's role. Critics argue that the President's influence over INEC appointments can be a door that compromises its independence, leading to calls for a more multi-stakeholder approach. The National Assembly has proposed some reforms, especially to involve the National Judicial Council in the appointment process to increase transparency and impartiality.

It is against this background that Women's Rights Advancement and Protection Alternative (WRAPA) in partnership with the African Centre for Leadership, Strategy & Development (Centre LSD) is proposing this policy brief.

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### SUMMARY

This memorandum seeks an alteration or addendum to Section 154(1) and Section 157 of the Constitution of the Federal Republic of Nigeria. Section 154(1) pertains to the appointment of the leadership of the Independent National Electoral Commission (INEC), which states that the President shall appoint the Commission's members, including the Chairman, subject to Senate confirmation. Section 157 outlines the procedures and grounds for removing these electoral officials.

The Memorandum outlines the establishment of an independent body tasked with recommending candidates to the President for leadership of INEC. This process, which will be competitive, is designed to actively involve citizens including marginalised and underserved communities, ensuring that their voices are heard and that the recommendation of candidates to the President is transparent, inclusive and representative. By fostering public participation, the aim is to enhance public trust, legitimacy and credibility of INEC and, ultimately, the electoral process.

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### INTRODUCTION

We commend the 10th National Assembly for its proactive approach to expanding dialogue on electoral reform. The Assembly has made strides in proposing changes to enhance the electoral landscape. By sponsoring multiple bills to alter, amend, or repeal provisions of the Constitution and the Electoral Act, the Assembly shows a commitment to addressing critical electoral issues. These proposals can foster transparency, ensure fairness, and strengthen election integrity, paving the way for a more robust democratic framework. We encourage continued collaboration among stakeholders to realise these reforms and promote a more effective electoral system.

The integrity of Nigeria's electoral process has been a topic of concern for several decades, with historical instances of malpractice and inefficiency undermining public confidence in the INEC. After a thorough and careful review of the electoral reform proposal by the National Assembly, we humbly draw attention to the ongoing debate surrounding the appointment of the INEC leadership, which necessitates urgent reform. As the country faces challenges related to political inequity, voter engagement, and the integrity of electoral processes, the manner in which leaders are appointed to oversee these mechanisms has become critically important. Concerns about transparency, neutrality, and potential political influence dominate discussions, with critics asserting that the appointment process is frequently marred by political manipulation, which undermines the commission's independence and erodes public trust.

As Professor Mahmood Yakubu's tenure draws to a close later this year after serving two terms in office, making him ineligible

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for reappointment, the ongoing discussions regarding his successor have sparked renewed calls for comprehensive electoral reforms. Central to these discussions is the need for reforms that strengthen the integrity of the electoral system through systemic changes. This includes addressing how the leadership of the INEC is appointed, ensuring that the selection process is transparent, merit-based, and free from political influence.

The current appointment process for INEC leadership remains questionable. This proposal advocates for the establishment of an independent body that will be responsible for selecting and recommending a set of candidates for INEC leadership to the President, who in turn nominates one from the set to enhance the credibility, transparency, and public trust in the electoral landscape.

### **Justifications for Alterations**

The memo is seeking an alteration or addendum to Section 154(1) and Section 157 of the Constitution of the Federal Republic of Nigeria. While section 154(1) addresses the appointment of the leadership of the INEC, section 157 outlines the procedures and grounds for the removal of these electoral officials. Section 154(1) states that the President shall appoint members of the Commission, including the Chairman, subject to confirmation by the Senate. The debate is that the President's sole responsibility of nominating candidates for the electoral umpire, leaves room for political influence in the appointment process, potentially undermining the independence and integrity of the Commission. Calls for reform have centred around making the

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appointment process more transparent and less subject to political pressures in order to enhance the integrity and impartiality of the Commission. As the debate continues, the focus remains on ensuring that the electoral body is empowered to conduct free and fair elections, thereby strengthening Nigeria's democratic framework.

The provisions in Section 154 (1) undermines the significant role of INEC in Section 15, Part F of the Third Schedule of the 1999 Constitution of Nigeria, which outlines the functions and powers of INEC. The section articulates INEC's mandate to organise, undertake, and supervise elections in Nigeria. Specifically, it emphasises several key responsibilities, including the conduct of elections. INEC is tasked with managing the electoral process for all elections, including presidential, gubernatorial, and legislative elections, ensuring that they are free, fair, and credible.

### **Our Prayers:**

1. Alter Section 154(1) to reflect the establishment of an independent panel for the selection of INEC leadership.
2. The president's nomination and appointment of the Chairman and members of the INEC shall be subject to the recommendation of an independent panel constituted for this purpose.
3. Alter section 157 to reflect' the process for appointing officials to INEC shall involve the independent panel, which shall be responsible for selecting candidates and submitting a list of recommended individuals to the President.

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4. The President shall appoint the Chairman and members of INEC from this list, subject to approval by the National Assembly.

### **A Case of True Independence of INEC**

As recommended by the Justice Uwais Committee in 2008, this memo advocates for the establishment of an independent body tasked with the appointment of the leadership of INEC. The proposal is justified on several critical grounds:

- **Ensuring Impartiality:** By taking the appointment process out of direct executive control, the independence of INEC can be better preserved. Such autonomy is vital for maintaining the integrity of electoral processes and ensuring that all parties are treated equitably.

- **Enhancing Public Trust:** For a democracy to function effectively, public confidence in the electoral process is essential. When citizens have confidence that electoral officials are unbiased and not beholden to political interests, they are more likely to participate in the democratic process, leading to higher voter turnout and greater civic engagement.

Establishing an independent body for appointing INEC leadership can strengthen Nigeria's electoral governance by ensuring neutrality and improving the public's trust in the system.

### **Independent Panel Membership**

The objective is to establish a fair and transparent process for the selection of INEC's leadership, thereby enhancing the integrity of the electoral processes in Nigeria. The duty will be to review the qualifications and backgrounds of potential candidates for INEC

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leadership; ensure that the selection process is transparent, inclusive, and adheres to good practices and submit a list of recommended candidates to the President.

On the panel's term of service, for the members that requires their nominations, they should serve for a specified duration, ideally aligning with electoral cycles, to ensure continuity and relevance. This composition aims to reflect a broad spectrum of expertise, interests, and perspectives, promoting a balanced approach.

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### Suggested Panel Membership

S/N	Institution	Representation	Position
1	National Judicial Council (NJC)	National Judicial Council Nominee	Chair
2	Nigeria Bar Association (NBA)	President	Co-Chair
3	Nigeria Labour Congress (NLC)	President	Member
4	Trade Union Congress (TUC)	President	Member
5	National Union of Journalists (NUJ)	President	Member
6	Academic Staff Union of Universities (ASUU)	President	Member
7	Civil Society Organisations (CSOs)	Renowned Election -Focused CSOs, Coalitions and Networks: <b>At least Women (2), Persons with Disabilities (2), and Youths (2).</b>	Members (10)
8	Independent Corrupt Practices and Other Related Offences Commission (ICPC)	<b>Commission's Secretary</b>	Secretary

Where membership of professional bodies fails to participate, the Panel chair, co-chair and secretary shall seek additional nominations from election-focused CSOs.<sup>1</sup>

### Proposed Criteria for INEC Leadership Selection

The INEC leadership criteria should be explicitly stated in the Third Schedule of the Constitution of the Federal Republic of Nigeria or

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relevant sections. Key qualifications should include a strong academic foundation. In addition to relevant experience in governance, law, or public service. And a proven leadership ability, demonstrated through past roles or positions.<sup>2</sup>

Positions	Academic Background	Professional Experience	Leadership Skills	Recommendation to the President and Council of State
Chair	A first degree	12 years, including at least 5 years in Public Service or election management, supervision or observation.  Technical Proficiency	Proven integrity, strategic thinking, decision-making and crisis communication abilities. Conflict management, collaboration and teamwork;	The panel shall nominate three top candidates to the President for nomination of one, followed by the National Assembly's Screening and confirmation.
National Commissioners	A first degree.	10 years, including at least 4 years in Public Service or election management, supervision, or observation.  Technical Proficiency	Disposition to inclusiveness, including inclusion of women, youths, and persons with disabilities.	The panel shall nominate two top candidates per geopolitical zone to the President for nomination of one per geopolitical zone, followed by the National Assembly Screening and confirmation.
Resident Electoral Commissioners	A first degree	8 years, including at least 2 years in Public Service or election management, supervision or observation. Technical Proficiency		The panel shall nominate two top candidates per state and FCT to the President for appointment in one state and FCT, followed by the National Assembly Screening and confirmation.

<sup>1</sup>Suggested CSOs - Centre LSD, WRAPA, Centre for Democracy and Development (CDD), Policy and Legal Advocacy Centre (PLAC), Women in Politics Forum (WIPF), Nigeria Women Trust Fund (NWTf), Peering Advocacy and Advancement Center in Africa (PAACA), Women Advocates Research and Documentation Center (WARDC); members of the Nigeria Civil Society (Election) Situation Room (NCSSR), Transition Monitoring Group (TMG), YIAGA Africa, Action Aid, Nigeria, and CLEEN Foundation for replacement.

<sup>2</sup>Olusola, A. (2023). Electoral reforms and the quest for integrity in Nigeria's electoral process.

Retrieved on April 12, 2025, from: <https://guardian.ng/politics/electoral-reforms-and-the-quest-for-integrity-in-nigerias-electoral-process/>

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### **Benefits of an Independent Panel**

The integrity and competence of INEC play a critical role in ensuring that elections are free and fair, core principles that underpin any functioning democracy. Strengthening the integrity of INEC hinges on a commitment to transparency, stakeholder involvement, inclusion and robust evaluation mechanisms within the leadership selection process. These efforts are not merely enhancements; they are fundamental to restoring and reinforcing public confidence in Nigeria's electoral process. This, in turn, will contribute to sustainable democratic governance, essential for national progress.

### **Case Study**

Several democracies around the world, including the United States, India, Chile, South Africa and Kenya, employ independent bodies or some form of quasi-independent committee for the appointment of electoral officials, ensuring electoral integrity and fostering public trust in the democratic process. Noteworthy is Kenya's model. The process of appointing commissioners to the Independent Electoral and Boundaries Commission (IEBC) involves a consultative approach that incorporates the participation of various stakeholders to ensure transparency and inclusivity. Here is an overview of how this consultative process works:

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<sup>3</sup>Ibrahim, J. (2023). Strengthening electoral integrity in Nigeria: A roadmap for reform. Retrieved on April 12, 2025, from: <https://thenationonlineng.net/strengthening-electoral-integrity-in-nigeria-a-roadmap-for-reform/>

<sup>4</sup>Okon, I. (2023). "Accountability in the Electoral Process in Nigeria: A Call for Reforms. Retrieved on April 11, 2025, from: <https://www.vanguardngr.com/2023/01/accountability-in-the-electoral-process-in-nigeria>

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Task	Description
<b>Formation of a Selection Panel</b>	The process begins with the establishment of a selection panel, which is often composed of representatives from different sectors of society, including civil society organisations, professional bodies, and other relevant stakeholders. This panel is responsible for overseeing the recruitment and selection of the IEBC commissioners. <sup>5</sup>
<b>Public Participation and Stakeholder Engagement</b>	To ensure a broad representation of interests, the selection panel conducts public engagement activities. This may include soliciting input from the public, political parties, and other interested groups. Public forums, advertisements, and outreach campaigns can be conducted to gather views on the qualities and qualifications desired in the commissioners. <sup>6</sup>
<b>Development of Criteria</b>	Based on the feedback obtained during the public participation phase, the selection panel develops criteria for the qualifications, skills, and experience required for the commissioner positions. This framework is crucial for ensuring that the candidates meet the necessary standards to perform effectively.
<b>Application Process</b>	The selection panel advertises the vacancies and invites applications from eligible candidates. The advertised roles typically specify the required qualifications and the application timeline. The process ensures that a variety of candidates can apply. In a press statement, signed by the country's selection panel chairperson, Dr. Nelson Makanda, dated February 16, 2025, the IEBC panel received 1,848 applications for the chairperson and member positions. <sup>7</sup>
<b>Shortlisting Candidates</b>	The panel reviews the applications and shortlists candidates based on the established criteria. This stage may also involve background checks to ensure the integrity and suitability of the candidates.
<b>Interviews</b>	Shortlisted candidates are then invited for interviews, where their competencies, knowledge of electoral processes, and ability to uphold the independence of the commission are evaluated. The panel may also seek input from a wider audience or conduct stakeholder consultations.

<sup>5</sup> Institute for Education in Democracy (IED) (2017). "Electoral Integrity in Kenya: The Role of Civil Society." Retrieved from <https://www.ied-kenya.org> on April 12, 2025.

<sup>6</sup> Sihanya, B. (2013). Strengthening Kenya's Electoral Process. Available at: [Kenya's Electoral process] retrieved from <https://www.africaportal.org> on April 13, 2025

<sup>7</sup> Parliament of Kenya <https://web.facebook.com/ParliamentKE>; retrieved on April 12, 2025.

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<b>Recommendations</b>	After interviews, the selection panel compiles a list of recommended candidates for appointment as IEBC commissioners. This list is submitted to the President of Kenya, who has the authority to nominate candidates.
<b>Approval by Parliament</b>	The President's nominees are then presented to Parliament for approval. The parliamentary committee may hold interviews or discussions regarding the candidates before voting on their confirmation
<b>Appointment</b>	Upon receiving parliamentary approval, the President formally appoints the commissioners to the IEBC. This step finalises the consultative process and ensures that the commissioners are representative of the broader society.

The Kenya model helps enhance the legitimacy and effectiveness of its independent electoral management body. Nigeria can indeed consider adopting a model similar to Kenya's for appointing INEC leadership. This would involve establishing an independent panel tasked with advertising, interviewing, screening, and recommending at least three candidates for the position of INEC Chairman and Commissioners to the president, who nominates from the list following the advice of the Council of States, to the National Assembly for screening and confirmation.

### Conclusion

Ensuring the integrity of INEC relies on a steadfast commitment to transparency, active stakeholder involvement, inclusion and effective evaluation mechanisms in the leadership selection process. These initiatives are not just improvements; they are critical for restoring and bolstering public confidence in Nigeria's electoral system. Ultimately, this will contribute to sustainable democratic governance, which is essential for the nation's progress.<sup>8</sup>

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<sup>8</sup> International IDEA. (2013). "The Electoral Management Design in South Africa." Available: [International IDEA] retrieved on April 11, 25 <https://www.idea.int/publications/catalogue/electoral-management-design-south-africa>.

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