



**THE 7TH SENATE
FEDERAL REPUBLIC OF NIGERIA**

***COMMITTEES ON THE REVIEW OF THE 1999
CONSTITUTION AND THE INDEPENDENT
NATIONAL ELECTORAL COMMISSION (INEC)***

**REPORT ON
A BILL
FOR
AN ACT TO AMEND THE ELECTORAL ACT, 2010 TO
PROVIDE FOR TENURE OF OFFICE OF SECRETARY,
POWER TO ISSUE DUPLICATE VOTERS CARD,
DETERMINE VOTING PROCEDURE AND FOR OTHER
RELATED MATTERS, 2014 (SB.455)**

JUNE, 2014

REPORT OF THE SENATE COMMITTEE ON THE REVIEW OF THE 1999 CONSTITUTION AND THE INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) COMMITTEE ON A BILL FOR AN ACT TO AMEND THE ELECTORAL ACT, 2010

1.0 INTRODUCTION

The Senate of the Federal Republic of Nigeria referred the following Electoral Act (Amendment) Bills to the Committees on the Review of the 1999 Constitution and Independent National Electoral Commission (INEC) for further legislative action after exhaustive debates on their general principles and subsequent Second Reading:

- i. Electoral Act (Amendment) Bill (SB.455), Second Reading – Tuesday, 1st April, 2014;
- ii. Electoral Act (Amendment) Bill (SB.266), Second Reading – 1st April, 2014;
- iii. Electoral Act (Amendment) Bill (SB.379), Second reading – 1st April, 2014; and
- iv. Electoral Act (Amendment) Bill (SB.297), Second Reading – Thursday, 3rd April, 2014

1.1 MEMBERSHIP OF THE COMMITTEE

- | | | | |
|----|--------------------------|---|--|
| 1. | Sen. Ike Ekweremadu | - | Chairman, Committee on Constitution Review |
| 2. | Sen. Victor Ndoma-Egba | - | Member |
| 3. | Sen. Bello Hayatu Gwarzo | - | “ |
| 4. | Sen. Uche Chukwumerije | - | “ |
| 5. | Sen. Abdul Ahmed Ningi | - | “ |
| 6. | Sen. Solomon Ganiyu | - | “ |
| 7. | Sen. George Akume | - | “ |
| 8. | Sen. Abu Ibrahim | - | “ |

9. Sen. Ahmed Rufa'i Sani - “
10. Sen. Ayoola H. Agboola - “
11. Sen. Umaru Dahiru - “
12. Sen. James E. Manager - “
13. Sen. Heineken Lokpobiri - “
14. Sen. Odion Ugbesia - “
15. Sen. Chris Anyanwu - “
16. Sen. Ahmed Makarfi - “
17. Sen. Smart Adeyemi - “
18. Sen. Dahiru Kuta - “
19. Sen. Nkechi Nwaogu - “
20. Sen. Zaynab Kure - “
21. Sen. Ayogu Eze - “
22. Sen. Suleiman Adokwe - “
23. Sen. Ita Enang - “
24. Sen. Phillip Tanimu Aduda - “
25. Sen. Chris Ngige - “
26. Sen. Barnabas Gemade - “
27. Sen. Ahmed Zannah - “
28. Sen. Christopher Nwankwo - “
29. Sen. Bello Moh'd Tukur - “
30. Sen. Anthony Adeniyi - “
31. Sen. Joshua Lidani - “
32. Sen. Abdulaziz Usman - “
33. Sen. Abubakar Atiku Bagudu - “
34. Sen. Mohammed Shabba Lafiagi - “
35. Sen. Adegbenga Sefiu Kaka - “
36. Sen. Boluwaji Kunlere - “
37. Sen. Sola Adeyeye - “

- | | | | |
|-----|--------------------------------|---|---|
| 38. | Sen. Olufemi Lanlehin | - | “ |
| 39. | Sen. Joshua Dariye | - | “ |
| 40. | Sen. Magnus Abe | - | “ |
| 41. | Sen. Abubakar Tutare Umar | - | “ |
| 42. | Sen. Alkali Jajere | - | “ |
| 43. | Sen. Esuene Helen | - | “ |
| 44. | Sen. Nenadi Usman | - | “ |
| 45. | Sen. Oluremi Tinubu | - | “ |
| 46. | Sen. Aisha Alhassan | - | “ |
| 47. | Sen. Mohammed Sani Saleh | - | “ |
| 48. | Sen. Margery C. Chuba Okadigbo | - | “ |
| 49. | Sen. Hope Uzodimma | - | “ |

1.2 COMMITTEE ON INEC

- | | | | |
|----|---------------------------|---|------------------------------|
| 1. | Sen. Andy Uba | - | Chairman (Committee on INEC) |
| 2. | Sen. Basheer Mohammed | - | Member |
| 3. | Sen. Abdulmumin M. Hassan | - | “ |
| 4. | Sen. Alkali A. Jajare | - | “ |
| 5. | Sen. Magnus Abe | - | “ |
| 6. | Sen. Zaynab Kure | - | “ |
| 7. | Sen. Olusola Adeyeye | - | “ |
| 8. | Sen. Abdulaziz Usman | - | “ |
| 9. | Anthony A. Adeniyi | - | “ |

1.3 SECRETARIAT

- | | | | |
|----|---------------------|---|---|
| 1. | Dr. Innocent Mebiri | - | Clerk, Committee on Constitution Review |
| 2. | Fayam Philip | - | Clerk, Committee on INEC |

2.0 BACKGROUND TO THE BILL

In the light of our experience as a nation, the 1999, 2003, 2007 and 2011 elections have shown that a good electoral system is invariably a prerequisite for enthroneing free and fair elections and the attendant effects of good governance, peace and stability in the polity. A flawed electoral system is a big threat to democracy, peace and unity in the country. In a transparent electoral democracy, there is a strong link between sustainable development and elections. Thus, the National Assembly has made sustained efforts at strengthening Nigeria's electoral process. The last Constitutional amendment reinforced the independence of the Independent National Electoral Commission (INEC) by making it more financially independent so as to insulate it from political interference.

It has been observed nonetheless, that more needs to be done to strengthen the Commission and enhance the entire electoral process. Thus when the Independent National Electoral Commission (INEC) forwarded proposals on the need for the amendment of some provisions of the Electoral Act to the Committee on Constitution Review and the Independent National Electoral Commission (INEC) Committee, it was well received and the Committees immediately initiated meetings with relevant stakeholders and held retreats with them to critically discuss the proposals with a view to improving the legal framework for the conduct of free and credible elections in 2015.

The Senate and the entire National Assembly recognise the need therefore to reform and strengthen the electoral law as an institution beyond even what is proposed by INEC and ensure total adherence of those laws and legislations. The outcome of the engagements is encapsulated in the content of some of the Bills debated and referred to the two Committees for further processing.

3.0 OBJECTIVE OF THE BILLS

The litmus test for a viable democratic Nigeria will be the extent to which her electoral process and laws are able to promote fair, participatory and electoral

Thus, the Bills generally seek to improve on the legal framework for the Electoral process in such a manner that the election management body will be free to take independent decisions on some issues of procedures and to gain time to prepare voters and candidates for elections as well as petitions after elections.

4.0 COMMITTEE ACTION/METHODOLOGY

On receipt of the Bills the two Committees met and agreed to hold a retreat where the reports of the meetings and engagements with stakeholders were reviewed vis-à-vis the provisions of the Bills. The contributions of members to the debate on the general principles of the Bills were also considered. The debates were generally non-partisan and very participatory.

Also, the Constitution Review Committee engaged in study missions to a number of countries to see first-hand how other Federal countries engage in electoral activities; electoral advocacy and reform; to draw from their experiences and challenges and ultimately, to observe and learn about global best practices in electoral processes and how they could be implemented in the Nigerian context so as to further strengthen the development of Nigeria's democratic electoral process.

5.0 HIGHLIGHTS OF THE BILL

Below is a snapshot of the major areas of the Electoral Act the Bill sought to alter which the Committees accepted and now recommend to the plenary. These are contained in the Draft Bill attached to the Report.

- i. Section 8 – Provision of tenure for the Secretary of the Commission.

- ii. Sections 13 and 18 – to give INEC sufficient time to process transfer of voters and issuance of duplicate voters’ card.
- iii. Section 52(2) – to allow INEC determine the procedure for voting at an election – thereby removing the prohibition of electronic voting.
- iv. Section 77 – to give INEC more time to produce certified true copies of documents requested by any party in an election petition.
- v. Section 111 – to give INEC more time to conduct re-run election into Area Councils.
- vi. Insertion of 115A and 115B – to empower the Executive Council of an Area Council to remove a Chairman or Vice-Chairman on grounds of incapacity; also to empower the Vice-Chairman and Leader to occupy the position of Chairman where appropriate.
- vii. Insertion of New Section “3A” of Section 123(1) – to provide punishment for polling officers who conspire to make false declaration of result.
- viii. Section 133 – to extend time for constitution of election tribunals.
- ix. Section 135 and 136 respectively define who appoints Chairman and members of Area Council Election Tribunals and Appeal Tribunal, when they will be constituted as well as when they will commence business.
- x. Paragraph 51(1) & (2) of the First Schedule deleted – to prevent electoral officers from being respondents in election petitions.

On the other hand, a number of proposals were rejected by the Committees.

Some of the proposals rejected are:

- i. Senate Bill 297 – (Sought to vest the responsibility of proving the regularity of any election on the Independent National Electoral Commission). The Bill was rejected in its entirety as the Committees were of the view that in law, the burden of proof lies with the petitioner.

House of Representatives and State Assemblies on the same day) – The Committees were unanimous in the opinion that INEC presently lacks the capacity to manage an electoral exercise of that scale in a single day.

- iii. Senate Bill 379 (Amendment of Section 28 – to provide alternative authority for officers to swear oath of neutrality). This was rejected as it was already covered in Bill 455.
- iv. Senate Bill 379 (Amendment of Section 87 to empower INEC where a political party fails to comply with the provisions of the Constitution or Electoral Act, to exclude the nominated candidate of that party from the list of nominated candidates for the election). The Committees were of the view that the court is the appropriate forum to determine the regularity or otherwise of a party primary.
- v. Senate Bill 266 (Amendment of Section 100 to make Presidential Debates mandatory before an election). Election debates, the Committees felt, should remain outside the purview of the law.

6.0 OBSERVATIONS

The Committees observed that the Bills offered diverse opinion on the issue of deepening democracy and democratic gains through electoral reforms. However, there were glaring problems of practicability, repetitiveness of some provisions, contradiction of standard legal principles and constitutional provisions. Hence, some of the provisions of the aforementioned Bills 266, 297, 379 and 455 were rejected.

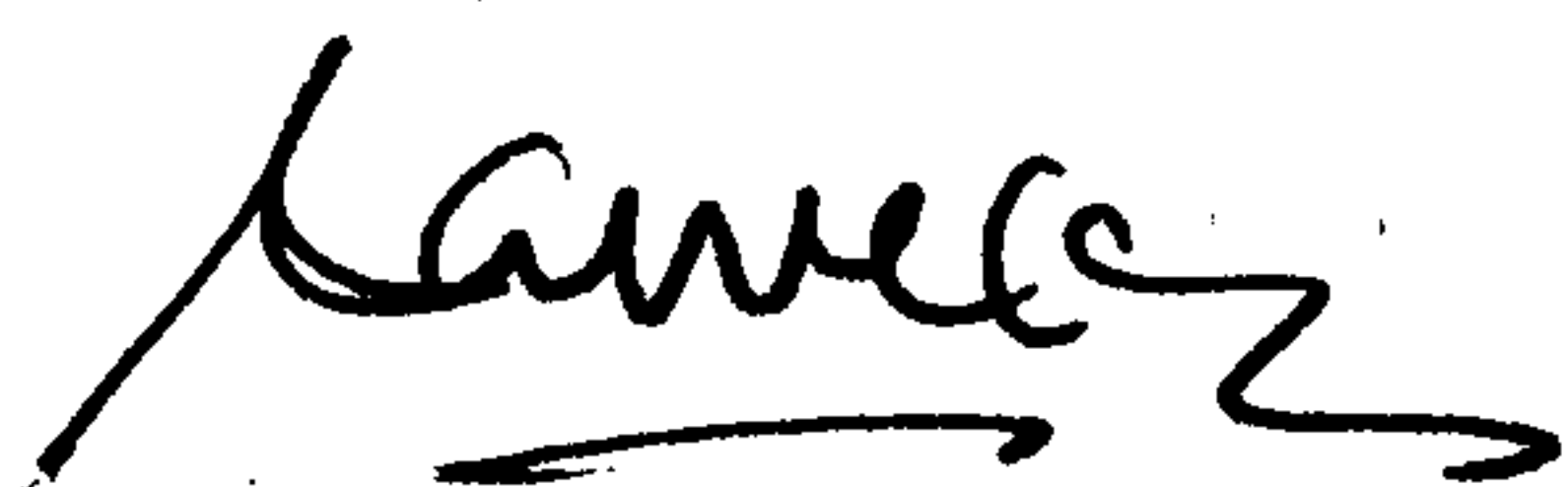
7.0 RECOMMENDATION

Mr. President, Distinguished colleagues, in view of the importance of the Bill and its relevance to the 2015 general elections, the Committees recommend that:

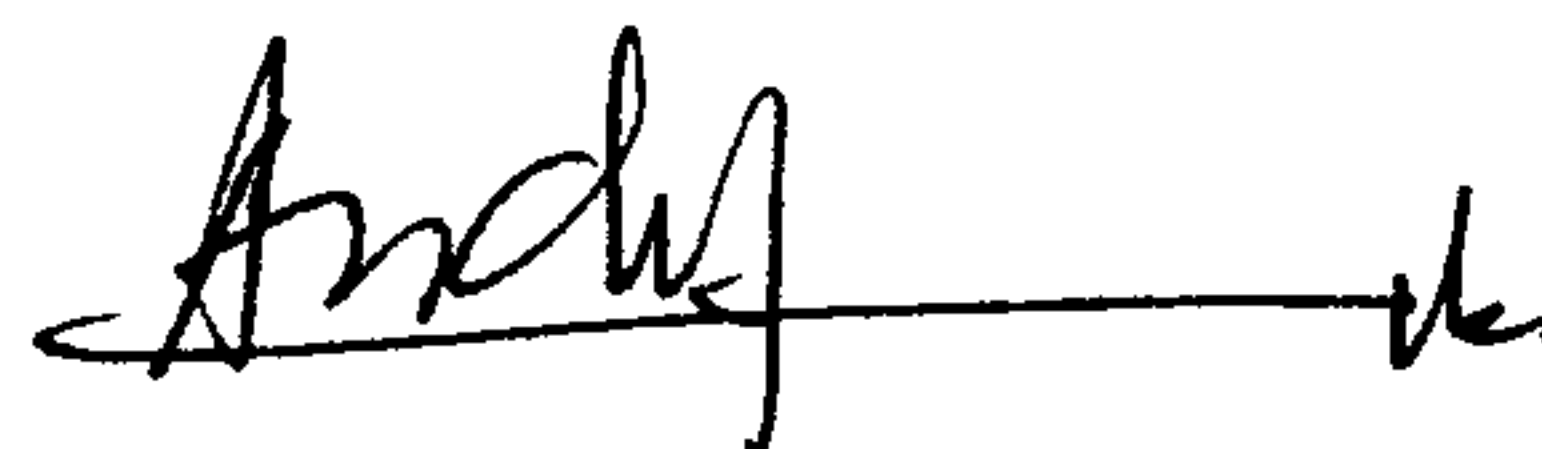
- a. the proposed amendments to the Electoral Act 2010 in the attached document should be adopted,
- b. the Senate do expedite action in the passage of this Bill to comply with the six months before election requirement of the ECOWAS Protocol on Good Governance to which Nigeria is a signatory.

8.0 CONCLUSION

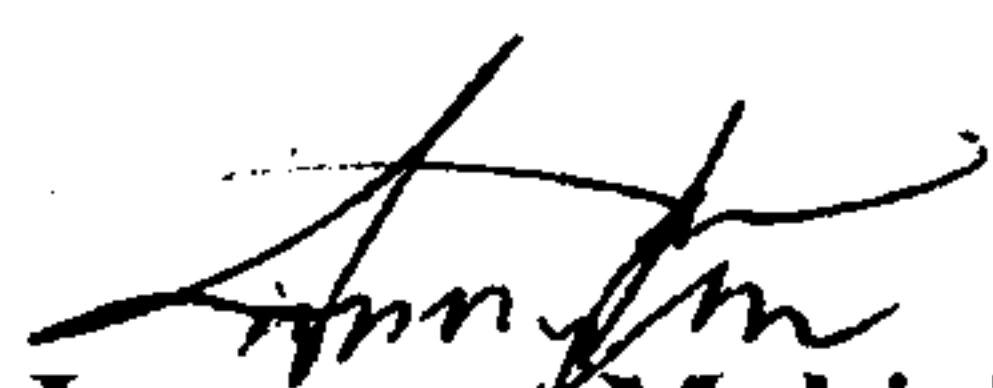
Mr. President, Distinguished Senators, on behalf of the members of both Committees, I wish to thank you for the opportunity given to us to be part of the processing of this Bill. Your support, cooperation and encouragement, including your incisive contributions to the debate on the general principles of the Bill undoubtedly, impacted on this work.



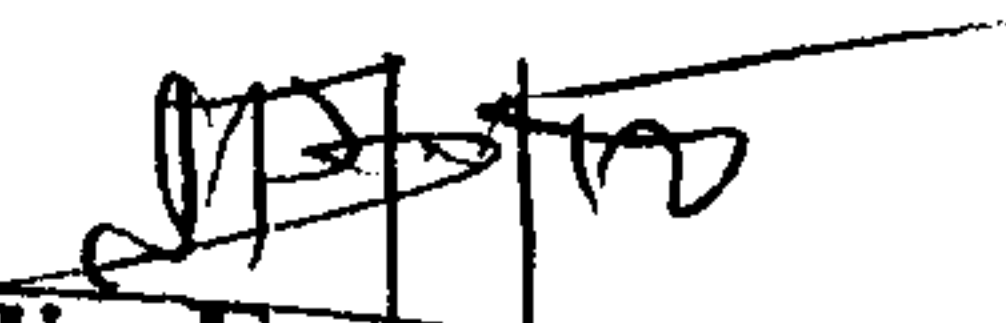
Senator Ike Ekweremadu, CFR
DSP/Chairman
Constitution Review Committee



Senator Andy Uba
Chairman, INEC



Dr. Innocent Mebiri
Clerk, Constitution Review



Phillip Fayana
Committee Clerk, INEC

**A BILL
FOR
AN ACT TO AMEND THE ELECTORAL ACT, 2010 TO PROVIDE FOR TENURE OF OFFICE OF SECRETARY, POWER TO
ISSUE DUPLICATE VOTERS CARD, DETERMINE VOTING PROCEDURE AND FOR OTHER RELATED MATTERS, 2014
(SB.455)**

| Section | Provisions of the Electoral Act | Provisions of the Bill | Committee Recommendation | Remarks |
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| | | The Electoral Act 2010 referred to in this Bill as the Principal Act is amended as follows: | | |
| 8. | <p>Secretary and other Staff of the Commission 8(1). There shall be a Secretary to the Commission who shall-</p> <p>(a) be appointed by the Commission; and (b) have such qualifications and experience to be determined by the Commission as are appropriate for a person required to perform the functions of his office under this Act.</p> | <p style="text-align: center;">Clause 1 Amendment of Section 8</p> <p>Section 8(I)of the Principal Act is amended by inserting a paragraph ‘c’</p> <p>“(C). hold office for a period of 4 (four) years from the date of his appointment which may be renewable for another period of 4 (four) years only”.</p> | Retained as in Bill | Tenure of the Secretary to the Commission. |
| 13. | <p style="text-align: center;">Transfer of Registered Voters</p> <p>13. (1) A persons who before election is resident in a constituency other than the one in which he was registered may apply to the Resident Electoral Commissioner of the State where he is currently resident for his name to be entered on the transferred voters’ list for the constituency.</p> <p>(2) An application under subsection (1) of this section shall be accompanied by the applicant’s voter’s card and shall be made not less than 30 days before the date of an election in the constituency where the applicant is resident.</p> | <p style="text-align: center;">Clause 2 Amendment of Section 13</p> <p>Section 13(2) of the principal Act is amended by:</p> <p style="padding-left: 40px;">i. inserting immediately after the word “by” in ,line 2 the words “a copy of”, ii. substituting the figure “30” in line 2 with the figure “60”.</p> | Retained as in Bill | Increase the number of days with which INEC could receive and treat application for duplicate voters card |

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| <p>18.</p> | <p>Power to issue duplicate Voters' Cards</p> <p>18.(1) Whenever a Voter's card is lost, destroyed, defaced, torn or otherwise damaged, the owner of such card shall, not less than thirty (30) days before polling day, apply in person to the Electoral Officer or any other officer duly authorized for that purpose by the Resident Electoral Commissioner, stating the circumstances of the loss, destruction, defacement or damage.</p> <p>(2).....</p> <p>(3) No person shall issue a duplicate voters' card to any voter on polling day or less than thirty (30) days before polling day.</p> <p>(4).....</p> | <p>Clause 3 Amendment of Section 18</p> <p>Section 18 of the Principal Act is amended in sub-section (1) by substituting the word "thirty" and figure "30" in line 2 with the word "sixty" and the figure "60".</p> | <p>Retained as in Bill</p> | <p>Increase the number of days to apply for treatment of request for a new voters card</p> |
| <p>28.</p> | <p>Oath of Neutrality by election officers Second Schedule</p> <p>28.(1) All staff appointed by the Commission taking part in the conduct of an election shall affirm or swear before the High Court an Oath of Neutrality as in the second Schedule to this Act.</p> <p>(2).....</p> | <p>Clause 4 Amendment of Section 28</p> <p>Section 28(1) of the Principal Act is amended by substituting the words "the High Court" in line 2 with the words "any court of law or Commissioner for Oaths."</p> | <p>Retained as in Bill</p> | <p>Extending the place to take oath of neutrality to any court of law to ensure compliance of people in an environment without a High Court</p> |
| <p>52.</p> | <p>Conduct of poll by open secret ballot</p> <p>52.(1) Voting at an election under this Act shall be open secret ballot.</p> <p>(2) The use of electronic voting machine for the time being is prohibited.</p> <p>(3).....</p> <p>(4).....</p> | <p>Clause 5 Amendment of Section 52</p> <p>Section 52 of the Principal Act is amended by substituting sub-section (2) with a new sub-section "2":</p> <p>"(2). Voting at an election under this Act shall be</p> | <p>Retained as in Bill</p> | <p>INEC should decide on electronic voting procedure and</p> |

| | | in accordance with the procedure determined by the Independent National Electoral Commission". | | otherwise (it unchains INEC) |
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| 77. | <p style="text-align: center;">Access to election documents</p> <p>77.(1) The Resident Electoral Commissioner, in a State where an election is conducted, shall, within 7 days after an application is made to him by any of the parties to an election petition, cause such documents or the certified true copy thereof, to be issued to the said party.</p> <p>(2).....</p> | <p style="text-align: center;">Clause 6 Amendment of Section 77</p> <p>Section 77 of the Principal Act is amended by substituting for subsection (1) a new subsection (1):</p> <p>“77(1). The Resident Electoral Commissioner, in a State where an election is conducted, shall, within 14 days after an application is made to him by any of the parties to an election petition, cause certified true copies of such document to be issued to the said party.”</p> | Retained as in Bill | Increase the number of days within which an applicant can be issued certified documents from 7 days to 14 days |
| 111. | <p style="text-align: center;">Election of Area Council Chairman</p> <p>111.(1) A candidate for an election to the office of Chairman, shall be deemed to have been duly elected to the office where being the only candidate nominated for the election he has-</p> <p>(a).....</p> <p>(b).....</p> <p>(2).....</p> <p>(3) If no candidate is duly elected under subsection (2) of this section, the Commission shall within 7 days conduct a second election between the 2 candidates, and the candidate who scored the majority of votes cast at the election shall be deemed duly elected at the election.</p> <p>(4).....</p> <p>(5).....</p> <p>(6) In default of a candidate duly elected under this section, the Commission shall within 7 days of the result of the election held under the said subsections, arrange for another election between</p> | <p style="text-align: center;">Clause 7 Amendment of Section 111</p> <p>Section 111 of the Principal Act is amended in subsections “3”, “6” and “7”, by substituting for the figure “7” with the figure “14”.</p> | Retained as in Bill | Increase the number of days (from 7 to 14) for INEC to conduct election into Area Councils where there is no clear winner in the first election |

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| | <p>the 2 candidates and a candidate at such an election shall be deemed to have been duly elected to the office of a Chairman of the Area Council if he has-</p> <p>(7) If no candidate is duly elected under subsection (6) of this section, arrangements shall be made within 7 days of the result of the previous election, for another election between the 2 candidates specified in subsection (6) of this section, and a candidate at this last election shall be deemed duly elected to the office of Chairman of the Area Council if he scores a simple majority of votes cast at the election.</p> | | | |
| 115. | <p>Removal of Chairman or Vice-Chairman</p> | <p>Clause 8 Insertion of New Section 115A – 115B</p> <p>Insert immediately after the existing Section 115 new Sections “115A – 115B”</p> <p>“Permanent Incapacity of Chairman or Vice Chairman of an Area Council 115A(1). The Chairman or Vice Chairman of Area Council shall cease to hold office if-</p> <p>(a) by resolution passed by two-thirds majority of all members of the Executive Council of the Area Council, it is declared that the Chairman or Vice Chairman is incapable of discharging the functions of his office; and</p> <p>(b) the declaration in paragraph (a) of this subsection is verified after such medical examination panel established under subsection (4) of this section in its report to the Speaker of the Area Legislative</p> | <p>Retained as in Bill</p> | <p>Provides for who manages the Council in the case of permanent incapacity of the Chairman or of the Vice-Chairman</p> |

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| | | <p>Council.</p> <p>(2). Where the medical panel certifies in its report that in its opinion the Chairman or Vice Chairman is suffering from such infirmity of body or mind as renders him permanently incapable of discharging the functions of his office, a notice thereof signed by the Speaker of the Area Legislative Council shall be published in the Official Gazette of the Area Council.</p> <p>(3). The Chairman or Vice Chairman shall cease to hold office as from the date of publication of the notice of the medical report pursuant to subsection (2) of this section.</p> <p>(4). The medical panel to which this section relates shall be appointed by the Speaker of the Area Legislative Council and shall consist of five medical practitioners in Nigeria:</p> <ul style="list-style-type: none">(a) one of whom shall be the personal physician of the holder of the office concerned; and(b) four other medical practitioners who have, in the opinion of the Speaker of the Area Legislative Council, attained a high degree of eminence in the field of medicine relative to the nature of examination to be conducted in accordance with the foregoing provisions of this section. <p>(5). In this section, the reference to Executive Council of the Area Council' is a</p> | | |
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reference to the body of supervisory councilors of the Area Council, established by the Chairman and charged with such responsibility for the functions of government as the Chairman may direct.

Discharge of Functions of Chairman or Vice Chairman of an Area Council

115B(1). The Vice-Chairman of an Area Council shall hold the office of the Chairman of the Area Council if the office of the Chairman becomes vacant by reason of death, resignation, permanent incapacity or removal of the Chairman from office for any other reason in accordance with section 115 or 116 of this Act.

(2). Where any vacancy occurs in the circumstances mentioned in subsection (1) of this section during a period when the office of Vice-Chairman of the Area Council is also vacant, the Leader of the Area Legislative Council shall hold office of the Chairman of the Area Council for a period of not less than three months, during which there shall be an election of a new Chairman of the Area Council who shall hold office for the unexpired term of office of the last holder of the office.

(3). Where the office of the Vice-Chairman becomes vacant-

- (a) by reason of death, resignation, permanent incapacity or removal in accordance with section 115 or 116 of this Act;
- (b) by his assumption of the office of Chairman of an Area Council in accordance with subsection (1) of this section; or


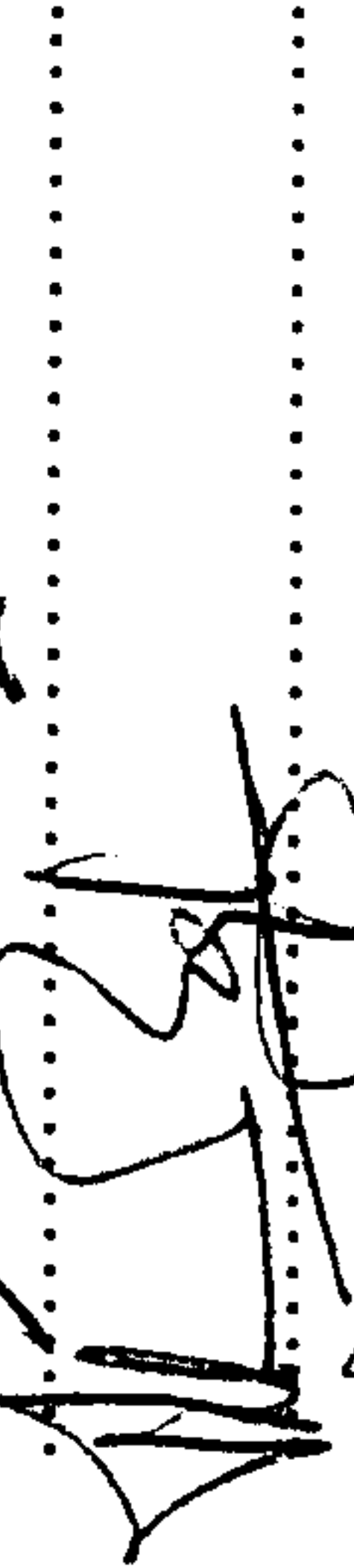















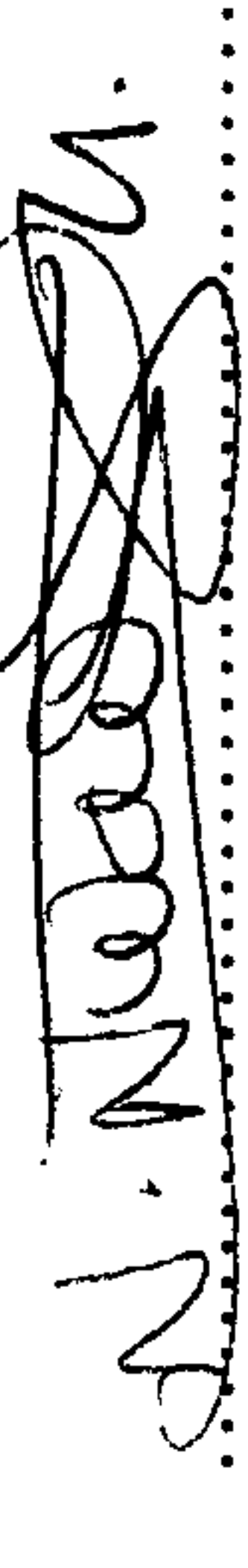
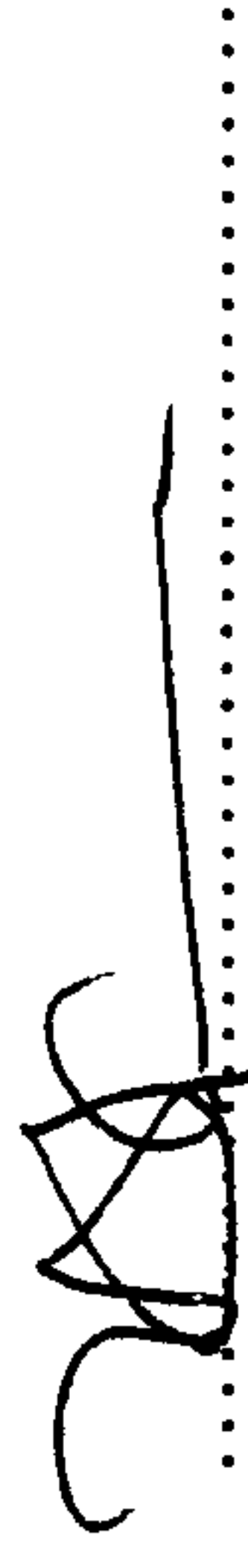

It defines the circumstances where the Vice-Chairman and the Leader of an Area Council can hold the office of the Chairman

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| | | <p>before the election; and</p> <p>(b) when constituted, open their registries for business not later than 30 days after the election.</p> <p>(7). The Quorum of the Area Council Election Appeal Tribunal when hearing any appeal from decisions of the Area Council Election Tribunal shall be all three members of the Appeal Tribunal.”</p> | | |
| P.51 | <p>Electoral Officer, etc. as Respondents</p> <p>51(1) Where an election petition complains of the conduct of an Electoral Officer, a Presiding Officer, Returning Officer or any other official of the Commission he shall for all purposes be deemed to be a respondent and joined in the election petition as a necessary party, but an Electoral Officer, a Presiding Officer, Returning Officer or any other official of the Commission shall not be at liberty to decline from opposing the petition except with the written consent of the Attorney-General of the Federation.</p> <p>(2) If consent is withheld by the Attorney-General under subparagraph (1) of this paragraph the Government of the Federation shall indemnify the electoral Officer, Presiding Officer, Returning Officer or such other official of the Commission against any costs which may be awarded against him by the Tribunal or court in respect of the election petition.</p> | <p>Clause 13</p> <p>Amendment of paragraph 51</p> <p>Paragraph 51 of the First Schedule of the Principal Act is amended by deleting subparagraph “1” and “2”.</p> | Retained as in Bill | To free Electoral officials from being respondents in election petition |
| | | <p>Short title</p> <p>This Bill may be cited as Electoral Act (Amendment Bill) 2014</p> | | |

Explanatory Memorandum

This Bill seeks to further amend the Electoral Act, 2010 to among other things provide for the tenure of Office of the Secretary, Power of INEC to issue duplicate voters card, Determine voting procedure; and the appointment and member of the Area Council Election Appeal Tribunal.

SIGNATURES

1. Sen. Ike Ekweremadu - 
2. Sen. Victor Ndoma-Egba - 
3. Sen. Bello Hayatu Gwarzo - 
4. Sen. Uche Chukwumerije - 
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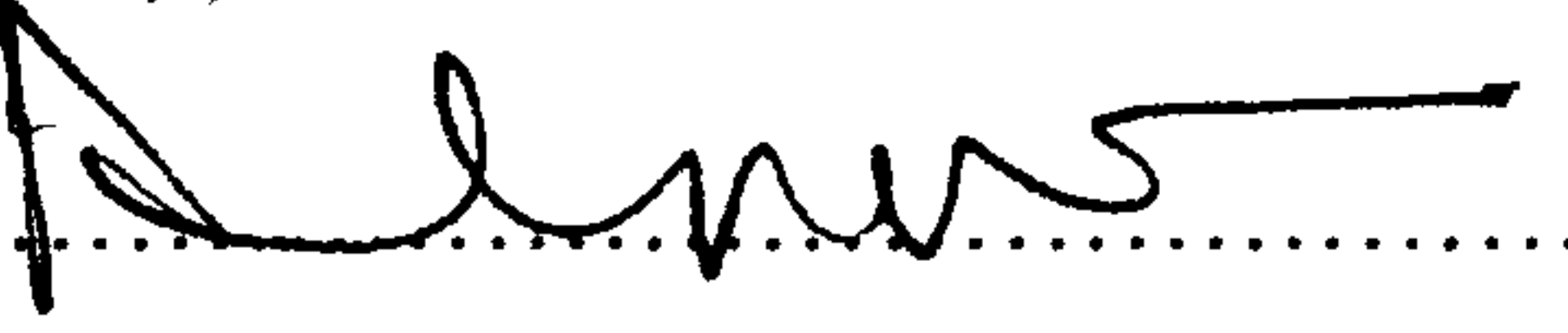
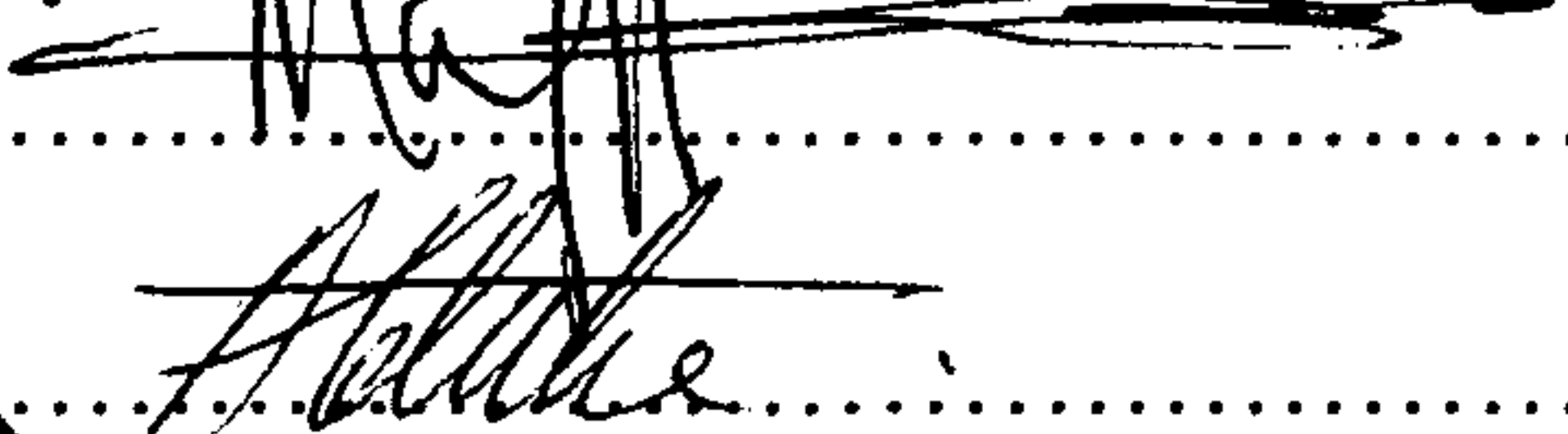
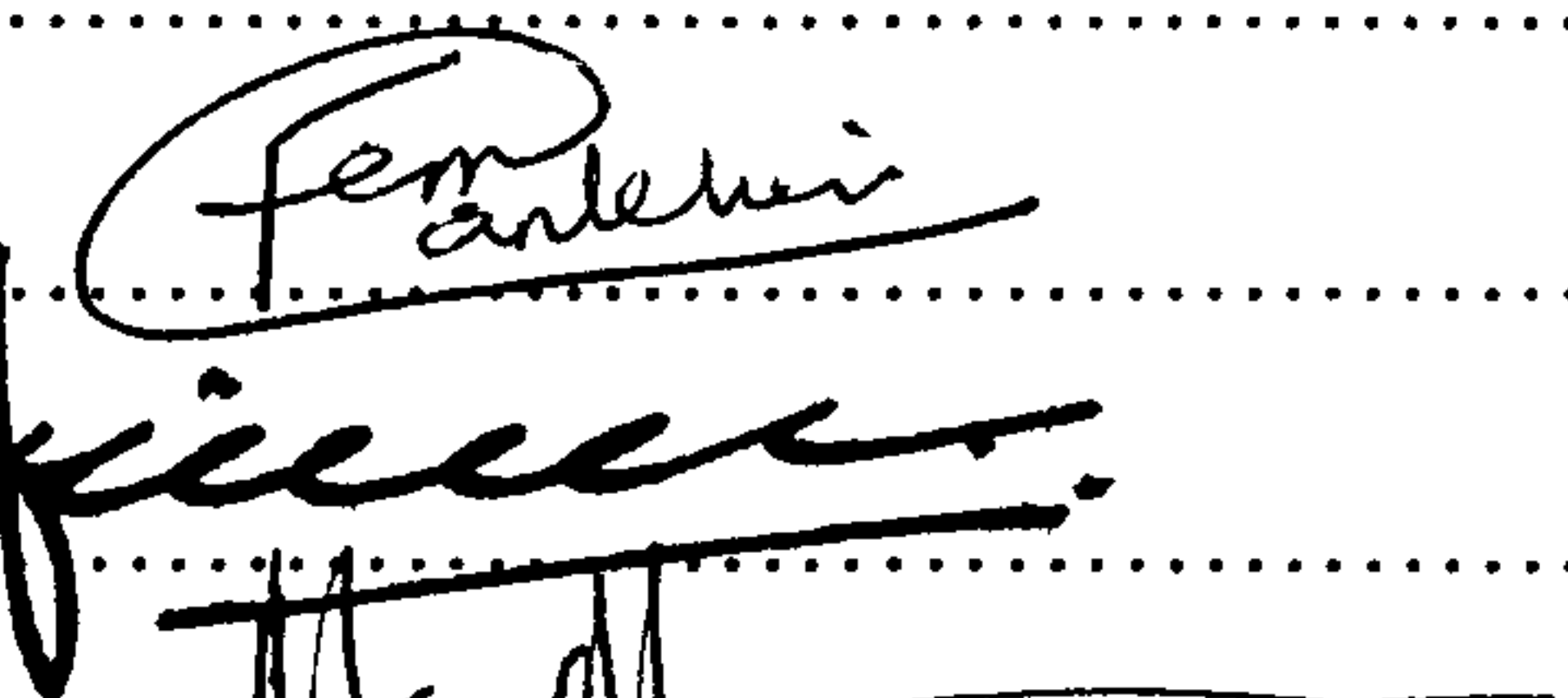
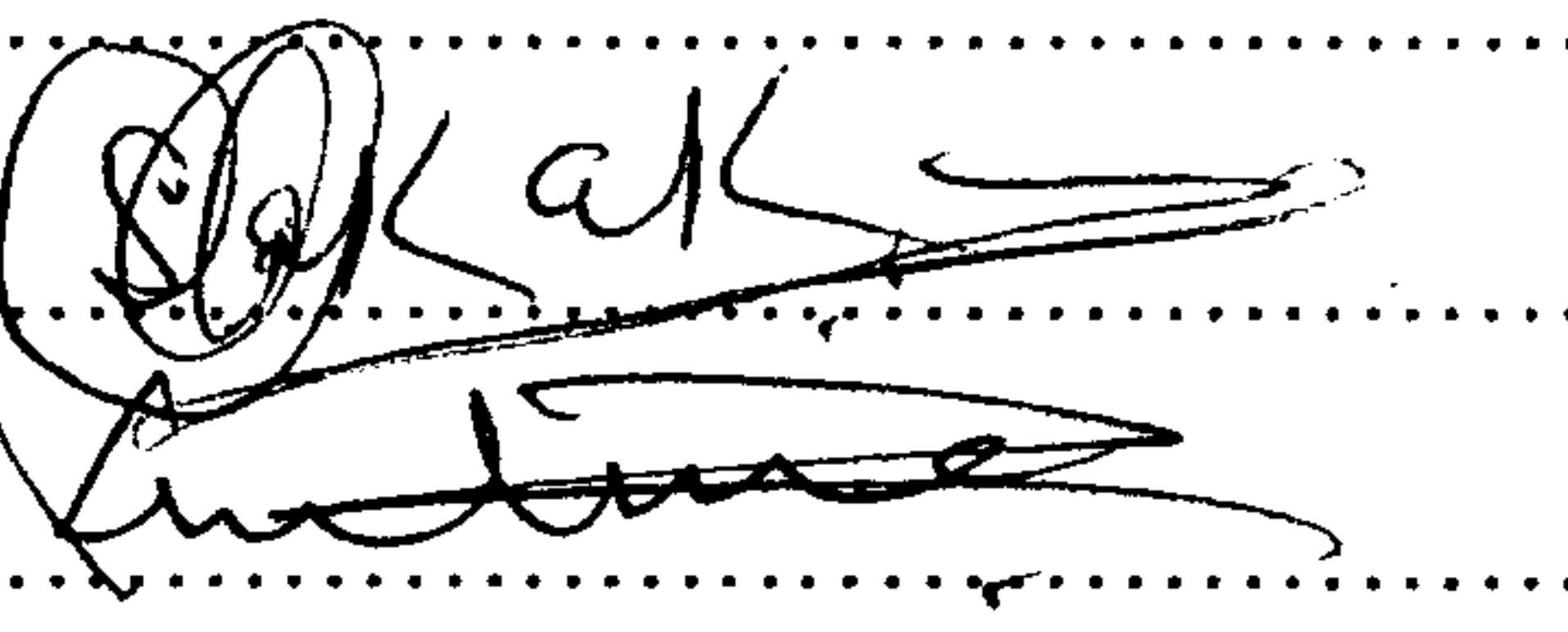
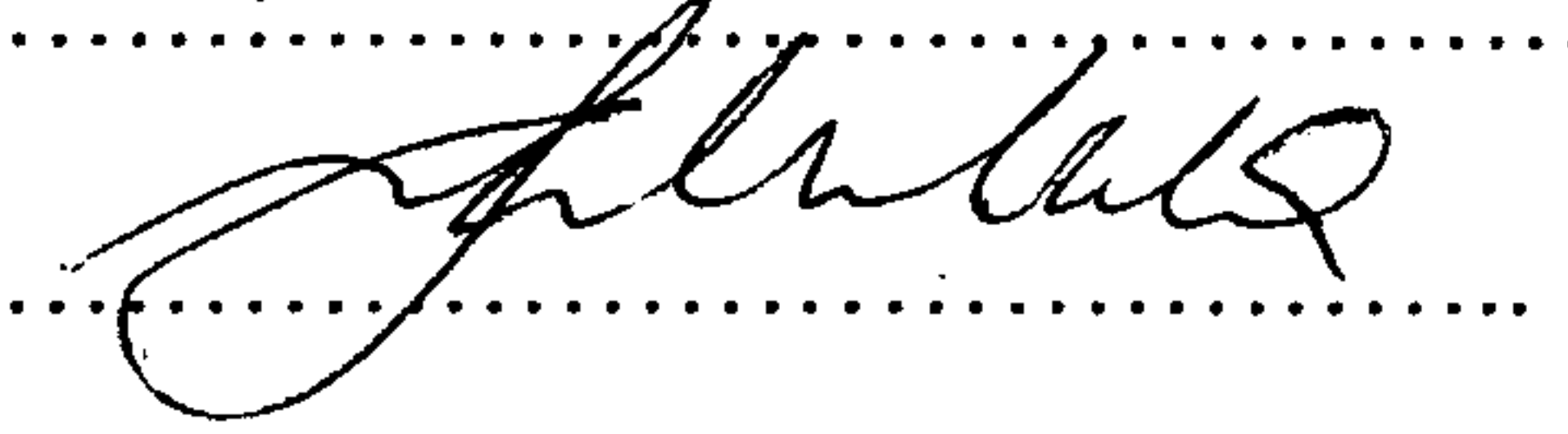
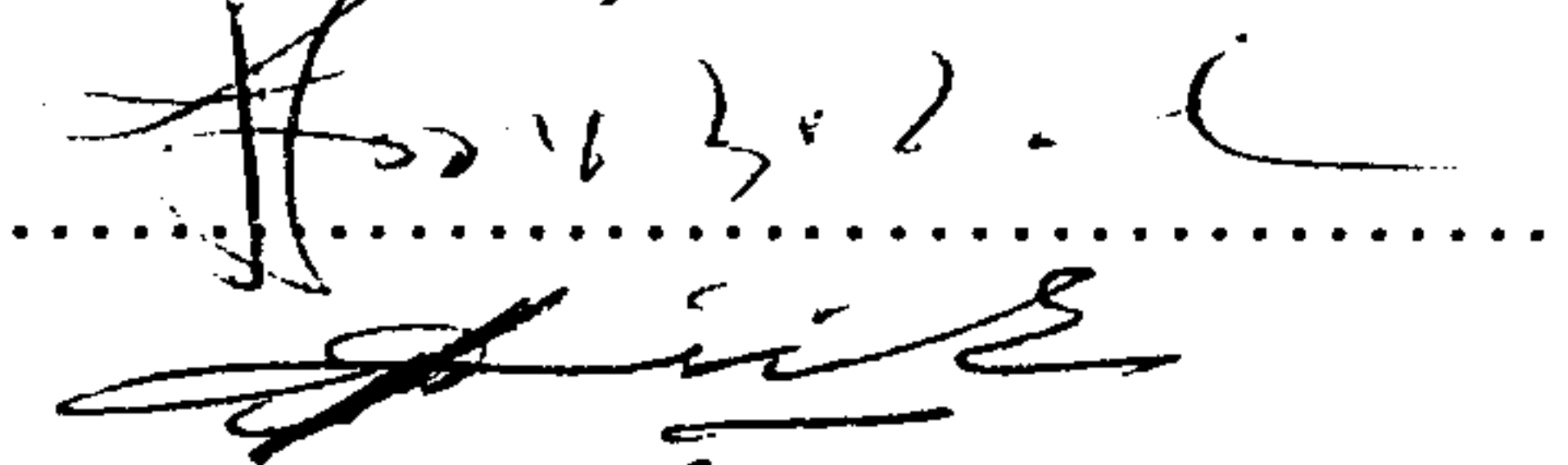
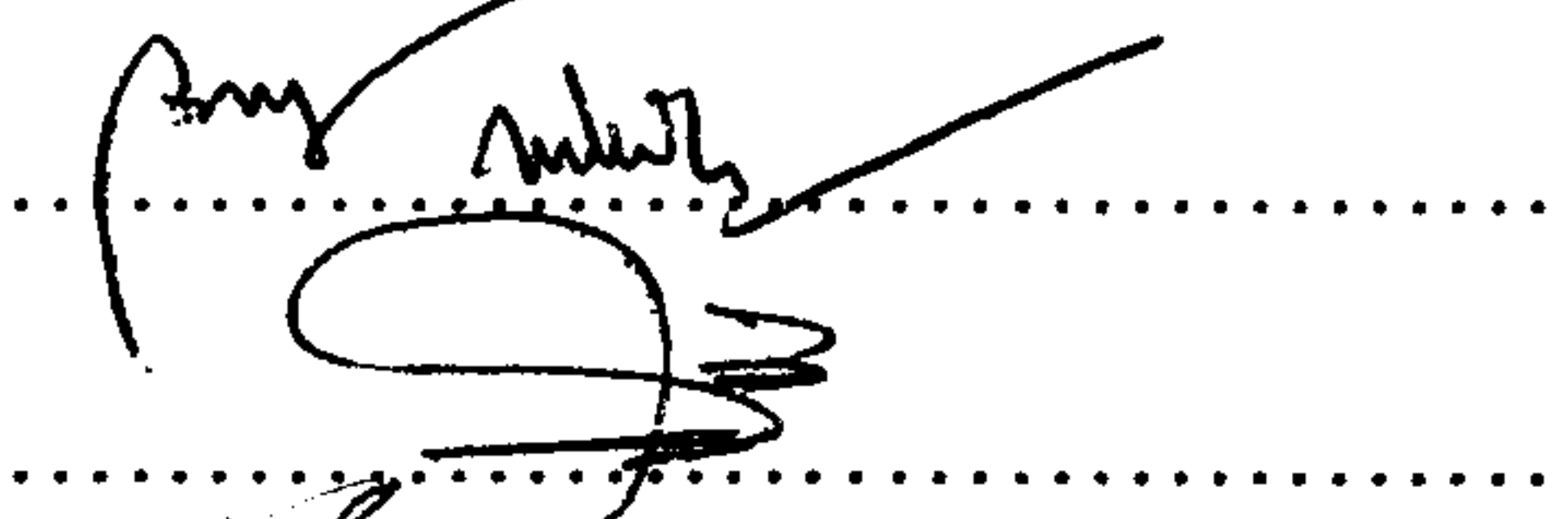
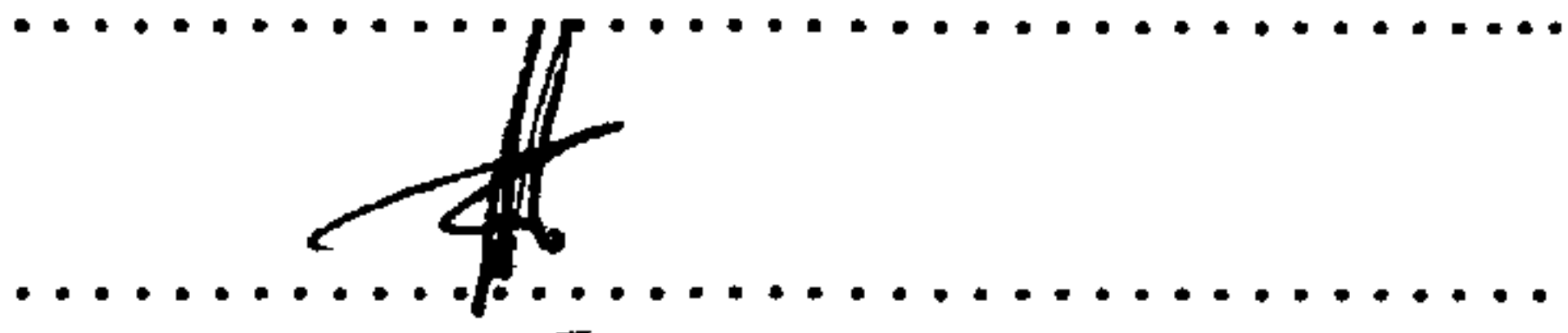
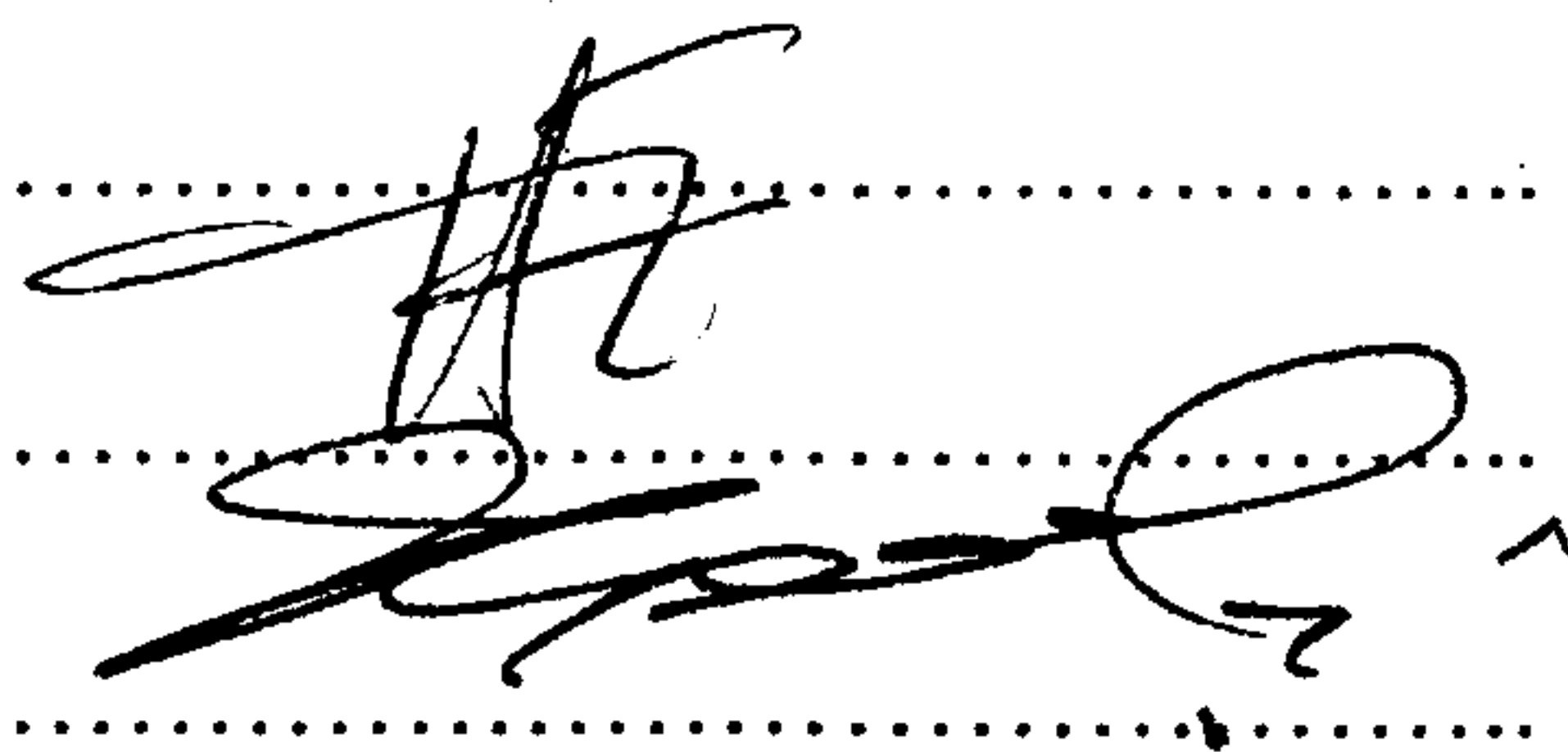
38. Sen. Olufemi Lanlehin -

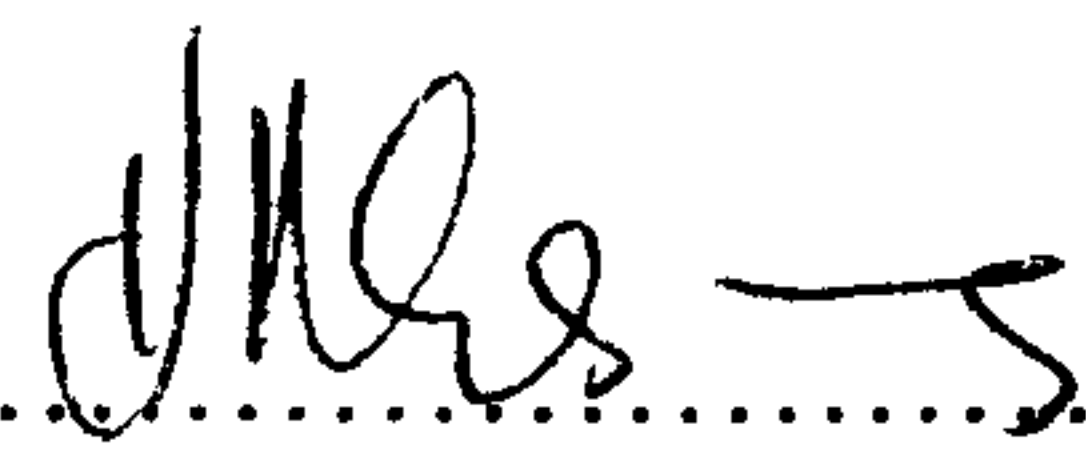
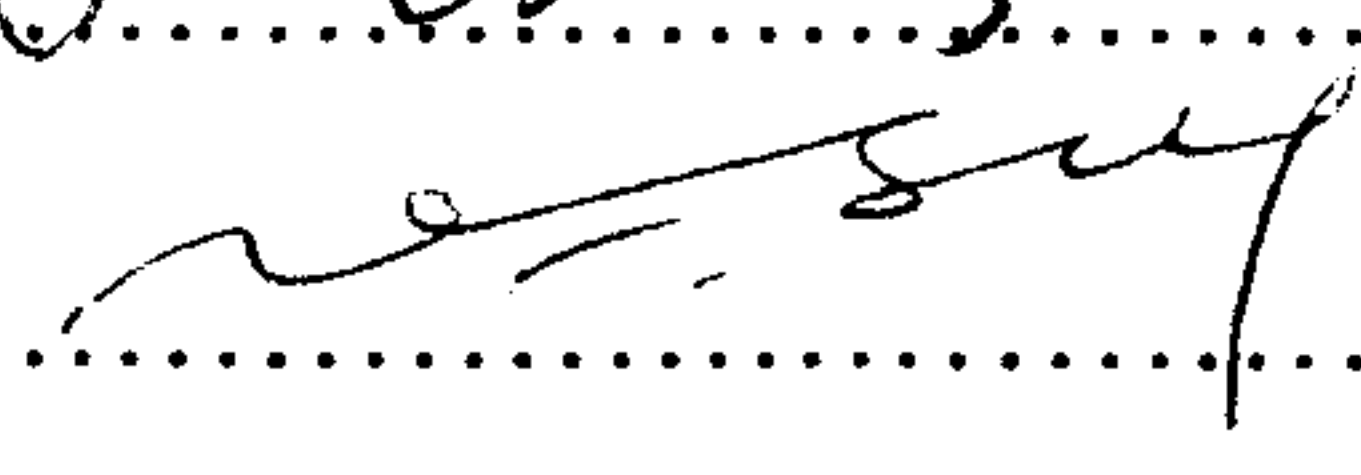
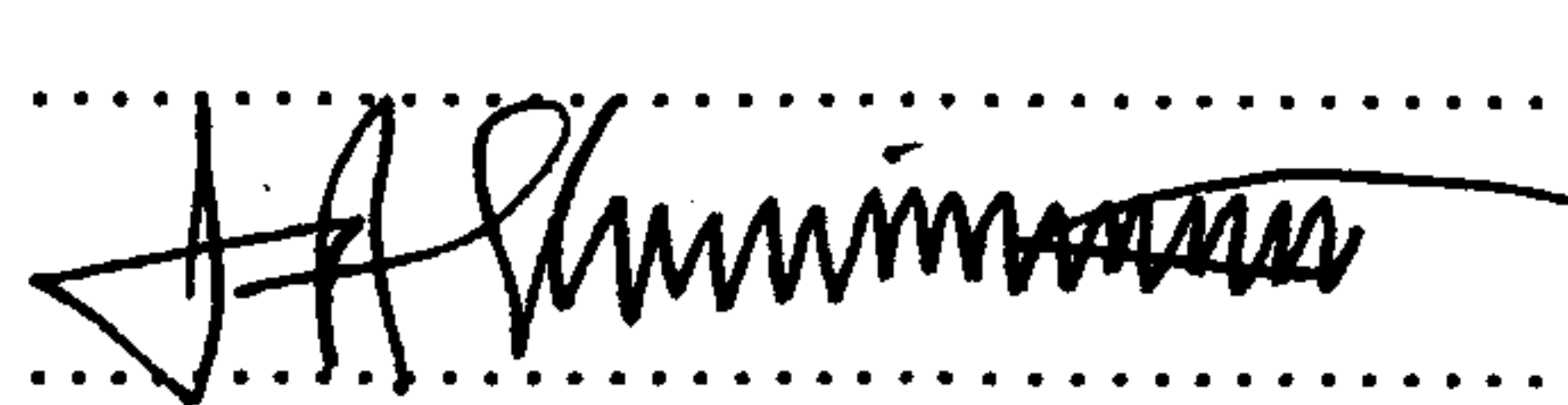
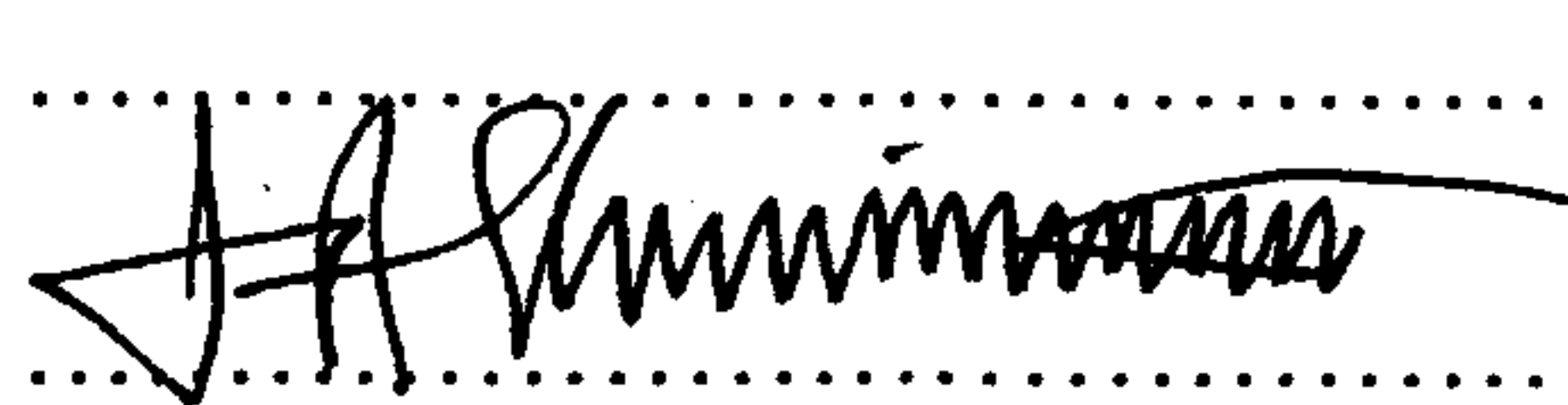
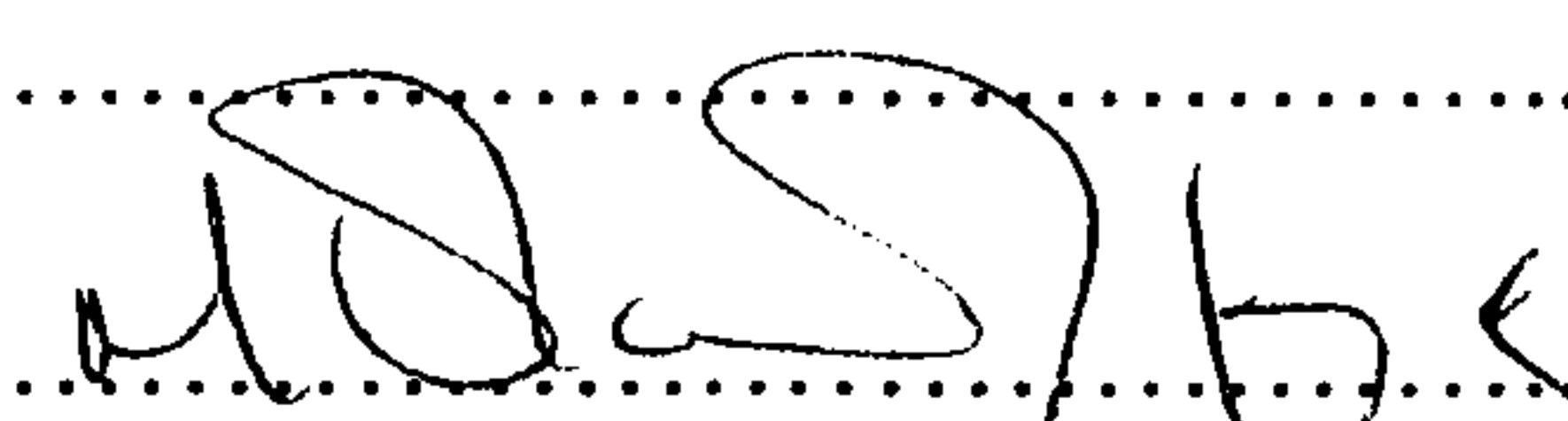
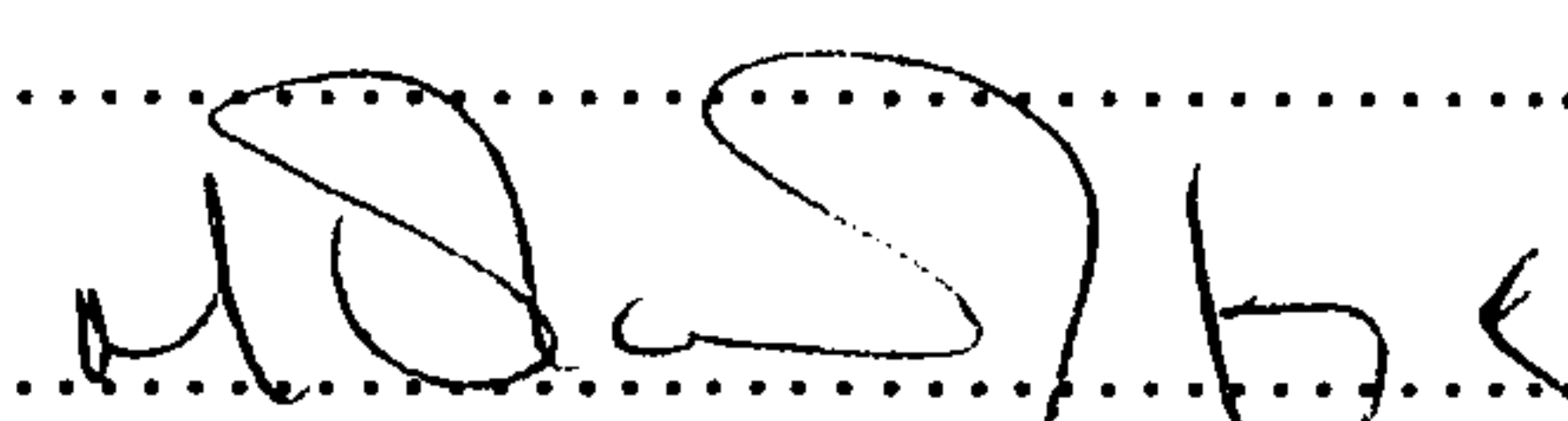
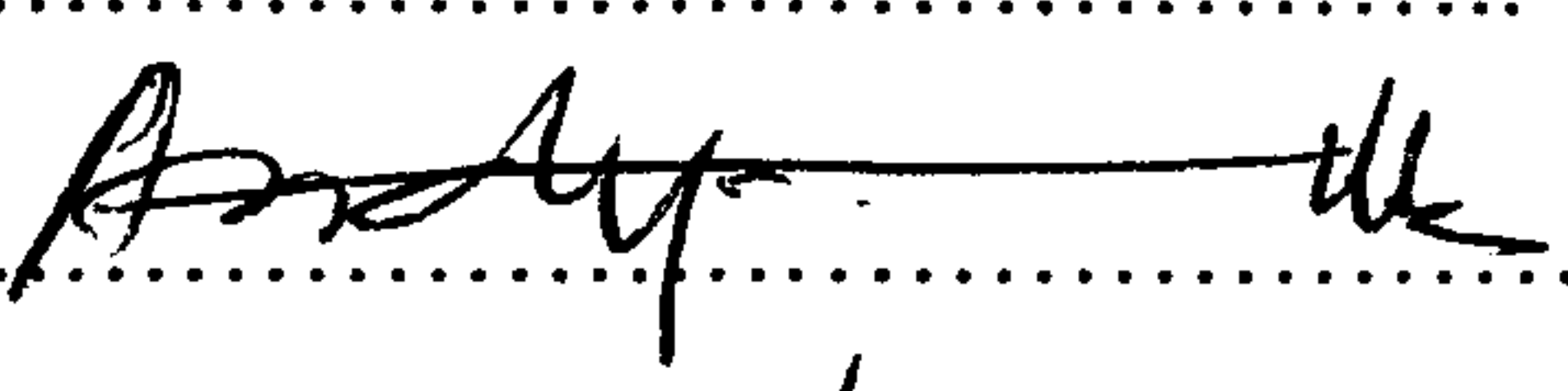
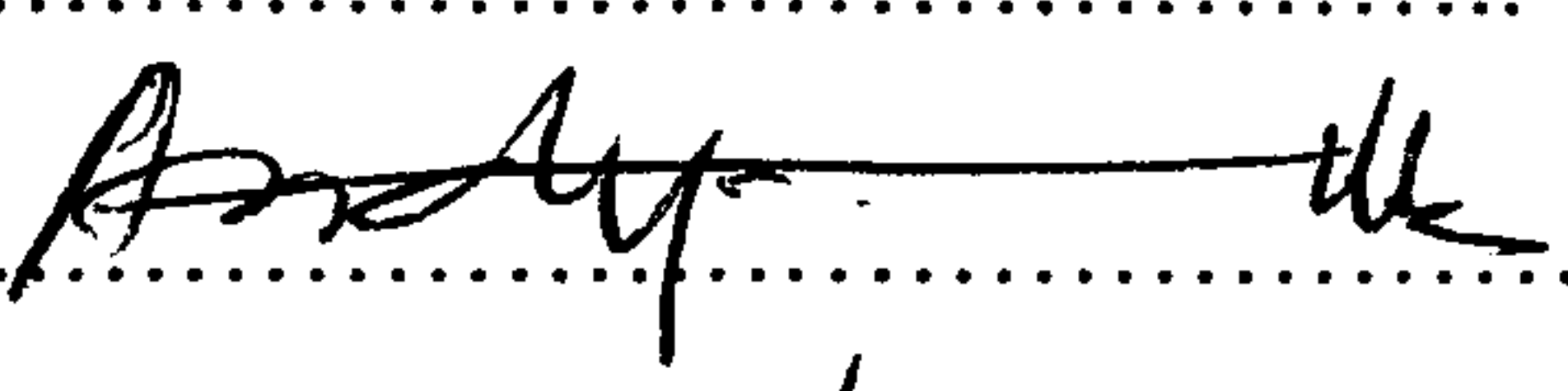
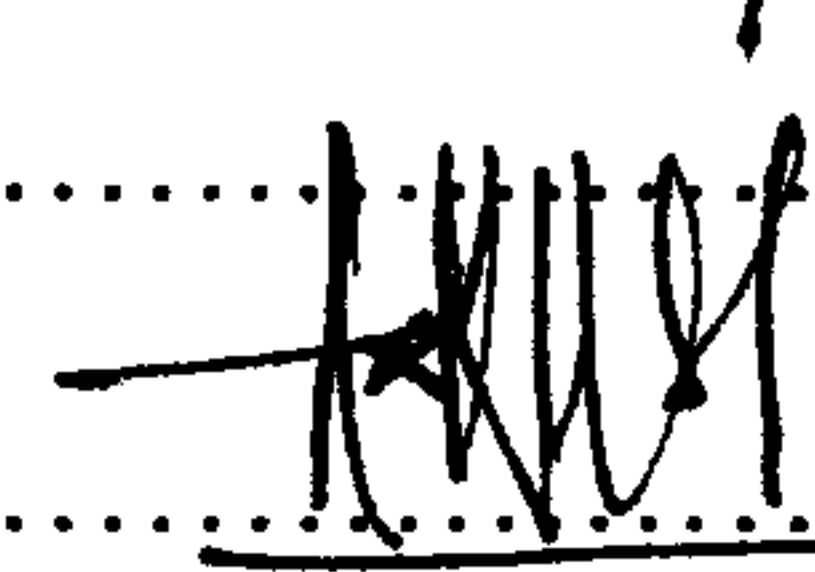
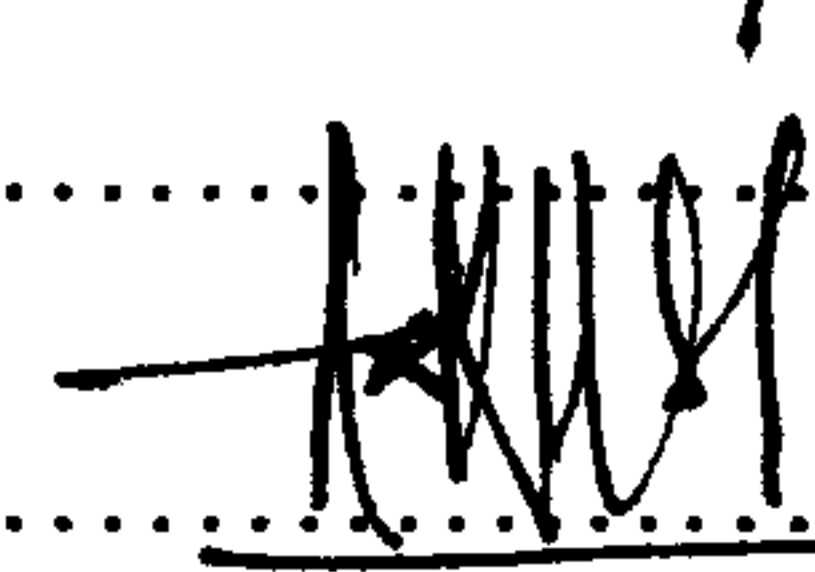
39. Sen. Joshua Dariye -

40. Sen. Magnus Abe -

41. Sen. Abubakar Tutare Umar -

42. Sen. Alkali Jajere -



- 43. Sen. Esuene Helen - 
- 44. Sen. Nenadi Usman - 
- 45. Sen. Oluremi Tinubu - 
- 46. Sen. Aisha Alhassan - 
- 47. Sen. Mohammed Sani Saleh - 
- 48. Sen. Margery C. Chuba Okadigbo - 
- 49. Sen. Hope Uzodinma - 
- 50. Sen. Andy Uba - 
- 51. Sen. Basheer Mohammed - 
- 52. Sen. Abdulmumin^M Hassan - 

Dr. Innocent Mebiri - Clerk (Constitution Review Committee): 

Philip Fayam - Clerk (Committee on INEC): 