MEMORANDUM ON THE REVIEW OF THE 1999 CONSTITUTION

TO:

RT. HON. BENJAMIN OKEZIE KALU

DEPUTY SPEAKER & HONOURABLE CHAIRMAN

HOUSE OF REPRESENTATIVES COMMITTEE

ON CONSTITUTION REVIEW

THE NATIONAL ASSEMBLY COMPLEX

THREE ARMS ZONE, ABUJA, NIGERIA

BY:

MOHAMMED NDARANI MOHAMMED,

MANAGING SOLICITOR

SOLACE LAW CHAMBERS

NO. 18 TUNIS STREET,

ZONE 6, WUSE, ABUJA.

INTRODUCTION: The developments in this country today justify the complete overhaul and comprehensive amendment to our 1999 Constitution, which was only made an annexure to a Military Decree, and which we have attempted to beat into place and modify through a myriad of amendments, but which leaves more to be desired as these amendments have not yielded the desired dividends, rather it has created multiple yawning gaps between what a people’s Constitution ought to be and what we now have as the nation’s Grundnorm. We believe that it is high time the National Assembly assert their powers as a “Sovereign Legislature” and enact for Nigerians a befitting Constitution.

We submit this Memorandum as an affirmation of our absolute faith and confidence in this Honourable House, and indeed the National Assembly as expressed in your publication dated Monday, March 11, 2024, in the Daily Trust Newspaper, to produce and enact a people-oriented constitution, one that satisfies the yearnings of all the peoples, interests and groups in Nigeria.

We therefore forward to you this memorandum, being our proposal which accords with the provisions of Sections 4, 8 and 9 of the Constitution of the Federal Republic of Nigeria (as amended), Order 20, Rule 30 of the Standing Orders of the House of Representatives (11% Edition), and in particular, the Legislative Agenda of the 10" House of Representatives, and by it urge you to kindly examine all the submissions made to you herein, believing that you will unbiasedly collate and harmonise our views and other public views in this regard.

We know that with a commitment on your path, which you have convincingly demonstrated by this publication, this 10% House of Representatives will produce a formidable document, the People’s Constitution which will effectively truly reflect the historical, cultural, and traditional values of all Nigerians, and project and promote the diverse nature of the Nigerian State. Only such an unbiased and well-intentioned Constitution would chart a way out of the doldrums into which we have been held hostage, and catapult us to the apex of development and progress, where peace, accountability and patriotic commitment will hold sway, instead of the segmented tribal affiliations and parochial interest and egocentric loyalty that is the bane of our politics and development today.

We will put forward submissions in the following areas:

1. The Federal Structure and devolution of Power.

2. Local Government and Local Government Autonomy.

3. Public Revenue, Fiscal Federation and Revenue Allocation.

4. Nigerian Police and Nigerian Security Architecture.

5. Comprehensive Judicial Reforms.

6. Electoral Reforms to strengthen INEC to deliver transparent, credible, free and fair

elections

8. Traditional Institutions.

12. Immunity

13. The National Assembly

16. Any other matter that will promote good governance and the welfare of all persons.

Rt. Hon Deputy Speaker and Chairman, below are our submissions:

1. THE FEDERAL STRUCTURE AND DEVOLUTION OF POWER.

We propose a constitutional amendment that will reintroduce the Parliamentary form of government. We contend that the present Presidential form of government has outlived its usefulness, since in the words of former President Obasanjo, “We have a system of government in which we have no hands to define and design, and we continue with it even when we know that it is not working for us. Western liberal democracy has not worked for Africa.” The Presidential system of government is bedevilled with inherent faults and imperfections, hence we suggest that Parliamentary government is the best suited for our country as it shares similar features with our political, cultural and traditional past and would work comparatively better to bring us out of the woods.

We therefore recommend the following as our consideration for the form of government, Federal Structure, and the devolution of power.

PARLIAMENTARY SYSTEM OF GOVERNMENT:

We recommend the adoption of the parliamentary system of governance because (a) It was abruptly terminated in 1966 by a military putsch, which prevented us from reaping the benefits derivable from it. (b) The historical and traditional antecedents in Nigeria favour parliamentary governance, first because our colonial master, Britain established and nurtured the rudiments of parliamentarians in Nigeria by her conduct of politics in Nigeria after becoming a colony of Great Britain till Nigeria’s independence in 1960. (c) Almost all the countries that were former British colonies and others such as Australia, Canada, New Zealand, India, South Africa, Israel, Luxembourg, Bangladesh, Barbados, Bulgaria,

Cambodia, Denmark, Jamaica, Japan, Lebanon, Malaysia, Niger, Norway, Pakistan, Portugal, Thailand, Ukraine, and Zimbabwe all adopted and uses the parliamentary systems, after or to take after British Westminster Parliamentarianism. (d) As a system of governance, parliamentarians are traditional to Nigeria’s roots against the backdrop of what happened or was practised in pre-colonial Nigeria and her numerous kingdoms and empires, whose modus operandi was equivalent to what we may today call republics.

Before the institution of colonial rule, Nigeria boasted of such kingdoms and empires as the old Oyo Empire, the Old Benin Empire, the Borgu Kingdom, Hausa (Seven) Kingdoms (Daura, Kano, Katsina, Zaria, Gobir, Rano and Hadeija) Kingdoms, Kanen-Bornu Empire, the Kebbi, Ibibio, Nri, Nupe, Kwararafa kingdoms, Songhai Empire (part), the Warri, Ile Ife, Yagba East Kingdoms, and of course, the Caliphate of Sokoto, to mention a few. (Wikipedia, accessed on the 19 March, 2024 @ 13.20 hours). These traditional kingdoms were said to have been administered in a manner that is akin to the Westminster form of Parliamentary government: with the King or Emperor as the president/prime minister, surrounded by an aristocratic group where the legislative and executive powers were domiciled, a group of advisers and the judicial body. The judicial body, as captured by the “Egwugwu” in Chinua Achebe’s Things Fall Apart, the Aminikpo Cult in Ogoniland and the “Ogboni Cult” in Old Oyo Empire were entrusted with the enforcement of the law and orders from the King/Emperor. (e) The dismal performance and failure of the Presidential system of government and the impracticality of the federation under the Presidential system of government means we should search for and shop for a better alternative, and for which the Parliamentary system of governance is the better option. (f) The spate of corruption by public officeholders assumed a new dimension as the years progressed during the passage of the civilian administration in Nigeria. From Tafawa Balewa (1960-1966) to General J. T. U. Aguiyi-Ironsi (January — July 1966), to General Yakubu Gowon (1966 - 1975), to General Ramat Mohammed Murtala (July 1975-February 1976), down to Olusegun Obasanjo (1976-1979), Shagari (1979 — 1983), General Buhari Mohammed (1983 - 1985), General Ibrahim Babangida (1985 - 1993), General Sanni Abacha (1993 — 1998), General Abdulsalami Abubakar (1998 —- 1999), President Olusegun Obasanjo (1999 — 2007), Alhaji Musa Yaradua (207 - 2009), Goodluck Ebele Jonathan (2009 — 2015)

and Buhari 92015 — 2023).

It is a sore point to note that it is estimated that from 1963 to 1999, past Nigerian leaders had stolen or misused 407 Billion Dollars or 225 Billion Pounds, while from 1960 to 2005, EFCC says that an estimated sum of over Twenty Trillion Dollars ($20 TRN) have been stolen by Nigerian politicians to Europe and the Western nations (Vanguard: March 15, 2015). According to a World Bank List, five depositors were responsible for depositing a whooping sum of 150 billion dollars ($150 B) between 1960 and 2005, but the scales has jumped out in astronomical numbers as the corruption scale for politicians of the third

and fourth republics have gradually shown the byzantine kleptomania and “lootocracy” by those supposedly entrusted with the national till and what we now require is a total break with the past.

What Nigerians need is a total break from the past, a whole new beginning and an end to the tortuous past in terms of our practice of democracy because a Parliamentary government would guarantee political freedom and corrupt free polity. Among the numerous advantages of parliamentary governance, we acknowledge that it fosters harmony between legislature & executive; it gives birth to a responsible government —ministers are appointed from among members of the Senate and House of Representatives, who are members of parliament; it prevents individual despotism — authority to a group of individuals (Parliamentarians); the chance for an alternative government is open at any time, rather than having to wait for the four-year tenure of a non-performing Prime Minister of State Governor, which comes without the rigours of an election; there is wide representation in Parliament of all sections/regions; it fosters stronger political parties, more centralized and party-aligned interest groups, a more centralized decision-making process, and more centralized and hierarchical administrative structures than the Presidential system. A Parliamentary government is also known to be decisive, whereas the presidential system is resolute; the parliamentarian system fosters a style of politics and policymaking that is more institutionalized, centred as it is on political parties, while the presidential fosters a more personalized, individualistic and free-floating style of leadership centred on the individual politician. In addition, one other basic feature of parliamentarianism is that it is corporatist (Wilson 1992).

Also, if our system were a Parliamentary system of government, what happened between H. E. Alhaji Atiku Abubakar and H. E. Nyesom Wike of the PDP would not have happened at all there would have not been any break in their ranks at all as they would have needed to become the Prime Minister would have been to secure a seat in the Senate of the Federal Republic of Nigeria, and not to tangle over who clinches the party Presidential ticket for the presidential election. This has been the bane of our polity, with numerous cross carpeting and buyers because all things seem to tilt towards the flagbearer in a presidential system.

In addition, parliamentarians would reduce money politics to the barest minimum because we would cease to have one office, imbued with excessive executive powers, rather each aspirant would be constrained and limited to his or her constituency, to secure their mandate to the Parliament and nothing more, while in Parliament, their co-equals decide their fate, which is impressive when aligned against the fact that it is transparent, a presumably prominent determinant of democratic accountability and where there is a coalition, in those circumstances in which no single party can gain a majority of the legislature, these coalition negotiations are usually fairly predictable as it is normally rare for ideologically distant parties to coalesce.

In a Parliamentarian government, accountability is taken to be a retrospective process of reward or punishment by which principals (voters) exact accountability from agents (elected officials), ex-post factor reward. More interestingly, because for the Parliamentary regimes, accountability is rendered very tenuous, it forecloses the tendency to play “blame games”, since the responsibility for the failure or success of governance is not diffused across multiple bodies, but placed squarely on the Parliament (Fiorina 1980; Linz 1994).

Further, in a parliamentary government, the chief concern is that politics and governance should and ought to adapt to changing demands and changing circumstances to engender political stability. This is why it guarantees political and economic stability, a flexible government, capable of overcoming strong vested interests and exercising leadership in the major areas of the nation’s political life. On the other hand, Presidential systems are too rigid since a sitting President cannot be impeached or removed between elections with ease with which a Parliament can pass a vote of no confidence of the Prime Minister and

that government is gone and to be followed by calling for elections at any time.

In a parliamentary system, by contrast, the government must be empowered to do the right thing; otherwise, it will do nothing at all, or worse, different things at the same time, avoid situations such as when there exists an “institutional warfare” or where the executive and the legislature attempt to circumvent each other in implementing policy, problems of indecisiveness which are non-existent because in the parliamentary system, political power is concentrated not in the hands of a single person or individual, but in a party or coalition.

We therefore urge you to consider our submission here as a step in the right direction towards the collective formulation of a new theoretical framework for our polity that works,

REGIONAL STRUCTURE OF ADMINISTRATION:

We propose the adoption of the Six Geopolitical Zones to act in the capacity of Regional Government, in tandem with the Four Regions, which was the constitutional structure during the First Republic, 1963 — 1966. We also propose the continued adoption of state Governments but contained within the Regional Governments wherein the present state configuration within each of the six geopolitical zones would devolve and come under the Regional Status and operate and derive their powers therefrom, with attendant powers allocated to the Regional and State Governments, and less power given to the central

government.

The Federal Structure has become too wieldy and cumbersome for the Federal Government to take on full blast, resulting in the failure of democracy in this country. Today, there is a dismal decay in the nation’s infrastructure, with no roads, rails, airports, power supply, educational infrastructure and power to refine crude petroleum to serve the needs of the Nigerian people. This is attributable to the sectarian, unrealistic, unworkability and impracticability of the Federalist System of government in a dominantly pluralistic and tolerant society like ours. The attendant and inherent flaws which came to the fore because of the hurried imposition and setting aside of the Parliamentary system of government led to the gradual subsumption of the otherwise federating units under the whole, and the emergence of an exceedingly strong centre, forged on and for us by the emerging central military command structure, derived from opportunistic Military Governance that held sway over us for a larger part of our existence as an independent nation. Today, things are changing very fast, the scales that seemed to hold our eyelids down, are peeling off, and the failure of the federalist principles and presidential system of government have forced us to look beyond the 1979 experiment, and to find the overwhelmingly good side of the Parliamentary system of government.

In view of our proposing the adoption of the Parliamentary system of government, we will similarly propose the complete overhaul of our structure of administration which we want to devolve to the Six geo-political Zones hitherto created by the late General Sani Abacha in 1993, the purpose then was to ensure that the become recognised in the Constitution as autonomous entities, devolve power to these zones and they manage their resources contrary to what we now have where the Federal Government alone owns all mineral resources in the country.

DEVOLUTION OF POWER:

We propose that more power should devolve to the constituent parts of the Federation, which in this case, refers to the six (6) geopolitical Zones of North-East, South-East, North-Central, South-South, North-East and South-East, within which are the constituent States, and which should be heralded by a composite autonomy to Local Governments. We contend that for Parliamentary government to make headway, then ultimately, there should be less concentration of power to the head of central government, the Prime

Minister as it shall thence be called. This will be in accord with the Regional formation that held sway during the 1$t Republic, 1963 — 1966.

This is good for the proper and efficient working of the Parliamentary Government which we are proposing. One of the basic problems bedevilling our democracy is the fact that the President wields too much power, his office is similarly confronted with the management of a country, based on the 2013 estimated population of 174,507,539 is projected to be the most populous Black nation in the world, and the 7‘" most populated nation in the entire world, trailing after Pakistan, Brazil, Indonesia, USA, India and China (1.3bn). Nigeria has 1/5'" of the total population of Black Africa, has a total of 521 languages,

which consists of 510 living languages, two-second languages without native speakers and 9 extinct languages. This informs why the Presidential government is inherently problematic.

Therefore devolution of power to the Regional Geopolitical Zonal Governments would allow the regions to be seised with the ability to manage their people for the best of its people, with minimal demands being made on the Federal central government, which is the intendment of devolution of power and making the regional governments the foci of power play and administration.

According to Premium Times’ “100 interesting facts about Nigeria” by Perry Brimah, January 8, 2014, Nigeria is one of the most naturally endowed countries on the face of the earth, but despite being the 3rd biggest economy in Africa, Nigeria sadly stands at number 160" out of 177 countries on the Human Development Index (HDI). To our shame, Nigeria had the 4th highest number of poor people on planet earth by 2014, which means that by 2024, Nigeria most probably have the highest number of poor people in the whole world, that is those who live and spend less than one United States Dollar (41,421.00) a day or less.

According to statistics released by Nigeria’s National Bureau of Statistics (2014), over One Hundred Million Nigerians are ‘destitute’ which has grown larger and larger as the hardship level in Nigeria doubled and quadrupled from May 29, 2023 to what the people had to contend with presently. Regrettably, despite so much hardship being suffered and endured by the common masses, Nigeria prides itself in having the highest-paid legislators in the entire world. It is no story that a Senator earning 1.2 Million Dollars per annum, or One Hundred and Eighty-Two Million Naira (4182,000,000.00) Naira per annum as of June 2021, can conveniently pay the salary of an Indian Lawmaker for Forty Nine (49) years.

On the other hand, a member House of Representatives would pay a Lawmaker in India his salary for Thirty-Four (34) years in 2021 One Hundred and Twenty Seven Million Naira (#127,000,000.00) per year, excluding other allowances and benefits. Meanwhile, a Senator in the United States of America earns Forty-Six Thousand, Three hundred and Fifty Dollars ($46,350.00) or Seven Million and Twenty-Nine Thousand, Seven Hundred and Fifty Naira ($7,029,750.00) only per annum. This explains why Nigeria spend a whooping twenty-five per cent (25%) of the nation’s overhead budget costs in servicing the National Assembly (2014).

Furthermore, based on the amount of revenue squandered, misappropriated, misused, stolen and left unused, an amount beyond $81 billion per year gets lost without traces by those in power. This is why Nigeria is tagged, the most corrupt, “fantastically corrupt” nation in the world, Nigerian common people are the most defrauded people, aka ‘mugus,’ in history, as Nigeria’s successive Presidential administrations continue to loot a greater percentage of the nation’s wealth, running in hundreds of billions of dollars in the name of “It is my turn” and go unscathed. The one sure remedy would be the introduction of a Parliamentary government which removes power from the President under the Presidential government, and shares it between the nominal President and the Prime Minister under the Parliamentary system. According to Premium Times, in 2013, Nigeria was rated the worst country to be born based on welfare and prosperity projections made then, and which by 2024, that report would invariably become child’s play as more than 90% of Nigerians today have grown “destitute’ because of removal of fuel subsidy, inflation, hyperinflation and unbearable costs of living. Going by the inner workings of the Parliamentary system of governance and the devolution of power to the constituent parts of the Nigerian federation, including of course the control of the natural endowments that are found in each geopolitical zone, while the Federal Government undertake a supervisory and monitoring role over the various zones, this will be curbed and corruption will be gradually taken out of our polity.

In this proposal, we recommend that the leader of the majority in the Senate would be the Prime Minister, and the leader of the majority in the House of Representatives would be the President. The Chairman of the Council of Traditional Rulers, which would be included in the Constitution as would be amended would nominate the President, who would be sworn in by the Chief Judge, the President so sworn in would then call on the leader of the majority on Senate to form Government. This would make all relevant stakeholders in the polity have a key role and become pervasively interested in the progress of the nation.

The Chairman of the National Council of Traditional Rulers would in the first place be a Chairman of a State Council of Traditional Rulers, then the national body after inauguration by the President would hold power for FIVE YEARS, not on Federal salary but emoluments as provided by each of their States. However, the Ministry of the Interior would undertake their expenditures and sitting allowances each time they sit and for the running costs for their Federal Secretariat in Abuja. The tenure would be one time for a lifetime and on a rotational basis within the six geopolitical zones such that it will move from North-East, to

South-East, to North-Central, to South-South, to North-West to South-West. This will ensure that no one tampers with the tenure of one or the other geopolitical zone.

2. LOCAL GOVERNMENT AND LOCAL GOVERNMENT AUTONOMY.

We recommend full, absolute, unadulterated, uncompromised, unmediated and unmitigated Local Government autonomy in tandem with the Parliamentary system of government which we are proposing. For Local Government, the third tier government to be this autonomous, we will also be recommending that State Independent Electoral Commissions be scraped, that the elections into Local government Councils follow the patterns for electing State and Federal legislatures on the one hand, or in the same way the Chairmen for Abuja FCT are elected. In addition, the revenue of these Local Government Councils should and ought to be paid directly to the Local government Councils, without having to pass it through State Governments or giving an allowance for State Houses of Assemblies to tinker with or manipulate the total amounts in the hands of Local Government Councils. However, the control and regulation of the affairs and financial accountability of Local and State Governments should be the responsibility of the Regional Governments, and any acts of financial impropriety or recklessness should be made a Federal offence which the Federal Agencies would prosecute as provided for by extant Federal legislation such as the Public Procurement, ICPC and EFCC Acts.

The Local Government as the third tier of government has been made an appendage of State Governments. This stultifies and frustrates the progress which ought to have been made by the Local government Councils as funds meant for the development of the areas are simply collated and shared by the actors at the regular Joint Accounts Allocation Committee meetings of each state. This has caused the erosion of accountability as these local government council leaderships complain of having little or nothing left after the State Governments have strung them of all funds meant for development, leaving them with a paltry amount which the leadership end up squandering. There is a need to institute serious and comprehensive checks and balances on the spending and performances of the state and Local governments to ensure that the dividends of democracy trickle down to all and sundry.

3. PUBLIC REVENUE, FISCAL FEDERATION AND REVENUE ALLOCATION.

We recommend that the Regional Governments, in which case we here refer to the Six Geopolitical Zones, should be constitutionally made to bear and undertake taxing hitherto reserved to the federal government except in stated and exclusive areas, which would be reduced and constricted to the barest minimum. In other to achieve this, we place reliance on the case of AG OF OGUN STATE v. ABERUAGBA (1985) 1 NWLR [Pt. 3] 395 @ 415, where the Supreme Court per BELLO, JSC, paras A — C did decide thus, “It is clear from the foregoing that the control of the economy is not within the exclusive power of the Federation.

Each Government (Federal, State and Local) has a share in the control. While the Constitution requires the Federation to control the national economy, it also empowers the State and Local Government in the development of the economy within its area of jurisdiction. It is therefore wrong for the Court of Appeal to conclude that because Section 16 obliges the Federal Government to control the national economy and since trade and commerce an integral parts of the national economy, the words “in particular” are words of emphasis and accordingly, as it held a State has no power to regulate any aspect of trade and commerce. With all due respect, this conclusion is inconsistent with the provisions of Item H 18 of

Part II of the Second Schedule and Section 7 (3) of the 1979 Constitution.” In adopting the above views of the Supreme Court, we should broadly and massively do a total overhaul of the revenue generation machinery and re-order the taxing powers of the Regions, States and Local Government Councils as it best suits a Parliamentary arrangement of our polity.

One of the hindrances to the realisation of the full taxing potentials of the country is the restrictive and usurping provisions of Section 44 (3) of the Constitution, which alienates the customary owners of the land and bestows on the Federal Government all rights to exploit, produce and dispose of all mineral deposits under the soil, land, waters and air in Nigeria. This has led to numerous, growing and unrestrained agitation by the oil-producing areas, amply led by Ken Saro Wiwa of living memory. We therefore propose the removal of all the legal and political restraint to the oil and sundry minerals communities to exploit their minerals and urge the abrogation, repeal and nullification of Section 44 (3) of the Constitution, the Land Use Act, 1978 and the Petroleum Act, 1969, to make allowance for and give room for resource control, so that the owners of the natural resource within their enclave have overriding control of these

resources, can exploit them for their benefit and pay stipulated taxes to the Federal Government as it obtained during the First Republic 1960 — 1966. This is what obtains in other political climes all over the world, hence we want this corrected during this amendment or enactment of the new Constitution.

We consider it an unfair deal to continue to deny and deprive the oil-bearing areas as well as those other areas that are endowed with commercial mineral deposits of the other of a share in the exploitation and production of these minerals within their environment. It is more so now that oil deposits have been found in other areas of Nigeria, in that it would be justified and preferable for the Federal Government to partner with the States and Regional Governments to exploit, produce, sell and share in the resources, like what obtains between the International Oil Companies (IOCs). We think the present case where the Federal

The government arrogates to itself, the exclusive rights to own and manage the “entire property in and control of minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria” is vexatious, offensive and disruptive. This is why the modalities for oil exploration have been a major source of conflict and militancy in the Niger Delta Area. We submit that making the owners of the crude oil and sundry natural resources and minerals shareholders and partners will go a long way towards helping the Federal Government surmount most of the problems and difficulties surrounding oil and minerals extraction and processing.

The fiscal policy shall devolve to the Regional and State Governments, who shall pay taxes and agreed percentages of the proceeds to the Federal coffers, in the same way that the NNPC Limited has been re-strategised to operate. Let the regions and State be given the power to generate the exploit and sell the minerals and through that generate the needed revenue, superintended by the Federal Government to ensure that the process is flawless and transparent, In the alternative, the revenue allocation formula should be redesigned and altered in line with the Loius Chick Commission of 1954 which recommended as follows:

A) MINING RENTS, ROYALTIES & DERIVATION FROM CRUDE OTL & MINERALS:

i) Regions of origin = 50%

ii) Federal Government = 20%, and

iii) Distributive Pool = 30%

B) DISTRIBUTIVE POOL:

This should be based on population, responsibilities placed on each regional government, the need for continuity in regional public services and the need for balanced development of the country. This should be shared as follows:

i) North = 40%

ii) West = 25%

iii) East = 25%

iv) South — South = 10%.

The initial report of the Commission gave a 5% to Southern Cameroon, but this has been overtaken today as that part of the Country no longer exists today. The above sharing also takes cognisance of the South-South receiving a 50% share of the proceeds from the oil revenue, hence South-South should be only entitled to only 10% stake from the pooled resources. This will be equitable.

4. NIGERIAN POLICE AND NIGERIAN SECURITY ARCHITECTURE.

We support and recommend the formation of State Police in all the States of the Federation, which we consider long overdue. With the rising spate of insecurity, and the gradual involvement of the communities and local vigilantes in collaborative efforts between the regular Police and members of the public in protecting lives and property, there is no doubt that the neighbourhood would be safer, crime reduced and offenders easily fished out. Out of the over twenty-five (25) Federating nations in the world today, including the United States of America, India, Indonesia, Canada, Mexico, Argentina, Brazil, etc., and others like Great Britain and Italy, which practice multilevel policing systems, Nigeria is the only country without a State Police. Interestingly, the four regions that existed during the First Republic operated State Police too, whose powers were taken away by the military that overthrew the civilian government then. This is the essence of Section 214 of the 1999 Constitution (as amended). Our submission on the State Police is to strengthen our proposal for a Parliamentary system of government since the State Police is an essential aspect of a strong federation, which we seek to achieve through our submissions.

Interestingly, since the advent of the present 4" Republic that is from 1999 to date, the call for State Police has grown and gathered momentum. The persistently and embarrassing security breaches across the country and the apparent crass failure of the one Federal Police structure is a source of worry on how to adequately police a 200 Million population, a vast and diversified territory consisting of 36 states and Abuja, 774 Local Government Areas, 8,812 Wards, 176,606 polling units with only 371,000 underpaid, understaffed, under-trained and under-motivated Police Officers commanded by the Inspector General of Police headquartered in Abuja. As a corollary to the Federal Police Service Commission, the State Police should put in place a State Police Commission, nominated by a broad-based group like NGOs, Clergy,

Force men retired and serving, businessmen, chieftaincy institutions, and others with proven integrity and non-partisan. Any member of any State Police found to be partisan or a card-carrying member of a party should be dropped. The State Police Commission would be charged with the duty of recruitment, promotion, discipline, and training of State Police officers and will also put up a robust guideline to deal with all acts of indiscipline and accountability of these officers, some of which should be handled by the Federal Police Force. The state heads should only be called Commissioner of Police and shall be answerable to the State House of Assembly, Federal Ministry of Police Affairs and the judiciary.

To foster cooperation between the federal and State Police, we recommend that the Constitution and other relevant laws in this respect by the National Assembly should specify and clearly define the responsibility of the Federal and state Police formations and give a clear-cut demarcation between their spheres of operation. Furthermore, we submit that certain crimes should be classed as federal Crimes while others should be classed as state crimes, and there should be avenues for the Federal Police to intervene, take over and prosecute offenders. The other details would be worked out by experts but must accommodate the peculiarities of our type of democracy, on how to check the excesses of politicians who would use the Police at their disposal to hunt down and terrorise their political opponents and to quell opposition and wantonly violate the rights of the citizens. This means that a provision should be made in the Federal Law which will permit the National assembly in such situations to proscribe such State Police formation and prosecute the officers so indicted.

5. COMPREHENSIVE JUDICIAL REFORMS.

We propose and recommend a comprehensive and all-embracing reform of the judiciary to make it capable of standing, performing optimally under the Parliamentary system of governance, operating as a Constitutional Court to guide and fearlessly regulate and moderate the activities of the executive legislature, hitherto becoming one. We look forward to judicial reform that is targeted at (a) Financial autonomy; (b) Security of Tenure; (c) Administrative Independence; (d) judicial officers’ appointment process bereft of political and other forms of interference; (e) Judicial conduct review by a body so designated; (f) Judicial accountability; (g) Continuing Education program for Judicial officers; (h) Compensation process which includes retirement and incapacitation of a judge while in active service; and (i) Court Management.

We submit that an independent judiciary is the key to the success of democracy, democratic ideals and federalism. It would take such an impartial, independent and accountable judiciary to undertake an unbiased evaluation of the legal and constitutional instruments and arrangements of a democratic state and all democratic instruments and statutes, to nullify and strike down such laws and practices that are oppressive and unconstitutional. It will require an independent and impartial judiciary to rid the government of every marked authoritarian tendency, ensure practical devolution of powers between the three arms of government, protect the people against arbitrariness of the government and its agencies, help in stabilizing, enforcing and improving due process for all government undertakings and

operations.

Further, we are convinced that an independent judiciary would encourage grassroots economic development because it favours and enhances the people’s access to justice, improves the quality of justice and reduces time wasted on seeking justice delivery and hence curbs if not totally eradicates corruption in the larger society, beginning from the justice sector. It is also factual that an independent judiciary also encourages foreign capital since foreign businesses are certain that their investment could particularly benefit from the impartiality of the courts through enhanced access to justice and reduced levels of corruption. We foresee massive reliance on court decisions and judgments by the people instead of resorting to self-help or such violent dispute settlement mechanisms which go contrary to the law. This can only come as a result of building good public confidence and trust in the adjudicatory process.

Independent judiciary and a court bereft of political interference will Enhance judicial independence, will not only increase the credibility, fairness and impartiality of the judiciary, but also improve the overall efficiency of the courts in handling their caseloads in a timely and efficient manner and improve public confidence and trust in the judicial process.

Given the foregoing submissions, we propose the following commendable recommendations:

Financial independence: The salaries, emoluments and budgetary allocation due to the Judges and funds for capital expenditure should be domiciled with the National Judicial Council, headed by the Chief Justice of Nigeria, but to be superintended by the Body of Benchers. The Federal Ministry of Finance should be mandated by constitutional provisions to regularly before the 21° of every month remit to the Chief Justice of Nigeria the total sums budgeted, to spend the same under the guide of the Body of Benchers.

We further recommend Constitutional provision for the selection and appointment of Judicial officers should be altered and modified, or made to prescribe that their appointment should be undertaken by a body to be known as the “Independent Judicial Advisory Council” of “Committee — for States”, who will be charged with the duty of selecting Judges in the country. Under this regime, if a lawyer desires to be a judge, then there would be an advertisement, followed by the interested person submitting an application (resume) to that effect including his/her detailed personal history. Extensive background and reference checks are conducted by the said Advisory Committee in association with the DSS. Following detailed and careful scrutiny, the qualified candidates will be determined and the Advisory Committee then decides which candidates should be recommended. Only those recommended by them would be eligible for appointment as judicial officers and any reported case of inducement or interference by Politicians would result in that candidate being blacklisted and dropped.

The list of approved candidates is sent to the Honourable Attorney General and Minister of Justice (Federal), or Honourable Attorney General and Commissioner of Justice (for States), who then recommends these persons to either the Federal or State Cabinet, and onward to the Senate or State Houses of Assembly for ratification. The ratified names would have to be sworn in by the President (Head of Government under Parliamentary Government) or Chief Judges of States. This will ensure that the persons so appointed are accountable to the people and the Judiciary, their constituencies, and will build public confidence in all persons appointed to the Bench through this means of selection.

Imposition of heavy sanctions on all established cases of inappropriate political or economic interference, intervention, inducement and influence by any person whatsoever. To realise this laudable objective, we strongly suggest that the “immunity” in Section 308 of the 1999 Constitution is both counterproductive, contrary to Section 36, the Natural Law principle of the Rule of Law and antithetical to common sense and the ethos of good governance. The State Governors would expose themselves to criminal prosecution if it is established that they have worked against, intend to work against or are working against the clause on non-interference with judiciary functions.

Strengthen the rule of law, and promote good governance by which everyone understands and adheres to the principle that the distinct integrity of each arm of government must be upheld and defended and that an articulated governance is opposed to compressed undifferentiated exercise of power.

To re-orientate and build public confidence and trust through civic education intended to raise support for the malady of the courts by keeping the people well informed about the importance and relevance of the doctrine of an impartial and independent judiciary, respect for the rule of law, taking time to point out that in every case of interference and usurpation of the powers and majesty of the courts, that the final safeguard of the judiciary's independence is in the long run, public trust.

g) To include the “Whistleblower” provision in all relevant legislations which seeks to safeguard and protect judicial independence and impartiality, and to prevent political interference, especially, to provide for a body charged with the receipt and investigation of all complaints and reports of all cases and attempted instances of an inappropriate interference, hijack, intervention, inducement and influence of judiciary which is brought to their notice, without disclosing the identity of the person who complained.

6. ELECTORAL REFORMS TO STRENGTHEN INEC TO DELIVER TRANSPARENT, CREDIBLE, FREE AND FAIR ELECTIONS

It is so painful and disappointing that INEC, Nigeria’s electoral umpire has been the major headache of electoral fraud in Nigeria. There is an overwhelming need to re-strategise, overhaul and amend or re-enact a new electoral act and regulations to make the process responsive to the will, yearnings and aspirations of Nigerians. Before we take this issue one after the other, it is important to make a case for an increase in the constituencies and boundary delimitation process, to bring in more persons and to make our democracy more representative as it can be. This we hope will be facilitated by one of the commissions that we are proposing, which seeks to exclude the executive and legislature from the exercise, and which reminds us that we need to implement the recommendations of Justice Uwais’s report.

We are pleased to recommend the following veritable points for the reform of our electoral system, with the intention that these will strengthen INEC, as the electoral umpire, and that in the end, INEC would deliver a free, fair and transparent election and results to Nigerians:

a. We suggest amendments to Sections 153 — 158 (1) & (2) of the 1999 Constitutional which would not only stipulate that the “Independent National Electoral Commission shall not be subject to the direction or control of any other authority”, but which shall actively and full-timely insulate the Independent National Electoral Commission (INEC) from the political influences of the executive arm of government in terms of its composition and funding.

b. That INEC as presently constituted ought to and should be split into three or more separate bodies which should include (1) The Political Parties Registration and Regulation Commission, (2) The Electoral Offenses Commission, (3) The Constituency Delineation Commission, and (4) The Independent National Electoral Commission (INEC).

c. That the power to appoint members into the resulting three or four statutory bodies that would be created from what is INEC today, that is (1) The Political Parties Registration and Regulation Commission, (2) The Electoral Offenses Commission, (3) The Constituency Delineation Authority, and (4) The Independent National Electoral Commission (INEC), should no longer be performed by the Executive(President), but it should be transferred political parties to the National Judicial Council (NIC) while its funding was to be a first line charge on the Consolidated Revenue of the Federation.

d. That the Chairman and members, especially of The Independent National Electoral Commission (INEC) should come about first by advertising the vacancy in three national dailies. Qualified persons, who are confident that they are ready to change the narrative would come up and would be interviewed by the Nigeria Judicial Council, and would come out with five or more candidates.

e, That the ensuing successful candidates would be made to face an election to be arranged by the electoral college consisting of twenty (20) representatives of all the political parties registered in Nigeria and done in an open place, and for which all forms of financial inducement, bribes or political interference would be outlawed and criminalized.

f. The Constitution should be amended so that the election to the office of Senators, members of the House of Representatives and Governor are done on the same day, while that of members of State's houses of Assembly and Chairmen of Local government Councils are also done on the same day, for a Parliamentary System of government.

g. However, while the Presidential system still holds sway and while we work towards the Parliamentary, we recommend that the Constitution should be amended to mandate holding Presidential and Gubernatorial elections on the same date.

h. That all and any such elections should be held at least six (6) months before the expiration of the term of the current holders of the offices.

i. That for optimum democratic practice and as it is obtainable under the Parliamentary system of governance, the elections into Senate, House of Representatives and States Houses of Assembly should be staggered, held every two years to ensure the people's mandate or vote of no confidence on the office holders if they are voted out.

j. That the number of Election Petition Tribunals should be increased while the number of judges that sit on each tribunal should be reduced from five to three so that more tribunals can be established per State and given that election matters are time-bound, the decisions would be delivered before the person so elected would be sworn in.

k. That the burden of proof for election petitions be removed from the Petitioner, and rather it should be placed on INEC and the Respondent, who are beneficiaries of the election that was declared.

l. That we urgently require the creation of an additional 30% of the existing legislative seats at the national, state and local government levels to make room for a more balanced proportional representation, which ought to include at least 25% for females and 5% for the physically handicapped.

m. The Constitution should be amended to capture and mandate the compulsory use of electronic systems of voting and collation of results. This means that the use of the BVAS Machines and electronic transmission of results to and through the IREV, a platform that allows voters and other interested parties to monitor the electoral process and view pictures of the election results from each polling unit, including the number of votes cast for each candidate and the percentage of total votes cast, would be made

mandatory and compulsory.

n. That the Constitution should also provide that any result that is not uploaded to the IREV Portal as soon as the election results are counted by the Presiding Officer would invalidate that result once a complaint is lodged against it by the Party Agent(s).

o. from our findings, it is obvious that electronic voting and electronic collation of results and management of our electoral system will drastically reduce the time it takes to vote, collate and release election results.

p. That with the introduction of electronic voting, Nigerians should be permitted by law to vote from anywhere they reside at the time the election would be held and that Nigerians in the Diaspora should be given the right to vote through electronic voting and posting to the IREV from anywhere in the world.

q: That INEC should not be given the option to determine which method of transmission and collation of results to use, but should be mandatorily required to transmit all election results from the Polling Units to the IREV, without which all such results would be voided and any such officer of INEC that delays or fails to transmit his/her results to the IREV would be prosecuted and stand the risk of ten (10) years imprisonment.

All cases of unstamped ballot paper(s) found in a ballot box, or found to have been used for an election including the likely introduction of ballot papers not issued to that unit or area as recorded by INEC at the materials distribution and collation centres should be criminalized and all and any such INEC Staff should be prosecuted and liable to a ten (10) years imprisonment if found guilty.

To permanently proscribe the habit and perennial practice of cross-carpeting by political opportunists, especially with the caveat that if an elected representative on one political party platform cross-carpets, the person not only loses his seat by the automatic working of the law but the person(s) shall be prosecuted and liable to be jailed for 10 years without an option of a fine.

The Police and all the other Security personnel at the polling booths should be given the right to arrest and prosecute any electoral offender who commits an electoral offence at any polling unit in his presence.

After the Okuama Army massacre of Army officers, the security officers at all polling units must carry arms, especially, as they would be given additional duties of making on-the-spot arrests of electoral offenders.

The Security personnel and other INEC personnel that would be engaged on the day of the election should be allowed to cast their votes, as it is most unjust to constantly disenfranchise such a large number of our citizens because they have to answer the national call to service. We propose that they be allowed to vote electronically a day before the actual day of the elections.

The Electoral Act should prescribe stringent measures and stiffer penalties ranging from ten to twenty years imprisonment for all electoral offences, including prosecuting a serving President and Governor and the running mates for electoral offences, in the same manner, we recommended it for political interference and acts disruptive of the independence and autonomy of the Judiciary.

All persons including elected persons who are found guilty by the special courts so set up should be barred from participating in future elections for thirty (30) years thereafter.

This is to compel compliance and obedience to the Electoral Act, Rules and Regulations since it is common knowledge that it is the political elites that have shown their penchant for not liking to play by the rules of the game and acts of impunity.

This will restore confidence in the electoral process, and bring us back to the old days when Nnamdi Azikiwe was elected to the Legislative Council in Lagos from the National Democratic Party (NCNC); Malam Umaru Altine, a northern Fulani man was elected Mayor of Enugu, in the East and was also re-elected for a second term and when John Umoru, from Etsako in today’s Edo State (Western region) was elected for the House of Assembly to represent Port Harcourt in the Eastern Nigerian House of Assembly. A good example is the fact that with an operative and active BVAS and IREV Transmission, Chief Oghene Egboh, Mrs Rita Orji and Mr Tony Nwoolu, all of the PDP won the House of Representatives Seats for Amuwon Odofin, Ajeromi Ifelodun and the Oshodi/Isolo Federal Constituencies in Lagos State. This informs our decision to pray the house to make these changes as they touch on the basics of electoral reforms.

8. TRADITIONAL INSTITUTIONS.

It is our submission that Section 21 of the 1999 Constitution be amended. This is so that it will provide for the establishment of the National Council of Traditional Rulers which would be composed of all the Chairmen of States Council of Traditional Rulers and the FCT. The members should not be on Federal Government salary but should be paid sitting allowances and such travel expenses and inconvenience allowances as shall be determined by the Revenue Mobilisation and Fiscal Commission from time to time.

We also propose that the National Secretariat of the National Council of Traditional Rulers be made an agency under the Federal Ministry of the Interior, and should undertake the payment of their expenditures and sitting allowances each time they sit and for the running costs for their Federal Secretariat in Abuja. The tenure would be one time for a lifetime and on a rotational basis within the six geopolitical zones such that it will move from North-East to South-East, to North-Central, to South-South, to North-West to South-West. This will ensure that no one tampers with the tenure of one or the other geopolitical zone.

In this proposal for a Parliamentary System of Government, the Chairman of the National Council of Traditional Rulers, would nominate the President or Head of State, from among the leading parties in the House of Representatives. The Traditional Rulers would be given such powers and functions that accord with their role as the custodians of the people's culture and traditions, assist in security in their various kingdoms and emirate councils and the State and federal Chairman of the Council of Traditional Councils would become an automatic members of the Security Council in each State and for the Federal Government.

We also propose that the Nigerian Constitution formalise and recognise the role played by the traditional rulers in mediating between the people and the state, enhancing national identity, resolving minor conflicts, and providing the needed institutional safety valve to accommodate and absorb and make up for the inadequacies of state bureaucracies. The traditional rulers have been on the scene since immemorial, before the advent of colonialism. To their credit, they form and occupy a central and important role in the lives of the various peoples and colour their cultural identities. They are the very essence of a legitimate form of participatory democracy because the involvement of traditional rulers

and the chieftaincy institution at the grassroots goes a long way towards grassroots democracy. This is why having cut them off from mainstream political administration has exposed our form of democracy to serious abuse and corrupt manipulation.

It is therefore imperative that at this period of our democratic growth, we involve traditional chieftaincy institutions in political administration so that the society would benefit from the public approval ratings that they enjoy and that they will transfer the overwhelmingly robust acceptability they enjoy to democratic leadership as a means to shapen and improve their various communities. It is also important that we state that with the easier accessibility to their subjects that traditional rulers enjoy with their subjects, caused mostly by their life-long reigns and hereditary status, they are more stable, influential, and on average, one of the most trusted institutions in the country. This informs the importance of being attached to involving them, bringing them close so that they would lawfully work with the Police, elected politicians, local government, police, and the Army for the peace and security of their areas. This we believe will foster social cohesion and stability and improve democratic consciousness and participation.

12. IMMUNITY

It is our submission that the immunity clause provided for the Governor and Deputy Governor under Section 308 of the 1999 Constitution should be removed and abolished completely. Standard research and findings by social and political scientists show that the immunity clause provided under Section 308 of the

1999 Constitution is an open invitation to impunity, wanton violation and trampling under foot of the fundamental human rights of Nigerian citizens, an expressway to executive criminality, self-aggrandizement and unhealthy self-enrichment drives, which is the bane of our leadership crisis. The fact is that because it bars and exempts them from criminal and civil liability, it follows that the Nigerian Constitution shields our leaders from the long arms of the law and gives them an atmosphere under which they could and do commit havoc, both to the economy, social fabric and political health of the country.

We contend that provided under Section 308 of the 1999 Constitution is highly controversial, and contradictory, undermines the corporate existence of the nation as an entity of equal citizens and opens the way for various violations and abuse, hence this ought and should be curtailed so that it is either completely expunged or struck down, or it is qualified. That someone is the sitting Governor or a deputy does not and ought not to place that person above everybody else. The immunity clause does not rest on any known human ideal of equality, fairness and justice when it is understood that the occupants of the office of the Governor and Deputy Governor in Nigeria continue to enjoy immunity for things done while in office even after they have left office.

This is where the real danger lies as it simply means that these classes of persons are sacred cows, untouchables. We agree with those who argue that “this wide latitude of immunity is a temptation for even the most sanctimonious of people given the high level of societal decadence.” Nobody should or ought to be made above the law. The Common law maxim, ‘rex protest pecara” or simply put in English, “the sovereign, crown or state could do no legal wrong” is a total aberration in its entirety as the Governor and Deputy Governor are no crowns nor are they the State, and more seriously, sovereignty does not reside in any of these offices absolutely, the judiciary and the Legislature shares in sovereignty.

On the contrary, our leaders have shown a propensity to do the wrongs over and over again, but they enjoy doing it with impunity. Coincidentally, these our leaders know that they are untouchable, and they promote the bent to always go against the law, disobey court orders, commit electoral offences, steal and cart our common resources to their homes, and some of them lock them in water and underground septic tanks to our knowledge, but the law seems powerless against them. the only remedy would be to expunge it from our jurisprudence for good. It is only them that we can fight and win our war against corruption, practice good democracy and conduct free and fair elections, as a case in point, how many sitting Presidents have been removed by the apex Court? This is why we submit that because Section 308 of the 1999 Constitution has outlived its usefulness, and its continued use has lapsed, it should be shown the way out now.

13. THE NATIONAL ASSEMBLY

In pursuance of the Parliamentary system of government, we propose a bi-cameral legislature for Nigeria, the Senate or the upper house of parliament and the Federal House of Representatives, the lower house of parliament. As earlier stated in this memorandum, the salary of both houses should be reduced to bring it in tandem with current realities, especially against the backdrop of the fact that a civil servant in Nigeria is only entitled to Eighteen thousand naira minimum salary. In addition, we suggest that an additional 30% of the existing legislative seats at the national, state and local government levels be created

to make room for a more balanced proportional representation of the people, especially, so that every tribe and people would have a representation at the National Assembly and state House of Assembly. This should also include carving out a 25% representation for females and 5% for the physically handicapped.

16. ANY OTHER MATTER THAT WILL PROMOTE GOOD GOVERNANCE AND WELFARE OF ALL PERSONS.

We wish to communicate to the National Assembly that by virtue of Section 4 (1) (2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the vesting of the legislative powers of the Federal republic in the National Assembly for the Federation makes the National Assembly a sovereign body. It is enough that we have rigmarole and scampered from pillar to post in our bid to amend the 1999 Constitution. The National Assembly of the Federal Republic of Nigeria which you are, has the power to draft an entirely new constitution, instead of panel beating the “tatters” of an addendum to a

Military Decree into a Peoples’ Constitution.

We therefore recommend and suggest that this House should invoke its power of sovereignty and make out a people's Constitution for the good people of Nigeria.

We also demand that in the new constitution, or such amendments that would be made to the Constitution, the provision for a referendum should be included as a condition for the passage of any law or amendment being anticipated thenceforth. This in our opinion is what would give the said Constitution or Act the touch of the people and imbue it with the much-needed legitimacy. This would bring the laws closer to the people and the people closer to the law and the lawmakers.

CONCLUSION:

Rt. Hon Deputy Speaker and Chairman, Constitution Amendment committee, we respectfully urge you to dispassionately consider the above submissions, bearing in mind that our little acts of amendments today would mean so much tomorrow to posterity.

Thank You all and God bless you all.

We are:

MOHAMMED NDARANI MOHAMMED, (SAN) & STEPHEN L. W. NYEENENWA (PH. D.)

MANAGING SOLICITOR DEPARTMENT OF PHILOSOPHY

SOLACE LAW CHAMBERS FACULTY OF HUMANITIES

NO. 18 TUNIS STREET, RIVERS STATE UNIVERSITY

ZONE 6, WUSE, ABUJA.