

PROCEDURE FOR RECALL OF A COUNCILLOR IN THE AREA LEGISLATIVE COUNCIL OF THE FEDERAL CAPITAL TERRITORY, OF NIGERIA

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ABSTRACT: By Nigeria's Constitutional arrangement, the Federal Capital Territory is divided into Area Councils. While the National Assembly makes laws for the Federal Capital Territory, each of the five Area Councils has a legislative Council that makes its bylaws. This paper examined the procedure for recall of a member of the legislative Council within "the Area Councils of the Federal Capital Territory Abuja under the Electoral Act, 2022 and the legality of the Regulations and Guidelines for Recall, 2024 made by INEC". The exhaustive survey determined that no singular provision in the Regulations and Guidelines for Recall, 2024 is in conflict with or falls short of either the constitutional stipulations or electoral legislation on recall of a lawmaker. To improve on the recall process, it was recommended among other things that specific timeline should be set for conclusion of verification of petition upon its submission by constituents to the INEC Chairman.

Keywords: *area, councillor, guideline, misconduct, recall, regulation.*

1.0 Introduction

The "Electoral Act, 2022" provides for the recall of a Councillor in the "Legislative Council of the Federal Capital

Territory”. Elections into the “Area Councils of the Federal Capital Territory” are conducted by the “Independent National Electoral Commission”. The aim of this paper is to review the state of the law on the recall of a Councillor in the Area Council of the Federal Capital Territory and the legality of the extant Independent Electoral Commission “Regulations and Guidelines for the Recall of a Member of The National Assembly, House of Assembly of a State or Area Council of the Federal Capital Territory, 2024”. This inquiry is important because, as held in *Jegede v INEC*, it is the law that INEC Guidelines cannot override the provisions in the Electoral Act. Hence, it will therefore spell disaster in the event that the Regulations and Guidelines for Recall, 2024 conflict with the provisions of the electoral laws. To this end this paper is further divided into the following segments namely: Meaning of “Councillor” or “lawmaker”; Statutory provisions for recall of a Councillor in the Area Council of the FCT; Ground or reason for recall of a Councillor in the Area Legislative Council; Role of the INEC in the recall process; INEC Regulations and Guidelines for the Recall of a Lawmaker, 2024; Stages of the recall process; Collation of referendum; Aborted or invalid recall process; Effect of a valid or effective recall; Constitutionality of the Regulations and Guidelines for Recall, 2024; and Conclusion and Recommendations.

2.0 Meaning of “Councillor” or “lawmaker”

Simply stated, a “Councillor” is a lawmaker in the “Local Government Area or Area Council of the FCT”. Within the Nigerian constitutional framework, a “lawmaker” is a representative or legislator or person elected into the legislature from an INEC delineated Senatorial District, Federal Constituency, State Constituency or Area Council Ward to make laws either for the either for Federation, State or Area Council/Local Government Area. In Nigeria, there are Federal, State, Area Council and Local Government Council parliaments or legislatures. A federal lawmaker is elected into the “National Assembly” which consists of the “Senate and the House of Representatives”, to exercise legislative powers of “the Federal Republic of Nigeria” as provided in *section 4(1)* of the CFRN, 1999 as amended. A State lawmaker or legislator is elected into the “House of Assembly of a State” to make “laws for the peace, order and good government of the State or any part thereof” as enacted under

section 4(7) of the CFRN, 1999 as amended. A Councillor in the Area Council of the Federal Capital Territory or Local Government Area is elected to make laws for the “Area Council of the Federal Capital Territory, Abuja” or “Local Government Council” in a State. For the purpose of this paper, irrespective of the tier of government they make or have been elected to make laws, all of them are referred to commonly as lawmakers. Besides, the Regulations and Guidelines for Recall, 2024 apply uniformly to the recall of a member of the National Assembly, House of Assembly of a State or Area Council of the Federal Capital Territory. In terms of scope, discussions in this paper are limited only to the “Councillor” or “lawmaker” who is a member “in the Area Council of the Federal Capital Territory” and how the INEC Regulation and Guidelines for Recall 2024 applies to his office.

3.0 Statutory provisions for recall of a Councillor in the Area Council of the FCT

The Electoral Act, 2022 makes provision for procedure for the recall of a member in an “Area Council Legislature of the Federal Capital Territory”. Specifically, *section 113* of the Electoral Act, 2022 provides that

“A member of an area council may be recalled as a member if –

- (a) there is presented to the Chairman of the Commission a petition in that behalf signed by not less than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member and which signatures are duly verified by the Independent National Electoral Commission; and
- (b) the petition is thereafter approved in a referendum conducted by the Commission within 90 days of the date of the receipt of the petition by a simple majority of the votes of the persons registered to vote in that member's constituency.”

The foregoing stipulations on recall of “a Member of the Legislative Council of the Area Council of the Federal Capital Territory” are considered fairly self-explanatory. Suffice it to add however that recall is a vote of no confidence on a lawmaker by his constituents. Categorically stated, the power or right to recall a lawmaker is the

exclusive constitutional prerogative of the electorate in that lawmaker's constituency. Recall of a lawmaker is initiated by the voters in the constituency themselves in terms stipulated under the Constitution or Electoral Act and in compliance with the INEC "Regulations and Guidelines for Recall, 2024". The INEC only implements the request of the constituents in line with the law on the subject matter especially section 113 of the Electoral Act, 2022.

4.0 Ground or reason for recall of a Councillor in the Area Legislative Council

It may be asked, on what ground can a Councillor be recalled? As a direct answer, the sole ground or reason under the electoral law for the recall of a lawmaker whether at the Federal, State or Area Council level by the constituents is "loss of confidence" on the lawmaker. The term or phrase "loss of confidence" is not defined either in the CFRN, 1999 as amended or Electoral Act, 2022. Loss of confidence is a fluid concept or term whose meaning is to be determined solely by the constituents. However, it is unarguable that there will be loss of confidence on a lawmaker by his constituents where, for instance, the lawmaker is a bench warmer, lacks congressional visibility and respect, offers ineffective representation and has disconnected with the electorate via inadequate constituency briefing, lack of consultation, absenteeism, supporting anti-people legislations or generally going against the interest of his constituency.

Whether the constituents are prepared to initiate recall process against their representative based on any or all of the aforementioned reasons or more is entirely left to their discretion. Significantly, the constituents intending to recall a lawmaker are not obliged or compelled by law to particularise in their petition for recall the ground or grounds why they lost confidence on the lawmaker intended to be recalled. It is also not a requirement under the Regulations and Guidelines for Recall, 2024. Once the constituents collect enough signatures to initiate a recall as required by the law and comply with "INEC Guidelines for Recall, 2024", they need not give any other reason other than loss of confidence on the lawmaker intended to be recalled.

5.0 Role of the INEC in the recall process

As explicated or clarified in the preceding segment, the INEC does not initiate recall process. That is the prerogative of the constituents of the lawmaker intended to be recalled. The duty or responsibility of the INEC in a recall process is to receive petition, verify signatures in the petition, conduct referendum and make public their findings about the validity or invalidity of outcome of the recall process. One of the functions of the INEC under *subsection (c) of section 2* of the Electoral Act, 2022 is the “power to conduct any referendum required to be conducted under the provisions of the Constitution or an Act of the National Assembly”. Recall process is incomplete without a referendum. Hence, the INEC is central in the process of recall of a lawmaker. In full realisation of this statutory responsibility the INEC has made Regulations and Guidelines for Recall, 2024 which will be extensively discussed below.

6.0 INEC Regulations and Guidelines for the Recall of a Lawmaker, 2024

In exercise of the powers conferred on the INEC by the combined provisions of *sections 69, 110 and 160* of the CFRN, 1999 as amended, *sections 2(c) and 113* of the Electoral Act, 2022 and all other powers enabling it in that behalf, the INEC issued detailed “Regulations and Guidelines for the recall of a Member of the National Assembly, House of Assembly of a State and Area Council of the Federal Capital Territory, 2024”. The “Regulations and Guidelines Recall, 2024” is divided into four parts namely-. Part I (*paragraphs 1 and 2*) deals with Petition; Part II (*paragraphs 3 to 12*) deals with Verification; Part III (*paragraphs 13 to 26*) deals with Referendum; Part IV (*paragraphs 27 to 30*) deals with miscellaneous issues.

7.0 Stages of the recall process

According to the Regulations and Guidelines for Recall, 2024, there are three critical stages of the recall process. These are Petition, Verification and Referendum. These three stages and what happens in them or should happen in between one stage and the other are discussed seriatim below.

7.1 Stage 1- Presentation of petition

A recall process is commenced by presentation of petition which has been reduced into different steps under the “Regulations and Guidelines for Recall, 2024”. Presentation of petition by the constituents through their representatives to the Chairman of the INEC is the first step of the recall process as contained in Part 1 of the Regulations and Guidelines for Recall, 2024. The obligatory component parts of the petition are provided under *paragraph 1* to the effect that-

(a) A petition for Recall shall be presented to the Chairman of the Commission by representative(s) of the petitioners. Submission of the petition to the Chairman of the INEC is supported by the constitutional provisions on recall as found in sections. For ease of communication, “the name(s), contact address(es), phone number(s) and e-mail address(es) of the representative(s) of the petitioners” should be clearly indicated in the covering letter forwarding the petition to the Commission). However, the stipulation does not require all the petitioners to be bodily present as representatives may lodge the petition although it is also not clearly stated whether the petition could be presented by electronic means.

There must be a forwarding letter of the recall accompanied by INEC FORM EC 41 which is styled “Collection of Signatures for the Recall of a Member of the National Assembly, House of Assembly of a State or Area Council of The Federal Capital Territory”. The said INEC FORM 41 should contain particulars of State, Constituency, LGA Registration Area/Ward, Polling Unit of the petitioners. The form also contains columns to supply the following information- “Serial number, name of petitioner, address, VIN (on the petitioners PVC), Signature/Thumbprint of each petitioner”.

(b) The petition shall be signed by more than one half of the persons (that is, at least one person above half) registered to vote in the constituency of the member sought to be recalled, alleging loss of confidence in that member. This requirement finds support in the criteria set under the constitution.

(c) Where half of the number of registered voters is not a whole number, the next whole number shall be regarded as one half of the registered voters.

(d) The signing of the petition may be by signatures or thumbprints of the petitioners. This stipulation accords with recognition of the fact that there are illiterate voters in Nigeria.

(e) The names, Voter Identification Numbers (VIN) and signatures of the petitioners shall be arranged according to Polling Units in the constituency of the member sought to be recalled.

(f) For ease of communication, the name(s), contact address(es), phone number(s) and e-mail address(es) of the representative(s) of the petitioners should be clearly indicated in the covering letter forwarding the petition to the Commission.

7.1.2 Publication of Notice

The second step within the presentation of petition stage as contained in Part I is the requirement of “Publication of Notice upon receipt of the petition”. Hence, in *paragraph 2* of Part 1 of the Regulations and Guidelines for Recall, 2024, the INEC “shall, upon receipt of the petition’ do the following:

(a) Notify the member sought to be recalled, in writing, of the receipt of the petition. Such notification shall be delivered to his/her official address, copied the presiding officer of the applicable legislature and published on the Commission’s website. This stipulation means that the lawmaker sought to be recalled must be put on notice in writing and his official address is his address of service. Thus, expressly and impliedly, it presupposes that all the accompanying documents of the petition should be served on the member sought to be recalled. Whether service is by personal or substituted means is not expressly stated in “Regulations and Guidelines for Recall, 2024” as the requirement is simply that the INEC notification “shall be delivered to his/her official address”. It is strongly opined that much as “copying the presiding officer of the applicable legislature and publication of the recall process on the INECs website” is desirable, failure to do all or any of them will not be fatal to the process provided always the member sought to be recalled has been duly put on notice.

(b) “Ascertain that the petition is signed by more than one half (over 50%) of the registered voters in the member’s constituency.” The list of signatories to the petition shall constitute the Register of Petitioners (Form EC41) for the purpose of any activity in this Regulation and Guidelines. This stipulation is designed to ascertain *prima facie* whether or not the minimum statutory threshold of the number of signatories required for submitting a petition for recall has been met

(c) Where *sub-paragraph 2(b)* above is established, issue a public notice or announcement stating the day, time, location and other details for the verification of the petition. This is a confirmation that on the face value, the minimum constitutional threshold of the number of signatories to a recall process has been met and that the signatories to the petition are ripe to be verified.

(d) Where *sub-paragraph 2(b)* above is not established, issue a public notice to that effect and copy the Presiding Officer of the applicable legislature. This stipulation means that signatories to the recall process have not met the minimum constitutional threshold and the petition for recall will fail.

7.2 Stage two- Verification

The verification stage covered in Part II (*paragraphs 3 to 12*) of the Regulations and Guidelines for Recall, 2024 involves sundry issues like location for verification, appointment of verification officers, right of the member sought to be recalled to appoint his own verification agents and allied matters. According to *paragraph 3* of the “Regulations and Guidelines for Recall, 2024”, verification shall “be carried out in the Polling Units at the constituency of the member sought to be recalled”. For the purpose of verification, INEC shall appoint Verification Officers as provided under *paragraph 4* of the Regulations and Guidelines for Recall, 2024.

Under *paragraph 5*, the member sought to be recalled is also entitled to appoint his own Verification Agents after prior notification to the INEC. Thus, a member sought to be recalled may, by notice in writing signed by him/her and addressed to the Resident Electoral Commissioner, appoint Verification Agents, who must be registered voters in the constituency, for each polling unit and collation centre in his/her constituency. The member shall also upload the names and addresses of the

Verification Agents, along with their passport size photographs and sample of signatures, to a dedicated portal established by the Commission for that purpose, not later than one week before the date fixed for the verification. The member sought to be recalled may elect to personally represent himself/herself in place of his/her Verification Agent(s) and performing any act or thing for which he/ she has appointed a Verification Agent *vide paragraph 5(b)*. This is a welcome provision although it is unthinkable that the member sought to be recalled is capable of being physically present in all the polling units and collection centres in his/her constituency.

On the other hand, the Representative(s) of the Petitioners may, by a signed notice in writing addressed to the Resident Electoral Commissioner, appoint Verification Agents, who must be registered voters in the constituency, for each polling unit and collation centre. They/he/she shall also upload the names and addresses of the Verification Agents, along with their passport-size photographs and sample of signatures, to a dedicated portal established by the Commission for that purpose, not later than one week before the date fixed for the verification.

It should be noted at this juncture that under paragraph 30 of the Regulations and Guidelines for Recall, 2024, the INEC may accredit observers to observe the processes of verification and referendum for recall, as it deems fit.

Details of the Verification procedure are supplied in *paragraphs 6, 7, 8* of the Regulations and Guidelines for Recall, 2024 while the procedure for close of verification is provided for in paragraph 9 thereof. Suffice it to say that under *paragraph 6*, verification of signatures/thumbprints of the petitioners for the Recall shall be carried out at the Polling Units using the Register of Petitioners (Form EC 41) and the Bimodal Voter Accreditation System (BVAS).

Collation and announcement of outcome of verification are to be done in the designated venues and in the prescribed INEC Forms by the Registration Area Verification Collation Officer at the Registration Area /Ward level “(collate the result in Form EC 41A into Form EC 41B) under *paragraph 10*; and by the Local Government/Area Council Verification Collation Officer at the Local Government

/Area Council Verification Collation Centre (Collate the result in Form EC 41B into Form EC 41C)” under *paragraph 11*. The final Collation and Declaration of Verification shall be carried out by the Constituency Verification Collation/Declaration Officer. Under *paragraph 12* of the “Regulations and Guidelines for Recall, 2024”, he shall among other things-“(a) Collate the result in Form EC 41C into Form EC 41D. (b) Stamp, sign, date and request Verification Collation Agent present to countersign”. The refusal of any agent to sign shall not invalidate the outcome. (c) Announce the final outcome of the verification exercise by stating the total number of verified petitioners in the Constituency. (d) Declare the outcome of the verification in Form EC 41E. The petition shall be declared valid for a referendum where the number of petitioners verified is more than one half (50%) of the registered voters in the Constituency.

7.3 Stage three- Referendum

This is another fundamental stage of the recall process as the outcome of the referendum will determine whether or not a lawmaker can be recalled. For the purpose of conduct of referendum, *paragraph 13* of the Guidelines provides that the INEC shall do the following:

- (a) Decline to conduct a referendum for the recall of the member if the result of the verification shows that not more than one half of the persons registered to vote in that member’s Constituency (that is, at least one person above one half) endorsed the petition. By way of analysis, this stipulation accords with the constitutional requirement that a petition in that behalf should signed by more than one half of the persons registered to vote in that member's constituency.
- (b) Where half of the number of registered voters is not a whole number, the next whole number shall be regarded as one half of the registered voters.
- (c) Conduct a referendum for the recall of the member where it has verified that more than one half of the persons registered to vote in that member’s Constituency have endorsed the petition, which shall take place not later than 90 days from the date of receipt of the petition for recall. It is important to accentuate that the 90 days’

timeline is a constitutional provision reiterated in the guideline. As a constitutional timeline, it cannot be extended.

(d) Issue a public notice or announcement stating the day, time, location and details for the Referendum.

Under *paragraph 14*, it is provided that the conduct of Referendum for Recall shall be carried out in all the Polling Units in the constituency of the member sought to be recalled. in *paragraph 16*, a person shall be qualified to vote at a Referendum for Recall if he/she is registered as a voter in the Constituency and is verified after presenting his/her PVC to the designated Referendum Officer at the PU on the day of the Referendum and under *paragraph 17(a)*, voting at a Referendum for Recall shall be by Open Secret Ballot and in accordance with the procedure specified in the Commission’s Regulations and Guidelines for the conduct of Elections in force at the time of the Referendum among other things.

With respect to appointment agents during referendum, as is the case during verification, it is provided in *paragraph 18* that during referendum that “(a) A member sought to be recalled may by notice in writing signed by him/her and addressed to the Resident Electoral Commissioner appoint Polling Agents, who must be registered voters in the Constituency, for each polling unit in the constituency. He/she shall also upload the names and addresses of the Polling Agents, along with their passport-size photographs and sample of signatures, to a dedicated portal established by the Commission for that purpose, not later than one week before the date fixed for the referendum. (b) Notwithstanding the requirement of *sub-paragraph 18(a)* of this paragraph, the member sought to be recalled shall not be precluded from personally representing himself/herself in place of his/her agent and performing any act or thing for which he/she has appointed a Polling Agent in these Regulations and Guidelines.”

Furthermore, under *paragraph 18(c)*, “the Representative(s) of the Petitioners may, by notice in writing signed by him/her/them and addressed to the Resident Electoral Commissioner, appoint Polling Agents, who must be registered voters in the

Constituency, for each Polling Unit. He/she/they shall also upload the names and addresses of the Polling Agents, along with their passport-size photographs and sample of signatures, to a dedicated portal established by the Commission for that purpose, not later than one week before the date fixed for the referendum.”

Relevant paragraphs of the “Regulations and Guidelines for Recall, 2024” contain details of Opening of Referendum (*paragraph 19*), accreditation and voting in a referendum for recall (*paragraphs 20 and 21*). The voting procedure shall be by “selection of YES or NO marks on the ballot paper by the use of thumbprint and not any other mark”. Accreditation and voting in a Referendum for the purpose of a Recall, shall be the same for voting in an election (secret ballot), as specified in the Electoral Act and the Commission’s Regulations and Guidelines for the Conduct of Elections that are in force at the time of the Referendum. Under *paragraph 22*, the designated Referendum Officer shall, at the close of voting:

- “(a) Count the votes in the presence of all persons present.
- (b) Enter the YES and NO votes in Form EC 42A, stamp, sign, date and request polling agents present to countersign. The refusal of any agent to sign shall not invalidate the result.
- (c) Announce loudly the number of YES and NO votes counted.
- (d) Take a picture of the completed Form EC 42A with the BVAS and upload it to the INEC Results Viewing portal (IReV) for purposes of public information.
- (e) Detach the Electoral Operations copy of Form EC 42A and hand over to the official designated by the Commission for its collection.
- (f) Issue copies of Form EC 42A to the Collation Agents and designated security agent present.
- (g) Complete Form RF (R) and paste at the polling unit.
- (h) Submit the completed original copy of Form EC 42A to the RA/Ward Referendum Collation Officer in a manner specified by the Commission.”

8.0 Collation of referendum

This is a very crucial and terminal stage of the recall process. The Regulations and Guidelines for Recall, 2024 provide for “(i) Collation of referendum at the Registration Area/Ward, (ii) Collation of Referendum at Constituency with one Local Government Area/Area Council, (iii) Collation of Referendum at Constituency with more than one Local Government Area/Area Council and (iv) Collation/Declaration of Referendum at Constituency Level”. In order to underscore the importance of collation of referendum, the provisions of the “Regulations and Guidelines for Recall, 2024” on collation of referendum at different centres or levels are reproduced verbatim below.

“(i) For the purpose of collation of referendum at the Registration Area/Ward, the Registration/Ward Referendum Collation Officer shall:

- (a) Take delivery of all Forms EC 42A from the designated Referendum Officers.
- (b) Collate the result in Form EC 42A into Form EC 42B as directed by the Commission, stamp, sign, date and request collation agents present to countersign. The refusal of any agent to sign shall not invalidate the result.
- (c) Announce the result of the Referendum in the RA/Ward.
- (d) Detach the Electoral Operations copy of Form EC 42B and hand over to the official designated by the Commission to collect it.
- (e) Issue copies of Form EC 42B to the Collation Agents and designated Police or security personnel present.
- (f) Complete Form RF (R) and paste at the RA/Ward Referendum Collation Centre.
- (g) Submit Form EC 42B to the Local Government/Area Council Referendum Collation Officer.”

Above are the explicit provisions of “paragraph 23 of the Regulations and Guidelines for Recall, 2024”.

(ii) For the purpose of “Collation of Referendum at Constituency with one Local Government Area/Area Council”, paragraph 24 of the Regulations and Guidelines for Recall, 2024 provide that the Local Government/Area Council Referendum Collation/Declaration Officer, in the case of a Constituency made up of one Local Government/Area Council shall:

- (a) Take delivery of all Form EC 42B from the RA/Ward Referendum Collation Officers along with other election materials and reports (if any) pertaining to the Referendum.
- (b) Collate the result of the Referendum by entering the scores in the Form EC 42B into Form EC 42C, crosscheck the figures, stamp, sign, date and request collation agent present to countersign. The refusal of any agent to sign shall not invalidate the result.
- (c) Detach the Election Operations copy of Form EC 42C and hand over to the official designated by the Commission for its collection.
- (d) Distribute copies of the Form EC 42C to Collation Agents and designated Police or security personnel at the Local Government/Area Council Referendum Collation Centre.
- (e) Enter the scores into the Declaration of Result Form EC 42E for the Referendum.
- (f) Declare the result of the Referendum.
- (g) Detach the Electoral Operations copy of Form EC 42E and hand over to the official designated by the Commission to collect it.
- (h) Distribute copies of the Form EC 42E to the Collation Agents and designated Police or security personnel present.

- (i) Complete Form RF (R) and paste at the Local Government/Area Council Referendum Collation Centre.
- (ii) For the purpose of Collation of Referendum at Constituency with more than one Local Government Area/Area Council, paragraph 25 of the Regulations and Guidelines for Recall, 2024 the Local Government Referendum Collation Officer, in the case of a constituency made up of more than one Local Government Area or Area Council shall:
 - (a) Take delivery of all Forms EC 42B from the RA/Ward Referendum Collation Officers with other election materials and reports (if any) pertaining to the Referendum.
 - (b) Collate the result of the Referendum by entering the scores in the Form EC 42B into Form EC 42C, crosscheck the figures, stamp, sign, date and request collation agent present to countersign. The refusal of any agent to sign shall not invalidate the result.
 - (c) Announce the result of the Referendum at the LGA/Area Council Collation Centre.
 - (d) Detach the Electoral Operations copy of Form EC 42C and hand over to the official designated by the Commission to collect it.
 - (e) Distribute copies of the Form EC 42C to collation agents and designated Police or security personnel at the Local Government/Area Council Referendum Collation Centre.
 - (f) Submit Form EC42C to the Referendum Constituency Collation/Declaration Officer along with other materials relating to the Referendum.
- (iv) Lastly, for the purpose of Collation/Declaration of Referendum at Constituency Level, paragraph 26 of the Regulations and Guidelines for Recall, 2024 provides that the Referendum Constituency Collation/Declaration Officer shall:

- (a) Collate the scores in the Form EC 42C into Form EC42D.
- (b) Crosscheck the figures, stamp, sign, date and request the Constituency Collation Agent present to countersign. The refusal of any agent to sign shall not invalidate the result.
- (c) Enter the scores in the Declaration of result Form EC 42E.
- (d) Declare the result of the Referendum.
- (e) Detach the Electoral Operations copies of Forms EC 42D and EC42E and hand them over to the official designated by the Commission to collect them.
- (f) Distribute copies of Forms EC42D and EC42E to the Constituency Collation Agents and designated Police or security personnel at the Collation Centre.
- (g) The control of, and procedures at, any Collation Centre shall be the same as specified by the Commission in its Regulations and Guidelines for the Conduct of Elections that is in force at the time of the Referendum.

It should be noted that the itemised Collation Centres are not sacrosanct because by reason of the provision of *paragraph 27* of Regulations and Guidelines for Recall, 2024, notwithstanding the provisions for collation, the Commission may designate or redesignate Collation Centres for the purposes of a Referendum as it deems fit provided that the redesignation shall be within the constituency in question as is the case with regular election.

9.0 Aborted or invalid recall process

Following stipulations in the “Regulations and Guidelines for Recall, 2024”, a recall process may be aborted or halted at two different stages before getting to the stage of referendum. One way is during the stage of presentation of petition and, as provided under *paragraph 2(d)* of the “Regulations and Guidelines for Recall, 2024”, it is ascertained that “the petition is not signed by more than one half (over 50%) of the

registered voters in the member's constituency". In such a case, the INEC shall issue a public notice to that effect and copy the Presiding Officer of the applicable legislature. This stipulation means or connotes that where signatories to the petition submitted for commencement of the recall process have not met the minimum constitutional threshold, the petition for recall will fail and no further steps will be taken by the INEC. In this case, the recall process has not commenced. The determination was made simply based on the number of persons who signed the petition presented to the INEC Chairman.

The second way in which a recall process which has already commenced may be aborted (midway or halfway or midstream) is where the declared outcome of the verification exercise shows that the number of petitioners verified is not more than one half (50%) of the registered voters in the Constituency, the recall process is invalid and shall automatically abort as it does not qualify for referendum. To qualify for referendum, the outcome of the verification must meet the irreducible minimum constitutional threshold that the number of petitioners verified shall be more than one half (50%) of the registered voters in the Constituency. Under *paragraph 13(e)*, where the signatures of the petitioners verified is not more than one half of the registered voters, the Commission shall issue a public notice or announcement to that effect.

10.0 Effect of a valid or effective recall

Once the Referendum Constituency Collation/Declaration Officer declares the result of the referendum in terms stipulated under *paragraph 26* of the "Regulations and Guidelines for Recall, 2024", the fate of the Councillor sought to be recalled will be public knowledge. INEC will subsequently communicate the outcome to the Presiding officer of the applicable legislature and it is suggested that the INEC should also follow suit and publish same on their website. Where the outcome of the declared result is that the constituents satisfied and met the constitutional or statutory threshold for the recall of a lawmaker through a referendum ("approved by a simple majority of the votes of the persons registered to vote in that member's constituency"), the affected lawmaker shall vacate or lose his seat. On the contrary, the outcome of the declared result is that the constituents satisfied and met the

constitutional or statutory threshold for the recall of a lawmaker through a referendum (“not approved by a simple majority of the votes of the persons registered to vote in that member's constituency”), the affected lawmaker shall not vacate or lose his seat.

In specific terms, the effect of a successful recall of a Councillor is that it “leads to the loss of seat of that member when the Leader of the Area Legislative Council receives a certificate under the hand of the Chairman of the Independent National Electoral Commission stating that the provisions of *section 113* of the Electoral Act, 2022 have been complied with in respect of the recall of that member”.

11.0 Constitutionality of the Regulations and Guidelines for Recall, 2024

It remains to make a categorical remark on the constitutionality of the “Regulations and Guidelines for Recall, 2024”. Having critically examined the gamut of the Regulations and Guidelines for Recall, 2024 alongside the statutory provisions on recall, it is submitted without equivocation that INEC properly exercised the powers conferred on it by *sections 69, 110* and 160 of the CFRN, 1999 as amended and *sections 2(c) and 113* of the Electoral Act, 2022 and all other powers enabling it in that behalf. No singular provision in the Regulations and Guidelines for Recall, 2024 has been found in this exhaustive inquiry to be conflict with or antagonises either the provision of the national constitution and or the nascent electoral law. What is left is therefore is for the electoral management body to keep tenacious fidelity with implementation of the Regulations and Guidelines for Recall, 2024.

12.0 Conclusion and Recommendations

Recall is the only way through which constituents are constitutionally empowered to remove a lawmaker from office after passing a vote of no confidence on such a lawmaker. The summary of findings in this work is that the Regulations and Guidelines for Recall, 2024 passed the litmus test or scrutiny of constitutionality as the provisions therein are consistent with the both constitution and electoral law. Going through the gamut of the provisions of the “Regulations and Guidelines for Recall, 2024”, recall of a lawmaker is not a legal impossibility but it is an uphill or arduous task. Hence, there is a compelling need to adhere to the recommendations

made herein, which when implemented, will make the recall process seamless. In order to improve on the recall process, the following pragmatic things are recommended namely-

- (a) Specific timeline should be set for conclusion of verification of petition upon its submission by constituents to the INEC Chairman. Presently, no timeline is set for it unlike the 90 days maximum period timeline set for conduct of referendum under the constitution and upheld in the Regulations and Guidelines for Recall, 2024. The Regulations and Guidelines for Recall, 2024 should be amended accordingly.
- (b) Heavy cost or financial implications borne by constituents for mobilising towards collecting signatures, presenting petition to the INEC Chairman, appointing agents during verification of petition and referendum proper is definitely prohibitive and unarguably an inhibiting factor against the recall process. It is therefore suggested that the Regulations and Guidelines for Recall, 2024 should be amended so that presentation of petition for recall can also be done online to reduce cost and logistic nightmares on the constituents.
- (c) The INEC must be always be conscious of and abide by the 90 days' timeline for conduct of referendum. Thus, recall process must be completed within the stipulated time frame or it will be declared a nullity if extended or elongated.

References

1. Hereinafter abbreviated as “FCT”.
2. Hereinafter abbreviated and referred to as the “INEC”.
3. Hereinafter referred to simply as “Regulations and Guidelines for Recall, 2024”.
4. (2021) LPELR-55481(SC).
5. *Paragraph 5(c)* of the Regulations and Guidelines for Recall, 2024.
6. *Paragraph 19(c)* of the “Regulations and Guidelines for Recall, 2024”.