



**ELECTORAL HUB MEMO ON
ESTABLISHMENT OF
NATIONAL ELECTORAL
OFFENCES COMMISSION AND
RELATED MATTERS BILL 2021**

**SENATE PUBLIC HEARING
APRIL 28, 2021**

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About the Electoral Hub

The Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), is a multidisciplinary strategic think-tank which seeks to provide solutions to improve the credibility and integrity of the electoral process. It is conceptualized to complement the roles and activities of the different institutions, stakeholders and drivers of the electoral process and governance. The Electoral Hub's aim is to strengthen electoral governance and accountability in Nigeria through the provision of data and critical analysis supporting the credibility and integrity of the electoral process. We believe that the integrity of the electoral process is crucial in improving the electoral governance architecture and democracy in Nigeria. We also believe in contextual analysis for solutions rooted in the principles of justice and equity

Our core values are knowledge-exchange, inclusion, justice, equity, transparency and accountability.

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Introduction

The National Electoral Offences Commission and Related Matters `Bill 2021 seeks to establish a National Electoral Offences Commission, which would be responsible for investigating and prosecuting electoral offenders. It follows the recommendation of the Justice Uwais-led Electoral Reform Committee (ERC) which was set up in 2008 to make recommendations for electoral reform.

Having originally been introduced in 2019, the Bill has now reached the public hearing stage, which will hold in the Senate on Wednesday, 28 April 2021. In light of this, the Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development (IRIAD), presents this memo highlighting key provisions of the Bill and making recommendations on areas of improvement.

Issues and Recommendations

Independence of the Commission

The National Electoral Offences Commission is established by clause 1(1) of the Bill. Importantly, sub-clause (2)(f) of that clause states that the Commission shall “be independent in the performance of its functions”. This express provision for the Commission’s independence should enable it to perform its duties without undue interference. The requirement that members of the Commission cannot be registered members of any political party (clause 2(1)) should also increase the level independence.

However, the independence of the Commission is threatened by the fact that by virtue of clause 2(3) of the Bill, the Chairman and members of the Commission are appointed and by the President (subject to confirmation by the Senate). This role of the President in appointing members of the Commission has the potential to undermine its independence. We therefore recommend that this clause should be amended to create an independent body that will be responsible for nominating members to the Commission, which will then be subject to confirmation by the Senate.

Gender Inclusion in the Commission

Clause 2(1) of the Bill states that the Commission shall consist of:

- a Chairman;
- a Secretary;
- representatives of certain bodies including, among others, the Ministry of Justice, the Independent National Electoral Commission (INEC), and the National Human Rights Commission; and
- six Nigerians with cognate experience in any one of the following: law, security, electoral management, engineering, and information technology.

Significantly, the Bill provides that in respect of the last category above (i.e. six Nigerians with cognate experience in a particular field), two of the six Nigerians shall be women. This represents about 33% guaranteed representation for women, thereby meeting the 30% threshold in the National Gender Policy. This is a commendable provision that should promote the inclusion of women within the Commission.

Mandate of the Commission

Clause 6 of the Bill mandates the Commission to, among others:

- investigate all electoral offences;
- prosecute electoral offenders;
- maintain records of all persons investigated and prosecuted; and
- adopt measures to prevent, minimise and eradicate the commission of electoral offences throughout the country.

The express mandate on the Commission to investigate electoral offences and prosecute offenders is highly important, given that INEC has neither the express legal mandate nor the capacity to prosecute electoral offenders. This mandate on the National Electoral Offences Commission should therefore lead to a higher enforcement of laws relating to electoral offences.

Also noteworthy is the Commission's mandate to adopt measures to prevent, minimise and eradicate the commission of electoral offences. This should ensure that the Commission does not only investigate and prosecute offenders, but also takes positive action to deter others from committing electoral offences.

However, it is submitted that the mandate on the Commission to maintain records of all persons investigated and prosecuted is not sufficient. In addition to maintaining these

records, the Commission should also be required to publicise them. This is due to the nature of public information in Nigeria which is usually hoarded and difficult to access. If the Commission publicises records of all persons investigated and prosecuted, this is likely to not only serve a deterrent effect on others, but also promote a culture of transparency and accountability within the Commission. We therefore recommend that clause 6(1)(e) should be amended to state that the Commission shall “maintain *and publicise* records of all persons it investigated and prosecuted” (suggested amendment in italics).

Electoral Offences

Part IV of the Bill deals extensively with electoral offences, including offences that are provided for under the Electoral Act No 6 of 2010 (as amended) as well as newly created offences. Clause 7(1)(a)(i) gives the Commission the power to investigate and prosecute people who violate the provisions of the National Electoral Offences Commission Bill, the Electoral Act 2010, or any other law relating to elections in Nigeria.

Clause 12(1) also states that any person who violates the provisions of the Electoral Act 2010 shall be sanctioned to the extent that is prescribed under that law. However, the Bill then goes on to give conflicting sanctions for some offences that are already contained in the Electoral Act 2010. An example is the offence of knowingly making a false statement in connection with an application to be placed on the voters register. By virtue of clause 13(1) of the 2019 Bill, a person who does this would be liable to imprisonment for a term not exceeding 15 years, while under section 117(1)(b) of the Electoral Act 2010, the person would only be liable to a maximum fine of ₦1,000,000 or 12 months imprisonment or both.

These duplications and inconsistencies could lead to confusion as to which provision should apply. We therefore recommend that the National Assembly should take this opportunity as it is also reviewing the Electoral Act 2010 to regularise the penalties for similar offences under both the Electoral Act and the National Electoral Offences Commission Bill. This would provide for clarity in the imposition of penalties.

Conclusion

Given the level of violence that has marred every single election in Nigeria (albeit in varying degrees), it is highly important to take action against electoral offenders. As stated earlier, INEC has neither an express legal mandate nor the capacity to prosecute electoral offenders. This makes the establishment of a National Electoral Offences Commission essential, as it would lead to an increase in the enforcement of laws relating to electoral offences while also serving a deterrent effect on others.

While commending the National Assembly for their extensive work on electoral review and their initiative in drafting this Bill, we call on them to adopt the following recommendations:

- the appointment of the members of the National Electoral Offences Commission should be done by an independent body instead of the President;
- the Commission should be mandated to not just maintain but also publicise records of all persons investigated and prosecuted; and
- the penalties for similar offences under both the Electoral Act 2010 and the National Electoral Offences Commission Bill should be regularised.

We also urge the National Assembly to pass this Bill expediently to allow ample time for the Commission to be set up and begin operations ahead of the fast-approaching 2023 elections. We are hopeful that this Bill, along with the recommendations put forward in this memo, will contribute to safeguarding electoral integrity and credibility in Nigeria.



**INITIATIVE FOR RESEARCH,
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