



# Electoral Hub Position on Electoral Act Amendment Bill 2020

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## **Electoral Hub Position on Electoral Act Amendment Bill 2020**

The proposed Electoral Act Amendment Bill 2020, which aims to repeal the Electoral Act No 6 2010 (as amended) and enact the Independent National Electoral Commission Act 2020, makes over 300 amendments, which include new provisions, to the legal framework guiding elections in Nigeria. The relevant areas of amendment include INEC independence, use of technology, political party structure and operations, campaign expenses, and gender and social inclusion (GESI).

On 9 December 2020, the National Assembly heard contributions from representatives of INEC, government agencies, civil society organisations (CSOs), political parties, and security agencies on the development of the Electoral Bill. The Electoral Hub, an organ of the Initiative for Research, Innovation and Advocacy in Development, joins the advocacy for electoral reform by highlighting key aspects of the proposed Bill, as well as gaps that need to be addressed.

### **INEC independence**

Section 3(2)(a) of the Bill provides that INEC funds shall be released not later than 180 days (approximately six months) to election day. Giving legal backing to the early release of funds to INEC is important to protect the Commission's financial independence, as well as to improve its capacity to plan for upcoming elections. As YIAGA has noted, the Federal Government released 76% of funds to INEC 86 days to the 2019 elections, and the remaining 24% only 57 days to the election.<sup>1</sup> This poses logistical challenges, a problem that led to the postponement of the 2019 just a few hours before polls were scheduled to open.<sup>2</sup> To prevent events like this from recurring, section 3(2)(a), which provides for the early release of funds to INEC, is highly important.

### **Use of technology**

Section 49 gives legal backing to the use of Smart Card Readers for the accreditation of voters. Section 52(2) also provides that INEC may adopt electronic voting or any other method of voting in elections as it may deem fit. This explicit provision for electronic voting is commendable and gives INEC legal backing to plan for electronic voting ahead of the 2023 elections.

Section 63(4) deals with the announcement and transmission of results. It provides that the Presiding Officer shall sort and count votes, record the sorted and counted votes in forms or electoral documents as prescribed by INEC, announce the results, and transmit them from the polling unit to the first level of collation of results to which the polling unit belongs. However, it does not state the form of transmission. We therefore submit section 63(4) should be amended to explicitly provide for the electronic transmission of results. The introduction of Z-pads through which the results of the 2020 Edo and Ondo State governorship elections were transmitted to the results viewing portal helped to significantly increase the credibility and transparency of the process. It would therefore be helpful to provide legal backing to the electronic transmission of results.

### **Political party structure and operations**

Section 78(1) provides that political parties must register at least a year before a general election, up from six months in the current law. This is a commendable provision that should allow INEC to better plan for elections.

Section 80(2) requires every registered party to maintain a register of its members in both hard and soft copy, while section 80(3) states that the parties shall make that register available to INEC not later than 30 days before the date fixed for the party primaries, Congresses or Convention. This is a commendable provision, as it will prevent last-minute changes and defections from politicians seeking to grab tickets for candidacy from parties. It is also likely to strengthen internal democracy within parties.

Furthermore, section 84(2) requires parties intending to merge to give INEC nine months' notice of their intention to do so before a general election. This is a change from the current law, which requires just 90 days' notice. This provision is bound to strengthen political parties' internal structure and ensure that they plan their operations ahead of time. The 9 months' notice will also give INEC ample time to plan and update its records.

Additionally, section 87(3) caps fees for nomination of candidates to ₦150,000 for a Ward Councillorship aspirant in the FCT, ₦250,000 for an Area Council Chairmanship aspirant in the FCT, ₦500,000 for a House of Assembly aspirant, ₦1,000,000 for a House of Representatives aspirant, ₦2,000,000 for a Senatorial aspirant, ₦5,000,000 for a Governorship aspirant, and ₦10,000,000 for a Presidential aspirant. The introduction of these maximum fees for nomination is bound to improve access to the electoral process, particularly for women, young people, and PWDs who have insufficient access to funds.

Finally, section 87(21) states that a political appointee cannot be a party delegate. This is a highly commendable provision that should increase the transparency and accountability of party's primaries, thereby strengthening internal democracy.

### **Campaign expenses**

Sections 91(1)-(7) provide limits on the election expenses of candidates, and section 91(9) provides that no individual or other entity shall donate more than ₦10,000,000 to a candidate. While these provisions are commendable, there is no mechanism put in place for monitoring election expenses. What is more, the penalties for exceeding these limits are modest. Section 91(10) states that a candidate who knowingly acts in contravention of this section is liable to a fine of 1% of the amount permitted or imprisonment for at most 12 months or both. We submit that the fine should be increased to a more substantial amount so as to truly serve a deterrent effect.

### **Gender and social inclusion**

On the issue of gender inclusion, we submit that the Bill fails to adequately promote women's representation. Section 87(8) stipulates that women must constitute at least one out of five ad-hoc ward delegates,<sup>3</sup> ten out of fifty ad-hoc local government delegates,<sup>4</sup> one

out of five ad-hoc state/FCT delegates,<sup>5</sup> and one out of five ad-hoc national delegates in political parties.<sup>6</sup> This represents just 20% of women as ad-hoc delegates at all levels, which is even lower than the 35% stated in the National Gender Policy.<sup>7</sup> Our main recommendation is therefore that section 87(8) of the Bill should be changed to guarantee equal representation of women and men (50%) as ad-hoc delegates for parties. In this way, even if parties fall short of the minimum requirement, there will be some level of women representation within a party's indirect primaries.

For persons with disabilities (PWDs), section 56(2) states that INEC may take reasonable steps to ensure that voters with disabilities are assisted at the polling unit. However, as pointed out by Mr Jake Epelle of the Albino Foundation, this provision is unacceptable because it says INEC "may" assist PWDs, which suggests that it is up to their discretion.<sup>8</sup> The provision should therefore be changed to "shall" so as to make it mandatory for INEC to provide assistance for PWDs.

## **Conclusion**

As Senate President Ahmad Lawan has pointed out, there is a strong correlation between an effective legal framework guiding elections and the conduct of free, fair and credible elections.<sup>9</sup> It is therefore important that we get it right with the Electoral Act Amendment Bill. Senator Lawan has also vowed that the National Assembly will pass the Bill before the end of the first quarter of 2021.<sup>10</sup> It is hoped that this promise will be kept, taking into account the recommendations made in this document, and that the President will assent to the Bill in due course, to give enough time for implementation in the run up to the 2023 general elections.

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<sup>1</sup> <https://twitter.com/YIAGA/status/1336661198335512579/photo/4>

<sup>2</sup> Samuel Ogundipe, "It's Official: INEC postpones all Nigeria's general elections", *Premium Times* (16 February 2019). Available at: <https://premiumtimesng.com/news/headlines/313199-its-official-inec-postpones-all-nigerias-general-elections.html>

<sup>3</sup> Electoral Act Amendment Bill 2020, section 87(8)(a)

<sup>4</sup> Ibid, section 87(8)(b)(i)

<sup>5</sup> Ibid, section 87(8)(b)(ii)

<sup>6</sup> Ibid, section 87(8)(b)(iii)

<sup>7</sup> Federal Ministry of Women Affairs and Social Development, *National Gender Policy* (December 2006)

<sup>8</sup> Presented at the Joint Public Hearing of the Electoral Act Amendment Bill 2020 (9 December 2020)

<sup>9</sup> Ibid

<sup>10</sup> Ibid



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## **About the Electoral Hub**

The Electoral Hub (E-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 and rooted in the principles of justice and equity

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

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