

**MEMORANDUM ON THE PROPOSED BILL FOR AN ACT TO ESTABLISH  
THE NATIONAL ELECTORAL OFFENCES COMMISSION AND FOR RELATED  
MATTERS**

**PRESENTED BY**

**LAWYERS ALERT**

**TO THE**

**NATIONAL ASSEMBLY HOUSE OF REPRESENTATIVES COMMITTEE ON  
ELECTORAL MATTERS**

**23RD AUGUST, 2022**

## **BACKGROUND**

Recently, the House Committee on Electoral matters invited Memoranda from relevant stakeholders and the general public to a 1-day Public Hearing on the “Proposed bill seeking to establish the National Electoral offences Commission and for related matters. In response to this call, Lawyers Alert has put together this memorandum highlighting certain areas of concern that will address some salient provisions of the proposed Bill.

There has been considerable debate as to whether the existing legal framework for the prosecution of electoral offenders as encapsulated in the Electoral Act, 2010 (as amended) is appropriate and adequate for the arrest, investigation and prosecution of electoral offenders. There has also been considerable argument as to the capacity and willingness of the Independent National Electoral Commission to prosecute electoral offenders in a professional and ethical manner. Debates are also ongoing as to the willingness of some elements within the political parties to act within the compass of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2010 (as amended) for winning elections and abandoning fraudulent means and ways of doing the same.

This Bill is a recognition of the enormity of the challenges we face in terms of electoral offences and INEC’S capacity to address these challenges. INEC is overwhelmed by the number of electoral offences around the country. INEC, however, does not have the prosecutorial power and the resources required for the prosecution of such offences. The passage of the bill will represent a giant stride towards sanitising the electoral processes and unbundling INEC through the creation of the National Electoral Offences Commission.

## **ISSUES FOR CONSIDERATION**

### **1. PETTY OFFENCES**

Section 22 (1) of the Proposed Act states “no person shall, from (3) hours prior to the commencement of the election, directly or indirectly disturbs public peace by doing any of the following acts in the house, building or place where a polling station is located or in any private or public house, building or land in the neighborhood therefore so as to cause obstruction to

the election or to voters or to persons or election officials who are conducting the election at the polling station;”

- a) Using loudspeakers, megaphones or similar devices, or
  - b) Playing musical instruments, singing and dancing, holding assembly or function of any kind whatsoever, making or causing to make commotion or manhandling or shouting
- (2) any person who commits an act in contravention of sub-clause (1) of this clause shall be guilty of an offence of breach of electoral peace and liable, on conviction to imprisonment for a term of at least six (6) months or a fine of at least one hundred thousand naira (N100,000) or both

The offences captured here are **petty** ones. They are victimless offences. By nature, a Petty offence does not constitute a threat to the safety of the public, law and order in the state. The laws creating petty offences are not only discriminatory in nature but, also infringe on the rights of the poor and indigent members of the community. Indeed, this portion of the Bill leaves so much to the discretion of law enforcement agents which stand very high chances of being abused. It is being advocated and adopted in other parts of the world that at worst the punishment for a petty offence should be a warning issued by the enforcement agents or the courts, community service, or little fine.

The above section needs to clearly spell out what amounts to “reasonable music”. Until this is done effectively, flagrant abuse of the provision by the police or law enforcement agents is most probable.

On the whole, there is a strong need to decriminalize such offences, as they do not constitute a threat to public safety. We also recommend non-custodial punishments.

## **2. EXCESSIVENESS OF PENALTIES**

- a. Sections 24 (1-6) and 32 set out some offences and the penalty for the breach of same. The penalty/punishment stipulated for the breach of these offences is excessive in relation to the stipulated criminal acts. There is the strong need to review this section. A non-custodial approach (community service or fines) is recommended

- b. While section 29 states the penalty for a person who furnishes or supplies any musical instrument to any person with the intent that it shall be used by any person for electoral propaganda, this raises the question as to what amounts to “musical instrument”. Besides, how one will determine the **intent** of another man is left to be seen. It is also observed that the punishment stipulated here is excessive and needs to be reviewed.

### **3. NOMINATION**

The Bill in its Section 2 provides that the members of the commission other than the Chairman/Secretary shall be part-time ones. It further states that the Chairman and members of the commission other than the ex-officio members shall be appointed by the president subject to confirmation by the senate. This part raises the question of **independence** as it is with several other similar bodies or commissions.

What we have is clearly in conformity with the provision of the constitution. However, the committee should have gone the extra mile of setting out the modalities for the nominations. It is important that the Bill makes for a very transparent and independent process that will ensure trust.

We believe in using an approach that strengthens the principles of separation of power between the executive and legislature as contained in the recommendations of the Honourable justice Uwais-led panel, which is centred around the “procedure”. The Panel’s recommendation did not rule out nominations by the president but sets out procedures that will determine who is presented to the House for confirmation. We believe this should have been taken into consideration in drafters of the Bill.

As stated earlier, unlike the membership of INEC which is full-time, the membership of this commission is part-time, with the Chairman and the Secretary as the only exceptions. In addition, going by the provision of this Bill almost all members except the Chairman and the Secretary are statutory members drawn from already existing state institutions under Section 2 (a-i). With the structure set out for membership, it becomes almost impossible to expect any commitment from the members who have their primary assignments thereby giving rise to conflict of interests.

This Bill did not talk about representation only but has gone a step further to define who should be in that commission. It did not give room for agencies to appoint persons to serve on the commission but rather it specifies who is to be

appointed. This has raised the question of the independence of the commission. The idea of independence is not simply independence from the influences of individuals and politicians, it is also independence from the influence of other institutions as well.

#### **4. CSO REPRESENTATION**

It is surprising that there is no civil society representation anywhere in the constitution of the membership of the commission. Without doubt, civil society activists occupy an important place in the development dialogue as it provides opportunities to bring communities together for collective action, mobilize society to articulate demands and voice concerns at local, national, regional and international levels. One of the key benefits of a strong civil society is that it serves as a channel for feedback to decision-makers, whether through research, through close contact with particular populations, or through bringing opinions that are born either in the state or in the private sector. There is also a strong need to include CSOs in the membership of the commission.

#### **5. MEDIA**

Just as noticed above, the media do not have representation in the commission. The importance of the media in a democratic society cannot be overemphasized. The media's roles as watchdogs and gatekeepers of society is of extreme importance in our democratic dispensation. Gatekeepers ultimately craft and conduct what is being published to the masses, therefore they determine what is to become the public's social reality and their view of the world. The media has clear provisions in the constitution in terms of its responsibility to hold systems accountable. Hence, there is the urgent need to include the media in this process.

Signed  
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