



COMMENTS OF THE NATIONAL HUMAN RIGHTS COMMISSION ON A BILL FOR AN ACT TO ESTABLISH THE NATIONAL ELECTORAL OFFENCES COMMISSION AND FOR RELATED MATTERS 2022

GENERAL PRINCIPLE

1.0. HUMAN RIGHTS IMPACT ASSESSMENT TEST

The National Human Rights Commission (NHRC) is the National Institution statutorily tasked with the mandate of protecting, promoting, and enforcing human rights. This mandate is spelt out in its enabling act. **Section 5(k) of the National Human Rights Commission Amendment Act 2010** empowers the Commission to *“examine any legislation, administrative provisions and proposed bill and bye-laws for the purpose of ascertaining whether such enactment, proposed bill or bye-law are consistent with human rights norms”*.

It is on this premise that the NHRC is proposing that before any bill is passed into law by legislative bodies at the Federal or State Level, it must first undergo and successfully pass a human rights impact assessment test. This means that the proposed legislation must improve the general enjoyment of the human rights of Nigerians and must be in keeping with internationally recognized human rights norms and best practices. This is a general examination of the above-referred bill to ensure that it complies with the highest human rights standards.

2.0 COMMENTS ON THE BILL

- i. In **Section 2(1)** which specifically deals with the composition of the membership of the Commission, it is the NHRC's considered view that the bill should specifically provide that at least a third of the membership of the Commission should be women. This is to ensure fairness and a gender balance as half of the Nigerian electorate are women. The use of **“Chairman”** in this Section and other parts of the bill should be amended to read **“Chairperson”**. This is in keeping with globally recognized best practices.

Also, **Section 2(1)(f)** of the Bill should be amended to state that the membership of the Commission should include the Executive Secretary of the National Human Rights Commission or his or her representative and not “the chairman, National Human Rights Commission or his

representative". This is because the Chairperson of the NHRC is a part time appointee while the Executive Secretary is the Chief Executive Officer (CEO). All other members of the Commission are CEO's and not part time officials.

- ii. The NHRC will also like to draw the attention of the Committee to the provisions of **Section 2(3)** of this proposed legislation which deals with the appointment of members of the Commission. It is stated that the appointment of a member by the President should be based on a recommendation by the National Judicial Council and confirmation by the Senate. The Bill did not specify whether the membership of the Commission should be subject to the approval vote of a simple majority or two-thirds of the Senate. Furthermore, it is the NHRC's position that a combination of the process of nomination by the Executive and subsequent confirmation by a simple majority of the Senate will help in enhancing the Independence of the Commission.
- iii. The Provisions of **Section 3(2)** of the Bill that provides for the removal of a member of the Commission by the President need to be better articulated. The provisions of the bill as currently articulated are vague and fail to specifically state the grounds on which a member of the Commission can be removed. Furthermore, it does not clearly define a process that must be followed to ensure that the member was rightfully removed. Amending the diction and phrasing of this provision of the legislation will help in guaranteeing accountability and ensuring a sense of transparency in the process of determining the membership of the Commission. More importantly, the removal of a member should be subjected to confirmation by the simple majority of the Senate to fortify the independence of the Commission.
- iv. Under **Section 6(1)(c)** of the Bill which gives the Commission power to prosecute electoral offences "*subject to the provisions of clause 174 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (on the power of the Attorneys-General of the Federation respectively to institute, continue, takeover or discontinue criminal proceedings against any person in any court of law*", it is the Commission's considered view that the phrase "clause 174.." in this part of the bill be amended to state "Section 174..." This similarly applies to **Section 12(2)** of the Bill which refers to "Clauses 221, 225(1),(2),(3) and (4) and 227 of the Constitution" rather than "Section 221..."

Also, under Section 6(1), the bill subjects the prosecution of criminal offences by the Commission to the whims and caprices of an Attorney-General who also doubles as the Minister/Commissioner of Justice, who

is a political appointee who might still be unwilling to institute criminal action against a deserving party because of his political leanings and vice versa. This lacuna in the proposed legislation needs to be addressed as it is ripe for abuse.

- v. It is the NHRC's considered view that provision of **Section 7(1)(c)** of the bill which empowers the Commission to seize any property suspected to have been used in the commission of an electoral offence is in order so as to discourage commission of electoral offences.
- vi. It is also the considered view of the NHRC that the provisions of **Section 8(4)** of the Bill should be amended so that the hiring of staff of the Commission is not subject to consultation and approval by the Federal Civil Service Commission. The NHRC's position is premised on the belief that the provision of this Section as it is currently written will consequently affect the Independence of the Commission.
- vii. It is also the Commission's considered view that the diction and phrasing of **Section 18(a)** of the Bill which deals with the offence of Bribery is very ambiguous and hard to decipher. The language of a bill as important as this should be simpler and more direct to effectively communicate the intendment of the drafter and to prevent any ambiguity in its interpretation and confusion in its implementation.
- viii. **Section 19(1)(a)** of the Bill should be amended to state "...commits the offence of impersonation, undue influence or bribery in Clauses 18,19 and 20 of this Bill respectively; or"
- ix. It is the Commission's considered view that the provisions of **Section 23(1)** of the Bill as currently articulated should not be seen as having a limiting effect on the Freedom of Expression. It is a norm for candidates vying for political office to embellish narratives that prop themselves up and paint them in a positive light while conversely putting down their political opponents. Consequently, the onus is on the candidate putting down his or her opponent to provide a justification or face criminal charges for unfounded pejorative statements falsely calculated to disparage the opponent without any factual basis.

3.0 GRAMMATICAL ADJUSTMENTS AND CLERICAL ERRORS

This will address the portions of the bill where the NHRC opines that the inclusion or removal of a letter, word, phrase or punctuation mark will better improve the diction used in the bill without altering the purpose of the drafters of the law.

- a. **Section 3(2)** of the bill will better convey its intent if it is amended to read “...(whether arising from infirmity of mind or body or any other related cause) or for gross misconduct; or if it is not in the interest of the public that the member should continue in office”
- b. **Section 5** of the bill should be amended to read “The Commission may make regulations for running the affairs of its proceedings or those of any of its committees or units that may enhance the efficient and effective functioning of the Commission”.
- c. In **Section 6(1)(h)** the phrase “electoral offences tribunals, the attorney Generals...” should be replaced with “election tribunals, the Attorneys General...”
- d. In **Sections 10 and 11** of the Bill, the words “Unit” or “Units” should be amended to read “Unit/Department” in the singular form or “Units/Departments” in the plural form.

4.0 CONCLUSION

The National Electoral Offences Commission (Establishment) Bill 2022 aims to provide the legal framework for the investigation and prosecution of electoral offences and consequently for the general improvement of the electoral process in Nigeria.

The establishment of the National Electoral Offences Commission is premised on the belief that it is unrealistic for the Independent National Electoral Commission (INEC) to conduct free, fair and credible elections and simultaneously prosecute offences arising from the same elections. The Electoral Reform Committee headed by a former Chief Justice of Nigeria, Mohammed Uwais, had in 2007 recommended the establishment of a special prosecution body to be known as the Electoral Offences Commission.

The National Human Rights Commission on its part appreciates that the conduct of free, fair and reputable elections are key tenets of the democratic process and the Commission will support any credible efforts to ensure that this becomes the norm in Nigeria. It is our sincere hope that our recommendations as stated in this memorandum will be taken into consideration and consequently, changes to the bill will be effected so that this legislation and the National body it establishes will help strengthen the enjoyment of democracy of the Nigerian people.