

MARCH, 2018

SUMMARY PROVISIONS OF SENATE BILL SEEKING TO ESTABLISH A NATIONAL ELECTORAL OFFENCES COMMISSION

This document contains some of the highlights of the Senate Bill seeking to establish a National Electoral Offences Commission. The Bill which passed second reading in the Senate on 11th November, 2017 sets up a primary body for the investigation and prosecution of all electoral offences under the Electoral Act, 2010 (as amended) and any law relating to elections in the Federation. The bill was committed to the Committees on INEC and Judiciary who have both scheduled a public hearing on the Bill .

S/N	BILL'S PROVISIONS	HIGHLIGHTS
1	Clause 1 National Electoral Offences Commission	This clause establishes a National Electoral Offences Commission that shall be a body corporate with perpetual succession. It shall have power to enter into contracts and power to enforce compliance of the provisions of the Bill among others. It shall also be independent of its functions subject to the Attorney General's powers to institute, continue, takeover or discontinue criminal proceedings against any person in a court of law.
2	Clause 2 Members of the Commission	Proposes 17 Members They include A Chairman who shall be the chief executive and accounting officer of the commission; shall be a serving or retired member of any government security or law enforcement agency not below the rank of Assistant Commissioner of Police or its equivalent with at least 15 years cognate experience.

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		Other members are: • A Secretary who shall be the Commission's head of administration • Representatives from Federal Ministries of Justice, Internal Affairs and Defence • IG of Police or his Representative • Chairman of INEC or his Representative • Chairman, NHRC or his Representative • Commandant General, Nigeria Security and Civil Defence Corps (NSCDC) • CBN Governor • DG of Nigerian Intelligence Agency or his Representative • DG of Department of State Security Services or his Representative • DG of Legal Aid Council of Nigeria • 4 eminent Nigerians with cognate experience in law, security, electoral management or Information Technology Apart from Chairman and Secretary, other members shall serve part-time. The Chairman and members of the Commission shall also be appointed by the President subject to Senate's confirmation
3	Clause 3 Tenure of Office	The Chairman and Members shall hold office for a renewable period of 4 years and no more- clause 3(1) Provides for the removal of the Chairman or Member of the Commission by the President • acting on an address supported by two-thirds majority of the Senate asking that he be removed for his inability to discharge the functions of his office or for misconduct; or if it is not in the interest of the public that the member should continue in office- clause 3(2) A Member of the Commission can also resign his membership by notice in writing addressed to the President. However, the date of resignation is effective from the date that the President receives the notice - clause 3(3)

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		Clause 4 also provides for a vacancy in the Commission to be filled by the appointment of a successor who shall hold office for the remainder of the term.
4	Clause 6 Functions of the Commission	The functions of the Commission under clause 6 (1) (a) - (k) include: • The enforcement and due administration of the provisions of the Bill • The investigation of all electoral offences, electoral corruption and violations of electoral due process in any election • The adoption of measures including preventative and regulatory actions and the introduction and maintenance of investigative and control techniques to prevent electoral offences • Taking charge of supervising, controlling, coordinating all responsibilities, functions and activities relating to investigations and prosecution of all offences connected with or relating to Elections conducted under the 2010 Electoral (as amended) • Liaising with the Attorney-General of the Federation, the Independent National Electoral Commission, all government security and law enforcement agencies and such other supervisory institutions involved in the eradication of electoral offences, electoral corruption and violations • Carrying out and sustaining rigorous public and enlightenment campaign against electoral offences, electoral corruption and electoral due process
5	Clause 7 Powers of the Commission	Under clause 7, the Commission has powers to: • Investigate a person, corporate body or organisation • Arrest and procure arrest • Initiate, develop or improve specific training programmes for its law enforcement personnel; • Establish special units for the effective conduct of its functions (Clause 12)

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6	Clause 8 Staff of the Commission	Provides for a secretary that shall be the head of the Commission's secretariat responsible for the keeping of the Commission's books and records- Clause 8(2)(b) • The Secretary shall be appointed for a single term of five years and subject to the supervision and control of the Chairman • The Secretary is a Member of the Commission under Clause 2(b) • No educational qualifications or years of experience are listed for the Secretary under this Bill. • In addition to the secretary, the Commission may appoint other staff or second officers from government security or law enforcement agencies or such other private or public services to assist in the performance of its duties- • The said staff shall be appointed on the Commission's terms and conditions and after consultation with the Federal Civil Service Commission
7	Clause 9 Staff Regulations	• The Commission can make staff regulations relating to the conditions of service of Staff of the Commission in areas such as their appointment, promotion and disciplinary control including their dismissal and appeal - Clause 9(1) • The Commission also has powers to make standing orders regulating its proceeding or those of any of its committees or units- Clause 5
8	Clause 10 Pension	• Service in the Commission shall be public service for the purposes of the Pensions Act and officers and other persons employed in the Commission shall be entitled to pensions, gratuities and other retirement benefits - Clause 10(1) • In addition, any power exercisable under the Bill by a Minister or other authority of the Government shall be vested in and exercisable by the Commission- Clause 10 (2)

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9	Clause 14 Offences arising from Existing Laws	This penalises any person who violates the provisions of the Electoral Act (2010) as amended or any other law regarding elections that is in force - Clause 14(a) In addition, it penalises officers or executives of any association or political party that breach sections 221, 225(1)(2)(3)(4) and 227 of the 1999 Constitution (as amended). These sections lay out requirements for the establishment and existence of political parties and prohibits any other association apart from political parties from canvassing for votes.
10	Clause 15 Offences by any Person	The bill creates additional offences. Clause 15 covers persons who make false statements in connection with any application to be placed on the National Register of Voters, forges or fraudulently defaces any document for the purposes of nomination, selling of electoral documents, destroys or interferes with the ballot box, manufactures, constructs, supplies or uses a device or mechanism by which a ballot box can be extracted or manipulated during elections etc. Persons who breach this provision or vote at an election where he is not entitled to vote are liable to an imprisonment term not exceeding fifteen (15) years on conviction.
11	Clause 16 Offences relating to Register of Voters, Voter's cards, etc	This covers printing without due authority, a document or paper purporting to be a register of voters, voter's card or electoral document, being in possession of the voter card of another person, defacing, damaging, altering a voters card or aiding, abetting, counselling or procuring the commission of any of the under listed offences under clause 16. Persons who breach this provision are liable to an imprisonment term not exceeding fifteen (15) years on conviction

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12	Clause 17 Offences by Election Officials	These offences include but are not limited to the following: • Making false entries which he knows or has reasonable cause to be false • Refusing persons who he has reasonable cause to believe they are a blind persons from voting in the manner provided for such persons
		• Willfully preventing persons which he has reasonable cause to believe they are entitled to vote from voting at the polling unit, • Willfully rejecting or refusing to count any ballot paper which he has reasonable cause to believe is validly cast • Announcing false results or a result which is false or which he ought to know is false Persons who breach this provision are liable to imprisonment for a term of at least ten (10) years.
13	Clause 18 Personation	This is applicable to persons who apply for a ballot paper in the name of another person whether the person is living, dead or fictitious. The offence carries imprisonment for a term of not more than one (1) year under clause 18(1). However, the penalty section should be clarified as clause 21 (a) and (b) provide for an imprisonment term of at least fifteen (15) years for this same offence.
14	Clause 19 Undue Influence	Undue Influence This offence relates to persons who directly or indirectly by make use of or threatens any force, violence or restraint for the purpose of inducing a person to give or refrain from voting, withdrawing his candidacy or nomination or from preventing the person from being registered as a voter.

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15	Clause 20 Bribery	This covers receiving, agreeing or contracting for any money, gift, loan or valuable consideration, office or employment or agreeing to give or refrain from giving vote to a particular candidate or not, at an election or for the promise of an office, place, employment or any other consideration. Offenders are liable to an imprisonment term of at least fifteen (15) years on conviction.
16	Clause 21 Punishment and Incapacities for Corrupt Practice	This penalises persons who commit the offence of personation, undue influence or bribery in sections 18, 19 and 20 of this Bill or who before or during any election, publish any false statement in print and electronic media for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any candidate at such election. The penalty for this offence is an imprisonment term of at least ten (10) years.
17	Clause 22 Perversion of Electoral Justice	Under this provision, a judicial officer shall be guilty of perverting electoral justice if before during and after an election, he directly or indirectly receives or accepts for himself or any other person, money, gift, loan, property, valuable consideration, an office, place of employment or appointment or a promise of personal enrichment for the purpose of giving, rendering, procuring or directing a judicial decision. Judicial officers or officer of a Court of Tribunal guilty of perverting electoral justice shall be liable on conviction to a term of at least twenty years.

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18	Clause 23 Election official, security personnel not to cause influence	This clause provides for election officials, security officials' personnel engaged by the Independent National Electoral Commission or its State counterpart to do no more other than performing their official duties and casting their vote in accordance with the law on election day. The penalty for breaching this provision is an imprisonment term of at least fifteen (15) years or a fine of at least Thirty Million Naira (N30,000,000) or both.
19	Clause 24 Prohibition on disturbing peace	Prohibits actions that disturb the peace where an election is being held beginning from three hours to the commencement of an election to the completion of the election on the day of election. Prohibited actions include using loudspeakers or similar devices, singing, shouting, dancing, playing musical instruments or holding any assembly or function of any kind whatsoever in a building, house, land or neighbourhood of where a polling station is located so as to cause obstruction to a voter or election officials. The penalty for breaching this is Imprisonment for at least six (6) months or a fine of at least One Hundred Thousand Naira (N100, 000) or both
20	Clause 25 Prohibition on damaging of character	This prevents persons from prejudicing the result of an election by printing, publishing, distributing, airing or televising information about the personal character or conduct of a candidate or his family member which he knows or believes to be false. Persons who breach this shall serve an imprisonment term for at least ten (10) years or a fine of at least ten million naira (N10, 000,000) or both.

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21	Clause 26 Restriction on election campaign	This prohibits the airing, televising, distribution of electioneering campaign audio, video, printed advertisements, handbill, placard or poster which refers to an election but does not have on the face of it the names and addresses of the political party, candidate or person getting them printed, published, distributed, posted, aired or televised. It also prohibits the affixing of any election campaign material on any religious, archaeological, historical building, monument or structure or writing on any private house, shop, wall or structure without the permission of the owner. Persons who breach this provision are liable to an imprisonment term of at least five (5) years, a fine of at least ten million naira (N10,000,000) or both.
22	Clause 27 Prohibition on campaign against national interest	This prevents a person from campaigning in a manner that undermines the sovereignty, territorial integrity or unity of the Federation and promotes hatred on the basis of any religion, community, caste, tribe, language or territorial region. Persons who breach this provision are liable to an imprisonment term of at least fifteen years without an option of fine.
23	Clause 28 Prohibition on going armed or using arms or explosives	This prohibits any person apart from security personnel from being armed with poisons, explosive substances or weapons or exploding or using them during elections.

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24	Clause 29 Prohibition on obstructing votes counting or other acts of election	This prohibits any candidate or agent from grabbing, looting or damaging in any manner, ballot boxes or papers or any electoral document or material during or after an election without the permission of an election official in charge of the election at a polling station or election official in charge of the electoral materials. Persons who breach this provision are liable to an imprisonment term of at least twenty years (20) or a fine of at least forty million naira (N40,000,000) upon conviction.
25	Clause 30 Certain expenditure to be illegal practice	One of the provisions here prohibits persons from contracting to convey voters to or from the poll for the purpose of promoting or procuring the election of a candidate. However, as an exception, provision may be made to convey voters to participate in an election where voters are unable to reach their polling stations or place of residence without crossing the sea or river. Persons who breach this provision are liable to an imprisonment term of at least one year (1) or to a fine of at least one million naira (N1,000,000).
26	Clause 31 Employers to allow employees reasonable period for voting	This mandates employers to allow every voter in his employ, a reasonable period for voting and prevents him from deducting remuneration or pay in his absence during such period. Employers are also prohibited from directly or indirectly refusing, intimidating, using undue influence or interfering with the right of an employee to vote. Employers who breach this provision shall be liable on conviction to an imprisonment term of at least three years (3) or to a fine of at least six million naira (N6,000,000). However, this provision does not extend to members of the armed forces, the Nigerian Police Force, the Nigerian Prisons Service and all Federal Government security and law enforcement agencies.

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		It also does not apply to any employee who is acting as an election official under the Electoral Act, 2010 (as amended) or any electoral law in force in any State of the Federation.
27	Clause 32 Limitation of political propaganda on polling day	This prohibits persons from furnishing or supplying any musical instrument or loudspeaker that can be used by any person in any way or upon vessels, animals, trucks or vehicles for the purpose of political propaganda on polling day. Any person who breaches this provision is liable to imprisonment for a term of at least one (1) year or to a fine of at least one million naira (N1,000,000)
28	Clause 33 Offences relating to false information	This covers persons who give false information on any substantive matter to a public officer. Also, any person who is to take decision or do any related act commits an offence under the Bill. However, there might be need to draft this provision more elegantly and for better clarity. For instance what does it mean by any person who is to take decision or do any act in relation thereto commits an offence under this Bill?
29	Clause 34 Offences Relating to Election Expenses	Election Expenses This makes it compulsory for all candidates in an election to submit a statement of election expenses to the Commission six months after the election and further provides the procedure for submitting such statement. Persons who breach this provision shall be liable to imprisonment for a term of at least 6 months and a fine equal to the amount of money specified in the relevant law as the maximum for election expenses for the particular elective office in question.
30	Clause 35 Courts	This gives the Federal High Court, High Court of a State or the High Court of the Federal Capital Territory, Abuja, power to try offenders under this Bill and impose penalties

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31	Clause 37 Keeping of Accounts	The Commission shall keep proper accounts that conform to accepted commercial standards of its receipts, payments assets and liabilities- clause 38 Clause 36 also allows the commission to maintain a fund for executing its functions and to accept gift of land, money or property provided that term and conditions for such are not contrary to the objectives and functions of the commission.
32	Clause 38 Submission of Annual Report	The Commission shall submit a report of its activities during the immediately preceding year, which shall include the audited accounts of the Commission no later than the 30th day of September in each year.
33	Clause 44 Immunities	This gives an officer of the Commission who is investigating or prosecuting an offence under this Bill, all the powers and immunities of a Police Officer under the Police Act.
34	Clause 45 General Savings	This reinforces the provisions of the Electoral Act 2010. It provides that offences committed or instituted before the commencement of this Bill, the Electoral Act 2010 (as amended) or any law or regulation relating to electoral offences shall be enforced or continue to be enforced by the National Electoral Offences Commission

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About PLAC

Policy and Legal Advocacy Centre (PLAC) is a non-governmental organization committed to strengthening democratic governance and citizens' participation in Nigeria. PLAC works to enhance citizens' engagement with state institutions, and to promote transparency and accountability in policy and decision-making processes.

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