

**LEAD DEBATE ON THE ELECTORAL OFFENCES COMMISSION (EST, ETC) BILL, 2019 (SB. 220).**

**Sponsor: Sen. Kyari, Abubakar Shaib (*Borno North*)**

Mr. President, confident about the Constitutional role of the National Assembly in sustaining our democracy through courage and intellectual industry. I stand to present this Lead Debate for the Second Reading of a Bill for an Act to establish the National Electoral Offences Commission (NEOC) and for Related Matters. You will recall that the Bill was read for the first time on the Wednesday, 27<sup>th</sup> November, 2019

This 9<sup>th</sup> Senate has so far vested an unprecedented public goodwill from our appreciative nation with the introduction of the amendments to the Electoral Act No. 6, 2010. By that bold step, this Senate connected very well with our electorates and renewed itself as the bulwark of our democracy. This happened because of our extraordinary leadership and commitment to meet challenges plaguing our electoral processes with solutions that accord with global best practices. It is only wise to build on that achievement with this Bill that seeks adequate deterrence and sanctions for undemocratic forces in our electoral environment.

Electoral crimes lead to low quality, corrupt and violent political leadership. Electoral crimes help election riggers and offenders take control of governments against the democratic will of the electorate. Electoral offences give birth to political apathy that forces the electorates to politically disengage from the political process. Political violence precipitates vicious cycles of political instability and national insecurity. Electoral corruption leads to avoidable waste of public resources and threaten national development in social-political and economic contexts. Civil disturbances and violence resulting from manipulated elections strain otherwise harmonious communal relationships with adverse effects on national cohesion, peace and security; because rigged elections throw up political schemes that are not conducive for businesses, the national economy decays from declining Foreign Direct Investments (FDIs), declining Gross Domestic Product (GDP), increasing unemployment, and general fall in the volumes of both local and global commerce. Electoral offences are self-inflicted injuries to be avoided at all cost.

Decisive deterrence through efficient criminal prosecutions is the most effective strategy for defeating electoral offenders. To this end, Section 149 and 150(2) of the

Electoral Act, 2010 (as amended) respectively vests the Independent National Electoral Commission (INEC) with the discretion and powers to prosecute alleged electoral offenders. For clarity, both sections provide as follows.

**Section 149** - *“The Commission shall consider any recommendation made to it by a Tribunal with respect to the prosecution by it of any person for an offence disclosed in any election petition.”*

*“150(2) A prosecution under this Act shall be undertaken by Legal Officers of the Commission (INEC) or any Legal Practitioner appointed by it”*

By the wording of Section 149 of the Electoral Act, 2010 (as amended), INEC is not clearly enabled to prosecute alleged offenders unless otherwise determined by a Tribunal. More significantly, with less than 100 Legal Officers and other operational deficiencies, INEC clearly does not have the needed human capacity to prosecute electoral offences committed across Nigeria’s 119,973 Polling Units; 8,809 Wards; 360 Federal Constituencies; 109 Senatorial Districts and 774 Local Government Areas.

By the foregoing statistics, it is unrealistic to expect INEC to conduct free, fair and credible elections and simultaneously prosecute offences arising from the same elections. Indeed, INEC has itself, admitted that it lacks the wherewithal to cleanse the system. Its failure to prosecute even one percent (*1 per cent*) of the 870,000 alleged electoral offences in the 2011 general elections is an affirmation of the necessity of a paradigm shift on how we deal with electoral offences. INEC’s open failure to prosecute electoral offenders has helped to sustain a reign of systemic election, rigging, electoral violence and manipulation, disenfranchisement of voters, votes buying, disinformation, ballot stuffing, voters’ register manipulation, declaration of false election results, destruction or invalidation of valid ballots, tampering with election systems, and voter impersonation. This has itself fuelled patriotic calls for INEC to be divested of that statutory duty. It is widely agreed that this duty is an undue burden on INEC. It distracts INEC from its core constitutional mandate of conducting elections. And the answer is in the establishment of a Commission charged with this important duty. Some human rights activists even argue that under our criminal jurisprudence, it is unsound for INEC to double as both the complainant and prosecutor in matters of alleged electoral offences.

As indicated earlier, even the national leadership of INEC has consistently called for reforms in this regard. According to Professor Mahmud Yakubu, Chairman of

INEC: *“as long as Electoral offenders are not punished we will continue to be faced with electoral violence”*. We need Electoral offences Commission or tribunal to deal with electoral offenders; this is reported from *Daily Trust*, 9<sup>th</sup> February, 2016. Before then, Professor Attahiru Jega the former national Chairman of INEC has similarly stated as follows:

*“I was privileged to serve in the Justice Muhammad Lawal Uwais led Committee and I know we made a recommendation for the establishment of a Tribunal to deal with the impunity in the way electoral offences are being committed in Nigeria”*.

Quoted from *The Nation Newspaper*, 9<sup>th</sup> October, 2013.

## EXAMPLES FROM FOREIGN JURISDICTIONS

Mr. President, Distinguished Colleagues, indeed, what we are doing now is not new. In 1954, that is 63 years ago, Malaysia enacted her Election Offences Act, 1954 to prevent electoral offences and corrupt illegal practices at elections; to provide for the establishment of enforcement teams and for matters connected therewith. In the United Kingdom, the representation of the People Act 1983, the representation of People Act 1985, the Political Parties, Elections and Referendum Act 2000, and the Electoral Administration Act 2006 are legislations to prevent and punish electoral fraud.

The Kingdom of Nepal passed its Election (Offences and Punishment) Act in 1990 (Amended in 2007) to “consolidate prevailing laws relating to election offences and punishment”.

In Canada, the Fair Elections Act 2014 was passed to impose stiffer penalties for electoral offences.

The Philippines Electoral Reform Law of 1987 (Act No. 6646) was enacted to guarantee electoral sanity.

Last year, Kenya passed its own Election Offences Act 2016 in response to growing electoral impunity and violence. The list continues.

Using Malaysia’s 1954 Electoral Offences Act as a reference point, it would seem we are late by almost 63 years. But as they say, it is better late than never. This is our moment to establish our own “enforcement teams” with the National Electoral Offences Commission (NEOC). As leaders, it is a unique privilege to be part of the

history of establishing the NEOC as an agency that would be dedicated to the deterrence and punishment of electoral offenders. But one must quickly acknowledge that this road is not altogether new for us as a nation.

## **THE UWAIS REPORT**

Mr. President, Distinguished Colleagues you will recall that after the 2017 general elections, our then President Umaru Musa Yar'Adua of blessed memory inaugurated the Honourable Justice Mohammed Uwais Electoral Reform Committee to resolve; *"flaws and shortcomings"* in our elections. That eminent Committee receive and processed 1,466 public memoranda; held public hearings where 907 presentations were made; accepted inputs from various national jurisdictions; and engaged constructively with our former leaders and all critical stakeholders.

In its final report, the Committee recommended that "For INEC to function efficiently, some of the functions currently performed by it should be assigned to other agencies. All offences committed within the electoral context should be prosecuted expeditiously. The prevailing atmosphere of impunity with regard to election offences should be ended by prosecuting and holding accountable, those responsible for electoral offences, including those of a criminal nature. This would reduce the impunity which has marred Nigeria's electoral process to date, and which threatens to undermine citizens' confidence in the country's political institutions. A special prosecutorial body to be known as Electoral Offences Commission should be established to work independently in the arraignment and prosecution of electoral offenders. This will include offences arising from failings of INEC before, during and after voting day. The Electoral Offences Commission should cooperate closely with security agencies to prosecute persons accused of committing such offences. This Bill draws positive inspiration from the great work of that Committee of great Nigerians and it is hereby duly acknowledged with immense gratitude to them.

## **THE BILL**

This Bill is in seven parts and has 48 Clauses;

Part 1 is on the establishment of the National Electoral Commission members of the Commission, their tenures and related matters.

Part II outlines the functions and powers of the Commission while;

Part III is on the Staff of the Commission.

Part IV is on electoral offences. This part deals with offences arising from violating existing laws and newly defined offences.

Part V is on courts and their jurisdiction and special powers.

Part VI on financial provisions for the proposed Commission while;

Part VII deals with miscellaneous provisions, including general savings in other legislations.

On the whole, the Bill is very well organized. It is a product of vast research.

## CONCLUSION

Mr. President, Distinguished Colleagues, going by the huge positive public interest generated by its even First Reading alone, it is very clear that Nigerians overwhelmingly want us to pass this Bill into law now. Let us once again assure Nigerians and the international community of our commitment to sanitise our electoral environment by passing this Bill into law.

Mr. President, Distinguished Colleagues, in compliance with Order 77(3) of our Senate Standing Rules, I have attached herewith Appendix 1 which is a financial compendium of the projected financial implications of this Bill to the Federal Government. For the greater good of our Republic, I hereby humbly move for the Second Reading of this Bill to be taken.