



ELECTORAL BILL, 2021: DISPARITIES IN THE BILL PASSED BY SENATE AND HOUSE OF REPRESENTATIVES

**As passed by the Senate on Thursday 15th July, 2021
and House of Representatives on Friday 16th July 2021**

September 2021

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Introduction



In July 2021, Nigeria's 9th National Assembly, before proceeding on its annual recess successfully passed the long-awaited Electoral Amendment Bill titled "A Bill for an act to repeal the Electoral Act and enact the Independent National Electoral Commission, 2021" at third reading. The process of lawmaking requires that after the clause-by-clause consideration of a bill at the third reading of the bill, the versions of the bill passed in both chambers will be considered for harmonisation at a conference made up of members from both the Senate and the House of Representatives. The conference committee is a temporary joint committee formed to harmonise positions and resolve differences between the House and Senate versions of a bill, and in this case; the electoral act amendment bill. The adopted version of the bill after harmonisation is expected to be presented at the plenary in both chambers for adoption before being transmitted to the President for assent.

The National Assembly on resumption is expected to constitute a joint committee to meet at the conference, conduct a clause-by-clause review of the Electoral Act Amendment Bill and adopt consensus positions on clauses where there are differences in the clauses adopted. The committee is expected to draft compromises between the positions of the two Chambers, which are then submitted to both Chambers for adoption/approval at plenary. The Electoral Amendment Bill as passed in both chambers have about 17 clauses where the Senate and the House did not arrive at a similar resolution as indicated in the votes and proceedings. By implication, the Senate and House of Representatives, via its conference committee, will need to adopt and present similar resolutions for concurrence, before transmitting to the President for assent.

How Members of the National Assembly choose to align themselves with regards to some of these contentious clauses and the eventual passage remains an issue of keen public interest. Election stakeholders, including INEC, have continued to react publicly to these pertinent issues on the proposed amendments/contentious clauses.

The table below highlights areas of divergence between the Electoral Act Amendment Bills passed by the Senate and the House of Representatives, as well as Yiaga Africa's observations/recommendations on the subject matter. These clause-by-clause dissimilarities were directly obtained from the Votes and Proceedings of both Chambers. Should the Electoral Act Amendment Bill eventually scale through the NASS and be assented to by President Muhammadu Buhari, it'll be the first time in 7 years that the Electoral Act will be altered, since its last successful alteration in 2014 by the 7th National Assembly.

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<p>1 ESTABLISHMENT OF INDEPENDENT NATIONAL ELECTORAL COMMISSION</p>	<p>The Independent National Electoral Commission as established by Section 153 of the Constitution (in this Bill referred to as “the Commission”</p>	<p>The Independent National Electoral Commission as established by the Constitution (in this Bill referred to as “the Commission”</p>	<p>The words ‘Section 153 of’ were deleted from the House version.</p> <p>The House version of this clause should be adopted, considering that a review of the 1999 constitution is underway. This is to avoid invalidating this clause, should the provision of section 153 of the Constitution be renumbered in future.</p>
<p>5 ANNUAL ESTIMATES AND ACCOUNTS</p>	<p>The Commission shall submit to the Ministry of Finance not later than 31st August in each financial year an estimate of its expenditure, income and payments during the next financial year.</p> <p>The Commission shall keep proper accounts and records in respect of each financial year and shall cause its accounts to be audited as soon as possible after the end of each financial year by the Auditor-General of the Federation.</p>	<p>The Commission shall keep proper accounts and records in respect of each financial year and shall cause its accounts to be audited as soon as possible after the end of each financial year as required by law.</p>	<p>The Senate version of this clause provides more clarity with regards to the timeline for a financial year, as well as who audits the Commission’s account. Specifying roles and timeline of events is necessary, as it helps to avoid ambiguity in the implementation of this clause.</p>

CLAUSE**SENATE****HOUSE OF REPS.****OBSERVATIONS/
RECOMMENDATIONS****6****ESTABLISHMENT
OF OFFICE IN
EACH STATE AND
FEDERAL CAPITAL
TERRITORY**

(1) There shall be established in each State of the Federation and Federal Capital Territory and Local Government Area, an office of the Commission which shall perform such functions as may be assigned to it by the Commission.

(2) A person appointed to the office of a Resident Electoral Commissioner shall

(a) be answerable to the Commission; and

(b) hold office for a period of five years from the date of his or her appointment which may be renewable for another period of five years only.

(3) The Resident Electoral Commissioner appointed under the Constitution may only be removed by the President, acting on an address supported by two-thirds majority of the Senate praying that the Resident Electoral Commissioner be so removed for inability to discharge the functions of the office (whether arising from infirmity of mind or body or any other cause) or for misconduct.

(4) "The appointment of a Resident Electoral Commissioner shall be in compliance with Section 14 (3) of the Constitution of the Federal Republic of Nigeria (as amended) and Section 4 of the Federal Character Commission (Establishment, etc.) Act, 1995 "

House inserted sub-clause 4

The House version of this clause should be adopted and amended to read: "The appointment of a Resident Electoral Commissioner shall be in compliance with the provisions regulating the appointment of the INEC chairman as stipulated in the Constitution of the Federal Republic of Nigeria (as amended), with compulsory submission to relevant sections of the Federal Character Commission (Establishment, etc.) Act, 1995 "

This leaves the clause subject to all procedures of appointment as it relates to the appointment of INEC chairman as well as Federal character consideration, irrespective of amendments in the constitution. By implication, this provision automatically aligns with relevant sections of the constitution without necessarily forcing further amendment to this clause on the electoral act.

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POWER TO PRINT AND ISSUE REGISTER OF VOTERS

15. The Commission shall cause a voters' register for each State to be printed, reproduced, copied, duplicated or saved in electronic format and any person or political party may obtain from the Commission, on payment of such fees as may be determined by the Commission, a certified true copy of any voters' register for the State or for a Local Government or Area Councilor registration area polling units within it.

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The Senate inserted the word "true" immediately after 'certified'; and 'polling units' immediately after the word area.

The Senate version of this clause should be adopted. For emphasis, whatever is certified is officially established to be genuine, substantiated or validated. Hence, the inclusion of the word "true" is unnecessary. However, the inclusion of a "polling unit" should be maintained.

Also, the clause should be redrafted to replace the term "Area Councilor" with "Area Council."

16

POWERS TO PRINT AND ISSUE VOTERS' CARD

(1) The Commission shall design, cause to be printed and control the issuance of voters' cards to voters whose names appear in the register.
 (2) No voter shall hold more than one valid voters' card.
 (3) Any person who contravenes subsection (2) commits an offence and is liable on conviction, to a fine not more than N500,000.00 or imprisonment for a term not more than one year or both.
 (4) The Commission may, whenever it considers it necessary, replace all or any voters' cards for the time being held by voters.

(1) The Commission shall design, cause to be printed and control the issuance of voters' cards to voters whose names appear in the register.
 (2) No voter shall hold more than one valid voters' card.
 (3) Any person who contravenes subsection (2) commits an offence and is liable on conviction, to a fine not more than N100,000.00 or imprisonment for a term not more than one year or both.
 (4) The Commission may, whenever it considers it necessary, replace all or any voters' cards for the time being held by voters.

Senate increased the fine in sub-clause 3 from N100,000.00 to N500,000.00

The Senate version of this clause should be adopted. Yiaga Africa believes that sanctions that place high retributive demand (financial or otherwise) on the offender have the propensity to discourage electoral offences.

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**CUSTODY OF
VOTERS' REGISTER**

Each electoral officer shall take custody of the voters register for his or her Local Government Area or Area Council under the general supervision of the Resident Electoral Commissioner.

Each electoral officer shall take custody of the voters register for his or her Local Government Area under the general supervision of the Resident Electoral Commissioner.

Senate inserted the words 'Area Council' immediately after 'Local Government Area'

In order to accommodate the inclusion of Area Councils, as it relates to the Federal Capital Territory, the Senate version should be maintained.

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**OFFENCES OF
BUYING AND
SELLING VOTERS'
CARDS**

Any person who -
(b) sells or attempts to sell or offers to sell any voter's card whether issued in the name of any voter or not; or
(c) buys or offers to buy any voters' card whether on his own behalf or on behalf of any other person; commits an offence and shall be liable, on conviction, to a fine not exceeding N500,000.00 or imprisonment not exceeding two years or both.

Any person who -
(a) is in unlawful possession of any voter's card whether issued in the name of any voter or not; or
(b) sells or attempts to sell or offers to sell any voter's card whether issued in the name of any voter or not; or
(c) buys or offers to buy any voters' card whether on his own behalf or on behalf of any other person; commits an offence and shall be liable, on conviction, to a fine not exceeding N500,000.00 or imprisonment not exceeding two years or both.

Senate deleted sub-clause (a). Note: Section 23 of the Principal Act was recommended for deletion by the two Committees. However, the Committees of the whole recommended its retention with modification by the Senate, while the House retained as is.

The House version of this clause should be maintained. Unlawful possession of voters' cards must be frowned at. It is possible to have people illegally possess voters' cards with no intention to sell them, but in an attempt to deliberately disenfranchise voters in a given election.

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RECOMMENDATIONS****24****OFFENCES
RELATING TO
REGISTRATION OF
VOTERS**

(i) Any person who -
 (a) Deleted;
 (b) after demand or requisition made of him or her under this Bill without just cause, fails to give any such information as he or she possesses or does not give the information within the time specified;
 (c) in the name of any other person, whether living, dead or fictitious, signs an application form for registration as a voter to have that other person registered as a voter;
 (d) transmits or is involved in transmitting to any person as genuine a declaration relating to registration which is false in any material particular, knowing it to be false;
 (e) intentionally procures the inclusion in the Register of voters of his or herself or any other person with the knowledge that he or she or that other person ought not to have been registered; or
 (f) by his or herself or any other person procures the registration of a fictitious person, commits an offence and is liable on conviction to a fine not more than N100,000.00 or imprisonment for a term not more than one year or both.

(i) Any person who -
 (a) makes a false statement in any application for registration as a voter knowing it to be false;
 (b) after demand or requisition made of him or her under this Bill without just cause, fails to give any such information as he or she possesses or does not give the information within the time specified;
 (c) in the name of any other person, whether living, dead or fictitious, signs an application form for registration as a voter to have that other person registered as a voter;
 (d) transmits or is involved in transmitting to any person as genuine a declaration relating to registration which is false in any material particular, knowing it to be false;
 (e) intentionally procures the inclusion in the Register of voters of his or herself or any other person with the knowledge that he or she or that other person ought not to have been registered; or
 (f) by his or herself or any other person procures the registration of a fictitious person, commits an offence and is liable on

The House retained provision as in the Principal Act while the Senate deleted sub-section (a) as harmonized.

The House version of this clause should be maintained. Giving false statements during registration is a serious offence that should be discouraged. Such falsification is capable of registering underage voters who are by law ineligible to be registered.

Yiaga Africa in its 2021 CVR report notes that under-age registration is a contemptible phenomenon in the current CVR exercise in some localities and immediately called on the Commission to appropriately investigate such acts. Many of the alleged culprits were possibly induced to register, and deliberately falsified their age.

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	<p>(2) Any person who - (a) by duress, including threats of any kind causes or induces any person or persons generally to refrain from registering as a voter or voters; or (b) in any way hinders another person from registering as a voter; commits an offence and is liable on conviction, to a fine not more than N500,000.00 or imprisonment for a term not exceeding five years</p>	<p>conviction to a fine not more than N100,000.00 or imprisonment for a term not more than one year or both. (2) Any person who - (a) by duress, including threats of any kind causes or induces any person or persons generally to refrain from registering as a voter or voters; or (b) in any way hinders another person from registering as a voter; commits an offence and is liable on conviction, to a fine not more than N500,000.00 or imprisonment for a term not exceeding five years.</p>	
<p>31 SUBMISSION OF LIST OF CANDIDATES AND THEIR AFFIDAVITS BY POLITICAL PARTIES</p>	<p>(2) The list or information submitted by each candidate shall be accompanied by an affidavit sworn to by the candidate at the Federal High Court, State High Court and Federal Capital Territory High Court indicating that he or she has fulfilled all the constitutional requirements for election into that office.</p>	<p>(2) The list or information submitted by each candidate shall be accompanied by an affidavit sworn to by the candidate at the Federal High Court, High Court of a State, or Federal Capital Territory, indicating that he or she has fulfilled all the constitutional requirements for election into that office.</p>	<p>While the Senate reads 'State High Court', the House instead reads 'High Court of a State'</p>

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36	DEATH OF A CANDIDATE	<p>Provided that in the case of a Presidential or gubernatorial election, the running mate will continue with the election and nominate a new running mate.</p>	<p>Provided that in the case of Presidential or gubernatorial or Federal Capital Territory Area Council election, the running mate shall continue with the election and nominate a new running mate.</p>	<p>The House made amendments to the provision of sub-clause 3 by replacing will with 'Shall' and inserting immediately after Gubernatorial, the words or 'Federal Capital Territory Area Council'.</p> <p>The House version of this clause should be maintained.</p>
43	BALLOT BOXES AND VOTING DEVICES	<p>(3) The Polling Agents shall be entitled to be present at the distribution of the election materials and voting devices from the office to the polling booth.</p>	<p>(3) The Polling Agents shall be entitled to be present at the distribution of the election materials from the office to the polling booth.</p>	<p>The Senate inserted the word 'and voting devices' immediately after election materials.</p> <p>The Senate version of this clause should be maintained.</p>
49	ACCREDITATION OF VOTERS AND VOTING	<p>(3) Where a smart card reader or any other technological device deployed for accreditation of voters fails to function in any unit and a fresh card reader or technological device is not deployed, the election in that unit shall be cancelled and another election shall be scheduled within 24 hours. If the Commission is satisfied that the result of the Election in that polling unit will substantially affect the final result of the whole election and declaration of a winner in the constituency concerned.</p>	<p>(3)Where a smart card reader deployed for accreditation of voters fails to function in any unit and a fresh card reader is not deployed, the election in that unit shall be cancelled and another election shall be scheduled within 24 hours: Provided that the result of the election in that polling unit will substantially affect the final result of the whole election and declaration of a winner in the Constituency concerned"</p>	<p>House redrafted sub-clause 3 and deleted the words 'or any other technological device'.</p> <p>The Senate version of this clause should be maintained. It is important to note that the Smart card reader itself is also a technological device, and as such, the Commission should have the leverage of using any approved technological device for the purpose of accreditation of voters.</p>

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50 RIGHT TO CHALLENGE ISSUE OF BALLOT PAPER

A candidate or a Polling Agent may challenge the right of a person to vote on the ground that the person is not a registered voter in the polling unit.

A candidate or a Polling Agent may challenge the right of a person to vote on such grounds and in accordance with such procedures as are provided for in this Bill.

Senate redrafted clause 50.

The Senate and House versions should be merged to read:
“A candidate or a Polling Agent may challenge the right of a person to vote either on the ground that the person is not a registered voter in the polling unit or on such grounds and in accordance with such procedures as are provided for in this Bill.”

Redrafting this clause acclimatizes the many instances that should legally prevent a person from voting, such as: not being registered at the relevant polling unit, failure of voter to be accredited/inconsistencies with details on voter card, promotion of violence and other related election day offences.

52 CONDUCT OF POLL BY OPEN SECRET BALLOT

(1) Voting at an election under this Bill shall be by open secret ballot.
(2) Voting at an election under this Bill shall be in accordance with the procedure determined by the Commission, which may include electronic voting.
(3) The Commission may consider electronic transmission provided that the national coverage is adjudged to be adequate and secure by the Nigeria Communications Commission (NCC) and approved by the

(1) Voting at an election under this Bill shall be by open secret ballot.
(2) Voting at an election and transmission of result under this Bill shall be in accordance with the procedure determined by the Commission.
(3) A voter on receiving a ballot paper shall mark it in the manner prescribed by the Commission.
(4) All ballots at an election under this Bill at any polling station shall be deposited in the ballot box in the

The House passed 4 sub-clauses while the Senate passed 5.

The House in sub-clause 2 empowers the Commission to determine the method and procedure for voting and transmission of results whereas the Senate in sub-clause 4 requires the Commission to seek the approvals of both the NCC and the National Assembly before deploying electronic means to transmit results.

The House version of this clause should be maintained. The provision in the Senate version in sub-section (3) is in contravention of the provisions of 1999 Constitution, as it

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	<p>National Assembly. (4) A voter on receiving a ballot paper shall mark it in the manner prescribed by the Commission. (5) All ballots at an election under this Bill at any polling station shall be deposited in the ballot box in the open view of the public.</p>	<p>open view of the public..</p>	<p>relates to the Independence and efficiency of INEC in the conduct and administration of election in Nigeria.</p>
<p>63 COUNTING OF VOTES AND FORMS</p>	<p>(6) A Presiding Officer who willfully contravenes any provision of this section commits an offence and is liable on conviction to a fine not more than N500,000.00 or imprisonment for a term of at least six months.</p>	<p>6) A Presiding Officer who willfully contravenes any provision of this section commits an offence and is liable on conviction to a fine not more than N100,000.00 or imprisonment for a term of at least six months.</p>	<p>Senate increased the fine in sub-clause 6 from N100,000.00 to N500, 000.00</p> <p>The Senate version of this clause should be adopted. Yiaga Africa believes that sanctions that place high retributive demand (financial or otherwise) on the offender have the propensity to discourage electoral offences.</p>
<p>76 FORMS FOR USE AT ELECTIONS</p>	<p>(3) A Presiding Officer who intentionally announces or signs any election result in violation of subsection (2) commits an offence and is liable on conviction to a fine of N1,000,000.00 or imprisonment for a term of at least one year or both.</p>	<p>(3) A Presiding Officer who intentionally announces or signs any election result in violation of subsection (2) commits an offence and is liable on conviction to a fine of N200,000.00 or imprisonment for a term of at least one year or both.</p>	<p>Senate increased the fine in sub-clause 3 from N200,000.00 to N1,000,000.00</p> <p>The Senate version of this clause should be adopted. Yiaga Africa believes that sanctions that place high retributive demand (financial or otherwise) on the offender have the propensity to discourage electoral offences.</p>
<p>87 NOMINATION OF CANDIDATES BY PARTIES</p>	<p>(1) A political party seeking to nominate candidates for elections under this Act shall hold direct or indirect primaries for aspirants to all elective positions, which may be monitored by the Commission.</p>	<p>(1) A political party seeking to nominate candidates for elections under this Act shall hold direct primaries for aspirants to all elective positions, which may be monitored by the Commission.</p>	<p>While the Senate passed to allow for direct or indirect primaries, the House allows for only direct primaries by deleting the words 'or indirect' immediately after 'direct or' from sub-clause 1 of clause 87 and anywhere it appears in the bill.</p>

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			<p>The Senate version of this clause should be adopted. The Electoral Act should give political parties the option to decide whether to adopt direct or indirect primaries. The focus should be on full compliance with the provision of the law and strict adherence to the guidelines for either mode of the primaries adopted especially as it relates to inclusiveness and transparency.</p> <p>The word “shall” is preferred to the use of the word “may” with respect to the monitoring of primaries by the Commission. “Shall” makes it mandatory for the Commission to monitor political party primaries which is important for oversight.</p>

Conclusion



Although electoral reform gained additional momentum since the reintroduction of respective amendment bills by the 9th National Assembly, there’s no gainsaying that some of the developments at the National Assembly, with regards to certain provisions, were contrary to public expectations of an electoral framework that guarantees improved electoral process in all ramifications, as it relates to citizens' confidence in electoral process and outcomes. Nevertheless, this reintroduction and eventual passage of the bill highlights the 9th Assembly’s commitments in responding to some of the deep-rooted concerns raised by the Civil Society, Local and International Election Observers, as well as International Development Partners.

In acknowledging the limitations of the conference committee in going outside the purview of the divergent views already expressed/passed by both Chambers, it is important to note, therefore, that there are still germane issues yet to be fully considered by the Legislature that are not necessarily captured in the existing bill. Hence, electoral reform must be understood as a continuous approach to solving complex electoral, socio-cultural and political issues that militate against free, fair and credible elections in Nigeria. Consequently, even after assent is given by President Muhammadu Buhari, efforts must nevertheless be geared, by all and sundry, in ensuring conscious and continuous engagement, for the improvement of the country’s electoral framework.



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