



ANALYSIS OF A BILL FOR AN ACT TO PROVIDE FOR THE PROHIBITION OF HATE SPEECHES AND OTHER RELATED MATTERS 2019

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This Bill was introduced by the Senate Deputy Chief Whip Sabi Abdullahi

The commencement section of the Bill states that this is “An Act of the National Assembly to promote national cohesion and integration by outlawing unfair discrimination, hate speeches and to provide for the establishment, powers and functions of the **INDEPENDENT NATIONAL COMMISSION FOR THE PROHIBITION OF HATE SPEECHES**, and for purposes connected therewith.”

Part I of the Bill covers the preliminary issues.

Section 1 of the Bill contains the short title.

Section 2 of the Bill is the Interpretation Section.

Part II of the Bill deals with the discrimination to which the Bill applies.

Section 3 of the Bill deals with **Ethnic discrimination**. It states that a person discriminates against another person if he treats a person less favourably than another on the grounds of ethnicity, race or national origins.

Section 4 of the Bill deals with **Hate speech**. “A person who uses, publishes, presents, distributes and/or directs the performance of, any material, written and/or visual which is threatening, abusive or insulting or involves the use of threatening, abusive or insulting words or behaviour commits an offence if such person intends thereby to stir up ethnic hatred, or having regard to all the circumstances, ethnic hatred is likely to be stirred up against any person or person from such an ethnic group in Nigeria.”

The section goes further to provide a sentence of life imprisonment for a person who commits this offence and states that “where the act causes any loss of life, the person shall be punished with death by hanging.”

Furthermore, ethnic hatred is defined as hatred against a group of persons from any ethnic group indigenous to Nigeria.

Section 5 of the Bill deals with **harassment on the basis of ethnicity**. This occurs where a person violates the dignity of another person or creates an intimidating, hostile, degrading, humiliating or offensive environment for the person subjected to the harassment. The test to be deployed here is a subjective test based on the perception of the harassed person.



The section goes further to provide a sentence on conviction to imprisonment for a term of not less than 5 years or to a fine of not less than 10 million naira or both.

Section 6 of the Bill provides for the offence of **ethnic or racial contempt** and states that this occurs when a “person knowingly utters words to incite feelings of contempt, hatred, hostility, violence or discrimination against any person, group or community on the basis of ethnicity or race.”

A person who is convicted will be liable to imprisonment for a term not less than 5 years or to a fine of not less than 10 million naira or to both.

Section 7 of the Bill provides for **discrimination by way of victimization**. This occurs where a person does any act that is injurious to the wellbeing and esteem of another person by treating the person less favourably than he will treat others and thereby victimises the person who has as a result;

- Made a complaint under the Bill
- Done anything under or in reference to it
- Given evidence or information in connection with proceedings brought by any person against any other person
- The person in violation knows that the person victimized intends to or has done any of the above.

Subsection (2) (a) provides for a person who subjects or threatens to subject another person to any detriment due to the person

- Making a complaint against any person
- Bringing any other proceedings against any person
- Giving evidence or information or producing a document pertaining proceeding under the Bill
- Doing anything in relation to the Bill to any person
- Contravened Part III unless the allegation was false and not made in good faith
- The allegation was made in good faith
- (b) fails to comply with a notice by the commission
- (c) hinders or obstructs a commissioner or member of staff from exercising their duties
- (d) insults a commissioner or member of staff
- (e) gives any information or makes any statement to the commission, secretary or person acting on its behalf which he knows is false or misleading

Such a person shall be liable on conviction to a fine of 2 million naira or imprisonment for a term not less than 12 months or both.

Section 8 of the Bill provides for offences by body of persons. It states that where it is a body corporate, every director, trustee and officer shall also be deemed to be guilty of that offence; and where it is a firm, every partner shall also be deemed to be guilty of that offence.



Part III of the Bill covers the establishment, powers and functions of the independent national commission for the prohibition of hate speeches establishment of the commission.

Section 9 of the Bill states that there shall be an **Independent National Commission for the Prohibition of Hate Speeches** (hereinafter referred to as the Commission).

Section 10 of the Bill provides that the Commission shall have its headquarters in Abuja and branches in the other States.

Section 11 of the Bill deals with the membership of the commission.

Section 12 of the Bill deals with the qualification of Commissioners.

Section 13 of the Bill deals with the term of office.

Section 14 of the Bill deals with the appointment and role of the Secretary to the Commission.

Section 15 of the Bill deals with the Oath of office.

Section 16 of the Bill deals with situations in which a position becomes vacant.

Section 17 of the Bill which deals with the instances which will lead to removal.

Section 18 of the Bill provides for how vacancies will be filled.

Section 19 of the Bill provides the objects and functions of the Commission, which include:

- Promotion and elimination of all forms of hate speeches in Nigeria
- Discourage persons, institutions, political parties and associations from advocating or promoting hate speeches
- Promote tolerance, understanding and acceptance of diversity; and participation by all ethnic communities in social, economic, cultural and political life of other communities
Plan, supervise, co-ordinate and promote educational and training programs to create public awareness, support and advancement of peace and harmony among ethnic communities and racial groups
- Promote respect for religions, cultural, linguistic and other forms of diversity
- Promote equal access and enjoyment by persons of all ethnic communities and racial groups to public or other services and facilities provided by the Government
- Promote arbitration, conciliation, mediation and similar forms of dispute resolution mechanisms in order to secure and enhance ethnic and racial harmony and peace.
- Investigate complaints of ethnic or racial discrimination
- Investigate on its own accord or on request from any institution, office, or person any issue affecting ethnic and racial relations
- Identify and analyze factors inhibiting the attainment of harmonious relations between ethnic communities



- Determine strategic priorities in all socio-economic political and development policies of the government impacting on ethnic relations and advise on their implementation
- Recommend to the government criteria for deciding whether any public office or officer has committed acts of discrimination on the ground of ethnicity or race
- Monitor and review all legislation and all administrative acts relating to or having implication for ethnic or race relations from time to time and submit proposals for review to the Government
- Initiate, lobby for and advocate for policy, legal and administrative reforms on issues affecting ethnic relations
- Monitor and make recommendations on factors inhibiting the development of harmonious relations between ethnic groups
- Research on and make recommendations on issues relating to ethnic affairs
- Report annually to the National assembly on the status of the level of implementation of the recommendations made by it
- Issue notices to people or institutions who discriminate to desist from such acts within a specified period
- Carry out other duties to ensure the discharge of its functions contradict the provision of Freedom of Information and sub section does not provide the power of enforcing the provision when the provisions of the Bill are been violated.

Section 20 of the Bill states the powers of the Commission and states that in the discharge of its duties, the Commission:

- Shall not be subject to the direction or control of any other person or authority
- Shall publish the names of persons and institutions who act in contravention of this Bill
- May associate with bodies within and outside Nigeria in furtherance of its purpose
- Control, supervise and administer the assets of the Commission
- Receive grants, gifts, donations or endowments
- Open a banking account for the Commission

Section 21 of the Bill gives the Commission the power to summon a witness

Section 22 provides for summons for the attendance of a witness

Section 23 provides for the expenses of a witness.

Section 24 - 36 of the Bill deals with the affairs of the commission including remuneration, liability, funding etc

Part IV of the Bill deals with Enforcement

Section 37 of the Bill deals with Complaint(s). It Section requires any person(s) whose rights has been contravened to forward their complaints to the Commission. This complaint can be brought by 2 or more persons jointly and can be brought against individual(s), corporate or unincorporated entity. Even person(s) not affected by such hate speech can send a complaint.



Section 38 of the Bill relates to Lodging a Complaint. It provides the procedure for submission of written complaints, which is by hand, facsimile, other electronic transmission or post. When the complaint is received, the commission shall notify the complainant in writing.

Section 39 of the Bill deals with the instances in which the Commission may decline to entertain complaints. These include where the complaint:

- Is frivolous, vexatious, misconceived and lacking in substance;
- Involves subject matter that would be more appropriately dealt with by the court;
- Involves a subject matter that has been adequately dealt with by a court;
- Relates to an alleged contravention that took place 12 months before the complaint was lodged.

The commission has 45 days in which to notify the complainant of its denial to entertain a complaint.

Section 40 of the Bill deals with Applications to Strike out Complaints. This is done in writing by the respondent where a complaint is frivolous, vexatious, misconceived or lacking in substance. This application can be made before the issuance of a notice to attend or before the complaint is set down for hearing.

Section 41 of the Bill vests the Commission with the power to dismiss a stale complaint, which lasted for 12 months without response from the complainant after due notification, and no further step can be taken with regards to the dismissed complaint.

Section 42 of the Bill empowers the National Assembly or any other authority to refer an issue of **Important Public Policy** to the Commission.

Section 43 of the Bill deals with referral of complaint for conciliation

Section 44 of the Bill states the instances where conciliation is inappropriate. 15 days after receipt of the commission's notice, the complainant may require the complaint be set down for hearing. Both parties will be notified and the complaint set down for hearing. However, where the complainant fails to notify the Commission, the complaint may be dismissed.

Section 45 of the Bill provides for Conciliation by the Commission of any complaint. The commission may be written notice require a person to appear before it or produce a document. before or referred to the Commission.

Section 46 of the Bill centred on Conciliation Agreements. Such terms shall be in writing and parties are to be bound and comply with same.

Section 47 states that where Commission fails to Conciliate, then notice will be given to the contending parties and the complaint set down for hearing within 60 days and in the absence of any reaction from the complainant, the Commission may dismiss the complaint with no further action.

Section 48 of the Bill provides that the Commission should endeavour to expedite all complaints referred to it.



Section 49 of the Bill states that the parties to a proceeding are the complainant, and respondent. However, the national assembly or any other authority may be joined as parties by the Commission.

Section 50 of the Bill relates to Decisions of the Commission. Where the complaint is proven, the Commission may issue a Compliance Notice; the Commission may also find a complaint or any part of it proven, but decline any further action on a complaint; or dismiss a complaint where same is not proven.

Section 51 deals with Compliance Notices and provides that it is to be served within 30 days and to furnish the Commission with the required information in no later than 3 months. But the person shall not be compelled to furnish any other information which is not allowed in evidence in civil proceedings before the High Court.

Section 52 of the Bill relates to Enforcement of Compliance Notices. To ensure compliance, the Bill requires the Commission to apply to a Magistrate Court or any other Court for an order in appropriate situations.

Section 53 relates to Investigation by the Commission. This is carried out with respect to contraventions which it becomes aware of in the course of performing its functions and powers or in the course of dealing with a complainant or whilst investigating a matter.

Section 54 deals with the Conduct of Investigations and where contravention occurs in the course of investigation, the Commission is expected to use reasonable endeavour to conciliate the matter.

Section 55 vested the Federal High Court with exclusive jurisdiction to try offences under the Bill.

KEY ISSUES OF CONCERN

From the foregoing provisions, it is our opinion that this bill seeks to clamp down on every citizen Constitutionally guaranteed right to freedom of expression as proffered in section 39 of the 1999 Constitution (as amended). This right should further be enforced by a democratic government and not suppressed or criminalised.

The essence of the bill seems to call for integration and tolerance in order to harmonize Nigerians. It seeks to achieve this by deterring acts or speeches which affect various ethnicities and races differently. Our suggestion is that rather than legislate on this issue, a dialogue with all the different ethnicities should be organised in order to address all the bottled-up issues; and diplomatic solutions should be sought. What is required to aid this harmonisation is public enlightenment and sensitization to ensure tolerance amongst all.

Most of the offences sought to be introduced by this Bill have already been covered by various Acts and Laws and fall under defamation, harassment and discrimination. These offences are civil in nature however and what this bill seeks to do is to criminalise discrimination from these speeches.



The Bill also seeks to introduce the harshest sentence for violators which is the death sentence. This seems very extreme and ought to be revised. There should be awareness campaigns and citizen sensitization on what amounts to hate speech and the effect it has in order to reduce its occurrence.

The Bill also seeks to empower the National Assembly or any other authority to be able to refer matters to the Commission that it feels is of important public policy. This seems to suggest that the National Assembly can solely decide whether or not an act or speech is discriminatorily enough to warrant it being labelled as important public policy and being referred to the Commission.