

## **ELECTORAL OFFENCES AND DEMOCRACY IN NIGERIA**

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### **Abstract**

*Nigeria is said to practice a representative democratic government, wherein the people are ruled through their elected representatives. One element of democracy is free and fair elections. Since the end of Military rule and the transition to civilian government, the challenges of free and fair election have been numerous. Incidents ranging from snatching of ballot boxes, election rigging, burning of election materials, rioting, buying of votes, etc. have been the order of the day. The rate of electoral offences with which the Nation is fraught with is a red light to the democracy which the country professes. This study discussed in detail the laws governing electoral offences, the challenges militating against its functionality, and how these laws affect the state of our democracy. The researcher used the doctrinal method of research, collected data from statute, case laws, articles, and the internet. The writer recommends that Electoral offences Commission/Tribunal should be established to relieve the burden of the INEC in prosecuting election related matters and allow her focus on her core function of conducting elections. The investigation of electoral offences and the resultant arrest should be left to relevant Electoral Officials and should not solely rest on the shoulders of the Nigerian Police as it is presently.*

**Keywords: Democracy, Electoral, Offences, Democracy, Electoral Commission, Nigeria.**

### **1. Introduction**

Democracy is a rule by the people, especially as a form of government; either directly or through elected representatives. Free and fair Election is one of the characteristics of a democratic government.

Nigeria operates a democratic system of government, but her recent elections conducted cannot in all fairness be adjudged to be free and fair. One of such elections was the 2018 gubernatorial election held in Ekiti state. There were reports and allegations of vote buying by several parties involved in the election, emanating from several national dailies, media houses and social media in general. Sums of money ranging from N4, 000 to N5, 000 Naira were allegedly distributed to the people in exchange for their votes.

Aside from the above, the conduct of elections in Nigeria is generally fraught with electoral offences. This amongst other reasons led to the establishment of Electoral Reform Committees in 2008 and 2016, and the amendment of the Electoral Act, in

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2010, wherein the penalties stipulated therein in breach of electoral laws were made stiffer.

Laws regulate all aspects of our lives, and the electoral process is no exception. The Constitution<sup>2</sup> the Electoral Act 2010, as (amended) and the Independent National Electoral Commission (INEC) Rules and Regulations constitute the legal framework which regulates our electoral process. These laws are made for the sustenance of our democracy<sup>3</sup>.

## **2. Democracy in Nigeria**

Democracy emanated from two Greek words, *demo*: people and *krati*: Government. Abraham Lincoln defined Democracy as the government of the people, by the people and for the people.<sup>4</sup> It is a system of government that gives power to the people. Democracy can be exercised by citizens or through elected agents. It was first established by the Greeks, it didn't reappear on a global scale until after the 17th century<sup>5</sup>. There are two types of Democracy, which are Direct Democracy and Indirect Democracy. Direct Democracy is a system of government whereby everyone is involved in the affairs of the country while Indirect Democracy is a system of government where citizens choose their representatives to rule on their behalf. This is also called representative democracy. This is the system of government being practiced in Nigeria.

Democracy can be characterized by periodic free and fair elections which represents one of the major features of democracy. The citizenry are allowed to choose the people that would represent their interests in government. It is also through elections that peaceful change of government is effected<sup>6</sup>. Democracy guarantees and respects the fundamental rights as stated in the constitution<sup>7</sup>, and also gives room for the emergence of various political parties which compete for political power, and when in government, help to mobilize the electorate to support

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<sup>2</sup>Federal Republic of Nigeria, 1999 (as amended).

<sup>3</sup> [http://www.inecnigeria.org/?page\\_id=2039](http://www.inecnigeria.org/?page_id=2039) (accessed on 10<sup>th</sup> day of April 2020).

<sup>4</sup> <http://www.schoolmattazz.com/2016/10/types-of-democracy/>(accessed on 10<sup>th</sup> day of April 2020).

<sup>5</sup> <https://classroom.synonym.com/what-are-the-six-characteristics-of-a-democracy-12083877.html>(accessed on 10<sup>th</sup> day of April, 2020).

<sup>6</sup> <https://www.nigerianinfopedia.com/democracy-types-features-characteristics/> (accessed on 10<sup>th</sup> day of April, 2020).

<sup>7</sup> <http://www.schoolmattazz.com/2016/10/types-of-democracy/>(accessed on 10<sup>th</sup> day of April, 2020).

government policies. The people have freedom to express their opinion about various policies of the government through the press. Similarly, the press in a democracy is free to investigate and criticize government policies<sup>8</sup>. In a democracy, the judiciary is free from the control of the other two organs of government; i.e. the decisions and pronouncements of the judiciary are not subject to either executive or legislative control. The Constitution is the Supreme law of the land in a democracy, and both the government and citizenry are subject to the laws of the country<sup>9</sup>.

Nigeria cannot be said to be a true reflection of a democratic society. This is because it lacks majority of the characteristics of democracy. For instance, elections conducted in Nigeria is far from being free and fair, they are fraught with election misconducts like vote buying, snatching of ballot boxes and rigging, there is the issue of 'godfatherism' and leadership being made to rotate amongst a few people in forms of cabals. In recent times there have been intimidation and harassment of the judiciary by the executive arm of government in flagrant disregard to the rule of law. The executive arm of government had recently removed the Chief Justice of Nigeria in a manner which had brought about agitations and condemnation from Nigerians and international bodies.

Femi Aribisala a columnist discussing democracy in Nigeria stated that Nigerian democracy is fundamentally undemocratic.<sup>10</sup> From 1999 to present day, Nigeria has had its longest stint of democratic rule. This democracy has been distinctly Nigerian because the principal actors have been more interested in manipulating the system than in allowing it to work. The democratic system operated in Nigeria is very Nigerian in its originality; never mind the fact that it is modeled after that of the United States. It operates more as a means for capturing power than as a system of government<sup>11</sup>. The capacity to rig and get away with it is linked to actual support on the ground, ensuring that the rigging is also somewhat democratic.

### **3. Electoral Offences in Nigeria**

Electoral Act 2010 (as amended) and the previous Electoral Act did not define electoral offences. Oxford Advanced Learner's Dictionary defines Offence as 'an

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<sup>8</sup> <https://www.nigerianinfopedia.com/democracy-types-features-characteristics/> (accessed on 10<sup>th</sup> day of April 2020).

<sup>9</sup> *Ibid.*

<sup>10</sup> <https://www.vanguardngr.com/2018/07/nigeria-style-democracy/>(accessed on 10<sup>th</sup> day of April 2020)

<sup>11</sup> *Ibid.*

illegal act or a crime' and equally defines crime as 'activity that involves breaking the Law' or illegal act or activity that can be punished by law.<sup>12</sup> Any conduct, action or inaction which is prohibited by the Electoral Act and a breach of which attracts punishment, is called an electoral offence. Examples of such offences are Impersonation and voting when not qualified,<sup>13</sup> Disorderly conducts at Elections,<sup>14</sup> Snatching and destroying of election materials on Election Day<sup>15</sup> and Dereliction of duty by Electoral officials.<sup>16</sup> Electoral offences may be committed by INEC or Security Officials, Political Parties and their officials, Candidates, Observers, Journalists/Media Houses or the general public.<sup>17</sup>

At present, INEC is saddled with the responsibility of prosecuting electoral offenders. The Electoral Act<sup>18</sup> empowers INEC to prosecute electoral offenders through its legal officers or any legal practitioner appointed by it without the powers to arrest and investigate thus depending on the police for this purpose.<sup>19</sup> This slows down the whole process and hampers effective prosecution by INEC. The creation of Electoral Offences commission and Electoral Offences commission will no doubt encourage the consistent and systematic enforcement of sanctions and discourage impunity. A Senior Advocate of Nigeria, Mr Rotimi Jacobs, while facilitating a session at a two-day training for INEC legal officers and police officers in Lagos sometime in July 2018 as reported by Vanguard News,<sup>20</sup> said there was the need to grant the Independent National Electoral Commission (INEC) the power to investigate electoral offences, as allowing the police to investigate electoral offences while restricting INEC to prosecution would not achieve much. He explained that dealing with electoral offences successfully required tight co-ordination from the process of investigation to prosecution. He went on to say; 'We cannot really achieve much if the only thing INEC does is to prosecute electoral offences and lacks the power to investigate cases. Successful prosecution of

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<sup>12</sup> CJ Ubanyionwu, 'Establishment of Electoral Offences Commission as a means of ensuring free and fair Elections in Nigeria' [2016] (1) *African Journal of Criminal Law Jurisprudence*, 100-115.

<sup>13</sup> Section 122 of the Electoral Act 2010 (Amended).

<sup>14</sup> Section 128, *Ibid.*

<sup>15</sup> Section 129 (4), *Ibid.*

<sup>16</sup> Section 123, *Ibid.*

<sup>17</sup> [http://www.inecnigeria.org/?page\\_mnid=2039](http://www.inecnigeria.org/?page_mnid=2039)(accessed on 10<sup>th</sup> day of April, 2020)

<sup>18</sup> Section 150(1) and (2) of the Electoral Act 2010 (as amended)

<sup>19</sup> <http://thenationonlineeng.net/inec-seeks-electoral-offences-tribunal-2019-poll/>(accessed on 10<sup>th</sup> day of April, 2020).

<sup>20</sup> <https://www.vanguardngr.com/2018/07/electoral-offences-lawyer-seeks-investigative-powers-for-inec/>(accessed on 5<sup>th</sup> day of May, 2020).

electoral offences will require that INEC is the prosecuting and the investigative agency. Giving the agency the power to also investigate would ensure better co-ordination needed to address the problem.' He suggested that INEC could be empowered by the law to set up its department for the purpose of investigating electoral offences, with this, the Commission would be able to handle cases from the beginning to the last day in court, as the problem of electoral malpractices is a threat to democracy, it undermined the credibility of elections.<sup>21</sup> INEC in their website made some interesting compilations of Electoral Offences as follows:

Listed here under, are some of the electoral offences prescribed by Nigerian Law as at 31<sup>st</sup> January, 2017. Anyone in breach of any of these provisions is liable to being arrested and charged to court and prosecuted by INEC after investigation by the relevant Security Agencies.<sup>22</sup>

### 1. Voters Registration

Offences	Penalty	References
Registering more than once. Unlawful possession of a voter's card, selling or buying of voters Card	A fine not exceeding N100,000 or Imprisonment for one year or both.	Section 117 E.A 2010
Giving false information in any application for registration as a voter	A fine not exceeding N500,000 or 12 months imprisonment or both.	
Hindering another person from registering as a voter	A fine not exceeding N500,000 or 5 years imprisonment or both.	
Impersonating a registration official, carrying out registration of persons illegally or forging a registration card	A maximum fine of N1,000,000 or 12 months imprisonment or to both.	

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<sup>21</sup> *Ibid.*

<sup>22</sup> <https://www.inecnigeria.org/voter-education/election-offences-and-penalties/>.

## 2. Offences in Respect of Nomination

Offences	Penalty	References
(a) forging a nomination paper or result form; (b) Willfully defacing or destroying a nomination paper or result form; (c) Delivering to an electoral officer a forged nomination paper or result (d) Signs a nomination paper or result form as a candidate in more than one	Person who commits an offence under subsection (1) of this section is liable on conviction to a maximum term of imprisonment for 2 years.	Section 118 E.A 2010

## 3. Offences in Relation to Ballot Papers and Ballot Boxes

a. Unlawful possession of a ballot paper b. Illegal printing of ballot papers c. Illegal production or importation of ballot boxes.	A maximum fine of N50,000,000 or for a term of imprisonment of not less than 10 years or both.	Section 118 (3) E.A 2010
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## 4. Disorderly Behaviour at Political Meetings

Offences	Penalty	References
To act in a disorderly manner or be in possession of offensive weapon of a political meeting.	A maximum fine of N500,00 or imprisonment for 12 months or both.	Section 119 E.A 2010

### 5. Improper Use of Voters Cards

Offences	Penalty	References
Unlawful giving of a voters card to some other person for use at an election other than, an officer appointed to do so. Being in possession of more than one	A maximum fine of N1,000,000 or imprisonment for 12 months or both.	Section 120 E.A 2010

### 6. Improper Use of Vehicles

Offences	Penalty	References
Conveying any person to a registration office or to a polling unit by government vehicle or boat, except in respect of a person who is entitled to use such vehicle or boat	A maximum fine of N 500,000.00 or imprisonment for six months or both.	Section 121 E.A 2010

### 7. Impersonation and voting when not Qualified

Offences	Penalty	References
A person voting or attempting to vote at an election when he/she is not qualified, or inducing a person to vote at an election knowing that such person is not qualified.	A maximum fine of N500,000 or 12 months imprisonment or both.	Section 122 E.A 2010

### 8. Dereliction of Duty/ False Result

Offences	Penalty	References
A Polling Officer failing to report on time or to discharge his duties on an election day without lawful excuse	On conviction to a maximum fine of N500,000 or 12 months imprisonment or both.	Section 123 E.A 2010

Announces or publishing a false election result	36 months imprisonment.	
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### 9. Announcing or Publishing a False Election Result

Offences	Penalty	References
Returning Officer or Collation Officer or person delivering a false certificate	3 years imprisonment without an option of fine.	

### 10. Bribery and Conspiracy

Offences	Penalty	References
a. Paying money to any other person for bribery at any election.	On conviction to a maximum fine of N500,000 or 12 months imprisonment or both.	Section 124 E.A 2010
b. Receiving any money or gift, for voting or to refrain from voting at any election.	A maximum fine of N500,000 or imprisonment for 12 months or both	

### 11. Requirement of Secrecy in Voting

Offences	Penalty	References
a. Not maintaining the secrecy of voting at a polling unit. b. Interfering with a voter casting his vote	A maximum fine of N100,000 or to imprisonment for a term of 6 months or both.	Section 125 E.A 2010

## 12. Wrongful Voting and False Statements

Offences	Penalty	References
a. Illegal voting at an election b. Publishing any statement of the withdrawal of a candidate or about his personal character.	A maximum fine of N100,000 or imprisonment for a term of 6 months or both.	Section 126 E.A 2010

### **4. The Need for the Establishment of Electoral Offences Commission and Tribunal**

Considering the bulk of the functions of the Independent National Electoral Commission as contained in Section 15, Part 1 of the 3<sup>rd</sup> schedule of the Constitution of the Federal Republic of Nigeria, 1999 (As amended) and Section 2 of the Electoral Act 2010 (As Amended), there is need for an establishment of a separate bodies to deal with issues involving Electoral offences.

Earlier in year 2018, the Chairman, INEC Legal Services, Mrs. May Agbamuche-Mbu, said the function of prosecution of electoral offences was a burden on the Independent National Electoral Commission (INEC). INEC does not have the capacity to prosecute all cases in all parts of the country at the same time. The function would be better handled by a special commission for electoral offences, she explained that a bill for the establishment of the commission was receiving attention at the National Assembly, and if eventually established, it would relieve INEC of the prosecutorial function and allow the commission to focus on its core function<sup>23</sup>.

The Independent National Electoral Commission (INEC) has urged the National Assembly and other stakeholders to expedite action on the bill to establish the National Electoral Offences Commission/Tribunal. As reported by the 'The Nation' National daily. The Commission also disclosed that it recorded 1,080 cases of electoral offences during the 2015 general elections and subsequent bye-elections.<sup>24</sup> INEC chairman, Prof. Mahmood Yakubu, stated these in a memorandum he submitted to the Senate joint committee on INEC and the Judiciary. He said 124 of the cases were filed and 60 convictions secured in various courts across the country.

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<sup>23</sup> <https://www.vanguardngr.com/2018/07/electoral-offences-lawyer-seeks-investigative-powers-for-inec/>(accessed on 10<sup>th</sup> day of April, 2020).

<sup>24</sup> <http://thenationonlineng.net/inec-seeks-electoral-offences-tribunal-2019-poll/>(accessed on 5<sup>th</sup> day of May, 2020).

Reports of the Electoral Reform Committee (the Uwais Report) of 2008 and the Post-election Violence (Lemu Report) 2011 have been left to unimplemented. The two reports recommended the establishment of the Electoral Offences Commission/Tribunal to address all forms of electoral violence and impunity that had continued to undermine the stability of the nation's democracy.<sup>25</sup>

Just like Mr. Rotimi Jacobs SAN. INEC chairman, Prof. Mahmood Yakubu, also talked about the fact that though INEC has the powers to prosecute, it lacks the powers to effect the arrest of electoral offenders, and this has continued to hamper effective prosecution of electoral offenders.

The failure to systematically and consistently enforce sanctions has encouraged impunity and the violence that often characterized electoral contest in Nigeria, thereby subverting the will of the people and undermining the nation's electoral democracy<sup>26</sup>.

##### **5. Factors Hindering Prosecution of Electoral Offences.**

In Nigeria, the impunity with which electoral related offences are committed is a cause for alarm. This cannot easily be divorced from the fact that most offenders are left to go scot free. These offenders are most often than not sponsored by politicians in very high positions who in the attempt to retain power will go to any length. There is also the issue of a compromised and un-independent judiciary. Those in the corridors of power and affluence have occasionally been reported to have openly or secretly, frustrated the prosecution of electoral offenders who most times work for them. A culture of bribery and corruption, furtherance of personal interest, as opposed to the interest of the public and suppression of evidence has continued to reign supreme. Sparse education on the dividend of democracy which include unbiased development of all sectors, little or no discrimination of classes of people in terms of execution of government policies is also a notable factor that both encourages electoral offences and hinder the prosecution of same. INEC who have been vested with the power to prosecute electoral offences is limited in terms of man-power and material resources.

Mrs May Agbamuche-Mbu, the Chairman, INEC Legal Services, listed political interference, lack of human and material resources as some of the major factors hindering successful prosecution of electoral offences in the country. As reported

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<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

in 'Vanguard' National daily<sup>27</sup>. She stated this sometime in August 2018, in Akwanga, Nasarawa State, at the opening of two-day training on prosecution of election offences for the commission's legal personnel and police officers. In her words "Our capacity in terms of resources and personnel is simply not large enough to prosecute offences in 120,000 polling units; 8,809 wards, 360 federal constituencies, 109 senatorial districts and 774 local government areas".

Political interference is also a factor such as instances where Attorneys-General files *Nolle Prosequi* for such cases, rendering the Commission powerless. Recent happenings in Ekiti State during the just concluded Governorship Election have thrown up the need for a closer look at our prosecutorial efforts in the area of electoral offences. Prosecution of offences is fraught with many difficulties. Traditionally, the police are charged with the duty of investigating these offences, yet we find that the officers who witnessed the offence and made the arrest are moved out of location after the election.<sup>28</sup>

These as discussed above, are vivid and practical challenges militating against the prosecution of electoral offences.

## **6. Efforts at Reform of Nigeria's Electoral System**

In December 2008, the National Electoral Reform Committee (NERC) headed by Justice Uwais submitted its report to President Umaru Yar'Adua after a year and a-half of being inaugurated to deliberate, consult and make relevant recommendations for the furtherance of the ailing electoral system<sup>29</sup>. The Committee recommended that the punishment for electoral offences committed by political parties, candidate and their representatives should be stiffened and be reinforced through disqualification for a stipulated period from exercising certain political rights.<sup>30</sup> The general approach should be to identify those offences relating to election processes which are sufficiently serious to attract legal incapacity to exercise the franchise or disqualification from contesting any election for a period of time. The disqualification period for any Candidate, upon conviction for corrupt practices under Section 131 of the Electoral Act 2006 (which is now Section 124

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<sup>27</sup> <https://www.vanguardngr.com/2018/08/three-factors-hindering-prosecution-of-electoral-offences-inec/>(accessed on 10<sup>th</sup> day of April, 2020).

<sup>28</sup> *ibid*

<sup>29</sup> <https://www.nas-int.org/currentaffairs/public-lectures/687-ten-years-of-nigerian-democracy-a-review-of-the-electoral-process?showall=&start=3>(accessed on 10<sup>th</sup> day of April, 2020).

<sup>30</sup> Report of the Electoral Reform Committee, Vol. 1 of the main Report, December, 2008, at p. 134 - 135.

of the 2010 Electoral Act (As amended) should be increased to ten years. It recommended that biased media reporting to attract fine of N1,000,000.00, and that Electoral Offences Commission should be created.<sup>31</sup> The said Electoral Offences Commission as so recommended has not been created till this present day.

In 2016 on the direction of by President Mohammadu Buhari, the Attorney-General of the Federal and Minister of Justice, Abubakar Malami, inaugurated a 24-member Committee on Constitution and Electoral Reform which was led by Dr. Ken Nnamani. The President during his inauguration speech stated his desire to deepen the country's democracy and entrench the culture of an enduring electoral system. The Committee was also advised to take a holistic look at the recommendation of Justice Uwais Electoral Reform Committee.<sup>32</sup>

In 2017, Senate President, Dr Ken Nnamani, submitted its report to the Attorney General of the Federation (AGF) and Minister of Justice, Abubakar Malami (SAN). Malami said, "The Committee has made recommendations on how to strengthen the INEC, the participation of independent candidates, the management of political parties and tackling of electoral offences among others<sup>33</sup>. We still await the substantial implementation of the recommendation of the Committee which includes the unbundling of the Independent National Electoral Commission, the participation of independent candidates, Diaspora voting, use of advance technologies for Elections and the establishment of Electoral offences Commission<sup>34</sup>.

## **7. Conclusion**

For democracy to thrive in Nigeria, free and fair election is paramount. Elections so far conducted in Nigeria had been 'nothing to write home about' as they have continuously witnessed a galore of misconducts. Almost all the players involved seem to be oblivious to the right practices expected in the conduct of election. This is especially witnessed on election days. It is no gainsaying that Nigeria is in dire

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<sup>31</sup> *Ibid.*

<sup>32</sup> (<https://www.premiumtimesng.com/news/top-news/211966-ken-nnamani-led-constitution-electoral-reform-committee-inaugurated.html>) (accessed on 5<sup>th</sup> day of May, 2020).

<sup>33</sup> <http://dailypost.ng/2017/05/03/nnamani-committee-finally-submits-report-electoral-reform/> (accessed on 5<sup>th</sup> day of May, 2020).

<sup>34</sup> **Ade Adesomoju, wrote from Abuja** <https://punchng.com/nnamani-electoral-reform-panel-submits-reports-wants-inec-unbundled/> (accessed on 5<sup>th</sup> day of May, 2020).

need of a total revamp of its electoral system for the betterment of the democracy which it professes to practice, and the time is now.

## **8. Recommendations**

Some recommendations of this study are as follows:

1. Electoral offences Commission should be established to relieve the burden of the INEC in prosecuting Election matters and allow her focus on her core function of conducting election.
2. The function of arrest and investigation of Electoral offence should be bestowed on the Electoral Offences Commission and not only on the police as is the present case.
3. More human and material resources should be employed and saddled with the responsibility of prosecuting Electoral offences as the present structure for this purpose has been reported by INEC to be insufficient.
4. The office of the Attorney General should be separated from that of the Minister of Justice. Also the power of the Attorney General in filing *Nolle Prosequi* should be exempted where it deals with electoral offences so that political interference will be limited in prosecuting electoral offences.
5. Adequate enlightenment should be given to the electorate as to what constitute electoral offences by well-meaning and relevant organizations.