



## **ELECTORAL OFFENCES AND ENFORCEMENT OF ATTENDANT SANCTIONS IN NIGERIA**

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### **Abstract**

There are various acts of commission or omissions criminalized under the Nigerian electoral laws. These acts of omission and commission are often-times, if not all time, suffer effort fatigue in the process of enforcement as well as incidental sanctions imposed against offenders. The constitutional guarantee of democracy in Nigeria as a state is somewhat intrinsically dependent on the electoral process. The electoral regime is critical to the development of the country's democracy. However, the maintenance of the integrity of the electoral regime is often undermined by the prevalence of electoral offenses. It is against this backdrop, that the authors argued the need to unearth the crucial facets of electoral offenses and the attendant mechanism for enforcing sanctions. The paper therefore maintained that the nation's legal framework has evolved various legislations to combat electoral offenses, particularly through the express criminalization of electoral misconducts as provided under the Electoral Act. Furthermore, it should be noted that the efficacious enforcement of imposed penal sanctions for the offenses has been weak, and often resulting in offenders' escape from the law. The authors therefore concluded that illumination to the dynamics of electoral offenses require the will to identify the dire need for a more effective mechanism to fortify Nigeria's electoral integrity.

**Keywords:** Electoral offences, sanctions, constitution, criminalization, democratic development

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## 1. Introduction

A direct affront to the electoral process in Nigeria is the prevalence of electoral malpractice, corrupt practices, and other forms of criminality unleashed in the process. These offenses are often perpetrated with brazen impunity and without effective enforcement of the accompanying sanctions against the perpetrators. Ordinarily, the Electoral Act did not provide a succinct definition for electoral offenses; rather, it merely explains and enumerates what constitute these offenses. Therefore, the term, electoral offense can be fully situate by combining the elements of two sub-terms, “electoral” and “offense.” Each element contributes distinct gradations that shape the meaning and implication of the term.<sup>1</sup> Accordingly, electoral offense encompasses any illegal behavior or transgression, including any malpractice either by commission or omission arising from the totality of the electoral process, upon which the person doing the act or making the omission is rendered liable to punishment under the Act. It involves every effort aimed at subverting the integrity of the electoral process by shaping the outcome.<sup>2</sup> It is at the same time, characterized by either or all of the three manipulative forms of rules, voters, and voting.<sup>3</sup> It also refers to any interruptive conduct that contradicts the electoral standards and interferes with the people's mandate.<sup>4</sup> Being a function of what the law prescribes at a particular time, it borders on any act that offends the nation's electoral standard as reflected in the Constitution, statutes as well as other administrative and procedural guidelines regulating the electoral process.<sup>5</sup> In other words, any action or inaction by any juristic person prohibited under the Electoral Act, a contravention of which attracts a penalty under the law would be regarded as an electoral offense.

Deemed criminal under the Electoral Act,<sup>6</sup> these offenses are required to be proved beyond a reasonable doubt before securing a conviction, as held in *Buhari v Obasanjo*.<sup>7</sup> The term invokes a connotation that allows for it to be used interchangeably with other nomenclatures like electoral

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<sup>1</sup> See Section 2 Criminal Code Act Cap C.38 Laws of Federation of Nigeria 2004.

<sup>2</sup> F. Lehoucq, “Electoral Fraud: Causes, Types and Consequences” in *Annual Review of Political Science* vol.6 2003 p.233.

<sup>3</sup> Y. Ismaila and Z. Othman, “Electoral Fraud and the Challenges of Democratic Consolidation in Nigeria's Fourth Republic” in *International Review of Management and Marketing* vol. 6(8) 2016 p.104.

<sup>4</sup> A. Casimir, et.al. “Electoral Fraud in Nigeria: A Philosophical Evaluation of the Framework of Electoral Violence” in *Open Journal of Political Science* vol. 3, 2013 p.164

<sup>5</sup> O.V. Adesanya, “Combating Electoral Fraud using the Rights Based Approach” in *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* vol. 11(2) 2020 p.76.

<sup>6</sup> A. Babalola, *Election Law and Practice*, vol.1. Intec Printers Limited, Ibadan, Nigeria. 2007, p. 440.

<sup>7</sup> (2005) 50 WRN p.1

malfeasance,<sup>8</sup> rigging, manipulation,<sup>9</sup> corruption,<sup>10</sup> malpractice and fraud.<sup>11</sup> For instance, Nwabueze defined electoral malpractice as deliberate illegalities committed with a corrupt, fraudulent, or sinister intention to influence an election in favour of a candidate or candidates.<sup>12</sup> The courts have also endeavored to explain the situations that give rise to electoral offenses rather than proffering a definition. For instance, the court in *Seriki v Are* explained that rigging and overvoting constitute electoral offenses.<sup>13</sup> Also, irregularities relating to snatching and stuffing of ballot boxes and setting polling stations ablaze were explained to be electoral offenses. The Supreme Court in *Buhari v Obasanjo* held that manipulation or alteration of election results is a criminal offense.<sup>14</sup> Again, the apex court in *Yussuf v Obasanjo*<sup>15</sup> did not mince words on opined that. “Corrupt practices connote and embrace certain perfidious and debauched activities which are felonious.”<sup>16</sup>

Electoral offense in Nigeria predates independence.<sup>17</sup> Indeed, every electoral cycle since the formal introduction of elections into the country has been bedeviled with various forms of electoral offenses and has regrettably remained unabated in the annals of Nigeria’s electoral process. This has been the pattern even until the last 2023 electoral cycle, which was also not devoid of infamous acts.<sup>18</sup> Ballot boxes and other electoral materials were hijacked, snatched and destroyed. Voters were violently attacked and in many cases resulted in serious bodily harm and even death.<sup>19</sup> Indeed, the Nigeria Police acknowledged in its address on the elections that no fewer than seven hundred offenders were arrested in various states across the federation during the elections.<sup>20</sup> This illegality

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<sup>8</sup> C. Nwangwu, et.al. “Elixir of Electoral Fraud: The Impact of Digital Technology on the 2015 General Elections in Nigeria” in *Journal of Cogent Social Sciences*, vol. 4 2018 p.2

<sup>9</sup> N. Cheeseman, and K. Brian, “How to Steal an Election in Broad Daylight” in *Foreign Policy* of 21/05/2018 available at <<https://www.foreignpolicy.com/2018/05/21/how-to-steal-an-election-in-broad-daylight/>> accessed on 12/03/2024.

<sup>10</sup> P.D. Finn, *Electoral Corruption and Malpractice* available at <https://www.heinonline.org> accessed on 15/03/2024.

<sup>11</sup> F. Lehoucq, supra, Note 2. p.235

<sup>12</sup> B.O. Nwabueze, *Nigerian Presidential Constitution (1979-83): The Second Experiment in Constitutional Democracy* Longman, London, 1985 p.401.

<sup>13</sup> (1999) 3 NWLR (Pt. 595)

<sup>14</sup> Supra, Note 7.

<sup>15</sup> (2003) 16 NWLR (Pt. 847) 554

<sup>16</sup> Per Acholonu JSC

<sup>17</sup> M. Ediagbonya, et.al. “Election Rigging and Violence in Nigeria in Historical Perspective: A Case Study of 1959,1964, 1965 and 1983 Elections” in *International Journal of Multidisciplinary Research and Analysis* vol. 6, 2023 pp.28-30.

<sup>18</sup> G. Onyedinefu, “2023 Elections: 109 Persons Killed in Political Violence - CDD” in *Business Day Newspaper* of 17/03/2023 available at <http://www.businessday.ng> accessed on 24/02/2024. See also “Violence that Marred 2023 Elections” in *Vanguard Newspapers* of 25/03/2023 at <https://www.vanguardngr.com> accessed on 24/07/2024.

<sup>19</sup> Ibid.

<sup>20</sup> Mohammed Babangida, “2023 Elections: Nigeria Police Apprehend 781 Suspended Electoral Offenders” in *Premium Times Newspaper* of 27/03/2023 available at <http://www.premiumtimesng.com> accessed on 20/02/2024.

was not limited to the electorates, it also extended to electoral officials and security agents who, though were engaged to curb the criminalities, became perpetrators themselves. The international community also expressed its concerns, with organizations like the National Democratic Institute (NDI) and International Republican Institute (IRI) specifically pointing out the shortcomings.<sup>21</sup> Similarly, the EU Observation Mission identified flaws in the process and called on the Nigerian authorities to address the challenges of impunity through effective enforcement of penal sanctions against offenders.<sup>22</sup>

The magnitude and impact of electoral offenses form a major justification for the imposition of penal sanctions. These offenses bear grave consequences on the nation's political configuration, structural foundation, and constitutional order. Section 1(2) of the Constitution provides that the government of Nigeria or any part thereof shall not be governed, nor controlled by any person or group of persons except by the provisions of the Constitution. By this, a duty is imposed on persons or groups of persons including political parties to refrain from forming government through illegal and illegitimate actions. Such illegal and illegitimate actions include the perpetration of any form of electoral offense.<sup>23</sup> Thus, any act of commission or omission that fosters criminality and undermines the nation's electoral integrity would be contrary to the Constitutional provision.<sup>24</sup>

Furthermore, a critical examination of the citizens' right to elect and be elected alongside the fundamental rights of expression,<sup>25</sup> assembly and association,<sup>26</sup> enshrined in the Constitution, which are universally recognized by various international, regional, and sub-regional bodies,<sup>27</sup> reveals that every electoral offense negates these rights. Each time an electoral offense is perpetrated, the nation's electoral process is jeopardized, democracy is endangered, and citizens' rights are infringed upon.<sup>28</sup> The target of electoral offenders extends beyond the candidate or the political party; rather, it ultimately undermines the people's mandate, depriving them of their fundamental right to elect

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<sup>21</sup> IRI/NDI Joint International Election Observation Mission to Nigeria, *Final Report of the 2023 Nigeria General Elections*, 2023 pp.23-24.

<sup>22</sup> European Union Election Observation Mission, *Nigeria 2023 Final Report: General Elections 25 February and 18 March 2023*, 2023, pp. 45-46.

<sup>23</sup> S.I. Ebirim, "The Effects of Electoral Malpractices on Nigeria Democratic Consolidation: 1999-2013" in *Public Policy and Administration Research* 4(2) 2014 p.51.

<sup>24</sup> Y. Ismaila, and Z. Othman, *supra*, Note 3.

<sup>25</sup> Section 39 of the Constitution

<sup>26</sup> *Ibid.*, at Section 40.

<sup>27</sup> The Universal Declaration on Human Rights (UDHR) 1948, The International Covenant on Civil and Political Rights (ICCPR) 1966, International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society (DRRIGOS) Conventions on the Rights of Persons with Disabilities (CRPWD), Africa Charter on Human and Peoples Rights (ACHPR).

<sup>28</sup> *Supra*, Notes 25 and 26.

those who lead them. As a result, voters' participation and confidence in the process are eroded, creating legitimacy issues in governance. Therefore, it behooves the law to assign attendant penal sanctions against parties found culpable in the criminalities.

Penal sanction operates as a vital component of the overall criminal justice system, which emphasizes that offenders are liable to be sanctioned.<sup>29</sup> Serving as a form of social control, penal sanctions represent the consequences incurred from committing an offense. It involves some form of designed and value-justified pain or suffering inflicted by a group in its corporate capacity on a group member. This is concomitantly in line with the postulation of the classical school,<sup>30</sup> and further retained by the utilitarian school, where both emphasize the justifiable nature of punishment within society's framework.<sup>31</sup> The legislative policy in Nigeria is to provide for specific sanctions in the Act creating the offense. These sanctions, which by nature are definitive in type, form, quantum, and adequacy, are deeply embedded in the penological justification for creating the offenses.<sup>32</sup> This policy equally applies to the various offenses created under the Electoral Act. Therefore, it becomes imperative for an appropriate consideration of the underlying justification for punishment whilst enforcing sanctions.

Various justifications underpin the imposition of sanctions, which serve distinct purposes aimed at maintaining order and fostering societal well-being. No one justification accrues more significance over the others; rather, they all go hand in hand and are applied contemporaneously. Ordinarily, many criminal justice systems, Nigeria inclusive, are built around more than a single justification.<sup>33</sup> Deterrence represents a major justification for penalizing offenders in Nigeria's court system, seeking to make crime subsequently unattractive to the offender. The Supreme Court in *Onuoha Kalu v The State*<sup>34</sup> reasoned that sanction is imposed to serve as a deterrence to others. In the same vein, the New Zealand Supreme Court in *R v Radich*<sup>35</sup> noted that the primary aim of punishment is

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<sup>29</sup> J.U. Ebuara, "The Plight of Victims of Crime under Nigerian Law" in *Emerging Issues in Nigeria Law: Essay in Honor of the Honorable Justice B.A. Adejumo OFR*, Constellation Nigeria Publishers Ibadan, 2009 pp135.

<sup>30</sup> See C. Beccaria. *An Essay on Crime and Punishment and Other Writings*, Cambridge University Press, Cambridge, 1995 pp.11-12

<sup>31</sup> G. Akingbehin, "Efficacy of Penal Sanctions for Electoral Offences in Nigeria" in E.O. Oyewo, and A. Sanni (eds.) *Commemorative Essays on 60<sup>th</sup> Anniversary of Faculty of Law*, University of Lagos 2012 p.439

<sup>32</sup> Ibid.

<sup>33</sup> See for Instance Section 142 of England and Wales Criminal Justice Act 2003 Which States the Various Justifications for Punishment under the Act to include (a) The Punishment of Offenders (b) the Reduction of Crimes (Including its Reduction by Deterrence) ;(c) Reform and Rehabilitation of Offenders (d) The Protection of the public (d) The Making of Reparation by the Offender to the Persons Affected by their Offences .

<sup>34</sup> (1998) LPELR 24

<sup>35</sup> 1954 NZLR 86

to protect the public from future crimes. Beyond deterrence, other justifications such as elimination, retribution, rehabilitation,<sup>36</sup> and restoration,<sup>37</sup> offer insightful approaches to penal sanctions. Together, these justifications form the foundation upon which the codification of electoral offenses and the accompanying consequential penal sanctions, as expressed in the Electoral Act, are anchored.

## **2. Nature and scope of electoral offences**

The nature of electoral offense typically finds its root in the fundamental criminal law principles of *mens rea* and *actus reus*. Affirming that a guilty verdict can only be found after establishing the wrongful act against a person and that such a person possessed the definite state of mind to cause or bear responsibility for occasioning the wrongful act. It equally derogates from the Constitutional principle that no person shall be found guilty of an offence except it is proven beyond reasonable doubt. In an electoral context, these principles are crucial in determining the legality of actions taken during the electoral process, with equal significance in holding persons accountable for their conduct once the elements of each offense as defined under the Electoral Act are met. In adherence with sections 36(8) and (12) of the Constitution on the principles of *nullum crimen sine lege*,<sup>38</sup> various offenses resulting from the electoral process were provided for and criminalized under the Electoral Act, thereby incorporating electoral offenses and the consequential sanctions into Nigeria's realm of jurisprudence. Part VII of the Electoral Act is solely dedicated to electoral offenses and the attached penal sanctions. However, this does not erase the existence of other offences created outside the purview of this part. While these offenses can be categorized into pre-election, during-election, and post-election periods, it is of note that many of the offenses transcend the three categories with their elements interconnected. They are thus compartmentalized in this work along the following lines.

### **I. Offences concerning voter registration and cards**

Nigeria practices universal adult suffrage, thus, every citizen of eighteen years and above bears the right to vote in any election. However, a condition precedent for exercising that right is due registration in the voter register for a specific polling unit with an accompanying voter card bearing

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<sup>36</sup> G. Akingbehin, *supra* note 31

<sup>37</sup> O.V.C. Ikpeze and M.O. Ezech, "The Concept of Restorative Justice and Criminal Justice System in Nigeria" in *Journal of International Human Rights and Contemporary Legal Issues* vol.1 Nov. 2021 p.94. N.E. Nwafor and O.C. Aduma, "Problems of the Administration of Criminal Justice System in Nigeria and the Applicability of Alternative Dispute Resolution" in *Nnamdi Azikiwe University Journal of Commercial and Property Law* vol.7(2) 2020 p.139.

<sup>38</sup> A principle reinforcing that there is "No Crime without Law" and that "Crime must be Defined and Written".



the voter's particulars. Once this condition is met, no voter could be prohibited from voting, whilst at the same time, voting without meeting this condition constitutes an offense. Hence, under sections 123(a) 124(1) and (2) of the Act, anyone who without having first registered as a voter attempts to vote, or votes when prohibited from so doing, or procures a person prohibited from voting to do so or possesses another's voter's card in any polling unit shall be liable upon conviction to a fine of one hundred thousand naira or a term of six months imprisonment or both.

In conformity with Nigeria's democratic practice of one man one vote, double registration as a voter as well as prevention of any citizen from registering is accordingly criminalized under Section 114 of the Act. The penal sanction for this set of offenses is a conviction to a fine of one million naira or a twelve-month imprisonment or both. Double registration is also prohibited under section 12 of the Act, which is outside Part VII, however carrying a lesser sanction of a fine of not more than one hundred thousand naira or imprisonment for a term of one year or both. Similarly, section 23(1) covers offenses relating to the registration of voters whilst section 23(2) relates to duress, including threat that prevents a person from registering. The imposed sanction for this section is one-year imprisonment or a fine of one hundred thousand naira for a contravention of section 23(1) and a five-year imprisonment or a fine of five hundred thousand naira for a violation of section 23(2) respectively.

Eligibility to vote under the law is predicated upon being a registered voter with a valid voter card. Therefore, Section 117 prohibits the improper use of voter's cards, its fraudulent possession, including possession of more than one card without lawful excuse, as well as buying and selling of the cards. These offenses are punishable upon conviction with twelve months imprisonment or an option of one million naira fine or both. Equally, the replacement of a permanent voters' card to any voter less than 90 days before the polling day is prohibited under section 18 of the Act and this attracts a fine of two hundred thousand naira or imprisonment for a term of two years or both.<sup>39</sup>

## II. Offences concerning nomination of candidates

Section 115(1) (a-d) and (k) of the Act criminalizes any act of forgery or tampering with nomination documents as well as double nomination into more than one constituency in the same election, carrying an attendant penal sanction of a maximum term of two years imprisonment. It is instructive that this section does not provide an option of fine, unlike other sections. More light was thrown on

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<sup>39</sup> Section 18(3) & (5) Electoral Act 2022.

the nature of this offense in the case of the *Peoples Democratic Party (PDP) v INEC and Others*.<sup>40</sup> Though the case was not a criminal one, the Supreme Court's view was significant. According to the Apex Court, multiple nominations under the Electoral Act do not occur simply because someone accepted a second nomination; the courts need to consider the circumstances carefully, especially in cases involving public interest. In this case, the fact that the acceptance of the first nomination was immediately relinquished to pave the way for another person for replacement as a senatorial candidate cannot be overlooked or disregarded. The purpose of the statutory provisions is to prevent individuals from running in multiple constituencies or political parties. However, if someone has clearly said "No, I don't want, and relinquishes one" it would not be acting in good faith to take up such a person and infer something else.<sup>41</sup> This case of *PDP v INEC and Others*<sup>42</sup> is distinguishable from the earlier case of *Uche Nwosu v Uche Nnadi*<sup>43</sup> where the Supreme Court voided the appellant's candidature as a result of his nomination as the candidate of the Action Alliance (AA) and the All-Progressives Congress (APC) in the Imo State Governorship Election of 2019. The ratio of the *Uche Nwosu* case was because the respondents failed to relinquish one of the nominations.

### III. Offenses concerning ballot papers, forms, boxes, and election results

Section 115(1)(e-j) of the Act also deals with forging, delivering, or using a result form, or ballot paper knowing it to be forged including the offense of tampering with or destroying ballot papers or ballot boxes and their content whilst section 115(2) relates to the offenses of unauthorized printing, possession, or importation of ballot paper, result forms, or any sort of ballot box. The prevalence of ballot box snatching and destruction of election materials during elections is lamentable and antithetical to election integrity. It is against this background that section 126(1)(j) of the Act criminalized any act of interference or tampering with any electoral material, even if it is only one piece of ballot paper. This offense, upon conviction, attracts imprisonment for a term of twenty-four months without the option of a fine, obviously due to its severity.<sup>44</sup> Whilst section 120 relates to conspiracy to make a false declaration of result, section 115(3) criminalizes an attempt to commit any of the foregoing offenses in which punishment is the same manner as the offense itself. However, the sanction for an attempt attracts the same sanction as the main offense. This runs

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<sup>40</sup> (2023) LPELR-60457 (SC).

<sup>41</sup> Per Emmanuel Agim JSC

<sup>42</sup> Supra, note 40.

<sup>43</sup> (LPELR)-50797 (SC).

<sup>44</sup> This section is in tandem with section 115(j) Electoral Act 2022.



contrary to the general standard, which requires that an attempt attracts half of the full punishment for the main offense. Sections 509-512 of the Criminal Code Act provide that the punishment for an attempt shall be one-half of the punishment of the substantive offense to which an offender is convicted.

#### IV. Bribery, Inducement and Undue Influence.

Section 121 outlaws any act of bribery or inducement through gifts, monetary or otherwise, loans, offers, promises, procurements to voters, or promises of such, voter coercion and conspiracy. The receipt of bribes by voters is equally outlawed under this section. However, bona fide expenses made or received during the election are exempted.<sup>45</sup> The state of mind is, therefore, a critical element for this offense. Also, by sections 121(1)(d) and 121(2), the law is clear that this offense could be committed before, during, or after the election. In a similar vein, section 127 prohibits undue influence on voters to vote or refrain from voting through monetary inducement together with corruptly accepting such monetary offer of inducement after the date of election has been announced. Noteworthy is that whilst the provision of section 127(a) has streamlined the common law offense of undue influence to “corruptly influencing” and only where a monetary transaction is involved, section 127(b) again widened it to include “any other inducement”. This would suggest that every other form of inducement, including physical, temporal, or spiritual, would come under this provision; more so, the inducement is not qualified with the usual common law proviso of “undue” or “corruptly” as applied under section 127(a). This makes the burden of proof more cumbersome to discharge.<sup>46</sup> Particularly in a country like Nigeria where leaders of different persuasions, both spiritual and temporal, are capable of exerting influence on voters. It is contended that section 127(a) would just have sufficed for this offense.

Related here is the issue of confidentiality of choice attached to a secret ballot as reinforced under section 122 of the Act. The section prohibits a violation of the ballot’s secrecy, the voter’s right to cast a vote freely, or interfering with the voter’s right to vote in any form. An issue that arises here is

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<sup>45</sup> S. 121(3) Electoral Act 2022

<sup>46</sup> See the case of *Fagbe v Etchie* (1959) WNLR 134, where corrupt practices of undue influence were alleged against the Olu of Warri for invoking the wrath of the Itsekiri tribal god on any Itsekiri voting for the petitioner. The court did not hesitate to dismiss the matter for proof of evidence. Furthermore in the recent case of *Adeniji Iyabode v INEC & 2 Ors.*, EPT/LAG/SHA/07/2023, Appeal No.CA/L/EP/SHA/31/2023. The petitioner claimed that the procession of the “Oro Cult” group under the authority of the traditional rulers in Eti-Osa State Constituency 1 of Lagos State on the eve of the election invoking curses on whosoever would vote against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent constituted undue influence. The court dismissed the case for lack of proof.

whether this provision would also apply to a voter who decides to display his ballot upon voting.<sup>47</sup> It is submitted that a voter who does this should be liable under the provision as the action would amount to creating an undue influence on other voters, contrary to section 127 discussed above. It would also be construed as an act of campaigning outside the period allowed under the law.<sup>48</sup> Also, section 128(a)-(c) of the Act creates various offenses of threatening and threatening violence to induce, compel or refrain a person from voting. The effect of this section is that apart from the actual use of force or violence, a threat or the use of force equally constitutes an offense under the Act. The capacity of the person making the threat to accomplish it would be immaterial, However, the threat must be serious and made with deliberate intention to carry it out and not just a brag. The penal sanction attached to this set of offenses is a term of three years imprisonment or a fine of one million naira. Furthermore, section 126 of the Act criminalizes any act of canvassing or soliciting for votes, persuading a voter not to vote, shouting slogans concerning the election, possession of an offensive weapon, voter intimidation, exhibiting any type of symbol concerning a political party, or the elections within 300 meters distance of a polling unit, on election day.

#### V. False statement, incitement, disorderly conduct and violence

It is an offense under section 123 (b) and (c) to knowingly propagate false news or statements regarding a candidate before or during an election to prejudice the candidate in question. Inciting others to act disorderly or provoke violence during elections is covered under section 125. It suffices to say that sections 92, 93, and 97, though outside the purview of Part VII, criminalize disorderly conduct, misconduct, usage of force or violence, as well as engaging in a tribal, sectional, or religious incitement or any act capable of provoking violence during political campaigns. Section 116 proscribes misconduct at political gatherings, particularly engaging in disorderly behavior and possession of weapons or missiles at political meetings after the election date has been announced. Offenders are punishable upon conviction with twelve months imprisonment or a fine of five hundred thousand naira or both.<sup>49</sup> Looking at the provisions of section 123, little or no problem arises from sub-section (b) because the provision is very specific. It relates to making false or reckless publications that a candidate has withdrawn from an election.

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<sup>47</sup> See Deji Elumoye., “Buhari votes in Daura: Displays Ballot Paper” in *This Day Newspaper* of 25/02/2023 available at <https://www.thisdaylive.com> accessed on 20/01/2024.

<sup>48</sup> See section 95 of the Electoral Act.

<sup>49</sup> It is contended that many of the offenses created under the Act and discussed in the forgoing would ordinarily bear the elements of incitement, incitement to misconduct, violence, or constitute either misconduct or violence per se. These offenses are discussed in various parts of this work. See, for example, the offence of ballot snatching.

Subsection (c) however, elicits some problems because of its general disposition. It raises the issue of whether campaign statements ordinarily bedeviled with untruths and innuendos attract criminality under this section. Put differently, what level of political speech would attract criminalization?<sup>50</sup> How would a true but seriously exaggerated or outrightly misleading statement be considered? It is contended that establishing the elements of the offense created under this subsection could be arbitrary and cloaked with uncertainties. Under this circumstance, citizens may be confronted with the fear of being caught in a web and curtailed from making valuable but controversial contributions to the political discourse to the detriment of the constitutionally guaranteed freedom of expression and free speech.<sup>51</sup> A case in point here is, for instance, where a candidate asserts that his opponent had been convicted of treason and jailed; whilst true, he failed to mention that the opponent had also been given full pardon.<sup>52</sup> In another case, a candidate publishes a statement that another candidate is an ex-convict, relying on a previously entered plea bargain in forfeiture proceedings by the alleged candidate.<sup>53</sup> This subsection requires the courts to make difficult distinctions and grapple with the issue of disinformation, innuendoes, and half-truths, as well as content that contains elements of truth but is packaged in accompanying mistruths or *vice versa*.

#### VI. Media related offences

Sections 94, 95, 96 and 128 of the Electoral Act encapsulate media-related offenses. In pursuance of section 22 of the Constitution which provides for the roles of the media, the National Broadcasting Commission (NBC) and the Nigerian Press Council (NPC) are saddled with the powers to regulate broadcast and print media. Though prosecution of media-related offenses under the Electoral Act is scanty, the various regulatory bodies have had reasons to sanction erring media outlets. For instance, as many as twenty-five broadcast stations were sanctioned during the 2023 electoral cycle.<sup>54</sup> However, worthy of note is that a Federal High Court in the recent case of *Incorporated Trustee of Media Rights Agenda v National Broadcasting Corporation* has nullified the powers of NBC to

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<sup>50</sup> R.L. Hasse, "A Constitutional Right to Lie in Campaigns and Elections?" in 74 *Montana Law Review* 2013 pp.71-72.

<sup>51</sup> J. Horder, "Criminal Law at the Limit: Countering False Claims in Elections and Referendums" in *The Modern Law Review* vol. 84(3) 2021 pp. 439-441.

<sup>52</sup> *Falae v Obasanjo* (1999) 4NWLR [PART 599] 476

<sup>53</sup> *Peter Obi & anor. v INEC & 3 Ors* CA/PEPC/03/2023; *Atiku Abubakar v INEC & 3 Ors* CA/PEPC/05/2023

<sup>54</sup> Friday Olorok, "Election: NBC Sanctions 25 Broadcasting Stations, 16 on Final Warning List" in *Punch Newspapers* of 15/03/2023, available at <https://www.punchng.com> accessed on 05/01/2024.

impose a fine. The court ruled that administrative and regulatory bodies could not exercise judicial powers.<sup>55</sup>

## VII. Finance related offenses

There are other offenses outside the purview of Part VII of the Act.<sup>56</sup> These offenses relate to party funding and campaign-based issues. Political parties must conform with section 225(3)(a) of the Constitution. In furtherance of this, they are precluded from possessing or holding any offshore fund or retaining any remitted asset to it from outside Nigeria, a contravention of which shall attract a forfeiture of such funds or assets or both to the commission. It may also be liable to a fine of at least five million naira.<sup>57</sup> Again, not many finance-related cases bordering on the Electoral Act are available. In *Chief Olisa Metuh v The Federal Republic of Nigeria*,<sup>58</sup> though prosecution centered primarily on economic crime, it was also not initiated at the instance of INEC but the Economic and Financial Crime Commission (EFCC). The matter becomes relevant here because the sum of Four Hundred Million Naira the defendant was accused of taking from the account of the National Security Adviser with the Central Bank of Nigeria (CBN) was said to have been utilized for the political activities of the Peoples Democratic Party (PDP). Upon conclusion of the trial, the defendant was convicted. Dissatisfied, he appealed to the Court of Appeal, where the conviction was upturned with a further directive that the matter be remitted to the Chief Justice of the Federal High Court for reassignment to another judge for a fresh trial. The prosecution further appealed to the Supreme Court. An attempt by the prosecution to commence a retrial at the High Court was struck out by the court, citing gross abuse of court process on the ground that an appeal against the Court of Appeal decision, which discharged and acquitted the defendant, was still pending before the Supreme Court. See also *Col. Mohammed Sambo Dasuki & Ors v The Federal Republic of Nigeria*.<sup>59</sup>

Other finance and campaign-related offenses outside the purview of Part VII of the Act include a non-submission of the political party's audited account to INEC within six months after an election<sup>60</sup> and nondisclosure of contributions received by political parties for their activities.<sup>61</sup>

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<sup>55</sup> Suit No. FHC/ABJ/CS/1386/2021

<sup>56</sup> Sections 85, 86, 87, and 88 of the Electoral Act 2022

<sup>57</sup> Ibid.

<sup>58</sup> (2017) 11NWLR (Pt. 1575)157

<sup>59</sup> SC/617/2016

<sup>60</sup> Section 89(3) Electoral Act 2022

<sup>61</sup> Ibid., at S. 90

Exceeding the limit on election expenses equally constitutes an offense.<sup>62</sup> It is worthy of note that the offenses created outside Part VII of the Act recognize the possibility of corporate criminal liability; thus, corporate culpability is attached against political parties.<sup>63</sup> This appears to be more encompassing as against offenses created under Part VII, which ironically, is the main part of the Act solely dedicated to electoral offenses.

Finally, it is also of note that the Act addresses other offenses such as the offense of improper use of vehicles during elections,<sup>64</sup> impersonation<sup>65</sup> and dereliction of duty.<sup>66</sup> Additionally, section 129 of the Act by itself did not create an offense; rather, it is an omnibus provision that extends the application of the offenses created under the Act *mutatis mutandis* to any recall process of a State or Federal legislator.<sup>67</sup>

### **3. Legal and Institutional mechanism for enforcement**

There is need to examine the subsisting legal and institutional framework appertaining to electoral issues in Nigeria. Enforcement mechanisms refer to the state's systemic arrangements of actions and protocols geared towards ensuring compliance with the relevant rules, standards, norms, as well as regulatory and legal frameworks. It involves putting in place institutional structures conferred with responsibilities to effectively drive and execute enforcement using the instrumentalities of the state under the law. Such responsibilities usually come with corresponding powers to investigate, arrest, detain and prosecute suspected offenders. This underscores the maintenance and management of public order, safety, as well as the overall stability of the nation's social, political, and legal system. The effectiveness or otherwise of the enforcement mechanism is often measured by its ability to achieve penal sanction justifications.

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<sup>62</sup> Ibid., at Sections 88-90

<sup>63</sup> Since corporate organizations cannot be subjected to imprisonment, fines are ordinarily imposed upon proven guilty.

<sup>64</sup> Ibid., at Section 118

<sup>65</sup> Ibid., at Section 119. It is noteworthy that unlike what was obtained under the Electoral Act 2010 where the evidence of at least two witnesses was required before a conviction for the offense of impersonation, it is no longer so under the 2022 Act because a conviction under this provision is no longer solely based on the strength of corroboration.

<sup>66</sup> Ibid., at Section 120

<sup>67</sup> Section 69, Constitution 1999 As Amended.

## I. The Attorney General

It is significant to note that at the forefront of enforcement in Nigeria is the Attorney General, both at the Federal and State levels. Ordinarily, by section 150 of the Constitution, the power to enforce any law in Nigeria is vested in the Attorney General of the Federation, who at the same time is the Federation's Chief Law Officer. This position equally applies under section 195 of the Constitution to the Attorney General of a State. The Attorney General's office, being a creation of the Constitution, takes preeminence in law enforcement across the country and has received judicial interpretation. In *Nigeria Engineering Works v Denap Limited*, the Supreme Court described the Attorney General as not only the head of the justice ministry but also the chief legal adviser to the government.<sup>68</sup> He is responsible in law for the government's actions, inactions, application, and enforcement of every law of the nation.

The Attorney General arrogates a supervisory power over every prosecutorial process, hence, every prosecution of an offense is deemed to have been done with his consent.<sup>69</sup> To this end, he exercises a wide range of discretion on whom to charge, for what offense, under which law, and before which court. He can decide as he deems fit, amend a charge, withdraw, take over, or even discontinue a criminal case in its entirety via *Nolle Prosequi*. The only proviso is that this power must be exercised in the public interest, justice, and prevention of abuse of legal process.<sup>70</sup> The nature of the Attorney General's power was again espoused by the Supreme Court in *State v Ilori*<sup>71</sup> where the apex court stated that: "the Attorney General has been a master unto himself and under no control whatsoever judicial or otherwise *vis a vis* his powers of instituting or discontinuing criminal proceedings"<sup>72</sup> The Attorney General can exercise these powers personally or through other law officers in the ministry. He also has the discretion to derogate the powers to private legal practitioners via a fiat where he chooses to do so, as held in *State v Aibangbee*<sup>73</sup> and also affirmed in *Comptroller Nigeria Prison and 2 Ors v Femi Adekanye*.<sup>74</sup> According to the Supreme Court, the exercise of this discretion cannot be questioned as his decision in that regard is final so far as he considers the decision to be in the best public interest and justice. See *Audu v AGF*.<sup>75</sup>

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<sup>68</sup> (2001) JELR 44337-SC

<sup>69</sup> Sections 174 and 211 of the Constitution 1999, as amended

<sup>70</sup> Ibid.

<sup>71</sup> (1983) 1SCNLR 94

<sup>72</sup> Per Kayode Esho JSC

<sup>73</sup> (1988) 7SC (Pt. 1) 196

<sup>74</sup> (2002) FWLR (Pt.120) 1650

<sup>75</sup> (2012) 12 (Pt. 2) S.C 23



## II. The Police

Fundamentally, the Nigeria Police is also a creation of the Constitution. Section 214(1) of the Constitution provides that there shall be a police force for Nigeria to be known as the Nigeria Police Force with a proviso prohibiting the establishment of any other police for the federation, state, local government, or any part of the country. Section 214(2) goes further to provide that the Nigeria Police Force shall be organized and administered in keeping with such provisions as may be prescribed by an Act of the National Assembly. The Police are under the exclusive legislative list of the Constitution,<sup>76</sup> thus bringing it under the exclusive jurisdiction of the national government.<sup>77</sup> Flowing from this Constitutional arrangement, the general powers of the police are provided for under section 4 of the Police Act. Accordingly, the force is empowered to prevent and detect crime as well as apprehend offenders. It is further saddled with the powers to maintain law and order, including the enforcement of all laws and regulations for the time being in force in the country, without prejudice to the enabling Acts of other security agencies.

Whilst section 5 of the Act further reinforces the police powers to enforce the Constitution, section 66 expressly confers prosecutorial powers on the police. The section provides that a police officer may conduct in person all prosecutions of an offender before any court, whether the information or complaint is laid in his name or not. This power is however subordinate to the powers of the Attorney General as enshrined under sections 174 and 211 of the Constitution as well as section 106 of the Administration of Criminal Justice Act. This was given judicial affirmation in *Olusemo v C.O.P*<sup>78</sup> and also in *FRN v Osahon*.<sup>79</sup> It is instructive that section 66(1) of the Police Act 2020 now makes it mandatory that only a police officer who must be a legal practitioner is allowed to exercise the prosecutorial powers of the police in any court in the country. However, a police officer may, subject to the provisions of relevant criminal procedure laws in force at the federal or state level, prosecute before the courts those offenses that nonqualified legal practitioners can prosecute.<sup>80</sup> The power to prosecute in this circumstance is usually limited to magistrate courts by established practice.

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<sup>76</sup> Item 45 of the Exclusive Legislative List Part I Second Schedule of the Constitution.

<sup>77</sup> Ibid.

<sup>78</sup> (1998) 11 NWLR (Pt. 575) 574.

<sup>79</sup> (2006) 5 NWLR (Pt. 973) 361.

<sup>80</sup> Section 66(2) Police Act 2020.

### III. Independent National Electoral Commission<sup>81</sup>

Of importance and central to this study is the Electoral Act<sup>82</sup> which empowers INEC to prosecute electoral offenders. Section 144 of the Act provides that “the commission shall consider any recommendation made to it by a tribunal concerning the prosecution by it of any person for an offense disclosed in any election petition.” The effect of this is that the INEC can initiate prosecution if an election petition tribunal arrives at a finding that an electoral malpractice of a criminal nature has been established and recommends a prosecution to the Commission.<sup>83</sup> It should be noted here that even though the tribunal could make a finding of an electoral offense, the tribunal does not have the power to pronounce a guilty verdict as such power only resides in the magistrate or high court. This is because an election tribunal does not act as a criminal court; it is of *sui generis* in character. Again, the standard of proof of electoral offenses is often difficult to discharge in an election petition tribunal due to its criminal nature.

Furthermore, by using the word “shall” under Section 144 of the Act, the commission must consider any recommendation made to it by an election tribunal for the prosecution of offenders. The issue then arises as to whether the INEC is inhibited from initiating proceedings for the prosecution of offenses committed under the Electoral Act without a recommendation from an election petition tribunal. This was resolved in *Ibrahim Mohammed Umar v Federal Republic of Nigeria*<sup>84</sup> where the court held that the relevant sections of the Electoral Act did not limit the commission’s powers to initiate proceedings for prosecution and that INEC may investigate and prosecute in appropriate cases without a recommendation from an election tribunal.<sup>85</sup> Accordingly, a contravention of any part of the Electoral Act shall be subject to trial in a magistrate court or a high court of a state where the offense occurred or the Federal Capital Territory. Prosecution shall be carried out by either the commission’s legal officers or legal practitioners appointed by the commission.<sup>86</sup>

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<sup>81</sup> [Hereafter, The INEC]

<sup>82</sup> Section 144 of the Electoral Act 2022

<sup>83</sup> Ibid.

<sup>84</sup> (2021) LPELR-53936(CA)

<sup>85</sup> Per Uwa JCA

<sup>86</sup> Section 145, Electoral Act 2022

## 4. Challenges to the enforcement of sanctions

There are inundations of challenges to the enforcement of sanctions in electoral matters and the include the following:

### I. Non-conferment of investigative powers on INEC

Whereas the Electoral Act expressly confers prosecutorial power on INEC, the Act is silent on the power of investigation, which encompasses the power to obtain evidence relevant to the prosecution of the offense. Concomitantly, investigatory power comes with the powers of arrest and search of persons and properties, being crucial for safeguarding prosecutors against infringing upon the right to personal liberty as guaranteed under Section 35(1) of the Constitution.

The imperativeness of investigative power is further underscored on the premise that prosecution can only be commenced against someone who has committed an offense or who is reasonably believed to have committed an offense through the proof of evidence. A mere opaque or vague suspicion would not suffice. Where investigative power is conferred, section 14 of the Evidence Act makes any evidence obtained under that power admissible in court so far as it does not violate any other rule of admissibility. In the case of *Mohammed Abacha v AG of Lagos State*, the Supreme Court held that a person not in any way linked to the offense charged by proof of evidence cannot be lawfully be prosecuted for the offense.<sup>87</sup> The court further held that a mere suspicion of the commission of an offense against a suspect, no matter how grave, cannot serve as a basis for criminal prosecution. This means that where no reasonable ground exists for believing that a person has committed an offense, such a person cannot be subjected to criminal prosecution; otherwise, it will constitute an infringement of the person's fundamental rights.<sup>88</sup> The effect of this is that for the proof of evidence to meet the required standard, it must have been obtained through professional investigation. Thus, a situation where INEC albeit possesses prosecutorial powers but lacks investigative powers cannot create the required platform for effective prosecution. An insight into the words of the INEC Chairman captures this challenge.

To prosecute electoral offenders fully rests upon INEC, but we are constrained to prosecute any electoral offender due to deficit legislation. The commission is not responsible for the arrest of electoral offense suspects. Also, INEC does not have the power to investigate

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<sup>87</sup> (2002) FWLR (Part 108) p.1355

<sup>88</sup> Section 36(6) & (8) of the Constitution 1999 as amended

electoral offenses. These are the challenges we are facing in prosecuting suspects of electoral offenses.<sup>89</sup>

## II. Lack of Mandatory Investigation of Election Tribunals' Findings

Closely related to the challenge of non-conferment of investigatory powers on INEC is that the law does not make it mandatory for every finding of corrupt practice or malpractice whatsoever by the Election Tribunal to automatically attract criminal investigation and prosecution against the parties responsible for such finding. In many cases findings of election petition tribunals have revealed various acts of criminalities, yet no investigation has been made because investigation and prosecution are discretionary.

## III. Constitutional loopholes

Two major issues of *Nolle Prosequi*, a prosecutorial discretion, conferred on the Attorney General and Constitutional immunity, against criminal prosecution bestowed on some categories of elected officials including the President, Vice President, Governors, and Deputy Governors<sup>90</sup> constitute limitations confronting the effective enforcement of penal sanctions against electoral offenders. With *Nolle Prosequi*, the Attorney General can withdraw any charge even where prosecution has commenced, whilst under a regime of constitutional immunity, no criminal prosecution can be instituted against any person conferred with the immunity, even in the face of blatant electoral infractions; otherwise, such prosecution would be declared incompetent and set aside.<sup>91</sup> There have been cases of electoral infractions on the part of some holders of these offices; for instance, during the 2019 general elections in Kano state, the deputy governor of the state was arrested alongside the state commissioner for local government and chieftaincy affairs for disrupting the collation of the governorship election result of that state. Upon investigation, both were found to be deserving of prosecution. However, given section 318 of the Constitution, only the Commissioner was prosecuted whilst the Deputy Governor was set free.<sup>92</sup> Another case in point is that of the immediate past Kogi State Governor, Yahaya Bello, who was accused of double registration in the run-up to the 2019

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<sup>89</sup> Yakubu Mahmood, "INEC Explains Inability to Prosecute Electoral Offenders" in *This Day Newspapers* of 04/12/2022, available at <https://www.thisdaydaylive.com> accessed on 12/02/2024

<sup>90</sup> Sections 308 and 318 of the CFRN 1999; *Fawehinmi v IGP* (2002) FWLR Part 108 p. 1355

<sup>91</sup> *Ibid.*

<sup>92</sup> John Alechenu., "Police Arrest Kano Deputy Governor, Commissioner," *Punch Newspapers*, 11/03/2019., available at <https://www.punchng.com> accessed on 02/01/2024

gubernatorial election in the state<sup>93</sup> but could not be prosecuted given the Constitutional immunity conferred on the Governor.

#### IV. Resource Constraints and Overreaching the Mandate of the INEC

The capacity of the INEC, both human and financial, to effectively prosecute offenders constitutes another limiting factor. It is reported that INEC has about 120 legal officers at the national headquarters and the thirty-six states in the federation.<sup>94</sup> Apart from these officers being responsible for the day-to-day handling of legal matters within the commission, they are also responsible for the prosecution of offenders across all the polling units across the federation.<sup>95</sup> Undoubtedly, effective enforcement cannot be achieved under this circumstance. Furthermore, it cannot be overemphasized that INEC's primary mandate is expressly enunciated in Section 15, Part 1 of the Third Schedule of the Constitution. Prosecution of electoral offenses does not form a primary function of the Commission. Therefore, combining the primary mandate with other responsibilities will undoubtedly overstretch the Commission.

#### V. Inadequacy of sanctions

Whereas electoral offenders need to be held accountable for their actions or inactions, there is little evidence of adequate sanctions being imposed against them. The recent case of *INEC v Professor Peter Ogba*<sup>96</sup> illustrates this well. The defendant, a university professor, was the returning officer for the Akwa Ibom Northwest Senatorial District in the 2019 general elections. He was charged with manipulating, publishing, and announcing false results contrary to sections 123(4) and (5) of the Electoral Act 2010. This section is *in parie materia* with sections 120(4) and (5) of the Electoral Act 2022. At the end of the trial, the defendant was found guilty, convicted, and sentenced to three years imprisonment with an option of one hundred thousand naira fine, which was the highest sentence the court could pass. The convict expectedly opted to pay the fine, which was grossly inadequate for the gravity of the offense. However, the court was stricter in *INEC v. Professor Ignatius Uduk*,<sup>97</sup> where the defendant was sentenced to three years imprisonment without the option of a fine, he has appealed against the conviction and indicated his intention to seek a state pardon. Where sanctions

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<sup>93</sup> Onyebuchi Ezigbo "INEC Confirms Kogi Governor, Yahaya Bello Registered Twice" *This Day Newspaper*, 15/12/2017, available at <https://www.thisdaylive.com> accessed on 02/01/2024

<sup>94</sup> F. Okoye, *The Prosecution of Electoral Offenders in Nigeria: Challenges and Possibilities* Friedrich-Ebert-Stiftung, 2013, p. 2.

<sup>95</sup> *Ibid.*

<sup>96</sup> FHC/UY/73C/2020

<sup>97</sup> FHC/UY/35C/2020

imposed are accompanied by an option of a fine, many perpetrators may be more motivated to the crime knowing that upon conviction, the worst they could pay is a meager fine.

Again, many of the direct perpetrators of electoral offenses are usually used as instruments in the hands of political gladiators who sponsor, mastermind, and benefit from these crimes. However, the provisions of the law do not capture these sponsors except under section 121(6), which provides against the offense of bribery and voter inducement. This situation allows the sponsors to escape the wrath of the law. In the case of *Prof. Ogba*<sup>98</sup> the defendant could not have on his volition perpetrated the crime without a motive, there is the presumption, though rebuttable, that he must have acted in cohort with the candidate and or the political party in whose favor the results were manipulated. This was enough to set the stage for the investigation and prosecution of the candidate upon Ogba's conviction. However, in a twist, the candidate was not only elected to the Senate but was also further elected as the Senate President.

The inadequacy of sanctions also relates to the fact that offenses under Part VII of the Act do not contemplate culpability against political parties. It is rather safe to postulate that only individual offenders are envisaged under the purview of this part. This ought not to be so, as political parties equally form part of the beneficiaries of the various offenses. Therefore, it behooves the law to assign effective criminal liability in such circumstances. Also, where individuals have been tried for electoral offenses, political parties are most often not held accountable, even where they were complicit in the offense. Moreover, a breach of the constitutional duty imposed on political parties to refrain from forming a government through illegal and illegitimate actions is exemplified in any form of electoral malpractice and by itself grievous enough to attract sanctions.

#### VI. Protracted prosecution of election cases

Delays in prosecution pose a significant challenge to the effective enforcement of penal sanctions against electoral offenses. It weakens the effect of penological underpinnings against the offense and makes the process susceptible to manipulation and unwholesome legal gymnastics, thereby eroding public confidence. For instance, the *Ogba's* case spans over three years. Similarly, in the recent case of *Aishatu Ahmed Dahiru v INEC and 2 Others*,<sup>99</sup> delay in prosecution was a major bane. Indeed,

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<sup>98</sup> Supra Note 95.

<sup>99</sup> Suit no FHC/ABJ/CS/935/2023.



INEC was at a time restrained from prosecuting the Adamawa REC,<sup>100</sup> and prosecution could not commence until about a year later. Again, even when the Act provides the option for prosecution in either Magistrate or High Court, many of the cases for prosecution are instituted at the High Courts. Given the procedural technicalities and administrative issues already confronting the courts, these cases are bound to suffer delays.

#### VII. Lack of effective legislative response to previous recommendations

Some Commissions, Bodies, and Committees have previously been empaneled and saddled with the task of devising recommendations aimed at tackling electoral offenses.<sup>101</sup> Despite these efforts, legislative endeavors to translate these recommendations into law have repeatedly faltered. An attempt was made by the 8th National Assembly to enact the “Electoral Offenses Commission Bill.” The essence of the bill was to establish a commission that shall be responsible for investigating and prosecuting electoral offenses created under the Bill, the Electoral Act, or any other law related to the electoral offense. However, the bill did not see the light of day. Similarly, the bill was again considered, passed, and forwarded to the president for assent by the 9<sup>th</sup> Assembly, but the president denied assent and returned it to the legislature for further deliberations, ultimately leading to its failure to be passed before the end of the 9<sup>th</sup> Assembly.

## 5. Conclusion

Significantly, Nigeria has undertaken substantial steps in addressing the scourge of electoral offenses by expressly criminalizing them, as evident in the Electoral Act 2022. As significant as the law’s enactment is, its efficacious enforcement is equally significant, if not more so. Otherwise, the law’s emplacement becomes akin to a toothless watchdog, essentially ineffective in combating the menace of electoral offenses. Whilst the challenges are severe, the prospects for improvement are not illusory, achievable through a dispassionate implementation of the herein proffered recommendations.

First, it is imperative to amend the Electoral Act to encompass a provision, making it mandatory and not discretionary, for every finding of corrupt practice or malpractice by the election petition tribunal to attract criminal investigation and prosecution against the responsible parties. Again,

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<sup>100</sup> The Resident Electoral Commissioner (REC), not being a returning officer, who evidently lacked the authority of a returning officer, not only usurped the powers but also prematurely declared a winner at a time when the election was on-going thereby undermining the integrity of the electoral process’ integrity.

<sup>101</sup> See Justice Uwais Electoral Reforms Committee of 2007 and Senator Ken Nnamani led the twenty-four-man Constitution and Electoral Reforms Committee 2016.

investigatory powers should be expressly conferred on INEC, thus integrating investigative and prosecutorial powers in the Commission. Furthermore, the law must ensure the adequacy of penal sanctions against offenders; options for pecuniary sanctions must be jettisoned. Sanctions must be extended to political parties besides the extant pecuniary regime of fines. Disqualification from sponsoring a candidate in the affected constituency in subsequent elections should be imposed. Regarding protracted prosecutions, section 145(2) of the Act should be amended to exclude the high courts as the courts of first instance in electoral offense cases.<sup>102</sup> Concurrently, efforts to enhance training and capacity building for all the stakeholders in the enforcement process must be intensified. INEC should improve its collaborative efforts with other professional bodies, CSOs, International Partners, along with other law enforcement agencies like the ICPC<sup>103</sup> as currently done with the NBA.<sup>104</sup> Finally, the various unsuccessful previous attempts to pass the electoral offenses bill into law must be remedied by the National Assembly, providing the legal framework for an autonomous body that will address most of the highlighted challenges.



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<sup>102</sup> This is desirable against the background that the maximum term of imprisonment under the Act, which is ten years, falls within the criminal jurisdiction of chief magistrates' courts. There are also more numbers of magistrate courts across the federation than high courts.

<sup>103</sup> This is imperative particularly given section 52 of the Independent Corrupt Practices and Other Related Offences Act 2000

<sup>104</sup> Bolanle Olabintan "INEC, NBA to Commence Prosecution of Suspects Arrested during General Election," *The Cable Newspaper*, 22/11/2023., available at <https://www.thecable.ng> accessed on 24/03/2024