

**ELECTORAL OFFENCES IN NIGERIA AND THE REGIME OF SANCTIONS: CHALLENGES AND PROSPECTS\***

**Abstract**

*In Nigeria, the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2022 (as amended), provide the legal framework and legislative safeguards under which elections could be held, in line with global best practices.<sup>1</sup> The implication of these provisions is that persons and political parties can only come to power through the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act, 2022 (as amended). Consequently, observance and adherence to Constitutional and Electoral stipulations are fundamental to the credibility of elections in Nigeria. In acknowledgement of the sociological fact that there are bound to be deviants in the society who hardly keep to the law, electoral offences are bound happen. The Electoral Act, 2022 creates legal safeguards in the form of electoral offences, which may be committed by an individual or group of persons, and for which such individuals or group of persons would be liable to criminal trials and sanctions, if convicted. The research methodology adopted in this research is pure theoretical approach popularly known as doctrinal method. This involve the definition, interpretation, analysis, evaluation and application of the legal concepts involved in the area of research using both primary and secondary sources gathered in the course of the research. This research begins with an overview of electoral offences in Nigeria, it then highlights electoral offences as codified in the Electoral Act, 2022 (as amended). There is a discussion of some of the challenges sabotaging a full implementation of the Act, as it relates to the offences. At the end of the research, the researcher concluded that in as much as the legal framework for the proper conduct of elections in Nigeria is, arguably, expansive enough in scope, implementation still remains a challenge. The researcher recommended that a lot of measures should be put in place for implementation of the provisions of the Act, that the National Assembly should expedite the passage of the Electoral Offences Commission and Tribunal bill, giving to the Commission the capacity to investigate all electoral fraud and related offences, and coordinate enforcement and prosecution of all electoral offences. The envisioned Commission should have the capacity and legal backing to set up Mobile Courts to try election offences on election days.*

**Keywords:** Electoral offences, Nigeria, Regime, Sanctions, Constitution

**1. Introduction**

Electoral Act 2022 (as amended), much like its predecessors, does not define electoral offences. Oxford Advanced Learner's Dictionary defines Offence as 'an 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>2</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.<sup>3</sup> The reality of electoral offences and malpractices in Nigeria is as old as Nigeria's nascent democracy. According to Okoye:

the issue of electoral fraud and the lack of credibility of the electoral process have been with the Nigerian people for some time. It has more or less become a feature of Nigerian elections. It is rooted in the "do or die" politics practiced by some Nigerian politicians and political parties. Unfortunately, as a large number of those that engage in electoral fraud and irregularities get away with it, it becomes the norm rather than the exception.<sup>4</sup>

The infamous history of electoral fraud or rigging has far reaching ramifications for the future of Nigeria's democracy because the phenomenon is growing rather than declining. As the elections go by, the principal forms of rigging and fraud are increasing and are being perfected in successive elections since 1964, 1965, 1979, 1999, and 2003, 2007, 2011, 2015, 2019 and 2023. The result is that elections have become turning points in which the outcome has been the subversion of the democratic process rather than its consolidation<sup>5</sup>.

During the parliamentary election of December 12, 1959, acid and other corrosive substances were poured into ballot boxes to distort the results of the election that was held to usher Nigeria into independence. By October 24, 1959, campaign had commenced throughout the country, involving NPC, AG and NCNC. Unfortunately, it was not free of violence. The appalling situation degenerated so much that the Governor General Sir James Robertson on October 28, 1959, in a broadcast, called for an end to hooliganism in the climate of campaign and threatened sterner measures if the situation did not improve. He lamented how despicable it was that on the eve of Nigerian independence, campaign meetings should feature lorry load of cutlasses, broken bottles and rods to beat up political opponents. This is a confirmation that the rate

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<sup>1</sup> *ibid* section 77(1).

<sup>2</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. Electoral Act 2010 (Amended) section 122.

<sup>3</sup> CR Akorah 'Electoral Offences and Democracy in Nigeria' [2020] (10) *Journal of Public and Private Law, UNIZIK*, <https://journals.ezenwaohaetorc.org/index.php/UNIZIKJPPL/article/view/1055> (accessed on the 4th day of January, 2023).

<sup>4</sup> Festus Okoye, 'Prosecution of Electoral Offences in Nigeria: Challenges and Possibilities' in *Friedrich Ebert-Stiftung Discussion Paper*, No 5, September 2013, <https://library.fes.de/pdf-files/bueros/nigeria/10405.pdf> (accessed on the 4th day of January, 2023).

<sup>5</sup> *ibid*

of political and electoral violence is already visible before independence.<sup>6</sup> The 1964 electioneering campaign was punctuated with appeals to ethnic sentiment and marked by thuggery, hooliganism and violence<sup>7</sup>. Accusations and counter-accusations of evil intentions and fraudulent electoral practices also characterized the campaign<sup>8</sup>. The government authorities jailed the candidates of the opposition or opponent party, manipulating the nominating machinery in such a way that the UPGA candidates could not get registered, treating the candidates physically and psychologically in a such a way as to scare them away, withholding the necessary permission for campaign meetings by the local authorities or hiring thugs to break-up such meetings<sup>9</sup>. It has been argued that the 1983 elections witnessed the worst election rigging in the history of our dear nation. The presidential, Gubernatorial, Senatorial, Assembly and Representative elections were characterized by rigging. No party was left out of the rigging exercise. The only political parties that could not complain of election rigging were those parties that lacked the resources to rig.<sup>10</sup> The wide spread accusations of ballot stuffing in the 1983 election led to another successful Northern official coup in 1983. The election had become a zero-sum gain and some of the losers as always would be advocate for military intervention.<sup>11</sup> After the 2007 elections, Musa Yar'adua admitted that the election that brought him in had "shortcoming".<sup>12</sup> The recently concluded elections and its dark legacies are still evolving. Time will tell its place in history. These sample historical challenges justify the codification of electoral offences in the Electoral Act and the regime of sanctions it carries with it.

## **2. Electoral Offences and the Regime of Sanctions**

The Electoral Act, 2022 (as amended)<sup>13</sup> creates different categories of electoral offences and prescribes punishment for them. There are Pre-election offences and Election Day offences.

### **Offences of Buying and Selling Voters' Cards<sup>14</sup>**

Any person who- (a) is in unlawful possession of any voter's card whether issued in the name of any voter or not; or (b) sells or attempts to sell or offers to sell any voter's card whether issued in the name of any voter or not; or (c) buys or offers to buy any voters' card whether on his own behalf or on behalf of any other person, commits an offence and is liable on conviction to a fine not more than N500,000 or imprisonment not more than two years or both.

### **Offences Relating to Register of Voters<sup>15</sup>**

(1) Any person who- (a) after demand or requisition made of him or her under this Act without just cause, fails to give any such information as he or she possesses or does not give the information within the time specified ; (b) in the name of any other person, whether living, dead or fictitious, signs an application form for registration as a voter to have that other person registered as a voter ;(c) transmits or is involved in transmitting to any person as genuine a declaration relating to registration which is false in any material particular, knowing it to be false; (d) intentionally procures the inclusion in the Register of Voters of his or herself or any other person with the knowledge that he or she or that other person ought not to have been registered ; or (e) by his or herself or any other person procures the registration of a fictitious person, commits an offence and is liable on conviction to a fine not more than N100,000 or imprisonment for a term not more than one year or both. (2) Any person who— (a) by duress, including threats of any kind causes or induces any person or persons generally to refrain from registering as a voter or voters; or (b) in any way hinders another person from registering as a voter; commits an offence and is liable on conviction, to a fine not more than N500, 000 or imprisonment for a term not more than five years.

### **Offences Relating to Registration<sup>16</sup>**

A person who -without authority, destroys, mutilates, defaces or remove or makes any alteration in any notice or document required for the purpose of registration under this Act ; (b) presents his or herself to be or does any act whereby he or she is by whatever name or description howsoever, included in the register of voters for a constituency in which he or she is not entitled to be registered or causes his or herself to be registered in more than one registration or revision centre ; (c) publishes any statement or report which he or she knows to be false or does not believe to be true so as to prevent persons who are qualified to register from registering as voters ; (d) makes in any record, register or document which he or she is

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<sup>6</sup>Ediagbonya Michael et al, 'Election Rigging and Violence in Nigeria in Historical Perspective: A Case Study of 1959, 1964, 1965 And 1983 Elections' [2023] (6) *International Journal of Multidisciplinary Research and Analysis*, file:///C:/Users/Pavilion/Downloads/Election\_Rigging\_and\_Violence\_in\_Nigeria\_in\_Histor.pdf (accessed on the 4th day of January, 2023).

<sup>7</sup>Ojo, E.O. *Aspects of Nigerian History*, Lagos: King Julius Educational Publishers (2006), 148.

<sup>8</sup> *Ibid*.

<sup>9</sup>Olav, Stoke, *An Introduction to the Politics, Economy and Social Setting of Modern Nigeria*, (Sweden: Soderoni and Finn 1970) p 41-46.

<sup>10</sup>Ediagbonya, M. "The Fall of the Second Republic of Nigeria. Being National Certificate in Education (N.C.E) Project Presented to the Department of History, College of Education, Agbor. (1984), 25.

<sup>11</sup>Ediagbonya Michael et al, 'Election Rigging and Violence in Nigeria in Historical Perspective: A Case Study of 1959, 1964, 1965 And 1983 Elections', *supra*.

<sup>12</sup><https://allafrica.com/stories/200705300320.html> (accessed 4th day of January, 2023).

<sup>13</sup> Electoral Act 2022.

<sup>14</sup> *Ibid* s.22

<sup>15</sup> *Ibid* s.23

<sup>16</sup> *Op cit* s.114.

required to prepare, publish or keep for the purpose of registration, any entry or statement which he or she knows to be false or does not believe to be true ; (e) impedes or obstructs a registration officer or a revision officer in the performance of his or her duties; (f ) without proper authority, wears the identification of a registration officer or assistant registration officer or wears any other identification purporting to be the identification of a registration officer or assistant registration officer ; (g) forges a registration card ; or (h) carries out registration or revision of voters at a centre or place not designated by the Commission, commits an offence and is liable on conviction to a maximum fine of N1,000,000 or to imprisonment for a term of 12 months or both.

#### **Offences Relating to Nomination<sup>17</sup>**

Section 115(1): A person who -a) forges any nomination paper or result form, (b) willfully defaces or destroys any nomination paper or result form, (c) delivers to an electoral officer any nomination paper or result form knowing it to be forged, (d) signs a nomination paper or result form as a candidate in more than one constituency at the same election, (e) forges any ballot paper or official mark on any ballot paper or any certificate of return or result form, (f ) willfully destroys any ballot paper or official mark on any ballot paper or any certificate of return or result form, (g) without authority gives a ballot paper or result form to any person, (h) willfully places in any ballot box any unauthorised paper or result form, (i) willfully removes from a polling station any ballot paper or result form whether or not the ballot paper or result form was issued to him or her in that polling station, (j) without authority destroys or in any other manner interferes with a ballot box or its contents or any ballot paper or result form then in use or likely to be used for the purpose of an election, (k) signs a nomination paper consenting to be a candidate at an election knowing that he or she is ineligible to be a candidate at that election, commits an offence and is liable on conviction to a maximum term of imprisonment for two years.

Section 115 (2) provides: A person who:

(a) without proper authority prints a ballot paper or what purports to be or is capable of being used as a ballot paper or result form at an election, (b) being authorised by the Commission to print ballot papers or result form, prints more than the number or quantity the Commission authorised, (c) without authority, is found in possession of a ballot paper or result form when he or she is not in the process of voting and at a time when the election for which the ballot paper or result form is intended, is not yet completed, (d) manufactures, constructs, imports into Nigeria, has in his or her possession, supplies to any election official or uses for the purpose of an election, or causes to be manufactured, constructed or imported into Nigeria, supplies to any election official for use for the purpose of any election, any ballot box including any compartment, appliance, voting device or mechanism or by which a ballot paper or result form may or could be secretly placed or stored in, or having been deposited during polling may be secretly diverted, misplaced or manipulated, commits an offence and is liable on conviction to a maximum fine of N50,000,000 or imprisonment for a term not less than 10 years or both. Section 115 (3) provides that ‘An attempt to commit any offence under this section shall be punishable in the same manner as the offence itself’.

#### **Offences Relating to Disorderly Conduct at Political Gatherings<sup>18</sup>**

Any person who, at a political meeting —

- (a) acts or incites another to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was convened, or (b) has in his possession an offensive weapon or missiles, commits an offence and is liable on conviction to a maximum fine of N500, 000 or imprisonment for a term of 12 months or both.

#### **Offences Relating to Improper Use of Voters’ Card<sup>19</sup>**

(a) being entitled to a voters card, gives it to some other person for use at an election other than an officer appointed and acting in the course of his or her duty under this Act, (b) not being an officer acting in the course of his or her duty under this Act, receives any voters card in the name of some other person or persons for use at an election uses it fraudulently, (c) without lawful excuse has in his possession more than one voters card, or (d) buys, sells, procures or deals, with a voters card otherwise than as provided in this Act, commits an offence and is liable on conviction to a maximum fine of N1,000,000 or imprisonment for a term of 12 months or both

#### **Offences Relating to Improper Use of Vehicles<sup>20</sup>**

(1) No person shall provide for the purpose of conveying any other person to a registration office or to a polling unit any government vehicle or boat, or any vehicle or boat belonging to a public corporation except in respect of a person who is ordinarily entitled to use such vehicle or boat and in emergency in respect of an electoral officer

(2) Any person who contravenes the provisions of this section, commits an offence and is liable on conviction to a maximum fine of N500, 000 or imprisonment for a term of six months or both.

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<sup>17</sup> *Loc cit* s.115

<sup>18</sup> Electoral Act 2022 s.116

<sup>19</sup> *Ibid* s.117

<sup>20</sup> *Ibid* s.118

**Offences Relating to Impersonation and Voting when not Qualified<sup>21</sup>**

(1) Any person who- (a) applies to be included in any list of voters in the name of some other person, whether such name is that of a person living or dead or of a fictitious person ; (b) having once to his or her knowledge been improperly included in a list of voters under this Act as a voter entitled to vote at any election, applies, except as authorized by this Act, to be included in any other list of voters prepared for any constituency as a voter at an election ; (c) applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead or of a fictitious person ; (d) having voted once at an election applies at the same election for another ballot paper ; (e) votes or attempts to vote at an election knowing that he or she is not qualified to vote at the election ; or (f) induces or procures any other person to vote at an election knowing that such other person is not qualified to vote at the election, commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.

(2) Any person who commits the offence of impersonation or who aids, abets, counsels or procures the commission of that offence, is liable on conviction to a maximum fine of N500, 000 or imprisonment for a term of 12 months or both.

**Offences Relating to Dereliction of Duty<sup>22</sup>**

(1) Any officer appointed for the purposes of this Act, who without lawful excuse commits any act or omits to act in breach of his or her official duty commits an offence and is liable on conviction to a maximum fine of N500, 000 or imprisonment for a term of 12 months or both. (2) Any polling official who fails to report promptly at his or her polling unit on an election day without lawful excuse commits an offence of dereliction of duty and is liable on conviction to maximum fine of N500,000 or imprisonment for a term of 12 months or both. (3) Any polling agent, political party or party agent who conspires to make false declaration of result of an election commits an offence and is liable on conviction to a maximum fine of N500, 000 or imprisonment for a term of 12 months or both.(4) Any person who announces or publishes an election result knowing same to be false or which is at variance with the signed certificate of return commits an offence and is liable on conviction to imprisonment for a term of 36 months. (5) Any returning officer or collation officer who delivers or causes to be delivered a false certificate of return knowing same to be false, commits an offence and is liable on conviction to imprisonment for a maximum term of three years without an option of fine. (6) Any person who delivers or causes to be delivered a false certificate of return knowing same to be false to any news media commits an offence and is liable on conviction to imprisonment for a term of three years.

**Offences Relating to Bribery and Conspiracy<sup>23</sup>**

(1) Any person who does any of the following- (a) directly or indirectly, by his or herself or by any other person on his or her behalf, corruptly makes any gift, loan, offer, promise, procurement or agreement to or for any person, in order to induce such person to procure or to endeavour to procure the return of any person as a member of a legislative house or to an elective office or the vote of any voter at any election ; (b) upon or in consequence of any gift, loan, offer, promise, procurement or agreement corruptly procures, or engages or promises or endeavours to procure, the return of any person as a member of a legislative house or to an elective office or the vote of any voter at any election ; (c) advances or pays or causes to be paid any money to or for the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election ; (d) after any election directly, or indirectly, by his or herself, or by any other person on his or her behalf receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting or having induced any candidate to refrain from canvassing for votes for his or herself at any such election, commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.

(2) A voter commits an offence of bribery where before or during an election directly or indirectly by his or herself or by any other person on his or her behalf, receives, agrees or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for his or herself, or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election.(3) Nothing in this section shall extend or apply to money paid or agreed to be paid for or on account of any lawful expenses bona fide incurred at or concerning any election. (4) Any person who commits the offence of bribery is liable on conviction to a maximum fine of N500, 000 or imprisonment for a term of 12 months or both. (5) Any person who conspires, aids or abets any other person to commit any of the offences under this Part of this Act commits the same offence and is liable to the same punishment. (6) For the purpose of this Act, a candidate shall be deemed to have committed an offence if it was committed with his or her knowledge and consent.

**Offences Relation to the Requirement of Secrecy in Voting<sup>24</sup>**

(1) Every person in attendance at a polling unit including every officer charged with the conduct of an election and his or her assistants and every polling agent and candidate in attendance at a polling station or at the collation centre, as the case may be, shall maintain and aid in maintaining the secrecy of the voting. (2) No person in attendance at a polling booth under this section shall, except for some purpose authorised by law, communicate to any person information as to the name or number on the register of any voter who has or has not voted at the place of voting. (3) No person shall— (a) interfere

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<sup>21</sup> *op cit* s.119

<sup>22</sup> *Ibid* s.120

<sup>23</sup> Electoral Act 2022 s.121

<sup>24</sup> *Ibid* s.122

with a voter casting his or her vote, or by any other means obtain or attempt to obtain in a polling unit, information as to the candidate for whom a voter in that place is about to vote for or has voted for; or (b) communicate at any time to any other person information obtained in a polling unit as to the candidate to whom a voter is about to vote or has voted for. (4) Any person acting contrary to the provisions of this section commits an offence and is liable on conviction to a maximum fine of N100, 000 or imprisonment for a term of three months or both.

#### **Offences Relating to Wrongful Voting and False Statements<sup>25</sup>**

Any person who- (a) votes at an election or induces or procures any person to vote at an election, knowing that he or she or such person is prohibited from voting at the election ; (b) before or during an election, publishes any statement of the withdrawal of a candidate at such election knowing it to be false or reckless as to its truth or falsity ; or(c) before or during an election publishes any statement as to the personal character or conduct of a candidate calculated to prejudice the chance of election of the candidate or to promote or procure the election of another candidate and such statement is false and was published without reasonable grounds for belief by the person publishing it that the statement is true, commits, an offence and is liable on conviction to a maximum fine of N100,000or imprisonment for a term of six months or both.

#### **Offences Relating to Voting by Unregistered Person<sup>26</sup>**

(1) Any person who knowingly votes or attempts to vote in a constituency in respect of which his or her name is not on the register of voters commits an offence and is liable on conviction to a maximum fine of N100, 000 or imprisonment for a term of six months or both. (2) Any person who knowingly brings into a polling unit during an election a voter's card issued to another person commits an offence and is liable on conviction to a fine of N100,000 or imprisonment for a term of six months or both.

#### **Offences Relating to Disorderly Conduct at Elections<sup>27</sup>**

Any person who at an election acts or incites others to act in a disorderly manner commits an offence and is liable on conviction to a maximum fine of N500, 000 or imprisonment for a term of 12 months or both.

#### **Offences on Election Day<sup>28</sup>**

(1) No person shall do any of the following acts or things in a polling unit or within a distance of 300 metres of a polling unit on the date on which an election is held- (a) canvass for votes ; (b) solicit for the vote of any voter ; (c) persuade any voter not to vote for any particular candidate ; (d) persuade any voter not to vote at the election ; (e) shout slogans concerning the election ; (f ) be in possession of any offensive weapon or wear any dress or have any facial or other decoration which in any event is calculated to intimidate voters ; (g) exhibit, wear or tender any notice, symbol, photograph or party card referring to the election ; (h) use any vehicle bearing the colour or symbol of a political party by any means whatsoever ; (i) loiter without lawful excuse after voting or after being refused to vote ; (j) snatch or destroy any election materials ; and (k) blare siren. (2) No person shall within the vicinity of a polling unit or collation centre on the day of which an election is held- (a) convene, hold or attend any public meeting during the hours of poll as may be prescribed by the Commission;(b) unless appointed under this Act to make official announcements, operate any megaphone, amplifier or public address apparatus ; or (c) wear or carry any badge, poster, banner, flag or symbol relating to a political party or to the election. (3) A person who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine of N100, 000 or imprisonment for a term of six months for every such offence. (4) Any person who snatches or destroys any election material or any election device, commits an offence and is liable on conviction to imprisonment for a term of 24 months.

#### **Offences Relating to Undue Influence<sup>29</sup>**

A person who- (a) corruptly by his or herself or by any other person at any time after the date of an election has been announced, directly or indirectly gives or provides or pays money to or for any person for the purpose of corruptly influencing that person or any other person to vote or refrain from voting at such election, or on account of such person or any other person having voted or refrained from voting at such election ; or (b) being a voter, corruptly accepts or takes money or any other inducement during any of the period stated in paragraph (a), commits an offence and is liable on conviction to a fine of N100,000 or imprisonment for a term of 12 months or both.

#### **Offences Relating to Threatening<sup>30</sup>**

A person who- (a) directly or indirectly, by his or herself or by another person on his or her behalf, makes use of or threatens to make use of any force, violence or restraint ; (b) inflicts or threatens to inflict by his or herself or by any other person, any minor or serious injury, damage, harm or loss on or against a person in order to induce or compel that person to vote or refrain from voting, or on account of such person having voted or refrained from voting ; (c) by abduction, duress, or a

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<sup>25</sup> *Ibid* s.123

<sup>26</sup> Electoral Act 2022, s.124

<sup>27</sup> *Ibid* s.125

<sup>28</sup> *Ibid* s.126

<sup>29</sup> Electoral Act 2022 s.127

<sup>30</sup> *Ibid* s.128

fraudulent device or contrivance, impedes or prevents the free use of the vote by a voter or thereby compels, induces, or prevails on a voter to give or refrain from giving his vote ; or (d) prevents any political aspirant from free use of the media, designated vehicles, mobilisation of political support and campaign at an election, commits an offence and is liable on conviction to a fine of N1,000,000 or imprisonment for a term of three years.

#### **Offences Relating to Recall<sup>31</sup>**

The offences referred to in the Act shall apply to recall of a member of a Legislative House and a member of an Area Council *mutatis mutandis*.

### **3. Challenges Sabotaging the Full Implementation of the Act**

There has been dismay and sometimes utter frustration at the unwillingness of the Nigerian state to prosecute electoral offender. This, arguably, may explain the progressive decay and widespread impunity that mar Nigerian electoral cycles. A cursory look at the offences and their corresponding regime of sanctions discloses that some of the prescribed sanctions are mild, while some are adequate. But beyond the issue of adequacy, or the lack thereof, of the sanctions is the major issue of lack of will on the part of the law enforcement bodies to give true life the safeguard provided by the Act. The Electoral Act provides that any offence committed under it shall be triable in a Magistrate Court or a High Court of a State in which the offence is committed, or the Federal Capital Territory, Abuja<sup>32</sup>. It further provided that a prosecution under the Act shall be undertaken by legal officers of the Commission or any legal practitioner appointed by it.<sup>33</sup> The inability of the INEC to fulfill its statutory function of prosecuting offenders, due to its wide-ranging and overwhelming responsibilities, has been pointed out as one of the challenges militating against an effective implementation of the sanctions regime under the Electoral Act. 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 2022 (as amended), it is clear that INEC lacks the capacity to investigate, arrest and prosecute all electoral offenders. To solve this problem, the creation of a separate Electoral Offences Commission has been proposed by different quarters. For example, The National Electoral Reform Committee (NERC) set up by President Umaru Musa Yar'adua in 2007 and headed by Justice Uwais; and subsequently the 24-member Committee on Constitution and Electoral Reform set up by President Mohammadu Buhari in 2016 and led by Dr. Ken Nnamani, both recommended the unbundling of INEC. In response to the said proposal, an Electoral Offences Commission and Tribunal Bill is currently before the National Assembly. The National Assembly, however, appears to be working at a snail speed in this regard. Another challenge towards the implementation of the sanction regime of the Electoral Act is the lack of zeal on the part of INEC sister agencies, namely EFCC, ICPC, the Nigerian Police Force, Nigerian Civil Defense Corps et cetera. There have been accusations that these agencies often collude with politicians to sabotage elections, instead of upholding the law and holding offenders to account.

### **4. Conclusion and Recommendations**

The legal framework for the proper conduct of elections in Nigeria is, arguably, expansive enough in scope. Implementation remains a challenge. In just concluded 2023 elections, flagrant violation of the Electoral Act was witnessed and well documented in audio-visual media. In many places provisions relating to secrecy in voting were disregarded by even the candidates themselves. Ballot boxes were snatched by miscreants, sometimes in the presence of security agents. Ballot papers were stolen, defaced or destroyed. Monetary inducements were reported and INEC officials were alleged to have colluded with party agents in some cases to subvert the will of the people. As at the time of writing of this article, there are no news of widespread prosecution of offenders. In effect, the appalling story of Nigerian elections has remained the same from the 1950's till date. All hope is not lost. With the anticipated passage of the Electoral Offences Commission and Tribunal Bill, hopefully a new era of sanity will be heralded in the Nigerian Electoral System. This is while acknowledging how the high expectations of Nigerians, in the wake of the new Electoral Act, 2022 (as amended) and its technological revolutions, were dashed against the rock of corruption. The following measures may be helpful:

The National Assembly should expedite the passage of the Electoral Offences Commission and Tribunal bill, donating to the Commission, the capacity to investigate all electoral fraud and related offences, coordinate enforcement and prosecution of all electoral offences. The envisioned Commission should have the capacity and legal backing to set up Mobile Courts to try election offences on election days. The Commission should adopt measures to prevent and eradicate the commission of electoral malpractices. They should also be open to the exchange of scientific and technical information with other democracies in joint training programs geared towards the eradication of electoral malpractices and fraudulent elections. Civil society groups and organizations should mount sustained media advocacy for the passage of an Electoral Offences Commission Act, the sharing of best practices on the handling of election offences and prosecution of electoral offenders with Electoral Commissions and other stakeholders from the West African Sub Regions<sup>34</sup>. The Inter-Agency Consultative Committee on Election Security should decentralize the training of security officers on electoral matters and electoral duties to take place at the various Local Governments across the federation. The trainings should not be episodic and ad-hoc, but should commence and be carried out on a quarterly basis at least one year before the general elections at the Divisional Police Headquarters level. This will create synergy among all the security forces and agencies engaged in election security as they will be trained using the same Code of Conduct, the Electoral Act, 2022(as amended) and the Constitution of the Federal Republic of Nigeria, 1999(as amended).<sup>35</sup>

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<sup>31</sup> *Ibid* s.129

<sup>32</sup> *Ibid* s.145(1)

<sup>33</sup> *Ibid* s.145(2)

<sup>34</sup>Festus Okoye, 'Prosecution of Electoral Offences in Nigeria: Challenges and Possibilities', *supra*.

<sup>35</sup> *Ibid*.