

## STRENGTHENING NIGERIA'S DEMOCRACY THROUGH THE PROSECUTION OF ELECTORAL OFFENCES COMMITTED ON THE DAY OF THE POLL\*

### Abstract

*On the day of the poll in Nigeria, several offences can be committed that violate the integrity of the electoral process. These offences are explicitly defined in the Electoral Act 2022 and other relevant statutory provisions. These offences are many. They include but not limited to: violence and intimidation, bribery and corruption, impersonation or voting by proxy or voting by unregistered person and multiple voting, destruction of electoral materials, campaigning on election day and obstruction of the electoral process. These offences are serious violations of the electoral process and are treated with strict penalties under Nigerian law. The judiciary plays a crucial role in addressing these offences. The extent of the prosecution of these offences in Nigeria is doubtful. In this article, the writer is making a case for the strengthening of Nigeria's democracy through the prosecution of these offences. This is borne out of the fact that politicians in Nigeria will not respond to good behavior unless there is a perception that bad behavior will be severely punished. The extent of the prosecution of these offences in Nigeria will be thoroughly examined. This will go a long way in reinforcing the importance of upholding electoral integrity with the aim of reducing the said offences to their barest minimum.*

**Keywords:** Nigerian Democracy, Prosecution, Electoral Offences, Day of the Poll

### 1. Introduction

The Electoral Act<sup>1</sup> 2022 specifies certain prohibited acts that can be committed on the day of the poll in Nigeria. These offences include bribery and corruption, voting by proxy or impersonation, multiple voting, ballot box snatching and disorderly conduct at polling units. These offences are explicitly defined in the Electoral Act 2022 and other relevant statutory provisions. The major question of how to deal with the perpetrators of these offences have for centuries been the major focus of criminal justice system. Punishing offenders have been the major focus of the criminal justice systems. In Nigeria, such offences abound because our politicians see elections as a do or die affair. In this article, the researcher looks at the offences of violence and intimidation, bribery and corruption, impersonation or voting by proxy or voting by unregistered person and multiple voting, destruction of electoral materials, campaigning on election day and obstruction of the electoral process. The extent of the prosecution of these offences in Nigeria is looked into. The writer makes a case for the strengthening of Nigeria's democracy through the prosecution of these offences. This is borne out of the fact that politicians in Nigeria will not respond to good behavior unless there is a perception that bad behavior will be severely punished. This will go a long way in upholding electoral integrity with the aim of reducing the said offences to their barest minimum.

### 2. Conceptual Clarifications

#### Prosecution

Prosecution is a legal process in which the State, through its legal representatives<sup>2</sup> initiates and conducts proceedings against an individual or entity accused of committing a crime. The primary objective of prosecution is to ensure that those who violate the law are brought to justice and held accountable for their actions. The prosecution process involves various stages, including investigation, charging, arraignment, trial, and sentencing. Prosecution also refers to the legal process of bringing a criminal charge against an individual or entity and pursuing that charge through a court of law. The prosecution is conducted by the State, represented by public prosecutors, who present evidence and arguments in court to prove the accused guilty beyond a reasonable doubt. The ultimate goal of prosecution is to obtain a conviction and impose a penalty or punishment as prescribed by law. The process begins with an investigation by law enforcement agencies, followed by the decision to charge the accused persons to court. If sufficient evidence exists, the accused is formally charged, and the case proceeds to trial. The prosecution must establish the elements of the offence and prove the accused guilty beyond a reasonable doubt. If the prosecution is successful, the accused may be convicted and sentenced according to the applicable laws. In *Federal Republic of Nigeria v Igbinedion*,<sup>3</sup> the prosecution charged the accused with corruption and money laundering. The Supreme Court emphasized the need for the prosecution to prove its case beyond a reasonable doubt. Section 174 of the Constitution<sup>4</sup> gives the Attorney General of the Federation the power to institute and undertake criminal proceedings against any person before any court of law.<sup>5</sup>

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<sup>1</sup> Electoral Act 2022.

<sup>2</sup> Usually, the Attorney General or the Director of Public Prosecutions.

<sup>3</sup> (2014) LPELR-22769(SC).

<sup>4</sup> Constitution of the Federal Republic of Nigeria, 1999 (as amended).

<sup>5</sup> Such powers were equally given to the Attorney General of each State of the Federation.

## Democracy

Democracy, derived from the Greek words 'demos' (people) and 'kratos' (power or rule), literally means 'rule by the people.' It is a form of government that allows for the participation of the citizenry in the political process, either directly or through their elected representatives. Democracy is a system of government in which power is vested in the people, who exercise that power directly or through elected representatives. It is characterized by the principles of political equality, majority rule, the protection of minority rights, and the rule of law. In a democracy, citizens have the right to participate in decision-making processes, typically through free and fair elections, where they elect representatives to govern on their behalf. Representative government is often referred to as democracy where the authority of government is derived solely from the consent of the governed.<sup>6</sup> The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.<sup>7</sup> A free and fair election gives the assurance that those who emerge as rulers are the elected representatives of the people. Except in case where an aspirant is returned unopposed; there will usually be at least two contestants to elective posts. Rules and regulations are normally put in place for the conduct of free and fair elections.

Democracy is based on the principles of (a) political equality where all citizens have equal rights and opportunities to participate in the political process; (b) majority rule where decisions are made based on the preference of the majority, while respecting the rights of the minority; (c) protection of rights where fundamental human rights, including freedom of speech, assembly, and the press; and (d) rule of law where the law applies equally to all individuals, ensuring fairness and justice in governance. In *A-G, Ondo State v A-G Federation*,<sup>8</sup> the Supreme Court of Nigeria emphasized the importance of democracy in ensuring that the will of the people is reflected in government actions. The case involved the constitutionality of certain provisions of the Electoral Act, where the court upheld the principles of democratic governance by ensuring that laws affecting elections must be consistent with democratic ideals. Democracy is more than just a system of government; it is a way of life that upholds the principles of freedom, equality, and justice. Through free and fair elections, adherence to the rule of law, the separation of powers, and the protection of human rights, democracy ensures that power resides with the people.

## Electoral Offence

The Electoral Act 2022 and previous Electoral Act<sup>9</sup> did not define electoral offences. It is therefore necessary to search for its meaning elsewhere. Oxford Advanced Learner's Dictionary<sup>10</sup> defines offences as 'an illegal act or a crime,' and it<sup>11</sup> equally defines crimes as 'activities that involves breaking the law' or 'an illegal act or activity that can be punished by law.' Offences in this perspective are synonymous with crimes.<sup>12</sup> Henry Campbell Black defines 'offence' as 'a felony or misdemeanor; a breach of the criminal laws; violation of law for which penalty is prescribed ... an act clearly prohibited by the lawful authority of the State, providing notice through published laws.'<sup>13</sup> According to Black's Law Dictionary,<sup>14</sup> 'offence is the violation of the law.' The term 'crime,' 'offence,' and 'criminal offence' are all said to be synonymous and ordinarily used interchangeably. Offence may comprehend every crime and misdemeanor, or may be used in a specific sense as synonymous with 'felony' or with 'misdemeanor,' as the case may be, or as signifying a crime of lesser grade, or an act not indictable, but punishable summarily or by the forfeiture of a penalty.<sup>15</sup> In the electoral system, offences committed on the day of election abound. The specifications of offences in the Electoral Act 2022 are in obedience to section 36 (12) of the Constitution.<sup>16</sup>

Accordingly, any act or omission which is not provided for in the Electoral Act cannot constitute an electoral offence. These offences are prescribed in the Electoral Act, 2022. Some of the offences committed on the day of elections are the subject matter of this work. In *Daggash v. Bulama*<sup>17</sup> the court emphasized the seriousness of electoral offences and upheld strict penalties to deter such conduct.

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<sup>6</sup> Section 14(2)(a) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that 'sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority.'

<sup>7</sup> [www.buzzle.com/articles/electoral-reform-in-Nigeria-html-28k](http://www.buzzle.com/articles/electoral-reform-in-Nigeria-html-28k) (accessed on 18 December 2008).

<sup>8</sup> (2002) 9 NWLR (Pt. 772) 222.

<sup>9</sup> Electoral Acts 1978, 1983, 2002, 2006 and 2010.

<sup>10</sup> AS Hornby, *Oxford Advanced Learner's Dictionary*, 7<sup>th</sup> Edition, Oxford University Press, 2005,439.

<sup>11</sup> *Ibid*, at page 363.

<sup>12</sup> B Nwakanma and N. Olehi, *Laws governing Elections and Election Petitions*, Edu – Edy Publications, Owerri, 2007, 187.

<sup>13</sup> *Ibid*, at p. 1081.

<sup>14</sup> BA Garner (ed), *Black's Law Dictionary*, 8<sup>th</sup> Edition, Thomson West, USA, 2004, p.1110.

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

<sup>16</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>17</sup> (2004) 14 NWLR (Pt. 892) 144.

### **3. Theories of Prosecution**

The prosecution of offences is guided by various legal theories that underpin the rationale and approach to criminal justice. These theories help to justify the State's role in prosecuting individuals and entities and provide a framework for understanding the objectives of criminal prosecution.

#### ***The Retributive Theory***

The retributive theory of prosecution is based on the principle of 'just deserts.' It posits that individuals who commit crimes deserve to be punished, and the punishment should be proportional to the severity of the offence. The theory emphasizes moral accountability and the idea that wrongdoers must face consequences for their actions. In *Adeyemi v The State*,<sup>18</sup> the court upheld the principle of retribution by affirming the conviction and sentence of the accused, who was found guilty of armed robbery. Section 401<sup>19</sup> prescribes punishment for the offence of robbery, reflecting the retributive approach to criminal justice.

#### ***Deterrent Theory***

The deterrent theory of prosecution focuses on preventing future crimes by imposing penalties that discourage both the offender and others from engaging in similar conduct. The theory operates on the premise that the fear of punishment will deter individuals from committing offences. In *State v. George*<sup>20</sup> the court imposed a severe sentence on the accused, convicted of drug trafficking, to serve as a deterrent to others who might consider engaging in similar criminal activities. Section 11 of the National Drug Law Enforcement Agency Act,<sup>21</sup> provides for severe penalties for drug-related offences, reflecting the deterrent theory of prosecution.

#### ***Rehabilitative Theory***

The rehabilitative theory of prosecution emphasizes reforming the offenders rather than merely punishing them. The goal is to rehabilitate and reintegrate the offender into society as a law-abiding citizen. This theory focuses on addressing the underlying causes of criminal behavior, such as addiction, lack of education, or poverty. In *R. v Ojo*,<sup>22</sup> the court considered the offender's background and circumstances and imposed a sentence aimed at rehabilitation rather than purely punitive measures. Section 401(3) of the Criminal Code<sup>23</sup> allows for probation as a form of rehabilitative punishment for certain offences.

#### ***Incapacitation Theory***

The incapacitation theory of prosecution seeks to protect society by removing dangerous individuals from the community, typically through imprisonment. The theory holds that by incapacitating the offender, further harm to society is prevented. In *Bello v The State*,<sup>24</sup> the court sentenced the accused to life imprisonment for murder, applying the incapacitation theory to protect society from the offender's potential future crimes. Section 319 of the Criminal Code<sup>25</sup> prescribes life imprisonment or death for the offence of murder, reflecting the incapacitation theory.

#### ***Restorative Theory***

The restorative theory of prosecution focuses on repairing the harm caused by the offence. It seeks to restore the victim, community, and offender to their previous state by encouraging reconciliation, restitution, and community service. This theory emphasizes healing rather than punishment. In the electoral case of *Ugwu v Ararume*,<sup>26</sup> the court ordered a rerun in areas affected by violence, reflecting a restorative approach to restoring the integrity of the election process. Section 336 of the Administration of Criminal Justice Act 2015 provides for compensation and restitution to victims, reflecting the restorative theory of prosecution.

Prosecution serves as the State's mechanism to enforce the rule of law by holding offenders accountable. The various theories of prosecution<sup>27</sup> provide different perspectives on the objectives and methods of criminal justice. These theories guide the courts and prosecutors in determining the appropriate legal responses to criminal behavior, ensuring that justice is served in a manner that aligns with societal values and legal principles.

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<sup>18</sup> (1991) 1 NWLR (Pt 170) 679.

<sup>19</sup> Criminal Code Act, Cap C38 LFN 2004.

<sup>20</sup> (2001) 12 NWLR (Pt 726) 155.

<sup>21</sup> Cap N30 LFN 2004.

<sup>22</sup> (1960) WNLR 1.

<sup>23</sup> Cap C38 LFN 2004.

<sup>24</sup> (1967) NMLR 1.

<sup>25</sup> Cap C38 LFN 2004.

<sup>26</sup> (2007) 12 NWLR (Pt. 1048) 367.

<sup>27</sup> Retributive, deterrent, rehabilitative, incapacitation and restorative.

#### **4. Prohibited Acts on the Day of the Poll**

Under the Electoral Act 2022, certain acts are explicitly prohibited on the day of the poll to ensure the integrity, fairness, and peaceful conduct of elections. These prohibited acts are designed to prevent violence, intimidation, fraud, and other forms of electoral malpractice. We shall briefly examine some of these prohibited acts. The ones to be considered in this work are:

##### **Violence and Intimidation**

Section 128 (a) – (c) of the Electoral Act 2022 prohibits the use of force or violence on the day of the elections. This includes any form of physical assault, intimidation, or threat against voters, election officials, or other individuals involved in the electoral process. Engaging in such acts is punishable by imprisonment for a term not exceeding three years or a fine. The said section<sup>28</sup> provides as follows:

Any 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 restrains;
- (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 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 commits an offence and is liable on conviction to a fine of N1,000,000 or imprisonment for a term of three years.

In *Ojukwu v Yar'adua*,<sup>29</sup> the court held that the presence of violence and intimidation at polling stations could invalidate the results of an election in the affected areas, emphasizing that free and fair elections cannot be conducted in an atmosphere of fear and coercion. See also *Ugwu v Ararume*.<sup>30</sup> The case of *INEC v Wike*<sup>31</sup> involved the gubernatorial election in Rivers State. The petitioner challenged the validity of the election results in several local government areas on the grounds that there was widespread snatching and destruction of election materials, particularly ballot boxes. The petitioner provided evidence showing that in some areas, thugs had invaded polling units, snatched ballot boxes, and destroyed them, thereby preventing the recording of legitimate votes. The court ruled in favor of the petitioner, finding that the election in the affected areas was not conducted in accordance with the law due to the snatching and destruction of election materials. The results in these areas were annulled, and a supplementary election was ordered.

##### **Bribery and Corruption**

Bribery and corruption during elections involve offering or receiving money, gifts, or other benefits to influence voters, electoral officers, or candidates. This practice undermines the fairness and transparency of elections, leading to the manipulation of election outcomes. Section 127<sup>32</sup> criminalizes the act of offering or receiving bribes, gifts, or any form of inducement to influence the outcome of an election. This includes direct or indirect payments to voters, electoral officers, or any other party to secure votes or manipulate the electoral process. The said section provides as follows:

Any 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.

In *Nwobodo v Onoh*,<sup>33</sup> the Supreme Court nullified the election results on the grounds of widespread bribery and corruption. The court held that the sanctity of elections must be preserved, and any form of corruption that undermines the electoral process cannot be tolerated. In *Nwankwo v Yar'Adua*,<sup>34</sup> the petitioner challenged the validity of the presidential election that returned Umaru Musa Yar'Adua as the winner. The petitioner alleged that there was widespread bribery and corruption during the election, particularly on the day of the poll. The petitioner provided evidence of financial inducements offered to voters and election officials, which he argued had significantly influenced the outcome

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<sup>28</sup> *Ibid*, section 128.

<sup>29</sup> (2009) 12 NWLR (Pt. 1154) 50.

<sup>30</sup> (2007) 12 NWLR (Pt 1048) 367.

<sup>31</sup> (2014) 3 NWLR (Pt 1394) 395.

<sup>32</sup> Electoral Act, 2022.

<sup>33</sup> (1984) 1 SCNLR 1.

<sup>34</sup> (2010) 12 NWLR (Pt 1209) 518.

of the election. The court found that while there were instances of bribery and corrupt practices, they were not sufficient to invalidate the entire election. However, the results in certain areas where bribery was particularly rampant were annulled. The court reaffirmed the principle that bribery on the day of the poll is a serious electoral offence that can compromise the legitimacy of an election.

### **Impersonation or Voting by Proxy or Voting by Unregistered Person and Multiple Voting**

Voting by proxy or impersonation occurs when an individual votes on behalf of another person without legal authorization, or when someone votes using a false identity, including the names of deceased persons or people not present at the polling unit. Multiple voting refers to an individual casting more than one vote in an election, either by registering at multiple polling units or by voting multiple times at the same unit. This act inflates the number of votes and distorts the election's outcome. Section 119(1) (c) (d) (e) and (f)<sup>35</sup> makes it an offence to vote or attempt to vote more than once or to impersonate another person for the purpose of voting. This section also prohibits any act that involves voting in the name of a deceased person or someone who is otherwise ineligible to vote. The said section provides as follows:

Any person who:

- (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.

Section 119(2) provides as follows:

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.

In *Awolowo v Shagari*,<sup>36</sup> the court emphasized the importance of the 'one person, one vote' principle and ruled that any act of impersonation or multiple voting constitutes a serious breach of the electoral process and can lead to the annulment of the election results. Also, in *Onyema v Ojukwu*<sup>37</sup> the election was annulled in a polling unit where it was found that many individuals had voted by proxy. In *Eze v Okolagu*,<sup>38</sup> the dispute arose from the conduct of the 2007 Senatorial election in the Enugu West Senatorial District. The appellant, Eze, challenged the return of the respondent, Okolagu, as the winner of the election on the grounds of multiple electoral malpractices, including voting by unregistered persons, multiple voting, and other irregularities on the day of the poll. The appellant argued that the election was marred by widespread irregularities, including the participation of individuals who were not registered voters and the casting of multiple votes by some individuals, which significantly altered the outcome of the election. The appellant presented evidence showing that in several polling units, the number of votes cast exceeded the number of registered voters, indicating that unregistered persons and multiple voting had occurred. The court found merit in the appellant's case, ruling that the participation of unregistered persons and instances of multiple voting had indeed compromised the integrity of the election. Consequently, the election results from the affected polling units were nullified, and the total number of valid votes was recalculated. This recalibration led to the annulment of the respondent's victory, and a re-run election was ordered in the affected areas. In *Yahaya v Bello*,<sup>39</sup> the appellant contested the gubernatorial election results in Kogi State, alleging widespread impersonation during the voting process. The appellant claimed that several individuals had voted using the identities of registered voters who were either deceased or absent on the day of the election. The appellant provided witness testimonies and documentary evidence to support these claims. The Supreme Court found that the allegations of impersonation were substantiated, particularly in certain local government areas. The court held that the integrity of the election had been compromised by these acts of impersonation, leading to the annulment of the results in the affected areas. A supplementary election was ordered to address the discrepancies.

The case of *Ojukwu v Agbodike*<sup>40</sup> concerned a House of Representatives election in Anambra State. The petitioner, Ojukwu, contested the victory of the respondent, Agbodike, on the grounds that there had been widespread voting by proxy on the day of the election. The petitioner alleged that in several polling units, individuals voted on behalf of others

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<sup>35</sup>Electoral Act, 2022.

<sup>36</sup>(1979) 6-9 SC 51.

<sup>37</sup>(2001) 18 NWLR (Pt. 744) 443.

<sup>38</sup>(2010) 5 NWLR (Pt. 1188) 667.

<sup>39</sup>(2016) LPELR-41853(SC).

<sup>40</sup>(2001) 18 NWLR (Pt 744) 443.

who were either deceased, absent, or otherwise unable to vote. The petitioner provided evidence, including voter registers and testimonies, showing that votes had been cast in the names of individuals who were not present on election day. This significantly inflated the number of votes in favor of the respondent. The court found that the petitioner had sufficiently proved that voting by proxy had occurred on a large scale, particularly in certain rural areas. The court held that this constituted a serious electoral offence, leading to the annulment of the election results in the affected polling units. A re-run of the election was ordered in those areas.

### **Destruction of Electoral Materials**

Section 126 (4)<sup>41</sup> criminalizes the destruction or unauthorized removal of electoral materials, including ballot papers, boxes, voters' registers, or any other official documents used in the election. The said subsection provides that any person who snatches or destroys any election material or any election device, commit an offence and is liable to imprisonment for a term of 24 months. There is no option of fine with regards to this offence. This is contrary to what was obtainable under the Electoral Act 2010. In *INEC v Action Congress*,<sup>42</sup> the court held that the destruction of electoral materials before, during, or after voting could invalidate the election in the affected areas. The integrity of the electoral process depends on the security and preservation of electoral materials.

### **Campaigning on Election Day**

Section 94(1)<sup>43</sup> prohibits campaigning or soliciting for votes on Election Day. All campaign activities must cease 24 hours before the commencement of voting. Violations of this provision result to in fine of N500, 000.00. Section 94(1)<sup>44</sup> provides that for the purpose of this Act, the period of campaigning in public by every political party shall commence 150 days before polling day and end 24 hours prior to that day. In *ACN v Lamido*,<sup>45</sup> the court emphasized that campaigning on Election Day violates the principle of electoral fairness. The court held that such activities could unduly influence voters and disrupt the orderly conduct of elections.

### **Obstruction of the Electoral Process**

The Electoral Act, 2022 makes it an offence to obstruct or hinder the proper conduct of elections. This includes blocking access to polling stations, disrupting the counting process, or interfering with the transmission of election results.<sup>46</sup> Obstruction of the electoral process can equally include snatching of ballot boxes and destruction of electoral materials. Ballot box snatching involves forcibly taking away ballot boxes from polling units, often accompanied by violence or intimidation. This offence aims to disrupt the voting process or manipulate the results by tampering with the ballots. Disorderly conduct can equally come into the umbrella of obstructing of the electoral process. Disorderly conduct includes any behavior that disrupts the voting process, such as violence, intimidation, or any act that creates an atmosphere of fear among voters. This offence can prevent voters from freely exercising their right to vote. These are most prevalence electoral offences in Nigerian elections. In *PDP v INEC*,<sup>47</sup> the court held that any act that obstructs the electoral process is a violation of the electoral law and can result in severe penalties, including the cancellation of the election in the affected areas. In *INEC v Wike*,<sup>48</sup> the Supreme Court nullified election results in several wards where there was credible evidence of ballot box snatching. See also *Areghesola v Oyinlola*.<sup>49</sup>

These prohibited acts and the corresponding legal provisions are crucial in ensuring that elections in Nigeria are conducted fairly, transparently, and without undue influence or coercion.

## **5. Electoral Offences committed on the day of the Elections: The Nigerian Experiences**

The history of general elections<sup>50</sup> in Nigeria since independence in 1960 has been characterized by so many offences committed on the day of the election. Attention will be focused on some general elections conducted in Nigeria during the fourth republic in analyzing the points being made.

**2003 General Elections:** These general elections held in April, 2003 were marred by widespread rigging, voter intimidation and violence.<sup>51</sup> During the election, the sub-station of the Federal Radio Corporation of Nigeria in Markudi (Benue State) was burnt down. At Oji River in Enugu State, the office of the Independent National Electoral Commission (INEC) was burnt down following violent protest on alleged falsification of electoral results. Eleven (11) people were

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<sup>41</sup> Electoral Act, 2022.

<sup>42</sup> (2009) 2 NWLR (Pt. 1126) 524.

<sup>43</sup> Electoral Act, 2022.

<sup>44</sup> *Ibid.*

<sup>45</sup> (2012) 8 NWLR (Pt. 1303) 560.

<sup>46</sup> See section 125 of the Electoral Act 2022.

<sup>47</sup> (2013) 6 NWLR (Pt. 1350) 555.

<sup>48</sup> (2014) 3 NWLR (Pt 1394) 395.

<sup>49</sup> (2009) 14 NWLR (Pt 1167) 424.

<sup>50</sup> General elections were conducted in Post Independent Nigeria in 1964, 1979, 1983, 1999, 2003, 2007 and 2011.

<sup>51</sup> <http://www.internationalpeaceandconflict.org/profiles/blogs/elections...> (accessed 18/6/2012).

killed and nine (9) wounded in Adikpo, the headquarters of Kwande local government area. The victims were mostly supporters of the ANPP.<sup>52</sup> In its report on the 2003 general elections, the Transition Monitoring Group (TMG) maintained that the desperation to capture power by member of the political class intensely heated up the political process. Political office holders utilized the power of incumbency to intimidate the opponents.<sup>53</sup>

**2007 General Elections:** The 2007 general elections in Nigeria were also flawed and generated immense tensions for the polity.<sup>54</sup> In Ekiti State, on the day of the election at least two (2) persons were killed in Ikere-Ekiti and Ise-Ekiti while eight (8) others received gun shots in the violence that ensued in the course of voting. There was massive snatching of ballot boxes in virtually all local government areas.<sup>55</sup> In Ondo State, about eight (8) people were arrested while about five (5) others were wounded during the Presidential and National Assembly elections held on 21/4/07. In Bauchi State, thugs virtually took over the street even before the announcement of the governorship result. Because of the deteriorating situation occasioned, curfew was imposed in the State. In Delta State, INEC office at Obiaruku was burnt down on the morning of the election. Election in the State was characterized by intimidation, arson, destruction of lives and properties in several parts of the State accompanied by hijack of electoral materials. As a result of the violence in some parts of the State, a dusk to dawn curfew was imposed on Ekpan and Effurun in Uvwie local government.<sup>56</sup>

**2011 General Elections:** On the number of people arrested in their attempts to snatch ballot boxes, the then Chairman of INEC, Prof. Jega said that about seven (7) people were arrested in Nasarawa, apart from the one in Bayelsa State where a sitting Senator is involved in an attempt to snatch ballot boxes.<sup>57</sup> At Oporoma, headquarters of Southern Ijaw local government area, it was gathered that ex-militant commander, Eris Paul (alias Ogun boss) and his boys were also said to have hijacked election materials from INEC officials for some unnamed PDP candidate.<sup>58</sup> At Odoni and Agbere communities in Sagbama local government area, the special adviser to the governor on security matters, Richard Kpodoh also allegedly hijacked election material to unknown destination while the Senatorial result sheet was also carted away at Adagbabiri community in the same local government area by a group of youths.<sup>59</sup> It was alleged that JTF impounded a car loaded with ammunition in the house of a House of representative aspirant in Kwale, Ndokwa West local government area of Delta State. The politician was said to be distributing guns to their boys when the military personnel invaded the house and shot sporadically to scare the residents who were said to have escaped leaving the car behind.<sup>60</sup>

### **Observation**

The writer has not come in contact with any reported cases prosecuted in criminal proceedings relating to the electoral offences committed on the day of the poll. With the litany of the offences discussed in the course of this research, there is no evidence to show that the perpetrators of the said electoral offences have been apprehended not to talk of being prosecuted. The problem with this situation has to do with INEC lacking the capacity to prosecute the electoral offences. INEC deeply concentrate its energy on conducting elections thereby neglecting to prosecute electoral offenders. This underscores the need for the establishment of Electoral Offence Commission that will be saddled with the responsibility of prosecution of electoral offences committed by electoral offenders on the day of the elections.

Conclusion

### **6. Conclusion**

Prosecution of offences committed on the day of the elections under the Electoral Act, 2022 is crucial in maintaining the sanctity of Nigeria's electoral process. The Act,<sup>61</sup> supported by judicial pronouncements, provides a framework that penalizes actions capable of compromising the credibility of elections. By enforcing these provisions through prosecution and/or otherwise of electoral offenders, Nigeria aims to ensure that elections are conducted fairly, transparently, and in accordance with the rule of law. There is the need for INEC to live up to its responsibility in educating the citizens on the illegality and consequences of offences relating to offences committed by electoral offenders on the day of the elections under the Electoral Act 2022. There is need for proper prosecution of electoral offences committed on the day of the elections. There is equally need for the establishment of Electoral Offence Commission that will be saddled with the responsibility of prosecution of electoral offences committed on the day of the elections. This will go a long way in strengthening Nigeria's democracy.

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<sup>52</sup> See Oga Ajena, 'Partnership for conflict management and peace-building: A field experience from Kwande local government of Benue State, Nigeria', being paper presented at a Colloquium organized by the Strategic Partnership for Peace (PASPA) and the Network of African Peace Builders (NAPS) at ECOWAS Secretariat, Abuja, 6-8 October, 2008.

<sup>53</sup> Report of the Transition Monitoring Group on 2003 General Elections cited in Michael Oddih, Electoral fraud and the democratic Process: Lessons from the 2003 Elections; in Attahiru Jega and Okechukwu Ibeanu (eds), 'Elections and the Future of Democracy in Nigeria,' A publication of the Nigerian Political Science Association, 2007.

<sup>54</sup> Inaugural Speech of President Umar Musa Yar'Adua on 29<sup>th</sup> May, 2007 at Eagle square Abuja.

<sup>55</sup> Ubanyionwu, C. J., 'Fight against political corruption in Nigeria: The journey so far' *Public and Private Law Journal*, Vol.4, 2011.

<sup>56</sup> *Ibid.*

<sup>57</sup> Oguwike Nwachukwu, 'PDP loses in Sambo, Obasanjo, Bankole units, *Sunday Independence*, April 10, 2011, p.2.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> Electoral Act 2022.