

# **The Prosecution of Electoral Offenders in Nigeria: *Challenges and Possibilities***



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## **SUMMARY**

- The essence of democratic elections is that they be free and fair;
- The 1999 Constitution (as amended) and Electoral Act, 2010 (as amended) envisage credible elections and legitimate results;
- Electoral malpractices and the prosecution of electoral offences is a mute issue in Nigeria;
- Electoral fraud and malpractices is rooted in the “do or die” politics of some Nigerian politicians and political parties;
- People commit electoral offences recklessly, with impunity, because they believe they could do it and get away with it;
- INEC does not have the capacity to prosecute electoral offenders;
- Unless electoral impunity is tackled, it may fester and lead to the abortion of the democratic process by anti democratic forces;
- The establishment of an Electoral Offences Commission and Tribunal will reduce electoral malpractices and offences.

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**ISBN: 978 978 8449 29 4**

Published in 2013 by

Friedrich-Ebert-Stiftung, Nigeria

Printed by: **Muhamsaid Commercial Press**

## **Foreword**

The integrity of any election lies mostly in the processes and procedures that add up to the final results. These processes and procedures are at all times sacrosanct and should be well managed to ensure that elections are not questionable. Frauds that happen before and during elections can result in litigations or at worst trigger post-election violence.

Electoral fraud is not peculiar to Nigeria, however the country has had its fair share of frauds in elections. According to the author, Barrister Festus Okoye Nigeria's Independent National Electoral Commission lacks the capacity and resources to hold electoral offenders accountable. He therefore recommends in the paper the revisiting of a proposal by the Electoral Reform Committee aimed at setting up an Election Prosecution Commission to address this issue.

This is the fifth discussion paper published by the FES Discussion Paper Series. It aims at contributing a more critical and comprehensive understanding of the importance of this topic. We hope that readers will find it useful as Nigeria treads the path of reform towards the elections in 2015.

The Friedrich-Ebert-Stiftung (FES) is a private, non-profit organisation committed to the values of social democracy. By commissioning and coordinating studies and publications, the discussion paper series included, FES Nigeria facilitates public dialogue to enhance the understanding of policy issues and politics in Nigeria.

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## **Introduction**

There has been considerable debate as to whether the existing legal framework for the prosecution of electoral offenders as encapsulated in the Electoral Act, 2010(as amended) is appropriate and adequate for the arrest, investigation and prosecution of electoral offenders. There has also been considerable debate as to the capacity and willingness of the Independent National Electoral Commission to prosecute electoral offenders in a professional and ethical manner. Debates are also ongoing as to the willingness of some elements within the political parties to act within the compass of the Constitution of the Federal Republic of Nigeria, 1999(as amended) and the Electoral Act, 2010(as amended) for winning elections and abandon fraudulent means and ways of doing the same.

These debates are hinged on the fact that the refusal, inability or incapacity of the Independent National Electoral Commission to prosecute electoral offenders encourages electoral impunity, voter apathy and the gradual disengagement of the Nigerian people from the electoral process as some of them believe that electoral fraud and malpractices renders their votes meaningless and even if they vote, their votes may not count. The debates are also hinged on the fact that if nobody is prosecuted successfully, it may then be more profitable to engage in electoral fraud and malpractices.

By section 150(1) & (2) of the Electoral Act, 2010(as amended) an offence committed under the Act shall be triable in a Magistrate Court or High Court of the State in which the offence is committed, or the Federal Capital Territory, Abuja. A prosecution under the Act shall be undertaken by Legal Officers of the Commission or any legal practitioner appointed by it.

However, the arrest and prosecution of electoral offenders have been fraught with a lot of challenges. The Police with the responsibility for the arrest, investigation and giving evidence in Court on electoral matters are sometimes posted out of their State Commands and moved to contiguous

states on Election Day. This is done to ensure their neutrality on Election Day. Unfortunately, some of the officers on duty on Election Day are posted back to their State Commands after elections making documentation of electoral offences difficult and also making it difficult for credible evidence to be gathered and serious prosecution to be carried out.

Most electoral offenders are also not prosecuted because the Independent National Electoral Commission has less than 100 Legal Officers serving the Headquarters and the 36 State Offices including the Federal Capital Territory, Abuja and do not have the capacity and resources to prosecute offences committed in 119, 973 polling units, 8, 809 wards, 360 Federal Constituencies, 109 Senatorial Districts and 774 Local Governments in Nigeria. It is more difficult to see how legal officers of the Commission will prosecute about 870,000 cases of multiple registrations detected by the Independent National Electoral Commission during the 2011 voters registration exercise. Because offenders are hardly prosecuted and some get away with impunity on account of their political affiliation, impunity is recycled, people disengage from the electoral process on account of electoral fraud and violence, and the credibility of the electoral process is called into question.

The effect of this state of affairs is that there is shoddy investigation and prosecution of electoral offenders. A research conducted by Human Rights Monitor on the Arrest and Prosecution of Electoral Offenders from January to March 2012 in 18 states of the Federation tracked a total of *294 cases, and out of this number 24 cases had been concluded and sentences passed, 78 of the cases were struck out for lack of diligent prosecution, 181 of the cases are still ongoing. 6 of the suspects were discharged and acquitted and 5 suspects have not been charged to court*

Unfortunately, attempts to amend the Electoral Act and create an Electoral Offences Commission through the introduction of an Electoral Offences Commission Bill have not materialized. This is curious because the

Independent National Electoral Commission has stated clearly that it does not have the capacity and resources to prosecute electoral offences.

It is therefore important to find out whether persons with vested interest in the perpetration and perpetuation of electoral fraud and malpractices are blocking the introduction and passage of a separate Electoral Offences Commission with powers to arrest, investigate, and prosecute electoral offenders. It is also important to project whether the passage of the Law will curb electoral fraud and raise the integrity of the electoral process.

### **The Electoral Process in Nigeria**

Like most human endeavors, the framers of the Constitution of the Federal Republic of Nigeria, 1999(as amended) and the Electoral Act, 2010(as amended) proceeded from the assumption that election must be free and fair and it is its freeness and fairness that guarantees its integrity. They also proceeded from the assumption that elections are subject to human imperfections and that since every stage of the electoral process is vulnerable, electoral fraud and manipulation may be difficult to prevent. It is the acknowledgement of human imperfections in the conduct and management of elections that accounts for the electorate provisions in Part V111 of the Electoral Act, 2010(as amended) relating to electoral offences and the penalties and sanctions for infraction of the provisions of the law.

### **Assessing the Credibility of Elections**

In the Preface to the Final Report of the 2003 General Elections in Nigeria titled "Do the Votes Count" the Transition Monitoring Group (TMG) stated that:

*Elections are a complex set of activities with different variables that act and feed on one another. It can be defined as a "formal act of collective decision that occurs in a stream of connected antecedents and subsequent behaviour". It involves the participation of the people in the act of electing their leaders*

*and their own participation in governance. Elections are not necessarily about Election Day activities although it forms an important component. It encompasses activities before, during and after elections. It includes the legal and constitutional framework of elections, the registration of political parties, party campaigns, the activities of the electronic and print media in terms of access; it includes campaign financing, the activities of the security agencies and the government in power. It includes the authenticity and genuineness of the voters register; it includes the independence or lack of it of electoral agencies and organs. It includes the liberalism or otherwise of the political process in the country and the independence of adjudicating bodies of elections."*

Elections may be conducted, but the failure of the voter registration process or the denial of a level playing ground for the political parties to operate or the lack of independence of the electoral management body or uncertainty in the constitutional and legal framework for the conduct of elections may produce results that may not be acceptable to the generality of the people. On Election Day therefore, the people may go to the polls, cast their votes and their votes will be properly recorded and results announced. Yet, it is possible that Election Day activities may just be a parody and farcical expression of the will of the people as the foundational aspects of the electoral process had already been compromised and the chain of activities leading to the final act of voting on Election Day have been marred by a series of acts and activities that undermined the freeness and fairness of the process.

In the case of Nigeria, section 1(2) of the 1999 Constitution of the Federal Republic of Nigeria makes it clear that the Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of the Constitution.<sup>iii</sup>For the Senate and House of

Representatives, every Senatorial District and Federal Constituency established in accordance with the provisions of the Constitution shall return one member who shall be directly elected to the Senate or the House of Representatives in such a manner as may be prescribed by an Act of the National Assembly.<sup>iv</sup>

Every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election. These same provisions are repeated in sections 115-118 of the Constitution of the Federal Republic of Nigeria 1999(as amended) relating to election to State Houses of Assembly and sections 130-138 and 176-183 relating to the election of the President and the Governors.

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,2010(as amended).

The due observance and adherence to Constitutional and Electoral stipulations and timelines is fundamental to the credibility of elections. This is because, the processes and procedures enumerated in the Constitution and the Electoral Act, 2010(as amended) are processes, steps and stages that must be complied with before the process of voting, collation and announcement of results will take place. If the Constitutional and Electoral Framework of an electoral process is faulty, skewed or manipulated, it may be difficult for such a process to produce results that would be acceptable to the Nigerian people.

### **The Nigerian Dilemma**

In some advanced democracies, elections are such a routine matter, that the credibility and validity of each electoral process and cycle is assessed on the quality and performance of new technologies and innovations and

how well such creative enterprises bolster the performance of the electoral management body and enhance voters' confidence.

In other countries, including Nigeria especially those with a history of military dictatorship, one party and "big man" rule, the process of holding elections as a peaceful and orderly means of power transfer has been problematic. In some of these countries, the military distorted the political landscape, underdeveloped and in some cases undermined democratic institutions. Process of transition and transfer of power after each successive military regime becomes a process of rebuilding, recreating and bringing into being institutions that have been dissolved or kept in abeyance. The Electoral Management Body in Nigeria is a case in point. Its history is a history of dissolutions, constitution and reconstitution.

*The history of election management bodies in Nigeria dates back to the colonial era, with the establishment of the then Electoral Commission of Nigeria (ECN). The ECN conducted the 1959 pre-independence general elections that ushered in Nigeria's first republic. Later, the Tafawa Balewa administration set up the Federal Electoral Commission (FEC) headed by the late Eyo Esua, which conducted the 1964 and 1965 regional elections. With the military coup d'état of 1966 and the assassination of Prime Minister Balewa and others, the FEC was dissolved by the Major General Aguiyi Ironsi-led Military Administration. General Ironsi's administration lasted only six months before it was overthrown in yet another coup d'état in July 1966, after which General Yakubu Gowon took over. From 1966 to 1979, Nigeria was under military rule. In 1978, the Military administration of General Olusegun Obasanjo established a new Federal Electoral Commission (FEC) with Chief Michael Ani as Chairman. The FEC conducted the 1979 transitional elections, which brought in Nigeria's second republic, with Alhaji Shehu Shagari as the first Executive President of Nigeria. FEC was renamed the Federal Electoral Commission of Nigeria (FEDECO) and headed by Justice Victor Ovie-Whiskey. FEDECO conducted the 1983 elections that re-elected the civilian administration of Shagari. The Shagari*

*Administration was overthrown by the military on the 31<sup>st</sup> of December 1983, led by General Muhammadu Buhari who was himself toppled 20 months later by General Ibrahim Babangida. The Babangida administration in 1987 set up the National Electoral Commission (NEC) with Professor Eme O. Awa as Chairman. The NEC commenced the implementation of a political transition program. In 1989, Prof. Humphrey N. Nwosu became the new NEC Chairman.*

*Against the backdrop of the electoral crisis arising from the botched presidential election conducted on June 12, 1993, Nigeria's third republic was cut short. The June 12 crisis led to the exit of the Babangida government. An interim government, led by Chief Ernest Shonekan was set up, while Prof. Okon E. Uya was appointed Chairman of NEC. On November 17, 1993, General Sani Abacha took over as the military Head of State, disbanded the NEC and replaced it in 1994 with the National Electoral Commission of Nigeria (NECON). The NECON had Chief Summers Dagogo-Jack as Chairman. The NECON managed to conduct elections up to the National Assembly. But General Abacha died in 1998 and with him went down the election management body, as well as the political transition programme. Abacha's successor, General Abdulsalam Abubakar, through Decree No. 17 of 1998, established the Independent National Electoral Commission (INEC). Hon. Justice Ephraim Akpata was the first Chairman of INEC. The INEC conducted the 1998/99 general elections and ushered in Nigeria's fourth republic.<sup>v</sup>*

Since then, Nigeria had Maurice Iwu as Chairman of the Independent National Electoral Commission who was appointed as the Chairperson of the Independent National Electoral Commission in June 2005 to succeed Dr. Abel Guobadia. He vacated office on the 28<sup>th</sup> day of April 2010 as his tenure expired on the 13<sup>th</sup> day of June 2010.

The current Commission headed by Professor Attahiru M. Jega as Chairman was inaugurated on June, 30, 2010 by President Goodluck Jonathan. Professor Jega's nomination resulted in a boost of confidence and

increased expectation for the 2011 general elections. He repeatedly expressed his commitment to conduct credible elections and led INEC on this basis.

Professor Jega's appointment was made against the background of the failure of the Independent National Electoral Commission to conduct acceptable elections in 2007. The 2007 State and Federal elections fell far short of basic international and regional standards for democratic elections.<sup>vi</sup> They were marred by very poor organization, lack of essential transparency, widespread procedural irregularities, substantial evidence of fraud, widespread voter disenfranchisement at different stages of the process, lack of equal conditions for political parties and candidates and numerous incidents of violence. As a result, the process cannot be considered to have been credible. Given the lack of transparency and evidence of fraud, particularly in the result collation process, there can be no confidence in the results of these elections. This is all the more regrettable since they were held in an improved atmosphere in which freedoms of expression and assembly were broadly respected during campaigning, the judiciary played a generally positive and independent role and the people showed remarkable commitment to democracy, eagerly engaging in the electoral process and waiting patiently to vote in often very difficult circumstances.<sup>vii</sup>

It is difficult for democratic institutions to develop, take root and build a culture of professionalism and expertise necessary for the conduct of credible elections in a climate punctuated by military interventions and transitional governments. It is difficult to conduct credible elections in situations where the incumbent President who is a member of a political party insists on retaining the power to appoint the Chairperson, National Commissioners and Resident Electoral Commissioners of an electoral management body that is supposed to be independent and seen to be such. In such situations, the law and the Constitution are not allowed to work. The Electoral Management Body is denied autonomy and independence; the power of incumbency is used and misused. The security agencies are deployed and used against opposition forces and all sorts of

subterfuge are employed to keep the incumbent regime in power. In such situations and instances, the credibility of the electoral process is called into question.

### **Where did the rain begin to beat us?**

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 practised 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.

*This sad history of electoral fraud or rigging has serious implications for our democratic future 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. 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. Not surprisingly, major political conflicts have emerged around rigged elections.*

*The 1983 elections occupy a special place in the history of electoral fraud in Nigeria. Competitive rigging reached its apogee:*

*All sorts of strategies and stratagems including manipulation of the ballot or "rigging" were employed in order to win elections. Each of the opposition parties used its local power of incumbency to retain power or to improve its position vis-a-vis other contenders. However, federal might was used to dislodge state governors in Anambra, Oyo, Kaduna, Gongola and Borno states, reversing the power structure existing before the election when opposition parties had twelve against NPN's seven governors. (Kurfi, 2005-97)*

*The most significant issue in the 1993 election was that emphasis shifted from traditional forms of electoral based manipulation of the ballot to total disregard of the figures collated on the basis of ballot and completed forms. Figures totally unrelated to any results genuine or forged, are simply announced and illegally protected with state power. The emergence of electoral victory by false declaration did not mean that other forms of competitive rigging disappeared. Indeed, the diversity of forms of competitive rigging employed during the 1983 elections has been carefully enumerated by the Babalakin commission of inquiry (FRN, 1986-290).*

- 1) Compilation of fictitious names on voters' registers*
- 2) Illegal compilation of separate voters' list*
- 3) Abuse of voters' registration revision exercise*
- 4) Illegal possession of ballot boxes*
- 5) Illegal printing of voters' cards.*
- 6) Stuffing of ballot boxes with ballot papers.*
- 7) Falsification of election results.*
- 8) Illegal thumb-printing of ballot papers.*
- 9) Voting by under-age children.*
- 10) Printing of Form EC8 and EC8A used for collation and declaration of election results.*
- 11) Deliberate refusal to supply election materials to certain areas.*
- 12) Announcing results in places where no elections were held.*
- 13) Unauthorized announcement of election result.*
- 14) Harassment of candidates' agents and voters.*

15) *Change of list of electoral officials.*

16) *Box-switching and inflation of figures.*

*In 2003, Nigeria conducted the second general election since her return to civil politics in May 1999. The 2003 elections were almost as contentious as the 1983 elections. The report from Nigerian observers affirmed numerous reported cases of alleged fraud in many states across the country (Transition Monitoring Group, 2003:120). The European Union Observer Report also confirmed widespread election-related malpractice in a number of states in the Middle Belt, the South east and the South-South (European Commission, 2003:42). The plethora of electoral malpractices such as ballot box stuffing, snatching of electoral materials and smashing of ballot boxes, inflation of votes and other dimensions of electoral fraud and the high incidences of electoral violence once more rekindled the old fears that the basic institutional weakness associated with her electoral system could bring the democratic experiment to grief.<sup>viii</sup>*

## **Electoral Laws in Nigeria**

The Electoral process in Nigeria is a product of the Constitution of the Federal Republic of Nigeria 1999(as amended), the Electoral Act, 2010(as amended) as well as rules, regulations and guidelines made by the Independent National Electoral Commission pursuant to the powers conferred on it by the Constitution of the Federal Republic of Nigeria 1999 as amended and the Electoral Act, 2010 (as amended).

The Constitution of the Federal Republic of Nigeria, 1999 being the fundamental law of the land sets the parameters and regulates and limits the powers of various tiers of government and its organs. The said Constitution creates the Independent National Electoral Commission and sets out its powers, its mandate and the parameters for carrying out its functions and conducting elections in Nigeria. The Electoral Act, 2010 (as amended) also sets out the procedures and processes for giving effect to the functions ascribed to the Commission by the Constitution.

Both the Constitution and the law envisage that elections in Nigeria must be credible and that legitimate votes must produce legitimate results. They presume that the processes and procedures through which various categories of office holders come to power are constitutional and in accordance with the rule of law and due process. It is therefore not permitted for the electoral management body, the government in power, political parties and their candidates to breach the provisions of the Constitution and the law in pre and post-election procedures and come to power through means and procedures not recognised by the Constitution and the law.

For elections to be credible, the various stakeholders must play by the rules of the game and must have some level of fidelity to the law. In other words, the laws regulating the conduct of elections and the conduct of all the political actors must be clear and not subject to arbitrary ambiguity and self-contrived lacuna. The Electoral Commission and its officials must also have both financial and administrative independence to function effectively. The Constitution and the law therefore regulate electoral behaviour. There is therefore a rebuttable presumption that in the conduct of elections, the electoral management body, the candidates, political parties and all the major stakeholders complied with the law and the Constitution.

### **Electoral Offences**

*In some countries, the deceased seem to cast ballots from the grave. Children too are on the electoral rolls. Ballot boxes disappear into thin air. Candidates are arrested, poisoned, even murdered. Although elections are now held in most countries around the globe, in many cases they are anything but free and fair.*<sup>ix</sup>

Part V111 of the Electoral Act, 2010(as amended) creates different categories of electoral offences and prescribes punishment for them. There are pre-election offences and Election Day offences.

The Registration of Voters, submission of list of candidates for elections, campaigns and the conduct of the campaigns are listed as pre-election matters, and offences for their contravention created and sanctions imposed.

Any person who contravenes section 12 relating to voters registration in one registration centre or registering more than once in the same registration centre or Section 16(2) relating to possession of more than one valid voters card, or Section 24(1) relating to registration of voters shall be liable on conviction to a fine not exceeding N100, 000 or imprisonment for a term not exceeding one year or both.

Any person who contravenes section 18(2) relating to issuance of a duplicate voters card to a voter on polling day or less than 30 days before polling day shall be liable on conviction to a fine not exceeding N200, 000 or imprisonment for a term not exceeding two year or both.

Offences of buying or selling voters cards in contravention of section 23 attracts a fine not exceeding N500,000 or imprisonment not exceeding two years or both.

Any person who uses duress or threats of any kind to cause or induce any person or persons generally to refrain from registering as a voter or voters or in any way hindering another person from registering as a voter commits an offence and is liable on conviction, to a fine not exceeding N500,000 or imprisonment not exceeding 5 years.

Section 31 of the Act relates to the submission of list of candidates and their affidavit by political parties, while a political party which presents to the Commission the name of a candidate who does not meet the qualifications stipulated in section 31 commits an offence and is liable on conviction to a maximum fine of N500,000 while a person who nominates more than one person for election to the same office in contravention of section 32 commits an offence and is liable on conviction to a maximum fine of N100,000 or imprisonment for 3 months or both.

Section 77(1) of the Act guarantees access to election documents by parties in an election petition and by section 77(2) any Resident Electoral Commissioner who wilfully fails to comply within 7 days of an application for access to such documents commits an offence and is liable on conviction to a maximum fine of N2, 000,000 or imprisonment for a term not exceeding 12 months, or both.

By section 81 of the Electoral Act, a political party or association which contravenes the provisions of section 227 of the Constitution of the Federal Republic of Nigeria which prohibits retention, organisation, training or equipping quasi-military organisations commits an offence and is liable on conviction to a fine of N500,000.00 and N700,000.00 for any subsequent offence; and N50,000.00 for every day that the offence continues while a person who aids and abets a political party to contravene section 227 commits an offence and is liable on conviction to a fine of N500,000 or imprisonment for a term of 3 years or both.

Section 86 of the Act criminalizes the refusal of political parties to provide information or clarification to the Independent National Electoral Commission in connection with their activities and conviction attracts a fine of not less than N500, 000.00 while offences relating to finances of political parties in section 88 and 89 of the Act attract the same penalty.

Section 91 of the Act criminalizes contravention of limitation on election expenses. A Presidential Candidate who knowingly contravenes it is liable to a maximum fine of N1, 000,000.00 or imprisonment for a period of 12months or both. In the case of Governorship election contravention and conviction attracts a fine of N800, 000.00 or imprisonment for 9 months or both. In the case of Senatorial seat elections in the National Assembly contravention and conviction attracts a fine of N600, 000.00 or imprisonment for 6 months or both. In the case of House of Representatives seat election in the National Assembly contravention of the law and conviction attracts a fine of N500, 000.00 or imprisonment for 5 months or both. In the case of State House of Assembly election,

contravention of the law and conviction attracts a fine of N300, 000.00 or 3months imprisonment or both. In the case of Chairmanship election to an Area Council, contravention of the law and conviction attracts a fine of N300, 000.00 or 3months imprisonment or both. In the case of Councillorship election to an Area Council, contravention and conviction attracts a fine of N100, 000.00 or 1month imprisonment or both.

Section 91(9) of the Act also provides that no individual or other entity shall donate more than one million Naira (N1,000,000.00) to any candidate and any individual who knowingly contravenes the section shall on conviction be liable to a maximum fine of N500, 000.00 or 9 months imprisonment or both.

Moreover, by section 91(12) of the Act, any accountant who falsifies or conspires or aids a candidate to forge or falsify a document relating to his expenditure at an election or receipt or donation for the election or in any way aids and abets the breach of the provisions of section 91 of the Act commits an offence and on conviction is liable to 10years imprisonment.

Part IV of the Electoral Act, 2010(as amended) also creates separate offences and prescribes penalties for them. Offences relating to voters registration, etc (Section 117) attracts a maximum fine of N1, 000,000.00 or 12months imprisonment or both; offences in respect of nomination, etc in section 118(1) carries a maximum term of imprisonment for 2years while offences in respect of nomination under section 118(3) is liable on conviction to a maximum fine of N50, 000,000 or for a term of imprisonment of not less than 10years or both. Disorderly behaviour at political meetings (Section 119) carries a maximum fine of N500,000 or imprisonment for 12months or both; improper use of voters cards (Section 120) attracts a maximum fine of N1,000,000 or imprisonment for 12months or both; improper use of vehicles (Section 121)attracts a maximum fine of N500,000 or to imprisonment for six months or both; Impersonation and voting when not qualified (Section 122)attracts a maximum fine of N500,000 or to imprisonment for 12 months or both; dereliction of

duty(Section 123) by any officer appointed under the Act or by any Polling Officer attracts a maximum fine of N500,000 or imprisonment for six months or both; while anybody who announces or publishes an election result knowing same to be false shall be liable to 36months imprisonment .

A Returning Officer or Collation Officer who delivers or causes to be delivered a false Certificate of Return shall be liable to 3 years imprisonment without an option of fine and the same punishment applies to any person who delivers or causes to be delivered a false Certificate of Return knowing it to be false; bribery and conspiracy(Section 124)attracts a maximum fine of N500,000 or imprisonment for 12 months or both; requirement of secrecy in voting(Section 125) and contravention attracts a maximum fine of N100,000 or imprisonment for 6months or both;wrongful voting and false statements(Section 126) attracts a maximum fine of N100,000 or imprisonment for six months or both; voting by unregistered person(Section 127)attracts a maximum fine of N100,000 or imprisonment for six months or both; disorderly conduct at elections(Section 128)attracts a maximum fine of N500,000 or imprisonment for 12 months or both; offences on Election Day(Section 129)(1)attracts a maximum fine of N100,000 or imprisonment for six months or both; while by Section 129(4) anybody who snatches or destroys any election material shall be liable on conviction to 24months imprisonment; undue influence(Section 130)attracts a maximum fine of N100,000 or imprisonment for 12 months or both; threatening(Section 131)attracts a maximum fine of N1,000,000.00 or imprisonment for 3years .

Despite the creation of these offences by the law and the sanctions provided for them, few offenders are apprehended and prosecuted by the various security agencies in Nigeria. The consequence is that the offences remain in the statute books as mere offences while candidates engage in competitive rigging. Consequently, the candidate who out-rigs the other is declared the winner while the opponent is forced to proceed to the election

tribunal as the underdog to struggle with the person with the power of incumbency.

Those who cannot stand the corruption and violence that attend the electoral process disengage from the process for fear of being maimed and killed by political thugs. This results in voter apathy and loss of legitimacy by the electoral process. The regime brought to power by fraudulent means faces the crisis of legitimacy, as it finds it difficult to command the confidence of the people and that of the international community as a result of its illegitimacy. The moment this happens, there is also the possibility that the international community may impose sanctions on the regime. There may be street protests and civil disobedience that may bring political and economic activities to a standstill. This may also lead to the ascendance of antidemocratic forces in the country.

### **Electoral Offences and sanctions Regime.**

Although the law prescribes the processes and procedures for the legitimacy of elections, the same law also recognises that things may not always go as prescribed. In which case, candidates and political parties that participated in an election may question the legitimacy and legality of such elections before the election tribunals set up for that purpose. The law also recognises the fact that some individuals and groups may attempt to subvert the electoral process and attempt to come to power through illegal means. It is on the basis of this that the law has created electoral offences and prescribed punishment for those that breach the provisions of the law.

People expect that elections will be credible and conducted in accordance with the law and the constitution. However, when the electoral framework are skewed and manipulated to achieve pre-determined outcomes, the credibility of the process and its outcome is put in doubt. When elections are rigged or manipulated, those who lose such elections are most likely to

reject the results. However, they are more likely to accept the results of an election conducted in accordance with the law and the constitution.

The issue of effective sanctions for breaches of election laws, rules and procedures poses an important challenge to the credibility of elections in Nigeria. The debate in Nigeria with respect to the administration of electoral justice relates not only to the inadequacy of existing provisions on electoral offences, but also the seeming inability to prosecute and secure convictions of electoral offenders.<sup>x</sup>

The fundamental question is whether these sanctions are stringent enough to dissuade people from taking the laws into their hands and using subterfuge to corrupt the electoral process. Coterminous to this is whether the fundamental challenge lies with effective sanctions or the inability of the agency saddled with the prosecution of offenders to prosecute them and for the Courts to impose sanctions prescribed in the law.

It is clear that some of the sanctions prescribed for most of the electoral offences in the electoral act are mild while some of them are adequate. This is considering the fact that stiff sentences do not necessarily deter people from committing offences and the goal of sentencing is to act as a deterrent and at the same time correctional. The basic challenge is that most politicians and political parties want to win elections by all means and are ready to go to any length to do so. They also recognise the weaknesses of investigating and prosecuting institutions and are ready to take the risk and commit electoral offences believing that they can exploit the said weaknesses and get away with their crimes.

### **The Prosecution of Electoral Offences**

There has been consternation and sometimes anger at the inability of the Nigerian State to prosecute electoral offenders. This, some Nigerians allege, may be responsible for the progressive degeneration of the electoral

process in Nigeria. It is therefore contended that the outcome of the 1999 General Elections is better than the 2003 elections and the 2003 elections better than the 2007 elections. The exception to this rule has been the 2011 elections that were adjudged better than the 1999, 2003 and 2007 elections. Even at that, the issue of electoral offences, the impunity that accompanies it and the inability to prosecute electoral offenders effectively still persists.

Section 158(1) of the Electoral Act, 2002 provides that an offence committed under the Act shall be triable in a magistrate's court or any High Court of a State in which the offence is committed, or the Federal Capital territory, Abuja. The same section is repeated in the Electoral Act, 2006 and in section 150(1) of the Electoral Act, 2010(as amended)

Section 158(2) of the Electoral Act, 2002 provides that a prosecution under the Act shall be undertaken by legal officers of the Commission or any legal practitioner appointed by it. The same section is repeated in section 158(2) of the Electoral Act, 2006 as well as in section 150(2) of the Electoral Act, 2010(as amended)

The question is whether Nigeria has derived the benefit of professional prosecution of electoral offenders with domiciling the power of prosecution with officers of the Independent National Electoral Commission. By the account of the Commission, minimal success has been recorded. The Chairman of the Independent National Electoral Commission, Professor Attahiru M. Jega stated the position of the Commission on the issue.

*The issue of electoral offences and the impunity with which they are committed is also something that we have to deal with. We have done our best since we came in as a new Commission to prosecute electoral offenders, both during the registration exercise and the elections. And we recorded quite a number of successful prosecutions, even though these are relatively few compared with the large number of offenders. One of the major challenges we have, obviously, has to do with institutional*

*65 suspects were charged with Snatching of Ballot Boxes*

*24 suspects were charged with Loitering after Voting*

*7 suspects were charged with Buying and Selling of Voters Cards*

*8 suspects were charged with Dereliction of Duty*

*13 suspects were charged with Multiple Registrations*

*9 suspects were charged with Impersonation*

*23 suspects were charged with Intimidation/Assault of INEC officials*

*7 suspects were charged with Falsification of results*

*3 suspects were charged with unauthorized destruction of ballot papers*

*1 suspect was charged with Hijacking of INEC Results*

*4 suspects were charged with being in Possession of Ballot Papers*

*7 suspects were charged for disorderly conduct*

*7 suspects were charged for bribery and corruption*

*Some of the accused persons in relation to the cases tracked were prosecuted by different agencies.*

- 1. The Police prosecuted a total of 223 cases*
- 2. The Independent National Electoral Commission(INEC) prosecuted 45*
- 3. The various Ministries of Justice prosecuted 21*
- 4. Five suspects among the cases tracked have not been charged to court.*

*In some of the states, such as Edo, Oyo and Enugu States, lawyers from the Independent National Electoral Commission took over the prosecution of some of the cases from the Police at the stage of trial. In Sokoto and Niger State, few of the cases were prosecuted by the Independent National Electoral Commission.*

*In Rivers State, the bulk of the cases tracked were prosecuted by the Independent National Electoral Commission.*

*Some of the accused persons were also tried in different courts across the federation.*

- 1. 17 of the cases tracked were being tried or tried at the High Court*
- 2. 271 of the cases tracked were tried or are being tried at the Magistrate Courts*
- 3. 1 case among those tracked is being tried by the Upper Area Court*
- 4. 5 of the cases are still under Police investigation and have not been charged to Court.*

*A large number of the cases tracked are still ongoing while a substantial number were struck out for lack of diligent prosecution.*

- 1. 24 cases have been concluded and sentences passed*
- 2. 78 of the cases were struck out for lack of diligent prosecution*
- 3. 181 of the cases are still ongoing*
- 4. 6 of the suspects were discharged and acquitted*
- 5. 5 suspects have not been charged to court<sup>xii</sup>*

On its own part, the Independent National Electoral Commission gave its own figure of arrests and prosecution which is very minimal.

**INDEPENDENT NATIONAL ELECTORAL COMMISSION**  
**NUMBER OF ELECTORAL OFFENCES AND PROGRESS MADE SO FAR**  
**LIST OF ELECTORAL OFFENCES DETERMINED AND PENDING<sup>xiii</sup>**

| S/N | STATE       | NO. OF CASES FILED | NO. OF ELECTORAL OFFENCES DETERMINED/<br>STRUCK OUT | NO OF CONVICTIONS | NO. OF ELECTORAL OFFENCES PENDING | REMARKS |
|-----|-------------|--------------------|---|-------------------|-----------------------------------|---------|
| 1   | ABIA        | 3                  | 3   | 0                 | 0                                 |         |
| 2   | ADAMAWA     | 5                  | 4   | 4                 | 1                                 |         |
| 3   | AKWA IBOM   | 0                  | 0   | 0                 | 0                                 |         |
| 4   | ANAMBRA     | 24                 | 17  | 0                 | 7                                 |         |
| 5   | BAUCHI      | 35                 | 6   | -                 | 29                                |         |
| 6   | BAYELSA     | 2                  | -   |                   | 2                                 |         |
| 7   | BENUE       | 16                 | 0   | 0                 | 16                                |         |
| 8   | BORNO       | 21                 | -   | -                 | 21                                |         |
| 9   | CROSS RIVER | 14                 | 7   | 0                 | 7                                 |         |
| 10  | DELTA       | 21                 | -   | -                 | 21                                |         |
| 11  | EBONYI      | 0                  | 0   | 0                 | 0                                 |         |
| 12  | EDO         | 12                 | -   | -                 | 12                                |         |
| 13  | ENUGU       | 17                 | 5   | 0                 | 12                                |         |
| 14  | EKITI       | 16                 | 8   | 0                 | 8                                 |         |
| 15  | GOMBE       | 3                  | -   | -                 | 3                                 |         |
| 16  | IMO         | 9                  | 8   | 0                 | 1                                 |         |
| 17  | JIGAWA      | 31                 | 6   | 7                 | 25                                |         |
| 18  | KADUNA      | 15                 | 15  | 0                 | 0                                 |         |

|    |              |            |            |           |            |  |
|----|--------------|------------|------------|-----------|------------|--|
| 19 | KANO         | 25         | 22         | 4         | 3          |  |
| 20 | KATSINA      | 16         | 15         | 0         | 1          |  |
| 21 | KEBBI        | 19         | 8          | 5         | 11         |  |
| 22 | KWARA        | 0          | 0          | 0         | 0          |  |
| 23 | LAGOS        | 17         | 14         | 0         | 3          |  |
| 24 | KOGI         | 4          | 2          | 0         | 2          |  |
| 25 | NASARAWA     | 11         | 8          | 0         | 3          |  |
| 26 | NIGER        | 2          | 0          | 0         | 2          |  |
| 27 | OGUN         | 28         | 2          | 0         | 26         |  |
| 28 | ONDO         | 32         | 4          | 1         | 28         |  |
| 29 | OYO          | 30         | 2          | 0         | 28         |  |
| 30 | OSUN         | 4          | 1          | 0         | 3          |  |
| 31 | PLATEAU      | 20         | 7          | 0         | 13         |  |
| 32 | RIVERS       | 12         | 0          | 0         | 12         |  |
| 33 | SOKOTO       | 2          | 0          | 0         | 2          |  |
| 34 | TARABA       | 0          | 0          | 0         | 0          |  |
| 35 | YOBE         | 0          | 0          | 0         | 0          |  |
| 36 | ZAMFARA      | 16         | 3          | 3         | 13         |  |
| 37 | FCT          | 0          | 0          | 0         | 0          |  |
|    | <b>TOTAL</b> | <b>482</b> | <b>167</b> | <b>24</b> | <b>315</b> |  |

**In the report of the Registration and Election Review Committee (RERC) set up by the Independent National Electoral Commission in 2012, they found as flows:**

*There are limited reports of prosecution of electoral offences. Under the current laws, INEC has the power to carry out the prosecution of persons, who are accused of electoral offences. With the numerous reports of offences allegedly committed during the April 2011 general elections, including electoral violence, it does not appear that INEC has the manpower and resources to pursue all of the prosecution. What was clear, however, from the RERC's zonal meetings is the general view expressed by participants at the meetings that electoral offences in the country would only begin to reduce and pre-and post-election violence arising from them considerably reduced, if perpetrators were expeditiously prosecuted.*

*In this respect, RERC finds it compelling to underscore the need for government to take urgent action to set up the process, including legislation, for the establishment of the Electoral Offences Commission, alongside other measures for the prosecution of electoral offences, as recommended by the ERC and accepted by government in its White Paper on ERC Report. INEC should engage government and the National Assembly on the urgent need for such legislation.*

## **Why Impunity Persists**

The issue for determination is why candidates, voters, political parties, security agents and staff of the electoral management body will persist in committing electoral fraud and electoral offences despite the galaxy of offences provided in the Electoral Act, 2010(as amended) The answer is not farfetched and are multidimensional. *People committed offences recklessly, with impunity, because they believed that they could do it and get away with it<sup>xiv</sup>.* During the voters registration exercise, the Independent National Electoral Commission detected about 870, 000 cases of multiple registrations which are offences under the Electoral Act, 2010(as amended) but a negligible few were prosecuted under the law. <sup>xv</sup>

Unfortunately, there are a myriad of issues that make the prosecution of offences by legal officers of the Commission difficult. The electoral management body does not have the time, the expertise, the resources and the capacity to shoulder such a responsibility in the face of conducting elections and managing post electoral challenges.

There are also challenges with the Nigerian Police Force and other security agencies relating to the arrest, investigation and prosecution of electoral offenders. In some of the elections held after the 2011 elections, soldiers and mobile police officers were sometimes deployed from contiguous states to the States conducting elections to ensure some level of neutrality. Some of these officers joined officers of the Nigeria Security and Civil Defence Corp, the Road Safety Commission, the Navy, Immigration and the Custom in maintaining security on Election Day. Some of the officers were hardly conversant with the provisions of the Electoral Act, 2010(as amended) relating to electoral offences. Some of them are not conversant with the Code of Conduct for Officers on Electoral Duty and are therefore not really in a position to determine when an offence that is not a regular offence has been committed.

Moreover, some Police Officers on electoral duty have continued to deliberately misread and misinterpret the provisions of section 59 of the Electoral Act, 2010(as amended) relating to impersonation by an applicant for a ballot paper as an excuse for refusal to intervene and arrest offenders on grounds of not having been authorized by Presiding Officers to arrest offenders committing an offence at the polling station.

To compound the problem, some of the police officers and other security personnel on duty on Election Day move back to their states and to their regular duties on the conclusion of elections. In some cases, they just arrest offenders without making a proper report of why they were arrested. Some of them just arrest offenders and dumped in the Police Station, and such offenders are released immediately after elections, because there is no record on why they were arrested. Some of the offenders are charged to court and the cases against them struck out because the police officers and those that arrested them are nowhere to be found to give evidence. The consequence is that impunity persists as the people involved know

that the State is not primed to carry out proper investigation and thereafter, prosecute electoral offenders.

The issues of electoral malpractices and the prosecution of electoral offences have also been a moot issue. This is because almost all the political parties depending on their areas of suzerainty engage in the same trade, they complain feebly against electoral offences and at the end those that breach the law are not preceded against in which case impunity persists and recycles itself.

There are also offences relating to dereliction of duty by officers of the Commission. It is against the gains of the law for the Commission to be the complainant and the prosecutor in its own cause and it is therefore important to get a neutral body that will coordinate and control the prosecution of electoral offences.

It can be seen that "there are adequate provisions in the Electoral Act for the prosecution of election offences. However, the institutions charged with the prosecution and the trials of offences are weak. These are the police, the courts, the commission and the Attorney Generals offices (federal and states). The provision in the Electoral Act 2006(which is in pari material with the provisions of the Electoral Act, 2010(as amended) which requires the commission to prosecute election offences may lead to some problems. Some of the envisaged problems are as follows: The issue of competence of the Commission to prosecute election offences. Does the commission have the capacity to properly prosecute electoral offences? Conflict of interest may arise when an officer of the commission is the accused. There may also be clash of interests as the office of Director of Public Prosecution at both federal and state levels are the organs responsible for prosecution of crimes. There could also be clash of interests between the Commission and the Police with regard to prosecution of election offences."<sup>xvi</sup>

Some prosecuting counsels interviewed clearly stated that it is difficult for them to prosecute electoral offences. They complained that there are no

records of the offences committed by most of the suspects arrested on suspicion of having committed electoral offences. They complained that more often than not only the statements of accused persons are found in the files without any investigation report on the issue that led to the arrest of the suspects and without any statement from the complainants and the arresting officers. They also complained that the evidence against most of the accused persons is too weak and pedestrian to stand the test of cross examination and cases are won and lost on the basis of evidence. They also complained that it is difficult to compel the attendance of Police Officers and security officers that made the arrests on Election Day as most of them are not within jurisdiction and sometimes it is difficult to compel their attendance. One of them interviewed stated that:

*I terminated some of the cases assigned to me for prosecution. In some of the cases in court, the files were just empty. Nobody in the Legal Department of the Police had information on most of the cases or how to trace the arresting officers. I will only be embarrassed as a lawyer to go ahead with a matter where there is no shred of evidence.<sup>xvii</sup>*

### **Curbing Electoral Offences: What is to be done?**

Several suggestions have been made on the best way to tackle the arrest, investigation and prosecution of offenders. Some persons interviewed suggested that the Independent National Electoral Commission should invest in private legal practitioners and give them the responsibility for the prosecution of electoral offenders as the Electoral Commission is burdened with the conduct of elections and does not have the capacity to focus on the issue of electoral offences.

Others suggested that it is better to integrate electoral offences as part of the crimes provided in the various States' laws and make the arrest and prosecution of the said offences the responsibility of the Nigerian Police Force and the office of the Attorney General of the various States. This will make it possible to prosecute offenders at the ward and Local Government

levels where lawyers may not have easy access due to difficult geographical terrain and paucity of funds. The office of the Attorney General of the States will then be at liberty to take over, continue or terminate such prosecutions depending on the national interest.

Some others suggested that it is better to strengthen the capacity of the Independent National Electoral Commission and allow it to continue to prosecute electoral offenders. In doing so, it reserves the right to engage the services of private legal practitioners in the prosecution of electoral offenders. In which case, it can make regulations requiring the establishment of Mobile Courts to prosecute electoral offenders on Election Day.

The last model is the establishment of an Electoral Offences Commission and an Electoral Offences Tribunal (and Mobile Courts on Election Day) to try electoral offences and electoral offenders.

The Electoral Reform Committee set up by President Umaru Musa Yar'adua considered all these various options and recommended the setting up of an Electoral Offences Commission vested with the power of arrest and prosecution of electoral offenders under a separate mechanism that is independent of the government in power. The Electoral Reform Committee recommended that an autonomous and constitutionally recognized **Electoral Offences Commission** should be established through a bill of the National Assembly and empowered to perform the following functions:

1. Enforcement and administration of the provisions of the Act establishing the Commission;
2. Investigation of all electoral frauds and related offences;
3. Coordination, enforcement and prosecution of all electoral offences;
4. Enforcement of the provision of the Electoral Act 2006, the Constitutions of registered political parties and any other Acts or enactments;
5. Adoption of measures to identify, trace and prosecute political thuggery, electoral fraud, political terrorism and other electoral offences;

6. Adoption of measures to prevent and eradicate the commission of electoral malpractices;
7. Adoption of measures which include but are not limited to coordination, prevention and regulatory actions;
8. Introduction and maintenance of investigative and control techniques towards the prevention of electoral malpractices and fraudulent election;
9. The facilitation of rapid exchange of scientific and technical information among other democracies on the conduct of joint operation and training, geared towards the eradication of electoral malpractices and fraudulent election;
10. The examination and investigation of all reported cases of electoral offences with the view to identifying electoral officers and staff of the electoral commission, individuals, corporate bodies or groups involved in the commission of electoral offences; and
11. Collaboration with election observing authorities within and outside Nigeria.

The Electoral Reform Committee recommended that the composition of the Electoral Offences Commission should be as follows:

1. The Chairman who shall be the Chief Executive Officer and a person of unquestionable character;
2. A Deputy Chairman who shall be a person of unquestionable character;
3. Six Nigerians of unquestionable character, 1 from each of the six geopolitical zones of the Federation;
4. The Attorney-General of the Federation or his nominee not below the rank of a Director;
5. The Inspector-General of Police or his nominee not below the rank of Assistant Inspector General;
6. The Secretary to the Commission who shall be the head of the administration;

By the recommendations of the Electoral Reform Committee, the offences listed in Part VIII of the Electoral Act, 2010(as amended) shall be transferred to the new Commission. The functions of Legal Officers of the

Independent National Electoral Commission listed in section 150(2) shall also be transferred to the said Commission.

- ~~THE CHAIRMAN AND MEMBERS OF THE COMMISSION WHO SHALL BE NON PARTISAN SHALL BE APPOINTED BY THE PRESIDENT SUBJECT TO CONFIRMATION BY THE NATIONAL ASSEMBLY.~~
- It shall be mandatory for Election Tribunal Judges that have the responsibility of adjudicating on electoral disputes to utilize the provisions of section 149 of the Act in making recommendations to the Electoral Offences Commission.
- Section 59 of the Electoral Act, 2010 which Police Officers on electoral duty have continued to deliberately misread and misinterpret as an excuse for refusal to intervene and arrest offenders on grounds of not having been authorized by Presiding Officers to arrest offenders committing an offence at the polling station should be expunged.
- All offences relating to registration of voters by a candidate should, upon conviction, in addition to other penalties in the Act, carry a period of ten years disqualification from contesting any election.
- The Electoral Offences Commission will also have the power to constitute mobile courts on Election Day to try electoral offenders.

## **The Opposition**

The opposition to the creation of an Electoral Offences Commission posit that there are too many Commissions in Nigeria with overlapping functions and that the Electoral Offences Commission will only add up to the wage bill of the government. Some also contend that such a Commission will be redundant immediately after elections. Some also contend that the Electoral Offences Commission will face the same financial and operational challenges being faced by the Economic and Financial Crimes Commission

(EFCC) as well as the Independent Corrupt Practices and other Related Offences Commission (ICPC).

The truth of the matter is that some of those who oppose the creation of an Electoral Offences Commission are afraid of the unknown. Some of them are experts in election rigging and are afraid that the said Commission will put them out of business. Some persons that have also been rigged out are not in support of the Commission as they perfect their art and hope that they will do better at rigging at the next election.

Furthermore, in the operations of the Electoral Offences Commission, the Attorney Generals of the Federation and of the States will be stripped of the power to file a nolle prosequi to terminate, take over discontinued matters pending against any individual in court in relation to electoral offences. The funds for the running and operations of the Commission will also be a charge on the Consolidated Revenue Fund of the Federation.

It is also a matter of common knowledge that elections have been effectively staggered in Nigeria. The Independent National Electoral Commission conducted Gubernatorial Elections on January 6, 2011. Sokoto Gubernatorial Elections took place on February 18, 2012. Edo Gubernatorial Elections took place in July 2012 while that of Ondo State took place on October 20, 2012. The implication is that Gubernatorial Elections or one form of bye election or the other will take place every year in Nigeria and the question of the Electoral Offences Commission being redundant does not arise.

### **Why Support the Creation of an Electoral offences Commission**

The Independent National Electoral Commission has made it clear to the Nigerian people and the National Assembly that they do not have the capacity to prosecute electoral offenders. They insist that they are overburdened with conducting elections, registering political parties and

monitoring their activities and their finances, as well as carrying out other activities incidental to the conduct of elections.

Moreover, the independent National Electoral Commission is not predicating its stand on lack of resources. Presently, section 3 of the Electoral Act, 2010(as amended) established the Independent National Electoral Commission Fund into which such sums and payments available to the Commission for carrying out its functions and purposes are paid. So, the Commission has some level of financial autonomy and resources to carry out its functions. The point of departure is that the Commission is very clear that it does not have the capacity to focus properly on the prosecution of electoral offenders. Therefore, even if more money is made available to the Commission for the purpose of prosecuting electoral offenders they will still not get it right, because the issue of prosecution of electoral offenders is peripheral to their main functions and activities.

It is therefore curious that the Executive Arm of Government and the National Assembly are still foot dragging on the promulgation of Electoral Offences Commission.

At the level of civil society groups and organizations, there is a consensus that a new Electoral Offences Commission will remove the prosecution of electoral offences from persons with vested interest in the prosecution or non-prosecution of electoral offenders and place it at the door step of an independent and autonomous Commission with the requisite resources and capacity to prosecute electoral offenders. It will make for specialization and the Commission will train a new crop of experts in the area of investigation and prosecution of electoral offences with the assistance of Development Partners.

The unbundling of the Independent National Electoral Commission and the creation of an Electoral Offences Commission will lead to adequate and

professional prosecution of electoral offenders. It will also lead to proper and professional investigation of electoral offences and the re-engagement of the people with the electoral process and strengthening the regime of democracy in Nigeria.

Will the establishment of an Electoral Offences Commission be the ultimate solution to the challenge of prosecuting electoral offenders? The answer is no. The establishment of the Commission and the creation of an Electoral Offences Tribunal will send a strong signal to electoral offenders and those contemplating the commission of electoral offences that they will be proceeded against and if a prima facie case is made out against them the law will take its course.

At present those who commit or encourage the commission of electoral offences know that the Police and other investigating agencies may carry out poor investigation and the facts of such investigation may not lead to a conviction. They also know that the electoral management body does not have the capacity to prosecute them. They also know that if they commit electoral offences and are caught and their party comes to power the Attorney General is most likely to take over the prosecution and terminate their trial.

The establishment of an Electoral Offences Commission may change the dynamics involved in the prosecution of electoral offenders. However, the independence of the Electoral Offences Commission can only be secured if they are given financial autonomy and removed from the operational control of the Executive and the Attorney General of the Federation and of the States.

More fundamentally, the political parties, civil society groups and organizations and the media must constantly beam their searchlight on the

operations of the Commission and use the instrumentality of the Freedom of Information Act to compel disclosure of the activities of the Commission.

## **Conclusion**

I believe that unless the issue of electoral impunity is tackled, it may fester and lead to the abortion of the democratic process by anti-democratic forces. All democratic forces must therefore rally round and see to the adoption of best practices for the conduct of elections and minimize electoral related fraud and offences.

## **Recommendations**

1. The National Assembly should pass an autonomous Electoral Offences Commission Act that will invest the Commission with the capacity to investigate all electoral fraud and related offences, coordinate enforcement and prosecution of all electoral offences.
2. The envisaged Commission will have the capacity and legal instrument to set up Mobile Courts to try election offences on election days and adopt measures to prevent and eradicate the commission of electoral malpractices and facilitate rapid exchange of scientific and technical information among other democracies on the conduct of joint operation and training geared towards the eradication of electoral malpractices and fraudulent election.
3. 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.
4. 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 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, 2010(as amended) and the Constitution of the Federal Republic of Nigeria, 1999(as amended).

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<sup>i</sup> Human Rights Monitor, Final Report on Tracking the Arrest and Prosecution of Electoral Offenders and Outreach Program on the 2011 General Elections.

<sup>ii</sup> Festus Okoye, Final Report of the 2003 General Elections in Nigeria titled “Do the Votes Count at pV11

<sup>iii</sup> Section 1(2) of Constitution of the Federal Republic of Nigeria 1999.

<sup>iv</sup> Section 77(1) of the Constitution of the Federal Republic of Nigeria 1999

<sup>v</sup> The Nigerian Educational and Research Council; Voter Education Handbook, 2005 at p. 12-13

<sup>vi</sup> European Union Election Observation Mission to Nigeria: Final Report on the 2011 General Elections

<sup>vii</sup> European Union Election Observation Mission to Nigeria: Final Report on the 2007 General Elections

<sup>viii</sup> Jibrin Ibrahim and Okechukwu Ibeanu: The 2007 Elections and the Subversion of Popular Sovereignty. Centre for Democracy and Development, 2009 .

<sup>ix</sup> Daniel Calingaert, Rigged Elections and How to Stop them. American university Summer Institute on Democracy and Elections, June 5 to June 15, 2006

<sup>x</sup> Report of the Electoral Reform Committee, Volume 1, Main report, December 2008, 134.

<sup>xi</sup> Professor Attahiru M. Jega, Elections, Democratic Transition and Conflict Management in Africa. A keynote address at “Managing Conflicts in Africa”, organized by the Centre for Conflict Management, Kennesaw State University, Georgia, USA., on May 13, 2011. 13-14.

<sup>xii</sup> Human Rights Monitor, Final Report on Tracking the Arrest and Prosecution of Electoral Offenders and Outreach Program on the 2011 General Elections.

<sup>xiii</sup> Inecnigeria.org, Status of INEC’s Prosecution of Electoral Offenders as at 30<sup>th</sup> May 2012

<sup>xiv</sup> Professor ATTAHIRU JEGA(SUPRA) 14.

<sup>xv</sup> Professor Attahiru M. Jega, IT in Voter Registration: Nigeria’s Experience. A presentation by the Chairman, Independent National Electoral Commission(INEC), Nigeria, at the Biennial Conference of the Commonwealth Electoral Network(CEN) in Toronto, Canada, on 25<sup>th</sup> June, 2012.

<sup>xvi</sup> Institute for Democracy in South Africa(IDASA), Enforcement of Electoral Laws and Reduction of Electoral Violence in Nigeria, July 2006

<sup>xvii</sup> Interview conducted in Abuja on April 22, 2013

## **BRIEF PROFILE**

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This publication is not for sale.

**ISBN: 978-978-8449-29-4**