



Electoral Offences in Nigeria: Legal Issues and Challenges

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Abstract. Every country's democracy is measured by the successes of its elections. Elections that meets the yearnings of the electorates is an election that is peaceful, free, fair and credible which is free from any malpractice. However, conducting an election which is free from misdeeds is crucial in Nigeria. Almost all elections in Nigeria are characterized with one form of violence or the other example, ballot snatching/BVAS (Bio medal Voter Automated Systems) snatching and or destruction, rigging, assassination, arson, murder, duress etc. Since pre - independence up till today, these malpractices largely affect the outcome of elections results. Electoral offences can be committed before, during and after elections. Electoral offences were made criminal by the legislations in order to achieve successes in the elections. Yet there are some lacunas which need to be addressed. The methodology adopted is qualitative. The paper recommends creating awareness and imposed stringent punishments through effective implementation of relevant legislations.

Keywords: electoral offences, malpractice, punishment

1 Introduction

Electoral offence is synonymous with electoral violence. Electoral offence is termed as a crime. Elections are conducted in Nigeria every four years. More recently, elections were conducted on the 25th February, and 18th March, 2023 i.e. Presidential and National Assembly elections and state Governors and state Houses of Assembly elections and supplementary elections on the 15th April, 2023. The relationship between crime and election in Nigeria is that the two are inseparable. The history of Nigerian elections cannot be completed without mentioning electoral crimes. The control of harmful social conduct by the political authority is regarded universally as a necessary ingredient for a peaceful environment by the identification of conduct as a crime. Only violations of rules made by the state are now regarded in law as a crime. In Nigeria offenders are hardly prosecuted and some get away with impunity on account of their political affiliation, impunity is recycled, people disengaged from the electoral process on account of electoral fraud and violence, and the credibility of the electoral process is called into question [1].

2 Problem Statement

Electoral offences are created and defined by the statutes. So also punishments for the breached of these laws are also prescribed by the Electoral Act, 2022. These punishments provided by the Act are weak and inadequate or non-commensurate punishments with the offences, ranging from 30 days imprisonment to a maximum of 5 years imprisonment or a fine of paltry N50, 000 to N10,000.000 or both in all these offences. Therefore, based on the inadequacy of these punishment, as provided for by the electoral Act, impunity is in the increase in the electoral process in Nigeria and therefore defeat the essence of the law to serve as deterrence. there is therefore the need to amend these laws in order to fill in the lacuna by amending the laws that provided for the punishments for committing electoral offences.

3 Research Questions

1. What are the laws relating to punishments provided by the electoral Act, 2022 for committing electoral offences in Nigeria?
2. How does the inadequacy of the punishments provided for by the electoral Act, 2022 encourage impunity in the electoral process in Nigeria?

4 Purpose of the Study

The main purpose of this study is to analyze the provisions of the electoral Act, 2022 relating to punishments to show the inadequacy of the punishments provided by the Act, with a view to reveal that impunity is in the increase in the electoral process in Nigeria. The specific purposes are:-

1. To critically study the provisions of the Electoral Act, 2022 relating to punishments of electoral offenders in Nigeria.
2. To appraise the relevant provisions of the Electoral Act relating to punishments with a view to identify the inadequacies of these punishments provided.

5 Research Method

For the purposes of this paper, the writer adopted doctrinal method of research. Data is collated from the primary sources i.e statutes, the law reports and the secondary sources which comprises of journals and articles, text books, encyclopedia, Newspapers, magazines and periodicals the use of relevant statutes and case law is obvious for the purpose of obtaining the applicable law and judicial pronouncement on the subject of this study, whereas, the use of Secondary source is basically to reflect on the way some people have written on the subject of the research.

The justification for applying this method is that it is well suited for contextual discourse. The method help the researcher to get information and data from the library in documented sources and ongoing activities in the electoral process in Nigeria The data collated in course of this research will be analyzed to show the gaps/inadequacies and or lacunas of these laws in the course of punishing electoral offenders in the electoral process in Nigeria.

6 The Concept of Electoral Offence

Since the promulgation of the constitution of the Federal republic of Nigeria which contains provisions prohibiting the application of customary criminal laws which is in Section 36 (12) of the 1999 constitution as amended which provides “subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law: and a written law refers to an Act of the National Assembly or a Law of a state; any subsidiary legislation or instrument under the provisions of a law. [2]

Conduct however anti -social is not regarded criminal in Nigeria unless prohibited by a written law and the penalty provided thereof. The idea of prohibiting a conduct as a crime is supported by the definition of a crime and the general concept of law enforcement in our society [3]

The prohibition of specific ascertained anti -social conduct before, during and after elections is an essential quality of a crime. The paramount purpose of a criminal law is towards the corrections of anti-social behavior and rehabilitation, Hence the provisions prohibiting electoral crimes are designed to prevent the commission of specific conducts prohibited by the electoral Laws during election processes. The idea of a specifically explains the theory of legality which is important in defining the scope of criminal law. Therefore, section 36 (8) of the constitution Federal Republic of Nigeria, 1999 (as amended) has declared that:-

“No person shall be held to be guilty of a criminal offence on account of any act or omission that did not at the time it took place, constitute such an offence and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed”

Base on the above, the prohibition of the criminal law applied uniformly to all citizens of the state,[4] this is consistent with constitutional protection against non-discrimination in the application of the electoral laws in Nigeria. Conducts are criminalized in elections for the purposes of conducting free, fair, credible and peaceful elections.

7 Theoretical Framework

In this paper the writer adopts the structural –functionalist approach in writing the paper. The approach is used to analyzed societies and their components features that focus on mutual integrations and interconnections. The approach states the social functions various elements of the social system perform with regard to a system as a

whole. The 1st proponent of the structural functionalist theory asserts that everything in the society has a given function that it must perform within that society in order for it to survive. Barrett [6] said structural-functionalist assumes that all the institutions and roles of society meshed nearly together; that the existing structures and institutions in any particular society contained indispensable functions without which the societies will healthy societies.

Again, the control of impunity in every democratic society is a responsibility and or function of the persons in control of the governmental affairs is crucial to the survival of democracy in Nigeria.

8 Electoral offences in Nigeria

Electoral offences in Nigeria are conducts committed before, during and after elections:-

8.1 Offences Committed Before Elections

Offences committed before elections are punishable as provided for, by virtue of sections 12(3), 16(3), 19(5),22(c),23(e) ,29 (8) and sub (2) (b) etc, of the Electoral Act 2022.

However, these offences include but not limited to offences committed during registration[7] of voters exercise in the form of multiple registration falsification of registration documents and voters cards[8]; inflating names of voters in areas thought to be one's stronghold while under registering in opponents constituencies[9]; intimidating the electorates. Other pre-election offences includes the appointment of electoral officers who are loyal to the power that be; disqualification of candidates in opposition, denial of opponents the right to express their feelings restructuring the usage of houses; denial of freedom of movement; threat to life of opponents and in some extreme cases assassination, arrest of opponents or outright imprisonment etc. [10]

However, the punishments provided in these sections are inadequate and or insufficient to deter people from committing impunity. These punishment provided by these laws and or the imposition of fines cannot deter offenders from committing these offences as the punishment is so minimal and the loophole make it impossible to deter them from committing these offences.

Table 1. An overview of the provisions of the electoral Act, 2022 providing punishments for offences committed prior to elections

Section	Offence	Punishments
12(3)	Registration in more than 1 Centre or register more than once fine not more than	N100,000- or 1-year imprisonment or both
16(3)	Possession of more than one voters card	fine of not more than N500,000- or not more than 1-year imprisonment or both
18(5)	Powers to issue replacement of per-	Fine not more than N200,000- or not

	manent voters cards less than 90 days to election	more than 2-years imprisonment or both.
19(5)	Failure to display voters register 90 days to the general elections	Fine of N100,000 or imprisonment for a term of 6 months or both
22(c)	Buys or offers to buy any voters card	Fine not more than N500,000 or imprisonment not more than 2 7ears or both
23(e)	To procure the registration of a fictitious person	Fine not more than N 100,000- or not more than 1-year imprisonment or both
29(8)	Submission of unqualified candidate by a political party to the commission	Fine of N10, 000,000.
30(3)	Nominations of more than one person at an election to the same office	Fine of not more than N100, 000 or imprisonment for a term of three months or both, but his or her action shall not invalidate the nomination

8.2 Offences Committed During Election

The punishments for these offences are as provided for under sections 64 (9), 73 (2), 74(2),75 (5) (a) and (b), 78 (1) (a – c) and (2), 83 (4), 88(11), 89(4), 92(7)(a0 amd (b),93(2)(a0and(b), 95(6)(a0and(b),96(3)(a0and(b) and 97(a) and (b) of the Electoral Act, 2022 these offenses include cooperation between politicians and officers of the Electoral Commission (presiding officers and polling clerks) [11] as the later act under the influence of material inducement or corruptly makes any gift, loan, offer such as money, food and drinks and promises of appointment into position of trust in Government , procurement or agreement to or to induce any person to procure or to endure to procure the return of any person as a member of a legislative house or to an elective office or the vote of any voter at an election.[12]

Other offences includes false declaration of result [13] ballot boxes stuffing with illegal votes as they tick the names of voters and hired agents for thumb- printing; in some cases voting centers are shifted from original designated areas to a private house or residence where people would lock themselves up to thumb-print ballot papers; police abets rigging during election as they give some candidates advantages over their opponents Touts and :Area boys” are recruited to harass, intimidate and kills electorates in opponents [14] areas so as to influence the election in favour of their candidates [15]

Table21. An overview of the provisions of the electoral Act, 2022 providing punishments for committing electoral offences during election

Section	Offence	Punishments
64(9)	Announcement of false result by returning or collation officer	fine of N 5, 000,000 or imprisonment for at least three years or both
73(3)	Failure to record to record elections in	N10,000.000 - or imprisonment for at

	the prescribed forms	least one year or both
74(2)	failure to provide certified copy within 14 days by Resident Electoral Commissioner	Maximum fine of N2,000,000 or 12 months imprisonment or both.
75(5)	(a) and (b) false or misleading information by an association, its executive member or principal officers, the association	Fine of N5,000,000 and each executive member or principal officer fine of N3,000,000 or imprisonment for at least two years or both
78(1)	Contravention of section 227 of the 1999 Constitution by any political party or association N5,000,000; for the first offence N700,000 for any subsequent offences and N500,000 for every day the offence continues. Any person or group of persons who aids or abets a political party in contravening s. 227 of the constitution commits an offence	Fine of N5,000,000 or imprisonment for five years or both
83(4)	Failure of a political party to provide information or clarification to the commission	Fine of not more than N 1,000,000
87	Failure to comply with the limit of financial contribution to a candidate or political party, in case of political party	Fine not more than N 10,000,000 and forfeiture of the amount donated and in case of individual fine of five times the amount donated in excess of the limit
88(9)	Failure to comply in relation to limitation on election expenses	Fine of 1% of the amount permitted as the limit of campaign expenditure or imprisonment for a term not more than 12 months and any individual who contravenes section 9 to a maximum fine of N 500,000- or imprisonment for a term of nine months or both. An accountant who falsifies or conspires or aids fine of N3,000,000 or imprisonment for a term of three years or both.
89	Election expenses incurred by political parties beyond the limit	Fine of N1,000,000 and forfeiture of the exceeded amount.
92(7)	Abusive language Conduct at political rallies and processions etc in the case of candidate, aspirant	Maximum fine of N 1,000,000- or imprisonment for a term of 12 months or both. In the case of political party fine of N2,000,000 in the first instance and N1,000,000 for any subsequent offence. Any person or group of persons who aids the commission of the offence fine of N500,000 or imprisonment for three

93	Prohibition of use of force or violence during political campaigns in the case of a candidate, aspirant or person or group of persons maximum fine of N 1,000,000- or imprisonment for 12 months and in the case of political party	years. Fine of N2,000,000 in the first instance for and N 500,000 for every subsequent offence
96(2)	Print of material, broadcasts, publishes, advertises within 24 hours preceding, immediately preceding or on polling day commits an offence	And on conviction a body corporate to a maximum of N1 000,000 and in the case of an individual to a maximum fine of individual N1,000,000 or imprisonment of six months or both
97(1)(a)	Campaigning or broadcasting based on religious, tribal or sectional reason	To a maximum fine of N1,000,000 or imprisonment for a term of 12 months or both and in the case of a political party to a maximum fine of N10,000,000
114	Whoever destroys, mutilates, defaces or remove or make any alteration	commits an offence to a maximum fine of N1,000,000 or to imprisonment for a term of 12 months or both
115	Whoever forges any nomination paper or results	On conviction to a maximum term of imprisonment for two years.
115(2)	Who without proper authority prints a ballot paper commits an offence and liable	On conviction to a maximum fine of N50,000,000 or imprisonment for a term not less than 10 years or both.
116(b)	Who at a political meeting incites or act in a disorderly manner	Commits an offence to a maximum fine of N500,000 or imprisonment for a term of 12 months or both
117	whoever gives his voters card to some other person for use at an election	Commits an offence on conviction to a maximum fine of N1,000,000 or imprisonment for a term of 12 months or both.
118	Offences in respect of conveying any person to a registration or polling unit with government vehicle or boat	Commits an offence and to a maximum fine N500,000, or imprisonment for a term of six months or both
119	Whoever applies to be included in any list of voters in the name of some other person	Commits an offence and on conviction to a maximum
119(2)	Impersonation, aids, abets, counsels or procures the commission of that offence	To a maximum fine of N500,000 or imprisonment for a term of 12 months or both. 120 any officer appointed commits any acts or omits to acts in breach of his official duty commits an offence to a maximum fine of

		N500,000 or imprisonment for a term of 12 months or both.
120(2)	Any polling official who to report promptly a t his polling unit on election day, commits dereliction of duty	And on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.
120(3)	Any polling agent, political party or party agent who conspires to make false declaration of result of an election	On conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.

8.3 Post-Election Offences

Punishments provided for Post electoral offences are as provided by sections 120, 121(1) and (4), 122(4), 123(c), 124(2), 125, 126(4), 127(b), and 128(d) of the Electoral Act, 2022. The offences include falsification of election result from various centers at the collation center [16] declaration of false result by electoral officers: any person who 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 purposes 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,[17] connivance of some politicians with some judges to thwart any objection that may be raised by political opponents so as to influence the outcome of any decision in their favor etc. the punishment ranges from fine of N50,000.00 to N1,000.000 and imprisonment from 12 months to 10 years imprisonment.

Table 3. An overview of the provisions of the electoral Act, 2022 providing punishments for committing post electoral offences

Section	Offence	Punishment
120(4)	Publication of election of result knowing it to be false or which is at variance with the signed certificate of return commits an offence	And conviction to imprisonment for a term of 36 months
120(5)	Any returning officer or collation officer who delivers a false certificate of return	On conviction to imprisonment for a maximum, term of three years without an option of fine
120 (6)	Presentation of a false certificate of return to any news, media	Commits an offence and on conviction to imprisonment for a term of three years.
121(3)	A voter commits bribery be-	On conviction to a maximum fine of

	fore or during an election	N500,000 or imprisonment for a term of 12 months or both
121	Bribery and conspiracy	Maximum fine of N500,000 or imprisonment for 12 months or both
122	Secrecy at voting, whoever violates it	On conviction to a maximum fine N100,000 or imprisonment for a term of three months Impersonation or both
123	Wrongful voting and false statements commits an offence and is liable	On conviction to a maximum fine of N100,000 or imprisonment for a term of six months or both.
124	Voting by unregistered person and he commits an offence	On conviction to a maximum fine of N100, 000 or imprisonment for a term of six months or both.
124(2)	Whoever brought a voters card to another during election	Commits an offence, fine of N100,000 or imprisonment for a term of six months or both.
125	Disorderly conduct at an election	Maximum fine of N500,000 or imprisonment for a term of 12 months or both
126(3)	Offences on election day	N100,000 or imprisonment for a term of six months for every such offence.
126(4)	Snatching of destruction of any election material or any election device	Imprisonment for a term of 24 months
127(b)	Undue influence	N100,000 fine or imprisonment for a term of 12 months or both
128	Threatening at	N1,000,000 or imprisonment for a term of three years

8.4 Legal issues and challenges in the punishment provisions of the Electoral Act, 2022

Looking critically at these provisions and the punishments provided for committing electoral offences are inadequate to serve as deterrence thereby not serving one of the purpose of criminal law and that since the punishment are inadequate impunity must persists in the electoral process in Nigeria. Electoral irregularities in the conduct of elections processes in Nigeria are increasing since the return of the country to democratic governance, in 1999. Impunity is taking different and complex dimensions in the electoral processes, thereby threatening the corporate existence of the country as unfair elections are the sinking of democratic governance which also undermines developments. Testifying to this fact, the European Union, Election Observer Mission (EU-EOM) [18] to Nigeria, during the 2023, general elections in Nigeria said, the

25th, February, 18th March and 14th April, 2023 elections, while presenting the report, that there 23 recommendations, there were six priority areas including ambiguities in the law ... as well as impunity in the electoral process.

Again, to show the extent of impunity in our electoral process during the 15th April 2023 re-run gubernatorial election in Adamawa state, when the Resident Electoral officer stirred controversy. He illegally declared Aisha Dahiru Binani as the winner of the election, when he announced the supplementary Governorship election result while collation was on going, thereby ridiculing the whole system [19].

Moreover, the inadequacy and or insufficiency of the punishments provided for electoral irregularities in Nigeria encourage violators. That is why impunity is in the increase. The would be violators of the electoral offences are not afraid of the punishments to be meted in case of breach. That is why impunity is in the increase in Nigeria during electioneering campaign and voting proper. These offences including, killing, maiming, arson, threat of fear of violence, ballot box snatching/ BVAS snatching, stuffing, rigging, change of election results, change of voting center etc., all of these offences are on the increase as the result of the punishment provide are inadequate. Another issue is the ambiguous nature of the laws and lack of mechanisms for enforcement. These laws were couched in ambiguous legislation to the extent that understanding its meaning in the course of its application is tasking. More importantly, it confers jurisdiction to the High court and Magistrate courts to try offenders. However, these courts are not courts of coordinate jurisdiction thereby creating a problem in the enforcement of these laws. A magistrate court as a court of limited jurisdiction when it comes to trying matters and passing of sentence. Unlike the High court that has unlimited jurisdiction in trying matters (except the ones the statutes expressly prohibited it) so also in passing sentence.

In order to curb these irregularities in the electoral process, in Nigeria much is desired to be done by providing stringent and hard punishments to be meted against every breach of the electoral laws if the law is to serve as deterrent to others and reduce impunity in the electoral process in the country, thereby creating confidence in the minds of the electorates. By conducting free, fair, credible and peaceful elections.

8.5 Issues and Challenges in Conducting Free, Fair and Credible Elections In Nigeria

Almost all elections conducted in Nigeria were characterized with one form of malpractice or the other since pre-independence.[20] When election was first introduced into country's legislative council in 1922, it was characterized with violence and other forms of malpractices. Election was properly introduced by the Richard Constitution of 1945 and the concept of Regionalism,[21]. Since then elections became controversial, violence, killing, snatching of ballot boxes, thuggery etc. was introduced into the country. The 1950 independence elections, 1964 general elections, 1965 western region elections were controversial and culminated into the 15th January, 1966 coup and the counter coup of July, 1966 and the 30 months Nigerian civil war [22]. The seed of violence was sown and germinated in the Nigerian elections. More recently, when the 4th republic was ushered in 1999, the elections of 2003, 2007, 2019 and the 2023

all were marred with elections malpractices except the 1999, 2011 and the 2015 elections were those conducted with little complaints of malpractices. As the results of the malpractices in the 2003 and 2007 elections, some elections tribunals and the court of appeal annulled some elections of some governors and National assembly which include, Ekiti, Rivers, Oyo, Ondo, Anambra, Yobe, Sokoto and Edo States [23].

However, it is important to observe here that there are basic some problems with these provisions which made the fight against commission of electoral offences very difficult. The provisions of the Electoral Act, 2022 of Nigeria cited above the punishments provided in the Act are not commensurate nor enough to deter people from committing impunity in elections. The inadequacy of the punishments makes people to commit these offences. The punishments provided are N50,000 to N10,000,000 and imprisonment of 3 months to 10 years. These punishments as provided are insufficient to deter others. *YAKUBU V, F.R.N (2023)1 NWLR PART, 1864, 97 AT 108 RATIO 12[24]* therefore, the Act has not provided the much needed punishment for the commission of these offences to allow for fair and peaceful elections,

9 Findings

Several issues were raised by the study concerning the inadequacy/insufficient and or lacunas in the Electoral Act concerning the punishments to be meted against violators of the Electoral Act, 2022, and the followings are the major findings of the work:-

That electoral offences are defined by the Electoral Act, 2022

That punishments are provided for by the Electoral Act, 2022

The punishments provided are of lesser term of imprisonment

That punishment provided for offences likely to be committed by politicians has a clause i.e. not more than. Either the fine or imprisonment

That the punishment provided for by the Electoral Act are inadequate and or insufficient to serve as deterrence

That there ambiguities in the laws

There are no mechanisms for enforcement of the laws

10 Recommendations

- Amend the above laws to provide stringent and stiffer punishments with no option to pay a fine
- Establish mechanisms for the implementation of provisions of the Electoral Act, dealing with electoral offences.
- Implement the provisions of the Electoral Act with stiffer punishment so as to serve as deterrent.

11 Conclusion

In conclusion, it is our submission that the lesser punishments prescribed by the Electoral Act, 2022 for violations of the provisions of the Act encouraged impunity in the electoral process in Nigeria. That the insufficiency of the punishments provided for by the Act makes it impossible to serve as deterrence and that is why impunity is in the increase in the Nigerian electoral process. Unless these laws are amended and provides stiffer and or stringent punishments, electoral offences will continue as politicians in Nigeria consider elections as a do or die affair and wants to win elections at whatever cost. If the above recommendations are implemented, impunity in election process in Nigeria will be reduced to the bearest minimum.

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