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INDEPENDENT NATIONAL ELECTORAL COMMISSION AND THE PROSECUTION OF ELECTORAL OFFENCES IN NIGERIA: IS THE 2010 ELECTORAL ACT IMPLICATED

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ABSTRACT

The article examines the effectiveness of Independent National Electoral Commission on the prosecution of electoral offences in Nigeria. The article argued that lumping together both prosecutorial and administrative roles in the mandate of INEC was a deliberate scheme by the ruling class to undermine vigorous prosecution of electoral offences. This was in anticipation that effective prosecution of such offences could inflict collateral damage to their political careers, as findings indicated that they constitute greater majority of the violators. The theory of post-colonial state was adopted as framework of analysis; while mixed and qualitative-descriptive methods were employed for data collection and analysis respectively. On the strength of the above findings the article recommends creation of separate and independent body charged with the responsibility of detection and prosecution of electoral offences, while INEC will concentrate on conduct of elections.

Keyword: Electoral Act, Prosecution, Electoral Offences, Theory of the Post-Colonial State, Dual Mandate.

1. INTRODUCTION

One of the greatest challenges to the democratization project in Nigeria is the reoccurring incidence of electoral irregularities. In effort to address this challenge, successive regimes had put in place a number of measures, these include several legislative enactments, electoral reforms and changes in the Electoral Management Bodies (EMBs) among others. In Nigeria the legal regime that guides the conduct of elections began with the introduction of Elective Principle in the 1922 Sir Hugh Clifford Constitution (Eko-Davis, 2011). Further provisions for conduct of election were made in the Independent Constitution of 1959, Republican Constitution of 1963, Military Decrees of the 1979, 1993, 1998 and 1999 (Akiboye and Anifowose 2011). The most recent legislations are the 2002, 2006 and 2010 Electoral Acts; the 2010 Act in particular has undergone several amendments between 2010 and 2020. Likewise EMBs have had its fair share

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of reforms and changes, beginning with Federal Electoral Commission (FEDECO) 1964-1983, National Electoral Commission (NEC) 1989-1993, National Electoral Commission of Nigeria (NECON) 1994-1998 and Independent National Electoral Commission (INEC) 1998-till date.

These legislations are usually unequivocal in policy directions and provide the basis upon which EMBs and other stakeholders in the electoral process operate. These legislations usually invest on the EMBs the mandate to conduct elections and in collaboration with other agencies ensure that the provisions of the electoral laws are enforced. The implication of the above is that EMBs are not just critical to the electoral process but that they perform dual roles: conduct of election and prosecution of electoral offences (Electoral Act 2010).

However it is worrisome that despite these legislations and changes in the EMBs, conduct of elections in Nigeria has been marred by repeated irregularities compounded by poor prosecution of offenders. This has led to poor rating of elections in Nigeria, by both local and international observers: 43% in 1999, 37% in 2003, 31% in 2007, 52% in 2011, 47 in 2015 and 41 in 2019 (EU, 2011; USAID, 2015; NDI, 2012).

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 INEC 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 INEC 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) and (2) of the Electoral Act, 2010 (as amended) an offence committed under the Act shall be tried 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. In view of the foregoing this article tend examine the impacts of dual mandates provided for the INEC in the 2010 Electoral Act on the prosecution of electoral offences in Nigeria.

2. METHODOLOGY

Interview and documentary methods were deployed in gathering data for the study. These methods helped the researchers to elicit information and data from stakeholders and other documented sources on the trend of prosecution of electoral offences in Nigeria. Therefore, we essentially relied on interview responses, articles from journals and Nigerian newspapers, official publications of Federal Government of Nigeria, non-governmental organisations, and political parties among others on the subject matter. The justification of these methods is that it well-

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suited for contextual analysis and useful when the task is to glean, illuminate, interpret and extract valuable information in order to draw inference from the available evidence.

Qualitative-descriptive method based on logical deduction was applied in the analysis of data generated in the study. It is the technique for making inference by objectively and systematically identifying specified characteristics of message (Stone 1966). The application of this technique involves examination of documents in order to generate information or inference based on the canons of scientific research. The justification of this method is that it enables political inquirer to scrutinize the content of a document in order to understand its underlying structure, ideas and concepts and to quantity the message it relates (White 1983).

The 2010 Electoral Act and INEC Prosecution of Electoral Offences: A Theoretical Exposition

The study adopted the post-colonial state abstracted from the Marxist theory of the state and expounded by Alavi (1972), Ake (1985, 2003), Ekekwe (1986), Ihonvbere (1989, 2000) Ibeanu (2003). The post-colonial state attempts to explicate tersely how the serving ruling class in the post-colonial country like Nigeria has slowed down the pace of the development of the electoral system. The theory is hinged on the assumption that the political class of the contemporary post-colonial state relentlessly devises several means to perpetuate their stay in power, hence utilizing all machinery of the state power to assume dominance over others.

According to Ake (1985), all post-colonial states are usually associated with very limited autonomy. Thus, post-colonial states are usually programmed to reflect and indeed protect the selfish individual interests of the greedy political elites. This tendency seems to have stunted efforts towards democratic consolidation in Nigeria. As Jakubowski (1973) earlier observed, the ruling class is both politically and economically dominant and constantly creates new avenues for holding down and exploiting the ruled or proletarian class. This was premised on the understanding that interpretation of the link between resources and politics most times is anchored on the pluralist and investment theories, though not without the theoretical and methodological challenges such pose to the budding post-colonial democracies.

From the foregoing, it is evident that the post-colonial states do not represent the public welfare but that of the dominant ruling classes. Accordingly, Ekekwe (1986, p.12) averred that "in the periphery of capitalism factors which have to do with the level of development of productive forces make the state, through its several institutions and apparatuses, a direct instrument of accumulation for the dominant class or its elements". Essentially, the theory views the state as an instrument of primitive accumulation by the dominant class and their collaborators (Alavi, 1972).

The theoretical expositions above aptly capture the substance of this article. Firstly, the sanction regime in the 2010 Electoral Act was skewed to favour the political class: comprising the ruling and governing elites, who are invariably the major stakeholders the electoral process. As gladiators in the electoral process, they are constantly interfacing with the EMBs and the electorates; their desperation for power makes them vulnerable to indulge in electoral malpractices, perhaps making them the major violators of electoral laws. Therefore, to ensure that the prosecution of such offenses as provided in the electoral Acts do not inflict colossal

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injuries on them, they usually prevail on law makers, who inadvertently are their counterparts and cronies in the Parliament to ensure that penalties prescribed for various electoral offences are not severe. Secondly, the drafters of the 2010 Electoral Act deliberately incapacitated INEC from vigorous detection and prosecution of violators of electoral laws by lumping prosecution to the mandate of the agency that is already overwhelmed by the task of conducting elections. This made it impossible for the agency to be aggressive in the enforcement of the provisions of the Act particularly as it relates to prevention, dictation and punishment of perpetrators of electoral offences. Therefore, the apparent laxity in the prosecution of electoral offences was expected because the Commission is already over-burdened by the task of conducting elections.

Therefore, the prescription of nominal penalties for electoral offences by the law makers is a reflection of the interest of the dominant class that had captured the legislature. This serves as a clear manifestation of the relative autonomy of the Nigerian state and also as an admission that the dominant political class who at inception of the fourth republic formed and funded political parties had successfully appropriated the legislature, to a point of influencing the content of legislations they make. Contemporary experience has proven that the Nigerian state is a veritable instrument for primitive accumulation; hence the political class sees politics as commercial portfolios that accrue tremendous returns in investment. The returns are usually in form of the largesse that go with public offices, award of contracts and appointments to cronies and use of public office to promote private businesses as with case with post-colonial states, Nigeria included (Ekekwe, 1986).

Given the enormous premium attached to public offices, electoral contest is akin to warfare, with each opposing party/candidate employing as much rigging tactics as it/he could muster even if it entails serving out the penalties, which usually is very insignificant and incommensurate with the expected gains if the party/candidate is elected into office. With this siege mentality, politicians in most cases prepare for elections like warfare, deploying all available machineries to achieve electoral victory including flagrant violation or circumvention of electoral laws and guidelines. The unhealthy competition among the gladiators are expressed in the intimidation and deployment of thugs and security personnel against opposition parties/candidates, vote buying and bribing of electoral official to alter electoral results, snatching of electoral materials and excessive deployment of funds above the limits provided by law in the prosecution of elections.

In addition the poor performance of electoral agencies in the adjudication and prosecution of electoral offences was a calculated scheme by them to ensure that the dominant class that appointed them to positions remains in power. The dominant class, relying on enormous state resources at its disposal most often influences the roles of these agencies against timely and impartial delivery of electoral justice at the detriment of the struggling opposition parties. In Nigeria, the state and its institutions like the National Assembly, INEC, courts and police have become the main instruments for the advancement of the interests of the dominant class. These tendencies have persisted because states in peripheral social formations are inchoate and thus thrive on low autonomy. The predominance of politicians with vested interests in the National Assembly and in different political parties, as well as the existence of EMBs that are incapable of administering electoral justice are by products of the low level of autonomy of the State. This

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low autonomization made it possible for the state and its institutions to express unwillingness, albeit subtly, to effectively prosecute violators of the electoral laws. The implication is that weak prosecution advances the electoral interests of the dominant class, given that over 80% of electoral victories were achieved through rigging. As a corollary, prosecutions of electoral offenses are mere window dressing as both the electoral agencies and the dominant class cannot enforce laws that will undermine their continued relevance in the political system

This theory is fundamental to this study because it has been able to explain that the post-colonial character of the Nigerian state leveraged the dominant class to circumvent the sanction regime in the electoral laws which made it possible for them to continue to indulge in electoral malpractices, as that has proven very effective in accelerating electoral victories. It is therefore within the context of the above theoretical expositions on the specific nature and character of the Nigerian state that one can fully appreciate and analyse the interface between the INEC and the ineffective prosecution of electoral offences as provided in the 2010 Electoral Act.

Statutory Duties of Electoral Management Bodies in Nigeria

EMBs play strategic roles in multi-party representative democracy; as such INEC in Nigeria is vested with the mandate to conduct free, fair and credible elections. INEC is also imbued with the powers to enforce electoral laws and prosecute offenders. The statutory duties of EMBs in Nigeria are usually captured in the constitution and other enabling legislations. In light of the above the 1999 Constitution provides for INEC the following administrative roles:

(a) organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of representatives and the House of Assembly of each State of the Federation;
(b) register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;
(c) monitor the organisation and operation of the political parties, including their finances;
(d) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
(e) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;
(f) monitor political campaigns and provide rules and regulations which shall govern the political parties;
(g) ensure that all Electoral Commissioners,

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Electoral and Returning Officers take and subscribe the Oath of Office prescribed by law;

(h) delegate any of its powers to any Resident Electoral Commissioner; and

(i) carry out such other functions as may be conferred upon it by an Act of the National Assembly

Similarly the Electoral Act 2010 provides for INEC the following administrative roles:

a. Conduct of voters education (section 2)
b. Conduct of referendum (section 2)
c. Registration of political parties (section 78)
d. Monitoring of political parties (Section 86)
e. Limitation of contributions to political parties (section 90)
f. Conduct of Area Councils Election (section 103).

In addition the Electoral Act 2010 provides for INEC the following prosecution roles:

a. Prosecution of offences disclosed in election petitions (section 149)
b. Trial of electoral offences (section 150)

Impacts of INEC Dual Roles on the Prosecution of Electoral Offences in Nigeria

The major challenge confronting administration of justice in respect to electoral offenses is loping of prosecutorial roles to mandate of INEC. It is expected that elections conducted in line with the provisions of the laws should be credible, free and fair, in order to command the acceptability of all stake holders .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. In addition when elections are rigged or manipulated, those who lose such elections are most likely to reject the results. Therefore it is admissible that the law provides the framework for the legitimization of the electoral processes and procedures, the same law also envisages that things may not always go as provided by law. In such case, candidates and political parties that participated in an election may question the credibility of such elections before 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 engaging in irregularities. 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.

Effective prosecution and administration of electoral offenses and sanctions have remained a critical 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. Another fundamental issue is that the sanctions are not stringent enough to dissuade people from taking the laws into their hands and using subterfuge to corrupt the electoral process.

Election administration is a wide spectrum of activities, encompassing registration and

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monitoring of political parties, voters registration and education, conduct of elections, facilitation and prosecution of electoral litigations and offenses. Therefore in line with the provisions of the 1999 Constitution and 2010 Electoral Act, INEC is solely responsible for the discharge of the above duties. In discharge of these functions INEC as presently constituted, mostly during the peak of electoral activities is usually overwhelmed, to the extent that services of adhoc staff are required. The implication of the above is that it takes divesting prosecutorial role from INEC, in favour of another autonomous agency for electoral offenses to be comprehensively detected and punished. Besides since INEC is integral part of the electoral process, it staff are not immured in the light of the ravaging epidemic in the electoral system, and as such cannot effectively prosecute itself. The above scenario explains the reoccurring crises and failure of INEC to conduct elections that will meet the expectations of Nigerians and the international community.

Closely related to the above is calculated conspiracy between ruling political parties/candidates and the law enforcement agencies including INEC to relax enforcement largely on account that strict prosecution may mar their political and electoral fortunes. The truth is that politicians and political parties are desperate to win elections and are ready to go to any length to achieve same. In view of the above they are aware of weaknesses of investigative and prosecutorial institutions and are ready to take the risk and commit electoral offences believing that they will exploit the said weaknesses and get away with their crimes.

Since 1999 there has been increasing consternation and anger at the inability of the Nigerian State to prosecute electoral offenders. To this end, it is alleged, that inability of the state to punish violators is responsible for the progressive degeneration of the electoral process in Nigeria. It is taken that administration of sanctions will serve as deterrence to future offenders. It is therefore contended that the outcome of the 1999 general elections was better than the 2003 elections and the 2003 elections better than the 2007 elections. The exception to this rule was 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 particularly those be hide the post election violence in the northern part of the country left much to be desired .The 2015 and 2019 elections had also recorded increasing cases of irregularities including underage/multiple registration and voting, violence, vote buying and donations and spending beyond the limits provided by law, yet the prosecution trend is at variance as show in table one below.

Table 1: Trends in the Prosecution of Electoral Offences in Nigeria, 2003 -2019

S/N	States	Election Years	No. of Cases Filed	No. of Cases Determined	No. of Convicts	No. of Offenses Pending
1.	Abia	2003	8	8	0	0
		2007	17	10	1	7
		2011	8	4	0	14
		2015	12	10	0	2
		2019	13	0	0	13

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2.	Adamawa	2003	4	4	1	0
		2007	15	12	1	3
		2011	8	7	0	1
		2015	12	8	3	4
		2019	12	0	0	12
3.	Akwa Ibom	2003	2	2	0	0
		2007	20	17	2	3
		2011	14	10	3	4
		2015	9	7	0	2
		2019	17	0	0	17
4.	Anambra	2003	17	10	3	7
		2007	16	15	7	1
		2011	14	14	2	0
		2015	3	0	0	3
		2019	2	0	0	2
5.	Bauchi	2003	4	2	0	2
		2007	43	10	8	33
		2011	32	8	3	24
		2015	41	15	8	26
		2019	9	0	0	9
6.	Bayelsa	2003	8	7	1	1
		2007	7	4	0	3
		2011	5	5	0	0
		2015	10	7	0	3
		2019	6	0	0	6
7.	Benue	2003	9	7	0	2
		2007	17	0	0	17
		2011	17	10	3	7
		2015	16	15	7	1
		2019	14	0	0	14
8.	Borno	2003	43	10	8	33
		2007	32	8	3	24
		2011	41	15	8	26
		2015	9	0	0	9
		2019	9	0	0	9
9.	Cross River	2003	8	7	1	1
		2007	7	4	0	3
		2011	5	5	0	0
		2015	10	7	0	3
		2019	6	0	0	6
		2003	9	7	0	2
		2007	17	0	0	17

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10.	Delta	2011	17	10	3	7
		2015	16	15	7	1
		2019	14	0	0	14
11.	Ebonyi	2003	8	8	0	0
		2007	17	10	1	7
		2011	8	4	0	14
		2015	12	10	0	2
		2019	13	0	0	13
12.	Edo	2003	8	7	1	1
		2007	7	4	0	3
		2011	5	5	0	0
		2015	10	7	0	3
		2019	6	0	0	6
13.	Enugu	2003	8	8	0	0
		2007	17	10	1	7
		2011	8	4	0	14
		2015	12	10	0	2
		2019	13	0	0	13
14.	Ekiti	2003	9	7	0	2
		2007	17	0	0	17
		2011	17	10	3	7
		2015	16	15	7	1
		2019	14	0	0	14
15.	Gombe	2003	9	7	0	2
		2007	17	0	0	17
		2011	17	10	3	7
		2015	16	15	7	1
		2019	14	0	0	14
16.	Imo	2003	8	7	1	1
		2007	7	4	0	3
		2011	5	5	0	0
		2015	10	7	0	3
		2019	6	0	0	6
17.	Jigawa	2003	8	8	0	0
		2007	17	10	1	7
		2011	8	4	0	14
		2015	12	10	0	2
		2019	13	0	0	13
18.	Kaduna	2003	43	10	8	33
		2007	32	8	3	24
		2011	41	15	8	26
		2015	9	0	0	9

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		2019	9	0	0	0
19.	Kano	2003	71	33	7	38
		2007	41	20	4	21
		2011	45	12	0	33
		2015	91	14	2	77
		2019	61	0	0	61
20.	Katsina	2003	8	8	0	0
		2007	17	10	1	7
		2011	8	4	0	4
		2015	12	10	0	2
		2019	13	0	0	13
21.	Kebbi	2003	41	7	0	34
		2007	34	10	3	24
		2011	17	2	1	15
		2015	45	3	0	42
		2019	31	0	0	13
22.	Kwara	2003	41	7	0	34
		2007	34	10	3	24
		2011	17	2	1	15
		2015	45	3	0	42
		2019	41	0	0	41
23.	Kogi	2003	43	10	8	33
		2007	32	8	3	24
		2011	41	15	8	26
		2015	9	0	0	9
		2019	9	0	0	9
24.	Lagos	2003	41	7	0	34
		2007	34	10	3	24
		2011	17	2	1	15
		2015	45	3	0	42
		2019	41	0	0	41
25.	Nasarawa	2003	9	7	0	2
		2007	17	0	0	17
		2011	17	10	3	7
		2015	16	15	7	1
		2019	14	0	0	14
26.	Niger	2003	8	8	0	0
		2007	17	10	1	7
		2011	8	4	0	14
		2015	12	10	0	2
		2019	13	0	0	13
		2003	9	7	0	2

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27.	Ogun	2007	17	0	0	17
		2011	17	10	3	7
		2015	16	15	7	1
		2019	14	0	0	14
28.	Ondo	2003	8	8	0	0
		2007	17	10	1	7
		2011	8	4	0	14
		2015	12	10	0	2
		2019	13	0	0	13
29.	Oyo	2003	41	7	0	34
		2007	34	10	3	24
		2011	17	2	1	15
		2015	45	3	0	42
		2019	41	0	0	41
30.	Osun	2003	9	7	0	2
		2007	17	4	1	13
		2011	17	10	3	7
		2015	16	15	7	1
		2019	14	0	0	14
31.	Plateau	2003	43	10	8	33
		2007	32	8	3	24
		2011	41	15	8	26
		2015	9	0	0	9
		2019	9	0	0	9
32.	Rivers	2003	41	7	0	34
		2007	34	10	3	24
		2011	17	2	1	15
		2015	45	3	0	42
		2019	41	0	0	41
33.	Sokoto	2003	8	8	0	0
		2007	17	10	1	7
		2011	8	4	0	14
		2015	12	10	0	2
		2019	13	0	0	13
34.	Taraba	2003	9	7	0	2
		2007	17	0	0	17
		2011	17	10	3	7
		2015	16	15	7	1
		2019	14	0	0	14
35.		2003	8	8	0	0
		2007	17	10	1	7
		2011	8	4	0	14

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	Yobe	2015	12	10	0	2
		2019	13	0	0	13
36.	Zamfara	2003	9	7	0	2
		2007	17	0	0	17
		2011	17	10	3	7
		2015	16	15	7	1
		2019	14	0	0	14
37.	FTC	2003	0	0	0	0
		2007	5	5	1	0
		2011	12	7	3	5
		2015	21	7	2	14
		2019	14	0	0	14

Source: Authors Compilation from INEC Reports on the Prosecution of Electoral Offences in Nigeria, 2003-2019.

The implication of the above table is that while indulgence in electoral irregularities are becoming integral part of the electoral process in Nigeria, the capacity of INEC, the police and judiciary successful detect , prosecute and convict perpetrators is increasingly dwindling .The laws provides adequate mechanism for prosecution of electoral offenses .For instance Section 158(1) of the Electoral Act, 2002 provides that an offence committed under the Act shall be tried 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). Similarly 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 fundamental concern is reluctance by these agencies to prosecute offenders even when prompted by the public. INEC itself admitted these lapses; by the account of the Commission, minimal success has been recorded. The former Chairman of the INEC, 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 (Vanguard, December 3rd, 2015)

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Similarly the increasing incapacitation of INEC and the law enforcement agencies to prosecute and sanction violators of electoral offenses was equally captured in the 2012 report of Registration and Election Review Committee (RERC) set up by INEC. The committee noted that:

> 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 (RERC 2012 cited in Okoye 2013:23).

In defense of the failure of INEC, Director of Legal Department Mrs. Oluwatoyin Babalola remarked as follows:

> 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. But is unfortunate that some of these officers who joined us like the Nigeria Security and Civil Defence Corp, the Road Safety Commission, the Navy, Immigration and the Custom in maintaining security on Election day were hardly conversant with the provisions of the Electoral Act,

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> 2010 (as amended) relating to electoral offences. Is a problem ,even 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. For instance, some Police Officers on electoral duty 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. Take for instance 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, so it is important to get a neutral body that will coordinate and control the prosecution of electoral offences (Researchers' Field Work, December 12, 2018).

According to her the problem is compounded by the fact that 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 (Researchers' Field Work, December 12th, 2018).
> .

Interactions with officials of INEC in Abuja reveal that electoral malpractices and the prosecution of electoral offences have 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 punished in return impunity persists and recycles itself.

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

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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. (Researchers' Field Work, December 12th, 2018).

The foregoing discussion has shown that INEC and other agencies responsible for prosecution of electoral offences have not lived up to the expectations of the masses, as a result accounted for continued fraud in the electoral process in Nigeria .

3. CONCLUSION

The inadequacies in the 2010 Electoral Act were found to constitute serious impediment to the adjudication of electoral justice particularly in the control and prosecution of electoral offences. Findings indicate that in order to undermine the capacity of INEC to prosecute electoral offenses, the law makers deliberately lumped together both prosecutorial and administrative roles in the mandate of INEC, making it impossible for the agency to discharge such functions impartially and efficiently. Furthermore in view of the above, and given the fact that INEC is not immune from contravening provisions of the Electoral Acts, assigning such roles made it impossible for the Commission prosecute itself. In the light of the above findings we recommended that the National Assembly should revisit the 1999 Constitution (as amended) and the 2010 Electoral Act with a view to unbundle the Commission to pave way for establishment of separate and independent body charged with the responsibility of detection and prosecution of electoral offences, while INEC will concentrate on conduct of elections. The members of the commissions will enjoy security of tenure and their emoluments and administrative funds drawn from consolidated fund and they will be accountable to National Assembly.

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