

ELECTORAL OFFENCES PENALTIES AND IMPLICATION AS THE YARDSTICK TO NIGERIAN DEMOCRACY

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Abstract

Generally speaking, democracy all over the world is centred on elections. The strength of any democracy in the world is measured by the credibility of it is an election. The election must be free, fair and away from any electoral malpractice. In developing countries, Africa inclusive democracy in such countries faced challenges of conducting credible polls. For some of them, elections were usually marred by rigging, violence and other forms of electoral malpractice and irregularities. In the case of Nigeria democracy has not really taken its roots as an election is seen as a winner take all. Characterized by violence, rigging and thuggery which to a certain extent affected the democratization process of the country. The system theory was employed to justify the argument. The methodology was qualitative using content analysis. The paper recommends, the provision of a standard electoral process, strong institutions, improve staff training, promotion of political education and creating awareness to the electorates. Poverty reductions programmes among others.

Keywords: Election, Democracy, Electoral offences, Electoral violence.

Introduction

Electoral offences are one of the common features of third world democracies; Nigerian is not exceptional many of the electoral offences are committed by either by individuals, groups, political parties or institutions which mostly are responsible to conduct or monitor the election.

The heart of democracy is the election. Perhaps, the credibility of any election can be traced through the electoral process. The credibility of an election determines the maturity of the democracy. In Africa election is usually characterized by various vote-buying, the multiplicity of vote, snatching of ballot boxes, rigging, inflation of the election figures, rejection of election result, underage voting, voting and intimidation of voters among others. Thus, the nature of the election strongly threatens to the survival of democracy in Nigeria.

Going by the popular definition of democracy given by Abraham Lincoln election is not only crucial but fundamental to democracy. It shows the extent to which a system is democratic. However, no system will be adjudged democratic if there is the absence of a free and fair election. But simply it is through the election that public office holders are recruited. The following is a sequence between election and democracy is such democracy becomes a faked if the election is not free and fair.

Whatever it is, the election is a process through which the electorate decides who govern and what policies to be enacted. In that instance election is sine-qua-non to the attainment of democratic consolidation. (Isiaq, 2008).

The word election is derived from the Latin verb "ELEGERE" meaning to pick out to choose. Election can be described as an arrangement by which a wider body of persons or people choose a smaller group of representatives to undertake a specified task. (Ishaq, 2008).

The Encyclopedia Americana (International edition Vol. 10,1988) sees the term election as a procedure for officers making a binding decision concerning policy by the vote of those formally qualified to practice.

Egwu (2003), argued that election is very central to the principles and practices of democracy all over the world. Since the birth of the modern states and the mayors advance made in terms of the popular will as the sources of sovereignty as proposed to the whims and caprices their right to determine their rulers. In other words, Ujo (2004) described the election as a procedure that allows members of an organization or community to choose representatives who will hold a position of authority within it. The most important elections select the leaders of local, state and international government. During elections, the electorate is given the opportunity to choose between alternative programmes of contestant election also promote public accountability. The threat of defeat at the polls exerts pressure on those in power to conduct themselves in a responsible manner and take account of popular interest and wishes when they make their decision (Ujo 2004). Related to this election counters legitimacy on those elected, because such type of political recruitment always reflects the wishes and the aspiration of people (Egwu. 2004).

However, Ahmad (2007) emphasizes that election perform a peaceful transfer of office from one government to another, it has to be free from all kinds of electoral malpractice such as:-

- i. Declaring elected candidates that have not scored the number of votes.
- ii. Unlawful distribution of ballot paper particularly to the ruling party or the highest bidder before the polling day.
- iii. Voting by proxy/multiple voting and underage voting.
- iv. Omitting names of members of the opposition parties from the voter's list and thereby giving undue advantage to the ruling party.
- v. Using uniform men police and other security agencies for the expulsion of polling agents from polling stations to facilitate unrestricted rigging.
- vi. Announcing polling results even when some polling stations have not submitted their results.
- vii. Announcing results of an election that did not hold in favour of one candidate.
- ix. Smashing or destruction of the ballot boxes where voting is not favouring a candidate.

Nigerian Democracy and Electoral Misconducts

Within twenty-two (22) years of uninterrupted democracy, the longest period in Nigeria's about sixty-two years of independence Nigeria could beat its chest that a firm foundation for the democratic governance has been laid. But has its Nigeria has had a history with democracy. Next to the cankerworm of corruption, electoral malpractices and several offences that challenge the democratization process over years flawed elections also provided the ability for military intervention in Nigeria politics. Indeed electoral offences and frauds are very good invitations to the military to overthrow the government and take over the affairs. Indeed, among the root causes of the military intervention in Nigeria were massive electoral offences that led to electoral violence that erupted in the western regional election in 1965. The level of electoral violence in the western region during the first republic manifested in the high level of loss of lives and property including what called "Operating Wetie" in retrospect must have been overwhelming for the young republic of barely five years that episode and general political behaviour of the people in that area earned the west region the application of "Wild, Wild West". The same pattern of electoral violence also occurred in the southwestern states of Oyo and Ondo following the 1983 elections. In these elections, the National Party of Nigeria (NPN), considered to be the "Northern" party was said to have had landslide victorious in those western states which were natural bases of Awolowo part. The Unity Party of Nigeria (UPN). The rest is history but the seeds of electoral violence in Nigeria were first sown in the western region of Nigeria. These seeds have since germinated and grown several fruits now scattered across other parts of the country.

Theoretical Analysis

Ahmad further argued that the pretentious of the above acts of electoral malpractices or offence will make the peaceful transfer of office from on government to another which is a very important process in any democratic process.

Elections are means of making political choices by voting. The election is used in the selection of leaders and the determination of issues. This conception implies that the votes all presented with alternatives, that they can choose among the number of a proposal designed to settle an issue of public concern. The presence of alternatives is a necessary condition. For although electoral forms may be employed to demonstrate popular support for incumbent leaders and their policies, the absence of alternatives, disqualified such devices as genuine elections. It can therefore be seen as the choice of representatives by the people to fill a position or political office by the method of voting. It is a medium through which a larger number of people participated in a political process. However, for an election to be genuine in any democratic process it should be free and fair, since democracy implies that power flow from governed, this cannot be achieved without a free and fair election (encyclopedia Americana Vol. 10).

System theory was first developed by David Easton who was regarded to be the pioneer of system analysis. Easton defined politics as the authoritative allocation of values that broadly constitutes the political process. This does not take place in a closed circuit. Its ends are connected with the social process. It is in this sense that the political system has been described as an open system on other words, allocation of values is made because their environment in David Easton terminology received input in from the environment in the form of demands and support it produce output in the form of policies and decision. The output flows back into the environment through a feedback mechanism, giving rise to fresh demand etc.

System theory is used here to analyse the electoral offences, penalties and implications in the Nigerian electoral system. A typical system has certain individuality.

First, a system is composed of an elements or parts that function as a whole. In other words, there is an organic unity and interdependence between components part of a system that any change in other parts and by extension, the entire system. Second, a system has identifiable boundaries distinguishing it from the nature within it operates.

Furthermore, the theory posits that a politics is an activity in which input from the environment is converted into outputs through the authoritative allocation of values. Consequently, as delineated by Easton, there are four (4) main processes in a typical political system, the input, the output, the conversion and the feedback process.

A detailed discussion of this is not necessary here but it is instructive to note that Eastern also drew attention to salient features that are critical in a political system to meet the demand from it is the environment. Accordingly, when they are genuinely

capable of speeding doom for the political system as those whose genuine aspirations are aside tracked of the trade-off are most likely to withdraw their support for the political system hence, occasion stress.

Relevance of the theory

Adopting this theory, the above scenario serves as a platform to posit that the electoral offences are a challenge to the system Electoral Commission has an intention for conducting the free, fair and credible elections. The environment is represented by the Nigerian states and all the past negative experiences of electoral malpractices and post-election violence witnessed in the country. These form the basis for the demand and support of the Nigerian state. As such, the need for electoral credibility emanates from the environment. Demands on the political system no doubt, come in a virtually infinite variety of forms, from accurate and updated voters register to accreditation of eligible voters on election’s day to actual votes cast to proper and accurate counting and announcement of results.

The conversion process in Nigeria context refers to those saddled with the responsibility of authoritative allocation of values in this context, those elected as people that constitute the mechanism of government. They are responsible for the conversions of the inputs which are demands coming from the environment into adequate output through the decision making process. It is the process that gave birth to INEC and empowered it to fashion our ways to conduct credible elections in Nigeria without interference from other quarters. Deducting from the system analysis, if the input is adequately converted into useful output, the Nigerian state would experience improved and credible elections and sustainable democracy.

Electoral Offences Penalties and Implications

The Independent National Electoral Commission (INEC) was established by the 1999 Constitution of the Federal Republic of Nigeria to among other things organize elections into various political offices in the country and the state independent electoral commission was established to organize and conduct local government elections in the state. The functions of INEC as contained in Section 15, Part 1 of the Third Schedule of the 1999 Constitution (As Amended) and Section 2 of the Electoral Act 2010 (As Amended) Laws regulate all aspects of our lives. The electoral process is no exception. Constitution of the Federal Republic of Nigeria, 1999 as amended, the Electoral Act 2010, as amended and the Independent National Electoral Commission (INEC) Rules and Regulations constitute the legal framework which regulates our electoral process. Provisions of these deal with the right to associate, vote, form Political Parties etc. Others include registration of voters, Election Day procedures, dispute resolution, etc. Breaches or violations of some of these provisions often attract penalties, which on conviction may be a fine, a term of imprisonment, or both.

Any conduct - action or inaction which is prohibited by the Constitution or the Electoral Act and a breach of which attracts punishment, is called an electoral offence. Electoral offences may be committed by INEC or Security Officials, Political Parties and their officials, Candidates, Observers, Journalists/Media Houses or the general public. Listed in this leaflet are some of the electoral offences prescribed by Nigerian Law as at 31st January, 2017.

Anyone in breach of any of these provisions is liable to be arrested and charged to court and prosecuted by INEC or SIEC in the case may be after an investigation by the relevant security Agencies

1. Voter Registration

Offences	Penalty	References
Register more than once. Unlawful possession of a voter’s card, selling or buying of voters card	A fine not exceeding N100, 000 or imprisonment for one year or both.	Section 117E.A 2010
Giving false information in any application for registration as a voter	A fine not exceeding N500,000 or 12 months Imprisonment or both.	
Hindering another person from registering as a voter	A fine not exceeding N500,000 or 5years Imprisonment or both.	
Impersonating a registration official, carrying out registration of persons illegally or forging a registration card	A maximum fine of N1,000,000 or 12 months imprisonment or to both.	

2. Offences in Respect of Nomination

Offences	Penalty	References
Forging a nomination paper or Result form; Willfully defacing or destroying a nomination paper or result form; Delivering to an electoral officer a forged nomination paper or result Signs a nomination paper or result form as a candidate in more than one constituency at the same election;	Person who commits an offence under subsection (1) of this section is liable for conviction to a maximum term of imprisonment for 2 years.	Section 118 E.A 2010

3. Offences in Relation to Ballot Papers and Ballot Boxes

Unlawful possession of a ballot paper. Illegal printing of ballot papers Illegal production or importation of ballot boxes.	A maximum fine of N50,000,000 or for a term of imprisonment of not less than 10 years or both.	Section 118(3) E.A 2010
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4. Disorderly Behaviour at Political Meetings

Offences	Penalty	References
To act in a disorderly manner or be in possession of an offensive weapon of a political meeting.	Maximum fine of N500,000 or imprisonment for 12 months or both.	Section 119 E.A 2010

5. Improper Use of Voter Card

Offences	Penalty	References
Unlawful giving of a voter's card to some other person for use at an election other than, an officer appointed to do so. Being in possession of more than one voter card.	A maximum fine of N1,000,000 or imprisonment for 12 months or both.	Section 120 E.A 2010

6. Improper Use of Vehicles

Offences	Penalty	References
Conveying any person to a Registration office or to a polling unit by government vehicle or boat, except in respect of a person who is entitled to use such vehicle or boat	A maximum fine of N 500,000.00 or imprisonment for six months or both	Section 12 E.A 2010

7. Impersonation and Voting when not Qualified

Offences	Penalty	References
A person voting or attempting to vote at an election when he/she is not qualified, or inducing a person to vote at an election knowing that such person is not qualified.	A maximum fine of N500,000 or 12 months imprisonment or both.	Section 122 E.A 2010

8. Dereliction of Duty/False result

Offences	Penalty	References
A Polling Officer failing to report on time or to discharge his duties on an election day without lawful excuse	On conviction to a maximum fine of N500,000 or 12 months imprisonment or both.	Section 123 E.A 2010
Announces or publishing a false election result	36 months imprisonment.	

9. Announces or publishes a false election result

Offences	Penalty	References
Returning Officer or Collation Officer or the person delivering a False certificate of return.	3 years imprisonment without an option of fine.	

10. Bribery and Conspiracy:-Vote Buying

Offences	Penalty	References
Paying money to any other person for bribery at any election.	On conviction to a maximum fine of N500,000 or 12months Imprisonment or both.	Section 124 E.A 2010
Receiving any money or gift, for voting or to refrain from voting at any election.	A maximum fine of N500,000 or imprisonment for 12 months or both	

11. Requirement of Secrecy in Voting

Offences	Penalty	References
Not maintaining the secrecy of voting at a polling unit. Interfering with a voter casting his vote	A maximum fine of N100,000 or to imprisonment for a term of 6 months or both.	Section 125 E.A 2010

12. Wrongful Voting and False Statements

Offences	Penalty	References
Illegal voting at an election Publishing any statement of the withdrawal of a candidate or about his personal character.	A maximum fine of N100,000 or imprisonment for a term of 6 months or both.	Section 126 E.A 2010

13. Voting by Unregistered Persons

Offences	Penalty	References
To bring into a polling unit during an election a voter's card Issued to another person	A fine of N100,000 or to imprisonment for a term of 6 months or both.	Section 127 E.A 2010

14. Disorderly Conducts at Elections

Offences	Penalty	References
Inciting others to act in a disorderly manner	A maximum fine of N500,000 or imprisonment for a term of 12 months or both.	Section 128 E.A 2010
Within a distance of 300 meters of a polling unit- Canvassing for votes, persuading any voter not to vote for any particular candidate or being in possession of any offensive weapon, wear or display any notice, symbol, photograph or party card using any vehicle bearing the colour or symbol of a political, loitering around a polling unit Blaring siren.	A fine of N100,000 or imprisonment for a term of 6 months.	
Snatching or destruction of any election material	24 months imprisonment.	

15. Undue Influence

Offences	Penalty	References
Accepting money or any other inducement during an election.	A fine of N 100,000 or imprisonment for a term of 12 months or both.	Section 130 E.A2010

16. Threatening

Offences	Penalty	References
Threatening a person with violence or injury to compel that person to vote or refrain from voting Preventing any political aspirant from free use of the media vehicles, mobilization of political support and campaign at an election;	A fine of N1,000,000 or imprisonment for a term of 3 years.	Section 131 E.A 2010

17 Campaigns and Campaign Finance

Offences	Penalty	References
Unlawful possession of a weapon at a political rally or voting centre	A maximum fine of N2,000,000 or imprisonment for a term of 2 years or both.	Section 94(2)E.A 2010

Threatening any person with violence during any political campaign	In the case of an individual, to a maximum fine of N1,000,000 or imprisonment for a term of 12 months. In the case of a political party, a fine of N2,000,000 in the first instance, and N500,000 for any subsequent offence.	Section 96(1,2)E.A 2010
Campaigning in public earlier than 90 days before polling day or ending it less than 24 hours to the election. A political party, advertising in a newspaper, radio or TV less than 24 hours before polling day	A maximum fine of N500,000	Section 99(1,2)E.A 2010
Employing state apparatus including the media to the advantage or disadvantage of any political party or candidate at any election. Unequal allocation of Media time among political parties or candidates Broadcasting or publishing any material for the purpose of promoting or opposing a particular political party or a candidate during 24hours immediately preceding or on polling day.	A maximum fine of N500,000 in the first instance and to a maximum fine of N1,000,000.00 for a subsequent conviction. A maximum fine of N500,000 or to imprisonment for a term of 12 months and in case of a body corporate shall pay a maximum fine of N1,000,000	Section 100 (1-6) E.A2010 Section 101 E.A 2010

18. Offences relating to finances of the apolitical party

Offences	Penalty	References
A Political Party possessing any fund outside or retaining funds or other assets remitted to it from outside Nigeria	For the feature of the funds or assets to the Commission and in addition, may be liable to a fine of not less than N500,000.	Section88(a-b) E.A2010

19. Limitations on Election Expenses and Contribution to a Political Party

Offences	Penalty	References
A Presidential Candidate incurring more than N1,000,000,000 as election expenses. A Governorship candidate incurring more than N200,000,000 A Senatorial and House of Representatives candidates exceeding N40,000,000 and N20,000,000 respectively. A candidate for State Assembly election spending more than N10,000,000. A candidate for Chairmanship of an Area Council incurring more than ten million nairas N10,000,000 In the case of Councillorship election to an Area Council, exceeding more than the	-Presidential election, to a maximum fine of N1,000,000 or imprisonment for a term of 12 months or both -Governorship election to a fine of N800,000 or imprisonment for a term of 9 months or both; -Senatorial election to a fine of N600,000 or imprisonment for a term of 6 months or both House of Representatives election to a fine of N500,000 or imprisonment for a term of 5months or both; -State House of Assembly election to a fine of N300,000 or imprisonment for a term of 3 months or both;	Section 90 (1-10) E.A2010

maximum of election expenses of one million nairas N1,000,000	In the case of Chairmanship election, to a fine of N300,000 or imprisonment for a term of 3 months or both; Councillorship election, to a fine of N100,000 or imprisonment for a term of one month or both.	
	A maximum fine of N500,000 or imprisonment for a term of 9 months or both.	Section 91(9)E. A 2010
Aiding a candidate to forge or falsify a document relating to his expenditure at an election	Imprisonment for a term of 10 years	Section 91(12)E. A 2010
Refusal by a political party to submit its election expenses to INEC in a separate audited return within 6 months after an election	A maximum fine of N1,000,000 and in the case of failure to submit an accurate audited return within the stipulated period, the court may impose a maximum penalty of N200,000 per day on any party for the period after the return was due until it is submitted to the Commission.	Section 92 (3,4,7) E.A 2010
A political party shall not incur election expenses beyond the limit stipulated in this Act. A political party that contravenes this subsection commits an offence and is liable on conviction	A maximum fine of N1,000,000 and for featured to the Commission of the amount by which the expenses exceed the limit set by the Commission.	

NOTE: It is to be noted that some of these provisions (and penalties) may change with the proposed further amendment to the Electoral Act 2010 (as amended).

The Implication of Electoral Offences

Contemporary Nigeria has become a conflict-prone society with the youth at the heart of most violent conflicts in the country. A recent study suggests that the youth are prosecutors of 90-95% of violent conflicts in Nigeria (Omeje, 2007). Granted, a situation

where the youth are the main prosecutors of violent conflict is not peculiar to Nigeria alone. However, the anxiety over the Nigerian situation is as a result of the sheer magnitude, complexity, frequency, ramifications and seeming intractability of the most violent conflict the country has witnessed since the advent of democracy in 1999.

The term electoral offences are such misconducts that are usually displayed in the electoral process either during registration or in the conduct of elections. Most at times failed to take actions against such attitudes from either the individual or group is what usually extent to electoral violence.

The term electoral violence has been used generally in two strands of research. At the first instance, electoral violence is seen as a subset of activities in a larger political conflict. In this context, electoral violence has been studied as part of the trajectory of ethnic or communal violence divided societies such as Kenya, Sri Lanka and India where it has been noted that violence tends to sleep and wake up around election times (Hogland, 2006). In a second approach, electoral violence is seen as the ultimate kind of electoral fraud (Hogland, 2006) electoral fraud has been defined as a clandestine effort to shape election results (Legouve1, 2003) in another submission (Schwartz, 2010) noted that electoral violence is simply violence aimed at the electoral process and is geared towards winning political competition or power through, subverting the ends of the electoral and democratic process.

Mwagiru (2000), notes that its tool of the trade is the intimidation and disempowerment of political opponents. Thus electoral violence, takes place not just at election periods but also in the periods leading up to the election, during the election, and in the period immediately following elections during the counting of ballots. In Nigeria’s Fourth Republic, it has become common for many political figures to openly recruit and arm the youth to unleash terror upon their opponents and ordinary members of the public during election periods for the purposes of this paper

electoral offences and its implications is particularly seen in this context.

Electoral offences, is common in Nigeria democracy, but metamorphose to violence and always violence is a threat to democracy. Thus, electoral violence happened not in all democracies. Yet in recent years violence in connection to elections particularly in the so-called 'emerging democracies' have attracted attention precisely because they seem extraordinary and scandalous in the system that is supposed to be by definition non-violence (REF, 2015). There is hardly any basis for making broad generalizations and electoral violence in democracies across countries due to cultural, social, economic and political specifics. A specific country may also display markedly different levels of electoral violence across time. Kenya and Nigeria displayed symbolic examples of electoral violence which along the way challenge the security of the country may be that including the development of the area because of destructions.

In analysis, elections offences and led to violence and electoral violence transformed to conflict. Høglund (2006), identifies three areas in which the precipitants of violence with regard to polling can be found. These are one, the nature of conflict societies whereby the stakes involved in winning or losing election are sometimes fundamental to the well beings of entire communities. Two the conflict dimension of democracy, in which a prevailing assumption both within the theory and practice has been that peace and democracy are mutually reinforcing. While, more democracy is probably the answer to political violence in the long run, an expanding body of scholarly work has contended that the democratization process particularly in post-conflict society is highly conflictual. Indeed under certain circumstances, democratization will make a return to war more likely (Mantulid and Snyder, 2001, Paris 2004).

Finally, the third participant of electoral violence as identified by Høglund is the design of electoral systems and administration. The electoral mechanism i.e electoral administration and electoral system design are central to understanding the attractiveness of violence in some societies and among certain actors.

Conclusion

Conclusively, the free, fair and credible election is only possible when there is control of elections offences and irregularities through the use of cardinal principles of democracy which always need to maintain that is the issue of rule of law and periodic elections which are at the heart of democracy. The electoral commission needs to handle the election and ensure offenders answers their wrongdoing. That would maintain the standard, value and integrity of the commission it also add courage to the citizens toward believing the capability and credibility of the commission in conducting free, fair and credible elections in Nigeria.

Recommendations

For election to serve it is the primary purpose of peaceful transfer of power from one regime to another, it must to be free from all forms of malpractice that may be destabilized the electoral process.

The paper, therefore, recommends the following aspects to improve the quality in the subsequent elections and to have a successful electoral process.

- = Proper arrangement for the elections by the commission
- = Improve staff training on how to handle their responsibilities
- = Strong, efficient, effective, and proactive institutions e.g. judiciary, police and other related agencies in the electoral process
- = Creating public awareness by CSOs Political Parties, Media and other relevant agencies people need to be enlightening on voters education and creating awareness to the new policies and electoral process.
- = Poverty reductions program by the government and other responsible organizations or individuals

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