

URGENT NEED FOR THE AMENDMENT OF SECTION 145 OF THE ELECTORAL ACT, 2022

By

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Abstract

The Electoral Act, 2022 came into operation on 25th February, 2022. It repealed the Electoral Act, No. 6 of 2010. In an attempt to see that electoral offenders are severely punished, section 145(1) Electoral Act, 2022 provides that an offence under the Act shall be triable in a Magistrate Court or a High Court of a State in which the offence is committed, or the Federal Capital Territory, Abuja. Subsection (2) of the said section provides that a prosecution under the Electoral Act, 2022 shall be undertaken by legal officers of the commission or any legal practitioner appointed by it. From experiences, politicians will not respond to good behavior unless there is a perception that bad behavior will be severely punished. There is no doubt that combating electoral offences in Nigeria is an arduous task. There is a serious lacuna in our Electoral Act with respect to prosecution of electoral offenders. The problem lies with the seeming inability to prosecute and secure convictions of electoral offences. This lacuna accounts to why politicians see elections as a do-or-die affair. In this article, the writer is making a case for the establishment of electoral offences commission that shall see to the prosecution of the electoral offences committed during our elections. This will go a long way in ensuring free and fair elections in Nigeria.

1.0 Introduction

The main focus of criminal justice systems the world over is the punishment of offenders. The emphasis is to show society's aversion for crimes and that criminals are punished. Honourable Justice Uwais panel set up to review the electoral processes in Nigeria recommended for the establishment of the electoral offences commission primarily to deal with the prosecution of electoral offences committed during elections.¹ It is unfortunate that the National Assembly has refused to include the establishment of the electoral offences commission in the Electoral Act, 2022, rather section 144 of the Electoral Act, 2022 provides that the Independent Electoral Commission (INEC) shall consider any recommendation made to it by a tribunal with respect to the prosecution by it of any person for an offence disclosed in any election petition. By implication, the election petition tribunals have no jurisdiction to entertain criminal offences created as electoral offences under the relevant electoral laws. In that wise; the tribunals will be dealing with offences against the electoral laws for the purpose of deciding the validity or otherwise of the election petitions presented before them since the tribunals lack jurisdictional power to try criminal offences. As a result of this development, the writer in this article makes a case for the amendment of section 145 of the Electoral Act, 2022 for the said section to give way for the establishment of the electoral offences commission so as to guarantee free and fair elections in Nigeria.

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¹ Hon. Justice Uwais Panel was set up in the year 2007 by the Nigerian Government under President Umaru Musa Yaradua and tasked with recommending electoral reforms for the country. The Panel submitted its Report on 11th December 2008.

2.0 What is Election?

Election is the corner stone of democracy.² Election is a means through which people make choice of leadership.³ It is the process of electing one person or more for leadership positions in both public and private establishments. Election offers a medium through which citizens in a polity choose their representatives and political leadership.⁴ It also allows a degree of communication between the rulers and the ruled and further provides a means of legitimizing the rights of the rulers to govern.⁵

In the contemporary world of today, elections have become the most acceptable means of changing leadership in any given political system. Representative government is often referred to as democracy where the authority of government is derived solely from the consent of the governed. The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.⁶ A free and fair election gives the assurance that those who emerge as rulers are the elected representatives of the people. Except in case where an aspirant is returned unopposed; there will usually be at least two contestants to elective posts. Rules and regulations are normally put in place for the conduct of free and fair elections.

The Electoral Act⁷ is the law which currently regulates elections in Nigeria. Applying a broad interpretation, the Court of Appeal in *Progressive Peoples' Alliance (PPA) v Sariki*⁸ interpreted the word "election" as used in section 137(1) (b)⁹ to mean the "process of choosing by popular votes a candidate for a political office in a democratic system of government. It cannot refer exclusively to the polls. The casting of votes by the electorates on the day of the polls is just part of the electoral process.¹⁰ By the provision of the Electoral Act¹¹ the word 'election' is a generic term comprising *inter alia* submission of list of candidates and their affidavit by political parties, nomination of candidates, conduct of the polls etc. In this article, the term election will be used in a broad manner.

2.1 The Concept of Electoral Offences

The Electoral Act 2022 and previous Electoral Act¹² did not define electoral offences. It is therefore necessary to search for its meaning elsewhere. Oxford Advanced Learner's Dictionary¹³ defines offences as "an illegal act or a crime," and it¹⁴ equally defines crimes as "activities that involves breaking the law" or "an illegal act or activity that can be punished by law." Offences in this perspective are synonymous with crimes.¹⁵ Henry Campbell Black defines "offence" as "a felony or misdemeanor; a breach of the criminal laws; violation of law for which penalty is prescribed ... an act clearly

² T Osipitan, "Problems of Proof under the Electoral Act 2002," in *Judicial Excellence, Essays in Honour of Hon. Justice Anthony Iguh JSC CON*, Enugu, Snaap Press Ltd, 2004.

³ <http://www.Internationalpeaceandconflict.org/profiles/blogs/election...> (accessed on 18 June 2012).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ www.Buzzle.com/articles/electoral-reform-in-Nigeria-html-28k (accessed on 18 December 2008).

⁷ Electoral Act 2022.

⁸ (2007) 17 NWLR (Pt 1064) 456.

⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹⁰ *Ibid* per Ogunwumi JCA who read the lead judgment.

¹¹ Electoral Act, 2022.

¹² Electoral Acts 1978, 1983, 2002, 2006 and 2010.

¹³ AS Hornby, Oxford Advanced Learner's Dictionary, 7th Edition, Oxford University Press, 2005,439.

¹⁴ *Ibid*, at page 363.

¹⁵ B Nwakanma and N. Olehi, Laws governing Elections and Election Petitions, Edu – Edy Publications, Owerri, 2007, 187.

prohibited by the lawful authority of the State, providing notice through published laws.”¹⁶ According to Black’s Law Dictionary,¹⁷ “offence is the violation of the law.” The term “crime,” “offence,” and “criminal offence” are all said to be synonymous and ordinarily used interchangeably. Offence may comprehend every crime and misdemeanor, or may be used in a specific sense as synonymous with “felony” or with “misdemeanor,” as the case may be, or as signifying a crime of lesser grade, or an act not indictable, but punishable summarily or by the forfeiture of a penalty.¹⁸ In the electoral system, such offences abound. The specifications of offences in the Electoral Act 2022 are in obedience to section 36 (12) of the Constitution¹⁹ which provides as follows:

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 thereof is prescribed in a written law, and in this subsection, 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.

Accordingly, any act or omission which is not provided for in the Electoral Act cannot constitute an electoral offence. These offences are prescribed in Part VII of the Electoral Act, 2022. Since these offences are adequately provided by our law, there is need for the serious prosecution of the offender to give way for free and fair elections in Nigeria. This calls for the need for the establishment of the electoral offences commission. In *Daggash v Bulama*²⁰ the court emphasized the seriousness of electoral offences and upheld strict penalties to deter such conduct.

2.2 What is Free and Fair Election?

Representative government is often referred to as democracy where the authority of government is derived solely from the consent of the governed. The principal mechanism for translating that consent into governmental authority is the holding of free and fair elections.²¹ A free and fair election gives the assurance that those who emerged as rulers are the elected representatives of the people. Free election is an election in which the political system and processes guarantee that each voter will be allowed to vote according to conscience. The concept of “free and fair” election is not a legal theory as such. Its significance is underscored by municipal and international legal instruments. The African Charter on Human and Peoples’ Right provides that every citizen shall have the right to participate freely in the government of his country either directly or through freely chosen representatives. Article 21(3)²² provides that the will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine election which shall be held by secret vote or by equivalent free voting procedures.

From the above illustrations, it can be seen that free and fair elections are those elections held without physical or psychological intimidation and in accordance with the provisions of fair electoral laws in

¹⁶ *Ibid*, at p. 1081.

¹⁷ BA Garner, Black’s Law Dictionary, 8th Edition, Thomson West, USA, 2004, p.1110.

¹⁸ *Ibid*.

¹⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

²⁰ (2004) 14 NWLR (Pt. 892) 144.

²¹ Article 13(4) African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004, which is part of our law as was held *Abacha v. Fawehinmi* (2006) 6 NWLR (Pt. 660) 228.

²² African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004.

force. They are those elections conducted so that the electorates have reasonable opportunity to vote, with each vote given same effect.²³

2.3 Electoral Offences under the Electoral Act 2022

In every electoral system, electoral offences abound. The specifications of offences in the Electoral Act 2022 are in obedience to section 36(12) of the 1999 constitution of the Federal Republic of Nigeria, 1999. These offences are prescribed in part VII of the Electoral Act, 2022 and they include offences in relation to registration,²⁴ offences in respect of nomination,²⁵ disorderly behavior at political meetings,²⁶ improper use of voters cards,²⁷ improper use of vehicles,²⁸ impersonation and voting when not qualified,²⁹ dereliction of duty,³⁰ bribery and conspiracy,³¹ requirement of secrecy in voting,³² wrongful voting and false statements,³³ voting by unregistered person,³⁴ disorderly conduct at elections,³⁵ offences on election day,³⁶ undue influence,³⁷ threatening³⁸ and offence relating to recall.³⁹

There are other offences created by other provisions of the Electoral Act 2022. That is to say that apart from the offences created by Part VII of the Act earlier identified, there are other provisions of the Act that create some other offences that militate against the peaceful conduct of elections. They are:

- (1) Offences relating to register of voters.⁴⁰ It should be noted that one of the critical pre-election activities is registration of voters. It is the duty of INEC to compile, maintain, and update on a continuous basis, a national register of voters referred to as the “register of voters” which shall include the names of all persons entitled to vote in any federal, state or local government or Area council elections. Section 23(1) and (2)⁴¹ makes it an offence for the contravention of the provisions of this section. Contravention attracts a fine not exceeding N500, 000 or imprisonment not exceeding five years.
- (2) Another offence that has to do with the registration of voters relates to double registration. No person shall register in more than one registration centre or register more than once in the same registration centre.⁴² Any person who contravenes the provision of section 22 of the Electoral

²³ CJ Ubanyionwu, *Op cit*, at p. 205.

²⁴ Section 114 of the Electoral Act, 2022.

²⁵ *Ibid*, s. 115.

²⁶ *Ibid*, s. 116.

²⁷ *Ibid*, s. 117.

²⁸ *Ibid*, s. 118.

²⁹ *Ibid*, s. 119.

³⁰ *Ibid*, s. 120.

³¹ *Ibid*, s. 121.

³² *Ibid*, s. 122.

³³ *Ibid*, s. 123.

³⁴ *Ibid*, s. 124.

³⁵ *Ibid*, s. 125.

³⁶ *Ibid*, s. 126.

³⁷ *Ibid*, s. 127.

³⁸ *Ibid*, s. 128.

³⁹ *Ibid*, s. 129.

⁴⁰ *Ibid*, s. 23.

⁴¹ *Ibid*.

⁴² *Ibid*, s. 22.

Act commits an offence and is liable on conviction to a fine not exceeding N500, 000 or imprisonment for a term not exceeding two year or both.

- (3) It is equally an offence for any person who by duress, including threats of any kind causes or induces any person or persons generally to refrain from registering as a voter or voters;⁴³ or in any way hinders another person from registering as a voter. The penalty for contravening these provisions is a fine not exceeding N500, 000 or imprisonment not more than five years.⁴⁴
- (4) It should be noted that section 23 of the Act does not exhaust all the offences relating to registration of voters. By section 16(1) of the Electoral Act,⁴⁵ the INEC is vested with the powers to design, print and control the issuance of voters' cards to voters whose names appear in the register. Subsection 2⁴⁶ unequivocally declares that "no voter shall hold more than one valid voter's card." Any person who contravenes subsection 2 of this section commits an offence and shall be liable on conviction to a fine not more than N500, 000 or imprisonment or a term not more than one year or both.⁴⁷
- (5) There are offences relating to submission of list of candidates and their affidavits by political parties.⁴⁸ Every political party is required to submit list of its candidates to the INEC not later than 180 days before the date appointed for a general election under the provisions of the Election Act 2022.⁴⁹ The list must be in the form prescribed by the commission. The list or information shall be accompanied by an affidavit sworn to by the candidate at the High Court of a state, indicating that he has fulfilled all the constitutional requirements for election into the office he wants to contest for.⁵⁰ The commission shall within 7 days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intends to contest the election.⁵¹ By section 29(8)⁵² a political party which presents to the Commission the name of a candidate who does not meet the qualification stipulated in this section, commits an offence and is liable on conviction to a fine of N10, 000, 000.
- (6) There is an offence relating to double nomination. It is contained in section 30.⁵³ A candidate for an election shall be nominated in writing by such number of persons whose names appear on the register of voters in the constituency as the commission may prescribe.⁵⁴ Section 30(2) of the Electoral Act⁵⁵ provides that "a person shall not nominate more than one person for an

⁴³*Ibid*, s. 23(2)(a).

⁴⁴ *Ibid*, s. 23(2)(b).

⁴⁵ Electoral Act, 2022.

⁴⁶ *Ibid*, s. 16(2).

⁴⁷ *Ibid*, s. 16(2).

⁴⁸ *Ibid*, s. 29.

⁴⁹ *Ibid*, s. 29(1).

⁵⁰ *Ibid*, s. 29(2).

⁵¹ *Ibid*, s. 29(3).

⁵² *Ibid*, s. 29(8).

⁵³ *Ibid*, s. 30.

⁵⁴ *Ibid*, s. 30(1).

⁵⁵ *Ibid*.

election to the same office.” A person who contravenes the above provision shall be guilty of an offence and is liable on conviction to a fine 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.⁵⁶

- (7) Electoral Act, 2022, provides for offences relating to conduct at political rallies and processions.⁵⁷ Certain conducts are prohibited at political rallies and processions.⁵⁸ Any political party aspirant or candidate that contravenes any of the provisions of the sections commits an offence and is liable on conviction (a) in the case of an aspirant or candidate, to a maximum fine of N1, 000, 000 or imprisonment for a term of 12 months; and (b) in the case of a political party, to a 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 or abets a political party, an aspirant or a candidate in contravening the provisions of Section 92 (5)⁵⁹ commits an offence and is liable on conviction to a fine of N500, 000 or imprisonment for a term of three years of both.⁶⁰
- (8) The Electoral Act 2022 prohibits the use of force or violence during political campaign.⁶¹ The punishment section of the said offence provides that a political party, candidates, aspirant, person or group of persons that contravenes the provisions of this section commits an offence and is liable on conviction (a) in the case of a candidate, aspirant or group of persons, to a maximum fine of N1, 000, 000 or imprisonment for a term of 12 months; and (b) in the case of a political party, to a fine of N2, 000, 000 in the first instance, and N500, 000 for any subsequent offence.⁶²
- (9) Campaign based on religion or tribe is an offence under the Electoral Act, 2022.⁶³ A person convicted under this section is liable (a) to a maximum fine of N1, 000, 000; or imprisonment for a term of 12 months or both; and (b) in the case of a political party, to a maximum fine of N10, 000, 000.⁶⁴
- (10) Section 95 (1)⁶⁵ provides for campaign for election. Campaign is part and parcel of political process. Rules and regulations are put in place by the Commission to guide the conduct of campaign by political parties. In order to ensure equity fairness and unhindered access to the news media, section 95(2)⁶⁶ provides that State apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate at any election. Media time shall be allocated equally among the political parties or candidates at similar hours

⁵⁶*Ibid*, s. 30(3).

⁵⁷ *Ibid*, s. 91(7).

⁵⁸ See sections 91 & 92 of the Electoral Act, 2022.

⁵⁹ *Ibid*.

⁶⁰ *Ibid*, s. 92(8).

⁶¹ Section 93 (1) of the Electoral Act, 2022.

⁶² *Ibid*, subsection (2).

⁶³ See s. 97 (1).

⁶⁴ *Ibid*.

⁶⁵ *Ibid*.

⁶⁶ Electoral Act, 2022.

of the day.⁶⁷ Subsection (4)⁶⁸ provides that at any public electronic media, equal airtime shall be allotted to all political parties or candidates during prime times at similar hours each day, while subsection (4) provides that at any public electronic media, equal airtime shall be allotted to all political parties or candidates during prime times at similar hours each day, subject to the payment of appropriate fees. Subsection (6) provides that a person who contravenes subsections (3) and (4) commits an offence and is liable on conviction, in the case of (a) a public media, to a fine of N2, 000, 000 in the first instance and N5, 000, 000 for subsequent conviction; and (b) principal officers and other officers of the media house, to a fine of N1, 000, 000 or imprisonment for a term of six months.

- (11) There are offences relating to limitation on election expenses.⁶⁹ The maximum election expenses for each political office are contained in the said section, likewise donations that could be made to political parties by individuals.⁷⁰ A candidate, who knowingly acts in contravention of this section, commits an offence and is liable on conviction to a fine of 1% of the amount permitted as the limit of campaign expenditure under this Act or imprisonment for a term not more than 12 months or both.⁷¹ Any individual who knowingly acts in contravention of subsection (9) is liable on conviction to a maximum fine of N500, 000 or imprisonment for a term of nine months or both.⁷² An accountant who falsifies, or conspires or aids a candidate to forge or falsify a document relating to his expenditure at an election or receipt or donation for the election or in any way aids and abets the contravention of the provisions of this section commits an offence and is liable on conviction to a fine of N3, 000, 000 or imprisonment for a term of three years or both.⁷³

2.4 Criminal Liability of Political Parties under the Electoral Act 2022

There are also other classes of offences created by the Electoral Act 2022. In such cases, corporate criminal liability can be enforced and stiff penalties imposed.¹¹⁶ They are:

(a) Offence relating to submission of list of Candidates to INEC

Section 29 (8)⁷⁴ provides for the criminal liability of political parties as it relates to the submission of list of candidates to INEC. It provides as follows:-

A political party which presents to the Commission the name of a candidate who does not meet the qualification stipulated in this section, commits an offence and is liable on conviction to a fine of N10, 000,000.

⁶⁷ See s. 95 (3) of the Electoral Act, 2022.

⁶⁸ *Ibid.*

⁶⁹ See s. 88 of the Act.

⁷⁰ See section 88 (2-8) of the Act.

⁷¹ *Ibid*, subsection (9).

⁷² *Ibid*, subsection (10).

⁷³ *Ibid*, subsection (11).

⁷⁴ Electoral Act, 2022.

(b) Offence relating to the breach of Campaign Rules by Political Parties

Section 94(1) of the Electoral Act, 2022 provides that the period of campaigning in public by every political party shall commence 150 days before polling day and end 24 hours before polling day. Any registered political party which through any person acting on its behalf during the 24 hours before polling day, advertises on the facilities of any broadcasting undertaking;⁷⁵ or procures for publication or acquiesces in the publication of an advertisement in a newspaper, for the purpose of promoting or opposing a particular candidate, commits an offence under this Act and is liable on conviction to a maximum fine of N500, 000.⁷⁶

It is equally provided that a person, or electronic medium that broadcasts, publishes, advertises or circulates any material for the purpose of promoting or opposing a particular political party or the election of a particular candidate over the radio, television, newspaper, magazine, handbills, or any print or electronic media whatsoever called within twenty four hours immediately preceding or on polling day commits an offence under this Act.⁷⁷ Any person convicted of this offence under this section is liable (a) in the case of a body corporate to a maximum fine of N1, 000,000 and in the case of an individual to a maximum fine of N1, 000, 000 or to imprisonment for a term of six months or both.⁷⁸

(c) Offences relating to contravention of section 227 of the 1999 Constitution

Section 227 of the Constitution⁷⁹ provides that “no association shall retain, organize, train or equip any person or group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest or in such manner as to arouse reasonable apprehension that they are organized and trained or equipped for that purpose.” Pursuant to this constitutional provision, any political party or association, which contravenes the provisions of section 227 of the Constitution, commits an offence and is liable on conviction to a fine of (a) N5, 000,000 for the first offence; (b) N7, 000,000 for any subsequent offence; and (c) N500,000 for every day that the offence continues.⁸⁰

Apart from the punishment prescribed above, subsection (2) adds that any person or group of persons who aids or abets a political party in contravening the provisions of section 227 of the Constitution commits an offence and is liable on conviction to a fine of N5, 000,000 or imprisonment for a term of five years or both.⁸¹

(d) Offences relating to monitoring of Political Parties

The Independent National Electoral Commission is empowered to monitor and keep records of the activities of all the registered political parties.⁸² The Commission may seek information or clarification from any registered political party in connection with any activities of the political party which may be contrary to the provisions of the Constitution or any other law, guidelines, rules or regulations made

⁷⁵ *Ibid*, subsection (2)(a).

⁷⁶ *Ibid*, subsection (2)(b).

⁷⁷ *Ibid*, section 96(1).

⁷⁸ *Ibid*, section 96(3).

⁷⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁸⁰ Section 78 (1) of the Electoral Act 2022.

⁸¹ *Ibid*, subsection (2).

⁸² Section 83 (1) of the Electoral Act 2022.

pursuant to an Act of the National Assembly.⁸³ The Commission may direct its enquiry under subsection (2) to the Chairman or Secretary of the political party at the national, state, local government or area council or ward level, as the case may be.⁸⁴ Any political party which fails to provide the required information or clarification under subsection (2) or carry out any lawful directive given by the Commission in conformity with the provisions of this section is liable to a fine of not more than N1, 000,000.⁸⁵

(e) Offence relating to Finances of a Political Party

Any political party that (a) holds or possesses any fund outside Nigeria in contravention of section 225(3) (a) of the Constitution, commits an offence and shall on conviction forfeit the funds or assets purchased with such funds to the Commission and in addition may be liable to a fine of not less than N5, 000,000;⁸⁶ or (b) retains any fund or other assets remitted to it from outside Nigeria in contravention of section 225(3) (a) of the Constitution commits an offence and shall on conviction forfeit the funds or assets to the Commission and in addition may be liable to a fine of at least N5, 000,000.⁸⁷

Furthermore, section 86(1) of the Electoral Act 2022 directs that every political party shall submit to the Commission a detailed annual statement of assets and liabilities and analysis of its sources of funds and other assets, together with statement of its expenditure including hard and soft copy of its list of members or in such a form as the Commission may require. Any official of the political party who contravenes subsection (1) commits an offence and is liable to a fine of N1, 000,000 or imprisonment for a term of six months or both.⁸⁸

Section 87(1)⁸⁹ further provides that any individual, candidate or political party who exceeds the limit placed by the Commission in subsection (1) commits an offence and is liable on conviction to (a) in the case of political party, a fine not more than N10, 000,000.00 and forfeiture of the amount donated; and (b) in case of an individual, a fine of five times the amount donated in excess of the limit placed by the Commission.⁹⁰

3.0 Functions and Duties of INEC under the Electoral Act of 2022

The Independent National Electoral Commission (INEC) is the body responsible for overseeing and conducting elections in Nigeria. The Electoral Act of 2022 provides a comprehensive legal framework for INEC's functions and duties, ensuring that elections are free, fair, and credible. The functions and duties of INEC can be summarized as follows:

3.1 Conduct and Supervision of Elections

INEC is mandated to organize, undertake, and supervise all elections to the offices of the President, Vice President, Governor, Deputy Governor, and the National and State Assemblies. The Electoral Act,

⁸³ *Ibid*, subsection (2).

⁸⁴ *Ibid*, subsection (3).

⁸⁵ *Ibid*, subsection (4).

⁸⁶ Section 85 (a) of the Electoral Act 2022.

⁸⁷ *Ibid*, subsection (b).

⁸⁸ Section 86 (2) of the Electoral Act 2022.

⁸⁹ *Ibid*.

⁹⁰ *Ibid*, section 87(2).

2022, outlines INEC's responsibility to fix dates for elections and ensure the proper conduct of these elections. In *INEC v. Musa*,⁹¹ the Supreme Court held that INEC has the exclusive power to conduct elections, emphasizing that this function is crucial for maintaining the integrity of the electoral process. This case reaffirmed INEC's constitutional role and its autonomy in managing electoral processes. In *PDP v INEC*,⁹² the Peoples Democratic Party (PDP) challenged INEC's decision to cancel the gubernatorial elections in Anambra State due to irregularities. INEC had decided to nullify the results and ordered a rerun in certain areas where the elections were allegedly marred by malpractices. The PDP argued that INEC had no power to cancel elections once results were announced, claiming that only an election tribunal had the authority to nullify an election. The Court of Appeal held that INEC has the power to cancel or postpone elections if it determines that the process was compromised by significant irregularities. The court affirmed that this power is part of INEC's duty to ensure free, fair, and credible elections. This case reinforces INEC's duty to act proactively in maintaining the integrity of elections, even if it involves canceling compromised elections.

3.2 Registration of Voters and Maintenance of the Voters' Register

It is the duty and responsibility of INEC to engage in the continuous registration of voters and the maintenance of an updated voters' register.⁹³ The Electoral Act, 2022,⁹⁴ mandates INEC to compile, maintain, and update the national register of voters, ensuring that all eligible Nigerians are able to vote. In *INEC v Action Congress*⁹⁵ the court emphasized the importance of an accurate voters' register in ensuring the credibility of elections. The case highlighted issues with voter registration, leading to calls for INEC to improve its data management practices. The ruling of the court in this case highlighted that the accuracy of the voters' register is fundamental to the legitimacy of the electoral process.

3.3 Delimitation of Constituencies

INEC is tasked with the delimitation of electoral constituencies and wards to ensure equitable representation. The Electoral Act, 2022, grants INEC the power to review and delimit constituencies at intervals of not less than ten years, taking into account population changes and other relevant factors. In *Attorney General of the Federation v Attorney General of Abia State*,⁹⁶ the Supreme Court clarified that INEC's responsibility to delimit constituencies is subject to constitutional provisions, ensuring fair and balanced representation. This case underscored the importance of fair delimitation in preventing the manipulation of electoral boundaries.⁹⁷

3.4 Regulation of Political Parties

INEC regulates the activities of political parties, including their registration, monitoring of their finances, and ensuring compliance with the law. Section 89 of the Electoral Act, 2022, gives INEC the authority to monitor and regulate the finances of political parties, ensuring that they operate within the legal framework. In *INEC v Balarabe Musa*,⁹⁸ the Supreme Court upheld INEC's power to deregister

⁹¹ (2003) 3 NWLR (Pt. 806) 72.

⁹² (2014) 17 NWLR (Pt. 1437) 525.

⁹³ Section 9(1) of the Electoral Act 2022.

⁹⁴ *Ibid.*

⁹⁵ (2009) 2 NWLR (Pt 1126) 524.

⁹⁶ (2002) 6 NWLR (Pt. 764) 542.

⁹⁷ Otherwise known as gerrymandering.

⁹⁸(2003) 3 NWLR (Pt. 806) 72.

political parties that fail to meet the requirements stipulated by law, affirming the commission's role in maintaining a structured political landscape. This case established a precedent for INEC's regulatory authority over political parties, including its ability to enforce compliance with electoral laws.

3.5. Monitoring of Campaign Finance

INEC monitors the finances of candidates and political parties to ensure compliance with campaign finance regulations. Section 88 of the Electoral Act, 2022, mandates INEC to monitor and regulate the campaign expenditures of political parties and candidates, setting limits on spending to prevent undue influence in the electoral process. In *Nwankwo v Yar'Adua*,⁹⁹ the court held that campaign finance regulations are essential for ensuring a level playing field, and INEC's role in monitoring these finances is critical for the fairness of elections. The case¹⁰⁰ reinforced the need for strict enforcement of campaign finance laws to prevent corruption and undue influence in elections. The case of *Ojukwu v Yar'Adua*¹⁰¹ arose from the 2007 presidential election, where there were widespread allegations of electoral malpractice, including issues with voter registration, ballot stuffing, and the transmission of results. Ojukwu challenged the validity of the election and the declaration of Yar'Adua as the winner. The Supreme Court upheld the election but highlighted the importance of transparency and fairness in the electoral process. The court pointed out various lapses in the electoral process, which INEC was urged to address in future elections. This case stressed INEC's duty to conduct elections that are not only free and fair but also seen to be so, thereby promoting public confidence in the electoral process.

3.6 Voter Education and Public Enlightenment

INEC is responsible for conducting voter education and public enlightenment to ensure that voters are informed about their rights and responsibilities. Section 2¹⁰² empowers INEC to provide voter education and promote public awareness of electoral processes. In *INEC v Ararume*,¹⁰³ the court highlighted the importance of voter education in ensuring informed participation in elections, noting that INEC's efforts in this area are vital for the success of the democratic process. This¹⁰⁴ case emphasized that voter education is crucial for reducing voter apathy and ensuring that elections are truly reflective of the electorate's will. In this case, the core issue revolved around INEC's role in substituting a candidate for the 2007 gubernatorial elections in Imo State. Ifeanyi Ararume was duly nominated by his party, the Peoples Democratic Party (PDP), as its candidate for the Imo State gubernatorial elections. However, shortly before the election, the PDP sought to substitute Ararume's name with another candidate's name and requested INEC to effect the substitution. The facts of this case are that INEC acted upon the PDP's request and substituted Ararume's name with that of another candidate. Ararume challenged this substitution, arguing that it was done illegally and without due process. The Supreme Court examined INEC's duty under the Electoral Act concerning the substitution of candidates. The Court held that INEC had a duty to ensure that any substitution of a candidate must comply with the provisions of the law, particularly the Electoral Act. The Supreme Court ruled in favor of Ararume, holding that INEC acted beyond its powers by substituting his name without following the proper legal procedure. The

⁹⁹ (2010) 12 NWLR (Pt. 1209) 518.

¹⁰⁰ *Ibid.*

¹⁰¹ (2009) 12 NWLR (Pt. 1154) 50.

¹⁰² Electoral Act, 2022.

¹⁰³ (2007) 9 NWLR (Pt 1038) 127.

¹⁰⁴ *Ibid.*

Court emphasized that INEC's role is to ensure that any substitution of a candidate by a political party is done in accordance with the law and not arbitrarily.

This case established that INEC must adhere strictly to the legal framework governing electoral processes and cannot unilaterally take actions that could affect the rights of candidates. The decision also highlighted the importance of INEC's duty to act as an impartial and lawful administrator of electoral processes. In *INEC v Musa*,¹⁰⁵ the court dealt with the issue of INEC's authority to disqualify candidates in an election. INEC had disqualified certain candidates from participating in the 2003 elections based on its interpretation of the qualifications required under the Constitution and the Electoral Act. The candidates challenged their disqualification, arguing that INEC did not have the power to disqualify them. The Supreme Court held that INEC does not have the power to disqualify candidates on its own. The Court held that only a court of law has the authority to disqualify a candidate, and INEC's duty is to conduct elections based on the list of candidates presented by political parties. This case clarified the limits of INEC's powers, emphasizing that INEC's role is to administer elections, not to determine the eligibility of candidates independently.

3.7 Conduct of Electoral Investigations and Prosecutions

INEC has the power to investigate electoral offences and prosecute individuals or entities found guilty of such offenses. Section 144 of the Electoral Act, 2022, authorizes INEC to investigate and prosecute electoral offences, including fraud, bribery, and violence, to ensure the integrity of the electoral process. In *INEC v CAN*,¹⁰⁶ the court upheld INEC's power to investigate and prosecute electoral offenses, stressing the importance of these powers in deterring electoral malpractices. This case demonstrated the effectiveness of INEC's prosecutorial powers in maintaining the integrity of elections.

4.0 Unbundling of Independent National Electoral Commission (INEC) for effective performance

We have taken time to enumerate the duties of INEC and the offences the INEC are saddled with in the discharge of its duties. In line with the recommendation of the national conference of 2014, the writer is making a case for the unbundling INEC and suggests that (a) INEC should be unbundled to enable it focus in its core mandate of organizing elections and delineation of constituencies. In unbundling INEC, cognizance must be taken of the need to guide against further multiplication of institutions, especially against the backdrop of the legitimate apprehension of Nigerians on the increasing cost of governance in the country; (b) Electoral Offences Commission should be established to undertake the investigation of all electoral frauds and related offences and prosecution of same. For us to make any progress in eradicating electoral offences there is the need to create a separate entity with the necessary powers and authority to deal with all issues concerning electoral crimes and offences in order to reduce incidences of impunity in the electoral process to the barest minimum. The Electoral Offences Commission if established should adopt of measures to identify, trace and prosecute political thuggery, electoral fraud and other electoral offences. The Electoral Offences Commission should equally facilitate exchange of scientific and technical information with other democracies on the conduct of joints operations and training geared towards the eradication of electoral malpractice and fraudulent elections. The Commission should equally be saddled with the examination and investigation of all reported cases of

¹⁰⁵ (2003) 3 NWLR (Pt 806) 72.

¹⁰⁶ (2010) 19 NWLR (Pt 1226) 273.



electoral offences with a view to identifying electoral officers and staff of the electoral commission, individuals, corporate bodies or groups involved in the commission of electoral offences.

5.0 Conclusion

From the foregoing analysis, it is indeed, good to prescribe punishment against electoral offences, the problem remains that of enforcement. Presently, there is need for the amendment of section 145 of the Electoral Act, 2022 for the unbundling of INEC. The said section should give way for the establishment of the electoral offences commission There is urgent need for this to be done since is obvious that our elections are marred by violence and other electoral malfeasance. If this is done, the dream of having a free and fair election would be guaranteed in Nigeria.