

RETHINKING THE PENAL MEASURES FOR ELECTORAL VIOLENCE IN NIGERIA

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ABSTRACT

All over the world, elections play an intricate part in democratic governance as it provides a platform for people to elect their leaders. The conduct of such elections should consequently be competitive, free and fair both substantively and procedurally and devoid of any form of violence. The prevalence of electoral violence in Africa has become very worrisome as the love for power has whittled down the possibility of eliminating same in modern day Africa. It has sadly also become part of Nigeria's electoral system; an occurrence that cannot be isolated from incidents of socio-economic inequalities, ethno-religious divisions, corruption, etc. The aftermath of such violent acts leaves in its wake injury (sometimes grievous) and loss of lives before, during and after elections. This undoubtedly brings to question the 'adequacy' of the extant law for the prosecution of electoral offenders as envisaged under the Electoral Act, 2022 (as amended). It is in view of this that the paper through a doctrinal research approach examines the existing legal framework for electoral violence in Nigeria. The paper finds that the penal measures put in place are not adequate to successfully deter future acts of violence. It therefore makes a case for expansion of the scope of punishment for electoral offences to include stiffer penalties.

1.0 INTRODUCTION

In the contemporary world, the universality of elections cannot be overemphasised as they are even conducted during armed conflicts.¹ It is only in a few countries like Brunei, China, Eritrea, Qatar, Saudi Arabia, and South Sudan that people do not have the opportunity to elect leaders in national elections.² Election is an intricate feature of democratic governance.³ It is considered to be one of the key drivers of democracy that engenders smooth transition in

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¹ Sarah Birch, Ursula Daxecker and Kristine Hoglund, 'Electoral Violence: An Introduction' <<https://journals.sagepub.com/doi/full/10.1177/0022343319889657>> accessed 19 February 2022. In Afghanistan for instance, since the beginning of the war in 2001, electorates have consistently (eight times) gone to the polls to exercise their franchise.

² Ibid.

³ Neville Onebamhoi Obakhedo, 'Curbing Electoral Violence in Nigeria: The Imperative of Political Education' (2011) 5(5) IMJE <<https://www.ajol.info/index.php/afrev/article/viewFile/72297/61230>> accessed 20 January 2022.

government, sustenance of democracy, accountability and transparency in governance.⁴ The conduct of such elections is supposed to be competitive, free and fair both substantively and procedurally⁵ and devoid of any form of violence. The elected representatives' ability to exercise decision-making power is based on the rule of law, and most importantly the Constitution which stresses the protection of the rights and freedoms of individuals,⁶ and places restrictions on the leaders and the extent to which the will of the majority can be exercised against the rights of minorities.⁷ There is oftentimes contest between those who want to acquire power and those who are likely to lose power regardless of the law(s) that regulate the electoral process. The contest usually triggers violence as some politicians in a quest to win by all means resort to unconventional means.⁸

In Africa, democratic transitions are generally complex compared to other parts of the world. The interplay of politics with geography, ethnicity, religion and other indices are probably the main factors that are responsible for these complexities.⁹ The prevalent issue of electoral violence in Africa has become very worrisome as the love for power by Africans (especially the leaders) has made eliminating electoral violence a herculean task in modern day Africa. Also worthy of note is the fact that a great percentage of these conflicts are triggered by the election process where election eras in Africa are considered a do or die affair.¹⁰

Historically, electoral violence has sadly been part of Nigeria's electoral system; an occurrence that cannot be isolated from incidents of socio-economic inequalities, ethno-religious divisions, corruption, etc.¹¹ The International Foundation for Election Systems in its Reports estimated that there were 967 cases of electoral violence in the 2007 elections which involved abduction, murder, armed protest, disruption of electoral conduct, intimidation and physical attack and also poster defacing. On the overall, the 2007 elections led to the death of

⁴Ebele Ogwuda, 'Conduct of Inconclusive Elections in Nigeria: The Ineptitude of INEC' <<http://nials.edu.ng/index.php/2015-12-10-16-05-04/seminar/220-conduct-of-inconclusive-elections-in-nigeria-the-ineptitude-of-inec>> accessed 21 January 2022. The conduct of elections in Nigeria is spearheaded by the Independent National Electoral Commission (INEC) which is established under section 153 of the 1999 Constitution (as amended) and Section 1 of the Electoral (Amendment) Act, 2010 as an independent body solely responsible for conducting, coordinating elections and other related matters in Nigeria.

⁵ Obakhedo, (n 3).

⁶ See Chapter 4 of the 1999 Constitution.

⁷ See n 5 above.

⁸ Obakhedo, (n 3).

⁹ Kelvin Ashindorbe, 'Electoral Violence and the Challenge of Democratic Consolidation in Nigeria' <<https://journals.sagepub.com/doi/full/10.1177/0974928417749639>> accessed 21 January 2022. Like many other African nations, Nigeria is not left out as it has a chequered history of conflicts occurring as a result of ethnic chauvinism, religious bigotry, federalism/restructuring, poor leadership, political intolerance and electoral shenanigans, etc. For further reading see, Anthony Egobueze, Callistus Ojirika, 'Electoral Violence in Nigeria's Fourth Republic: Implications for Political Stability' (2017) 13(2) JSRR <https://www.researchgate.net/publication/315062878_Electoral_Violence_in_Nigeria's_Fourth_Republic_Implications_for_Political_Stability/download> accessed 28 March 2022.

¹⁰ Ojighoro Reuben Edafenene and Etchie Peter, 'Elections and Electoral Violence in Africa: Causes and Implications' <https://link.springer.com/chapter/10.1007/978-981-16-4652-2_2> accessed 25 February 2022. In all the regions of Africa, electoral violence has become a norm rather than an exception as there is hardly a state in Africa that has not experienced electoral violence.

¹¹ Aly Verjee and Others, 'Nigeria's 2019 Elections: Change, Continuity, and the Risks to Peace' <<https://www.usip.org>> accessed 5 January 2022.

300 people.¹² According to the Human Rights Watch, 800 people lost their lives as a result of the deadly election-related and communal violence in northern Nigeria that followed the April 2011 Presidential elections.¹³ The 2019 elections that brought back the incumbent President Muhammad Buhari to office was characterized by electoral violence which sadly was mostly perpetrated by state actors. A report by SBM Intelligence which monitors socio-political and economic developments in Nigeria revealed that 626 people lost their lives during the 2019 elections.¹⁴

Since independence, Nigeria's electoral history has been replete with incidents of flawed and disputed elections that have culminated in violence, leading to deaths and making a mockery of previous attempts at democratic consolidation.¹⁵ This has not only alienated the citizens politically but also ravaged the country's entire political system.¹⁶ In spite of several electoral reforms, it seems to be on the increase with no evidence of serious and concerted effort to control it.¹⁷

It is in the wake of these acts of violence leading to injury and loss of lives before, during and after elections that the subject of electoral violence becomes overly imperative especially as Nigeria prepares for its general elections in 2023. Also, it importantly brings to question the 'adequacy' of the extant law for the prosecution of electoral offenders as envisaged under the Electoral Act, 2022 (as amended).¹⁸ YIAGA Africa (a Civil Society Organisation) after the 2019 general elections intensified calls for legal accountability of individuals for electoral offences. This in their opinion can restore some form of credibility to future elections and

¹²Kubiat Umana, 'Electoral Violence in Nigeria: Causes, Consequences and Solutions' <<https://researchcyber.com/electoral-violence-nigeria-causes-consequences-solutions/>> accessed 5 January 2022.

¹³ 'Nigeria: Post-Election Violence Killed 800 Promptly Prosecute Offenders, Address Underlying Causes' <<https://www.hrw.org/news/2011/05/16/nigeria-post-election-violence-killed-800>> accessed 6 January 2022.

¹⁴ 'Nigeria's Widespread Violence Ushers in President's New Term Investigate and ensure Justice' <<https://www.hrw.org/newa/2019/06/10/nigeria-widespread-violence-ushers-presidents-new-term>> accessed 11 February 2022. See also, SBM Intelligence, Mounting election Violence <<https://www.sbmintel.com/2019/02/mounting-election-violence/>> accessed 12 May 2022. See also, 'European Union Election Observation Mission Nigeria General Elections 2019' <https://www.eods.eu/library/Nigeria_eu_eom_2ndpreliminarystatement_11march2019.pdf> accessed 10 February 2022.

¹⁵ Ashindorbe, (n 9). The 2015 general election could perhaps be described as unprecedented in the annals of the country's history as the first time an entrenched and incumbent party was defeated at the polls, and the country witnessed a peaceful transition of power between contending political parties thereby fulfilling one of the preconditions for democratic consolidation.

¹⁶Kehinde Akinfenwa, 'Curtailing Electoral Violence in Nigeria' <<https://www.pmnewsnigeria.com/2019/02/09/curtailing-electoral-violence-in-nigeria/>> accessed 20 June 2021

¹⁷ Sunday O Onwe and Others, 'Effects of Electoral Fraud and Violence on Nigeria Democracy: Lessons from 2011 Presidential Election' (2015) 20(4) JHSS <<https://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue4/Version-1/C020411015.pdf>> accessed 10 February 2022.

¹⁸ It is important to point out that the Electoral (Amendment) Bill, 2021 to which the President declined assent (on issues of mode of primaries, etc.) has since been reworked by the National Assembly and transmitted for the President's assent on 31st January 2022. For further reading see, Deji Elumoye and Sunday Aborisade, 'National Assembly Transmits Reworked Electoral Act Amendment Bill to Buhari for Assent' <<https://www.thisdaylive.com/index.php/2022/02/01/national-assembly-transmits-reworked-electoral-act-amendment-bill-to-buhari-for-assent/>> accessed 15 February 2022.

deter electoral offenders.¹⁹ Ensuring accountability has become quite challenging because of the vast and complicated network of those involved in electoral malfeasance as well as a lopsided focus on those who carry out violence vis-à-vis those who actually stage-manage it.²⁰

It is against this background that the paper analyses the existing legal framework for electoral violence in Nigeria. The paper finds that the penal measures are not appropriate or adequate to successfully deter future acts of violence and therefore makes a case for stiffer penalties. The paper is divided into six sections to properly and clearly discuss the subject. The second section examines the meaning, nature and dimensions of electoral violence while section three undertakes an analysis of the causes of electoral violence and the consequences for Nigeria. Section four takes us through the law(s) on electoral violence and in so doing identifies the lacuna in the law(s). Section five discusses Electoral violence framework in select countries for the sole purpose of identifying lessons if any, for Nigeria. It also looks at the peculiar nature of election matters in emphasising the need for a distinct robust punishment framework in Nigeria. Section 6 finally concludes with recommendations or electoral violence prevention strategies to stem the tide of electoral violence or ensure the conduct of violent free elections in Nigeria.

2.0 DIMENSIONS OF ELECTORAL VIOLENCE

Conceptualizing electoral violence has increasingly become difficult as it is susceptible to different opinions and perspectives. It can be grouped within one of two more common fields of political analysis. On the one hand, electoral violence can be perceived as a subset of political violence and consequently likened to communal violence, rebellion, and civil war. On the other hand, it can be seen as a type of election malfeasance, and therefore more akin to election rigging, vote-buying, and other forms of electoral fraud.²¹ Alternatively, it connotes any act of violence perpetuated in the course of political activities, including pre, during and post- election periods, and may include to wit: thuggery, use of force to disrupt political meetings or voting at polling stations, or the use of dangerous weapons to intimidate voters and other electoral process or to cause bodily harm or injury to any person (often leading to death) connected with electoral processes.²² Electoral Violence could also mean any violence that is directly or indirectly linked to protest against an election.²³ Furthermore, all forms of organised act or threats (physical, psychological and structural) geared towards intimidating, harming, blackmailing a political stakeholder before, during and after an

¹⁹ Claire Wilmot, 'After Elections, Important Questions Remain for Nigeria's Democracy' <<https://theglobalobservatory.org/2019/03/after-elections-important-questions-remain-nigerias-democracy/>> accessed 23 February 2022.

²⁰ Ibid.

²¹ Charles Taylor, 'Shared Security, Shared Elections Best Practices for the Prevention of Electoral Violence' <<https://reliefweb.int/sites/reliefweb.int/files/resources/Electoral-violence-report-web-version.pdf>> accessed 18 February 2022.

²² Anthony Egobueze and Callistus Ojirika, 'Electoral Violence in Nigeria's Fourth Republic: Implications for Political Stability' (2017) 13(2) JSRR <https://www.researchgate.net/publication/315062878_Electoral_Violence_in_Nigeria's_Fourth_Republic_Implications_for_Political_Stability> accessed 11 February 2022.

²³ Mohammed Adoke, 'Stemming Electoral Violence in Nigeria- a Focus on the adequacy of the Law and its Enforcement' <<https://www.vanguardngr.com/2011/09/stemming-electoral-violence-in-nigeria-a-focus-on-the-adequacy-of-the-law-and-its-enforcement/amp/>> accessed 11 February 2022.

election with a view to determining, delaying, or otherwise influencing an electoral process can be referred to as electoral violence.²⁴

What we can garner from the foregoing is that electoral violence can be classified into three to wit: pre-election violence, violence during elections and post-election violence. Pre-election violence primarily takes place at the party primaries stage where contestants from the same political party contest to become the party flag bearers. At this stage, bribery, thuggery, arson, shooting and maiming are often utilised to achieve a particular objective. The same violence is employed at the election stage including other unorthodox methods such as snatching of ballot boxes/papers, kidnapping or abduction of electoral officers and party agents, preventing voters from exercising their franchise by means of force, forcing electoral officers to alter or deface results or result sheets, etc.²⁵ The last category which is post-election violence involves the same activities depicted in pre-election and election stage and is often characterised by shooting, looting, arson and wanton destruction of lives and properties; usually orchestrated by members of the losing/opposition political party.²⁶

The employment of elections to select leaders in theory is basically geared towards providing a mechanism for non-violent alternative to the use of force and a platform for citizens to participate in governance. This is however a far cry from what happens in practice as these expectations are often dashed. Most elections especially in nascent democracies are fraught with varied levels of violence during campaign, election and post-election period. This no doubt can escalate into fatalities, undo years of peace building/development work and worst case scenario, trigger a civil war.²⁷ A case in point will be the post-election violence in Cote d'Ivoire which left scores dead, internally displaced one million and left 100,000 refugees in neighbouring countries.²⁸ The electoral process in Nigeria for example in the past five decades is of such nature that exposes the lack of universal standards of fairness, competitive and peaceful value due to intolerance arising from the acts of self-seeking class of politicians divided across ethno-religious groups. Electoral outcome has thus become predicated on personality politics. The indices of class and ethno-religious sentiments divide political stakeholders into progressives and conservatives, with each group pursuing its interest. They utilise all available means, including violence to win elections.²⁹ Electoral violence is used by political actors to intentionally influence the process and outcome of elections and also entails coercive acts against people, property and infrastructure. It can occur in any part of the electoral process either at the announcement of elections, party primaries, voter registration and can also be perpetuated by both state and non-state actors.³⁰ Additionally, electoral violence covers a broad spectrum of activities; the crux of which is unified by the use of force.³¹

²⁴ Ashindorbe, (n 9).

²⁵ Adoke, (n 23).

²⁶ Ibid.

²⁷ Birch, (n 1).

²⁸ Ibid. Elections that took place in Afghanistan, Bangladesh, India, Iraq, Kenya, Pakistan and Zimbabwe also recorded incidents of violence.

²⁹ Dickson Ogbonnaya Igwe, 'The Perception of Electoral Violence and Democratization in Ibadan, Oyo State Southwest Nigeria, Democracy and Security' <<http://dx.doi.org/10.1080/17419166.2012.65405>> accessed 18 February 2022.

³⁰ Birch, (n 1).

³¹ Ibid.

Classifying electoral violence into key dimensions can help researchers, policy makers, Election Management Bodies (EMB) and other electoral stakeholders to easily understand the root causes and proffer policy recommendations. Existing literature reveals that there are at least four vital dimensions that should be closely analysed. They are: the severity of violence, the timing of violence, the perpetrators of violence, and the victims of violence.³²

The severity of the violence could be described in several ways as researchers have overtime developed various coding schemes to designate violence as more or less severe. Violence at the first level is epitomised by the breakup of rallies by security forces, party supporters' brawls in the streets, confiscation of opposition newspapers, candidate disqualifications, and short-term arrests of political opponents. Second level of violence involves high-level assassinations, targeted murders as well as long-term arrests of party leaders, consistent use of violent intimidation, harassment, and the use of torture/force. The highest level of severity is characterised by highly violent campaign with generalized violence, widespread physical attacks leading to a substantial number of deaths.³³ Also, severity of violence could be measure by a number of violent events that shrouded an election as covered by Newspaper houses and other media outlets.³⁴

With respect to the timing of electoral violence, it is something that can occur before or after an Election. Nonetheless, the inspirations behind each act of violence often vary. Pre-election violence is often employed to influence voting behavior, either through discouraging voters from turning out or coercing them into supporting particular candidates. Post-election violence on the other hand, is carried out to protest the outcome of an election (poll results) or quelling protests by supporters of the losing party.³⁵ In Sub-Saharan African, most acts of electoral violence occurred before the elections and were orchestrated by incumbent governments.³⁶ In a research on electoral violence carried out on Indonesia, Harish and Toha, it was discovered that pre-election violence was prevalent in regions with a history of separatist movements while regions with prior ethno-communal crisis were more prone to post-election violence.³⁷

The perpetrators of violence are a very critical dimension of electoral violence. The notion of violence becomes quite catchy when incumbents are no longer able to buy the requisite votes to remain in power. We can therefore say that violence is actually a last resort or strategy of a weakened, cash-strapped government.³⁸ Conversely, members of the opposition could also at the very least resort to violence in the pre-election period. This also depicts weakness as it suggests that they cannot match the advantage of the incumbent government hence the

³² Taylor, (n 21).

³³ Scott Straus and Charlie Taylor, 'Democratization and Electoral Violence in Sub-Saharan Africa, 1990-2008' in Dorina Bekoe (ed), *Voting in Fear: In Sub-Saharan Africa* (Washington DC: United States Electoral Institute of Peace Press, 2012) 15 -38.

³⁴ Arthur Goldsmith, 'Electoral Violence in Africa Revisited' (2015) 27(5)*Terrorism and Political Violence*, 818-837

³⁵ Taylor, (n 21). See also Kristine Hoglund and Anton Piyarathne, 'Paying the Price of Patronage: Electoral Violence in Sri Lanka' (2009) 47(3) *Commonwealth and Comparative Politics* 287-307.

³⁶ Straus, (n 33).

³⁷ Taylor, (n 21).

³⁸ Paul Collier and Pedro C Vicente, 'Violence, Bribery, and Fraud: The Political Economy of Elections in Sub-Saharan Africa' (2012) 153 (1-2) *Public Choice*, 11-147 cited in Taylor, (n 20).

reliance on a strategy that is similar to terrorism. This argument has been backed up for instance by the events of the 2007 election in Nigeria.³⁹

It is however important to point out that several other studies have suggested that election violence is not just a strategy of the weak as most cases of election violence in Africa have and continue to be orchestrated by relatively strong incumbent governments and their supporters. The governments of Equatorial Guinea and Sudan are instructive on this point as they enjoy considerable rents from oil revenue and can easily outspend or match their opponents financially.⁴⁰

The last dimension deals with the victims of electoral violence. Here, the violence can be targeted at either voters or at politicians themselves with each having different means of dealing with the threat of violence.⁴¹ Existing evidence observes that certain demographic groups are more susceptible to certain types of electoral violence. In studying electoral violence in Sri Lanka, it was discovered that women and activists from the lower classes were more or less victims of serious violence than the local elites.⁴² This no doubt exposes the importance of socioeconomic class in explaining the different types of violence experienced; the import of which is that it is the people with relatively weak socio-economic background albeit active in politics that suffer the most violent acts of arson and physical attacks, notwithstanding the party they belonged to.⁴³

3.0 ELECTORAL VIOLENCE IN NIGERIA: THE PUSH FACTORS AND IMPLICATIONS

Given the devastating effect of electoral violence on the country's political scenery, a plethora of questions bordering on the causes of electoral violence have arisen. The root causes of electoral violence have been linked to greed, elections rigging, abuse of political power, alienation, marginalisation and exclusion. It has also been attributed to poverty/unemployment, ineffectiveness of security forces and culture of impunity, weak penalties (i.e. punishment for electoral violence), weak governance and corruption, and, proliferation of arms and ammunitions.⁴⁴

The likelihood of electoral violence is quite high when political systems are predicated on patronage and clientelism. This refers to political institutions that are superimposed by informal relationships founded on the exchange of resources and political royalty.⁴⁵ Here, political supporters will do almost anything including engagement in violence to ensure that

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Taylor, (n 21).

⁴² Bjarnegård, E., Håkansson, S., & Zetterberg, P. Gender and Violence against Political Candidates: Lessons from Sri Lanka. *Politics & Gender*, Cambridge University Press(2022) 18(1), 33-61. See also Høglund and Piyarathne, (n 35). See also, Monitoring and Mitigating Electoral Violence Through Nonpartisan Citizen Election Observation, NDI Guidance Document for the Global Network of Domestic Election Monitors (GNDEM) https://www.ndi.org/sites/default/files/conflictguide_app5_srilankacasestudy_en_0.pdf accessed 12 March, 2022

⁴³ Taylor, (n 21).

⁴⁴ Obakhedo, (n 3).

⁴⁵ 'Electoral Violence: Causes and Prevention Key Findings from AFSC's Shared Security, Shared Elections Report' <<https://www.afsc.org>> accessed 24 February 2022.

their candidates of choice emerge winners. Furthermore, the presence of weak electoral management bodies could also trigger electoral violence as their role in ensuring credible polls cannot be overemphasised.⁴⁶ The absence of strong and proactive electoral bodies spells doom for democratic governance of any nation.

Other push factors that fuel electoral violence include insecurity, traditional rulers' partisanship, abuse of office by elected officials, the quest to win at all cost; perceived lucrateness of political office, weak handling of election petitions, loss of faith in the judiciary, and non-compliance with the electoral law and poor enforcement of laws; the partisan disposition of the police, and other security agencies involved in the electoral process, corruption on the part of INEC staff and ad-hoc officials who collude with politicians, conflict of interests between and among politicians, and greed and selfish interests of politicians coupled with ideological bankruptcy.⁴⁷

The attendant consequences of electoral violence are quite high. Even in cases where the death toll is low, electoral violence may critically impact the electoral process, the election outcome and perceived legitimacy. It may in the long run, have a negative effect on democratic consolidation prospects and people's perception about democracy as a political system. In addition, electoral violence could also create a humanitarian crisis as well stop or reverse socio-economic development programmes.⁴⁸ In complex cases, it may heighten the risk of armed conflict or civil war. Electoral violence may transcend the borders of a country where it happens in such manner as to impact neighbouring states by internally displacing people, introducing a humanitarian crisis, increasing the proliferation of arms and also armed violence, which undoubtedly can accelerate instability in existing unstable regions.⁴⁹

An electoral process that is replete with violence can cause voter apathy in which a considerable number of eligible voters can disenfranchise themselves by refusing to participate. Voter apathy is probably the worst thing that could happen in a democracy as it affords evil politicians the opportunity to vote or declare their unpopular candidates' winners where the reverse should have been the case. This of course defeats the whole essence of an electoral process.⁵⁰

Electoral violence could launch a nation into total anarchy as violence triggers more violence. It therefore provides a platform for the disintegration of a Nation.⁵¹ Acts of violence portends danger for any nation which if ignored could lead to a full-blown war.

4.0 LEGAL FRAMEWORK FOR ELECTORAL VIOLENCE IN NIGERIA

It is trite that law is a mechanism for maintaining peace and order and the electoral process is no exception.⁵² The legal framework for electoral process and violence in Nigeria are the

⁴⁶ Ibid.

⁴⁷ See n 43 above.

⁴⁸ 'Electoral Violence in Africa' <<https://www.diva-portal.org/smash/get/diva2:581667/FULLTEXT01.pdf>> accessed 25 February 2022.

⁴⁹ Ibid.

⁵⁰ Umana, (n 12).

⁵¹ Ibid.

1999 Constitution of the Federal Republic of Nigeria which is the grundnorm; the Criminal Code, the Penal Code and the Electoral Act.⁵³ The framework also incorporates international and regional standards derived from International and Regional Agreements. The elements of Electoral violence from the different definitions proffered by scholars include acts of thuggery, aggression;⁵⁴ Snatching of ballot boxes to rig and manipulate election results;⁵⁵ violence as a result of difference in opinions, feelings, engagements of electoral processes;⁵⁶ causing pandemonium in polling stations to hinder voters from voting; beating up electoral officers and sometimes killing same in the process when weapons such as guns and cutlasses are used during the elections.⁵⁷ These electoral violence offences may be perpetuated by Independent National Electoral Commission (INEC) officials, Political parties and their officials, candidates, observers, Journalists/Media houses or the general public.⁵⁸ This section of the paper seeks to examine those laws that in one way or the other embodies provisions dealing with elections or conduct of elections.

4.1 The 1999 Constitution of Federal Republic of Nigeria

The Constitution of the Federal Republic of Nigeria, 1999 as amended constitutes part of the legal framework that regulates the Nigerian electoral process. It regulates the right to vote and be voted for as well as the right to the formation of political parties. Election is one of the fundamental duties of citizens in a democratic setting.⁵⁹ Therefore, any obstruction to the exercise of this duty constitutes a breach of a constitutional right. Section 11 of the 1999 Constitution mandates the legislature to make laws for maintaining and securing of public safety and public order. They are equally mandated to make laws for peace, order and good government.⁶⁰ The implication is that any law (s) made by the Legislature to protect public safety, peace and order and punish offenders will be used to punish perpetrators of electoral violence. More specifically, section 42 provides that no citizen shall be treated differently by virtue of having a different ethnic group, place of origin, sex, religion or political opinion. In essence, nobody should be intimidated or harassed either expressly or in practical application of any law in Nigeria or executive or administrative action because of having a different political opinion.⁶¹ The power to criminalise any form of electoral violence is derived from the Constitution. The Constitution in section 153(1) more importantly establishes the

⁵²O A Ayodele, An Assessment of the Legal Framework put in place to Curb Electoral Violence in Nigeria, Elections and Electoral Violence in Nigeria' <https://www.researchgate.net/publication/356596791_An_Assessment_of_the_Legal_Framework_Put_in_Place_to_Curb_Electoral_Violence_in_Nigeria> accessed 28 February 2022.

⁵³ Constitution of the Federal Republic of Nigeria 1999, Electoral (Amendment) Act, 2022.

⁵⁴H M Robert, *Robert's Rules of Order* (Newly Rev, 11th edn, Philadelphia: Da Capo Press 2011).

⁵⁵S I Ladan-Baki, 'Electoral Violence and 2015 General Elections in Nigeria' (2016) 16 (1) GJHSSR, 1-8

⁵⁶T A Balogun, 'Nigeria: Electoral Violence and National Security' <<http://aceproject.org/eroen/regions/africa/NG/electoral-violence-nigeria/view>> accessed 11 April 2022.

⁵⁷ See n 54 above .

⁵⁸ Independent National Electoral Commission, Election offences and Penalties' <<https://www.inecnigeria.org/voter-education/election-offences-and-penalties/>> accessed 3 April 2022.

⁵⁹ 1999 Constitution of Federal Republic of Nigeria, s 77.

⁶⁰ 1999 Constitution of FRN, s11 (1) & (4).

⁶¹ Section 42 of the 1999 Constitution of FRN

Independent National Electoral Commission (INEC) as the sole body empowered to conduct elections.⁶²

4.2 Criminal Code and Penal Code of Nigeria

The Criminal Code Law of Nigeria is a law that defines and prescribes punishment for all criminal offences in the southern part of Nigeria⁶³ while the Penal Code applies to the states in northern Nigeria.⁶⁴ The actions described by scholars as electoral violence constitute criminal offences defined under the Criminal and Penal Code.⁶⁵

The offence of snatching of ballot boxes which is recurrent on election days is usually perpetrated by armed persons who instil fear in the electorates and cart away the ballot boxes in order to rig the election.⁶⁶ This offence which can be described as stealing with violence is defined and punished under section 402 of the Criminal Code which defined stealing with violence as the use or threat to use violence to obtain or retain a thing stolen and the punishment for this offence is a sentence of imprisonment not less than 21 years.⁶⁷ Section 296 the Penal Code defined an offence carried out in the manner ballot boxes are snatched as robbery. The law explained that theft i.e. stealing or snatching of ballot boxes is robbery if in order to commit the theft, the offender voluntarily causes or attempts to cause to any person fear of death or hurt or wrongful restraints or actual death, hurt or wrongful restraints.⁶⁸

Other violent offences that take place before, during and after elections such as murder,⁶⁹ kidnapping of opponent or contestant,⁷⁰ intimidation, assault⁷¹ and harassment can be punished under the Criminal and Penal Codes if the ingredients are satisfied.⁷²

4.3 The Electoral (Amendment) Act 2022: A New Wine in an Old Bottle

The Electoral Act as amended is the extant legal framework that regulates the conduct of elections and also deals with matters connected with formation of political parties.⁷³ The law regulates the process and procedure for elections and disputes associated with it during

⁶² See section 1 of the Electoral (Amendment) Act, 2022 and Part I of the Third Schedule to the Constitution on the powers of INEC.

⁶³ Criminal Code Act, CAP.771990, (now CAP C38 LFN 2004) < <https://www.refworld.org/docid/49997ade1a.html>> accessed 9 March 2022.

⁶⁴ Nigerian Penal Code of (Northern States) Federal Provisions Act 1960.

⁶⁵ Criminal Code Act, CAP.771990, (now CAP C38 LFN 2004), ss 316, 317, 320, 323 324, 356 and 402.

⁶⁶ Kelvin Ebiri, Julius Osahon, Chido Okafor and Oludare Richards, 'Violence, Ballot Box Snatching, Vote Buying hallmark Guber Polls in Kogi, Bayelsa' < <https://guardian.ng/news/violence-ballot-box-snatching-vote-buying-hallmark-guber-polls-in-kogi-bayelsa/>> accessed 2 April 2022.

⁶⁷ Criminal Code Act, s 402.

⁶⁸ Nigerian Penal Code of (Northern States) (Federal Provisions Act 1960) s 296.

⁶⁹ Criminal Code Act, CAP.771990, (now CAP C38 LFN 2004), s 316.

⁷⁰ Criminal Code Act, CAP.771990, (now CAP C38 LFN 2004), s 364.

⁷¹ Criminal Code Act, CAP.771990, (now CAP C38 LFN 2004), s 356.

⁷² See Criminal and Penal Code on Murder; see section 220-223 of the Penal Code, assault see s263-267 of penal code, Harassment, on kidnapping see section 271-274 of the penal Code, Cap.89 (With Northern States Federal Provisions Act Cap345) Law of the Federation 1990.

⁷³ See the Explanatory Memorandum of the Electoral Act 2022.

and after elections.⁷⁴ It equally provides penalties for the breaches and violations of the law which can on conviction result to a fine, a term of imprisonment, or both.⁷⁵

Part VII of the Electoral Act outlines acts or omissions that constitute electoral offences and includes electoral violence as an electoral offence.⁷⁶ Offences that border on the use of violence during, before or after election listed in the Electoral Act are considered as electoral violence.⁷⁷ They are listed under section 128 to include threatening use of force, violence or restraint on a voter, inflicting or threatening to inflict injury on a voter to induce, compel him to vote or refrain from voting, preventing the exercise of the right to vote through abduction, duress, fraud or other forms of threats to political aspirants. The same section provides punishment for persons involved to be fine of N1, 000,000 (One Million Naira) or Imprisonment for a term of three years on conviction.⁷⁸

It is important to note that the violent offences listed in the Electoral Act 2022 such as thuggery, use of force to disrupt political meetings, or voting at polling station or use of dangerous weapons to intimidate voters and other electoral process or cause bodily harm or injury can also be prosecuted under the Criminal Code Act or Penal Code Law of Nigeria since such acts are of criminal nature.⁷⁹ However, the less importance placed on these offences when perpetrated during elections has led to its continuity. A careful examination of the offences classified as electoral violence reveal that cases where such use of violence result to fatality are not aptly captured or envisaged. It is also worrisome that the Electoral Act dismissively made a blanket provision for one type of punishment (N1,000,000 or a term of three years imprisonment) for the use of force or violence or threat during, before or after elections. This in the opinion of the paper is inadequate as it does not underscore the devastating consequences of such violent acts that could lead to grievous bodily injury or death. The need to expand the scope of offences and provide stricter penalty (e.g. death penalty or life imprisonment depending on the circumstances of the case) for perpetrators can therefore not be overemphasised. The Electoral Law which was just amended in March 2022 sadly did not incorporate any additional strict punitive measures to curb or whittle down electoral violence in Nigeria. While the amendments to the Act may be considered laudable, it leaves much to be desired as there are still gaps with regard to adequate punishment to address the issue of electoral violence which we cannot rule out of elections.⁸⁰

4.4. International Conventions

⁷⁴ Electoral Act 2022, Part IV, ss 24 -74.

⁷⁵ Electoral Act 2022, s 128.

⁷⁶ Electoral Act 2022, s 128.

⁷⁷ Egobueze, (n 22)

⁷⁸ Electoral Act 2022, s 131

⁷⁹ See criminal Code Act CAP. 77 Laws of the Federation 199 and Penal Code Act of Northern States

⁸⁰ The Amended Electoral Law only incorporated amongst other things issues of early release of fund to INEC, electronic transmission of results, incorporation of persons with disability in the electoral process, early conduct of primaries and commencement of campaigns, definition of over-voting, clarity on substitution of dead candidates, power of the Electoral body to review results declared under duress, neutrality of INEC officials, etc. For further reading see, Waziri Adio, ' Dissecting and Interrogating Electoral Act 2022' <<http://www.thisdaylive.com>> accessed 29 March 2022

Nigeria is signatory to several International and Regional Conventions and Treaties that regulate election and electoral process. Article 21 of the Universal Declaration of Human Right (UDHR) provides that every citizen of a country has a right to take part in the government of his country, directly or through freely chosen representatives and this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.⁸¹ The implication of this provision is that every citizen of a country should freely participate in the electoral process of his country without being harassed or intimidated. Equally, Article 25 of the International Covenant on Civil and Political Rights (ICCPR), provides that every citizen shall have the right and the opportunity to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electorates; without any of the distinctions and without unreasonable restrictions.⁸² This provision clearly shows the States that the right to participate should not only be guaranteed as *de jure*, but also *de facto*.

Article 2 (2-3) mandates state parties to provide laws, measures or legal framework on electoral offences and to enforce sanctions on violators of right.⁸³ By so doing, states are to provide security at polling station so as to protect the voters from intimidation, harassment.⁸⁴ Equally Article 26 of the ICCPR mandates states to ensure that equal protection under the law is a precondition for the equal enjoyment of rights and opportunities to participate in public affairs. National legal frameworks must ban any form of discrimination, including on the grounds of political opinion, religious beliefs, and ethnic or social origin.

Regional instruments such as African Charter on Human and People's Rights and its Protocols,⁸⁵ African Charter on Democracy, Elections and Governance (2007)⁸⁶ also emphasizes the right of citizens to freely take part in election without fear.⁸⁷

5.0 ELECTORAL VIOLENCE FRAMEWORK WITH SELECT COUNTRIES AND NIGERIA IN VIEW

This section of the paper will examine the electoral violence framework in some select countries, it will interrogate how perpetrators of electoral violence have been prosecuted in a developed country such as the United States of America and in some developing countries within the African Region make a case for a more encompassing and robust electoral violence punishment framework in Nigeria.

5.1 Electoral Violence Framework in Select Countries

⁸¹ Universal Declaration of Human Right 1948, Art 21, para 1-3

⁸² ICCPR 1966, Art 25 (a-b). See also The UN Human Rights Committee of the CCPR General Comment 25

⁸³ ICCPR 1966, Art 2(2-3)

⁸⁴ Ibid

⁸⁵ African Charter on Human and Peoples' Rights 1981, Art 13

⁸⁶ African Charter on Democracy, Elections and Governance 2007-2012, Art 17

⁸⁷ Ibid. See Compendium of International Standards for Elections, Luxembourg (Publication Office of the European Union, 2016)

Electoral violence is distinct from other forms of organized violence in that the institutional frameworks surrounding elections shape the ways in which violence intervenes in the electoral process. The actors, practices, and institutions provided by the electoral framework affect how and why electoral violence arises, and influences its timing, targets and prosecution of perpetrators.⁸⁸ According to Dirks, electoral violence during election period is like annual ritual of conflict and is considered an integral part of political system.⁸⁹ According to him:

I would tentatively suggest that parts of democratic elections in some new African democracies could very loosely be interpreted as such an annual ritual of conflict in that contests of succession are a time for grievances to be avenged and violence to be excused and go unpunished.⁹⁰

The prosecution of violence perpetrated at such times have been swept under the carpet due to its distinctiveness; as such many countries have sought ways in which the perpetrators can be brought to book.

In the United States of America, the Constitution confers upon the states, primary authority over the election process.⁹¹ Accordingly, federal law does not directly address how election should be conducted.⁹² State law historically has regulated such important activities as the registration of voters, the qualifications for absentee voting, the type of voting equipment used to tabulate votes, the selection of election officials, and the procedures and safeguards for counting ballots.⁹³ These factors might suggest that the prosecution of election crime should be left primarily to local law enforcement.

In reality, a patchwork of federal and state laws is used in the prosecution of electoral violence committed either against candidates or election administrators.⁹⁴ For instance, section 594 of the 18 U.S. Constitutions prohibits intimidating, threatening, or coercing anyone, or attempting to do so, for the purpose of interfering with an individual's right to vote or not vote in any election held solely or in part to elect a federal candidate. The statute does not apply to primaries. Violations are one-year misdemeanors.⁹⁵ Therefore, legal scholars and current and former prosecutors have argued that US authorities must walk a fine line between America's laws against criminal threats and its constitutional protections on

⁸⁸ Fjelde Hanne and Kristine Ho'glund 'Electoral Violence: The Emergence of a Research Field' (2016) 14(2) APSA Comparative Democratization Newsletter, 8–11

⁸⁹ R Dirks, 'Annual Rituals of Conflict' (1988) 90 (4) American Anthropologist, 856–870. See also S Drucker-Brown, 'The Grandchildren's Play at the Mamprusi King's Funeral: Ritual Rebellion Revisited in Northern Ghana' (1999) 5 (2) JRAI, 181–192

⁹⁰ Dirks, (n 86)

⁹¹ When election offences are driven by animus based on race, ethnicity, or language-minority status, the broad protections of the 1965 Voting Rights Act and other civil rights statutes apply. 52 U.S.C. §§ 10101, 10301, 10303(f), & 10503. Such matters are supervised by the Civil Rights Division.

⁹² Richard C Pilger, 'Federal Prosecution of Election offenses (Eight Edition, December 2017) <<https://www.justice.gov/criminal/file/1029066/download>> accessed 24 March 2022

⁹³ Ibid

⁹⁴ Ibid. The main federal criminal statutes that can apply to voter intimidation are specified in these sections of the Constitution; 52 U.S.C. § 20511(1); 18 U.S.C. §§ 241, 242, 245(b)(1)(A), 594, and 610.

⁹⁵ 18 U.S.C 594

political speech.⁹⁶ This implies that threats made at political speeches are often overlooked as against threats made at ordinary times which are directly spelt out in the Constitution. The United States constitutional protections, however, do not cover threats of violence during elections, and numerous state and federal laws allow police and prosecutors to pursue cases against people who terrorize others, for political reasons or other motives.⁹⁷ In some cases, many states make it a felony and offenders are charged with terroristic threats and acts.⁹⁸ At some other times the law on stalking have been applied to intimidation of election workers as the law generally prohibit any actions that put a person in reasonable fear of death or serious injury or cause emotional distress.⁹⁹

Legal scholars acknowledge in the US, however, that many allegedly threatening messages and electoral violence incidents fall into a grey area and therefore calling for a comprehensive policy and legal framework for the offence of electoral violence.

In West Africa on the other hand, the election period is a window wherein violent party supporters can be protected by powerful politicians.¹⁰⁰ Crimes that would be punished at other times are often left unpunished during election time. This is particularly the case when the party of the perpetrators of violence wins power. Thus, when masked as election-related, violence can be used to “settle older scores”.¹⁰¹ Accordingly, the election period can be used as a particular window of time for the “world to turn upside down”.¹⁰² Straus and Taylor (2012) find that in sub-Saharan Africa, most election violence has taken place prior to elections and has generally been perpetrated by incumbent governments.¹⁰³ But not many convictions have been recorded for the perpetrators. This is due to the absence of legal framework that criminalises violence perpetrated during elections. The electoral violence experienced in Kenya and Cote D’Ivoire has been prosecuted as crimes against humanity. Such crimes involve participation in “widespread or systematic attack on a civilian population.”¹⁰⁴ The outcome of a commission of Inquiry into Post-Election Violence (CIPEV) established to investigate the electoral violence in 2008 was the need to establish a special Kenyan tribunal to prosecute the perpetrators of electoral violence.¹⁰⁵ Although this was

⁹⁶Linda So and Jason Szep, ‘Threats of Violence to U.S Election Officials highlight legal gray Area’ *Reuters* (United States, 8 September 2021) <<https://www.reuters.com/legal/government/threats-violence-us-election-officials-highlight-legal-gray-area-2021-09-08/>> accessed 23 March 2022

⁹⁷ Ibid

⁹⁸18 U.S.C. § 245(b)(1)(A) -physical threats or reprisals against candidates, voters, poll watchers, or election officials; 18 U.S.C. § 592 – “armed” persons stationed at the polls; 18 U.S.C. § 609 – coercion of voting among the military; these statutes apply to non-federal Elections. 52 U.S.C. § 20511(1) – voter intimidation: This statute applies to only Federal Elections only

⁹⁹So, (n 93)

¹⁰⁰ Clementina Amankwaah, ‘Election -Related Violence: The Case of Ghana’ 56 *Current African Issues* <<http://www.diva-portal.org/smash/get/diva2:689688/FULLTEXT01.pdf>> accessed 12 April 2022

¹⁰¹ M Utas, ‘Discussion about Ghana’s Relevance to Research on Elections and Violence in New Democracies’ *Personal Communication* (Ghana, 5 December 2012)

¹⁰²Ibid

¹⁰³Scott, (n 33)

¹⁰⁴ ‘ICC authorizes Probe into Post-Election Violence in Cote d’Ivoire’ <<https://news.un.org/en/story/2011/10/390132-icc-authorizes-probe-post-election-violence-cote-divoire>> accessed 14 March 2022

¹⁰⁵ International Center for Transitional Justice, ‘The Kenya Commission of Inquiry into Post-Election Violence Fact Sheet’

rejected by the Kenyan National Assembly and as a result, CIPEV forwarded the names of the suspect to the ICC.¹⁰⁶ The September 2008 Independent Review Commission (IREC) known as the “Kriegler Commission”, established to more generally examine the issue of electoral violence recommended a “radical” change in the structure, independence, capacity, and management of the Electoral Commission of Kenya (ECK).¹⁰⁷ This clearly implies that the weak institutional and legal frame work in the regulation of electoral violence in Africa and other continents are a major reason for the non-accountability of perpetrators.

5.2 Rethinking The Framework For Electoral Violence In Nigeria

It is commonly said that election or election related matters are *sui generis* i.e. that electoral matters are peculiar or of their own kind. They are very much unlike ordinary civil or criminal proceedings.¹⁰⁸ In *Orubu v National Electoral Commission*,¹⁰⁹ his Lordship Uwais, JSC (as he then was) opined thus:

An election petition is not the same as ordinary civil proceedings. It is a special proceeding because of the peculiar nature of elections, which by reason of their importance to the well-being of a democratic society are regarded with aura that places them over and above the normal day to day transactions between individuals which give rise to ordinary or general claims in Court.

Also, in *Obasanya v Babafemi*¹¹⁰ per Uwais, JSC (as he then was) noted that since primary elections produce the candidates who will eventually contest the elections, it goes without saying that pre-election matters, such as the instant case, are also *sui generis*.

*From the foregoing, there is need for a comprehensive legal framework that provides for violent crimes arising out of elections or electoral process and which will be administered by the Federal Government. This legality and the necessity of this argument has somewhat been settled by the way election tribunals are set up to decide election petitions.*¹¹¹ The Constitution confers on the federal government exclusive legislative powers over elections to offices of president and vice-president, governor, or deputy governor. While it confers on both Federal and state government the legislative powers over National assembly, state assembly and local government elections.

Correspondingly, the exception to the decision in A.G. Abia State v A.G. Federation,¹¹² where it was held that state governments have jurisdiction over local government areas due to

<http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf>
accessed 17 March 2022

¹⁰⁶Ibid

¹⁰⁷ ‘Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007’ <<https://aceproject.org/regions-en/countries-and-territories/KE/reports/independent-review-commission-on-the-general>> accessed 22 February 2022

¹⁰⁸ *Hassan v Aliyu* (2010) 17 NWLR (Pt.1223) 547; *James v INEC* (2015) 12 NWLR (Pt. 1474) 538

¹⁰⁹ (1988) 5 NWLR (Pt.94) 323 @ 347

¹¹⁰ (2000) 15 NWLR (Pt.689) 1 @ 17 A – D See also *Abubakar v YarAdua* (2008) ALL FWLR (Pt.404) 1409 @ 1450 E – F

¹¹¹1999 Constitution, s 285. See also Walyben, ‘Election Tribunal in Nigeria–An Overview’ <<https://www.walyben.com/election-tribunal-in-nigeria/amp/>> accessed April 3 2022

¹¹² (2002) 6 NWLR (763) 264

section 7(1), section 197 and item 22 of the Second Schedule of the Constitution is item 11 of the Concurrent legislative list. In the concurrent legislative list, power is given to the National Assembly in relation to registration of voters and the procedure regulating elections to a local government council. In considering which tier of government (federal or state) has the power to make laws in respect to local government elections, the court held that any laws made by the State house of assembly, regarding election to a local government council, must not be inconsistent with any law made by the National Assembly. This is supported by item 12 of the concurrent Legislative List.

While many scholars have advocated for a commission or tribunal for trial of electoral offenders, there is a clear cut need to have well-defined sanctions and enforcement mechanisms against perpetrators of electoral fraud and violence. This suggests the need to expand the scope of electoral offence to include all forms of violent offences perpetrated during elections. In so doing, disaggregating electoral violence into dimensions will help in designing the appropriate law and policy solution. Existing studies have also suggested that there are at least four key dimensions (discussed earlier in the paper) that should be examined more closely in developing a suitable legal framework for regulation and punishment of electoral violence perpetrators.¹¹³ A combined study of these four key dimensions will provide a clearer perspective.

The paper advocates for the need to urgently support the establishment of an effective and legitimate electoral institution and framework; institutional reforms aimed at lowering the stakes of elections; encourage the devolution of powers; improve the socio-economic standing of the populace; and devise strategies to prevent and manage electoral violence.

6.0 CONCLUSION/RECOMMENDATIONS

Nigeria and in fact Africa has witnessed significant democratic progress over the past two decades, although there is still great variation between various sub-regions and countries. Due to the increasing reliance on elections as a means to distribute and regulate political power in society, the stakes of such elections are often high. The socio-economic realities of losing power in societies where almost all political power and economic resources of the state are placed in the hands of the incumbent, coupled with exclusive electoral systems and weak or biased electoral institutions, risk turning elections into a do-or-die affair. This is intensified in societies divided along ethnic and other socio-economic cleavages like Nigeria and many African countries. Reforms to regulate and punish electoral violence perpetrators are trite as it will deter people from engaging in it.

Many literatures have identified actions such as election technical assistance, social peace building and political party engagement and types of electoral violence prevention but not much have been said about strengthening the legal framework for identifying and punishing electoral offenders. Also, it's been found that local law enforcement often is not equipped to prosecute election offences making federal law enforcement seem the only enforcement

¹¹³ Charles Taylor, 'Shared Security, Shared Elections Best practices for the prevention of Electoral Violence, A study of the American Friends Service Committee' <<https://reliefweb.int/sites/reliefweb.int/files/resources/Electoral-violence-report-web-version.pdf>> accessed 23 March 2022

option available. Accordingly, prosecution of electoral offenders by federal criminal justice system or federal high court seems to be the best option because the federal high court judges who are drawn from a broader geographic area than most state judges discharge their duties efficiently, and thus lessen the possibility of local bias. Also, the provision of a federal law criminalising electoral violence will sufficiently reduce its occurrence, make politician accountable and bring perpetrators to book.