

PROSECUTING ELECTORAL OFFENCES IN NIGERIA AND KENYA: A COMPARATIVE ANALYSIS

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Abstract

Election offences refer to all the crimes committed during the election period of a general election or By-election for political offices and which were directly related to the elections. The incapacity to investigate and prosecute electoral offences is alarming and discouraging and calls for discourse. Therefore, there is the need for vigorous and result oriented investigation and prosecution of such offences in Nigeria and Kenya. This is forestall voters' apathy and curb the brazen impunity exhibited on the part of those who perpetuate such electoral offences. Some salient provisions of the Electoral law on electoral offences pertaining to voters and electoral officials are stated and adumbrated on to know the adequacy or otherwise of the law. Realistically, there is the obvious need to create an independent Electoral Offences Commission with powers to investigate and prosecute such cases in synergy with Federal and State Prosecutors in both Jurisdictions.

Keywords: Investigate, Prosecute, Electoral Offences, Electoral Act

Introduction

The major cause¹ of failure of electoral processes worldwide has

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¹ Elisha Ongoya, Willis Otieno 'HandBook on Kenya's Electoral Laws and System' <www.ku.ac.ke/actil/wp-content/uploads/2015/07/KENYAN-ELECTION-LAWS1.pdf >accessed 2 April 2017. Other causes have been

been traced to the influence of election crimes and offences during the whole period of election, that is, from voter registration to the management of the elections.

The major forms of rigging² and fraud are increasing and are being perfected in successive Nigerian elections since 1964, 1965, 1979, 1999, 2003, 2007, 2011 and 2015.

Nigeria conducted her second general election in 2003 since her return to civil rule in May 1999. The 2003 elections were almost as contentious as the 1983 elections. The report from Nigerian observers³ affirmed numerous reported cases of alleged fraud in many States across the country. The European Union Observer Report⁴ also confirmed widespread election-related malpractice in a number of States in the Middle Belt, the South east and the South-South. The high incidences of electoral violence once more rekindled the old fears that the basic institutional weakness associated with her electoral system could bring the democratic

attributed to economic difficulties such as high poverty, hunger and unemployment levels in society. Economic frustration and inequalities associated with land ownership, together with unkept promises of job opportunities for young people.

² Festus Okoye 'The Prosecution of Electoral Offenders in Nigeria Challenges and Possibilities' <library.fes.de/pdffiles/bueros/Nigeria/10405.pdf> accessed 5 April 2017. These includes compilation of fictitious names on voters' registers, illegal compilation of separate voters' list, abuse of voters' registration revision exercise, illegal possession of ballot boxes, Illegal printing of voters' cards., stuffing of ballot boxes with ballot papers, falsification of election results, illegal thumb-printing of ballot papers, deliberate refusal to supply election materials to certain areas, announcing results in places where no elections were held, unauthorized announcement of election result, change of list of electoral officials, box-switching and inflation of figures.

³ Patterns of Election Violence <<https://www.hrw.org/reports/2004/nigeria0604/2.htm>> accessed 6 May 2017.

⁴ Nigeria Presidential and Gubernatorial Elections 2003 EU Election Observation Mission accessed <[www.europarl.europa.eu/meetdocs/committees/afet/20030520/Nigeria2ndPre liminaryStatement](http://www.europarl.europa.eu/meetdocs/committees/afet/20030520/Nigeria2ndPre%20liminaryStatement)> accessed 8 April 2017.

experiment to grief. The issue of electoral fraud and the lack of credibility of the electoral process have been with the Nigerian people for some time⁵. It has more or less become a feature of Nigerian elections. It is rooted in the “do or die”⁶ politics practised by some Nigerian politicians and political parties.

Kenya has had an equal share of the problem of election crimes and offences. The period preceding the first Multi-Party elections in 1992 witnessed cases of election crimes and violence⁷. Opposition candidates were roughed up by security agencies while unpopular leaders were imposed and installed through the 1988 voting system of queuing⁸. The worst cases of election crimes and offences were also characterized by a large scale of violence were witnessed during the aftermath of the 2007 disputed General Elections in what is now called the 2007-2008 Kenyan Crisis⁹.

In both jurisdictions, a large number of those that engage in electoral fraud and irregularities get away with it.

⁵ Okoye F (n.2) p1. The result is that elections have become turning points in which the outcome has been the subversion of the democratic process rather than its consolidation. Not surprisingly, major political conflicts have emerged around rigged elections.

⁶ These words gained prominence by its use by former President of Nigeria General Olusegun Obasanjo in reference to the 2003 elections. It simply meant that the ruling party then Peoples Democratic Party (PDP) needed to win the election at all cost and by all means which in fact it did.

⁷ Office of the High Commissioner for Human Rights (OHCHR). (2008). Fact-Finding Mission to Kenya on Post Election Violence, 6-28 February 2008.p.2.

⁸ National Crime Research Centre (NCRC) ‘A Study of Election Crimes and Offences in Kenya’ <www.crimeresearch.go.ke/index.php?...election...offences-in-kenya-> accessed 2 May 2017. This is popularly known in Kenya as “Mlolongo System” which was characterized by massive rigging. Ethnic flare-ups, violence and crimes such as riggings, killings were again witnessed in several parts of the country including Coast and Rift Valley Provinces during the 1997 and 2002 General Elections.

⁹ *Ibid.* The violence led to the death of over 1,300 Kenyans and the displacement of over 650,000 people, some of who have remained unsettled in the Internally Displaced Persons (IDP) Camps.

Causes of Electoral Offences

Nepotism has been extended to elective posts. Some citizens may decide to engage in violent protests as a way of rejecting the elected individual. Where election Officials, who have either been compromised, incompetently recruited or are perceived to be partisan and favour one side of the parties involved, the disadvantaged lot may decide to revenge by attacking the winner or their supporters thus causing injuries and deaths and damaging their property such as homes, offices and vehicles. Where election laws are applied selectively to contestants and some people do not believe in the existing judicial mechanisms to provide remedy, the disgruntled contestants and their supporters may take law into their own hands and engage in criminal activities¹⁰.

Election crimes and offences have been attributed to economic difficulties such as high poverty, hunger and unemployment levels in society. Economic frustration and inequalities associated with land ownership, together with unkept promises of job opportunities for young people, have been identified as some of the most important contributors to outbreaks of violence during electoral processes. Politicians have capitalized on these factors to influence the electorate using rewards, cash handouts and relief food during the election period¹¹.

Illiteracy among the electorate has been blamed for some election offences. Voters who cannot read or write have to be assisted by a trusted friend or relative. However, some of the friends and relatives cannot be trusted to faithfully assist the illiterate voters and may end up misguiding the voters into voting for candidates not of their choice. Illiterate voters can also be easily deceived by unscrupulous Politicians¹².

Negative campaigning or mudslinging and the use of hate and incitement language by different political contestants and their

¹⁰ Ongoya, Otieno *supra* (n.1)p 1.

¹¹ *Ibid.*

¹² *Ibid.*

supporters has been known to trigger violence. Provocative use of the media by political parties has contributed to election offences. Aggrieved parties may confront the aggressor in campaign rallies with a view to revenging on the derogatory language¹³.

Further, another contributing factor to election disorder is the State itself, particularly its Police and military apparatus. Some Government agencies have been reported to interfere with political elections by imposing preferred candidates. There are persistent suspicions that soldiers and police work for politicians as mercenaries and private security guards. In some areas, partisan behavior of military personnel has also diminished trust in election security.

The Applicable Law in Nigeria

The Constitution of the Federal Republic of Nigeria¹⁴, which is the supreme law of the land sets the parameters and regulates and limits the powers of various tiers of government and its organs. The said Constitution creates the Independent National Electoral Commission¹⁵(INEC) and sets out its powers¹⁶, its mandate and the parameters for carrying out its functions and conducting elections in Nigeria. The Electoral Act ¹⁷(as amended) also sets out the

¹³ *Ibid.*

¹⁴ Constitution of the Federal Republic of Nigeria as amended 1999 hereinafter “CFRN 1999”, Cap C23 Laws of the Federation 2004.

¹⁵ Hereinafter “INEC”. The Constitution and the law therefore regulate electoral behavior. The various stakeholders must play by the rules of the game and must show some level of fidelity to the law.

¹⁶ Powers to, among others to organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation; register political parties, arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election.

¹⁷ The Electoral Act, 2010 (as amended) hereinafter “EA”. It was enacted to regulate the conduct of Federal, State and Area Council elections in Nigeria. The Act makes provisions for registration of voters and the National Register

procedures and processes for giving effect to the functions ascribed to INEC by the Constitution.

Part V111 of the EA creates different categories of electoral offences and prescribes punishment for them. There are pre-election offences¹⁸ and Election Day offences¹⁹.

By section 150(1) & (2)²⁰ of the EA, an offence²¹ committed under the EA shall be triable in a Magistrate Court or High Court of the State in which the offence is committed, or the Federal Capital Territory, Abuja. A prosecution under the Act shall be undertaken by Legal Officers of the Commission or any legal practitioner appointed by it.

Any person who contravenes section 12 relating to voters registration in one registration centre or registering more than once in the same registration centre. Section 16(2)²² relates to possession of more than one valid voters card. Section 24(1) relates to registration of voters shall be liable on conviction to a fine not exceeding N100, 000 or imprisonment for a term not exceeding one

of voters in Part III thereof. The procedure for election (the electoral process) is captured in Part IV of the Act. Part V of the Act regulates Political parties which are crucial partners in the Electoral process. Provisions are made in Part VII for Electoral Offences and sanctions. The judiciary is saddled in Part VIII with determination of disputes arising from the conduct of an election.

¹⁸ The Registration of Voters, submission of list of candidates for elections, campaigns and the conduct of the campaigns are listed as pre-election matters.

¹⁹ Canvass for votes; solicit the vote of any voter; persuade any voter not to vote for any particular candidate; persuade any voter not to vote at the election; shout slogans concerning the election, loiter without lawful excuse after voting or being refused to vote; snatch or destroy any election materials etc

²⁰ Ongoya, Otieno *supra* (n.1) p 1.

²¹ Offences such as casting of vote twice or more, announcing false election result, stopping any other person from voting, revealing information on a ballot paper of another person. Being in possession of another person's voter card, canvassing for votes at polling unit, loitering or walking about in a polling unit, snatching or destroying ballot boxes or Card readers.

²² *Ibid.*

year or both.

Further, section 18(2) states that any person who is involve in the issuance of a duplicate voters card to a voter on polling day or less than 30 days before polling day shall be liable on conviction to a fine not exceeding N200, 000 or imprisonment for a term not exceeding two year or both.

Offences of buying or selling voters cards is in contravention of section 23 and it attracts a fine not exceeding N500,000 or imprisonment not exceeding two years or both.

Section 117 covers offences relating to voters registration and it attracts a maximum fine of N1, 000,000.00 or 12months imprisonment or both.

Pointedly, section 122 deals on impersonation and voting when not qualified attracts a maximum fine of N500,000 or to imprisonment for 12 months or both; section 125 deals with the requirement of secrecy in voting and contravention attracts a maximum fine of N100,000 or imprisonment for 6months or both. Wrongful voting and false statements is covered by section 126 and it attracts a maximum fine of N100,000 or imprisonment for six months or both. Section 127 deals with voting by unregistered person and it attracts a maximum fine of N100,000 or imprisonment for six months or both. Disorderly conduct at elections under section 128 attracts a maximum fine of N500,000 or imprisonment for 12 months or both. Offences on Election Day under Section 129(1) attracts a maximum fine of N100,000 or imprisonment for six months or both while by section 129(4) anybody who snatches or destroys any election material shall be liable on conviction to 24 months imprisonment. Section 130 deals with undue influence and it attracts a maximum fine of N100,000 or imprisonment for 12 months or both. Threatening is covered by section 131 and it attracts a maximum fine of N1,000,000.00 or imprisonment for 3years.

Suffice to add that section 123²³ deals with dereliction of duty by any officer appointed under the Act or by any Polling Officer attracts a maximum fine of N500,000 or imprisonment for six months or both; while anybody who announces or publishes an election result knowing same to be false shall be liable to 36months imprisonment.

Bribery and conspiracy under S.124 attracts a maximum fine of N500,000 or imprisonment for 12 months or both; The provisions of the law stated above are plausible and commendable. But the enforcement of these laws has always been a bane overtime in the Nigerian legal system.

The Police have the sole power to investigate election crimes. In situations where arrest are made, shoddy investigations are usually conducted into these alleged electoral offences sometimes based on compromise or complicity or superior orders from above.

In some instances, where investigations are not abruptly terminated, prosecution by the Nigeria Police Force, Federal and State Prosecutors, and the Independent National Electoral Commission (INEC) are abysmal and lack lustre.

The Police lack the political will and independence to carry out investigations of electoral offences while the bodies aforementioned that are in charge for prosecuting such election offences in Court also lack the political will to logically follow through to the end especially in most cases due to party affiliation by the culprits caught with the government in power which automatically frustrates by all means the prosecution of such cases.

Applicable Law in Kenya

²³*Ibid.*

Under section 74(1)(d-f)²⁴, every election officer who wilfully prevents any person from voting at the polling station at which he or she knows or has reasonable cause to believe such person is entitled to vote; wilfully rejects or refuses to count any ballot paper which he or she knows or has reasonable cause to believe is validly cast for any candidate in accordance with this Act; or wilfully counts any ballot paper as being cast for any candidate, which he or she knows or has reasonable cause to believe was not validly cast for such candidate commits an offence against this section and, on conviction on indictment, is liable to imprisonment for 2 years.

In section 74(2)(a)²⁵, an election officer who whilst having any duty to perform attempts to persuade any person to vote for or support or to refrain from voting for or from supporting any person as a candidate for any election or as a candidate for nomination on behalf of any political party for such election, or to support any political party, or attempts to ascertain for what candidate or party any person intends to vote.

Furthermore, under section 79(a), the following persons shall be deemed guilty of treating within the meaning of this Act thus: every person who corruptly, by himself or herself or by any other person, either before, during or after an election, directly or indirectly, gives, or provides or pays wholly or in part the expenses of giving or providing any food, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person, or any other person, to vote or to refrain from voting at such election, or on account of such person or any other person having voted or refrained from voting at such election and every voter who corruptly accepts or takes any such food, drink, entertainment, or provision.

Section 81 provides that a person who at an election applies for a ballot paper in the name of another person, whether that name be

²⁴ The Election Act 2011 is Kenya's consolidated electoral law.

²⁵ *Ibid.*

the name of a person living or dead or of a fictitious person, or who, having voted once at any election, applies at the same election for a ballot paper in his or her own name, commits personation while section 82 states that every person who commits treating; personation; aiding, abetting counselling or procuring the commission of any one of the foregoing offences, is liable on summary conviction to a fine of \$500 or to imprisonment for 6 months.

In addition, section 83(1)(a) provides penalty for certain illegal practices by stating that every person who votes, or induces or procures any person to vote, at any election, knowing that he or she or such other person is prohibited by any law, from voting at such election.

On the other hand, section 83(4)²⁶ states that any person who during the period of 14 days ending with the day after polling day willfully detains an identification card issued to another person commits an illegal practice and is liable on summary conviction to a fine of \$500 or to imprisonment for 6 months.

Section 84(1)(a-f) succinctly provides for offences in respect of ballot papers as it states that a person who forges or counterfeits, or fraudulently defaces or destroys, any ballot paper; without due authority supplies a ballot paper to any person; fraudulently puts into any ballot box any paper other than the ballot paper which he or she is authorised by law to put in; fraudulently takes out of the polling station any ballot paper; without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purpose of any election; or not being duly registered as an elector, votes at an election is liable, on summary conviction, if he or she is the returning officer or presiding officer, or clerk employed at a polling station, to a fine of \$1,000 or to imprisonment for 12 months and, if he or she is any other person, to a fine of \$500 or to imprisonment for 6 months.

²⁶ *Ibid.*

Suffice to add that section 85 states that every election officer, candidate or agent, in attendance at a polling station shall maintain and aid in maintaining the secrecy of the voting in such station, and shall not communicate except for some purpose authorised by law, to any person any information as to the name or number on any list of electors, of any elector who has or has not applied for a ballot paper or voted at that station and no person shall interfere with or attempt to interfere with an elector when marking his or her vote or otherwise attempt to obtain in the polling station any information as to the candidate for whom any elector in such station is about to vote or has voted.

Section 85(2-4) provides that every election officer, candidate or agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting and shall not communicate or attempt to communicate any information obtained at such counting as to the candidate or candidates for whom any vote is given in any particular ballot paper, a person shall not, directly or indirectly, induce any voter to display his or her ballot paper after he or she has marked it so as to make known to any person the name of the candidate for whom or against whose name he or she has marked his or her vote, person who acts in contravention of this section is liable on summary conviction to a fine of \$500 or to imprisonment for 6 months.

The law on electoral offences in Kenya are undoubtedly adequate in curtailing the commission of election offences. The problem lies in the investigation of such offences by the Police when they arise in the course of election. Most often, investigations are not thorough and are marred by political interferences. Coupled with this is that sometimes prosecution of these election offences cases fail as a result of lack of manpower of Prosecuting Officers on the part of The Independent Electoral and Boundaries Commission(IEBC).

The Prosecution of Electoral Offences in both Jurisdiction

The inability of the Nigerian State to prosecute electoral offenders

over the perpetuation of election offences is alarming and calls for concern. This may be responsible for the progressive degeneration of the electoral process in Nigeria. It is therefore contended that the outcome of the 1999 General Elections is better than the 2003 elections and the 2003 elections better than the 2007 elections. The exception to this rule has been the 2011 and 2015 elections that were adjudged better than the 1999, 2003 and 2007 elections²⁷. Even at that, the issue of electoral offences, the impunity that accompanies it and the inability to prosecute electoral offenders effectively still persists.

Section 150(1) of the EA provides that an offence committed under the Act shall be triable in a magistrate's court or any High Court of a State in which the offence is committed, or the Federal Capital territory, Abuja.

In same vein, S. 158(2) of the EA, 2010 provides that a prosecution under the Act shall be undertaken by legal officers of the Commission or any legal practitioner appointed by it. The question is whether Nigeria has derived the benefit of professional prosecution of electoral offenders with domiciling the power of prosecution with officers of the INEC. By the account of the Commission, minimal success has been recorded²⁸.

Some of the accused persons in relation to the cases tracked were prosecuted by different agencies.

In some of the States, such as Edo, Oyo and Enugu States, lawyers from the INEC took over the prosecution of some of the cases from the Police at the stage of trial. In Sokoto and Niger State, few of the cases were prosecuted by the INEC, and in Rivers State, the bulk of the cases tracked were prosecuted by INEC.

²⁷ Okoye *supra* (n.2),p1.

²⁸ *Ibid.* 65 suspects were charged with snatching of Ballot Boxes,24 suspects were charged with Loitering after voting,7 suspects were charged with buying and selling of Voters cards 8 suspects were charged with Dereliction of Duty,23 suspects were charged with Intimidation/Assault of INEC officials.

Some of the accused persons were also tried in different courts²⁹ across the federation. There are limited reports of prosecution of electoral offences³⁰. Under the current laws, INEC has the power to carry out the prosecution of persons, who are accused of electoral offences. With the numerous reports of offences allegedly committed during the April 2011 general elections, including electoral violence, it does not appear that INEC has the manpower and resources to pursue all of the prosecution.

Prosecution of electoral offences in Kenya is undertaken by IEBC³¹ established under Article 88 of the Constitution³² of Kenya with the mandate³³ of conducting or supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament.

²⁹ *Ibid.* 17 of the cases tracked were being tried or tried at the High Court, 271 of the cases tracked were tried or are being tried at the Magistrate Courts, 1 case among those tracked is being tried by the Upper Area Court, 5 of the cases are still under Police investigation and have not been charged to Court, A large number of the cases tracked are still ongoing while a substantial number were struck out for lack of diligent prosecution.

³⁰ *Ibid.* 7 suspects were charged with Falsification of results, 3 suspects were charged with unauthorized destruction of ballot papers 1 suspect was charged with Hijacking of INEC Results, 4 suspects were charged with being in possession of Ballot Papers 7 suspects were charged for disorderly conduct, 7 suspects were charged for bribery and corruption. The Police prosecuted a total of 223 cases. The Independent National Electoral Commission (INEC) prosecuted 45, the various Ministries of Justice prosecuted 21, Five suspects among the cases tracked have not been charged to court.

³¹ Established by the IEBC Act of 2011.

³² Constitution of 2010 that was enacted 27 August.

³³ Other duties include delimitation of electorate units, registration of voters, regulation of political parties, voter education, settling of electoral disputes and modernization and reforming of electoral processes and systems. IEBC ensures that elections are credible, transparent, free and fair. It is committed to upholding national values and principles of good governance and democracy.

The Police are still required to provide election related security, investigate election offences and to make arrests where necessary³⁴. Although, the IEBC has recently hired an Investigations and Prosecution Manager, an Investigation Officer and a Prosecution Officer. This is hardly enough to handle the anticipated load given the country's election history.

Collaboration with the security agencies and the Director of Public Prosecution is therefore critical in the discharge of IEBC'S prosecutorial remit³⁵ in respect of election offences. In fact the police failed to collect and preserve evidence of those who committed post-election violence, and the Director of Public Prosecutions (DPP) admitted his office could not prosecute cases because of this weakness³⁶.

The Way Out

The commission of electoral fraud and electoral offences in both Jurisdiction will persist despite the adequacy of offences provided in their EA as the political will needed by the various recognised bodies to prosecute these offences is lacking in entirety as people committed these offences without restraint or caution with impunity, because they believed that they could get away with it. The prosecution of electoral offences in both Jurisdiction is low and an efficient and proper prosecution can only be realised if the undermentioned are achieved.

Setting up a properly independent Electoral Offences Commission in both Jurisdiction under a no nonsense strong leadership. This will

³⁴ Makulilo, Alexander B, Ntaganda, Eugene 'Election Management Bodies in East Africa' <<https://books.google.com.ng/books?id=Uww6GvAAQBAJ&pg=PA111&lpg=PA111&dq=PROSECUTING+ELECTION+OFFENCES+IN+KENYA>>accessed on 9 May 2017.

³⁵ *Ibid.*

³⁶ 'IEBC Needs Urgent Reforms Says Church Leader' *Daily Nation* 4 May 2016 <www.nation.co.ke/news/politic/IEBC-Supreme-Court/-/1064/31890881/-/20nfj/-/index.html >accessed 10 May 2017.

send a clear signal to candidates and political parties that people will be held accountable for any election related abuses. The powers of this Commission should include the investigation of all electoral frauds and related offences; coordination, enforcement and prosecution of all electoral offences; the examination and investigation of all reported cases of electoral offences with the view to identifying electoral officers and staff of the electoral commission, individuals, corporate bodies or groups involved in the commission of electoral offences; and collaboration with election observing authorities within and outside Nigeria.

Furthermore, in the operations of the Electoral Offences Commission, the Attorney Generals of the Federation and of the States will be stripped of the power to file a *nolle prosequi*³⁷ to terminate, take over discontinued matters pending against any individual in court in relation to electoral offences.

The electoral management body in both Jurisdiction should be strengthened in all ramifications in terms of expertise, manpower, resources and the capacity to shoulder such a responsibility of prosecuting electoral offences in the face of conducting elections and managing post electoral challenges.

There is need for an independent Police force in both Jurisdiction free from all sorts of political interference which would be able to conduct proper, impartial and meaningful investigations on all infractions of electoral offences to seeing that culprits are charged to Court. It is trite that one of the primary functions of law enforcement officials as stated in the Nigerian Police Act is the preservation of law and order.⁴⁴ This function is very important during elections. If Law and order are not maintained, elections can hardly be peaceful and the result may not be acceptable to the voters. In the performance of his or her duty every law enforcement

³⁷ Power to discontinue a matter in Court. This is covered under sections 150 and 174 of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

official is expected to exhibit certain standard of behaviour and discipline which distinguishes him or her as an agent of the law³⁸. In terms of arrest and detention during elections³⁹, it is noteworthy that everyone has the right to personal liberty and it is unlawful to subject any voter to arbitrary arrest and detention.

Furthermore, law enforcement officials have a duty to ensure that law and order do not break down during elections. In the event of a civil disorder, all measures they adopt for the restoration of order should respect human rights of voters⁴⁰ INEC should invest in private legal practitioners and give them the responsibility for the prosecution of electoral offenders as INEC AND IEBC are burdened with the conduct of elections and do not have the capacity to focus on the issue of electoral offences.

The capacity of INEC and IEBC should be strengthened and be allowed it to continue to prosecute electoral offenders. In doing so, it reserves the right to engage the services of private legal practitioners in the prosecution of electoral offenders. In which case, it can make regulations requiring the establishment of Mobile Courts to prosecute electoral offenders on election day⁴¹. Through proper enlightenment, it is the duty of a citizen in both Jurisdiction

³⁸ Sections 343 to 388 of the Police Act sets the standard required of every Police Officer in Nigeria. These are among others that every police officer should try his best to maintain the good name of the Nigeria Police Force, and to further good relations with the public, every police officer should obey all lawful orders; reject corruption in the exercise of his police duties; ensure that his general behaviour is good and acceptable to the public

³⁹ Anyone who is arrested should be told the reasons for his arrest in a language that he understands; anyone who is arrested should be charged to court within the constitutional stipulations; anyone who is arrested has the right to remain silent or avoid answering questions until he consults a lawyer or any other person of his choice; anyone who is arrested has the right to trial within a reasonable time, or to be released amongst others.

⁴⁰ Ladan MT 'Enforcement of Electoral Law and Electoral Violence in Nigeria' <www.gamji.com/article6000/N_EWS6681.html> accessed 11 May 2017,

⁴¹ Okoye *supra* (n.2) p1.

to report the commission of election offences as soon as possible to the bodies mandated in law to be in charge.

Conclusion

The National Assembly in both Jurisdiction should pass legislation to establish an Electoral Offences Commission with its primary function to investigate and prosecute election offences cases. This is without prejudice to the power of the Police Force, Federal and State Prosecutors to still continue to prosecute election offences cases⁴². The needed synergy, collaboration and utmost cooperation should exist amongst the above mentioned bodies in making this a reality.

⁴² Under the current system, the Nigeria Police Force, Federal and State Prosecutors, and the Independent National Electoral Commission (INEC), established in 1998, have authority to prosecute electoral offences. Only the Police have the power to investigate such abuses.