

**ESTABLISHMENT OF THE NATIONAL ELECTORAL OFFENCES
COMMISSION (NEOC): A PANACEA FOR ELECTORAL FRAUD AND
CORRUPTION IN NIGERIA?**

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ABSTRACT

This qualitative study examines the rationale for the establishment of a separate statutory body known as the National Electoral Offences Commission (NEOC) to undertake the investigation, arrest, arraignment, and prosecution of offences listed in the Electoral Act 2010 (as amended and further so proposed). This development is sequel to findings by the Electoral Reform Committee (ERC) set up by President Yar'Adua in 2007 that the Independent National Electoral Commission (INEC) had no power to investigate cases of alleged electoral crimes, lacked skilled manpower, time, and resources to effectively undertake the responsibility, and further conflicted where its staff were the offenders. NEOC has received formal legislative action with the passage of the establishment bill in 2021 awaiting assent. The problem is that NEOC's prosecutorial powers are subject to the overriding constitutional powers of the Attorney-General of the Federation (AGF) in that regard. This study used the qualitative case methodology approach to examine the key issues involved, with primary data collected from information-rich participants, while secondary data came from documents. Using the Electoral Justice System (EJS) as our conceptual framework, the work found that NEOC faces some key challenges to its effectiveness of which executive interference in the appointment of its members and in the discharge of its functions are prominent.

KEYWORDS: Commission; Electoral; Offences, Prosecution, Fraud, Corruption.

INTRODUCTION

Following alleged reports that the 2007 General Election was flawed and below national and international standards; President Umaru Yar'Adua promised to effect remedial measures. The idea of establishing a separate body to investigate and prosecute electoral offences crystallised during the proceedings of the Electoral Reform Committee (ERC) set up by President Umaru Yar'Adua in 2007 which recommended among other things the establishment of an Electoral Offences Commission. Before then, the 2006 Electoral Act under which the 2007 elections were conducted had empowered the Independent National Electoral Commission (INEC) to prosecute offences listed in the Act through its Legal Officers or any Legal Practitioner appointed by it (S. 158, Electoral Act, 2006). The provision was retained in the Electoral Act 2010 under S.150. It has however, been noted that INEC was encumbered in its prosecutorial powers as it did not have the power to investigate nor skilled personnel to undertake the task (O. Uzzi, former Director of Legal Services, INEC, personal communication, August 29, 2021). It was argued that the provisions of the Act, the procedure for investigation of electoral offences by the police, and subsequent prosecution of offenders by INEC did not meet the expectations of generality of Nigerians hence the search for a more effective process.

This study assessed key benefits of establishing a separate body for investigating and prosecuting electoral offenders, as well as the major constraints that could lead to the ineffectiveness of such a body being established as the National Electoral Offences Commission (NEOC). This study significantly contributes to the knowledge of benefits and constraints of electoral offences prosecution and ultimately to the literature of peaceful electoral process. The perceived problem which gave rise to this study is that of the effectiveness of prosecuting the electoral offences provisions of the Electoral Act as part of the Electoral Justice System (EJS) of Nigeria which like the election petitions proceedings for addressing challenges to election outcomes are special in nature, occurrences, and general characterization. Neither the police nor INEC has been optimal in enforcing the electoral criminal law, hence the bill recently passed by the Senate for setting up a dedicated agency to

take up that duty and responsibility. Thus, in order to get a viable result, two research questions are posited and these are; What justifies the establishment of the National Electoral Offences Commission (NEOC) in Nigeria? And how does the constitutional powers of the Attorney-General of the Federation (AGF) impact on the prosecutorial powers of the NEOC?

This work adopted and utilized the qualitative case study descriptive methodological design approach which employs the inductive reasoning, “building from the particular to the general on social problems occurring in natural setting with data collected by the researcher from multiple triangulated sources of open-ended unstructured interviews, documents, and focused groups” (Creswell, 2009). According to Creswell (2013) qualitative approach is also most suitable for evidence-based research involving the study of a case within a real life, contemporary context or setting. Our work is a descriptive single case study of effective prosecution of electoral offences with in-depth descriptive and analytical approach. The Electoral Justice System (EJS) was adopted as the conceptual framework of the study for its relevance and connection with our method of inquiry, data collection, and data analytical methods employed in the study. The concept of electoral justice according to International involves the “means and mechanisms available in a specific country for securing compliance and enforcing the electoral legal framework” (IDEA, 2010: 5). Inherent in the EJS framework is the electoral criminal law and administrative regulatory infractions that are both investigated and punished in accordance with the law or resolved in accordance with the electoral dispute resolution (EDR) subsystem in place.

Background and Literature Review

Competitive electoral politics is inherently full of conflict. Sometimes, the struggle for political power through periodic elections can result in breaches of the electoral laws and processes. The Electoral Act 2010 (as amended) and even the preceding acts did not define “electoral offences” (Ubanyionwu, 2016, 100). For purposes of our work, electoral offences can be defined as breaches of the laws regulating the conduct of elections and related processes

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and requiring punishments. Such breaches and prescribed punishments are often provided as part of the electoral legal framework of the country.

In Nigeria, various electoral legislations known as Electoral Acts have always provided for the electoral offences section. The Electoral Act 2006 provided for them in Part VIII, sections 124-139, while in the subsequent Electoral Act 2010, they are listed in Part VII, Sections 117 -132. According to INEC (2019) the Electoral Offences and Penalties as provided in the electoral legal framework are available and accessible from its website for public enlightenment and voter education purposes (retrieved August 23, 2021, from <https://www.inecnigeria.org>). The offences relate to registration of voters, nomination of candidates, voting process, bribery and conspiracy, undue influence, campaign and campaign finance, finances of political parties among many others. The power to prosecute these offences vests in INEC (S. 158, Electoral 2006; S.150, Electoral Act, 2010) which may do so through its Legal Officers, or any Legal Practitioner appointed by it. However, the breaches where they occur, are investigated by the Police as INEC lacks the investigative power and skills. This situation created challenges for both INEC which became overburdened by the prosecutorial responsibility and the Police which became overstretched and somewhat distracted from its regular policing functions in addition to providing security for the conduct of elections. The foregoing situation made the quest for the establishment of a separate agency to investigate and prosecute electoral offences inevitable.

The National Electoral Offences Commission (NEOC)

ACE Electoral Knowledge Network (2011) maintained that a breach of public trust and peace can result from illegal acts that subvert the electoral process and therefore, enforcing the legal framework is essential to maintain electoral integrity. The ERC recommended among other things, the expeditious prosecution of all offences committed within the electoral contest (Section 2.6, p. 56, Vol.1, ERC). The ERC had further observed that the “prevailing atmosphere of impunity with regard to election offences should be ended by prosecuting and holding accountable those responsible for electoral offences, including those of a criminal

nature” (p. 55). Consequently, it recommended in its 2008 report the establishment of a special prosecutorial body to be known as Electoral Offences Commission to work independently in the investigation, arraignment, and prosecution of electoral offenders (p. 57).

The above recommendation did not find a place in our electoral justice system and administration until 2021 when the Senate of the Federal Republic of Nigeria passed the Senate Bill SB. 220 of July 15, 2021 for “An Act to Establish the National Electoral Offences Commission (NEOC) and for Related Matters, 2019”. Electoral offences can be classified as negative conflicts which if not addressed, can quickly spiral into violent conflicts that could undermine the conduct of free, fair, and credible elections necessary for political stability and economic development. Prosecution of federal criminal offences in Nigeria including electoral ones are constitutionally deemed to be done with the consent of the Attorney-General of the Federation (AGF) which vests the office in Section 174 of the 1999 Nigerian Constitution with the power to “institute, undertake, takeover, and discontinue any criminal proceedings that may have been instituted by himself or any other authority or person at any stage before judgment is delivered. The Attorneys-General of the states have similar powers with respect to state criminal matters in Section 211 of the Constitution. The powers can be exercised personally or through officers of his department or any other person so delegated by him. This is the basis for the power to enter “*nolle prosequi*” in criminal proceedings which directly translates to “not to wish to prosecute” (Cornell Law School, Retrieved September 1, 2021, from www.law.cornell.edu).

Ubanyionu (2016: 111) noted the importance of prescribing, prosecuting, and enforcing punishment for electoral offences and submitted that the “reason electoral offences go unpunished in Nigeria is as a result of the failure of the respective Attorneys-General to prosecute offenders, especially if those involved are members of the ruling party or were acting in the interest of the ruling party”. Ubanyionu (2016) did not however, go beyond the observation to address the specific challenges posed by the unchallengeable power of the AGF in the case of prosecutions by the NEOC. Ogbeide (2010: 12) stated that malpractices

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characterize the conduct of elections in Nigeria since the first republic with “high level of political indiscipline, and electoral illegalities leading to collapse of democratic civil rule and consequent emergence of military rule in Nigeria” (p. 45), a position also posited by Kurfi (2013).

International IDEA (2010: 12) maintained that using “corrective and/or punitive measures, the electoral dispute resolution system (EDRS) ensures that elections are conducted in accordance with the provisions of the legal framework”. According to Enugworie et. al. (2021), the “ruling political elite who drafted the Electoral Acts “deliberately incapacitated INEC from vigorous detection and prosecution of violators of electoral laws by lumping prosecution to the mandate of the agency already overburdened by the task of conducting elections” (p. 53). Enugworie et. al. (2021: 54) concluded that “weak prosecution advances electoral interests of the dominant class”. It can thus be seen that some of the electoral offences like negligence of duty, manipulation of results done by INEC field personnel will run against the principles of natural justice for INEC to be the complainant, and at the same time the prosecutor in its own cause. Under this arrangement, the investigation of the complaint even if by the Police and the prosecution by INEC will raise issues of conflict of interest that could undermine the electoral justice system. This development clearly underscores the need according to Enugworie et. al. (2021) to have a dedicated agency to professionally undertake the detection, investigation, and prosecution of electoral offences but professionally but failed to address the constraints facing such a body.

Ezeogueri-Oyewole and Momoh (2020) reviewed the challenges of INEC in conducting elections in the first two decades of the fourth republic and submitted that INEC was found to play the function of “political stockbroker” with a tale of mixed blessings. David et. al. (2013) recommended the full implementation of the ERC report with particular reference to the setting of the “Electoral Offences Court to punish offenders” (p.51) but failed in their work to address the challenges that such a body was bound to face in the light of past prosecutorial efforts by both the police and INEC. Olawole et. al. (2013: 22) submitted that

“electoral fraud had continued in African countries unabated despite several recommendations in that regard”. The authors did not address the specific challenge of prosecution as part of the recommended measures. Kurfi (2013), and Okoye (2013) endorsed the establishment of the NEOC as recommended by the ERC but like all the reviewed literatures failed to interrogate the challenges that will constrain the effectiveness of such a nascent body. O. Ndeche (Submission to the United States Institute of Peace Roundtable on Elections in Nigeria at Abuja, September 3, 2019) stated that as part of intervention to mitigate electoral violence and malpractices, “an independent investigative and prosecutorial body, excluded from the AGF’s power of *nolle prosequi* under S. 174 of the 1999 Nigerian Constitution should be established”. This position marks a departure from previous works as it directly addresses a key constraint on the powers of the AGF in relation to the powers of NEOC.

Analysis and Discussion

Our primary data comes from responses to unstructured open-ended key informant research questionnaire in a standard sequence and form with sufficient spaces to write in answers mailed to the participants with an introductory letter. This approach enabled the respondents to “open up and talk freely” (Creswell, 2013: 165). The questions elicited information from the respondent-participants about knowledge and experience of the subject matter of the study.

The stratified purposeful sampling strategy was used to deliberately select the most appropriate individuals with deep knowledge and experience in the matter and are willing to participate and communicate reflectively on the study. The nature of our study does not require width but depth, hence relatively small samples, even single cases can be selected purposefully. According to Patton (2002: 230), “the logic and power of purposeful sampling lie in selecting information rich cases for study in depth”. The stratification strategy is to enable selection of participants of special interest that can answer the research questions. As further asserted by Patton (2002: 240) “stratified samples are samples with samples”. In this study, we have selected 10 research participants who were independently mailed the research questionnaire with an introductory note explaining the purpose of the study. The participants

met the spread characteristics of age, gender, marital status, education, occupation, and residence. A major factor that influenced the sampling size was the time frame available for the cork which was very tight.

Our sample size $n = 10$ as follows:

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|----|---------------------------|---|----|------------|
| 1. | INEC members | = | 2. | (R1, R2) |
| 2. | National Assembly members | = | 2 | (R3, R4) |
| 3. | Legal Practitioners | = | 2 | (R5, R6) |
| 4. | Judicial Officers | = | 2 | (R7, R8) |
| 5. | Political Party leaders | = | 2 | (R9, R10). |

Where R is assigned to respondents to the interview questionnaire who are anonymised, and confidentiality strictly maintained. Additional phone calls were made in some cases as follow up to clarify some responses. Secondary data from multiple sources, reports, journal articles were also analysed for corroboration and evidence.

Data Analytical Strategies

Responses to five unstructured open-ended key informant questions woven around the research questions were received, read, and collated in MS Word as datasets, and thereafter, hand-coded using highlighter to identify themes and nodes running through them. The result of this stage of data analysis provided us with responses with recurring themes, sub-themes, and categories in relation to the research questions. These identified broad categories were compared with data from documents from our literature review. A measurement scale of 1-5 was used to analyse each response for relevance and establish a point of value in search of systematic meaning and connection to the research questions. The assigned researcher codes to the responses were 1 = poor; 2 = fair; 3 = average; 4 = good; and 5 = excellent. Thus, the qualitative data through this thematic analysis acquired quantitative values for ease of inductive decision making on the findings.

Discussion

Our qualitative data analysis demonstrated that the research participants had a clear knowledge and understanding of the reasons for the establishment of a separate body to address the issue of effective prosecution of offenders as well as the constraints on its effectiveness from the AGF. Our focus was on the categories that measure 3-5 on our code scale. Majority of the respondents firmly supported the establishment of NEOC as a matter of urgent priority.

From the above, it can be seen that a case for the establishment of NEOC has been well made from historical experiences, and from obvious challenges which both the Police and INEC were faced with in their respective prosecutorial efforts. Of note is the response from INEC members who submitted that it has been bad for the Legal Officers to prosecute their colleagues who are accused of committing electoral offences. They further averred that the non-availability of witnesses, particularly National Youth Service Corps (NYSC) members and students who served as election officials, when required during trial created huge challenges to INEC effectiveness. Some respondents noted that the sponsors of electoral violence and malpractices who are often the main beneficiaries of fraudulent electoral victories, are hardly the ones arrested, investigated, and prosecuted for the offences. In some situations, investigating police officers were transferred out of station thereby delaying prompt action on cases and forwarding of case files to INEC for study and further action. INEC faced a serious “conflict of interest” when it was confronted with prosecuting its own staff for electoral offences.

Two Legal Practitioners who are experienced in electoral offences prosecution maintained that the establishment of NEOC will lead to skilful and professional investigation and speedy prosecution of offenders which will consequently reengage the citizens with the electoral process for more active participation. They are unanimous that NEOC should be to electoral corruption and fraud what the Economic and Financial Crimes Commission (EFCC) is to financial corruption. This dominant position justifies the establishment of NEOC and accords with the recommendations of ERC, the concept of EJS, and the legislative action by

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the National Assembly in establishing the body. Our first research question is answered in the affirmative with the overwhelming result of findings justifying the establishment of NEOC to address cases of electoral offences through independent investigation, arrest, arraignment, and trial of offenders.

The establishment of NEOC is not without evidence-based constraints as our second research question rightly posited. A key constraint is the absence of specialized courts to try offenders and reliance on the regular High Courts (Federal High Court, High Court of a State, or High Court of the Federal Capital Territory of Abuja) to commence criminal proceedings as provided under S.33 (3) of NEOC Bill 2019. It is worthy to note that the respective Chief Judge may designate a court(s) or a judge(s) to hear and determine matters brought pursuant to the Bill and the court or judge so designated is required to give such matters priority over all other matters (S. 33 (4), NEOC Bill 2019). The effectiveness of NEOC therefore depends on cooperation of the courts.

A much more serious constraint to the effectiveness of the prosecutorial powers of NEOC is the special constitutional power of the AGF under S.174 of the 1999 Nigerian Constitution (as amended) with regards to all non-martial criminal prosecutions in the country. The AGF is the Chief Law Officer of the federation and in whose deemed consent all such criminal prosecutions are undertaken. As stated by a senior Legal Practitioner who was a key informant respondent, “the powers of the AGF are capable of undermining the independence and effectiveness of the NEOC as the power of AGF is constitutional while the power of NEOC by statute which is inferior to the constitution”. There is no restraint on the power of AGF, not even by way of judicial review. It will require more than an activist judge to manage the enormous powers of intervention by the AGF in the prosecution of electoral offences which may further have underlying political considerations and consequences.

Another very senior member of the Bar and a research participant argued that there are no key benefits in establishing NEOC as it will amount to duplication of roles or functions of existing investigative powers of the police and prosecutorial powers of the police and the

AGF. It will further have implications for the budget. Beyond the constraining power of intervention by the AGF and political considerations by the Executive in the selection, appointment, and operations of NEOC, several respondents stated that lack of financial autonomy, and inadequate skilled manpower could seriously constrain the effectiveness of NEOC to fulfil its statutory mandate. This submission directly addressed our second research question by affirming the constraint imposed by the constitutional power of AGF on all criminal prosecution other than court-martials but further established additional constraints that impact the effectiveness of NEOC.

Conclusion

NEOC is expected to play a key role in promoting and strengthening electoral democratic governance through the filtration process that will lead to the emergence of quality leadership in public elective offices. Jeong (2017: 33) maintained that “the first priority for peace research is to pursue knowledge that will enhance ability to manage and prevent violent conflict”. This is fundamental and critical to our understanding of the nature of electoral offences as possible triggers of violent electoral conflicts. This study establishes that NEOC is needed as part of our electoral justice system but that more will have to be done to make it effective and prevent a relapse to pre-NEOC era. NEOC will unbundle INEC and relieve it of the fettering burden of prosecuting offenders that may be its own staff.

Recommendations

Flowing our evidence-based research findings, we make a number of recommendations that will strengthen NEOC and the integrity of the electoral process in general. It is recommended that Advocacy proposal to amend Sections 174 and 211 of the 1999 Constitution in relation to the power of AGF and that of the state respectively to exclude their application in cases of electoral offences as with courts-martial. Also, there is the need for the amendment to NEOC Establishment Bill to specifically direct and provide for the creation of dedicated Electoral Offences Courts by Chief Judges to hear and expeditiously determine electoral offences. It is also expected that full financial autonomy be granted to NEOC by placing their budget on the

first line charge on the Consolidated Revenue Fund of the federation. Furthermore, amendment to the NEOC Bill which will make the selection, appointment, and disciplinary control of the Chairman, full time members, and Secretary on the recommendation of the National Judicial Council will be necessary. Finally, mandatory annual publication of Register of Electoral Offenders with statutory provision for restriction of electoral rights for a period must be mandated.

REFERENCES

- ACE Electoral Knowledge Network (2011). Enforcement of electoral integrity. Retrieved August 24, 2021, from <https://aceproject.org/ace-es/topics>
- Creswell, J. W. (2013). *Qualitative inquiry and research design: Choosing among five approaches* (3rd ed.). Sage Publications, Inc.
- Creswell, J. W. (2009). *Research design: Qualitative, Quantitative, and Mixed Methods Approaches*. (Laureate Education, Inc., custom ed.). SAGE Publications, Inc.
- David, N., Manu, Y., and Musa, A. (2015). Elections, electoral reforms, and abuse of the Electoral Act in Nigeria: An analysis of the 2015 electoral process. *IOSR Journal of Humanities and Social Sciences (IOSR-JHSS)*, 20(4), 47-51. doi:10.9790/0837-20454751
<http://www.iosrjournals.org/iosr-jhss/papers/Vol20-issue4/Version-5/I020454751.pdf>
- Electoral Act 2010. Retrieved from <https://www.inecnigeria.org/downloads-all/electoral-act-2010/>
- Federal Republic of Nigeria (2008). *Report of the Electoral Reform Committee Report*. Federal Ministry of Information and Culture, Abuja. Retrieved from <https://nairametrics.com/wp-content/uploads/2012/01/Uwais-Report-on-Electoral-Reform.pdf>
- Ezeogueri-Oyewole, A., and Momoh, M. (2020). A historicism of INEC and the conduct of elections in Nigeria: The first two decades of the fourth republic (1999-2019) in focus. *International Journal of Research and Innovation in Social Sciences (IJRISS)*, 4(5), 196-210. Retrieved August 24, 2021, from <https://www.rsisinternational.org/journals/ijriss/digital-library/volume-iv-issue-v/>
- Ezugworie, C., Ostar, C., and Okorie, A. (2021). Independent National Electoral Commission and the prosecution of electoral offences in Nigeria: Is the 2010 Electoral Act implicated? *International Journal of Business Management and Economic Review*, 4(1), 50-65. Retrieved August 23, 2021, from https://ijbmer.org/uploads2021/BMER_4_229.pdf

- International IDEA (2010). *Electoral justice: An overview of the International IDEA handbook*. Retrieved August 24, 2021, from <https://www.idea.int/sites/default/files/publications/chapters/electoral-justice-handbook/electoral-justice-handbook-overview.pdf>
- Independent National Electoral Commission (2019). *Electoral offences and penalties*. Retrieved August 23, 2021, from <https://www.inecnigeria.org/wp-content/uploads/2019/02/ELECTORAL-OFFENCES-AND-PENALTIES-latest-FEBRUARY-2019.pdf>
- Jeong, H. (2017). *Peace and conflict studies: An introduction*. Routledge.
- Kurfi, A. (2013). *Sixty years long march towards democracy (Nigerian General Election 1951-2011)*. Spectrum Books Ltd.
- Ndeche, O. (2019, September 3). *Electoral processes and procedures: Issues and challenges*. [Paper presentation]. United States Institute of Peace Roundtable on Elections in Nigeria.
- National Electoral Offences Commission Bill 2019. Retrieved from <https://placbillstrack.org/upload/SB220.pdf>
- Ogbeide, M. (2010). A culture of failed elections: Revisiting democratic elections in Nigeria, 1959-2003. *Historia Actual Online*, 21(2010), 43-56. Retrieved August 31, 2021, from <https://www.historia-actual.org/Publicaciones/index.php/hao/article/view/412>
- Okoye, F. (2013, September). *The prosecution of electoral offenders in Nigeria: Challenges and possibilities*. [Discussion paper]. Friedrich Ebert Stiftung. Retrieved August 29, 2021, from <https://library.fes.de/pdf-files/bueros/nigeria/10405.pdf>
- Patton, M. Q. (2002). *Qualitative research and evaluation methods* (3rd ed.). SAGE Publications, Inc.
- Ubanyionwu, C. (2016). Establishment of Electoral Offences Commission as a means of ensuring free and fair elections in Nigeria. *AFJCLJ*, 1(1). 99-114. Retrieved August 23, 2021, from <https://journals.ezenwaohaetorc.org/index.php/AFJCLJ/article/view/482>