

Roundtable on Electoral Offences in Nigeria

Communique

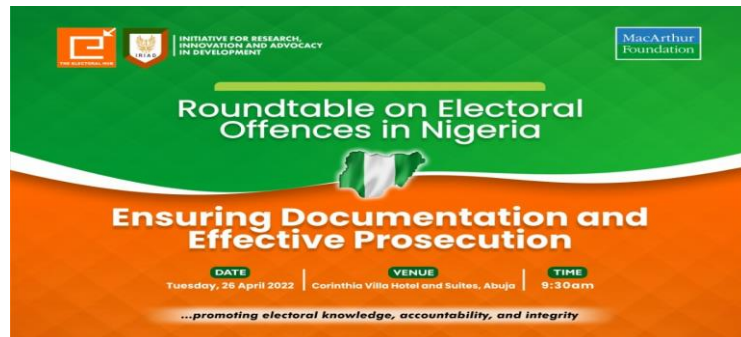


Ensuring Documentation and Effective Prosecution



ROUNDTABLE ON ELECTORAL OFFENCES ENSURING DOCUMENTATION AND EFFECTIVE PROSECUTION

Communique



1. PREAMBLE

As part of advocacy towards strengthening and entrenching electoral accountability in Nigeria, The Electoral Hub, a strategic think-tank committed to promoting electoral knowledge, accountability, and integrity organised a Roundtable on ensuring documentation and effective prosecution of electoral offences in Nigeria for violence prevention and as a deterrence and accountability tool. The Roundtable was organised with support from the Macarthur Foundation and aimed at conceptualizing solutions to address the challenges of documenting, prosecuting, and convicting electoral offences in Nigeria.

The objectives of the Roundtable were: create a shared understanding of electoral offences, and how best to document and prosecute; analyse the nexus between electoral offences and electoral accountability; explore pragmatic strategies for effective monitoring and documentation by electoral stakeholders, particularly the CSOs; discuss challenges of prosecution and conviction, and make recommendations to address these challenges; and document the key discussion points to help lawmakers, policymakers and other key stakeholders understand the situation, gaps, challenges, and ways to tackle these challenges.

The Roundtable featured a keynote address on prosecuting electoral offences as a mechanism for electoral accountability, provisions relating to electoral offences in the Electoral Act 2022. It also featured two panels. The first was on the interrogation of the

nature of electoral offences and challenges of prosecution and conviction, and recommendations to address these challenges. The second panel was on the perspectives of the electoral management body and civil society on monitoring and documenting electoral offences, particularly around effective documentation and prosecution as deterrence and accountability tools.

The Roundtable was chaired by Professor Attahiru Jega, OFR, former INEC Chairman and Keynote Address was given by Professor Okechukwu Ibeanu, Former INEC National Commissioner. Participants included Chairmen of State Independent Electoral Commission of Plateau, Taraba, Yobe, Gombe, Kano, Nasarawa, Kogi, Managing Director and Editor-in-Chief of Guardian Newspapers, representatives of the Independent National Electoral Commission (INEC), Inter-Party Advisory Council (IPAC), Young women in political parties, National Human Rights Commission (NHRC), National Orientation Agency (NOA), National Judicial Institute, Nigerian Police Force (NPF), Nigeria Security and Civil Defence Corps (NSCDC), and News Agency of Nigeria (NAN), Nigerian Bar Association (NBA), International Federation of Women Lawyers (FIDA) as well as CSOs working on electoral governance and the media. The Roundtable was held at Corinthia Villa Hotel and Suites, Abuja on 26 April 2022 and started at 9.40 am prompt.

In her welcome address, the Director of The Electoral Hub noted that INEC has enormous responsibilities, which has hindered it in making significant efforts in prosecuting electoral offences. A major challenge is the lack of resources - both required human capacity and finance to effectively prosecute electoral offences. This is compounded because INEC lacks investigative powers and has to rely on a third party, the police to investigate offences. It is further worsened by peculiar features of Nigeria, where electoral politics is a zero-sum game and a 'do or die' affair: there is the abuse of state resources, the practice of godfatherism within many political parties, and a high level of electoral impunity.

She mentioned that electoral fraud and malpractices are rooted in the zero-sum/"do or die" politics of Nigerian politicians and political parties. Politicians commit electoral offences recklessly and with impunity because they believe and know they can do these without repercussions. There is also endemic corruption. Corruption has also increased the recurrence of electoral offences in the electoral process, as practices such as patronage, vote-buying, and vote-selling have become the norm during elections. The result is that without access to huge amounts of money, it is incredibly difficult – if not impossible – to contest elections in Nigeria. All these make it difficult to tackle electoral offences in Nigeria effectively. According to her, these many issues around electoral offences in Nigeria greatly undermine transparency, participation, inclusion, and trust in the electoral process. The way electoral offences are addressed is a key indicator of the integrity and credibility of elections.

The Chairman, Professor Attahiru Jega in his opening remark commended The Electoral Hub and its partners for organising such a meeting at the best possible time in view of the forthcoming 2023 general election.

He stated that there have been improvements in the Nigerian Electoral framework, especially with the introduction of the new Electoral Act of 2022 which has introduced some positive changes despite some challenges. He however noted that beyond laws and legal frameworks is the need for implementation and/or compliance with the enacted laws, as the dearth of implementation and compliance is the danger and breeding of electoral impunity as is peculiar to Nigeria.

He noted that historically, electoral offences in Nigeria can be categorized into three broad categories: *pre-election offences* largely relating to either campaign or electioneering processes including matters relating to campaign financing; *election day offences* which relate to issues such as the disruption of the voting processes, use of violence or intimidation, harassment or use of money as well as problem activities perpetrated either by the electoral officials themselves or security agencies deployed for election duty; and *post-election day offences* which relate to either the alteration of election result or fraudulent declaration of results or even violent activities to disrupt the collation and announcement of results processes. He also emphasized a critical issue of electoral impunity which is a major feature of Nigeria's electoral process.

Delivering the Keynote address, on "**Prosecuting Electoral Offences as a Mechanism for Electoral Accountability**", Professor Okechukwu Ibeanu explained that electoral accountability (which suggests that persons ought to be held responsible where they act in contravention of certain established norms) is an intrinsic part and requirement of liberal democracy. He submitted that all stakeholders must be held accountable if an election process must be credible enough to give legitimacy to our form of liberal democracy. He concluded by highlighting the following points:

1. Electoral Act provisions on electoral offences is overboard with the criminalisation of all electoral offences. As not all offence is a criminal act, so there should be space for some civil procedure and punishment.
2. The need to separate distinguish between criminal and non-criminal activities/actions/inactions in the electoral process
3. The need for the judiciary to develop sentencing guidelines
4. The need to address and clarify the impasse between the police and the INEC on the power to investigate and power to prosecute
5. The need to clarify issues as regards the powers of the Attorney General on the discontinuance of the prosecution of electoral offences. Such that

Section 174(1c), (the power of discontinuance) is read together with Section 174(3) (the responsibility to the public interest) of the 1999 Constitution.

6. The need for more public sensitization on electoral offences especially in the rural area
7. The need for INEC to work with stakeholders to develop guidelines in the prosecution of offences
8. The need to develop a framework for funding the prosecution of electoral offences
9. Understanding that many stakeholders in the political parties and politicians are not desirous of reform
10. Pay adequate attention to strategy for building partnerships for effective investigation and prosecution of electoral offences

2. OBSERVATIONS

Following the presentations, the Roundtable observed the following:

- a. The new Electoral Act 2022 has remarkably improved legal framework for improving the integrity of Nigerian elections moving forward
- b. The new legal framework is deeper in that it has gone a step further than any of the past electoral acts as it is fairly comprehensive in terms of itemizing different electoral offenses and recommending specific penalties.
- c. Integrity of elections go beyond the legal framework to encompass key issues of implementation, compliance and sanctioning of those who violate the legal framework.
- d. That the 62 offences itemised in the new Act should be differentiated into civil and criminal offences and punishments. So that civil offences can be sanctioned through civil procedures and remedial measures such as restorative justice. This would also reduce burdening of the courts.
- e. Many stakeholders in the election process are yet to know the criminality of some activities done in the electioneering process. Political Parties and Public need to be educated about the Electoral Act
- f. The culture of impunity stemming from the societal structure which is based on the *rule of man* rather than the *rule of law* thus breeding the sense of impunity
- g. The key challenge is how the new Act will be applied
- h. Lack of political will to prosecute and punish electoral offenders
- i. Uncertainty of punishment of electoral offences

- j. There is full commercialisation of polling units where vote trading is the order of the day. Many situations where voters have been accredited will be waiting for payment even as low as five hundred naira before voting.
- k. Largescale poverty exacerbates the critical offence of vote trading
- l. Need for electoral rebirth. Citizens need to be well informed, enlightened and oriented. Not only about voting right and choosing good representative but also about the electoral offences
- m. All efforts seem tended towards penalisation rather prevention. More efforts should be directed to prevention of offences such as education and sensitizing stakeholders, particularly parties, candidates and supporters as well as electorate rather than to penalising offenders.
- n. The peculiarity of Nigeria that makes conventional indicators inapplicable as it is so having to always contextualise periodically to address changing terrains
- o. Creating additional bureaucracy would not necessarily address the problem particularly given high level of impunity and ineffectiveness of new agencies established to tackle issues, rather a proper diagnostics needs be done to effectively address the problem.

3. RECOMMENDATIONS

In the light of the observations above, the following resolutions were made:

- a. Responsibilities with regards to investigation and prosecution of electoral offences need to be clearly assigned
- b. The use of punitive measures need to be adequately balanced with restorative justice in such a way as to leverage on the gains of the Criminal Justice Administration Act as well as the nascent Electoral Act
- c. There's a need to devise and put preventive measures in place rather than depending solely on punitive measures (which are mainly reactive) for election crime deterrence since prevention is always better than cure.
- d. Citizens need to be well informed, well enlightened and well-oriented in terms of understanding the negative consequences of electoral offences hence the need for greater advocacy. This also underscores the need for greater collaboration between INEC, CSOs, the media and other relevant stakeholders for the purpose of advocacy, sensitization etc as well as the need to simplify the constitution and the electoral Act
- e. In view of the enormous nature of the duties of INEC in the electoral process (which apart from the conducting elections includes regulation, prosecution, investigation, etc of election offences) it is recommended that the INEC

should be unbundled for better efficiency. A second argument is that to avoid another layer of bureaucracy, INEC should be provided with all enablement to effectively prosecute offences.

- f. The need for the creation of an electoral commission (as recommended by the Uwais commission) was highlighted. If well set up in terms of functionality and capacity there would be no need for a specialized election crime tribunal.
- g. CSOs need to pay attention to and monitor the Electoral Commission Bill otherwise the aims and objectives for the recommendation of the commission could be jeopardised.
- h. It was recommended that stakeholders need to come up with strategies for building partnerships for effective investigation and prosecution of electoral offences
- i. There is a need to establish clear indicators for documenting electoral offences and reporting of same
- j. Beyond documentation, stakeholders need to develop the willpower to use available data for investigating and, prosecuting electoral crimes
- k. CSOs need to identify pro-reform elements as an entry point into reforming the mindset of the politicians and work towards a possible synergy
- l. The media has a critical role to play in informing, advocacy, sensitization and awareness creation about the Electoral Act and about the offences.

4. CONCLUSION

It is clear going forward that beyond the enactment of the new Electoral Act 2022, is the requirement and process of implementation. There is also an important need to fashion ways to enlighten and educate citizens and other stakeholders about the new legal framework. These actions are necessary for using the legal framework to improve the integrity and credibility of the election process and to ensure and safeguard the legitimacy of the elections. Desirable as this might be, there are not enough stakeholders working in this direction.

Dated this 26th April 2022

In attendance

Professor Attahiru Jega, OFR, Former INEC Chairman
Professor Okechukwu Ibeanu, Former INEC National Commissioner
Independent National Electoral Commission
Forum of State Independent Electoral Commissions of Nigeria -FOSIECON

Chairmen of Plateau State Independent Electoral Commission (PLASIEC)
 Chairman Taraba State Independent Electoral Commission (TASIEC)
 Chairman Yobe State Independent Electoral Commission (YOSIEC)
 Chairman Gombe State Independent Electoral Commission (GOSIEC)
 Chairman Kano State Independent Electoral Commission (KANSIEC)
 Chairman Nasarawa State Independent Electoral Commission (NASIEC)
 Chairman Kogi State Independent Electoral Commission (KOSIEC)
 State Commissioner, Oyo State Independent Electoral Commission (OYSIEC)
 Administrator, Anambra State Independent Electoral Commission (ANSIEC)
 State Commissioner, Imo State Independent Electoral Commission (ISIEC)
 Managing Director and Editor-in-Chief of Guardian Newspapers
 Centre for Journalism and Innovative Development (CJID)
 National Human Rights Commission (NHRC)
 National Judicial Institute (NJI)
 National Orientation Agency
 Nigerian Police Force (NPF)
 Nigeria Security and Civil Defence Corps (NSCDC),
 News Agency of Nigeria (NAN)
 Nigerian Bar Association (NBA)
 National Rescue Movement (NRM)
 International Federation of Women Lawyers (FIDA)
 Inter-Party Advisory Council -IPAC
 Centre for Socio-Legal Studies -CSLS
 Abuja School of Political and Social Thoughts
 West Africa Network for Peacebuilding -WANEP
 Partners West Africa, Nigeria (PWAN)
 PDP National Young Women's League
 Policy and Legal Advocacy Centre (PLAC)
 Women Education and Development Initiatives – WEADI
 Network of Disabled Women
 Rule of Law, Advocacy and Accountability Centre (RULAAC)
 CLEEN Foundation
 100 Women Lobby Group
 TRAP-M/Kubwa Express
 CBM Global
 Emma Ezeazu Centre for Accountability and Good Governance (EECentre)
 Abiodun Essiet Foundation
 Africa Young Female Advisers Forum
 The Electoral Forum
 The Electoral Hub/IRIAD







**INITIATIVE FOR RESEARCH,
INNOVATION AND ADVOCACY
IN DEVELOPMENT**

About The Electoral Hub

The Electoral Hub is a multidisciplinary strategic think tank committed to strengthening electoral governance, and accountability in Nigeria. The Electoral Hub works to enhance electoral knowledge, integrity and credibility through research, documentation, electoral education, policy and legal influencing, and impact advocacy

Contact

8A Remilekun Street, Kukwaba, Abuja, Nigeria

Phone: +234 912 155 1337 and +234 908 699 8850

Email: electoralhub@electoralhubng.org and electoralhub@gmail.com

website: www.iriad.org and www.electoralhub.iriad.org