
EXAMINATION OF THE OFFENCE OF UNDUE INFLUENCE UNDER THE ELECTORAL ACT 2022*

Abstract

The offence of undue influence under the Electoral Act 2022 is a critical legal tool designed to protect the integrity of elections by preventing the manipulation of voters through payment of money either directly or indirectly in order to achieve a specific outcome or to discourage voters from participating freely and fairly in the electoral process. This offence is rampant in Nigeria and it is a serious violation of the electoral process. The offence of undue influence is treated with strict penalties under the Nigerian law. The judiciary as the watch dog of all authorities and persons in Nigeria plays a crucial role in addressing this offence. There are a lot of challenges in proving undue influence because of the high evidentiary standard required to nullify an election based on such claims. The writer looks at this offence with the aim of reducing this offence to its barest minimum for the purpose of strengthening Nigeria's democratic system. Doctrinal research methodology was adopted in this work. The offence of undue influence is one of the major threats that prevent the achieving of free and fair elections in Nigeria. The work proffers solutions aimed at eradicating this menace in our democratic journey for the benefit of our nascent democracy.

Key words: examination, offence, undue influence, Electoral Act 2022.

1. Introduction

The Electoral Act 2022 made elaborate provisions for the offence of undue influence. This offence undermines the integrity of the electoral process in Nigeria. This offence covers a situation where a person corruptly by his or herself or by any other person at any time after the date of an election has been announced, directly or indirectly gives or provides or pays, accepts or takes or receives money to or for any person for the purpose of corruptly influencing that person or any other person to vote or 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. This is aimed at discouraging the person from participating freely and fairly in the electoral process. The paper examined this offence as provided for in the Electoral Act 2022.

In Nigeria, such offence abounds because our politicians see elections as a do or die affair and can do anything rightly or wrongly to win the election. This offence is one of the major threats to our democratic process in Nigeria. This work examined the extent Nigerian politicians can go to thwart the electoral process through the offence of undue influence. Instances of this offence were fully discussed. This article is aimed at eradicating this offence to its barest minimum for the purpose of strengthening Nigeria's democracy. This will go a long way in upholding electoral integrity with the aim of reducing this offence for the benefit of free and fair election in Nigeria.

2. Concept of Offence and Electoral Offence

The Electoral Act 2022 and previous Electoral Act¹ did not define electoral offence. It is therefore necessary to look for its meaning elsewhere. Oxford Advanced Learner's Dictionary² defines offence

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¹ Electoral Acts 1978, 1983, 2002, 2006, 2010 and 2022.

² AS Hornby, *Oxford Advanced Learner's Dictionary*, (7th Edition, Oxford University Press, 2005), 439.

as ‘illegal act or crime’, and it³ equally defines crimes as ‘activities that involves breaking the law’ or ‘an illegal act or activity that can be punished by law.’ Offences in this perspective are synonymous with crimes.⁴ Henry Campbell Black defines “offence” as ‘a felony or misdemeanor; a breach of the criminal laws; violation of law for which penalty is prescribed ... an act clearly prohibited by the lawful authority of the State, providing notice through published laws.’⁵ According to Black’s Law Dictionary,⁶ ‘offence is the violation of the law.’

The term “crime,” “offence,” and “criminal offence” are all said to be synonymous and ordinarily used interchangeably. Offence may comprehend every crime and misdemeanor, or may be used in a specific sense as synonymous with “felony” or with “misdemeanor,” as the case may be, or as signifying a crime of lesser grade, or an act not indictable, but punishable summarily or by the forfeiture of a penalty.⁷ There are so many instances of this particular offence in our electoral process. The specifications of offences in the Electoral Act 2022 are in obedience to Section 36 (12) of the Constitution⁸ which provides that ‘subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a law of a State, any subsidiary legislation or instrument under the provisions of a law.’

Accordingly, any act or omission which is not provided for in the Electoral Act cannot constitute an electoral offence. This offence is provided for in section 127 of the Act.⁹ Offence of undue influence is the subject matter of this work. In *Daggash v. Bulama*¹⁰ the court emphasized the seriousness of electoral offences and upheld strict penalties to deter such conduct.

3. Concept of Offence of Undue Influence

The offence of undue influence under the Nigerian Electoral Act 2022 refers to any act by which a person corruptly by his or herself or by any other person at any time after the date of an election has been announced, directly or indirectly gives or provides or pays, accepts or takes or receives money to or for any person for the purpose of corruptly influencing that person or any other person to vote or 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. The act of undue influence undermines the integrity of elections and is treated as a serious electoral offence under Nigerian law. The offence of undue influence is specifically prohibited for under Section 127 of the Electoral Act 2022. The penalty for undue influence includes a fine of N100, 000 or imprisonment for a term of 12 months or both.

4. Case Laws on Undue Influence in the Electoral Process in Nigeria

Let us briefly look at some case laws dealing with undue influence in our electoral process.

4.1 *Abubakar v. Yar’Adua*.¹¹

In this case, Alhaji Atiku Abubakar, the then-vice president of Nigeria, challenged the election of Alhaji Umaru Musa Yar’Adua as president, alleging widespread electoral malpractices, including undue

³ Ibid, at p. 363.

⁴ B Nwakanma and N Olehi, *Laws governing Elections and Election Petitions*, (Owerri: Edu – Edy Publications, 2007), 187.

⁵ Ibid, at p. 1081.

⁶ BA Garner, *Black’s Law Dictionary*, (8th Edition, USA: Thomson West, 2004), p.1110.

⁷ Ibid.

⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁹ Electoral Act, 2022.

¹⁰ (2004) 14 NWLR (Pt 892) 144.

¹¹ (2008) 19 NWLR (Pt 1120) 1 SC.

influence. The appellant contended that the ruling party used State resources and security agencies to intimidate and coerce voters and opposition candidates, thereby exerting undue influence over the election results. The Supreme Court, however, held that while there were irregularities, the evidence presented was insufficient to overturn the election results.

4.2 *Ojukwu v. Obasanjo*.¹²

The facts of this case are that Chief Emeka Odumegwu Ojukwu challenged the validity of the 2003 presidential election, alleging that the incumbent president, Olusegun Obasanjo, used undue influence through State apparatuses to intimidate voters and suppress opposition votes. The Supreme Court found that although there were instances of intimidation, they did not substantially affect the outcome of the election. The court emphasized the need for clear and convincing evidence to prove undue influence.

4.3 *Buhari v. Obasanjo*¹³

In this case, General Muhammadu Buhari contested the 2003 presidential election, alleging that President Olusegun Obasanjo and his party engaged in widespread undue influence, including the use of State security agencies to intimidate voters and opposition candidates. The Supreme Court acknowledged instances of undue influence but held that the evidence presented did not warrant nullifying the entire election.

4.4 *Nwankwo v INEC*¹⁴

The appellant in this case was a candidate in the 2003 gubernatorial election. He alleged that the ruling party used undue influence by deploying security forces to intimidate voters and opposition party agents, thereby affecting the election results. The Court of Appeal found that while there was evidence of intimidation, it did not substantially alter the election outcome. The court reiterated that proving undue influence requires clear evidence of how the influence directly impacted the election results.

4.5 *Ojo v. Adeyemi*¹⁵

In this case, Ojo challenged the results of a local government election, arguing that the winning candidate, Adeyemi, had employed undue influence by using local thugs to intimidate voters at polling stations. The Court of Appeal held that the acts of intimidation constituted undue influence but ruled that the scale of influence did not affect the overall outcome of the election.

5. Theories of Law on Undue Influence during Elections

Theories of law concerning undue influence during elections focus on protecting the democratic process and ensuring that elections are free from improper interference. Through case laws, the courts have underscored the importance of substantial evidence in proving undue influence.

5. 1 Theory of Free and Fair Elections

The principle of free and fair elections is a cornerstone of democratic governance. Undue influence directly contravenes this principle by compromising the autonomy of voters and candidates. The theory asserts that elections should be conducted in an environment free from coercion, threats, or any form of manipulation that could alter the electorates' genuine will. In cases where undue influence is proven, courts are mandated to annul the election results or impose penalties on the offenders to preserve the

¹² (2004) 12 NWLR (Pt 886) 169 SC.

¹³ (2005) 13 NWLR (Pt 941) 1 SC.

¹⁴ (2003) 13 NWLR (Pt 841) 509 CA.

¹⁵ (2009) LPELR-8677(CA).

integrity of the electoral process. The theory of free and fair elections is embedded in various constitutional provisions and international covenants, including the Electoral Act 2022.

5.2 Doctrine of Electoral Integrity

The doctrine of electoral integrity emphasizes the importance of maintaining public confidence in the electoral system. Undue influence erodes this confidence by introducing elements of fear and coercion, leading to skewed results that do not reflect the true choice of the people. Courts, therefore, apply this doctrine to ensure that elections are conducted in a manner that upholds democratic values and respects the rights of all participants. This doctrine is supported by judicial decisions.¹⁶

5.3 Public Policy Doctrine

This theory posits that the law should act in the public interest to prevent any actions that could undermine the democratic process. Undue influence during elections is considered contrary to public policy because it undermines the foundation of democratic governance. Legal provisions against undue influence are thus designed to protect the public interest by ensuring that elections are free from improper interference. The public policy doctrine is reflected in statutory provisions like Section 127 of the Electoral Act 2022.

6. Theories of Undue Influence in the Electoral Process in Nigeria

These theories and the accompanying case laws illustrate the various forms of undue influence that can occur in the Nigerian electoral process. Each theory underscores the importance of ensuring that voters can make their choices freely, without coercion, fraud, economic pressure, or psychological manipulation. The Electoral Act 2022 provides legal frameworks to combat these forms of undue influence, ensuring that elections remain free, fair, and credible. These theories are:

6.1 Theory of Coercive Influence

The theory of coercive influence posits that undue influence occurs when a person is compelled or pressured into acting in a manner contrary to their free will during the electoral process. This form of influence involves threats, intimidation, or physical force, making the voter's decision less about choice and more about avoiding harm. In *Gundiri v. Nyako*,¹⁷ the appellant challenged the election of the respondent on the grounds of undue influence. The appellant argued that the respondent used State security apparatus to intimidate voters in certain areas, which coerced them into voting for the respondent. The court found that the use of security agencies to intimidate voters constituted undue influence, which vitiated the electoral process. Also in *Nwobodo v. Onoh*,¹⁸ the petitioner alleged that the respondent used thugs to intimidate voters and disrupt polling in opposition strongholds, resulting in an unfair electoral advantage. The Supreme Court held that the actions amounted to undue influence, rendering the election result invalid. This theory is grounded in the legal understanding that voter autonomy is essential for a free and fair election, and any actions that compromise this autonomy, such as coercion or intimidation, undermine the integrity of the electoral process.

6.2 Theory of Fraudulent Influence

The theory of fraudulent influence centers on deceit and manipulation to unduly influence the electoral process. This could involve the use of false information, misrepresentation of facts, or bribery to sway the decision-making process of voters. See *Ezenwa v Okwuonu*¹⁹ where the petitioner contested the election with the respondent. The petitioner alleged that the respondent used fraudulent means,

¹⁶ *Buhari v Obasanjo* (no.13).

¹⁷ (2014) 2 NWLR (Pt 1391) 211.

¹⁸ (1984) 1 SCNLR 1.

¹⁹(2019) 7 NWLR (Pt 1670) 55.

including bribery and the distribution of fake news, to influence voters. The tribunal found that these actions constituted undue influence as they deceived and manipulated the electorates, thereby invalidating the election results. Also in *Peterside v. Dakuku*,²⁰ the appellant alleged that the respondent distributed money to voters and spread false information about the appellant's eligibility. The court ruled that such actions amounted to undue influence, as they were intended to corruptly sway voters' choices. The principle behind this theory is that the electoral process must be transparent and based on truthful information. Any fraudulent actions that deceive or mislead voters are considered undue influence as they violate the trust and fairness required in elections.

6.3 Theory of Economic Influence

Economic influence occurs when undue influence is exerted through economic means, such as the promise or threat of financial benefits or losses. This theory asserts that voters can be unduly influenced by economic pressures that affect their voting choices. In *Anazodo v. Iwunze*,²¹ the appellant alleged that the respondent used financial inducements to influence voters, particularly in economically disadvantaged areas. The court held that such economic inducements amounted to undue influence, as they compromised the free will of the voters by leveraging their financial vulnerability. In *Oyeneye v. Dosunmu*,²² the petitioner argued that the respondent promised government contracts and financial rewards to key community leaders in exchange for votes. The court found that this constituted undue influence because it exploited the economic dependency of the voters on the respondent's promises. Economic influence is recognized as a potent form of undue influence because it preys on the financial vulnerabilities of voters, leading them to make electoral decisions based on economic survival rather than political conviction.

6.4 Theory of psychological influence

Psychological influence refers to the use of emotional manipulation, fear, or psychological pressure to unduly influence voters. This could involve spreading fear, creating a sense of obligation, or exploiting existing psychological vulnerabilities to alter voting behavior. In *Onyema v. Ogochukwu*,²³ the appellant argued that the respondent used psychological manipulation by spreading fear of potential violence and creating a sense of impending danger if voters did not support the respondent. The court found that such psychological tactics constituted undue influence as they manipulated the voters' emotions and fears, thus impairing their ability to make a free and informed choice. In *Ojukwu v. Obiano*,²⁴ the petitioner claimed that the respondent's campaign relied heavily on fear mongering and emotional blackmail, which unduly influenced the electorates. The court agreed, ruling that psychological pressure that impacts voters' emotional state is a form of undue influence. Psychological influence is recognized as a subtle but powerful form of undue influence, as it can deeply impact voters' emotions and perceptions, leading them to act in ways that do not reflect their true intentions or interests.

7. The Role of Security Agencies in Curbing Undue Influence during Elections

Security Agencies refer to government organizations and bodies responsible for maintaining public order, enforcing laws, and safeguarding the rights and properties of individuals within the State. These agencies include the police, military, and paramilitary organizations, such as the Department of State

²⁰ (2016) 7 NWLR (Pt 1512) 542.

²¹ (2004) 5 NWLR (Pt 873) 468.

²² (2020) 6 NWLR (Pt 1721) 245.

²³ (2018) 4 NWLR (Pt. 1608) 194.

²⁴ (2015) 7 NWLR (Pt. 1472) 420.

Services (DSS), the Nigerian Police Force, and the Nigerian Security and Civil Defence Corps (NSCDC). Their functions encompass a wide range of activities, including crime prevention, intelligence gathering, law enforcement, and protection of public and private properties.

In the context of elections, security agencies are charged with maintaining order, preventing electoral violence, ensuring the safety of voters, electoral officials, and materials, and enforcing the laws governing the electoral process. Their role is crucial in ensuring that elections are conducted freely, fairly, and without undue influence. Security agencies have a vital role in curbing undue influence during elections by ensuring a safe and fair electoral environment, preventing electoral malpractices, and protecting electoral officials and materials. Their actions are fundamental to upholding the integrity of the electoral process. The statutory provisions in the Electoral Act 2022 provide a legal framework that guides the conduct of security agencies during elections, emphasizing the importance of their neutrality and adherence to the law. The security agencies have a lot of role to play in curbing undue influence during elections. Their roles include:

7.1 Ensuring a Safe Electoral Environment

Security agencies play a crucial role in maintaining law and order during elections, ensuring that the electoral process is conducted in a peaceful and secure environment. By deploying personnel to polling stations, collation centers, and other strategic locations, security agencies help prevent acts of intimidation, violence, and other forms of undue influence that could disrupt the electoral process. Security agencies are mandated by law to maintain order during the conduct of elections.

7.2 Preventing Electoral Malpractices

Security agencies are tasked with preventing and addressing electoral malpractices, including acts of undue influence. This involves monitoring and investigating reports of intimidation, coercion, and other forms of manipulation, as well as arresting and prosecuting offenders. Their presence is intended to deter potential perpetrators from engaging in illegal activities that could compromise the fairness of the elections. Section 127²⁵ criminalizes undue influence and mandates law enforcement agencies to act against such offences.

7.3 Protecting Electoral Officials and Materials

Another critical role of security agencies is to protect electoral officials, materials, and infrastructure. By securing these elements, they reduce the likelihood of undue influence being exerted on electoral officers or the manipulation of electoral materials, ensuring the integrity of the election process.

7.4 Facilitating Free and Fair Elections

By curbing undue influence and other electoral offences, security agencies help ensure that elections are conducted freely and fairly. Their role is to enforce the laws that safeguard the electoral process, ensuring that voters can exercise their rights without fear of intimidation or coercion. The presence and actions of security agencies are fundamental to the conduct of free and fair elections.

9. Case Laws Relating to the Role of Security Agencies in Ensuring Electoral Integrity

9.1 *INEC v Atuma*²⁶

In this case, Atuma was accused of using security agencies to intimidate voters and electoral officials, thereby exerting undue influence on the electoral process. The Supreme Court condemned the misuse

²⁵ Electoral Act 2022.

²⁶ (2019) LPELR-48143(SC).

of security forces in elections and emphasized the importance of their role in preventing undue influence rather than facilitating it.

9.2 *Buhari v Obasanjo*²⁷

General Muhammadu Buhari alleged that security agencies were used to intimidate voters and opposition candidates during the 2003 presidential election, thus contributing to undue influence. The Supreme Court acknowledged the improper use of security forces but required clear evidence to show that such actions substantially affected the election outcome.

9.3 *Ojukwu v Obasanjo*²⁸

In this case, Chief Emeka Odumegwu Ojukwu challenged the 2003 presidential election, alleging that security agencies were deployed to intimidate voters and opposition candidates, thereby exerting undue influence. The Supreme Court highlighted the critical role of security agencies in ensuring a free and fair election but found that the evidence presented was insufficient to annul the election.

9.4 *Nwankwo v INEC*²⁹

The facts of this case are that Nwankwo alleged that the ruling party used security forces to intimidate voters and opposition party agents during the 2003 gubernatorial election, thus exerting undue influence. The Court of Appeal reiterated the importance of security agencies in curbing undue influence rather than perpetrating it, emphasizing the need for neutrality and adherence to the law.

9.5 *Agbaje v Fashola*³⁰

The facts of this case are that during the 2007 Lagos State gubernatorial election, Agbaje alleged that security forces were used to intimidate voters and opposition party agents, thereby exerting undue influence. The Court of Appeal underscored the role of security agencies in protecting the integrity of the electoral process, noting that any deviation from this role compromises the legitimacy of the election.

10. Instances where Security Agencies have Failed to Curb Undue Influence during Elections

Security agencies play a critical role in ensuring the integrity of elections by curbing undue influence. However, instances where they fail to fulfill this role³¹ can severely undermine the fairness and credibility of the electoral process. The cases of *Ojukwu v Obasanjo*,³² *INEC v Atuma*,³³ and *Nwankwo v INEC*³⁴ highlight the consequences of such failures, emphasizing the need for security agencies to act impartially and in accordance with the law during elections. Hereunder are the instances where security agencies have failed to curb undue influence during elections:

10.1 Ineffectiveness in Preventing Voter Intimidation

There have been instances where security agencies have failed to prevent voter intimidation, which is a key form of undue influence. In some cases, the failure of security forces to act decisively against individuals or groups intimidating voters has led to skewed election results, raising questions about the

²⁷ (2005) 13 NWLR (Pt. 941) 1 SC.

²⁸ (2004) 12 NWLR (Pt 886) 169 SC.

²⁹ (2003) 13 NWLR (Pt 841) 509 CA.

³⁰ (2008) LPELR-3649(CA).

³¹ Whether through ineffectiveness, collusion, or failure to protect electoral officials and materials.

³² (no. 28).

³³ (no. 26).

³⁴ (no. 29).

legitimacy of the electoral process. In *Ojukwu v Obasanjo*,³⁵ Chief Emeka Odumegwu Ojukwu alleged that during the 2003 presidential election, security agencies were used to intimidate voters and opposition candidates, thus failing in their duty to curb undue influence. Despite these allegations, the Supreme Court found that the evidence was insufficient to nullify the election but acknowledged the lapses in security management.

10.2 Collusion with Political Actors

In some elections, security agencies have been accused of colluding with political actors to exert undue influence. This collusion undermines the neutrality expected of security forces and compromises the fairness of the election process. In *INEC v Atuma*,³⁶ Atuma was accused of using security agencies to intimidate voters and electoral officials, thereby exerting undue influence on the electoral process. The Supreme Court criticized the misuse of security forces but highlighted the challenge of proving that their actions substantially affected the election outcome.

10.3 Failure to Protect Electoral Officials and Materials

Security agencies have sometimes failed to protect electoral officials and materials from being compromised, leading to manipulation and undue influence over the election results. This failure can lead to the annulment of election results or the need for reruns. In *Buhari v Obasanjo*,³⁷ which has to do with the 2003 presidential election, General Muhammadu Buhari alleged that security agencies were used to intimidate voters and opposition candidates, and they failed to protect electoral officials and materials from undue influence. The Supreme Court acknowledged these issues but found the evidence insufficient to overturn the election results. Also in *Nwankwo v INEC*,³⁸ Nwankwo, a candidate in the 2003 gubernatorial election, alleged that the ruling party used security forces to intimidate voters and opposition party agents, thereby exerting undue influence. The Court of Appeal found that the security agencies failed to act impartially and protect the electoral process, contributing to an environment of fear and intimidation. In *Agbaje v Fashola*,³⁹ that has to do with the 2007 Lagos State gubernatorial election. In that election, Agbaje alleged that security forces were used to intimidate voters and opposition party agents, thus failing to curb undue influence. The Court of Appeal criticized the failure of security agencies to act neutrally and protect the integrity of the electoral process. It should be noted that Section 127 of the Electoral Act 2022 criminalizes undue influence and mandates security agencies to prevent such offences by maintaining order and enforcing the law during elections. The failure of security agencies to act according to these provisions compromises the integrity of the electoral process. Section 4⁴⁰ empowers security agencies like the police, to maintain order during elections, preventing undue influence and other electoral malpractices. The failure to fulfill this role can lead to compromised elections and subsequent legal challenges.

Security agencies are pivotal in maintaining law and order within a State, particularly during elections, where their role extends to ensuring that the process is free from violence, intimidation, and undue influence. The effectiveness of security agencies in carrying out their duties is essential for upholding the integrity of the electoral process, as illustrated by case laws such as *Buhari v Obasanjo*⁴¹ and *INEC*

³⁵ (2004) 12 NWLR (Pt 886) 169 SC.

³⁶ (2019) LPELR-48143(SC).

³⁷ (2005) 13 NWLR (Pt. 941) 1 SC.

³⁸ (2003) 13 NWLR (Pt. 841) 509 CA.

³⁹ (2008) LPELR-3649(CA).

⁴⁰ Police Act Laws of the Federation of Nigeria 2004.

⁴¹ (no. 28).

v Atuma.⁴² The statutory provisions of the Electoral Act 2022 provide a legal framework that guides the conduct of security agencies, emphasizing the importance of their neutrality and adherence to the law.

12. Role and Functions of Security Agencies in Ensuring Electoral Integrity in Nigeria

12.1 Maintaining Law and Order during Elections

Security agencies are primarily responsible for maintaining law and order during elections. They ensure that voters can exercise their franchise in a peaceful environment free from undue influence such as intimidation, violence, or coercion. By patrolling polling stations and responding to incidents of unrest, they play a crucial role in preventing electoral malpractices and ensuring that the electoral process runs smoothly.

12.2 Protection of Electoral Officials and Materials

Security agencies are tasked with the protection of electoral officials and materials. This includes ensuring that sensitive electoral materials, such as ballot papers and result sheets, are safely transported to and from polling units and collation centers. Their presence deters attempts to tamper with or destroy electoral materials, which is vital for the credibility of the electoral process.

12.3 Preventing and Addressing Electoral Violence

One of the critical roles of security agencies is to prevent undue influence and electoral violence, which can undermine the integrity of the election. This includes intervening in situations where violence is likely to occur, quelling disturbances, and apprehending individuals who engage in violent acts. By curbing violence, security agencies help to ensure that elections are conducted in a peaceful manner, allowing for the free and fair expression of the voters' will.

12.4 Enforcement of Electoral Laws

Security agencies are responsible for enforcing electoral laws and regulations. This includes arresting and prosecuting individuals who violate the electoral code, such as those engaging in vote-buying, undue influence, or other forms of electoral malpractices. By enforcing these laws, security agencies help to uphold the legal framework that governs elections and ensure that violators are held accountable.

12.5 Intelligence Gathering and Risk Assessment

Security agencies are also involved in intelligence gathering and risk assessment before and during elections. They identify potential threats to the electoral process, such as planned violence, and take proactive measures to mitigate these risks. This intelligence work is crucial for preventing disruptions and ensuring that the electoral process is not compromised. Security agencies play a fundamental role in ensuring electoral integrity in Nigeria by maintaining law and order, protecting electoral officials and materials, preventing electoral violence, and enforcing electoral laws. Their effectiveness in these roles is critical to the credibility of the electoral process, as demonstrated in cases like *Buhari v. Obasanjo*⁴³ and *INEC v. Atuma*.⁴⁴ The statutory provisions in the Electoral Act 2022 provide a robust legal framework that guides the conduct of security agencies during elections, emphasizing their importance in safeguarding democracy.

⁴² (no. 26).

⁴³ (no. 28).

⁴⁴(no. 26).

13. Executive Recklessness and the Offence of Undue Influence in the Electoral Process: the Nigerian Experience

The **executive arm of government** in Nigeria refers to the branch of government responsible for implementing and enforcing laws, as well as managing the day-to-day operations of the State. The executive is headed by the president at the federal level and governors at the State level. This arm of government exercises authority through various ministries, departments, and agencies. Executive recklessness in the electoral process refers to the actions or inactions of the executive branch of government, particularly the president, governors, or other high-ranking officials, which flagrantly disregard the rule of law, democratic norms, and established procedures during elections. This can involve abuse of power, unlawful interference in electoral processes, and use of State resources for personal or party gain. This equally includes actions that undermine the integrity of the electoral process.

The history of general elections⁴⁵ in Nigeria since independence in 1960 has been characterized by disorderly conducts including breaching the electoral laws that relate to undue influence. I shall use the case of *Chief Mrs. Anike Olowoporoku & Ors v Ekiti State Electoral Commission & Ors*⁴⁶ to show case the offences relating to undue influence in Nigeria and the extend the power of incumbency could play in the breach of electoral laws relating to undue influence. One of the three police personnel who testified for the petitioner during the hearing of the petition in this case⁴⁷ gave vivid account of undue influence of the governor as follows:

Voting started 9 O' clock and around 9:30, governor Fayose and some mobile police came to me with his entourage. The governor greeted me, 'well done' he said he wanted us to cooperate, and I asked how, he said he wanted to collect the ballot papers and put them in the box. I said no. He said if I refused he would carry the box away. I told him the DPO has instructed us to take care of the box and maintain peace. He ordered some persons following him to carry the box. I held the box and struggled for it with them. They pushed me down and collected my baton. Before I stood up, the ballot box had been taken away. They fired into the air as they were going. I hid somewhere till they left. I came out later and went to the station. I discovered there was commotion everywhere. They were singing as they were going in Yoruba which translated to "let everybody warn his ward as today will be tough." Some villains followed the governor in addition to mobile police without tags. I was not given any result of election. There was no election again since the arrival of the governor. They did not collate the results. I don't have a copy of the result announced on the radio.

Another police woman, Mrs. Titilope Arotile was PW3, in her own oral testimony, she stated thus:

We were given the election material around 9:00am. People had queued up to vote, the first person was to be accredited when two people arrived and said the ballot papers should be signed and they were PDP members. I asked why? They went away and two people came back with the governor. He said how it is officer. I said fine. He said I should cooperate with him and he would give me a job. I don't know the type of job. As soon as he said that, some boys surrounded me. The presiding officer started stamping the papers and the PDP members were putting the ballot papers in the box. They did not sign all and yet all were put inside the box. The box was taken away. I went back to the station. I was

⁴⁵ General elections were conducted in Post Independent Nigeria in 1964, 1979, 1983, 1999, 2003, 2007, 2011, 2015, 2019 and 2023.

⁴⁶ Unreported suit No. EPT/EKLG/27/2004 reported in the Daily Independent, Thursday, June 21, 2007, p.3

⁴⁷ Ibid.

not given any result and I did not follow them to the collating centre since I was not given anything to take there.

Mr. Samuel Durojaiye, Acting Sergeant Major was PW4. He covered the election in the entire local government. In his vivid account of the undue influence during the election, he had this to tell the tribunal:

As a division Sergeant Major, I posted my men on election; I had a patrol to make sure my men were at alert. This was at 8 0'clock. I thereafter came back to the township police post. I was there when a vehicle loaded with soldiers parked in front of our police station. The soldiers dropped and patrolled the town. I left Ilawe for Igbara Odo and after visiting my men there, I went to Ogotun. At Ogotun, I went to St. Bartholomew Primary School where I met two polling units. I brought additional three policemen to join then. I later visited every other place to make sure everything was in order. Around 1:45pm, I saw people running up and down and I left for St. Bartholomew Primary School to know what was happening. I heard gunshots seriously. At the primary school, my men had run away and the situation was such that I could not enter the primary school compound because of the gunshots. The guns were fired by mobile police and soldiers. On getting there, I saw one bus parked and ballot boxes were being packed inside the bus and I met the governor who asked them to pack the boxes inside the bus. I could not do anything. I went back to the station to meet my men. They said no result was given to them because as soon as the governor arrived and there was shooting, they ran for their lives.

The respondents were so devastated by the credible evidence given by the witnesses. Hence, they called a police officer, Inspector Felix Onwinkwe. But under cross-examination by the petitioner's counsel, the witness confirmed the allegations of electoral malpractices including undue influence. In particular, he stunned the tribunal when he disclosed that the thugs arrested and charged to court for smashing ballot boxes had been "set free" at the instance of the Ekiti State government which ordered that the criminal charges against them be dropped.

14. Conclusion and Recommendations

The Act,⁴⁸ supported by judicial pronouncements, provides a framework that penalizes actions capable of compromising the credibility of elections. By enforcing these provisions through prosecution and/or otherwise of electoral offenders, Nigeria aims to ensure that elections are conducted fairly, transparently, and in accordance with the rule of law. There is the need for INEC to live up to its responsibility in educating the citizens on the illegality and consequences of offences relating to undue influence under the Electoral Act 2022. The immunity clause in our constitution should be revisited. The immunity clause has made governors to act recklessly during electoral process. The case of *Chief Mrs. Anike Olowoporoku & Ors v Ekiti State Electoral Commission & Ors*⁴⁹ has demonstrated the need to scrap the immunity clause in our Constitution so that the dream of having free and fair elections devoid of undue influence by the power of the incumbency would be achieved.

⁴⁸ Electoral Act 2022.

⁴⁹ (no. 46).