INTERNAL DEMOCRACY OF POLITICAL PARTIES AND ELECTORAL OUTCOMES: A STUDY OF STATUTES, ELECTORAL DISPUTES AND LEGAL DECISIONS IN NIGERIA (1999-2019)

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DECLARATION

To the best of my knowledge, I confirm that the work in this thesis is my original work undertaken for the degree of Doctor of Philosophy in the Faculty of Business and Law, De Montfort University. I confirm that no material of this thesis has been submitted for any other degree or qualification at any other university.

ABSTRACT

A thriving intra party democracy (IPD) culture is key to developing and sustaining sound democratic traditions. In Nigeria and other emerging democracies, the practice of IPD is problematic and characterised by several challenges, including, but not limited to, the resistance of political parties to state regulation. The challenges to the effective practice of IPD in Nigeria have necessitated significant legal and institutional reforms over the years. However, the reluctance of party officials to abide by and enforce these reforms has rendered – and continues to render - the laws ineffective. Using a socio-legal approach, this thesis examines the regulatory framework of IPD and how it has shaped electoral outcomes in Nigeria. The study draws on institutionalism and institutional legal theory to examine political parties, electoral laws, and judicial decisions in relation to IPD in Nigeria. The study further examines how these institutions have shaped the practice of IPD and reinforced or weakened the country's nascent democracy. The Doctrinal Legal Research and Qualitative Organisational research methods of data gathering and analysis were adopted for this study. The thesis was able to identify the reasons for the reluctance of party officials to conform to best practices in IPD. The study further found that the reality of electoral democracy warrants a re-evaluation of the existing institutions, electoral statutes, and jurisprudence on which IPD in post-independence Nigeria has been founded. The study recommends legislative reforms to strengthen IPD based on Nigeria's peculiar electoral, legislative and judicial experiences. It further recognises the need to develop a unique set of electoral and legislative systems and

jurisprudence for Nigeria that aligns with its people, culture, and history. These recommendations are premised on the argument that democracy as a governance model should respect the cultural relativity of peoples while also sustaining some of the universal attributes of democratic norms.

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Universal Declaration of Human Rights of 1948

International Covenant on Civil and Political Rights of 1966

LIST OF ABBREVIATIONS

ABN – Association of Better Nigeria

ACN – Action Congress of Nigeria

AD – Alliance for Democracy

AEDR – Alternative Electoral Disputes Resolution

AG-Action Group

APC-All Progressives Congress

APP – All Peoples Party

APGA-All Progressive Grand Alliance

ANPP – All Nigeria Peoples Party

BOT – Board of Trustees

CFRN- Constitution of the Federal Republic of Nigeria

CNC-Congress for National Consensus

DLR – Doctrinal Legal Research

DMU – BAL- De Montfort University Business and Law Faculty

DPN-Democratic Party of Nigeria

EMB – Electoral Management Board

EA – Electoral Act

EDRS – Electoral Disputes Resolution Systems

EFCC – Economic and Financial Crimes commission

EJS – Electoral Justice System

FCT – Federal Capital Territory

GDM-Grassroots Democratic Movement

GNPP-Great Nigeria Peoples Party

IPD – Internal Party Democracy

IPAC- Inter-Party Advisory Council

INEC-Independent National Electoral Commission

PDP-Peoples Democratic Party

NNDP-Nigeria National Democratic Party

NYM-Nigeria Youth Movement

NCNC-National Council of Nigeria and Cameroons

NPC-National Democratic Party

UPGA-United Progressive Grand Alliance

NDP-National Democratic Party

NPN-Nigeria Party of Nigeria

NPP-Nigeria People Party

UPN-United Party of Nigeria

NRC-National Republican Convention

SDP-Social Democratic Party

NCPN-National Centre Party of Nigeria

UNCP – United Nigeria Congress Party

NEC-National Electoral Commission

NWC – National Working Committee

NAFDAC – National Agency for Food Drug Administration and Control

NCC- National Communication Commission

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CHAPTER ONE

1.1. Background of the Study

The appeal of democracy as a political system of organising human society has persisted since Platonian times in ancient Greece. In the modern era, the democratisation process requires an intricate web of processes and institution building, leading ultimately to the democratic state.[1]

In emerging democracies, reform has often targeted electoral systems, including electoral statutes, political parties, and electoral umpires, to build supportive institutions of democracy. Scholars have argued that to be rightly supportive of the democratic state, these institutions must have internal democratic governance standards, especially political parties[2]. Unfortunately, in Nigeria and a number of other emerging democracies in Africa and beyond, adherence to internal democratic standards has long been problematic.[3]

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[1] Jean Grugel and Matthew Bishop, *Democratization: a critical introduction*. (Bloomsbury, 2013)

[2] Ibid

[3] TY Ryan, *Looking in the Mirror: Intra-Party Democracy and Party Politics in Southern Africa*. HIM 1990-2015. 1507. https://stars.library.ucf.edu/honorstheses1990-2015/1507(2013) (Accessed 15/01/2019)

Some scholars[4] have explored how electoral democracies work and agreed that electoral outcomes result from the interplay of preferences and strategies within the constraints of institutional arrangements. The various interpretations of the electoral statutes and judicial decisions regulating the electoral processes on intraparty democracy in Nigeria have produced different electoral outcomes.

1.2. The Concept and Dimensions of IPD

Scholars[5] have attempted to define and explain the concept of IPD in political parties. For Scarrow[6] IPD refers to the level and method of including party members in the decision-making and deliberation processes within the party structure. Parties, in aggregating and articulating citizens opinions, provide the populace with a set of ideas and policies that determine the direction of the party in government as well as anchoring their expectations about democracy.

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[4] Kees Van der Eijk and Mark Franklin, *Elections and voters*. (Bloomsbury, 2011) See also Kees Van der Eijk and Kees Niemöller, 'Election studies in the Netherlands: Pluralism and accommodation' (1994) 25 (3) *European Journal of Political Research* 323; Ecevit Yüksel Alper and Gülnur Kocapınar, 'Do party lists matter? Political party strategies in legislative candidate nominations' (2018) 71(3) *Parliamentary Affairs* 697

[5] Maurice Duverger, *Dictatorship*. (FeniXX, 1961); Susan Scarrow, *Political Parties and Democracy in Theoretical and Practical Perspectives: Implementing Intra-Party Democracy* (NDI 2005); Robert Michels *Political parties: A sociological study of the oligarchical tendencies of modern democracy* (Routledge, 2017)

[6] Susan Scarrow, *Political Parties and Democracy in Theoretical and Practical Perspectives: Implementing Intra-Party Democracy* (NDI, 2005)

Scarrow[7] argued that IPD is known to nurture citizens' political competencies and usually produces more capable representation, ensuring that parties produce appropriate policies and political programs. She further argued that IPD, in linking ordinary citizens to government, largely contributes to the stability and legitimacy of democracies, in which political parties compete for power.[8] Cooper equally argued that political parties in their representative role render public policymaking accountable.[9] Ojukwu and Olaifa, in their analysis of the challenges of internal democracy in Nigerian political parties, stated that IPD connotes the democratisation of the governance and decision-making process of political parties, which involves transparency, inclusiveness, fairness, and consensus in managing party affairs.[10] Okhaide, in his analysis of Nigeria's electoral reforms, argued that there could be no democracy in parties without the periodic election of party members and their representatives in a free and fair system.[11] Duvenger and Micheal[12] agree that IPD connotes the participation and voice of parties' ranks and file and the responsiveness of parties to the political field. Akubo and Adejo further point out that IPD involves the systemic

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[7] Ibid

[8] Ibid

[9] Nic Cheeseman, ed. *Institutions and democracy in Africa*. (CUP, 2018)

[10] Chris Ojukwu and Tope Olaifa, 'Challenges of internal democracy in Nigeria's political parties: The bane of intra-party conflicts in the Peoples' Democratic Party of Nigeria' (2011) 11(3) *Global Journal of Human Social Science*, 25.

[11] Paul Okhaide, *Quest for Internal Party Democracy in Nigeria: Amendment of Electoral Act 2010 as an Albatross* (2012), 3.

[12] Michels. (n. 5)

organisation of the party's domestic activities transparently, equitably, and according to the party rules.[13] From the foregoing, the basic principles of internal democracy of parties include electivity, accountability, inclusivity, participation, transparency, and representation[14] in the political process.

IPD, inferably, is a system of instituting and consolidating these basic principles in the internal structures and procedures of a political party, especially the rule of the majority, in which the supreme power of decision making is vested in the members of the political party and exercised by them directly or indirectly through a system of representation. Embedding IPD in political parties generally makes the political class privy to grassroots' civic needs and equally provides them with opportunities to impart policy decisions with this knowledge, in the process establishing and sustaining close ties between society and government.[15] In major democracies of the world, parties are neither personalised nor restricted to serving the promoters' or elites' interests; rather, they are institutions founded on rules, structures, principles, procedures, and norms[16]. Being formal institutionalised alliances, parties are essentially established to cater to the general members' and the elites' interests. Parties

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[13] Akubo Aduku and Adejo Yakubu, 'Political parties and democratic consolidation in Nigeria's Fourth Republic' (2014) 2(3) *Global Journal of Political Science and Administration,* 79.

[14] Antonia Simbine, *Political Parties and Internal Party Democracy in Nigeria* (CDD 2016).

[15] Fabio Wolkenstein, 'A deliberative model of intra-party democracy' (2016) 24(3) *Journal of Political Philosophy*. 297

[16] Adam Bower, 'Norms Without the Great Powers: International Law, Nested Social Structures, and the Ban on Antipersonnel Mine' (2015)17(3) *International Studies Review*, 347 *https://doi.org/10.1111/misr.12225* (Accessed 10/01/2021).

operate within specified institutional and legal frameworks that define their boundaries according to their composition, financial base, membership, functions, roles, operational rules[17], and, more importantly, their electoral agenda. This institutional and legal framework, under which parties operate, lies at the core of this study.

1.3. Statement of the Problem

There has been ongoing consideration of how best to govern IPD policies and systems in the Nigerian media as well as scholarship within political science. In particular, the problem of candidate selection, substitution, and/or replacement has been a recurring theme. The disputes across the All Progressive Congress (APC) and the Peoples' Democratic Party (PDP), the two leading political parties that have emerged in the 4th Republic, have drawn the attention of writers seeking to explain the events within these parties that have threatened to derail Nigeria's nascent democracy[18], such as, for instance the issue of illegal candidate selection that triggered the Supreme Court to annul some of the elections won by the APC across the country.[19]

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[17] Ace project, The Electoral College Network, Electoral Systems — (aceproject.org) (Accessed 10/01/2021)

[18] Ojukwu and Olaifa (n.10); Edmund Egbo and Ernest Aniche, 'The state, political parties and crisis of internal democracy in Nigeria: A study of Peoples Democratic Party' (2012)4 (1) *Journal of Nigerian Government and Politics,* 24.

[19] The finer details of some of these IPD issues that have occurred within the PDP and other political parties are discussed in this thesis.

For example, from commentaries in the Nigerian press, it has become obvious that the PDP has become infamous for disrespecting its constitution regarding a candidate's selection or replacement. The Nigerian press, for instance, elaborated on a controversial case in point[20]. A pre-election suit was filed by Rotimi Amaechi, a candidate who had won the PDP gubernatorial primaries in Rivers State, Nigeria. The PDP illegally replaced Amaechi with another candidate, Omehia, who later contested and won the governorship election in the state. In its judgement, the Supreme Court declared Amaechi the winner and subsequently swore him in as Governor of Rivers State, although he did not participate in the general election.[21] In yet another instance of wrongful substitution of candidates by the PDP,[22] Senator Ifeanyi Ararume had won the PDP governorship primary in Imo State but was substituted with another candidate, Charles Ugwu. Ararume protested and challenged the Party's action in court. The Supreme Court decided that Ararume could not be substituted in the absence of a cogent and verifiable reason as required by law and that the Independent National Electoral Commission (INEC) should restore him on the ballot.

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[20] *Amechi v INEC & Ors* (2007) 9 NWLR pt 1040 pg 504.

[21] The Supreme Court judgement was controversial, such that it called to question 'who owns the vote' – party or candidate – in a presidential system of government. In *Faleke v INEC & Anor* (2016) The Supreme Court of Nigeria further affirmed its decision in *Amaechi v Omehia* that votes belong to the Party rather than the Candidate, and that the party was at liberty to assign the votes to any freshly nominated candidates it deemed fit to in the case of the death of its candidate in the course of the election.

[22] *Ugwu v Ararume* (2007)12 NWLR pt 1048 367

The incidents identified above elicited statutory reforms which in turn led the National Assembly to re-enact the Electoral Act (EA)[23], which set out the guidelines, rules, and steps that a political party must follow in the nomination of its candidates for election.[24] Prior to the EA 2010, candidates' sponsorship, nomination, and selection for elections were exclusively the domestic affairs of the parties. However, with the introduction of Section 87 of the EA 2010, the court was conferred with the jurisdiction to intervene in matters relating to the conduct of parties' primaries.[25] Specifically, Section 87 (9) was introduced in the EA 2010 to achieve this purpose. The Honourable Justice of the Supreme Court in *PDP v Sylva*[26] noted that the clear objective of S.87 was to achieve internal democracy in the affairs of political parties. More so, the Supreme Court argued that the conduct of party primaries must be transparent so as to provide a level playing ground for their contestants.[27] The EA 2010 further enabled an aggrieved aspirant to an elective post to seek redress in court if he or she believed the provisions of the Act were not complied with by a political party in the selection and nomination of candidates for election.[28]

To realise the intention of Section 87 of the EA 2010, as emphasised by

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[23] The Electoral Act, 2010 (As Amended), Section 87

[24] Section 228(a) of the 1999 CFRN confers on the National Assembly the power to make laws to ensure the internal democracy of political parties and laws guiding the conduct of party primaries, congresses and conventions.

[25] The Supreme Court, in *PDP v Sylva (2012)13 NWLR pt. 1316 85,* emphasised that the purpose of Section 87 of the Electoral Act 2010 (As Amended) was to confer jurisdiction on the court on matters relating to the conduct of parties' primaries, noting that the regulation and intervention in the internal activities of parties is only possible by way of state legislation.

the Honourable Justice of the Supreme Court, the constitutions of political parties in Nigeria took further steps to democratise the procedures through which candidates are selected and nominated at congresses and party conventions. For example, Article 17 of the Constitution of the PDP provides democratic procedural steps for the nomination of candidates for elections to political office.[29] Also, Article 20[30] provides for the democratic nomination of candidates to elective posts.

Another statutory review of the EA 2010 in response to the controversial judgment of the Supreme Court in *Hon. Faleke v INEC*[31] was the amendment of Section 36, which empowered the INEC to suspend elections in cases where a nominated candidate dies after the commencement of an election but before the declaration of the final result.[32]

In the cases of *Shinkafi v. Yari*[33] *and Tarzoor v Loraer*[34], the Supreme Court stressed the importance of IPD and the need for political parties to obey their constitutions. In *Mato v Hembe*[35], the Supreme Court held that holding a

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[26] *PDP v Sylva* (n. 25)

[27] PDP v *Sylva* (n. 25)

[28] EA (n. 23), Section 87(9)

[29] PDP Constitution 2009 (As Amended) 12

[30] APC Constitution (As Amended) 13

[31] *Hon. Faleke v INEC* (SC.648/2016); [2016] NGSC 84 (30 September 2016)

[32] EA (n. 23) Section 36 (1)

[33] *Shinkafi v. Yari* (2016)7 NWLR (pt.1511)340

[34] *Tarzoor v Loraer* (2016) 3 NWLR (Part 1500) 463 at 529 Parag G.

[35] *Mato v Hembe* (2017) LPELR-SC.733/2016

primary election in a manner contrary to the EA 2010 (as amended) and the political party's constitution will render such primary elections null and void.

Following the above, it is evident that there are legal and regulatory guidelines under the EA 2010 requiring political parties to respect and abide by democratic procedures and practices in their internal processes. However, in reality, this is often disregarded.[36] The fundamental reason for this disregard is still unclear, as there are various theories as to what might be the cause. More so, and more curiously, the Supreme Court has been inconsistent in its judgments on the issue, somewhat curiously (hence this study).

At the institutional level, Alili[37] explored the reason for this inconsistency and averred that jurisprudential streams of pragmatism and realism influence the Supreme Court of Nigeria. He defined the Supreme Court as a political court based on this assertion. Another scholar, Omotola,[38] focused on how elections have impacted the democratic transition in Nigeria's 4th Republic. He argued that the weak institutionalisation of political parties and the system of electoral management have had damaging ramifications for election outcomes in Nigeria.

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36 Augustine Magolowondo, 'Democracy within political parties: The state of affairs in East and Southern Africa.' (2013), 200.

37 Ngozi Alili, *The Supreme Court as A Political Court: A Review of the Supreme Court of Nigeria Decision in the Election Petition Case of General Muhammadu Buhari v. INEC & 4 0RS.* (NIALS Supreme Court Review (2011) 11,1.

38 See Shola Omotola, 'Elections and democratic transition in Nigeria under the Fourth Republic.' (2010)109 (437). *African Affairs* 535.

Professor Anthony Onyishi,[39] while trying to explain intraparty politics and the future of democracy in Nigeria from the institutional perspective, isolated a set of indicators of intraparty crisis, saying:

> One is visible altercation within the ranks of party members at all levels of the federal structure. The second is high turnover in the election and/or appointment of members of the executive committees of political parties. A third indicator is the breakup of parties and the subsequent formation of factions. The fourth manifestation of party crisis is rampant defection across parties.

In explaining the incidence of weak internal democracy in political parties in Nigeria from the perspective of party members, Onyishi identified an avalanche of rules and regulations and statutory instruments for regulating the actions of leaders when it comes to intra-party elections and appointments. However, despite these rules, the problem is their breach by those the rules should guide. Put differently, party leaders are in wanton breach of their party constitutions, regulations, and the EA 2010.

What becomes clear in the scholarly research is that Nigeria is a diverse society with high ethnic and racial boundaries and highly strenuous relationships within and among major political party drivers and the wider society.

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39 See Anthony Onyishi*, Between Man and His Institutions: Intra-Party Politics and the Future of Democracy in Nigeria.* (2014) *http://www.bristol.ac.uk/sps/policypolitcs/previousconferences/policyandpolitics.* [Accessed 01 October 2017]

Consequently, democratic institutions are usually stretched to the limits, while governance standards in democratic institutions are often fragile and disrespected. However, the weakness of democratic/electoral institutions in Nigeria has left a certain degree of broken politics, typified by the proliferation of IPD-related electoral court cases. Despite the elucidations from the extant writings highlighted above, there is limited research exploring the challenges to IPD in Nigeria from a socio-legal dimension. Notably, the nexus between the practice of IPD, electoral outcomes, legislative reforms, and judicial interventions in the Nigerian context is under researched. This study is an attempt to fill this gap.

The problems that provoked this study, therefore, are:

1. Are the statutes for regulating internal party politics and the electoral system in Nigeria adequate and consistent?
2. Is the body of case laws on IPD inherently consistent with itself and with the statutes on elections?
3. Are there conflicts/tensions between statutory provisions and legal principles from the cases to be evaluated?
4. Can sustainable reforms of the electoral system in Nigeria be proposed from these evaluations?

1.4. Research Aim

This study aims to critically explore tensions, contradictions, and ambiguities in existing legal provisions governing IPD, party management mechanisms, and other institutional functions and processes that affect political parties' effective functioning in Nigeria. Specifically, the study aims to evaluate the impact of legal

decisions on IPD-related cases on the regulation and practice of IPD in Nigeria. The judgments of the Apex court in Nigeria on intra-party and electoral disputes are critically evaluated to gain a deeper understanding of the impact of law on the inner workings of IPD within Nigeria's democratisation processes.

1.4.1. Research Objectives

In considering the tension created by often conflicting provisions of law regulating IPD and decisions of the court in electoral matters, the specific objectives of the study are:

1. To undertake a review of legal instruments, extant theories, events, and other relevant documentation on the IPD of political parties in Nigeria.
2. To undertake empirical research exploring the factors that influence individual and collective practices inside Nigeria's major political parties set against the country's institutional and historical context.

1.4.2. Research Questions

Considering the aims and objectives stated above, the research questions that this study seeks answers to are:

1. Are the extant legal, regulatory, and institutional framework(s) for IPD adequate for democracy in Nigeria?
2. What has been the impact of court decisions on IPD in Nigeria?
3. What IPD principle and national legal provisions and principle(s) could be devised for the Nigerian context?

1.4.3. Assumptions

This study is guided by the outcome of the field work and data analysis and how they addressed the research questions in making assumptions.

1.4.4. Philosophical Standpoint

This study adopts an interpretivist philosophy based on a subjective epistemology and an idealist ontology.[40] According to *Giddens,*[41] the social world is different from the natural world and must consequently be studied differently. It follows that this study, focusing as it does on human behaviour and collective social action, is suitable for an interpretivist philosophy. Objectivist, determinist, and essentialist philosophies were deemed unsuitable because the study does not involve statistical correlations or numerical equations.[42]

1.5. The Research Methodology

1.5.1. Design and Methodology

Given that this study seeks to identify tensions, contradictions, and ambiguities in existing legal provisions and judicial decisions governing IPD, party management mechanisms, and other functions that impact the effective

[40] Mita Giacomini, 'Theory matters in qualitative health research' (2010) *The SAGE handbook of qualitative methods in health research*. 125.

[41] Anthony Giddens, 'The Consequences of Modernity' (2007) *Phil Papers: Online Research in Philosophy* *(Accessed 16/05/2019)*

[42] Marcella Horrigan-Kelly, Michelle Millar and Maura Dowling, 'Understanding the key tenets of Heidegger's philosophy for interpretive phenomenological research' (2016) 15 (1) *International Journal of Qualitative Methods.* 1609406916680634.

functioning of political parties in Nigeria, a combination of the Doctrinal Legal Research (DLR) method and a qualitative research approach were utilised to investigate these issues.

Data sources used include electoral statutes, the constitutions of Nigeria and political parties, election regulations, legal decisions on IPD journal articles, commentaries, online publications, media reports such as magazines, newspapers, and commentaries on Nigeria's elections and electoral system.

1.5.2. Research Design: Case Study

The study adopts a case study design focusing on two political parties - the All Progressive Congress (APC) and the Peoples' Democratic Party (PDP). As an intrinsic part of research methodology, case study research examines a phenomenon within its real-life context, and its primary purpose is to understand something unique to (a) specific case(s).[43] It is useful for understanding some particular problems or situations in great depth,[44] as in the present study, and where one can identify cases rich in information.[45] By adopting the case study approach, it is hoped that rich understandings of the subject will be generated.

Furthermore, understanding the distinctive nature of the Nigerian electoral system and process would enhance the grappling of party mechanisms and structures and their impact on election outcomes. For example, consequent on the findings in this case study, broader generalisations might be made about the

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[43] Emily Guest Greg and Marilyn Mitchell, *Collecting qualitative data: A field manual for applied research*. (Sage, 2013).

[44] Quinn Patton, *How to use qualitative methods in evaluation*, (Sage,1987) 4.

[45] Ibid

influence of effective structure and inclusiveness in the activities of political parties in Nigeria. The use of the APC and PDP as case studies provides a specific institutional explanation of how the democratic landscape was structured in the design and constitution of electoral institutions such as political parties and electoral laws.

This thesis equally considered the limitations and criticisms of case studies. For instance, one criticism made against the case study methodology is that it lacks scientific rigor, which makes it deficient in making scientific generalisations.[46] However, Stake countered this criticism by arguing that:

> The real business of a case study is particularization, not a generalisation, understanding a particular case in depth to know what it is, what it does, and its uniqueness…thus implying knowledge of others that the case is different from.[47]

1.5.3. The Socio-legal Approach

Creswell[48] has argued that a suitable research approach guides credible research. Considering the landscape of possibilities and opportunities offered by the multiple methods previously adopted by existing studies, a socio-legal

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[46] Omiunu Ohiocheoya, 'Moving from ''central exclusivity'' to cooperative federalism in the international economic participation of federal systems: a case study of Nigeria' (Dphil thesis, University of Liverpool 2014)

[47] Robert Stake, *The art of case study research*, (Sage, 1995).

[48] John Cresswell and Cheryl Poth, *Qualitative inquiry and research design: Choosing among five approaches*. (Sage, 2016).

approach was adopted but adapted to fit the study's specific context. It has been suggested that a *socio-legal* approach to legal studies conceives law as the bond that holds society together. It therefore suggests that to study 'law in action',[49] it should be within the context of the society in which law operates. It has been established that, unlike the black letter approach, the socio-legal approach does not seek to isolate legal research from 'supposedly' non-legal factors such as morals, policy, and ideological issues considered 'external' and independent of DLR.[50]

Moreover, a key advantage of adopting a socio-legal strategy for this study is that it afforded the researcher flexibility regarding the sources of the data utilised. For example, the research was able to draw on the richness of interdisciplinary perspectives which have addressed phenomena relating to the domestic affairs of political institutions over centuries. Therefore, in the Nigerian context, this study goes beyond the EA 2010 (as amended), case laws, the provisions of the Nigerian Constitution and various party constitutions as they relate to the regulation of intraparty activities. It further engages the political actors within institutions involved in the democratic process in Nigeria, through interviews, in an attempt to gain a deeper understanding of the problems bedevilling political parties internally.

Characteristically, *socio-legal* research is embedded in society and borrows extensively from research traditions in the social sciences, particularly

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[49] Michael Salter and Julie Mason, *Writing law dissertations: An introduction and guide to the conduct of legal research.* (Pearson Education 2007)

[50] Ibid.

sociology and political science. As an interdisciplinary study, the socio-legal approach embraces empiricism to discover 'law in action' rather than the abstract normative evaluations of law and legal regimes,[51] as the black-letter approach would have us do.

Although it is agreed that socio-legal studies embrace disciplines and subjects concerned with the law as a social institution, its major setback is the challenge faced by the legal academics engaged in it.[52] The incorporation of other disciplines into legal research has been seen to present a practical problem of engaging legal professionals and academic audiences simultaneously. It also poses a philosophical question of the practicability of engaging in two different practices simultaneously.[53] Suppose it is agreed that people and institutions provide the social context for a socio-legal approach, which is a very broad methodology. In that case, it thus requires, in some cases, that we adopt *'middle-range'*[54] theories for analytic elegance. One such 'middle range' theory derived

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[51] Lindsay Stirton, *Researching and Writing Dissertation in the field of Law.* http://www.uea.ac.uk/menu/acad/law/prospective_student/research.html. (Accessed April 12, 2019).

[52] Socio-Legal Studies Association, 'SLSA Statement of Principles of Ethical Research Practice' (January 2009) 1.2.1www.slsa.ac.uk/index.php/8-general-information/4-slsa-statement-of-principles-of-ethical-research-practice (accessed 14 October 2019)

[53] Robert Roux, 'The Incorporation Problem in Interdisciplinary Legal Research' (2015) 8 Erasmus Law Review 55.

[54] Merton King and Robert Merton. *Social theory and social structure*, (Simon and Schuster, 1968).

from the socio-legal approach is *institutional (legal) theory*, which informs this study's theoretical framework of analysis.

1.5.4. Doctrinal Legal Research (DLR)

DLR describes a research process which aims to identify, analyse, and synthesise the content of the law.[55] Furthermore, it refers to the 'doctrine' of precedent, defined as a body of rules applied consistently and which have evolved organically and gradually.[56] Gestel and Micklitz emphasised that 'a doctrine is a synthesis of rules, principles, norms, interpretative guidelines and values, which explains, or justifies a segment of the law as part of a larger system of law.'[57]

The earlier work of Pearce et al[58] commended DLR as a logical explication and critique of the rules governing a particular legal domain through the investigation of the relationship between these rules and exposition of conflicting areas towards prognosticating future evolution and reform. Following Hutching and Duncan and Pearce et al, this work adopts the DLR methodology so as to:

1. Examine the legal framework on IPD and elections in Nigeria;

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[55] Terry Hutchinson and Nigel Duncan, 'Defining the doctrinal' (2012), *Deakin Law Review* 17.

[56] Ibid

[57] Robert van Gestel and Hans Micklitz, *Revitalizing Doctrinal Legal Research in Europe: What About Methodology? European University Institute, Florence, Department of Law*< *http://cadmus. eui. eu/bitstream/handle/1814/16825/LAW_2011_05. p df* (2011).

[58] Charles Pearce, Enid Campbell and Don Harding, *Australian law schools: A discipline assessment for the Commonwealth Tertiary Education Commission: A summary*. (Australian Government Public Service 1987).

2. Analyse the judgments and decisions of the Supreme Court in electoral cases to identify their impact on IPD in Nigeria, and;
3. Identify conflicting legal provisions and principle(s) of law on IPD in Nigeria and propose reform thereof.

By combining the relevant elements, the study aimed to establish an appropriate argument and complete statement of the law on the internal democracy of Nigerian political parties. In so doing, it hopes to identify the underlying logic and legal principles upon which courts base their decisions in adjudicating electoral disputes. More importantly, it reveals those areas of the electoral law and practice that are inconsistent, contradicting, and illogical. This approach aligns with the position of Pearce et al,[59] namely that reform-oriented research 'intensively evaluates the adequacy of existing rules and recommends changes to any rules found wanting'[60]. Therefore, the exposition of the legal framework on IPD will help assess the adequacy or otherwise of the existing legal and regulatory framework on elections and party activities to consolidate democracy in Nigeria.

In line with van Gestel and Micklitz[61] this work interrogates a range of legal arguments derived from the ratio decidendi of judgments of the Apex court in Nigeria. These judgments are based on the interpretation of the provisions of the EA 2010 Constitution of Nigeria, the parties' constitutions, case laws, and guidelines on intraparty elections, together with commentaries and scholarly articles on IPD in Nigeria.

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[59] Ibid

[60] Ibid

[61] Van Gestel and Micklitz (n. 57).

Using DLR, this study analyses the existing literature on IPD and electoral laws in Nigeria and similar jurisdictions to gain insights into known, unknown, and emerging facts of law on the subject of study.[62] It involves a meticulous process of identifying, reading, analysing, and synthesising relevant and novel information into an established legal framework.[63] In relation to court decisions, DLR further assisted the analysis of them and acknowledged and harmonised new evidence and materials found in them into the existing body of law on IPD and elections to achieve analytical cohesion.[64]

However, van Hoecke criticised the DLR approach for confining 'legal reality' to legislation and case law[65]. He argued that provided the law aims at ordering society and influencing behaviour,[66] such an approach becomes insufficient. In their later work, Hutching and Duncan[67] countered this argument by arguing that DLR is not simply an identification of relevant legislation and case law or merely a textual analysis; instead, it involves careful consideration of case materials concerning hierarchy or judicial authorities as well as understanding the social context in which they are applied and interpreted. By re-echoing the social

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[62] Alan Bryman, *Social research methods*. (OUP, 2016).

[63] Terry Hutchinson, 'Researching and Writing in Law', (3rd edn, Lawbook Co., 2010) 38.

[64] Ibid

[65] Mark van Hoecke (ed). *Methodologies of legal research: which kind of method for what kind of discipline?* (Bloomsbury, 2011).

[66] Julie De Coninck. 'Behavioural economics and legal research' (2011) *Methodologies of legal research. Which kind of method for what kind of discipline (*Bloomsbury, 2011) 257.

[67] Hutchinson and Duncan (n. 55) 17.

context of legal inquiry, DLR is consequently wrapped into the broader socio-legal approach that guided this study.

The scientific status of DLR has also been questioned by scholars for its inability 'to build, structure, interpret and apply the law so that it fulfills its function in society, together with suffering from a complete lack of methodology.'[68] In response to this limitation, and following Cotterrell's[69] position that true legal scholarship must require a sociological understanding of the law, this study thus becomes an attempt to broaden DLR by infusing insights from social science.[70] As a study embedded in society, this work seeks to comprehend and unearth the effect of judicial decisions on IPD as it relates to real-world situations. This will be done through qualitative key informant interviews of selected petitioners and respondents in election disputes as well as other actors in the Nigerian electoral system. In selecting these participants, the researcher considered landmark cases that have changed the political landscape in Nigeria by setting legal precedents through making laws by the judiciary. Unarguably, the adjudication of electoral disputes will engage Nigerian culture and society and, perhaps more importantly, the lived experiences of party members in the peculiar cultural context in which they operate. DLR helped to ensure that the study situated

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[68] Salter and Mason (n. 49).

[69] Roger Cotterrell, 'Why must legal ideas be interpreted sociologically?' (1998) 25 (2) *Journal of law and society*,171.

[70] Bart du Laing, 'Promises and pitfalls of interdisciplinary legal research: the case of evolutionary analysis in law' (2011) *Methodologies of legal research: which kind of method for what kind of discipline? (Hart Publishing, 2011). 241)* 241.

propositions and conclusions on the position of the law on either the relevant legislations or case law.[71]

The screening criterion of the study with respect to judicial decisions/case law is based on the hierarchy of courts and precedents; thus, superior court judgments on IPD and electoral disputes will take precedence over judgments of the lower courts.

In conclusion, DLR helped focus the research on the description and analysis of the EA 2010 and related statutes. DLR also enabled the evaluation of secondary data sources in the form of journals, research articles, and informed legal commentaries on case laws and legislation on intraparty disputes.

1.5.5. Theoretical Framework: The Institutionalism of Law

A broad understanding of the structure and nature of law demands an equal comprehension of the law's institutions.[72] This is because, in reality, institutions do not exist in isolation. Instead, they exist in the context of and for norms or rules that provide meaning to, regulate, justify, and often authorise human behaviour in social settings,[73] thereby rendering institutional reality an intricate combination of norms, activities, values, human associations, and meanings.[74] Scott[75] described institutions as comprising regulative, normative, and cultural-cognitive

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[71] Arlene Fink, *Conducting research literature reviews: From the internet to paper* (Sage, 2019).

[72] Peter Morton, *An Institutional Theory of Law: Keeping Law in its Place* (OUP, 1998).

[73] Neil MacCormick and Ota Weinberger, 'An institutional theory of law: New approaches to legal positivism' (1986) 3 *Springer Science & Business Media, Dordrecht 1986*, 213ff

[74] Ibid

[75] Richard Scott, *Institutions and organizations* (Sage, 1995) 2.

elements that offer stability and meaning to social life. Institutions have also been referred to as rules that individuals employ in organising their relationships with one another. For the pluralists[76], institutions are the consequences of human activities within their natural and social environment that create stability in internal rules.[77] Thus, the relevance and utility of institutional theory to the analysis of intraparty politics lies in the fact that political parties are in themselves institutions since they encapsulate rules of behaviour, both formal and informal[78]. Therefore, the role they play in any society's political process is quintessentially institutional roles.[79]

To understand the different interpretations of institutions, it is essential to recognise that the concept of Institutions as applied to legal or social research is often used to refer to established law, custom or practice[80]. In political research,

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[76] Eugen Ehrlich and Nathan Isaacs, 'The sociology of law' (1922) 36(2) *Harvard Law Review* 130; Romano Santi, *The legal order* (Taylor & Francis, 2017)

[77] Mariano Croce, 'Self-sufficiency of law: a critical-institutional theory of social order' (2012) 99. *Dordrecht: Springer*

[78] Nic Cheeseman et al. 'Kenya's 2017 elections: winner-takes-all politics as usual?' (2019) 13(2) *Journal of Eastern African Studies*, 215

[79] Onyishi (n. 39). For more discussion about the relevance of the institutional legal theory to the discussions on intraparty democracy, see generally the works of Pierre Jon, Guy Peters, and Gerry Stoker, *Debating institutionalism* (2008) *https://philpapers.org*. (Accessed 16/06/2018); Vivien Lowndes and Mark Roberts, *Why institutions matter: The new institutionalism in political science* (Macmillan 2013); Guy Peters, *Institutional theory in political science: The new institutionalism* (EEP 2019).

[80] There are two dictionary definitions of institutions: In the first, an institution is a social organisation, e.g., establishment, institute, foundation; in the second, an institution is an

institutions may be used to refer to the practices and customs of government.[81]. In sociology and management studies, institutions refer to forms of social organisations, both formal and informal[82]. In the corporate world, institutions are seen in organisations or corporations' inherent practices, customs, and laws. Likewise, in a democratic system, institutions assume the character of electoral legislation (issued by constitutionally authorised bodies), political parties, electoral bodies, national constitutions (enacted and adopted by formal processes), and party laws employed by parties to organise repetitive party activities, with a resultant impact on members and non-members.[83] It follows from this that political parties, election management bodies, the judiciary/courts, including the electoral statutes, constitutions, and regulations, form a gamut of organisations, rules, and norms of which organisational institutionalism[84] becomes relevant to the analysis of intra-party politics and electoral outcomes. In this context, it should be highlighted that institutions shape and define political participation. Thus, by extension, IPD refers to party members' available opportunities and constraints to pursue politically relevant values in society.

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established law or practice synonymous with custom, phenomena, fact, procedure, convention, usage, tradition, rite, ritual, fashion, use, habit and so on.

81 Lowndes and Roberts (n. 79).

82 Raymond Williams, *A vocabulary of culture and society (*Oxford 1985) 169.

83 Elinor Ostrom, *Crafting institutions for self-governing irrigation systems* (CSG 1991).

84 Royston Greenwood et al, ‘Traditions as institutionalized practice: Implications for deinstitutionalization’ (2008) 327, *The Sage handbook of organizational institutionalism,*352; Paul DiMaggio and Walter Powell, ‘The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields’ (1983) 48 *American Sociological Review,* 147.

Furthermore, in a democracy, court decisions and binding orders issued by judges and administrative authorities to political institutions and individuals in electoral disputes are formal rules with institutional characteristics.

Furthermore, in sociolegal terms, institutions define social life from marriage, family, markets, and politics to church and state. In this sense, they refer to formal or informal codes of conduct, written contracts, and complex organisations.[85] In pragmatic terms, institutions could be used to mean special procedures and practices.[86] For behaviouralists with institutional inclinations, they refer to 'stable, valued and recurring patterns of behaviour'.[87] This behaviour, according to Peters, becomes patterned interactions that are predictable.[88] Intrinsic to the meaning of institution constructed above is the regularity of human behaviour associated with it, and the sources of this regularity or patterns are diverse yet overlapping.[89] In this context, electoral statutes, legal precedents, customs, electoral rules, guidelines, codes, and culture produce behaviour patterns. This, in turn, produces predictable, stable, and trusted institutions. Indeed, there can be no strong institutions, electoral systems, and no law-governed society without predictable behaviour. However, for some proponents of institutions as a legal order,[90] these behavioural patterns are not

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[85] See n. 78.

[86] Ibid

[87] Samuel Huntington, *Political order in changing societies* (YUP, 2006).

[88] Peters (n. 79).

[89] Ibid

[90] Santi (n. 76).

institutions merely because of the rules of conduct they produce; rather, they are independent of the temporary managers of such institutions. In essence, political parties, electoral bodies, party laws, electoral rules, case laws, and precedents all develop from the continuous interaction of individuals in socio-political circumstances; their primary function is to guarantee the survival of the laws and roles beyond the initial party promoters, lawmakers or judges as the case may be. Put differently, even though institutions develop from interactions among people in real circumstances, their primary function is to ensure that the institutions (parties, party rules, and legal principles) outlive their initial creators.[91] This institutional concept can be compared to the company law principle of legal personality, which confers continuous existence on an incorporated company long after the promoters have ceased to exist, thus making the company an independent legal person distinct from its members.[92]

Law is undoubtedly institutional and, as such, a significant part of social life. Institutional legal theory looks at the existence of law as an institutional fact occurring in social reality. It underscores the existence of a legal system, as a network of a normative system, with organisation and social processes having a perceptible element.[93] Following a pure jurisprudence[94] position that a normative

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[91] Ibid.

[92] Susan McLaughlin, *Unlocking Company Law* (Routledge, 2019)

[93] MacCormick and Weinberger (n. 73)

[94] The idea of a Pure Theory of Law was propounded by Hans Kelsen (1881–1973). The jurisprudence Kelsen propounded “characterizes itself as a ‘pure’ theory of law because it aims at cognition focused on the law alone” and this purity serves as its “basic methodological principle”. *https://unanzagulzar.blogspot.com/* (Accessed 6/12/2020)

system is a legal order only when it is effectual and active, Salter and Mason [95] opposed the justification for understanding blackletter law in complete abstraction from the sociological appreciation of the consequences of real legal institutions. They further averred that 'the social existence of institutions depends on their being in actual operation, ... guidance and evaluation of human actions in their social context'.[96] Thus, Nigeria's electoral laws, party laws, statutes, and policies constitute a legal order if found to be in operation and effective and active in guiding and evaluating the actions of political parties and the organisation of electoral democracy in the country.

Consequently, if the leverage of institutional legal theory is that it proposes the study and understanding of legal concepts within the context of society and human behaviour and their dynamic interactions and relationships, then this thesis aims to achieve a deeper comprehension of the democratic institutions (structure/organisations) within which these laws exist so as to explain their interactions and boundaries. Institutions are rules that political parties use to order/govern their relationship with one another and with the party.[97] Therefore, the relevance of institutional legal theory lies in the fact that it focuses on the parameters of opportunities and constraints set by the formal institutional architecture of the state. The theory is also mindful of the relevance of both formal

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[95] Salter and Mason (n. 68); Stirton (n 62).

[96] Salter and Mason (n. 68).

[97] Morton (n. 72).

and informal institutions[98] in shaping socio-political outcomes. It further appreciates the fact that sociolegal institutions are not stagnant waters, especially in today's world in which institutions are primarily driven by globalisation and technology.

Moreover, 'the institutional character of law arises from the function of law in reducing complexity in life'[99] by creating predictable patterns of behaviour. In essence, legal routines and structures such as legal precedents, electoral laws, codes, customs, and guidelines for elections help to reduce complexity in an electoral system. They also reduce the incidences of new disputes that legal actors in the electoral system need to consider.[100] More importantly, the institutional character of law helps to predict electoral outcomes in a democratic system.

1.5.6. The Ontology of the Institutional Theory of Law

For proponents of legal positivism, institutional facts are true by virtue of an interpretation of events in the light of individual practices and normative rules.[101] For instance, on the legitimacy of the candidate selection process in Nigeria, a primary election for nomination of a governorship candidate, conducted within a state congress, is significant because of the rules that govern the selection

[98] Nic Cheeseman et al. 'Kenya's 2017 elections: winner-takes-all politics as usual?' (2019) 13(2) *Journal of Eastern African Studies*, 215

[99] John Bell, 'Legal research and the distinctiveness of comparative law' (2011), *Methodologies of Legal Research, European Academy of Legal Theory* 155.

[100] Ibid

[101] MacCormick and Weinberger (n. 73).

process. What really exists as institutional fact is that concepts such as conventions, congress, candidate selection, elections etc., which are created and formulated through norms, codes, and patterns of human behaviour, are such that they can be instantiated through party activities conducted 'under' and with regard to the rules.[102] Therefore, it is not the concepts, congress, conventions, or elections in themselves that exist; rather, the concepts have meaning through rules and patterns. Thus, the relevant 'institution' develops and exists when these rules are applied and satisfied in some instances, giving rise to a normative system and determining what institutional possibilities exist within the institution.[103]

McCormick and Weinberger[104] posited that institutions can only exist if the specific institution concept has been envisaged earlier and articulated through relevant rules. However, this view contradicts the evolution of institutions through case laws/precedents. In this sense, it can be argued that institutions (laws/precedents) can evolve without prior legislative enactment and formulation of relevant concepts.[105] This position has been established on different occasions in Nigeria's political history. For instance, the principle in the case of Rotimi *Amaechi v INEC*,[106] and *Hon. Faleke v INEC & Anor*[107] evolved without prior

[102] Ibid

[103] Ibid

[104] Ibid

[105] Christopher Arnold, 'Institutional Aspects of Law' (1979) 42 *Modern Law Review* 667

[106] *Amechi (n. 20)*.

[107] *Hon. Faleke (n. 31).*

legislative design covering such circumstances. The court determined the cases and precedents established without prior provisions in the statute applicable to such matters or circumstances. The legal decisions in this generation of cases were made *a priori* without reliance on any precedent or similar circumstances. The Supreme Court's decision could have been derived from reasonings based on facts of the case and self-evident truth.

These cases establish how novel precedents could emerge by judicial decisions to deal with specific problems, such as the difficulty of securing fairness for a legally nominated candidate wrongfully substituted in an election by his party. It begins as an issue involving the invocation of the court's equitable power: can and should a decision be given against some purportedly unfair behaviour by a political party? It proceeds to the argument of whether justice requires or allows transferring any comparable remedy to avail in favour of a candidate who did not participate in all the stages of an election. In formulating the basis for such decisions and expressly pronouncing rulings upon general points of law, the court initially constructs the basis for and then formulates and names the emerging institution (for instance, 'candidate's wrongful substitution equity').

Similarly, court interpretation of statutes based on the canons of statutory construction may produce and expound institutions primarily constituted by statute law. An excellent example to aid understanding of this logic is provided by the way in which the 'proper plaintiff' rule was developed through the judicial decision in the English case of *Foss v Harbottle*[108] and similar cases. The principle of separate corporate personality was also developed through judicial

[108] *Foss v Harbottle* (1843) 67 ER 189

decisions in cases like *Solomon v Solomon & Co. Ltd*.[109] In *Foss v Harbottle*[110], it was decided that it is for the company to bring proceedings where a wrong has been done to the company, thus stripping members of the company of the right to bring proceedings on behalf of the company. In the same vein, the English court in *Solomon v Solomon & Co Ltd,*[111] in establishing the separate corporate personality principle, decided that a company had a legal personality distinct and separate from the members. It was therefore established that in English law, the law relating to the ability of a member of a company to bring proceedings on behalf of the company, and the law that grants a limited company, the right to sue in its name and own assets separately from its shareholders were not originally articulated nor written down in statute. Rather these institutions emerged, developed, and evolved through judicial decisions based on legal reasoning and statutory interpretations.

Following the above examples, it is established that institutional concepts, being formulated in or through sets of extant rules, any procedure of emergence or development of rules, can therefore be a process of emergence or development of institutions.[112]

1.5.7. Institutional Legal Theory

Having reviewed the concept of institutions as applied to socio-legal research, this study will explore the explanatory power of institutional legal theory and

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[109] *Solomon v Solomon & Co. ltd* [1896] UKHL 1, [1897] AC 22

[110] Ibid

[111] Ibid

[112] MacCormick and Weinberger (n. 73).

provide insights into its utility and relevance to this research. Thus far, we are in no doubt about the centrality of institutions to socio-legal studies. Curiously, however, institutional legal theory is seldom used in legal research despite its robust explanatory power for understanding social and legal phenomena.[113] The leverage of institutional legal theory is that it proposes the study and understanding of legal phenomena within the context of society and human behaviour and their dynamic interactions and relationships. The focus here is the set of rules, practices, and customs that characterise social institutions.

An interdisciplinary study that includes legal and institutional studies requires that we borrow the methodological approaches of sister disciplines in the humanities and the social sciences. To this extent, the theory is appropriate fo grappling with IPD, electoral statutes, and legal decisions in Nigeria for the period under review.

Considering that the study seeks to address human action within spaces of political activism and how they engage with legal instruments, the institutional approach is suitable, particularly considering that it examines statutes, laws, and regulations guiding political parties and elections, i.e. the “soft” side of people, political parties, and regulations. It is also appropriate in this study because it accounts for state agencies' issues that form the “hard” side of organisations and political action.[114]

Furthermore, the institutional approach enriches the study given that it is

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[113] Ibid.

[114] David Leopold and Marc Stears (eds) ‘Political theory: Methods and approaches’ (OUP, 2008); Royston et el. (n. 84).

mainly concerned with empirical historical institutionalism, the value of which lies in its ability to effectively compare constitutions, laws, and political traditions across time and legal jurisdictions. Precedence in the application of this approach is evident in this literature. For instance, Montesquieu[115] provided a descriptive classification of political systems, constitutions, laws, and political traditions leading to the evolution of the doctrine of separation of powers in government, now widely applied as a safeguard against tyranny and protection of civil liberties, using the institutional approach.

Institutionalism evolved gradually as a legal theory with the seminal and pioneering work of MacCormick and Weinberger[116] through to the rich positivist jurisprudence of Morton,[117] whose main concern was to distinguish between different legal fields, including penal, civil, and public law and in the process provided a detailed analysis of those institutions in a democracy wherein legal language and norms gain traction. From the vibrant prism of institutional legal theory, Morton offered an original, coherent systemic exposition of the law in modern society with a vivid exposition of the comparative value of institutional legal theory.

Croce[118] has more recently made a case for the relevance of Critical Institutional Theory. He enriched the growing body of literature on the theory by exploring the theoretical kaleidoscope ranging from Legal Pluralism, Classic

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115 Charles De Montesquieu*, The spirit of the laws*. (CUP, 1989).

116 MacCormick and Weinberger (n. 73).

117 Morton (n. 72).

118 Croce (n. 77).

Institutionalism to Jura Continuum. In doing so, he built on the earlier works of Atiya and Summers'[119] comparative study of Legal Reasoning, Legal Theory, and Legal Institutions of Anglo-American Law, which re-echoed the comparative value of institutional legal theory to legal research started by Montesquieu.

What the above studies' adoption of a transdisciplinary approach shows is that law is the building block of institutional thought and, as such, law and governance preoccupied early institutionalists' writings, typified by the school of legal institutionalism which has developed in France over the last two centuries.[120]

1.5.8. The Utility of Institutional Legal Theory

For Onyishi, the relevance and utility of institutional legal theory to the analysis of intraparty politics lies in the fact that, as he puts it:

> Political Parties are in themselves institutions since they encapsulate rules of behaviour, both formal and informal. Therefore, the role they play in any society's political process is quintessentially institutional roles.[121]

It follows from the above that political parties, election management bodies, the judiciary/courts - including electoral statutes, constitutions, and regulations - form a gamut of organisations, rules, and norms of which

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[119] Patrick Atiyah and Robert Summers, *Form and Substance in Anglo-American Law: A Comparative Study of Legal Reasoning, Legal Theory and Legal Institutions* (Clarendon Press 1987).

[120] Maksymilian Del Mar, *Law as institutional normative order* (Routledge, 2016).

[121] Onyishi (n. 39).

organisational institutionalism[122] becomes relevant to the analysis of intra-party politics and electoral outcomes. In this context, it should be highlighted that institutions shape and define political participation, and thus IPD refers to the available opportunities and constraints to party members in their pursuit of politically relevant values in society.

The relevance of institutional legal theory lies in the fact that it understands the parameters of opportunities and constraints set by the formal institutional architecture of the state and broadly defines the behaviour of actors in the system. The theory is also mindful of the relevance of both formal and informal institutions[123] in shaping socio-political outcomes. It further appreciates the fact that socio-legal institutions are not stagnant waters, especially in today's world, in which institutions are largely driven by globalisation and rapid technological development.[124]

1.5.9. The Limits of Institutional Legal Theory

Institutional legal theory shares the same theoretical limitations with all other genres of institutionalism. Institutional theory, especially historical and empirical institutionalism, has been accused of being more descriptive than analytic in its observation of sociolegal phenomena.[125] The institutional analyst incurs an observer's bias as he draws his/her individual beliefs and values into the research

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[122] Greenwood (n. 84); DiMaggio and Powell (n. 84).

[123] Cheeseman et al. (n. 98)

[124] MacCormick and Weinberger (n. 73).

[125] Peters (n. 79); Rein Taagepera and Matthew Shugart. 'Seats and votes, the effects and determinants of electoral systems' (1989) 22 *Canadian Journal of Political Science* 875.

process.[126] *Researcher's prejudice* acts as a filter between his/her senses and the real world they are observing and thus cannot be trusted to be *objective*.[127] One way institutional scholars have tried to mitigate this bias is to fixate the observation by establishing a theoretical position to guide and contour dialogue between theory and empiricism.[128]

Berger and Luckmann long ago posited that institutions are 'dead' if represented only in verbal designations and physical objects; as such, representations are devoid of subjective reality, except when brought to life through human conduct.[129] For the fact that institutions are designed to be transmitted, maintained, and reproduced across generations,[130] they have been accused of being resistant to change,[131] especially in the constantly changing outside real-world environment they exist in. This early critique of institutionalism relates to how the theory handles social change. If the idea of the institution is about regularities or patterned behaviour, it suggests then that change could be considered a deviation from that pattern. Therefore, institutional change can only

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[126] Lowndes and Roberts (n. 79).

[127] Ibid

[128] ibid

[129] Peter Berger and Thomas Luckmann, *The social construction of reality: A treatise in the sociology of knowledge* (Anchor, 1966).

[130] Zucker Lynne, 'The role of institutionalization in cultural persistence' (1977) 42 (5) *American sociological review* 726.

[131] Ronald Jepperson, 'Institutions, institutional effects and institutionalisation' in Walter W. Powell and Paul J. DiMaggio (eds), *The New Institutionalism in Organisational Analysis* (UOC, Press 1991) 143.

occur if the system were to be disrupted.[132]

However, early work by Tolbert and Zucker suggests that although institutions (as a process) function to provide stability and order, they do actually pass through incremental and sometimes even revolutionary change.[133] Thus, new institutionalist thinking sees institutions not in terms of non-equilibrium but instead as human designs that change as frequently as human foibles or as the social milieu evolves. This means that institutional legal theory does adapt to, and can account for, change, as do other socio-legal methods.

Furthermore, institutionalism has been accused of opportunism as it dubiously oscillates between the intellectual epistemological polarities of theory and empiricism, deductive and inductive reasoning, seeking to draw the best from both polarities. The analytical costs and benefits of this ambivalence are that it limits the knowledge claims of the theory. Put simply, by abandoning or de-emphasising the classic strict scientific method, institutionalism distances itself from the discovery of the holy grail of knowledge or truth but conceives theory as a constantly changing phenomenon, especially in the face of the ever-changing, outside, 'real-world environment' it observes.

Much of the institutional legal theory that evolved from legal positivism was less concerned with metrics and empiricism. Therefore, it occupied much of the spectrum of normative institutionalism and was mostly concerned with social norms and values. Interestingly, institutional legal theories affiliated with

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[132] Greenwood et el. (n. 84).

[133] Pamela Tolbert and Lynne Zucker, 'The Institutional theory' in Stewart R. Clegg, Cynthia Hardy, and Walter R. Nord (eds), Handbook of Organisation Studies (Sage, 1996) 175.

sociological institutionalism have made better progress with crunching numbers in its research and analysis. This current research effort is tilted towards this genre of institutionalism as it seeks to explain the effect of the legal framework and regulatory institutions on IPD in Nigerian parties from 1999 to 2019.

Again, to uncover the legal principles that informed court decisions on IPD-related cases, this study will rely on normative or discursive institutionalism tools, which share a common theoretical tradition with the black letter approach to legal research.

Another often cited limitation is that these institutional constraints, rules, and regulations are subverted by the existence of cliques, caucuses, and cabals in organisations of interest. These subversions, which seem to operate outside formal laws, rules, and regulations,[134] provide a smokescreen for institutional decisions that could not be manifest if we were to follow only formal rules and regulations during this study.

To remedy this, the researcher undertook limited field studies to elicit the views of key political stakeholders in order to gain insights into the political and legal architecture of Nigerian political parties to understand the leading causes of wanton breach of formal rules and regulations as well as of election outcomes/result rejection and consequent contestation in election tribunals.

1.6. Data Sources

The documentary evidence used in this work consists of data from statutes, constitutions, case laws, reported and unreported court cases relating to IPD in

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[134] Cheeseman et al. (n. 98).

Nigeria, and parliamentary reports. Other data sources utilised include journal articles, commentaries, online publications, media reports, including magazines, newspapers, and commentaries on Nigeria's elections and electoral system.

In content analysis of these documents, the work employed 'Doctrinal Restatement' and 'Recasting.' Doctrinal Restatement is the organisation and reorganisation of case law into logical components, classes, and principles, distinguishing and explaining the fundamental principles and logic on which decisions are anchored. Doctrinal Recasting is a systematic process of case collection according to logical reasonings or *stare decisis,* 'explaining their commonalities, exposing conflicts and discrepancies in logic and offering a new paradigm.'[135]

Consequently, the study isolated two categories of relevant Supreme Court cases following the historical evolution of the electoral statutes in Nigeria. The first category concerns cases decided *before* the enactment of Section 87(9) of the EA 2010, wherein party supremacy and autonomy reigned; thus, the courts were stripped of jurisdiction to intervene in or regulate political parties' domestic affairs, especially in choosing their candidates for general elections. The second category is cases *since* the enacting of Section 87(9) of the EA 2010, which conferred on the courts the power to intervene in and regulate the internal activities of parties in Nigeria. This classification aims to provide a deeper understanding of the impact of the laws on IPD and election outcomes before and after the 2010 electoral reform.

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[135] Minow Martha, 'Archetypal legal scholarship: A field guide.' (2013) 63 *Journal of Legal Education,* 65.

This study further analyses the case law on state regulation of internal political party activities in Nigeria and its impact on electoral outcomes in the country through a recasting of cases prior to the decision in *Amaechi v INEC & 2 Ors.* These cases are distinguished based on the principles of law and reasoning applied in reaching decisions. Hopefully, this will bring to evident relief the inductive reasoning, similarities, distinguishing factors, and discrepancies in the logic used to arrive at such decisions.

1.6.1 The Qualitative Organisational Research Method

The second source of data adopted for this study is semi-structured interviews with relevant career politicians and legal advocates.[136]

This investigation provided realistic insights into the perceptions and lived experiences of political parties' members, in their own words, as regards internal party procedures and activities, especially petitioners and respondents in intraparty disputes which are of interest to the present study. The interviews provided in-depth insights into candidates' nomination procedures for general elections, how party executives are selected and how decisions are reached within political parties. Through these interviews, this work provides detailed insights into how individual actors, institutions, and organisations interact and understand aspects of their world in the natural setting.[137] This follows directives

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[136] Paul Drew and John Heritage, *Analysing talk at work: An introduction* (CUP, 1992).

[137] Complete dissertation: Statistics solutions: https: statisticssolutions.com/qualitative-research-approach. (Accessed on 16/4/2019).

for qualitative research in real life.[138] In this way, the sources of information consulted in this thesis were more extensive than would have been necessary if the research had been conducted solely with a black letter law methodology.[139]

Using qualitative interviews justified the need to ground the theoretical analysis within the context of actual events developing in Nigeria's democratic system and institutions.[140] In supporting this approach, Currie stated, 'A commitment to qualitative research demonstrates a desire to examine the social phenomenon in an in-depth and rich fashion…'[141] In this regard, the political culture, history, legal precedents, and the real-life experiences and accounts of the actors and stakeholders of the political system in the Nigerian social context are placed into a practical perspective. However, the limitation of this method lies in the fact that the researcher could easily be influenced by personal biases and idiosyncrasies[142] acquired over years of interacting with the system and actors during her career as a legal officer in Nigeria's Electoral Management Body (EMB). Notwithstanding these limitations, the interview process provided a deeper understanding of the challenges facing political and democratic institutions in Nigeria.

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[138] David Gray, *Doing research in the real world*. (Sage, 2021); Colin Robson and Kieran McCartan, *Real world research: a resource for users of social research methods in applied settings*. (Wiley, 2016).

[139] Salter and Mason (n. 49).

[140] Omiunu (n. 46).

[141] Ibid.

[142] Claire Anderson, 'Presenting and evaluating qualitative research' (2010) 74(8) *American journal of pharmaceutical education,* 141

Following Yin,[143] this study's use of multiple sources of data for triangulation helped to make the findings richer by validating as well as enhancing their reliability and credibility. Using Fink's approach, both data sources are intended to provide answers to the research questions.

1.7. Findings

This study found that:

1) Political parties in Nigeria do not adhere to or obey their internal laws/constitutions and electoral laws.
2) There is no paucity of legal/regulatory framework on IPD in Nigeria; political parties have established and structured internal laws and constitutions that require parties to respect and abide by democratic procedures and practices. However, these laws are often ignored or disregarded[144].
3) The challenges of IPD in Nigerian parties are mainly attributable to godfatherism, the party supremacy principle, corruption within parties, disobeying court orders, lack of enforcement of party rules, gaps in party laws, conflict of interests, multiple defections from parties, disrespect for party rules, overbearing governmental influence on party structures, lack of information, lack of party autonomy, parallel party structures, parallel

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[143] Robert Yin, 'Discovering the future of the case study. Method in evaluation research' (1994) 15(3) *Evaluation practice*. 283.

[144] Augustine Magolowondo, *Democracy within political parties: The state of affairs in East and Southern Africa.* (2013) 200.

primaries, and the lawlessness of politicians generally.

4) The judiciary are guided by the evidence before them and by the statistics from the actual elections and thus act within their jurisdiction in determining election outcomes. The parties were found to be the architects of the problems and disputes that come before the court because of their disrespect for party laws.
5) Informal/unwritten rules that exist within Nigeria's political parties are products of convergence of political interests and dealings within the parties aimed at protecting individuals, groups, or collective interests of party members.
6) Contradictory judgements of courts in internal party disputes make the law on IPD regulation uncertain and difficult to understand.
7) Legal reforms are overdue on the IPD issues such as electronic voting, party defections, independent candidacies, qualification/disqualification of candidates, parties' constitutional amendments, enforcement of party laws/court judgements and electronic voting.

1.8. Ethical Considerations

This research was conducted in compliance with De Montfort University's Ethics Policy. The researcher went through the ethical approval process before commencing the fieldwork in June 2021. A major challenge during the ethical approval process was the issue of safety for the researcher. Given COVID 19, interviews could not be conducted face to face. However, the researcher adopted a virtual data collection method with the appropriate ethical approval. This is in line with De Montfort University's ethical standard during the COVID 19

pandemic. Consequently, all interviews were conducted via Zoom or by telephone. The researcher maintained the required ethical standards necessary for a study of this nature and appropriate for an online data collection process. The researcher ensured that the interviewees were able to hear and see the questions through the medium used by sharing the questions either before or during the interview. The researcher was also transparent with the interviewees, explaining the reason for the interview and how the data obtained was going to be used.

1.9. Scope and Limitations of Study

The analysis of the relationship between elections/electoral outcomes and democratic transitions in Africa have relied primarily on data from general elections,[145] ignoring that from primary elections. This work is thus focused on examining the IPD credentials of Nigerian political parties through both documentary and field research methods, referencing statutes, political parties' disputes/cases and judicial decisions. Analysis of data from the above sources relating to party primary elections, candidate selection processes and how they impact on electoral outcomes in Nigeria from 1999 to 2019 is the main focus of this thesis.

This work engages with the electoral law and party rules as they relate to the regulation of the candidate selection and nomination dimension of IPD. It also

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[145] Lindberg Staffan and Staffan Lindberg, *Democracy and elections in Africa*. (JHU Press 2006); Michael Bratton and Nicholas Van de Walle, *Democratic experiments in Africa: Regime transitions in comparative perspective* (CUP, 1997).

focuses on court-decided electoral cases based on pre-election disputes that emanate from intraparty elections, including party primaries and party executives' elections. The study further considers the impact of legal decisions on the IPD and electoral outcomes in Nigeria. By extension, it addresses the interaction between court orders/judgments and the consolidation of democracy in Nigeria.

The concept of IPD often assumes varying dimensions in a democratic system. These dimensions include party primary activities such as nomination of candidates for elective offices, election of candidates to leadership roles, and development of party policies and ideology. However, this work has as its focus the legal and institutional dimensions of Nigerian political parties' activities in primaries. It engages with the electoral law and party rules as they relate to the regulation of candidate selection and nomination. It also analyses issues of IPD in Nigeria parties such as adherence to electoral/party laws, adequacy of the legal framework on IPD, the major challenges of IPD within parties, courts/ballot role in deciding electoral outcomes in Nigeria, political parties informal/unwritten rules, impact of court's decision on IPD disputes/ electoral outcome and electoral reforms. The study further considers the impact of legal decisions on the internal democracy of parties and electoral outcomes in Nigeria.

The rational for the scope of this thesis is borne out of the fact that this work is a legal study and its focus is the examination and analyses of electoral and party laws in Nigeria in the context of party primaries activities. In addition, electoral disputes and litigations in the period under review (1999 to 2019) emanate from pre-election and party primary activities such as qualification/disqualification of candidates, nomination of candidates for elective

posts, substitution of candidates and election of political parties' leadership. This study hence reviews the cases, party constitutions, national constitutions and other regulations modulating IPD in Nigeria.

It is true that the politics of IPD in Nigeria have been vigorously discussed, debated and largely settled in the political science literature.[146] However, the scope of the current research is limited to the study of the legal issues surrounding IPD in Nigeria such as statutes, cases and judicial decisions. Other scholars in politics have tried to link elections and electoral outcomes to democratic transitions, relying primarily on data from general elections to validate their studies.[147] It is also agreed that the major issues revolving around IPD in political parties relate to primaries, candidate nomination and party leadership selection.[148] Therefore, this research will be referencing statutory provisions and legal cases on candidate selection and party primaries. It will also form the bulk of the field work aiming to validate the core issues of the research.

Even though the study is country specific, Nigeria, as a common law country, shares similar legal traditions, court systems and structures with other commonwealth countries in Africa such as Ghana, Gambia, Sierra Leone, Kenya, and South Africa.[149] Again, nationalism and party formation in West Africa were largely off shoots of the West African Students Union, which further makes the

[146] Akubo Aduku and Adejo Yakubu (n. 13). Simbine (n. 14).

[147] Ojukwu Chris and Tope Olaifa (n. 10).

[148] Okhaide Itua (N. 14); Simbine (n. 14).

[149] Ian Cooper, 'Political Parties' *Institutions and Democracy in Africa: How the Rules of the Game Shape Political Developments* (CUP, 2018)

political parties in Anglo-phone West Africa share a common credential, especially the dominant role of elders or godfathers and founders in party affairs.[150]

Based on the above, even without an in-depth comparison, some of the findings of this study can relate to the IPD environment of some African countries. Practically, the study is country specific to align with the intimate familiarity the researcher has with the Nigerian electoral system. Also, given that the study was done under the strict COVID-19 travel restriction period, a single country approach was a more pragmatic choice.

1.10. Structure of Thesis

The thesis is structured as follows:

Chapter One – Introduction - presents the background to the research. The chapter offers insights into the conceptual definitions and understandings of IPD, including in the context of Nigeria. It explores institutionalism and institutional legal theory as the theoretical foundation on which the study is anchored. The chapter further explains the rationale for the research work, the aims /objectives, the strategy and methodology adopted in the study. This chapter also explains the scope and limitations of the thesis.

Chapter Two is an overview of IPD in Nigeria. The chapter analyses the organisational structure of Nigerian political parties. It traces the colonial origin and development of parties. It further examines the nature of parties from the

[150] James Coleman and Samuel Coleman, *Nigeria: Background to nationalism*. (Univ. of California Press, 1958);

post-colonial era to the present Fourth Republic (i.e. the post-1999 era) and the challenges of IPD which Nigerian political parties have struggled with in the period examined.

Chapter Three sets out the legal framework for IPD in Nigerian political parties. The chapter examines the legal and institutional framework for IPD in Nigerian parties. The chapter also lays the foundation for further examination of the electoral reforms that have taken place in Nigeria.

Chapter Four – 'Electoral Law Reform on IPD in Nigeria' - examines the position and significance of statute and case law regulating the internal democracy of political parties in Nigeria. An analysis of the provisions of the EA 2010, and the reforms of this Act related to IPD is carried out in this chapter. The chapter further analyses the impact of these reforms on IPD and electoral outcomes in Nigeria's electoral democracy.

Chapter Five looks at the role of the Judiciary in IPD and electoral outcomes in Nigeria. Court judgments on intraparty disputes and pre-election cases, which often are contradictory and inconsistent, are analysed. The chapter also examines the impact of court decisions on IPD and electoral outcomes generally in Nigeria.

Chapter Six is the discussion and analysis of the findings and sets out the contributions of the thesis to scholarly work in the field.

Chapter Seven concludes the thesis by summarising the findings/outcomes of the research by listing and explaining the core challenges of IPD together with the recommendation on how IPD can be successfully entrenched in parties in Nigeria.

1.11. Conclusion

This thesis seeks to interrogate the current regulatory framework on IPD and attendant challenges the law poses to the effective practice of IPD in Nigerian political parties. The thesis makes efforts to ascertain the actual reasons for wanton disobedience of the extant party laws and regulations that seek to promote IPD within parties. Considering that the results of most intra-party disputes in courts impact on the general electoral outcomes in Nigeria, thereby leveraging on institutional legal theory, the study attempts to analyse the electoral laws, the body of case law on IPD and recent events over the period under analysis in order to understand how best to govern internal party activities, policies and systems to positively shape electoral outcomes in Nigeria as well as consolidate the gains of democracy.

CHAPTER TWO

OVERVIEW OF INTERNAL PARTY DEMOCRACY IN NIGERIA

2.1. Introduction

This chapter traces the origins of Nigerian political parties from the pre-independence era to the present-day Fourth Republic in order to understand the behaviour of political parties prior to and after independence was secured in 1960. An analysis of political parties' unique organisational structures and how they sustain IPD is conducted. The chapter further explores the socio-political context of IPD in Nigeria in relation to structural functionality, ethnicity, godfatherism, and ideological and policy issues. This analysis is aimed at understanding how these factors affect IPD within parties and electoral democracy in Nigeria generally.

2.2. Origin and History of Political Parties and IPD in Nigeria

This section traces the origins and history of Nigerian political parties from their colonial origins through their post-colonial developments, exploring their roles in promoting and/or undermining the tenets of IPD and, by extension, consolidating or weakening electoral democracy in Nigeria.

2.2.1 The Pre-Independence Era

The leading political parties that emerged in colonial and immediate post-colonial Nigeria were provincial in outlook, having drawn their provenance from socio-cultural and ethnic-based associations, something which fitted well with the

British colonial policy of divide and rule.[151] The Nigerian National Democratic Party (NNDP), the Nigerian Youth Movement (NYM), the National Council of Nigeria and Cameroons (NCNC), and the Action Group (AG) were among the initial political parties formed in Nigeria. For Danjibo and Ashindorbe, the history and behaviour of these early parties in Nigeria contravened all normative roles expected of them. They averred that, rather than being essential and indispensable institutions for establishing a firm, dependable participatory political order and national and communal interest aggregation,[152] parties transformed into ethnic protagonists.[153] Their formation and existence thus took a regional pattern. The NCNC was perceived as a party to protect the interests of people from the Eastern Region, the AG for the Western Region, and the Northern People's Congress (NPC) for the Northern Region, respectively. The ethnic sentiments entrenched in their foundations deeply undermined their proclaimed commitment to democratic values.[154] For instance, the NCNC (1946-1966), in the initial stage of its formation, had a nationalist appeal due to the multi-

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[151] Simbine (n. 14).

[152] Lere Amusan, 'Intra-party politics and Democratic consolidation in Nigeria: five decades of undulating journey' *Political Parties and Democratic Consolidation in Nigeria*. (Codat Publications, 2011); Nathaniel Danjibo and Kelvin Ashindorbe, 'The Evolution and Pattern of Political Party Formation and the Search for National Integration in Nigeria' (2018) 3 (5) *Brazilian Journal of African Studies* 85.

[153] Danjibo and Ashindorbe (n. 152).

[154] Innocent Alfa and Otaida Eikojonwa, 'Party Politics and Intra Party Democracy in Nigeria: A Historical and Contemporary Perspective' (2012) 4 *Journal of Social Science and Policy Review* 1.

ethnic constitution of its leadership, adoption of universal causes, and mass character. But by 1959, this seemingly broad-based national party took a regional and ethnic turn with the majority of its supporters and members hailing from the Igbo ethnic group. This gravitation to ethnic cleavages made the NCNC negate the tenets of internal democracy in its actual operations.[155]

From its beginnings in 1949, the AG identified with the Yoruba ethnic group while intentionally excluding the Igbo and Hausa ethnic groups. The registration documents that announced the emergence of the party openly described it as a Western Regional Political Organisation.[156]

The NPC, also emerging in 1949 (from the Jam'iyyar *Mutanen Arewa* - Association of People from the North), was from the beginning an organisation from and for the Hausa ethnic group. The main objectives of this group, which transformed into a political party in 1951,[157] according to its founders, were to combat idleness and injustice in the northern region.[158]

The cultural and ethnic biases of this generation of parties rapidly degenerated into ethnic tensions and conflicts, with each group seeking to protect its regional jurisdiction while making concerted efforts to control the political base of the rival party.[159] Danjibo and Ashindorbe[160] opined that the main weakness

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[155] Ibid.

[156] John Post, *The Nigerian Federal Election of 1959: Political and Administration in a Developing Political System.* (OUP, 1963)

[157] Billy Dudley, *Parties and politics in Northern Nigeria*. (Routledge, 2013).

[158] Ibid.

[159] Ibid.

[160] Danjibo and Ashindorbe (n. 152).

that characterised these political parties was their formation patterns, subsequent degeneration into ethnic-based groupings, and the personalisation of their operations by their founders. Sklar, in his seminal work, presented a lucid picture of the workings of the First Republic Nigerian political parties:

> Three major political parties grappled for power, each dominant in a region and rooted in its main cultural-linguistic group - Hausa in the North, Igbo in the East, and Yoruba in the West. Each party was the organisational core of a political class, defined to include those who control the dominant institutions of society. The regional party leaders operated highly effective systems of patronage, dispensing jobs, contracts, commercial loans, traditional titles, and scholarship.[161]

2.2.2. The Post-Independence Era (1960-1983)

Following Sklar's description of the workings of parties in Nigeria in the pre-independence era, Yaqub noted that the parties that existed into the initial post-independence period degenerated into ethnic pressure groups because of intra and inter-party squabbles, a trend that eventually led to the truncation of democratic rule.[162] As Muhammad writes:

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[161] Richard Sklar, *Nigerian political parties: Power in an emergent African nation* (PUP 2015) 2288

[162] Yaqub Nuhu, 'The Military, Democracy, Transition and the 1999 Elections' in Lai Olurode and Remi Anifowose, (eds.) *Issues in Nigeria's 1999 General Elections* (JWP 2004); see also James Ojiako, *Thirteen Years of Military Rule in Nigeria* (Daily Times Publication, 1981); Oyeleye Oyediran*, (ed.) Nigerian Government and Politics Under the Military Rule*, *1966 – 79* (Macmillan, 1979).

> Little wonder, therefore, that the period up to the end of the First Republic was characterised by various forms of political intolerance, violence, and abuse of democratic processes … and other forms of political intimidation that took place, especially in the then western region. As a result, the country was on the verge of disintegration before the military struck on 15 January 1966 to terminate the civilian rule thereby ending the era of destructive party politics in the country.[163]

In response to Nigeria's gaining of independence in 1960, the NCNC, the AG, and a few of their allies in the north came together to form the United Progressive Grand Alliance, (UPGA), while the NPC and their political allies, in control of the western and federal governments, formed the Nigerian National Alliance (NNA).[164] Ethnic politics and personality clashes characterised party development in this era. Consequently, due to the absence of clear rules/principles regulating party procedures, conflicts, divisiveness, and disintegration rocked the party system, leading to the emergence of new parties such as the National Democratic Party (NDP) and the Democratic Party of Nigeria (DPN).[165]

The Second Republic also witnessed a similar evolution, with the dominant parties in orientation and leadership a reincarnation of the First Republic

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[163] Abdulrasheed Muhammad, ‘Political parties and national integration: Reflections on Nigeria since 1999’ (2007) 9 (4) *Journal of Sustainable Development in Africa* 211

[164] Sklar Richard, ‘Nigerian politics in perspective’ (1967) 2 (4) *Government and Opposition* 524

[165] Simbine (n.14)

parties.[166] Politics was generally practiced not according to the principles of internal democracy and universal standards[167] but principally on clientelism and prebendalism.[168] The Great Nigeria People's Party (GNPP), the National Party of Nigeria (NPN), The Nigeria People's Party (NPP), The People's Redemption Party (PRP), and the Unity Party of Nigeria (UPN), emerged as the only five political parties in Nigeria in the Second Republic. Subsequently, some prominent members of the UPN, defected to the NPN. The build-up of parties' activities to the 1983 general elections, witnessed the circumvention of internal democratic norms in nominating flag-bearers by the political parties. The parties' candidates' nominations were in flagrant violation of their own provisions for choosing party flag-bearers and in apparent disregard for the doctrines of intra-party democracy.[169] The NPN, in an apparent disregard of an internal arrangement, replaced the late Chief MKO Abiola with Alhaji Shehu Shagari as the presidential flag bearer in the 1983 general election.[170] The 1983 general election itself was massively influenced and rigged by the country's political leaders, to the detriment of the people's interests. The outcome of these anti-democratic activities of

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[166] Yaqub Nuhu, 'Political parties and the transition process' *Transition politics in Nigeria* 1999 (1970) 118.

[167] Ibid.

[168] Joseph Richard, *Democracy and prebendal politics in Nigeria*. (CUP, 2014) 56

[169] Yaqub (n.166)

[170] Ibid

parties once more was the truncation of the Second Republic on 31st December 1983.[171]

2.2.3. The Post-Independence Era (1985-1993)

Nigeria had three military regimes between the Second Republic and the Fourth Republic (i.e., between 1983 and 1999). Regarding the formation of political parties, the 1989 Constitution of the Federal Republic of Nigeria (CFRN) and electoral laws, under General Ibrahim Babangida (1985-1993), the then head of state, provided for only two parties, namely, the National Republican Convention (NRC) and the Social Democratic Party (SDP). The challenge of democracy in this period was that the political parties were neither autonomous nor self-governing institutions. The military government was a midwife to the parties' creation and birth. The government enacted constitutions and manifestos for them, built party secretariats for them, as well as funded their activities.[172] Intraparty democracy in parties was non-existent in this era, as instructions were handed down to parties from the military government. Nominations for elective posts and other party processes were based purely on who and what the military government desired. The actions of the military government in autocratically micro-managing the political parties were antithetical to democratic principles.

[171] Robert Dode, 'Political parties and the prospects of democratic consolidation in Nigeria: 1999-2006' (2010) 4 (5) *African Journal of Political Science and International Relations* 188 http://www.academicjournals.org/ajpsir (Accessed, 04/01/2021).

[172] Elo Amucheazi, 'Party system and party politics' in Oyovbaire Egite (ed) *Governance and politics in Nigeria: The IBB and OBJ years*. (Spectrum Books, 2008) 59.

Consequently, all party activity in this era lacked institutional autonomy and independence and could not live up to the demands of democracy.

2.2.4. The Post-Independence Era (1993-1998)

General Sani Abacha, after toppling the interim government less than six months after its inauguration in 1993, just like his predecessor, sought to perpetuate himself in office through democratic government. Any political institutions the regime established were all tailored towards his self-succession bid. Five political associations were registered as political parties; The Congress for National Consensus (CNC), the DPN, the Grassroots Democratic Movement (GDM), the NCPN, and the United Nigeria Congress Party (UNCP). The mechanism for candidate selection under this regime was mostly by endorsement and adoption of consensus candidate(s). To enable the adoption of Abacha as the presidential candidate, political parties' conventions amended parties' constitutions to allow a non-member to become the party's candidate.[173] Consequently, between April 16-20, 1998, all but one of the five registered parties adopted Abacha as a consensus candidate for the presidential elections.[174] Eventually, the UNCP became the party through which Abacha's self-succession bid was to be

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[173] James Rupert,' Nigerian leader wins nomination of 4 of 5 parties', *The Washington Post*, April 20, 1998 (Accessed 15/2/2022)

[174] Enemaku Idachaba, 'Chronology of Major Political Events in the Abacha Era (1993-1998)' in Kunle Amuwo et al *Nigeria during the Abacha Years (1993-1998): The Domestic and International Politics of Democratization.* Ibadan: IFRA-Nigeria, (2001) 341. Web. <http://books.openedition.org/ifra/653>. (Accessed on 15/02/2022)

realised.[175] According to political analysts, Nigeria at the time was moving towards a one-party state with all the parties eventually adopting Abacha as their 'sole' presidential candidate. In June 1998, Abacha died before the completion of the electoral process that would have seen him returned as a democratically elected president.[176]

The pre-1999 era, which could rightly be referred to as the Third Republic in the political history of Nigeria, was made up of parties autocratically manipulated by the military junta. There was never a semblance of democracy in their internal activities. Parties were neither autonomous nor independent; rather, they were handed down orders and instructions, and failure to do so meant their members would be victimised or harassed by the incumbent regime and/or their parties would be starved of finances. Political analysts viewed the threat of these anti-democratic actions as disastrous for the principles of IPD in the country.[177]

To actualise their purpose, the military government in power, (post-1993 and pre-1999), through the instrumentality of the Electoral Commission, imposed stringent conditions for the registration of political associations, designed

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[175] Ibid.

[176] The five parties that existed pre-1999, described by Bola Ige, an opposition figure, as 'the five fingers of a leprous hand' were dissolved after General Abacha's death. Cited in Yemi Ajiroba 'Abacha's long silence' The Nigeria Voice, https://www.thenigerianvoice.com, October 23, 2013(Accessed 15/02/2022)

[177] Katsina Mukhtar, 'A contextual analysis of party system formation in Nigeria, 1960-2011' (2013) 21 (2) *Intellectual Discourse* 221.

deliberately to restrict the number of parties in the country.[178] Ujo, in his work on Nigerian political parties, noted that, in registering parties, priority was placed on associations with more practical solutions to the country's political and socio-economic problems, rather than those with coherent ideological beliefs.[179] The basic institutional requirement of intra-party democracy was contradicted and the parties operated outside the confines of intra-party and democratic ethos.[180]

General Abdulsalam Abubakar, who led the transition government that harboured in the Fourth Republic, in describing the nature of democracy in the country then, stated that:

> …democratisation was marred by manoeuvring and manipulation of political institutions, structures, and actors… we have only succeeded in creating a defective foundation on which a solid democratic structure can neither be constructed nor sustained…[181]

These words still hold true today in Nigeria's Fourth Republic. Political institutions are still manipulated and used as vehicles for achieving regional and personal agendas. Irrespective of the extant regulatory regime on intraparty democracy, established to promote and ensure internal democracy of parties, Nigeria's

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[178] Pita Agbese, 'Party registration and the subversion of democracy in Nigeria' (1999) 27(1) *African Issues* 63

[179] Ujo Abdulhamid, *Understanding political parties in Nigeria*. (Klamidas Books, 2000) 53.

[180] Ibid

[181] Nuhu (n. 166).

internal party organisation remains muddy, with a high deficit of democracy in their political activities.

2.2.5. The Post-Independence Era (1999–today)

The Fourth Republic is sequentially the republican government of Nigeria from 1999, deriving its powers from the 1999 CFRN.[182] As could perhaps be expected, it ushered in another generation of parties, the internal structuring of which reflects, to a large extent, the defective foundation upon which its predecessors were founded. A lack of internal democracy, high level of indiscipline, 'big man' syndrome, defections, and absence of ideological bases[183] characterise the parties that emerged in the country after many years of military interregnum.

Since 1999, Nigeria has been under an electoral democratic system of government, conducting six successive general elections successfully, and handing over government from one administration to another. Though the nascent democratic process is replete with its challenges, Nigerians have, however, shown their commitment and resolve to hold onto their democratic rule as it exists outside internal party politics, believing, as the saying goes, that 'practice makes perfect'. They also understand that the worst democratic rule is better than the best military rule. With this adage, it can be claimed that Nigeria is gradually evolving democratically.

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[182] Osita Agbu, 'Sectional Interests and oppositional politics in the fourth republic' (2013) 5 (2), *The Nigeria Electoral Journal,* 26

[183] Mukhtar (n. 177).

The initial elections conducted in the present Fourth Republic were contested by only three registered parties as of 1999. These were the Alliance for Democracy (AD), the APP, and the PDP.[184] Since then, new political parties have emerged, either solitarily or through mergers and alliances to strengthen their political/electoral base. Many other parties that were not able to satisfy the requirement of the Fourth Alteration to the Constitution[185] were deregistered by the Electoral Commission.

Presently, out of a total of eighteen registered political parties in the country, two are active and viable in the sense that they are the only two parties that share the state-level governance of all 36 states in Nigeria. The APC evolved from an alliance and merger with the leading opposition party in July 2013. To form a broad-based party that represents a new phase in the democratic evolution of the country,[186] the ACN, the ANPP, part of the APGA, and part of the CPC, formed a merger that produced the APC. The PDP was the ruling party while the APC became the main opposition party. Although some scholars have posited that the formation of the APC put paid to the idea of regional and sectional political parties which fanned the flames of ethnic chauvinism and rivalries, they also aver that the crosscutting membership and support base that the APC and the PDP are enmeshed in have broken the cycle of regionally based political parties. However, Alfa and Otaida continue to insist that, notwithstanding this

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[184] Obiyan Sat, 'Political parties under the Abubakar transition program and democratic stability in Nigeria' (1999) 27(1) *African Issues* 41.

[185] Constitution (Fourth Alteration, No.9) Act, 2017. Section 225 (a),

[186] Danjibo (n. 152)

seeming understanding of the political class, the mainstream political parties in Nigeria are not institutionalised and cannot boast of a complete and sound, internal democracy.[187] If party institutionalisation, in the view of Saliu and Mohammed,[188] is the process by which parties become established, acquire value and enduring stability, and internal democracy is the method for including party members in intra-party deliberations and decision making,[189] then can these two parties be adjudged as institutionalised and/or internally democratic organisations? Alfa and Otaida, in juxtaposing the political parties with the criteria for affirming party institutionalisation (amongst which are legislative stability and leadership change, party members participating in internal polls for leadership positions, selecting party candidates in general elections and playing an active role in enhancing the under-represented groups in their organisations) then, this duo insists, the APC and the PDP fall short of institutionalised status.[190] In the same vein, Simbine thinks that if the structures of these parties are compared to the criteria of IPD,[191] they would be found wanting in both principle and practice. Essentially, within these parties, IPD is generally low, with strong power centralisation, strong/overbearing leaderships, little participation of members in

[187] Alfa and Eikojonwa (n. 154).

[188] Hassan Saliu and Abdulrasheed Muhammad, 'Growing Nigeria's Democracy through viable political Parties.' *Perspective on Nation-Building and Development in Nigeria-Political and Legal Issues* (Concept Publication 2008).

[189] Scarrow (n. 6).

[190] Alfa and Eikojonwa (n. 154).

[191] Simbine (n. 14).

the decision-making process, and selection procedures highly controlled by the leadership.[192] For Omotola:

> Despite the political parties' resolute engagement with the democratisation process in Nigeria, under the Fourth Republic, they, however, suffer from the weakness of IPD, leading to intraparty squabbles and fractionalisation.[193]

The merger that produced the APC can be traced to the challenges of IPD within the constituent parties. The breakaway of the CPC from the ANPP was linked to the insistence of Buhari on being its automatic presidential candidate. The ruling APC, in the 2019 general elections, was severally criticised for its imposition of candidates that had not passed through the party's primary elections. The damaging outcome was the cancellation of all such elections by the Supreme court at the slightest legal challenge. The emergence of many flagbearers of the party in the 2015 and 2019 general elections as consensus candidates was mired in controversies. Political scholars have observed the non-existence or dysfunctionality of ideological foundations and internal political cultures in Nigerian political parties, producing a highly manipulated electoral structure by the party leadership and its candidates in public office.[194]

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[192] Čular Goran, 'Organisational development of parties and internal party democracy in Croatia' (2004) 41(5) *Politička misao: časopis za politologiju* 28

[193] Shola Omotola, 'Opposition and the challenges of multiparty democracy' (2013) 5(2) *The Nigerian Electoral Journal* 26.

[194] Ace, *The Electoral Knowledge Network*, Primary Elections — (aceproject.org) (Accessed 12/01/21)

It is important to note that without viable, democratically managed political parties, it will be impossible to have an enduring democracy.[195] It is therefore imperative that, for Nigerian political parties to serve as strong pillars and instruments through which democracy can be cultivated and entrenched,[196] they must themselves be seen to be transparent and democratic in their internal affairs and must respect their internal rules. The principle of *Nemo dat quod non habet*, – 'one cannot naturally give what he does not have' - comes into play in this context. Furthermore, if the argument of Aldrich (i.e. that parties have a commitment to transform the political system in which they operate through democratic means[197]), holds water, then political parties in Nigeria, as institutions allegedly supportive of democratic development, must adopt internal democratic procedures in selecting capable and appealing leaders and candidates[198] to positively transform the Nigerian political system and enjoy better electoral success.

2.3. The Organisational Structure of Nigeria's Political Parties and the Implications for IPD in Nigeria

To build a clearer picture of the concept of IPD in Nigeria, it is imperative to understand the institutional and organisational structure of the country's political

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[195] Scarrow (n. 6).

[196] Ibid

[197] John Aldrich, *Why parties? The origin and transformation of political parties in America*. (University of Chicago Press, 1995).

[198] Simbine (n. 14).

parties. Political parties are registered, formal and organised institutions established and regulated both externally by the Electoral Laws and internally by their constitutions and guidelines. Political parties in Nigeria have seven levels of organisation: the Polling Unit, the Ward, the Local Government Area/Area Council, the Senatorial district, the State, the Zonal, and the National. A Party Secretariat is established and sustained at all party levels (except the Senatorial District and the Polling Unit) through the party organs. There are fourteen principal organs within Nigeria's Political Parties. Table one shows party organs, governing bodies, and members of the executive organs in Nigerian political parties.

Table 1

S/N	ORGANS	OTHER GOVERNING BODIES	MEMBERS OF ORGANS
1.	National Convention	Board of Trustees	Chairman
2.	National Executive Committee	National Caucus	Deputy Chairman
3.	National Working Committee	Zonal Caucus	Secretary
4.	Zonal Executive Committee	State Caucus	Assistant Secretary
5.	Zonal Congress		Treasurer

6.	State Congress		Financial Secretary
7.	State Executive Committee		Publicity Secretary
8.	State Working Committee		Women’s Leader
9.	Senatorial District Committee		Youth Leader
10.	Local Government Area/Area Council Congress		
11.	Local Government Area/Area Council Executive Committee		
12.	Ward Congress		
13.	Ward Executive Committee		
14.	Polling Unit		

The National Conventions and State Congresses are made up of members who are nominated by/elected according to the parties’ constitutions.

Nigeria's political parties, like all parties in democratic systems, are territorially defined institutions made up of people with varied - most times common - interests. Party members are subject to the party's authority and are united in the pursuit of the stated objectives of the party.[199] As organisations, Nigerian political parties, as stated in the 1999 CFRN (As Amended), are associations constitutionally empowered to canvass for votes for any candidate at any election or contribute to the funds of any political party or the election expenses of any candidate at an election.[200] The objectives and aims of parties in Nigeria are embodied and expressed in the parties' constitutions and, as such, the provisions of each party's constitution are deemed supreme and binding on all members and organs of the party, subject only to the provisions of the 1999 CFRN (As Amended) and any other laws for the time being in force in the Federal Republic of Nigeria.[201] Political party leaders are authorised to coordinate and direct the internal activities of the parties. Consequently, authority within the party is primarily structured by specific positions within the hierarchy of control.[202] The relationships between the members are structured in terms of the organisational authority and also influenced by the members' recognition that the party's activities are aimed at winning elections and assuming political power.[203] Political

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[199] Sandra Dawson, *Analysing Organisations* (Macmilliian, 1996) xxii

[200] Constitution of the federal Republic of Nigeria 1999 (As Amended) Section 221

[201] PDP Constitution, Article 2; All Progressive Party Constitution, Article 2

[202] Raz Joseph, 'Authority and justification.' *Philosophy & Public Affairs* (1985)14 3

[203] Morton (n. 72).

parties in Nigeria thus aspire to attain their political goals by first engaging in political activities and elections organised and executed internally.

Parties, by their own rules, are required to exhibit institutional credibility.[204] In other words, as democratic organisations, they are required to be inclusive and transparent in their internal activities in order to promote democracy internally. Institutional credibility refers to the belief in the efficacy of the party by the party faithful. The success of the party as an institution consequently depends on its universalism, objectivity, impartiality, nonpartisanship, and equal treatment of its members. Efficaciousness also requires that all stakeholders of the party should have reasonable and effective access to the relevant party policies, information, and documents within the fabric of the law. Furthermore, regular reporting of audited accounts and the current state of affairs of the party to the members and the official oversight bodies; the Independent National Electoral Commission (INEC) and Inter-Party Advisory Council (IPAC). Releasing of factual information, identifying challenges and problems encountered and decisions taken to resolve those problems as well as progress made, and organisation of regular meetings of members, are part of the process of ensuring transparency[205] and engendering

[204] Okechukwu Nwankwo, 'Political Parties and the Challenges of Democratic Federalism in Nigeria' (2005)1 (1) *American Journal of International Politics and Development Studies* 205

[205] Mohamed Conteh, *An Introduction to Election Administration for Election Managers and Tertiary Institutions in Sierra Leone*. (INEACE 2013).

trust.[206] Overall, political party credibility is a sine qua non to an internally democratic party and by extension a free and fair election. The credibility of parties equally provokes confidence and commitment of parties to the democratic process given that no successful election happens in an environment of distrust. To ensure that parties are credible and operate within their enabling laws, state and internal regulation of parties became necessary. Regulation of political parties by the state manifests in the fact that the 1999 CFRN (As Amended) has set conditions for the existence and recognition of political parties and empowered the National Assembly to legislate for the regulation of political parties.[207]

Parties in Nigeria were established by and are governed by the 1999 CFRN (As Amended) and the 2010 EA (As Amended). Parties were established, among other objectives, to secure formal representation and win governmental power by the electoral process. For example, Article 7 (iv) of the Constitution of the APC established that one aspect of the party's objectives is to sponsor eligible candidates and canvas for votes for election into all elective offices in all tiers of government.[208] Article 6.3 of the Constitution of the PDP provides (amongst other objectives) that 'the party shall contest all elections in Nigeria and shall, for that purpose, draw its support from all sections of the society'.[209] Therefore, it is

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[206] Okechukwu Nwankwo, *Institutionalizing Uncertainty in Nigeria: Electoral Administration and Legitimacy of 2015 Elections.* (Unpublished: 2020) (accessed on 10/12/2020)

[207] *INEC v Musa* (2002) (SC.228); CFRN (1999) As Amended. Section 228

[208] The Constitution of the APC (As Amended) Article 7(iv)

[209] The Constitution of the APC (As Amended)

evident that although parties are formed for some political, economic, and social objectives, the ostensible purpose of all parties in Nigeria is to win elections, while their real goal is to assume government control.[210] Consequently, parties in Nigeria are not known for, nor are memberships dependent on, the pursuit of any ideological agenda or policy programme, be it political, economic, or otherwise. Parties are formed with the objective of winning elections by every means possible to control the government machinery and serve the interests of the party elites and their funders/promoters.[211]

As political organisations with members, all bonafide members are deemed formally registered and issued a card as evidence of membership. This feature thus distinguishes them from other, more diffused social movements[212] which exist in the country. In distinguishing a political party from other associations, the Supreme Court, in the case of *INEC v Musa*,[213] stated that a political party includes any association whose activities include canvassing for votes in support of a candidate for election to a political office. In contrast, an association means any corporate or unincorporated persons who agree to act together for any common purpose, including ethnic, cultural, occupational, or

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[210] Morton (n. 72).

[211] Shola Omotola, *Nigeria* 'Parties and Political Ideology' (2009) 1(3) *Journal of Alternative perspectives in the Social Sciences* 612.

[212] Pippa Norris, *Political Parties and Democracy in Theoretical and Practical Perspective (*National Democratic Institute for International Affairs, 2005)

[213] *INEC* (n. 202)

religious purposes. This definition of parties is in line with the constitutional definition of parties in Nigeria.

Under the 1999 CFRN (As Amended), a political party is an organisation whose activities include but are not limited to canvassing votes in support of a candidate for election.[214] The same constitution further demands the following conditions for registration as a political party in Nigeria:

1) Compulsory registration of its promoters/national officers' names and addresses with the INEC, Nigeria’s electoral body;
2) The openness of its membership to every adult citizen, irrespective of ethnic group, circumstances of birth, sex, religion, or social class;[215]
3) Registration of the party's constitution with the INEC.

It is evident from the preceding comments that Nigeria’s political parties are a creation of law whose existence and operations are strictly regulated by law. The Nigerian Constitution empowers the INEC - through the EA - to regulate and monitor the activities of parties.[216] The EA equally empowers the INEC to deregister parties for failure to win a presidential or governorship election or a seat in the national or state assembly election.[217] Membership of a party has also been defined as being a person who is registered as a member, has agreed to

[214] The 1999 CFRN (As Amended) Section 229

[215] Ibid, Section 222

[216] Electoral Act 2010 (As Amended) Section 86; CFRN 1999, Section 228

[217] Electoral Act 2010 (As Amended)

abide by the rules and regulations, pay his/her dues, and has been issued with a membership card as evidence of membership.

Parties in Nigeria elect and/or nominate their party officials through the Ward, Local Government, and State Congress periodically or every four years. State governorship candidates are elected at the state congress level. Political parties' national executives and parties' presidential flag bearers are elected at the different parties' national conventions every election year. The State, Local Government Area (LGA), and Ward Party executives are nominated/elected at the respective congress of the states, LGAs, or Ward levels. To this end, the 1999 CFRN (As Amended) states that:

> the constitution and rules of any political party shall provide for periodical elections, on a democratic basis, of the principal officers and members of the Executive Committee or other governing body.[218]

The Constitution further states that the election of the officers or members of the Executive Committee of any party should be deemed to be 'periodical' only if it occurs at regular intervals not exceeding four years.[219] In compliance with the provision of the Nigerian Constitution, the parties, in their own constitutions, equally provide for the tenure of office of party officials. The constitution of the PDP provides that all National, Zonal, State, Local Government Area, and Ward Officers of the party shall hold office for a term of four years and shall be eligible for re-election at the National Convention or appropriate Congress for a further

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[218] 1999 CFRN, Section 223 (1) (a)

[219] 1999 CFRN, Section 223 (2) (a)

term of four years and no more.[220] A similar provision[221] found in the constitution of the APC Party provides inter alia that all officers of the Party elected or appointed into the Party's organs shall serve in such organs for four (4) years and shall be eligible for re-election or re-appointment for another period of four (4) years only. Furthermore, the EA,[222] in prescribing that parties adopt either direct or indirect primaries in the nomination of candidates for election, demands explicitly that a party that adopts the system of indirect primaries shall stipulate in its constitution the rules and procedures for the democratic election of delegates to vote at the convention or congress at which the candidates shall be elected.[223]

The aforementioned provisions in Nigeria's national and party constitutions and the EA provide the constitutional and legal basis for the internal democracy of political parties. Party officials are elected or appointed for a minimum period of four years and a maximum period of eight years. This follows the democratic tenure of elected political office holders such as the President of Nigeria and state governors.[224] In this context, the law intends to restrict individuals from perpetuating themselves in office for more than eight years, such as is obtainable in some alleged democracies of the world.[225] Yet, over the years, it has been observed from the avalanche of cases decided in the courts that these

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[220] PDP constitution, Article 14(1)

[221] PDP constitution, Article 17(i)

[222] Electoral Act 2010 (As Amended), Section 87 (1) – (7)

[223] Electoral Act 2010 (As Amended), Section 87(7)

[224] Electoral Act 2010 (As Amended), Sections, 135(2), 137(1)(b), 180(2) and 182(2)

[225] In Uganda, President Yoweri Museveni has been in power for 35 years.

constitutional requirements for the democratic election of party officers are not adhered to by parties. Party stalwarts/chiefs have been observed to single-handedly appoint people to the party's executive committee based on personal influences, and without due process. This is also seen in the nomination of party candidates for elective posts in the country.

Structurally, Nigerian political parties have a top-down organisational structure, with centralised authority and decision-making powers vested in specific positions within the hierarchy of control.[226] However**,** the relationship between party members is structured in terms of organisational authority and is also shaped by an awareness that party activities are aimed at the attainment of winning democratic elections,[227] and, as such, taking over government control. Political parties in Nigeria are hierarchically organised from National, State, Local Government, Ward, and Polling Unit levels.

This mechanical structure of Nigerian parties naturally impedes democracy within the organisation. When centralised, non-inclusive decision-making powers and authority exist in any institutional structure, such an institution naturally does not practice democracy in its internal operations and management. The majority of the members of the parties are alienated, excluded, and not consulted in the deliberations and decision-making process of the party. Awofeso et al., in their work[228] on consolidating democracy in Nigeria, noted that most

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[226] Nowell-Smith (n. 202).

[227] Ibid

[228] Olu Awofeso et al, 'The effect of intra-party conflict management mechanism on democratic consolidation in Nigeria's fourth republic' (2017) 7 (7) *Developing Country Studies* 96.

political parties in Nigeria are autocratic and oligarchic in their organisational structures. They argued that for the parties' hierarchy, conformity is preferred to a critical debate of issues and is enforced through both covert and overt pressure, including sanctioning of members either by suspension or expulsion from the party. The autocratic nature of parties in Nigeria is accountable for the high incidences of factions within the party structure, defections and cross-carpeting of members from one party to another in a bid to realise political aspirations currently stifled by party oligarchs. The proliferation of electoral disputes in Nigerian courts, bordering on internal party conflicts, is an indictment that internal democracy within parties in the country is only on paper and more of a lip service than a substantive practice. Since party politics is an essential element of electoral democracy, the nature of politics in a democracy depends, therefore, to a great extent, on the existing institutions and drivers of the political system.[229] Apparently, there are established institutions for the democratic process; however, the major challenge is adherence to the demands of these institutions and obedience to the regulatory framework of party politics.

2.4. The Socio-Political Context of IPD in Nigeria

2.4.1. Structural Dysfunctionality

Political parties in Nigeria suffer a vicarious dysfunctionality that flows from the

[229] Michael Omilusi, 'The nuances and nuisances of party defection in Nigeria's fourth republic' (2019) 3 (4) *International Journal of Multidisciplinary Academic Research* 56.

dysfunctionality of the Nigerian state and its political and legal order.[230] For this reason, parties are structured to be extensions of the government in power or personal properties/fiefdoms, depending on the founders, financiers, and godfathers. To this extent, IPD in Nigerian parties is but a phantasm. This lawlessness of parties is further aggravated by the country's multi-party system, whereby parties are instituted and structured along primordial and selfish interests and against the promotion of the national interest.[231] Most often, the membership of these parties is structured to revolve around the elites, friends, and/or family members of the politicians in power. The outcome of an unresolved internal conflict is the emergence of multiple factions within the same party. The collapse of attempts to resolve internal disputes amicably ultimately results in the defection of members to other parties, where they trade their membership for personal self-aggrandisement. Politicians invest their resources and exert their influence to advance personal interests. Gaining political appointments/elective posts becomes the outcome of tradeoffs and bargains between different power brokers and actors in the system.[232]

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[230] Onwe Onyemachi, 'The Challenge Of Internal Democracy In Nigerian Political Parties', *The Guardian* (7th February 2015), (Accessed 30/09/2019)

[231] John Ayoade, 'Godfather politics in Nigeria' in Victor A. Adetula (ed), *Money and Politics in Nigeria* (Petra Digital Press 2008); Augustine Ikelegbe, 'Political Parties and Violence' in Olu Obafemi, Sam Egwu, Okechukwu Ibeanu & Jibrin Ibrahim (eds), *Political Parties and Democracy in Nigeria*. (NIPSS, 2014).

[232] Awofeso et al (n. 228)

2.4.2. Ethnicity and IPD in Nigeria

Edmund Burke, some 250 years ago, conceived of political parties as bodies that exist to serve national and not some sectional, narrow or parochial interests.[233] However, parties in Nigeria have, over time, degenerated into machinery or instruments for achieving personal, sectional and political goals, rather than an organ of a democratic system wherein political ideas, policies, discussions, and programmes are developed and implemented.[234] Danjibo and Ashindorbe[235] noted that parties' were ethnically and regionally formed in Nigeria, hence their description of parties as 'ethnic protagonists'. The promotion of an ethnic agenda at the expense of a national agenda by political parties in Nigeria has instigated an apparent under-development of the institutional capabilities of the political parties, which in turn has provoked problems that render the parties weak structurally.[236] Also, party structures are often hijacked by incumbent executives and made into extensions of the government in power. Opposition voices are silenced within the party, and hence it is difficult to challenge the decisions of incumbents, especially in matters of candidate selection and election of party officials. Political positions which are neither provided for in the national

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[233] Cited in Emmanuel Ojo, 'Party Primaries and Candidate Selection in Nigeria, 1999-2009' (2019) 3(1) *Polac Historical Review* 393.

[234] Infra Section 2.2.2. 'Post-Independence Era' (1960-1983)

[235] Danjibo and Ashindorbe (n. 152).

[236] Charles Alfred and Goodnews Osah, '2019 General Elections: Need for Human and Institutional Capacity Development for Political Parties' (2018) 9(2) *Covenant Journal of Business and Social Sciences*,1

constitution or party constitutions, such as ‘Party National Leader’, are entrenched into the party structure.[237] The electoral value of these party officials during primaries makes the control of party structure at all levels a treasured possession in the political arsenal of political leaders.[238]

2.4.3. Godfatherism and Personality Cult

Political powers in Nigeria are often used and misused by the elite class,[239] popularly known as the ‘godfathers’. Godfathers have been described as rich power brokers who have the power to determine who gets nominated for an elective post within a party and who wins elections in a state.[240] Scholars have described godfatherism as the practice of political office seekers getting connected to an individual who is believed to have the ability to deliver a desired outcome in an electoral contest.[241] The concept of godfatherism is not new in the history of Nigerian politics. Indeed, it can be traced back to the 1950s, with the nationalist activities championed by the educated elites who were at the forefront

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[237] Bola Ahmed Tinubu assumed the role National Leader of APC, an unknown organ of the party.

[238] Onyemachi (n. 230).

[239] Vilfredo Pareto, *The mind and society*, (1935)2 Рипол Классик; Gaetano Mosca, ‘*The ruling class’*, *Social Stratification*. (Routledge, 2018) 276; James Meisel, *The myth of the ruling class: Gaetano Mosca and the ‘Elite’,* (Ann Arbor 1962); Karl Marx and Friedrich Engels, *‘Manifesto of the Communist Party’ Social Theory Re-Wired*. (Routledge, 2016) 136.

[240] Jibrim Ibrahim, 'The rise of Nigeria's godfathers' (BBC News, 10 November, 2003) http: llnews.bbc.co.uk/2/hi/africal3 156540.stm (accessed 06/07/2022)

[241] Ishaku Lere, Victoria Jatau, and Jonathan Badung. ‘Godfatherism in the Politics of Nigeria: An Exposé.’(2014)3 (2) *AFRREV IJAH: An International Journal of Arts and Humanities*. 29,45.

of Nigeria's struggle for independence.[242] These were the political leaders of the ethnic/regional political groups that emerged in the 1950s and 1960s. Among the political godfathers of that era were the then Sardauna of Sokoto, Sir Ahmadu Bello, who led the NPC, Dr Nnamdi Azikiwe, leader of the NCNC and Chief Obafemi Awolowo, who led the AG. These few men determined who occupied political offices in the geo-political regions they led. According to Albert, they were 'clearing houses' for political opportunities.[243] It can be said that the role of the First Republic godfathers was to show the way for other Nigerians in a colonial system.[244] Godfatherism then was a noble venture that inspired political mentorship.[245] The First Republic godfathers cultivated godsons whom they believed would build on their legacies. For Ujo, the principal motivation of mentoring godsons was not to use them as surrogates to promote parochial interest but to promote the developmental aspirations of the people.[246] However, this is no longer the case with the country's more recent political godfathers. The current breed of political godfathers in Nigeria use their financial influence and power to manipulate loyalists and restrict political participation by dictating who participates in Nigerian politics.[247] The influence of these godfathers has been

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[242] James Coleman,' Nigeria: Background to Nationalism' cited in Albert Isaac, 'Explaining 'godfatherism' in Nigerian Politics'(2005) 9 (2) *African Sociological Review* 105.

[243] Isaac (n. 242).

[244] Ibid.

[245] Ishaku, Jatau and Badung (n. 241).

[246] Ujo Abdulhamid, 'First generation politicians started godfatherism', (2004). http://news.Biafaraniaworld.com/archier2004/Aug/27 (Accessed 06/07/2022)

[247] Ibid

seen to be significant both within the parties wherein they operate and within the entire political constituency, especially where the particular party they belong to is in power.[248]

Godfather-godson conflict is not new in Nigerian politics. For example, in 1999, under the PDP, Chris Uba, a self-acclaimed godfather in Nigeria's Fourth Republic, once boasted that he was the greatest godfather in Nigeria because he single-handedly sponsored every politician in Anambra State. Among the politicians he sponsored was Dr Chris Ngige, a medical practitioner, whom he thought he could manipulate. Conflict between the two broke out when Uba insisted on nominating all the commissioners, special advisers and personal assistants. Another source of conflict between Ngige and Uba was on how state funds should be allocated and spent. The conflicts culminated in the abduction of Ngige, a sitting Governor, while his 'resignation from office' was read by the state house of assembly. On his release from his abductors, Ngige claimed that he was forced to write the resignation letter under duress before he became the governor.[249]

Kwara State is popularly known as Saraki Dynasty because the phenomenon of godfatherism has become so pronounced and deeply rooted in the political system that it appears to be constitutional. Dr. Olusola Saraki, a wealthy and influential politician, took advantage of the poverty of the people by providing basic social and economic infrastructures that were lacking in the state. He exploited the people and fostered godsons and ultimately decided who would

[248] Ibid

[249] Ibid

occupy what positions in state politics. Similarly, in Lagos State and in fact most of the western states, Senator Ahmed Tinubu of APC assumes the position of a regional godfather. Tinubu has been said to have single-handedly sponsored all governors and all elective positions in western Nigeria as well as determining who occupies these posts.

Though the godfatherism syndrome can be seen in other world democracies (as it is common for powerful and influential people in society to support and sponsor electoral candidates), in the Nigerian system the godfathers have turned politics into a money-making business under which elections are rigged.[250] Godfatherism in Nigeria can therefore be said to be detrimental to the promotion of an internally democratic party. It is also derogatory to the principle of democracy and freedom in a society that claims to practice democracy, as Nigeria does. Overall, the effect of godfatherism in Nigeria's political system can be evidenced in the maladministration and unaccountability of the proteges of the godfathers in power. Holders of political office are robbed of their independence and dignity when they become surrogates of their godfathers. Godfatherism also breeds violence, which often leads to breakdown of law and order in society.[251]

2.5. Ideological and Policy Issues Affecting IPD in Nigerian Parties

Ideological and policy differences are rarely a challenge to IPD in Nigeria. For reasons of political clientelism, parties are content with the struggle to win state

[250] Ibid

[251] Ibid

power to authoritatively allocate societal values.[252] For Nigerian political parties, state capture comes first; ideological and policy directions are low down the list of priorities. Even the fundamental objectives and directive principles of state policy enshrined in Chapter 2 of the 1999 CFRN (As Amended),[253] which serves as a beacon of policy and governance standards for all political parties, are flagrantly ignored in policy making and execution of the major political parties that have governed Nigeria since 1999. This is particularly so for economic objectives/citizens' rights.[254] It is worth noting that the ruling APC party, which has 'progress' as a mantra (meaning that it ostensibly has a progressive policy direction), has succeeded in throwing more citizens into poverty than all previous governments since independence.[255] In the course of this research, therefore, it can honestly be stated that no intra-party litigation or dispute regarding policy differences in major political parties in Nigeria was found that might have been worth commenting on.

Rather than setting up Nigeria as an ideal type democracy with respect to IPD, my position in this thesis aligns with Onyishi's[256] position that there is in theory – in the form of a wealth of provisions in party constitutions, rules and

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[252] David Easton, 'A systems analysis of political life' *Systems Research for Behavioral Science systems Research* (Routledge, 2017) 428, 436; For a classic definition of politics, see Harold Lasswell, *Politics: Who gets what, when, how.* (Pickle Partners Publishing, 2018).

[253] 1999 CFRN, Section 16.

[254] Ibid

[255] World Bank Poverty Index in Nigeria 1960-2019

[256] Onyishi (n. 39).

regulations, the national constitution, statutes and laws – enough on paper to secure an effective IPD and good governance at party and national levels. However, in reality, clientele politics, fuelled by the pecuniary interests of politicians, means that the party laws, rules and regulations are flagrantly abused and ignored, escalating poor governance and mass poverty and misery of the citizenry. The prevailing poverty of policy and governance has further distanced citizens from the major political parties and right now the yearning for a change of major parties and governance standards has never been stronger.

In policy and ideological terms, the major political parties that have held power since 1999 – the PDP and the APC - have promised in their manifestos[257] during successive presidential campaigns to restructure Nigeria, which is but a euphemism for fiscal federalism. However, the complexity of ethnic politics prevented any party in government from fulfilling this electoral promise and the sharing rather than the baking of the national cake has continued apace.

Fiscal federalism would have meant that revenue accruing from states would be retained in the revenue generating states and a percentage would be paid to the central/federal government. Oil is the dominant revenue earner of Nigeria and is derived mainly from the South East and Southern Regions. Yet fiscal federalism remains opposed by the core Northern Regions and progress has not been made until recently when the Rivers State government won a landmark court decision to keep revenue accruing to them from VAT.[258]

[257] APC Manifesto, https://www.allprogressivescongress.org/ (Accessed 29/06/2022)

[258] Bridget Edokwe, 'Attorney General of Rivers State v. FIRS & AGF'(BarristerNG.com, 12 September 2021) - BarristerNG.com (Accessed 29 June 2022)

The restructuring of Nigeria in policy terms further suggests support for the state police would be forthcoming as it is a popular policy that would make the country safer, in the face of growing insecurity. However, the conservative northern faction of the ruling APC and the party that dominates the security architecture and bureaucracy of Nigeria from 1999 to 2015 (i.e., the PDP), did not support this policy and, therefore, such reforms have remained a work in progress.

In fact, numerous political analysts have stated that Nigerian parties lack political ideologies.[259] Parties are essentially not issue-based and are devoid of institutional structures, as seen in some Western jurisdictions. Consequently, the two major parties are mere conglomerates that do not share a common view but congregate for opportunistic and self-serving purposes.[260] For Egboh and Anichie, Nigerian parties are platforms to achieve hegemonic power for elites, propelling their anti-democratic structure and practices, such as the imposition of candidates and pre-determined outcomes of party primaries.[261] This structure does not allow for internal democratic principles; instead, it encourages political authoritarianism, which in turn promotes the privatisation of state power. Omodia[262] argued that the authoritarianism of Nigerian political parties is a

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[259] Simbine (n 14); Awofeso et al. (n 228).

[260] Egboh and Aniche *The state, political parties and crisis of internal democracy in Nigeria: A study of Peoples Democratic Party (PDP).* (2012) 4 (1) Journal of Nigerian Government and Politics 24. https://ssrn.com/abstract=2659393 (Accessed 25th July 2019)

[261] Simbine, (n. 14).

[262] Stephen Omodia, 'Party Politics and The Challenge of Political Representation in Nigeria' (2011) 2 (22), *International Journal of Business and Social Science.*

representation of the autocratic nature of the Nigerian state, which has been militarised in the image of prolonged military regimes.[263] In contrast to democratic rule, which liberalises political space, the Nigerian state has remained predatory, repressive, and authoritarian.[264] Despite the constitutional and statutory provisions[265] that seek to entrench democracy within party affairs, political parties still lack internal democracy in their structures and processes. Political parties are thus characterised by a dearth of ideological clarity and a cult of personality, while their activities are characterised by violence, brigandage, and repression of the will of the party members. The impact of these characteristics on parties' behaviour undermines the electoral process and electoral outcomes, which are consistently challenged in the courts and most often adjudged undemocratic by the country's judiciary and/or roundly condemned by the international community.

2.6. Conclusion

Following from the above analysis, it is therefore safe to conclude that;

1. Political parties in Nigeria from pre- to post-independence have been ethnically and regionally polarised. Most Nigerian parties have been/are founded by influential individuals or groups who promote both their personal and ethnic agendas. The socio-political context within which parties operate has, over time, produced structurally dysfunctional parties

[263] See Michael Omilusi, 'An Assessment of Political Parties and Democratic Consolidation in Nigeria's Fourth Republic' (2016) 4 (1) *European Journal of Research in Social Sciences.*

[264] Ibid

[265] 1999 CFRN (As Amended), Section 223, Electoral Act, Section 87

that are unable to serve the national interests of the country in all areas of life.

2. The structure of Nigeria's political parties in the Fourth Republic is robust enough to guarantee a resilient IPD on paper; however, it should be noted that some decisions of the parties follow a clandestine structure outside of their known formal structures. The decisions of the parties in such informal fora are the greatest challenge to IPD. For instance, it is at such informal meetings that candidates for elections are determined and supplanted. To illustrate, Bola Ahmed Tinubu assumed the role of National Leader of the APC, an unknown position in the party. At the time, Tinubu was stopped by Governor El Rufia of Kaduna State from attending a meeting of APC National Executive Committee after being reminded that the National Leader was an unknown position in the party's constitution.[266]

3. Ideological and policy stances and differences rarely take place within parties for fear of losing state patronage.

4. Political parties in Nigeria since 1999 have failed to articulate and pursue clear and consistent public policies to end mass misery and stand out as positive examples to the citizenry and to other parties.

[266] El-Rufai kicks Tinubu out of APC NEC meeting, (The Nigerian Voice, 31 August, 2018) https://www.thenigerianvoice.com (Accessed 29/06/2022)

CHAPTER THREE

LEGAL FRAMEWORK FOR IPD IN NIGERIA

3.1 Introduction

The aim of this chapter is to examine the institutional framework for IPD in Nigerian parties. Specifically, it will analyse the provisions of the 1999 CFRN (As Amended) and the constitutions of APC and PDP on the regulation of internal party democracy. Drawing on institutional theory, the chapter will further explore the nature and role of the party constitution (as an institution) in structuring the actions and decisions of political parties. The analysis will aid our understanding of the principles and policies upon which parties' decisions are made. It will also establish whether there are adequate regulations on IPD in Nigeria and possibly highlight reasons for why breaches of some party rules are made by the parties. The chapter contributes to the central argument of the thesis by laying a foundation for additional examination in the ensuing chapters which consider the legal basis for electoral reforms in Nigeria.

It is generally accepted that law gives social order and, by extension, political order in any society. An organised political system of a nation is dependent on the existing social order, often described as utilitarianism and classical political economy.[267] This social order is made possible by the existence of law because the law, along with other institutions, structures actions, shapes preferences, and is itself affected by

[267] Atiyah and Summers (n. 119).

actions.[268] Furthermore, the theory of private interest and rational choice theory agree that people not only act in their rational best interest, but are essentially ruled by self-interest and guided by judgments about the effectual means to achieve their personal ambitions. The theories suggest that the paramount determinant of human action is internal rather than external. In essence, what influences how an individual act are within the individual and not in the groups to which he or she belongs. Consequently, these theories have been affirmed as the foundation for the conception of social order. It has been observed over time by rational choice proponents that the motivating factors for the conduct and actions of the political class are self-centred interests, pursued for private ends rather than party goals or national goals. As anywhere, then, state regulation of parties in Nigeria's legal system, through laws, therefore, serves as a check on the activities of parties and constrains the extent to which political elites use parties as vehicles for pursuing personal goals. Electoral laws/regulations also act as instruments of social order that aim to democratise internal party activities through the regulation of political organisations and the relationship between political parties.

According to Morton, law is a social fact, and, 'normative systems are existing systems because of their impact on the behaviour of individuals, because of their role in the organisation of life'.[269] Furthermore, if a legal system is a set of rules,[270] it can rightly be stated that any legal system wherein the law exists, without constant adherence to the law and a corresponding enforcement mechanism, could best be said

[268] Julia Black, 'New institutionalism and naturalism in socio-legal analysis: Institutionalist approaches to regulatory decision making' (1997)19 (1) *Law & Policy* 51.

[269] Morton (n. 72).

[270] Ibid

to be an ad hoc system of discretionary decision making rather than a system of law.[271] Institutional theory assumes that functional regulations in society are attached to and constitute part of particular forms of life.[272] Moreover, legal institutionalism conceives the law as a kind of institution,[273] and thus the law is described as an 'institutionalised system'. It is therefore difficult to understand legal norms without understanding why they are created and how they are applied.

Nigeria's electoral law (i.e. its legal system) is thus a constitutive part of the Nigerian society defined in political terms.[274] It must also be stated that, much as the institutions of any country, Nigeria's legal institutions are shaped by its history and culture, which is what distinguishes their functions and structures from the institutions of other polities.[275] Gurvitch, in his theory on 'normative fact', postulated that the concept of law was founded on the fact of union or 'associational community' (i.e. a normative fact) and not on the will of the society.[276] Hauriou, in his earlier work, opposed the identification of law with enacted law, noting that laws are products of history and further averring that institutions, being both social phenomena and legal structure, anticipate and produce law, which is either institution-persons (such as

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[271] Roberto Mangabeira, *Law in Modern Society. Toward a Criticism of Social Theory*. (The Free Press 1976).

[272] Morton (n. 72).

[273] Pintore Anna, 'Institutionalism in law' (1998) In: Routledge Encyclopaedia of Philosophy, Taylor and Francis,<https://www.rep.routledge.com/articles/thematic/institutionalism-in-law/v-1>. doi:10.4324/9780415249126-T018-1 (viewed 19 November 2022)

[274] Morton (n. 72).

[275] Morton (n. 72).

[276] Georges Gurvitch, *Sociology of Law* (Routledge and Kegan Paul, 1947)

political parties) or institution-things (such as the electoral laws).[277] Following the work of Hauriou, Renard identified the importance of institutions as the means by which internal party activities are consolidated in pursuit of the common objectives; of winning elections and assuming state powers.[278] The existing electoral law in Nigeria, being an institution-thing, is generic in nature because it applies to and regulates both the internal and external activities of registered political parties within the country.

In identifying generality as a basic nature of rules, Atiyah and Summers described rules (and regulations) as norms that apply to a class of cases. For them, generality must relate to a specific group of persons, activities, and circumstances.[279] To this end, the external regulation of parties is seen as generic in that it applies to regulate all activities of registered political parties operating within a state.

Furthermore, following the argument of Atiyah and Summers in their comparative work,[280] statute law contributes to a more significant (and formal) role than case laws and non-enacted laws in any legal system. Following this argument, the Supreme court, in the case of *Akwe Doma v INEC*,[281] reiterated that the EA is the principal law that regulates party activities, in so far as its provisions are not inconsistent with the 1999 CFRN (As Amended). The court held that a non-compliance with the EA vitiates an

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[277] Maurice Hauriou, *Principles of public law for the use of undergraduate (3rd year) and PhD students in political science* (Bookshop of the Société du Recueil Sirey, 1916).

[278] Morton (n. 72).

[279] Atiyah and Summers (n. 119).

[280] Ibid

[281] *Akwe Doma v INEC* (2012) SC 96803

election result. Thus, the constitutions of political parties, precedents, and other non-enacted laws on parties and elections are subject to the provisions of the EA in all matters patterning to political party activities and electoral matters in Nigeria.

3.2. Sources of Nigerian Party Law in the Fourth Republic

Generally, political party laws have been defined as 'the total body of law that affects political parties.'[282] In the Nigerian legal system, the corpus of party law is formed basically from and through the 1999 CFRN, the electoral statute i.e., the 2010 EA (As Amended), the INEC (Establishment) Act, and the constitutions of the political parties. Furthermore, since 1999, when Nigeria returned to civil rule and the first set of general elections were conducted, a growing body of case law has emerged which embodies the principles and rules of law, pronounced upon by the Apex court in Nigeria, which governs specific legal situations that emerge in resolving intra- and inter-party disputes. These principles and rulings also contribute to the regulation of political parties. (For a deeper discussion and understanding of the role and impact of the courts on IPD in Nigeria, this source of party law will be discussed in Chapter 5).

3.2.1. The 1999 Constitution of the Federal Republic of Nigeria

Nigeria's political party laws regulate certain aspects of political parties, including the legal status and definition of parties, internal organisational structure, methods of candidate selection, parties' behaviour and activities, party finances, and a framework of external monitoring and sanctions to ensure that parties obey the rules and are

[282] Müller Wolfgang and Ulrich Sieberer, *Handbook of Party Politics*. (Sage, 2006) 189, 435.

penalised if found in breach of any of these rules.[283] These instruments constitute the regulatory framework for political parties and shape how Nigeria's party system adheres to IPD. The 1999 CFRN, the 2010 EA, and case laws constitute external regulation, while party constitutions and guidelines constitute internal party regulatory instruments. These laws thus are applied generally, without exception, in regulating the organisation and activities of political parties in the country. Hitherto, all issues relating to electoral processes, such as the formation of political parties and their constitutions, political parties' organisation and activities,[284] electoral institutions,[285]qualification for elective posts,[286] the judiciary,[287] and election dispute resolution mechanisms, all have their origins in the Nigerian Constitution.

The major focus of this section, therefore, is to analyse the provisions of 1999 CFRN (As Amended) as it relates to parties and their internal activities. The 1999 CFRN (As Amended) is the grounding norm of Nigeria's legal system and the constitutional basis upon which laws are established. The electoral laws and political parties' constitutions/laws thus derive their legality and applicability from the 1999 CFRN (As Amended). Being the grounding norm, the 1999 CFRN (As Amended) is the supreme and highest law of the land. Its provisions have binding force on all authorities and persons throughout the Federal Republic of Nigeria.[288] The supremacy of the

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[283] Richard Katz, 'The problem of candidate selection and models of party democracy' (2001) 7(3) *Party politics* 277.

[284] 1999 CFRN (As Amended) Section 221 -229

[285] 1999 CFRN (As Amended), Section78 & 153

[286] 1999 CFRN (As Amended), Section 65-66, s. 153

[287] 1999 CFRN (As Amended) Section 6, Sections 230-259

[288] 1999 CFRN (As Amended) Section 1(1)

Constitution is explicitly provided for under chapter one of the constitution. As it declares: 'The Constitution is supreme, and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria'. It further states that:

> The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution, … If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.[289]

This section in effect provides for the supremacy of the Constitution over the 2010 EA and any other extant laws, statutes, and case laws regulating parties' organisation and activities. Any provision of the 2010 EA or court judgment that contradicts a Constitutional provision, as it relates to internal party affairs, is thus automatically null and void. The Nigerian constitution is therefore the fundamental law that constitutes the underlying basis for the Nigerian legal system, and from which flows all powers that are exercised in governance.

[289] 1999 CFRN (As Amended) Section 1 (3); *National Union of Electricity Employees v Bureau of Public Enterprise* (2012) SC 61161.

The Supreme Court of Nigeria, in upholding this provision of the Constitution, held in *Olawoyin v Commissioner of Police*[290] and *Katagun v MEK Roberts*[291], that all existing laws in Nigeria have effect with such modifications as may be necessary to

bring the law into conformity with the Constitution. In the case of *Peoples Democratic Party (PDP) v Congress for Progressive Change (CPC)& Ors.*[292]

In *Sikiru Bakere v Lagos State Civil Service Commission*,[293] the court, in its ruling, stated that Nigeria operates under a written constitution and any statute which conflicts with any of the provisions of the constitution is void.

Consequently, it is established from the aforementioned Constitutional provisions and decided cases of the Supreme Court that in deciding any internal party/electoral disputes, the provisions of the Constitution take priority over the electoral laws, party laws, and any other regulating laws for political parties in Nigeria. The Constitution also states categorically that the Government of Nigeria or any part thereof shall not be governed or controlled by any person or group of persons except in accordance with the provisions of the Constitution.[294] In other words, no one can occupy elective offices at the local, state, or federal levels of government unless he or she has been elected in accordance with the provision of the Constitution or any law made in accordance with the Constitution.

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[290] *Olawoyin v Commissioner of Police* (1961) SC 11115

[291] *Katagun v MEK. Roberts* (1967) SC 54411

[292] *PDP v Congress for Progressive Change (CPC)& Ors* (2011) SC 11127

[293] *Sikiru Bakere v Lagos State Civil Service Commission* (1992) SC 04318

[294] 1999 CFRN (As Amended) Section 1 (2)

With reference to history, the legal requirement for a democratic process in the internal arrangements and structure of political parties was first seen in the German Basic Law (Grundgesetz) of 1949.[295] Article 21 of the Basic Law provides that: 'The political parties' internal organisation must conform to democratic principles... Parties must publicly account for their assets and the sources and use of their funds as well as assets.[296] The same law further declared unconstitutional any party whose aims and behaviour may destroy or impair the free democratic basic order. The basic law further conferred the Federal Constitutional Court with the requisite jurisdiction, by law, to hear and decide questions of unconstitutionality by parties deemed to be in breach of these provisions. Consequently, this provided the constitutional basis for the ban of the Communist Party, whose activities were deemed antithetical to the democratic constitutional order.[297]

In the same spirit of entrenching democratic practices within political parties in Nigeria, the 1999 CFRN (As Amended), under Sections 221 to 229, provides for the regulation of political parties and their activities. It also provides for certain qualifications that persons vying for political offices in Nigeria must meet to be eligible to participate in elections to those offices.[298] The 1999 CFRN (As Amended) empowered the National Assembly to make laws for the regulation of political parties in Nigeria.[299] In particular,

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[295] Ingrid Van Biezen and Daniela Piccio, 'Shaping intra-party democracy: On the legal regulation of internal party organisations.' *The challenges of intra-party democracy* (OUP, 2013) 27

[296] Ibid.

[297] Donald Kommers, *The constitutional jurisprudence of the Federal Republic of Germany* (DUP, 1997) 217.

[298] 1999 CFRN (As Amended) Sections 65, 106,131, 177.

[299] 1999 CFRN (As Amended) Section 228

to provide for enforcement of the law, through the prescription of punishment for contravention of any of the provisions of sections 221, 225(3), and 227 of the Constitution.[300] The Constitution, under Section 223 (1), specifically requires that party constitutions provide for the periodic election, on a democratic basis, of the principal officers and members of the Executive Committee or other governing body of the party.[301]

It is worth noting that Article 21 of the German Grundgesetz, in giving the federal courts the jurisdiction to determine the constitutionality or otherwise of the activities of parties, directly gave the State the right to monitor and prohibit from political activities any political party that threatened the democratic order by breaching the rules regulating parties. The equivalent Law in Nigeria is Section 87 (9) of the 2010 EA (As Amended), which confers upon the courts (the Federal High Court, the High Court of any State or Federal Capital Territory) the right to intervene and regulate the activities of parties as they relate to their internal matters, specifically in the selection or nomination of candidates for elective positions.

Furthermore, the Constitution empowered the National Assembly to confer necessary powers on the INEC to enable effective monitoring and regulation of parties. It can thus be validly stated that a system of law that regulates parties and their internal activities, as well as an enforcement mechanism, exist in the Nigerian legal system.

The question, however, concerns adherence to these rules and regulations. It has been observed that parties in Nigeria in practice often do not abide by the extant rules that govern their internal activities requiring them to abide by democratic

[300] Ibid.

[301] 1999 CFRN (As Amended) Section 223 (1)

principles; that is where the problem lies. This work will attempt to unearth the salient reasons for non-adherence and/or breach of the electoral laws by Nigeria’s political parties in this regard.

An institutionalist analysis of law posits that where law exists, it determines the structural role of the institutions and will be followed. Epstein avers that structuring the vote is the basic function of a political party in a modern democracy.[302] Schonfeld,[303] following the work of Epstein, reiterated that the function of parties is to offer voters a means to organise and offer a choice among competing candidates. He further argued that to perceive parties in functional terms does not necessarily ignore activities inside the party, but rather that internal activities are effective only if they influence the general performance of party roles.[304] This assertion holds in Nigerian political parties. In the recent primary elections, held before the general election of 2019, the ruling party (the APC), under the leadership of Comrade Oshiomole, disregarded the laws in choosing the parties' candidates for those elections. The candidates were handpicked by the Chairman of the party, leading to allegations of fraud and favouritism in the primaries. The outcome of the unlawful and undemocratic procedures adopted in the selection of candidates to represent the parties was a general overturn of the courts’ decisions at the slightest challenge. Most of the candidates did not qualify for the positions they contested, neither were they properly screened. Moreover, primaries were not held in most states, leading to the indiscriminate selection of candidates. For instance, shortly

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[302] Leon Epstein, *Political parties in Western democracies* (Routledge 2020)

[303] William Schonfeld, *Political parties*: ‘The functional approach and the structural alternative’ (1983) 15(4) *Comparative Politics* 477.

[304] Ibid

before the general election of March 2019, the Federal High Court in Abuja had, on February 11th, 2019, in the suit *John Odey v APC,*[305] ordered the INEC to delist all the names of the APC's candidates in Cross River state from the 2019 election for non-compliance of the party with its own Constitution and guidelines in the conduct of primary elections to nominate candidates.[306] The names were subsequently removed from the ballot papers. Most of the elections were declared null and void due to this reason when the cases were heard by the courts. The internal activities of the APC evidently impacted negatively on the general performance of the party's role in a democratic Nigeria.

Furthermore, parties have been conceived as structures and settings in which activities take place[307]. Consequently, the 1999 CFRN (As Amended) describes the structural roles of parties in Nigeria as canvassing for votes for candidates at elections, contributing to the funds of political parties,[308] organising and conducting periodic elections on a democratic basis, (of the principal officers and members of other governing body of the party),[309]as well as ensuring that the federal character of Nigeria is reflected in the composition of the Executive Committee or other governing body of the party.[310] It follows that in the determination of this structural role (of parties), the

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[305] *John Odey v APC* FHC/CA/CS/73/2018

[306] John Nwachukwu, 'Nigeria State elections: Court sacks all APC candidates in Cross River', *Daily Post* (Lagos, 6 March 2019) https://dailypost.ng (Accessed 3/02/21)

[307] Richard Katz and Peter Mair, 'Changing models of party organisation and party democracy: the emergence of the cartel party' (1995) 1 (1) *Party politics* 5.

[308] 1999 CFRN (As Amended), Section 221,

[309] 1999 CFRN (As Amended), Section 223 (1)(a)

[310] 1999 CFRN (As Amended), Section 223 (1)(b)

courts and lawmakers are bound by these provisions. All internal disputes emanating from the internal affairs of parties, as well as legal interpretations of all laws relating to parties and their internal activities, are determined by reading from the Constitution and applying the same[311], as a substantive law without manoeuvring. The 1999 CFRN, (As Amended) also required all political parties in Nigeria to register a copy of its Constitution in the principal office of the INEC in such form as may be prescribed by the Commission.[312]Following the above, it can be adduced that party laws in Nigeria, as in some other democracies, explicitly direct that party members be allowed to participate in the internal decision-making procedures; however, the law leaves the internal selection and decision-making procedures to be elaborated in the party's own constitutions.[313] It is thus established that every political party in Nigeria must have a party constitution which must be legally registered with the INEC. Also, the party's constitution must, among other things, provide for the democratic selection and nomination process of the organs of the party as well as candidates for elective posts. These laws not only lay the bases for the enactment of internal party statutes, they also formally establish the general principle of IPD.

Although the law that regulates parties in Nigeria prescribes that parties should adopt internal laws for the organisation of their activities, it nevertheless did not say much about the *standards* to which the structure of the party constitutions should conform. The only standard prescribed by the 1999 CFRN (As Amended) is the

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[311] Keith Dowding, 'The Compatibility of Behaviouralism, Rational Choice and New Institutionalism' (1994) 6 (1) *Journal of Theoretical Politics* 105.

[312] 1999 CFRN (As Amended), Section 222

[313] 1999 CFRN (As Amended), Section 223(1)

requirement that the programme, aims, and objectives of political parties shall conform with the provisions of Chapter two of the Constitution.[314] This provision implies that the programmes, aims, and objectives of Nigerian political parties, as stipulated in their constitutions, shall conform to the fundamental objectives and directive principles of state policy contained in Chapter two of the Constitution. These objectives and directive principles of state policy contain values and standards that govern all branches of government entrusted with the exercise of political powers, including political, social, economic, cultural, and educational institutions, national ethics, and duties of citizens. Nigerian political parties, from this analysis, are potentially conceived as public institutions if they are to be guided by these values and standards.[315]

3.2.2. Nigerian Political Parties' Constitutions on IPD

In the Nigerian party system, the internal organisational structure of parties can be traced to the legal documents in the form of party constitutions, which provide, on a much larger and more detailed scale, the legal requirements for parties to comply with so as to be internally democratic in their procedures. To contextualise the analysis of IPD in political parties, the study will draw on the constitutions of the two major political parties in Nigeria and the two that form the case studies of this research.

Internal party law, according to Richard and Mair, [316] may, among other things:

[314] 1999 CFRN (As Amended), Section 224

[315] Enyinna Nwauche, 'Political parties, the 1999 Nigerian Constitution and the 2011 general elections.' *Constitution and laws Overseas/Law and Politics in Africa, Asia and Latin America* (2013) 407, https://www.jstor.org/stable/43239709, (Accessed on 3/1/2021)

[316] Katz and Mair (n. 307).

> regulate the internal decision-making procedures of political parties, define the powers and composition of the internal organs of the party, prescribe the internal channels of accountability, prescribe the frequency of meetings for party organs, specify admission requirements for party membership, lay down the voting and election procedures, define the rights and duties of party members and identify the incompatibility of party membership with other (public) offices or organisations…

It is worth noting that, in Nigerian politics, while party constitutions provide us with the highest degree of formal organisational expectations as regards IPD, the behaviour of parties and their decisions on internal party affairs, as well as textual analysis of speeches and party surveys, all offer additional information on the real state of affairs within the party structure.[317]

While institutional theory suggests that laws as institutions structure actions, shape preferences, and are themselves shaped by the actions of individuals and organisations,[318] many other definitions have described institutions such as party activities and as practices of social interactions[319] that are subject to the party's control. This section explores what relative role the party constitution (as an institution) plays in structuring the actions and decisions of political parties and what impact these actions have on the party constitutions (Do these actions weaken the constitutions or make

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[317] Gabriela Borz and Kenneth Janda, 'Contemporary trends in party organisation: revisiting intra-party democracy' (2020) 26 *Party Politics* 1.

[318] Black (n. 268).

[319] Scott (n. 75)

them stronger? Do the party's internal laws affect the actions and behaviour of parties or do the actions of parties affect the character and nature of these laws?)

Generally, political party members are subject to the party's control and are united in the pursuit of the declared objectives of the party as expressed in the party's constitution. Party constitutions, as institutions, thus consist of normative, cognitive, and regulative structures and activities that provide not only stability to the party's internal arrangements, but also meaning to the behaviour of parties in every democratic system.[320] Morton, in his work on the institutional theory of law,[321] argued that for parties to attain stable and coordinated pursuit of the objectives of the party as contained in the constitution, certain members of the party must be constitutionally authorised to make decisions on behalf of the party. This group of members, known as party organs, are authorised to formulate policies and programmes of the party as well as draft guidelines for the successful and smooth running of the party. In other words, they are responsible for directing and coordinating the internal activities of other members of the political party. For instance, the Constitution of the APC[322] established fourteen principal organs of the party, each with its respective composition, powers, functions, and tenures. Likewise, the Constitution of the PDP established eighteen organs of the party.[323] For institutionalism, although the structure of parties and their internal procedures and the legal power assigned to the party organs are important,

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[320] Margaret Peil, *Consensus and conflict in African societies: An introduction to sociology* (Longman, 1977).

[321] Morton (n. 72).

[322] PDP Constitution, Article 11

[323] PDP Constitution, Article 12

what is more important is the normative structure in which the party exists and that exists within the party.[324] In other words, decision processes that develop within the party structure and how decisions are made depend largely on the interaction of the institutional structure, the party members, and the party; the formal structure will shape, but not determine, decision making.

Furthermore, a normative system could be said to exist if it exerts a palpable and significant impact on the behaviour of the people it tends to control. Political parties' internal law systems exist because of their supposed impact on the behaviour of political parties and their members as well as the role they play in the organisation of parties.[325] However, in Nigeria, the existence of these institutions has not proved to positively influence the behaviour of parties generally, but only through their impact on incentives and sanctions within the party organisation.[326] For example, the Constitution of the ADC and the Constitution of the PDP provide for the discipline and sanctions of members who are found to have committed an offence against the party, including breach of any provision of the constitution.[327] However, it has been observed that certain individuals have been exempted from these sanctions because of their social status or political value, even when found to be in breach of the party constitution or to have been involved in anti-party activities.

Internal party laws thus constitute an intricate set of norms, roles, values, incentives, rewards, and sanctions that govern the relations of parties and their

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[324] Scott (n. 75)

[325] Awofeso et al. (n. 228).

[326] Dawson (n. 139).

[327] APC Constitution (2004) As Amended Article 21; PDP Constitution, (2012) As Amended, Article 20

members and processes within the parties. Party laws in this context involve more than just rewards for being a member. They generally involve positive or negative changes in outcomes that result because of members' particular actions taken within a set of working rules.[328] Gabriela and Janda[329] identified incentives as material inducements such as money, goods, government contracts, opportunities for prestige and personal power, service for the party, etc. A breach of party rules could have a negative outcome ranging from withdrawal of these incentives or denial of the party's sponsorship to an elective position to expulsion from the party, whereas subservience to party leadership and rules could have a positive outcome or reward of being sponsored by the party for an elective political post.

To ascertain the level of party compliance with the legal requirement to be internally democratic, this study carried out a qualitative analysis of the provisions of the parties' constitutions as they relate to internal democratic structure, both in terms of organisational structure and decision-making processes.

In line with the legal requirement regarding the influence of political party members in the selection of party leaders and party candidates for elective posts, which Russell and Wattenberg[330] agree are the most important functions performed by political parties, the 2014 Constitution of the APC provides for the democratic election of party executives at national conventions or congresses. It also provides for a

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[328] Dawson (n. 139).

[329] Borz and Janda (n. 317).

[330] Russel Dalton and Martin Wattenberg, (eds) *Parties without partisans: Political change in advanced industrial democracies*. (OUP, 2000); See also Stefano Bartelini and Peter Mair, 'Challenges to contemporary political parties.' *Political parties and democracy* (JUP, 2001) 327.

democratic process in the nomination of candidates for elective posts through the system of primary elections. [331] The said provision states that:

> All Party posts prescribed or implied by this Constitution shall be filled by democratically conducted elections at the respective National Convention or Congress subject, where possible, to consensus… Conduct of Primaries for Nomination of Candidates for Councillorship shall be by a direct primary election conducted at the Ward level… Nomination of Candidates for Local Government Council/Area Council Chairman, State House of Assembly, House of Representatives, Senate, Governor, President, Shall be through direct or indirect primary election to be conducted at the appropriate level.[332]

Further to the above provision, where the nomination is by indirect primaries, such indirect primaries must be by an Electoral College of delegates which has been democratically elected by members of the party from various wards.[333]

The Constitution of the PDP, on the other hand, described as democratic the character and ethics of the party.[334] It further provides for the democratic election of officers of the party and the nomination of candidates for elective posts,[335] stating that 'The National Convention, the Zonal, State, Local Government Area, and Ward Congresses shall meet, to elect the officers of the party at the various levels of the party structure as specified in this Constitution…'

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[331] APC Constitution (2004) (As Amended) Article 20

[332] APC Constitution (2004) As Amended Article 20 (i) (ii) and (iii),

[333] APC Constitution (2004) As Amended Article 20(iv)

[334] PDP Constitution (2012) As Amended Article 6.1

[335] PDP Constitution (2012) As Amended Article 16 and 17

Article 17,[336] which provides for the nomination of candidates for election to public office, further vests the National Executive Committee (NEC) of the party with the exclusive authority to regulate the procedure and formulate guidelines and regulations for the nomination of candidates for election to public offices at all levels.

Article 17.3[337] provides that in the conduct of primaries for the party's candidate for the post of President, Governor, or Senator, the primary shall be held at the National Convention, State Congress, and Senatorial Congress of the party. It can be deduced from the Constitution of the PDP that the election of party officials in the party is through the institution of National Conventions and Zonal Congresses. It should be noted that although the Constitution of the PDP prescribes the internal procedures for the election of party leadership, internal party organs, and selection of candidates, it does not specify the role that party members are to play or the rules by which the selection processes should be conducted. By specifying that all selection processes are by way of National Conventions and Zonal Congresses (by implication, indirect primaries), the PDP denies the membership of the party the legal right to choose the mode or procedure for its primary elections. The decision of the NEC or other respective organs of the party responsible for filling the vacant posts is final. The Constitution of the PDP in this regard is an omnibus law that lacks transparency and standards. However, in clear contrast to this practice, PDP *party law* notes that the policies and programmes of the party shall be determined by its membership, and *the leadership of the party shall be accountable to the party.*[338] Thus, the party – in theory - asserts the principle of

[336] PDP Constitution (2012) As Amended

[337] PDP Constitution (2012) As Amended

[338] PDP Constitution (2012) As Amended, Article 6.2

internal democracy by involving the party membership in the formulation of policies and programmes of the party and in making the party leadership accountable to the party.

It is worth noting that under both parties' constitutions, party decisions and resolutions are made by each of the parties' organs and thus by a simple majority of members present and voting at a meeting. The quorum for the meetings shall be one-third of its (the organ's) membership, except for PDP party law, which requires a two-thirds quorum of the membership drawn from at least two-thirds of the zones/states in the Federation for the Zonal and National Working Committees, respectively.[339]

It has been asserted that the legitimacy of a political party's constitution depends on the influence of its members in drafting or amending the constitution.[340] For Nigerian parties, constitutional amendments require at least a two-thirds majority of members/delegates to be present and voting at a national convention, after statutory due notice to the members, notifying them of the amendment.[341]

The institution of an internal dispute resolution system for the resolution of internal conflicts and the right of party members to appeal internal party decisions are essential mechanisms for guaranteeing internal democratic procedures within parties.[342] To this end, the Board of trustees (BOT) of the APC is empowered by its constitution to act as arbitrator and mediator in disputes and ensure the enforcement of

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[339] APC Constitution (2004) As Amended, Article 25

[340] *Faleke v INEC* (SC.648/2016)

[341] PDP Constitution (2012) As Amended, Article 26; APC Constitution, (2004) As Amended, Article 30.

[342] Scarrow (n. 7); Robin Pettit, 'Exploring variations in intra-party democracy: A comparative study of the British Labour Party and the Danish centre-left' (2012)14 (4) *The British Journal of Politics and International Relations* 630.

discipline by the Constitution of the APC.[343] The PDP's BOT only mediates in disputes between the executive and legislative arms of government at all levels, for its party members.[344] Within both political parties, complaints by members are usually heard and determined by their respective Executive Committee at the level wherein the complaint originates; thereafter, appeals from any member, aggrieved by the decision of the organs or officers of the party against him or her, shall address the complaint to a higher organ of the parties.[345] The decision of the NEC, being the highest organ to hear an appeal, becomes binding on all members and organs of the party.[346] Party members are not permitted by the party rules to resort to external dispute resolution mechanisms such as the courts to review any decision taken by the parties' NECs, even when such decisions are considered contradictory with the party's constitution or even unlawful.[347]

It can therefore be deduced from the above discussion of each party's constitution that, in Nigeria's political system, many party activities, in particular those involving party leadership and candidate selection processes, are found within the internal jurisdiction of each individual party.[348] However, the 2010 EA[349] qualifies this jurisdiction of parties by vesting the power to hear and determine complaints of an

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[343] APC Constitution (2004) As Amended, Article 13.2

[344] PDP Constitution (2012) As Amended, Article 12.8

[345] PDP Constitution (2012) As Amended Article 21.13 and Article 21(B)

[346] APC Constitution (2004) As Amended, Article 12.73

[347] van Biezen and Piccio (n. 295) 27.

[348] Paul Pennings and Reuven Hazan, 'Democratizing candidate selection: causes and consequences' (2001)7 (3) *Party Politics* 267.

[349] Electoral Act 2010 (As Amended) Section 87 (10)

aggrieved aspirant who believes that a political party did not comply with its rules or the EA in the selection of candidates for elective posts.[350].

On the issue of the discipline of party members and enforcement of party rules, it has been established that, like other organisations, the enforcement mechanism is an essential feature of political parties, and as such, discipline of members plays a role that is as important as rewards as a motivating factor in the life of parties.[351] The internal imposition of sanctions and constraints on members of a party is primarily aimed at maintaining party discipline. Consequently, party constitutions are used for monitoring and enforcing actions when members make individual or collective political choices that are contrary to party laws.[352] Institutional theory maintains that obedience to party rules is born from a desire and capability to assert the common objectives of the party to which one belongs, rather than from the threat of sanctions.[353] This view explains why party loyalists accept party laws as a binding standard rather than an instrumentality for sanctions.

Furthermore, Nigerian parties' constitutions empower parties, through their organs, to discipline and impose sanctions on erring members of the party.[354] A breach of party rules or other offences as listed in the constitution attracts penalties ranging from reprimand, censure, fine, suspension with a fine, debarment from holding any party

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[350] Electoral Act 2010 (As Amended), Section 87 (9)

[351] John O'Neill, 'The disciplinary society: from Weber to Foucault.' (1986) British *Journal of Sociology*. 42

[352] John Commons, *Legal Foundations of Capitalism* (WUP, 1957)

[353] Roberto Mangabeira, *Law in Modern Society. Toward a Criticism of Social Theory*. (The Free Press, 1976).

[354] APC Constitution (2004) As Amended, Article 21

office, removal from office, and, as a final deterrent, expulsion from the party.[355] For most members of parties in Nigeria, these sanctions are mere textual provisions in the constitution which are not always enforced. This attitude emanates from the knowledge that a sanctioned member of a party can easily be admitted into another party without any political repercussions. The parties are seen as one, the only differentiating factor being that at one time one party is the ruling party and the other one is the opposition, waiting in the wings for its turn to take over the reign of political power once again.

3.3. Conclusion

It can be concluded, then, that a system of law that regulates parties and their internal activities, including enforcement mechanism, exist - *on paper* - in the Nigerian legal system. While the 1999 CFRN demands that parties be internally organised according to democratic principles, the party's constitutions provide parties with the highest degree of formal organisational expectations as regards IPD. However, actual party practice and decision-making on internal party affairs, as well as textual analysis of speeches/party surveys, demonstrate that parties often act contrary to their stated laws/electoral framework. Also, due to weak institutions in Nigeria generally, parties do not have the capacity to enforce their own rules, and do not have the power to prosecute and/or punish powerful members who are in breach of those rules.[356] Furthermore, party procedures and decision-making are not influenced by their respective constitutions, neither are their actions influenced by regulating frameworks; rather, their decision-making processes are influenced by unwritten alliances/agreements and by

[355] PDP Constitution (2012) As Amended Article 21.7

[356] Borz and Janda (n. 317).

party godfathers. Party constitutions are often not enforced, and consequently, the nature and character of parties' internal laws are weak and ineffective regulators of party behaviour.

CHAPTER FOUR

ELECTORAL LAW REFORM ON IPD IN NIGERIA

4.1. Introduction

This chapter examines the position and significance of the law (statute and case law) regulating the internal democracy of political parties in Nigeria. The analysis focuses on the position of the 2010 EA prior to the events that necessitated a series of reforms, how those reforms were introduced and implemented, their implications for IPD, and their significance for the state's intervention in IPD and electoral outcomes in Nigeria. The chapter, in analysing the case law that instigated some of the reforms, highlights the trend of the reforms and the trajectory of the development of IPD laws in Nigeria. To structure the analysis coherently, the chapter focuses on the interaction of the State with political parties on the following IPD matters:

1. Qualification/disqualification
2. Nomination and selection of candidates
3. Substitution/withdrawal and death of candidates.
4. Selection of party officials

This analysis focuses on the pre-2002 electoral law and the electoral reforms of 2006, 2010, and post-2010 as they relate to the aforementioned IPD activities in Nigeria's electoral politics.

Apart from these four activities constituting the core IPD activities within political parties in Nigeria, they have also been identified as the basis of most internal party disputes in courts. The outcomes of these party activities are often the subject of pre-election and intraparty disputes, hence their selection for analysis in this work. The analysis aims to evaluate the impact of the reforms on Nigeria's electoral democracy. An analysis of political parties' reactions towards the court's involvement in IPD issues is examined. The chapter highlights the inherent contradictions in the law as well as the behaviour of parties and general electoral outcomes in Nigeria.

4.2. Qualification/Disqualification of Candidates for Election under the 2002, 2006, and 2010 Electoral Acts

Under the 1999 CFRN,[357] a person shall be qualified for election in the various elective offices if:

- He or she is a citizen of Nigeria and has attained 35 years (or 25 years for a member of the House of Representatives);
- He or she has been educated up to at least a secondary school leaving certificate or its equivalent;
- He or she is a member of a political party and is sponsored by that party.

[357] 1999 CFRN (As Amended) Section 65,106 and 131.

4.2.1. The 2002 Electoral Act

Under the EA 2002, the INEC was empowered to qualify or disqualify candidates for elective posts.[358] Parties were to be held accountable for presenting/submitting the name of an unqualified candidate for an elective post. The penalty for a convicted party included a fine of N500,000 ($600) and disqualification from participating in that particular election for the office in the same constituency.[359] The regulation of parties in this way made them cautious and diligent in the nomination processes to avert incurring fines or being disqualified from contesting a post. Under the 2002 EA regime, parties strove to be responsive, transparent, and inclusive in accordance with the party rules.[360] Consequently, parties were expected to produce a more capable representation, one which ensured that appropriate policies and political programmes[361] were developed.

4.2.2. The 2006 Electoral Act

However, with the enactment of the 2006 EA, the legal position as to the qualification of candidates changed. The 2006 EA removed the power to disqualify candidates from

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[358] Electoral Act 2002, Section 21(1), (4) and (8)

[359] Electoral Act 2002, Section 21(7) (a) and (b)

[360] Akubo Aduku and Adejo Yakubu (n. 13)

[361] Scarrow (n. 6).

the INEC and vested it solely in the courts by virtue of sections 32(4),[362] (5)[363] and (6)[364] of the 2006 EA. Subsequently, the question as to the power of the INEC to disqualify candidates for election was raised before the Supreme Court in the case of *Action Congress & Anor v INEC*[365]. In this case, the INEC excluded certain candidates who were validly nominated by their political parties from contesting elections based on their purported indictment by the Economic and Financial Crimes Commission (EFCC) investigation and government white paper on the indictment.[366] The plaintiffs thereafter instituted an action against the INEC to determine whether the defendant (the INEC) had the power to disqualify any candidate properly sponsored by a political party without recourse to a court of law. The court relied on sections 32 (4) and (5) of the 2006 EA[367], holding that although the defendant/respondent had the power to screen candidates for election, it did not have the power to disqualify or exclude any candidate from contesting an election, and that the power to disqualify any

[362] Any person who has reasonable grounds to believe that any information given by a candidate in the Affidavit is false may file a suit at the High Court of a State or Federal High Court against such a person seeking a declaration that the information contained in the Affidavit is false.

[363] If the Supreme determines that any of the information contained in the Affidavit is false, the Court shall issue an order disqualifying the candidate from contesting the election.

[364] A political party which presents to the Commission the name of a candidate who does not meet the qualifications stipulated in this section shall be guilty of an offence and on conviction shall be liable to a maximum fine of N500,000.00 ($600).

[365] *Action Congress & Anor v INEC* (2007) 6 NWLR (Part 1029) 142

[366] Aminu Bello, 'Judicial Review as an Efficient Tool for Electoral Reform in Nigeria' (2008) https://papers.ssrn.com/ (Accessed 16/04/2021)

[367] Itua Okhaide, 'Quest for internal party democracy in Nigeria: Amendment of electoral act 2010 as an albatross' (2012) 3 (3) *International Journal of Peace and Development Studies* 57; Simbine (n. 14).

candidate sponsored by any political party including the two plaintiffs/appellants from contesting an election is vested in the courts, as provided in Section 32(5) of the 2006 EA.[368] The court further ruled that Section 137(1)(d)[369] of the Constitution, which the INEC relied on, did not confer on the INEC the power to disqualify any candidate, and doing so will imply that the INEC is exercising an adjudicative function which is the sole function of the court of law by section 6, subsections (1)[370] and (6)[371] of the 1999 CFRN.[372]

4.2.3 The 2010 Electoral Act

The National Assembly repealed the 2006 EA and, in its wake, enacted the 2010 EA, which subsequently reversed the position of the law yet again conferring the power of disqualification of candidates on the INEC through in Section 87 (9) of the 2010 EA.[373] This section placed a duty on the political parties to ensure compliance with internal party rules and adherence to the 2010 EA on IPD in the selection of candidates for

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[368] Ibid

[369] '...He is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal'

[370] 'The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation'.

[371] 'The judicial powers… shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law.'

[372] 1999 CFRN (As Amended)

[373] 'Where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue.'

elections. However, with the electoral reform of 2010, Section 87 (9) of the 2010 EA was deleted and replaced with a new subsection (9), which provides:

> Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High Court or the High Court of a State, for redress[374].

In addition, two new provisos were added to sections 87 and 31 of the amended 2010 EA, respectively. While Section 87 (10)[375] restricts the power of the courts to prevent the holding of party primaries or general elections pending the determination of any case before it, Section 31(1)[376] makes it impossible for the INEC to disqualify or reject any candidate sponsored by any political party.[377]

The combined effect of these reforms, that is, the deletion of Section 87(9) of the repealed 2010 EA, the enactment of the new Section 87 (9) and (10) of the same act (As Amended), and the proviso to section 31(1) of the amended 2010 EA, together with the decisions of the court in *Action Congress & Anor v INEC*[378] and *Atiku Abubakar v*

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[374] Electoral Act 2010 (As Amended), Section 87 (9).

[375] 'Nothing in this section shall empower the courts to stop the holding of primaries or general election or the processes thereof under this Act pending the determination of a suit'

[376] Every political party shall…submit to the Commission in the prescribed forms the list of the candidates the party proposes to sponsor at the elections, *provided that the Commission shall not reject or disqualify candidate(s) for any reason whatsoever.*

[377] Okhaide (n. 367); Simbine (n. 14).

[378] *Action Congress & Anor v INEC* (2007) 6 NWLR (Part 1029) 142

INEC,[379] is that the INEC no longer has the right to reject or disqualify any candidate sponsored by any political party in Nigeria for any reason whatsoever. The INEC is bound by law to accept any candidate sponsored by a political party in Nigeria without question, even where the person is clearly unqualified or disqualified constitutionally. Such unqualified persons cannot be prevented from being on the ballot. For example, it cannot prevent a foreign citizen, an undischarged bankrupt, an underaged person, or a person that has submitted a forged document from contesting an election. It is legally not allowed to interfere in the choice of candidates, that being a strictly internal party affair. The implication is that under the – amended - 2010 EA, it is only the court that has the power to disqualify any candidate(s) sponsored by a political party. If the INEC or any person seeks to disqualify a candidate, they must do so through the court. Political analysts[380] have criticised this position of the law as unsatisfactory. Their argument is premised on the fact that the INEC is not only an election management body but also a regulatory body. They argue that if regulatory bodies such as National Agency for Food and Drug Administration and Control (NAFDAC) and the National Communication Commission (NCC) are given regulatory powers to seal unregistered pharmaceutical premises or seize expired drugs and sanction communication companies respectively, then the INEC should be legally empowered to not only regulate political parties but also disqualify candidates in an election.[381] The Supreme

[379] *Atiku Abubakar v INEC* LER [2019] CA/PEPC/002/2019

[380] Salih Mohamed and Per Nordlund. 'Political Parties in Africa'. *(Pluto* 2003) 275; Itua Okhaide (n.367).

[381] Kevin Mejuru, 'Reflections on Pre-Election Matters pertaining to Nomination of Candidates by political parties in Nigeria' (2015) 7(1) *Nigerian Electoral Journal* 35.

court, in *Lawrence v PDP,*[382] held that it is only the court that can issue an order disqualifying the candidates from contesting the election. Also, in the case of *Saleh v. Abah*,[383] where the issue of disqualification for the presentation of forged certificates came up for consideration before the court, the Supreme Court, in line with Section 137(1)(j) of the CFRN 1999[384] and Section 31 (1) of 2010 EA (As Amended), upheld the disqualification of the respondent based on the presentation of a forged certificate. The Supreme Court, in its ruling, stated that:

> The intention of the Constitution and EA is that anyone who had presented a forged certificate to INEC should stand automatically disqualified for all future elections if, as in this case, a court or tribunal finds the certificate to have been forged, and it matters not whether or not such fact is further fraudulently or desperately concealed in subsequent elections or declaration forms.

This proviso and decision ensure that honesty and integrity characterise those persons who present themselves for election.

Furthermore, it can rightly be implied that the intention of the lawmakers in drafting the proviso to section 87 (10) of the 2010 EA (As Amended), which removed the power of the court to make an order stopping primary or general elections, was to avoid a political crisis similar to that which engulfed the nation in 1993 due to an order of the court. Two days before the general election of June 12, 1993, between *Abiola and Tofa,* an association known as the Association of Better Nigeria (ABN)

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[382] *Lawrence v PDP* (2017) SC. 81/2017

[383] *Saleh v. Abah* (2017) LPELR-41914(SC)

[384] 'A person shall not be qualified for election …if he has presented a forged certificate to the Independent National Electoral Commission'.

went to court and secured an order suspending the election. The National Electoral Commission, however, went ahead and conducted the election in defiance of the court order. The association again applied to the court for an order to stop the announcement of the results. The court granted their application and an order stopping the announcement of the June 12, 1993 election was made, citing the first order suspending the election[385] and pronouncing that the election was illegal and ought not to have been held *abinitio*. It is believed that the courts were instrumental in the political crisis that engulfed the nation at the time, which led to the annulment of the 1993 presidential election.

Consequently, events throughout the political history of Nigeria have informed the gradual but consistent electoral reforms in the country. There have been efforts to close every lacuna and inconsistency in the electoral laws every time an event occurs that was not provided for by the law occurs. This process has seen the gradual evolution and development of the electoral law and the electoral system generally, infusing some degree of certainty and clarity in the electoral system.

4.3. Nomination and Selection of Candidates by Parties Under the 2002, 2006, and 2010 Electoral Acts

One of the essential factors in the electoral process in any electoral democracy is the decision of a political party as to who it will sponsor to contest for an elective post from the constituencies[386]. In the Nigerian electoral system, general elections are conducted

[385] Michael Orodare, 'Association for Better Nigeria: The untold story of the group Babangida used to scuttle June 12,1993 presidential election' (Lagos,12 June 2021) https://neusroom.com/ (Accessed 16 October 2021)

[386] Mejuru (n. 381).

by the INEC, which receives nominations from political parties. As an internal party activity, the nomination process is the absolute responsibility and right of the political parties as provided by the EA and governed by parties' constitutions and/or guidelines. The nomination of candidates is by way of primaries, held during party conventions[387] or congresses[388]. 'Primaries'[389] is defined by the 2010 EA (As Amended)[390] as intra-party elections by voters of a given political party to nominate candidates for elective office under that party's constitution and the law of the land. In *Tsoho v Yahaya*,[391] the court held that the nomination of a person is an act of suggesting or proposing a person by name to an electoral body as a candidate for elective office. In *James Yakubu & Anor v INEC & Ors*.,[392] the Court of Appeal defined 'nomination' as earmarking a candidate for election for a particular office/position. The court further stated that the definition of nomination in the case of *PPA v. Saraki*[393] aptly conveyed the meaning of the word in all its ramifications. To nominate, according to the court, means to propose

[387] A political party's convention is a gathering where a party elects its national officers and/or the presidential candidate for the party; amends the party's constitution when necessary; reviews, ratifies, overturns or alter any decision taken by any of its constituent bodies, units or officials of the party; appoints external auditors to audit the party's account; resolves disputes; establishes any committee to deal with specific issues; and takes decisions on the running or future direction of the party.

[388] A political party congress is a gathering where a political party elects candidates for elections or elects its State, Local Government Area and Ward officials.

[389] A political party primary is a democratic process of electing candidates who will represent the party in an election.

[390] Section 156

[391] *Tsoho v Yahaya* (1999) 4 NWLR (pt.600) 657

[392] *James Yakubu & Anor v INEC & Ors* CA/J/EP/HR/22/2008

[393] *PPA v. Saraki*[393] (2007) 17 NWLR Pt. 1044 pg. 453

formally that somebody should be chosen for a position, office, or a task, to propose a person for election or opportunity.

In essence, any aspirant for elective office must primarily go through his or her party's nomination process and, if successful, should be presented by his political party to the Electoral Commission. An aspirant cannot nominate himself or herself; he or she can only be sponsored by a political party, which nominates him or her as a candidate, particularly so when the 1999 CFRN never made provision for an independent candidate.

4.3.1. Procedure for Party Nomination: 1999–2002

Before the enactment of the 2002 EA, the procedures and methods adopted for the candidates' nomination/selection process were specifically provided by the political parties' internal laws (party constitutions, regulations, and guidelines). The electoral laws did not provide for the nomination process. For instance, the 1999 presidential primaries that produced Olusegun Obasanjo as the PDP presidential candidate were through indirect primaries as provided by the PDP Constitution and party regulations. A national convention of the party was held in which PDP delegates from all over the country voted for their desired candidate through a secret ballot system. Chapter VIII of the 2012 Constitution (As Amended) of the PDP provides for the nomination of candidates for election to public office. The party constitution provides inter alia that the NEC shall formulate guidelines and regulations for the nomination of candidates for election into public offices.[394] The party constitution further empowers the NEC of the

[394] PDP Constitution (2012) (As Amended), Section 50 (1)

party to regulate the procedure for selecting the party's candidates for elective office[395] and states that the primary election shall be held at the national convention or state congress of the party specially convened for that particular purpose.[396]

EAs before 2002 as well as the 2002 EA did not provide for any particular procedure for parties to adopt in the nomination of candidates for elective positions. The processes and methods were left in the hands of the parties because it was clearly an internal party affair, and the state did not interfere. Section 21 of the EA 2002 only provided for parties to give to the INEC the list of the candidates the party proposes to sponsor at the election.

Consequently, parties were accused of abusing the process and adopting varying nomination procedures not provided by their regulations to rig the primary elections. Delegates were allegedly intimidated by incumbents seeking re-election through 'carrot and stick' tactics. Parties were accused of allocating serial numbers given to delegates in a way to determine how they voted, thereby undermining the secrecy of their votes.[397] In 1999, Alex Ekwueme, who contested Obasanjo in the presidential primary, accused the party of adopting a voting system that was not in accordance with the party's regulations.[398]

These allegations show how parties adopt undemocratic procedures in their conventions and primary elections. They manipulate the internal party electoral

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[395] PDP Constitution (2012) (As Amended), Section 50 (2)

[396] PDP Constitution (2012) (As Amended), Section 50 (3)

[397] 'Nigeria: Obasanjo wins party nomination for second term' (6 January 2003) http://www.thenewhumanitarian.org (Accessed 17 October 2021).

[398] Ibid

systems by any means possible to win an election. They either do not obey their own rules or change them at will. However, things were to change with the enactment of the 2006 EA.

4.3.2. Procedural Reform for Nominations: The 2006 Electoral Act

With the enactment of the 2006 EA, the state made inroads into regulating the processes through which parties nominate their candidates for elective posts. The new act provided, under Section 33 (1), that a candidate for election shall be nominated in writing by such a number of persons as prescribed by the Commission, whose names appear on the register of voters in the constituency.[399] The same act prohibited the nomination of more than one person (by a registered voter) for an election to the same office and prescribed a N50,000 fine, three months imprisonment, or both as punishment for anyone found guilty of contravening the section. However, the action of double voting (i.e. nominating more than one person for an elective post) shall not invalidate the party's nomination process.[400] The implication of this provision was that the 2006 EA allowed direct or indirect nomination by parties of their candidates through a nomination paper, by writing the name of the candidate therein and signing the same by the registered voters present at the congress or convention. The 2006 EA further empowered the Electoral Commission to determine the number or percentage of registered voters that were allowed to participate in the nomination exercise. If the Electoral Commission restricts the number of registered voters that can participate in the nomination process (through guidelines or regulations), there was nothing the parties could do to stop it because every party regulation is subject to the provisions of

[399] Electoral Act 2006, Section 33 (1)

[400] Electoral Act 2006, Section 33 (3)

the 1999 Constitution and the 2006 EA.[401] In *Onuoha v Okafor*[402] and *Dalhatu v Turaki*[403]***,*** the court held that the nomination of candidates by parties, through primary elections, cannot be entertained by the courts, even though a party had disobeyed its internal regulations in the nomination process. This situation led to the manipulation of the system to produce unpopular candidates. Different standards were used in different states and localities to conduct primary elections and the nomination process. The system was no longer trusted as accusations of rigging and manipulation of nomination procedures became overwhelming.[404] This interference by the state to regulate parties' nomination processes did not last long as it was replete with inconsistencies and was not accepted by the parties, which saw the Electoral Commission as interfering with their internal activities. The parties agitated for their autonomy and for true IPD to reign within parties. Section 33(1) of the 2006 EA was seen as undermining the principle of IPD as the state, through the Electoral Commission, was striving to regulate the primaries and the nomination processes of parties. The 2006 EA was subsequently repealed and a new electoral law was enacted in 2010.

4.3.3. Procedural Reform for Nomination: The 2010 Electoral Act

The 2010 EA (As Amended), still in force, through Section 87 attempts to mitigate the mischief recorded in the 2006 EA by consolidating the internal democracy of political parties. Section 87 regulates candidates' nomination by clearly stipulating the procedure parties should adopt in nominating a candidate to be sponsored for an

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[401] PDP Constitution (2012) As Amended.

[402] *Onuoha v Okafor* (1983) 14 NSCC 494

[403] *Dalhatu v. Twiaki & Ors* (2003) LPELR 917

[404] Mejuru (n. 381)

elective post.[405] The Supreme Court, in *Gbileve v Addingi,*[406] held that the implication of Section 87 (4) (c) of the 2010 EA is that a political party is bound to sponsor only a candidate who was produced from the party's primaries that were monitored by the INEC. Section 87(4) (b) and (C) provides that the aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries and that the aspirant's name shall be forwarded to the Electoral Commission as the candidate for a particular election.[407]

How did the position/law change? The procedure for nomination of candidates by parties was no longer through a nomination paper (i.e. by writing the name of the candidate in the nomination paper and signing it by the registered voters present at the congress or convention) as in the 2006 EA. The 2006 EA also gave the Electoral Commission the power to decide the percentage of registered voters that can participate in the nomination exercise, thereby controlling the procedure without a clear or prescribed rationale for such decisions. Ultimately, under the 2006 Act, the power to make a decision on who to nominate was removed from party members and placed in the hands of the state that regulated nomination activities. However, the reform of 2010[408] affected that the state through the INEC, only *observes* the nomination exercise of parties without directly interfering in the procedures the party decides to adopt. The issue of double nomination by registered party members was also expunged from the

[405] EA 2010 (As Amended), Section 87.

[406] *Gbileve v Addingi* (2014) 16NWLR (PT.1433)394

[407] *Ukachukwu v PDP* (2014)17 NWLR (pt.1435) 134

[408] EA 2010 (As Amended), Section 87

2010 EA. Parties were allowed to nominate candidates either through direct or indirect primaries according to the procedure outlined under the act.[409]

The amended Section 87 (9) of the 2010 EA (As Amended) legally permits an aggrieved aspirant who complains that the provisions of the EA 2010 (As Amended), or the guidelines/Constitution of his political party has not been complied with in the selection or nomination process, to apply to the Federal or State High Court for redress. With the enactment of this section, the remedy (or right of redress) for a wrong against an aggrieved aspirant (denied by the previous acts) was restored. To underscore the right for redress for a perceived wrong against an aggrieved aspirant, the circuit court of appeals of the USA, in the case of *Leo feist v young*,[410] observed that ‘it is an elementary maxim of the equity of jurisprudence that there is no wrong without a remedy’, in other words, there is no remedy without any wrong, and the persons whose right is being violated has a right to stand before a court of law.[411] Also, in the case of *C.Vera Thevar v The Secretary to Government*[412]**,** the court held that 'there is no wrong without a remedy; the laws say that in every case where a person is wronged and caused injury then a remedy should be provided. Also, following the statement of Judge Wooten in the English case of *Mckinnon v. Grogan,*[413] which aptly reflects the implication of Section 87 (9) of the 2010 EA (As Amended), to the effect that;

[409] EA 2010 (As Amended)

[410] *Leo Feist v. Young*, 46 F. Supp. 622 (E.D. Wis. 1942)

[411] Ibid

[412] *C.Vera Thevar v The Secretary to Government* [2017] UKSC 72

[413] *Mckinnon v. Grogan* (1974) 1 NSWLR 295, at 298-9

> Citizens are entitled to look to the courts for the same assistance in resolving disputes about the conduct of sporting, political and social organisation as they can expect in relation to commercial institutions. If it is not forthcoming, a vast and growing sector of the lives of the people in the …society will be a legal no man's land, in which disputes are settled not in accordance with justice and the fulfilment of … obligations, but … arrogant disregard of rights and other means which poison the institution in which they exist and destroy trust between members.[414]

In *Ugwu v Ararume,*[415] the Supreme Court, in considering and departing from its earlier decision in *Onuoha v Okafor*[416] and *Dalhatu v Turaki,*[417] to the effect that selection of a candidate for election was the internal affairs of the political parties, stated:

> If the political parties, in their wisdom, had written it into their Constitutions that their candidates for election would emerge from their party primaries, it becomes unacceptable that the court should run away from the duty to enforce compliance with the provisions of the parties' Constitutions[418]

The Supreme Court, in *Williams v Daily Times*,[419] *Rossek v ACB Ltd*.[420], and *Johnson*

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[414] Ibid

[415] *Ugwu v Ararume (n.22)*

[416] *Onuoha v Okafor (n.402)*

[417] *Dalhatu (n. 403).*

[418] *Ugwu v Ararume (n.22)*

[419] *Williams v Daily Times* (1990)1 NWLR (pt.124)1

[420] *Rossek v ACB Ltd* (1993)8 NWLR (Pt.312)382

v Lawanson,[421] whilst explaining its power to overrule itself, stated that it can change its position and overrule itself for good and substantial reasons. In *Onuoha v Okafor*,[422] the Supreme Court stated that Nigeria's electoral process dictates that the decision that the selection of a candidate for election was the internal affairs of the political parties was non-justiciable, and hence should be no longer followed.

Consequently, the judiciary has become the only institution that can compel parties to comply with the provisions of 2010 EA and their own constitutions with regards to IPD in the selection of candidates for elections. The 2010 EA, with this amendment, gave the judiciary oversight and an overriding responsibility in the internal affairs of parties by empowering them to interfere and regulate parties' internal selection processes legally, thus making the selection of candidates no longer an absolute domestic affair of the parties. The amended 2010 EA, in giving aggrieved aspirants the legal right to seek redress from the court where they complain that the parties did not comply with their guidelines and provisions of the EA, in the selection of candidates, is in effect deepening the culture of IPD in Nigeria's political parties and, in turn, consolidating democracy in the country.

However, political analysts in the country are divided about the actual consequences and/or implications of section 87(9) of the amended EA. While some argue that this provision is repressive and spells doom for the development of IPD within the political parties,[423] others believe that it is a much-needed step towards engendering

[421] *Johnson v Lawanson* (1971) All NLR 56

[422] *Onuoha v Okafor* (1983)14 NSCC 494

[423] Okhaide (n. 367).

a democratic culture in political parties, given that parties do not obey their constitutions or the EA in this regard.[424] To this end, the Supreme Court, in *Mato v. Hember & Ors,*[425] stated inter alia that Section 87(9) ensures that in making their choice of candidate for elective office, political parties do not stray beyond the confines of the EA or their electoral guidelines. The section seeks to curb the impunity with which political parties hitherto acted without regard to the democratic norms they profess to practice. Political parties must obey their constitutions and guidelines and, where necessary (as provided by law), the courts will intervene and wield a big stick to prevent arbitrariness.

Adangor[426] argued that, although Section 87 (9) is not all-inclusive in its provision, in conferring the right to seek redress from the court only on aspirants who participated in the party primaries and not on members who the party unlawfully excluded from participating in the primaries, the 2010 EA, in permitting the courts to interfere with the management of internal affairs of parties through legislative intervention, regarding nomination and sponsorship of candidates for elective posts, engenders internal democratic culture[427] in the country. His argument is premised on the fact that Section 87(9), in conferring jurisdiction on the courts to intervene in matters relating to a party's primaries, gave the courts the power to adjudicate on any dispute arising from the nomination process, though with an appending clause that qualifies the

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[424] Adangor Zacchaeus, 'Promoting internal democracy in political parties in Nigeria: Looking beyond section 87(9) of the Electoral Act, 2010 (As Amended)' (2019) 9(1) *Africa Journal of Law and Criminology* 1.

[425] *Mato v Hember & Ors* (2017) LPELR-SC.733/2016

[426] Adangor (n 424).

[427] Ibid

right to seek redress from the court (or benefit from the section). Consequently, for any member of a political party to validly question the process and/or outcome of candidate nomination of a party before a competent court, such a person must bring him or herself within the ambit of an aspirant. In other words, only a political party member who has participated in the party's primaries can approach the court; otherwise, he/she lacks the *locus standi* to bring such an action and/or seek redress from the court.[428] According to the Supreme Court in *Senator Ayogu Eze v PDP*,[429] the issue of *locus standi* is a condition precedent to the commencement of any action before any court of law, be it a trial court, an appellate court, or the Supreme Court.

> 'To institute and maintain any action, the person instituting it must have the legal capacity, and where a party lacks the requisite locus standi to institute an action, he will be said to be a 'busy body' and the logical consequence is that the court will not have the jurisdiction to listen to him'.[430]

Again, for the complainant to succeed under Section 87(9) of the act, his complaint must not only relate to non-compliance with the 2010 EA or his party's guidelines and constitution, but he must also bring himself within the purview of the subsection by showing that he was an aspirant in the election complained of. In answering the question, 'Who is an aspirant?', the court stated that 'an aspirant is a

[428] The term 'locus standi' denotes the legal capacity to institute proceedings in a court of law and is used interchangeably with terms like 'standing' or 'title to sue'. It is the right or competence to initiate proceedings in a court of law to redress or assert a right enforceable at law. See *Ladejobi & Ors. v Oguntayo* & Ors. (2004) LPELR-1734 (SC)

[429] *Senator Ayogu Eze v PDP*, (2018) LPELR-44907 (SC)

[430] *Senator Ayogu Eze (n. 429).*

person who contested the primary election of his party…and actually participated in the primary election he is challenging'.[431] Thus, the person must have participated in the party's primary screening process and be dissatisfied in some way by the process and be seeking to invoke the limited jurisdiction of the courts under the provisions.[432]

The Supreme Court, in answering the question at what point will a person/party have the locus to institute an action on a matter arising from the nomination of a party's candidate for an election, ruled in *Ardo v Nyako & Ors.,*[433] *Lado v CPC.,*[434] *Emenike v. PDP,*[435] *PDP v Timipre Sylva*[436] *and Emeka v Okadigbo,*[437] that:

> For a party/person to qualify or have the locus to institute an action on a matter arising from the nomination of a party's candidate for an election, he must have participated in the nomination exercise of the Party and failed, irrespective of whether the nomination is a process or an event. Where a party did not

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[431] See *Shinkafi v Yari* (2016)7 NWLR (pt.1511) 340; *P.D.P. v Sylva* (2012) 13 NWLR (Pt.1316) 85 at 126; *Lado v C.P.C.* (2012) 17 NWLR (Pt.1275) 30 at 59 – 60; *Tarzoor v Ortom & 2 Ors* SC.928/2015; *Uzodinma v Izumaso* (2011) 17 NWLR (Pt.1275) p.60; *Emeka v Okadigbo* (2012) 18 NWLR (Pt.1221) p.55; *J.A. Ucha v Onwe & Ors* (2011) 4 NWLR (pt.1237) p.386.

[432] *Uwazurike v Nwachukwu* (2012) LPERL-19659 (SC) 1 @ 23-32; *Odedo v PDP* (2015) LPELR--24738 (SC) 1 @ 62; *Ogah v Ikpeazu* (2017) LPELR-42372 (SC) 1 @ 54-55; *Emenike v PDP* [2012] NWLR (Pt. 1315) 556 @ 591; *Ukachukwu v PDP* [2014] 17 NWLR (Pt. 1435) 134; *APGA v Anyanwu* [2014] 7 NWLR (Pt. 1407) 541 @ 575.

[433] *Ardo v Nyako & Ors* (2014) LPELR-SC.135/2012

[434] *Lado v C.P.C.* (2012) 17 NWLR (Pt.1275) 30 at 59 - 60

[435] *Emenike v. P.D.P* (2012) 12 NWLR (Pt. 1315) 556

[436] *P.D.P. v Timipre Sylva* (2012) 13 NWLR (Pt.1316) 85 at 126

[437] *Emeka v Okadigbo* (2012) 18 NWLR (Pt.1221) p.55

> participate in the primary election of the political party for the nomination of a candidate for an election, he cannot sue on the processes leading to and including the actual primary election, because by the provisions of the said section 87(9) of the EA (2010) as amended, the court will have no jurisdiction to hear and determine the action

A similar decision was taken by the Supreme Court in *Wushishi v Imam:*[438]

> An aspirant excluded by his political party from contesting the party primaries, and who was not an actual contestant at the party primary election, has no locus standi to challenge the outcome of the primary election.[439]

It follows logically from the above cases that an 'aspirant' in Section 87(9) of the 2010 EA is a person who has been screened and cleared by his party to contest the primary election and has physically participated in the election. Consequently, a person who fails to submit his completed Expression of Interest and Nomination Form to the party does not qualify as an aspirant under the provision.[440] Also, in *Adegbuyi v. APC*[441] and *Bamgboye v Saraki,*[442] the court held that a member of a political party who withdraws from a primary election lacks the locus standi to question the outcome of the said election, stating that, 'Primary elections, being an in-house matter of a

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[438] *Wushishi v Imam* [2017] 18 NWLR (Pt. 1597) 175

[439] *Wushishi* (n. 438).

[440] *Maihaja v Gaida* (2017) LPELR-42474 (SC)1.

[441] *Adegbuyi v. APC* (2014) LPELR-24214 (SC) 1 @ 16-17

[442] *Bamgboye v Saraki* (2010) 14 W. R. N. 125

political party, a non-member of the Party lacks the locus standi to challenge the conduct of the said election'.[443]

The principle of the supremacy of a political party to nominate its candidate for any elective office according to its internal rules and the court's lack of jurisdiction to interfere with the nomination process has been established as part of Nigeria's electoral jurisprudence.[444] It has been held that sponsorship of candidates by a political party for an election is the prerogative of the party concerned.[445] Therefore, a political party has the right to prevent or bar any of its members from contesting its primaries if it so decides. The right of sponsorship by a political party is neither a Constitutional nor statutory right to which a member of a political party is entitled.[446] It is equally not a right under common law or customary law.[447] The Supreme Court, in *Dalhatu v Turaki,*[448]

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[443] *ACN v Labour Party* (2012) LPELR-8003(CA) 1 @ 15; *Ballantyne v Ayi* (2011) LPELR-8825 (CA) 1 @ 18; *Willie v PDP* (2013) LPELR-22710 (CA) 1 @ 10.

[444] *Ehuwa v Ondo State Independent Electoral Commission* (2006) LPELR-1056(SC)1 @ 39-40; [2006] 18 NWLR (Pt.1012) 544; *Shinkafi v Yari* (2006) LPELR 2650 (SC) 1 @ 20-23; *Ugwu v PDP* (2015) LPELR -24353 (SC); *Yardua v Yandoma* (2014) LPELR 24217 (SC) 1 @ 77-78; *CPC v Ombugadu* (2013) LPELR- 21007 (SC) 1 @ 61-62; *Ardo v Nyako* (2014) LPELR-22878 (SC) 1 @ 29; *Amaechi v INEC* (2007) 18 NWLR (Pt. 1065) 105; *Eyiboh v Abia* [2012] 16 NWLR (Pt. 1325) 51.

[445] *Wushishi* (438).

[446] *Onuoha v Okafor* (n.402)

[447] *Onuoha v Okafor* (n.402)

[448] *Dalhatu* (n. 403).

explained the rationale behind the principle of supremacy of a political party to nominate its candidate.[449]

Consequently, there are no judicial criteria for determining the appropriate candidate to be selected available to the courts to assist in adjudicating a dispute.[450] Hence, this set of aspirants is not offered any relief in law, and the powers inside the party solely determine their fate.

Parallel Nominations

In the build-up to general elections, sometimes there are different factions within the party hierarchy and power tussles can break out between them. These factors could lead to the holding of two parallel primaries, especially in Governorship and National Assembly primaries. Thus, where two parallel primaries are conducted and a dispute arises as to which candidate of a party was duly nominated to contest an election, the court, in *Tukur v Uba,*[451] held that the party is the appropriate body to attest to the validity of the candidate to contest its primaries, subject to the party's constitution and guidelines. Consequently, if there are two parallel primary elections, only the person who participated in the primary election conducted by the NEC of the party is an aspirant within the meaning of the term in Section 87 (9) of the act. Any participant in the primary election conducted by the State organ of the party is not an aspirant and cannot approach the court for redress, for he has no locus standi to ask for redress. Put

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[449] '... since persons have freely given their consent to be bound by the rules and regulations of a political party, they should be left alone to be governed by such rules and regulations. Once persons have freely mortgaged their consciences to a situation, courts of law should not interfere...'

[450] *PDP v Sylva (2012)13 NWLR (pt.1316)85*

[451] *Tukur v Uba* (2013)4 NWLR (pt.1343)90 at 113.

differently,[452] it is only the NEC or the political parties that are empowered by law to conduct primaries to nominate and sponsor candidates for election.[453]

Furthermore, in an action where two members of a party are both aspirants at a single political party primary election duly conducted by the party concerned and are both claiming victory over the same primary election, the Supreme court held, in *Olley v Tunji,*[454] that the proper procedure to be adopted in resolving the dispute is that of a full trial involving filing and exchange of pleadings by the parties. Equally, where an issue has been determined in the high courts or at election tribunal, a party cannot re-litigate the issue, as it would amount to an abuse of the court process.[455]

The 2010 EA also provides that where there is only one aspirant in a political party for any elective posts, the party shall convene a special convention or congress to confirm him or her and his/her name be forwarded to the Electoral Commission as the party candidate.[456] The 2010 EA further demands parties that adopt the system of indirect primaries in nominating its candidates to clearly provide in its constitution and rules the procedures for the democratic election of delegates to vote at a convention, a congress, or a meeting, in addition to delegates already prescribed in the constitution

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[452] *Emenike v PDP & Ors*. (2012)12 NWLR (pt.279)689: NWLR (pt. 1448)123 @198 A-H; *Yaradua v Yandoma* (2014) LPELR SC.4/2014

[453] *Yaradua v Yandonna* (2015)4 NWLR (pt. 1448)123@177; *Odedo v Oguebego* (2015)13 NWLR (pt.1500) 463

[454] *Olley v Tunji* (2013)10 NWLR (pt.1362)275

[455] *Ikechukwu v Nwoye* (2015)3 NWLR (pt.1446)367

[456] Electoral Act 2010 (As Amended), section 87 (6)

of the party.[457] This provision is aimed at promoting a democratic process within the parties for choosing members who represent the party in public offices.

4.3.4. Post-2010 Reforms

A new EA Bill (EA 2022), which will repeal the 2010 EA, recently[458] passed by the National Assembly, has introduced some reforms in the nomination procedure of political parties in Nigeria.[459] While the effect of this reform in future general elections and electoral outcomes in Nigeria is yet to be seen, as the bill is yet to be passed into law, the implications of the reform for IPD are yet to be determined. A party member has commended the reforms as laudable as they will promote inclusivity in party activities and strengthen democracy.[460] However, when the bill is eventually passed into law, the political parties will also amend their internal laws and constitutions to reflect this method of selection in their primary elections.

4.3.5. Position of Parties' Constitutions on the Nomination of Candidates

To have a deeper understanding of the extent to which parties regulate themselves in relation to the nomination of the candidates, and to examine the level of democracy within parties, it is pertinent to analyse the provisions of the parties' constitutions regarding the nomination of candidates for elective posts. These analyses are focused on the constitution of the two major political parties in Nigeria - the APC and the PDP.

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[457] Electoral Act 2010 (As Amended), section 87 (7)

[458] Electoral Act No. 6 2010 (Repeal & Re-enactment) Bill, 2021 (SB. 122) was passed by the National Assembly on 16 July 2021.

[459] Section 84 (2) provides that the procedure for the nomination of candidates by political parties for the various elective positions shall be by direct, indirect primaries or consensus.

[460] Bamidele Opeyemi, APC (Ekiti State) https://guardian.ng/ (Accessed 12/06/2020)

The Constitution of the APC, in line with the provision of the 2010 EA,[461] provides that the nomination of candidates for Councillorship shall be by a direct primary election conducted at the ward level. Also, the nomination of candidates for local government area council, Chairman, State House of Assembly, House of Representatives, Senate, Governor, and President shall all be through *direct* or *indirect* primary election to be conducted at the appropriate level.[462] Nomination by *indirect primaries* shall be by an Electoral College of delegates democratically elected by members of the party from the various wards contained in the particular constituency at congresses.[463] APC party rules further require that all statutory delegates to the National Convention shall be members of the Electoral Colleges for all elections for which candidates are to be nominated. Also, voting in ward congresses to elect the Electoral College members shall be by secret ballot, and the contestants with the highest number of votes shall be announced as the winners accordingly.[464]

However, the PDP Constitution provides that:

> The National Executive Committee shall, subject to the provisions of the CFRN, 1999 (As Amended), the EA 2010 (As Amended), and this Constitution, formulate guidelines and regulations for the nomination of candidates for election into public offices at all levels and shall be the final authority for resolving all disputes relating to the choice of candidates for the party for any election and for conveying to the INEC or any other authority to whom it may

[461] Electoral Act 2010 (As Amended), Section 87

[462] APC Constitution 2014 (As Amended) Article 20 (ii) and (iii)

[463] APC Constitution 2014 (As Amended) Article 20 (iv)

[464] APC Constitution 2014 (As Amended) Article 20 (iv) (c) and (d)

> concern, confirming the names or list of names of candidates for the party in any elective public office in the federation.[465]

The PDP Constitution further provides that in the conduct of primaries for the party's candidate for the post of President, Governor, Senator etc., the primary shall be held at the National Convention, State Congress, and Senatorial constituency of the party especially convened for that purpose respectively.[466] The party's rules state:

> The Congress for the election of ward officers, councillorship candidates, and the 3 delegates to Local Government Congress and State Congress, out of which at least one (1) shall be a woman, shall be by *direct primaries* in which all card-carrying members of the party at ward level shall participate.[467]

Thus, unlike the Constitution of the APC, that of the PDP does not provide for a specific procedure to be adopted in the nomination of candidates. Instead, the party, through its constitution, gives power to the party's NEC to design the method and draw up the rules that the party adopts to regulate the nomination process. The implication is that the method or structure of candidate nomination can change at each convention or congress over time. There is no clarity or certainty in the process as the NEC could always draw up different guidelines/regulations for different conventions/congresses. This leaves the nomination process of the PDP open to manipulation and rigging, making it undemocratic by its very nature. On the other hand, the APC outlines a structured, well-defined procedure for the nomination of

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[465] PDP Constitution 2012, Article 50

[466] PDP Constitution 2012, Article 50, (2)-(7)

[467] Ibid Article 50, (8) (emphasis added).

candidates. However, that said, the question is one of substantive adherence to these procedures. Do members of the APC actually follow these seemingly democratic processes or is it only the rule on paper and not in practice?

4.3.6. Position of Case Law on Nomination of Candidates in the Electoral Acts

In *Dalhatu v Turaki,*[468] an issue raised for determination by the Supreme Court was whether, having regard to its decision in *Onuoha v Okafor,*[469] a court of law can validly assume jurisdiction in a case to elect/select a candidate for a political party, or to nominate him or her for sponsorship in an election. The Supreme Court held that the issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and the said party's constitution. Thus, it is a domestic affair of the political party and, as such, not justiciable in a court of law[470]. The Supreme Court equally held, in *Okechukwu Emeka v Okadigbo*[471] and *Ehinlanwo v Chief Olusola,*[472] that a political party has the unfettered right to nominate or sponsor a candidate it likes for an election, as the nomination of candidates remains a domestic affair of the party and the courts cannot nominate for it. In the cases of *Ardo v Nyako*

[468] *Dalhatu* (n. 403).

[469]*Onuoha v Okafor* (1983)14 NSCC 494

[470] *Onuoha v Okafor* (1983)14 NSCC 494

[471] *Okechukwu Emeka v Okadigbo* (2012) (SC) 16963

[472] *Ehinlanwo v Chief Olusola* (2008) (SC) 12416

& Ors.,[473] *Lado v C.P.C.,*[474] *Emenike v PDP,*[475] *PDP v Timipre Sylva,*[476] and *Emeka v Okadigbo,*[477] the Supreme Court in each held that the question of who is a candidate of a political party remains within the province of the political parties, over which the courts have no jurisdiction. In *Kurfi v Mohammed,*[478] the Supreme court held that the nomination of a candidate is exclusively the responsibility of the political party concerned. Also, the cases of *Anyanwu v Ogunnewe,*[479] *A.N.P.P. v Usman*,[480] *Agi v PDP,*[481] and *PDP v Sylva*[482] contain statements of law to the effect that it is the prerogative of the parties to determine who its members are and the courts lack jurisdiction to interfere with the exercise of that power. The cases equally established that it is primarily within the authority of political parties to nominate or sponsor a candidate who will contest an election on its behalf. The courts, then, lack the jurisdiction to do so.[483] Furthermore, the 1999 CFRN (As Amended)[484] prohibits any

[473] *Ehinlanwo v Chief Olusola* (2014) LPELR-SC.135/2012

[474] *Lado v C.P.C* (2012) 17 NWLR (Pt.1275) 30 at 59 - 60

[475] *Emenike v PDP* (2012) 12 NWLR (Pt. 1315) 556

[476] *PDP v Timipre Sylva* (2012) 13 NWLR (Pt.1316) 85 at 126

[477] *Emeka v Okadigbo* (2012) 18 NWLR (Pt.1331) 55 at 83.

[478] *Kurfi v Mohammed* [1993] 2NWLR (Pt. 277) 602

[479] *Anyanwu v Ogunnewe* (2014)8 NWLR (pt. 1410) 437

[480] *A.N.P.P. v. Usman* (2008) 12 NWLR (Pt. 1100) 1

[481] *Agi v. PDP (2017) 17 NWLR (Pt. 1595) 386*

[482] *PDP v Sylva (2012)13 NWLR (pt.1316) 85*

[483] Zacchaeus (n. 424) 1

[484] 1999 CFRN (As Amended) section 221

association other than a political party from canvassing for votes for any candidate(s) at an election.

Nigeria's electoral laws do not have provision for an independent candidate; hence a candidate cannot run for a political office without being sponsored by a political party, and neither can a political party win a seat in an election except through a candidate it is sponsoring. For this reason, all pre-election matters challenging the sponsorship and nomination of a particular candidate must necessarily join the sponsoring political party as a party to the suit. The court, in *Azubike v PDP,*[485] held that the sponsoring party must be made a party to the suit as it has a direct legal interest that would be affected by the outcome of the suit.[486]

In effect, before the electoral reform of 2010,[487] and based on the decided cases cited above, it was an established principle of law that the courts lacked the jurisdiction to adjudicate internal party disputes relating to the selection and nomination of candidates for elections in Nigeria. Thus, they were unable to check and enforce the observance of IPD on the selection and nomination of candidates for elections.[488] Therefore, the outcome of this legal position was that an aggrieved party who complained that a party had failed to obey its constitution or adhere to the parties' regulation on the selection of candidates for election was left without a remedy. This position contradicts the common law principle of *Ubi Jus Ibi Remedium,* which means that where there is a wrong, there is a remedy. If any wrong is committed, then the law

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[485] *Azubike v PDP* (2014)7 NWLR (pt.1406) 292.

[486] *Ibid*.

[487] Electoral Act 2002, 2006 and 2010

[488] *Azubike* (n. 485).

provides a remedy for that wrong committed by a party. In Singh *Kalra v Promod Gupta & Ors.*,[489] and *Maretti v William*,[490] the court recognised the maxim *Ubi jus ibi remedium* as a fundamental principle of law, to the effect that it is the duty of the courts to protect the rights of people and to grant relief to the aggrieved party rather than denying it. Furthermore, in *Shivkumar Chadha v. Municipal Corporation of Delhi*,[491] a court held that where statutory enactments do not provide any remedy but only create rights and liabilities if any person complains of his rights being violated or wrongly affected, such person can approach the civil court based on the principle of legislation that where there is a right, there is a remedy.[492]

Consequently, by making the selection of candidates non-justiciable, under the previous EAs, the lawmakers literally tied the hands of justice, leaving the aggrieved party member at the mercy of his political party without a remedy in law.

4.4. Submission, Substitution/Withdrawal of Candidates (under the 2002, 2006, and 2010 Electoral Acts)

It has been noted above that the nomination of candidates for elections is the sole prerogative and responsibility of political parties. In this regard, the right of parties

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[489] Case No: Appeal (civil) 1027-1028 of 1992/ Supreme Court of India https://indiankanoon.org/ (Accessed on 28/02/2021)

[490] *Maretti v Williams*, (1930) by *'Ubi Jus Ibi Remedium' https://lexpeeps.in/* (Accessed on 28/02/2021)

[491] 1993 SCR (3) 522, 1993 SCC (3) 161

[492] Saumya Saxena, 'Ubi jus ibi remedium: where there is a right, there is a remedy' (I Pleaders,22 may 2019) **https://blog.ipleaders.in/** (Accessed 27/02/2021)

cannot be challenged in any court or tribunal, even when parties violate their own constitution in deciding on who to sponsor for a particular election.[493]

4.4.1. The 2002 Electoral Act

Under the 2002 EA,[494] any political party that wished to change any of its candidates for any election under this act, after the submission of a list of nominated candidates, could signify its intention (to substitute) in writing to the commission. In effect, political parties were only required by law to submit a written application, to replace a nominated candidate whose name has been submitted to the Electoral Commission with another person's name.

4.4.2. The 2006 Electoral Act

With the repeal of the 2002 EA and the enactment of the 2006 EA, the position changed. Section 34(1) and (2) of the 2006 EA required that the substitution of a candidate must be for *cogent and verifiable reasons*, except in the case of death. The implication of this provision was that once a political party had submitted the name of any candidate to the Electoral Commission, it could no longer withdraw the name of that candidate. The exception where withdrawal could be allowed was when a party could show cogent and verifiable reasons for doing so (if an application is brought within 60 days of the forthcoming election). In the case where a party applies to withdraw the name of a candidate after the expiration of 60 days before a forthcoming election, the political party must prove that the candidate whose name it seeks to withdraw is dead. Furthermore, where a party has successfully applied and proved a cogent and verifiable

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[493] *Onuoha v Okafor* (n. 402)

[494] Section 23

reason for seeking withdrawal of a candidate, the 2006 EA required the concerned candidate to withdraw his candidature by notice in writing signed and delivered by himself to the party that nominated him for the election and that party shall convey the withdrawal to the Electoral Commission.[495]

Thus, based on the interpretation of sections 34(1) and (2) of the 2006 EA, the Supreme Court, in the case of *Ugwu v Ararume,*[496] laid down the legal framework for substitution or change of candidates as follows:

> It is clear that the Legislature intends that even though the right of choice of a candidate to be sponsored for any election remains the special preserve of the political parties, just as the right to change or substitute such candidates…there must be compelling and verifiable reasons for the substitution given by the political Party desiring the change or substitution.[497]

The Supreme Court followed this principle in the case *Amaechi v INEC.*[498] Amaechi's case showed the response and dissatisfaction of Nigerian courts to unchecked abuse of the rule of law by Nigerian political parties. The case was perhaps the most innovative election petition decision in Nigeria's Fourth Republic, and it significantly impacted the political landscape and parties' attitude towards IPD. Numerous principles and precedents in Nigerian electoral law and practice emerged from the case, making it a locus classicus on elections, democracy, and the rule of law

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[495] 2006 Electoral Act, section 36(1)

[496] *Ugwu* (n. 415)

[497] *Ugwu* (n. 415)

[498] *Amaechi* (n. 20)

as it gave birth to a more enlightened and civilised political culture.[499] The facts of the case were that the PDP replaced Amaechi with Omehia as its candidate for the Governorship election in Rivers State during the April 2007 election. In an action challenging the substitution, the Appellant (Amaechi) contended that there were no cogent and verifiable reasons for the substitution as required by law. In his response, the 2nd respondent (Omehia) challenged the court's jurisdiction to hear and determine the matter, contending that the issue of selection of a party's candidate for an election, being an internal affair of the party, was non-justiciable. The two lower courts upheld the respondent's objection. However, in allowing Amaechi's appeal, the Supreme Court of Nigeria held that:

> In Ararume's Case, this court decided that to offer the reason framed as 'error' for a change of candidate is not in compliance with section 34(2) of the EA 2006. In this case, the same reason relied upon by the 3rd respondent (PDP) in substituting the Appellant with the 2nd respondent (Omehia) is the word 'error', without more. Clearly, in my view, the cases are similar, and the same principle applies... It is my finding that the Appellant was not substituted according to the law and therefore remained the 3rd respondent's nominated candidate for the Rivers State Governorship election held on 14/4/07. It was the Appellant and not the 2nd respondent who must be deemed to have won the elections.[500]

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[499] Ibid.

[500] Amaechi V Omehia, per Katsina Alu.

In the ruling, the Supreme Court ordered Omehia out of the office and ordered that Amaechi be sworn in as governor of Rivers State. This decision was unique because it raised several legal issues. It has been held that the practical implication of the Supreme Court's decision in the Amaechi case was to declare a person who did not actually participate in an election as the winner.[501] The court's judicial activism, in this case, was not only novel; it brought about an important restraint on the unfettered power of political parties to nominate and sponsor candidates for elections, which previously was an intra-party affair and non-justiciable. However, under the 2010 EA (As Amended), a reform which was instigated in the Amaechi case whereby political parties were deemed to be not at liberty to withdraw, change, or substitute candidates whose names had been submitted to the Electoral Commission, except in the case of death or withdrawal by the candidates themselves. This position became necessary as an after-effect of 'the Amaechi case.

It must be noted that the legal issues involved in this case are the Illegal substitution of a candidate for election and the non-compliance with the EA in the substitution of the Appellant's name with that of the second defendant. Section 34 (1) and (2) of the 2006 EA specifically required that political parties that wish to change/substitute one nominated candidate with another can only do so for 'cogent and verifiable reasons. However, in the instant case, the PDP stated that Amaechi's name was submitted in "error", hence the need to substitute it with Omehia's name. The PDP proffered the same reason of 'error' in *Ugwu v Ararume,*[502] which the Supreme Court faulted. Consequently, the Supreme Court concluded that the term 'error' did not meet

[501] *Amechi* (n. 20)

[502] *Ugwu* (n. 415)

the requirement of Section 34 of the 2006 EA. The Court asked the question: What ‘error’ made it possible for Omehia, a non-candidate at the PDP primaries, to be named the party's candidate in place of eight candidates who contested and of whom Amaechi came first? The court held that it seemed clear that the reason given by the PDP for the substitution of Omehia for Amaechi was patently untrue and undoubtedly unverifiable.[503]

Furthermore, the decision in the *Amaechi* case established a number of other important principles which have come to be regarded as fundamental in Nigeria’s constitutional and electoral law. Firstly, it clarified that elections are contested, won, and/or lost by political parties, not the candidates bearing their flags. Secondly, it established the principle that a candidate entitled to the nomination but substituted with another can bring a pre-election action to compel his or her party to nominate him or her, and to secure an order to be sworn into the contested office if during the action the election is held, and his or her party wins.

4.4.3. The 2010 Electoral Act

However, as part of Nigeria’s electoral evolution and reforms, and to avoid parties’ indiscriminately substituting candidates, which could lead to endless court cases, the 2006 EA was repealed and replaced by the 2010 EA.[504] Under the 2010 Act, the rule became that parties are prohibited from withdrawing nominated candidates whose names have been submitted. However, the exceptions to this rule or the conditions

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[503] Ibid.

[504] The 2010 Electoral Act, section 33, provides thus: ‘A political party shall not be allowed to change or substitute its candidate whose name has been submitted …, except in the case of death or withdrawal by the candidate.’

whereby parties are permitted to withdraw nominated candidates after submitting their names to the commission are the death of the candidate and the withdrawal of nomination by the candidate himself. The 2010 EA no longer required the party concerned to have cogent and verifiable reasons for seeking withdrawal.

Although Section 35 of the 2010 Act is a replication of Section 36 of the 2006 Act which required a candidate who intends to withdraw his nomination to personally convey his intention in writing to the political party, which in turn will transmit such withdrawal notice to the Electoral Commission, the only difference between the two provisions is the number of days within which the candidate must convey his intention. While the 2006 Act stipulated 70 days before the election in which he or she was to contest, the 2010 Act reduced the requirement to 45 days.

The combined effect of the above provisions of the 2010 EA was that a political party has the right and prerogative to nominate a candidate for an elective post.[505] However, there is no comparable right or prerogative on the part of the party to withdraw the candidate's nomination, unless the candidate himself withdraws or dies. In the case of *Uwazurike v Nwachukwu,*[506] the central focus of sections 31(1), 33, and 35 of the 2010 EA (As Amended) is the relationship of a candidate and his or her political party to the responsibilities of the INEC. The INEC's responsibilities are limited to receiving and accepting whatever nomination/name the party presents to it. To this extent, the INEC is required to assume a neutral position, whether it is on the submission or withdrawal of a candidate. The courts also have limited interference with this process,

[505] 2010 Electoral Act (As Amended), section 31(1)

[506] *Uwazurike v Nwachukwu* (2013)13NWLR (pt.1342)503@527

as stated earlier. In *Adegbuyi v APC,*[507] the Appellant, who had earlier written to his party to withdraw as the senatorial candidate, later brought an action challenging the nomination and sponsoring of another candidate for the same position by his party after his voluntary withdrawal on the grounds that his letter of withdrawal was not dated. The Supreme Court noted that the Appellant did not deny writing the said letter of withdrawal; therefore, it presumed that he admitted the letter's content and intentions. The court held that the Appellant, having voluntarily withdrawn from the race, allowed the substituting candidate to become the preferred candidate of the party. The Supreme Court, in this case, emphasised that a candidate who withdrew from the contest does not have the right to complain about the conduct of the primary election. He or she cannot be allowed to blow hot and cold simultaneously as he or she had lost the locus standi to challenge the process or outcome of the primary election he or she withdrew.[508]

The significance of this reform lies in the understanding that while the 2006 EA allowed political parties to substitute, withdraw or change candidates whose names were submitted to the INEC for cogent and verifiable reasons, the 2010 EA (As Amended) completely prohibits all forms of substitution or withdrawal of candidates, after submission to the INEC, except in the case of confirmed death or withdrawal of the person whose name has been submitted to INEC. This reform came about due to the abuse by political parties of the 2006 EA, which allowed them to change candidates for cogent and verifiable reasons. Parties were engaged in illegal and wrongful substitution of validly nominated candidates for no good reasons, denying

[507] *Adegbuyi v APC* (2015)2 NWLR (pt.1442)1

[508] Per Fabiyi, JSC.

candidates their rights after winning primaries and replacing them with persons who did not contest the primaries and were not involved in the nomination process. This had escalated the volume of electoral disputes in the courts. Adeleke and Oni aptly described the political climate in Nigeria at the time in the following way:

> The Nigerian political class has always acted in a manner that constitutes an affront to the rule of law and subversion of the course of justice in the pursuit of a selfish political agenda. Frantic efforts were made to install candidates who enjoyed the blessing of neo patrimony in various political groups, even at the risk of swimming against the tide of electoral law. Hence, the courts were confronted with an avalanche of election petitions.[509]

However, the controversial decision in the *Amaechi* case did not go down well with Nigerian politicians. The fact that someone who had never contested an election was declared the winner of the election was difficult for some in the political class to comprehend. They believe that the court and not the polls had made Amaechi the governor, and such a precedence could be detrimental to their positions. Therefore, the politicians in the Federal Legislature amended the 2006 EA in 2010 by introducing

[509] Adeleke Lateef and Ebenezer Oni, 'Election litigation and democratic governance in Nigeria.' *Democratic Practice and Governance in Nigeria*. (Routledge 2020) 35.

Section 141[510] to obliterate the decision of the Supreme Court in the Amaechi case and negate its effect on subsequent cases.[511]

With the enactment of section 141 of the 2010 EA (As Amended), the National Assembly legislatively overruled the Supreme Court's decision in the Amaechi case by providing that 'no person who did not go through all the stages of an election can be declared winner of that election'[512]. Figuratively, this was the death of the principle in the Amaechi case. Subsequently, in the case of *CPC v Ombugadu,*[513] which had similar facts and circumstances as the Amaechi case, the Supreme Court declined to declare the wrongfully excluded candidate winner of the general election because he has not participated in all the processes of the election. The court, in this case, acceded to the fact that by Section 141 of the 2010 EA, the National Assembly has set aside its decision in *Amaechi v INEC*. The court stated that:

> Contrary to the decision in Amaechi, the implication of section 141 of the EA 2010 (as amended) is that a candidate who stands to win or lose the election is the candidate and not the Party that sponsored him. In other words, parties do not contest, win or lose elections directly, they do so by the candidates they sponsored, and before a person can be returned elected by a tribunal or court,

[510] 2010 Electoral Act, Section 141, provides that an election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election.

[511] Emmanuel Nurudeen, 'Section 141 of the Electoral Act: A Further Bottleneck in the Electioneering Process' 17 November (2015) https://www.researchgate.net/ (Accessed on 26/1/2021)

[512] (n. 508)

[513] *CPC v Ombugadu* [2013] 18 NWLR (pt. 1385) 66 (SC)

that person must have fully participated in all the stages of the election, starting from nomination to the actual voting.[514]

However, in the latter case of *Jev v Iyortyom (No. 1)*,[515] the Supreme Court figuratively resurrected Amaechi. In this case, the political party illegally substituted Iyortyom, who had won a primary, with Jev. Jev won the general election, and Iyortyom filed an action for wrongful substitution. The Federal High Court and the Court of Appeal declared him the valid candidate of the party and ordered that he be sworn in, in place of Jev, the adjudged usurper. The Supreme Court, however, overruled the lower courts, holding that the courts could not properly make such an order, since by section 141 of the 2010 EA (As Amended), no person who has not undergone all the stages of an election can be sworn in as the winner, as was the case in Amaechi. The only available remedy for Iyortyom, therefore, was a fresh election. But later, in *Jev v. Iyortyom (No. 2)*,[516] the Supreme Court, in a very rare outing, overruled itself, set aside its decision in No. 1 above, and, in concurrence with the two lower courts, ordered Iyortyom to be sworn into office without a rerun.[517]

The rationale behind the court's reasons for overruling its own decision in No.1 is that section 141 applies, by explicit enactment, only to 'tribunal or court' as defined under Section 133 (2) of the 2010 EA (As Amended). The said Section 133 (2) defines 'court' to mean the Court of Appeal for presidential elections and the Election Tribunal

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[514] Per Ngwuta, JSC, at 119-120 G-A

[515] *Jev v Iyortyom (No. 1)* [2014] 14 NWLR (pt. 1428) 575 (SC)

[516] *Jev v Iyortyom (No. 2)* [2015] 15 NWLR (pt. 1483) 484 (SC)

[517] Ovo Efemini, 'Section 141 of the Electoral Act: How Poor Draftsmanship Resurrected Amaechi' (2017) 6, *IJLDLR* 43.

for other elections. Impliedly, the 2010 EA, by the express mention of these, excluded all other courts (including the Supreme Court), leaving Section 141 applicable only to election petitions, not pre-election matters as in the present case.

Consequently, Amaechi's principle still stands as the law and its implications for the nature of election in Nigeria survive. Amaechi's case laid down an invaluable principle used to check the arbitrariness of politicians and political parties who are inclined to subvert the law and impose candidates on their party members in violation of the EA and their own internal rules. One political commentator, in his analysis of the return of Amaechi, stated:

> Care should be taken by the appropriate authorities to ensure that legislative instruments are properly and carefully drafted, in order not to leave room for a subversion of the actual intention of the Legislature. Although the courts will usually be guided by the *Sententia Legis* (intention of the legislature) while interpreting a piece of legislation, it will unsurprisingly follow the letter of the legislation where it has an attitude that leans against the actual intention of the legislature (its spirit) …[518]

Another impact of Section 141 of the 2010 EA is its capacity to disrupt party politics, especially where there is a genuine need for a change of political candidate[519]. For instance, in *PDP v INEC*,[520] Alhaji Atiku Abubakar contested and won the Adamawa State gubernatorial election in 1999. Subsequently, he received a nomination as the

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[518] Ibid.

[519] Nurudeen (n. 511)

[520] Nurudeen (n. 511)

running mate of Chief Olusegun Obasanjo as Vice President before he could be sworn in as Governor. His party, the PDP, applied to the INEC to change its candidate as the governor-elect could no longer be sworn in. This position was contested in court; however, the Supreme Court ruled in favour of the PDP. With the enactment of section 141, this is no longer the position of the law as the Supreme Court would have ordered a fresh election under the 2010 EA and the Electoral Commission would require a written notice of withdrawal, signed by the candidate and delivered to the party that nominated him, for onward communication to the INEC, no fewer than 45 days before the election.

4.4.4. Submission of Lists of Candidates under the 2002, 2006, and 2010 Electoral Acts

The pertinent fact to highlight here is that the 2002, 2006 and 2010 EAs all recommended the disqualification of a candidate from contesting an election if found guilty of submitting a false affidavit and/or false document(s) to the Electoral Commission.[521] However, unlike the 2006 and 2010 EAs, the 2002 EA went a step further by empowering the court to order a candidate found guilty of swearing to a false affidavit to vacate the office if already elected, and the next person with the highest number of votes in the election to be declared duly elected. The power of the courts under the 2002 EA was exercised during the most recent general election held in the country.[522] In 2019, Nigeria's Supreme Court overturned the governorship election in Bayelsa State. The ratio decidendi of the judgment is the fact that the Deputy Governor-

[521] Electoral Act 2002, section 21(5); Electoral Act 2006, section 32(5); Electoral Act 2010, section 31(6).

[522] PDP & 2 Ors. v. Biobarakuma Degi-Eremienyo & 3 ors. SC.1/2020

elect presented forged documents in the application process. The court held that for this reason, both the APC's Governor and the Deputy Governor-elect were automatically disqualified and pronounced the PDP candidate as the duly elected governor of Bayelsa State. Consequently, the PDP candidate was sworn in as the governor-elect. The Supreme Court held that the action of the Deputy Governor-elect affects the Governor-elect because they ran on a joint ticket.[523]

The decision of the court in this instance ran contrary to the 2010 EA,[524] which clearly stated that a candidate found guilty of filing a false document or making a false declaration should only be disqualified from contesting the election. The extant law did not empower courts to order a candidate/party that has won an election to vacate the seat based on the false declaration. In this case, the court clearly acted ex judicial.

Another reform that was introduced with the amendment of the 2010 EA is Section 31 (1), which removed the INEC's power to disqualify any candidate whose name has been submitted for any reason whatsoever**.** Section 31 thus empowers the court (*not* the INEC) to disqualify a candidate/political party from contesting the election if found guilty of submitting false affidavits or documents.[525] However, a proposed amendment to this section, yet to be passed into law by the National Assembly, provides that if the candidate is already elected, he or she would be ineligible to re-contest for another election, which must be conducted within 90 days by the INEC. The

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[523] Abdur Shaban, 'Nigeria court sacks governor-elect over deputy's fake credentials' *Africa news* (Lagos, 13 February 2020) https://www.africanews.com/ (Accessed 19 October 2021)

[524] Electoral Act 2010 (As Amended) section 31 (6)

[525] Ibid Section 31(6)

proposed bill seeks to restrain courts from declaring winners from those that lost elections because the actual winners were found guilty of a false declaration.

The bill proposes that courts should order a fresh election within 90 days of removing the elected candidate from office due to a false declaration. This bill can be seen as a reaction of the legislature to judicial pronouncement and, in this case, the order crowning a loser of an election the winner because the initial winner had been found 'not qualified' to contest the election. Section 31(8) of the 2010 EA penalises political parties that do not meet the qualification stipulated under the EA[526]

4.4.5. Death of a Candidate after Nomination Under the 2002,2006 and 2010 Electoral Acts

On the issue of the death of a candidate after nomination, the electoral laws permit a valid substitution of the deceased nominated candidate.[527] The 2002 and 2006 EAs empowered the INEC to cancel elections in cases where a nominated candidate died after his name had been submitted to the INEC as the sponsored candidate of the party, but before the commencement of the poll. With the electoral reform of 2010, a period of 14 days was allowed for parties to nominate a new candidate to replace the deceased by conducting fresh primaries.

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[526] A political party which presents to the Commission the name of a candidate who does not meet the qualifications stipulated in this section, shall be guilty of an offence and on conviction shall be liable to a maximum of N500,000.00 (USD 600).

[527] Electoral Act 2010 (As Amended) Section 33

With recent developments in the political trajectory of Nigeria, circumstances that are novel to our political jurisprudence have emerged. For instance, the position of the law regarding death of a candidate (in the course of voting).

These political events were hitherto not provided for by the 1999 CFRN (As Amended) and the EAs, hence the need for further electoral reforms. The 1999 CFRN (As Amended) and the 2010 EA (As Amended) made no provision relating to steps to take in the event of death of a candidate *during* an election when the casting of votes has commenced but before a return is made. The nearest provision similar to this circumstance is Section 36(1) of the 2010 EA (As Amended), which only applies where a nominated candidate dies after nomination but before the commencement of the polls, but does not apply to a situation of the death of a candidate after commencement of the polls.[528] This apparent gap in Nigeria's electoral law became evident in 2015 during Kogi State governorship elections. After the commencement of voting but before the declaration of results and return of a winner, Prince Abubakar Audu, the APC governorship candidate, died. Following his death, three persons involved in the election claimed to be the right candidate to replace Prince Audu. First, his running mate, James Faleke, contended that he should assume the position of his principal to complete the election. Secondly, Yahaya Bello, who was the first runner-up during the primary election (which had produced Prince Audu), also contended that he was the right person to step into Audu's shoes for the election. Equally contending for the governorship position was the candidate of the PDP, Capt. Idris Wada, who asserted

[528] Samuel Oguche, 'Electoral Law Reform in Nigeria: Proposals for Amendment of the Electoral Act 2010 and the Imperative of ICT' (2017)6 *IJLDLR* 47.)

that following Audu's death, he (Wada) was to be declared the winner of the election, having secured the second highest number of votes in the polls. The APC eventually fielded Yahaya Bello to complete the election, which the late Audu was already ahead of before his demise. The apparent lacuna in the Nigerian electoral law became a subject of litigation in *Captain Idris Wada & Ors v Yahaya Bello & Ors*.[529] The Supreme Court, however, affirmed Yahaya Bello as the governor of Kogi State. Yahaya Bello came second in the APC primaries for the governorship election.

4.5. Political Party Leadership Election

Party leaders are perceived as gatekeepers of those who lead the country, making the process of electing party leaders an essential political institution. Due to the value of political parties to the engendering of democracy at the institutional level in developing democracies such as Nigeria, it becomes imperative to understand their internal workings. A leadership election is one of the major defining functions performed by political parties, and choosing its leaders is a strategic process with important implications on the nature of the parties, as it reflects their democratic culture. Party leadership elections have also been adjudged good indicators of the degree of democracy within the organisational dynamic of parties, as the leadership selection method of parties may be used as an acid test of how democratically they conduct their internal affairs.[530]

[529] *Captain Idris Wada & Ors v Yahaya Bello & Ors* (2016) 17 NWLR, Pt. 1542, 374

[530] Reuven Hazan and Gideon Rahat. *Democracy within Parties: Candidate selection methods and their political consequences*. (OUP 2010).

This section analyses the leadership selection methods used by Nigerian political parties in electing their leaders. An assessment of the constitutional provisions and internal party rules on leadership election methods and how democratic the process adopted by parties is will be carried out using the lens of IPD. At the core of IPD is the assumption that, at the institutional level it requires political parties not only to be to be internally democratic but also to enhance the inclusiveness of the leadership selection method. The IPD has been described as involving the equal sharing of political power within a party, where the decision-making process involves the participation of the party on the ground. Consequently, the leadership election process becomes the dependent variable for measuring the degree of IPD in political parties.[531] Scholars have averred that the performance variable of determining how democratic political parties are is party leadership election institutionalisation, as measured by the adoption of formal rules for the election of party leaders.[532] Consequently, emphasis should be on the presence or lack of formal and codified rules in party statutes and constitutions.[533] Scholars have equally suggested a co-existence of formal institutions with informal procedures, with the informal institution providing more about the actual procedure parties adopt in leadership election practice.[534] In analysing the content of the formal rules that regulate the leadership election process in Nigeria parties, as contained in

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[531] William Cross and Richard Katz (eds), *The challenges of intra-party democracy* (OUP, 2013)

[532] Gyda Sindre, 'Internal party democracy in former rebel parties' (2016) 22 (4) *Party Politics* 501.

[533] Annalisa Cappellini, *Intra-party democracy and internal party power: a comparative study of Italian political parties*. (DPhil thesis, King's College London, 2020).

[534] Helmke Gretchen and Steven Levitsky. 'Informal institutions and comparative politics: A research agenda' (2004) 2 (4) *Perspectives on Politics* 725.

the statutes and constitutions and any other informal rules, an assessment of any discrepancies existing between the formal and informal rules and the level of adherence of parties to their rules will be made.

To promote democratic parties in Nigeria, the 1999 CFRN requires the constitution and rules of political parties to provide for periodical elections on a democratic basis of the principal officers and members of the Executive Committee or other governing body of the political party.[535] The said 1999 CFRN further states that the election of the officers or members of the Executive Committee of a political party should be deemed to be periodical only if it is made at regular intervals not exceeding four years.[536]

In line with the above constitutional provisions, the APC Constitution provides that:

> … all Party posts within the party, prescribed or implied by this Constitution shall be filled by democratically conducted elections at the respective National Convention or Congress subject, where possible, to consensus…[537]

The Constitution of the APC further prescribes a tenure of four years for all officers of the party elected or appointed into the party's organs and an additional four years if re-elected or re-appointed.[538]

The Constitution of the PDP equally provides that the party's National Convention, zonal, state, local government area and ward congresses shall meet to

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[535] 1999 CFRN section 223 (1)(a)

[536] 1999 CFRN 223 (2)(a)

[537] APC Constitution (2004) As Amended, Article 20

[538] APC Constitution (2004) As Amended, Article 17

elect the officers of the party at the various levels of the party structure, as specified in the constitution except in the Federal Capital Territory (FCT), where officers of the party shall be elected based on geo-political zones.[539] The Constitution of the PDP further provides that the procedure to be adopted at the Congress for the election of ward officers, councillorship candidates, and the three delegates to the Local Government Congress and the State Congress, (out of which at least one shall be a woman), shall be by direct primaries in which all card-carrying members of the party at ward level shall participate.[540]

From the above provisions of the political parties' constitutions, it is evident that the party leadership at all levels (ward, local government council, state, zonal, and national) consists of a Chairman, a Deputy Chairman, a Secretary, an Assistant Secretary, a Treasurer, a Financial Secretary, a Publicity Secretary, a Women’s Leader, and a Youth Leader, including other members elected for the Ward Congress, among whom shall be women. These party officials/leaders are elected at the congresses and the conventions of the parties.

For purposes of clarity, a political party’s congress is defined as a gathering at which a political party selects its candidates for elections or elects its state, local government, and ward party officials, while a political party convention is a gathering where a political party:

1. Elects its national officers and/or the presidential candidate for the party;
2. Amends the party constitution when necessary;

[539] PDP Constitution (2012) As Amended, Article 49 (1)

[540] PDP Constitution (2012) (As Amended) Article 50 (8)

3. Reviews ratify, overturns, or alter any decision taken by any of its constituent bodies, units, or officials of the party;
4. Appoints external auditors to audit the party's accounts;
5. Resolves disputes;
6. Establishes any committee to deal with specific issues;
7. Takes decisions on the running or future direction of the party.

However, due to the executive power of the governor and funding of the party from the state's coffers, the governor of the state becomes the de facto party leader, dictating how the party functions - most times without resistance from the party members - throughout his or her tenure in office.

The parties' leadership, according to their constitutions, has the main decision-making power of the parties, with the responsibility to set the political vision, mission, and agenda of the parties as well as externally represent them. It is often said that three characteristics mark out a political party — ideology, organisational structure, and leadership. However, as earlier observed, Nigerian political parties often lack a coherent political ideology, and the constitutionally recognised structures are under immense pressure and strain. Members are not united in common beliefs or ideas; the only uniting force that does bond them is the struggle for political power and positions. Nigerian parties have always been embroiled in some kind of crisis or another, pitching members of the same party into different factions within. Oftentimes, the crisis or dispute revolves around leadership tussles within the party, creating two-party factions' allegiant to two different leaders. These disputes frequently end up in the courts, who assume jurisdiction to determine the cases where the parties are found not to have obeyed their constitution.

In recent times, in the case of *Hon.Aguma v APC,*[541] the Supreme Court affirmed the sacking of Hon. Aguma as the chairman of the caretaker committee of the APC in Rivers State and recognised the Isaac Ogbobula-led caretaker committee (which was constituted by the party's National Working Committee) as the authentic leadership structure of the party. The Apex Court based its decision on the lack of jurisdiction of the court to entertain the matter, as doing so would amount to interference in the leadership dispute, which is an internal affair of the party.

In a related leadership dispute in the ruling APC, the Court of Appeal sitting in Abuja on June 16th, 2020, affirmed the suspension of the former APC National Chairman by his party. On November 12, 2019, Oshiomhole was suspended from the APC after 18 local government chairmen in his native State of Edo passed a vote of no confidence in him. He was accused of trying to disintegrate the party in Edo State. However, a faction loyal to Oshiomhole declared his suspension null and void and then suspended Governor Godwin Obaseki, whom they allege had orchestrated Oshiomole's suspension. Subsequently, Edo State APC reaffirmed the suspension of Oshiomole and said he had no legal right to continue to function as the APC National Chairman by virtue of his suspension in Edo State. On the 4th of March, 2020, a High Court sitting in Abuja ordered the suspension of Oshiomole from the office of the National Chairman of the APC, stating that, having been suspended from the party, Oshiomhole was no longer a member and could not possibly continue to discharge his official responsibilities as National Chairman with a clear order of the court that Oshiomhole be restricted to the national secretariat of the party. Oshiomole then appealed against his suspension at the Abuja Court of Appeal, and the court affirmed

[541] (Unreported) 2021

his suspension on the grounds that his suspension from Ward 10 of Etsako Local Government of Edo State was ratified at the ward, local government, and state levels, as required by law. The court held that the identity of those who suspended Oshiomole was not in doubt because, in their unchallenged affidavit, they made it clear that they were party members and officers of the party; therefore, the appeal lacked merit.

The implication of the court's decision in the above cases is that in an internal party dispute that revolves around a leadership dispute, the courts will usually decline jurisdiction because it is an internal party affair in which the court does not interfere. However, where an action of the party is challenged, as in the case of the former APC chairman, the courts will only set aside the decision of the party where the party did not obey its constitution or follow the law. The court will ratify any action of a political party conducted with due process and in accordance with the party's law.

4.6. Conclusion

From the above analysis of various EAs and the development of electoral case law which led to reforms in Nigeria's electoral law with regards to IPD, one can conclude that there has been a deliberate attempt by the legislature to make parties independent and autonomous through the trend of reforms. It can be inferred that Nigerian parties demanded - and won - reforms that reduced the power and control of the state in the affairs of parties. State regulation of the internal activities of parties was thus removed by the 2010 reform. This, to many, is an encouraging move in the direction of IPD. The extant electoral laws and party laws provide for the democratic elections of candidates and party leadership. Furthermore, the Nigerian Supreme Court, in its role of adjudication of electoral disputes, has been found to be inconsistent in its decisions, as seen in *Captain Idris Wada & Ors v. Yahaya Bello &*

Ors[542], and *Jev v Iyortom* (1) and (2).[543] These inconsistencies have the potential to derail democracy, as Nigeria witnessed before and after the 1993 general election, which was allegedly the most free and fair election in the history of the country. Also, the court and the legislature are not seen to pursue a nexus between judicial pronouncements and legislative actions in order to have a consistent body of law governing electoral disputes. What is seen is the pursuit of political interests in the guise of political reform. The courts and the legislatures are foundational to Nigeria's democratic growth, and thus should consciously be seen to develop a coherent body of laws and principles that will help promote the country's democracy to the next level towards consolidation.

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[542] *Captain Idris Wada* (n. 528).

[543] *Jev v Iyortom* (1) and (2) (2015) 15 NWLR (1483) 482

CHAPTER FIVE

AN EVALUATION OF JUDICIAL INTERVENTION IN IPD AND ELECTORAL OUTCOMES IN NIGERIA

5.1. Introduction

This chapter examines the role and impact of the judiciary in IPD and electoral outcomes in Nigeria. The organisational structure and specific jurisdictions of Nigeria's courts in electoral matters will be analysed. The chapter further examines the concepts of judicial activism and judicial independence and how they impact or influence judicial decisions on electoral matters. An analysis of the judgments of the courts on electoral cases will also be undertaken to establish how judicial independence and judicial activism have impacted general electoral outcomes in Nigeria. In the process, the socio-political context of politics in Nigeria and its constraints on the constitutional functions of the judiciary in determining electoral outcomes will be analysed. This chapter, generally, assesses whether or not the judiciary has provided stability to the electoral democratic system and the polity in Nigeria through their interventions.

A legitimate democratic government is one in which the electoral process that gave birth to it is free, fair, impartial, and trusted.[544] Every electoral process in Nigeria, as elsewhere in the world, comes with disputes and disagreements. These disputes

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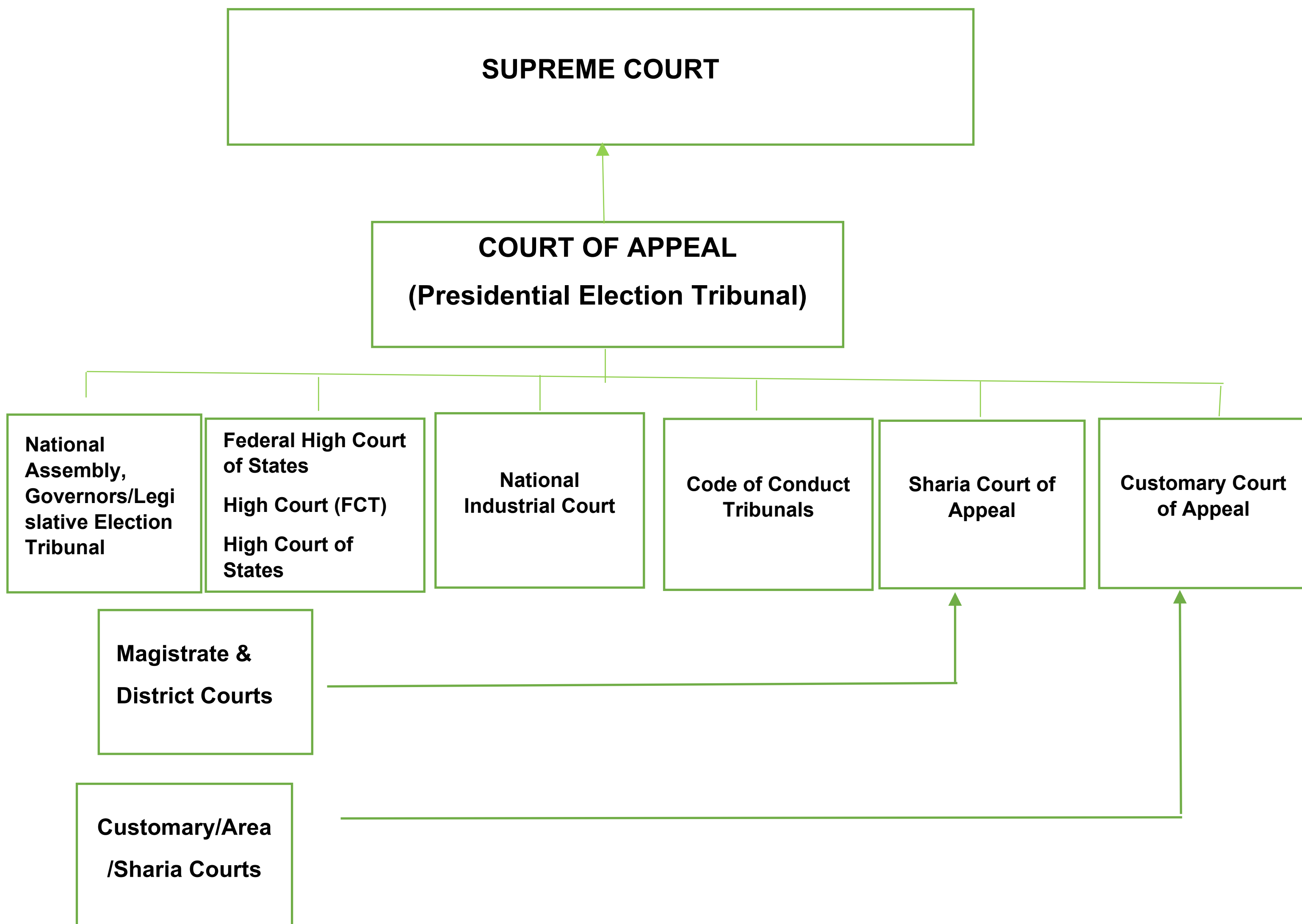
[544] Jesus Orozco-Henriquez et al, 'Electoral Justice', *The international IDEA Handbook* (November 2010), https://www.idea.int/ (Accessed 12/04/2021)

occur mostly within and between political parties and other stakeholders in the electoral process. Increasingly, as democracies experience the 'judicialisation'[545] of electoral procedures, whereby the courts are allowed to make final decisions on electoral outcomes, these disputes end up in the courts**.** Hence, in Nigeria, the judiciary has become increasingly responsible for resolving numerous electoral conflicts since the inception of the democratic regime in 1999. The statistics of electoral cases that are heard and determined in Nigerian courts at each election year thus continue to multiply exponentially. The courts are increasingly overwhelmed and pressured by the demand for justice and fairness in the adjudication of electoral disputes, raising the need for an effective judicial system that can resolve all electoral disputes, including intra-party ones.

[545] Ibid

5.2. Organisational Structure and Hierarchy of Courts on Electoral Matters in Nigeria

Figure 1: Hierarchy and Jurisdiction of Courts in Nigeria



The 1999 CFRN (As Amended) vested judicial powers of the Federation and the states solely in the courts[546] (i.e. the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory, Abuja, each state's High Court, Sharia courts, and customary courts and other special courts such as

[546] 1999 CFRN, section 6 (3)

Election Petition Tribunals, Code of Conduct Tribunals and The National Industrial Courts.[547] The structures of these courts are established by the Constitution.[548] It is established that these courts of record have inherent jurisdiction to adjudicate disputes over all civil, criminal, and electoral disputes between citizens, government, and authorities.

Under the 2010 EA, all election petitions shall be presented to a competent tribunal or court in accordance with the provisions of the Constitution and the 2010 EA [549] Under the same EA, a tribunal or court is defined as 'the Court of Appeal' in the case of a presidential or governorship election and in the case of any other election (national and state assembly elections), the election petition tribunal established under the Constitution or the 2010 EA.[550]

5.2.1. The Supreme Court

Section 230 of the 1999 CFRN (As Amended) established the Supreme Court as the Apex court of Nigeria. In other words, it is the highest court in the land and its decision is final, to which there is no appeal. As the Constitution states: 'No appeal shall lie to any other body or person from any determination of the Supreme Court. There exists only one Supreme Court in Nigeria.'[551] All appeals on criminal, civil or electoral cases

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[547] 1999 CFRN, section 6 (5)

[548] 1999 CFRN, sections 230-238

[549] Electoral Act 2010 (As Amended) Section 133 (1)

[550] Electoral Act 2010 (As Amended) Section 133 (2)

[551] 1999 CFRN Section 235

from the Court of Appeal are heard and determined by the Supreme Court.[552] The Supreme Court has original jurisdiction in any dispute between the Federation and a state or between states if, and in so far as, that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends.[553] The Supreme court has no original jurisdiction with respect to any criminal matter.[554] Furthermore, the Supreme Court has an appellate jurisdiction over decisions of the Court of Appeal on electoral matters.[555]

5.2.2. Court of Appeal

Section 230 of the 1999 CFRN (As Amended) equally established the Court of Appeal. It ranks second in the hierarchy of courts in Nigeria and is vested with the original jurisdiction to hear and determine electoral disputes arising from Presidential/Vice Presidential elections in Nigeria.[556] Appeals from the Governorship Election Tribunal, State Legislative Tribunals and National Assembly Election Tribunals are heard by the Court of Appeal.[557] The decisions of the Court of Appeal in respect of appeals arising from election petitions is final.[558] Also, all appeals from the Federal High Court, the High Court of a state, the Sharia Courts of Appeal in a state, and the Customary Appeal

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[552] 1999 CFRN, Section 233, states that the Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determines appeals from the Court of Appeal.

[553] 1999 CFRN Section 232(1) and (2)

[554] 1999 CFRN Section 232(2)

[555] 1999 CFRN Section 233(2)(e)(i)-(iii)

[556] 1999 CFRN Section 239(1)

[557] 1999 CFRN Section 246(1)

[558] 1999 CFRN Section 246(3)

Courts on civil and criminal matters are heard by the Court of Appeal as well as appeals from the National Industrial Court and Code of Conduct Tribunals.[559]

5.2.3. State High Court/Federal High Court

The 1999 CFRN provides for a High Court in each of Nigeria's 36 states and in the Federal Capital Territory of Abuja.[560] The High Courts and Federal High Court have equal jurisdictions in civil and criminal cases. The National Industrial Court and Code of Conduct Tribunals are courts of coordinate jurisdiction with the State and Federal High Courts in Nigeria. Also, Sharia Courts of Appeal and Customary Courts of Appeal have coordinate jurisdiction with the State High Court.

The 2010 EA (As Amended) conferred the Federal High Court and High Court of any state and the FCT with jurisdiction to hear and determine cases arising from the nomination of candidates, where an aspirant complains that a political party did not comply with the provisions of the 2010 EA and the party's guidelines in the party nomination exercise.[561]

5.3. Establishment and Constitution of Election Tribunals in Nigeria

In accordance with the international human rights instruments establishing the fundamental right of all persons whose rights have been infringed upon to have an effective remedy before a pre-established independent tribunal,[562] the 1999

[559] 1999 CFRN, sections 243-246

[560] 1999 CFRN, Section 255

[561] Electoral Act 2010, Section 87(9),

[562] Declaration on Criteria for Free and Fair Elections, adopted by the Inter-Parliamentary Council in 1994, (Paragraph 4.9); Universal Declaration of Human Rights of 1948, Articles 20 and 21; African

Constitution and the 2010 EA established the Election Petition Tribunals and conferred them with the power and authority to hear and determine all complaints arising from the outcome of elections.[563] The declaration on the criteria for free and fair elections states:

> States should ensure that violations of human rights and complaints relating to the electoral process are determined promptly within the time frame of the electoral process and effectively by an independent and impartial authority, such as an Electoral Commission or the courts.[564]

In line with the above declaration, the 1999 CFRN made provisions for the establishment and constitution of the Election Tribunals. Thus:

> There shall be established for the Federation one or more election tribunals to be known as the National Assembly Election Tribunals which shall, to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected as a member of the National Assembly, the seat of a member of the Senate or a member of the House of Representatives has vacant and a question or petition

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Charter on Human and Peoples' Rights of 1981, Article 13; International Covenant on Civil and Political Rights of 1966, Articles 2, 19, 21, 22 and 25

[563] 1999 CFRN: Part V111, Section 133 of Electoral Act 2010 (As amended)

[564] Declaration on Criteria for Free and Fair Elections, adopted by the Inter-Parliamentary Council in 1994, (Paragraph 4.9); Universal Declaration of Human Rights of 1948, Articles 20 and 21; African Charter on Human and Peoples' Rights of 1981, Article 13; International Covenant on Civil and Political Rights of 1966, Articles 2, 19, 21, 22 and 25

brought before the election tribunal has been properly or improperly brought.[565]

The constitution further established the Governorship and Legislative Houses Election Tribunals in each state which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house.[566]

The Supreme Court shall be duly constituted when hearing appeals from electoral matters if it consists of not less than five Justices of the Supreme Court.[567] The Court of Appeal, in hearing and determining a presidential election petition, shall be duly constituted if it consists of at least three Justices of the Court Appeal.[568] The National Assembly Election Tribunals and the Governorship/Legislative Houses Election Tribunals each consist of a Chairman and four other members. The Chairman of the tribunal must be a Judge of a High Court and four other members are appointed from among High Court Judges, Kadis of a Sharia Court of Appeal and/or Judges of a Customary Court of Appeal.[569]

Subsequently, in furtherance of its functions and duties of interpretation of the law and judicial review, the judiciary, in determining all intraparty and electoral disputes in Nigeria, in particular determines:

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[565] 1999 CFRN, Section 285 (1)(a) to (d)

[566] 1999 CFR, Section 285 (2)

[567] 1999 CFRN, Section 234

[568] 1999 CFRN, Section 239(2)

[569] 1999 CFRN, Sixth Schedule.

1. Which laws the legislature intend to apply to specific situations;
2. Whether a course of action or law is unconstitutional, null or void;
3. How legislature is meant the law to apply to disputes, and;
4. How laws should be interpreted to achieve uniformity in policies through the appeals process.[570]

For Nwagboso and Duke, 'The need to right the wrong of Nigeria's electoral process in Nigeria necessitated the establishment of electoral tribunals.'[571] The election petition tribunal in this context does not entertain any other complaints or disputes except those arising from the specific election for which the tribunal was constituted.[572] Thus, no other court or tribunal except the Election Tribunals shall have original jurisdiction to hear and determine petitions arising from Presidential, Governorship, National Assembly, and State House of Assembly elections.[573] However, as earlier stated, the Supreme court, in *Wambai v Donatus,*[574] in reversing this position, held that an Election Petition Tribunal (wherein the legality and outcome of an election is challenged) equally has jurisdiction to hear and determine intra party disputes and pre-election matters, based on the issue of qualification to contest the

[570] Fidelis Uwakwe and Chudi Nwabachili, 'Section 140(2) and 141 of the Electoral Act, 2010 of Nigeria: A legislative mockery' (2017) 5 (6) *Global Journal of Politics and Law Research* 54

[571] Chris Nwagboso and Otu Duke. 'The Implication of the 2011 General Elections on Democracy and Good Governance in Nigeria', (2015) 2, *Advances in Social Sciences Research Journal*, 221 doi:10.14738/assrj.27.1337. (Accessed 16/2/2021)

[572] 1999 CFRN, Section 285

[573] Ibid.

[574] *Wambai v Donatus* (2014) 14 NWLR (pt.1427) 223

election, in the first instance.[575] Consequently, after the determination of election petitions and/or the resolution of disputes arising from the outcome of elections, including the hearing of all appeals from the decisions of the tribunal, by the apex courts, the election tribunal stands dissolved, to be reconstituted in the next election cycle. This system allows for effective resolution of electoral outcome disputes in a timely manner within the legally required timeframe,[576] prior to the winners assuming office, as required by law.

5.4. Courts' Jurisdiction on Pre-election and Post-election Cases

Nigerian case law[577] established the nature of electoral matters as 'sui-generis' or peculiar or in a class of its own, and, as such, to be distinct from ordinary civil or criminal proceedings[578]. Adjudication in these cases revolves strictly around documentary evidence. Cases bordering on intraparty activities such as nomination, disqualification, withdrawal, substitution, and sponsorship of candidates for election naturally precede the general election and are regarded as pre-election cases. This category of cases is deemed different from election petition cases.

Under the Nigerian judicial system, courts' jurisdiction over challenges to general electoral outcomes is different from jurisdiction over other electoral challenges such as complaints arising from the conduct and results of primary elections and election of

[575] This reasoning and decision were based on Section 138 (1) (a) and (d) of the Electoral Act 2010 (as amended).

[576] 2010 Electoral Act, Section 134, Presumed 90 days' time frame to resolve all electoral disputes in court, otherwise referred to as 'the Rock of Gibraltar'.

[577] *Idehenre v Omiyi* (2010) LCN/4162(CA)

[578] *James v INEC* (2015)12 NWLR (pt. 1474) 538; *Wambai* (n. 573).

party officials. Jurisdiction over challenges to electoral outcomes is conferred on the election petition tribunals,[579] while jurisdiction over intraparty disputes such as complaints arising from the nomination of candidates for elective posts is conferred on the Federal High Court and the High Courts of the respective state.[580] The Court of Appeal and the Supreme Court, having the status of appellant courts, are empowered to ultimately hear appeals from the election tribunals and the federal and state high courts.[581]

The Supreme Court, in *Yaradua v Yandoma,*[582] held that an election is not an event but a process that commences with qualification and nomination of candidates and terminates with the holding of a poll that produces a winner. Thus, all the electoral processes and activities that occur prior to the conduct of the general poll are categorised as pre-election matters,[583] irrespective of whether they are contested in the courts or not. For clarity, pre-election matters are cases wherein the legality and outcome of a candidate selection process, including the disqualification, withdrawal, and/or substitution of a candidate, are challenged in the appropriate courts before the conduct of general elections. These cases are distinguished from Election Petition matters (post-election cases), which constitute all proceedings instituted after the conclusion of an election, challenging the election's outcome in an Election Tribunal.

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[579] 1999 CFRN, section 285; Part V111, Section 133

[580] Electoral Act 2010 (As Amended) Section 87(9)

[581] 1999 CFRN, Section 285

[582] *Yaradua v Yandoma* (2015)4 NWLR (Pt.14480 123 @177

[583] Lateef Fagbemi, 'True or false, the Maxim of Justice Delayed is Justice denied has no relevance in the trial of Election Petition cases' (Honourable Justice Mustaphar Akanbi Foundation lecture, Abuja, 2010) https://docslib.org/ (accessed 16 ?03/2021)

Case law[584] has established that an aggrieved party seeking to institute a pre-election matter in a court of law must approach a competent court to seek the enforcement of his/her rights prior to the actual election; hence the case remains a pre-election matter even when it goes to the Court of Appeal, in as much as it was filed before the election. In *Nobis-Elendu v INEC,*[585] the Supreme Court held that a pre-election suit instituted a day before the conduct of the general election qualifies and subsists as a pre-election matter, and that the Court has jurisdiction to entertain it. In the case of *Adeogun v Fashogbon,*[586] the Supreme Court reiterated its position from *Ugwu v Ararume*[587] and *Amaechi v INEC,*[588] namely that the dictionary meaning of 'pre' is before and the substitution which took place on a date before the election certainly qualified the suit as a pre-election matter. In *Abimbola v INEC*[589] and *Bob v Akpan,*[590] where the question of whether pre-election matters are within the jurisdiction of an Election Tribunal was raised, the Court of Appeal stated that, according to the 1999 Constitution and 2010 EA, the original jurisdiction of Election Tribunal is defined only in respect of a person validly elected.[591] All pre-election matters which include the nomination of a candidate by the provisions of the 2010 EA are within the jurisdiction of a State High Court or the

[584] *Nobis-Elendu v INEC* (2015) 16 NWLR (pt.1485) 197

[585] *Nobis-Elendu (n. 583).*

[586] *Adeogun v Fashogbon* SC.183/2007

[587] *Ugwu v Ararume* (n.22)

[588] *Amechi* (n. 20)

[589] *Abimbola v INEC* (2009) LCN/3451(CA); (2009) LPELR-CA/1/EPT/HA/48/2008.

[590] *Bob v Akpan* CA/A/97/M/2007

[591] Electoral Act 2010 (As Amended) Section 133.

Federal High Court.[592] It thus held that the Election Tribunal has no jurisdiction over pre-election matters. In the above cases, the Court of Appeal followed the Supreme Court's decision in *Ugwu v Ararume,*[593] *Amaechi v INEC,*[594] *the Action Congress of Nigeria v INEC,*[595] *Odedo v INEC,*[596] *and Pam v Mohammed Usman.*[597] The Supreme Court, in *Agbakoba v INEC & Ors,*[598] stated that sections 32[599] and 34[600] of the 2006 EA provided the 'dividing line' between pre-election and post-election disputes for preliminary matters as opposed to matters related to the holding of actual elections.

Furthermore, the Supreme Court, in *Watharda v Ularumu*[601] and *Hassan v Aliyu,*[602] held that a wrongfully substituted candidate who did not file an action challenging the unlawful substitution before the holding of an election and declaration of a winner loses the right to pursue a pre-election matter after the election has taken

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[592] EA 2010 (As Amended) Section 87 (10)

[593] *Ugwu v Ararume* (n. 22)

[594] *Amaechi* (n. 20)

[595] *Action Congress of Nigeria v INEC* (2007) 6 NWLR (Part 1029) 142

[596] *Odedo v INEC* (2008)7 S.C 25.

[597] *Pam v Mohammed Usman* (2008)5-6 S.C (pt.1)83

[598] *Agbakoba v INEC & Ors* (2008) LPELR- SC. 224/2007

[599] 'Every political party shall not later than 120 days before the date appointed for a general election under the provisions of this Act, submit to the Commission in the prescribed forms the list of the candidates the Party proposes to sponsor at the elections'

[600] A Political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.

[601] *Watharda v Ularumu* (2015)3 NWLR (pt.1446) 253

[602] *Hassan v Aliyu* (2010)17 NWLR (pt.1223) 247

place.[603] Following this reasoning, the rationale for making pre-election matters time-restricted is that the question of nomination, substitution, and sponsorship of a candidate ceases to exist as soon as the election, to which these internal party issues relate to, is concluded. Therefore, a pre-election matter must be instituted in the appropriate high court before the conduct of the election; otherwise, the right to redress is deemed to have elapsed as the status of the matter would transform to a post-election matter over which the courts do not have jurisdiction.[604] This position was further affirmed in the latter case of *Akpamgbo-Okadigbo v Chidi*.[605] It should be noted that what case law seeks to establish here is that after the holding of an election, the announcing of the result and the declaration of a winner, a pre-election matter that has not been filed becomes exhausted, and the appropriate court with jurisdiction to hear and determine an action relating to the election becomes the Election Tribunal and no longer the High Court.

It is pertinent to understand that the above decisions of the court were premised on Section 87(9)[606] of the 2010 EA (As Amended), which conferred jurisdiction only on the Federal High Court or a state's High Court to hear and determine cases on the

[603] Mejuru (n. 381).

[604] *Salim v CPC* (2013)6 NWLR (pt.1351)501

[605] *Akpamgbo-Okadigbo v Chidi* (N0. 2) (2015) 10 NWLR (pt. 1466)171

[606] 'Notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State, for redress'

nomination of candidates (pre-election matters). This section precludes an election tribunal from entertaining pre-election matters.

However, Section 87(9) of the 2010 EA (As Amended) and the judgments of the Supreme Court on the jurisdiction of the High Court on pre-election matters have been seen to contradict this legal position. The said Section 87(9) is diametrically opposed to Section 138 (1) (a) and (d) of the 2010 EA (As Amended) and decisions of the court which are based on it. Section 138 (1) (a) and (d) of the 2010 EA (As Amended) provides that:

1) An election may be questioned on any of the following grounds:
   (a) a person whose election is questioned was, at the time of the election, not qualified to contest the election.
   (d) the petitioner (the political party or its candidate) was validly nominated but was unlawfully excluded from the election.

The above provision of the 2010 EA implies that an election tribunal (wherein the legality and outcome of an election is challenged) has jurisdiction to hear and determine a pre-election matter, based on the issue of qualification to contest the election (thereby contradicting the previous decisions of the court), after the conclusion of an election and declaration of results. The Supreme Court has held[607] that challenges to an election on the grounds of unlawful substitution of a candidate come within the purview of Section 138(1)(a) because it challenges the qualification of a person to contest the election in question, especially if his nomination as the party's candidate is

[607] *Wambai* (n. 573)

challenged.[608] The rationale behind this decision is that a person cannot be qualified as a candidate for an election except when he or she is duly nominated and sponsored by a political party to which he or she, of course, belongs. It thus follows that the outcome of an election can validly be challenged on the grounds of nomination (pre-election matter), in an election tribunal, under Section 138 (1)(a) of the 2010 EA (As Amended). This was the Supreme Court's position in *Wambai v Donatus*[609] when it ruled that it is wrong to hold that an election tribunal does not have jurisdiction to hear and determine a pre-election matter. Also, in *Dangana v Usman,*[610] the Supreme Court held that the issue of the qualification of a candidate to contest an election under Section 138 (1)(a) of the 2010 EA is both a pre-election and an election matter which both the High Court and an election tribunal have jurisdiction to hear and determine.

Furthermore, the act stipulates[611] that where an election tribunal or the High Court concludes that a candidate was unlawfully substituted and that the candidate who contested the election was not qualified to contest to do so, ab initio, the tribunal/court has the power to nullify such an election. Thus, Section 140(1) vested jurisdiction in both an election tribunal and the High Court to hear and determine pre-election matters as well as nullify an election in which an unqualified candidate contested and won.

The foregoing analysis of sections 87(9), 138(1)(a)(d) and 140(1) of the 2010 EA reveal the contradictions in the Electoral Law and case law regarding the jurisdiction of the High Court and election petition tribunals on pre-election matters. To state,

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[608] *Wambai* (n. 573)

[609] *Wambai* (n. 573)

[610] *Dangana v Usman* (2013)6 NWLR (pt.1349)50 at 89-90

[611] 2010 EA (As Amended) Section 140(1)

therefore, that Section 87(9) of the 2010 EA strips an election tribunal of the jurisdiction to entertain pre-election matters is not correct. Case law and precedence have shown that the principle of law established by Section 87(9) admits exceptions. Thus, it is not in all cases that a pre-election matter must be instituted, heard, and determined by the High Court. The exception, as established in *Dangana v Usman,*[612] is that, where the pre-election matter is instituted post-election, an appropriate election tribunal equally has jurisdiction to hear and determine the dispute. However, the decision did not give litigants the choice of initiating an action either at the High court or at an election tribunal but ruled that where a party seeking relief failed to file the matter before the conduct and conclusion of the election in the High Court, he or she can still avail himself or herself of the opportunity to do so, after the election, at an election tribunal, under Section 138(1)(a) and (d) of the 2010 EA (As Amended).[613]

5.5. Doctrine of Judicial Precedence

The system of precedence, being a source of formal legal reasoning, is a system whereby the principles of law (*ratio decidendi*) upon which superior courts decide a case becomes binding on the lower courts,[614] even where a decision is given *per incuriam*. However, where a superior court's decision is challenged and reversed on the basis that it was reached per incuriam, then it does not possess for the lower courts any binding effect.[615] This principle, otherwise known as *Stare Decisis*, has been described

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[612] *Dangana v Usman* (2013)6 NWLR (pt.1349)50 at 89-90

[613] Mejuru (n. 381).

[614] *Ngwo v. Monye* (1970) 1 All NLR 91 at 100

[615] *R. v. Northumberland Compensation Appeal Trubunal ex-parte Shaw* [1951] 1 K.B. 711; *Young v. Bristol Aeroplane Co. Limited*; *Nicholas v. Penny* [1950] 2 K.B. 466

as a decision of the court of record becoming an authority for similar cases arising afterward with similar questions of law.[616] The congruity of court judgments in electoral cases is anchored in this principle,[617] that is, 'to stand by decided cases'.[618] In *Emerah & Sons v A.G Plateau State*[619] and *Global Trans Oceanico S.A v Free Ent (Nig) Ltd*,[620] it was held that judicial precedence is not alien to Nigeria's jurisprudence and must be strictly adhered to by all courts. The Supreme Court can only overrule itself for good and substantial reasons.[621] However, an *obiter dictum* (a 'passing comment') lacks binding effect for the purpose of this doctrine.[622] The implication is that the judicial decisions of the Supreme Court embodying these interpretations then become controlling for future cases, with similar facts, sometimes to the extent that they virtually supplant the legislative enactments themselves. This becomes the position even though the substantive reasoning on which the decision is based is weak and the countervailing substantive consideration may be strong.

Generally, Nigeria's Judges are expected to follow earlier decisions, principally because the goal of the law is to give certainty and consistency in the legal system through uniform and predictable justice. It is also necessary for providing guidance to

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[616] Alayinde Zaccheauus, 'An analysis of the legal regime of election administration in Nigeria' (2016)46 *Journal of Law, Policy & Globalization* 110.

[617] Ibid.

[618] Ibid

[619] *Emerah & Sons v A.G* Plateau State (1990)4 NWLR (Pt147)788

[620] *Global Trans Oceanico S.A v Free Ent (Nig) Ltd* (2001)5 NWLR (pt. 706)426@441

[621] See *Williams v Daily Times* (1990)1 NWLR (pt124)1; *Rossek v ACB Ltd*. (1993)8 NWLR (pt. 312)382; *Johnson v Lawanson* (1971) All NWLR 56

[622] *Dalhatu* (n. 403); *NA. B Ltd v. Barri Eng. (Nig) Ltd* (1995) 8 NWLR (pt. 413)257 pp.289-290)

the court and saves time and effort that could be used to formulate or generate new solutions for the same problems each time they occur. The principle of fairness and equity demands individuals with substantially identical cases with similar facts should be dealt with in the same way. Stated differently, precedent simply means treating similar cases similarly. This is the basis or foundation of ‘judge-made law’, as the law (the precedent) is created by the judge, not by a legislature. Courts in Nigeria, except for the Supreme Court, are bound by the decisions of a higher court in the judicial hierarchy, as set out in Section 6 (5) of the 1999 CFRN.[623] The Supreme Court, in the case of *UBA Trustees Ltd. v Nigergrob Ceramic Ltd.,*[624]pointed out that:

> In our hierarchical system of courts, the law is in the final analysis, what the Supreme Court says that it is, once they have decided a point, their decision is, by the doctrine of stare decisis binding on all the courts in the country.

The hierarchical system of law in Nigeria, influenced by the English common law, invokes the common law principle that judges make law to the extent that they possess the power to develop new laws under the guise of interpreting the law. Opinions are equally divided on the nature of common law. While Barak[625] is of the opinion common law has developed from the pronouncement of judges (thus

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[623] Nnaemeka-Agu P.S.C ‘Law as a Social Engineering’ (A keynote address to a workshop on human rights by the N.B.A Onitsha branch, 26/1/88) P.4

[624] *UBA Trustees Ltd. v Nigergrob Ceramic Ltd* (1987)3 N.W.L.R (pt62)600,623

[625] Aharon Barak, *The judge in a democracy* (Princeton University Press 2009) 15.

confirming the idea that common law is judge-made law), Sourgens[626] believes that judges only *discover* the law. However, it has been suggested that judges, when acting within the scope of agency in decision making,[627] should apply precedent creatively in order not to lead to stereotyped legal procedures and stultification of the progress of the legal system.

The electoral tribunals and courts are considered to be comprised of judges who are sound in knowledge and unblemished in character[628]. They are laden with the responsibility of investigating the actual events that transpired on an election day[629] and apply the substantive law (i.e., the electoral law of the time) in resolving disputes. To this extent, the judges, in adjudicating an electoral dispute, determine to a great extent the substantive or formal character of the electoral justice system in Nigeria because they create and apply standards for identifying valid electoral laws[630] through the interpretation of statutes. In creating and applying these standards, the courts are empowered by the 1999 CFRN and the 2010 EA to choose whether these standards are to be incorporated in a strict rule or inflexible rules that are more consistent with

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[626] Frederic Sourgens, *A Nascent Common Law* (Hotei Publishing 2014), 28; See Jeffery Goldsworthy, 'The Myth of the Common Law Constitution', in Douglas E. Edlin (ed.), *Common Law Theory* (CUP 2007) 204

[627] Ronda Evans and Sean Fern, 'From Applications to Appeals: A Political Science Perspective on the New Zealand Supreme Court's Dockets' (*2013*) *The Supreme Court of New Zealand* (2004) 33

[628] Penner James et al. (eds), *Jurisprudence and Legal Theory. Commentary and Materials* (OUP 2005)

[629] Nwagboso and Duke (n. 570)

[630] Atiyah and Summers (n. 279)

substantive analysis.[631] For example, in the issue of substitution/changing of a candidate, the 2010 EA under Section 33 (a strict rule) stated that a political party is not permitted to change or substitute a candidate whose name has been submitted to the INEC after a valid nomination, except in the case of death or withdrawal by the candidate. The courts, in applying this strict rule, created a standard in the case of *Onuora v Okafor,*[632] followed by *Amaechi v Omehia.*[633] The standard of nullifying an election wherein a wrongful substitution is established was incorporated in a strict rule. This also became a standard for identifying valid internal party laws to the extent that they are consistent with the electoral statute. The substantive or formal character of the law on wrongful substitution was thus developed by the principle in the Amaechi case. Furthermore, Section141,[634] which was enacted by the legislature to reverse this standard,[635] was interpreted together with Section 133(2) of the 2010 EA[636] by the Supreme Court. In interpreting these flexible laws when read together, the Apex court developed and incorporated a standard into the flexible rule. The standard is the exclusion of 'the Supreme Court' from the meaning of 'courts' under Section 133 (2) of

[631] Ibid

[632] *Onuoha v Okafor* (n.402)

[633] *Amaechi v Omehia* (2007) SC.252/2007

[634] 'An election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election'

[635] Barr. Oriker Jev v. Sekav Dzua Iyortom (No. 2), [6]

[636] '….tribunal or court' means- (a) in the case of Presidential, the Court of Appeal; and (b) in the case of any other elections under this Act, the election tribunal established under the Constitution or by this Act.'

the 2010 EA, which is consistent with the substantive interpretation of Section 141 of the same EA.

5.6. Analysis of the Practice and Impact of Judicial Activism in Nigeria Under the Fourth Republic

The starting point of this section is to examine whether Nigerian courts have considerably and/or in reality assumed a novel and distinct approach to judicial decision making in the resolution of electoral disputes. Specifically, have courts inadvertently adopt a creative or 'activist' legislative function through judicial activism, or have they exhibited judicial self-restraint in their pronouncements and decisions?

Prempeh explains judicial activism to mean judges seeking to achieve ideological or socio-political outcomes through their legal decisions by impacting the evolution of legal doctrines.[637] The concept has also been described as the judicial power to pronounce and apply laws and policies that promote the public interest in society. Being a philosophy of judicial decision making, it has been criticised as a doctrine that allows judge-found rationality of legal decisions and public policies based on their personal views instead of constitutionalism[638] through the invocation of novel and disputable interpretations of the constitution that void democratically enacted law, policies and practices.[639]

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[637] Kwasi Prempeh. 'African judges, in their own cause: Reconstituting independent courts in contemporary Africa.' (2006) 4(3) *International Journal of Constitutional Law* 592.

[638] Jagran Josh, 'Judicial Review and Judicial Activism' (July 28, 2016) https://www.jagranjosh.com/ (Accessed 18 July 2022)

[639] See Adegbenro v Akintola (1963) All NLR 305; Lakanmi V. A.G Western Nig (1970) NSCC 143.

Nigerian courts, in the exercise of their judicial powers, also apply the doctrine of judicial review in providing a remedy for wrongs[640] sustained against aggrieved members of society. Thus, judicial review has been distinguished from judicial activism. In electoral cases, judicial review can be said to be the inherent power of courts to review and determine the legitimacy of an electoral law or party law provision**,** while judicial activism implies the use of judicial power to achieve electoral justice and political good.[641] The late Chief Justice J.s Verma, of India, defined judicial activism as the active process of the implementation of the rule of law essential for the preservation of a functional democracy.[642] Thus, if a court invalidates a party activity or law that is unconstitutional, it cannot be accused of engaging in judicial activism, that judge instead should be commended for championing political and democratic justice. Thus, Nigerian courts, in reviewing constitutional provisions and the legality of intra party laws/activities and judicial decisions directly or indirectly take the posture of activism. The courts, in assuming an activist posture, provide relief where a violation of a political right has occurred against any party member(s) through the application of the law,[643] thereby creating new regulations through the retention, alteration, or advancement of social and

[640] Hemant Singh, 'Judicial Review and Judicial Activism' (Indian Polity, I April 2019) https://www.jagranjosh.com/ (Accessed 16 October 2021)

[641] Ibid

[642] Anthony Agada, 'Nigeria: Time Limitation in Election Matters and the Question of Justice' This Day, (21 February 2021) https://allafrica.com/ (Accessed 9 August 2022)

[643] Sections 6 (6)(a) and (b); *Ransome-Kuti v. Attorney General of the Federation* (1985) 2 NWLR, part 6, 211

political rights-based laws.[644] Consequently, judicial activism has been used by Mahoney[645] to explain the intervention of the judiciary in electoral disputes.[646]

Opinions have been divided on the true impact of judicial activism in Nigeria's electoral democracy. Although the judiciary has been accused of nullifying the Constitution and democratically enacted legislation,[647] in the guise of judicial activism, Maduagwu[648] held that Nigerian courts, through this function, have boldly restrained the violation of IPD and other democratic breaches. This work aligns with the position of Maduagwu to the extent that the judiciary in Nigeria, through judicial activism, has deviated from the norm and courageously restricted the excesses of political parties from constantly breaching the provisions of the Constitution and the EAs.

For instance, in the notorious cases of *Ugwu v Ararume*,[649] *Amechi v INEC,*[650] and similar cases, the judiciary, through evolutive and innovative interpretation of the Constitution and electoral law, employed judicial activism in the determination of internal party conflicts. The Supreme Court's decisions in these cases were based on

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[644] Meagher Jacob, 'Common Law Courts: The Judiciary as a Regulatory Mechanism.' *Journal of Comparative Law.* (2017) 12.1, PP 108.

[645] Paul Mahoney, 'Judicial activism, and judicial self-restraint in the European Court of human rights: two sides of the same coin' (1990) *Human Rights Law Journal* 11, 57. See also Canon Bradley. 'Defining the dimensions of judicial activism', (1982) 66 *Judicature* 236.

[646] Ibid

[647] Christopher Peters, *Adjudication as Representation* (1997) 97 Columbia Law Review 312, 434.

[648] Maduagwu Rita 'The role of the judiciary in the sustenance of democracy in Nigeria', (2019) *African Journal of Constitutional and Administrative Law* 1, 4.

[649] *Ugwu v Ararume* (n.22)

[650] *Amechi* (n. 20)

the various circumstances leading to the judgments.[651] Contrary to the provisions of the 1999 CFRN[652] and the 2006 EA,[653] the court in the *Amaechi* case assumed jurisdiction and gave victory to a petitioner who was not a candidate and who did not participate in the said election, thereby nullifying the victory of another candidate (Omehia) who had participated in all the processes of the election.

While the 1999 Constitution, under Section 179(2), provides that a candidate for a governorship election of a state is duly elected where, out of two or more candidates, he or she has the highest number of votes cast at the said election, the 2006 EA[654] qualified a petitioner in an election petition to be a candidate in an election. Amechi did not meet any of the criteria to be qualified as a candidate under both laws. However, in his argument, Amechi relied on Section 145 of same Act,[655] arguing that the respondent (Omehia) was not qualified to contest the Rivers State governorship election in the first place because he (Amechi) was validly nominated by his party but was unlawfully excluded from the election. Amaechi's party at the time, the PDP, relied on Section 34

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[651] Omenma Tochukwu, Okechukwu Ibeanu, and Ike Onyishi. 'Disputed Elections and the Role of the Court in Emerging Democracies in Africa: The Nigerian Example.' *Journal of Politics and Democratization* (2017)2.1 Pp 28

[652] 1999 CFRN Section 179(2)

[653] Electoral Act 2006, Section 144(1)(a)

[654] Electoral Act 2006 Section 144(1)(a)

[655] An election may be questioned on any of the following grounds, that is to say: (a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election; (b) that the election was invalid by reason of corrupt practices or noncompliance with the provisions of this Act; (c) that the respondent was not duly elected by majority of lawful votes cast at the election; or (d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

(2)[656] of the 2006 EA to argue that his exclusion was based on cogent and verifiable reasons which, according to the Supreme court, were not established. Consequently, the Court adopted same decision as in the Ararume case and ruled that the substitution of Amechi in the Rivers State governorship election was unlawful and not in compliance with Section 34(2) of the 2006 EA, and therefore a nullity.

The judiciary in these cases adopted an evolutionary and activist stand in resolving internal party disputes. This position was clearly contrary to the drafters' intentions of Section 144(1)(a), which required an election petitioner to have participated in the election the outcome of which he is disputing. This study is of the view that judicial activism, as exhibited by Nigeria's judiciary in electoral cases, has impacted positively on the electoral system by bringing clarity and stability to intraparty activities, especially in the process of nomination and substitution of candidates for elective posts. Parties became weary of flag bearers who ran in elections but were being disqualified by the courts for unlawful substitution. The court's activism in this regard reduced the incidence of unlawful substitution and brought about a positive reform in the nomination and candidates' sponsorship, thus promoting social and political justice.

Also, in the case of *Peter Obi v INEC,*[657] a new interpretation was given to a constitutional provision on the tenure of office of a governor of a state in Nigeria. The rule developed by the court in the case thereafter became the law and precedent for subsequent cases with similar facts. Mr Peter Obi approached the court for a

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[656] Any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons.

[657] *Peter Obi v INEC* (S.C. 123/2007) [2007] NGSC 180 (13 July 2007)

declaration of when his tenure of office as the Governor of Anambra state would end. Obi contended that his tenure in office was to start on the day he was sworn in on the 17th of March 2006, that is, the date he took his oath of allegiance and oath of office. He argued that, by virtue of the Nigerian constitution,[658] the tenure for office of governor was four years and an allowance of two terms where the candidate wins the election again. Hence, there ought not to be another governorship election on the 14th of April 2007, as the INEC had scheduled. Prior to this case, Obi had filed a petition at an electoral tribunal to contest the 2003 governorship election outcome, which he claimed he had won. The election tribunal, after three years of litigation, set aside the declaration of Dr. Chris Ngige as the winner of the 2003 election and declared Obi the winner of that election. Again, in the general election of 2007, the 1st respondent in the case, the INEC, scheduled another election for the 14th of April 2007. Obi approached the Supreme Court to determine when tenure would commence and when it would end, pursuant to the provisions of the Constitution. The Court held that the issue of tenure of office was a constitutional matter provided under Section 180 of the Constitution. It further stated that nothing in the Constitution provides that all the elections in the country must be conducted at the same time. It therefore declared that the tenure of office of Mr. Obi started on the day he was sworn into office, which was March 17th 2006, and would expire on March 17th 2010, a four-year tenure as provided by the Constitution. The Court also ordered the 5th respondent, Mr. Andy Uba (who won the April 2007 election) to vacate the office of the Governor of Anambra State with immediate effect to enable Obi to begin his tenure.

[658] 1999 CFRN Section 180(2)(a)

In the *Peter Obi case*,[659] the Supreme Court, in developing Section 180(2)(a), gave the tenure of office of a governor in Nigeria a new breath of life, especially those whose election had been marred by corrupt practices. The impact of court activism in the interpretation of tenure of office on the Nigerian electoral system is seen in the staggered governorship elections in the country. Since the inception of the Fourth Republic in 1999, Nigeria's general elections, including governorship elections, have occurred every four years in all states of the Nigerian Federation simultaneously. However, the decision in the Peter Obi case[660] altered and revolutionised the election period for states, allowing governorship elections in the country to be conducted at different times. Subsequently, other states, such as Bayelsa, Edo, Ekiti, Kogi, Ondo, and Osun, followed Obi's principle, mainly due to court judgments that nullified the election of their governors at different times in the past.

Flowing on from the above cases, this study argues that courts' jurisprudential methods in the present democratic dispensation have, to a large extent, developed through judicial activism by giving EAs a breath of life[661] and curtailed the excesses of Nigeria's political parties. In defending judicial activism, Schlesinger, in his seminal work,[662] argued:

> The resources of legal artifice, the ambiguity of precedents, the range of applicable doctrine, are all so extensive that in most cases in which there is a

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[659] *Obi* (n. 656)

[660] *Obi* (n. 656)

[661] Dragoljub Popovic, 'Prevailing of judicial activism over self-restraint in the jurisprudence of the European Court of human rights', *Creighton Law Review* (2008) 42, 361.

[662] Arthur Schlesinger, *The Supreme Court: 1947*, (Fortune Magazine, January 1947)

reasonable difference of opinion a judge can come out on either side without straining the fabric of legal logic.

These events raise a number of questions. Have the courts in Nigeria strained the fabric of legal logic in the adjudication and resolution of electoral disputes? Have they constrained the underlying structure of the country's democracy or liberated the democratic structure through judicial activism? Are courts in breach of the Constitution and/or electoral laws in the name of judicial activism? If yes, are judges held accountable? Could it be a question of enforcement and ineffectiveness of the laws?

Nigeria's judiciary has been criticised for hiding behind judicial activism to alter subsisting electoral laws by substituting them with their own decisions,[663] especially where political interests exist. In other words, there has been an active disposition on the part of Nigerian judges to intervene in the electoral process through a deviation from previous court reasonings, as seen in the Amaechi case, or departure from the seminal meaning of the constitutional context of the law, and ultimately reverse legislations,[664] where there are supervening political interests. Omenma et al,[665] in this respect, conceived judicial activism as an interference of the courts in the rights of the Nigerian people by acting outside its jurisdiction.

The judiciary have also been accused of not employing activism where a decision or order of a court runs against the executive. This organ of government, most

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[663] Mahoney (n. 644).

[664] Tushnet Mark and Strong Rights, *Judicial Review and Social Welfare Right in Comparative Constitutional Law.* (2007).

[665] Omenma Tochukwu et al, 'Disputed elections and the role of the court in emerging democracies in Africa: The Nigerian example' (2017)2(1) Journal of Politics and Democratisation, 28.

times, does not obey or enforce court orders. This was the case in *Muhammadu Buhari & Others v Olusegun Obasanjo & Others*,[666] wherein the petitioner was granted an injunction by the court, restraining an incumbent president - Obasanjo - and his running mate from being sworn into office pending the determination of the main election petition. Obasanjo and his deputy proceeded with the swearing-in ceremony against the order of the court without any sanction.

Furthermore, the political class in Nigeria has strongly challenged the judicial activism of courts on the grounds that the learned justices are overstepping their jurisdictional reference. The activist inclination of the judiciary received a reaction from the legislature through an amendment of the 2010 EA. Section 140(2) of the 2010 EA thus disallowed courts from declaring a person with the second highest votes or any other person (especially a non-candidate in an election) as elected, in an election which was marred by substantial irregularities or non-compliance with the 2010 EA. The courts, under this new law,[667] are only required to order a fresh election where it nullifies an election on the ground of disqualification of the winner(s) of that election. Notwithstanding this amendment, the courts are still in the practice of nullifying elections due to disqualification and declaring winners' candidates with the second highest votes in the election instead of ordering fresh elections, as provided by the 2010 EA. In the recent case of the *PDP v Biobarakuma Degi-Eremienyo,*[668] the court annulled the election of the APC candidate, David Lyon, as the winner of the November 16, 2019, governorship election in Bayelsa State, on the grounds that his deputy, Biobarakuma

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[666] *Muhammadu Buhari & Others v Olusegun Obasanjo & Others* SC 133/2003; (2003)17 NWLR

[667] Section 140(2)

[668] *PDP v Biobarakuma Degi-Eremienyo* SC.1/2020

Degi-Eremienyo, presented forged documents to the Electoral Commission. It consequently ordered the INEC to withdraw the certificate of return issued to the governor and deputy governor-elect and to declare the party with the second-highest number of lawful votes and geographical spread the winner. Again, as a fallout of the intraparty crises that engulfed the APC before the 2019 general elections, the Supreme Court disqualified all its candidates who won elections in Zamfara State and Rivers State due to the parties' failure to conduct primary elections for the nomination of candidates, as required by law.[669] Subsequently, the court ordered the parties and the candidates with the second highest votes and spread in the various elections to be declared winners of the elections. These judicial decisions are clearly contradictory to Section 140 (2) of the 2010 EA (As Amended), which revoked the power to declare the person(s) with the second-highest votes as elected in a court nullified election in Nigeria.

Taken together, if case law is a framework of legal principles developed by courts to regulate certain legal situations, as was earlier stated in this work, then the *cliché* that the judge's office is *ius dicere* and not *ius dare*, that is, to interpret the law and apply the law, and not to make law or give law, becomes contradictory. From the ensuing analysis of cases, it is found that when judges are presented with an electoral dispute with inadequate laws or a precedent upon which to resolve a case, they have been inclined to make a new and radical pronouncement to resolve the dispute. Put differently, Nigeria's judiciary, in interpreting and applying laws, have developed new rules and/or extended and/or limited subsisting laws. In so doing, a new structure of

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[669] Felix Omohomhion, 'Supreme Court sacks elected APC candidates in Zamfara'(2019) https://businessday.ng/ (Accessed 23 August 2021)

established electoral laws has been created through the formulation of new legal ideas as well as the refinement of existing ones.[670]

However, in examining whether the Nigerian judiciary has exhibited some level judicial self-restraint in their pronouncements, the Supreme court's actions could be analysed from the perspective of their impact on electoral outcomes. The principle of judicial restraint, being both substantive and procedural doctrine, requires judges to consider constitutional questions, to yield considerably to the intentions of the legislators, and to desist from deciding legal issues, except if the decision is fundamental for resolving constitutional rights between parties.[671] Thus, in *Buhari v Obasanjo*,[672] at the 2003 presidential election, the incumbent president and presidential candidate of the PDP, Olusegun Obasanjo, was returned as winner of the election and as President of the Federal Republic of Nigeria. His opponent, Muhammadu Buhari, and the ANPP, argued that Obasanjo was not validly elected by a majority of lawful votes cast in the election and did not meet the required 25 percent of votes cast in two-thirds of the states of the Nigerian Federation and the FCT. However, the Supreme Court, in dismissing the petition, upheld the election of president Obasanjo on the premise that the petitioners had failed to establish the alleged non-compliance with the electoral law. Consequently, the court interpreted Section 135(1) of the 2002 EA[673] in

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[670] Konrad Zweigelt and Hein Kotz, *Introduction to comparative law* (Oxford: Clarendon press, 1998) 3.

[671] Juliana Nnadi, 'Judicial activism in Nigeria Judiciary' (LLB thesis, Ahmadu Bello University Zaria 1999)

[672] *Buhari v Obasanjo* (2005) 9 SCM 1 101 102 203

[673] 'An Election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election'.

favour of the incumbent president, who was the respondent, thereupon upholding the election against the general intention of the legislation.[674]

In the preceding judgments of the court, especially in *Odumegwu Ojukwu v Musa Yar'Adua*,[675] the courts could be seen to have intentionally applied self-restraint in their decision by not allowing the petitions to cancel the elections. This was in order to avert potential political instability in the country. Critics of this self-restraint position of the courts have argued that not only was the judgement influenced by politics rather than law, but the justices considered the electoral implication and outcomes of cancelling the elections, both in terms of finances and logistics of ordering a fresh election.[676]

Although the South African Court, in *S v Zuma,*[677] cautioned judges against the danger of allowing political pressure instead of the law to influence their interpretation of democratic enactments, the evidence from this study suggests that the Court's judicial activism does not only allow the development of electoral case law, it also allows Nigeria's electoral jurisprudence to evolve in a healthy way. Nigeria's judiciary, notwithstanding its shortcomings, has striven to attain a significant degree of creativity in its jurisprudence in the exercise of its constitutional role of interpreting electoral laws to safeguard political rights.[678] Through the development of Nigeria's body of electoral law, the courts have continued to guarantee that citizens' votes are not lost at the polling

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[674]Paul Craig, *EU administrative law*. (OUP 2012); Wade William and Christopher Forsyth. *Administrative Law (*OUP, 2004).

[675] *Odumegwu Ojukwu v Musa Yar'Adua* (2009)6 SCM 126 205

[676] *Odumegwu Ojukwu v Musa Yar'Adua* (n. 675)

[677] *Court in S v Zuma* (1995) (2) SA 642 (CC) paras 17-18

[678] Declaration on Criteria for Free and Fair Elections, adopted by the Inter-Parliamentary Council in 1994 (Paragraph 4.9)

booth or in the courts. The judiciary has also sanitised the process of nomination of candidates by parties. There has been a significant decrease in cases on unlawful substitution of candidates since the *Amechi case*. Furthermore, major national political crises that might potentially truncate the country's democracy have been averted and, as such, the courts have wielded a positive impact on sustaining the country's fragile democracy.

Consequently, the courts have albeit regulated and managed electoral outcomes in Nigeria through independent control of political actions and the electoral process generally. This study suggests that, although the judiciary has been criticised for 'interpreting the law sometimes in a vacuum',[679] without aim nor in relation to the substantive issues before it, the dictum[680] that the words a judge must construe are 'empty vessels into which he can pour nearly anything he will'[681] becomes relevant. Put differently, the judge's word is a valid law, and every judge has the power and privilege to use his office to create so much out of nothing. Where there exists, no law regulating a specific legal situation, judges have developed laws to resolve and manage conflicts pending when legislators enact a law that adequately governs such a situation. Hence, standards are set with the capacity to modify party behaviour and transform a system in an undesirable state. It is thus the opinion of this work that the legal logic upon which electoral disputes are decided is not constrained; rather, the judiciary has to an extent liberated the democratic structure of Nigeria through judicial activism. This study further

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[679] Mahoney (n. 644).

[680] Billings Learned Hand was an American jurist, lawyer, and judicial philosopher.

[681] Schlesinger (n. 661)

argues that, because law and politics are inseparable, the courts cannot evade politics in dispensing justice. Therefore, the courts should be allowed to effectively utilise their political power for virtuous social/political outcomes.[682] However, the challenge with judicial activism in Nigeria, like any other jurisdiction, is that it rests on the disputable construct of the role of the courts to say what the law is and ought to be.[683]

5.7. Analysis of the Practice and Impact of Judicial Independence in Nigeria Under the Fourth Republic

The judiciary as a democratic institution in Nigeria is vested with the constitutional authority to hear and determine all civil, criminal and electoral cases, both as an original jurisdiction or appellate jurisdiction. Thus, the judicial powers vested in courts under the constitution shall extend:

> To all inherent powers and sanctions of a court of law and to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person[684]

The above constitutional provision aligns with the basic principles on judicial independence developed by the United Nations,[685] which recommends that judicial

[682] Mahoney (n. 644)

[683] (*Marbury v Madson)*5 U.S.137,177(1803)

[684] 1999 CFRN Section 6(6)

[685] See Basic Principles on the Independence of the Judiciary, Preamble, U.N. Human Rights Commission Res. 's 40/32 (Nov. 29, 1985) and 40/146 (Dec. 13, 1985),

independence 'be guaranteed by the state and enshrined in the Constitution or the law of the country'. This basic principle requires the judicial branch of government to be vested with an authority that is different and distinct from the executive or legislative authorities/arms of government. This is what the principle of separation of powers in a state emphasises. In effect, the executive and legislative arms of government must resist taking actions that might jeopardise the independence of the judiciary.[686]

In Nigeria's political system, the judiciary, through the application of constitutional and judicial review, mediate electoral disputes between political parties and between parties and individuals, thus preventing the arbitrary use of state and political power by the executives and the political parties.[687] The capacity of the courts to carry out these functions effectively depends to a great extent on the independence of the judiciary.[688]

The concept of judicial independence connotes judicial functions that are not under the influence and control of the political class.[689] In other words, it is the ability of a judge or court to make decisions without undue pressure from external bodies, especially the executive and legislative branches of government.[690]

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[686] Keith Rosenn. 'The Protection of Judicial Independence in Latin America' (1987) 19 *U. Miami Inter-Am. L. Rev.* 1, 35.

[687]Christopher Larkins, 'Judicial Independence and Democratisation: A Theoritical and Conceptual Analysis' (1996) 44 American Journal of Comparative Law 605

[688] Ibid.

[689] Kwasi Prempeh. 'African judges, in their own cause: Reconstituting independent courts in contemporary Africa.' (2006)4 (3) *International Journal of Constitutional Law* 592, 605.

[690] Berman Larry, et al. *Approaching Democracy: American Government in Times of Challenge*. (Routledge, 2021).

Verner defined judicial independence as a judge's capacity to decide cases on the basis of existing law and the merits of the case, free from interference from political powers or other government agents.[691] Judicial independence is thus the competence and capability of a tribunal or court to effectively hear and determine a case before it based on the evidence and law without the intervention of people and systems with interests in the outcome of the case.

5.7.1. Appointment of Judges

Rosenn identified the notion of judicial independence as the extent to which judges decide cases in line with their evidential findings, established law and justice without interference from state powers or individuals.[692] Larkins further identified impartiality and political insularity[693] as the two main traits of an independent judiciary.[694] While impartiality is a widely assumed attribute of judges that relate to their neutrality and integrity in behaviour and attitude when mediating between social and political actors,[695] political insularity for Fiss is 'the notion that judges should not be used as tools to further political aims nor punished for preventing their realisation'.[696] Political

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[691] Joel Verner. 'The Independence of Supreme Courts in Latin America: A Review of the Literature' (1984)16 *Journal of Latin American Studies* 463.

[692] Rosenn (n. 685).

19 *U. Miami Inter-Am. L. Rev.* 1, 35.

[693] Owen Fiss, 'The limits of judicial independence'. *The University of Miami Inter-American Law Review* (1993) 57, 25

[694] Larkins (n. 686).

[695] Ibid

[696] Fiss Owen. 'The limits of judicial independence' (1993) 57. *The University of Miami Inter-American Law Review* 25.

insularity for judges can be achieved by the institutionalisation of structures and processes that do not only guarantee life tenure for judges but also prevent the reduction of their wages in the course of their tenure whilst providing checks and balances in their appointment.[697] However, the 1999 CFRN, in providing for the appointment of the judges, exposed the process to politicisation and undue influence of the political class. Under the 1999 CFRN,[698] the appointment of judges shall be made by the President on the recommendation of the National Judicial Council (NJC), such appointments being subject to the confirmation of the Senate.[699]

Comparatively, the 1963 Constitution of Nigeria provided for the Justices of the Supreme Court and the High Court to be appointed by the President, acting on the advice or recommendation of the Prime Minister. The system under the 1963 Constitution produced qualified judges and eliminated nepotism, favouritism or recourse to political affiliation in the appointment of judges.[700] Regrettably, under the 1999 CFRN, these issues characterise the appointment of judges in Nigeria today. The present system is designed to make judges politically predisposed and subject to manipulation by the political class. Also, Section 271 of the 1999 CFRN gave the governor of any state in Nigeria the power to appoint a High Court Judge on the recommendation of the NJC. This process is subject to abuse and can further erode

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[697] Clark David. 'Judicial protection of the constitution in Latin America' (1974) 405 *Hastings Constitutional Legal Questions* 2; and Rosenn (n. 685).

[698] 1999 CFRN sections 231 and 238.

[699] 1999 CFRN Section 291

[700] Aare Afe Babalola. 'Appointment, promotion and remuneration of judges in Nigeria: The need for a change' (3 June 2021) https://www.vanguardngr.com/ (Accessed 5 August 2022)

the independence of the judiciary. The NJC only recommends upon availability of vacancies and suitability of candidates. An appointed judge often may become a stooge and subservient to the official (a president or a governor) who appointed him or her.

By way of comparison, in the USA, under the law of certain states (for example Minnesota, Mississippi, Montana, Nevada and North Dakota), the appointment of judges is not absolutely within the powers of the legislators or the Governor, but in the hands of the electorates. In these states, judges are elected into office through non-partisan elections, rather than being selected by a judicial commission or by the governor or legislature.[701]

[701] Ibid

5.7.2. Bribery and Corruption

In furtherance of the principle of insularity for the judiciary, the 1999 CFRN provides for the security of tenure of the judges by allowing them to serve until retirement age (65 or 70 years old) without diminution of their wages or alteration of their conditions of service.[702] Nigeria's judges are also insulated from arbitrary removal from office prior to their retirement age, except in certain specified circumstances.[703] In recent times, the judiciary in Nigeria has come under severe criticism as a result of allegations of bribery and corruption that led to circumstances whereby the Chief Justice of Nigeria (CJN) was removed from office and tried for corruption.[704]

The Nigerian government, in January 2019, filed charges against the CJN, Justice Onnoghen, at the Code of Conduct Tribunal (CCT), accusing him of asset declaration offences. The President subsequently suspended the CJN following an order by the CCT and replaced him with Justice Tanko, who belonged to the same ethnic group as the President. It is of interest to note that the CJN, prior to Onnoghen's

[702] The 1999 CFRN, Section 291, provides that 'a judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances - (a) in the case of - (i) Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja…, by the President acting on an address supported by two-thirds majority of the Senate…Praying that he be so removed for his inability to discharge the functions of his office or appointment…for misconduct or contravention of the Code of Conduct.'

[703] 1999 CFRN Section 292.

[704] Samuel Ogundipe. The full corruption charges against Chief Justice Walter Onnoghen' (12 January, 2019) https://www.premiumtimesng.com/ (Accessed 4 August 2022)

suspension on January 25, 2019, announced plans to swear in members of the various 2019 election petition tribunals on January 26. Commentators interpreted the suspension and subsequent trial of Justice Onnoghen as a premeditated move to not only interfere in the selection of the election tribunal members but equally to influence the outcomes of the electoral disputes. Also, in 2016, officials of the Department of State Services (DSS) and the Nigerian Police Force raided the homes of judges and arrested a number of them, alleging involvement in corrupt practices and misconduct.[705]

One of the justices whose home was raided was Justice Muazu Pindiga, who served on the election tribunal in Rivers State. A former Nigeria Supreme Court Justice stated that many of the judges who try election petition cases in Nigeria have become 'billionaires' (in Nigerian currency) due to the bribery and corruption in electoral cases.[706] It is believed that the most prevalent form of criminal corruption among judges is bribery, which has been commonplace in election tribunal cases since the inception of the Fourth Republic.[707]

Judicial Independence thus assumes a vital significance when a subsisting government is either a party to a dispute or has an interest in the outcome of a dispute.[708] Electoral judicial decisions are among the few issues that instigate conflict between the judiciary and other arms of government especially when the ruling party is

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[705] Evelyn Okakwu and Samuel Ogundipe, 'Nigeria's secret police, SSS, raids judges' residences in Abuja, five states' (8 October 2016) https://www.premiumtimesng.com/ (Accessed 4 August 2022)

[706] Joel Nwokeoma, 'Nigerian Judiciary as Temple of Corruption', THE WILL (3 October 2012) *http://thewillnigeria.com/opinion/5331* (Accessed 4 August, 2022)

[707] Phillip Aka, 'Judicial independence under Nigeria's fourth republic: Problems and Prospects' (2014)1 *California Western International Law Journal* 45.

[708] Larkins (n. 686).

interested. The danger in such cases is that the judges most often find 'grounds' to deliver judgements in favour of the government.[709] Consequently, electoral matters are ruled with caution and circumspection rather than with an overt activist mindset. Furthermore, judges have succumbed to the idea that 'career development depends on how they rule, especially in high-profile cases involving the government'.[710]

The impact of interference on judicial functions of the courts by the ruling party/government in Nigeria is that the judiciary is deprived of its neutrality and impartiality and is constantly accused of corruption. Citizens' confidence in securing justice from the courts is eroded because 'a corrupt judge is not capable of finding the truth in a judicial process and incapable of doing justice to the case before it'.[711] Another controversial Federal High Court Judge has been accused of corruption and of being a tool in the hands of the current ruling APC to disintegrate the PDP. This is due to numerous controversial and contentious decisions he had made in political disputes. In spite of the complaints against his decisions, including petitions to the National Judicial Council (NJC), he remains unperturbed and in post.[712]

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[709] Peter Bassey. 'The Nigerian Judiciary: The Departing Glory (2000) 38.; see also Oko Okechukwu, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria', (2005) 31 *Brooklyn Journal of International Law* 9 (commenting on the 'problems and failures' of the Nigerian judiciary)

[710] Oko (Ibid)

[711] Niki Tobi, 'Code of Conduct and Professional Ethics for Judicial Officers in Nigeria', *Judicial Excellence: Essays in Honor of Hon Justice Anthony* (2004) 37, 82.

[712] Joseph Onyekwere, 'Controversial judgments and corruption claims against judiciary' (22 November 2016) https://guardian.ng/ (Accessed 4 August, 2022)

It must be emphasized that, in electoral matters, where the outcome is exposed to the influence of the ruling parties, the parties against whom judgment is given are denied justice and the wishes of the people are thwarted in the court. The outcome of the decisions in such cases with high profile interest is usually civil unrest in the polity when citizens express their grievance and dissatisfaction with a court ruling.[713]

5.7.3. Nepotism and Ethnicity

Nepotism and ethnicity are factors that equally impact on the independence of the judiciary in Nigeria. As seen in the case of the unconstitutional removal and trial of a former CJN in Nigeria. President Buhari, a northerner, removed a sitting Chief Justice without due process and/or as provided by the law.[714] He replaced him with Justice Tango, who comes from the same ethnic group as him. Ethnicity, as endemic as corruption not only in the judiciary but in other sectors of Nigeria's political system, has greatly restricted the liberty and independence of the judiciary in the performance of their judicial functions.

5.7.4. Fiscal Autonomy of the Judiciary/Remuneration of Judges

Lack of fiscal autonomy of the judicial institutions and poor salary structure for judges and justices of the Supreme Court are other relevant factors that diminish judicial independence. For judicial independence to be realised and institutionalised in a democratic system like Nigeria's, the judiciary must have control over its funding.[715] The

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[713] Uzodinma V PDP (2019) Unreported.

[714] 1999 CFRN Section 21 (b)(d) and (g) – 'The National Judicial Council shall have power to recommend to the President/Governor the removal from office of the judicial officers; Appoint, dismiss and exercise disciplinary control over members and staff of the Council'

[715] Okechukwu (n. 708)

executive arm of government controls and disburses funds to the judicial arm under the present Fourth Republic. A former president of the Court of Appeal bemoaned this state of affairs within the system when he stated:

> It is ... no use speaking of the judiciary as the third arm of the government if that arm has wittingly or unwittingly been consigned to the role of beggar, living at the mercy of the other two powerful arms[716]

A situation in which the judicial arm of government receives insufficient allowance annually to run the judiciary, in the name of budgetary allocations, does not give the judiciary the confidence to be independent in reality/practice because the tendency of the executive/legislature to use the system to punish the judiciary for any perceived disloyalty is high.

It has also been stated in many fora that the salaries of Nigerian Judges compare poorly with their foreign counterparts.[717] For instance, under South Africa's Judges' Remuneration and Conditions of Employment Act, a judge can continue to perform active service until he or she reaches the age of 75. This act equally ensures the payment of attractive salaries and benefits to serving judges by providing for continuous payment of salaries and gratuities to judges after their retirement along with payment of lifetime salaries to surviving spouses of judicial officers and gratuities for such spouses. This compares favourably with the provisions of the 1999 CFRN, which puts the retirement age of judges at 65 or 70 years of age. The Constitution

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[716] Ibid

[717] Aare Afe Babalola. 'Appointment, promotion and remuneration of judges in Nigeria: The need for a change' (3 June 2021) https://www.vanguardngr.com/ (Accessed 5 August 2022)

did not provide for the regular review of judges' salaries, and this has negatively impacted on their salaries, which have not been reviewed for years. Moreover, judges are hardly paid pensions/gratuities due to a lack of funds and corruption.

However, it is worth noting that in the previous analysis of a number of decided cases, the judiciary in Nigeria has to some extent displayed some features of independence in their functions. This is due to its decisions in *PDP v Biobarakuma Degi-Eremienyo.*[718] In this case, notwithstanding the fact that the defendant was a member of the ruling APC, the court annulled his election as the winner of the November 16, 2019, governorship election in Bayelsa State on the grounds of forgery and non-qualification.

Again, in 2019, the Supreme Court disqualified all the APC's candidates who had won elections in Zamfara State and Rivers State due to the parties' failure to conduct primary elections for the nomination of candidates, as required by law.[719] The above decisions clearly go against the current ruling party in Nigeria. The fact that the court issued judgements against the ruling party and powerful political actors (i.e., Comrade Oshiomole, the then APC chairman) and enforced these judgements indicates its independence. The judiciary has thus exhibited the quality of an institution with the authority to influence the behaviour of political parties.[720]

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[718] *PDP v Biobarakuma Degi-Eremienyo* SC.1/2020 (Supra)

[719] Omohomhion (n. 668)

[720] Larkins (n. 686).

5.8. Conclusion

In summary, judicial independence refers to the institutional capacity of the judicial arm of government to make independent decisions. This capacity revolves around statutes or constitutional provisions and guarantees, judicial funding, judicial appointments and discipline. On the hand, judicial activism, as it relates to the subject matter under discussion, refers to the ability of judges to defend the Constitution and electoral statutes and, perhaps more importantly, the will of the people at the ballot box, in their decisions on electoral matters. However, electoral judicial decisions are among the few issues that spark conflict between the judiciary and other arms of government. Consequently, electoral matters, especially when the ruling party's interests are at stake, are ruled with caution and circumspection rather than with an outright activist mindset.

CHAPTER SIX

PRESENTATION AND ANALYSIS OF THE FINDINGS

6.1. Introduction

Among the objectives of this study is to undertake empirical research exploring the factors that influence the individual and collective practices of the two main political parties within the institutional and cultural context of Nigeria. In presenting the findings, each of the themes generated from the content analysis and empirical data are represented and analysed.

Following the themes identified in this research, this analysis synchronises the data from the survey with the interview responses. In doing this, particular attention is paid to the key descriptors of the respondents' narratives on reasons for parties' breach of their internal laws and the impacts of the legal and institutional framework on IPD and electoral outcomes in Nigeria. The findings also focus on the major challenges of IPD and the adequacy of the extant legal framework on IPD as well as the impact of legal decisions regarding intra-party disputes on parties' behaviour and electoral outcomes generally. The study also explores the plausible reasons for parties' aversion to electoral laws and the potential reforms parties expect to see in the political landscape in Nigeria. The findings are presented under each of the seven dimensions representing the main themes, namely:

1. Adherence to electoral/party laws
2. Adequacy of the legal framework on IPD
3. Challenges of intra-party democracy
4. The role of the courts versus the role of the ballot in deciding electoral outcomes

5. Parties’ informal/unwritten rules

6. The impact of court decisions on IPD disputes and electoral outcomes

7. Electoral reforms

6.2. The Survey

For this survey, the count is the number of questions asked while the mean represents the average number of responses. The mode (higher boundary) represents the highest frequency of responses. The minimum (lower boundary) represents the lowest responses. The standard deviation represents how the responses deviate from the higher boundary (44) and the lower boundary (27) (see Table 1).

Mean	35.727
Median	35
Mode	44
Standard Deviation	7.534
Minimum	27
Maximum	44
Range	17
Count	11

Table 2. Survey Responses

The questionnaire consisted of eleven questions focused on the legal framework and challenges of IPD in Nigeria. There was a total of 44 respondents. The questions ranged

from the party affiliation of the respondents to the electoral reforms they wish to see in the internal democracy of parties as well as the entire electoral system in Nigeria.

There are eighteen registered political parties in Nigeria presently. However, in terms of state-wide or geographical domination, only two are active: the APC (the current ruling party), and the PDP (the main opposition party).

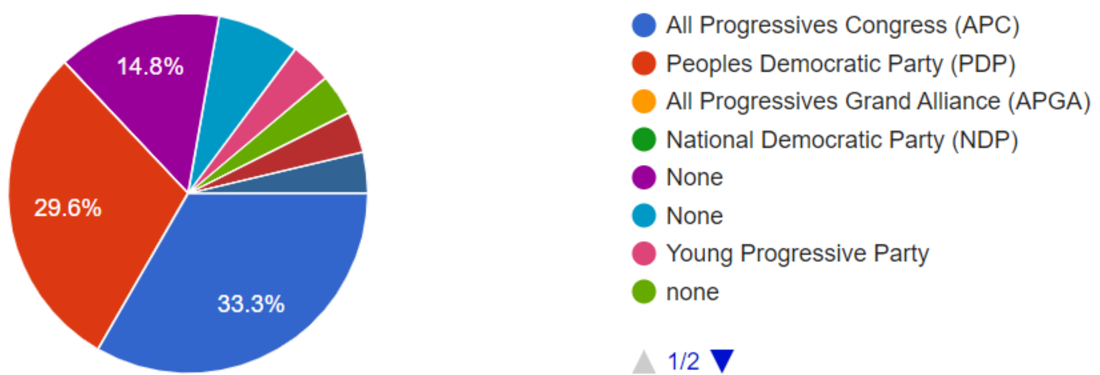

Figure 1. Party Affiliation

Figure 1 depicts the domination of the two main parties. Out of 27 respondents affiliated to political parties, 33% identified with the APC, 29.6% identified with the PDP, 3.7% identified with other parties while a total of 37% indicated no party affiliation.

6.2.1. Adherence to Electoral/Party Rules and Laws

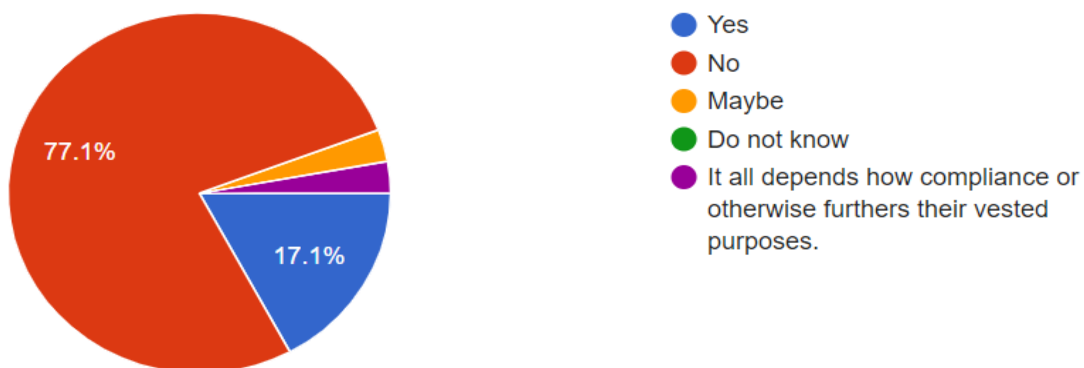

Figure 2. Adherence to Party Rules and Laws

Parties have been found to disobey their own laws on internal party activities[721] despite the fact that there are numerous rules, regulations and statutory instruments for regulating party activities when it comes to intra-party elections and appointments. The problem, then, is the breaching of them by those who should be guided by them.[722]

Figure 2 shows that 77.1% of the respondents agreed that party members do not respect their internal party laws. However, 17.1% disagreed with this view and claimed that parties do respect their own internal regulations and laws. Another 2.9% of respondents stated that respect for internal party rules and laws depends on how compliance or otherwise furthers the vested purposes/interests of the members.

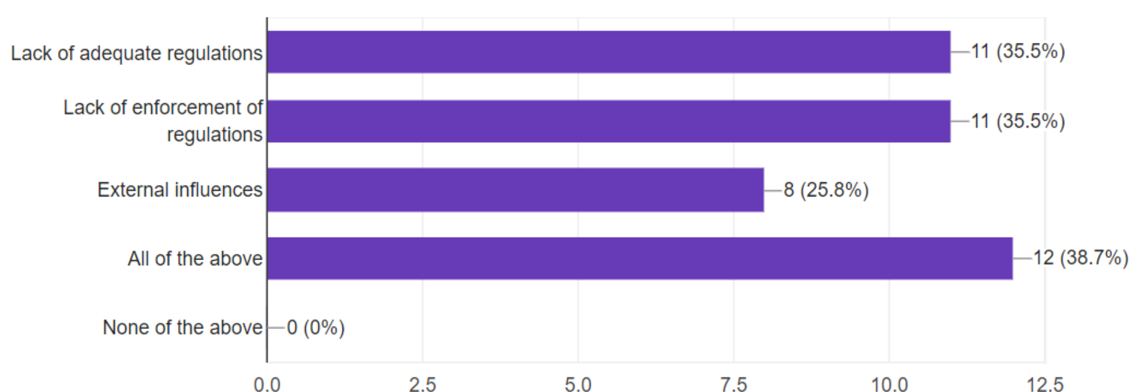

Figure 3. Reasons Parties Disrespect Internal Rules and Laws

Figure 3 shows that 35.5% of the respondents identified a lack of adequate regulation as the reason for party members' nonadherence to internal laws. Another 35.5% identified a lack of enforcement of existing laws by the parties, 25.8% attributed the

[721] Onyishi (n. 39).

[722] This goes against the point made by the Supreme Court, in the case of *Shinkafi v Yari* and Tarzoor V Loraer, where the importance of IPD and the need for political parties to obey their constitutions were stressed. See *Shinkafi v Yari (n. 431)* and *Tarzoor V Loraer (n.34).*

parties' behaviour to external influences that seek to control the parties, while 38.7% agreed that all the reasons listed constitute reasons for disrespect of party laws.

To get a deeper understanding of the reasons parties breach their internal laws and electoral laws which regulate party activities, the dimension and extent of political parties' adherence to electoral laws and internal party laws was explored with the question: Do political parties obey/abide by their own laws? Most of the respondents answered this question in the negative and identified the major reasons for parties having a negative attitude to their own internal laws and the electoral laws in general:

1. Lack of respect for the party /party structure
2. Lack of discipline/control within the party
3. Lack of enforcement of the existing laws
4. Corruption
5. Godfatherism
6. Lack of knowledge of the party laws and electoral laws
7. State executives having undue influence on political parties
8. Party supremacy

One respondent expressed the opinion that Nigeria has appropriate electoral laws and party laws in place; however, the challenge is that the laws are not respected by the parties, saying:

> We have proper laws, of course, it may not be adequate, but if the ones we have on the ground are followed or obeyed, there will be sanity in the electoral system. I mean we have beautiful laws.

The same respondent further stated that one infraction of the internal democracy of parties in Nigeria is the undue influence incumbent state governors exert on their parties. Having contested a seat at the State House of Assembly of Ekiti State in 2019, this respondent narrated his experience, stating that during the primary election, all the aspirants of the particular state assembly seat, from 16 local government areas of the state, were summoned to the government house, where they were subjected to unlawful screening and handpicking that replaced the primary election. Thereafter, the party filed a report of a false primary election to the INEC, stating that the preferred governor's candidates were elected/nominated. The aspirants were not given the opportunity to participate in a proper/legal primary election; instead, the Governor's candidates were endorsed and their names were forwarded to the INEC as the duly nominated candidates for the party. This is antithetical to the provisions of the party laws and the electoral laws.

Disagreeing with the actions of the state governors in this regard, another respondent stated:

> But I disagree with one man, the governor saying no, this is who I want; No! let us give voice to other party members to say no. This is the man that should go for us. So, if the governor brings the candidate and the rest of the party members say no, this is the candidate that should go for us, let that man who the rest of the party say should go for them, then go...

Similarly, another respondent accused parties of sacrificing/subjugating party/electoral laws at the altar of party supremacy. For him, political parties, in disobeying their own laws, hide behind the principle of party supremacy, meaning

that whatever decision the party takes will subsist even when it is contrary to the party laws. As one respondent averred:

> At times they don't abide by the law, for example, if you have primaries, and the person that won the primaries is not in the interest of the party, suddenly they will change it, what they will tell you is that the party supremacy is final. So, the party has the final say and in effect do not follow the party's Constitution.

Another respondent alleged that most political party members in Nigeria, both elites and non-elite members, do not know what the party constitution is or what it looks like. Consequently, they cannot abide by a law they are ignorant of. This respondent claimed that many party members do not know what the constitution is or what it says. The implication of this, for him, is that when such party members contest and win elections and eventually occupy an elective position, they will not be in a position to obey the constitution of the country, which is a more completed law. He further stated:

> When you don't have respect and do not care about your party constitution, is it the Constitution of Nigeria, which is a lot more bogus, a lot more complicated than your simple party constitution you will abide by?

Consequently, this respondent recommended a reform whereby parties are surcharged or penalised each time they are found to be in breach of their own constitution in relation to internal democracy. For him, breaches of party laws should attract sanctions and possible deregistration of the party. That way, he opined, parties would be forced to respect their internal laws and internal democracy will flourish within them. The respondent also recommended that political parties provide civic

education to party members and even to the public. He noted that educating party affiliates and members on the party's laws and its constitution will enable party members to be more aware of their rights and responsibilities as members. It will also trigger a stronger and more effective IPD in Nigeria. This position aligns with the findings of Sirivunnabood,[723] who found that parties' provision of political education for the party members and party supporters increased interest in party politics and strengthened political participation.

Most of the respondents (90%) were of the opinion that parties' disrespect for their own laws anchors on the problem of 'Godfatherism'. One respondent stated:

> The problem of godfathers is that; when somebody is controlling the party, it does not allow the party to operate as constitutionally as possible? They do not operate according to their own laid down guidelines and Constitution.

In essence, the party leaders and sponsors who are the godfathers do not allow the operation of party laws within the party structure. They impose their will and wishes on all other members of the party irrespective of the legality or illegality of their wishes. On several occasions, those who resist the godfathers and their wishes have even been expelled from the party by any means possible.

Furthermore, one respondent, in justifying the court's action in nullifying the Zamfara State APC primaries in the build-up to the 2019 general elections due to non-adherence to the party laws on the nomination of candidates, stated that the legal

[723] Punchada Sirivunnabood, 'Political Education: The Role of Political Parties in Educating Civil Society on Politics' (2016) 16(3), *Silpakorn University Journal of Social Sciences, Humanities, and Arts,* 156, 194.

procedures were not followed in the conduct of the primary elections, and hence the court annulled the outcome of the primaries. The respondent explained his opinion:

> The APC congress in Zamfara State did not satisfy all the requirements of the EA 2010 and that was what all the witnesses testified to, in the court, so it's not the issue of the court determining this primary election outcome, the issue actually bordered on the fact that the internal party laws of the party were not obeyed.

In the case of *Shinkafi v Yari,*[724] the court emphasised the importance of internal democracy and the need for parties to respect and obey their own laws. The court also stated the need for parties to recognise the jurisdiction of the courts to intervene where parties are found to have disobeyed their constitutions.

However, a party member (a respondent) who has held a number of executive positions in the PDP, at both state and national levels, disagreed with the allegation that parties do not abide by their own constitution. He stated categorically that, because democracy is about the majority and the majority is a democracy, these laws are therefore made for people and people are not made for laws. He asserted that sometimes, to protect the best interests of the party, certain laws, constitutional provisions or concessions have to be subjugated. Thus, the party, in protecting its interests, uses its mechanism/network to subjugate and undermine the legitimate interests of the minority members. Ultimately, the interests of the party's 'elders', which is synonymous with the interests of the party, prevail. The respondent stated:

[724] *Shinkafi v Yari (n. 431)*

> Yes, the applications or interpretations of constitutions might not be in the best interest of the party or the people. But then, it cannot be said not to be abiding by the laws and constitutions of the parties.

Confirming the practice of subjugation of the minority interest for the interest of the elders of the party, another respondent, accusing political parties of infraction of party laws, stated:

> At times political parties do not abide by the law, for example, if you have primaries, and the person that won the primary is not in the interest of the party, they will change the outcome in the guise of party supremacy. That is, the party has the final say.

This also confirms the earlier allegation that parties hide under the principle of party supremacy to disobey the electoral laws and party constitutions.

It is thus evident that, notwithstanding the Supreme court's decision, in the case of *Shinkafi v Yari*[725] and similar cases that emphasise the importance of internal democracy and the need for parties to respect and obey their own laws, Nigeria's political parties continually breach their constitutions and electoral laws. The Supreme Court also stated the need for parties to recognise the jurisdiction of the courts to intervene where parties are found to have disobeyed their constitutions.[726]

[725] *Shinkafi v Yari (n. 431)*

[726] *Tarzoor v Loraer (n. 34); Shinkafi v Yari (n. 431)*

6.2.2. The Adequacy of the Legal Framework

Depicting the adequacy of the existing legal and institutional framework for IPD and democracy in Nigeria, Figure 4 shows that 61.4% of the respondents believed that the existing framework is inadequate to sustain the country's democracy while 29.5% opined that there is an adequate legal framework on IPD to sustain democracy.

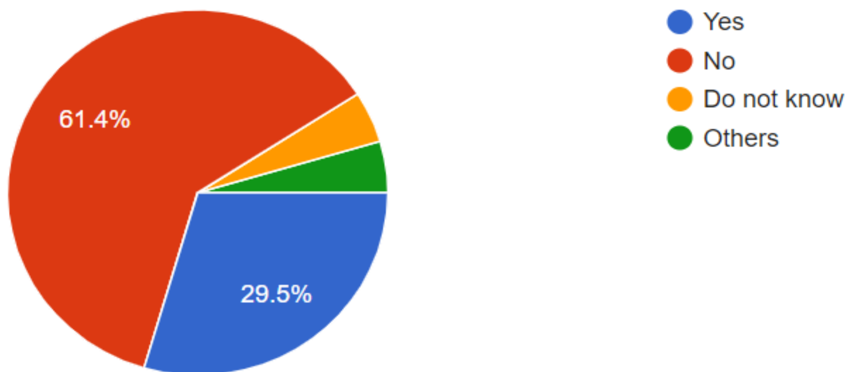

Figure 4. Respondents' Views on the Adequacy of the Legal Framework

Answering the first research question (see Section 1.4.2.: Are the extant legal, regulatory and institutional framework(s) for IPD adequate for the sustenance of democracy in Nigeria?), one respondent stated:

> We have the proper laws but they are not being followed. See our electoral law, I am not saying it's perfect, but with what we have, it's enough for us to conduct free and fair elections, at the internal party and general elections …, But in a way, it has been flawed.

Another respondent, aligning with the above assertion, stated that:

> The problem in the country is not policies or the laws or the legal framework. It is the political will to implement whatever has been decided by certain rules ... all to the letter of the laws.

In support of this assertion, another respondent averred that every constitution is workable. Accordingly, it is the responsibility of the people to apply, interpret, and defend the constitution. He therefore noted that:

> The legal framework for IPD in Nigeria is adequate for the sustenance of democracy. However, the legal framework is merely paper if not appropriately interpreted, defended, applied, and executed… You find that in some cases, people overlook, misinterpret or misapply these legal frameworks… The problem is not the legal framework, the problem is the people.

In essence, this category of party members strongly believes that the laws regulating elections and the internal democracy of parties in Nigeria are adequate and functional; however, the problem is in the political parties' negative attitudes towards the laws. For them, if the existing laws are obeyed, there would be fewer electoral disputes emanating from primary and general elections. Consequently, their position remains that electoral democracy can be successfully developed and sustained in the country but the problem lies in the party's flagrant disobedience of these laws.

However, other respondents believed that the existing legal framework is inadequate for IPD to thrive in Nigeria. One maintained that the laws are not adequate and have a lot of gaps that should be filled. Such gaps he identified as the power given to the INEC by the 2010 EA (As Amended) to issue guidelines for an election. As he said: 'For the mere fact that the 2010 EA has ceded the power to issue the guideline, to the INEC, whatever the INEC issues out, cannot be faulted'.

One respondent, agreeing with this position, noted that the inadequate legal framework on IPD and elections distorts the electoral system. He asserted that electoral reform is unachievable without the political will to implement reforms: 'Reforms without

the political will to implement them will come to nothing.' Another respondent stated:

> If there is no good law to sustain democracy, it leads to chaos and what we are seeing today in the country, (i.e., political conflicts and violence), but if we have good laws, democracy will be sustained, and the country will be good.

Inferably, in Nigeria, what we see today because of a lack of effective laws are political conflicts, numerous electoral litigations and uncertainties, to mention but a few issues. Hence the call for reforms in electoral laws and the will to implement and enforce these laws. Political parties are equally called to respect the laws regulating IPD, without which any amendments of the laws will be futile.

6.2.3. Deciding Electoral Outcomes: Courts versus Ballots

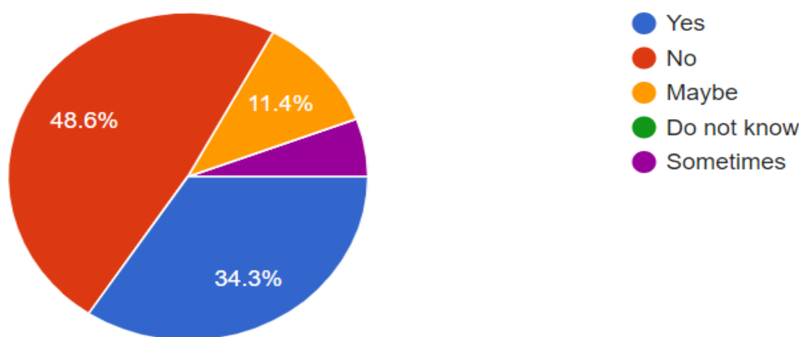

Figure 5. Ballots vs Court

To understand the extent of the power and influence of courts in our democratic process, the survey sought to know the opinion of respondents on this issue. Figure 5 shows that 48.6% of the respondents did not agree with the argument that courts determine the electoral outcomes with their decisions, while 34.3% agreed that courts do determine electoral outcomes in Nigeria. Some 5.7% signalled that sometimes the courts do determine the outcome but on some occasions the ballots are primary.

To further understand the actual role of courts in shaping IPD and electoral

democracy in Nigeria, the empirical investigation focused on the question of courts deciding the outcomes of elections instead of actual ballots. This question was based on the trend of annulment of several election outcomes by the courts in Nigeria following a challenge to the results. It became worrisome that the decisions of the electorate from the ballots were not being respected. The court became inclined to annul elections and either pronounce the runner up to the election as the winner or order fresh elections outright. The court was thus accused of deciding the outcomes of elections against the electorates' will and decisions.

Most respondents in this study accused the parties of being the architects of their problems, to the extent that the parties do not respect their own constitutions and electoral laws when it comes to choosing candidates. Consequently, the courts have decided elections. They argue that if the parties adhered to the internal party laws and electoral law in the nomination of their candidates during congresses and primaries, there would be no reason for the courts to intervene in the outcome of primary elections.

One respondent, citing the 2019 National Assembly Election cases of Senator *Dino Melaye v Smart Adeyemi,*[727] *Senator Olujimi V Mr. Adedayo Adeye,*[728] *Mr. Uzor Kalu V Mr. Ohuabunwa,*[729] and *Mr. Manager V Emmanuel Uduaghan*,[730] stated that if the election outcomes were challenged in the courts and the court eventually annulled the said outcomes, the court had truly decided the elections. Other respondents averred that when election outcomes are challenged, the court is merely called upon to

[727] (2020) unreported

[728] (2020) unreported

[729] (2020) unreported

[730] (2020) unreported

scrutinise the process which delivered the result and decide if there were any irregularities in the election process as alleged by the petitioner. In essence, the courts are strictly guided by the information/facts presented to the court, and judgments are based on these facts. Agreeing with this sentiment, one respondent stated:

> The court's concerns most times in Nigeria border so much on the compliance of political parties with their own law and electoral law. If the court finds any anomalies or non-compliance with the party constitution and the EA, it will pronounce judgment on what is presented before it.

He noted that the court does not award victory to those who did not win; victory depends on what the parties are able to prove before the court.

Another respondent believed that if parties followed the electoral laws and internal party laws in choosing their candidates, there would be no need for the courts to hear and determine the outcome of elections. He observed that if election irregularities were eliminated and proper internal democracy were instituted within the parties with the laws guiding the electoral processes, fully observed, there would be less acrimony when ballots are cast, counted, and winners declared.

The same annulment of electoral outcomes by the court due to parties not following legitimate guidelines and rules in nominating candidates was witnessed in Zamfara State in the 1999 general election. In May 1999, all the APC candidates that won the February 2019 elections at all levels of government were removed when the outcome of the elections was nullified by the Supreme Court. The court, in its ruling, stated that the APC, having not conducted valid primaries in the build-up to the elections for 36 seats in the National Assembly, had no valid candidates and cannot be said to have emerged winners of these elections. Accordingly, the

Supreme Court ordered all other candidates with the second highest votes in all the elections to stand elected in the state. It also agreed that the judgment should serve as a 'bitter lesson' for political parties who do not follow the established laws and guidelines in the conduct of their internal elections.[731] A similar order was given by the court in cases[732] bordering on internal party crisis in Rivers State. The Supreme Court, while maintaining that the APC had disobeyed court orders, ordered the INEC to remove all APC candidates in Rivers State from the 2019 general election.[733]

One respondent, aligning with the argument that the court was right to intervene in election outcomes only to the extent that politicians do not respect the laws and the internal democracy of their own parties: 'But because of the lack of IPD in parties they were forced to use the judiciary to determine their cases'. He further noted that the direct consequence of the court deciding the outcomes of the election is the decamping of members from one party to another when they are not satisfied with the decision of the court. The same respondent stated that to checkmate the courts in their interventions, a bill is currently being sponsored by the INEC. This bill seeks to remove the power of courts to declare candidates' winners of elections when they nullify the outcome of an election. Instead, the bill will require the court to order fresh elections for elective post. This way, this respondent noted, the candidates who are qualified will have the opportunity to stand for election by the people and not the

[731] Adejumo Kabir, Premium Times, 'Analysis: The 36 APC losers from Supreme Court's ruling on Zamfara elections' (May 24, 2019) https://www.premiumtimesng.com/ (Accessed 17/03/2022)

[732] Rivers State PDP V Rivers State APC (Unreported)

[733] Egufe Yafugborhi, Vanguard, 'Disqualification of Rivers APC from 2019 elections: One crisis, many interests' (January 12, 2019) https://www.vanguardngr.com/ (Accessed 17/03/2022)

court. According to him, the distortion of electoral jurisprudence by the courts will be a thing of the past when the new bill is passed into law.

In recent times, the courts in Nigeria have been accused of politicising electoral disputes and consequently imposing unpopular candidates through their decisions. This has resulted in negative outcomes that are sometimes extreme and even violent. An example of this was witnessed in Imo State recently when a sitting governor, from the PDP, was removed by a court and a candidate of the ruling APC, who had come 4th in the election, was declared the winner of the gubernatorial election. The repercussions and fallout of the judgment were violence, political conflicts and killings witnessed across Imo State.

However, one respondent countered the argument that the courts determine the electoral outcome, averring that it is the ballots that determine the winners. The respondent's argument was premised on the fact that without a physical headcount of electorates' votes, there would be no election and nothing upon which the court could determine election outcomes. The respondent maintained that the court only resolves disputes in election outcome from the field if the outcome is challenged in the court, nothing more. As she put it: 'The ballot plays a major role because if there is no headcount from the grassroots, there is no election.'

Another respondent argued that it is *neither the court nor the ballot* that determines the electoral outcomes in Nigeria; rather, it is the institutions charged with the responsibility of managing the ballots that eventually define the outcomes. An example of such institutions is the electoral management institutions, including the INEC and the security outfits in charge of guarding the ballots. For this respondent:

> It is not only the unbiased umpire but the people who safeguard the polling booths, they are human beings and members of the society whom decisions of the politicians and the government influence and affect.

Consequently, for parties' primary elections where the outcomes are disputed in courts, the rule requires a fact to be proved. i.e., in line with Section 87 (9) of the 2010 EA (As Amended). The fact that the nomination process for the candidates of a political party did not follow the law must be proved beyond a reasonable doubt. The burden of proof is usually on the petitioner who is challenging the election outcome. In this instance, the court must decide based on all available evidence before it, the legality of the electoral process that produced the disputed outcome. If the petitioner fails to discharge the burden of proof, the fact (of electoral irregularities) is treated as not to have happened and the outcome is upheld. However, if the petitioner succeeds in discharging the burden of proof, the fact is treated as having happened and the outcome of the election is cancelled.

One respondent, commenting on the implication of the courts' politicisation of electoral disputes and the consequent imposition of unpopular candidates through by their decisions, observed that:

> Sometimes the court might be right or wrong. The people they give verdicts to might not be the popular candidate of the parties, so it affects the political parties negatively.

It can therefore be argued that although the courts act within their jurisdiction in determining election outcomes, they do not determine these outcomes in a void. They are mostly guided by the evidence before them and by the facts from the actual elections that have taken place. Sometimes the judges, in protecting the interests of

the government that appointed them, politicise the cases before them and consequently give verdicts in favour of unpopular candidates, thus, the allegation that courts determine election outcomes and not the ballots.

6.2.4. The Challenges Facing IPD in Nigeria

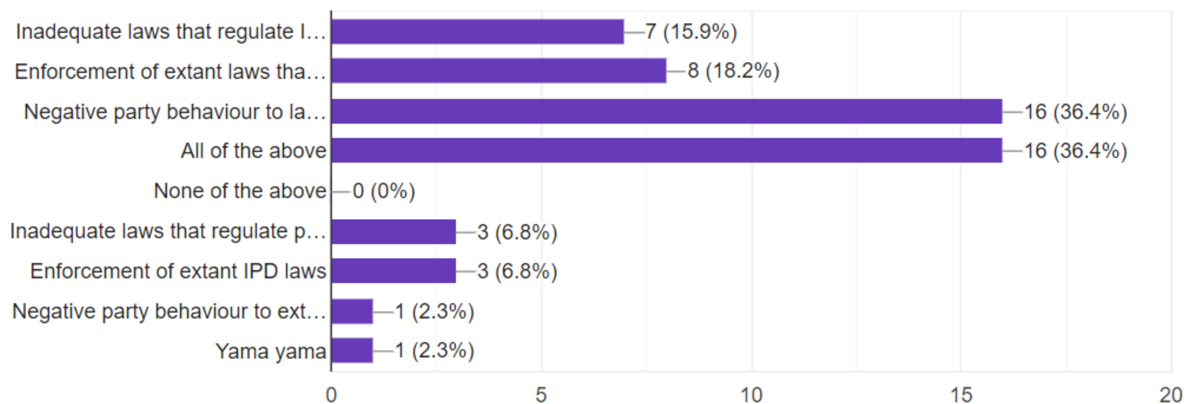

Figure 6. Respondents' Views on the Challenges facing IPD in Nigeria

Figure 6 shows 36.4% of respondents attributed the challenges of IPD to the negative behaviour of political parties to internal and external laws that regulate party activities. A quarter believed that the major challenge facing genuine IPD is the lack of enforcement of extant - internal and external - laws that regulate party democracy. The inadequate legal framework regulating parties' activities was identified by 22.7% while 34.4% of the respondents believed that all the factors mentioned contribute to the challenges facing IPD in the country.

Given that IPD in Nigeria's political parties has long been a contentious issue in the country's political landscape, this study attempts to unravel the reasons political parties find it difficult to adhere to democratic tenets within their parties. It has been argued that these challenges are the reasons democracy in Nigeria has not

developed as keenly and rapidly as it should have. Many of the numerous pre-election cases that go to court every election year have been attributed to these challenges. In this context, this study seeks to understand the problems bedevilling parties internally as organisations and as major democratic institutions which should be an integral part of the building of a wider democratic culture in the country at large. To this end, the respondents were asked an open-ended question as to what they believe the challenges facing IPD in Nigeria are.

Among other things, they identified the following issues as the main challenges facing IPD in Nigeria: Godfatherism, the party supremacy principle, corruption within parties, disobeying court orders, lack of enforcement of party rules, gaps in party laws, conflict of interests, multiple defections from parties, disrespect for party rules, governments overbearing influence on party structure, lack of information, lack of party autonomy, parallel party structures, and primaries, and the general lawlessness of politicians. Some of these issues will be considered in turn below.

6.2.4.1. Godfatherism

The most common issue that the respondents spoke of was godfatherism, noting that due process and laws are not followed in party activities because of godfatherism and favouritism. Aspirants of elective posts are not given equal opportunities to contest for the primary elections; rather, the party stalwarts or state governors, as the case may be, impose a candidate on the party without due process being followed. This practice, the respondents noted, has been a common trend in the stifling of opposing voices and thus of democratic debate in the parties. One respondent narrated an experience he had as an aspirant for a house of assembly seat:

The party chairman told me directly that I was fighting constituted authority

> because the governor (who is the constituted authority) anointed a candidate who I was contesting against.

For some respondents, the direct consequence of imposing candidates by the executives of the party is the sponsoring of unpopular candidates. This behaviour, they claimed, breeds lawlessness within parties as the ‘anointed’ candidates no longer respect the party law or authority because they are the favoured candidate and believe they are ‘untouchable’.

The solution to this challenge, according to one respondent, is for governors to cease interfering in party affairs and allow parties to be autonomous or independent in making their decisions. The respondent noted that:

> The issue of internal democracy in the party depends on the party and if the people can actually select who will lead them, devoid of any opposition from the godfathers or the governor who the constitution of the party referred to as the leader of the party.

This respondent further suggested that to resolve the problem of godfatherism in Nigeria’s party politics was an amendment to party constitutions in order to remove the governor of a state as the leader of the party in that state. The respondent argued that the governor already wields a great deal of influence in a state. Most party caucus members are the governor’s appointees and are subservient to him or her. In making someone the governor, the leader of the party in the state will give him or her absolute power to do anything he wants without opposition from the party.

Commenting on the influence of godfathers in party politics in Nigeria, another respondent stated that:

> One of the problems in Nigeria politics is the use of money... When godfathers form the parties, they want to control the party structures, thereby disrupting the growth of democracy and the growth of the parties.

According to a respondent who had had personal experience of godfatherism, the influence of godfathers in Nigerian politics is so overwhelming that if a State House of Assembly member who does not belong to the governor's faction or has not been anointed by the governor wins an election through the courts after contesting the outcome of the primaries, he or she may end up being frustrated as he or she may never be sworn in as a member of the State House until the expiration of his tenure.

Again, a respondent, who in his political career was once a speaker of the State House of Assembly advocates for political party financial autonomy, expressed the conviction that an imperative reform in Nigeria's democracy today is a constitutional guarantee for the financial independence of the State House of Assembly. According to him, the law as it exists presently *does not* give the State House of Assembly independence from the governor. State legislators often find themselves going 'cap in hand' to the executive for finances to run the legislative arm of a state's government, thereby allowing governors to exert undue influence on the lawmakers. He thus concluded:

> If the National Assembly or the President can make or give a guarantee to provide financial autonomy to the state house of assembly, it will reduce the influence of godfatherism, especially that of the governor of the state.

6.2.4.2. Party Supremacy

Political parties have been accused of hiding under the veil of party supremacy to disrespect party laws and/or deny other party members their legitimate claims/rights

within the party.[734] The courts have also been accused of being complicit in this regard by their contradictory judgments and pronouncements. The respondents averred that notwithstanding the case law principle[735] that parties must obey their laws in the conduct of primary elections, parties still flaunt their internal laws in the nomination of candidates. When the outcome of primaries is contested in the courts, a court will give contradictory judgments which end up creating more confusion than clarity. One respondent claimed that in a number of cases involving internal party disputes, (in which Section 87(9) of the 2010 EA (As Amended) gave the court jurisdiction to entertain) the court declined jurisdiction, citing party supremacy, i.e., the decision of the party is upheld, notwithstanding any illegality. However, after a general election in which the same candidates who participated were challenged before the courts once more, the court proceeded to nullify the election for lack of qualification or illegal nomination from their parties. The court thus reversed itself and assumed jurisdiction for the very same issues and cases it had declined jurisdiction some months earlier.

Parties have also been accused of using the party supremacy principle to frustrate members of a party who are not in agreement with the party heavyweights on the issue of nomination. For instance, on one occasion a party agreed on a particular date, time, and venue for a ward congress to elect executive officers. However, when members of the party who were opposing the governor's list of candidates arrived at the venue, they realised the congress had been concluded

[734] 45% of respondents in this study accused parties of hiding behind the veil of party supremacy to disrespect party laws.

[735] *Tarzoor v. Ioraer (n. 34) Shinkafi v. Yari (n. 431)*

without them. The party, in excluding members illegally from participating in the congress, cited party supremacy, i.e. the party decided to change the time of the congress (without informing all its members) and proceeded to hold the congress without some members.

One respondent questioned the principle of party supremacy in a system in which a state governor's decision overrides the decision of the party, saying:

> The terminology that the party is supreme comes to the question because a decision can be made by members of the political party, and the governor being the designated party leader of the state can change that decision. So, the question then is, is the party truly supreme on its own?

For this particular respondent, the practice and trend within the parties have eroded the potency of the principle of party supremacy. The respect for the terminology that the party is supreme has continuously dwindled, the respondent claimed.

In contrast to the opinion just expressed, another respondent stated that because the party is supreme and is a custom or tradition, the party's constitution should *not* be fair to all members. This respondent argued that party laws ought not to treat all members of the party equally as long as the laws do not violate members' constitutional rights. According to this respondent:

> If the political parties state in their rules, what is to be followed... as long as those things do not interfere with members' rights as Nigerians based on the Nigerian Constitution, then if they choose to be in that party, they must abide by it, and if they do not like the rules, then they can move to a different party.

In this sense, a party can decide that they do not want a particular candidate as their

nominee or flagbearer in a general election. That decision stands irrespective of the fact that the candidate may have won the primary elections by a good margin. The party would insist they do not want the candidate. In this case, the said candidate either goes to court to secure his mandate or succumbs to the authority of the party leadership that is denying him his mandate or exits the party completely to another party where he can realise his ambition. The respondent continued: ‘That is why I say the party is a tradition, and it is also a custom of its own. Yes, the party can say they do not want you as a candidate.’ Another respondent concurred, stating:

> And if the majority said no, then he has to abide by what the majority said and wait for when the majority to say yes, So, yes, the decisions or the applications and interpretations of the constitution might not be in the best interest of the party or the people. But then, it cannot be said not to be abiding by the laws and constitution of the parties.

Another respondent, confirming that parties go against their constitution using party supremacy as a defence, gave an instance.

> For example, in a party primary election, if the person that won the primaries is not in the interest of the party, the party will suddenly change the outcome. What the party will say is that the party’s supremacy is final. The party has the final say. In that area they are not following their constitution.

The respondent explained the inability of the state/INEC to intervene where such a wrong is committed against a winner of a primary election:

> If the political party substitutes a name to the INEC as their candidate apart from the winner of the primary election, it is for the INEC to accept it. They will

not and cannot reject it because that is what the law and the EA provide; that the party will send the names of their candidates/delegates and the INEC cannot reject it.

The above exploration of what happens inside political parties confirms that parties in Nigeria are not inclined to follow their internal laws. The laws are merely ‘paper laws' to offer some form of legitimacy to parties who in truth do not believe in internal democracy but rather in the collective consensus of those who are in control of the party structure at any given point.

6.2.4.3. Corruption within Parties

In the interviews with the respondents, corruption appeared as a prominent challenge facing IPD in Nigerian political parties. Corruption, in fact, seems to be endemic in the political and electoral system of Nigeria. Within political parties, internal democracy is eroded by corrupt practices such as the use of money to buy members’ support and allegiance. Politics in Nigeria has often been described as ‘cash and carry’ politics, in which the highest bidder takes it all.[736] A large majority – 80% - of respondents agreed that this problem derails electoral democracy in a such way that it apparently cannot be controlled by the system. For instance, the reason for the court’s nullification of the outcome of some elections in Nigeria has been the disqualification of candidates who emerge as winners of an election. Often, these

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[736] Caroline Duffield, BBC News, ‘Nigeria's 'cash and carry' politics’ (14 January 2011), *https://www.bbc.co.uk/news/world-africa* (Accessed 17/03/2022)

candidates are not properly screened by their parties before their nomination. When their qualifications have been challenged in a court, they have been found guilty of submitting false declarations to the electoral body. This becomes the rationale for annulling their victory. One may ask why their parties did not screen them properly knowing that it can affect the party's victory and image? As one respondent lamented:

> Over the years, money, corruption, nepotism, and high handedness have affected internal democracy. One big problem is corruption, which decays the process of nomination of candidates in parties. This is a major problem.

A respondent likened party corruption to a bidding exercise in which 'the highest bidder takes it all.'

Yet another respondent, who had been the victim of corruption in the ruling APC, expressed her disappointment with the complicity of the employees of the party in demanding money from aspirants to facilitate their victory in the primary elections. She gave an example of how deeply the problem of corruption has eaten into the system:

> Let me give you an instance. Before our last primaries, some of the internal staff of the party collected money from aspirants to facilitate their victory at the primaries, even without the knowledge of the governor.

On further inquiry to confirm whether the employees actually do interfere or facilitate the victory of aspirants, as they claimed, the respondent answered:

> No, it's bribery. What are they facilitating? When there is a number one citizen of the state who calls the shots, it is all bribery, but they will tell you they want to facilitate.

Eventually, the entire party structure is compromised. Party members also decry the use of money during primary elections to compromise candidates' agents. The agents, when compromised with money, look the other way while electoral fraud takes place during the casting of votes.

6.2.4.4. Gaps in the Law

A major issue that has been identified as hindering IPD in parties and politics in the country more generally is gaps in the electoral laws. Most of the extant legal frameworks on elections are inherently distorted by reason of non-provision of laws to cover specific or unforeseen situations in the electoral process. These gaps are found in the national and party constitutions, electoral laws, and party laws/guidelines. A respondent explained the gaps in laws as follows:

> Because everything, takes root from the ground up, i.e. from the constitution. Once there is a loophole in the constitution, the parties at times want to take advantage of that loophole, and that is why tribunal cases are decided more on technicalities than the facts of the case.

A lawyer respondent recommended regular review of the electoral law and internal party laws, especially after each election year where gaps in law have been identified. This, according to the same participant, would enable better laws and limit litigations arising within parties. He thus stated:

> From the party angle particularly, they should have the culture of constitutional review. For example, at the last election, whatever gaps are identified should be filled either by amending the laws or enacting new laws for the next election cycle.

These gaps, according to this respondent, have been used in some cases by the party leaders to their own advantage, or simply to frustrate the electoral process.

The issue of gaps in the laws brings this discussion to a particular gap in the 1999 CFRN, namely the non-provision of penalties for cross carpeting or defection of lawmakers in the National Assembly from one party to another on the floor of the House and also for state governors.

6.2.4.5. Cross Carpet/Defections

Nigerian politicians have defended their indiscriminate defection from one party to another as their fundamental right to association. Attempts at electoral reforms aimed at controlling incessant moves from one party to another and back by party members have been stalled many times as the bills hardly pass the second reading on the floor of the national parliament. The refusal by the lawmakers to pass such a bill into law has been attributed to the fact that they are the beneficiaries of the gap in a law that does not provide for penalties for decamping from a party on whose platform a member was elected. Cross carpeting between parties is engineered by their inability to obey the constitution and party laws. When they are in breach of the constitution or laws and are asked to face the consequences of their actions, they resist the party's decision and instead move to an opposing party. The issue of cross carpeting or decamping from one party to another with ease by Nigerian politicians has been identified as a challenge to party democracy in Nigeria. One respondent noted the problem of unconscionable defections from one political party to another by Nigerian party members. He accused politicians of indiscriminate party defections, especially when they fail to secure tickets for an elective position from a party. For him, this makes a mockery of democracy and needs urgent attention by the lawmakers. The challenge, however, is that it is the same

people he accuses of jumping parties for selfish interests that are the lawmakers with the responsibility of amending the EA. The lawmakers are unwilling to sponsor or initiate electoral reform that could work against their interests. In the respondent's words:

> I strongly believe in eliminating defections because it causes problems for the parties. Look at Edo elections. For example, the sitting governor was APC, his opponent was PDP. Four years after the defection, the sitting governor in the PDP, his opponent in the APC. What makes it worse is that none of them were members of the party for over one month before they were chosen as candidates.

The respondent further suggested that this challenge could be eliminated with the introduction of independent candidacies in Nigeria's electoral politics. For him, introducing such a reform to the electoral system would give aspiring candidates a platform to contest an election if they feel marginalised by a particular party and would not have to move from one party to another to realise their aspirations. As he said:

> Independence candidacies would close that loophole. If the person feels not well treated, he or she at that point can convert and have an independent candidacy and write to the INEC for approval for an independent candidate based on his or her reasons.

It should be noted that before the conclusion of this research, the Federal High Court in Abuja removed the Governor of Ebonyi State, his deputy, and 16 Ebonyi State House of Assembly members from office[737] for defecting from the PDP, the party on

[737] FHC/ABJ/CS/920/21 and FHC/ABJ/CS/ 104/21. See Nnochiri et al, Vanguard,' Why court sacked Gov Umahi, Deputy, 16 lawmakers' (March 9, 2022), https://www.vanguardngr.com/ (Accessed 17/03/2022)

whose platform they were elected, to the APC. Even though the governor has appealed, it appears the court has mustered the courage to punish cross carpeting politicians who are unable to provide enough justification for defecting from party to party, before a constitutional amendment on the issue. Although a party chieftain[738] has commended the ruling as one of the greatest legal pronouncements in the history of Nigerian politics, the judgment is yet another contradiction of the Supreme Court judgment in *AGF v Atiku Abubakar*.[739] In *AGF v Atiku Abubakar*, the court held that the only conditions for the removal of an incumbent president or vice president is that provided under sections 143-144 of the 1999 CFRN.[740] These conditions do not include defection from the political party on which platform he or she was elected to that office to another political party. This research will not, however, delve into the implication of this contradictory judgment of the court at this time. It could, of course, be a subject of study and discussion in future research.

6.2.4.6. Parties' Disobedience of Court Orders

Parties have been seen to be in the habit of disobeying court orders, especially when the order does not favour them. They have been accused of abusing court processes by going to different courts to get a judgment in their favour to evade enforcement of a previous order of the court. One respondent answered the question on the reason for political parties' disobedience of a court order as follows:

> Court judgments have been variously disobeyed, by most political parties in

[738] Chief Abia Onyike

[739] *AGF v Atiku Abubakar* (S.C. 31/2007) [2007] NGSC 118 (20 APRIL 2007)

[740] An incumbent executive can only be removed from office by death, resignation or impeachment.

> as much as some court processes have been equally abused, people going to court, getting all sorts of orders, even orders from courts of coordinate jurisdiction. And then most political parties choose and select which orders of the court to obey. And in certain cases, there is flagrant disobedience of court orders or court processes.

Disobedience of court orders by parties has been identified as an underlying cause of protracted and endless IPD litigation which has negatively impacted party cohesion. If a party faction refuses to obey a judgment of a court that is not in its favour, a parallel or opposing faction will likewise refuse to adhere to party rules, the constitution, or a court order out of retaliation. The cycles of disrespecting court judgments and party laws are created in this way. One respondent stated:

> Most court decisions on internal party disputes, which we call pre-election matters, have not gone to help matters. They are flagrantly disobeyed by political parties. And that has led to long, protracted matters in courts that linger on for even beyond the tenure of the offices of the elected persons.

The respondent further noted that any judgment that does not favour the ruling class in the party will never be obeyed: 'The party will delay that judgment and will not allow such a judgment to see the light of the day.'

Consequently, for party members whom a court judgment favours, reclaiming a stolen mandate becomes a mirage. The concerned political party against whom judgment was given ensures that the legitimate candidate the court order favours is frustrated. The same respondent, explaining how widespread and notorious the attitude, noted:

> Political parties will frustrate the judgment, they will not allow you to come in...it

> happens everywhere, in all the parties, it happened in Ondo State, it happened in Ekiti, happened in Edo state and some other states.

6.2.4.7. Lack of Enforcement of Court Orders/Party Laws

This challenge in the democratic process of parties goes hand in hand with the problem of enforcement of court orders that affect members of the same party. Most court judgments on intraparty disputes are not enforced, and nor are they respected by parties. This links to the earlier point made about party supremacy and the parties' unwritten conventions. In essence, notwithstanding the provisions of a party law or the decision of the court in the internal affairs of parties, parties will stand by their own decision such as choosing candidate(s) or delegates over others. They do not change their decision even in the face of a court order to retract such a decision or to abide by their party laws. One respondent noted that: 'The challenge of IPD in Nigeria, particularly, is the enforcement of [parties'] own laws or regulations because there is no nobody to checkmate them in the first instance.' This respondent suggested that:

> Parties should make their laws enforceable. They should create an avenue in the law that will help the mechanism to ensure that these rules are not merely in the books but are obeyed.

6.2.4.8. Unlawful Nomination and Substitution of Candidates

As earlier stated in this work, the nomination of candidates for an elective post being an internal party activity is the absolute responsibility and right of the political parties. The process of nomination is governed by the 2001 EA,[741] parties' constitutions

[741] Section 87 (9) Electoral Act 2010 (As Amended)

and/or guidelines. The nomination of candidates is by way of primaries, held during a party convention[742] or congress[743]. Often, the process of party nominations is marred with irregularities and not in line with the law to the extent that aggrieved parties sue both the political party and the candidates that emerged as winners of the primaries. The major cause of disputes within the parties is the wrongful substitution of candidates who have legitimately won the primary election with another candidate.[744] Most times before the disputes are resolved, the general election would have been held and the outcome of the dispute will impact the outcome of the general election. This has become a normal phenomenon in Nigerian party politics and a significant problem in the country's electoral democracy. Courts in Nigeria often disqualify a winner of an election if it is successfully proven that the winner did not win the primary election of a party and thus was not qualified to stand for the said election. Consequently, when a court disqualifies a winner, the court will either order a fresh election in which the legitimate candidate will become a contestant, or it will order the rightful candidate to assume the said post without participating in the general election. A respondent who shed light on the undemocratic activities of parties narrated thus:

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[742] A political party convention is a gathering where a political party elects its national officers and/or the presidential candidate for the party; amends the party's constitution when necessary; reviews, ratifies, overturns or alter any decision taken by any of its constituent bodies, units or officials of the party; appoints external auditors to audit the party's account; resolve disputes; establish any committee to deal with specific issues and takes decisions on the running or future direction of the party.

[743] A political party congress is a gathering where a political party elects candidates for elections or elects its state, Local Government Area and ward party officials.

[744] *Amaechi V INEC (2007)7-10 S.C 172*

> A case study is that of Zamfara State. Within the same party – the APC - a faction of the party went to court challenging the outcome of the primary election on the basis that the party primaries were not conducted according to the party's laws. The APC did not have proper delegates who nominated candidates that contested the general elections. And as such the court ordered the next political party that won in the various constituencies to take over from them.

Furthermore, the wrongful substitution of nominated delegates without due process poses a challenge to parties' internal democracy. As another respondent stated:

> There is a rule. Before you become a delegate, you must be voted for, and then you go and vote for anyone aspiring for any position in the party. A party can remove your name as a delegate after you have been elected and put forward another name without due process.

A respondent who expressed displeasure with the actions of the political parties in wrongful substitutions of candidates and delegates suggested that the law should be amended to allow courts to penalise/sanction parties who are found guilty of wrongful substitution of candidates. According to the participant:

> Where a candidate wins, and his name is not presented, then yes, that candidate has every right to go to court. And if a political party is seen to do this regularly, the court should also surcharge them because they are wasting the time of the court.

The case of *Amaechi v Omehia*, discussed previously, is a locus classicus for wrongful

substitution.[745] In the opinion of one respondent;

> There was no reason that the PDP, as a political party that had substituted Amaechi, could provide for his substitution. In that particular case, the court was right in taking that decision.

6.2.4.9. Parallel Party Structures

The weak structure of political parties in Nigeria has led to a lack of internal cohesion.[746] This is posing a significant challenge to the internal democracy of parties as it has led to an increase in incidences of parallel primaries and state executives' elections within the same political party. Consequently, winners from the parallel primaries who claim to be the legitimate nominated candidates of the party go to court to authenticate their mandate. This is a major reason for the proliferation of internal party disputes in courts. Some respondents averred that there is a multiplicity of cases in courts because the same party comes up with different candidates at the same time via parallel organisations and/or parallel units of the same party. They claimed that the parties having parallel structures is an outcome of disobedience to the party constitution and the constitution of the country.

This behaviour of parties has been maintained since the inception of electoral democracy in Nigeria and is increasingly eroding parties' cohesiveness in Nigeria's

[745] *Amechi v INEC* (2008)1S.C (Pt.1)36

[746] Godwin Udeuhele, 'Parties Parallel Primaries and Its Implication to Political Development in Nigeria' (2015) 5(10) *Developing country studies*, 109.

political parties. A respondent confirming the existence of parallel/factional primaries and structures within the same party stated:

> Some party members went against the governor's instruction, so we had parallel primaries. That is, the governor had his own primaries, with his candidates, that won, and some other leaders went ahead to have their own parallel primary. So that is what caused major internal friction between the camp of the governor and the other camp. Then it ended up in litigation from the Federal High Court of Owerri to the Federal High Court of Abuja to appeals to the Supreme Court. Finally, the governor's candidates won.

The above revelations reveal that internal inclusive democracy is yet to be achieved by parties in Nigeria, leading to multiple litigations after every election cycle. This culture has derailed the consolidation of the gains of democracy in the country.

6.2.4.10. Electoral Violence

Electoral violence entails the threat or actual use of physical and destructive force by individuals or groups against other individuals or groups in an electoral process.[747] Often, electoral violence is perpetrated by individuals who intend to change the behaviour of people in a subsisting political structure or the outcome of an electoral process.[748] Electoral violence could take place prior to, during, and/or after intra- or

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[747] Neville Obakhedo, 'Curbing electoral violence in Nigeria: The imperative of political education.' (2011) 5 (5) *African Research Review* 99.

[748] Ted Honderich, 'Political violence, the alternative Probability' (1989) 3 *Collected Seminar Papers*; Remi Anifowose, *Violence and politics in Nigeria: The Tiv and Yoruba experience*. (Nok publishers International, 1982)

inter-party elections. An inconclusive outcome often characterises an electoral process that is marred or obstructed by violence. In an internal party election in which delegates or party flag bearers are to be elected, electoral violence has the potential to stall the entire process, thereby creating a vacuum in the system. In the researcher's career as an electoral officer in Nigeria's electoral management body, she officially observed party primary elections in which violence and thuggery disrupted the whole electoral process and forced the parties to cancel the results of such primary elections and reschedule the entire party primaries.

Some respondents in this study identified electoral violence as a major challenge for IPD. When supporters of candidates to an elective position do not obey the party's congress or convention guidelines, it leads to internal party conflicts and litigations. According to a respondent:

> There is also the threat of harm, bodily harm. If your party is not popular in that neighbourhood, that party will influence some local members to stampede and bombard the collation centres. So outside you see a large number of people who have no reason to be there, threatening intimidation and bodily harm.

Another respondent suggested an electoral reform that should penalise any party that is guilty of perpetrating violence in elections. The respondent believes that when parties stand disqualified for engaging in violence in an electoral process through an electoral law amendment, it will reduce the incidence of violence and more credible outcomes of elections will be witnessed. This respondent stated:

Yes, and the issue of thuggery, ballot snatching on the day of the election, should be included too in the amendment that the supporters of any political party that engages in any violence that can affect the outcome of the elections. There should be an automatic disqualification for such candidates. That measure will make candidates caution their supporters.

6.2.5. The Impact of Court Decisions on IPD and Electoral Outcomes

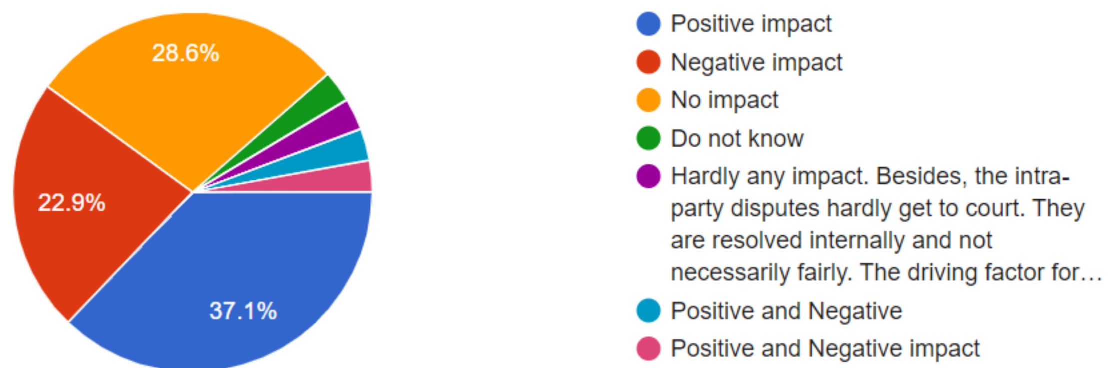

Figure 7. Respondents' Views on the Impact of Court Decisions

To get a deeper understanding of the impact of court judgments on the internal affairs of political parties and electoral outcomes in Nigeria, the researcher asked the respondents to explain from their experiences what these impacts are. This question is aimed at answering the study's second research question (see Section 1.4.2): What is the impact of court decisions on IPD in Nigeria?

Figure 7 indicates that 37.1% of the respondents believed that courts' judgments on internal party disputes impact positively the behaviour of parties and outcomes of elections generally, while 22.9% were of the view that such decisions have a negative impact on. A further 2.9% indicated that courts have no influence on parties' affairs because internal disputes are mostly resolved internally within the

parties although not necessarily fairly for the parties involved. The same 2.9% of respondents stated that the driving factor for the parties is mostly the interests the members pursue.

6.2.5.1. Contradictory Judgements of Courts in Internal Party Disputes

The judiciary, a major pillar of democracy in the country, has tried to maintain peace and decorum in Nigeria's electoral democracy and political space. Without the judiciary, constant conflicts, anarchy, political tensions, and the possible overthrow of elected governments would have been endemic and persist to this day. Despite this, a full 37% of the respondents in this research accused the judiciary of being complicit in inflaming the tensions within political parties. They argue that this is partly because the courts have in several cases given contradictory orders and judgments.

Other respondents, making up 22%, also identified the ambivalence of electoral laws and court decisions as a major problem that exists in internal party politics. The courts' interpretation of the electoral laws is constantly questioned and has left many doubts about the credibility of the judiciary in determining electoral disputes. Part of this ambivalence, according to these respondents, is the problem of having different and/or contradictory judgments from courts of coordinate jurisdiction. When this happens, parties' resort to appealing decision to a higher court. The higher court, most often, is the Supreme Court, which determines the dispute and sets a precedent on the issue(s) in contention. A respondent stated thus:

> One of our challenges is the uncertainty of the law. When the law is written clearly, it is still not certain. When you get to court or where a decision is supposed to be upheld, the court departs from a previous decision. The court claims to have distinguished between the two cases. We cannot stop them

> from distinguishing cases. They will always have a way of making contradictory judgments on the same facts and defend each decision.

The respondent emphasised that:

> Some court judgments would come from a State High court and some will come from a Federal High Court, courts of the coordinate jurisdiction on the same matter, but they give varying orders.

6.2.5.2. Judicial Integrity and Corruption

The image and reputation of the Nigerian judiciary have been questioned many times. As this study has observed, they have been accused of compromise and abuse of judicial powers in their functions of arbitrating electoral disputes. Some prominent judges have been called out recently by citizens at one time or the other for bribery and corruption.[749] A respondent in this research accused politicians of rigging elections, believing that the outcomes, when challenged in court, can be influenced, thereby rigging electoral outcomes twice. The respondent further stated that the courts' behaviour in this regard has left apathy and distrust in the judicial system of Nigeria. The people no longer trust that they can get electoral justice from the courts when their mandate is stolen.[750] One respondent lamented 'even though one wins the election with a good margin, it will be rigged'.

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[749] Abdulrauf Salihu and Gholami Hossein, 'Corruption in the Nigeria Judicial System: An Overview', (2018) 25 (3) Journal of Financial Crime, *669.* [*https://doi.org/10.1108/JFC-01-2017-0005*](https://doi.org/10.1108/JFC-01-2017-0005) *(Accessed 17/3/2022)*

[750] Ibid

Another respondent narrated how his mandate was stolen by his party in a primary election because he was not the favoured candidate. He explained how his party secured a judgment against him without his knowledge, to declare someone who had not even participated in the primaries the winner of the primaries. According to him:

> The only candidate I contested with did not have the qualification to contest for that position. And I wrote to the party hierarchy to disqualify him, but they didn't do anything. I sent a letter to the appeal committee. I sent a letter to the National body; they did not do anything. Instead of acting on my petition, they went and got a judgment without my consent or my opponent's consent. The court stated that my opponent's agent in the primaries was the authentic candidate of the party that won the election, the agent for the person I was contesting with. And he did not contest the primaries.

Some respondents interviewed accused parties of using their powers, especially at the national level, to dictate and manipulate what the outcome of the court will be. Consequently, the respondents expressed their desire to see the transformation of the court to an institution upon which electorates can put their trust in to receive justice. As one respondent stated:

> So, if an election takes place, and they manage to end up in the court, people should be confident that whatever judgment coming out of that court, be it the Supreme Court or High Court, that this judgment can be relied upon. Otherwise, there is a fundamental problem.

The above statements go to show the extent of accusations of corruption in the Nigerian judiciary as regards electoral cases. It could be inferred that the judiciary is no longer

the hope of the common man; rather, it is the hope of rich and influential people who are powerful enough to buy judgments in their favour.[751]

6.2.6. Parties Informal or Unwritten Laws and Rules

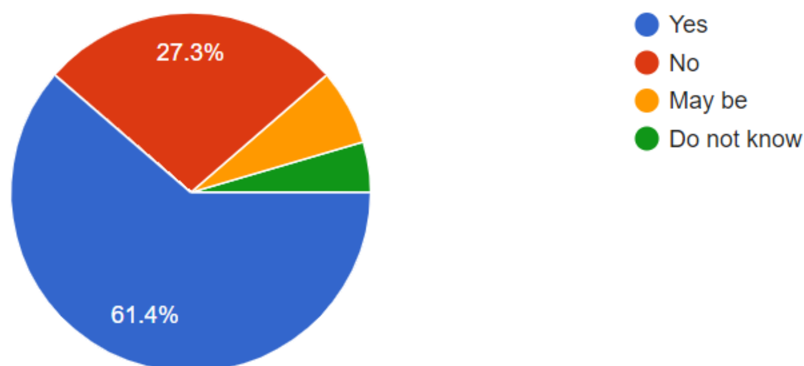

Figure 8. Respondents' Views on Unwritten Party Laws/Rules

As earlier stated in this work, one of the limitations of institutional constraints, rules, and regulations such as party rules is their subversion by the existence of cliques, caucuses, and cabals that operate outside the formal laws/rules in organisations of interest. These subversions provide a smokescreen for institutional decisions that could not be manifest if we were to follow only formal rules and regulations in the course of the study. Consequently, the respondents were asked if there are informal or unwritten codes (rules) by which parties conduct their internal affairs.

Figure 8 shows that 61.4% of the respondents agreed that political parties have unwritten or informal rules by which parties operate, while 27.3% disagreed with the position that parties operate outside of the formal institutions. These silent rules, though not formal and codified, could be the salient principles that govern certain internal party affairs. Of the large majority of the respondents that held that parties operate according

[751] Ibid

to unwritten rules, they deployed different terms to describe these rules, such as mutual agreement, internal arrangement, conventions, consensus, customs, or party understanding. A respondent who had held party leadership positions in different capacities affirmed:

> There are informal/unwritten codes/rules by which parties conduct their internal affairs are present in all political parties around the world. Democracy, politics or political parties, were all founded on what is called convention... actually informal or unwritten codes or rules.

For this respondent, informal rules have existed from the beginning of political life:

> There are informal or unwritten codes/rules by which parties conduct their affairs from the beginning of time, and in my opinion, they are not the problem. The problem is the individual persons that are engaged in applying these codes and rules.

For the respondents who denied the existence of unwritten rules, they claimed that all internal party's activities and processes are done in accordance with the provisions of the political party's constitution or guidelines. One respondent emphatically averred:

> No! We work within the constitution. We abide by the rules of the party. There is nothing like informal or unwritten codes or rules. There is a written document which is compiled into law, a party constitution.

However, some of the respondents who acknowledged the existence of these silent but overbearing rules within the party noted that although they exist, they are not accepted by all party members. This group of people, whom the rules do not favour, tend to challenge such party decisions/agreements in the court. One respondent noted that those with political influence could use what are called 'unwritten rules' to make a decision(s) come to pass. However, doing so might lead to litigation.

A respondent, explaining the basis on which these uncodified principles are relied upon by parties in decision making, stated that where a situation is not covered by the party's constitution, the NWC of the party usually make a decision concerning that situation. However, after resolving it, parties do not proceed to amend their constitution to bridge the gap. They will prefer not to bridge the gaps in the constitution because they can take advantage of such gaps to manipulate situations in their favour.

In fact, parties rarely amend their constitutions, some respondents averred, with one pointing out that:

> Parties go through things. Rather than amending the constitution, they leave the it with the inherent gap. Have you ever heard of political parties amending their constitution? What they do is, when there is a problem or conflict, the NWC takes a decision that is not binding. But they never go back to address this matter in the constitution in order that in the future, when it comes up again, the constitution will address it, so you do not see political parties amending the constitution of their party, which is wrong because the constitution was never written to be perfect.

This respondent, therefore, concluded that 'the basis of parties' informal rules is that parties encounter problems and the NWC *takes a decision which is outside or not*

covered by the Constitution and sometimes this decision overrides the parties' Constitutions' (emphasis added).

Two other respondents defended these informal 'internal arrangements' of parties as a mechanism through which conflicts are managed within parties. They stated that 'internal arrangements' such as the zoning (rotation) of political posts are made for the best interests of the party as well as making party processes easier and workable, aside from engendering inclusivity. Otherwise, there would always be tensions within the party when certain decisions are to be made. Citing a case of internal arrangement, a respondent noted:

> We used to rotate our chairman. A zone produces the chairman, and in the next congress the chairmanship post will definitely move from that zone to another zone. So, in my own ward, it is very difficult and not feasible for any ward chairman to hold office for two consecutive tenures. That is not part of our constitution, but an internal arrangement that can make some things easier and workable.

Another respondent affirmed this procedure within her party structure:

> Yes, we can have such *internal dialogue* to bring peace, and I think that is a one-off. For instance, if you go through the party constitution, you will find a clause that covers a *consensus candidature*. [Emphasis added]

One respondent further noted that informal rules are the products of the convergence of political interests and dealings within the parties aimed at protecting individual, group, or collective interests of party members. The respondent averred:

> Those unwritten codes could be deciphered from concentric circles of intrigues

> within parties which they call political shenanigans, whereby you have caucuses within the party whereby people decide what happens for the party before the process takes place. When there is a convergence of interest that would emerge from such political dealings at the best, but it is somebody who emerges because the interest of everybody is covered or seemingly covered, that is an unwritten code; it is informal, it is not formal as such.

These silent principles were also described as 'unwritten alliances' or 'consensuses', mutually agreed upon by party members but which one respondent alleged are often abused by party leaders. Another respondent - a former House of Representative member – said in response to this question:

> Yes, because by the time we get to party primaries and party congresses, you discover that they are in *unwritten alliances*, some are *forced* on the party members while some are *mutually agreed*. But sometimes this issue of *consensus is abused*. It is in the party's constitution, but they abuse the provision because they force people to accept candidates who are not popular choices. [Emphasis added]

A parties' liaison officer in the INEC observed that though the issue of consensus is provided under political parties' constitutions, it is often abused. He stated that from his work experience monitoring political party congresses:

> It is often abused because people are being forced to agree and parties come under the cover of consensus to commit a lot of fraud. Most times they conduct primaries, and even when they do, people have been beaten into line.

One respondent (a party member) confirmed this sentiment:

> There is a provision in our party that the caucus of the party will agree among themselves the candidate that should represent us, and that still depends on all aspirants agreeing. Further confirming the existence of unwritten rules in parties, another respondent stated that these unwritten rules are implied custom and tradition, as seen in all other systems or fields of practice.

According to this respondent:

> Yes, to a large extent parties have agreements outside of the provisions of their constitution, on how to do certain things. Just like in any trade dispute or arbitration, there are things that are not written, but are implied, or imported or they say it's the normal custom of the trade or business. Yes, it exists, it is more like a code, even during the election, when they want to conduct any election, including, primary elections and conventions.

These unwritten party rules, called traditions or customs, can be challenged or tested in the courts by aggrieved parties whom the custom did not favour. As mentioned earlier in this work, in some cases the courts decline jurisdiction because it is an internal party affair that should not be interfered with. Yet in other cases, a court may assume jurisdiction and rule against the custom in favour of the written party constitution/guidelines governing that party activity. To illustrate this, one respondent stated that if a party zones an elective post to a particular zone, and if a member does not agree with the decision of the party, he or she can contest it in the court, where he or she might eventually receive a favourable decision.

Emphasising the importance and relevance of party customs or traditions, one respondent acknowledged that political parties do not exist for the interests of all its members. He reiterated that, so far as these traditions do not conflict with the

fundamental rights of party members, the courts should not interfere with or annul the traditions/unwritten codes.

The above exploration answers the question of what IPD principles and legal reforms could be devised for Nigerian political parties. This analysis completely mirrors the political culture and inclinations of the people of Nigeria. It could be argued that the culture is less democratic when measured against the parameters of western democracies. However, these silent but known customs often govern and regulate internal party activities in the country and could be transformed into legitimate party policies/processes through constitutional amendments and electoral reforms.

6.2.6.1. Who Makes Unwritten Rules?

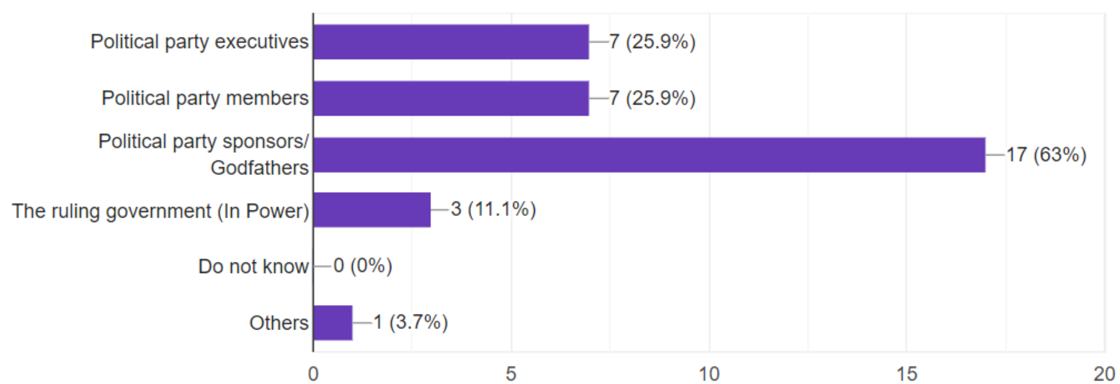

Figure 9. Respondents' Views on Who Makes the Unwritten Rules

Of the respondents that believe parties operate outside of the formal/institutional rules, Figure 9 shows that 63% saw political party sponsors and godfathers as the makers of these informal rules. Slightly over a quarter (25.9%) indicated that party members are the architects of the informal laws, while a further 25% believed that party executive members create and shape the rules. A further 11.1% believed that where a party produceds the ruling government, the incumbent government becomes the shapers of these unwritten codes by which pollical parties operate.

6.2.6.2. Informal Rules Contradictory/Complementary to Formal Rules

Figure 10. Respondents' Views on Informal Rules Contradictory/Complementary to Formal Rules

Figure 10 indicates that 51.9% of the respondents agreed that informal rules often contradict formal laws operating within the parties. Just over a third (33.3%) indicated that the formal and informal rules complement each other to enable the smooth running of party operations, while 3.7% noted that the rules could complement or contradict each other depending on the vested interest of the party controllers. This result supports Cheeseman's assertion that formal institutions only are not able to modify political behaviours more than informal institutions, and that powers often compete with or complement the formal institutions.[752]

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[752] Cheeseman (n. 78).

6.2.7. Electoral Reforms

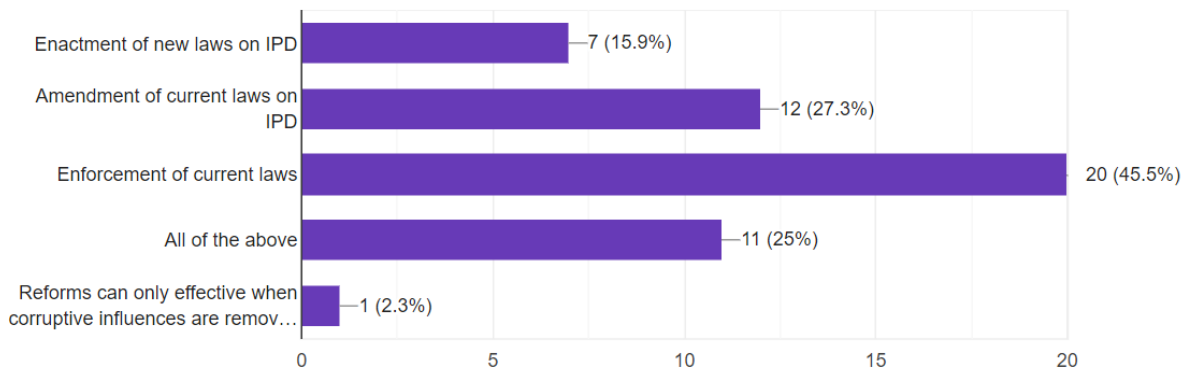

Figure 11. Respondents' Views on Electoral Reforms

One objective of this work is to identify suitable principles and rules that could be introduced in the form of regulatory reform to govern party activities towards strengthening IPD in Nigeria. To this end, the respondents to the survey were asked to indicate the most pressing reforms needed for entrenching a sustainable democratic practice within political parties and in the country's wider political culture.

Figure 11 shows that 45.5% of the respondents indicated that reforms should be directed to the enforcement of existing party laws and regulations. A further 27.3% proposed amendment of existing laws on the internal democracy of parties, while 15.9% preferred an overhaul of existing laws and replacement with an entirely new legal framework. A small minority - 2.3% - noted that reforms can only be effective or meaningful when corrupt influences are eliminated from the parties. In the interim, they suggested that enforcement of current laws would help but cannot be effectively actioned due to rampant corruption and vested interests.

The respondents were therefore presented with questions tailored to finding suitable reforms that could be introduced in the regulation of party activities to better embed internal democratic ethics in Nigerian parties. The following issues that relate to

the electoral process and internal party activities were identified as areas in need of reform.

6.2.7.1. Electronic Voting

Some respondents stated that the 1999 CFRN and the 2010 EA should be amended with respect to the way voting is conducted in Nigeria. They argued that the reality of the present age requires that voting should be done electronically rather than the manual voting the INEC still conducts. As one respondent stated:

> I think the problem is that we need an improvement in the current EA to bring it into conformity with the realities of the times. We find ourselves in a situation whereby one can vote and elect a leader with the use of a smartphone or computer.

This respondent further averred that such reform needs an enabling institutional framework to be put in place for it to succeed.

Eighty percent of the respondents in this study, therefore, recommended that electronic/digital voting, early voting, diaspora voting, and absentee ballots should be adopted for both intra- and inter-party elections to eliminate most of the problems that are encountered during elections, such as snatching of boxes, violence, falsification of result sheets, padding figures, multiple/over voting, stuffing of ballot boxes with ballot papers, vote-buying, etc. This way, primary elections and general elections will cease to be a do-or-die matter where many resources are wasted without achieving much success in the elections.

6.2.7.2. Party Defections

Thirty percent of the respondents in this study indicated that they would like to see

the law on party defections and cross carpeting of parties on the floor of national and state house enacted. The proposed bill stipulated that any member of the National Assembly who defects from the party on which he or she was elected to another party should be made to lose his or her seat. These respondents argued that this reform would checkmate political party members who for selfish motives exit their political party for another political party without serving out the term of their office with the party on which they were elected. This reform is a further act against this tradition as recent events have shown that the courts in Nigeria are now disposed to penalising party defections.

6.2.7.3 Independent Candidacies

One respondent canvassed for the 1999 CFRN to be amended to provide for independent candidates in our electoral system, arguing that this will minimise the incidences of defections and decamping from one party to another, a tradition which, he claimed, makes a mockery of democracy in Nigeria. Every politician/candidate who is not given a ticket in his or her party immediately joins an opposing party, where he or she buys the ticket. If the law provides for independent candidates, party members would not need to change parties indiscriminately to realise their political ambition; instead, they could contest as independent candidates. However, eight out of eleven respondents argued that Nigeria is not democratically ready for independent candidates and should retain the mechanism of party platforms for all elections in the country.

6.2.7.4. Empowering the INEC to (Dis)qualify Candidates for Elective Posts

Some respondents in this study appraised the role of the INEC in qualifying or

disqualifying nominated candidates. Prior to the electoral reform of 2006, the INEC, by law, was empowered to disqualify candidates who did not meet the requisite criteria to contest an election even where their party had nominated them. Consequently, this EA was amended, and the INEC was stripped of the power of disqualification. The law required them to accept any candidate presented by the political party to represent them. Some respondents argued that the stripping of the power of disqualification is the root cause of parties nominating unqualified candidates who win elections and are subsequently removed by the court for non-qualification. Cases abound where winners of an election were disqualified for submitting false affidavits/documents to the INEC. The INEC, on their part, is unable to disqualify them because they have no legal authority to disqualify candidates. The behaviour of parties in nominating unqualified candidates has negatively impacted electoral outcomes in Nigeria, with one respondent recommending:

> If somebody presents a false document. The INEC does not go to verify those documents because the law has stopped them from doing that. We have to empower the electoral body to be able to checkmate the internal party system in the country, so by doing that there is going to be a sustainable political system in our country.

Another respondent indicated that upholding IPD should go beyond the INEC observing primary elections because, at that stage, it is already too late. He averred that the INEC should be part of the internal political party vetting of their candidates in order to avoid instances of too many litigations in court. He affirmed: ‘I am of the strong opinion that the function of qualification of candidates should revert to the INEC.’

Forty five percent of the respondents, therefore, advocated for an EA amendment that would once more give the INEC the power to conduct verification of documents submitted by all candidates as well as empower them to disqualify any candidate who submitted fake documents or certificates. This reform, they believe, would reduce the incidences of removing declared winners of elections for non-qualification and replacing them with the candidate who received the second-highest valid votes in an election.

6.2.7.5. Penalising/Surcharging Parties

It was recommended by one participant in this study that the 2010 EA should be amended to include penalties for parties who do not follow the rules/procedures in the nomination of candidates. He suggested that parties who wilfully/knowingly nominate a candidate who is not qualified or who knowingly submit a false document should be either be surcharged and/or disqualified from contesting the said elective post completely. The respondent recommended:

> And where you do not substitute your candidate, and it goes to court, if this person wins, the INEC should surcharge the political party. So, the INEC will give you the window to substitute (yes, early enough). So, the onus of proof falls back on the political party when the party believes that the person is genuine, and the documents are genuine. The INEC should reserve the right to surcharge that political party for wasting their time on the court process.

Prior to the conclusion of this research, a new EA – the 2022 EA - was passed by the legislature which prescribed a 10 million-naira ($13,000.00) penalty for parties found

guilty of presenting unqualified candidates for elective posts.[753] This electoral law amendment satisfies the recommendation of the respondents who in this research claimed that parties should be penalised for nominating and presenting an unqualified candidate for an elective post.

Some respondents further recommended that political parties should be penalised where their members are found guilty of instigating or perpetuating violence in the form of thuggery or ballot snatching during elections, especially where their actions substantially affect the outcome of that election. Penalties should include automatic disqualification of candidates whose supporters are involved in perpetrating electoral violence.

One respondent equally recommended an electoral reform that would disallow the INEC from issuing election guidelines, especially those guidelines that, when not complied with, could alter/affect the outcome of the election. He advocated that the guidelines should be enacted as laws and included in the EA provisions. That way, there would be no confusion or discrepancies in the interpretation of the laws, which would be obeyed by all election officers involved in the conduct of the elections on election day.

6.2.7.6. Party Constitution Amendments

There was a consensus among the respondents that political parties in Nigeria do not have the culture of amending their constitutions regularly. Rather than amending party constitutions to provide for situations that were hitherto not provided for, parties constitute ad hoc committees to resolve these issues and do not subsequently amend

[753] Electoral Act 2020

their constitution for future reference.

One respondent advised that parties should develop the culture of reviewing their laws regularly ('maybe every eight to ten years') to enhance their vibrancy and ability to provide resolutions to most of the challenges they experience as an institution. He observed that part of strengthening IPD entails strengthening the constitution of the parties, especially those that are obsolete and need updating.

In view of the need to review party constitutions on a regular basis and to make members aware of the provisions of their constitution, one respondent recommended that every party member aspiring to contest an elective post should, as part of the screening process, be given a party constitution to read. He argued that this reform would perhaps help members to be more knowledgeable about the provisions of the party's constitution. Furthermore, when party members are subjected to interviews based on the understanding of the party constitution prior to being issued a ticket to contest an elective post, it could promote members' adherence to the party laws and directly promote internal democracy of parties.

CHAPTER SEVEN

CONCLUSIONS AND RECOMMENDATIONS

7.1. Summary

Considering the tensions generated by often conflicting provisions of law regulating IPD and decisions of the courts in electoral matters, this thesis set out to review the legal instruments Nigeria's main political parties use to cultivate IPD. A socio-legal research methodology that included a mix of doctrinal 'black letter' analysis and qualitative analysis was adopted to critically explore factors that influence individual and collective practices in Nigeria's major political parties within the country's institutional and historical context. Specifically, this thesis aimed to identify tensions, contradictions, and ambiguities in existing legal provisions governing IPD, party management mechanisms, and other institutional functions and processes that affect political parties' effective functioning in Nigeria.

Taking the above aims into consideration, the answers to three broad research questions have been sought in this research:

1. Are the extant legal, regulatory, and institutional framework(s) for IPD adequate for the sustenance of democracy in Nigeria?
2. What is the impact of court decisions on IPD in Nigeria?
3. What IPD principle and national legal provisions and principle(s) could be devised for the Nigerian context?

7.2. Adequacy of the Legal and Institutional Framework for IPD

At the onset of this research, the question of the adequacy of the legal and institutional framework for IPD was posed. This question was developed due to the evidence from the existing literature, the media, intra-party disputes, and events within the political parties that strongly suggest that political parties often do not obey electoral laws and/or party laws. At the beginning of the research, the reason for this disregard of the laws by parties was not very clear.

In the course of this study, it was found that the legal/regulatory and institutional framework for IPD in Nigeria is in fact adequate. The 1999 CFRN and the 2010 EA are sound and valid legal instruments with provisions guiding political parties and requiring them to respect and abide by IPD best practices in their internal processes. It was also found that political parties have internal laws in the form of party constitutions that require them to respect and abide by democratic procedures and practices in their internal processes. However, the issue is that these legal and institutional frameworks are often ignored or disregarded.[754]

A further investigation from the fieldwork on the reasons for the disregard of IPD and electoral laws by Nigerian parties found that the negative attitude of parties is attributed to the following *major* challenges within the party system:

1. Godfatherism
2. Ignorance of party laws
3. Gaps in extant laws
4. Lack of enforcement of the laws

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[754] Magolowondo Augustine, 'Democracy within political parties: The state of affairs in East and Southern Africa' (2013), 200.

5. Corruption within the party structure

Each of these issues is dealt with below and suggestions to remedy them are provided.

7.2.1 Godfatherism

The challenge of the godfather syndrome has existed in Nigerian party politics as far back as the pre-independence political era. However, it has become more pronounced and worrisome in recent times because of its interference with IPD. This research found that political party stalwarts and states' executive governors impose candidates on the parties during the nomination and election exercises without due process.[755] According to the respondents in this research, this practice has been a common trend in parties that stifles opposing voices and democracy within the parties.

To reduce the influence of godfatherism, this study recommends that necessary reforms be affected to allow for the financial autonomy of political parties within the limits of the law regulating party financing. In this regard, this study aligns with the Oji et al.'s[756] suggestion that public funding of political parties should be restored in Nigeria but with strict conditions set for parties' access to those funds. Also, income generated from party activities such as membership registration and subscription, as well as the sale of nomination forms, should be utilised solely for funding political parties' activities. Laws should be made to exclude individuals from funding party activities with personal finances. This reform would allow parties to be more independent and autonomous in their decision-making without fear or favour from anybody.

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[755] Infra Chapter six, section 6.2.4.1

[756] Oji Okechukwu, et al, 'Political party funding in Nigeria: A Case of People's Democratic Party' (2014), *Arabian Journal of Business and Management Review 62.1889*

Legal reform is needed to proscribe the designation of the executive governors of a state as the 'party leader' of that state. The designation and ascription of party leader title to governors provides them with the power to unduly influence people and decisions within the party system.[757] More so, interfering with the leadership/activities of political parties could be a distraction to the governor's major role in providing quality governance for the state’s citizens.

Moreover, constitutional reform is required to make each state’s House of Assembly financially autonomous. The present law that promotes the legislature’s dependency on the executives for its functioning and funding is detrimental to party democracy and the autonomous existence of the legislature. Making state legislatures financially independent will eliminate the overbearing influence of governors on the members of the legislature and allow party democracy to be cultivated.

7.2.2. Ignorance of Party Laws

One respondent in this research attributed disobedience of the party laws to the fact that many political party members are ignorant of the provisions of their party constitutions and internal party laws. He noted that party members could not obey party laws that they were not aware of. The respondent alluded to the fact that some party members do not even own a copy of their party’s constitution, which for him is very problematic.[758]

To resolve this challenge, this study recommends that the Inter-Party Advisory Council (IPAC) should be given the responsibility of educating and enlightening political

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[757] Infra, Chapter Six, Section 6.2.1

[758] Infra, Chapter six, section 6.2.1

party members on their rights and responsibilities. The IPAC is a body made up of representatives of all political parties in Nigeria. It was established by the Political Parties Code of Conduct 2013 to promote inter-party dialogue among all registered political parties.[759] The dialogue is meant to contribute to a violence-free, fair, credible, and transparent electoral process. This study contends that the IPAC is an appropriate institution to undertake the role of IPD sensitisation and education. If political party members are educated on the need for IPD, and are aware of their rights and responsibilities as enshrined in their party constitutions and electoral laws, there would be less disobedience to the law and more accountability demanded from the leadership. Also, a well-informed party member would not allow his or her rights to be infringed upon and others that are better informed would no longer take advantage of members' ignorance to perpetuate injustice.[760]

7.2.3. Gaps in Extant Laws

Another factor identified as hindering IPD in parties' political parties in Nigeria is the existence of gaps in electoral and party laws. As stated earlier, most of the extant legal frameworks on elections are inherently distorted by reason of the non-provision of laws to cover specific or unforeseen situations in the electoral process. These gaps are found in the party constitutions and electoral laws. The study found that where a void exists in party internal laws/constitutions over certain situations, the parties' NWCs decide to address this situation. However, no mechanism is put in place to amend the party's

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[759] Political Parties' Code of Conduct 2013 established the structure of IPAC as a general body comprising a representative from each registered political party (who should also be a member of his/her party's NWC) and a representative from the INEC.

[760] Infra, Chapter six, sections, 6.2.1 and 6.2.4.4

constitution in order to provide for a similar situation in the future. Thus, most recurrent party issues that should be provided for under the constitution are resolved by the NWC repeatedly without a clear pattern but according to prevailing interests.[761] This approach allows for discordance and variations in decision-making within the party structure. It was found that party leaders take advantage of the gaps in the party laws to impose their decision on the rest of the party membership, thereby eroding democracy within the parties. Parties were found not to be in the habit of amending their constitutions regularly to fill the gaps in the law.

To remedy this, this study recommends that a similar provision to Section 87 of the 2010 EA (which regulates IPD in parties) should be enacted. The proposed provision would require parties to mandatorily review and amend their constitutions every eight years, covering two election cycles. The law should empower party members to bring class-action claims or individual claims against a political party for non-review/non-provision of its constitution in certain situations that are not provided for. Such claimants (party members) should be allowed to seek a court order mandating a political party to amend its constitution in order to provide for such situations and close the apparent gap. This is particularly necessary where certain rights and privileges are denied or damages are suffered because of a gap in the internal party laws. If such a law were enacted, it would put in place mechanisms within the party that would allow for regular reviews and amendments of parties' constitutions/internal laws. This would promote IPD more within the parties as members would have the opportunity to have an input into decision making in the party and not be excluded by the NWC's interests.

7.2.4. Lack of Enforcement of the Laws

One salient point that has been identified as an underlying reason for Nigerian political parties disregarding IPD best practices is the non-enforcement of party laws by political parties. Parties do not have the willpower to enforce their laws when they are found to have been breached. In certain cases where parties have attempted to enforce their written laws and or sanction members, the members often resist. Subsequently, sanctioned members who have breached the party laws defect to another party. This attitude weakens the disciplinary process of parties, which are consequently less motivated to enforce their laws. Therefore, it is recommended that the parties implement a mechanism to enforce internal party rules. An organisation without rules and an effective enforcement mechanism attracts lawlessness. It also impedes the entrenchment of internal democracy in parties.

7.2.5. Corruption within the Party Structure

Corruption within the party structure was identified as an endemic problem and a major challenge facing political parties and other democratic institutions. This challenge can be traced to the non-enforceability of relevant laws on corruption in the country generally. It is often said that what happens in individual organisations/institutions in a country is reflective of the wider picture of the country as a whole. This challenge negatively impacts IPD as people are not willing to participate in party politics due to the level of corruption in the system. Money is seen as the only driver of political decisions or actions. A wealthy politician who is ready to spend more money within the party structure will have his political interest protected, to the detriment of other legitimate interests within the party.

It is thus recommended that strict sanctions be put in place such as banning a candidate from running, to penalise any member of a political party indicted for corrupt practices. However, as mentioned above, the challenge in this recommendation is the actual enforcement of the law.

7.3. The Impact of Court Decisions on IPD in Nigeria

The second research question in this study concerned the impact of court decisions on IPD in Nigeria. The research to this end analysed the role of the courts in Nigeria's democracy through their unique decisions on IPD. Based on DLR and case analysis, as well as the empirical data from this research, it was found that though the courts have sometimes been inconsistent in their decisions, as seen in *Captain Idris Wada & Ors v. Yahaya Bello & Ors*[762] and Jev V Iyortom (1) and (2),[763] they have regulated and managed electoral outcomes through independent control of political actions and the electoral process generally. This study observed that the judiciary has often been criticised for making contradictory judgments and 'interpreting the law in a vacuum'.[764] For instance, in *Wambai v Donatus*[765] *and Dangana v Usman,*[766] the Supreme Court contradicted itself on the issue of jurisdiction of the electoral tribunal to hear pre-election (IPD) cases. The Supreme Court's decision in these two cases conflicted with its

[762] *Captain Idris Wada & Ors v. Yahaya Bello & Ors* (2016) 17 NWLR, Pt. 1542, 374

[763] *Jev v Iyortom* (1) and (2) (2015) 15 NWLR (1483) 482

[764] Mahoney Paul, *Judicial activism, and judicial self-restraint in the European Court of human rights: two sides of the same coin*. (1990).

[765] *Wambai v Donatus* (2014) 14 NWLR (pt.1427) 223

[766] *Dangana v Usman* (2013)6 NWLR (pt.1349)50 at 89-90

decision in *Ugwu v Ararume,*[767] *Amaechi v INEC,*[768] *Action Congress of Nigeria v INEC,*[769] *Odedo v INEC,*[770] *Pam v Mohammed Usman*[771] *and Agbakoba v INEC & Ors.*[772]

The study also found that the Supreme Court has set valid precedents in electoral cases. Where there is no law regulating a specific political and legal situation, it has developed new laws to resolve and manage electoral conflicts, allowing standards to be set to modify party behaviour and change the system's undesired state.[773] For example, in the case of *Peter Obi v INEC,*[774] a new interpretation was given to a constitutional provision on the tenure of office of a governor of a state. The Supreme Court's ruling in the case thereafter became the law and set the precedent for subsequent cases with similar facts.[775] Consequently, the decision in *Obi v INEC*[776] revolutionised the election timetable/period for different states, allowing governorship elections in the country to be conducted at different times. The case law thus

[767] *Ugwu v Ararume* (n.22)

[768] *Amaechi v INEC* (2008)1 S.C (pt.1)36

[769] *Action Congress of Nigeria v INEC* (2007) 6 NWLR (Part 1029) 142

[770] *Odedo v INEC* (2008)7 S.C 25.

[771] *Pam v Mohammed Usman* (2008)5-6 S.C (pt.1)83

[772] *Agbakoba v INEC & Ors* (2008) LPELR- SC. 224/2007

[773] Susan Scarrow, *Political Parties and Democracy in Theoretical and Practical Perspectives: Implementing Intra-Party Democracy* (NDI, 2005)

[774] *Peter Obi v INEC* (S.C. 123/2007) [2007] NGSC 180 (13 July 2007)

[775] Library of Congress Library of Congress (loc.gov) (Accessed 12/07/2022)

[776] *Peter Obi v INEC* (S.C. 123/2007) [2007] NGSC 180

standardised election periods for states and modified the 1999 CFRN's interpretation of the tenure of office of a governor.

The study further found that the judiciary, in adopting a critical role, has restrained the excesses and undemocratic tendencies of political parties, as was seen in the *Amaechi* case[777] and in *Ugwu v Ararume*,[778] where sitting governors were ordered by the courts to vacate their office due to their unlawful nomination by their parties. The judiciary have also been instrumental in national political tranquillity through the resolution of electoral disputes as they protect the nation's democracy and guarantee the fundamental rights of citizens,[779] as witnessed in *Buhari v Obasanjo*[780] and *Odumegwu Ojukwu v Musa Yar'Adua.*[781]

7.4. What IPD Principle and National Legal Provisions and Principle(s) can be devised for the Nigerian Context?

The third research question in this work addressed the suitability of the current IPD laws to the Nigerian context and asked whether there were alternative legal provisions and/or democratic principles that could be devised for Nigerian parties.

This thesis found that socio-cultural factors influence individual and collective

[777] *Amaechi v INEC* (2008)1 S.C (pt.1)36

[778]*Ugwu v Ararume* (n.22)

[779]Tahir Mamman and Chibueze Okorie,'Nurturing Constitutionalism through the Courts: Constitutional Adjudication and Democracy in Nigeria', available at http://www.ialsnet.orL/meetings/constiti... /mamman & Okorie (Nig). pdf. (Accessed 13/4/2021)

[780] *Buhari v Obasanjo* (2005) 9 SCM 1 101 102 203

[781] *Odumegwu Ojukwu v Musa Yar'Adua* (2009)6 SCM 126 205

practices within major political parties in Nigeria. As Schaffer argued, democracy is a cultural construct that is inconspicuous to non-members.[782] Therefore, democracy can only be understood within the context of a particular culture and certain domestic realities.[783] The current study determines that the challenges facing IPD in Nigeria stem mainly from cultural and social realities. In Nigeria, the military has ruled for most of the post-independence years, which has had a great impact on subsequent civil leadership styles. Also, being a country with a culture of subservience to traditional ethnic rulers, Nigeria has developed a self-propelling intra-party principle of deference to authority, a socio-cultural idiosyncrasy that regulates party behaviour. Perhaps somewhat paradoxically, this has helped Nigerians maintain their cultural identity while striving – sometimes stumbling - towards a workable democratic system of governance.

7.5. Recommendations

7.5.1. Conflicting/Contradictory Laws

This thesis, among other aims, set out to examine the role and impact of court decisions on IPD in Nigeria and established that court judgments and pronouncements are often conflicting and political in nature. When court decisions are conflicting, the law becomes uncertain. There is also the tendency for parties to choose which law to obey when there is uncertainty and conflicts in the body of law regulating IPD. As political outcomes, the citizens' wishes are often thwarted by the outcomes of courts' decisions.

[782] Schaffer Frederic, *Democracy in Translation: understanding politics in an unfamiliar culture*. (CUP 2000).

[783] Willis Justin, Gabrielle Lynch, and Nic Cheeseman. 'A valid electoral exercise? Uganda's 1980 Elections and the Observers' Dilemma.' (2017) 59 (1) *Comparative Studies in Society and History* 211.

Consequently, judgments are often resisted by the electorates through violence and conflict.

Furthermore, as earlier mentioned, the courts and the legislature are not united in their functions of law making: electoral statutes and case laws are not harmonised. This is due to the cyclical nature of interactions that exist between the legislation and judiciary on IPD regulation. When the legislature enacts a law and the judiciary interprets and applies that law outside the legislature's intention, it instigates a reaction from the legislature to amend the law, which continues cyclically. This was seen in the enactment of Section 141 of the 2010 EA[784] by the legislature to reverse the effect of the decision in the Amaechi's case.[785] These actions - and their reactions - have left the two institutions in a seeming contest of superiority. Also, in 2011, a political party instituted a suit that challenged the legality of three provisions of the 2010 EA, namely, sections 87(9), 140(2), and 141.[786] The Supreme Court annulled Section 140(2), a provision that barred the Courts from declaring the runner-up in an election the winner of that election upon finding deficiencies in the qualifications of the candidate with the most votes, requiring instead that fresh elections be held.[787] The Supreme Court held the provision to be invalid because it violated the constitutional power conferred on courts to make declaratory judgments.[788] The Supreme Court also rejected a challenge

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[784] An election tribunal or court shall not under any circumstance declare any person a winner at an election in which such a person has not fully participated in all the stages of the said election.

[785] *Barr. Oriker Jev v. Sekav Dzua Iyortom* (No. 2), [6]

[786] *Action Congress of Nigeria v Chief justice of Nigeria & Ors.* (2011) Unreported

[787] *See* Electoral (Amendment) Act 2010, Act. No. 10 of Dec. 29, 2010, 97:92 Federal Republic of Nigeria official gazette A1217-A1230 (Dec. 31, 2010).

[788] 1999 Constitution of the Federal Republic of Nigeria. (As Amended) Section 6(1)

to Section 141 of the 2010 EA, a provision that barred the courts from declaring a candidate who has not participated fully in an election as a winner of the election.[789] These actions of the legislature were aimed at containing the constitutional powers of the courts. Consequently, the judiciary always finds itself in a defensive position, poised to declare such legislative actions a nullity. These laws and counter principles are often confusing and contradictory to the extent that parties do not know which is the substantive law at any point in time.

This thesis thus recommends that the lawmakers and judiciary work towards a common purpose to harmonise all IPD/electoral laws to avoid conflicts and confusion. Any electoral law amendment should be based upon the recommendations of a committee on the electoral amendment. This committee should be comprised of members of the National Assembly, the judiciary, the INEC and other relevant stakeholders in the electoral system. This would afford the citizens a clear understanding of the position of the law to reduce the number of cases that end up in the courts challenging the electoral statutes and political parties' actions.

7.5.2. Restructuring the Judiciary

The 1999 CFRN[790] and the 2010 EA[791] presently provide for the hearing and determination of all pre-election and intra-party cases within 180 days of instituting the case, and all appeals to be concluded within 60 days. The same time restriction applies to all election petition cases arising from the conduct of the elections. This study

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[789] Library of Congress *Nigeria: Court Annuls Election Law Provision Banning Tribunals from Making Declaratory Judgment | Library of Congress (loc.gov)* (accessed 16/01/2022)

[790] 1999 CFRN, (Fourth Alteration, No 21) Act 2017. [Determination of Pre-election matters]

[791] Electoral Act 2010 (As amended) Section 134.

recommends a review and amendment of Section 285 of the 1999 CFRN and Section 134 of the 2010 EA dealing with the election petition time limit to provide for a unified court/tribunal structure with jurisdiction to hear and determine both pre-election cases and election petition cases. This process requires an electoral tribunal be set up 30 days prior to the political parties' nomination exercise and be given powers to abridge time for filing documents. The tribunal must also be given a time frame within which to conclude all cases pending, even on appeal before elections are held. This reform would clear the tribunal of any pending case that could potentially impact negatively on the outcome of the general elections as the foundation of any electoral victory are pre-election matters. Considering that the tribunal would also have the jurisdiction to adjudicate on election petition cases, any unresolved pre-election case(s) prior to the election could be consolidated by the tribunal for ease of process and efficiency and all electoral cases could be determined before the scheduled date for assumption of office for the winners of the elections. This structural reform would eliminate situations whereby elected candidates whose elections are affirmed by the courts to have their electoral victory overturned because of a pre-election dispute[792] and would thus save resources for the country and for the parties as well. The study also recommends that such an amendment should give the tribunal or the appellate courts the powers to extend the period beyond the stipulated time, either *suo moto* or by application of either of the parties to the action, supported by cogent reasons for the such an application.[793]

[792] Justice Usman Bwala. 'Pre-election matters in regular courts and election petition tribunals' Vanguard, (4 march 2020), https://www.vanguardngr.com/ (Accessed 9 August 2022)

[793] Anthony Agada. 'Nigeria: Time Limitation in Election Matters and the Question of Justice' This Day, (21 Feburary 2021) https://allafrica.com/stories (Accessed 9 August 2022)

This study further recommends a restructuring of the Nigerian judiciary to make it more independent. A system whereby the Federal Government or a state government appoints a Chief Justice and he or she in turn appoints the chairman and members of the electoral tribunal make the process vulnerable to politicisation. The electoral tribunal may become subservient and loyal to the power that appointed them, to the detriment of justice and fair trials. The study recommends a constitutional reform that would enable judges that hear and determine electoral cases to be elected in a non-partisan election by the people prior to an election year, as is seen in some US states.[794] The new system would grant the electoral courts independence in their judicial functions, and they would thus function to give electoral justice to the citizens.

Furthermore, in order to avoid overt pressure from the executive and legislative arms of government on the judiciary, this work recommends that judicial funds should be a first line charge from the revenues of both the federal and state governments in order to eliminate corruption and inefficiency from the justice system. The state of affairs regarding the funding of the judiciary presently regrettably sabotages the protection of judicial independence[795] under the 1999 CFRN. This has led to a lack of infrastructure in the institution[796] and an apparent lack of independence in the exercise of its functions.

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[794] Arkansas, Georgia, Idaho, Kentucky, Minnesota, Mississippi, Montana, Nevada, North Dakota, Oregon, Washington, West Virginia and Wisconsin.

[795] Aka Philip. 'Judicial independence under Nigeria's fourth republic: Problems and Prospects' (2014)1 *California Western International Law Journal* 45.

[796] Boma Ozobia, *Nigerian-judges-are-poorly-equipped-boma-ozobia/ October* 25, 2016. Daily Independent, http://www.dailyindependentnig.com/2013/01/ (Accessed August 5, 2022)

It is also recommended that for judicial independence to be upheld, executives should not interfere with the judicial functions of judges and should be subject to the rule of law, especially with respect to disciplinary procedures for corrupt judges. Judges should be held accountable for corrupt practices through the disciplinary processes/mechanism of the NJC, as instituted by the 1999 CFRN. The NJC therefore 'must maintain a delicate balance between enforcing disciplinary standards so that judges do not violate their judicial oath thereby allowing judges sufficient autonomy and independence'.[797]

Moreover, an amendment of the constitution is necessary to provide for the establishment of an electoral offences tribunal that would be solely dedicated to the prosecution of all electoral offenders from the political party primaries to the general elections. This would decongest the ordinary courts of electoral offences cases and enable a speedy determination of all prosecutions and other cases in the ordinary courts.

7.5.3. The Law on the Qualifications of Candidates

An electoral reform proposed by this thesis, emerging from the investigation, is the amendment of Section 31 of the 2010 EA (As Amended). This work recommends that the proviso to Section 31 of this EA should be expunged. The proviso restrains the electoral body from disqualifying and/or rejecting a nominated candidate presented by a party *for any reason whatsoever.* To this end, it is proposed that the deleted provision of Section 87(9) of the repealed 2010 EA that empowered the INEC to exclude a party's

[797] Oko Okechukwu, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria', (2005) 31 BROOK. J. INT' L 9.

candidate where the party was found not to have complied with the provisions of the EA in its primary election should be reinstated. This research established that the main cause of parties fielding unqualified candidates that end up being disqualified by the courts is the removal of Section 87(9) of the repealed 2010 EA.[798] This work further recommends the amendment of the 2010 EA to reflect this provision. This would enable the INEC to enforce compliance with internal democratic principles.[799]

Following the fieldwork, the study also recommends an amendment to the electoral law that penalises parties each time they nominate unqualified candidates for an elective post. This would make the parties more ethical and stringent in selecting and nominating candidates.

7.6. Limitations of the Findings

A major objective of this study was to examine statutory provisions and judgments of courts emanating from intra-party disputes and conflicts. A major challenge in this regard was gaining access to the database of the *All Nigeria Law Reports*, which contain all the relevant cases. Having access to this database requires membership subscriptions to several Nigerian law report platforms. Though the cases are the same and are repeated across all the platforms, I could only subscribe to a small number. A further -related – issue was that most relevant cases are yet to be reported and included in this database, which hindered access to some cases. Information on these groups of cases was only available through media reports.

[798] Where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue.

[799] Itua Okhaide (n. 367).

Another major challenge was the COVID 19 pandemic and its attendant protocols. The ethical approval of face-to-face interviews was withdrawn as it was no longer safe. Travel was also restricted, which negatively impacted the number of participants the study could access. Virtual/online interviews restricted the accessibility of participants' demeanour and body language. Also, a virtual interview cannot do as much justice to the quality of data collected as would a face-to-face interview. The same way information is lost due to network issues in an online data collection process, information from unspoken words is also lost through video or audio narrative.

Furthermore, the participants interviewed were mostly career politicians who were constantly in one political engagement or another, night or day. This affected the sample size for this research work. Though the initial plan was to interview 20 participants, the difficulty of getting a commitment on time and participation reduced the sample size to 11. However, the main data for the study comes from the doctrinal analysis and the empirical data comes from sampled questions for further validation of the work, and thus a reduced sample size did not diminish the quality of the study.

The study was limited from the perspective of the voices heard. Judges and attorneys that handle electoral cases were not well represented in this work in order not to exceed its scope. One senior staff member of the INEC and one attorney were interviewed to provide insights into the position of the electoral body and attorneys representing the parties.

7.7. Significance of the Research

This study is significant *(in academic terms)* to the extent that it contributes to the body of socio-legal and institutional understanding of politico-legal issues in Nigeria, which is beginning to gain more traction in legal scholarship. It thus adds to the socio-legal

literature on IPD in Nigeria and emerging democracies. Following therefrom, this study is further significant to the extent that it focuses on the place of law in society and the concepts of law and democracy as a set of norms or rules of behaviour in society or organisations and, more broadly, institutions. Of greater significance is the fact that the institutional character of law as it affects democratic best practices is timely and appropriate and very helpful to legal scholars, especially those who believe that democratic transitions should respect and recognise wider social and cultural norms. Therefore, democratisation should not be construed to mean a one-size-fits all approach; instead, it should be construed in relation to cultures and norms. It has been established that political parties in Nigeria are not regulated only by the formal institutions, but mostly by informal institutions laid down and agreed upon by leading political figures in the country. *In practical terms*, the cultural underpinnings of democracy become very relevant for structuring electoral reforms and the legal framework for managing IPD.

7.8. A Future Research Agenda

The scope and area covered by this thesis have the potential to spark further investigation, especially regarding the legal framework and reforms on IPD. Presently in Nigeria, a new EA (Bill) - the 2022 EA - is in the process of being signed into law. The 2022 EA will regulate the 2023 elections. The changes, amendments, and new provisions pertaining to the regulation of party democracy have considerable potential for further detailed investigation. The implications of the new law on electoral democracy, IPD, and electoral outcomes in Nigeria are potential areas for further investigation.

Furthermore, the Alternative Electoral Dispute Resolution (AEDR) mechanism for the management of intra-party disputes is a potential subject for further exploration. Though not formally endorsed in Nigeria,[800] the use of the AEDR is an effective means of managing intra-party disputes. The AEDR seeks to provide and develop means of resolving electoral conflicts in the internal process of parties and electoral process generally. It identifies and mitigates conflicts within a party and between different parties. The AEDR mechanism pacifies grievances through Joint Problem Solving (JPS), reconciliation and, in severe cases, reintegration.[801]

7.9. Conclusions

In conclusion, this thesis submits that to encourage parties to be more democratic in their activities, the main focus of international observers in Nigeria's electoral process should be on the intra-party selection process, i.e. the political parties' primary elections, which this study found to be the main instigator of electoral disputes. Observers often concentrate on general elections in Nigeria; however, this work has found that the entire democratic process is sabotaged at the party primary elections stage because that is where most electoral litigations that impact the outcome of general elections emanate from. All international observers' work amounts to an exercise in futility if the parties' internal selection processes are not straightened out. This thesis thus recommends straightening political parties' primaries in Nigeria by legally providing for political party

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[800] Ikpokonte Felicia, 'The application of alternative dispute resolution mechanisms in the resolution of electoral disputes: Nigeria in perspective.' (MS thesis, University of Cape Town 2018)

[801] Obi Neji, 'Resolving Political Party Disputes through Alternative Dispute Resolution.' *Journal of Political Science and Leadership Research* (2018) 4 (4)

primaries to be observed by international and local observers. The inclusion of observers will ensure that the right procedures are followed in the intra-party candidate selection process, ensuring that the right candidates are elected and that no candidate is imposed on parties (and, by extension, on the country). This would better consolidate democracy in Nigeria and bring about more desirable electoral outcomes compared to what is presently obtainable.

Finally, this study established that political parties are customs/traditions. Implicitly, parties are institutions with specific peculiarities, including 'secrets of the trade'. Consequently, Nigeria should be allowed to develop a variant of electoral democracy that is suitable to its people, history, and culture. Democracy should not be modelled in every country according to a perceived 'ideal democracy' or how it is practised elsewhere, for example in the western world. Instead, countries, especially African countries, including Nigeria, should follow 'best practices' in democracy while also respecting and acknowledging their socio-cultural peculiarities. This thesis found that cultural factors influence individual and collective practices within major political parties. This is in line with Schaffer's argument that democracy 'often has cultural underpinnings that are invisible to outsiders,' and thus can only be truly understood within a particular culture and domestic realities.[802] It could be argued that what are seen as challenges of IPD and democracy generally in Nigeria are 'teething problems', as Cheeseman described them; however, this study found that the challenges are far removed from the developmental curves of democracy. The problems hindering democratic practices within parties in the country are mostly cultural problems. These

[802] Willis Justin, Gabrielle Lynch and Nic Cheeseman. ''A valid electoral exercise"? Uganda's 1980 Elections and the Observers' Dilemma.' (2017)59(.1) *Comparative Studies in Society and History* 211.

problems emerge because of the colonial imposition[803] of western-style democracy, for Nigerians are who they are. Consequently, self-developed intra-party principles that can effectively regulate parties are thus recommended. This will help Nigerians find their true democratic identity and a workable democratic system of governance.

[803] Cheeseman Nic and Sishuwa Sishuwa. 'African Studies Keyword: Democracy.' (2021) 64 (3) African *Studies Review* 704.

APPENDIX I

Research Participant Information Sheet

Title of Project: Internal Democracy of Political Parties and Electoral Outcomes: A Study of Statutes, Electoral Disputes, and Legal Decisions in Nigeria (1999-2019).

Name of Researcher(s): Juliana Nnadi

Dear Participant,

You have been invited to take part in this virtual interview as part of a research study – a PhD in Law - to investigate the impact of extant legal/regulatory regime governing Intra-Party Democracy (IPD) on electoral outcomes in Nigeria.

This interview will be conducted online as face-to-face meetings are currently suspended due to COVID-19. You will receive joining details for the online sessions/calls and further instructions on participation.

Before you decide whether to take part it is important for you to understand why the research is being done and what it will involve. Please take the time to read the following information carefully and discuss it with others if you wish to. Ask us if there is anything that is not clear or if you would like more information. Take the time to decide whether you want to take part or not. Thank you for reading this.

What is the research about?

Nigeria returned to a democratic government with the inception of the Fourth Republic in 1999. The existence of political parties is accepted as a crucial characteristic of a democratic regime. A major role of political parties in a democracy is ensuring that a legitimate democratic government is elected through credible, free, and fair elections.

The quality of Intra-Party Democracy (IPD) in these parties determines to a large extent the quality and kind of democracy a country has.

Over the years, there has been an increase in electoral/intra party disputes recorded in the apex courts in Nigeria. There has also been a debate on the impact of the legal regime and the role of the judiciary in effectively addressing these disputes and ultimately their role in entrenching and deepening democracy in Nigeria.

The aim of this research, therefore, is to critically examine the impact of the extant legal/regulatory regime governing IPD on electoral outcomes in Nigeria.

Towards achieving this aim, the study will:

1. Identify the tensions, contradictions and ambiguities in existing legal provisions governing IPD, party management mechanisms and other functions that impact on the effective functioning of political parties in Nigeria.

2. Critically analyse the judgements and decisions of the apex courts in intra-party disputes with to identify their impact on IPD and the general role of parties in strengthening democracy in Nigeria.

3. Explore the factors that influence individual and collective practices in major political parties within the institutional and cultural context of Nigeria.

Why have I been invited to take part?

You have been invited to take part in this research study because one or more of the following apply:

1. You are a registered member and/or executive of a major political party in Nigeria.

2. You have previously contested a primary election as a candidate of a political party for an elective position.
3. You have contested an elective position in a general election in Nigeria.
4. You are a staff of the INEC and by virtue of your position have monitored party primaries, congresses and conventions.
5. You have participated in an election tribunal/court in Nigeria.

What does the study/participation involve?

Your contribution to the research will be through participation in a semi-structured virtual interview which will take place online. The interview session will not last more than 1 hour.

After a secured appointment, the virtual interview session will take place during regular working hours (between 9am and 5pm) online (organised by the researcher) and will involve not more than one participant per session. You will be informed in advance about the details of the session.

The interview will be about your perceptions of:

1. The tensions, contradictions and ambiguities in existing legal provisions governing IPD, party management mechanisms and other functions that impact on the effective functioning of political parties in Nigeria. The judgements of the apex courts on intra-party disputes and their impact on parties' IPD and the general role parties play in strengthening or weakening democracy in Nigeria.
2. The factors that influence individual and collective practices in major political parties within the institutional and cultural context of Nigeria.
3. The adequacy of the legal and institutional framework on party activities and elections in Nigeria.

You will be sent the questions and themes in advance so you can see the kind of questions we will be asking.

Your participation in the online interview is voluntary and/or consensual. Respondents have the right to withdraw at any time.

I will ask you to sign a consent form before we start the session, which will be recorded using a Dictaphone.

Anything you talk about will be anonymised so that you cannot be identified and only the named researcher will have access to the information you provide. The recordings will be transcribed (typed) into an electronic file, which will be password protected and stored at De Montfort University (DMU) in a secure online repository called Fig share. Hard copies of transcriptions will be made and kept in locked filing cabinets located in the locked offices of the named DMU researcher.

All personal data will be collected, stored and processed in accordance with the General Data Protection Regulation (GDPR) principles and any published material will be anonymised.

You will not be identified - or identifiable - in any publication of the research.

The original recordings will be deleted from the recording device immediately after the MP3 file has been uploaded to a password protected file located on Fig share. The MP3 files will be deleted after the transcription has been completed.

My academic supervisor will have access to the data collected.

If any participant decides to withdraw after being interviewed or after the data has been collected, the data will be erased and will not be stored or used in the study.

The audio recordings will be involved in this study solely for the purpose of transcription and accuracy of data and shall be held in confidence.

Who is doing the research?

Juliana Nnadi, a Chief Legal Officer of the Independent National Electoral Commission (INEC), Nigeria, studying for a PhD at DMU, Leicester, UK. My university supervisor's details are set out at the end of this sheet.

If you have any concerns about this research, for any reason and at any time, you may contact my supervisor, Dr. Ohio Omiunu. His contact details are provided at the end of this information sheet.

Who is funding the research?

The researcher is funding all the costs of the project – there is no external funding.

The research population includes:

1. Executives and registered members of major political parties in Nigeria.
2. Former and current elective position candidates and nominees of political parties in Nigeria
3. Members of the Legislature in Nigeria.
4. Staff of the INEC, Nigeria.

How the volunteer was chosen to be invited to take part in the study

Based on my professional background as a legal officer and Head of the Legal Department at the INEC, Ekiti State, Nigeria, I identified potential respondents for the research project based on:

1. Their membership and position in a major political party in Nigeria.

2. Their participation in the conduct and monitoring of political parties' primary elections, congresses and conventions in Nigeria.
3. Their participation in electoral cases/disputes and tribunals.

Do I have to take part?

Kindly note that taking part in this research is voluntary and it is up to you to decide whether to take part. If you do decide to take part, you will be given this information sheet to keep and be asked to sign a consent form. After deciding to take part, you will still be free to withdraw at any time and without giving a reason.

I am interested in taking part, what do I do next?

If you are interested in taking part in this study, kindly contact the researcher via her email address: P17512461@my365.dmu.ac.uk

What if I agree to take part and then change my mind?

If at any stage you decide to terminate your participation in this study, please note that you are at liberty to withdraw from the study at any time without giving a reason. Any data collected up to the point of your withdrawal will be deleted immediately. However, if you do wish to request to withdraw the information given, you can do so upon contacting the researcher on the above email address.

What happens to the information I provide?

a) The information will be used as part of initial findings of the study which will form the basis for future research in the area, for educational purposes, for publication, to inform policy, and in conference presentations.

b) As explained above, the information gathered will be stored on DMU's secure repository Fig share. This is password protected and will only be accessed by the named researcher.
c) Hard copies of transcriptions will be made and kept in locked cabinets in the researcher's locked rooms. The transcriptions will be anonymised. You will not be identifiable in anything that is produced or presented as a result of the research. A professional third party will carry out the transcription.

The research data will help the researcher in carrying out the research effectively and in furthering the cause of democracy in Nigeria.

The participants will be offered electronic copies of the research summaries or the full work. For those interested, updates will be available.

Will my taking part in this study be kept confidential?

All information which is collected about you during this research will be kept in a DMU database that is protected by a password and is strictly confidential.

To conceal your identity, an ID code or coded word shall be used instead of your name. All/any information given that could be traced to or identified with you will be removed and anonymised. As stated above, all data collected will be stored and processed in accordance with the general data protection regulation principles and DMU policy, which states that any information gathered from people participating in research (the anonymised transcripts) is normally kept for 5 years after a study has been completed. My supervisor(s) will have access to the data. Members of the faculty, human research ethics committee may have access to the data to check that the research has been conducted in accordance with the approval.

Will anyone know that I am taking part?

All responses will be confidential, and it will be wholly up to you to inform your principal or manager before taking part. As above, the interviews will take place remotely/online at a time and manner of *your* choice. If the participants' principals or managers ask them to take part, it will be made clear that an individual's responses will remain confidential.

What will happen to the results of the research study?

The results of the interview will:

1. Help to demonstrate the quality of internal party democracy in Nigeria and will help identify possible changes to the legislation.
2. Help to identify tensions, contradictions and ambiguities in existing legal provisions governing IPD, party management mechanisms and other functions that impact the effective functioning of political parties in Nigeria.
3. Provide a deeper understanding of the impact of the law on the inner workings of IPD within the democratisation processes in Nigeria.
4. Help in advancing a theory to animate further conversation and intellectual reflection to contribute to improving the effectiveness of political parties in context.

What are the possible advantages and disadvantages of taking part?

The major advantage of taking part is your contribution to a process that will bring about potential reform to the internal practices of political parties and electoral reform in Nigeria. The personal disadvantage to a participant could be the time sacrificed to grant the research interview. There are no other personal disadvantages to taking part.

What are the possible benefits of taking part?

We hope that taking part in the interview will be a positive experience for you. There are no direct benefits of participating in this study. However, your contribution will contribute to and enhance the quality of the research carried out and might prove to be a catalyst to qualitative discussions on IPD and reforms in this field of politics in Nigeria.

What if something goes wrong?

If you are harmed in some way by taking part in this research project, there are no special compensation arrangements. If you are harmed due to someone's negligence, then you may have grounds for legal action, but you may have to finance it yourself. Regardless of this, if you wish to complain, or have any concerns about any aspect of the way you have been approached or treated during this study, the normal complaints mechanisms of DMU are be available to you.

Who can I complain to?

If you have any complaints regarding anything to do with this study, you can initially approach the lead investigator, Juliana Nnadi (*P17512461@my365.dmu.ac.uk).* If this achieves no satisfactory outcome, you should then contact the Administrator for the Faculty Research Ethics Committee, Research & Innovation Office, Faculty of Business and Law, De Montfort University, The Gateway, Leicester, LE1 9BH or BALResearchEthics@dmu.ac.uk

Complaints can be addressed to the supervisor of this research work; whose contact details appear below:

Dr. Ohio Omiunu., *ohio.omiunu@dmu.ac.uk*

+44 0 (116) 257 7166

Who is organising and funding the research?

This research is part of the requirements towards an educational award of Doctor of Philosophy (Ph.D.) of DMU, Leicester. The research is not sponsored by any organisation or company. The researcher is funding all the costs of the project – there is no external funding.

Who has reviewed the study?

This study has been reviewed and approved by De Montfort University, Faculty of Business and Law Research Ethics Committee.

Contact for Further Information

For further information on this research, kindly contact the following persons.

1. Researcher: Juliana Nnadi., *P17512461@my365.dmu.ac.uk*
2. Supervisor: Dr. Ohio Omiunu., *ohio.omiunu@dmu.ac.uk*

Appreciation

Your voluntary participation in this study is much appreciated. Thank you for your time and effort in making this field work a success.

Name /Signature ……Juliana Nnadi……………….

Date: 30/08/2021……………

APPENDIX II

Indicative Research Questions

- What are the challenges facing internal party democracy (IPD) in Nigeria?
- Is the existing legal electoral framework adequate for the sustenance of democracy in Nigeria?
- Do political parties obey their party laws/constitutions?
- What is the impact of court decisions on intra-party disputes on the compliance of parties with their internal laws/constitution?
- Do courts or ballots decide elections in Nigeria?
- Are there informal/unwritten rules by which parties conduct their internal affairs?
- What reforms do you consider necessary for the internal management of party affairs that can help embed internal party democracy within parties?

APPENDIX III

(Survey Questions)

Table 1. Questions utilised in the study

Question Category (Question number on the questionnaire) (n=number of responses)	**Question Type**
Political Party Affiliation	
(27) Which Nigerian political party do you belong to?	Multiple- Choice
Challenges of IPD	
(44) What do you consider as challenges to IPD in Nigeria?	Multiple-Choice
Adequacy of Legal Framework on Elections	
(44) Is the present legal framework for elections adequate to sustain democracy in Nigeria?	Dichotomous
Party Constitutions/Laws	
(35) Do parties abide by their constitutions?	Dichotomous
(31) Why do parties disobey party laws?	Multiple- Choice
Impact of Court Decisions in IPD	
(35) What impact do courts' decision have on IPD?	Multiple- Choice
(35) Do courts (not ballots) decide elections in Nigeria?	Multiple-Choice
Informal Party Rules	
(44) Are there informal rules by which parties conduct their affairs?	Multiple-Choice
(27) Who makes the informal rules?	Multiple- Choice
(27) Are formal and informal party rules contradictory or complementary?	Multiple-Choice
Electoral Reforms	

(44) What reforms do you wish to see in the internal management of parties? Multiple-Choice

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