COURT ADJUDICATIONS ON PRE-ELECTION DISPUTES IN YOUNG DEMOCRACIES: THE IMPACT ON ELECTORAL MANAGEMENT BODY IN NIGERIA, 1999-2011[1]

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Over the recent years, the court has increasingly become involved in determining the outcome of electoral competitions. Extant literature is divided on whether the involvement of the court in the electoral process supports or erodes elections with integrity, especially when the judiciary becomes interventionist. Interventionist judiciary, in this sense, means when court decision usurps the powers of EMBs in determining electoral processes and its outcomes. This study establishes that some court decisions over pre-election matters have negative regulations on the conduct of elections in Nigeria, thereby lowering the quality of electoral process. The study adopted a constitutional ethnographic approach, which is the study of the central legal elements of polities using methods that are capable of recovering the lived detail of the politico-legal environment. Data focused on disputed nomination of candidates by parties, the content and substance of 135 pre-elections litigations, and the court decisions in Nigeria. Simple descriptive statistics was used to analysed quantitative data. The study concludes that the manipulation of candidate nomination processes has increased the pre-election litigations and implication for free and fair election.

Key words: Party politics, intraparty disputes, nominations of candidates, electoral management body, court adjudications, Nigeria

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In recent times, the judiciary has become increasingly involved in resolving electoral disputes. The court visibility has been described as the judicialisation of politics, which means either (a) the expansion of the province of the courts or the judge at the expense of the politicians and/or the administrators, that is, the transfer of decision-making rights to the courts, or at least, (b) the spread of judicial decision-making methods outside the judicial province proper (Tate and Vallinder 1995, 13). The judicialisation of politics is recognised in the democratic process, particularly in the consideration of electoral petitions. Today, not a single week passes without a national high court somewhere in the world releasing a major judgment pertaining to the scope of constitutional rights or the limits on legislative or executive powers (Hirschl 2008). It has been shown that within the last decade and a half, "constitutional courts in over twenty-five countries have become the ultimate decision makers in disputes over national election outcome" (Hirschl 2008, 8). The success or failure of the electoral process is mainly predicated on the neutrality and professionalism of the electoral management body (EMB).

In the East Central European countries, like Hungary, the constitutional courts play a limited role in the internal party politics, because, "the parties are autonomous and are not the political arm of some pre-existing social group" (Enyedi and Toka 2007, 14). More importantly, Hungarian citizens were "already incorporated, mobilised, activated and politicised" in the party politics during the 1989 wave of democratisation (Mair 1997, 180). This does not suggest that there were no challenges of splits, mergers, major changes in ideology or internal party fissions among the rank and files of party members, but such were normally based on "policy issues or coalition strategies" which do not require the involvement of courts (Enyedi and Toka 2007, 2). Court intervention in Hungarian elections is always on the conduct of elections, and such interventions come after the National Election Commission (NEC) or the 106 Constituency Election Commissions (CoECs) must have

reviewed the complaints (OSCE/ODIHR Election Observation Mission 2014, 19). OSCE/ODIHR Election Observation Mission (2014, 19) notes that at the 2014 parliamentary elections "over 900 complaints and appeals were dealt with by the NEC. At least 65 per cent were rejected on formal grounds" during the elections. NEC decisions in pre-election matter are final, unless appealed to the Constitutional Court. All complaints must be received and decided within three days. While the Hungarian National Election Commission has power over the conduct of elections, it equally plays a judicial role in pre-election matters, which strengthens its independence and limits the involvement of the constitutional court. This is contrary to other countries like Nigeria, where every issues of intraparty infractions are matters of judicial interpretations and adjudications.

In Europe, almost half of the party laws establish the principle of intraparty development (IPD), which require that "the party structures are to be internally democratic or prescribing the direct involvement of the party members in internal decision-making procedures" (Van Biezen and Piccio 2013, 40). In some countries, IPD is in fact a legal precondition for the foundation and operation of political parties. In Finland, for instance, a political party must guarantee that it respects internal democratic principles and activities in order to be entered in the party register (Sandberg 1997, 101–102). In Czech Republic, political parties that have no democratic status or no democratically elected bodies may not be established and operate. Thus, internal party democracy is sacrosanct, at least in the involvement of the party membership in the selection of the internal organs of representation, such as the party congress or representative assemblies. The legal provisions also grant party members the right to challenge internal party decisions through the existence of arbitration boards to solve internal disputes. Van Biezen and Piccio (2013, 40) note that "no provisions establishing members' influence in the candidate selection procedures appear throughout the European party laws". The central party members' role in the intraparty democracy means that there are limited legal fireworks preceding general elections, and even when there are, such disputes are resolved

at the arbitration boards before elections. It is also important to state that in some countries like United Kingdom, United States, Australia and New Zealand where there are strong liberal traditions of democracy, the governments are reluctant to impose external regulations on political associations. This may not be the same in Spain, Venezuela, Portugal, Nepal, Finland *et cetera* where government regulations related to intraparty nominations, leadership or internal decision-making can also be found (Gauja 2006). Party development in Central and Eastern European countries (CEECs) has been undergoing "a long transition period without showing firm signs of moving into system consolidation (Pridham 1999, 2). Therefore, there are cross-national variation between regions like East-Central Europe and the Balkans, just as it is found among republics from the former USSR, both inviting comparison but also raising doubts about too firm judgements concerning common trends among these countries.

In Africa, party regulations can be found to be ineffective in some countries like Ghana and Sierra Leone where the enforcement agency (Electoral Commission of Ghana and Political Parties Registration Commission in Sierra Leone) has not attempted to enforce the provisions. In the case of Nigeria, intraparty regulation is a provision of the constitution, party elections are compulsory, but the procedures are often disregarded or manipulated resulting to court involvement. The party structures and organisations are built around strong individuals, known as godfather politics in Nigeria. Godfatherism is characterised by "authoritarian political monopoly, defined as the absence of competition /…/ and the elimination or subordination of rivals" (Jackson and Rosberg 1982, 48). Godfathers are both in literal and objective terms owners of political parties in Africa. What differentiates godfather politics from political 'notables' in Europe and other older democracies is the godfather's penchant to operate outside party regulations and rule of law (Omenma, Ibeanu and Onyishi 2014). Instead of the extant rules determining the relationship between godfather and individual party members, it is the personalized rules of the 'godfather' that dictates nomination process.

The implication is that the laws governing intraparty relations, selection of party leaders and representatives are displaced by individual wills and preferences. In Nigeria, judiciary has been a major player in electoral democracy since 1999, determining matters of pre-election petitions and post-election disputes. Before 1999, the judiciary in Nigeria has not been considered as a serious intervener in electoral justice. But recent data has shown that courts have significantly intervened in the democratization process. For instance, of the 1777 electoral petitions that followed the 2003 and 2007 general elections, 1250 election petitions arose out of the 2007 general elections alone (INEC 2007; Enweremadu 2011, 8). Election petitions for the 2007 general elections remain the highest in the history of election petitions in Nigeria. Compared to the 2011 general elections, only a total of seven hundred and thirty-one (731) elections petitions were filed at various Election Petition Tribunals across the Federation, including the Federal Capital Territory (FCT), a fall of almost 50% (INEC 2011).

Nwabueze (2007) notes the increasing influence of the judiciary in election matters, he states that both advanced and emerging democratic nations need the essential services of the courts in determining core electoral controversies. The difference is that in European countries the courts hardly determine issues of election rigging or party nomination of candidates, because rigging of election or internal party schism over the candidate nomination is a rare occurrence. On the contrary, the same cannot be said about emerging democratic countries in Africa, the judiciary is deeply involved in pre-election and post-election conflicts. The totality of judicial interventions in the electoral process is what we characterize as electoral justice. International IDEA (2010) defines electoral justice as the means and mechanisms: for ensuring that each action, procedure and decision related to the electoral process is in line with the law (the constitution, statute law, international instruments and treaties, and all other provisions); and for protecting or restoring the enjoyment of electoral rights, giving people who believe their electoral rights have been violated the ability to make a complaint, get a hearing and receive an adjudication (IDEA 2010, 1).

Pre-election matters, as the name implies, are matters which originate or occur before the conduct of an election or poll. The study adopted a constitutional ethnographic approach. Scheppele (2004, 395) defines the approach as: "The study of the central legal elements of polities using methods that are capable of recovering the lived detail of the politico-legal environment". The present investigation is relevant for some reasons. In most African states practicing presidential system of government, the constitutional and legal frameworks guiding the electoral justice system are tailored after the presidential model (Hirschle 2009). Nigerian electoral justice continues to be portrayed as broadly synonymous with European-style of jurisprudence. Also, it would add new empirical data for Africa electoral justice system, which has been less frequently analysed in comparison to other recently democratized countries in Central Europe and Latin America (Hirschle 2009). Moreover, the data generated would foster comparisons of emerging democracies in Central Europe and Africa for comparative political scholars. African nations, just like some European countries, belong to the countries of emerging democracies where issue of democratic consolidation is a major concern, the article adds up to the body of literature on emerging democracies. The article concludes that electoral management bodies in Africa lack the structural independence from government, powerful or dominant interest groups, which invariably affect the election process and outcomes. And finally, the court by its decisions and pronouncements has become strong player in the democratization process. The concern among citizens is that the court has inherent and obvious weaknesses, such as lack of independence and financial autonomy, and executive powers of appointment of judges, which expose judicial officers to corruptions and manipulation by the executive and influential political actors.

The study adopted the survey design. Data were collected from the election reports by the European Union Election Observation Reports, International Institute for Democracy and Electoral Assistance, International Republican Institute Election Reports, OSCE Office for Democratic Institutions and Human Rights (ODIHR), domestic election observation

reports, publications of the INEC, report of the Electoral Reform Commission, National Judicial Council Fact-Finding Committee on Judiciary Crisis, etc. The 2007 and 2011 general election results were also obtained from the database of the INEC. Quantitative data were analysed using simple descriptive statistics of percentage, graphs and pie charts, while logical arguments, inferences and content analysis were used for processing qualitative data. The article was structured into three parts. Part one provides background information and the debates on the elections and intraparty nominations politics in East Central Europe and Africa. Part two reviews theoretical literature on internal party democracy, election administrations and court roles in electoral process. The third part deals with the intraparty democracy, candidate nomination process and performance. Data on the pre-election litigations and election administration in Nigeria was presented and analysed. The fourth part is the impact of pre-election court decisions on the independence of electoral management bodies in young democracies. The article concludes that a strong and independent EMB is a fundamental element in democratic consolidation process both in the young and old democracies.

CONCEPTUALIZING INTERNAL PARTY DEMOCRACY, ELECTION ADMINISTRATIONS AND COURT ROLES IN ELECTORAL PROCESS

The challenge to democratization process is to identify those conditions or platforms that guarantee the consolidation of the democracy. There are two main features critical in the literature of democratic consolidation: party subscription to internal rule and strong independent Electoral Management Body (EMB). There are persuasive arguments linking political parties to democratic consolidation, and Toka (1997) asserts that parties are desirable to improve the quality of democracy, but not the necessary condition for consolidation of democracy. There are paucity of literature linking intra-party democracy either as a mutual dependence to democratic consolidation or desirable means of improving the quality of democracy. Nonetheless,

most of the literature that investigated Eastern Europe and Latin America countries, had a marginal reference to Africa (Liza 1996; Diamond 1997; Mozaffar and Schedler 2002; Basedau and Stroh 2008). Democratic consolidation is associated with Huntington's alternations in power, because of the mandatory condition of free, fair, open and equally competitions elections. The flaw of Huntington's thesis is the assumption that elites will surrender power willing in accordance with the rules of democracy, thereby ignoring the judicial role(s), which is not the reality. A strong and independent EMB is as a fundamental element in democratic consolidation process.

The International Institute for Democracy and Electoral Assistance (IDEA) (2010) notes that since the mid-1980s, there has been a 'credibility gap' for many electoral institutions which result in "diminished public confidence in the integrity and diligence of their activities" (IDEA 2010, 1). Some scholars argue that the core of the problem is lack of political autonomy and capacity to regulate quality elections (Kawanaka and Asaba 2011), while others consider the placement of electoral management bodies within the state structure as the main problem (Garber 1994; Harris 1997; López-Pintor 2000). Later scholars examine the method of recruitment, is it a governmental approach; a judicial approach; a multi-party approach; or an expert approach (Garber 1994; Harris 1997; IDEA 2010). Whatever approach a nation adopts, the central thesis is the autonomy of EMB, which borders on two concepts – (a) structural independence from government, powerful or dominant interest groups and, (b) fearless independence; that is, not succumbing to governmental, political or partisan influences on their decisions (IDEA 2010). Most literature fails to draw attention to the independence of EMBs from the judicial institution, that is, the strategic role of the courts in determining the outcome of electoral matters. Particularly, the link between the management of elections and the role of courts in promoting or undermining both the structural and normative (regulations) independence of EMBs.

The independence of Commission is measured on the basis of three interrelated dimensions:

- How the legal frameworks – constitution, electoral act and other electoral regulations established boundaries between the Commission and other institutions of the government such as the judiciary and the executive (Hounkpe and Fall 2009, 87).
- Capacity to insulate the operational activities of the EMBs from the informal institutions that are so dominant in the electoral process. Such informal institutions are power blocs or powerful individuals within and outside government that in pursuit of their own agenda try to manipulate the commission to serve their political interest (Jinadu 2010, 126).
- Extent to which EMB is able to appear as neutral to major electoral stakeholders, particularly political parties. This could result from INEC not following its election guidelines and regulations.

Judicial intervention in the management of election petitions and political matters has greatly expanded in the last one decade (Rares 2011; Gloppen 2004; Ugochukwu 2004, 2009). In fact, courts have been involved in a wide range of issues that boarder on national and international political importance. In the literature, two reasons have been identified for these expansions. First, the realization among the judges that the: "judicial system is a public resource that must be managed so as to ensure that the right of the public to have access to a court to resolve their disputes is not ***empty rhetoric*** (Rares 2011, 1). Second, is that the judiciary has to ensure that elected representative are not "choking off the channels of political change to ensure that they will stay in and the out will stay out" (Ely 1980 cited in Gloppen 2004, 4). The argument is quite relevant, particularly in the context of new democracies of Africa, where: "The new leaders of the continent /…/ are systematically obstructing the liberalization of the political system in an effort to remain in power as long as possible /…/ Elections are held, but the outcomes of those elections are already known" (Ellett 2008, 33). The consideration, therefore, is not on the constitutional role of the courts to resolve electoral disputes arising from political contestations, but whether the judiciary is properly placed to

confine themselves to "the application of legal principles" without "engaging in judicial tyranny" (Okoye 2009, 128).

This is referred in the literature as judicial activism, and its critics often allege that 'power hungry' judges and 'imperialist' courts expropriate the constitution, and can be too assertive or over-involved in moral and political decision making, which has its own consequences (Tushnet 1999; Bork 2002; Kramer 2004). The court-centric approach has its own positive and negative effects. On one hand, it is necessary in a political system where other institutions, particularly the legislature, are very weak. The courts need to provide cover for people. On the other, this portends danger due to the prevalence of corruption, which tends to rub off negatively on the judiciary, particularly if that institution persistently acts in ways that make it appear that it is part of the political elite.

There are two identified elements of evaluating intra-party democracy: the democratic selection of the leadership, which involves the elections of internal positions as well as candidates for general elections in free and fair process. Then, the holding of regular, credible and genuine primary elections within parties, which includes equal and open participation of entire members and groups in a manner that interests are more or less equally represented (Shale and Matlosa 2008). These two elements constitute primary source of conflict within parties. The new theory of distributional conflict has been used to analyse the factors underlying party primaries and intra-party democracy (Ichino and Nathan 2011). This theory presents three core propositions: first, that party leaders allow for primaries in order to avoid the negative reaction of local party members, which results from being denied the opportunity to collect rents from the aspirants competing for the nomination. Second, nominations in safe constituencies that are more likely to translate into electoral victory attract more aspirants and greater spending than those in constituencies that are strongholds of the opposing party. Third, although party leaders could maintain control over the nomination and extract these rents for themselves, the cost on candidates, as well as for the leaders themselves by preventing a primary is very high.

The theory demonstrates that party conflict emanates from how the party hierarchy manages primaries and the value of the potential rent from the candidates. Where the value for rent to the party leaders are high, leaders can induce aspirants to withdraw in favour of a preferred nominee, use administrative procedures to disqualify aspirants competing against a preferred nominee, or simply cancel a primary outright. In these circumstances, party leaders may prefer to use vetting to influence candidate selection. Such situation induces both vertical and horizontal distributional conflicts over rents between party leaders and political aspirants on one hand, and between party leaders and the rank and file of party members on the other. On this basis, the two basic elements of democratic selection of the leadership and holding of regular, credible and genuine primary elections are likely to be lacking in internal party democracy.

The emphasis is on rents, but Ichino and Nathan (2011) gloss over an important factor. That is, the tendency of party leaders to bypass the rank and file of party members 'to connect directly with voters'. In emerging democracies, party leaders can afford to ignore the interest of party members in as much as leaders connect directly with general voters, by way of monumental electoral fraud. In Nigeria, there are cases of vote-buying, use of thugs and law enforcement agencies to manipulate electoral results. If party leaders can bypass party members to have direct contact with the entire electorate, then it diminishes the prospect of internal party democracy and consolidation of democracy. Drawing from this literature, we examine the characteristics of intraparty democracy, the selection or nomination of party leaders and representatives in elections and the court litigations in Nigeria. While the resort to courts has its positive considerations, it also carries several negative implications, by placing constraints on the time available for INEC to conduct a credible and free and fair elections.

INTRAPARTY DEMOCRACY, CANDIDATE NOMINATION PROCESS AND PERFORMANCE

Between 1999 and 2011 elections, intraparty politics were characterised by intrigues and obvious disregards to the institutional rules and norms. Court interventions provided a modicum of order and civility in the conduct of intraparty politics and reduction of electoral malpractices by party notables or 'godfathers'. The total of 2,596 post-election petitions adjudicated by the courts over the four election cycles is a fulfilment of the judiciary electoral duty to ensure that the Independent National Electoral Commission (INEC) does not sit over its own case. The judiciary has a central role to play in electoral dispute resolution. Court interventions help to guide the electoral process in line with international best principles of conducting elections. It provides an avenue for electoral grievances to be resolved. The judiciary helps to sustain political rights of the electorate and party members in democratic governance. The alternative to this is to resort to self-help and consequential anarchy. Also, judicial involvements in election matters provides avenues for legal reforms like the time limitation of post-election petitions, which invariably helps to improve the electoral system. The reduction in election petitions from 1,291 after the 2007 elections to 731 petitions in the 2011 elections shows that the judicial resolution of election disputes has contributed to the improvement of election credibility of the 2011 and 2015 general elections in Nigeria.

There were several litigations and court pronouncements. Initially, courts avoided adjudication on intraparty suits, claiming it was an internal affair, but later, the courts assumed jurisdiction on internal party nomination and substitution techniques. The litigations were due to lack of: party coherence, membership inclusiveness, party autonomy, and roots in society (Panebianco 1988; Scarrow 2005; Shale and Matlosa 2008). Since the 1999 elections and a return to democracy, the trend has been that party primaries are pre-determined by party 'leaders' (President or Governors) and/or 'godfathers' over nomination of candidates. *Table 1* presents the four patterns or features

of intra-party democracy among the Nigerian dominant parties; namely: All Nigeria Peoples Party (ANPP), Action Congress of Nigeria (CAN), All Progressive Grand Alliance (APGA) and Peoples Democratic Party (PDP). The table presents specific indicators manifested by the Nigeria parties and the degree in which these parties move away from the standard principles of coherence, inclusiveness, autonomy and roots in society. As indicated, parties in Africa are confronted with limited membership participation in decision-making, over centralisation of decision making, weak internal mechanisms of conflict resolutions, overbearing influence of individuals in the nomination of candidates or leadership succession, and weak links to the society.

Table 1: Indicators of Weak Internal Party Democracy, Nigeria, 1999-2011

Dimension	**Verifiable Indicators**	**Political Party**			
		ANPP	**ACN**	**APGA**	**PDP**
Coherence	adherence to rules and procedures tolerance of internal dissidence and freedom of opinion	nomination of candidates characterised by selective approach, internal dissidents are not usually accommodated leading to continuous decamping of members, limited opportunity to membership rights.	imposition of candidates and absence of fairness in party primaries, highly centralised party system, dissenting views against the centralised leadership are not allowed.	Long drawn legal battle over ownership/leaders-hip of the party, highly centralised system under the monopoly of party owners and state governor.	Prevalence of the use of automatic, anointed and consensus candidates, Highly factionalised organisation, membership is defined within factions rather than party.

Inclusiveness	participation of members in candidate nominations willingness to undertake greater citizen outreach and membership strength, gender representation	nominations controlled by party leaders and/or godfathers, uncertain of its membership, membership drawn from North East, very poor record of women representation	Candidates for primary elections are forced to step down for preferred and selected candidate of a clique, Membership strength drawn from south-west states, Weak women representation, about 5% women participation.	Nomination of candidates is the exclusive preserve of party owners and/or the state governor, Lacking in national membership, members are concentrated in south East, Encouraging women elections, about 12% women participation.	nominations controlled by party leaders and/or godfathers, engages on frequent validations of members as a process of manipulating delegates and voters in party primaries, provides for a minimum of 35% of women representation, but less than 6% women are represented.

Autonomy	free from external and internal individual influence on decision-making, independent and strong bureaucratic organisation	decisions are products of elected party governors and influential individuals, limited channels for participatory internal decision making. party supremacy is replaced with state governors or/and elected party members supremacy.	No evidence of involving party's sub-national leaders and members in decision-making, limited channels for participatory internal decision making, Supremacy of elected governors and party leaders.	Privatisation of party structure, limited channels for participatory internal decision making. No clear role division between party executive and party owners.	Overriding interest of party leaders – elected president, governors, and council chairmen etc., limited channels for participatory internal decision making. Pockets of party godfather influencing decisions at various party structures – ward, local government, zones etc.
Roots in society	strong link to the society responsive governance, citizenship massive participation in election,	no clear defined party programmes, public services poor deliverance, election rigging and violence	defined party programmes, public services delivery very poor, election rigging and violence	no clear defined party programmes, poor deliverance of public services, election rigging and violence	no clear defined party programmes, public services delivery very poor, election rigging and violence

Source: Author's own analysis.

A critical analysis of *Table 1* demonstrates that parties have not attained the expected level of internal democracy to drive the democratisation process in Nigeria. The data strongly indicates that a few influential, powerful and prominent individuals defined as "leaders", "godfathers", or "barons" literally control party structures. The parties are associated with one or more strong "leaders", "godfathers" or party "barons" who determine the rules of the game, selection process and bankroll party activities. The control by strong individuals over party structures and mechanism manifests in the predominant use of 'automatic tickets' and 'anointed candidates' techniques in 2003, 2007 and 2011 at PDP congresses. These techniques are usually made possible by the indiscriminate use of 'vetting' to deny unwanted aspirants the right of participation. In the PDP Constitution, no reference is made to *automatic ticket, consensus candidates* and *anointed candidates* as method of selection of candidates (see *Table 2*).

Table 2: Party nomination techniques in Nigeria, 1999-2011

FEATURES	1999	2003	2007	2011
Open Competition	Fairly adopted	Not adopted	Not adopted	Not adopted
Consensus Candidate	Slightly adopted	Not adopted	Not adopted	Not adopted
Automatic Ticket	Not Adopted	Largely adopted	Slightly adopted	Largely adopted
Anointed Candidate	Slightly adopted	Slightly adopted	Largely adopted	Slightly adopted

Source: Omenma (2015, 80).

Table 2 indicates a limited use of the open competition system (*fairly adopted*) for the four election years. Open competition means that the parties rely on their constitutional provisions of nomination of candidates or party leaders through direct election in a congress. Article 6.1 of the 2009 of the PDP (as amended) states that "the party shall be a democratic

organization"; Article 6.2 provides that "the policies and programmes of the Party shall be determined by its membership…"; while Article 16.1 declares that "The National Convention, the Zonal, State, Local Government Area and Ward Congresses shall meet to elect the officers of the party at various levels of the party structure" and Article 12.93 provides that secret ballot shall be the mode of nomination of candidates at convention or congress. The Constitution of ANPP, Article 14.1(4(ix)) of the 2006 (reviewed edition) provides that the Presidential candidate of the party shall be elected at its national convention, while Article 21 states that "All Party posts prescribed or implied by this Constitution shall be filled by democratically conducted elections…". Despite these provisions, the party nomination of candidates for elections had been more of a closed affair. Open competition, which is the reliance on party's legal provisions on the nomination of candidates was *fairly adopted* at the primary elections of 1999 (see *Table 2*), showing a relative (high) compliance to party constitution and other extant legal provisions in the pre-election year of 1999.

Box 1: Conceptualizing the Features of Nomination

Open Competition – This process allows for open, transparent, unimpaired conditions of nomination and equal opportunity for all interested and qualified candidates to participate in the nomination process. The process is driven by party's constitution, Electoral Act and other relevant laws of the country, especially the constitution. Open competition does not only ensure that primaries are organized within the legal frameworks but put mechanisms in place for identifying and preventing irregularities and providing appropriate means for correcting irregularities.

Consensus Candidate – Consensus in Nigeria parlance is the favoured candidate of the party leadership – National Executive Committee, National Working Committee or the Board of Trustee. APGA constitution empowers party NEC to identify a "credible and acceptable person" for nomination; this is a variant of consensus. The PDP, ACN, and ANPP constitutions as well as Nigerian electoral act do not permit a consensus candidate. Consensus candidate is a corrupted term used to manipulate electoral process by the

party leadership. The concept of consensus means agreement, understanding, and collapsing of varying interests to one candidate by various interest groups. The concept of agreement is virtually absent in all the candidates nominated on the basis of leadership consensus.

Anointed Candidate – The anointed candidate has the blessing of party notables, known as godfathers or political investors in Nigeria. Anointed candidate is usually a product of party 'Big Men' and party machineries. There are semblances of primaries, but they are merely a fiat accompli, a walk over or a landslide victory. To ensure victory for the anointed candidate, party machineries are bought over, card-carrying members or delegates are bribed or forced to vote for the anointed candidate. No genuine, open and unimpaired competition is allowed. Party rules and regulations guiding primaries and nominations process are grossly violated. Opposition candidates are usually disqualified, schemed out, expelled or suspended depending on the weight of the opposition candidates. Because the process of nominating anointed candidate is undemocratic some dissatisfied or aggrieved members normally decamp to other political parties or withdraw or contest it in court.

Automatic Ticket – This is a tripartite exchange of favour arrangement among the president, the national assembly members and the state governors. This arrangement comes into practice during the candidate's second term renewal. Such informal arrangements are always propagated and implemented by the National Working Committee and Board of Trustee. Primary elections for the automatic candidates are mere formalities because opposition candidates are not encouraged, while those who dare the policy are expelled or suspended.

Source: Omenma, Ibeanu and Onyishi (2014, 71).

However, subsequent primaries by the parties in 2003, 2007 and 2011 show dominance of *automatic ticket* and *anointed candidate* (see *Box 1*). This is a gross breach of the party's constitutional provisions on "democratic organisation", "membership participation", "secret ballot system", and that of the provisions of the Electoral Act. This indicates a significant low compliance rate to extant laws, irrespective of several judicial pronouncements. The low compliant rate (nomination by *automatic ticket,*

anointed candidate and/or consensus candidates) is not exclusive to PDP, other political parties such as ANPP, APGA and ACN are guilty of the offence. The structural composition of party executives and its link to 'godfather' institutions inherently stifle intraparty democracy. This supports International IDEA (2007) assertion that party leadership often imposes tight control and patronage over candidates during party primary elections such that, the involvement and participation of party members in the selection process are almost non-existent and where it is allowed, it is accompanied by a high degree of political leadership manipulation. This explains why party "leaders", "godfather" or "barons" violate the constitutional rights and privileges of party members in the process of nomination of candidates, thereby increasing intraparty conflicts and resulting in frequent court litigations over pre-election matters.

PRE-ELECTION LITIGATIONS AND ELECTION ADMINISTRATION

In Nigeria, there is hardly any election (pre-elections and post--elections) that does not ultimately become one for court adjudication. In the aftermath of the 2015 general elections, 730 number of petitions trailed the polls, while the March 2019 general elections petitioners have filed 766 cases in the tribunals in Nigeria. Independent National Electoral Commission of Nigeria (INEC) has equally observed that: during the run up to the 2007 General Elections, particularly after the primaries, a significant number of litigations from aggrieved party members seeking redress of perceived wrongs and injustices littered the political scene. Although this could be seen as a healthy expression of democratic options, many of the court cases were not resolved until very close to the elections. There were also issues of eligibility, whereby some disqualified candidates went to court to challenge their disqualification, those of the PDP gubernatorial candidacy for Imo State, AC (Action Congress) and ANPP (All Nigeria Peoples' Party) candidacies for Anambra State and most dramatic of all, the case of the AC Presidential candidate, the then Vice-President, Atiku Abubakar (INEC 2007 cited in Jinadu

2011, 137). Ibrahim and Garuba indicate that court cases instituted against INEC apparently work against INEC electoral duties, while most of the pre-election cases were completely out of INEC's powers to resolve, there were also others that were within its mandate, but the Commission could not exercise its powers due to the myriad of challenges confronting it. Events leading to the 2007 elections exposed the manipulative tendencies of the Commission, as series of court cases completely overwhelmed its legal department, to the point that necessitated the outsourcing of legal services (Ibrahim and Garuba 2008, 55).

Pre-election activities are grouped into two: activities pertaining to the EMB functions; and activities of the political parties. The EMB is concerned with delimitation of electoral district boundaries; determining whether to grant, reject or cancel the registration of political parties; updating of voter registers; and information on the electoral process. Also, some actions of political parties related to their internal democracy – such as approval of their constitutions and internal procedures, selection of party leaders and candidates for office or the expulsion of members and other sanctions are activities that fall within pre-election issues. These issues are subject to court litigation which can impact on the actual conduct of elections.

The jurisdiction of the ordinary courts (the High Court of a State or the Federal High Court) over pre-election matters remains intact and operational by Sections 178(20 and 28(92) of the 1999 Constitution. Also, Section 87, Sub-Section 10 of Electoral Act, 2010 (as amended) 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".

By this, pre-election matters run their full constitutional course, by traversing the three tiers of Court, that is, the High Court, the Court of Appeal, and the Supreme Court in Nigeria.

The 1999 and 2003 pre-election court cases: Since the return of democracy in 1999, the High Courts have been inundated with several pre-election matters that had far reaching implications for INEC conduct of smooth, free and fair elections. The 1999 elections were regulated by Military Decree No. 17 and the election time table did not stipulate any statutory days before the submission of nominations. In fact, party primaries and the general elections were almost running concurrently, leaving little room for pre-election litigations. For instance, the 1999 Presidential election was held on 27 February, 1999, while the Alliance for Democracy (AD) held its presidential primaries in late January 1999, All Peoples Party (APP) held its convention in February 1999 convention, and People Democratic Party (PDP) was the last party to hold its Presidential primaries in Jos, Plateau state (The Carter Center and NDI 1999, 26). Therefore, there were little or no pre-election litigations, because the politicians were suspicious of the departing military rulers, and did not want to offer slim opportunity for the military to continue staying in power.

The situation was different in the 2003 general elections as court cases on party nominations and substitution of candidates were considerable significant, which brought the judiciary into play. In 2003, a few pre-election matters were witnessed (see *Table 3*).

Table 3: Pre-Election cases & their Impact on the Conduct of Elections, 2003

Nature of the case	Parties	Impact on: a) INEC functions; b) quality of elections
Annulment of guidelines on Registration of political parties	Gani Fawehinmi Vs INEC, May 2002 at Federal High Court	**INEC functions** - the time interval, between the Court ruling and holding of elections was too short for proper planning and printing of election materials; - delay in deployment of election materials; **Election quality** - limited opportunity for campaigns among the 26 new parties, - election apathy, - poor mobilisation, - uncertainty of the nominated candidate, multiple nominations from party office etc
Annulment of Section 15 of the 2002 Electoral Act, which stipulates the holding of all elections the same day.	INEC Vs National Assembly, 2002	**INEC functions** - This resulted in difficulties in implementing the electoral process, - The electoral process was based on the assumption that all elections will be held in one day, - Increased the cost on part of INEC, - It was difficult to enforce the rule of no campaigning 24 hours before Election Day, while there were three different election days - Created more logistic problem for INEC, **Election quality,** - Uncertainty of whom to cast vote for, - Increased the propensity of relying on electoral fraud, - Uncertainty whether the election was held or not.
No postponement of Elections	NDP Vs. INEC	**INEC functions** - Affected the deadline set for the end of voter registration, - A distraction for the preparation by INEC **Election quality,** - Created uncertainty on the electorate,
Third Term for Governors	Abubakar Audu Vs. INEC	**INEC functions** - Added additional cost to INEC; - A distraction to INEC preparation for and implementation of election timetable.

Source: EU EOM Nigeria (2003, 13–14); The Guardian, 2003 (INEC, Party Registration & the 2003 Polls).

The analysis of *Table 3*, shows three interrelated impacts of court involvement on the INEC independence: logistical problems; environment of uncertainty; and credibility gap. The logistical problem concerns with the INEC capacity to adhere strictly to the election time table, timely provision and distributions of election material, deployment of *ad hoc* staff, and release of fund among others. The pre-election case arising from the annulment of election guidelines, registration of new political parties and setting aside of Section 15 of the 2002 Electoral Act, by the Supreme Court on 8 November, 2002, restricted and violated INEC powers to register political parties as well as guidelines to conducting of elections. On 4th December, 2002, INEC in compliance with the Supreme Court ruling registered 26 new political parties four months before the 12 April, 2003 general elections. Statistically, these new political parties had only 86 days (between 4 December 2002 and 17 February, 2003) (see *Table 6*) to plan, organise and conduct party primaries in 36 states of the federation, 109 senatorial districts, 360 House of representative constituencies, the national conventions for their presidential candidates and submit same to INEC headquarters. As a result of this, the deadline for the submission of the nomination of candidates was shifted by INEC to 12 March, 2003. In spite of the shift, INEC encountered a series of difficulties with documentation and vetting of candidates' certificates. EU EOM (2003, 25–26) reports that despite the shift:

> "/.../ the nomination process remained non-transparent, especially in the scrutiny of the documentation submitted by individual candidates and in its vetting procedures. On 11 April, INEC still had no consolidated list of accepted candidates for all 109 senatorial districts and for the 360 federal constituencies. It remained unclear whether nominations were presented for all seats being contested".

The gap between the registration of 26 new parties and the actual days of election was too close for INEC to properly organise the series of elections under a free and fair conditions. The registration was in compliance with the Supreme Court rulings that directed INEC to register political parties that have complied

with the constitutional provisions. Initially, the electoral management body refused their registration on the basis of Section 15 of the 2002 Electoral Act the guidelines on Registration of political parties, which the Supreme Court annulled.

The initial impact is the atmospheric culture of uncertainty of when is the elections would be held and which parties/individuals would be eligible for the elections. Added to this, was the Federal High Court, Abuja judgement, that set aside Section 15 of the Electoral Act (sequence of elections), which resulted in more difficulties in implementing the electoral process as the rest of the Electoral Act 2002 was based on the assumption that all elections were to take place on the same day. On the average, the long-time (between 7 and 11 months) it took the court to rule on most of the pre-election litigations constrained the powers and functions INEC towards organising quality elections in 2003.

There is the issue of the integrity of the Commission or what is referred to as credibility gap arising from the court pronouncement. The acceptance of multiple nominations from parallel congresses of the same party by INEC, also casts serious doubts over the impartiality of the Commission to organise free and fair elections. Though the court played some positive and significant roles in restoring justice in a few of the cases but the time durations it took the court were serious issues of concern. It is on this basis that International IDEA (2012, 5) argues that although the judiciary has an important role to play in elections and electoral processes, but before the judiciary is given a supervisory or implementing role in transitional elections, an independent assessment should be carried out to determine whether it has the capability and broadly recognised independence necessary to fulfil an electoral function. Decisions on the role of the judiciary in transitional elections should not be made without a credible assessment and consideration of the public's perception of the judiciary and its actual independence.

The 2007 pre-election cases: The election of 2007 was regulated by the 2006 Electoral Act adopted, as well as other INEC regulations and guidelines. The Governorship and the State House of Assembly elections were held on 14 April 2007, while

the Presidential and the National House of Assembly elections were held on 21 April 2007. *Table 4* presents different dimensions of pre-election litigations against INEC over issues of disqualifications and nominations of candidates.

Table 4: Pre-Election Cases & their Impact on the Conduct of Elections, 2007

Nature of the case	**Parties**	**Impact on: a) INEC functions; b) quality of elections**
In March 2007, NDP filed an action in the Federal High Court Abuja, for an order to restrain INEC from conducting State & Presidential elections	NDP & others Vs. INEC, 2007	**INEC functions;** **-** Failure of INEC to comply with the legal provisions for the registration of voters, - the case was still pending in the courts after Presidential election, **quality of elections** - Suspension and confusion over whether elections will be held or not.
On 12 April, the High Court in Anambra State ordered INEC not to prevent Mr Ngige from contesting gubernatorial election	Ngige Vs. INEC, 2007	**INEC function** - Failure for INEC to comply with several court orders to list Mr Ngige's name as gubernatorial candidate of AC, **quality of elections** - suspension and confusion over list of gubernatorial candidates in Anambra, - delay and distraction of electioneering campaign of AC candidate, - INEC usurped the power of the court by refusing to list Mr. Ngige's name as candidate, - it reduced the chances of AC candidate to market the party manifesto, - increased uncertainty among voters concerning the translation of their votes into mandate.

15 March 2007 disqualification of Atiku Abubakar's candidacy under AC by INEC	*Action Congress vs. INEC* (2007)	INEC functions Affected the focus and pace of INEC in the preparations leading to elections, Re-printing of 65 million presidential election ballot papers within three days, Affected the distribution across the 120,000 polling stations, increased cost on the Commission, Resulted in the shift of election day from 2 April to 9 April, 2007, Logistic difficulties, Election quality petitions had a negative effect on the voters' awareness of the electoral contestants.

Sources: EU EOM (2007); *Action Congress v. INEC* (2007) 12 NWLR (Pt 1048) 222; Jinadu (2011, 138).

Table 4 indicates two categories of court interventions: judgments delivered very close to the election date, and litigations that terminated after the conduct of elections. Content analysis of *Table 4*, particularly the INEC disqualification of Atiku Abubakar's candidacy under Action Congress (AC) and the subsequent Supreme Court ruling on 16 April 2007 (five days before the April 21 election), shows that INEC had just five days to reprint and distribute 70 million ballot papers. The delay and logistical problem were so enormous that EU EOM (2007, 13) reports that:

> "The ballots arrived in Nigeria (from South Africa) the day before the elections and INEC failed to distribute the ballot papers in time to the States and from there to the LGAs, Wards and Polling Stations. This led to serious delays, disruptions and in a number of cases even to the cancellation of the elections in some parts of country".

The Supreme Court ruling and subsequent reprinting of the ballot papers resulted in a delay of the opening of polling station from 08:00 to 10:00 and the closing of polling from 15:00 to 17:00. In a number of states, such as Abia, Imo, Kaduna,

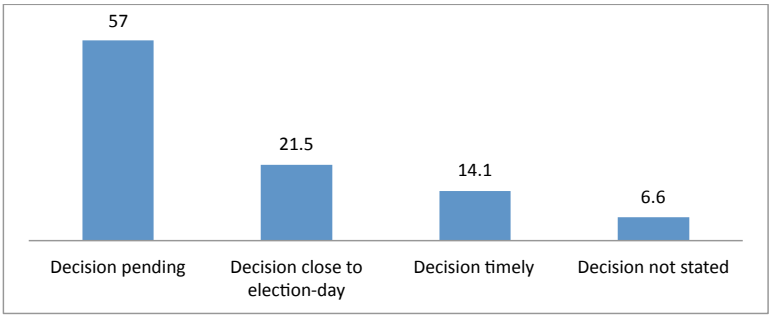
Ebonyi and Bauchi, polling stations did not open until late afternoon (EU EOM 2007, 35). In many voting stations in some states like Benue, Kaduna, Anambra, Borno, Ondo, Edo, Gombe, Cross River, and Enugu no presidential elections took place because of faulty and late delivery of ballot papers (EU EOM 2007, 36). There were cases of missing of essential polling materials, non-receipt of correct number and type of ballot papers in many polling booths; while the reprinted ballot papers were delivered without serial numbers, candidates' pictures, or names, which were contrary to the law. The delay and the absence of these basic details in the ballot papers resulted in massive disenfranchisement of voters, massive electoral fraud, late and very poor collation process, and the eventual lack of confidence in the results declared by INEC. In addition, INEC had to re-run 111 out of 1 496 elections in 28 states on 28 April, 2007 (EU EOM 2007, 40).

The 2011 pre-election cases: The general elections of 2011 were regulated by the 1999 Constitution and the Electoral Act 2010 (as amended), as well as other INEC regulations and guidelines. Just like other previous election years, party conflicts over nomination of candidates and conduct of congresses remained a knotty issue. Following the conduct of the party primaries, several intraparty disputes were brought before court for interpretations. These issues revolved around disqualification, ex-convicts contesting nominated contrary to the law, parties forwarding names of candidates who did not contest any primaries, exclusion of names after winning the primaries, refusal to conduct party primaries yet parties forwarded fictitious names, illegal nullification of primaries results, wrongful publication of names, wrongful imposition of names, and forced letters of withdrawal (EU EOM 2011, 40). *Table* 5 (see appendix A): presents 135 pre-election litigations, the prayers of the petitioners, the decisions of the court and the time frame to conclude court cases.

In *Table 5***,** the time frame is the time between the filing of the case (High Court and Appeal Court) and disposal of 135 pre-election litigations. The time frame is categorised into four: (a) those petitions that the Court did not take definite decision(s)/ ruling(s) before the actual elections were conducted are labelled

as DP – Decision Pending; (b) petitions whereby Court decisions were taken, but such decisions came too close to the election days, are labelled DVC – Decision Very Close to Election-day; (c) court decision(s) that came timely, that is, some days or months well ahead of election day are designated as DOT – decision On Time; and (d) where court decisions were not known on a particular petition, are labelled DNS – Decision Not Stated. *Figure 1* shows a descriptive analysis of court decisions with respective nearness to election dates.

Figure 1: Nature of Pre-Elections Court Decisions in 2011



Source: Author's own analysis.

Figure 1 demonstrates the percentage distributions of the court decisions. It shows that the majority (57%) of the litigations were pending (DP) before various courts in Nigeria, that is, not concluded before the actual election day. Such cases created an atmosphere of electoral uncertainty on both the electorate and contestants, particularly on the choice to make and it equally led to electoral apathy. The candidates with pending court cases usually have a low spirit attitude in campaigning and soliciting for votes, especially when candidates (with pending court cases) have reflected on the court decisions on Ugwu v. Araraume, and Amaechi v. INEC cases, where the winner of election was substituted with a candidate that never participated in the elections. A decision invalidating an election does not constitute the court an arbiter of who should govern; the choice is simply referred back to the electorate in a fresh election. Again 21.6% of court

decisions were taken when the election-day was very close by. This resulted in the re-printing of over 70 million election materials, and the subsequent logistical problems, delay and omission of candidates' particulars. Furthermore, litigations that were timely disposed of were 19 in number, suggesting 14.1%. This means that a negligible number (19) of pre-election litigations did not interfere significantly with INEC election activities. Finally, court decisions were not stated in 6.6% (9) of the pre-election cases.

A reading of *Tables 3, 4* and *5* **(**data on pre-elections litigations for 2003, 2007 and 2010) and *Table 6* (elections time-tables) brings to the fore the nature of pressure these litigations had on the Commission. *Table 5* presents submission of nomination deadlines as stipulated by Electoral Acts of 2002, 2006 and 2010.

Table 6: Deadlines for Submission of nomination by political parties to INEC

Legal Provision	**Election Year**	**Deadline of Submission**	**Last Date of Submission**	**Election Dates**
Electoral Act, 2002, Section 21(1)	2003	60 days before elections	Thursday, 17th February, 2003	12 April 2003
Electoral Act, 2006, Section 32(1)	2007	120 days before elections	Friday, 15 December 2006	14 April, 2007
Electoral Act, 2010, section 31 (1)	2011	60 days before elections	Tuesday, 1 February 2011	2 April 2011 (later shifted to 9 April 9 2011)

Sources: Electoral Acts, 2002, 2006 and 2010 (as amended); EU EOM (2003, 2007 and 2011).

The implication of *Table 6* is that whatever decisions of the court on the pre-election petitions, notably those petitions that challenged nominations, disqualifications or substitutions of candidates, will certainly interfere in INEC's planning and

conducting of elections, in as much as cases lingered until two months after the deadline for submission of the nomination list.

Over 400 pre-election litigations were determined by the court for the 2011 elections, and it was extremely difficult for INEC to adhere strictly to Section 31(1) and (3) of Electoral Act of 2010 (as amended). *Table 6* indicates that the last day for party submissions of nomination lists was Tuesday, 1 February, 2011, while *Table 5* shows that out of the 135 pre-election litigations in 2011, a large proportion of the cases were filed in court after 1 February, 2011 (submission deadline), while a negligible number of the cases were filed before January 2011. In other words, the courts had just 43 working days to adjudicate on the vast majority of the cases before the actual election on 2 April 2011.

It is this gap or delay in pre-election litigations that encourage political parties and their leaders to grossly infringe on the extant law, with strong feelings or belief that either the torturous court process frustrates the candidate to abandon the case or the candidates are persuaded to abandon their petitions. Court interventions are expected to guide the electoral process in line with international best principles of conducting elections. On the contrary, the interventions of the court, particularly with the interpretation of relevant laws on the conduct of elections, created undue delays on election day activities; problems of enforcing electoral guidelines and regulations by the Commission which reduced the level of public confidence in the INEC. This also interfered with procurement of election materials and deployment for elections, which had caused shifts in the election time-table and staggered elections in some state, as well as created an atmosphere of uncertainty in the electoral process.

Events leading to the 2007 elections exposed INEC's weakness and capacity, as a series of court cases completely overwhelmed its legal department to the point that the Commission outsourced legal services (Bawa 2013). This diminished the Commission's capacity to contend with its task, including the monitoring and supervision of political parties during the preparation for elections. The Electoral Act 2010 (as amended), does not provide specific procedures for the submission and

adjudication of *petitions prior to the elections*. Such cases are treated as any other cases in ordinary civil litigation (fraught with delays) which impinges on the preparation and conduct of elections, especially when most pre-election cases dragged on even after the actual conduct of elections.

Overall, the roles of the courts in pre-election cases have not been transparent, rather, most often, courts demonstrated a degree of partiality in interpreting the constitutional and legal framework with regard to intraparty disputes. Nevertheless, lack of deadlines for filing, considering and determining complaints prior to polling trailed the results of the primaries, producing a large number of judgments delivered by the courts only a few days before the polls or even after. The high number of pending petitions affected the voters' awareness of the electorate on who are contestants, while some decisions disrupted the Independent National Electoral Commission, particularly the printing of election day materials.

IMPACT OF PRE-ELECTION COURT DECISIONS ON THE INDEPENDENCE OF INEC

Cumulatively, the sheer number of both pre-election and post-election petitions filed in the normal courts and tribunals for the election cycles of 1999, 2003, 2007 and 2011 was overwhelming in number. Their impacts on the INEC independence, particularly on the implementation of elections timetables and schedules of activities have been enormous. First is the case of governors of five states: Adamawa, Bayelsa, Cross River, Kogi and Sokoto over tenure elongations. The case was a typical example of court intervention that impinged on the Commission's election timetable, schedule of activities and planning. The Commission issued a notice of election on 7 September, 2010 for the governorship of states (INEC Report 2011, 26). The five Governors subsequently sought declarations that their tenure in office would expire four years from the time they were sworn in after the re-run elections, rather than from the date they were first sworn in, in May 2007. Judgment was delivered in the consolidated suits at the Federal High Court, on the 23 February 2011,

in their favour, which was reaffirmed by the Court of Appeal on the 15th of April 2011. This was the situation as at the time when the April 2011 gubernatorial elections were to be held, and as a result, the Commission had to stand down the proposed elections in the affected five states. The Commission in compliance with the Court rulings issued another Timetable and Schedule of Activities for the conduct of elections in the affected five states. The case was disposed by the Supreme Court on the 27 of January 2012, (that is, 10 months after the April 2011 elections). The politicians have used the court process not only to interfere on the INEC's duty and responsibility, but to entrenched a staggered electoral process in Nigeria, which is unknown to the Constitution. Studies have shown that independent and professional EMBs that are free from institutional control offer a much greater chance of successful elections (Hartlyn et al. 2008). The institutional autonomy of EMBs has also been positively linked with successful democratisation (Gazibo 2006). This lends weight to the argument that a permanent, independent EMB not only plays an important role in securing free and fair elections, but also improves the prospects of democratic consolidation.

Second, the disruption of the INEC election time table had a consequential effect on the operational cost of the Commission. Two sets of general elections were conducted in the same year. This created additional operational cost for INEC, which is compelled to recruit another set of *ad hoc* staff such as polling unit officers, supervisory presiding officers, collation officers, returning officers as well as payment for security men and procurement of vehicles and other materials. The cost breakdown shows a total N359 158 000[2] (US$2 287 630. 57) additional cost that was not budgeted (INEC 2011 Election Report, 124–125; INEC 2015, 7, 25, 37, 89 and 134). Also, an estimated total cost of the three hundred and fifty-nine million, one hundred and fifty-eight thousand (~~₦~~359 158 000 or *US$2 287 630. 57*) paid for the INEC *ad hoc* staff at the rescheduled gubernatorial elections

2 The conversion rate was at N157 to US$1 as at 2015.

in the five states (INEC 2011 Election Report, 124–125; INEC 2015, 7, 25, 37, 89 and 134). This was in addition to the sum of twenty million, four hundred and thirty-four thousand naira (₦20 434 000 or US$13 0152. 87) only for the security personnel allowances (INEC 2011 Election Report, 124–125). The personnel cost (INEC *ad hoc* staff and security) shows an estimate of three hundred and seventy-nine million, five hundred and ninety-two thousand naira (₦379 592 000 or UD$2 417 783. 44). This excludes the cost of supervisory presiding officers (SPOs), the cost of logistics management, such as procurement of materials and equipment, distribution of election materials, deployment of temporary storage facilities and provision of transport facilities for the elections. Considering challenges, which the Commission faced before appropriation and release of funds that always results in cap-in-hand pleading for fund by INEC. The implication is that the Commission depends on the legislature and executive for funds, the Commission's electoral autonomy would most likely be crippled. INEC chairman, Professor Attahiru Jega, lamented thus:

> "/…/ we met a budget on ground and you are aware that the 2010 appropriations were reduced. That budget cut also affected us because while we were requesting for 74 billion naira for the direct data capture machines and other logistics our capital budget was reduced by 8 billion. That money was meant to address some of the infrastructural decay in our state and local government offices which are in a state of disrepair…we will be making a representation to the government on this so that we will reduce to the barest minimum the dependence of our staff on governors and local government chairmen for some logistics because we *found out that some of them (INEC Staff) make themselves available to be used by going to the governors and local government chairmen to request one favour or the other"* (*Daily Trust*, 31 August, 2010).

The funding problems identified, no doubt impinged on the Commission's logistic management as a direct consequence of interventionist court. The administration of elections during a transition is fraught with challenges, including administrative efficiency, political neutrality and public accountability (Mozaffar and Schedler 2002, 7–10).

Third, the Supreme Court ruling on *Amaechi's case* blurred the formal rule (constitution) that defines the function and role of the INEC. INEC independence depends on the extent to which the Commission effectively discharges and enforces its constitutional functions without interference or usurpation. In the celebrated case of *Amaechi v. INEC (2008)*, the Supreme Court rules that:

> "In the eye of the law Amaechi is the Governorship candidate of the PDP that won the election. The people voted for the party, which has the right to field a candidate, not the individual. Based on this, the court ruled that Amaechi having been validly elected in primaries and nominated as the PDP's Governorship Candidate in Rivers State, remained in the eye of the Law, the candidate who contested the governorship election".

That simple logic led Amaechi directly to the Government House of Rivers State, as the Governor without physically contesting the gubernatorial election. The Supreme Court awarded Amaechi what he never asked for, the ruling equally usurped the constitutional power of the Commission over the right to declare winners or losers of election. Section 27, Sub-section 2 of the 2010 Electoral Act (as amended) on the announcement of election results provides that "the Returning Officer shall announce the result and declare the winner of the election" at the various designated collation centres. The powers of INEC to conduct elections and declare the results are derived from the constitution not from the leniency or generosity of any other arm of the government of Nigeria (Third Schedule, Part I, section 15(a) of the 1999 Constitution of the Federal Republic of Nigeria; Section 27 (1–2) of the 2010 Electoral Act of Nigeria). It is not within the constitutional boundary of the Court to declare winners or losers of election results. Nwabueze (2007, 53) argues that "a decision invalidating an election does not constitute the court an arbiter of who should govern; the choice is simply referred back to the electorate in a fresh election". Courts do not make laws but interpret them. The delay in court (particularly at the Court of Appeal) was caused by the Judiciary not INEC. On two occasions, the Court of Appeal refused to assume

jurisdiction but was repeatedly compelled by the Supreme Court to look into the case. Therefore, the failure of the judiciary to expeditiously dispense the case in record time should not be used by the same court to interfere on the powers and rights of the Commission.

Overall, the data collected and analysed show greater involvement of the judiciary in the Commission's electoral powers and functions, including the implementation of election time tables, the funding of INEC operations, and the usurpation of the right to announce results of elections among others. The Commission, despite being confronted with thousands of pre- and post-election litigations, found it increasingly difficult to maintain its independence when most of the decisions of the judiciary tend to control the Commission. Some of the decisions, according to Bawa (2013), are made "at the very late hours", thereby disrupting the planning and programmes of the Commission. Therefore, instead of the Commission being regulated by its election timetable, the Commission becomes increasingly dependent on "whatever is the directive" of the Court. More importantly, when the judiciary is also a product of the ruling political group, those who appoint judges are also expected to influence them to serve their interest. International IDEA (2012, 11) argues that experience from a number of transitions, including the case study of Indonesia, points to the challenges posed by changes in the legal framework in the run-up to elections. If there is a stable legal framework before the elections take place, this will make it easier for the EMB to prepare and administer a credible process.

CONCLUSION

At its core, the central starting observation of our contribution is that little is known about the judicial role in electoral democracy in Africa. The judiciary, over the years, consider themselves as an integral component of the executive, and often acts to protect incumbent; specific sectional and party interests. The low level of intraparty democracy among parties is accepted because the interests of the party 'godfathers' and notables are protected

by institutions that are expected to regulate party organisational behaviours. Available data shows this as the reasons why parties are involved in unending conflicts over nomination of candidates, and court interventions have not been able to resolve them. Therefore, parties can afford to get into an election with unresolved disputes over who emerged the winner of party primaries. This has its obvious implications for the management of the electoral process, such as uncertainty of rules, uncertainty of candidates standing for elections and, who eventually emerges the winner, because courts have usurped power of announcing election outcomes.

Much as courts are criticized for acting as an instrument in the hand of the executives and powerful individuals, they also, embody mechanisms to deal with the problems in democratic development. Some of the court rulings have tempered the excessiveness powers of the executive that undermines the progress of liberal democracy. For instance, when the electoral Commission in Nigeria engaged in unnecessary disqualification of party candidates, court pronouncements restored the electoral rights of the candidates. Also, Kenya made history as the first African country to nullify a presidential election. The decision by the Supreme Court has been described by many as a "landmark ruling". It is globally rare that a perceived victory of a president-elect has been nullified by the courts. It is only in Panama that the court successfully annulled the presidential election in 1989 (Hernández-Huerta, 2015).

A fair share of literature reviewed in Central and East Europe suggests that most parties have adopted a wide range of internal organisational reforms, which at least formally, give members more say over outcomes. Direct democracy is now used in a wide range of intraparty decision making procedures, such as candidate selection, leadership selection and policy positions formulation. Even though oligarchic tendencies inside the CEE parties still exist, but there is "a remarkable increase in their IPD-level" (Obert and Von dem Berge 2015, 19), because of an internal arbitration mechanism that does not permit courts involvement. On the contrary, parties in Nigeria, despite the fact that they have existed for close to two decades within the general

conditions of a democratic system, they have systematically displayed lower levels of intraparty democracy. This is because, party organs, just like the judiciary and Electoral Commission, are appendages of the executive power. Moreover, while there are "declining importance of cleavage politics" and oligarchic tendencies in parties in Central and Eastern Europe (Scarrow and Gezgor 2010), the same cannot be attributed to parties in Africa because of resilience party "leaders", "godfather", "notables" and clientelism.

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