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CREDIBLE ELECTORAL JUSTICE SYSTEM AND DEMOCRATIC CONSOLIDATION IN NIGERIA

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ABSTRACT

The overarching goal of this paper is to explore and situate the role of a credible electoral justice system in midwifing and consolidating democracy in Nigeria. Underscoring the importance of elections to democracy, the paper provided a brief conceptual framework on electoral justice and its centrality in building and nurturing democratic ethos and practices in the country. In the main, it discussed the extant electoral justice framework of the country, in terms of the laws and institutions that play key role in the electoral process – the Constitution, the Electoral Act and other regulations made thereunder, as well as the role of INEC and other election management bodies (EMBs). The paper dwelled on the role of the judiciary and legal practitioners in ensuring the attainment of electoral justice through sound, competent and just advocacy, and adjudication. The paper adopted the doctrinal research methodology by relying on primary and secondary data obtained from books, the internet, and such other similar source materials. In conclusion the work recommended, firstly, that the courts should be bold and courageous in handling pre-election, election and post-election disputes in a manner that serves to restore confidence in the democratic process. This, according to the paper, can only be done if the much-need competence and integrity are injected in the judiciary and the legal practitioners that handle such cases. Additionally, the paper recommended that INEC must live up to the expectation of the public by being an impartial umpire, and that those who commit electoral offences must be punished to serve as a deterrent to would-be electoral offenders.

1. INTRODUCTION

Democracy as a system of government is, without a doubt, now the most preferred mode of governance across the globe because it fosters proportionate representation and creates an atmosphere in which citizens of a given country wield the power, through the instrumentality of the ballot box, to decide who should govern them at any given time. Additionally, democracy has been conceived of as a tool that enables the citizenry to persuade the powerful to act for the greater good of the system.[1] Perhaps the greatest gift of democracy to humanity may be said to lie in its 'vital role in the story of civilization, helping transform the world from power structures of monarchy, empire, and conquest into popular rule, self-determination, and peaceful coexistence.'[2] In most cases, scholars have tried to establish an inextricable link between democracy and development.[3]

Thus, from the early experience in ancient Greece, democracy has unarguably

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[1] See John Wallace, Hans Kundnani and Elizabeth Donnelly, 'Importance of Democracy' *Chatham House* <https://www.chathamhouse.org/2021/04/importance-democracy>, accessed 14th March, 2023.

[2] Ibid.

[3] For these views, see Boutros-Ghali and others, *The Interaction Between Democracy and Development* (UNESCO 2002), cited at <https://www.beyondintractability.org/bksum/ghali-interaction>, accessed 14th March, 2023; and Alina Rocha Menocal, 'Analysing the Relationship Between Democracy and Development: Defining Basic Concepts and Assessing Key Linkages' available at <https://gsdrc.org/document-library/analysing-the-relationship-between-democracy-and-development-defining-basic-concepts-and-assessing-key-linkages/>, accessed 14th March, 2023.

undergone several transmutations – from direct democracy where people were able to come together to decide on matters of common interest[4], to indirect or representative democracy that emerged in the late 18th century. Even today, it has been asserted that 'there are as many different forms of democracy as there are democratic nations in the world'[5], because no two democracies are exactly the same. Notwithstanding the form of democracy being practised, the issue of election is central. Thus, the survival and consolidation of democracy are dependent on the electoral legal framework of a given country and the extent to which all stakeholders faithfully implement and comply with that framework, which is what electoral justice exemplifies.

This paper, therefore, examines the meaning of electoral justice and its relevance to democratic consolidation in Nigeria. It particularly situates the indispensable role that INEC, the Nigerian judiciary and other stakeholders are expected to play in the attainment of electoral justice and better democratic experiment. The paper x-rays how the failure of justice in pre-election, election and post-election matters continues to negatively impact the democratic process, with the result that those who benefit from their acts of illegality become more emboldened to engage in more. The next segment of the paper examines the centrality of elections as the cornerstone of democracy.

2. ELECTIONS AS THE CORNERSTONE OF DEMOCRACY

Despite the 'varieties' of democracy, what has remained constant in the practice of representative democracy is the indispensability of elections in the democratic process. Periodic elections, as the means of recruiting political leaders, thus become the hallmark of every democratic society. In fact, what distinguishes a democratic dispensation from other systems of government lies in the opportunity accorded to citizens to determine, at regular intervals and in a free and fair manner, those who will superintend over the affairs of the state on their behalf. Given that nation-states have become so large in size and population that it is now impracticable for all citizens to gather in one place to take decisions on matters of common interest, as was the case in the ancient Greek City States, the place of elections has become sacrosanct in many climes.

In international law, the relevance of elections as the medium through which citizens can enthrone and firmly establish constitutional administrations has since been recognised. The Inter-Parliamentary Union, for instance, reiterates that '[i]n any State the authority of the government can only derive from the will of the people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage'.[6] Similarly, in the ECOWAS sub-region, the Protocol on Democracy and Good Governance clearly provides that, as a matter of constitutional convergence principle, '[e]very accession to power must be made through free, fair and transparent elections'.[7] These guarantees underscore the imperative, not only of elections generally but also of free, fair and credible elections in particular as the building blocks of democracy.

However, in many countries, particularly developing democracies, the conduct of elections is often fraught with many challenges, often resulting in grievances and culminating

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[4] Even in ancient Greece, direct democracy was made possible because only a limited number of 'people' were eligible to participate in the process, as other groups, such as women, children and slaves, were not recognised as people in that sense. Secondly, the population of the area was not so much as to necessitate the selection of representatives.

[5] Council of Europe, 'Democracy' available at <https://www.coe.int/en/web/compass/democracy>, accessed 14th March, 2023.

[6] See article 1 of the Declaration on Criteria for Free and Fair Elections, adopted by the Inter-Parliamentary Council at its 154th Session held in Paris, France on 26 March 1994, available at< http://archive.ipu.org/cnl-e/154-free.htm>, accessed 28th February, 2023.

[7] ECOWAS Protocol A/SP1/12/01, art 1(b).

in litigation. Nigeria, for example, has witnessed series of flawed elections since its return to civil rule in May 1999, and successive administrations in the country have striven to ensure, not only the free and fair conduct of elections by the electoral umpire but also an effective framework for the resolution of electoral disputes.[8]

Given the centrality of elections as the means of recruiting those to be saddled with the responsibility for handling public trust, it is only fair that questions pertaining to how elections are planned and managed, who is qualified to run for what office, which institution conducts the election, how the election is conducted, and how grievances are handled, should all be properly taken care of. This is because the manner in which these questions are handled impacts the electoral process and ultimately shapes democratic culture either positively or negatively.

The ensuing section looks at the meaning and relevance of electoral justice in terms of the mechanisms that have been put in place to ensure election credibility and effective redress where wrongs are committed.

3. MEANING AND RELEVANCE OF ELECTORAL JUSTICE

Notwithstanding the existence of the legal and regulatory framework for the conduct of elections and the resolution of disputes arising therefrom, the conduct of political actors in Nigeria constitutes a threat to the consolidation of democracy in this country that is touted as the 'Giant of Africa.' What accounts for this worrisome situation is the absence of a credible and effective electoral justice system that addresses the challenges posed. The inability of the courts to rise to the occasion by rendering decisions that could shape the political and democratic culture in the land has exacerbated an already worse situation.

Electoral justice, as a concept, may simply be defined in a broad sense as 'ensuring that every action, procedure and decision related to the electoral process is in line with the law (the constitution, statute law, international instruments or treaties and all other provisions in force in a country), and that the enjoyment of electoral rights is protected and restored, giving people who believe their electoral rights have been violated the ability to make a complaint, get a hearing and receive an adjudication.'[9] It generally encompasses the right and correct application of the existing electoral legal framework in a manner that ultimately results in the prevention of infractions and the impartial adjustment of conflicting claims arising from the process.

Electoral justice has been identified to have positive impact on democracy and the shaping of democratic culture. In Africa where the practice of democracy is still in its rudimentary stage, the place of electoral justice cannot be over-emphasised. Speaking on the importance of electoral justice system, International Foundation for Electoral Systems (IFES) observes as follows:

> The effective resolution of electoral complaints is integral to the integrity and legitimacy of an election. If the rules governing the resolution of election claims are incoherent or do not provide for effective remedies, or if arbiters are biased or poorly trained, the adjudication process can destabilize governments, undermine public trust, and engender violence.[10]

Furthermore, electoral justice operates in concert with other elements of the electoral framework to provide some form of guarantee for free, fair and genuine

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[8] Article 7 of the ECOWAS Protocol again provides that 'Adequate arrangements shall be made to hear and dispose of all petitions relating to the conduct of elections and announcement of results'.

[9] Jesus Orozco-Henriquez, *Electoral Justice: The International IDEA Handbook* (International IDEA 2010) 9.

[10] IFES, 'Electoral Justice/Election Dispute Resolution' at <https://www.ifes.org/issues/electoral-justice-election-dispute-resolution>, accessed 18th February, 2023.

elections and therefore engenders democratic legitimacy and credibility.[11] Even though the mere existence of a robust electoral justice system is not of itself a guarantee for free, fair and credible elections, its absence or ineffectiveness may exacerbate existing tensions in the polity. Thus, the absence of a comprehensive and consensus-based legal framework for the prevention and resolution of electoral disputes, based on democratic principles and values, has the potentiality to precipitate violence or armed conflict as we have witnessed in Nigeria and many other African countries.[12] Kolawole, Wakili and Olukayode have, for instance, written on the manner in which electoral malpractice constitutes a challenge to sustainable development in Nigeria.[13]

Again, the relevance of electoral justice in strengthening citizens' confidence in democracy is beyond dispute. Its role as a catalyst in promoting and protecting human rights norms and ideological plurality has also been acknowledged.[14] Where mechanisms for ensuring the integrity of elections and resolving any disputes arising therefrom are weak and, consequently, unable to provide appropriate remedies to aggrieved persons, citizens' confidence in elections is diminished, if not eroded. And without elections, democracy becomes a charade. Drawing attention to the place of electoral justice in this regard, the Organization of American States (OAS) opines that electoral justice is an instrument which:

> …allows for the resolution of electoral conflicts within the context of social peace and political stability, which is the primary requisite of democratic governance. It is also society's best guarantee for the protection of political rights and ideological plurality, both of which afford legitimacy to the electoral process.[15]

From the foregoing discussion, it is obvious that Electoral justice rests on two major pillars: *preventing* the violation of the electoral legal framework, and *resolving* any disputes that emanate from non-observance or violation of that framework.[16] Preventing the violation of electoral legal framework, on the one hand, entails due observance of, or compliance with, the law governing elections generally. This casts a duty on election management bodies (EMBs), political parties, politicians, and the citizenry to ensure that the laws and rules meant to regulate the electoral process are strictly followed without discrimination.

On other hand, resolving electoral disputes involves both the formal and informal dispute resolution mechanisms – litigation and Alternative Dispute Resolution (ADR).

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[11] Orozco-Henriquez, n 9.

[12] Ibid.

[13] Aliyu M. Kolawole, Olawoyin Kayode Wakili and Bamidele Samson Olukayode, 'Electoral Malpractice as a Challenge to Sustainable Development in Nigeria' *Global Journal of Political Science and Administration* 8(1), 15 – 25, February 2020.

[14] See, for instance, Samuel A. Akanibo and Nuleera A. Duson, 'Electoral Justice as A Catalyst in the promotion of Human Rights Norms During Election: The Nigerian Experience' *International Journal of Business & Law Research* (9)(2), 36 – 47, April – June 2021, available at <https://www.researchgate.net/profile/Nuleera-Duson/publication/353883880_Electoral_Justice_As_A_Catalyst_In_The_Promotion_Of_Human_Rights_Norms_During_Election_The_Nigerian_Experience/links/611668591ca20f6f861d4bdc/Electoral-Justice-As-A-Catalyst-In-The-Promotion-Of-Human-Rights-Norms-During-Election-The-Nigerian-Experience.pdf?_sg%5B0%5D=0wdzEBCC9fDMkWWTmhlDllrTBYtZvlL1DoY9s3DVLMGyE3HZMbZed4UEFZeSrS6r7Xh978k3xEwZCDW_49PSzw.q2HwtGKRJAW-Z4Bl7jzLQUJKZwWgDnhPot28QNDIcD_HoKr_1sO1Mb1JL5d6D2fVINpp7TezbABNKcjB8z8LhQ&_sg%5B1%5D=yi4SnFnIcES7NbMimejCGNloZxjw2sGMYGyqSlII8o76Q-A5d2cJQQlrAOboEIHpILDQ_jIrwATKNOsEasDFRjqfFaqbGMv1l4yNsXb6qw5H.q2HwtGKRJAW-Z4Bl7jzLQUJKZwWgDnhPot28QNDIcD_HoKr_1sO1Mb1JL5d6D2fVINpp7TezbABNKcjB8z8LhQ&_iepl=>, accessed 18th March, 2023.

[15] OAS, *Observing Electoral Justice Systems: A Manual for OAS Electoral Observation Missions* (DECO, 2019), available at <http://www.oas.org/es/sap/deco/Pubs/Manuales/Observing-Electoral-Justice-Systems-a-Manual-for-OAS-Electoral-Observation--Missions.pdf>, accessed 18th February, 2023.

[16] Ibid.

Unfortunately, the existing electoral legal framework in Nigeria – the Constitution, the Electoral Act and the Regulations made thereunder – all accord a pride of place to litigation as the means of resolving electoral disputes. There is no corresponding formal framework where electoral disputes could be resolved through ADR with all the attendant benefits that this entails, even though INEC has made a case for sustainable ADR culture in the electoral process.[17] Okonkwo, Ezeudu and Anushiem,[18] for instance, make reference to compromise, negotiation, facilitated dialogue, arbitration and mediation as ADR options that parties may resort to in the circumstances. Consequently, a situation where parties to an electoral dispute are afforded an opportunity to discuss frankly and make concessions on a number of issues such as the allocation of cabinet posts, would foster peace and tranquillity in the polity rather than resort to litigation with its associated animosity, delays, and technicalities.

Even in respect of the formal adjudicatory process of litigation, electoral justice in the resolution of disputes must be seen from, and take cognisance of, two important angles: corrective and punitive. In its corrective dimension, electoral justice obtains when an adjudicatory body – a tribunal or court as the case may be in Nigeria – is able to effectively annul, modify or acknowledge an irregularity that may have occurred during the conduct of an election. This is achieved through a procedure enshrined for challenging the conduct of the election, and the intention is to *correct* an error that may have been made with a view to ensuring credibility in the process. The punitive aspect of electoral justice targets the imposition of election-related, administrative, and criminal liabilities on persons or entities responsible for committing electoral offences. The punishment of offenders generally serves as a deterrent to other persons who may want to engage in similar conduct in the future.

The next segment of the paper examines the laws and institutions that perform critical roles in the attainment of electoral justice in Nigeria and draws attention to some of the flaws in the electoral justice framework.

4. OVERVIEW OF THE CURRENT ELECTORAL JUSTICE FRAMEWORK IN NIGERIA

In this segment of the paper, we intend to analyse the extant electoral legal framework, which consists of the laws (and other rules) and the institutions that have been structured to help prevent and correct or remedy electoral disputes in the country.

4.1 Laws and Rules Governing Elections in Nigeria

The electoral process in Nigeria is governed by two major laws – the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act (including the rules and guidelines made thereunder). The Constitution of Nigeria is, unarguably, the supreme law of the land from which every other law derives its validity.[19] As an important document, the Constitution makes provisions on matters pertaining to the electoral process, such as qualification for election and tenure of office of certain key political office holders under the Constitution, such as the President and Vice-President,[20] Governor and Deputy Governor,[21] as well as members of National and State Assemblies.[22] The Constitution further provides for

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[17] See, for instance, 'INEC Makes Case for Sustainable ADR Culture in the Electoral Process' <https://inecnigeria.org/?news=inec-makes-case-for-sustainable-adr-culture-in-the-political-process>, accessed 4th September 2024.

[18] PO Okonkwo, LC Ezeudu and UM Anushiem, 'Appraisal of Alternative Electoral Dispute Resolution as a Panacea to Protracted Election Disputes in Nigeria' available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4433987>, accessed 4th September 2024

[19] See s 1(3) of the Nigerian Constitution of the Federal Republic of Nigeria 1999, as amended (CFRN).

[20] ss 131 and 142(2) CFRN.

[21] ss 177 and 187(2) CFRN.

[22] ss 65(1) & (2) CFRN.

circumstances in which the afore-mentioned category of persons may be disqualified from being elected to or holding those offices.[23] Most fundamentally, the Constitution provides for the establishment of the country's major election management body, the Independent National Electoral Commission (INEC)[24] as well as the courts and tribunals which shall exercise jurisdiction over disputes (petitions) that often arise after the conduct of elections and return of winners.[25]

The Electoral Act, on the other hand, is the principal legislation that regulates the electoral process in Nigeria. From 1999 when Nigeria returned to civil rule after a long period of military interregnum, the country has had many electoral laws – the Electoral Act 2002, the Electoral Act 2006, the Electoral Act 2010 (as amended) and, recently the Electoral Act 2022. The Electoral Act 2022, like previous Acts, makes elaborate provisions on a wide range of subject matters, including but not limited to the establishment and functions of the Independent National Electoral Commission (INEC);[26] Staff of the Commission;[27] national register of voters and voters' registration;[28] procedure at elections (dealing with a wide range of issues);[29] political parties;[30] and Area Council elections.[31] Of utmost relevance to this paper are the provisions of the Electoral Act dealing with electoral offences;[32] determination of election petitions arising from elections;[33] and other miscellaneous provisions that touch on, among other things, the prosecution of offences disclosed in election petition, trial of offences, etc.[34]

In addition to the substantive provisions of the Act dealing with the various subject matters, the Act also contains rules of procedure for election petitions.[35] As the name clearly indicates, the rules are intended to complement the provisions of the Act, especially as it concerns the presentation and determination of election petitions under the Act.

4.2 Institutions Involved in the Electoral Process

Apart from the Laws that regulate the electoral process, certain institutions have been established by law to ensure compliance with the electoral legal framework. In this segment, we shall be concerned with the role of INEC and security agencies in ensuring the attainment of electoral justice. The courts, which are undoubtedly key to the attainment of electoral justice, will be discussed later in this paper.

4.1.1 INEC and other Election Management Bodies (EMBs)

The role of INEC in the electoral process in Nigeria cannot be over-emphasised. Both the Constitution and the Electoral Act 2022 have established INEC as the country's apex election management body and also clearly define the powers of the Commission. For instance, Paragraph 15 Part I of the Third Schedule to the Constitution empowers INEC to, inter alia:

(a) Organise, undertake, and supervise all elections to the offices of the President and Vice-

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[23] See ss 137, 142(2), 182, 187(2) and 66 CFRN regarding disqualification for the offices of President, Vice-President, Governor, Deputy Governor and members of National and State Assemblies respectively.
[24] See Paragraph 14 of Part I of the Third Schedule to the Constitution.
[25] See ss 239 and 285 of the Constitution dealing with the jurisdictions of the Court of Appeal and other tribunals to entertain petitions as to the validity of the election of President and Vice-President, Members of the National Assembly as well as that of Governors and State Legislators.
[26] Part I, consisting of ss 1 – 7 of the Electoral Act 2022.
[27] Part II, s 8 ibid.
[28] Part III, ss 9 – 23 ibid.
[29] Part IV, ss 24 – 74 ibid.
[30] Part V, ss 75 – 97 ibid.
[31] Part VI, ss 98 – 113 ibid.
[32] Part VII, ss 114 – 129 ibid.
[33] Part VIII, ss 130 – 140 ibid.
[34] Part IX, ss 141 – 153 ibid.
[35] See, for instance, the First Schedule to the Electoral Act 2022.

President, the Governor, and Deputy Governor of a State, and to the membership of the Senate, House of Representatives, and the House of Assembly of each State of the Federation;
(b) Register political parties in accordance with the provisions of the Constitution and an Act of the National Assembly;
(c) Monitor the organisation and operation of the political parties, including their finances;
(d) Arrange for annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
(e) Arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;
(f) Monitor political campaigns and provide rules and regulations which shall govern the political parties;
(g) Ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the oath of office prescribed by law;
(h) Delegate any of its powers to any Resident Electoral Commissioner; and
(i) Carry out such other functions as may be conferred upon it by an Act of the National Assembly.

In addition to the above functions, the Electoral Act further empowers INEC to (a) conduct voter and civic education; (b) promote knowledge of sound democratic election processes; and (c) conduct any referendum required to be conducted pursuant to the provision of the Constitution or an Act of the National Assembly.[36] In sum, INEC has the onerous task of ensuring compliance with the relevant provisions of the Constitution and the Electoral Act relating to the electoral process.

Despite the clear and unambiguous provisions of the law on the role that INEC is supposed to play in the electoral process, it is rather unfortunate that the failure of electoral justice in Nigeria is sometimes the result of the failure of election management bodies (EMBs) in keeping faith with these provisions. Apart from the fact that the institution lacks the measure of independence that it should have, the inability of some INEC staff to maintain the expected level of neutrality often undermines the integrity of elections in Nigeria. Thus, it is commonplace to find INEC officials drafted to conduct elections dining and wining with politicians who are interested in the outcome of the elections. Such INEC staff or officials view the exercise as an avenue to enrich themselves. In the 2023 Presidential and National Assembly elections, for instance, some INEC officials had been accused of colluding with other persons in perpetrating electoral fraud, dereliction of duty, vote-buying, criminal conspiracy, etc.[37]

In Nigeria, there are documented accounts of INEC staff's involvement in electoral fraud of monumental proportions. For instance, during the 2007 General Elections in Nigeria, generally agreed to be one of the worst in the series, the Maurice Iwu-led Commission was reported to have acted as a department of the ruling party at the centre and in many States of the Federation, where preferred candidates were simply returned elected even when voters were still in the voting booths.[38] In some cases, collation and declaration of results were done in the

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[36] See section 2 of the Electoral Act 2022.
[37] See G Habib and A Olasupo, 'Govt Begins Prosecution of INEC Officials, Others for Electoral Fraud' *Punch* (3rd March 2024) <https://punchng.com/govt-begins-prosecution-of-inec-officials-others-for-electoral-fraud/>, accessed 4th September 2024
[38] For instance, see Said Adejumobi, 'INEC and the Electoral Process' in S Adejumobi (ed), *Governance and Politics in Post-Military Nigeria* (2010), viewed online at <https://link.springer.com/chapter/10.1057/9780230115453_4?noAccess=true>, accessed 6th April 2023, and Osita Ogbu, 'Unbridled Election Rigging and the Use of Technology: The Smart Card Reader as the 'Joker' in Nigeria's 2015 Presidential Election' available at https://www.inecnigeria.org/wp-content/uploads/2019/02/Conference-Paper-by-Osita-Agbu.pdf>, accessed 6th April, 2023.

homes of influential politicians.[39]

State independent electoral commissions (SIECs) have been the worst hit in this ignoble practice. In addition to their suffering from general neglect, their independence is more less a matter of theory than practice. One area in which the performance of SIECs leaves much to be desired is in the conduct of Local Government elections, which is a matter that falls squarely under their scope of jurisdiction. In most States of the Federation, Local Government officials who emerge after the elections may really be termed 'appointees' of the respective State Governors in the sense that, even when elections are conducted, it is a contest amongst members of the ruling party in the State.

So when the independence and integrity of EMBs are compromised, as is often the case in the country, the ends of electoral justice are defeated and people lose confidence in the process. In this kind of scenario, resort to self-help or extra-legal means becomes an attractive option.

4.2 Complicity of the Police and other Law Enforcement Agencies in Electoral Infractions

Security is paramount at every stage of human interaction. At no other period is the need for security more urgent than at electioneering periods. Apart from the fact that security agents ensure orderliness and prevent a breach of the peace at such times, their role in apprehending those who commit crimes during elections is at the heart of electoral justice and democratic consolidation. This is more so that certain types of conduct have been categorized as electoral offences under the Electoral Act.[40] Consequently, any person who commits any of the offences should be arrested and prosecuted by a police officer or other law enforcement agent drafted to secure the election.

Unfortunately, the ignoble role of the police and other security agents in undermining the credibility of the electoral process in Nigeria has been attested to in the literature of elections in this country.[41] In some instances, security agents who are supposed to prevent infractions during elections stand idly by while egregious crimes are perpetrated during the polls. Even when desperate politicians hire thugs to destabilise the process or even manipulate it in their favour, the culprits are hardly arrested. Where some arrests are made, the culprits are not brought to book to serve as a deterrent to others. In some other instances, it is the law enforcement agents that become ballot box snatchers for their political paymasters.

This kind of situation fuels impunity, as the average voter cashes in on every available loophole to wreak havoc on the system. Little wonder, since Nigeria returned to civil rule in 1999, there has been very little attention to the prosecution of electoral offenders, despite an elaborate table of offences and penalties that INEC has compiled.[42]

But what is the role of the courts in ensuring electoral justice and consolidating democracy

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[39] Adejumobi, ibid.

[40] Some of these offences include: registering more than once; unlawful possession of voter's card; buying or selling of voter's card; giving false information in any application for voter's card; hindering another person from registering to vote; impersonating a registration official; and illegal registration of persons. Others are offences in respect of nomination; offences in relation to ballot papers and ballot boxes; disorderly behaviour at political meetings; improper use of voter's card; dereliction of duty by INEC staff; issuance of false results; vote buying (bribery and corruption);disorderly conducts at elections; etc. For details, visit the official website of INEC at <https://www.inecnigeria.org/voter-education/election-offences-and-penalties/>, accessed 15th March 2023.

[41] For details, see Osezua Ehiyamen Mediayanose, 'The Role of Security in Credible Elections and Sustenance of Democracy in Nigeria' *Journal of Public Administration, Finance and Law* (2018) (13) 134 – 142, available at <https://www.jopafl.com/uploads/issue13/THE_ROLE_OF_SECURITY_IN_CREDIBLE_ELECTIONS_AND_SUSTAINANCE_OF_DEMOCRACY_IN_NIGERIA.pdf>, accessed 6th April 2023 and Muiz Banire, 'Election Monitoring and the Role of Security Operatives in Midwifing Lasting Democracy' (2018), at <https://mabandassociates.com/election-monitoring-and-the-role-of-security-operatives-in-midwifing-lasting-democracy/>, accessed 6th April 2023.

[42] See the official website of INEC at <https://www.inecnigeria.org/voter-education/election-offences-and-penalties/>, accessed 15th March 2023.

in Nigeria? This question and many more are answered in the next segment of the paper.

5. THE NIGERIAN JUDICIARY AND THE QUEST FOR ELECTORAL JUSTICE AND DEMOCRATIC CONSOLIDATION

The judicial arm of the government, consisting of the courts and tribunals established pursuant to section 6 of the Constitution of the Federal Republic of Nigeria, no doubt plays an indispensable role in the creation and sustenance of democratic ethos in the country. It is elementary knowledge that the principal duty of the courts is to hold the scale (balance) fairly and justly between contending parties in a dispute. Disputes are an inevitable product of human interaction, especially in the political and electoral process that is often characterised by display of differing interests. In Nigeria pre-election, election and post-election activities always lend themselves to disputes that require the intervention of the courts and tribunals for their effective resolution. This section, therefore, analyses the role that the judiciary has played, positively and negatively, relative to the quest for the attainment of credible electoral justice and democratic consolidation in the country.

5.1 The Courts and the Internal Affairs of Political Parties

Since the electoral process also includes the manner in which political parties conduct their internal affairs, such as the election of party executives and the nomination of candidates for election to any public office under the Constitution or any other law, it is important that we consider how the courts have over time handled disputes arising from these activities and whether their decisions have helped ensure electoral justice or otherwise. This touches on the domestic affairs of political parties and the quest for internal democracy within the parties.

Due to the influence of political parties in the political and electoral landscape of the country, internal affairs of these political parties can longer be perceived to be the parties' exclusive preserve since the outcome of their internal affairs impinges on the political landscape of the nation one way or the other. On this, Atelhe, Lawal and Terhile opine that 'democracy alongside political parties with vibrant ideologies and manifestoes are very important tenets that ensure good governance world over and Nigeria in particular.'[43] The writers add, thus:

> Internal party activities such as membership, recruitment, socialization, training, discipline, and resources of the party have profound influence on good governance because political parties serve as an avenue through which political leaders emerge. When political parties are weak and ineffective, politics is reduced to unbridled opportunity and self-serving interest of individual politicians who may derail nation-building process and democratic project.[44]

In the context of the Nigerian democratic experiment, for instance, governmental policies and programmes are essentially, if not entirely, bye-products of political parties. We therefore agree with Adangor that 'Political parties are the building blocks of democratic

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[43] GA Atelhe, AM Lawal and A Terhile, 'Democracy, Intra-Party Struggle and Good Governance in Nigeria: The People's Democratic Party and All Progressives Congress Experience' *European Journal of Scientific Research* (2019) (154) (4), 491 – 498, at 491. The authors further submitted, and rightly so in our view, that political parties 'remain pillars of democracy and channels through which effective services and good governance could be delivered to the people.' Quoting Pwanagba, they contended that, without ideologically-based, strong and independent political parties, good governance is likely not to be deepened.

[44] Ibid. See also ON Chukwujekwu and IE Ezeabasili, 'Party Politics and Internal Democracy in Nigeria: People's Democratic Party (PDP) in Anambra State, 2006 – 2016' *World Journal of Innovative Research* (2019)(6)(6), 48 – 55; AS Ajisebiyawo, 'Intra-Party Politics and Democratic Sustenance in Nigeria's Fourth Republic' *International Journal of Arts & Sciences* (2015) 327 – 338.

institutions and culture in the state'.[45] There is, consequently, a link between the practice of internal democracy within the political party and the evolution and sustenance of democratic culture in the nation.[46] It is in recognition of the preeminent role of political parties that the Nigerian Constitution accords a pride of place to them in the scheme of Nigerian politics. For instance, the Constitution provides that 'No association, other than political party, shall canvass for votes for any candidate at any election…'[47] The above constitutional provision entails that political parties are the only means through which political office holders can emerge. That gives the parties considerable influence on the political landscape of the country to the extent that the type and calibre of leaders produced in the nation are again bye-products of the respective parties from which they emerge. It is in recognition of the importance of internal democracy that the constitutions of political parties, the Electoral Act and the Nigerian Constitution make provisions dealing with internal democracy within political parties.[48]

What then is the role of the courts in ensuring internal democracy within the political parties? For a long time, the courts had shied away from interfering in the domestic affairs of political parties, based on the corporate law principle enshrined in *Foss v Harbottle* which established the doctrine of judicial non-interference in the internal affairs of corporations or associations, which was extended to political parties in Nigeria.[49] The underlying reasoning is that, a political party is a voluntary association, and by virtue of its nature as such, it has its constitution, rules, guidelines, and regulations to which all members have subscribed upon submitting themselves to membership. Their membership entails that they are bound to obey the association's constitution, rules, guidelines, and regulations, and that any decision of the association that flows from, or revolves around, their membership of the association should be final and binding and consequently not the subject of review by the courts.[50]

In *Musa v PRP*[51], for instance, a question arose as to whether the resolution of the respondent (PRP) to the effect that Governors elected on its platform should not attend institutionalised meetings of the Governors was a violation of the appellant's fundamental rights under sections 32, 36, 37 and 38 of the 1979 Constitution. The Supreme Court held that it would not interfere in a case where members of a voluntary association had arrived at a decision within the provisions of their constitution, even if the decision was unreasonable. This principle was first applied to the nomination of candidates in the case of *Onuoha v Okafor.*[52] In that case, the Supreme Court again had no difficulty in holding that the issue of who should be a candidate of a given political party at any election was a political one to be determined by the rules and constitution of the party.

This remained the position of the law at the inception of the fourth Republic as

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[45] See Zacchaeus Adangor, 'Promoting Internal Democracy in Political Parties in Nigeria: Looking Beyond Section 87(9) of the Electoral Act, 2010 (as amended)', https://www.researchgate.net/publication/331684770.
[46] Ibid.
[47] Section 221 of the Constitution of the Federal Republic of Nigeria 1999, as amended. See also the decision of the Supreme Court of Nigeria in the celebrated case of *Amaechi v INEC* (2008) 5 NWLR (Pt 1080) 227
[48] See, for instance, the Preamble to and articles 7 & 20 of the Constitution of the All Progressives Congress (APC); sections 6, 7 & 50 of the Constitution of the Peoples' Democratic Party(PDP); sections 223 & 224 of the Constitution of the Federal Republic of Nigeria; and sections 85 and 87 of the Electoral Act 2010, as amended (now sections 82 and 84 of the Electoral Act 2022).
[49] For details, see the case of *Onuoha v Okafor* cited in Francis M. Kwede, 'A Critique of Judicial Non-Interference in the Internal/Domestic Affairs of Political Parties: *Peoples Democratic Party v Sylva* in Perspective' *Journal of Private Law,* Faculty of Law, University of Jos (2013) (1) (1), 82 – 93.
[50] See Adangor, n 38.
[51] (1981) 2 N.C.L.R. 763, 769.
[52] (1983) 2 SCNLR, 244.

exemplified in cases such as *Dalhatu v Turaki*,[53] *PDP v Emenike*[54] and *PDP v Sylva*[55] in which the Supreme Court variously upheld the principle of judicial non-interference in the internal affairs of political parties and left the aggrieved parties without a remedy. In both *Emenike* and *Sylva,* the Supreme Court held that the nomination and sponsorship of a candidate by a political party were strictly internal affairs of the party which were not justiciable, notwithstanding the provision of section 87(9) of the Electoral Act 2010 (as amended).[56]

It is worthy of note that the judicial attitude of refraining from interfering in the internal affairs of political parties in Nigeria, though correct in principle, has contributed to the current level of impunity and absence of justice in the conduct of activities of many political parties in Nigeria. The result of this is that political parties have been sadly left in the hands of a few privileged individuals who run the affairs of the parties in a manner that is anything but democratic. So, the courts, rather than rise to the occasion by curtailing some of the excesses of these party bigwigs, often choose to hide behind the cloak of judicial non-interference even where there are clear and compelling grounds for intervention. It is curious, if not worrisome, that the Supreme Court in the *Emenike and Sylva cases*[57] would refuse to intervene in the question about nomination and sponsorship of candidates by a political party even where section 87(9) of the Electoral Act 2010 (as amended) was clear and unequivocal, to the effect that an aggrieved person or party had the right to seek redress before the Federal High Court or the High Court of a State.

The consequences of lack of access to the courts for the ventilation of grievances by aggrieved persons are dire. Resort to self-help clearly becomes the order of the day. Rancour and violence at party congresses are mostly animated by deep-seated fears by some party members that they may not have access to, let alone get, justice in the law courts for wrongs done to them. The perpetrators of these wrongs, on the other hand, are further emboldened in their acts by their knowledge of the fact that their illegal acts are not subject to judicial scrutiny, thanks to the principle of judicial non-interference! This explains why electoral politics in Nigeria is characterised by so much lawlessness that many people perceive it as a dirty game, to be played only by the morally depraved members of society. This lawlessness and 'dirt' associated with party politics makes it unattractive to people given to decent lifestyle.

Notwithstanding the above judicial attitude towards pre-election matters, the courts have entertained and adjudicated some causes predicated essentially on the internal affairs of political parties. In this respect, the cases of *Amaechi v INEC*[58], *Ugwu v Ararume*[59], *APC v Marafa*[60] and others demonstrate the capacity of the courts to look into the internal affairs of political parties when the need arises. In Amaechi's case, for example, the Supreme Court held that the substitution of Rotimi Amaechi with Celestine Omehia as the governorship candidate of the People's Democratic Party (PDP) for Rivers State, even though an internal affair of the party, was illegal, Amaechi having polled the highest number of votes cast at the party

[53] (2003) 15 NWLR (Pt 843) 310.
[54] (2012) 12 NWLR (Pt 1315) 556.
[55] (2012) 13 NWLR (Pt 1316) 85.
[56] Now section 84 (14) of the Electoral Act 2022. The difference now is that only the Federal High Court has been conferred with original jurisdiction over matters arising from the nomination of candidates pursuant to that section.
[57] See notes 51 and 52.
[58] (2008) 5 NWLR (Pt 1080) 227. In this case, the appellant's name was substituted for that of Celestine Omehia, who did not participate in the party's primaries. While the case was pending on appeal before the Court of Appeal, the Supreme Court gave its decision in *Ararume* case, and in order to avoid the implications of the said decision on the appellant's case, the party expelled the appellant. Nevertheless, the Supreme Court held that the substitution was wrong and invoked its powers under the Supreme Court Act to make any order necessary for determining the real question in controversy, and do other things it considers proper in the interest of justice, to declare that the appellant was the candidate that won the election.
[59] [2007] 12 NWLR (Pt 1048) 367.
[60] (2020) 6 NWLR (Pt 1721) 383.

primaries. In the same vein, in *Ararume,* the Supreme Court intervened in the nomination and sponsorship of candidate by the PDP in preparation for the Imo State 2007 governorship election, wherein the apex Court nullified the substitution of Senator Ifeanyi Ararume with Engineer Charles Ugwu as the candidate of the party for the governorship election. Finally, in Marafa the court also entertained suits predicated on the conduct of primary elections of the All Progressives Congress (APC) in Zamfara State during the 2019 election cycle.

The above analysis demonstrates that internal disputes of political parties can no longer be said to be their domestic affairs, as courts of law may be called upon, in appropriate circumstances, to intervene when the rights of party members are or are likely to be violated. We submit that this practice fosters internal democracy within the political parties and introduces sanity in the conduct of party affairs.

5.2 Judicial Rascality and the Menace of Conflicting Interim Orders

Even where the courts intervene in pre-election matters, as discussed in the preceding segment of this paper, one worrisome development that has cast doubt on the credibility of the judiciary as an institution is the phenomenon of conflicting interim orders granted by courts of coordinate jurisdiction, sometimes even on *ex parte* applications. The rate at which these interim orders fly about is indicative of the deficit in competence and integrity that afflicts the judiciary. In 2016, for instance, a protracted intra-party feud in the Peoples' Democratic Party (PDP) had produced the Ali Modu Sheriff and Ahmed Makarfi factions of the Party due mainly to conflicting judgments from the Federal High Court in Abuja and Port Harcourt respectively.[61] During the same period, the Court of Appeal panels in Abuja and Ilorin gave conflicting decisions on the governorship election dispute in Abia State between Okezie Ikpeazu and Uche Ogah, all of the PDP.[62]

In recent times again, the courts created a lot of confusion in the leadership of the PDP. For instance, while a High Court in Port Harcourt, Rivers State, gave an interim order restraining Mr Uche Secondus from parading himself as the chairman of the PDP on August 24, 2021, a Kebbi State High Court, sitting in Birnin-Kebbi, restored Secondus as National Chairman of the Party barely three days later.[63] Barely 24 hours after resumption of office by Secondus pursuant to the Birnin-Kebbi order, Justice Edem Kooffreh of the Cross River State High Court, sitting in Calabar, again gave an order restraining him from resuming office.[64]

After the Anambra State Governorship primaries, a number of conflicting interim orders emerged from the courts. First, the Abuja Division of the Federal High Court, animated by the application of one Okoye Nwabuogo, gave an order setting aside the nomination of Charles Soludo as the candidate of the All Progressive Grand Alliance (APGA) for the Anambra State Governorship election scheduled for November 6, 2021. Days later, the Anambra State High Court, contrary to the decision of the Federal High Court, ordered INEC to restore Soludo as the candidate of APGA for the election. As if that was not enough, Justice Musa Ubale of Jigawa State gave another order mandating INEC to accept anyone brought by one Jude Okeke as the candidate of APGA for the November 6 Governorship election in the State.[65]

Apart from the fact that these conflicting orders precipitate a climate of uncertainty and outright confusion, the manner in which some of them are procured is really an indictment of

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[61] Taiwo Ojoye, 'The Menace of Conflicting Court Judgments' *The Punch* (October 4, 2016), obtained at <https://punchng.com/menace-conflicting-court-judgements/> accessed 6th April 2023.
[62] Ibid.
[63] The Nation, 'Saving Judiciary from Crisis of Conflicting Court Orders', available at https://thenationonlineng.net/saving-judiciary-from-crisis-of-conflicting-court-orders/>, accessed 6th April 2023.
[64] Ibid.
[65] Ibid.

the judiciary and the legal profession at large.

5.3 Issues and Challenges in the Adjudication of Election Petitions

Disputes arising from the conduct of elections are a regular occurrence in Nigeria. Even in America that is today considered as the bastion of democracy, the 2020 US Presidential Election revealed that no nation is immune to electoral malfeasance or at least the allegation of it.[66] In Nigeria, the Electoral Act governs almost entirely the subject matter of election petitions. For instance, the mode of presentation of an election petition, the time-limit for doing so, the grounds for presenting a petition, persons entitled to bring a petition, and all other sundry rules are contained therein.

The aim of an election petition is to test the credibility of an election and the capacity and capability of the election management body – such as INEC or SIECs in our case – and other stakeholders in adhering to electoral norms and ensuring the sustenance of democracy in the land. Courts and election tribunals have been established as gate keepers in this respect. But the determination of election petitions in Nigeria is influenced by a number of factors outlined below.

i. Competence and Integrity Deficits Amongst Judges and Lawyers Involved in Election Petitions

The outcome of every court case, much less an election petition, depends on the competence and integrity of judges who decide the case. On the one hand, the duty of a judge is one that calls for competence and professionalism in the law profession. A judge must, therefore 'be knowledgeable about the law, willing to undertake in-depth legal research, and able to write decisions that are clear, logical and cogent'.[67] It also been noted that the judgments of a good judge should be sound, and that a judge 'should be able to make informed decisions that will stand up to close scrutiny.'[68] But when persons who do not possess these qualities are recruited into the judiciary, the system is bound to experience serious deficits in competence and this is often exhibited in the kinds of decisions that are rendered by these kinds of judges. Unfortunately, in Nigeria, the general conditions of service in the judiciary are such that cannot attract the best and most qualified lawyers to the bench. Furthermore, recruitment to the bench is almost always a political exercise where loyalty to the government of the day, rather than competence and capacity, is the determinant. As is often the case, sectional, tribal and religious considerations outweigh any other consideration, with the result that some of the judges can hardly do any meaningful legal research or write sound judgments.

On the other hand, lack of integrity on the part of some judges not only undermines the system but constitutes a threat to justice. Thus, even where judges are competent, in the sense that they possess the necessary legal skills and abilities, the absence of integrity on their part makes them a threat to justice and democracy as a whole. In this connection, it has been observed that 'judges should be fair and open-minded devoid of any kind of political fervour'.[69]

The challenges that afflict judges and militate against their effectiveness and efficiency in the discharge of their duties also afflict the lawyers who are involved in the prosecution and defence of election petition matters. While a large percentage of the electoral injustice results

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[66] See, for instance, Kevin Breuninger, 'Trump Refuses to Accept Election Results, says 'it's far from over'' *CNBC* (November 7, 2020) available at https://www.cnbc.com/2020/11/07/trump-refuses-to-accept-election-results-says-it-is-far-from-over.html>, accessed 27th March, 2023.

[67] Md. Manjur Hossain Patoari, Muhammed Hasan Murad and Md. Salahuddin Mahmud, 'The Desired Qualities of a Good Judge' *Academic Journal of Interdisciplinary Studies* (2014) (3)(1), available at <https://www.richtmann.org/journal/index.php/ajis/article/download/2067/2054>, accessed 27th March, 2023.

[68] Ibid.

[69] Ibid.

from the incompetence of some of the lawyers in handling their clients' matters, some of the other causes are attributable to lack of integrity of the lawyers who collude with their rich clients to corrupt the judges in order to obtain favourable decisions.

ii. Legal and Procedural Challenges Involved in Election Petitions

Part of the challenge involved in election petitions in Nigeria may not be unconnected with the fact that such proceedings, though essentially civil in nature, have been described as proceedings which are *sui generis.* This means that they are a special class of proceedings with rules or procedures that are more strictly observed than it is the case in ordinary civil causes. In *Orubu v NEC*,[70] for instance, the court held that it is due to the peculiarity of election petitions and their importance to the sustenance of a democratic society that they are "regarded with an aura that places them over and above normal day to day transaction between individuals which give rise to ordinary claims in court".[71] Similarly, the Court of Appeal in *Uduma v Arunsi*[72] held that "Election petitions are sui generis. Their very nature makes them peculiar. Sometimes, the general statement of the law applicable in ordinary civil litigation may not be justice in election proceedings."[73]

For instance, election petitions are time-bound, consistent with the hallowed principle of *res judicata,* which entails that there must be an end to litigation. It is therefore only fair and reasonable that certain causes of action, especially election petitions, are filed, heard, and determined within stipulated periods to enable office holders settle down to the task of governance. In pursuit of this imperative, the Electoral Act requires that an election petition be filed within 21 days after the date of the declaration of the results of the election.[74] In addition, it is required as a matter of law that an election tribunal deliver its judgment in respect of an election petition within 180 days from the date of filing of the petition,[75] while an appeal from a decision of an election tribunal or court must be heard and disposed of within 90 days from the date of delivery of judgment of the tribunal or court.[76] These requirements also enjoy constitutional backing as evident from the provisions of section 285 of the Constitution.[77]

As far as our electoral jurisprudence is concerned, time limit prescribed for the presentation and determination of electoral disputes is of utmost importance, as it is crucial to the life of an election petition itself. Unlike the situation in ordinary civil causes, where time within which an action needs to be taken may be enlarged,[78] the respective time limits stipulated by the above provisions of the Constitution and the Electoral Act cannot be expanded or

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[70] (1988) 5 NWLR (Pt 94) 323.

[71] Ibid, at 347. In that case, Uwais, CJN (as he then was) clearly adumbrated the essence of an election petition in the following words: "an election petition is not the same as the ordinary civil proceedings. It is a special proceeding because of the nature of elections which by reason of their importance to the well-being of a democratic society are regarded with aura that places them above the normal, day to day transactions between individuals which give rise to ordinary or general claim in court. As a matter of deliberate policy to enhance urgency, election petitions are expected to be devoid of the procedural clogs that cause delay in the disposition of the substantive dispute." See also, *Abdullahi v Elayo* (1993) 1 NWLR (Pt 268) 171.

[72] (2012) 7 NWLR (Pt 1298) 55.

[73] Ibid, at 121. See also the cases of *APGA v Uba* (2012) 11 NWLR (Pt 1311) 325, *Abubakar v Yar'Adua* (2008) 19 NWLR (Pt 1120) 1, and *Bamigboye v Saraki* (2009) All FWLR (Pt 484) 1573.

[74] See section 134(1) of the Electoral Act 2010, as amended.

[75] Ibid, section 134(2).

[76] Ibid, section 134(3).

[77] For example, subsections (5), (6) and (7) of the Constitution of the Federal Republic of Nigeria 1999, as amended, respectively require that all election petition cases are filed within 21 days, determined within 180 days and appeals arising therefrom also determined within 90 days.

[78] In ordinary civil cases, for example, a party who is out of time in respect of any step that ought to have been taken can conveniently apply to the court for extension of time to enable them take the appropriate step. The court would usually grant such an application unless, of course, there exist cogent reasons to the contrary.

otherwise extended even for a day. In other words, a petitioner who fails to file or present their petition within 21 days completely loses their right to approach the election tribunal. In the cases *Moghalu v Ngige*[79] and *Kamba v Bawa,*[80] the Courts emphatically held that a prospective petitioner who fails to file his petition within the time limited by statute loses his right of action.[81]

In relation to the period for the determination of election petitions as provided for in sections 285(6) of the Constitution and section 134(2) of the Electoral Act 2010, as amended, the courts have also held that this time limit must be strictly and scrupulously adhered to. In *Akunyili v Ngige,*[82] the Court of Appeal, relying on previous decisions of the Supreme Court, held that: "It is clear therefrom that the provision of Section 285(6) (supra) though harsh, must be strictly applied and that there is no safe haven or protection for an election Petition that is not determined to finality within the constitutional period of 180 days from the date it was filed before the Tribunal." Earlier, in *PDP v CPC*,[83] the Supreme Court had occasion to interpret section 285(5) – (7) of the Constitution of the Federal Republic of Nigeria 1999, as amended. The apex Court, per Onnoghen JSC (as he then was), held as follows:

> I hold the considered view that in terms of times to do anything relating to an election petition or judgment thereon or arising therefrom, it is the above provisions that apply and that no court has the power to extend the times as constitutionally provided in section 285(5) - (7) of the 1999 Constitution (as amended), by interpretation of the sections or otherwise.[84]

On section 285(6) of the Constitution specifically, the Supreme Court again did not mince words in upholding the sanctity of that provision in relation to all election cases. In the consolidated appeal in *ANPP v Goni,* [85] the apex Court emphatically stated, thus:

> It has been held by this court in a number of cases including consolidated appeals Nos. SC/141/2011; SC/266/2011; SC/267/2011; SC/282/2011; SC/356/2011 and SC/357/2011: *Brig. Gen. Mohammed Buba Marwa & Ors v Adm. Murtala Nyako & Ors* delivered on 27th January, 2012, reported in (2012) 6 NWLR (Pt. 1296) 199 that the time fixed by the Constitution is like the rock of Gibraltar or Mount Zion which cannot be moved; that the time cannot be extended or expanded or elongated or in any way enlarged; that if what is to be done is not done within the time so fixed, it lapses as the court is thereby robbed of the jurisdiction to continue to entertain the matter.[86]

From the foregoing discourse, it is beyond any dispute that compliance with statutory time-limits for the institution and determination of all election petitions, including any appeals arising therefrom, must be strictly complied with. Sections 134(1) – (3) of the Electoral Act and 285(5) – (7) of the Constitution are "like a statute of limitation which takes away the right of action from a party leaving him with an unenforceable cause of action."[87] Consequently, both the petitioner and respondent in an election petition need to be aware of this critical component of electoral disputes adjudication.

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[79] (2005) 4 NWLR (Pt 914) 1.
[80] (2005) 4 NWLR (Pt 914) 43.
[81] See also, *Sirika v Bello* (2011) 2 NWLR (Pt 1232) 452.
[82] Suit No CA/E/EPT/8/2012, judgment delivered on 26th day of March, 2012, available at <https://nigerialii.org/ng/judgment/court-appeal/2012/14> , accessed 11th March, 2023.
[83] (2011) 17 NWLR (Pt 1277) 485.
[84] Ibid, at p 508.
[85] (2012) 7 NWLR (Pt 1298) 147.
[86] Ibid, at p 182.
[87] See *Akunyili v Ngige,* supra.

However, a strict observance of the above stipulations and other mandatory procedural steps, though necessary for the speedy and expeditious disposal of election petitions, could sometimes amount to sacrificing justice on the altar of speed and elevating technicalities above substantial justice.[88] On the effect of the 180-day limitation period for the determination of election petitions, in particular, it has been contended that '…it has the potentiality to defeat the hearing and determination of election petition matters, with the result that litigants leave the court completely dissatisfied. Yet, the dissatisfaction is not occasioned by any fault that may be attributable to his action but on account of time over which he has no control.'[89] The potentiality of technical justice to encourage lawlessness during the conduct of elections is real. Armed with the knowledge of the fact that the lifespan of an election petition is only 180 days, all that politicians need to do is to get INEC to declare them elected and the game is pushed to the tribunal. Their lawyers will then belabour the tribunal with frivolous applications intended to delay the trial and thereby crash onto the 180-day period. It is in the light of this that one finds the ratio of the Supreme Court in *PDP v Okorocha*[90] very worrisome. In that case, the Court had held thus:

> The main objective of section 285 of the Constitution is to remedy or remove the mischief (which is delay in election matters) which hitherto created a cogwheel in the steady progress of election matters in litigation. I think it is very good innovation which is all out to remove question of delay *whether caused by the deliberate act of the parties or by nonchalance of all other bodies, authorities, including the courts of law, legal representatives (counsel) for the parties, etc.* I therefore find it difficult to fault this vibrant and revolutionary section of the Constitution.[91]

(iii) Non-Compliance with Electoral Guidelines by the Courts

One area of challenge often encountered in electoral justice administration is the inability or outright refusal of the courts to abide by or observe electoral guidelines issued by the Independent National Electoral Commission or other EMBs. It is true that effective entrenchment of the rule of law and electoral justice requires that repercussions and sanctions be provided for infringement of regulations and standards by all stakeholders. But where the courts refuse to uphold such regulations put in place by EMBs for smooth and credible conduct of elections, it leaves much to be desired. A case in point is the introduction of the Bimodal Voter Accreditation System (BVAS) in the 2023 General Elections pursuant to the Electoral Act 2022. INEC has stipulated, on several occasions, that elections conducted in violation of the BVAS and electronic transmission of results would not be accepted.[92] Notwithstanding this, the Supreme Court has shied away from enforcing the use of BVAS in the conduct of elections. For instance, in the Kogi Governorship election, the apex Court overruled the Court of Appeal's decision which had ordered the forensic examination of BVAS by SDP in the

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[88] On this, see, Tobias M. Ngufuwan, 'Justice on the Altar of Speed: A Critique of the Judicial Interpretation of the 180-day Period for the Determination of Election Petitions in Nigeria' in Dakas CJ Dakas, Akkarren Samuel Shaakaa and Alphonsus O Alubo, *Beyond Shenanigans: Jos Book of Readings on Critical Legal Issues* (Innovative Communications 2015), 378 – 396.

[89] Ibid, at 394 – 395. The author added that: 'It is comforting when a litigant is availed the opportunity to pursue his claim as far as the law permits even if he loses at the end of the action. But where a party is shut out simply because his matter, which was duly filed, is suddenly caught by a statute of limitation, chances are that he will resort to extra-legal means to obtain justice which the courts ought to give him but did not'.

[90] (2012) 15 NWLR (Pt 1323) 205.

[91] Per Muhammed, JSC at 252, italics supplied for emphasis.

[92] See Solomon Elusoji, 'INEC Insists on Use of BVAS, Electronic Transmission of Results' *Channels* (22nd October 2022) <https://www.channelstv.com/2022/10/18/inec-insists-on-use-of-bvas-electronic-transmission-of-results/>, accessed 4th September 2024.

November 16, 2023 Governorship polls.[93] In the 2023 Presidential Election there were alleged technical glitches in the transmission of results through the INEC Result Viewing (IREV) Portal contrary to INEC's stipulation. Yet, the Presidential Election Petition Court held that the election could not be nullified by the unavailability of the election results on the INEC IREV Portal.[94]

6. CONCLUSION: ENHANCING ELECTORAL JUSTICE AND DEEPENING DEMOCRACY IN NIGERIA

Given that electoral justice is central to the evolution and sustenance of sound democratic culture in Nigeria, this paper proposes the following recommendations for the various stakeholders involved in the electoral process.

1. To start with, the courts have a pivotal role to play in dethroning injustice and enthroning a credible electoral justice system which addresses the problems that have tended to cast doubt on the country's democratic experiment. In doing this, the courts must competently and courageously give decisions that will help curtail some of the excesses involved in the electoral process. For instance, the courts must ensure, through their pronouncements, that internal democracy is truly practised in the various political parties, both in the selection of party executives and the nomination of candidates for elections. Thus, the dogma of judicial non-interference in the internal affairs of political parties must be handled with caution in order to ensure sanity in some of these parties which adopt undemocratic, even autocratic, methods of doing things. It is the absence of internal democracy that fuels violence and bloodshed amongst members of those parties.[95]

The courts also need to be on top of their game when it comes to the determination of election petitions brought before them. They must hold the balance fairly between the contending parties in order to restore confidence in the adjudicatory process. If the move towards substantial justice, as adumbrated upon by the courts themselves[96], is to be achieved, the courts must champion the 'de-technicality' process by a restrictive interpretation of statutory provisions which give imprimatur to technicalities rather than substantial justice. Given the relevance of electoral politics, slavish adherence to such provisions, even when it is glaring that doing so will occasion injustice to one of the parties, is a great disservice to our nation and its democratic practice.

But for the judicial arm to deliver on its mandate it must purge itself of the corruption that often militates against its effectiveness and which keeps it seemingly tied to the apron-strings of the political class. Issues around competence of judicial officers need to be addressed by the appointing and regulatory authorities in order to sanitise the system. The same recommendation holds true for legal practitioners who have an undoubted role to play in the attainment of electoral justice in the country.

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[93] Olakunle Olasanmi, 'Kogi Election: Supreme Court Voids Order against BVAS Inspection' *Leadership* (March 2024 <https://leadership.ng/kogi-election-supreme-court-voids-order-against-bivas-inspection/>, accessed 4th September 2024.

[94] See *Peter Obi v INEC* (2023) in Petition No. CA/PEPC/03/2023, and Jide Ajani, 'Futility of Card Reader, Server, BVAS & IReV: NASS, INEC, Judiciary and Future Elections' Vanguard (30th October 2023) <https://www.vanguardngr.com/2023/10/futility-of-card-reader-server-bvas-irev-nass-inec-judiciary-and-future-elections/> accessed 5 September 2024.

[95] For more on internal democracy, see Muiz Banire, 'The Courts and Internal Democracy in Nigeria' M A Banire & Associates <https://mabandassociates.com/the-courts-and-internal-democracy-in-political-parties/>, accessed 18th February, 2023.

[96] The courts have emphasised the need for substantial, as opposed to technical justice in numerous cases, such as *Pere Ajuwa v Shell Petroleum Development Company* (Suit No SC. 290/2007, decided on Friday December 16, 2011); *Uwazurike v A G Federation* (2007) 8 NWLR (Pt 1035) 1; *Olujimi v Ekit State House of Assembly* (2009)11 NWLR (Pt 1153)464; etc.

It is heartwarming that the National Judicial Council (NJC) and the Legal Practitioners Disciplinary Committee (LPDC) of the Nigerian Bar Association, both of which are bodies that regulate judicial officers and legal practitioners, have recently taken action concerning the ignoble role of some judicial officers and legal practitioners in the issuance of conflicting interim orders in relation to some high-profile cases in the country.[97]

2. Secondly, INEC and other EMBs must strive to ensure and protect their independence and integrity as electoral umpires. They are to ensure scrupulous adherence to the electoral laws without discrimination, as doing so will send a strong message to the political class and other citizens that it is not business as usual. In this connection, any staff of INEC found to have colluded with politicians or any other person in undermining the electoral process should be relieved of their jobs and be made to face the full wrath of the law, in keeping with the quest for electoral justice. On the other hand, the government must be willing to give the EMBs a free hand to superintend the conduct of elections in the country. Valuable lessons need to be learnt from more mature democracies like the United States of America, particularly during the 2020 Presidential Election, where the electoral umpire did not succumb to the pressure by the ruling party to manipulate the results of the polls to its favour.

3. It is about time electoral offenders started to face real prosecution for their involvement in any act of criminality relating to elections. In order to achieve this, law enforcement agencies charged with the responsibility for securing the electoral process must rise to the occasion by ensuring that perpetrators are arrested and arraigned before the appropriate judicial bodies, no matter their position in society. The deterrent effect of a successful arrest and prosecution of election offenders in bringing about sanity in the electoral process is phenomenal. Law enforcement agents who, rather than prevent infractions of the law, constitute themselves as criminals should also be brought to justice.

[97] Ameh Ejekwonyilo, 'Conflicting Court Orders: Seven Lawyers to Face Disciplinary Panel – NBA' *Premium Times* (January 24, 2022) available at <https://www.premiumtimesng.com/news/more-news/507597-conflicting-court-orders-seven-lawyers-to-face-disciplinary-panel-nba.html>, accessed 6th April 2023.