CHALLENGES OF PRE-ELECTION LITIGATIONS IN THE ELECTORAL PROCESS OF NIGERIA: RIVERS AND ZAMFARA STATES' DISPUTES IN PERSPECTIVE

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ABSTRACT

Pre-election litigations involving intra-party conflicts seem to have taken a front-burner in the electoral process of Nigeria, especially since the advent of the current democratic dispensation. Hitherto, at least going by a paucity of reported cases on intra-party conflicts, pre-election litigations between members of political party was a rarity. However, in the last few years there has been a phenomena upsurge in such matters with significant impact on the electoral process of the country. Using the recent decisions of the Supreme Court in pre-election litigations involving members of the All Progressives Congress (APC) in Rivers and Zamfara States, this paper reviews the trajectory of intra-party pre-election litigations and advocates for a reinvention of previous Supreme Court jurisprudence which views such disputes as political questions for which courts should prudentially decline jurisdiction.

I. INTRODUCTION

Since Nigeria returned to democratic governance in 1999, the country has witnessed numerous litigations in respect of elections into various positions in government.[1] Over the years, there has

[1] J. Tochukwu Omenma, O.O. Ibeanu and Ike E. Onyishi (2017) "Election Disputes and the Role of the Courts im Emerging Democracies in Africa: the Nigerian Example", *Journal of Politics and Democratization*, vol. 2, no. 1, pp. 22-55, available at

been noticeable upsurge in election-related disputes before the holding of elections; and after conclusion of elections and declaration of election results.[2] These phenomena have immense implications for the electoral process of the country. Elections are an integral part of the democratic system without which no holder of an otherwise elective office can claim *de jure* legitimacy.[3] In the same vein, where a person is declared winner of a disputed election, until the dispute is resolved one way or another, the *de jure* legitimacy of that declaration remains questionable.[4] Of particular note is the phenomena increase in the number of pre-election litigations across the country in the course of every election cycle.[5] Most of these litigations relate to intra-party disputes.

This paper addresses this trend in the context of the intractable pre-election disputes involving members of the All Progressives Congress (APC) in two states of the federation, Rivers and Zamfara States. The disputes which arose in the nomination of candidates to be fielded by the APC in those two states pose particular concerns because of the differing issues raised in the various courts resulting in the barring of the party and all its candidates from participating in the 2019 general elections in the two states, with the exception of the presidential election. This underscores the decisive impact of pre-election litigations in the electoral process. To appraise the issues raised, the paper is discussed in five parts. After the introduction, attempt is made in part two to clarify what constitutes the electoral process and pre-election litigation. In the third part, the specific details of the pre-election conflicts in Rivers and Zamfara States are discussed. Part four offers a critique of the state of the law in pre-election litigations in Nigeria and its implications not only for the electoral process involving both states in the 2019 general election cycle, but also as it

https://www.researchgate.net/publication/316696495_Disputed_Elections_and_the_Role_of_the_Court_in_Emerging_Democracies_in_Africa_The_Nigerian_Example (accessed 27 April, 2019).

[2] Ibid.

[3] Eline Severs & Alexander Mattlelaer (2014) "A Crisis of Democratic Legitimacy? It's about Legitimation, Stupid", *European Policy Brief*, no. 21, available at http://aei.pitt.edu/63549/1/EPB21-def.pdf (accessed 27 April, 2019).

[4] Ibid.

[5] See note 1.

affects the country's electoral process as a whole. In the final part, the paper concludes with some recommendations.

II. CONCEPTUAL CLARIFICATION

Central to this discussion are a number of conceptual issues which are linked, one way or the other. Of particular interest are the *electoral process* and *pre-election litigation*. In order to effectively draw the linkage between them, it is necessary to clarify their conceptual framework.

Electoral Process

Conceptually, what constitutes the electoral process is often confused with the electoral system. Yet, these are two different concepts even as they both relate to elections and electioneering. The electoral process is said to refer to the entire cycle of election[6]; or simply put, it concerns all activities and procedures in the election of persons to various elective positions in government. In a broader sense, electoral process is said to refer to all pre-election and post-election activities in an election cycle, including but not limited to registration of political parties, registration of voters and delineation of voting constituencies, resolution electoral disputes, election of candidates and return of elected candidates, and the actual swearing-in of the elected.[7]

On its part, the electoral system is also said to refer to "the manner in which votes cast in a general election are translated into seats in the legislature"[8], or "…the method by which voters make a choice between different options."[9] In this regard, matters such as the electoral formula

[6] N. Elekwa (2008) "The Electoral Process in Nigeria: How to make INEC succeed" *The Nigerian Electoral Journal*, 2 (1), 30.

[7]See, Desmond Okechukwu Nnamani (2014) "Electoral Process and Challenges of Good Governance in the Nigerian State (1999-2011)", *Journal of Good Governance and Sustainable Development in Africa*, Vol. 2, No. 3, 80.

[8] Alina Rocha Menochal (2011) "Why Electoral System matter: an analysis of their incentives and effects on key areas of governance", being a research report submitted to Overseas Development Institute (ODI), available at https://www.odi.org/publications/6057-why-electoral-systems-matter-analysis-their-incentives-and-effects-key-areas-governance at p. 2 (accessed 24 April, 2019).

[9]John T. Ishiyama (2012) *Comparative Politics: Principles of Democracy and Democratization* (first ed.), New Jersey, Blackwell Publishing, 157 at 158.

(plurality/majority, proportional, mixed, or other forms of electoral formula); the ballot structure (whether the voter votes for a candidate or a party, and whether the voter makes a single choice or expresses a series of preferences); and the district magnitude (number of representatives to the legislature that a particular district elects, etc.), all constitute the essential elements of an electoral system.[10]

In this paper, the focus is limited to the conceptualized meaning of the electoral process which has been well endorsed by a number of judicial decisions[11] in the absence of a definitive interpretation of the concept in both the Constitution of the Federal Republic of Nigeria, 1999 (hereafter "the Constitution")[12] and all its Alteration Acts[13], as well as the extant Electoral Act, 2010 (as amended)[14] and the Regulations and Guidelines for the Conduct of the 2019 Elections issued by the Independent National Electoral Commission (INEC).[15] Judicial endorsement for this approach can be found in *National Democratic Party (NDP) v. INEC*, where Ariwoola JSC said "There is no doubt that the issue in the instant appeal involves electoral process *which is the method by which a person is elected to public office in a democratic society"*(italics supplied).[16]

Although this dictum seems to be similar to Professor Ishiyama's conception of the electoral system, the subtle difference is that whereas Justice Ariwoola was quite definitive that electoral

[10] Menochal, note 8, p. 3.
[11] See *National Democratic Party (NDP) v. INEC* (2013) 6 NWLR (Pt. 1350) 392, at 419; *Ojukwu v. Obasanjo* (2004) 1 EPR 626 at 653.
[12] Section 318 is the interpretation section of the Constitution. The section does not interpret what "electoral process" means. It also does not interpret what an "election" means.
[13] There have been seven Alteration Acts to the Constitution since 2010. Three were assented into law in 2010, four in 2018. None of these contain an interpretation of "electoral process" or "election".
[14] The extant Electoral Act, 2010 (as amended) has no provision interpreting "electoral process" or "election".
[15] INEC is permitted by the Constitution to issue regulations and guidelines for election. The latest was issued on 12 January, 2019. It does not contain any provision interpreting what "electoral process" or "election" means. See https://www.inecnigeria.org/wp-content/uploads/2019/01/Regulations-and-Guidelines-2019.pdf
[16] See note 11, at 419.

process entails *method* of *electing a person to public office* in a *democratic system*, Professor Ishiyama writes about electoral system as the *method* by which *voters choose* from different electoral *options* distinct from electing or choosing "a person to public office". In any event, Salami JCA appears to have adumbrated the meaning of the electoral process even further when he said in *Ojukwu v. Obasanjo* (supra) that "The issue of election goes beyond merely voting, as it is a process inclusive of delimitation of constituency, nomination, accreditation, voting itself, counting, collation and return; or declaration of result."[17]

Pre-election Litigation

In a broad sense, pre-election litigation generally refers to suits instituted prior to the actual conduct of elections into contested offices.[18] Nonetheless, in the electoral process of Nigeria, the precise normative meaning of pre-election litigation can now be found in the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No. 21) Act, 2017[19], the Electoral Act, 2010 (as amended) and from judicial interpretation of the said constitutional alteration.[20] Following the constitutional alteration, a new section 285 (14) of the Constitution elaborately defines pre-election matter (for the purpose of the section) to mean any suit by –

(a) an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of selection or nomination of candidates for an election;

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[17] See note 11 at 653

[18] See generally, Justin Levitt (2009) "Long Lines at the Courthouse: Pre-Election Litigation of Election Day Burdens", *Election Law Journal*, pp. 1-65, available at https://www.researchgate.net/publication/228129316_Long_Lines_at_the_Courthouse_Pre-Election_Litigation_of_Election_Day_Burdens (Accessed 24th June, 2019).

[19] Assented to by President Mohammadu Buhari on 7th June, 2018.

[20] See Suit no. CA/A/698/2018 - *Itanyi & Anor. v. Bagudu & Ors.* Delivered on 17th December, 2018 at pp. 32-33. Per P.O. Ige, JCA cited in P.O. Ige (2019) "The Structure of Judicial System in Election Dispute and in the Electoral Process", being a paper presented at *National Judicial Institute 2019 Annual Refresher Course for Judges and Kadis*, 11-15 March, 2019 at NJI, Jabi, Abuja, available at http://nji.gov.ng/demo/wp-content/uploads/2019/03/TOTAL-SEMINAR-AS-ARRANGED.pdf (accessed 23rd April, 2019).

(b) an aspirant challenging the actions, decisions or activities of the Independent National Electoral Commission in respect of his participation in an election or who complains that the provisions of the Electoral Act or any Act of the National Assembly regulating elections in Nigeria has not been complied with by the Independent National Electoral Commission in respect of selection or nomination of candidates and participation in an election; and

(c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidates from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election.

The constitutional alteration also introduces new dimensions to pre-election litigation by limiting time within which such disputes are to be commenced and concluded, in addition to other related matters. These are contained in the new subsections 8, 9, 10, 11, 12 and 13 of section 285 of the Constitution as follows:

(8) Where a preliminary objection or any other interlocutory issue touching on the jurisdiction of the (election) tribunal or court in any pre-election matter or on the competence of the petition itself is raised by a party, the tribunal or court shall suspend its ruling and deliver it at the stage of final judgment; and

(9) Notwithstanding anything to the contrary in this Constitution, every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit.

(10) A Court in every pre-election matter shall deliver its judgment in writing within 180 days from the date of filing of the suit.

(11) An appeal from a decision in a pre-election matter shall be filed within 14 days from the date of the delivery of the judgment appealed against.

(12) An appeal from a decision of a Court in a pre-election matter shall be heard and disposed of within 60 days from the date of filing of the appeal.

(13) An election tribunal or court shall not declare any person a winner of an election in which such a person has not fully participated in all stages of the election.[21]

[21] The meaning of "stages of the election" is not defined by the Constitution. However, in *Yar'Adua & Ors. v. Yandoma & Ors* (2015) 4 NWLR (Pt. 1448) 123 at 177, Muhammad JSC provided an interpretation of what constitutes stages of election thus "Certainly, as asserted by the appellant, an election is along drawn process with distinct stages ending in the declaration of a winner by the returning officer. It entails one's membership of a political party, his indication or desire to be the party's candidate at the election, primaries for the nomination of the party's candidate, presentation

What constitutes pre-election litigation or matter has also been set-out in the Electoral Act, 2010 (as amended), though by inference. For instance, section 87 (9) of the Act confers jurisdiction on the Federal High Court or High Court of a State or the High Court of the Federal Capital Territory to entertain matters in which an aspirant "complains that any provisions of the 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…" Section 31 (5) of the same Act also confers jurisdiction on the same courts to entertain a suit filed by *any person* challenging the candidacy of a person contesting an election on the platform of any political party in a general election or bye-election. The courts have held in a line of cases that both scenario constitute pre-election litigations; meaning that they must be instituted before the actual event or day of voting in an election.[22]

III. PRE-ELECTION LITIGATIONS IN RIVERS AND ZAMFARA STATES

As the 2019 general elections approached, the ruling All Progressives Congress braced up to conduct its congresses and national convention to herald new party executives, the incumbents having reached the end of their tenure.[23] Section 223 (1) (a) and (2) (a) of the Constitution, and section 85 (3) of the extant Electoral Act, 2010 mandatorily require political parties not only to

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of the party's candidate to INEC, the event of election, return of the successful candidate at the election after declaration of scores, and ends with the issuance of certificate of return to the successful candidate."

[22]See generally, *All Progressive Congress & Ors. v. Independent National Electoral Commission & Ors.* (2018) LPELR – 44286; *Ayogu Eze v. Peoples Democratic Party & Ors.* (2019) 1 NWLR (Pt. 1652) 1; *Boko v. Nungwa* (2019) 1 NWLR (Pt. 1654) 395; *Bassey Etim v. Akpan & Ors.* (2019) 1 NWLR (Pt. 1654) 451.

[23] The party concluded the process of electing a National Executive Committee on Friday 13 June 2014 with the election of Chief John Odigie-Oyegun as the National Chairman along with other executive members. See for a full list of those elected to national offices at the party's national convention: "List of APC National Executives" *National Bulletin* Monday 16 June 2014, available at https://www.nigerianbulletin.com/threads/list-of-apc-national-executives.80356/ . See also Oluokun Ayorinde "National Convention: APC Elects Chairman, others" *PM News* Friday June 13, 2014, available at https://www.pmnewsnigeria.com/2014/06/13/national-convention-apc-elects-chairman-others/

elect new executives at all levels at regular intervals for a term "not exceeding four years",[24] but also to do so in an election "conducted in a democratic manner and allowing for all members of the party or duly elected delegates to vote in support of a candidate of their choice."[25] Political parties are also required under section 85 of the Electoral Act to give to the Independent National Electoral Commission (INEC) "at least 21 days notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidates for any of the elective offices specified under" the Electoral Act.

In compliance with these mandatory constitutional and statutory provisions, the APC announced dates for the conduct of its congresses and national convention.[26] The process of electing a new executive committee for the party was concluded with a national convention.[27] However, the exercise did not go quite smoothly in some states. Notably, outcomes of congresses in Rivers and Zamfara States were heavily disputed leading to series of litigations.[28] The situation remained unresolved till the primary elections fell due for nominations of candidates to be fielded by the party for the 2019 general elections.[29] It was in the milieu of these conflicts that the pre-election disputes arose, which prevented the party from fielding candidates in Rivers State, and the judicial nullification of INEC's decision to accept the list of nominees from the party for Zamfara State for

[24] Section 223 (2) (a) of the Constitution.
[25] Sections 223 (1) (a) of the Constitution and 85 (3) of the Electoral Act.
[26] Jamilah Nasir "APC announces new dates for congresses, moves convention to June", *The Cable* April 27, 2018, available at https://www.thecable.ng/apc-announces-new-dates-congress (accessed 25th April, 2019).
[27] See, "List of National Executives elected at the 2018 All Progressives Congress, APC, National Convention", *Vanguard*, June 25, 2018, available at https://www.vanguardngr.com/2018/06/list-of-national-executives-elected-at-2018-all-progressives-congress-apc-national-convention/ (accessed 25th April, 2019).
[28] Adekunbi Ero "A Party's Executive Migraine", available at https://tell.ng/a-partys-executive-migraine/ (accessed at 27 April, 2019).
[29] Ibid.

the 2019 general elections. In order to provide a clear picture of the disputes in the two states, the facts of the disputes are now set out.

Conflict in Rivers State

The scheduled 2018 State Congress of the APC in Rivers State resulted in a dispute as two factions emerged. Meanwhile, before the congress was held, one of the factions had approached the High Court of Rivers State seeking a number of reliefs including an injunction to restrain the holding of the congress. The High Court granted the injunction. Nonetheless, the party proceeded with the congress and subsequently used the list of delegates submitted by the state executive committee that emerged to conduct the primaries for nomination of candidates to be fielded by the party in the 2019 general elections. When the dispute eventually went before the Supreme Court, the court set aside the decision of the Court of Appeal and restored that of the High Court of Rivers State nullifying the state congress and all other actions taken by the factional state executive committee which emerged from the congress, including nullifying the nomination of the party's candidates for the 2019 general elections.

The major plank of the Supreme Court decision is that the party proceeded to conduct the state congress in defiance of the injunctive order of the High Court of Rivers restraining it from conducting the said congress.[30] This was a decision on the preliminary issue of conducting the state congress despite the restraining injunctive order. On the substantive issue of the validity of the congress itself, the High Court of Rivers State had nullified the state congress, which decision was set aside by the Court of Appeal. When the matter was further appealed to the Supreme Court,

[30] Cletus Ukpong "Why APC may not have governorship, other candidates in Rivers", *Premium Times*, October 25, 2018, available at https://www.premiumtimesng.com/regional/south-south-regional/292457-2019-why-apc-may-not-have-governorship-other-candidates-in-rivers.html (accessed 25th April, 2019).

the court again set aside the decision of the Court of Appeal and restored that of the High Court of Rivers on the sole ground that the dispute being a ***pre-election litigation***, the appeal against the decision of the High Court ought to have been filed within 14 days as required by section 285 (11) of the Constitution (as altered), which was not done by the respondent.[31]

Conflict in Zamfara State

Like Rivers State, the congress to elect new executive committee members for the APC in Zamfara State remained disputed in the run up to the primary elections for the 2109 general election. Amidst the conflict, the national executive committee of the party made arrangements to conduct primary elections in the state. The primary elections were disputed due to factional conflicts. Efforts by the national executive to hold fresh primary elections within the deadline fixed by INEC for conduct of primary elections were frustrated because of the factional crisis. INEC subsequently declared that the party was ineligible to field candidates for the 2019 general elections for all elective offices in the state as there was no primary election as prescribed by section 87 of the Electoral Act.[32]

This decision became subject of conflicting judgments of the courts following separate ***pre-election litigations*** filed by the disputing parties. Although INEC later listed the party's candidates submitted by the national executive committee[33] following the ruling of the Court of Appeal sitting in Abuja,[34] the Court of Appeal sitting in Sokoto State, which also presided over pre-election

[31] Evelyn Okakwu "What the Supreme Court Ruling on Rivers means", *Premium Times*, February 13, 2019, available at https://www.premiumtimesng.com/news/more-news/312573-analysis-what-the-supreme-court-ruling-on-rivers-means.html (accessed 25th April, 2019).
[32] See, Adedayo Akinwale, "INEC maintains APC has no candidates in Rivers, Zamfara", *THIS DAY*, February I, 2019, available at https://www.thisdaylive.com/index.php/2019/02/01/inec-maintains-apc-has-no-candidates-in-rivers-zamfara/ (accessed 26 April, 2019)
[33]See, Anthony Ogbonna, "Breaking: INEC finally restores APC in Zamfara on ballot", *VANGUARD*, February 21, 2019, available at https://www.vanguardngr.com/2019/02/breaking-inec-finally-lists-apc-candidates-in-zamfara-on-ballot/ (accessed 26 April, 2019).
[34] "Breaking: Appeal Courts directs INEC to list Zamfara APC candidates for polls", *theeagleonlin.com* February 21, 2019, available at https://theeagleonline.com.ng/breaking-appeal-court-directs-inec-to-list-zamfara-apc-candidates-for-polls/ (accessed 26 April, 2019).

litigation on the disputed nomination exercise, subsequently annulled the purported primary election on which the list was based.[35] The latter court declared that "the nullification of the purported nomination exercise was to serve as a bitter lesson for political parties as they are ought to follow legitimate guidelines and rules".[36] The court further emphasized that "domestic affairs of political parties must (be done) within the confines of the law in dealing with party members and elections."[37] The protracted conflict later shifted to the Supreme Court for final decision.[38] In a unanimous decision, the Supreme Court nullified the primary elections held by the party and declared the votes cast for APC in all positions contested in the state in the general elections (except the presidential election) as "wasted" because the party failed to conduct primaries in accordance with its own rules and as required by law.[39] The court then ordered INEC to return all candidate who were declared runners up in the general election.[40]

IV. PRE-ELECTION LITIGATIONS AND IMPLICATIONS FOR NIGERIA'S ELECTORAL PROCESS

The pre-election litigation disputes in Rivers and Zamfara States in particular, and the state of the law on pre-election litigation in Nigeria in general, raise several concerns for the country's electoral process and invariably, its democratic stability. Of particular note are the problems associated with intra-party conflicts and internal democracy in the party system.

[35] See, "Update: Court of Appeal nullifies Zamfara APC primaries for gov, assembly elections", *PUNCH*, March 25, 2019 https://punchng.com/just-in-appeal-court-nullifies-zamfara-apc-primaries-for-gov-assembly-elections/ (accessed 26 April, 2019).
[36] Ibid.
[37] Ibid.
[38] See, Alex Enumah "Supreme Court Receives Zamfara APC's Record of Appeal", *THIS DAY*, February, 2019, available at https://www.thisdaylive.com/index.php/2019/04/15/supreme-court-receives-zamfara-apcs-records-of-appeal/ (accessed 26 April, 2019).
[39]See, Oludare Richards and Isah Ibrahim, "Jubilation in Zamfara as Supreme Court nullifies APC Candidates' Elections", *The Guardian*, May 25, 2019 https://guardian.ng/news/jubilation-in-zamfara-as-supreme-court-nullifies-apc-candidates-elections/ (accessed May 31, 2019)
[40] Ibid

Intra-party Conflicts and Internal Democracy

What is clear is that conflicts leading to pre-election litigations often emanate from internal management crisis of political parties, and disputes over nomination of party members or aspirants to be fielded as candidates for elections. Since the restoration of democracy in 1999, these conflicts have continued to exacerbate.[41] Many times, they result in violence, bloodshed and even fatalities.[42] In fact, there are statistical evidence showing increased violence and deaths resulting from intra-party conflicts, demonstrating desperate quest for political positions.[43] Intra-party conflicts could also negatively affect the fortunes of political parties in their primary quests to gain political power in government; as happened to the APC with the total exclusion of the party from fielding candidates in Rivers State and nullification of votes casts for candidates of the party in Zamfara State in the 2019 general elections. Apparently to develop a culture of democratic ethics which can minimize and manage conflicts arising from intra-party contestations and infuse a system of internal democracy in political parties, the framers of the Constitution had inserted clauses in the Constitution requiring political parties to adopt democratic methods in the internal management of their affairs.[44] These are further reaffirmed in the Electoral Act. This requirement is to apply not only in elections into party executive positions, but also in nomination of candidates

[41] Muinat Adetayo Adekeye (2017) "Party Primaries, Candidates Selection and intra-party Conflict in Nigeria: PDP in Perspective", *Covenant University Journal of Politics and International Affairs,* vol. 5, no. 1, pp 22-39; Omoruyi Austin Aigbe "Internal Party Conflicts: The Effect of Lack of Internal Democracy in Nigeria's Political Parties – the way forward", available at https://www.academia.edu/24594263/Internal_Party_Conflicts_The_Effect_of_Lack_of_Internal_Party_Democracy_in_Nigeria_s_Political_Parties_-_The_Way_Forward (accessed 26 April, 2019)

[42] See, Aly Verjee, Chris Kwaja, and Oge Onubugu (2018) "Nigeria's 2019 Elections: Change, Continuity, and the Risks to Peace", *United States Institute of Peace Special Report No. 429,* available at https://www.usip.org/sites/default/files/2018-09/sr_429_verjee_et_al_final.pdf

[43] See, Coretin Cohen (2015) "Viloence between and within political parties in Nigeria: statistics, structure and patterns (2006-2014), *IFRA-Nigeria Working Series, No. 50,* available at http://www.nigeriawatch.org/media/html/WP11Cohen.pdf

[44] See section 223 (1) (a) (2) (a) of the Constitution.

to be fielded by political parties in any election.[45] The INEC is exclusively saddled with the task of administratively monitoring strict compliance with these mandatory constitutional and statutory requirements.[46]

However, it would appear that virtually all political parties are caught in the vortex of apparent inability to meet with this objective as shown by the persistence of conflicts in the process of electing their executive members and in the course of nominating candidates for elections. One immediate outcome of such conflicts is the filing of pre-election litigations by aggrieved members. This has inevitably dragged the courts into determining matters of internal management of political parties with far reaching consequences for Nigeria's electoral process and democratic stability. It is in this context that it is necessary to evaluate the impact of pre-election litigations and the role which the courts have had to play in such disputes. In order to make meaning of this recurrent challenge, it is meet to re-appraise the objective of seeking to *formally* or *legally* institute internal democracy in the country's electoral process and the resultant involvement of INEC and the courts in enforcing the objective. This review is important because it provides the tool with which to understand the dimension of intra-party conflicts and the resultant negative impact on political party management and the stability of Nigeria's electoral process.

Instituting Internal Democracy: a necessary objective?

[45] See section 87 of the Electoral Act, 2010 (as amended).
[46] See sections 85 and 86, ibid. See also section 225 of the Constitution.

The question of whether the objective of formally instituting internal democracy in Nigeria's political parties system is necessary, seems to be unavoidable. The idea of internal democracy or "intra-party democracy, refers to the level and methods of including party members in the decision making and deliberation within the party structure."[47] The general belief, which is arguable, is that intra-party democracy nurtures citizens' political competence and may produce more qualified representatives leading to formulation of better political programmes which can be of beneficial effect on the citizens, and the political environment.[48] On the flip side, it's also argued that "too much democratization may hinder parties to keep their electoral promises and also dilute the power of a party's inner leadership."[49] The cross country evidence is that internal management of political parties is regulated in many countries.[50] However, the nature of regulation varies from country to country. These range from "candidate selection rules; internal election for leadership positions; or women's and minorities' representation in the party leadership."[51] The Nigerian legal framework seems to adopt most of these regulations.

However, it appears that in the nomination process or selection of candidates for elections, only a few countries set legally binding regulations.[52] In most legal systems, parties are given the latitude to determine the most appropriate processes and internal regulations suitable to them.[53] This is in consonance with the liberal traditions by which many matured democracies refrain from imposing external regulations on political associations or parties in the belief that they are voluntary bodies for which strict formal regulations are difficult if not unnecessary to regulate. The remedy for

[47] See, "Methods of Promoting Internal Democracy in Political Parties", available at http://aceproject.org/electoral-advice/archive/questions/replies/110615365/mobile_conversation_view (accessed 26 April, 2019).
[48] Ibid.
[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.

breach of internal rules of membership and management are often left to be determined by their internal constitutions. The courts are also reluctant to interfere in decisions taken internally, including those relating to sponsorship as candidates for elections. Whenever such disputes are brought before courts, they decline jurisdiction as they consider such matters political questions for which there can be no precise judicial rule to come to a clear determination.[54]

This liberal tradition was affirmed in Nigeria by the Supreme Court of Nigeria in the 1983 landmark decision of *Onuoha v. Okafor*.[55] This decision was reached even when the operative Constitution of 1979 and the then applicable Electoral Act of 1982 appear to institute a system of internal democracy in intra-party management and in the nomination of candidates for elective positions. The Supreme Court held at the time that what political parties owed to their members seeking nomination was the right to seek nomination under the platform of the party, not the right to be sponsored by the party![56] In that case, the appellant won the primary election to be fielded as a candidate of the Nigeria Peoples' Party (NPP) in the 1983 general elections for Owerri Senatorial District of Imo State. Subsequently, the party constituted a panel to resolve the dispute which arose from the exercise. The party, without conducting a fresh primary election, dropped the appellant as its candidate and replaced him with his defeated opponent at the primary election. The appellant challenged the decision of the party and was successful at the High Court. The party appealed against the decision to the Court of Appeal which held in the party's favour. On appeal to the Supreme Court, the court held that the complaint of the appellant is a political question which is not justiciable; and dismissed the appeal. In the lead judgment, Obaseki JSC said emphatically:

[54] See *Onuoha v. Okafor & Ors* (1983) 2 SCNLR 244 or (1983) 14 NSCC 494, *Per* Obaseki JSC, available at http://ilaw.com.ng/hon-patrick-c-onuoha-v-chief-r-b-k-okafor-chairman-n-p-p-ors-2/ (accessed 26 April, 2019).
[55] Ibid
[56] Ibid

> It is clear to me that … the expressed intention of the Constitution of the Federal Republic 1979 and the Electoral Act 1982 is to give a political party, in the instant appeal the N.P.P. (Nigerian Peoples' Party), the right freely to choose the candidate it will sponsor for election to any elective office or seat in the legislature and in this appeal a seat in the House of Senate of the National Assembly. The exercise of this right is the domestic affairs of the N.P.P. guided by its constitution. There are no judicial criteria or yardstick to determine which candidate a political party ought to choose and the judiciary is therefore unable to exercise any judicial power in the matter. It is a matter over which it has no jurisdiction. The question of the candidate a political party will sponsor is more in the nature of a political question which the courts are not qualified to deliberate upon and answer. The judiciary has been relieved of the task of answering the question by the Electoral Act when it gave the power to the leader of the political party to answer the question. It is therefore my view that the matter in dispute brought before the Court is not justiciable.

The relevant portion of the Electoral Act, 1982 upon which His Lordship came to this significant conclusion was section 83 (2), which provided thus "S. 83 (2) Where there is doubt as to whether a candidate is sponsored by a political party, the commission (i.e. the Federal Electoral Commission) shall resolve same by consulting the leader of the political party." In the view of Obaseki, JSC, which was unanimously endorsed by the entire court, based on the provision, the "real power to make a choice is, in my view, in the political party through its leader."[57] This was the state of the law which was reaffirmed in *Dalhatu v. Turaki*,[58] until a 2006 amendment to the Electoral Act, by which political parties were required to give "cogent and verifiable reasons" for substituting a candidate whose name had been submitted to INEC as a candidate for an election.[59] The section provided:

(1) A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.

(2) An application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons.

[57] Ibid.
[58] (2003) 15 NWLR (Pt. 843) 310
[59] See section 34 (1) (2) of the Electoral Act 2006 (as amended).

The Supreme Court subsequently endorsed this amendment, holding that it created a different context for which its earlier decisions in *Onuoha v. Okafor* and *Dalhatu v. Turaki* were inapplicable in so far as the issue of the power of political parties to freely determine candidates to sponsor. The first case in which the court came to this conclusion is *Ugwu v. Ararume*.[60] The other is the more celebrated case of *Ameachi v. INEC & Ano.,*[61] perhaps more celebrated because by the latter decision, a sitting Governor of a state was removed from office on ground that the substitution of the appellant by his political party, the PDP, was in contravention of the provision of section 34 (1) (2) of the Electoral Act, 2006 (as amended).

From the foregoing, it would appear that if the state of the law had remained as provided in the pre-2006 Electoral Act, the situation in Rivers State pre-election disputes would probably have been avoided as the INEC would have had no say in the matter of who was sponsored by the APC into all the disputed positions. This would also have been the scenario in the conflict in Zamfara State as the court would have declined jurisdiction on the matter in consonance with the *Onuoha* jurisprudence. As to whether this is healthy for the objective of infusing the ethic of internal democracy in intra-party management of political parties, it is clear from the cross country evidence of even advanced democracies that there is really no hard and fast rule on internal democracy. The accustomed practice is to provide as much leeway as possible for political parties to manage their intra-party processes including

[60] (2007) 12 NWLR (Pt. 1048) 365.
[61] (2008) 5 NWLR (Pt. 1080) 227.

choosing their leadership and nominating who they wish to sponsor as candidates for elections. There is no plausible reason why this cannot be the case in Nigeria as well.

In any event, countries which have legally formalized intra-party democracy regulations did so not necessarily to promote democratic values but due to several other factors including international political pressure;[62] for fear of what was considered negative economic ideology;[63] to compel inclusion of disadvantaged segments such as women[64] and mainly to compel new political parties to gain formal registration.[65] Nigeria has also instituted similar non-majoritarian or consociational policy in the intra-party affairs of political parties first in the Constitution of 1979[66] and subsequently in the extant Constitution of 1999.[67] Therefore, there seems to be nothing entirely sacrosanct in the apparent fixation on instituting the objective of internal democracy through formal, normative rules of control of the intra-party management processes of political parties. As we have witnessed especially since 2006 with the amendment of the Electoral Act in that year, this objective has proved to be counter-productive not only to internal cohesion of political parties, but also to the stability of the electoral process of the country with the rather un-abating spate of pre-election litigations in every election cycle since then.

[62] As in the case of Germany where regulations on intra-party "democracy were originally enacted to respond to international political pressure to convince the world of the country's objection to fascism and totalitarianism of all sorts". See note 47.
[63] As in the case of Finland, where "due to fear of soviet communism all political organizations were regulated by law and communist organizations were banned through the 1917 Constitution." See note 47.
[64] As in the cases of Venezuela, Nepal, Belgium and France. See note 47.
[65] As in the case of India. See note 47.
[66] See section 203 (2) (b) which requires that members of the executive committee or other governing body of the political party shall reflect the federal character of the country by belonging to different states of not less than two-thirds of the states of the federation.
[67] See section 223 (2) (b) which reproduces the entire provisions of section 203 (2) (b) of the Constitution, 1979.

To put the issue beyond doubt, a number of challenges can be identified with pre-election litigations in the country:

First, a clear challenge is the spate of pre-election litigations that currently dominate the dockets of the courts which has adversely denied political parties leadership the latitude to control their parties' internal processes without frequent external intrusion, even by the courts. This situation was initially spawned by the provisions of the then section 34 (1) and (2) of the Electoral Act, as amended in 2006 upon which *Ugwu v. Arurume* and *Ameachi v. INEC* and several others were decided. Although that provision was subsequently deleted from the Electoral Act (as amended in 2010), yet political parties are still prohibited from exercising the latitude to fully determine who they choose to sponsor as candidate in an election. Thus, by section 33 of the extant Electoral Act, 2010 (as amended), a "political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 32 of the Act (on nomination of candidate), except in the case of death or withdrawal". In the particular case of withdrawal of candidature, only a nominated candidate may by notice in writing signed by him and delivered by himself to the political party that nominated him for the election, can the withdrawal be effective, after conveyance of the withdrawal by the party to INEC not later than 45 days to the election. Any candidate who is aggrieved with non-compliance with these provisions can still seek redress through a pre-election litigation process.

In addition, section 87 (9) of the Electoral Act (as amended in 2010) grants an aspirant who complains that the provisions of the Act and the guidelines of a political party (in respect of conduct of primaries through democratic means of direct or indirect voting, etc.) have 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 High Court of a State or Federal Capital Territory for redress. Similarly, the new section 285 (14) brought about by the Constitution of the Federal republic of Nigeria, 1999 (Fourth Alteration, No. 21) Act, 2017 appears to have further opened a floodgate for pre-election litigation even as that may not have been the actual intention of the new provision.[68] This is because the alteration expands the scope of pre-election litigation by the elaborate efforts to define what constitutes "pre-election matter", most of which connect with intra-party matters and decisions taken by INEC in the electoral process, including those affecting its supervisory role over political parties in respect of nomination of candidates for an election and related matters.

Second, the upsurge in pre-election matters being connected often with complaints of failure of political parties to comply with the legal framework on internal democracy has increased the visibility of the courts in the electoral process and invariably, intra-party politics of political parties, with very negative consequences for the judicial system. As correctly submitted by Justice Obaseki in the *Onuoha* case, hard as a court may try, the judicial machinery is ill-equipped to resolve internal political party disputes because the tool of the justice process are not designed to effectively resolve political questions. In that event, the courts are being exposed needlessly to enforce the objective of internal democracy contained in the country's electoral legal framework when such a task is best left to the internal mechanisms of political parties and possibly in conjunction with INEC (as final arbiter), as was provided in section 83 (2) of Electoral Act, 1982.

Third, pre-election litigations may adversely deny political parties of the opportunity to field candidates for election if disputing parties are unable to agree on peaceful resolution of conflicts

[68] Seun Adeyeye "Constitutional Amendment: why we set time-frame for pre-election matters – Senate Deputy President", *Pulse Nigeria* October 6, 2018 https://www.pulse.ng/news/politics/ike-ekweremadu-constitution-amendment-why-we-set-time-frame-for-pre-election-matters/jrm27by (accessed 26 April 2019).

resulting either from leadership tussle or nomination exercise for election of candidates to be sponsored by such political parties. The case of Rivers and Zamfara States easily points to this with the unprecedented result that a major political party was denied the opportunity of contesting elections in the two states by stroke of judicial pronouncements. Such litigations may actually further affect a political party in an election even if successfully resolved, especially in favour of a candidate who the party actually does not desire to sponsor. This point was also made by Justice Obaseki in the *Onuoha* case.

In the end, candidates depend on the whole machinery of the party, including the leadership and followership, talk less of financing, to be able to win elections. Where the party leadership, especially, is opposed to the candidature of a candidate who emerged through a pre-election litigation, the likelihood is that the party will withdraw support for such a candidate in the actual election with the consequence of certain defeat for the party and the candidate. The net effect of this is that the country's democratic stability suffers adversely where political parties are placed in the awkward situation where they literarily have to constantly look over their shoulders in their internal political affairs. Where political parties, as voluntary bodies, are unable to operate freely especially through their constituted leadership, this ultimately defeats the expected benefits of seeking to formally instil intra-party democracy in political parties.

V. CONCLUSION AND RECOMMENDATIONS

What is clear from the foregoing is that pre-election litigations have had deleterious impact on the electoral process of Nigeria. It is also obvious that most of the litigations could have been avoided if political parties are allowed to resolve intra-party disputes by themselves or in conjunction with the electoral management body, INEC, as was hitherto provided in the Electoral Act of 1982. As correctly observed by Justice Obaseki in the *Onuoha* case, political parties are voluntary bodies

which should not be subjected to extensive external regulations or be restricted to elaborate formal regulations such as now contained in the extant Electoral Act. It must be noted that the provisions of the Constitution of 1999 empowering INEC to monitor the activities of political parties is not different from that of the 1979 version. Yet, Justice Obaseki and the entire Justices of the Supreme Court in the *Onuoha* case exercised prudential judicial restraint when they held that the dispute was a political question which was best left to be resolved by the leader of the political party; in that case, the defunct Nigerian Peoples' Party (NPP). In other words, even as the Constitution of 1979 sought to institute internal democracy in political parties, the Supreme Court was careful not to interfere in the internal affairs of the NPP, and broadly cautioned against any judicial effort to do so in regard to any other political party.

Nevertheless, there was a provision of the Constitution of 1979 which the Supreme Court referred to which, by inference, provided a leeway to aggrieved members of political parties to sponsor themselves if they feel shortchanged in the nomination process. That is section 37 (2) which recognized the right to run for legislative office as an independent candidate. The section provided that "A person elected to a legislative house as a candidate who was not sponsored by any political party shall not be entitled to join or declare himself to be a member of a political party until the general election next following his election as such candidate". This section is, unfortunately, not contained in the Constitution of 1999. It is recommended that this provision should be restored to the Constitution because it provides enormous opportunity for those aspiring to political positions, especially legislative offices, to sponsor themselves. It is also recommended that a similar provision as section 83 (2) of the Electoral Act 1982 be restored to the Electoral Act in order to empower the leadership of political parties, in conjunction with INEC, to resolve disputes over nomination of candidates. Finally, it is recommended that courts should adopt the Supreme Court's

attitude in the *Onuoha* case by avoiding getting involved in intra-party disputes especially in the nomination process. This is in order to insulate themselves from the intense political pressures which intra-party contestations often generate; and also to leave political parties to their (inevitable) electoral fate, if they persist in undermining the political interests of their members by continuing to trump basic principles of internal democracy.