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Quest for internal party democracy in Nigeria: Amendment of electoral act 2010 as an albatross

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The conduct of a credible election has been hinged on many factors. One of them is a well-developed internal party democracy. This assertion underscores the quest for internal democracy among the various political parties in Nigeria. Before the enactment of the Electoral Act 2010, stakeholders had argued that Nigeria needs an Electoral law that will incorporate procedures / steps that will guarantee internal party democracy. This explained the robust acceptance of the Electoral Act 2010. This Act, contained specific provisions dealing with internal party democracy particularly, as it affect the nomination of candidates for elections. The Act further provides that where these procedures are not followed, an aggrieved candidate can apply to the High Court of a State or the Federal High Court for redress. Also, the Act provides that where cases of non-compliance and violations of its provisions particularly those sections dealing with internal party democracy has been established before a court, the court is empowered by the Act to make an order directing the Independent National Electoral Commission (INEC) to withdraw the name(s) of such candidate(s) for that election. This paper therefore seek to examine the recent amendment to the Electoral Act 2010 particularly the sections dealing with the nomination of candidate for election and posit that the amendment were an albatross to the quest for internal party democracy in Nigeria.

Key word: Credible election, political party, internal party democracy, Nigerian electoral acts.

INTRODUCTION

A country's democratic maturity can be assessed by the transparent manner in which elections are conducted in that country, in accordance with the rule of law and in obedience to acceptable international norms. Therefore, the need for political parties to adhere to the principles and practice of internal party democracy cannot be over emphasised. In Nigeria, there is the quest for the enthronement of internal democracy among the registered political parties, particularly as it relate to the conduct of parties primaries where candidates are chosen to stand for elections on the platform of their political parties. Research has shown that most Nigerians believed that internal party democracy does not only affect the credibility of the elections, but also the quality of leadership, governance and economic development¹.

This paper therefore seeks to examine the recent amendment to the Electoral Act 2010, particularly the section dealing with the nomination of candidate for election and posit that the amendment were an albatross to the quest for internal party democracy in Nigeria.

HISTORICAL DEVELOPMENT OF POLITICAL PARTIES IN NIGERIA

All over the world, where democracy is being practised, Elective positions are contested through the instrumentality of political parties. Nigeria is no exception. The Constitution of the Federal Republic of Nigeria 1999 (as amended) hereinafter referred to as "1999 Constitution as amended" made provisions for the existence of political parties. The Constitution also provides that it is only a political party that can canvass for votes for any candidate at any election². To this end,

¹ See " Elections, Internal Party Democracy and Nigeria's Economic Development" p.12 available at [http:// www.valuefronteironline.com](http://www.valuefronteironline.com) (last accessed 7th April 2011)

political parties are indispensable institutions of democracy and democratic societies². It has been argued that sustainable democracy is not achievable without a viable political party system.

A political party has been defined by Edmund Burke as “a body of men united, for the promoting by their joint endeavours the national interest, upon some particular principles which they all agreed”³. Also Remi Anifowose see political parties as a means of organising the people so that they can select from themselves an elite group, which will control the process of public decision-making on their behalf.⁴ For Herbert Simon, a party is “a system of interdependent activities characterized by a high degree of rational direction of behaviour towards ends that are objects of common acknowledgement and expectations.”⁵ Flowing from the definitions above, it is obvious that political parties have a responsibility to present candidate for elections, with the primary aim of capturing political power for the furtherance of common good.⁶ To say that Political parties are very essential in the quest for political maturity of a nation, will amount to stating the obvious. It has been identified, that political parties discharge their responsibilities at three levels in any political system. These are electorate-related functions, government-related function and linkage-related functions.⁷ With regard to the Parties’ electorate-related functions, which entails political representation, expression of peoples’ demand through interest articulation and most importantly the aggregation, simplification and structuring of electoral choice, through the integration of voters into the system by way of political education and mobilization.

Here the parties have direct connection with the people. Government– related function satisfied another aspect for the justification for the formation of political parties. Under this function, the parties are expected to make government accountable by effectively implementing party policies and exercising control over government administration. Thirdly, the linkage – related function places the political party between the government and the people. This function is effectively discharged by aggregating and channelling of public

interest, recruiting and training of political leaders.⁸ Since the formation of the first political party in Nigeria that is, the Nigerian National Democratic Party (NNDP) in 1923 under the leadership of Herbert Macaulay⁹ political parties in Nigeria had strived to fulfil the aforementioned functions. It has been opined that although political party had become useful for the variety of task that required control or communication, it was first invented for more limited and self-serving purpose¹⁰. With the introduction of elective principle into Nigeria by the Clifford Constitution, the tempos of political activities were increased among political parties canvassing for elective positions backed with nationalist agitations. The year 1944 witnessed the formation of National Council of Nigeria and Cameroon (NCNC) under the leadership of Herbert Macaulay and later Nnamdi Azikwe.¹¹ Also in 1950, the Egbe Omo Oduduwa a Yoruba socio-cultural organisation, transformed into a political party known as the Action Group (AG) under the leadership of Chief Obafemi Awolowo. In the North, the dominant political party was the Northern People’s Congress (NPC). In 1951, the Northern Element Progressive Union (NEPU) was form as a breakaway faction from the Northern People’s Congress. These parties dominated the political landscape of the country particularly in their respective regions and in the march toward independence in the First Republic.¹² During the First Republic, it was easy to identify any of these political parties with their ideology. Thus the NPC was an essentially conservative and elitist, while the AG appears to be progressive and socialist in character and finally the NCNC was perceived as a welfarist party driven with very strong nationalist ideology.

The Second Republic that span from 1979 to 1983 witnessed the registration of more political parties in Nigeria. In terms of structure and ideology, there was no much noticeable difference between them and those registered under the First Republic. Rather, what happened was the reincarnation of the parties of the First Republic under different nomenclature.¹³ Thus the National Party of Nigeria (NPN), the Unity Party of Nigeria (UPN), and the Nigerian People’s Party (NPP), replaced the NPC, AG, and NCNC respectively. In addition, the Peoples Redemption Party (PRP), the Great Nigerian People’s Party (GNPP) and the Nigerian Advance Party (NAP) were political parties that were registered as fresh parties during the Second Republic. Under the aborted Third Republic, there was a radical

² J. Shola Omotola, “Political Parties and the Quest for Political Stability in Nigeria”, (2010) vol.6, No.2 *Taiwan J. Democracy*, at. 125.

³ Edmund Burke, *The Works of Edmund Burke*, vol.1 (Boston; Little, Brown, 1993), cited in Joseph Lapalombara and Jeffrey Anderson, “Political Parties,” in *Encyclopedia of Government and Politics*, vol. 1, ed. Mary Hawkesworth and Maurice Kogan (London; Routledge, 2001), 294.

⁴ Remi Anifowose, “Political Parties and Party System in the Fourth Republic of Nigeria: Issues, Problems and Prospects,” in *Issues in Nigeria’s 1999 General Elections*, ed. Iai Olurode and Remi Anifowose (1999, Lagos Nigeria; John West Publication), at 55-78.

⁵ Herbert Simon, “Comments on the Theory of Organization,” *American Political Science Review* (1962) vol.46 no.4, at 1130.

⁶ See footnote 4 above at 128.

⁷ Mick Moore, “What Do Political Parties Do? (2002) available at <http://www.ids.ac.uk/gdr/reviews/review-13.html>. cited in J. Shola Omotola, “Political Parties and the Quest for Political Stability in Nigeria”, (2010) vol.6, No.2 *Taiwan Journal of Democracy*, at. 129.

⁸ Adigun, A. & B. Agbaje “Political Parties and Pressure Groups” in *Elements of Politics*. ed. Remi Anifowose and Francis Enemuio (1999, Lagos, Nigeria: Malthouse Press) at 191-206

⁹ It is important to state that the activities of the NNDP were restricted to contesting elections for the Lagos city council.

¹⁰ See Philip W. Shively, *Power and Choice: An Introduction to Political Science* (1997 New York McGraw Hill) at 200

¹¹ The Party was later re-named National Congress of Nigerian Citizens.

¹² Billy J. Dudley, *Instability and Political Order; Politics and Crisis in Nigeria* (1973 Ibadan, Nigeria; Ibadan University Press.)

¹³ See footnote 4 above, at page 132.

change in the mode and procedure for party formation in Nigeria. The then Federal Military Government¹⁴ formed and imposed two political parties on Nigerian. These were the Social Democratic Party (SDP) and the National Republic Convention (NRC). In terms of political ideology, it has been argued that there is nothing much differentia between the two parties, at least not in ideological dispositions.¹⁵

In 1999, Nigeria returned to multi-party democracy following the successful inauguration of the transition programme by the then Military Head of State, General Abdulsalm Abubakar. Consequently, three political parties were initially registered. These were the People's Democratic Party (PDP), the All People's Party (APP), and All Nigeria People Party (ANPP). The Alliance for Democracy (AD) was registered by the Independent National Electoral Commission (INEC).¹⁶ Later there was a significant increase in the number of political parties in Nigeria by December 2002¹⁷.

Furthermore, additional three political parties were registered between January and February 2006¹⁸. Currently, under the present political dispensation the number of registered political parties in Nigeria that participating in the April 2011 general election is sixty-three.

INSTITUTIONAL AND LEGAL FRAMEWORK FOR ELECTIONS IN NIGERIA

The Electoral Act 2010¹⁹ (as amended) contained the legal and institutional framework for the conduct of elections in Nigeria. This enactment regulates all matters relating to election. Apart from the Electoral Act 2010 (as amended), the 1999 Constitution (as amended) also deals with pre- election matters.

The 1999 Constitution (as amended) provides in section 153 (1) (f) the establishment of the Independent

National Election Commission (INEC). This Federal Executive body is saddled with the responsibility for the conduct of free and fair elections in Nigeria. It is imperative to mention that since 1959 till date, Nigeria has always had an election commission known with different acronym. Their functions have basically remained the same, but for some few modifications as dictated by the Constitution. These functions include powers to regulate and carry out the registration of voters, delineation of constituencies, registration of political parties, and regulation of and the conduct of election proper²⁰. The first Electoral Commission to be established in Nigeria was the Electoral Commission of Nigeria (ECN). This body conducted the 1959 elections. In 1960, a new electoral body was established. It was known as the Federal Electoral Commission (FEC). This body replaced the Electoral Commission of Nigeria (ECN). The Federal Electoral Commission conducted the Parliamentary Elections of 1964 and the Regional Parliamentary Elections of 1965.

In 1966 following the military take-over of government, and with the abrogation of all democratic institutions in the country, the Federal Electoral Commission was subsequently dissolved. Preparatory to the handing of power to the civilian administration, the then Federal Military Government headed by General Olusegun Obasanjo²¹ in 1976²² established the Federal Electoral Commission (FEDECO). In 1983, the Federal Electoral Commission (FEDECO) was dissolved by the then Military Administration after seizing power from the civilian government.

In 1987, General Ibrahim Babangida's military administration established the National Electoral Commission (NEC)²³ preparatory to handing-over to a civilian administration. The National Electoral Commission (NEC) was vested substantially with the same powers as the Federal Electoral Commission (FEDECO)²⁴ except that there were two significant limitations. Firstly, there was restriction as to the numbers of political parties that can be registered by the commission. In fact, the commission was directed to register only two political parties formed and imposed on Nigerians by the Armed Forces Ruling Council. These two political parties were: the National Republican Convention (NRC) and the Social Democratic Party (SDP)²⁵. Secondly, the commission was vested with powers to conduct all elections including the local government elections, unlike the situation under Decree

¹⁴ Headed by General Ibrahim Bdamasi Babangida (Rtd) CFR, DSS, mni August 27, 1985-August 27, 1993.

¹⁵ Adele Jinadu, "Electoral Administration in Africa: A Nigerian Case Study under the Transition to Civil Rule Process" in *The Political Economy of Nigeria under Military Rule, 1984-1993*, ed. Said Adejumo and Abubakar Momoh (1995, Harare, Zimbabwe: SAPES Books); Peter M. Lewis, "Endgame in Nigeria? The Potitics of a Failed Transition Programme", *African Affairs* 93 (1994): 323-340; and Omo Omoruyi, *Parties and Politics in Nigeria* (2002, Boston: Advancing Democracy in Africa [ADA])

¹⁶ J. Shola Omotola, "The 2003 Nigerian Second Election: Some Comments," *Political Science Review* 3, Nos. 1 and 2 (2004): 126-138, and Said Adejumo and Michael Kehind, "Building Democracy without Democrats? Political Parties and Threats of Democratic Reversal in Nigeria." *Journal of African Elections* 6, no.2. (2007); 93-113.

¹⁷ The number of registered political parties stood at thirty.

¹⁸ Antonia Okosi-Simibine, "Political Vagrancy and Democratic Consolidation in Nigeria," in *Elections and Democratic Consolidation in Nigeria*, ed. Godwin Onu and Abubakar Momoh (2005, Lagos Nigeria; Nigeria Political Science Association [NPSA], 17-32 and Godwin Onu and Abubakar Momoh, eds., *Elections and Democratic Consolidation in Nigeria* (2005 Lagos Nigeria; NPSA,)

¹⁹ See the Amended Electoral Act No. 64,2010.

²⁰ C. U. Okoboh (Mrs). "Legal and Institutional Framework for Elections in Nigeria" in C. U. Okoboh ed., *Current Issues in Nigerian Electoral Law (A Legal Perspective)* (2007, Enugu, Snaap Press Ltd.) at 92.

²¹ 13th February 1976-30th September 1979.

²² By virtue of the Federal Electoral Commission Decree No. 41 of 1977.

²³ See National Electoral Commission Act No. 23 of 1987, Cap. N Laws of the Federal of Nigeria, 2004.

²⁴ See Sec.3 of the National Electoral Commission Act No.23 of 1987.

²⁵ Ibid. at Sec.3 (1)(b).

No.41 of 1977.²⁶ In 1993, the National Electoral Commission (NEC) was dissolved and in its place, the National Electoral Commission of Nigeria (NECON) was established.²⁷ The enabling Decree, that is, Decree No.3 of 1996 vested the National Electoral Commission of Nigeria (NECON) with substantially the same functions as those vested in the National Electoral Commission (NEC). However, there was one significant different. There was no restriction as to the numbers of political parties the commission can register.²⁸ In 1998, National Electoral Commission of Nigeria (NECON) was dissolved. The Independent National Electoral Commission (INEC) was established pursuant to the Independent National Election Commission (Establishment, etc) Decree No.17 of 1998.

Under the current civilian dispensation in Nigeria, the body that is charge with the constitutional responsibilities to conduct Federal, State and Area Council elections is the Independent National Election Commission (INEC).²⁹ The powers of the Commission are listed in paragraph F 15 of Part 1 of the third Schedule to the 1999 Constitution (as amended). These include the following:

- a. Organize, undertake and supervise all election to the offices of the President and Vice- President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation.
- b. Register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly.
- c. Monitor the organization and operation of the political parties, including their finances.
- d. Arrange for the 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, prepare, maintain and revise the register of votes 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 to the oath of office prescribed by the law;
- h. Delegate any of its powers to any Resident Electoral Commission; and

²⁶ See footnote 22 above at 92.

²⁷ See the National Electoral Commission of Nigeria Decree No.3 of 1996.

²⁸ See Sec.4 National Electoral Commission of Nigeria (Establishment etc) Decree No.3 of 1996.

²⁹ See P.O. Itua. "Electoral Offences and the Conduct of Credible Election in Nigeria" in C. U. Okoboh ed., *Current Issues in Nigerian Electoral Law (A Legal Perspective)* (2007, Enugu, Snaap Press Ltd.) at 139.

- i. Carry out such other functions as may be conferred upon it by an Act of the National Assembly.

In addition, the establishment, powers and functions of the Independent National Electoral Commission (INEC) have been integrated into the Electoral Act, 2010 as amended. Section 2 of the Electoral Act, as amended incorporates by reference the functions and powers of Independent National Electoral Commission (INEC) under the 1999 Constitution as amended, in addition vest it with the powers to do the following:

- a. Conduct voter and civic education;
- b. Promote knowledge of sound democratic election process and;
- c. Conduct any referendum required to be conducted pursuant to the provision of the 1999 Constitution or any other law or Act of the National Assembly.

It is important to emphases here that the aforementioned powers of Independent National Electoral Commission (INEC) under the 1999 Constitution (as amended) is substantially the same with those listed under Decree No.17 of 1998. The only difference is that the Commission that is, INEC is to organize, undertake and supervise elections to the offices of the President, Vice-President, Governor and Deputy Governor of a State, membership of the Senate, House of Representative and the House of Assembly of each state of the Federation. Therefore, unlike Decree No.3 of 1996 and No.17 of 1998, the Commission under the current laws does not have the power to conduct elections to Local Government Councils.³⁰

RELEVANCY OF INTERNAL DEMOCRACY

There are two schools of thought on the relevancy of internal democracy among political parties in any political system. For Duverger³¹, internal party democracy is very important for the functioning of the democratic system as a whole. On the other hand, authors like Sartori³² stressed that logic of party competition rather than internal party democracy is the element that makes democracy functioning. In Nigerian, there seem to be total disregard for internal party democracy among the registered political parties particularly as it relates to the conducts of parties primaries conducted between the 26th of November 2010 and 15th of January 2011, where candidates were nominated to contest the April 2011

³⁰ See item 22 of the Exclusive Legislative List of the 1999 Constitution, which expressly excludes elections into a Local government council, or any office in such council.

³¹ See Duverger, Maurice, *Political Parties; Their Organization and Activity in Modern State*, (1963, New York; John Wiley & Sons) at 134.

³² Sartori, Giovanni, *Parties and Party System; A Framework for Analysis. Vol.1* (1977; Cambridge, Cambridge University Press.) at 54-56.

general elections on the platform of their political parties.

WHAT IS INTERNAL PARTY DEMOCRACY?

There is no universal definition of the concept of intra-party democracy (internal party democracy), although many scholars agreed on some basic principles of electivity, accountability, transparency, inclusivity, participation, and representation.³³ "Internal party democracy means that the party's should be formed "bottom-up" and that the internal distribution of power should be marked by dispersion at different levels, bodies and individuals rather than by the concentration in one organ".³⁴

Unlike most definitions of democracy at the level of political system, the definition of internal party democracy does not mean a state that can be distinguished from other forms of internal party order. It is rather about the scale by which we can measure the extent to which a party is democratically organized and eventually compare among other parties.³⁵ According to M.A. Mohamed Salih internal party democracy "Implies support for the general interest of the party membership, the public and the state.

It means that party structure and organisation are participatory and inclusive, essentially vehicles for the exercise of nascent democratic leadership and values"³⁶. There are two identified essential instrumental elements of intra-party democracy. The first group involves the organisation of free, fair and regular elections of internal positions as well as candidates for the representative bodies. While the second group involves equal and open participation of entire members and members' group in such a way that interest are more or less equally represented. It is imperative to analyze actual practice by political parties in order to determine whether they adhere to the practice of internal democracy. Three levels of observations are determinable for the purposes of this analysis. These are legal requirements, party regulations, and actual practice.

In Nigeria, these analyses will be carried out with reference to the Electoral Act 2010, (as amended), the Constitutions of the political parties and the actual conducts of the political parties during their various parties primaries conducted prior to the April 2011 general elections.

³³ Jeroen Mimpem "Intra-Party Democracy and Its Discontents Democratization in a Volatile Political Landscape" available at http://plein66.nl/documents/64/Intra-Party_Democracy_and_its_Discontents_Mimpem.pdf accessed on 18th May 2011.

³⁴ G. Cular, "Organisational Development of Parties and Internal party Democracy in Croatia" *Politicka misao*, vol. XLI, (2004) No.5 p.34.

³⁵ *ibid*.

³⁶ M. A. Mohamed Salih "The Challenges of Internal Party Democracy in Africa" in UNDP, *A Hand Book on Working with Political Parties*, (2006, New York UNDP) at 54-55.

THE ELECTORAL ACT 2010 AS AMENDED AND INTERNAL PARTY DEMOCRACY

The Electoral Act 2010 repeals the Electoral Act No, 2 of 2006 and the Independent National Electoral Commission Acts, Cap 15, Laws of the Federation of Nigeria, 2004 and enacts the Electoral Act, 2010 to regulate the conduct of Federal, State and Area Council elections.³⁷ However, when it became apparent to the Commission that there was need to adjust the election time table to accommodate unforeseen exigencies,³⁸ the National Assembly amended the 2010 Electoral Act to accommodate these changes. Immediately after the Bill was signed into law³⁹, it became apparent that some of the amendments done, particularly the one dealing with the compliance with internal party democracy in the choice of party candidate has been done inadvertently to reduce the commission to a toothless bulldog. These amendments, have elicits criticism from political scientists, lawyers, politicians and many stakeholder who viewed the amendments as an albatross to the quest for the attainment of internal party democracy in Nigeria. It is important to mention that the Electoral Act 2010 (as amended) introduced a lot of changes in the procedure for the conduct of elections in Nigeria.

These changes are radically different from what was obtainable under the former regime as prescribed by the 2006 Electoral Act. However, for the purposes of this discourse, this study shall be restricted to the examination and analysis to those sections dealing with the conduct of party primaries, in other to determine whether the Electoral Act 2010 (as amended) incorporated provisions that seek to encourage the practice of internal party democracy in the selections of candidates that represented their political parties in the April 2011 general elections. As stated earlier, in Nigeria, there are currently 63 registered political parties. These parties were registered by the Independent National Electoral Commission to participate in the April 2011 general elections.⁴⁰ The Electoral Act (as amended) makes it mandatory for a political party to give notice to the Commission twenty one days before the conduct of any convention, congress, conference or meeting convened for the purpose of electing members of its executive or for the purposes of nominating any candidate for any elective office specified by the Act. Section 85 (1) of the Act⁴¹ provides as follows:

³⁷ See the explanatory memorandum to the Electoral Act, 2010.

³⁸ Such as time for the Commission to issue notices, receive nomination of candidate from political parties and ensure the proper conduct of political parties.

³⁹ by the President and Commander-in-Chief of the Nigerian Armed Forces, President Goodluck Ebele Jonathan, GCFR.

⁴⁰ See the official website of the Independent National Electoral Commission (INEC) available at <http://www.inecnigeria.org/political-parties/>. (last accessed 25 May 2011).

⁴¹ Amended Electoral Act 2010 .

A registered political party shall give the Commission at least 21 days notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committee, other governing bodies or nominating candidate for any of the elective office specified under the this Act.

Also, the Act gave the Commission the discretion of either to notify or not to notify a political party of its intention to attend and monitor the convention, congress which has been convened by a political party for the purposes of either nominating a candidate or for electing party executives. Section 85 (2) further provides as follows:

The Commission may, with or without prior notice to the political party monitor. And attend any convention, congress, conference or meeting which is convened by a political party for the purpose of:

- (a) Electing members of its executive committees or other governing bodies;
- (b) Nominating a candidate for an election at any level; and
- (c) Approving a merger with any other registered political party.

Furthermore, the Act in section 87 gave a very detailed and comprehensive procedure for the nomination of candidates by political parties. Section 87(1) provides that "a political party seeking to nominate candidate for elections under this Act shall hold primaries for aspirants to all elective positions". Sub section 2 provides as follows: "the procedure for the nomination of the candidate by political parties for the various elective position shall be by direct or indirect primaries." The Act further provides that a political party that adopts the direct primaries procedure shall ensure that all aspirants are given equal opportunity of being voted for by members of the party.⁴² However, where a political party decides to adopt the indirect primaries for the choice of its candidates it shall adopt the procedures outlined in section 87 (4).

The procedures are as follows. Where a political party wishes to nominate a candidate for the position of president, the party shall "hold special Presidential conventions in the Federal Capital Territory, or any other place within the Federation that is agreed by the national executive committee of the party where delegate shall vote for each of the aspirants at designated centre".⁴³ The aspirant with the highest number of votes at the end of the voting shall be declared the winner of the President primaries of the political party and the aspirants name shall be forwarded to the Independent National Commission as the candidate of

the party.⁴⁴ Section 87(4) (b) provides that In the case of the nominations to the position of Governorship candidate, a political party shall, where they intend to sponsor candidate do the following:

- (a) Hold a special congress in the state capital with delegate voting for each of the aspirant at the congress to be held on a specify date appointed by the National Executive Committee (NCE) of the party.⁴⁵
- (b) The aspirant with the highest number of votes at the end of voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Independent National Election Commission as the Candidate of the party, for the particular state.⁴⁶

Section 87(4) (c) deals with the nominations to the position of a Senatorial candidate, House of Representatives and State House of Assembly. Section 87(4)(c) (i) provides that where a political party intend to sponsor a candidates for any of the aforementioned positions, it shall "hold special congress in the senatorial district, federal constituency and the state assembly constituency respectively, with delegates voting for each of the aspirant in designated centre or centres on specified dates." It further provide that "the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Independent National Election Commission as the candidate of the party." With regard to the position of a Chairmanship candidate of an Area Council, the Act in section 87(4)(d)(i) provides that where a political party intend to sponsor a candidate for that position, that party must "hold a special congress in the Area Councils, with delegates voting for each of the aspirants at designated centres on a specified date". Subsection (ii) of section 87(4)(d) further provides "the aspirant with the highest number of votes at the end of the voting shall be declared the winner of the primaries of the party and the aspirant's name shall be forwarded to the Independent National Electoral Commission as the candidate of the party".

In the case of a Councillorship candidate, the direct primaries in the ward and the name of the candidate with the highest number of votes shall be submitted to the Independent National Electoral Commission as the candidate of the party.⁴⁷ The Act provides that where there is only one aspirant in a political party for any of the elective positions mentioned in sub section (4) (a), (b), (c), and the party shall convene a special convention or congress at a designated centre on a specified date for the confirmation of the such aspirant and the name of the aspirant shall be forwarded to the Independent National

⁴² Sec.87 (3) of the Amended Electoral Act 2010.

⁴³ Sec. 87 (4)(a)(i) of the Amended Electoral Act 2010.

⁴⁴ Sec. 87(4)(a)(ii) of the Amended Electoral Act 2010

⁴⁵ Sec.87(4)(b)(i) of the Amended Electoral Act.2010

⁴⁶Sec. 87(4)(b)(ii) of the Amended Electoral Act 2010.

⁴⁷ Sec. 87(5) of the Amended Electoral Act 2010.

Electoral Commission as the candidate of the party.⁴⁸ A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting in addition to delegates already prescribed in the constitution of the party.⁴⁹ The Act further provide that a political appointee at any level shall not be a voting delegate at the Convention or congress of any political party for the purpose of nomination of candidates for any election except where such a political appointee is also an officer of a political party.⁵⁰ Section 87(9) provides that notwithstanding the provisions of the Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election, may apply to the Federal High Court or the High Court of a State or FCT, for redress. However, the Act in section 87(10) provides that nothing in this section shall empower the courts to stop the holding of primaries or general election under this Act pending the determination of a sult.

Having examined the provisions of section 87 in detail, it is imperative for the purposes of this discourse to mention the provisions of section 87(9) of the repealed Electoral Act 2010. That section provide that “where a political party fails to comply with the provisions of this Act in the conduct of its primaries, it candidate for the election shall not be included in the election for the particular position in issue.” This repealed section placed an obligation on the political parties to ensure the observance of internal party democracy and adherence to the provisions of the Electoral Act regarding internal party democracy in the selections of candidates for elections. Sadly, this all-important subsection was deleted from the amended Electoral Act, 2010. Also a proviso was added to section 31 (1) of the amended Electoral Act 2010, which now makes it impossible for the Commission to reject the name of any candidate sponsor, any political party. The section provides as follows:

“Every political party shall not later than 60 days before the date appointed For a general election under the provisions of this Bill, submitted to the Commission in the prescribed forms, the list of the candidates the party proposes to sponsor at the elections, *provided that the Commission shall not reject or disqualify candidates for any reason whatsoever.*”⁵¹

The implication of this subsection is that the commission cannot reject the name(s) of any candidate(s) sponsored by any political party for any

reason whatsoever. It is my humble submission that with the deleting of section 87(9) of the repealed Electoral Act 2010 from the current amended Electoral Act 2010, and with the enactment of the proviso to section 31(1) of the amended Electoral Act, the Amended Electoral Act 2010 metaphorically kills the quest for the attainment of internal party democracy in Nigeria. It therefore means that under the amended Electoral Act 2010, it is only through the judiciary that political parties can be force to obey their own constitutions and comply with the provisions of the amended Electoral Act dealing with internal party democracy in the selection of Candidates for elections. This is achievable because the Amended Electoral Act 2010 in its current section 87(9) gives aspirants legal rights to approach the Federal High Court or the High Court of a state to seek redress where they compliant that their political parties fails to comply with the provisions of the Act dealing with the prescribed mode for the selection of candidates for the general elections.

PARTY CONSTITUTION AND INTERNAL DEMOCRACY

Having discussed the provisions of the amended Electoral Act 2010 as it affects internal party democracy, it is also imperative that we examine the constitutions of the various political parties in order to determine their Constitutional provisions dealing with internal democracy in the selections of candidates for the general elections.

As stated earlier, a total of sixty-three political parties are registered in Nigeria. These parties participated in the April 2011 general elections. It will amount to a herculean task to examine their respective constitutions. However, this study shall examine the constitutions of the three main political parties that is, the Action Congress of Nigeria (ACN), Congress of Progress Change (CPC) and the People Democratic Party (PDP), judging from their performance in the Presidential elections held on the 16th of April 2011. At that election, ACN pulled a total of 2,079,154 votes. The CPC pulled 12,214,853 votes and the PDP pulled a total of 22,495,187 votes.⁵² Based on the aforementioned results, the Independent National Electoral Commission (INEC) declared the presidential candidate of the PDP as the winner at that election.

THE CONSTITUTION OF THE CONGRESS FOR PROGRESS CHANGE (CPC)

The Constitution of the Congress for Progress Change (CPC) in schedule 3 provide for the procedure for the nomination of candidates for the elective positions in the country. For the presidential nominations, the constitution

⁴⁸ Sec.87(6) of the Amended Electoral Act 2010.

⁴⁹ Sec. 87(7) of the Amended Electoral Act 2010.

⁵⁰ Sec.87 (8) of the Amended Electoral Act, 2010

⁵¹ Section 31(1) of Amended Electoral Act 2010, italics are mine for emphasis.

⁵² See footnote 41 above.

provides as follows:

(i) The country shall form one single Constituency for the purpose of nominating a Presidential candidate of the Party. All aspirant seeking nomination shall submit themselves to the National Convention specially convened for that purpose provided that the nomination of each candidate is supported by at least 30 members of the party from each of six Geo political zones in the country.

(ii) The candidate that wins more than fifty percent of the votes of the total Delegates of the Special Convention shall be considered duly nominated.

(iii) Where in the first ballot no candidate fulfils the condition laid down in (ii) earlier, there shall be a second ballot in which the first two candidates scoring the highest votes in the first ballot shall be eligible to contest and the candidate with a simple majority of the votes cast shall be considered duly nominated.

(iv) Or the Board of Trustees may direct the use of direct primaries in each financial member of the party can participate by using option A4 Mutatus mutandi for the Governor, Assembly and Local Government primaries.

For gubernatorial nominations, the constitution provides as follows:

(i) The State shall form one single Constituency for the purpose of nominating a gubernatorial candidate of the party. All aspirants seeking nomination shall submit themselves to the state nomination congress specially convened for that purpose provided that each application is supported by at least ten registered members of the party from each of at least two third of the Local Government Area of the State.

(ii) The candidate that wins more than fifty percent of the votes of the total Delegates of the special congress shall be considered duly nominated.

(iii) Where in the first ballot no candidate fulfils the conditions laid down in (ii) earlier, there shall be a second ballot in which the first two candidates scoring the highest votes in the first ballot shall be eligible to contest and the candidate with a simple majority of the votes cast shall be considered duly nominated.

Furthermore, the constitution also provides for the nomination of Local Government Chairman in this manner.

(i) The Local Government Area shall form one single Constituency for the purpose of nominating a Local Government Council Chairman candidate of the party. All aspirants seeking nomination shall submit themselves to the Local Government Area congress specially convened for that purpose, provided that each application is supported by at least ten registered members of the party from each of at least two-thirds of the ward in the Local

Government Area.

(i) Where in the first ballot no candidate fulfils the condition laid down in (i) earlier, there shall be a second ballot in which the first two candidates scoring the highest votes in the first ballot shall be eligible to contest and the candidate with the simple majority of the votes cast shall be considered duly nominated.

The procedures for the nomination of Local Government Ward Councillors are provided for as follows:

(i) Each ward shall form one constituency for the purpose of nominating a Local Government Ward Councillor candidate of the Party. All aspirant seeking nomination shall submit themselves to ward General Meeting specially convened for that purpose, provided that each applicant is supported by at least twenty registered members of the party from the ward.

(ii) The candidate that wins more than fifty percent of the votes of the total delegate of the special general meeting shall be considered duly nominated.

(iii) Where in the first ballot, no candidate fulfils the conditions laid down in (ii) earlier, there shall be a second ballot in which the first two candidates scoring the highest votes in first ballot shall be eligible to contest and the candidate with the simple majority of the votes cast shall be considered duly nominated.

The Constitution further provides the manner in which these primaries shall be carried out across the country⁵³. Having examined the provisions of the constitution of the Congress for Progressive Change (CPC), the study will now proceed to discuss the provisions of the constitution of the Action Congress of Nigeria (ACN) dealing with the nomination of candidates for election into public offices. Article 20 of the ACN constitution deals with the nomination of candidates for election into public office. Thus, Article 20.1, which deals with presidential primaries, provides as follows:

(a) For the purposes of the nomination of a presidential candidate of the party, the whole country shall form one constituency.

(b) An aspirant seeking nomination as presidential candidate shall submit himself to election at the National Convention of the party specially convened for that purpose, provided that the nomination of each aspirant is supported by one registered member of the party from each senatorial district in the federation.

(c) For a presidential aspirant to qualify as a candidate at the National Convention of the party he shall have scored in his or her State Congress of the party simple majority of the votes cast by the total number of delegates

⁵³ See generally the provisions of schedule 3 no 5 on the conduct of nominations.

participating at the congress.

(d) Where no aspirant wins majority of the votes cast in his State Congress, there shall be a second ballot in which the first two aspirants with the highest number of votes in the first ballot shall be eligible to contest. The aspirant with highest number of votes cast shall be considered the winner and therefore qualify as candidate at the National Convention.

(e) For the purpose of Article 20.1(b), (c) and (d) of this Constitution the FCT Abuja shall be treated as if it were a State.

(f) Where no aspirant wins majority of the votes cast at the National Convention, there shall be a second ballot in which the first two aspirant with the highest numbers of votes cast in the first ballot shall be eligible to contest and the aspirant with the highest number of votes cast shall be considered the winner and therefore duly nominated.

Also, the Constitution, in Article 21.2 made specific provisions with regard to gubernatorial primaries. It provides as follows:

(a) For the purposes of the nomination of a gubernatorial candidate of the party, the State shall form one constituency while the Ward Congress shall be the Electoral College.

(b) An aspirant seeking nomination as gubernatorial candidate shall submit himself to the election at the Ward Congresses in the State convened specially for that purposes. Any aspirant who scores simple majority of the total votes cast in more than half of the Ward within the State shall be considered winner and therefore duly nominated.

(c) If at the end of the first ballot no winner emerges, there shall be a second ballot in which the two aspirants with the highest number of vote cast in the highest number of ward shall be eligible to contest and the aspirant with a simple majority of the votes cast in the second ballot shall be considered the winner and therefore duly nominated.

Article 21.3 deals specifically with National Assembly Primaries in this manner:

(a) For the purposes of the nomination of a member of the National Assembly of the party, the relevant National Assembly constituency shall form one constituency while the Ward Congress shall be the Electoral College.

(b) An aspirant seeking nomination as a National Assembly candidate shall submit himself to the election at Ward Congress within his constituency specially convened for that purposes. Any aspirant who scores simple majority of the total votes cast in more than half of the Ward within the constituency shall be considered winner and therefore duly nominated.

(c) Where no winner emerges, in the first ballot, there shall be a second ballot in which the two aspirant with the

highest number of vote cast in the highest number of Wards in the first ballot shall be eligible to contest and the aspirant with a simple majority of the vote cast in the second ballot shall be considered the winner and therefore duly nominated.

Furthermore, Article 21.4 provided for the procedure for the State Houses of Assembly Primaries thus:

(a) For the purpose of the nomination of a candidate to the State House of Assembly the area so designated as State House of Assembly Constituency shall be one constituency.

(b) An aspirant seeking nomination as State House of Assembly candidate shall submit himself to the election at the Ward Congresses within his constituency specially convened for that purpose. Any aspirant who scores a simple majority of the total votes cast in more than half of the Wards within the Constituency shall be considered winner and therefore duly nominated.

(c) Where no winner emerges in the first ballot, there shall be a second ballot in which the two aspirants with the highest number of votes cast in the highest number of wards in the first ballot shall be eligible to contest and the aspirant with the simple majority of the vote cast in the second ballot shall be considered the winner and duly nominated.

Article 21.5 contained the procedure for the conduct of Local Government Chairman Primaries. It provides as follows:

(a) For the purpose of the nomination of a Local Government Council Chairman of the party, the Local Government Area shall form one constituency.

(b) An aspirant seeking nomination, as LGA Chairmanship candidate shall submit himself to the election at Ward Congress specially convened for that purpose. Any aspirant who scores a simple majority of the total votes cast in more than half of the ward within the constituency shall be considered winner and therefore duly nominated.

(c) Where no winner emerges in the first ballot, there shall be a second ballot in which the two aspirant with the highest number of votes cast in the highest number of wards in the first ballot shall be eligible to contest and the aspirant with the simple majority of the votes cast in the second ballot shall be considered the winner and duly nominated.

Finally the constitution also provided for the procedure for the conduct of primaries for councillorship. Accordingly, Article 21.6 states as follows:

(a) For the purpose of the nomination of a councillor of the party, each ward shall form one constituency.

(b) An aspirant seeking nomination, as a councillorship candidate shall submit himself to election at the ward congress specially convened for that purposes, provided that his nomination is support by twenty registered members of the party at the ward.

(c) The candidate that wins the highest number of votes cast at the ward congress shall be considered winner.

(d) Where in the first ballot, no candidate wins up to fifty percent of the votes, there shall be a second ballot in which the first two candidates having the highest votes in the first ballot shall be eligible to contest and the candidate with a simple majority of votes cast shall be considered duly nominated.

On like the constitution of the Congress for Progressive Change (CPC), the constitution of the Action Congress of Nigeria (ACN), made adequate provision for an election panel to adjudicate on complaints of candidates emanating from the conduct of the primaries. At the National level, the panel shall be constituted by the National Executive Committee and it shall consist of party members of proven integrity and its membership shall reflect geographical spread. The election panel at the State level shall be constituted by the State Executive Committee and shall consist of seven (7) party members of proven integrity and shall reflect the state geographical spread.⁵⁴

Lastly, the Constitution of the Peoples Democratic Party of Nigeria (PDP) 2009 (as amended), in article 17 makes elaborate provision for the nomination of candidate for election into public offices. The National Executive Committee of the party is charge with the responsibly for the formulation of guideline and regulation for the nomination of candidates for election in to public office at all level and its shall be the final authority for resolving all disputes relating to the choice of candidates for the party for any election and for confirming the names or list of names of candidates for the party in any elective public office in the federation.⁵⁵ Article 17.2 contained the procedure for the selection of the party's candidate for elective office in the following manner:

(a) In the conduct of the primaries for the Party's candidate for the post of the President of the Federal Republic of Nigeria, the primary shall be held at the National Convention of the Party specially convened for that purposes.

(b) In the conduct of primaries for the Party's candidate for the post of the Governorship of a state, the primary shall be held at the state Congress of the party specially convened for that purpose and

(c) In the conduct of the primaries for the Party's

candidate for the post of Local Government council chairman and House of Assembly, the primaries shall be held at the local government constituency headquarter.

(d) In the conduct of the primaries for the Party's candidate for the post of member of the House of Representative, the primaries shall be held at the constituency headquarter.

(e) In the conduct of the primaries for the Party's candidate for the post of senator the primaries shall be held at the senatorial constituency headquarter.

(f) Congress for the election of ward officers, councillorship candidate and the 3 delegates to Local Government Congress and state congress out of which at least one (1) shall be a woman shall be by direct primaries, in which all the card carrying members of the party at ward level shall participate.

The constitution further placed a minimum of two years membership span for any member to be eligible to stand for election into any of the party or public office unless the appropriate executive committee rules to the contrary.⁵⁶

NOMINATION OF CANDIDATES AND INTERNAL PARTY DEMOCRACY

Under the previous Electoral Acts, the nominations of candidate were governed by the rules governing preliminaries as to election, which was left for the political parties to decide. In *Tsoho v. Yahaya*⁵⁷, the court held that nomination is an act of suggesting or proposing a person by name to an electoral body as a candidate for an elective office. Preliminary rules are those rules, which determine intra party resolutions and nomination to the elective office.⁵⁸ The relationship here is between the political party in question, its members and the electoral body. Therefore, any person preparing to, or seeking to contest election, must first have been nominated by members of his political party, and presented by his political party to the electoral body. Thus in *Kurfi v. Mohammed*⁵⁹ the court held that the nomination of a candidate is exclusively the responsibility of a political party concerned. In *Onuoha v. Okafor*⁶⁰ a case regarded as the *locus classicus* on this proposition of the law, the appellant who was the plaintiff at the lower court instituted an action by a writ of summons claiming as follows:

"1. A DECLARATION that the decision of the Nigerian Peoples' Party Nomination Elections Petition Panel on

⁵⁴ See generally the provisions of Article 22 of the Constitution of Action Congress of Nigeria (ACN).

⁵⁵ Article 17.1 of the constitution of the Peoples Democratic Party of Nigeria (PDP).

⁵⁶ Article 17.1 (g) of the Constitution of the People Democratic Party 2009 as amended.

⁵⁷ [1999] 4 NWLR (Pt.600) 657

⁵⁸ Afe Babalola, *Election Law and Practice* (2nd ed. 2007 Intec Printers Limited) p 124

⁵⁹ [1993] 2NWLR (Pt. 277) 602

⁶⁰ (1983) SCNLR 244

Tuesday 18th April 1983, nullifying the nomination for the Owerri Senatorial Nigerian Peoples' Party candidate of 21st March 1983 is null and void being contrary to natural justice, equity and good conscience.

2. A DECLARATION that the nomination election result announced by the Presiding Officer for the nomination election for the Owerri Senatorial District NPP candidate on March 21 1983 is valid and subsisting as being in accordance with the guideline for the said election.

3. AN INJUNCTION restraining the Nigerian Peoples' Party from submitting the name of Hon. Isidore Obasi or any name other than that of Hon. P.C. Onuoha to the Federal Electoral Commissioner as the NPP Candidate for Owerri Senatorial District seat in the 1983 general elections."

The High Court granted the reliefs sought and the defendant appealed. The Federal Court of Appeal allowed the appeal, set aside the decision of the High court and dismissed the claims. The appellant herein appealed to the Supreme Court. On the issue of justiciability of the selection of candidate, the Court held that the choice of candidate a political party will sponsor is in the nature of a political question, which is not justiciable in a court of law. On the second question as to whom does the power to nominate and sponsor candidate for an election is vested, the Court held that by virtue of the Constitution of the Federal Republic of Nigeria, 1979 and the Electoral Act, 1982, the power and the right to nominate and sponsor a candidate to an election are vested in a political party and the exercise of such power and right is a matter within the discretion of a political party.

A court has no jurisdiction to nominate or sponsor a particular candidate. In *Dalhatu v. Turaki*⁶¹ the Supreme Court was invited to distinguish between the case before it and its previous decision in *Onuoha v. Okafor*.⁶² In *Dalhatu v. Turaki*⁶³ one of the issues raised for determination by the Supreme Court was whether having regard to the decision of the Supreme Court in *Onuoha v Okafor*, a court of law can validly assume jurisdiction in a case to elect or select a candidate for a political party in its internal affairs to nominate him for sponsorship in an election. The court held that the issue of who should be a candidate of a given political party at any election is clearly a political one to be determined by the rules and the constitution of the said party. Thus it is a domestic affair of the political party and as such not justiciable in a court of law.⁶⁴ Accordingly, Tobi JSC observed as follows:

⁶¹ [2003] 15 NWLR (Pt. 843) 310

⁶² *Supra*.

⁶³ *Supra*.

⁶⁴ See also, *Adebusuyi v. Oduyoye* [2004] 1 NWLR (Pt.834) 406; *Jang v. INEC* [2004] 12 NWLR (Pt.886) 46; *Abdulkadir v. Mamman* [2003] 14 NWLR (Pt.839) 1; *Rimi v. INEC* [2005] 6 NWLR (Pt. 920) 56 and *Osakwe v. INEC* [2005] 13 NWLR (Pt.942) 442.

"Is Onuoha distinguishable from the present case? That is the million Naira question. Although Mr. Akpamgbo came out brilliantly to argue that Onuoha is distinguishable from this case, I do not see any meaningful distinction that can make the difference In favour of his client. As it is, both cases in my understanding, involved the sponsorship of a candidate by a political party. While Onuoha involved the political party of the NPP, this case involved the political party of ANPP"⁶⁵.

From the above, it clear that under the previous Electoral Acts, the court lack the ability to check and enforce the observance of internal party democracy with regard to the selection and nomination of candidates for elections. Consequently, where a party fails to adhere to its guideline and the provisions of its constitution dealing with the selection of candidates for election, the court, unfortunately and literally too turns a blind eye and looked the other way because such matters were considered as domestic and internal affair of the political party which are not justiciable in court. Thus the aggrieved party is left without a remedy.

In contrast, the present Electoral Act, 2010 (as amended) made a significant departure from the principle of law discussed above. As mentioned earlier in the course of this study, section 87 deals with the procedure for the conduct of parties primaries. Section 87 (9) enjoin any aspirant who feels that the provisions of the Electoral Act 2010 (as amended), or the guidance lines / Constitution of his political party has not been adhere to during the nomination process may apply to the Federal High Court or a High Court of a State for redress. This provision reflects the views of Wooten, J in the case of *Mckinnon v. Grogan*⁶⁶ where he stated as follows:

"I consider that citizens are entitled to look to the courts for the same assistance in resolving disputes about the conduct of sporting, political and social organization as they can expect in relation to commercial institutions. If it is not forthcoming a vast and growing sector of the lives of the people in the affluent society will be a legal no man's land, in which disputes are settled not in accordance with justice and the fulfilment of deliberately undertaken obligations, but by deceit, craftiness, arrogant disregard of rights and other means which poison the institution in which they exist, and destroy trust between members."

Also, in *Ugwu v Ararume*⁶⁷ Oguntade JSC (Rtd) in his concurring judgment at pages 875 to 876 (A-A) in considering and departing from the previous decision of the Supreme Court to the effect that selection of candidate for election was the internal affairs of the

⁶⁵ [2003] 15 NWLR (Pt. 843) 346.

⁶⁶ (1974) 1 NSWLR 295, at 298-9

⁶⁷ (2007) ALL FWLR (Pt. 377) 875-876

political parties as held by the same court in *Onuoha v Okafor*⁶⁸ and *Dalhatu v Turaki*⁶⁹ observed as follows:

“...[I]f the political parties, in their own wisdom had written it into their Constitutions that their candidates for election would emerge from their party primaries, it becomes unacceptable that the court should run away from the duty to enforce compliance with the provisions of the parties’ Constitutions...Even if the decision in *ONUOHA VS OKAFOR* (Supra), the contemporary bitterness and this Country’s electoral process dictate that the decision be no longer followed. An observer of the Nigerian political scene today easily discovers that the failure of the parties to ensure intra-party democracy and live by the provision of their Constitutions as to the emergence of candidate for election is one of the major cause of the serious problem hindering the enthronement of a representative government in the Country. If a political party was not to be bound by the provisions of its Constitution concerning party primaries, why would there be the need to send members of the parties aspiring to be candidates for electoral offices on a wild goose chase upon which they dissipate their resources and waste time. Would it not have made better sense in that event for the political parties to just set out the criteria for the emergence of their candidate for electoral offices and then reserve to themselves (that is, the parties) the ultimate power to decide who should contest and who should not.”

Many aspirants took advantage of this statutory provision and appeal to a Court to either set aside some of these nominations done in total disregard to the provisions of the Electoral Act 2010 (as amended) or do not at all. It is a common knowledge that most of the primaries conducted by political parties before the April 2011 general elections in Nigeria were characterised by total disregard for the adherent to the principles of internal party democracy.

In an article titled “Lack of internal democracy still albatross of party primaries” published on the 22nd of January 2011 wherein Mr. Fidelis Soriwei⁷⁰ wrote commenting on the conduct of the parties’ primaries before the April polls as follows:

“The recent primaries conducted by the various political parties have only shown that the culture of inclusive democracy is still miles away from the nation’s political space, which might take some time for Nigeria to catch up with the reality of representative governance. The primaries for the nominations of candidates for the various political offices in preparation for the 2011 general elections may have come and gone, but the

angst generated by the outcome of the primaries has continued to attract opprobrium. Apart from the presidential primaries, which were marked by what observer described as a remarkable improvement in the struggle towards passable democratic conduct...the same cannot be said of the governorship and the legislative primaries at the national and state levels. Cries of candidates’ imposition, parallel congresses, undemocratic conduct and mass protest have greeted the out come of the so-called primaries across the state of the federation. The disagreement and anger generated by the undemocratic conduct associated with the primaries have culminated in threat of mass defection from some of the political parties. For instance, in Delta State, the Governorship and National Assembly primaries were anything far from smooth and democratic. The deeply fractional PDP in the state did not help matters as a section of the party opposed to the State Governor, Dr. Emmanuel Uduaghan, under the leadership of Chief Edward Clark, held a parallel governorship primary, which returned Prof. Saliba Mukoro as the (factional) PDP candidate in the state. However, the incumbent governor, Uduaghan, was returned as the winner of yet another congress organised by the faction of the PDP that enjoys the recognition of the national executive of the party.”

The story was the same in most of the state in the federations. For example, in Akwa Ibom state, it was reported that the contestants for the governorship slot of the PDP had protested the out come of the primaries, which returned the governor, Chief Godswill Akpabio, as the winner of the primary. But because of the disenchantment and the barrage of allegations, which followed the outcome of the primaries, the party leadership (PDP) were compelled to hold a reschedule primary in the state to determine the actual winner of the election. Akpabio emerged victorious by defeating his co-contestant with a considerable margin. He pulled a total of 1,270 votes as against his opponents Mr. Imo Udoh’s, one vote and zero votes for Mr. Frank Okon. In Ogun state, the situation was not different. Two contending factions led by the then governor Otunoba Gbenga Daniel and Dr. Jubril Martins Kuye held two parallel congresses, which produced two candidates for the party. While the Daniel group returned Mr. Gboyega Isiaka, as its candidate, the Kuye group returned Tunji Olurin a former Military governor. In Zamfara State, the primaries of the PDP was also characterised by fractionalisation. While a faction returned the former governor Alhaji Aliyu Shinkafi as it candidate for the April Polls, the other group gave their ticket to Alhaji Inkra Bilbis. The result presented to back the outcome of the parallel primaries showed clearly that Nigerian politicians are yet to come to terms with the reality of true democratic conduct. While Shinkafi was said to have polled 576 votes to defeat Inkra Bilbis, who got 17 votes in the primaries conduct by the

⁶⁸ (1983) SCNLR at 244

⁶⁹ (2003) FWLR (Pt.174) at 247

⁷⁰ “available at: <<http://www.Naijan.com>> (last accessed 1st April 2011)

faction loyal to the then governor, the other faction's result showed that Alhaji Inkra Bilbis defeated Alhaji Shinkafi by pulling a total of 687 votes as against 17 votes by Shinkafi. In Niger state, two candidates belong to the ANPP got the party governorship tickets. Both candidates from the opposing factions Mr. David Umaru and Bala Kuta emerged as winner from the primaries that was reported to have been witnessed by the officials of INEC.⁷¹

Furthermore, in another article titled "INEC, Parties and Internal Democracy" reported by the Daily independent published on the 23rd January 2011⁷² Mr. Mark Mayah reported as follows:

"The Independent National Electoral Commission (INEC) is presently faced with the onerous task of ensuring the enthronement of internal democracy within the various registered political parties in the country. This was necessitated by the internal bickering and in-fighting that has almost torn the party apart as a result of disagreement over party primaries and nomination of candidates. In fact, the electoral agency has in the past three weeks been in the forefront of the campaign to bring sanity in the crisis-ridden political parties...it is on record that before the commencement of the congress, almost all the parties were engaged in internal crisis over who should fly the flags of their parties. Indeed, in Lagos, Edo and Ekiti state where the Action Congress of Nigeria (ACN) has significant strength, the situation is not any different, when taking into cognisance the party's penchant for criticising the activities of the electoral body. In fact, the outcome of the last weekend's ACN primaries in Edo and Ekiti states, even though without reported bloodshed, appears to have rubbished the party's democratic credentials as it has not known peace since then...in ACN, where tempers have practically risen to boiling points, the allegation is that the arrowhead of the party, and former Governor of Lagos State, Asiwaju Bola Ahmed Tinubu personally chose all the candidate for virtually every elective position and foisted the party, a development that is said not to be going down well with some faction within the party in Edo, Ekiti, Osun and Lagos."

Unfortunately, with the apparent non-compliance with the provisions of the Electoral Act 2010 (as amended) governing the adherent to the principles of internal democracy in the selections of candidates for the election by political parties in Nigeria, the Independent National Electoral Commission (INEC) appeared to be helpless in enforcing the strict adherent of the law because of the inclusion of a proviso to section 31(1) to the amended 2010 Electoral Act which made it impossible for the Commission to reject the name of any candidate

submitted by the political party for any reason.⁷³

Thus it was possible for political parties to submit names of candidates different from the names of the candidate that won the primaries that were supervised or monitored by INEC. The negative effect of the proviso to section 31(1) to the amended 2010 Electoral Act, and the deleting of old section 87(9) of the repealed Electoral Act 2010 from the current Electoral Act, was well articulated by Mr. Mike Igini the then INEC Resident Electoral Commissioner (REC) in Cross River State in a paper titled "Amended Electoral Act 2010: The Death of Section 87(9) And The Internment Of Internal Party Democracy"⁷⁴ wherein he stated as follows:

"It is noteworthy that as an electoral management body, INEC has been working under legal uncertainty as the Electoral Act was undergoing amendment being the guiding statute for conducting electoral processes. However, having perused within the last 24 h the gazetted copy of the Electoral Act, 2010 of December 29 as amended, it has become clear that the dictatorship intent in elitism has triumphed over the overarching pluralism that Nigeria people clamour for in matters of internal democracy. To be clear, Section 87(9) of the preceding Electoral Act 2010 clearly underscored the inherent ability of INEC as a Commission to arbitrate timeously on contentious party nominations which do not follow stated party guidelines by specifying in Section 87(9) of the old Electoral Act that "Where a political party fails to comply with the provision of this Act in the conduct of its primaries, its candidate for the election shall not be included in the election for the particular position in issue" whereas in the amended Electoral Act 2010, this provision has been expunged by the lawmakers; more significantly, to nail coffin of Section 87 (9), the lawmakers introduced a new provision to Section 31(1) which completely strips INEC of any say in the matter of disqualification of nominees submitted by the political parties. This new provision states that: "Every political party shall, not later than 60 days before the date appointed for the general election under the provision of this Bill, submit to the commission in the prescribed forms the list of candidates the party proposes to sponsor at the elections, provided that the Commission shall not reject or disqualify candidates for any reasons whatsoever" by using this blanket phrase 'any reason whatsoever' the law makers have stripped INEC, the supposed umpire, of the ability to determine the qualification or status of any candidate submitted by a party, irrespective of any circumstances surrounding a candidate's status, the party now dictates, how and why a candidate can contest in an elections in which they are participating even if INEC has

⁷³ See footnote 52 above

⁷⁴ see the Sunday Trust titled "Candidates' list: How National Assembly castrated INEC"⁷⁴ Available at: <[http:// Sunday.dailytrust.com](http://Sunday.dailytrust.com) > (last accessed 8th April 2011)

⁷¹ For further reading, see footnote 68 above.

⁷² Available at: <[http:// www. allAfrica.com](http://www.allAfrica.com) > (last accessed 1st April 2011)

doubts, it must seek legal interpretation in a court that has no timeline and cannot stop a party's candidate from taking part in an election conducted by INEC. This is akin to a referee being asked to play the role of a spectator regarding who participates in an election. This development can only spell doom for internal democracy of the parties, which as we all know has been the primogeniture crisis for much of the conflict that have bedevilled development of parties and therefore the development of a sustainable democratic culture in our country because an open elitist field only selected candidate who have in most cases, not gone through proper party democratic approbation, as we are currently witnessing in the crisis within most parties”.

The combine effects of the amendment as observed above played out in Kano State before the April elections within the Congress for Progressive Change (CPC). The party conducted its primaries for the gubernatorial aspirants. After the primaries, INEC maintained that the Kano CPC governorship primary election was won by Mohammed Sani Abacha who pulled the highest numbers of votes. The party however, insisted on fielding the name of a retired Colonel Lawal Ja'afaru Isah as its candidate. INEC initially resisted, the party's choice, but in the face of pressure and palpable legal handicaps, the Commission had no choice than to accept the name of Lawal Ja'afaru Isah as the party's candidate for that election.

Some aspirants' sought legal redress relying on the provision of section 87(9) of the Electoral Act 2010 (as amended) to complain about the conduct of the primaries in their political parties. In *Alhaji Adjoto Kabiru v. Anslam Agbabi and Ors.*⁷⁵, the Plaintiff, by Originating Summons, sought the interpretations of section 87(1)(4) (c)(i)(ii), section 33 of the Electoral Act 2010 (as amended) and a letter of the Action Congress of Nigeria (ACN) the second Defendant dated the 13th January 2011 written to the Resident Electoral Commissioner of the Independent National Electoral Commission, (INEC), Edo State. The Plaintiff has asked the court to determine three questions. Question one was whether; having scored the highest numbers of vote cast on the 12th day of January 2011 he is not the proper candidate of the 2nd defendant (ACN) to be sent to the 3rd defendant (INEC) as the candidate for the Edo state House of Assembly for Akoko-Edo constituency. Questions two was Whether the 2nd defendant (ACN) can remove the name of the Plaintiff after same have been submitted to the 3rd defendant (INEC) as candidate of the 2nd defendant for election into the Edo State House of Assembly representing Akoko-Edo constituency 1 for the April, 2011 Election and substituting same with the name of the 1st defendant

(Anslam Agabi) who came 2nd in the primaries conducted by the 2nd defendant's officials on the 12th day of January 2011 and finally whether the 2nd and 3rd defendants can circumvent the provisions of the Electoral Act 2010 (as amended). The Plaintiff therefore claims the following consequential reliefs. A declaration that the purported withdrawal of the Plaintiff's name and the subsequent submission of the name of 1st Defendant as the candidate of the 2nd Defendant to the 3rd Defendant is illegal, null and void and of no legal consequence and or significance. A consequential order mandating the 3rd Defendant not to act on the subsequent submission of the 1st Defendant's name as the candidate of the 2nd Defendant representing Akoko-Edo, Edo State House of Assembly constituency 1. An order of the court compelling and or mandating the 3rd Defendant to act on the letter of the 2nd Defendant dated the 13th day of January, 2011 in which the name of the Plaintiff was named as candidate of the 2nd Defendant for the Akoko-Edo, Edo State House of Assembly Constituency 1 for the April 2011 election and finally an order of the court that the Plaintiff is the valid candidate of the 2nd Defendant for Akoko-Edo constituency 1 Edo state House of Assembly election. The parties presented their arguments before the court, and in a well-considered judgment, the court held as follows. Regarding question one, this is the judgement:

“Upon the totality of evidence before the Court, and the Electoral Act section 87(4) (c) (ii) thereof, the Plaintiff who scored the highest number of votes on the 12th day of January 2011 is the proper candidate of the 2nd Defendant to be sent to the 3rd Defendant as a candidate for the Edo State House of Assembly for Akoko-Edo constituency 1”.⁷⁶

For question two, the court resolved it in the negative and held thus:

“That upon all evidence before the court, and section 33 Electoral Act, the 2nd Defendant cannot remove the name of the Plaintiff after same have been submitted to the 3rd Defendant as candidate of the 2nd Defendant for election into the Edo State House of Assembly representing Akoko-Edo Constituency 1 for April 2011 Election, and substitute same with the name of the 1st Defendant who came 2nd in the primaries conducted by the 2nd Defendant's officials on the 12th day of January 2011”.⁷⁷

Finally, the court also resolved question three in the negative as follows:

“The 2nd and 3rd Defendants cannot circumvent the provision of the Electoral Act 2011 as amended. Where a law or statute provides or prescribes a particular mode of

⁷⁵ Suit No. FHC/B/CS/46/2011 judgement delivered on 13th April 2011 by Honourable Justice Adamu Hobon of the Federal High Court, Benin Judicial Division.

⁷⁶ Id at 12

⁷⁷ Id at 12

doing an official act, that particular mode and it only must be followed and no other way is allowed otherwise the act remains void".⁷⁸

The court resolved the case in the Plaintiff favour and granted all the reliefs sought per the Plaintiff originating summons.

Also in *Hon. Peter Onwusanya v INEC and 3Ors*⁷⁹, the court was called upon to resolve among other things whether having regard to the provision of section 87 (4) (c) of the Amended Electoral Act, 2010, the publication of the 4th Defendant's name as the PDP candidate representing the Oshimil- South Constituency of the Delta State House of Assembly Election due in April 2011 amounted to the violation of the Electoral Act. The facts of the case are as follows. The 3rd Defendant, (PDP) conducted its primaries (through accredited delegates) on the 6th of January 2011, at the Oshimili –South Local Government Arcade, Asaba. At the end of the exercise, the Plaintiff scored the highest number of votes (105) and was duly and openly declared the winner of the said primaries by the PDP returning officer. But strangely, the name of the 4th Defendant (Hon. Emeka Okonji) and incumbent member representing the said constituency at the Delta State House of Assembly and who came forth with only 26 votes at the said primaries was published by the 1st and 2nd Defendant (Independent National Electoral Commission (INEC) and The Resident Electoral Commissioner, Delta State) as the duly nominated candidate of the PDP for the said House of Assembly Election. The Court held in favour of the Plaintiff after considering the provisions of section 87(4) (c) of the Amended Electoral Act 2010. In the judgement, the presiding Judge observed as follows:

"I equally agree with the submission, the above provision of the law is mandatory, and does leave the political parties with any choice, as was brazenly done in the past in Nigeria, of ignoring the wishes of the voters and nominating anybody that the power that be in the party may decide to anoint as the party's candidate. In other words, the clear intention of the legislator is to ensure internal party democracy, or to ensure that democracy is not only entrenched in our system for general election only, but also in the system or process of selection of candidate for elections in Nigeria. Gone are the days of imposition of candidates against the wishes of the voters. I equally agree that, the power that be in the political parties in the past would simply impose a candidate against the wishes of the majority of the party members and then hide under the clause in the party Constitution which provides that the selection of candidate is an internal party affair and cannot be questioned in any

⁷⁸ Id at 13.

⁷⁹ Suit No. FHC/ASB/CS/41/2011. Judgment delivered on the 14th of April by Honourable Justice I.N. BUBA of the Federal High Court, Asaba Judicial Division.

Court of law. The Legislators by section 87(9) of the Amended Electoral Act, 2010, simply cured that mischief by giving any aggrieved aspirant like in the present case, whose victory at the primaries has been denied him, the unfettered power or right to go to court to enforce same without any impediment..."⁸⁰

The court consequently, answered all the questions in the Plaintiff's favour and granted all the reliefs sought by the plaintiff which includes among others that the Plaintiff is by virtue of the Amended Electoral Act, 2010, and the 1999 Constitution (as amended) the valid candidate of the Peoples Democratic Party (PDP) entitled to contest the Delta State House of Assembly Election for the Oshimili –South Constituency having won the party (PDP) primaries for the said election.

Most aspirants that challenged their primaries in court were not as lucky as the plaintiffs in the two cited cases because the Electoral Act, 2010 (as amended) provided in section 87(10) that nothing in the section shall empower the Court to stop the holding of primaries or general election under the Act pending the determination of a suit. As a result, most of the suits that were instituted challenging the conduct and out come of the primaries were either abandoned or struck out on the order of the court, because they were not determined even after the general elections had been held in April 2011.⁸¹ The reason being that there is no timeline provided by the Electoral Act 2010 (as amended) and the 1999 Constitution for the determination of such suit. The only timeline provided for under section 285 (6) of the 1999 Constitution (as amended), relate only to election petition case. In fact, the Peoples Democratic Party (PDP) held its Bayelsa State Gubernatorial primaries on the 19th of November 2011 despite a court order to the contrary relying on the aforementioned section 87(10) of the Electoral Act 2010 (as amended) as its authority for holding the primaries wherein Hon. Seriake Dickson was declared the winner with 365 votes.⁸²

The important of internal party democracy to the over all- political, and economic development of any country cannot be over emphasised. In a survey conducted in Nigeria by ValueFronteira Ltd⁸³ titled "Elections, Internal Party Democracy and Nigeria's Economic Development" it was discovered that "most Nigerians not only believe that internal party democracy affects the credibility of the elections but also the quality of leadership, governance, and economic development. "Many respondents believe

⁸⁰ Id at 30-31.

⁸¹ See for example, *Hon. Victor Obozokhae v. Action Congress of Nigeria (ACN) & 2 Ors.* Suit No. FHC/B/CS/20/2011 file before the Federal High Court of Nigeria, Benin Judicial Division.

⁸² See the Vanguard Newspaper with the title "Bayelsa Guber PDP to hold primaries despite court order" available at <<http://www.vanguardngr.com>> (last assessed 18 November 2011) and Sam Oyandogha "Jonathan's candidate wins PDP ticket" (20 November 2011) Sunday Vanguard (Nigeria) at 1&5.

⁸³ Available at <<http://www.valuefronteiraonline.com>> (last assessed 7 April 2011)

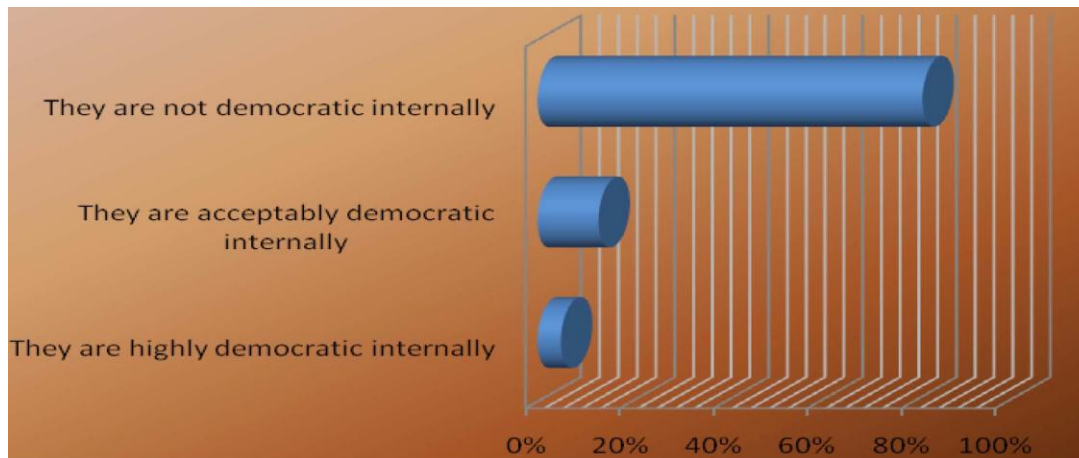


Figure 1. Building democracy without democrats? Political parties and threats of democratic reversal in Nigeria.

that credible election can not be conducted on the foundation of prior imposition of candidates during the primaries of the political parties. Also, the responses show that the growth of democratic institutions and party politics are positively related” and finally “majority agreed that Nigeria’s political parties are not internally democratic. When asked whether Nigeria Political parties are democratic internally, most of the Respondent answered in the negative. Their response is represented in the graph below in Figure 1.⁸⁴

From the graph earlier, about 80% of the respondents believed that Nigerian political parties are not internally democratic.

Also, the survey further shows that most of the Respondent believed that intra-party democracy influences inter-party democracy, and the credibility of the elections. From the survey, about 80% of the respondents agreed to this proposition as represented in Figure 2. However, most of the people interviewed do share the opinion that internal party democracy is the most important ingredient of a successful democracy, and that it has a way of affecting the credibility of the elections.⁸⁵

Furthermore, about 80% of the respondent answered believed that internal party democracy plays a major role in the quality of leadership as represented by the graph in Figure 3.⁸⁶

Also, 80% of the respondents believed that credible general elections couldn’t be conducted in an atmosphere where candidates are imposed at the party primaries elections. This is represented in Figure 4.⁸⁷ The over all impact of imposition of candidate, about 80% of

the respondent believed that those who successfully imposed candidate on the party members during party primaries will also want to do the same during the general election.

Finally on the question whether the shoddy electoral practices in Nigeria are a result of the weak democratic institutions and poor internal party politics, about 85% of the respondents answered in the affirmative, this is represented by the graph in Figure 5.⁸⁸

RECOMMENDATIONS

This study has evaluated all the factors militating against the quest for internal party democracy in Nigeria. It has also shown the role internal party democracy plays in achieving quality leadership, good governance and economic development. In order for Nigeria to achieve an acceptable level of internal party democracy, the following recommendations are suggested.

The Independent National Electoral Commission (INEC) must be legally empowered to monitor and enforce the practice of internal party democracy within all registered political parties in Nigeria. Towards this end, the current Electoral Act 2010 (as amended) must be further amended, to incorporate the deleted provision of section 87(9) of the repeal Electoral Act 2010. For the avoidance of doubt, that section provides that “where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidates for election shall not be included in the election for the particular position in issue.” With such provision in place, the Electoral Commission will be able to enforce compliance with internal democracy mechanism at

⁸⁴ Id at 14

⁸⁵ Id at 16.

⁸⁶ Id at 17.

⁸⁷ Id. at 18.

⁸⁸ Id at 21

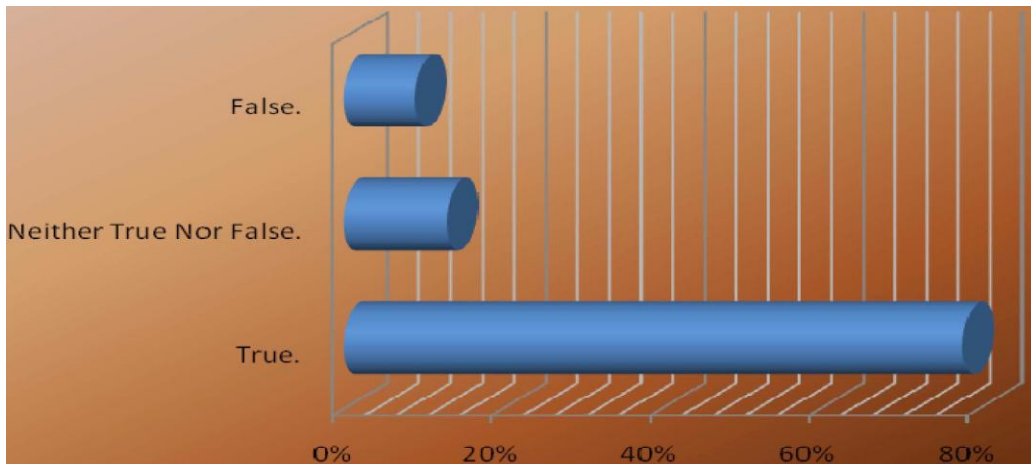


Figure 2. The political economy of Nigeria under military rule.

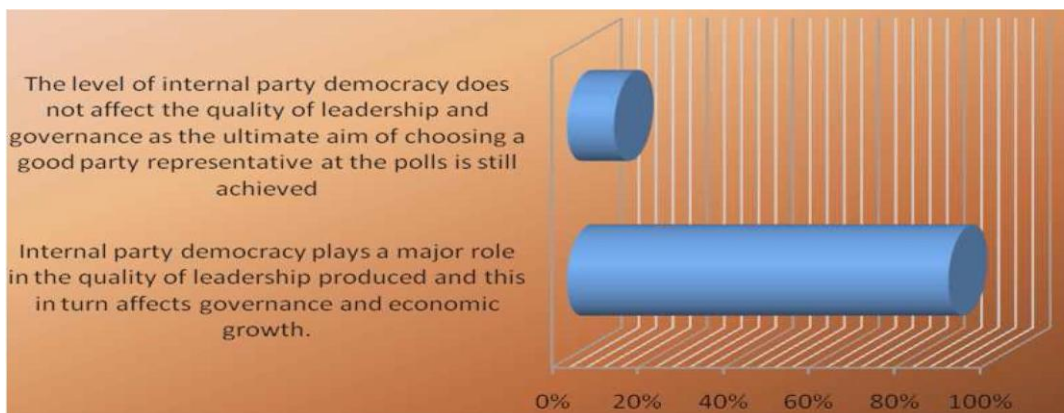


Figure 3. Instability and Political Order; Politics and crisis in Nigeria (1973 Ibadan, Nigeria; Ibadan University Press.

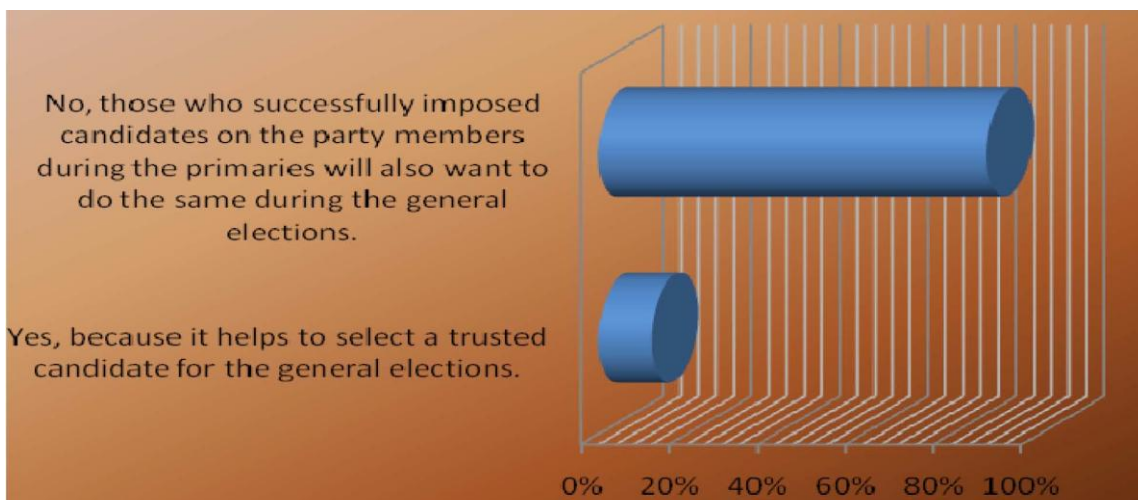


Figure 4. Electoral Administration in Africa: A Nigerian case study under the transition to civil rule process.

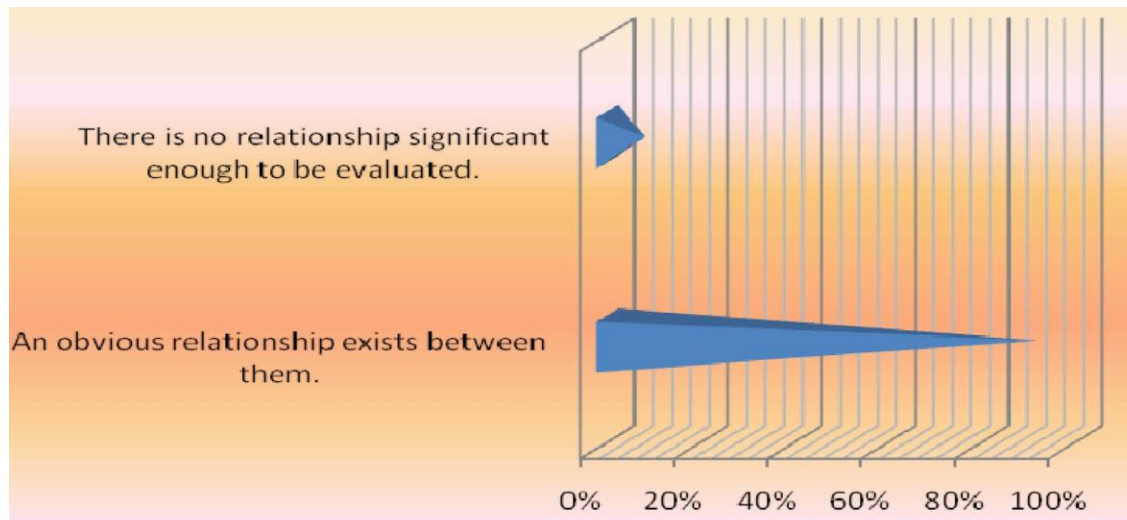


Figure 5. The Amended Electoral Act No. 64,2010.

provided for by the Act, and also strengthen the Commission's supervisory role under section 85(2) of the said Act.

Also, the proviso in section 31(1) of the Electoral Act 2010 (as amended) must be removed. This proviso prohibits the Independent National Electoral Commission (INEC) from disqualifying or rejecting any candidate presented by the political party as its candidate for election "for any reason what so ever". This study has already discussed in detail the negative effect of the aforementioned proviso.

Further more, the 1999 Constitution (as amended) should be further amended to incorporate a time line for the determination of suits instituted by aspirants seeking the judicial redress for the conduct of parties' primaries. The study has shown that because, there is no time limitation, many suits were still pending before various Federal High Court and State High Courts across the country even after the general election had been concluded by the Independent National Electoral Commission (INEC). What is suggested there is similar to what is provided for by section 285 (6) of the 1999 Constitution (as amended) dealing with the duration of an election petition.

It is further recommended that the Independent National Electoral Commission (INEC) should take over the conduct of party primaries in the country, as opposed the current position where the Commission only observed the conduct of such primaries as provided for under section 85(2) of the Electoral Act 2010 (as amended). This can be achieved by a process of central registration during the voter registration exercise. When a prospective voter goes to register during the voter registration, he is asked to identify his party affiliation. The prospective voter can then be registered against his

party affiliation, or registered as a non- affiliate. The data collected during this exercise can form the party register of members that will be use subsequently to conduct the party primaries. The system should be made very flexible to accommodate change of party affiliation at any time by a voter updating the record at any of the Commission's office nationwide. This practice will make it convenient for Independent National Electoral Commission (INEC) to be able to conduct the primaries among the political parties across the country and also assist the Commission to draw up an acceptable timetable for the election, which will also accommodate the period for the Courts to adjudicate on cases emanating from the conduct of the primaries. Whoever wishes to run in the party primaries will be made to pay a prescribed fee to the Commission and not the political party. With Independent National Electoral Commission (INEC) at the helm of the party primaries, the undue influence of the godfathers' and moneybags will be reduced to the barest minimum. Elected officials will be more independent and responsive to the electorate when elected in a free and fair election. This practice will encourage the best candidates to seek political office. It is posited that having emerged from a transparent process, the candidates' will be willing to accept the outcome of the general election.

The current practice of restricting voting to the polling units where a voter registered should be discouraged. INEC should be able to develop a database, which will make it possible for a voter to vote in any part of the country irrespective of where he/she registered. This procedure will encourage national integration and political development.

Registration of voters should be made a continuous exercise. The Commission must put the machinery in motion for the continuous update of the voters register.

The current practice of waiting till some few months to the general election before the register is updated should be discouraged. With adequate information, the Commission will be better prepared to face the challenges of organising a hitch free election.

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