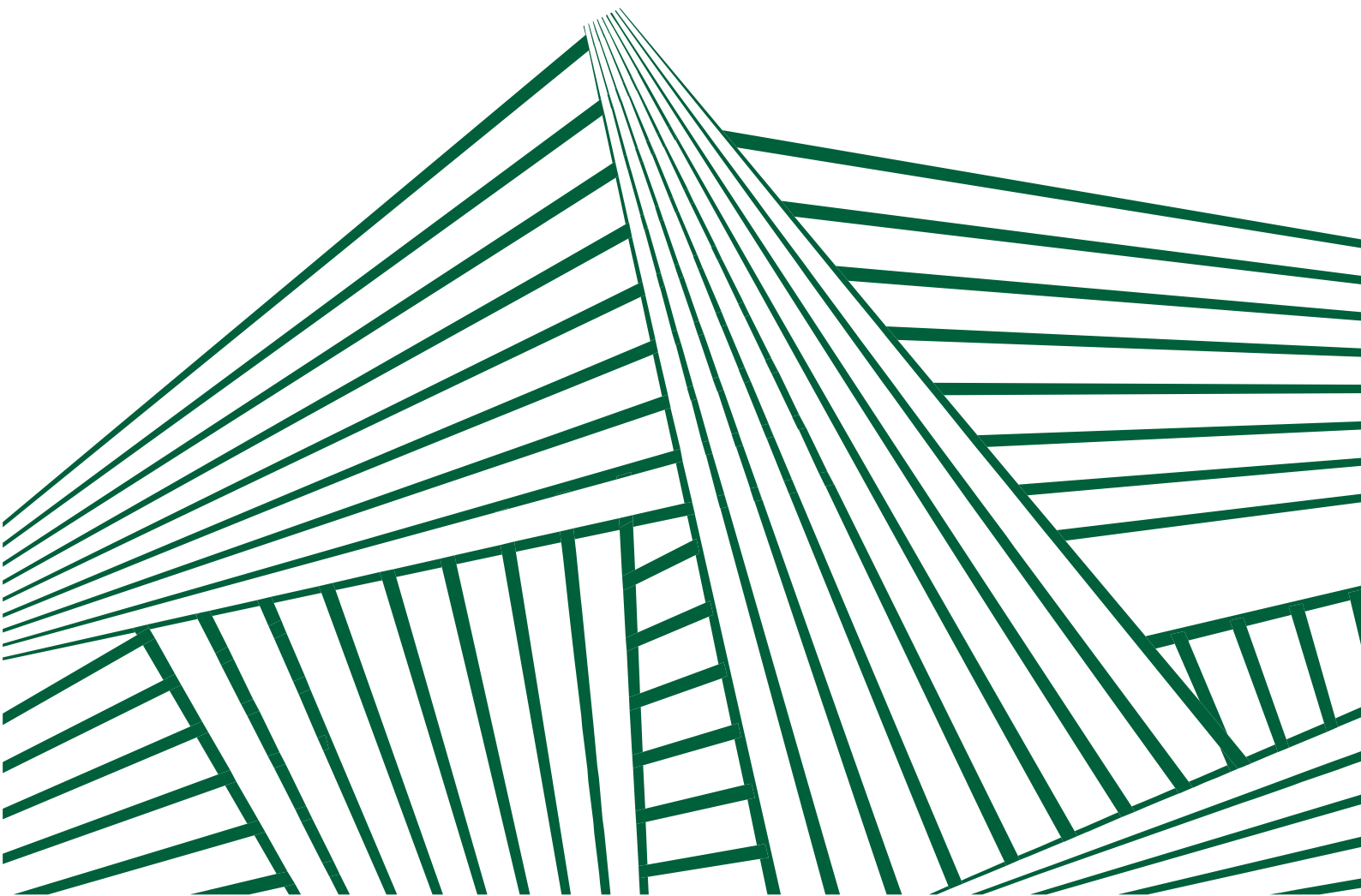


Corruption and Conflicting Judgments in Electoral Process

and their Impact on
Nigeria's Democracy



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List of Acronyms

AA	Action Alliance
APC	All Progressives Congress
APGA	All Progressives Grand Alliance
CJN	Chief Justice of Nigeria
FCT	Federal Capital Territory
ICIR	International Centre for Investigative Reporting
ICPC	Independent Corrupt Practices and other related offences Commission
JSC	Justice of the Supreme Court
KDI	Kimpact Development Initiative
NCC	Nigeria Communication Commission
NJC	Nigeria Judicial Council
PDP	Peoples Democratic Party
PVC	Permanent Voters Card
PWD	Persons with Disability
SAN	Senior Advocate of Nigeria
TI	Transparency International

Introduction

The Judiciary is no doubt an important arm of any system of Government because of its core responsibility of administering justice and serving as the chief custodian of the constitution. The judiciary also performs the important role of adjudicating disputes between individuals, the state and individuals, corporations and the state, and any other parties who are in any form of disputes.¹

Given these functions of the judiciary, it is therefore natural that it would have a central role to play in the electoral process, since the conducts of elections in Nigeria, like several other African countries, are usually marred by irregularities. However, what was not envisaged is the increasing number of elections that end up at the tribunals and the courts for adjudication and how the process has often offset or changed the outcome of such elections to the dismay of the electorates.

This increased role of the judiciary in the electoral process over the years has led to the phenomenon that one of the respondents in the research referred to as the '*tribunalization of democracy in Nigeria*', as you would find in this report. Once an election ends up at the tribunal or the courts, in cases where the parties involved have the resources to pursue the case, there is no telling which direction it would swing. This is now making political actors that lose elections and have the resources to resort to the courts for final decision. This has resulted in a situation where the electorates are no longer deciding who wins elections, but the courts, a trend that could negatively impact the country's democracy.

When an election that is supposed to be decided by the electorates, who usually are in their thousands depending on the office being contested for, is now being decided by one judge or a few selected judges, then that gives room to manipulation and compromise. Just like the two other arms of government, the judiciary is not immune to the scourge of corruption. In recent, years, the judiciary has come under scrutiny and judges are being found complicit in corruption allegations, especially bribery by

¹ Duru, O.W. C. (2012). "The Role and Historical Development of the Judiciary in Nigeria" in Elsevier. Accessed 20th September 2021 via: https://en.wikipedia.org/wiki/Social_Science_Research_Network

lawyers representing parties in various cases before their courts. As contained in this report, an estimated 9.4 billion Naira was said to have been exchanged in bribe-for-judgement between 2018 and 2020 only.

While we were in the final production stage of this report, the Chief Justice of Nigeria, Justice Tanko Mohammed summoned six Chief Judges over increasing cases of conflicting orders in their respective States. The states affected were Jigawa, Kebbi, Cross River, Anambra, and Rivers States. The summon further gave credence to this body of research and the findings that corruption is gradually destroying our democracy. Conflicting judgement is one of the proves of the existence of corruption in our electoral system necessitated by the increasing involvement of the judiciary as a new key player in electioneering process.

Corruption and Conflicting Judgments in Electoral Process and their Impact on Nigeria's Democracy contains the report of two research works that looked at the increasing role of the judiciary in Nigeria's electoral process. While one focuses on the legal perspective of judicial corruption in the electoral process, the other focuses on how it affects the perception of the electorates. For a country that has consistently recorded abysmal voter turnout during elections, this development, if unchecked, would no doubt further exacerbate voter apathy in the country.

This report contains an example of a clear case study of conflicting judgements by the same judge. The substance of the two cases was the same. The judgements were delivered same year. The only differences were location and the parties involved. In addition to the research findings, this report also includes recommendations on how the trend can be reversed and ensure the strengthening of the country's democratic process.

Premium Times Centre for Investigative Journalism thanks our research team and contributors to this project. We also acknowledge and appreciate our funders, the European Union, for their continued support for our work and the strengthening of our democratic governance in Nigeria. It is hoped that relevant agencies of government and other stakeholders would review the findings, as well as the recommendations of this report, with the aim of taking necessary steps to address this problem in order to strengthen and secure our relatively nascent democracy.

Nigeria's Electoral Process and Judicial Corruption

1. Background

Elections satisfy democratic standards when they are defined by competition, participation, and legitimacy.² These principles are considered the basis of liberal democracy and means of assessing democratic consolidation. This is when a political system operates under the principle of liberalism; a system that is defined and limited by the rule of law, affords civil liberties, allows a competitive election involving multiple parties, and guarantees a popularly acceptable outcome.

In Nigeria, a country that ideally aspires to liberal democracy, these democratic standards of elections are governed by a system of laws. For example, the 1999 Constitution, as amended, establishes the Independent National Electoral Commission (INEC) to regulate and conduct elections and defines the qualifications to participate in elections, either to be voted for or to vote.³ In addition to the provisions of the Constitution, the Principal Act, the Electoral Act 2010 as amended, provides for the detailed procedures for the conduct of elections as well as rules governing participation and competition in the electoral process and how powerholders are to legitimately emerge therefrom.

The judiciary, as an arm of government, has the responsibility to interpret the laws,⁴

² Lindberg (2004, 2006) cited in Omotola. J., and Aiyedogbon, G., 2007. *Political participation and voter turnout in Nigeria's 2011 elections. Journal of African Elections*, 11(1).

³ Section 153 of the Constitution establishes INEC, while its powers and obligations are contained in the Third Schedule, Part 1 Item F, paragraphs 14 and 15.

⁴ Section 6(5) of the 1999 Constitution

including those governing the elections in Nigeria in case of disputes. The Nigerian judicial system, set on the British common law, combined with a customary system of laws including Sharia, is described as “a *mélange of practices, processes and policies*.”⁵ The judiciary is, at least in form, the last hope of the common. And when there is a snap along the electoral process, whether it is about participation and competition or dispute over the outcome of elections, the judiciary has the sacred role of delivering remedy and justice in accordance with the dictates of the law and presented facts. Disturbingly, however, the temple of justice is tainted, provoking complaints from various segments of the society, including jurists themselves, lawyers, civil society, media, and ordinary citizens. In Nigeria, corruption has taken a cultural dimension and this aberrant conduct is extended to the judiciary, thereby blighting the country’s justice system and democratic promise.

Concerning elections, a pillar of democracy, the judiciary is vulnerable to manipulation by the political actors.⁶ At various stages of the electoral process, they seek judicial outcomes to either retain or access power or control a party structure. In Nigeria’s democracy, the core motivational variable for the need to retain or access power is, for all intents and purposes, to use public office for private ends, including criminal accumulation of wealth, at the expense of public development and service delivery.⁷ Consequently, elections are still a matter of “*life and death*” despite some well-attested improvements over the years. With this inversion of politics, manipulation of the judiciary is one of the strategies – apart from electoral violence, vote-buying, and compromising the electoral officials – to rig the system and control power at all costs.

In a 2020 report by the Independent Corrupt Practices and other related offences Commission, ICPC, an estimated 9.4 billion Naira was said to have been exchanged

⁵ *Aver Tyavwase Theophilus & Orban Wanger Justin, ‘Judiciary and Democracy, Issues in Contemporary Nigerian Society’, Global Journal of Arts, Humanities and Social Sciences Vol.2, No.1, pp. 86, March 2014, Published by European Centre for Research Training and Development UK (www.ea-journals.org). <https://ablawg.ca/2016/12/07/the-dangers-of-inconsistency-and-consistency-in-supreme-court-jurisprudence/>, cited in an undated paper titled “The Judiciary and Election Matters in Nigeria: Analysis on conflicting judgments in election matters in Nigeria,” by Oluwadare Kolawole.*

⁶ *Oluwadare Kolawole argues in an undated paper, titled: “The Judiciary and Election Matters in Nigeria: Analysis on conflicting judgments in election matters in Nigeria.”*

⁷ *Mimiko, N., 2010. Swimming against the Tide: Development Challenge for the Long Disadvantaged in a Fundamentally Skewed Global System. 233rd Inaugural Lecture of Obafemi Awolowo University, Ile-Ife, Nigeria.*

in bribe-for-judgement schemes between 2018 and 2020.⁸ According to that report, lawyers were mostly responsible for offering bribes for favourable judgements mostly in electoral and political matters. The troubling disclosure only works to reinforce the abrasively dim view of the country's judicial sector by the public. Apart from the involvement of judges in corruption-related investigations and prosecutions, technicality, as opposed to the substance in judicial decisions on electoral matters as well as conflicting judgements by different courts of equal jurisdiction on the same matter or matters with similar facts and a common key point at issue, may have influenced the negative perception of the judiciary by the public.

Using a qualitative approach, this study explores the agency of Nigeria's electoral law in facilitating or impeding democracy and examines a possible structure of corruption in the judicial arm, particularly, in election-related cases through the prisms of legal experts and exploration of existing sources. This report argues that while the law, in some measure, has helped facilitate the democratic standards of Nigeria's elections, challenges remain, considerably regarding a high prevalence of corruption in the judiciary as well as the role of the political actors.

2. Research Question(s) and Objectives

Overall, this study is a qualitative exploration of the role of law in facilitating or impeding the democratic standards of Nigeria's electoral process and how corruption in the judiciary is structured and how it impacts the electoral process.

The foregoing prompted the overall question: *How does the body of laws governing elections as well as corruption in the judicial arm affect the democratic standards of elections in Nigeria?*

The following specific questions were used to handle the overall question in detail, widen perspectives, and shed more light on the research issues.:

- I. Does the law impede the democratic standards of Nigeria's elections?
- II. Does the law facilitate the democratic standards of Nigeria's elections?
- III. Is there a structure of corruption in Nigeria's judiciary and how does it affect election-related matters?

⁸ Kunle Sanni, *PREMIUM TIMES* <https://www.premiumtimesng.com/news/headlines/433257-at-least-n9-4bn-paid-as-bribe-for-justice-in-nigeria-in-two-years-icpc-report.html>

The work is to engage in a thorough and in-depth analysis of the role of law in the electoral process and how this affects rights, voting processes, party politics and the political sphere at large. It is also to examine the judiciary in light of the problem of corruption - that undermines ethics and delivery capacity of public service in Nigeria – and its impacts on the electoral process, as well as how much this impacts the democratic process at large. In addition, this research is to aid the understanding of the structure of corruption in the judicial arm as it relates particularly to electoral matters.

3. Methodology

3.1. Desktop Research and Literature Review

A systematic and targeted review of relevant literature was undertaken in order to deepen the understanding of Nigeria's law governing elections and gain secondary data from media and institutional reports and existing work on democracy, judicial corruption, delivery of judgements. Consulted sources included the 1999 Constitution of the Federal Republic of Nigeria, as amended, Electoral Act, 2010, as amended, court judgements, INEC guidelines, institutional reports, journal articles and newspaper reports, all referenced in the footnotes.

3.2. Interviews

In order to pursue the research questions, this study used a combination of key informants and key in-depth interviews conducted with:

- I. Four professors of law, who have electoral jurisprudence expertise, with two of them also being Senior Advocates of Nigeria;
- II. Two Senior Advocates of Nigeria, who are not professors of law but with experience in election-related litigations;
- III. Two retired judges, who had a working familiarity with electoral jurisprudence;
- IV. Two politicians, who are females and former federal lawmakers, and are familiar with election-related court matters; and
- V. A representative of civil society group, Kimpact Development Initiative, KDI.

The respondents were purposely chosen on the basis of their expertise, relevance to the research questions, and gender as well as the geographical base to have nationally representative and gender-balanced data.

The respondents were asked a number of open-ended questions in separate free-flowing and loosely structured conversations that generated informed perspectives and rich descriptive data on the agency of the law governing elections in facilitating or impeding the democratic standards of Nigerian elections; and corruption in the judiciary and impacts of this on the judgements in election-related matters. All responses are anonymised for ethical reasons and as categorically requested by most of the respondents, citing the sensitive nature of the subject.

3.3. Limitation of research

The research did not include a collection of nationally representative quantitative data using a cross-sectional survey involving randomly selected participants. That would have helped address the (problem of) potential for bias that may have arisen from the non-random selection of participants for the interviews.

4. Research Findings

4.1. Law and Democratic Qualities of Elections

This report engages the question about the agency of Nigerian law in facilitating or impeding democracy, looking particularly at elections as a fundamental pillar. A systematic approach, therefore, would be to qualitatively assess the democratic quality of Nigeria's electoral process, using competition, participation, and legitimacy broadly, and specifically calling to question the role of law in promoting civil rights and ease of the voting process, widening the political space, and enabling public trust in the process and outcome.

Competition: Section 40 of the 1999 Constitution, as altered, provides for the right of citizens to freedom of assembly and association, including political parties accorded recognition by INEC. This creates the legal basis for a multi-party system, which fundamentally ensures competitive elections and affords the people choices; the right to decide on who leads or represents them from an array of candidates presented by various political parties. Further, the Constitution in Sections 221-229 and the Electoral Act in Sections 78-102 stipulate provisions for the formation and regulations of political parties by INEC. Parts of these provisions were applied by INEC in drawing the 2014 Guidelines for the Registration of New Political Parties. Nigeria currently has 18 recognised political parties, after 74 were deregistered in 2020 by INEC, citing provisions of the Constitution (225A) and the Electoral Act

(78). The number of political parties has risen astronomically since 1999 when only three were registered at the inception of the Fourth Republic.

In one interview for this report, the representative of civil society group KDI says the law widens the political space and allows persons out of the entrenched political establishment to form parties and compete. Some of the minor parties are adopted at the state level by politicians, who fail in contests within the major parties, say PDP and APC, to compete in elections.

Regarding local government elections, conducted by the electoral commissions appointed by governors, one respondent, a professor of law, says elections are bare of democratic standards. *“Opposition parties do not participate except those mobilised by the government to participate,”* the respondent says, suggesting that local government elections should instead be conducted by INEC.

Participation: Political participation through voting is a fundamental right guaranteed by law. Sections 9-23 (Part III) of the Electoral Act cover the provisions on the voter registration process. While the law forbids double registration or being registered in more than one place (Section 12(2), a registered voter may apply to change their voting unit or constituency from where they had originally registered (Section 13). This is *“an improvement and it is a way law facilitates participation for a voter, who changes base, for instance, or for any reason may want his or her name transferred to a voters’ list in another unit,”* says one respondent, a Senior Advocate of Nigeria and professor of law.

The law also mandates INEC to continuously register new voters either as they become newly qualified to vote, say, when they turn 18, or because they had not just registered before for any reason (Section 10(1)). However, INEC has to stop registration of voters and revision and updating of voters’ register no later than 30 days before any election (Section 9(5)). While these provisions democratise and facilitate the citizens’ voting right, at least in form, respondents say there are practical impediments. Two law scholars, one from the South, code named ‘M’ and the other from the North, code named ‘G’, among the respondents, say electoral officers are not always available for the continuous registration exercise. For instance, INEC stopped registration of new voters in August 2018 and has announced it is only reopening the exercise in June 2021, running until the third quarter of 2022. This leaves a period of nearly three years without any new registration and means, even more concerning, citizens who turned 18 after the last registration exercise in August 2018 were not registered for the off-cycle elections in Kogi and Bayelsa in 2019. *“This*

is the disenfranchisement of eligible citizens and is not maximising the opportunity the law offers,” says law scholar M, who is also a Senior Advocate of Nigeria. The same respondent agrees that INEC voting guidelines have eased the voting process and facilitated participation in elections. “Previously, voters had to be accredited, wait for hours, and then return to the queue to vote and that was discouraging; but now accreditation and voting are simultaneously done,” the respondent says.

Presidential elections	Registered voters	Percent turnout (approx.)
1999	57,538,945	53
2003	60,823,022	69
2007	61,567,036	58
2011	73,528,040	54
2015	68,833,476	43
2019	82.344,107	35

Table 1: Nigeria’s presidential elections, registered voters and turnout rates

Sources: PREMIUM TIMES, ICIR, Daily Trust

From Table 1, the presidential elections in 2015 and 2019 had the lowest turnouts, less than 50 per cent, compared with the previous elections, from 1999 to 2011. Nigeria started using electronic means, with permanent voter’s cards, PVCs, and smart card readers, in 2015 and used the same method in 2019. That the two elections with electronic accreditation recorded comparatively far lower turnout rates provokes concerns about the credibility of the statistics from the previous elections, using manual accreditation method, particularly 2003 and 2007, widely considered among the worst in Nigeria’s history. Generally, sabre-rattling and threats/use of violence by political parties and public concern about secure elections may be affecting voter turnout, thereby impeding the right guaranteed by law, interviewed law scholars observe.

A respondent, who is a Senior Advocate of Nigeria, decries the limitation of Nigeria’s electoral law in denying citizens the right to challenge INEC in court or an election tribunal on the conduct or outcome of an election. *“Even if a community is disenfranchised, the electoral law does give voters the right to challenge INEC,”* says the senior lawyer. *“Only a contestant can file a petition. In order words, when a partisan does not approach the court, no matter the poor conduct of an election, it stays.”*

Legitimacy: The outcome of an election has to elicit popular acceptance that the person exercising power has the right to do so in accordance with the law. However, respondents say there are some instances that question the credibility of Nigerian elections in terms of reflecting the popular wishes of the electorate. In one way, this is so when violence is deployed as a strategy for rigging by political actors, who are particularly enabled by the country's troubling system of electoral law that defocuses electoral crimes, one respondent, a Senior Advocate of Nigeria, says. This respondent explains that *"the electoral law only focuses on civil matters. The state is not interested in electoral crimes."* Another respondent, from the civil society, says *"politicians feel emboldened to do anything to win the election."* citing the example of the 2019 Kogi governorship election. *"And they will say let their opponent go to court, from which they can corruptly obtain a favourable judgement."*

Another way, which will be discussed in more detail in subsequent parts, is the (corrupt) use of the judiciary to undermine popular wishes, causing what a respondent, a Senior Advocate of Nigeria, calls *"tribunalisation of democracy"* explained as the use of courts to access power rather than popular votes.

"The electorate then have the impression that the court has become the umpire, that they are bypassed, and the person exercising power does not have their mandate,"
the respondent says.

In separate interviews, two respondents who had been federal lawmakers, say that the refusal of the President to assent to the alteration of the Electoral Act to constitutionalise electronic collation and transfer of results, from voting points to a central server in real-time – as well as electronic accreditation of voters - hurts a chance to enhance the credibility of the outcomes of Nigerian elections and raise public trust in the process. A key issue in the Buhari-Atiku 2019 presidential election dispute was the (non)use of electronic collation and transfer of results. At the time of writing this report, public criticisms continue to trail the proposal of the National Assembly to subject INEC to the judgement of the Nigerian Communications Commission (NCC), headed by a political appointee, in the matter of electronic transmission of results.

So, while the law eases participation and competition, concerns remain about outcomes, several times not reflecting popular wishes when violence is deployed as a rigging strategy without consequences or courts returning candidates without popular votes as winners or electoral officials are compromised to create fictitious results, exploiting lack of an electronic collation system.

4.2. Controversial and Conflicting Judgements: Undermining Democracy

Exploration of the extant literature on democracies the world over, and in the developing countries particularly, shows that a major challenge of electoral politics is the conduct of credible, secure and violence-free elections.⁹ In Nigeria particularly, some considerable scholarship has been devoted to electoral violence as a rigging strategy.¹⁰ However, in Nigeria's brand of politics that has been described as "criminal",¹¹ the use of violence is just one among rigging strategies – one other way is through the judiciary. One respondent, a professor of law and Senior Advocate of Nigeria, observes:

"As politicians can do anything for power, the judiciary, including the Supreme Court, is becoming a theatre of politics. We are messing up the institution with inconsistent, conflicting judgements."

In the recent past, the Supreme Court's judgements in the 2015 Akwa Ibom, Delta, and Rivers States' governorship disputes appeared as undermining the progress brought about by the use of smart card readers and permanent voter's cards, PVCs, for electronic accreditation of voters. For the 2015 elections, INEC had issued guidelines that specified electronic accreditation through which the actual number of accredited voters per voting unit could be determined and extracted from a central database. It was a key premise upon which high hopes in the 2015 elections had rested as it was going to check overvoting.

In the aforementioned states, the results declared by INEC were in excess of the numbers of the accredited voters recorded by smart card readers. In Rivers State, for instance, the total number of voters, electronically accredited, specified as the only means of accreditation by INEC, was 292,878. However, the Peoples Democratic

9 Daxecker, U., 2014. *All quiet on election day? International election observation and incentives for pre-election violence in African elections. Electoral Studies, 34 (June 2014), pp. 232-243* | Chaturvedi, A., 2005. *Rigging Elections with Violence. Public Choice, 125, pp. 189-202.*

10 Bratton, M., 2008, *Vote Buying and Violence in Nigerian Election Campaigns. Electoral Studies, 27, pp. 621-632.* | Collier, P., and Vicente, P., 2014. *Votes and Violence: Experimental Evidence from a Field Experiment in Nigeria. The Economic Journal, 124(February), pp. F327–F355.* | Fafchamps, M., and Vicente, P.C. (2013). *'Political violence and social networks: experimental evidence from a Nigerian election. Journal of Development Economics, vol. 101, pp. 27–48*

11 Human Rights Watch, *'Criminal Politics: Violence, 'Godfathers' and Corruption in Nigeria'*, New York: Human Rights Watch, 2007.

Party was declared the winner with 1,029,102 votes, multiple times exceeding the number of voters that had turned up for voting as electronically recorded.¹² The All Progressives Congress prayer was then that the election should be nullified for another one to be conducted. It won at both the trial tribunal and the appellate court. But the Supreme Court voided the earlier judgements and upheld the election, rejecting the validity of electronic accreditation.

But even more concerning, the Supreme Court now “okays” the use of electronic accreditation without reviewing the 2015 judgements, nor is there a constitutional alteration to allow it apart from as specified in INEC’s guidelines, which it (the Supreme Court) had rejected for the 2015 governorships in Akwa Ibom, Delta, and Rivers States. A respondent, who is a Senior Advocate of Nigeria, says the following:

“Pursuant to the electoral law, INEC has powers to draw the guidelines for elections. Based on this, INEC has eased the voting process by, for instance, allowing accreditation and voting to go simultaneously. Also empowered by the law, INEC issued guidelines for the use of card readers and permanent voter’s cards. While the law allows this, the Supreme Court rejected the use of electronic accreditation through card readers in its judgements on Akwa Ibom, Rivers, and Delta States’ 2015 governorship elections. I cannot authoritatively say if corruption played a role in those judgements, but I cannot fathom a basis for the judgements. But without reviewing their 2015 judgements, the Supreme Court now okays the use of card readers and permanent voter’s card.”

Even more recently, the Supreme Court’s judgement in the 2019 Imo State’s governorship election dispute sparked outrage. As one analyst noted, that judgement questioned “*the integrity and professional competence of the Supreme Court*” and screamed of “*traits that undermined the confidence in the quality of the judgement available to the people.*”¹³

¹² Taiwo Hassan Adebayo, *PREMIUM TIMES* <https://www.premiumtimesng.com/news/headlines/182673-exclusive-rivers-nyeson-wike-a-goner-inec-document-exposes-fraud-by-pdp-inec-in-guber-poll.html>

¹³ Segun Adeniyi quoted by Shola Oyeyipo, *THISDAY*, <https://www.thisdaylive.com/index.php/2020/03/08/when-the-scourt-chose-to-persevere-in-error/>

After the election of March 9, 2019, the four major contestants had been declared by INEC to have received votes as follows: the winner Peoples Democratic Party (Emeka Ihedioha) - 273,404 votes; Action Alliance (Uche Nwosu) -190,364 votes; All Progressives Grand Alliance (Ifeanyi Ararume -114,676 votes; and All Progressives Congress (Hope Uzodinma) of APC- 96,458 votes. But in January 2020, All Progressives Congress' candidate was declared the winner by the Supreme Court after "arbitrarily" adding 213,295 votes from 388 polling units to bring the APC's candidate's tally to 309,753, surpassing PDP's.

The APC pled that the results from the disputed 388 units were unlawfully excluded from the final collation by INEC. But INEC during the proceedings leading to the Supreme Court had testified that the results from the 388 units presented by the APC were unlawful and did not emanate from the commission as voting in the said units was cancelled due to violence, over voting and ballot snatching. According to a publication in THISDAY,¹⁴ INEC's official responsible for logistics tendered INEC Form EC40G, otherwise known as incident form, which is usually filled by the electoral officers to record cancellation of an election with the reasons for the cancellation also stated in the forms.

According to the publication in THISDAY, the forms EC40G tendered by the INEC's official were admitted in evidence as Exhibit 63RD1 – 63RD19 and these forms EC40G showed "conclusively" that elections were cancelled in the polling units where the APC's candidate claimed his votes were excluded. The publication further reports overvoting in the results presented by the APC and accepted by the Supreme Court:

"In Item No. 69 being Eziamal/Okpala ward, polling unit 8 (Umualum Square, Eziamal) the total number of registered voters shown therein is 462 but the petitioner Chief Hope Uzodinma scored himself 819 votes and scored PDP 7 votes. In Item No. 285, Obudiaro ward in Ngwuta LGA, Polling Unit 12, Central Assembly Square Amusa II, the Petitioner again admitted the total number of registered voters as 449 while APC scored 780 votes and PDP 4 votes."

¹⁴ Olusegun Awe, THISDAY, <https://www.thisdaylive.com/index.php/2020/02/14/how-imo-governorship-election-verdict-generates-judicial-crisis/>

Nevertheless, the Supreme Court declared the APC winner, overturning earlier decisions of the election petition tribunal and the Court of Appeal. The judgement generated widespread outrage and the PDP then reapproached the apex court to review its decision. But in the verdict given in March 2020, the apex court, led by the Chief Justice of Nigeria (CJN) Tanko Mohammed, held *“it is settled law that this court has no power to change or alter its own judgement or sit as an appellate court over its own judgement,”* and further said that granting the PDP and Mr Ihedioha’s request would open the flood gate by parties to all kinds of litigations”.¹⁵

However, one of the Justices, Centus Nweze, dissented. He said the apex court has powers to review its decision and that the APC’s candidate had *“mischievously misled the court to accept “unverified votes”*.

Justice Nweze’s words:¹⁶

“(Mr Uzodinma) mischievously misled the court into unjust conclusion with the unverified votes credited to himself in the disputed 388 polling units. In my intimate reading of the January 14 judgment, the meat and substance of Ihedioha’s matter were lost to time frame. This court once set aside its own earlier judgement and therefore cannot use the time frame to extinguish the right of any person. This court has powers to overrule itself and can revisit any decision not in accordance with justice. the decision of the Supreme Court in the instant matter will continue to haunt our electoral jurisprudence for a long time to come. This court has a duty of redeeming its image, it is against this background that the finality of the court cannot extinguish the right of any person. I am of the view that this application should succeed. I hereby make an order repealing the decision of this court made on January 14 and that the certificate of return issued to the appellant be returned to INEC. I also make an order restoring the respondents as the winner of the March 9, 2019 governorship election.”

¹⁵ Halimah Yahaya, PREMIUM TIMES <https://www.premiumtimesng.com/news/headlines/380088-imo-governorship-why-supreme-court-dismissed-ihediohas-application-to-reverse-ruling.html>

¹⁶ Ibid

Indeed, there exists precedent of the Supreme Court reviewing or reversing its earlier decision, contrary to the position of the majority judgement, one respondent, a Senior Advocate of Nigeria and professor of law, says, citing the lead judgement by Justice of the Supreme Court, the famous Chukwudife Oputa, in *Adegoke Motors Ltd v Adesanya (1989) 13 NWLR (Pt. 109) 250, page 275A*. The Justice said inter alia:

“We are final not because we are infallible; rather we are infallible because we are final. Justices of this Court are human beings, capable of erring. It will certainly be short-sighted arrogance not to accept this obvious truth. It is also true that this Court can do inestimable good through its wise decisions. Similarly, the Court can do incalculable harm through its mistakes. When therefore it appears to learned counsel that any decision of this Court has been given per incuriam, such counsel should have the boldness and courage to ask that such a decision be overruled. This Court has the power to over-rule itself (and has done so in the past) for it gladly accepts that it is far better to admit an error than to persevere in error.”

Chukwudifu Oputa JSC in Adegoke Motors Vs. Adesanya (1989)

We shall discuss some more conflicting and controversial election-related judgements, which over the years have negatively impacted public trust in the judiciary and provoked concerns about how political actors undermine democracy through the courts.

In their respective rulings in Abia State 2015 governorship election dispute (*Ikpeazu v. Otti & ors (2016) (CA/OW/EPT/2015)*), and Osun State 2007 governorship election dispute (*LPELR-CA//EPT/GOV/02/2010*), the Owerri and the Ibadan Divisions of the Court of Appeal upheld allegations of irregularities and malpractices and proceeded to nullify the elections. However, regarding the Ogun State 2007 governorship election dispute (*Ibikunle Amosun v. Independent National Electoral Commission & ors - CA//EPT/GOV/01/2009*), the Ibadan Division of the Court of Appeal, though acknowledged irregularities and malpractices, upheld the election of then-incumbent Governor Gbenga Daniel of Peoples Democratic Party. The Court of Appeal in Ibadan then stated that the malpractices were immaterial if there was

no evidence *“to connect them to the person returned as elected.”*

An apparent inconsistency is observable between the Ogun State case and those of Abia and Osun, though all were with similar facts. On the Ogun case, one analyst¹⁷ aptly notes that *“the Court of Appeal failed to pay attention to the fact that the basis for voiding an election is not to indict a specific candidate. The involvement of a candidate is secondary. The primary concern is that once an election has been conducted with irregularities, re-election is to be ordered in order to preserve the sanctity of the process and ensure that an emerging candidate is duly elected. The need to prove the culpability of a candidate cannot override the already proven fact that the election was conducted fraudulently.”*

In another instance, on Friday, January 25, 2019, two high courts, sitting separately, in Gusau, Zamfara State, and Abuja, FCT, delivered conflicting judgements on the same matter; whether INEC could accept candidates presented by the All Progressives Congress for 2019 elections in Zamfara State.¹⁸ While the court in Gusau ruled that the party actually conducted primaries in the state and should be allowed to present candidates there for the elections, the Abuja court ruled otherwise. It was in the context of a desperate political chess game between two factions of the All Progressives Congress in Zamfara State – one led by then-Governor Abdulaziz Yari and the other by Senator Kabir Marafa. The latter, based in Abuja, was for the party not being able to present candidates. Interestingly, the factions separately obtained conflicting *“favourable”* rulings from the courts sitting in the respective bases of their leaders.

The representative of the civil society KDI says that parties to cases *“obtain rulings from courts in the states they control or have influence.”* The suggestion, therefore, is that political actors procure court judgements wherever they are able. Another respondent, a Senior Advocate of Nigeria, draws a link between corruption and conflicting judgements and controversial judgements based on so-called technical grounds rather than substantial justice, which he says *“expose the judiciary to ridicule and undermines popular will.”*

In one example of technicality-based judgement, cited by the representative of the civil society KDI, the Supreme Court in its judgement in the 2018 Osun State

¹⁷ Oluwadare Kolawole in undated paper, titled: *“The Judiciary and Election Matters in Nigeria: Analysis on conflicting judgments in election matters in Nigeria.”*

¹⁸ Sani Tukur, PREMIUM TIMES <https://www.premiumtimesng.com/news/headlines/307945-2019-courts-issue-conflicting-judgements-on-apc-having-candidates-in-zamfara.html>

governorship election dispute nullified the earlier verdicts of the trial tribunal and the appeal court, that had voided the election of Governor Gboyega Oyetola of the All Progressives Congress, on the ground the judge, Justice Obiorah J, that read the tribunal judgement, missed a day's proceeding and that *"affects the soundness of the judgment since he never saw or heard the testimony of RW 12 and RW13..."*

The All Progressives Congress did not contend that they won the election lawfully and the Supreme Court also did not bother about issues of substance such as violence, rigging, overvoting and the like. A publication in THISDAY notes that it was the opinion of many Nigerians that the *"Supreme Court mired itself in corruption and politics" after "the Independent National Electoral Commission, INEC, (had) merely paved way to edge Adeleke out by cancelling 3, 498 votes and ordering a rerun in seven polling units when he was already leading in the election."*¹⁹

4.3. Judicial Corruption and Electoral Matters

Corruption, simply put, means illegal, dishonest or fraudulent conduct, especially by those in positions of power for private ends. In Nigeria, it is an endemic problem, and no analysis of the country's barely easing development crises is possible except, of course, it comes to grips with the challenge of corruption. It erodes work ethics in the public service, and to that extent, it undermines the delivery capacity, making services entitled to or paid for by the citizens either not rendered at all or perfunctorily delivered.²⁰

Unfortunately, the judiciary, though oft-touted as the last hope of the common man, is also, pervasively, a locus of corruption, the respondents for this study agree. Their responses complement understandings from various journalistic and institutional reports and journal articles reviewed for this study. As it concerns electoral matters, corruption in the judiciary undermines democracy and precipitates legitimacy crisis in situations where the popular will is trumped as an outcome of a miscarriage of justice.

Of the estimated 9.4 billion Naira that was reported to have been exchanged in a

¹⁹ Lillian Okenwa, THISDAY, <https://www.thisdaylive.com/index.php/2020/03/01/supreme-court-never-determined-who-won-osun-elections/>

²⁰ Mimiko, N., 2010. *Swimming against the Tide: Development Challenge for the Long Disadvantaged in a Fundamentally Skewed Global System*. 233rd Inaugural Lecture of Obafemi Awolowo University, Ile-Ife, Nigeria.

bribe-for-judgement scheme between 2018 and 2020, the most part was offered by lawyers for favourable judgements in electoral and political matters, according to the ICPC in its report, *Nigeria Corruption Index: Report of a Pilot Survey*, released in December 2020.

“Of the 901 respondents in the justice sector, 638 making 70.81 per cent were lawyers. Judges were 124 or 13.76 per cent, and 25 respondents at 2.77 per cent were court staff (clerks and registrars. In all, there were reported experiences of being corruptly paid, demanded, or offered bribes up to 9.457 billion Naira in the entire justice sector between 2018 and 2020. The money involved in the high-level corruption in this sector was categorised into money demanded, offered or paid. Demands were made by court officials including judges, while offers and payments were made by lawyers and litigants.”

ICPC, 2020: Nigeria Corruption Index: Report of a Pilot Survey

In one interview for this study, one respondent, a Senior Advocate of Nigeria, says, *“the (ICPC) report is damning and you would have expected the bench and bar to take that report seriously. Nobody rejected it. Nobody denied it and that gives support to the perception that corruption is prevalent in the judiciary.”* As the senior lawyer notes, perhaps what the ICPC report indicting the judiciary does is to reinforce the public perception of the judiciary as corrupt and some judgements as tainted with official credence.

Before now, individuals, with weighty public responsibilities, had spoken about corruption in the judiciary, particularly with regards to election-related matters. Late Kayode Eso, Justice of the Supreme Court, was reported to have raised concern about how judges at election petition tribunals *“become billionaires overnight”*²¹ Three respondents, including a retired judge, in separate interviews, say that judges lobby to be on election petition tribunals because they know they would make money. The retired judge, particularly, says that while serving on a tribunal in a state that

²¹ Tayo Oyetibo, SAN, PREMIUM TIMES, September 26, 2012, <https://www.premiumtimesng.com/opinion/101606-the-role-of-the-judiciary-in-combating-corruption-in-nigeria-by-tayo-oyetibo-san.html>

he refuses to mention, a lawyer for a party offered him a bribe for a “favourable” outcome. He says he rejected the bribe but that he is aware another colleague collected the offer. The second retired judge interviewed for this study says that a then-serving judge, working as a “consultant” to a governor, approached him with a bribe to help the governor win at the tribunal on which he (the retired judge) was serving.

A former chairman of Transparency International in Nigeria, Ishola Williams, is reported to have corroborated late Eso’s concern, which runs in agreement with the worrying testimonies of the respondents above. Mr Williams, a retired Major General, stated thus: *“All the Judges are just using the election tribunals to make money. All those who had gone through election tribunals are millionaires today. I challenge them to say No.”*²² Also, a respondent, who is a Senior Advocate of Nigeria, says a former president of Nigerian Bar Association, Joseph Dawodu, said publicly that retired judges had become consultants on electoral matters and were helping to distribute bribes for judgements. In an attempt to independently verify this claim by our respondent, we found that the respondent did not reproduce the exact words of Mr Dawodu and did not quote him verbatim. But we found the following statement credited to him (Mr Dawodu): *“there is a growing perception backed up by empirical evidence that justice is purchasable and it has been purchased on several occasions in Nigeria.”*²³ In another take on judicial corruption in election-related matters, Afe Babalola, SAN, reportedly lamented thus:²⁴

“Time was when a lawyer could predict the outcome of a case because of the facts, the law and the brilliance of the lawyers that handled the case. Today, things have changed and nobody can be sure. Nowadays, politicians would text the outcome of judgement to their party men before judgement is delivered and prepare their supporters ahead of time for celebration.”

²² *Ibid.*

²³ *Ikechuwkwu Nnochiri, Vanguard, September 29, 2011 <https://www.vanguardngr.com/2011/09/corruption-in-judiciary-cjn-nba-to-the-rescue/>*

²⁴ *Tauo(you meant Tayo?) Oyetibo, SAN, PREMIUM TIMES, September 26, 2012, <https://www.premiumtimesng.com/opinion/101606-the-role-of-the-judiciary-in-combating-corruption-in-nigeria-by-tayo-oyetibo-san.html>*

Perhaps one issue that is suggestive of corruption in the judiciary regarding electoral matters is the problem of conflicting judgements by courts of equal jurisdictions on the same matter. The representative of the civil society KDI, which has a working familiarity with electoral jurisprudence, says *“there is a pattern that suggests corruption in the judiciary; corruption is official. Parties get judgements in states they control or where they have influence. What you have then are conflicting judgements from different courts of equal jurisdiction on the same matter with the same facts. The APC factions in Imo ahead of 2019 elections got different judgements from courts in Abuja and Imo on the same matter.”* The referenced Imo APC case bears similarity with the earlier highlighted Zamfara APC case (see 3.2). Another respondent, a Senior Advocate of Nigeria and professor of law, gives further insight: *“Politicians have a habit of hiring senior lawyers and see judges to offer money for judgements.”* Another respondent, a former federal lawmaker, says (controversial and conflicting) judgements *“can also be corruptly obtained when politicians, like governors, threaten or promise judges in their states promotion. Also, other politicians, with federal powers can use anti-corruption and intelligence agencies to dig up and obtain damning dirty secrets of judges and then use that to blackmail them (the judges) to obtain favourable rulings. That’s the reason judges are intimidated.”*

5. Case Study:

Corruption-Influenced Contradictory Judgements by a Single Justice

In 2008, there was a classic example of contradictory judgements, that prompted criticism and suspicion of judicial corruption. Retired Justice Zainab Bulkachuwa, then of the Kaduna Division of the Court of Appeal, gave two conflicting judgements in the Kebbi and Sokoto States 2007 governorship election dispute. The judgements in the two cases were given a day apart by the same judge and contradictory even though both cases rested on similar facts. One, in the Kebbi case (*Usman Nasamu Saidu v. Abubakar Mallam Abubakar & ors (2008) LPELR-CA/KI/EPI/GOVI/50/2007*), the court on April 10, 2008, upheld the election of Saidu Dakingari (PDP), despite having not been a member of the Peoples Democratic Party by INEC's deadline for submission (and substitution) of candidates by parties. The trial tribunal had earlier invalidated the election. Conversely, in the Sokoto case (*Alh. Muhammadu Maigari Dingyadi & anor. v. Aliyu Magatakarda Wamako & ors. (2008) LPELR-CA/KI/EPI/GOVI/60/2007*), on April 11, the same court headed by the same person, retired Justice Bulkachuwa, invalidated the election of Aliyu Wammako (PDP), who, like Kebbi State's Saidu Dakingari, had not also held PDP's membership prior to INEC's deadline for substitution of candidates. Note that not joining their party (PDP) prior to INEC's deadline stipulated for substitution of candidates was the key point at issue in both Sokoto and Kebbi cases before the same appellate court, headed by a single person; yet contradictory judgements were delivered.

In a US cable from the political office in Nigeria to the CIA²⁵, leaked and published by WikiLeaks, it is alleged that former First Lady of Nigeria, Turai Yar'Adua, had "intervened on behalf of her son-in-law Dakin-Gari (he wedded President Yar'Adua's daughter, Zainab last June) by bribing Justice Zainab Bulkachuwa to rule in Dakin-Gari's favour." In the Sokoto case, the same leaked cable alleges that former Governor Attahiru Bafarawa, who was opposed to the election of his former deputy, Aliyu Wammako, also bribed retired Justice Bulkachuwa to overturn Mr Wammako's election.

²⁵ WikiLeaks, Nigeria: Corrupt court reverses tribunal rulings, https://wikileaks.org/plusd/cables/08ABUJA780_a.html, accessed April, 26, 2021

The leaked cable ends thus:

“Kebbi and Sokoto appeals cases illustrate that this is far from a universal situation and that judicial corruption remains endemic in Nigeria.”

Justice Bulkachuwa later became the President of the Court of Appeal, with a responsibility to appoint judges to election petition tribunals. But a few judges had come under the sledgehammer of the National Judicial Council, NJC, for corruption and impropriety. In one instance, in 2004, the NJC disbanded the Akwa Ibom State 2003 governorship election petition tribunal and axed the judges on the tribunal. The affected judges were Maltida Adamu (chairman), and three others, namely A.T. Ahura, James Isede, and Anthony. Elelegwu.

The suspension was based on the findings of the NJC on allegations of bribery levelled against the tribunal. Newswatch²⁶ then reported that the NJC found that the judges collected the bribe to pervert the course of justice. Also suspended was Chris Senlong of the Federal High Court, Lagos Division, for *“the despicable role he played in attempting to influence the decision of (Akwa Ibom) election tribunal.”*²⁷ Then, Effiong Udo, the Chief Judge of Akwa Ibom State at the time was also indicted by the ICPC for his role in the bribery-for-judgement scheme.²⁸ In another instance, in 2005, two Justices of the Court of Appeal, O. Opene and A. Adeniji, were dismissed. The NJC found they had collected bribes to award victory to a party in an appeal over a decision concerning an election dispute in Anambra State.²⁹

In the legal circle, Senior Advocates of Nigeria, professors of law, and retired judges interviewed for this report say that the perception of the judicial sector as corrupt is high. Other respondents - the civil society representative and former federal lawmakers - say public trust in the judiciary is low.

²⁶ Chirs Ajaero, *Newswatch*, February 9, 2004, <http://www.dameawards.com/wworkjudiciaryreport14th.htm>

²⁷ Okechukwu, O., 2005. *Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria*. *Brooklyn Journal of International Law*, Vol. 31(1), p. 27. <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1278&context=bjil>

²⁸ Sufuyan Ojeifo, *Vanguard*, June 18, 2004, <https://allafrica.com/stories/200406180145.html>

²⁹ ICJ, <https://www.icj.org/wp-content/uploads/2012/04/Nigeria-Attack-on-Justice-5-Publication-2008.pdf>

6. Conclusions and Remedial Notes

Democracy returned to Nigeria in 1999, marking the inception of the Fourth Republic. Over 20 years in the Fourth Republic, the longest Nigeria has experienced civil rule uninterrupted, democracy remains in a state of mixed and contrasting enjoyment for the citizens. The electoral process has certainly improved, with technological innovations and more participatory and competitive space. But the democratic gains have been limited and undermined by a number of factors.

One is judicial corruption and impropriety, with tainted judgements, resulting in the subversion of popular will and consequent legitimacy crisis. Corruption is an integral part of the public service in Nigeria, and the judicial sector is not unaffected by that pervasive ill. From the submissions of respondents and secondarily sourced pieces of evidence from accounts of legal luminaries, NJC's decisions and various media, institutional and academic publications, it is amply clear that corruption is prevalent in the judiciary and tainted judgements are given in electoral matters.

Two, ill-motivated political actors, desperate for power, play a role in undermining the electoral process, namely by intimidating and bribing jurists for fraudulent judgements, as well as using violence as a method of rigging, buying votes, and compromising electoral officials. The implication is that elections become bare of democratic qualities, such as participation, competition and legitimacy.

Three, there are also stultifying effects of the extant electoral law. These include non-constitutionality of the electronic collation and transfer of results; de-focusing electoral crimes, thereby missing an opportunity to punish and deter electoral violence and vote-buying, among other methods of rigging; and not allowing citizens to challenge INEC when they are disenfranchised or dissatisfied with the conduct of an election.

What remedial actions can be recommended? Recommendations are non-exhaustive and may require a whole new thesis but the following may suffice.

The electoral law should be modernised with a further alteration of the Electoral Act, 2010, to make electronic accreditation and electronic collation and transfer of results as well as tech-enabled voting statutory. This must be done in a way that does not remove the independence of INEC. This is to check the vulnerability of the process to manipulations by electoral officials and political actors. While ballots are openly sorted and counted at polling units, it is said that rigging occurs during collation and transfer of results across stages. But that may end with a

transparent electronic method of collating and transferring results. The public trust in the electoral process will also improve, thereby encouraging greater participation and competition. This, of course, will also reduce the rampant resort to courts after elections and consequently the fraudulent use of the judiciary to subvert the popular will. Additionally, election matters may be removed from the Principal Act, which is a written and rigid form of constitution, to ease the process of amending the electoral law to conform with emerging changes and necessities.

The National Judicial Council should be more committed to improving the ethical stature of the judiciary as an institution and systematically purging the institution of corruption. Judicial corruption is dangerous and if left unchecked will continue to undermine democratic gains. An institutionally honest judiciary will be key to democratic consolidation and be able to resist fraudulent instincts of the political class to intimidate or bribe judges to obtain tainted judgements. To achieve systemic change, the background of judges matters; only persons with a demonstrated track record of integrity, courage, and competence must get to the bench. The recruitment process must be totally detached from personal prejudices, ethnic, religious and political considerations and focused genuinely on issues of demonstrated competence, honesty, character and academic achievements. Then, there must be due sanctions against misconduct, even without removing the part of law enforcers from undertaking criminal investigations and prosecution, to restore public confidence and instil discipline among judicial officers. Also, there must be continuous judicial education. Then, importantly, the judiciary must be realistically independent. Although there exists a legal (theoretical) framework for judicial independence, in practice, this is implacably undermined by the political actors and bad judges. This means that to have a virile and independent judiciary the political actors, particularly the elected government, must check their way of intimidating or corrupting the judicial officials for selfish ends. Also, especially at the state level, the judiciary must be adequately funded and financially autonomous. Judges must not depend on the voluntary goodwill of the government or political actors to most adequately live well.

Election-related crimes should be statutorily defined, with stipulated stiff punishments, including jail terms and disqualification from future elections for political actors, to create deterrence. Also, the Nigerian Bar Association should deal more seriously with cases of professional misconduct, especially involving senior lawyers in election-related matters. Lastly, the media should strengthen its capacity to investigate and expose abuses in the judiciary and electoral matters to afford the public a basis to demand accountability and reforms.

The Role of Judiciary in Elections and its Effects on the Perceptions of the Electorates

1. Background

Elections affirm the sovereignty of the citizen in a democratic setting. Through elections, citizens constitute the government which they want and hold the government accountable. More than the room to exercise one's civic duty is the illusion of choice that elections afforded to the true holders of power within a democracy - the people.

Yet, contemporary democracies are far from their Athenian roots and its complexity has necessitated the emergence of another actor that seems to throw new light on the process. The final say on who is allowed to lead has been taken away from the people and situated in the halls of justice. This adjustment, though created to give a genuine possibility for a redress of grievances, seems to create a new variable in determining if elections truly are representative of the popular will of the people.

However, to be of any significance, judicial determination of election disputes must offer the aggrieved persons a genuine possibility of redress. Lord Hodge in a speech given at North Strathclyde Sheriffdom Conference in 2018, identifies at least three factors that need to be embedded in the adjudication process for the judiciary to be seen to be playing its role effectively³⁰. First of all, the process must be fair and perceived as fair by litigants and the public. This requires that the process treats the parties to a dispute equally and offers them an equal opportunity to present their

³⁰ Lord Hodge, *Justice of The Supreme Court of the United Kingdom "Preserving judicial independence in an age of populism"* 23rd November 2018 file:///C:/Users/HP/Downloads/speech-181123.pdf

case. It also requires that the process resolves disputes impartially and meritoriously. Second, the process must be transparent, that is, when an election is disputed and a court adjudicates on the dispute, it must do so in a way that is understandable (based on prior existing rules) and must make a fair analysis of the evidence as it relates to the competing claims. Finally, the process must be prompt and cases should be determined with finality. As is often said, justice delayed is justice denied.

Ugochukwu (2011, p. 58) argues that *“although there might be justification for judicial intervention in the countries of Africa, the prevalence of corruption in the judiciaries makes such intervention a double-edged sword.”*³¹ On one hand, it acts as an umpire that ensures there be rectification of gaps existing in the electoral process in general but on the other hand the administrative and operational corruption affecting the arm is exploited, affecting the democratic equilibrium. Court’s involvement in electoral issues should be able to strengthen the electoral laws and not make them ineffective or even threaten the consolidation of democracy

This section of this study aims to lend a voice to those who are on the receiving end of democracy. This study is clearly about the citizens’ perception of the interference of the judiciary in the electoral process through corruption and conflicting judgement. It is the story of people’s perceptions about the court’s involvement in democracy. We hope this section will shed a light on the reality of the electoral system on those it was made to cater for with solutions on how to improve it.

2. Methodology

2.1. Literature Review

A systematic and targeted review of relevant literature was undertaken to understand the effects of Judicial activism on democratic legitimacy. Additionally, literature was reviewed to understand the impact of the perception of legitimacy of mandates that are won in court. Some of the consulted sources include research papers, journals, articles, studies and other secondary sources including useful information from newspapers, radio and other media.

2.2. Interviews

2.2.1. This article relies heavily on qualitative data from interviews conducted with:

- (i) Civil Society Organisations that focus on Women and People with

³¹ https://www.researchgate.net/publication/335381126_Courts'_Involvement_in_the_Electoral_Process_and_Their_Impact_on_Improving_Election_Quality_in_Nigeria

Disability.

- (ii) A representative of The National Institute for Policy and Strategic Studies.
- (iii) Representative of the National Union of Campus Journalists
- (iv) Three Politicians; a female and a Male Person with Disability who are familiar with the electoral process and have had some level of experience with election tribunals.

Respondents were purposely chosen based on the demographic they represent, expertise and experience. This is to create a microcosm that could represent popular opinion on the subject matter. These respondents were asked a series of open-ended questions in separate loosely structured conversations. This allowed for an in-depth discussion of perspectives and experience of the judiciary's conduct during elections and how that affects the demand side of democracy. Questions asked were on three broad areas:

- (i) Use of Courts for election-related grievances
- (ii) Conflicting Judgements
- (iii) The perception of corruption and justice in courts handling of cases. The reactions of various representatives of subgroups would be woven together to tell the story of the effect that acts of the judiciary over the years has had on the citizens.

The research did not include any nationally representative quantitative data. That would have helped address the (problem of) potential for bias that may have arisen from the non-random selection of participants for the interviews.

3. Definition of Subgroups

Primary data were collected from selected subgroups of the population. They are women, persons with disabilities (PWDs) and the youth. These groups are essential and important because they are the most affected by the conduct and outcomes of elections.

3.1. Women's Group

The World's Economic Forum's Global Gender Gap report 2018 placed Nigeria at 139th out of a total 149 countries in terms of the gender gap in political empowerment.³² The reasons for these statistics are not far-fetched. After the 2015

³² World Economic Forum. (2018). "The Global Gender Gap Report 2018" (PDF).

Nigerian elections, for example, only 20 women were elected into the lower House (5.6%) and 7 into the upper House (6.4%). In the last (2019) elections only 7.3% of the Nigerian Senate and 3.1% of the House of Representatives are women.

In Nigeria, there has only ever been one female Governor, who got her seat due to the impeachment of the governor to whom she was a vice. In the country's history, there have also only been 4 women elected as deputy Governors³³.

Women form 49.4 % of Nigeria's population, according to data from the National Bureau of statistics and about 51% of women are involved in voting during elections.³⁴ They account for about 47.14 per cent (39,598,645 million) of the 84,004.084 million registered voters nationwide.³⁵ While the data on collected PVCs for the 2019 elections do not break down by sex, available 2015 presidential election voter turnout data show that housewives were the third-highest group out of the nine groups that voted.³⁶ In 2015, three million, six hundred and sixty-seven thousand, and seventy-six (3,667,076) housewives voted in the presidential election, placing next to students (4,480,708) and civil servants (4,628,433).

Irrespective of the number of women who are politically active, their representation in leadership is still nothing to write home about. Female political representation in the 2019 elections was negligible relative to the approximately half of the population they constitute, with 2,970 women on the electoral ballot, representing only 11.36 per cent of nominated candidates. This gap is caused by numerous barriers that women face which include various attitudes to gender; negative attitudes towards women in leadership; female candidates often suffer from election violence, threats or hate speech; and political parties have exclusively excluded women, doing little to encourage their participation in politics and political leadership. These barriers cut across all s institutions and sectors of society, and this social research was undertaken to understand the role the judiciary has played to aid and/or abate the prevailing status quo.

³³<https://www.proshareng.com/news/Politics/Gender-Inclusion-In-Nigeria-Governance--Focus-on-States/46589>

³⁴ Agbalajobi, D.T. (2009). *Women's participation and the political process in Nigeria: Problems and prospects. A publication of African Journal of Political Science and International Relations Vol. 4(2), pp. 075-082, May 2021*

³⁵ Nwankwo, Chiedo (2019-03-03). "ANALYSIS: Probing 'the women's vote in Nigeria's 2019 presidential election | Premium Times Nigeria". Retrieved 2021-05-18.

³⁶ Nwankwo, Chiedo (2019-03-03). "ANALYSIS: Probing 'the women's vote in Nigeria's 2019 presidential election | Premium Times Nigeria". Retrieved 2021-05-18.

3.2. Persons with Disabilities (PWDs)

The Convention on the Rights of Persons with Disabilities and its Optional Protocol defines persons with disabilities to *“include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”*³⁷ The estimate for the number of people with disabilities in Nigeria varies because there are currently no updated or exact statistics on people with disabilities.

The World report on disability, published in 2011, said about 25 million Nigerians had at least one disability, while 3.6 millions of these had very significant difficulties in functioning.³⁸ The 2006 Nigerian census reported 3,253,169 people with disabilities or 2.32% of the total population of 140,431,790 in that year. However, the Centre for Citizens with Disabilities, a Nigerian NGO, claims the census did not capture the full extent of disability in Nigeria and has called on Nigeria’s National Population Commission to cooperate with the Ministry of Women Affairs and Social Development for the 2016 census to measure disability more accurately.³⁹ As of 2020, there are reportedly over 27 million Nigerians living with some form of disability.⁴⁰

In terms of political participation, testimony from all respondents shows that Persons with a disability, unfortunately, hardly participate in party politics in Nigeria today. According to Mr Taiwo, a respondent who has been involved in politics personally, says *“Unfortunately most of the time, persons living with disabilities often struggle with what I refer to as ‘selective position or selective responsibilities’.. simply because there is a wrong mindset that persons with disabilities can only do some certain things”*. There are various socio-economic and cultural reasons why this prevails and this study seeks to understand the role the judiciary plays from the perspective of PWDs themselves.

3.3. Youths

The United Nations, for statistical purposes, defines ‘youth’, as those persons between the ages of 15 and 24years, without prejudice to other definitions by

³⁷ <https://www.un.org/development/desa/disabilities/resources/general-assembly/convention-on-the-rights-of-persons-with-disabilities-ares61106.html> . Retrieved 18 May 2021

³⁸ “Nigeria”. Christian Blind Mission. Retrieved 18 May 2021.

³⁹ Umeh, Ngozi C; Adeola, Romola. “Nigeria”. African Disability Rights Yearbook. Retrieved 18 May 2021.

⁴⁰ Nze, Emeka. “NPC Lacks Data on Persons with Disabilities- Chair”. Centre for Citizens with Disabilities. Archived from the original on 18 May 2021. Retrieved 18 May 2021.

Member States.⁴¹ Youth in Nigeria which includes citizens of the Federal Republic of Nigeria aged 18–29 years according to the new youth policy (2019) are students, entrepreneurs, tech gurus, business owners, civil servants etc. Also, according to population projections by the United Nations for 2020, about 43% of the Nigerian population comprised children 0-14 years, 19% aged 15-24 years and about 62% are below age 25 years. By contrast, less than 5 per cent are aged 60 years and above. This makes Nigeria a youthful population with a median age of about 18 years, which is lower than African and world estimates of 20 and 29 respectively.⁴² Over the years, due to corruption, exclusion, marginalization of the youths and lack of transparency from the Nigerian Government, there's been a decline in the participation of the Nigerian Youth in election and politics.

4. Findings

4.1. Court Use

The interventions of the judiciary in the electoral processes between 1999 and 2011 increased substantially during each election cycle in Nigeria. However, those interventions seem to have a negative impact on the quality of elections in the country.⁴³ These are seen in how judgments affect the ability of institutions like INEC to carry out their statutory functions and delays in judgement which affect outcomes of elections, among others.

These negative effects are not lost on the electorates and those the democratic system seeks to serve. For various reasons, more than half the respondents showed an apprehension towards using the courts. General reasons for this apprehension were centred around the bureaucracy involved and the cost of litigation.

Justice seems to only be for those with the deepest pockets. Due to the difference in cases, it is not easy to predict the cost of litigation. However, when one respondent thought to fight a case of a stolen mandate, he was told by his political advisor that he would need to budget about 10 million naira to pursue the case. He says, *“By analysis, I will need a law chamber that will be responsible for data analysis and collection for the election. In the process, they will go to INEC and look for witnesses*

⁴¹ Secretary-General's Report to the General Assembly, A/36/215, 1981 Retrieved 19 May 2010

⁴² Funke Fayehun, Uche Charlie Isiugo-Abanihe (2020-10-25) *“#EndSARS: How Nigeria can tap into its youthful population | The conversation Africa”*. Retrieved 2021-05-19.

⁴³ https://www.researchgate.net/publication/335381126_Courts'_Involvement_in_the_Electoral_Process_and_Their_Impact_on_Improving_Election_Quality_in_Nigeria

(like 100 people) in different polls and transport to court would need to be provided. Going by the Nigerian mindset, no one would want to be a witness without getting something in return. Also, the court judgement is not pronounced at a time, it can be adjourned and re-adjourned again which would increase the cost. When I saw the breakdown, I let it go since it is four years and I don't want to go more bankrupt than I was".

This sentiment was also shared by women and their representative groups. The high cost of litigation further deters their will to go to the courts, though it was not established as their primary reason. Mrs Gloria Laraba Shoda, National president of the National Council for Women Society, puts it best: *"It is demoralising for women. Women think that the brave ones among them came out to contest elections; they struggle and work as hard as men and at the end of the day, in one way or the other - either by muzzling them or by deep pockets - they take these things from women. Such things are very demoralising. A lot of women don't like wasting money. They don't just like to waste money because they think of their children at home, they think of their husbands. Whatever they have is spread to those people I just mentioned. So, they don't like just throwing their money away to gamble."*

Though both women and PWDs agree that cost is a factor that deters them from using the courts to pursue their election disputes, both groups expanded on some other barriers that are specific to their demographic.

Firstly, women explained that a factor that dampens their willingness to use the courts is the dissuasion from other parties. This was described by most interviewees and they explained that most women who wish to redress grievances are most times told to withdraw by those close to them. This could occur at any stage of the case and is a cited reason why many cases involving women do not get concluded in the courts. Mrs Laraba explains *"maybe they'll go and talk to their husbands and say why are they allowing their wives to take the government to court and that kind of thing and of course they will withdraw the case. Some of them are given appointive positions and some of them are promised next time. They don't ever get to the end of the process"*.

This dynamic is further complicated by the fact that many women are afraid to refuse these offers to not lose their political standing. In a bid to build political capital many women are put in a position where they feel unable to refuse lest they become targets. The reality of this mental stress, coupled with the uncertainty of the outcomes makes women forfeit their cases and settle for whatever position they are given for their compliance.

For PWDs, a specific barrier to their willingness to use the courts is the inaccessibility of courts. Representatives of disability-focused civil society organisations that were interviewed lamented this being a deterrent to wanting to use the courts. This reality of PWDs can be best described by the experience of Mr Ayuba as captured below: *“Well, part of the delicate issues I had was that the courts were not accessible. I never entered the court throughout the petition period in the court. I came in and I could only move up the steps, even though I was carried up there. I stood at the door just by the entrance. I could hear the judge but I wasn’t anywhere within the court premises because they have made permanent and non-adjustable seats. They were built of concrete slabs and then mounted something like your chair on it. I never entered the court. The courts were not accessible. I was only represented by my counsel and lawyers in the court. I think that was a serious problem. That was a setback because as soon as the court clerk announced the case and the lawyers announced their appearance the next would be if the parties are in court. My lawyer will say yes and when he looked around the four corners of the court, I wasn’t there. That was a serious concern as the accessibility of the court was a challenge.”*

4.2. Conflicting Judgements: Perception of Justice and Corruption

In a heterogeneous society like that in Nigeria if the post-election conflict is not handled with the required neutrality the election suffers enormously from a credibility crisis.⁴⁴ Justice must not only be done but also perceived to be done. However, as the years go by it seems that this perception of justice seems to be eroding.

When most respondents to the interview were asked if they believed justice is done or will be done in election cases, most affirmed the widely held belief of the prevalence of corruption in the judiciary and their handling of election-related cases. A respondent from the women political advancement organisation; Elect Her puts it very poetically *“First of all, the rule of law is broken. There is very little fate in the electoral judicial system and that is because of the complexity that arises from that particular domain”*

This perception has its roots generally in the belief that money bags and those who have power can easily pay to get a favourable judgement. This notion, as explored in the previous chapter, is entrenched in the minds of men, women and youth alike and experienced by Mr Ayuba, a PWD who ran for the office of Councillor of Mangu LGA in 2015. According to him, after the elections, he was set to be declared the

⁴⁴ <https://docs.google.com/document/d/1BBST6BjDs4j8BmuHKOUMSqq89h0mLpfwk9b-s9O2zg7E/edit>

winner of the elections. However, due to speculations of violence in some Polling units, a re-run was ordered in those units and with that, another candidate was declared the winner. Even though he had great reason to believe there was foul play, he was advised not to go to court by his party members. He explains:

“As civilized and law-abiding citizens, the right thing to do was to go to the court but the party chairman said we shouldn’t go to court because he said we don’t have confidence in the court. We are not going to the regular court; we’re going to the Plateau State Local Government Election Tribunal which was constituted by the same Governor that rigged us out. He said all of these people that were wrongly declared winners have received what was called certificates of return and he said if you go to court which was a kangaroo tribunal, they’ll still give justice to this same opponent of yours”.

This perception is further solidified by the reality of bribery and corruption in the judiciary. Various studies over the years have shed light on the fact that the rich and powerful give bribes in exchange for favourable judgements, and this reality has severely impacted the trust Nigerians have in the justice system. The increased participation of the judiciary in electoral issues has opened it to become the target of political investors. This has created a crisis of integrity, where judges’ decisions can be influenced and favourable rulings go to the highest bidder. Conflicting judgements in elections are perceived to be a by-product of this corrupt state of affairs and it has a socially harmful effect on the perceptions of those it was entrusted to protect.

One of the effects of this problem is increased apathy towards the electoral process. Its effects were described by Elether thus: *“...when you have conflicting and some very controversial judgement, what happens is it affects everyone. It affects the voter; it affects the voter like why am I voting. We already know the end from the beginning. Which is like a sentiment that a lot of youths have. What is the purpose? And that’s what used to hold the youth’s hostage for a really long time.”*

The powerless feeling was emphasized. by the President of the National Union of Campus Journalists, Mr Samuel Ajala. When speaking about the effects of conflicting judgements especially on students and youths he said:

“Conflicting judgement is one factor that’s breaking the system. I realize that people do not really talk about it unlike discussing elections, security and other issues... It makes me wonder if courts operate a different constitution and if the judges are products of different law schools’ curriculum or training. If I can undergo such kind of confusion, I can imagine what students or campus Journalists are actually going through because everything just looks so confusing to us and I can’t say if I am

confident about the whole electioneering process in Nigeria.”

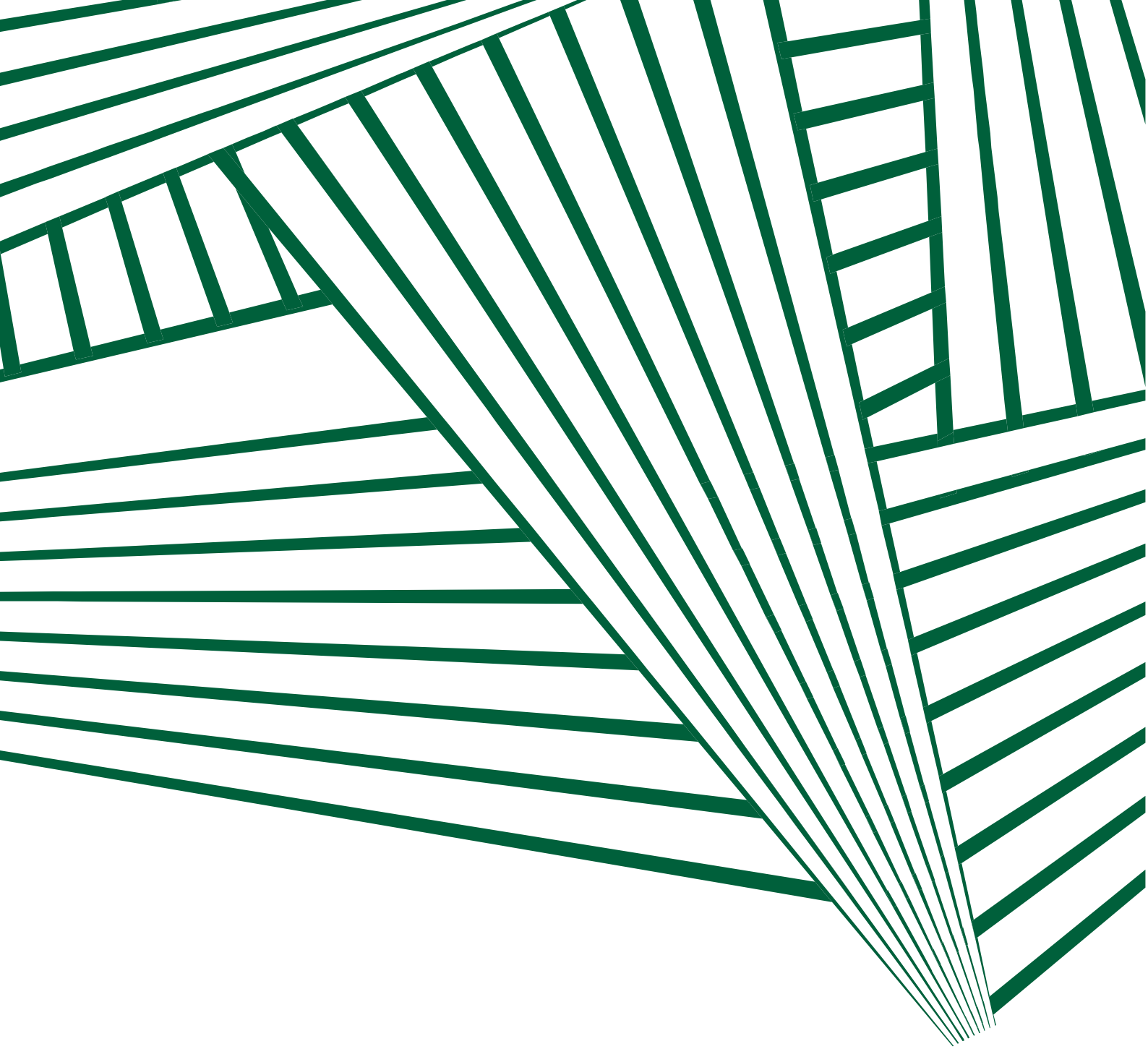
The lack of trust and apathy are not the only ripple effects of the judiciary’s activism in elections. The process of litigation can also weaken the political party and there might not be internal cohesion in the party. According to Dr Musa Umar the Chief Operating Officer of NIPSS there have been several cases when a given party lost membership because it lost election through a court’s decision. There can be unlawful reactions to court rulings because individuals would want to get justice for themselves, most times violently.

Citizens look towards the judiciary as the guardian of their rights and need to trust that those rights would be protected. In a situation where a citizen puts in effort towards deciding on a candidate and voting and thereafter the case goes to court and there is no justice done, doubt would be bred and citizens would no longer believe that elections would be free and fair. This is the situation of the Nigerian electoral system today.

5. Conclusions and Recommendations

In conclusion, this article has shown that there is deteriorating trust in the way the courts handle electoral cases. The effects of this are reluctance to use the courts and growing levels of apathy in the electoral process. The judiciary needs to be proactive about restoring its image of being a just and fair umpire and here are a few recommendations on how this can be achieved:

- The NJC and Heads of Courts must give consideration to competence and integrity in their selection of Tribunal judges.
- The Courts need to ensure better protection for witnesses by providing resources and safe spaces for them against any threats from politicians and/or their agents.
- The NJC should publicly discipline defaulting judges.
- The judiciary should ensure election cases are concluded timeously to reduce litigation expenses, particularly for women, youths and PWDs.
- The court settings should be made accessible, conducive and comfortable for persons with disabilities; by providing wheelchair accessible entrance or ramp for the physically disabled, braille assistance for the visually impaired and sign language experts for the hearing impaired at no additional costs to them.



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