

JUDICIAL CORRUPTION, INSTITUTIONAL REFORM AND THE ELECTORAL PROCESS IN NIGERIA

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ABSTRACT

Shortly after the collapse of the Berlin Wall and the demise of several African one-party regimes, leaders of a number of African countries began the process of reconstructing the postcolonial African state by embarking on policy and political reforms. This decision was informed by the fact that, since independence, many African countries have been wracked by political and economic crises that have prevented the state from pursuing the rapid growth and economic development needed to fight poverty and material deprivation on the continent. This study argues that while corruption has contributed largely to the development crises in post-independence Nigeria, the problem of judicial corruption is a major impediment to the attainment of sustainable electoral reform in Nigeria. The study substantiates this hypothesis by citing instances of corruption in the Election Petition Tribunals of the 2003 and 2007 general elections in Nigeria. It is submitted that corruption in the judiciary helps to undermine electoral reform by ensuring that the decisions of the Election Petition Tribunals are compromised and the mandate of the people is subverted. Suggestions are offered to reform of the Nigerian electoral process with a view to fighting corruption in the judiciary.

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1 INTRODUCTION

Since the end of the Cold War and the collapse of military rule and one-party regimes across Africa, several African countries have begun reforming their electoral processes.¹ In Nigeria, the entire electoral system was reconstructed to ensure that it is capable of sustaining the country's democratic project, providing a fair system of electing leaders and rededicating the state to human-centred development.

Since 1960, when Nigeria attained its independence, elections in the country have been characterised by and fraught with election rigging, massive corruption in government, and capricious and arbitrary use of state power to manipulate the electoral mandates of the people. Elections have served also as a platform for the deliberate use of excessive force to subdue the voices of the opposition.²

At different times in Nigeria's political history, the state has been used to silence those who were desirous of challenging the *status quo*.³ In the process, elections in Nigeria have become volatile. This practice contradicts the popular culture in liberal or advanced democracies. Brautigam & Omotola opine that elections are one of the greatest indices of measuring advanced liberal democratic culture because citizens know that, through elections, they can remove those leaders who have refused to fulfil their election manifestos or those who have lost popular support.⁴

The objective of this paper is to discuss critically the role of judicial corruption in the reform of the electoral process in Nigeria. It does this by citing cases of corruption in the Election Petition Tribunals of the 2003 and 2007 elections which have affected negatively the constitutional responsibility of the Nigerian judiciary in the reform of the electoral system.

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- 1 Ake C (2000) *The Feasibility of Democracy in Africa* Senegal: CODESRIA at 72; Oloka-Onyango SJ & Muwanga N (2007) *Africa's New Governance Models: Debating Form and Substance* Kampala: Fountain Publishers at vii; Jinadu A (2010) *Electoral Reforms and the Future of Democratisation in Nigeria* Lagos: CBAC at 1.
 - 2 Akanbi MM (2004) *Corruption and the Challenges of Good Governance in Nigeria* at 18; Ijalaye DA (2008a) *Corruption in the Public Service of Nigeria: A Nation's Albatross* Lagos: Nigerian Institute of Advanced Legal Studies at 18.
 - 3 Sesay A & Ukeje C (1999) "The West and Elections in Nigeria" 45(4) *Journal of Opinions* 34-37 at 35.
 - 4 Brautigam D (1997) "Institutions, Economic Reform and Democratic Consolidation in Mauritius" 30(1) *Comparative Politics* 45-62 at 45. See also Omotola (2010) "Elections and Democratic Transition Under the Fourth Republic" 109(437) *African Affairs* 535-553 at 535.

2 WHAT IS JUDICIAL CORRUPTION?

Judicial corruption has been defined as the abuse of court process or judicial process by judicial or non-judicial officers, for purposes of satisfying their pecuniary or personal needs, which may carry monetary or non-monetary values. As a variant of corruption in the larger society, judicial corruption refers to the abuse of public power for private gain by people charged with the administration of justice.⁵ The global anti-corruption agency, Transparency International, states that:

Judicial corruption is any inappropriate influence on the impartiality of the judicial process by any actor within the court system. For example, a judge may allow or exclude evidence with the aim of justifying the acquittal of a guilty defendant of high political or social status. Judges or court staff may manipulate court dates to favour one party or another. In countries where there are no verbatim transcripts, judges may inaccurately summarise court proceedings or distort witness testimony before delivering a verdict that has been purchased by one of the parties in the case. Judicial court personnel may 'lose' a file — for a price.⁶

In this study, judicial corruption refers to any inappropriate influence on the judicial process designed, by those charged with the administration of justice or by non-state actors, to subvert the electoral process using bribes or any other form of political patronage.⁷ This definition is supported by and is in consonance with Sections 18 and 19 of the Corrupt Practices and Other Related Offences Act, 2000. Similarly, Section 98 of the Criminal Code sees a corrupt public official as "any person who corruptly asks for, receives or obtains any property or benefit of any kind for himself or any other person".⁸

5 See Bayley DH (1966) "The Effects of Corruption in a Developing Nation" 19 *The Western Political Quarterly* 719-732 at 720; Nye JS (1967) "Corruption and Political Development: A Cost Benefit Analysis" 61 *The American Political Science Review* 417-427 at 419; Oputa C (1986) "The Judiciary and the Administration of Justice: Critical Assessment and Recommendations" 21(3) *Nigerian Bar Journal* 36-53 at 37; Harsch E (1993) "Accumulators and Democrats: Challenging State Corruption in Africa" 31 *The Journal of Modern African Studies* 31-48 at 33.

6 Transparency International (2007) *Global Corruption Report 2007: Corruption in Judicial Systems* Cambridge: Cambridge University Press at xxi.

7 Akinbiyi S (2003) *Ethics of the Legal Profession in Nigeria* Ogun State: Augustus Publication at 203; Mbaku JM (2010) "Law, Institutions and Corruption in Africa" at 42, available at <http://works.bepress.com/johnmbaku> (visited 10 April 2013). See also Musdapher D (2011) *The Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy* Lagos: Nigerian Institute of Advanced Legal Studies at 4.

8 Criminal Code Act Cap38.

2.1 The rule of law, judicial corruption and the electoral process in Nigeria: probing the synergy

The notion of the rule of law is derived from the fact that everybody is equal before the law. It also connotes that the judiciary, which is established to interpret law and deliver justice, must place everyone on an equal footing, without fear or favour. This is the notion that makes the law the last hope of the common man. Because law, as an instrument of social order, cannot operate effectively without the judicial system, the two usually are seen as inseparable entities. For instance, the law is expected to define the *modus operandi* of the electoral system, and the judiciary is expected to ensure that all the parties and stakeholders in a political contest comply with the constitution and the electoral law.⁹ However, studies on state and politics in the developing world have indicated that human beings are rational animals who can choose between obedience and disobedience. While many people ordinarily will want to comply with the law once it has been crafted by the legislature and they understand it, some may not want to comply. Instead, they will devote much of their energy to manipulating the law to suit their parochial interests. It is therefore the duty and the constitutional responsibility of the judiciary to ensure that the rule of law prevails at all times.¹⁰

Judicial corruption is definitely antithetical to the rule of law and the electoral system because it creates two systems of justice: one for the rich and another one for the poor.¹¹ Pepys aptly observes that:

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- 9 See Oputa C (1993) "The Independence of the Judiciary in a Democratic Society: Its Needs, Its Positive and Its Negative Aspects" in Elias TO & Jegede MI (eds) *Nigerian Essays in Jurisprudence* Lagos: MIJ Publishers Limited at 223; Jega A (2014) *Stakeholders and the Electoral Process in Nigeria: Review of 2011 Elections and Projections into 2015* Lagos: Department of Sociology, University of Lagos at 2-4.
- 10 Oputa C (2003) "The Judiciary as an Unbiased Umpire in the Democratic Process" in *Towards Functional Justice: Seminar Papers of Justice Chukwudifu A Oputa* Ibadan: Gold Press Limited at 174-176; Ijalaye DA (2008b) *Executive and Legislative Lawlessness: A Challenge to the Rule of Law in Nigeria* Lagos: Lagos State University at 5.
- 11 See Akinbiyi (2003) at 206; Munyantwali SJ (2003) *The Role of Legal and Judicial Reform in Promoting the Rule of Law and Good Governance in Africa* Lagos: Nigerian Institute of Advanced Legal Studies at 6; Abdul-Razaq T (2005) "Elections Petitions and the Politics of the Judiciary: The General Elections of 1983" in Akinsanya AA & Adeoye A (eds) *Readings in Nigerian Government and Politics* Ogun State: Gratial Associates International 253-267 at 254; Mbaku JM (2013) "Providing a Foundation for Wealth Creation and Development: The Role of the Rule of Law" 38(3) *Brooks Journal of International Law* 960-1051 at 1040; Adisa WB (2014) *Socio-economic Factors and Vulnerability of Court Users to Judicial Corruption in Lagos State, Nigeria* Thesis submitted to the Department of Sociology, University of Lagos at 3.

In corrupt judiciaries, citizens are not afforded their democratic right of equal access to the courts, nor are they treated equally by the courts. The merits of the case and the applicable law are not paramount in corrupt judiciaries, but rather the status of the parties and the benefit judges and court personnel derive from their decisions. A citizen's economic level, political status and social background play a decisive role in the judicial decision-making process. In corrupt judiciaries, rich and well-connected citizens triumph over ordinary citizens, and governmental entities and business enterprises prevail over citizens.¹²

In most transitioning states, corruption of the judiciary and the subversion of the rule of law are major problems for the conduct of free and fair elections, and in the final analysis, for the sustainability of democracy.¹³

Nigeria is amongst those African countries where corruption is endemic to the electoral process. Nigeria's past elections, apart from being characterised by violence and electoral fraud, have seen the judiciary being accused of electoral corruption. For example, the judiciary has been implicated in the annulment of the 1993 election, allegedly won by the late Chief MKO Abiola but voided by the then Military Head of State, General Ibrahim Badamosi Babaginda. The Abuja High Court ordered the stoppage of the process two days before the Presidential election. The judgment, by Justice Bassej Ikpeme, was said to have been delivered after normal sitting hours of the court. Not only was this judgment a calculated attempt by the military government to thwart the elections, but it also was designed to demonstrate that the judiciary was not capable of sustaining any democratic project in the country.¹⁴

Despite the judgment of Justice Ikpeme, the National Electoral Commission (NEC) proceeded to conduct the election on Saturday 12 June 1993. Chief Abiola was understood to be the winner of the Presidential election but the military annulled it. It was the non-compliance of NEC with the judgment of Justice Ikpeme that informed the decision of the military to proceed to court for an order to stop NEC from announcing the results of the Presidential election. This order subsequently was granted by the

12 Pepys MN (2007) "Introducing the Problem: Corruption within the Judiciary: Causes and Remedies" in Transparency International *Global Corruption Report 2007: Corruption in Judicial Systems* Cambridge: Cambridge University Press at 3.

13 Abdul-Rasaq (2005) at 253; Musdapher (2011) at 11.

14 *The Guardian* (26 June 2016) "The Courts and Injustice to MKO Abiola", available at <http://guardian.ng/opinion/the-opinion/the-courts-and-injustice-to-mko--abiola> (visited 31 May 2017).

Chief Judge of Abuja, Justice Dahiru Saleh.¹⁵ It is important to note that the confusion created by this judgment led to the issuance of injunctions and counter-injunctions by courts of cognate jurisdiction in Abuja and Lagos, a development which evidences the level of corruption and moral degeneration in the nation's judicial system. Although such frivolous injunctions may have stopped under the current dispensation, collusion amongst litigants, lawyers and tribunal judges is still a major problem and has been identified by experts as an obstacle to the sustainability of the electoral process in Nigeria.¹⁶ The editorial comment of *The Guardian* newspaper clearly attests to this:

Notwithstanding the postponement of the elections, the recent barrage of lawsuits against the Independent National Electoral Commission (INEC) may well be a tell-tale sign of what befalls the judiciary in the months ahead. The overload of litigations, the pressure on election tribunals, and the moral and ethical implications of illicit liaisons between tribunal heads and litigants are possible expectations, with dire consequences for Nigeria's political development. This is why the sermonic admonition of the Chief Justice of Nigeria, Justice Mahmud Mohammed, the other day, to judicial officers that they must never again be used to truncate the nation's democracy, remains a fitting reminder of the sacredness of the judiciary's task to democratic culture. With sentences that smack of threatening imperatives, Justice Mohammed touched raw spots and bruised some egos of these respected ministers of the temple of justice as he swore in, in Abuja the 242 judges selected as chairmen and members of the 2015 Election Petition Tribunal. As if his mission must be accomplished by force, Mohammed's words were biting: "You must ensure that all petitions must be founded upon grounds which are contained in Section 138 of the Electoral Act and not on extraneous provisions of law as the tribunal is not a court of vain inquisition." "All your considerations must be founded in law only ..." "Let me use this opportunity to sound a note of warning to all judicial officers ..." "We must never again be used as tools to truncate our nation's democracy ..." "You must be dispensers of justice regardless of fear or favour, position or standing ..." "We must uphold the stability of this democracy ...".¹⁷

15 *The Guardian* (18 August 2016) "Saleh, June 1993 and History", available at <http://guardian.ng/opinions/saleh-june-12-1993-history> (visited 31 May 2017); *Vanguard* (10 November 2016) "How to Sustain Free and Fair Elections in Nigeria by Jega", available at www.vanguardngr.com.2011/10 (visited 31 May 2017).

16 Atavti K (15 August 2015) "Corruption: Election Tribunal Judges under Watch" *Nigerian Pilot*, available at nigerianpilot.com/corruption-election-tribunal-judge (visited 31 May 2017).

17 *The Guardian* (3 March 2015) "The Chief Justice and Election Tribunals", available at <http://www.ngrguardiannews.com/2015/03> (visited 31 May 2015).

2.2 Judicial corruption, institutional reform and the electoral process in transitioning states: insights from Nigeria

Democracy in a transitioning state is a product of reforms and, as such, it is bound to be solidified by continuous reform of the electoral process.¹⁸ Of course, reforms are necessary to ensure that strong institutions give rise to strong mandates. Elections help to legitimise the government's claim to leadership in a democratic society, unlike a military regime which claims its legitimacy through the barrel of a gun. However, it must be noted that good elections depend on strong institutions. Institutions are the basis upon which the people choose their leaders and determine the appropriate values for governing society.¹⁹

The reform agenda of democracy in Africa began shortly after the collapse of military rule in the late 1990s. For many African leaders this was an opportunity to reconstruct and reconstitute the post-colonial African state, instil new values and engender democratic practices that are capable of changing the political and economic landscape of the continent.²⁰ The need for reform was not accidental in the post-military rule history of many African countries. The reform came as a respite from and solution to the myriad of problems of development on the continent. It came at a time when Africa was confronted with diverse issues of poverty and destitution among the indigenous people. Thus, many Africans saw the reform process as an opportunity to fight poverty and to improve the living conditions of the citizenry. It was seen also as an opportunity to reconstruct and reconstitute the state so that governance may be bottom-up, people-centered and participatory.²¹

Many African countries, including Nigeria, believed that it was high time for the political system to be liberalised in order to give the citizens more power and more

18 See Oloka-Onyango & Muwanga (2007) at ix; Jinadu (2010) at 3.

19 See Brautigam (1997) at 48; Mbaku JM (2000) *Bureaucratic and Political Corruption in Africa: The Public Choice Approach* Florida: Krieger Publishing Company at 199. See also Asian Human Rights Commission and Asian Legal Resource Center (2006) *Asia: Towards the Elimination of Corruption and Executive Control of the Judiciary* Hong Kong: Asian Human Rights Commission and Asia Legal Resource Center at 4; Omotola (2010) at 536; Ferree K (2010) "The Social Origins of Electoral Volatility" (40)4 *British Journal of Political Science* 759-779 at 760.

20 See Ake C (1996) *Democracy and Development in Africa* Ibadan: Spectrum Books Limited at 140; Mbaku JM (1994) "Bureaucratic Corruption and Policy Reform in Africa" 19(2) *The Journal of Social, Political and Economic Studies* 149-179 at 150; Ake C (2000) at 174.

21 Nyangoro J (1994) "Reform Politics and the Democratisation in Africa" 37(1) *African Studies Review* 133-149 at 134; Mbaku (2000) at 7; Ake (2000) at 174.

voice in government. Writing about the mood that led to reforms in the 1990s, Mbaku observes that:

Over three decades of state control of economic activities has failed to rid African societies of mass poverty and material deprivation. Massive state control has, instead, encouraged and advanced nepotism, bureaucratic and political corruption, and constrained the development of viable and sustainable economic and governmental systems. When the decade of the 1990s began, Africa was still the poorest and least developed continent in the world. Despite massive flows of development assistance, the standard of living of most Africans has either declined since the 1960s or has improved marginally. The significant economic potentials that could have been used to improve human conditions have been squandered through perverse economic policies, bureaucratic corruption, and financial mismanagement.²²

Electoral reform was one of the steps undertaken by many African governments, including Nigeria, to improve the democratic system. Electoral reform is a collection of different policies and programmes of government aimed at improving the standards and global best practices in the electoral process of a country. Electoral reform may be multifaceted or selective. When it is multifaceted or holistic, it is designed to make a comprehensive diagnosis of every facet of the electoral system, encompassing the law setting up the electoral body, the enactment of the electoral law, the voting system, the delineation of constituencies, the registration of voters, the verification of voters' registers, the security and management of elections, the registration and deregistration of political parties, the screening of candidates, party finance, electoral offences, election dates, the recruitment of *ad hoc* staff for the elections, and the training and retraining of electoral staff.²³ The success of any election is a function of the nature and character of the electoral reform that is put in place by the government. It also depends largely on the character of the people appointed by the government to manage the electoral system. Neither good reforms nor a good electoral body may guarantee success. Successful elections require both significant electoral law reform and an effective electoral system managed by dependable and committed staff.²⁴

Since the return of democracy to Nigeria in May 1999, several electoral reforms have been undertaken. The most significant of these is the reform that emanated from

22 See Mbaku (1994) at 151.

23 See Omotola (2010) at 552.

24 See Mbaku (1994) at 173; Brautigam (1997) at 46.

Justice Muhammadu Uwais's Electoral Reform Committee, initiated by late President Umar Musa Yar'dua. The Uwais Committee comprised 22 members drawn from various sectors of Nigerian society, including the judiciary, the academy, civil society and the organised private sector. The Committee was set up to review the 2007 general election and recommend to the Federal Government of Nigeria ways of curtailing electoral irregularities in the country. The 2007 election was described as a charade and the worst general election ever conducted in Nigeria. It was characterised by massive rigging and manipulation, leading to the setting up of the Uwais Committee by the Federal Government.²⁵

The government adopted and used several of the Committee's recommendations, although there are many which have not been accepted. Nevertheless, the government noted that the Committee's recommendations formed the substantial part of the Electoral Act of 2010. For instance, Sections 1 to 7 of the Electoral Act deal with the establishment and functions of the Independent National Electoral Commission, as suggested by the Uwais Committee. Another significant recommendation of the Uwais Committee to be incorporated into the Electoral Act was the introduction of continuous voters' registers. Section 9 of the Electoral Act states thus:

- (1) The Commission shall compile, maintain and update on a continuous basis, a National Register of Voters, in this Act referred to as the "Register of Voters" which shall include names of all persons entitled to vote in any Federal, State and Local Government or Area Council elections.
- (2) The Commission shall maintain as part of the National Register of Voters, a register of voters for each State of the Federation and for the Federal Capital Territory.
- (3) The Commission shall maintain as part of the National Registers of Voters for each State and Federal Capital Territory, a Register of Voters for each Local Government or Area Council within the State or the Federal Capital Territory.
- (4) The register of voters shall contain, in respect of every person, the particulars required in the Form prescribed by the Commission.
- (5) The registration of voters, updating and revision of the register of voters under this section shall stop not later than 60 days before any election covered by this Act.
- (6) The registration of voters shall be at the registration centres designed for that purpose by the Commission and notified to the public.

25 Omotola (2010) at 549.

Section 10(1) goes on to provide that “there shall be continuous registration of all persons qualified to be registered voters”. The Electoral Act also changed the modes of sponsoring political parties and specified penalties for violators of political party financing.²⁶ Furthermore, it addressed the conduct of elections and stipulated penalties for violators of the rules governing the conduct of elections.²⁷

The Independent National Electoral Commission (INEC)²⁸ substantially implemented the contents of the Electoral Act by ensuring that its own institutional procedure was reinvigorated. For instance, INEC discarded the recruitment and use of *ad hoc* staff from primary schools and local communities and adopted the Uwais Committee’s recommendation that any person who serves on the INEC *ad hoc* team should be, at least, a current member of the National Youth Service Corps (NYSC) or a public servant in a recognised State or Federal institution. In order to ensure transparency in the conduct of the 2011 elections, INEC stood by this position and recruited only NYSC members, civil servants and members of the academy. For the first time, university teachers served as collation officers at the local government level, while Vice Chancellors were used as collation officers at the State and Federal levels. INEC continued to use this model in subsequent elections and has promised to pursue the improvement of standards.²⁹ As a mark of its determination to comply with the Electoral Act, INEC deployed enough functioning electronic machines to Ondo State in order to forestall previous experiences where electronic machines would stop working on election day. During the conduct of the election, INEC was reported to have improved also on its use of the electronic voting system by employing experienced and well trained personnel for the activity. This improvement was responsible for the perceived level of credibility of INEC’s performance in the electoral process by the people of Ondo State, and for the main opposition party candidate, Eytayo Jegede, not submitting a petition to the Governorship and Legislative House of Assembly Petitions Tribunal.³⁰

Despite the substantial changes introduced in 2011, there were still allegations of election rigging in some parts of the country, as well as violent disruptions of

26 See Sections 90-93 of the Electoral Act, 2010.

27 See Sections 117-132 of the Electoral Act, 2010.

28 INEC replaced NEC in 1999.

29 Jega (2014) at 4.

30 Akingboye O (27 December 2016) "Why I Did Not Challenge Ondo Governorship Poll Result, by Jegede " *The Guardian*, available at <https://t.guardian.ng/news/why-did-not-challenge> (visited 14 June 2017).

elections. The violence that accompanied the elections was symptomatic of the grievances nursed in some quarters by Nigerians. Notwithstanding these flaws, the 2011 general election has been described by many observers as one of the fairest elections ever conducted in Nigeria.³¹

Regrettably, however, corruption in the judiciary has tended to affect negatively the electoral process and the prospects of democratic stability in Nigeria. Following the conclusion of the 2011 elections, Election Petition Tribunals were set up to look into the conduct of elections where parties sued for redress or wanted a recount of the votes cast. Election Petition Tribunals are recognised constitutionally as the only bodies that can receive, act on and give judgments on petitions filed by aggrieved parties or candidates in elections conducted by INEC.³² Sections 140 to 145 of the Electoral Act contains the details of the procedures to be followed by aggrieved persons or political parties for the writing, submission and hearing of their election petitions, including petitions regarding fines and penalties imposed for non-compliance with the electoral law. The source of judicial corruption and the effect that such corruption has had on Nigeria's electoral system comes largely from the Election Petition Tribunals. This matter will be discussed in more detail later.

What exactly is the theoretical context that is producing and reproducing judicial corruption in the electoral process? Can this be attributed to the failure of the state sincerely to fight the problem of pervasive corruption in the public sector of post-colonial African society? The next section will attempt to provide answers to these questions.

3 THE PERIPHERAL POLITICAL ECONOMY, JUDICIAL CORRUPTION AND THE ELECTORAL PROCESS

The peripheral political economy is a variant of the classical Marxist political economy of development. The theory simply states that conditions in peripheral societies are actually responsible for the political crises in these countries. It considers that politics is shaped by the inherited structures of colonialism, which allow the state to be used to amass wealth and enrich the politically powerful in society. Ake gives a cogent description of the conditions in Africa that are promoting political crisis:

31 *Vanguard* (1 October 2011) "How to Sustain Free and Fair Elections in Nigeria by Attahiru Jega", available at www.vanguardngr.com/2011/10/how-to-sustain-free (visited 31 May 2017).

32 See Sections 133-140 of the Electoral Act, 2010.

It is easy to see that the political environment at independence was profoundly hostile to development. The struggle for power was so absorbing that everything else, including development, was marginalised. Those who were out of power constantly worried about their exposure to every kind of assault by a state that was hardly subject to any constitutional or institutional restraints. Since what mattered in this type of politics was the calculus of force, those out-of-power strove constantly to put together a credible force to challenge those in power, or, at any rate, to limit their own vulnerability to harassment and abuse. In a highly statist postcolonial polity, they did not even have the option of channeling their ambitions into economic success, which was primarily a matter of state patronage. To become wealthy without the patronage of the state was likely to invite the unpleasant attention of those in control of state power. Political power was everything; it was not only the access to wealth but also the means to security and the only guarantor of general well-being. For anyone outside the hegemonic faction of the political elite, it was generally futile to harbour any illusions of becoming wealthy by entrepreneurial activity or to even take personal safety for granted. For anyone who was part of the ruling faction, entrepreneurial activity was unnecessary, for one could appropriate surplus with less risk and less trouble by means of state power.³³

The peripheral political economy theory posits that corruption is one of the consequences of the development crisis in Africa. It postulates that the state has failed both as a protective and productive state. The state has failed in its protective role because it is unable to guarantee the safety of the lives and property of the citizenry. It has failed as a productive state because it lacks the capacity to create wealth, sustain state-owned enterprises, and maintain a viable private sector. As a result, the state itself is exposed to corruption and primitive capital accumulation.³⁴ Mbaku describes the scenario in this way:

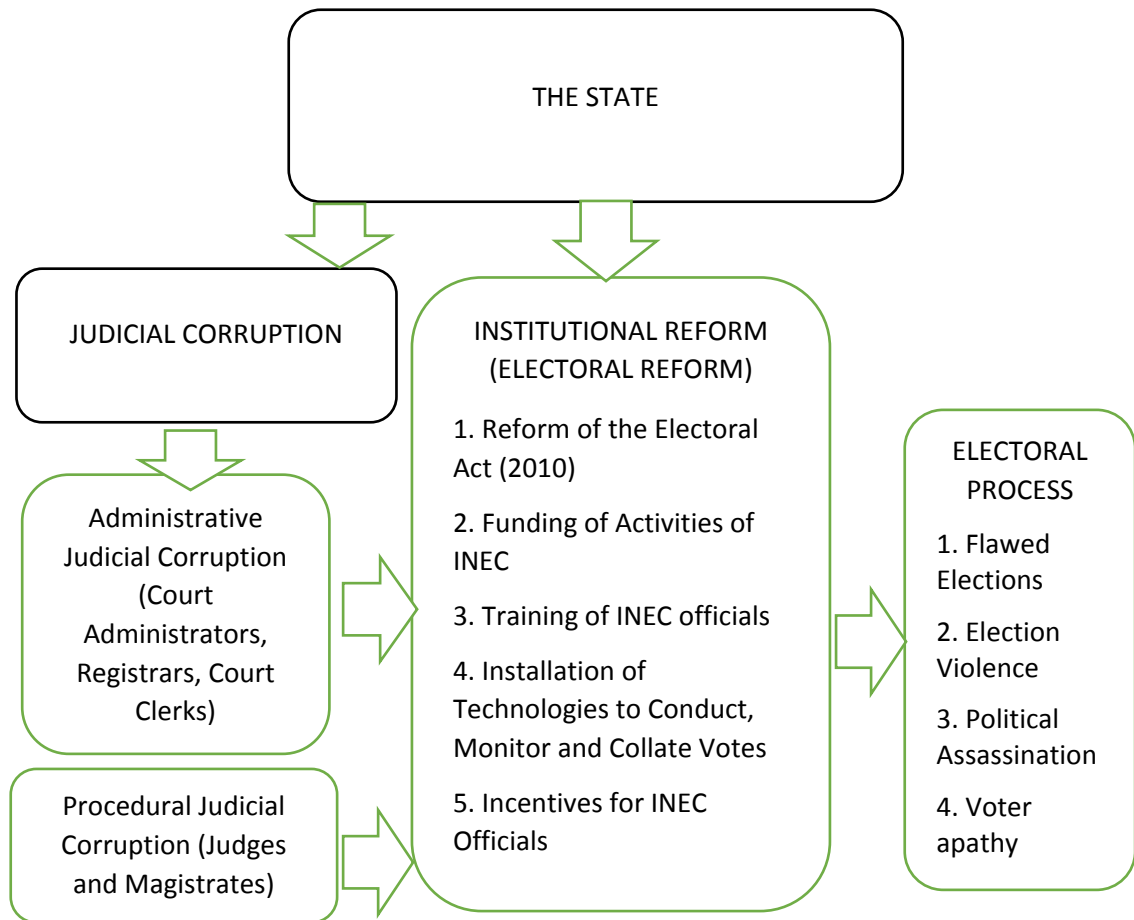
Bureaucratic corruption (of which judicial corruption is a variant) has provided certain groups in the African economies privileged positions in government as well as enormous wealth. Since independence, corrupt bureaucrats and politicians have promulgated policies that have allowed them to monopolise both economic and political institutions. While perverse economic policies have enriched a few individuals, notably politicians, military elites and a

33 See Ake (1996) at 7.

34 Ekeh P (1975) "Colonialism and Two Publics in Africa: A Theoretical Statement" 17(1) *Comparative Studies in Society and History* 91-112 at 110; World Bank (2005) *Judicial Systems in Transition Economies: Assessing the Past, Looking at the Future* Washington DC: The World Bank at 11; Adisa WB (2016) "Colonialism and the Military: A Discourse on the History of Judicial Corruption in Nigeria" 6(2) *AFRIKA: Journal of Politics, Economics and Society* 33-60 at 35.

handful of entrepreneurs, the mass of the African peoples have remained essentially poor and severely poor.³⁵

Figure 1: Conceptual Framework on Judicial Corruption, Institutional Reform and the Electoral Process in Nigeria³⁶



35 See Mbaku (1994) at 162.

36 The conceptual framework was developed by the author to explain the impact of judicial corruption on institutional reform and the electoral process in Nigeria. It shows that institutional reform is critical to electoral reform, but in Nigeria this process has been affected negatively by the problem of judicial corruption in the Election Petition Tribunals. If urgent reform is not undertaken to address this moral dilemma in the judiciary, Election Petition Tribunals may continue to undermine democracy in Nigeria.

The schema that is provided in Figure 1 above is meant to illustrate the nature of relationship between judicial corruption, institutional reform and the electoral process in Nigeria. It indicates that judicial corruption is an antithesis of democracy, and that it becomes anti-democratic through the corruption of the reforms of the electoral process, part of which is the constitution and operation of the Election Petition Tribunals. The schema further shows that corruption hurts institutional reforms by ensuring that elections are flawed and by provoking citizens to engage in election violence.

4 MEASURING JUDICIAL CORRUPTION IN THE ELECTORAL PROCESS IN NIGERIA: THE IMPORTANCE OF CASE STUDIES

Efforts to measure, track and understand the nature and causes of judicial corruption in the judicial systems of developing countries are ongoing. Methods vary from using the perception of corruption in the judiciary to tracking experiences of judicial corruption. The World Bank and the United Nations have spearheaded many attempts to determine empirically whether corruption affects development.³⁷ In this paper, the case study method is adopted to interrogate the impact of judicial corruption on Nigeria's electoral process. Case study is a common method in the study of politics and law.³⁸

Two cases of judicial corruption, one relating to the 2003 elections and the other to the 2007 elections, will be considered. For 2003, the focus is on the Anambra State National Assembly Election, while for 2007 it is on the Osun State Governorship Election. Recent events in Nigeria indicate that there is substantial evidence of massive corruption in the judiciary, especially in Election Petition Tribunals in the country. The best evidence concerns justices of the Appeal Court who were sacked by the National Judicial Council for their involvement in election bribery. Two such instances are presented and discussed below.

37 Seligson MA (2002) "The Impact of Corruption on Regime Legitimacy: A Comparative Study of Four Latin American Countries" 64(2) *The Journal of Politics* 408-433 at 414-417. See also Seligson MA (2006) "The Measurement and Impact of Corruption Victimization: Survey Evidence from Latin America" 34(2) *World Development* 381-404 at 383; Adisa (2016) at 14.

38 Oso WY & Onen D (2008) *A General Guide to Writing Research Proposal and Report: A Handbook for Beginning Researchers* (2ed) Uganda: Fountain Publishers at 71.

4.1 Anambra State National Assembly Election (2003)

The 2003 National Assembly Election in Anambra State was the subject of judicial corruption which led to the dismissal of two justices of the Court of Appeal, Justice Okechukwu Opene and Justice DA Adeniji, by the National Judicial Council. The two justices were said to have been indicted for taking bribes in relation to the senatorial election in Anambra State.³⁹ Justice Opene allegedly took ₦12 million and Justice Adeniji was supposed to have taken ₦15 million. The two justices were members of Anambra State National Assembly Election Petition Tribunal which sat in Enugu in the contest between Nicholas C Ukachukwu and Ugochukwu Uba, and was expected to give a verdict on a petition written against the election of Ugochukwu Uba of the Peoples' Democratic Party. Ugochukwu Uba allegedly offered the two justices the money for them to declare him winner of the election. This was not the only case that was riddled with corruption. There were several allegations of massive corruption in the Election Petition Tribunals in the state but none of these allegations eventually made it to the National Judicial Council.⁴⁰

Be that as it may, the dismissal of Justices Opene and Adeniji, as a result of the bribery scandal, marked a watershed in the history of the judiciary in Nigeria. Ijalaye had this to say about the case:

On Thursday, 12th May, 2005 President Olusegun Obasanjo approved the dismissal of two Justices of the Court of Appeal over bribery allegations made against them. These were Justices Okechukwu Opene and David A. Adeniji. The dismissal of the two Justices of the Court of Appeal was seen as a novelty because it was the first time in the history of Nigeria that Justices of the appellate court would be sacked on the basis of corruption.⁴¹

4.2 Osun State Governorship Election (2007)

The 2007 Osun State Governorship Election was the subject of a legal tussle. Lawyers for Engineer Rauf Aregbesola, the candidate of the Action Congress of Nigeria, had filed a petition to the Appeal Court in Ibadan, requesting that the votes cast in 10 local councils during the 2007 Osun Governorship Election be recounted and that a forensic analysis be conducted to ascertain the validity of the ballot papers used by INEC.

39 See *Ukachukwu v Uba* (2005) 18 NWLR (Pt 956) 1.

40 Adeyemo W (2007) "The Rot in the Temple of Justice" in TELL Magazine *Corruption in the Judiciary: The Challenge Before Kutugi* Lagos: TELL Communications Limited at 14-18.

41 See Ijalaye (2008) at 10.

The Election Petition Tribunal in this matter was headed by Justice Thomas Naron. The case began in 2007 when Aregbesola filed a petition contending that INEC and the police colluded to rig the elections in favour of Colonel Olagusolye Oyinlola, the candidate of the People's Democratic Party. In 2008, the lower court (which was the Governorship and Legislative House of Assembly Election Petition Tribunal)⁴² rejected the forensic analysis carried out on polls in 10 council areas of the state, thereby validating the election of Oyinlola. Dissatisfied with this verdict, Aregbesola filed a case at the Court of Appeal for the verdict of the lower court to be overturned. The appellate court ordered a retrial, and the Election Petition Tribunal had to hear the case again. After several legal skirmishes, the Court of Appeal, sitting in Ibadan, eventually declared Engineer Rauf Aregbesola to be the authentic winner of the 2007 Governorship Election in Osun State.

The controversy which dogged the case affected the judiciary seriously at the Appeal Court as well as at the Supreme Court. Firstly, Justice Thomas Naron of Plateau State High Court, who headed the first Osun State Election Petition Tribunal, was found guilty of gross misconduct and abuse of office by the National Judicial Council, as he maintained constant interaction with Mr Kunle Kalejaiye SAN, the lawyer of Colonel Olagunsoye Oyinlola. Justice Naron was given compulsory retirement from the Bench in terms of Section 292(1)(b) of the 1999 Constitution because he had acted against the Code of Conduct for judicial officers.

The second issue in the Osun State Election Petition Tribunal case was that it created rancour between Justice Ayo Salami and the then Chief Justice of Nigeria, Honourable Kastina-Alu CJN. The details of this controversy are captured by Abimboye:

The battle is unprecedented in the Nigerian Bench, one that is threatening the image of the judiciary. For over a year, Kastina-Alu, Chief Justice of Nigeria (CJN) and Isa Ayo Salami, President, Court of Appeal, PCA, the two most high ranking men in the Bench, had been locked in a tango over the decisions of the appellate courts. First, it was on the case on the 2007 governorship election and the 2008 rerun in Sokoto State and the verdicts of other justices of the Appeal Court which removed the governors of the People's Democratic Party in Ekiti and Osun State states and replaced them with those of the Action Congress of Nigeria, ACN. Although, the two top-notch of the judiciary are billed to retire soon, Kastina-Alu is set to quit office on August 29, and Salami two years from now — they refused to sheathe their swords. They fought each other to a standstill. But on August 18, the feud claimed its first

42 See *Aregbesola v Oyinlola* (2009) 14 NWLR (Pt 1162) 429.

casualty. Whereas Salami had gone to court seeking declarations that the National Judicial Council, NJC, had no right to investigate the petitions against him and that the outcomes of the exercise were perverse, the Council wrote President Goodluck Jonathan, recommending his compulsory retirement for misconduct. Promptly, the president on Sunday, August 21, suspended the embattled judge.⁴³

4.3 Discussion of Findings

The issues emerging from the 2003 and 2007 elections discussed above concern the bribery of tribunal judges and the unhealthy closeness of tribunal judges to the lawyers of litigants. The Anambra State National Assembly Election led to the dismissal of Justices Okechukwu Opene and DA Adeniji. However, the Osun State Governorship Election encompassed matters of corruption and politics that nearly tore the judiciary apart.

In the latter case, Justices Katsina-Alu and Ayo Salami were the individuals whose images were affected most by the moral crisis which erupted. Although, Justice Salami was sacked eventually, following the recommendation of the National Judicial Council, many analysts have argued that the then Chief Justice of the Federation also erred in law by stopping the Sokoto Election Petition Tribunal from going ahead to deliver its judgment on the Sokoto Governorship Election.⁴⁴ Abimboye sums up:

The Salami-Katsina-Alu feud which has now snow balled into a national disgrace began in February, 2010 when the CJN who doubles as NJC Chairman, stopped the Appeal Court, Sokoto, from delivering ruling in the case between Muhammad Dingyadi of the Democratic People's Party, DPP, and Magatakarda Wamakko of the People's Democratic Party, PDP. Both men had contested the governorship election and the May 24, 2008 rerun. INEC declared the PDP candidate winner on the two occasions. On January 18, 2010, the judges of the Appeal Court, Sokoto, led by Muhammd Dattijo, had heard the appeal filed by Dingyandi and fixed February 24, for ruling. Given this situation, DPP felt it should discontinue an interlocutory appeal it filed at the Supreme Court. This has turned out to be an unwise step.⁴⁵

Abimboye continues:

Ruling was fixed for October 4, 2010. But before the Sokoto Court of Appeal panel could deliver judgment, a panel of the Supreme Court presided over by

43 Abimboye D (5 September 2011) "Anarchy in the Temple of Justice" in *Newswatch Judiciary in Disarray*, Lagos: Newswatch Communications Limited at 12.

44 Abimboye (2011) at 15.

45 Abimboye (2011) at 15.

Dahiru Musdapher issued an injunction restraining the panel in Sokoto from proceeding to deliver ruling in the appeal. Subsequently, a five-man panel headed by B Babalakin, former justice of the Supreme Court, was set up by the CJN. The panel, in its report, found that there was no case of misconduct made against the PCA (President of Court of Appeal) and that the CJN has no power to interfere with any proceedings in any court as was done in Sokoto case. Katsina-Alu accepted the conclusions in good faith.⁴⁶

The Sokoto Governorship case is an example of how far and how seriously the politics of the judiciary could undermine the administration of justice in the country.

5 CONCLUSION AND RECOMMENDATIONS

This study has demonstrated that judicial corruption slows down the advancement of democracy and undermines the process of conducting free and fair elections in Nigeria. Judicial corruption drags the judiciary, which is revered by people as the last hope of the common man, into bribery, nepotism and moral dilemma. This study has demonstrated also that the Election Petition Tribunals are the main locus of judicial corruption in the country's electoral process. Thus, the need to monitor the activities of the Election Petitions Tribunals is urgent if Nigeria desires genuine electoral reform. Also, the National Judicial Council must ensure that erring judges always are brought to book and appropriate sanctions meted out to them as and when due.

The following recommendations are aimed at promoting effective reform of the electoral process in Nigeria:

1. Constitutional courts need to be set up to deal directly and effectively with constitutional cases, and to help strengthen the powers of the regular courts on constitutional matters.
2. The Independent National Electoral Commission must enforce the terms and contents of the Electoral Act of 2010 against politicians who pervert or try to pervert the course of justice during the sittings of the Election Petition Tribunals.
3. Justices of the Court of Appeal must be screened properly and certified by the National Judicial Council before they are appointed to sit on the panels of Election Petition Tribunals.

46 Abimboye (2011) at 15.

4. Periodic monitoring of the proceedings and activities of Election Petition Tribunals must become compulsory, both for the Independent National Electoral Commission and the National Judicial Council.
5. Remuneration for justices who sit on the Election Petition Tribunals must be commensurate with the task given to them, since good incentives are likely to promote to transparency and accountability.