Ward Congresses and Primaries as Legal Tools For Deepening Democracy In Nigeria

By

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Abstract

This paper examines the state of ward congresses and primaries in Nigeria and how this can be used as a legal tool to deepen democracy in Nigeria. It finds that the ward congresses and primaries are far from democratic despite the fact that there are standard procedures usually spelt out in the Guidelines for Primaries and approved by the National Executive Committees of the political parties and the legislative intervention as contained in section 87(9) of the Electoral Act 2010 (as amended). The paper recommends that the best way to go in deepening our democracy is to ensure the sanctity of delegates' lists for ward congresses and primaries. It also recommends the enactment of guidelines for congresses and primaries into the Electoral Act, and the criminalisation of malpractices relating thereto by the legislation. It further recommends that it should be mandatory for pre-election matters relating to congresses and primaries to be concluded before general elections.

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1. Introduction

Ward congresses and primaries are aspects of internal political party mechanism for the nomination of candidates for sponsorship at an election. The membership of a political party carries with it some benefits, rights and privileges.[1] One of these privileges includes the liberty to stand for primary elections within the political party to vie for the party's ticket to contest elective positions.[2] Nigeria is a multi-party democracy in which political parties have the prerogative to select or nominate their flag-bearers for constitutional elective positions. It is a constitutional requirement that a candidate has to contest an elective post on the platform of a political party.[3] The political parties provide rules and guidelines to regulate the conduct of congresses to elect delegates who will vote at the primary election.[4] The question is, do the political parties play according to their own rules? The mutual exclusiveness between the internal rules and the ultimate power of the political party inherent in the doctrine of "political question" is not much helpful as the political party may still jettison its own given rules and choose whoever it wants. This state of uncertainty leaves much to be desired. The political class is dogged in rancorous maneuvering, leading to fragmentations loosely called line-ups. Each line-up within the political party tries to outdo the other in a bid to ensure their line-up gets the party's ticket. This less desirable situation leaves a sour taste in the polity, evident in the number of pre-election litigations, factionalisations, cross-carpeting and switching of membership.

The situation is a vicious one and encourages money politics and *god-fatherism*. As has been witnessed, this problem has continued to plague the political system until recently, when the legislature intervened through legislation. The Electoral Act

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1 See, for example, All Progressives Congress' (APC's) Constitution (October 2014 as amended), Art. 9.3 (i)(ii).

2 *Ibid.*

3 *Olofu v Itodo* [2010] 18 NWLR (Pt 1225) 545.

4 Electoral Act, 2010 (as amended) s 87(7).

2010 (as amended) opened a narrow limit for aggrieved aspirants to ventilate their grouse in the courts.[5] The delegates do not enjoy any statutory protection yet. This view is fortified by the judgment[6] of the Court of Appeal,[7] in an appeal challenging the decision[8] of the Federal High Court,[9] which declared delegates elected at the Peoples' Democratic Party Ward Congress held in Enugu State on 1st November, 2014 as delegates duly elected at the said congress. The Court of Appeal had held that the respondents, who were the successful plaintiffs at the Federal High Court, had no cause of action when they approached the lower court while the primaries was yet to be conducted. Had the primaries held before they approached the lower court, there would still not have been any difference. It would have been caught by the terrifying web of "domestic affair" of a political party. Delegates do not come under the scope of section 87(9) of the Electoral Act 2010 (as amended).

Against the backdrop of the foregoing, this paper examines the changes in the electoral laws through the evolution of election cycles in Nigeria and the progress that such changes have brought to the political system and the prospect, which continuous improvement on the laws in relation to ward congresses and primaries holds for deepening democracy in Nigeria.

Competitive party and electoral democracy is *sine qua non* to deepening democratic practice in any democracy. Nigeria is a multi-party based democracy. Sponsorship of candidates for elective offices is the exclusive domain of political parties.[10] A

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5 *Ibid.*, s 87(9).

6 *PDP & Ors. v Barrister Orji Chinenye Godwin & Ors*. (Unreported) Suit No. CA/A/28/2015 delivered on 30th April, 2015.

7 Abuja Division.

8 *Barrister Orji Chinenye Godwin & Ors. v PDP & Ors.* (Unreported) Suit No. FHC/ABJ/CS/816/2014 delivered on 24th November, 2014.

9 Holden at Abuja.

10 *Olofu v Itodo, supra.*

candidate who aspires for an elective office must first pass the hurdle of nomination and if successful, he will then move on to the next stage which is the general election. Thus, struggle for elective political offices is contested on two fronts: intra-party and inter-party. Whereas the former is within the realm of domestic or internal affairs of political parties, the latter is conducted and supervised by the electoral body, the Independent National Electoral Commission (INEC). The focus of this paper is on the intra-party contest.

The intra-party contest involves the conduct of ward congresses and primaries. At the ward congress, members of the political party vote to elect delegates who will in turn vote at the party's primaries to elect a candidate to be presented for the general election. Therefore, the terms ward congress and primaries are coterminous. In essence, the two words are used interchangeably as shall be explained anon. However, the term "congress" is of more flexible usage. It admits of usage in few other senses unlike the term "primary" which has acquired a somewhat inflexible usage in the Nigeria political lexicon.

2. Ward Congress

The Oxford Advanced Learner's Dictionary[11] offers a definition of ward as "one of the areas into which a city is divided and which elects and is represented by a member of the local council." The ward is the smallest political unit or constituency in the hierarchy of political divisions ascribed with political representation in Nigeria. Although, coming below the wards are the polling units,[12] but polling units are political divisions created by the Independent National Electoral Commission for purposes of convenience in the

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11 S.A. Hornby (6th Edition, New York: Oxford University Press 2000).

12 Electoral Act 2010 s 156. The section defines polling unit as the place, enclosure, booth, shade or house at which voting takes place under this Act.

conduct of elections. Wards are constituencies with political representation; while polling units are merely voting units.

The word "congress" denotes meeting. So when used together with the term "ward", it means ward meeting. The Ward Congress is established as a formal organ in the Constitution of most, if not all the registered political parties in Nigeria.[13] The Ward Congress comprises all officers and registered members of the party in the ward.[14] Ward Congress, conference or meeting may be convened for purposes set out in the Constitution of a political party. Such purposes include election of members of the Ward Executive Committee; election of ad-hoc delegates who will vote to nominate candidates for elections into electoral political offices, and the direct nomination of councillorship candidate to represent the ward in the Local Government Legislative Council.[15]

3. Primaries

Primaries is defined in the *Electoral Act* as an intra-party election by voters of a given political party to nominate candidates for elective office in accordance with a political party's Constitution and the law.[16] In *Doukpolagha v George*,[17] the court stated that primaries are internal affairs of each political party in the sense that only registered members of the party are expected to vote or be voted for and the rules for the primaries are based on the Constitution of the party. *The Black's Law Dictionary*[18] defines

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13 See, for example, All Progressives Congress Constitution (October 2014 as amended), Art. 11 A (xii).

14 *Ibid.*, Art. 12.15; Constitution of Peoples Democratic Party (as amended in 2012) s 15 (1).

15 *Ibid.*, Art. 13.12; *Ibid.*, s. 15(2).

16 Electoral Act 2010 (as amended), s. 156. This section is the interpretation section.

17 [1992] 1 LRECN.

18 B. A. Garner, *Black's Law Dictionary,* (8th edn., USA: Thomson West 2004), p. 557.

"primaries" as a preliminary election in which a political party's registered voters nominate the candidate who will run in the general election. A primary election is an election that narrows the field of candidates before an election for office. Primary elections are one means by which a political party or a political alliance nominates candidates for an upcoming general election or by-election. A primary simply mean a congress of a political party convened solely for the purpose of electing or selecting candidates to be sponsored in a general election or local government election.

A primary within the context of the Electoral Act 2010 is of two types: direct primaries and indirect primaries.[19] Direct primary is a procedure for the nomination of candidates by a political party in which every registered member is entitled to vote for an aspirant of his or her choice.[20] Indirect primary, on the other hand, is a procedure for the nomination of candidates by a political party with delegates voting to elect candidates of their choice.[21]

4. Legal Framework

Party congresses and primaries are governed by the provisions of the Electoral Act 2010 (as amended). The foundation for this is rooted in the Constitution of the Federal Republic of Nigeria 1999 (as amended) (herein after the Constitution). According to section 228(a) of the Constitution, the National Assembly may by law provide:

> Guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of the party primaries, party congresses and party conventions.[22]

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19 Electoral Act 2010 (as amended), s. 87(2).

20 *Ibid.*, s 87(3).

21 *Ibid.*, s 87(4).

22 Constitution of the Federal Republic of Nigeria 1999 (as amended).

The Constitution of political parties also has its root in the 1999 Constitution of the Federal Republic of Nigeria (as amended). Prospective political parties must register their Constitution with the Independent National Electoral Commission, among other requirements, before it can qualify for registration.[23] The Constitution of political parties therefore contains a set of rules, regulations and guidelines by which it conducts its affairs including the procedure for the selection or nomination of candidates for elections. Apart from the party Constitution, political parties provide supplementary rules and guidelines which may be contained in separate documents. Such rules or guidelines may be specific or general.

The Constitution and the Electoral Act are the basic legal framework governing the processes by which political parties nominate candidates for elections. The first indigenous electoral legislation in Nigeria was the Nigeria Electoral (Transitional Provisions) Act of 1961.[24] This was followed by the Electoral Act 1962, amended in 1964. Prior to the 1979 general elections, upon cessation of military rule, the Federal Military Government in 1977 promulgated the Electoral Act 1977 amended in 1978 and 1979. Then there was the Electoral Act 1982.

The Second Republic was truncated following a military coup on 31 December, 1983 which saw Major General Muhammadu Buhari as the Head of State. The military government was overthrown in a counter coup in August 1985 when then General Ibrahim Badamosi Babangida took over as Head of State. The Babangida regime rolled out a transition programme to midwife the Third Republic. The transition programme was backed up with Transition to Civil Rule (Political

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23 *Ibid.*, s 222(c).

24 The Nigeria Electoral (Transitional Provisions) Act, 1961 re-enacted the following: (i) Nigeria Electoral Provisions Order-in-Council of 1958; (ii) Elections (House of Representatives) Regulations of 1958; and (iii) Federal Legislative (Disputed Seats) Regulations of 1959.

Parties Registration and Activities) Decree of 1987.[25] The Third Republic was later aborted following the controversial annulment of the June 12, 1993 presidential election. General Babangida appointed Chief Ernest Shonekan as Head of the Interim National Government before stepping aside in August of 1993. Chief Shonekan was later ousted by General Sani Abacha in a bloodless coup.

General Abacha began another round of transition to civil rule with the promulgation of Decree No. 3 of 1996 by which the National Electoral Commission of Nigeria (NECON) was established. Other pieces of enactments included: Local Government Elections Decree No. 7 of 1997; State Government (Basic Constitutional and Transitional Provisions) Decree No. 22 of 1997; National Assembly (Basic Constitutional and Transitional Provisions) Decree No. 6 of 1998. The transition programme came to a halt following the death of General Sani Abacha.

General Abdulsalami Abubakar succeeded Late General Sani Abacha and began a transitional groundwork that gave birth to the present Fourth Republic. The Fourth Republic came into being on May 29, 1999 following successful elections conducted by the Independent National Electoral Commission (INEC).[26]

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25 The other legal framework that operated during the Ibrahim Babangida regime included: Transition to Civil Rule (Political Parties Registration and Activities) Decree of 1991; Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 13 of 1993; National Assembly (Basic Constitutional and Transitional Provisions) Decree No. 18 of 1992; State Government (Basic Constitutional and Transitional Provisions) Decree No. 50 of 1991.

26 The 1999 general elections were conducted based on the following legal framework: Independent National Electoral Commission (Establishment, *etc*.) Decree No. 17 of 1998; Independent National Electoral Commission (Amendment) Decree No. 33 of 1998; Political Parties (Registration and Activities) Decree No. 35 of 1998; Local Government (Basic Constitutional and Transitional Provisions)

There had been five election cycles between 1999 and 2015. The first election cycle in 1999 was conducted in accordance with the 1999 Constitution and relevant legislations enacted in that dispensation. Subsequent legislations were enacted between 2001 and 2015 covering four election cycles: 2003, 2007, 2011 and 2015. These include Electoral Act 2001, Electoral Act 2002, Electoral Act 2006 and Electoral Act 2010 (as amended). However, the Electoral Act 2001 was not really tested before it was repealed. This legislation was repealed due to controversies relating to the National Assembly going outside its scope of legislative competence in making provisions regarding the conduct of local government elections. Some sections of the legislation were declared void in the case of *Attorney General of Abia State & 35 Ors v Attorney General of the Federation.*[27]

5. Ward Congresses and Primaries: The Vexed Issue of Justiciability and Political Question

The ward congress provides the avenue for political parties to select *ad hoc* delegates who will in turn vote in a special congress or primaries to nominate candidates for the various elective public offices. It is emphasised that a political party may either select its candidate through direct or indirect primaries. There seems to be preference for indirect primaries by political parties, perhaps due to its cost effectiveness and ease of organisation. In the period

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Decree No. 36 of 1998; State Government (Basic Constitutional and Transitional Provisions) Decree No. 3 of 1999; State Government (Basic Constitutional and Transitional Provisions) (Amendment) Decree No. 4 of 1999; National Assembly (Basic Constitutional and Transitional Provisions) Decree No. 5 of 1999; Presidential Election (Basic Constitutional and Transitional Provisions) Decree No. 6 of 1999. These laws had been repealed by the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeal) Decree No. 63 of 1999.

27 [2002] 6 NWLR (Pt 762) 542.

prior to 2010, there was no statutory provision regulating the selection of delegates, but under the Electoral Act 2010 (as amended), there is now statutory recognition for delegates.[28] Section 87(7)[29] provides:

> A political party that adopts the system of indirect primaries for the choice of its candidate shall clearly outline in its Constitution and rules the procedure for the democratic election of delegates to vote at the convention, congress or meeting, in addition to delegates already prescribed in the Constitution of the party.

This provision is novel. It will be noted that democratic selection of delegates is one of the nuggets for internal democracy within political parties and the bedrock for democratic nomination of candidates. This provision provides some certainty as to the mode and procedure for selection of candidates. Prior to this time, the selection of candidates was largely unpredictable. The selection process was in most cases rancorous. The party's rules were observed more in the breach and the godfathers and moneybags called the shots. However, the current electoral legal regime recognises the need to allow delegates to vote in support of a candidate of their choice. A look at the cases points to the direction that delegates have no justiciable right[30]. This is because while a delegate may feel aggrieved that his name did not appear on the list of delegates, he may not be able to compel the party through litigation to include his name. Assuming, it is a possibility to compel his political party to include him in the list of delegates, his success will serve no utilitarian purpose because by the time

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28 S. 85 (3).

29 Electoral Act 2010 (as amended).

30 *Peoples Democratic Party & Ors. v Barrister Orji Chinenye Godwin & Ors*. (Unreported) Appeal No. CA/A/28/2015 delivered on 30th April, 2015.

he would have gone to court, a candidate would have emerged and his success cannot oust the winner of the primaries whose emergence can only be questioned by an aspirant who participated in the primaries[31]. Since a delegate is not an aspirant, it logically follows that an action complaining about abandonment of a list of delegates in preference to another is an academic exercise. Once a primary is shown to have the approval or endorsement of the National Executive Committee of the Political Party, that primary will usually be recognized and upheld by the courts[32]. In the recent case of *Ejike Oguebego & Anor v. Peoples Democratic Party & Ors*[33], the Supreme Court despite spirited effort by candidates who emerged from primaries organized by the Appellants who were adjudged to be the authentic PDP Executive Committee in Anambra State, to be declared as the duly elected members of the National Assembly, the Supreme Court declined to accede to their prayers. No doubt that the delegates approved by the authentic Executive Committee voted at the primaries wherein the candidates seeking to be declared winners were nominated, yet the Supreme Court could not grant the reliefs because the National Executive Committee of the Peoples Democratic Party had approved a certain primary that produced the set of candidates who were already sworn-in into various legislative houses. It is therefore obvious that a delegate has no protectable right following from his success at a Ward Congress for the election of delegates.

The Supreme Court decision[34] has completely removed the ambiguity that seems to have been created by the Court of Appeal decision in the case of *Peoples Democratic Party & Ors. v*

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31 Section 87 of the Electoral Act, 2010.

32 Emenike v. PDP (2012) 5 KLR (Pt. 311) 1717 @ 1736, paras D-H.

33 Ejike Oguebego & Anor v. Peoples Democratic Party & Ors. (Unreported) Appeal No. SC. 37/2015 delivered on 29th January, 2016.

34 *Ibid*.

Barrister Orji Chinenye Godwin & Ors[35] which held that an action commenced by delegates before the holding of the primary is speculative as no cause of action would have accrued. The question then is, would a cause of action accrue after the holding of the primary? The answer is certainly in the negative. So where a delegate is under the apprehension that his party might use another delegate list to conduct her primaries, the delegate will find himself in a helpless situation. His recourse to the courts will always be greeted with a challenge to his *locus standi*. Obviously, a delegate has no legal standing to question the conduct of party primaries.

It seems that only an aspirant, whose complaint falls under section 87 of the Electoral Act 2010 (as amended), has justiciable right. This position appears to strengthen extant situations in which political parties substitute delegates according to their whims and caprices. This unfortunate situation might be operating in the mind of Simbine,[36] when he said: "In Nigeria's contemporary politics however, parties that should promote democracy are themselves the most undemocratic entities." It does not seem a delegate can complain about the conduct of a party primary, but it appears that a delegate duly elected at a ward congress who is excluded from voting at a primary which he was

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35 *Ibid*, fn. 30

36 A. T. Simbine, "Single Party Dominance and Democracy in Nigeria: The Peoples' Democratic Party," (A paper presented at National Conference on Political Parties and Future of Democracy in Nigeria organised by the National Institute for Policy and Strategic Studies (NIPPS), Kuru, in collaboration with Democracy and Governance Development Project (DGD) II of UNDP, 26-28 June, 2013, p. 8) cited in Akubo, A. Aduku, and Yakubu, Adejo Umoru, "Political Parties and Democratic Consolidation in Nigeria's Fourth Republic", *Global Journal of Political Science and Administration* Vol. 2, No. 3, p. 90, September 2014 published by European Centre for Research Training and Development UK, available at: www.eajournals.org, lasts accessed on 09/08/2015.

elected to attend and vote any aspirant of his choice may succeed in a claim for damages against his party for breach of his right as a member.

The position of the law had been that the issue of who should be a candidate of a political party for an election into public office is entirely the exclusive preserve and internal affairs of the political party and that the courts have no jurisdiction to entertain questions bordering on a political party's domestic affairs. The legal framework for the conduct of the 1999 general elections followed in this vein. The election timeframe was too short and there was equally lack of precise statutory provision on procedure for nomination of candidates. As a result the selection procedures were less than desirable. Carl W. Dundas[37] stated:

> The shortened election cycle affected the newly formed and registered political parties adversely in many ways. This was particularly so with respect to candidate selection at all levels of election preparation. As an unplanned consequence of the short period of time, the management of political parties was unprepared or had an excuse for seizing the untested party internal democratic machinery from the members and allowed party executives to mastermind the candidate selection process, particularly at the lower election tiers.

The candidate selection process for the 1999 general elections set a very bad precedent for party internal democracy. Part of the reason for this was the short election cycle as posited by Carl W. Dundas, who wrote:

> Perhaps in the circumstances, there was no better procedure for the yet fledgling political parties to manage candidate selection for the series of elections:

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37 Electoral Essays and Discourses, (Bloomington, USA: Author House UK Ltd.), pp. 27-29.

> local government, state/gubernatorial/national legislature and president in just about six months, but it did set a very bad precedent for party internal democracy. It also allowed leadership patronage to triumph over popular choice of party members in candidate selection. Worst yet, the candidate selection procedures encouraged 'money' politics by seducing party leadership to support the candidate who was the highest bidder. The candidate nomination process caused confusion within the political parties, as well as in INEC as 'shopping and changing' of candidates between party state committees' nominees and party national choice sometimes brought INEC into the picture to make the choice in favour of the national party executive nominee as the only official candidate.[38]

This observation is apt and the bad precedent set from the inception of the fourth republic continues to be the bane of party internal democracy till today. In *Okafor v Onuorah*[39] and *Dalhatu v Turaki*,[40] the position has been that the courts cannot inquire into the domestic affairs of political parties in relation to nomination or sponsorship of candidates for election. The reason for the position is understandable. The electoral laws operational at the time reposed in the political parties the exclusive power to decide who their candidates should be. Under the Electoral Act, 2002, political parties were required to submit to the Independent National Electoral Commission, not later than 60 days before the date appointed for a general election, the list of candidates they proposed to sponsor at the elections.[41] Political parties were at liberty to choose whoever they wished as candidates and to substitute at will.

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38 *Ibid.*

39 [1983] 14 NSCC 494; [1983] 2 SCNLR 244.

40 [2003] 15 NWLR (Pt 843) 310.

41 Electoral Act 2002 s 21(1). This Act has since been repealed.

However, that 2002 position slightly changed during the third election cycle in 2007. The Electoral Act 2006 section 34(2) introduced the requirement of 'cogent and verifiable reason' before any substitution can be valid.[42] The interpretation of this section came up in *Ugwu v Ararume*.[43] The Supreme Court in the lead judgment of Niki Tobi, JSC stated that:

> Taking section 34(2) in the context of primaries in particular, I have no doubt in my mind that the subsection is not only important but has, an imperative content; considering the general object intended to be secured by the 2006 Act. It is certainly not the intention of the Act to gamble with an important aspect of the electoral process, such as primaries in the hands of a political party to dictate the pace in any way it likes, without any corresponding exercise of due process on the part of an aggrieved person.

In *Ugwu v Ararume*,[44] it was contended that the issue of nomination and substitution of candidates by a political party was a domestic affair of the political party on the authorities of *Onuoha v Okafor*[45] and *Dalhatu v Turaki*.[46] That contention was rejected by the apex court. The court observed that this logic faults the underlying factor or need for primaries and makes nonsense of a party's Electoral Guidelines for Primary Elections.[47] Pronouncing on the inapplicability of the two cases of *Onuoha* and *Dalhatu*, the Supreme Court said that:

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42 Electoral Act 2006, s 34(2).
43 [2007] NWLR (Pt 1048) 365.
44 *Supra.*
45 *Supra*.
46 *Supra.*
47 *Ibid.*

> It is elementary law that a case is decided on its facts. No case is decided outside its factual milieu. The situation in the two cases is not similar to the situation in this case. While *Onuoha* was decided on an earlier Electoral Act, *Dalhatu* was decided on the Electoral Act of 2002. What is involved in this appeal is the Electoral Act, 2006. The provisions of section 34(2) of the 2006 Act was not in any of the previous Acts and that makes the whole big difference.[48]

By this decision, *Ugwu v Ararume*[49] thus marked a shift from a regime of primaries being strictly the domestic affairs of political parties to a regime that allows for judicial scrutiny of how political parties run that domestic affair. This paradigm shift was soon to be consolidated upon in subsequent decisions of the court. It was decided in the celebrated case of *Amaechi v INEC*[50] that a person who contests and wins the primary election can only be barred from contesting the general election, if and only if his political party gives cogent and verifiable reasons for the substitution as required by the Electoral Act of 2006. If no such reason is given the candidate who won the primaries remains the recognised candidate of the party.

The Electoral Act 2010 (as amended) firmly nailed the coffin of political abracadabra as far as nominations of candidates are concerned. Every political party must as of necessity conduct primaries.[51] The party should give the Independent National Electoral Commission (INEC) at least 21 days' notice of the date and venue of such primaries.[52] Once a primary has been conducted

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48 *Ibid.*

49 *Ibid.*

50 [2008] 1 SC.

51 Electoral Act 2010 (as amended), s. 87(1).

52 *Ibid*., s. 85(1). The Governorship Election Tribunal constituted in respect of the 2015 Governorship Election in Rivers State sitting in Abuja struck out Labour Party's Governorship candidate petition on

and a winner emerged, the party no longer has discretion in the matter. It is a peremptory duty to submit the name of the aspirant who scored the highest number of votes to the Independent National Electoral Commission (INEC). In fact, it is no longer open to a political party to change or substitute the candidate whose name has been submitted unless under two circumstances namely: where the candidate dies or withdraws on his own.[53] The Independent National Electoral Commission (INEC) has no power to reject or disqualify candidates whose names are submitted to it for any reason whatsoever.[54] This provision is a codification of the Supreme Court judgment in the case of *Action Congress & Anor. v INEC,*[55] wherein it was held that the Independent National Electoral Commission (INEC) had no powers to screen, verify or disqualify candidates. Under the Electoral Act 2002, the Independent National Electoral Commission was given powers to determine the qualification or disqualification of candidates.[56] The Court of Appeal, interpreting the 2002 Act in *Ajadi v Ajibola,*[57] held that the Independent National Electoral Commission had powers to screen and verify particulars of candidates. This led to unnecessary interference in the process of selection of candidates.

However, the recent shift in the sense of the right of an aspirant whose complaint fit into the provisions of section 87(9) of the Electoral Act 2010 (as amended) to seek redress in court does not derogate on the power and control of a political party over whom it should nominate or sponsor in an election. In *PDP v Sylva,*[58] the Supreme Court held that the right to nominate or

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the ground that his party did not give INEC 21 days' notice of the congress at which he was nominated.

53 *Ibid*., s 33.

54 *Ibid*., s 31(1).

55 [2007] 12 NWLR (Pt 1048) 222 at 296.

56 S. 21(8).

57 [2004] 6 NWLR (Pt. 898) 91 at 196.

58 [2012] 13 NWLR (Pt. 1316) 85.

sponsor a candidate by a political party is a domestic right of the party, a political matter within the sole discretion of the party. A member of the party has no legal right to be nominated or sponsored by his party. A court thus has no jurisdiction to determine who a political party should sponsor. The court further held that nomination or sponsorship of a candidate for election is a political matter solely within the discretion of the party, and this is so because the sponsorship or nomination of a candidate is a pre-primary election affair of the party. A political party has the right to bar any of its members from contesting its primaries if it so desires. This authority relates to the issue of screening of aspirants prior to the conduct of the primaries. Thus, an aspirant who was screened out prior to the primaries cannot invoke the jurisdiction of the court.

In *Ozonma (Barr) Chidi Nobis Elendu v INEC & 2 Ors.*,[59] the Court of Appeal, Enugu Division, quoting its earlier judgment in *Ugwu & Ors. v PDP*[60] held that:

> It is settled by a long line of judicial decisions . . . that the decision as to who should be nominated or sponsored to represent a political party as its candidate in a general election is the domestic affair of the political party and the courts have no jurisdiction to decide for a political party who should be its candidate for election, that is an internal matter within the exclusive province of a political party. However, the exercise of this power is now regulated in certain respects by the Electoral Act 2010 (as amended). Section 87(9) of this Act now gives an aspirant in any primary election of his political party, who feels the party did not comply with the Electoral Act and the guidelines of the political party in the nomination of a rival aspirant as its candidate for an election, the

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59 Appeal No. CA/E/201/2011 (Unreported) delivered on 3rd February, 2014, p. 16.

60 CA/E/259/2012 (Unreported) delivered on 8th March, 2013.

> right to seek redress in the Federal High Court or High Court of a State or FCT. Section 87 has not taken away or reduced the exclusive power of the party to nominate or sponsor persons as its candidates for elections. It merely regulates the process and procedure of nominating such persons. It places a responsibility on the party to avoid arbitrariness and follow the procedure prescribed therein. This is to ensure that the decision to nominate a person as the party's candidate is the democratic decision of the party and not the dictation of a minority.[61]

This decision reflects the consistent attitude of the courts to instill order in the process of electing members of parties, who bear their flag in the general elections. The court is saying that the primaries may well be the domestic affairs of political parties but the parties in conducting such primaries should play by a set of rules.

6. Deepening Democracy: What Connection with Ward Congresses and Primaries?

It is imperative to make an attempt in clarifying what is meant by "deepening democracy." The clarification will follow the established assumption or conceptions of democracy. Lee[62] has two conceptions of deepening democracy. One is a "minimalist conception," emphasising procedural or formal democracy. The other is a "maximalist conception," focusing on the outcomes of politics, such as institutionalisation of political institutions, social

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61 *Ibid.*

62 S. Lee, "Democratic Transition and Consolidation of Democracy in South Korea", *Taiwan Journal of Democracy*, Vol. 3, No. 1, pp. 92-125, cited in A. A. Aduku, and Yakubu, Adejo Umoru "Political Parties and Democratic Consolidation in Nigeria's Fourth Republic," above note 36.

justice, and economic equality.[63] Schmitter,[64] on his part, defines the minimalist conception of a consolidated democratic regime as the process of transforming the accidental arrangements, prudential norms, and contingent solutions that have emerged during the transition into relations of cooperation and competition that are reliably known, regularly practised, and voluntarily accepted by those persons or collectives that participate in democratic governance.

It follows from the understanding of the minimalist conception of democracy that ward congresses and primaries fit into the minimalist conceptual milieu. Ward Congresses and primaries are procedural arrangements and prudential norms which define the character and culture of the polity of a nation. The way and manner political parties conduct their ward congresses and primaries affect the political rating of the country. Therefore, deepening democracy is, in essence, concerned with improving and strengthening procedures in the practice of democracy. When internal democratic processes and procedures are abused, it leaves a sad commentary on a country's political system. One of such commentary was adduced by Momoh[65] when he stated:

> Political parties in Nigeria are not keen about deepening democracy; rather they are preoccupied with the crude

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63 *Ibid.*

64 P. Schmitter, "The Consolidation of Democracy and Representation of Social Groups", *American Behavioral Scientists*, vol. 35, March/June 1992, *ibid.*

65 A. Momoh, "Party System and Democracy in Nigeria," (A paper presented at National Conference on Political Parties and Future of Democracy in Nigeria, organised by the National Institute for Policy and Strategic Studies (NIPPS), Kuru, in collaboration with Democracy and Governance Development Project (DGD) II of UNDP, 26-28 June, 2013 cited in Akubo, A. Aduku & Yakubu, Adejo Umoru "Political Parties and Democratic Consolidation in Nigeria's Fourth Republic," above note 36.

> capture of power. They have abandoned their traditional role of membership recruitment and mobilisation, and political education. With the emergence of godfathers, owners and joiners, political nomads and the use of uncivil means to win elections, Nigerian political parties have continued to contribute to de-democratisation. The central challenge of party system dwells on party processes, inter-party relationship, violence and other ecological factors.

The challenge of deepening democracy in Nigeria is one that has agitated and continues to agitate the mind of stakeholders and observers alike. Ironically, the politicians and parties seem comfortable with continuing in abuse of the political process. The abuse of party processes was obvious from the Peoples' Democratic Party primaries in Anambra State for the 2011 General Elections. Parallel primaries were conducted: one by the National Executive Committee and another by the State Executive Committee led by Chief Benji Udeozor. The Anambra case showed excessive dominance of godfathers, the most influential among them was Chief Christian Uba who single-handedly nominated aspirants loyal to him as candidates. These loyal aspirants were made to sign documents acknowledging receipt of friendly loans from Ubah's company Kay-Kay Construction Limited and make undertaking to repay. The alleged disguised friendly loans were in fact, an amount of money the candidates will pay the godfather as reward. This insipid behind-the-scene act came to the fore in the appeal cases of *Ben Nwankwo v Kay-Kay Construction Limited,*[66] *Hon. Eucharia Azodo v Kay-Kay Construction Limited*[67] and *Chizor Obidigwe v Kay-Kay Construction Limited.*[68] Although in a split decision of 2-1, the

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66 CA/E/55/2013 (Unreported) delivered on 8th December, 2014.

67 CA/E/56/2013, *Ibid.*

68 CA/E/57/2013, *Ibid.*

Court of Appeal, Enugu Division, gave judgment in favour of the Respondent holding the Appellants liable to repay the friendly loans of N200,000,000.00 (Two Hundred Million Naira) allegedly advanced to each of the appellants in the respective appeals. The dissenting judgment of Misitura Omodere Bolaji-Yusuff, JCA in Azodo's case is striking when she observed thus: "Those facts riase serious issues of illegality and public policy which cannot be waived aside". The Honourable Justice referred to *Alao v ACB Ltd.,*[69] where the Supreme Court stated that:

> The law is very clear on the effect of illegality on a transaction or contract. It is the law that a contract is illegal if the consideration or the promise involves doing something illegal or contrary to public policy or if the intention of the parties in making the contract is thereby to promote something which is illegal or contrary to public policy. An illegal contract is a void contract and it cannot be the foundation of any legal right. In other words, when the object of either the promise or the consideration is to promote the committal of an illegal act, the contract itself is illegal and cannot be enforced.

It has been illustrated by the above cases how personalisation or the lack of institutionalisation of political parties can generate bad blood and erode the confidence of citizens in the political system.

Ward Congresses and Primaries operate to ensure the democratic selection of party's candidates according to its Constitution, guidelines and rules as well as in accordance with the Electoral Act 2010 (as amended). It is this realisation and upon the reflection on the ugly experiences of the past on how political parties abuse their powers to nominate candidates that the

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69 [1998] 3 NWLR (Pt. 542), 339 at p. 355, paras. E-F.

legislature intervened in enacting the section 87(9) of the Electoral Act 2010 (as amended).

The 2015 general elections recorded quite some improvements in the internal processes of the political parties and in the conduct of the general elections by INEC. For example, the Presidential primaries of the now-governing All Progressives Congress (APC) which was keenly contested by 4 aspirants[70] was adjudged to be free and fair, credible and transparent.

7. Conclusions

This paper finds that many political parties in Nigeria are infested with lack of internal democracy. There is lack of transparency in their internal processes for candidates' selection. It seems obvious that the solutions to the problems associated with candidates' selection lies on transparent ward congresses and primaries. There have, however, been consistent improvements to the processes which occur by way of modification of extant laws and introduction of novel provisions. The ward congresses are far from democratic. The choice of who makes the delegate list is usually determined by political godfathers. Delegates list are prepared at the comfort of hotel rooms and homes of influential politicians. This is regrettable despite the fact that there are standard procedures usually approved by the National Executive Committees of the political parties. The procedures are spelt out in the Guidelines for Primaries. Some of the political parties in Nigeria face internal democratic challenges. These challenges throw up problems which include multiple delegates list, parallel primaries, and emergence of multiple delegates. The paper also finds that the current legal framework has reasonably cleared the cobwebs which hitherto entrapped political parties' primaries. The limited standing granted aspirants by virtue of section 87(9) of the

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70 The aspirants were General Muhammadu Buhari, Alhaji Atiku Abubakar, Engr. Rabiu Musa Kwankwasnso and Owelle Anayo Rochas Okorocha.

Electoral Act 2010 (as amended) is apt and significantly checks excesses at primaries. Had it not been that provisions were made in the Electoral Act 2010 for aspirants to ventilate their grouse in court, there would have been much more discord in the political parties.

Following the findings set out above, this paper recommends that the best way to go in deepening our democracy is to ensure the sanctity of delegates who emerge from ward congresses. It should not be open to a political party leadership to tamper with delegate list produced from congresses. Political aspirants should be clear and certain about the composition of the delegates to vote in a primary. The paper also recommends that political parties, as institutions for democratisation, should not be aloof from or averse to change. They should address issues of institutionalisation, effective leadership, discipline, organisational capacity, strict adherence to rules, complaints and grievance redress mechanisms and internal democracy. It is also recommended that the legislature makes the procedure for the conduct of ward congress form part of the electoral law. Such an intervention will engender transparency and ultimately ensure that political parties do not indulge in arbitrariness in the nomination of candidates. In this connection, it is recommended that provision should be made in the electoral law requiring political parties to submit their list of voting delegates for party primaries to INEC and copy given to aspirants before the primaries. With respect to primaries, it is recommended that there should be an additional provision limiting the time for determination of pre-election matters. It is desirable that pre-election matters bordering on congresses and primaries are concluded before any general election. Aspirants should be accorded standing to challenge irregularities arising from the conduct of ward congresses, if any, before the actual primaries. While this paper hesitates to suggest that delegates should be put on the same pedestal with aspirants with respect to standing, it nevertheless recommends that conducts

which impair the processes and procedures connected with ward congresses and primaries should be criminalised and punishable with fines or imprisonment or both to deter impunity, make for decorous congresses and primaries and promote political sportsmanship founded on internal democracy.

In conclusion, this paper notes that ward congresses and primaries are inevitable legal tools for deepening democracy in Nigeria and indeed any country for that matter. Without legal and political regulation of ward congresses and primaries, the results of general elections will only be a truncated end derived from a reprehensible means. The way and manner candidates emerge speaks volumes about the integrity of the political system as a whole. The process is as much important as the outcome. In fact, if the process is faulty, the outcome will not escape odium. Politicians should let their actions be dictated by good conscience, not by the erratic and inordinate drive for selfish goal. Political actors should have the right attitude to internal processes and procedures and submit to relevant rules and guidelines as a matter of self-discipline.