'ALTERNATIVE ELECTORAL DISPUTE RESOLUTION MECHANISM' AS A PANACEA TO PROTRACTED ELECTION DISPUTES*

Abstract.
This paper attempts to appraise the use of alternative dispute resolution as a panacea to protracted election disputes in Nigeria. The hallmark of democracy in any given society is the conduct of free and fair elections. However, in almost every election, disputes are bound to occur and it is not easy for a party to concede defeat when he believes that the election was rigged in favour of his opponent. In Nigeria, election disputes are very common and they are treated as being sui generis. These disputes can occur between persons of the same political party or between persons from two or more different political parties. Over the last two decades, the courts have been the appropriate venue for the ventilation of grievances arising from the conduct of elections. However, the level of public satisfaction with litigation generally in Nigeria is quite low and this also affects election petitions. The resolution of election disputes through litigation is fast losing its place due to factors such as delay, undue technicality and formality, proclivity to rule in favour of the incumbent power, bribery and corruption, high cost, etc. On the other hand, there are so many advantages of resolving election disputes through alternative resolution mechanisms like negotiation, mediation, facilitated dialogue, etc. These benefits include speed, lesser costs, flexibility, cordiality, expertise, to mention but a few. The researchers find that Alternative Dispute Resolution (ADR) presents a veritable means of resolving election disputes. The researchers recommend inter alia the enactment of a mandatory ADR statute and a flexible interpretation of provisions on limitation of time as part of the steps to encourage ADR in the resolution of election disputes in Nigeria.

Keywords: Election, Alternative Electoral Dispute Resolution Mechanism, Panacea, Nigeria

1. Introduction

Elections by the very fact that they require or involve the electorate making a choice between two or more candidates inherently lead to disputes and where not properly managed, the disputes can lead to election crisis. Election disputes reflect a struggle between two opposing principles, aims, ideologies, manifestos and interests and they often arise from perceived injustice or the politicians' vaunting ambition either to remain in power despite their seeming unpopularity or to acquire forcibly, by desperately pushing popular incumbents out of office. Unfortunately, from Nigeria's political history, it has been observed that the country has been unable to satisfactorily and effectively manage the conflicts that ensue from elections as litigation is fast losing its viability as a means of resolving election disputes. Research shows that there is now a growing realisation that investments of time and human resources in ADR in resolving election disputes can avert conflict and deterioration of the overall political and economic well-being of a country. This paper sets out to discuss the meaning and nature of election disputes, the disadvantages of litigation vis-à-vis the prospects of Alternative Electoral Dispute Resolution (AEDR) in the resolution of election disputes.

2. Meaning and Nature of Election Disputes.

Election dispute refers to any complaint, challenge, claim or contest relating to any stage of the electoral process. Therefore, election disputes can be defined as conflicts, disagreements or controversies arising from or in connection with an election, that are usually but not always resolved through lawsuits. Disputes are a common occurrence in elections as those who lose will sometimes, and very often in Nigeria, challenge the winners. The frequent challenges of the outcome of elections in Nigeria is because in most African countries (including Nigeria), the voting process is usually riddled with accusations and counter-accusations of fraud, irregularities and violence exacerbated by the lack of credible legal instrument or mechanism for the aggrieved parties to resolve issues arising from electoral disputes.[1] Election disputes are caused by a number of factors. These include the manipulation of resources by political parties to gain advantage or interest; distortion of basic societal and ethical values by political interest groups; psychological manipulation of vulnerable group(s) to carry out electoral violence; abuse of an election process by the Election Management Body (i.e. Independent National Electoral

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[1]Stephanie M. Burchard & Meshack Simati, 'The Role of the Courts in Mitigating Election Violence in Nigeria' *Cadernos de Estudos Africanos (*2019) Vol 38, p 126.

Commission) poor communication to the voters that affect the legitimacy of the process; and the influence of the ruling party or government to the credibility of the elections.[2] The peculiarity of Nigeria's electoral disputes stems from the pandemic and endemic social malaise ranging from ethnicism, corruption and thuggery,[3] while the notoriety arises from the public involvement and interest in elections and their outcome. As opposed to other legal disputes, the public are not only interested in the outcome of election petitions; they predict the decisions of the courts and tribunals particularly when they participated in the electoral process. The stages in which conflicts that give rise to election disputes occur have been summarised as follows:
(a) during the registration process when certain persons like internally displaced persons, prisoners, persons in diaspora or other conflict-forced migrants cannot register, establish or re-establish their officially recognised identities – *identity conflict*;
(b) during campaigns as rivals seek to disrupt the campaigns of opponents, intimidate voters and candidates, and use threats and violence to influence participation in the *voting – campaign conflict;*
(c) on the election day when rivalries are played out at the polling station – *balloting conflict;*
(d) when the electoral system provides for elections that are organised as 'zero sum' events and 'losers' are left out of participation in governance – *result conflict.*[4]

By nature, election disputes are *sui generis*. In other words, they are special, unique or of their own kind. This was buttressed in the case of *Orubu v. NEC*[5] where his lordship, Uwais CJN (as he then was) succinctly held as follows:
An election petition is not the same as the ordinary civil proceedings. It is a special proceeding because of the nature of elections which, by reason of their importance to the well-being of a democratic society are regarded with aura that places them above the normal day to day transactions between individuals which give rise to ordinary or general claim in court. As a matter of deliberate policy to enhance urgency, election petitions are expected to be devoid of the procedural clogs that cause delay in the disposition of the substantive dispute.[6]

As rightly pointed out by a learned writer, election petitions have peculiar features which modify the operation of certain rules of civil proceedings.[7] Some technical defects or irregularities which in other proceedings are considered too immaterial to affect the validity of the claim, could be fatal to proceedings in election petitions. Distinct from common law actions, election disputes are strictly regulated by the constitution, laws or regulations which stipulate inter alia the procedures that must be followed during an election and the rules that must be complied with in challenging an election.[8] .

3. Categories of Election Disputes in Nigeria
In Nigeria, elections are conducted by the Independent National Electoral Commission (INEC) appointed by the President for the office of the President/Vice-President, members of the National Assembly Governors, Deputy-Governors, and members of the States Houses of Assembly.[9] Elections into the executive and legislative offices in the Local Government Areas are conducted by the various State Electoral Commissions appointed by the Governors of various states. Election disputes may likewise be categorized into: presidential election disputes, gubernatorial election disputes and /legislative houses election disputes. However, in the context of this paper, election disputes will be categorized into: intra party (pre-election) disputes and inter party disputes. This categorization is preferable because it is broader and wider in scope.[10]

Intra Party Election Disputes
Also known as a pre-election dispute, an intra-party election dispute simply refers to disputes arising from the results of primary elections held by a political party. Here, the conflict borders on whether a political party complied with its constitution and/or the law generally (especially the 1999 constitution and the Electoral Act) in

[2].'*Election Dispute Management for West Africa: A Training Manual*' published by West Africa Network for Peacebuilding (WANEP), Ghana, 2013, p 26.
[3] Joshua E. Alobo, *Election Petition in Nigeria: Cases and Materials* (Josim Publishing House, Garki, Abuja, 2007) p 5.
[4] Paul Andrew Gwaza, 'Traditional Strategies for Election Conflict Management in Nigeria' pg. 8, available at <https://ssrn.com/abstract=2470477> last accessed on 29th June 2021.
[5] (1988) 5 NWLR (Pt. 94) 323 at 347.
[6] See also *Abdulahi v. Elayo* (1993) 1 NWLR 332.
[7]C. J. Ubanyionwu, Election Petition Cases and the Right to Fair Trial Within a Reasonable Time in Nigeria (2012) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* p 13.
[8]Barry H. Heinberg, *The Resolution of Election Disputes: Legal Principles that Control Election Challenges* 2008 (IFES, Washington DC, USA), p 1.
[9] The Constitution of the Federal Republic of Nigeria 1999 (as amended) s 15 of the Third Schedule (Part 1).
[10]See Obi Ndifon Neji, 'Resolving Political Party Disputes through Alternative Dispute Resolution' (2018) Vol. 4 No. 4 *Journal of Political Science and Leadership Research,* 30 (28-41).

the nomination of a candidate as the party's flag bearer. Party primaries therefore constitute a major cause of intra-party conflict.[11] Just like general elections, party primaries can be highly contested affairs, particularly because they are seen as the gateway to state power and wealth. In this connection, election irregularities, including rigging, are not uncommon, and other procedures are flouted. Competing candidates may mobilise groups (usually the youths) to campaign for them, including through intimidation, bribery and violence. Patrons and 'godfathers' play a central role in party primary election contests, putting their immense resources behind a candidate in the hope of exerting control once they win.[12]

The issues around primary elections often lead to the inundation of the court with several petitions and they further inform the spate of willy-nilly party defections by politicians.[13] Initially, Nigerian courts refused to entertain disputes bordering on party primaries. For instance, in *Onuoha v Okafor,*[14] the plaintiff brought an action to compel his party to nominate and sponsor him for election to a senatorial seat instead of the defendant. Both the plaintiff and the defendant had contested for the party's ticket and the plaintiff was chosen. The defendant wrote a petition against him and the panel set up to consider the petition nullified the election and went on to choose the defendant. The Supreme Court held that it could not entertain the action because the constitution makes nomination and sponsorship of a candidate a political matter solely within the discretion of the political party concerned. This non-interventionist approach of the court contained a message for politicians on the need for them to try and resolve their cases amicably without bordering the court. However, when it seemed that politicians did not assimilate the hint of the court, it became imperative for the courts to entertain those cases though restrictively. In *Ugwu v. Ararume,*[15] the Supreme Court held that the Peoples Democratic Party (PDP) had not complied with section 34(2) of the Electoral Act of 2006 which required any political party wishing to substitute its candidates to give cogent and verifiable reasons. The PDP substituted the name of Senator Ifeanyi Ararume with that of Engineer Charles Ugwu to contest the gubernatorial election in Imo State. At issue in the instant case was the requirement of 'cogent and verifiable reasons.' The Supreme Court held that a political party that had acted in 'error' was not a cogent and verifiable reason for the purposes of section 34(2) of the Electoral Act of 2006. The Supreme Court also took a similar approach in the case of *Amaechi v Independent National Electoral Commission.*[16] The appellant had won the gubernatorial primaries of his party but was subsequently dropped by his party and his name substituted with that of another person who did not contest the primaries. The party claimed that the substitution was because the appellant's name was submitted in 'error'. Rejecting that contention, the Court said that the question that arises is –what 'error' made it possible for a non-candidate at PDP primaries to be named the PDP Candidate in place of eight candidates who contested and of whom Amaechi came first? In the case of *Ibrahim v. Abdullah,*[17] the Supreme Court held that the choice of candidates by a political party for elective office being a political issue is governed by the rules, guidelines and constitution of the political party concerned and is a matter of internal affairs of the political party concerned. The court further held that such issue is not to be questioned before any court as it is not justiciable.

But in another recent case of *Omajali v. David*[18] the Supreme Court relying on section 87 of the Electoral Act, 2010 held that the choice of a political party's candidate for a general election is justiciable. The court held that when the choice of the candidate of a political party is done in flagrant disregard or violation of the provisions of the Electoral Act, the party's constitution and the party's guidelines for the nomination of candidates for general elections, a dispute therefrom is justiciable. Section 87 (9) of the Electoral Act provides that an aspirant who complains that any of the provisions of the Act and the guidelines of a political party has not been complied with in the selection or nomination of a candidate of a political party for election has an unfettered right to challenge the process in court. Interestingly, the Supreme Court in another recent case of *Gana v. SDP*[19] held that the choice of a political party's candidate for a general election is an internal affair of a political party and such is a 'political one', 'domestic issue' and 'not such as would be justiciable in a court of law.' The court further explained that the rationale for the non-interference is that 'if a court could interfere, it would in effect be managing a political party for the members thereof.'

[11]Adeniyi S. Basiru, 'Pervasive Intra-Party Conflicts in a Democratising Nigeria: Terrains, Implications, Drivers and Options for Resolution' (2019) Vol. 19 (1) *African Journal of Conflict Resolution*, 113 (109-130)
[12]United Nations Economic Commission for Africa (UNECA), *'Elections and the Management of Diversity'* African Governance Report III (2013) Oxford United Press, United Kingdom, p 152.
[13] Obi Ndifon Neji, above (n 15) p 32.
[14] (1983) NSCC 494 42.
[15] (2007) ALL FLWR (Pt. 353) 3.
[16] (2008) 5 NWLR (Pt. 1080) 227.
[17] (2019) 17 NWLR (Pt. 1701) 293.
[18] (2019) 17 NWLR (Pt. 1702) 438.
[19] (2019**)** 11 NWLR **(Pt.** 1684**)** 510

What needs to be pointed out is that, although the Supreme Court in both *Gana v. SDP* and *Ibrahim v. Abdullah* was more emphatic as to the non-justiciability of claims bordering on the choice of the candidate of a political party, the apex court did acknowledge the provisions of section 87 (9) of the Electoral Act as an exception to the general rule. This leads to a conclusion that the general attitude of our courts to claims emanating from party primaries is that they are not justiciable. However, if the claims are brought pursuant to or within the confines of section 87 (9) of the Electoral Act, they are justiciable and cannot be rejected by the courts.[20]

Inter-Party Election Disputes

Also known as post-election disputes, inter-party election disputes are election disputes that cut across members of two or more political parties. They are arguably the most challenging election disputes because they affect the interests, aims, manifestoes, ideologies and ambitions of two or more political parties and once they are properly brought before the courts, there is no principle (such as the justiciability principle in pre-election disputes) that stops the courts from hearing them. Over the last two decades, the courts have always been bombarded with armada of post-election disputes. In the 2003 general elections, 574 petitions were filed at the various election tribunals in the Federation including the Federal Capital Territory (FCT). It increased to 1,291 in 2007 and reduced 731 in 2011.[21] By the end of April 2019, the number of petitions challenging various results of the 2019 general elections rose to 766.[22] Pursuant to section 138 (1) of the Electoral Act of 2010, the permissible grounds upon which post-election disputes are brought are:

(a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;
(b) that the election was invalid by reason of corrupt practices or noncompliance with the provisions of the Act;
(c) that the respondent was not duly elected by a majority of lawful votes cast at the election; or(d) that the petitioner or its candidate was validly nominated but unlawfully excluded from the election.

An act or omission which may be contrary to an instruction or directive of the commission or of an officer appointed for the purpose of the election but which is not contrary to the provisions of the Act shall not of itself be a ground for questioning the election.[23] It is apposite to note that other grounds recognised by case law for challenging an election include that a person has not been validly elected to the office of President or Vice-President or Governor or Deputy Governor or as a member of the National Assembly or a State House of Assembly under this constitution.[24] Beyond the above grounds stated in the relevant provisions of the Constitution and the Electoral Act, the courts will scarcely allow petitions bordering on any other ground.[25]

4. Formal Electoral Dispute Resolution (FEDR) Mechanisms

The formal mechanisms for resolving electoral disputes in Nigeria are inhered in the courts and tribunals.[26] These courts or tribunals are manned by judges that are not specialised in electoral matters but are part of the judicial branch. The 'formal electoral dispute resolution (FEDR) mechanisms' refers to the set of institutional and technical-legal means or mechanisms for challenging or exercising oversight functions on electoral actions, procedures and decisions of an administrative, judicial or legislative body or even an international body. FEDRSs exist to monitor, ensure and enforce the integrity of the electoral process. Through their operation, irregular electoral actions or decisions may be annulled or amended through challenges, or a sanction may be imposed on the perpetrator or person responsible for the irregularity or wrongful action. Depending on the applicable law, the same irregularity may trigger both types of oversight mechanism. [27]

Litigation is an essential dispute resolution tool for this mechanism with the use of courts and tribunals to resolve disputes. In most West African countries' election disputes are handled by the courts.[28] Nigeria is no exception.[29] Apart from the fact that the courts are presumed to be impartial umpires, the reason why politicians choose the

[20] See *APC v Marafa* **(**2020**)** 6 NWLR **(**Pt**.** 1684**)** 510
[21] J. T. Omenma, et al. 'Disputed Elections and the Role of the Court in Emerging Democracies in Africa: The Nigerian Example' *Journal of Politics and Democratization* (2017) Vol 2 (1), 44 (28-55)
[22] Halimah Yahaya, '2019 Election Petitions Across Nigeria Increase to 766' Premium Times (April 24, 2019) available at <https://www.premiumtimesng.com/news/top-news/326680-2019-election-petitions-across-nigeria-increase-to-766.html> accessed on 5th July 2021
[23] Electoral Act, s. 138 (2); see also *Ogboru v. Ibori* (2004) 7 NWLR, pt. 871, 192
[24] CFRN 1999, ss. 239(1)(a) and 285(1)(a) & (b) and (2); see also *Obasanjo v Yusuf* (2004) 9 NWLR pt. 877, 144
[25] A. O. Osadolor, 'Constitutional Grounds for Questioning Elections in Nigeria: An Overview' (2019) Vol. 12 (3) *Journal of Politics and Law,* 177 (167-177)
[26] CFRN 1999 (as amended) s 285.
[27] Jesús Orozco-Henríquez et al., *Electoral Justice: The International IDEA Handbook,* (Bulls Graphics, Sweden) 2010 p. 37 paras 83-84.
[28] West Africa Network for Peacebuilding (WANEP), above n 5 p 40.
[29] Joshua E. Alobo, above n 6.

courts to resolve their electoral imbroglio is that only the courts have the power to nullify a concluded election. INEC or any other body does not have the power to disqualify any candidate who has been validly nominated from contesting an election except if the candidate has been indicted by a court of law.[30] Section 285 of the CFRN 1999 provides for the establishment of Election Tribunals to determine election disputes in Nigeria except the Court of Appeal which holds original jurisdiction to determine election disputes relating to the validity of the election of the President. The role of the courts in such cases is simply to ensure compliance with stipulated rules and law and to uphold electoral fairness and justice. It is apposite to underscore that election disputes put the courts on trial and our jurisprudence is awash with several views expressing dissatisfaction against litigation in Nigeria generally and the role of courts in election petitions specifically.[31] Below are some of the reasons why litigation is no longer viable as the exclusive mechanism for the resolution of election disputes:

The Courts Hardly Upturn Elections: The success rate of election petitions in Nigeria is low.[32] One will ask, what is the purpose of going to court to challenge an election result when it is almost becoming a norm that the courts will hardly upturn elections and one is not sure that justice will be done? Amongst various other reasons, the principle of substantial compliance has been cited as one of the factors that prevent or slow down the rate of upturning elections.[33] By the said principle, an election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election.[34]

Election Petitions are Technical: There are so many cases where the courts dismissed election petitions on technical or legalistic grounds.[35] In the case of *Ezenwo v. Festus*,[36] the petition was filed, exchanged and settled as provided by paragraph 18 (1) of the First Schedule to the Electoral Act. However, because the petitioner did not apply for issuance of pre-hearing notice within 7 days as stipulated by paragraph 18 (3) and (4) of the First Schedule to the Electoral Act, the tribunal dismissed the petition and further appeals to the Court of Appeal and the Supreme Court were dismissed. In *APC v Udoji*,[37] the court dismissed the election petition because it was filed after the 14 days stipulated by section 285 (9) of the CFRN 1999.

Bribery and Corruption Tendencies of Judges*:* Another factor that influences public perception against election tribunals is the allegation of rampant corruption against tribunal and appeal court judges.[38]

Delay: One of the major challenges of litigation in Nigeria is that of delay in justice administration and when this is applied to election petitions, delay subverts the true intent of the mandate of the people. An example that readily comes to mind is that of *Ngige v Obi*,[39] where it took 35 months for the 1st respondent to receive justice in a court of law, 35 months is a very considerable portion of a 4 years term of office. After the 2007 presidential elections, General Muhammadu Buhari of the ANPP and Atiku Abubakar of the AC challenged the victory of President Umaru Yar'Adua of the PDP and it was about eight months before the presidential election petition tribunal validated the victory of Yar'Adua as president and Goodluck Jonathan as vice-president. It is no wonder that section 285 of the CFRN 1999 was amended to fix the time limit within which election petitions can be filed, concluded, appealed against and dispensed with on appeal.

Harassment & Intimidation of Judges*:* One of the practical reasons why judges are wary of election petitions is that of threats and intimidation which they often receive from politicians.[40] The more judges are threatened by politicians, the less likely they are to administer justice without fear and favour and this is a disadvantage for election petitions.

Proclivity to Rule in Favour of Incumbent Power: The tendency of the courts to rule in favour of the incumbent in election petitions has been recognized as a major reason for lack of trust in the judiciary.[41] For instance, from 1999 till date, no presidential election petition has ever succeeded.

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[30]E. R. Ayeide, 'Electoral Laws and 2007 General Elections in Nigeria' (2007) Vol 6 (3) *Journal of African Elections*, 53 (33-54).

[31]See A. G. Umar Kari, 'Issues in Election in Election Petition Adjudication in Nigeria's Fourth' (2017) Vol.5, No.7 *Global Journal of Politics and Law Research,* 76 (75-87); see also Emmanuel O. Ojo, 'Public Perceptions on Judicial Decisions on Election Petitions: The Case of 2007 General Election in Nigeria' (2007) Vol 10 (1) *Journal of African Elections*, 113 (103-113).

[32] J. T. Omenma, et al. above n at p 44

[33] Ibid, at page 46.

[34] Electoral Act, s. 139 (1).

[35] A. G. Umar Kari, above n 35 p 78.

[36] (2020) 16 NWLR (Pt. 1750) 353.

[37] (2020) 2 NWLR (Pt. 1709) 541.

[38] Emmanuel O. Ojo, above n 31 at 109.

[39](2006) 14 NWLR (Pt. 999) 1.

[40] Emmanuel O. Ojo, above n 31 at 109.

[41] Stephanie M. Burchard & Meshack Simati, (above n 4) p 131.

Cost of litigation: The cost of election petitions is so high that only parties and candidates with deep pockets can afford it.[42] Apart from financial cost, other costs include material and human costs of party disputes, factionalisation of party, psychological trauma/emotional instability and high blood pressure, bankruptcy and impoverishment, negative publicity, disruption of social and economic activities, distrust and suspicion, damaged relationship and bitterness, anxiety and protracted litigation processes.[43]

Conflicting Judgments*:* The fact most often give out conflicting decisions on election matters is one of the factors that make litigation lose its viability as a means of resolving electoral disputes.[44] As rightly observed by a learned scholar, such judicial contradictions have a tendency to lead not only to confusion in judicial precedence but could cause untold hardship to litigants in their quest for justice.[45] It is obvious that the decisions of the tribunals create ill feelings and deprive someone of a perceived victory which sometimes leads to civil unrest and political crisis.[46]

Underfunding of Courts*:* This is a major challenge facing the future of litigation in the resolution of disputes.[47] For instance, in the election petition challenging the 2019 presidential elections, one of the issues raised by the PW59 was that of INEC Server into which election results were electronically fed. Although the court rejected the evidence on the grounds that it was not supported by expert evidence, one wonders if the courts have the required facilities to properly ascertain the merits of such claims.

5. Alternative Dispute Resolution as a Means of Resolution of Election Disputes

Litigation breeds a threatening environment for the disputants, their supporters and the public. Alternative Electoral Dispute Resolution Mechanism provides the possibility of win-win outcomes for all disputants as opposed to FEDR. Report shows that Nigeria is rated low in terms of election disputes management, no thanks to the resort solely to formal electoral dispute resolution (FEDR) mechanisms. [48] It is therefore imperative for stakeholders to consider the possibility of resolving election disputes through means other than by litigation. Apart from litigation, there are other dispute resolution mechanisms that can be resorted to, in resolving election disputes. Formal EDR (FEDR) systems can be complemented by other means and mechanisms for managing electoral disputes. Such mechanisms are normally referred to as informal or alternative electoral dispute resolution (AEDR) mechanisms. Their primary purpose is not to replace FEDR systems but to play a complementary role, especially in situations in which the formal systems face credibility, financial or time constraints linked to political or institutional crises or to their inadequate design. In contrast to FEDR mechanisms, AEDR mechanisms provide for one or more parties in conflict to initiate a process to resolve it, which can be done unilaterally (by withdrawing its claims or response), bilaterally, or through a third party or agency

Forms of Alternative Electoral Dispute Mechanisms

In general, AEDR mechanisms may be classified as unilateral, where the will of one of the parties in dispute is sufficient to resolve it or consider it concluded. This includes processes like renunciation, abandonment, admission or recognition of certain claims or reliefs. AEDR may also be bilateral, when the parties involved need to be in agreement before the dispute can be considered resolved. Bilateral AEDR category involves compromise or give-and-take between two or more parties. This involves the use of Compromise, Negotiation and Facilitated Dialogue.

Compromise

Compromise is the peaceful settlement, either express or tacit, of a dispute, without recourse by the two disputants to a third person or agency to help settle the dispute. Compromise requires the bilateral or multilateral agreement of both or all the disputants involved.

Negotiation

This process involves the coming together of the disputing parties themselves with a view to identifying and discussing the causes of their difference and to find a lasting solution to the problem. There are two types of negotiation – *positional* or *principled* negotiation. While positional negotiation involves two adversaries who apply their various strengths and advantages to win over the opposition, principled negotiation involves two friends and the goal is agreement.[49]

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[42] United Nations Economic Commission for Africa (UNECA), above n 17 p 131.
[43] Obi Ndifon Neji, supra at 33
[44]Almami Cyllah, 'Elections worth Dying for? A Selection of Case Studies from Africa' (International Foundation for Electoral Systems, Washington, 2014) 181.
[45] above n 35 p 84.
[46] *Adegbenro v. Akintola* (1963) 3 WLR 63, *Awolowo v Shagari* (1979) 11 SC 1 – p 5.
[47]Katherine Ellena Chad Vickery and Lisa Reppell, 'Elections on Trial: The Effective Management of Election Disputes and Violations' (International Foundation for Electoral Systems Crystal Drive, 10th Floor Arlington, 2018) page 14.
[48] United Nations Economic Commission for Africa (UNECA), above n 17 p 162.
[49] See West Africa Network for Peacebuilding (WANEP), supra at page 44

Facilitated Dialogue

In facilitated dialogue, the disputing parties are guided by a third party to actively create greater mutual understanding and deeper insight through constructive discussions about complex or potentially controversial issues. The facilitator helps parties to set ground rules for the discussion and to keep the parties focused on the issues at stake and not to deviate from the set rules but does not get involved in making a decision for the parties.[50] AEDR may also involve third-party intervention by a party other than an organ of state. Three options are available with third-party intervention: arbitration, mediation and conciliation.

Arbitration

Arbitration is a conflict management tool used for the settlement of disputes under which the disputing parties agree to be bound by the decision of the arbitrator who has been abrogated the status of a quasi-judge.[51] In arbitration, parties enjoy wider autonomy and can chose an expert in the area of dispute to arbitrate their case.[52]

Mediation

Mediation is a voluntary and confidential process in which a neutral person, the mediator, assists the disputing parties to clarify issues, develop options and work toward a mutually beneficial resolution.' Mediators refrain from suggesting an outcome or solution but they apply their skills including patience, good listening ability, non-judgmental, empathy, e.t.c, in helping the disputants to arrive at a solution.[53]

Conciliation

Just like mediation, conciliation involves the engagement of a third party to facilitate settlement of disputes and to help parties restore a positive relationship. However, unlike mediation, conciliation is more formal because it may rely on only documents rather than physical presence of disputants in the resolution of disputes. Again, unlike a mediator, a conciliator may make recommendations for settlement.[54]

Modules of Alternative Electoral Dispute Mechanisms

Different models of AEDR exist and apply in different electoral system of some countries. While some AEDRs are permanent, others are *ad hoc*.

Permanent AEDRs

Some AEDR mechanisms exist alongside FEDR mechanisms. In that form, they serve as permanent, supportive and complementary mechanisms. In electoral systems that provide for permanent AEDRs, they are generally permanent and/or provided for before elections are held as an alternative means of resolving possible electoral disputes in a simpler and more informal manner, and are backed up by the established FEDR system. In such cases the use of AEDR mechanisms is not a sign of weakness in the FEDR system. It is rather useful for fostering speedy and cost-effective dispute resolution. Both FEDR and AEDR systems coexist and complement each other.[55] The AEDR may exist as pre-trial requirement wherein aggrieved candidates at elections are required under the Rules to show evidence of having employed an alternative dispute resolution which has failed before proceeding with the election petition. The electoral system of many countries provide for a pre-trial requirement, in a case against the Electoral Monitoring Body, that the complainant must have appeared before the body in order to give it an opportunity to correct its alleged error or irregularity before resorting to litigation or any form of FEDR. This requirement of prior exhaustion of administrative remedies is not a formal administrative challenge, and thus should be considered not an administrative electoral challenge but an AEDR mechanism.[56] Examples of states that operate electoral systems with Permanent AEDRs are given in Box 1 hereunder.

[50] Musa Mohammed Abdulkabir, 297
[51] West Africa Network for Peacebuilding (WANEP), supra at page 41
[52]Musa M. Abdulkabir, 'Understanding the Application of ADR as a Tool for Speedy Dispensation of Justice in Nigeria' (2018) Vol. 1 (1) *Nile University Law Journal,* 296 (294-306)
[53] Obi Ndifon Neji, supra at 34
[54] Ibid, 35
[55] Above n 32, p 183, para 560.
[56] Ibid p 190, para 581.

Box 1: Some Examples of Electoral Systems that Apply Permanent AEDR Mechanisms.

A. The following Countries apply different forms of Permanent AEDR (PAEDR) mechanisms: Afghanistan, Cambodia , Ethiopia; Kenya; Lesotho; Malawi; Mexico, Samoa; South Africa; and Uganda. To discuss a few; In Cambodia, the National Election Commission (NEC) is responsible for deciding all complaints and appeals through the holding of public hearings, except for cases that fall under the jurisdiction of the judiciary. Electoral disputes are addressed at the level where they occur, starting with polling station officials, the Commune Election Commission (CEC) and the Provincial Election Commission (PEC). Electoral disputes are therefore dealt with within electoral structures, outside the formal justice/court system which is out of the reach of the vast majority of the population, as well as being distrusted and associated with criminal matters.

Source: Denis Truesdell, AEDR in Cambodia in 'Electoral Justice: The International IDEA Handbook, Jesús Orozco-Henríquez et al. (Bulls Graphics, Sweden) 2010 Box 8.4, p 190.

B. South Africa and Lesotho have institutionalized a system of party liaison committees, which serve as vehicles for consultation and cooperation between the EMB and the registered parties on all electoral matters with the aim of delivering free, fair and genuine elections. These committees have been established nationally, provincially and locally, and are permanent. Each registered political party has the right to appoint two representatives to each committee. The committees meet frequently and their administration is entrusted to the EMB, which chairs them at all levels. They take a consultative and constructive approach and seek to reach consensus among the political parties and their candidates. The tribunals appointed by South Africa's Electoral Court to resolve various electoral disputes and challenges generally endorse the conclusions of the committees, which are also respected and implemented by the organs and agencies involved.

Source: Electoral Justice: The International IDEA Handbook, Jesús Orozco-Henríquez et al. (Bulls Graphics, Sweden) 2010, p 189, para 579.

Similarly, an AEDR may be contained in the constitution of a party to the effect that election dispute between or among members of the same party must pass through an ADR mechanism within the party before applying the FEDR.[57]

Ad Hoc AEDRs

Some AEDRs are applied on *an ad hoc* basis or in exceptional or extraordinary circumstances as a result of political crises or institutional failure in existing FEDR mechanisms. They are to fill a credibility gap that exists in the FEDR system because of either political conflict or institutional weaknesses. Such AEDR mechanisms come into play when a serious dispute arises in relation to the holding of an election, its unfolding or outcome. The resolution of the dispute or challenge is entrusted on an extraordinary and exceptional basis to an *ad hoc* body not originally provided for in the FEDR system.[58]

International Ad Hoc AEDR Bodies

Electoral rights are human rights and several have been enshrined in various international legal instruments.[59] Some of these universal or regional instruments have agencies and procedures for reinforcing, on the basis of subsidiarity and complementarity, means for protecting the electoral rights which are protected by domestic laws. The domestic route to seeking redress over alleged breaches of electoral despite resolutions must be exhausted first before recourse is had to a universal or regional mechanism. The international mechanisms therefore are of complementary or supplementary nature and do not act as replacement of domestic AEDR mechanisms.
Instances of application of International AEDR are given in Box 2 hereunder,

[57] Ibid para 582.
[58] Ibid para 561.
[59]Examples are: the United Nations Declaration on Human Rights 1948, International Covenant on Civil and Political Rights 1966 (ICCPR), African Charter on Human and Peoples' Right, 1981 (as domesticated under Nigerian Law); African Charter on Democracy, Elections and Governance; Economic Community of West African States Protocol on Democracy and Good Governance 2001; Cairo Agenda for the Re-launch of Africa's Economic and Social Development, 1995; Algiers Declaration on Unconstitutional Changes of Government, 1999; Lomé Declaration for an OAU Response to Unconstitutional Changes of Government 2000; OAU/AU Declaration on Principles Governing Democratic Elections in Africa, 2002.

Box 2: **Some instances of application of International Alternative Electoral Dispute Resolution Mechanism**

The African Union through the former United Nations Secretary-General, Kofi Annan, intervened to mediate an agreement and created a coalition government in Kenya after the post-election violence in Kenya in 2007. In 2009, the Southern African Development Community (SADC) appointed former South African President Thabo Mbeki to mediate in the conflict in Zimbabwe which followed the 2008 election. This process led to the signing of a power-sharing agreement by the belligerent parties and the formation of a government of national unity.

Source: Electoral Justice: The International IDEA Handbook, Jesús Orozco-Henríquez et al. (Bulls Graphics, Sweden) 2010 p 192, para 586.

6. Prospects of Resolution of Election Disputes through AEDR

There are several factors that make ADR a preferable means of resolving electoral disputes. The fact that election disputes are unique in nature offers a clearer reason why they should be treated with care and caution. Below are some of the key features of ADR that make it better than litigation:

a. It is primarily a voluntary process;
b. It avoids the win-lose, 'winner takes all' culture of litigation, where relationships tend to suffer;
c. It tends to be quicker and, in most cases;
d. It is a less expensive mechanism for resolving disputes;
e. It avoids the inflexibility and rigidity of court procedures;
f. It provides a greater option for parties to conduct cases without legal representation and therefore creates greater opportunities for retaining control;
g. Due to its consensual nature it can offer a superior resolution than court judgments;
h. It focuses on real needs rather than strict rights and obligations under the law;
i. It is less easy for more powerful or wealthy parties to delay and 'wear down' the opposition

A learned scholar believes that the above advantages of ADR can also be applied in resolving political party disputes (including election cases).[60] For intra-party disputes, he suggests the development of an internal mechanism that will identify and mitigate the interaction of negative energies at the intra party level; and in the event of crises, provide a system that accommodates these negative energies and redirect same into peace resources.[61] This paper submits also that inter-party election disputes can be managed by setting up multi-party liaison committees which will be saddled with the responsibility of resolving inter-party strife.[62] In South Africa, party liaison committees have been a major force in reducing electoral deaths by defusing electoral disputes and it is no wonder that South Africa has been ranked high in terms of public satisfaction with election dispute management.[63] Similarly, Ghana's notable election success in 2008 cannot be disconnected from the inter-party advisory committee that met regularly to resolve grievances raised by any of the parties. One wonders why ADR should not be formalized and entrenched into the Nigerian election dispute resolution system at least to save the billions of naira usually squandered in litigating electoral disputes.[64] ADR processes and procedures are flexible in practice where the disputing politicians or parties will enjoy the leverage to determine the terms, procedure, rules, place and manner in which the process is to be conducted. They will also have the autonomy to decide or chose the judge or umpire that will determine the issues in dispute. ADR will also save time and unnecessary cost for the parties and the nation as a whole. It will also prevent widespread violence and bloodshed that usually follow election disputes.

7. Challenges of Resolution of Election Disputes through ADR

Absence of a Statutory Provision*:* There is no law in Nigeria that mandates election disputants to exhaust ADR mechanisms before seeking redress in the courts. There is no doubt that almost all political parties in the country have processes for internal conflict management enshrined in their constitutions, but in practice these institutional

[60] Obi Ndifon Neji, supra at 36.
[61] Ibid
[62] See Chris Fomunyoh, 'Mediating Election-Related Conflicts' (Centre for Humanitarian Dialogue, Switzerland, 2009) p 11.
[63] United Nations Economic Commission for Africa (UNECA), above n 17 at p 162.
[64]See for instance, How Buhari, Atiku and INEC Spent Billions at Tribunal' available at <https://dailytrust.com/amp/how-buhari-atiku-inec-spent-billions-at-tribunal> last accessed on 10th July 2021.

frameworks are weak.[65] In any case, no matter how mandatory a provision of a political party's constitution is, it cannot oust the jurisdiction of the courts as regards election disputes.[66]

Lack of Moderation among Politicians: Unwillingness on the part of politicians to play by the rules is a major challenge to institutionalizing ADR in election dispute management.[67] In the case of *APC v. Marafa*,[68] his lordship Galumje J.S.C preaching amicable resolution of election disputes, lamented as follows: '[S]ome politicians either are ignorant of what party politics is, or out of mischief, have continuously dragged this nation backward. If care is not taken, this class of politicians will drag this nation to the stone age, where all of us will be consumed'. The case of *Oni v. Fayemi*[69] further buttresses the lack of moderation on the part of our politicians. Here, the appellant lost his party's primary election to the Respondent. He congratulated the Respondent and even participated in the Respondent's mega rally. However, before the gubernatorial election, he changed his mind and filed a petition against the Respondent challenging his victory at the primary election. The apex court per Galumje found the Appellant's attitude strange and dismissed his petition for being statute barred.

Strict Interpretation of Provisions on Time Limit for Instituting Election Petitions*:* Section 258 (5) and (9) of the CFRN (as amended)[70] requires that an election petition shall be filed 21 days after the date of the declaration of the election results while in case of pre-election matters, the suit shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained of.[71] Although these provisions are geared towards avoiding unnecessary delay in determining election petitions, the strict approach of the courts to these provisions in a way affects the possibility of ADR in election disputes. This is because time will continue to run notwithstanding the ADR efforts and a party may lose his right to seek redress even when the dispute could not be resolved amicably. This happened in the cases of *Nwoko v. Waoboshi*[72] and *Lokpobiri v. APC*[73] where the time spent in attempting ADR was not reckoned with by the courts in dismissing the petition for being statute-barred.

AEDR may not be effective in a situation of power or financial imbalance between disputants: Balancing the interests of a weak disputant with those of a stronger disputant, and may not work when one party is uncooperative – especially in a multiparty dispute.

8. Conclusion and Recommendations

In this research paper, it has been shown that litigation is not the only means through which election disputes can be resolved and that, given the peculiar nature of election disputes and the level of public dissatisfaction with the way they are handled in our courts today, it is imperative for relevant stakeholders to consider the formalization of ADR as a veritable means of resolving election disputes in Nigeria. The notable pronouncement of his lordship, Bage J.S.C in *Lawal v. APC*[74] provides an informative message with which the researcher seeks to conclude this paper. In the said case, his Lordship stated as follows: One thing I must say before concluding this judgment is that our gentlemen and women in the business of politics must now start to learn to accept and concede defeat at elections, there will always be a winner at every contest. Now I say this being mindful of the rights to pursue litigation to whatever level where a person feels aggrieved. But what is obtainable now is a stint short of desperation, if not a full blown manifestation of it. In the instant appeal, we see members of the same political party litigate a point, which is moot to the apex court. No game spirit, no sportsmanship, no brotherliness; just unending contests including litigation. The trend is not healthy to our nascent democracy and I make bold to say this must stop. The purpose of politics ought to be the pursuit of office with the aim of bringing good governance and dividends of democracy to the people, with this in mind, it should not be difficult to politicians to, where possible, work hard to resolve their difference, support one another with good things that brings progress to the nation, and to end this unending litigations that arise over the least of political misunderstandings.

In view of the above *dictum* as well as the points marshaled out in this paper, the researcher proceeds to make the following recommendations:

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[65] Adeniyi S. Basiru, above n 11 at p. 126.
[66] See *Udenwa & Anor v. Uzodinma* (2013) 5 NWLR (Pt. 1346) 94; *Ogaga v. Umukoro & Ors* (2011) 12 SC (Pt. 11) 74.
[67]Chimaroke Ogba, 'Electoral Management Body and the Challenges of Conducting Credible Elections in Nigeria' (2017) Vol 6 (3) *American Internal Journal of Social Science*, 89 (85-96).
[68] Supra, at page 433, paras. F-H.
[69] (2020) 15 NWLR (pt. 1746) 59 at 88, para. A-C.
[70] Fourth Alteration Act of 2017.
[71] See *Bello v. Yusuf* (2019) 15 NWLR (Pt. 1695) 250; *Gbenga v. APC* (2020) 14 NWLR (Pt. 1744) 248.
[72] (2020) 13 NWLR (Pt. 1742) 395.
[73] (2021) 3 NWLR (Pt. 1764) 538.
[74] (2019) 3 NWLR (Pt. 1658) 86.

a. There is need for the enactment of an Act that will make it mandatory for election disputes to only proceed to court after parties thereto have exhausted ADR options in resolving such disputes;
b. There is need for the creation or strengthening of intra-party and inter-party dispute resolution committees that will work hand in hand with INEC's election panels with a view to resolving election disputes at the earliest opportunity;
c. INEC is to stay open-minded, professional and impartial in the execution of its electoral responsibilities especially as it relates to resolving election complaints;
d. Political parties are to sensitize their members on the importance of consenting to the ADR options in the event of a dispute;
e. The courts are to encourage parties to resolve their difference amicably. In this connection, the courts should be flexible with the interpretation of statutory provisions on time limits for instating election petitions where there is clear evidence of attempts by parties to resolve.