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# Elections Judicial Review



*...an observatory report of the post-2023  
general election dispute resolution  
processes in Nigeria*



# **Elections Judicial Review**

*...an observatory report of the 2023  
general election dispute resolution  
process in Nigeria*

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## **Disclaimer**

This document has been produced by Kimpact Development Initiative (KDI) to provide information on the findings of her post-2023 election petition tribunal monitoring efforts. The report is focused on the Presidential, Governorship/SHoA, and National Assembly Election Petition Tribunals across the States of Nigeria. Kimpact hereby certifies that all the views expressed in this document accurately reflect the analytical views of the information and data gathered from the Tribunals through the Election Petition Tribunal monitors, which were from reliable sources and verified. While reasonable precautions have been taken in preparing this report, KDI, IFES, CEPPS, USAID and UKAID shall take no responsibility for errors, or any views expressed herein for actions taken because of information provided in this report.



## About Kimpact

Kimpact Development Initiative (KDI) is an independent non-governmental organization that advances good governance, democratic rights, public policy, and public engagement. We do this by building informed and active citizens through capacity development, advancing public policies, data-driven advocacy and reforms that give a more supportive environment for citizen-led development.

## Our Mission:

To inspire citizen-led democratic and economic development that is fixed firmly on the principles of participation, data-driven advocacy, strong democratic institutions, and public policies.

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### This study is supported by:





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# List of Abbreviations

A: Accord

AA: Action Alliance

AAC: African Action Congress

ADC: African Democratic Congress

ADP: Action Democratic Party

Anor: Another

APC: All Progressive Congress

APGA: All Progressive Grand Alliance

APM: Allied Peoples Movement

APP: Action Peoples Party

BP: Boot Party

BVAS: Bimodal Voters Accreditation System

CA: Court of Appeal

CEPPS: The Consortium of Elections and Political Process Strengthening

CFRN: Constitution of the Federal Republic of Nigeria

CJ: Chief Judge

CJN: Chief Justice of Nigeria

CoA: Court of Appeal

CSOs: Civil Society Organizations

CTC: Certified True Copy

EC: Electoral Commission

EDR: Election Dispute Resolution

EMB: Election Management Body

EPM: Election Petition Monitors

EPT: Election Petition Tribunal

EPTM: Election Petition Tribunal Monitoring

FCT: Federal Capital Territory

FHC: Federal High Court

FRN: Federal Republic of Nigeria

GNI: Gross National Income

GPZ: Geo-Political Zone

IFES: International Foundation for Electoral System

INEC: Independent National Electoral Commission

IReV: INEC Result Viewing Portal

KDI: Kimpact Development Initiative

LPELR: LawPavilion Electronic Law Report

LP: Labour Party  
NOA: National Orientation Agency  
NNPP: New Nigeria People's Party  
NRM: National Rescue Movement  
NWLR: Nigeria Weekly Law Report  
Ors: Others  
PEPC: Presidential Election Petition Court  
PDP: Peoples Democratic Party  
PRP: People's Redemption Party  
PHC: Pre-hearing Conference  
PWD: Persons With Disability  
RMFA: Revenue Mobilization Allocation and Fiscal Commission  
RPEP: Rules of Procedure for Election Petition  
S: Section  
SAN: Senior Advocate of Nigeria  
SC: Supreme Court  
SDP: Social Democratic Party  
SHoA: State House of Assembly  
UKAID: United Kingdom Agency for International Development  
USAID: United States Agency for International Development  
UTD: Unable To Determine  
WR: Withdrawal Rate  
YPP: Young Progressive Party  
ZLP: Zenith Labour Party

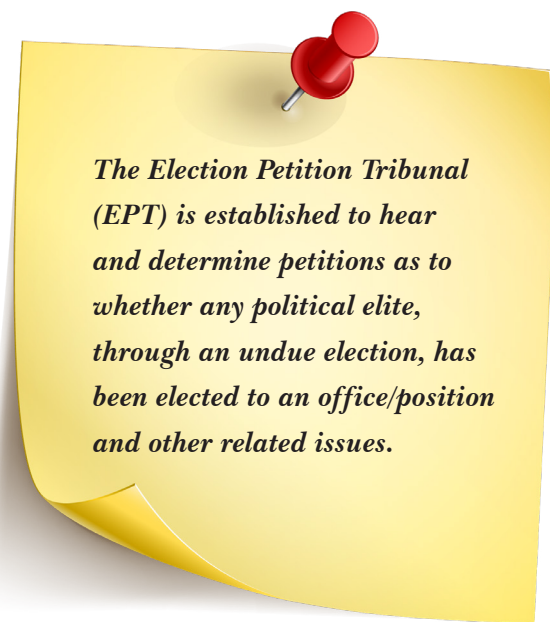
# Executive Summary

Election litigations are a regular feature of Nigeria’s electoral cycle. The Election Petition Tribunal (EPT) is the true arbiter in election infraction matters—established under Sections 239 and 285 of the 1999 Constitution of the Federal Republic of Nigeria. EPTs remain the constitutional destination where aggrieved political parties or their candidates can seek appropriate redress in various circumstances allowed under the law to resolve disputes arising from the conduct of an election.

While legal redress is preferable to post-election conflict or violence, we have observed an increase in the number of petitions, making it increasingly difficult to separate electoral administration from adjudication at each election.

Given this, Kimpact Development Initiative, with the support of the International Foundation for Electoral Systems (IFES), sought to observe the judiciary’s pivotal role in the Nigerian Election Dispute Resolution (EDR) process by monitoring the EPTs’ adherence to legal frameworks all the way to the Supreme Courts. This monitoring effort reflects KDI’s commitment to track and compile EDR process across the 36 states, building on the 2019 monitoring efforts. Furthermore, it will make recommendations for improving the electoral justice system, processes, and efficiency.

This report, a product of the monitoring efforts, navigated the intricacies of Nigeria’s judiciary in resolving post-election disputes and upholding the legitimacy of the electoral process. The report revealed a multifaceted analysis



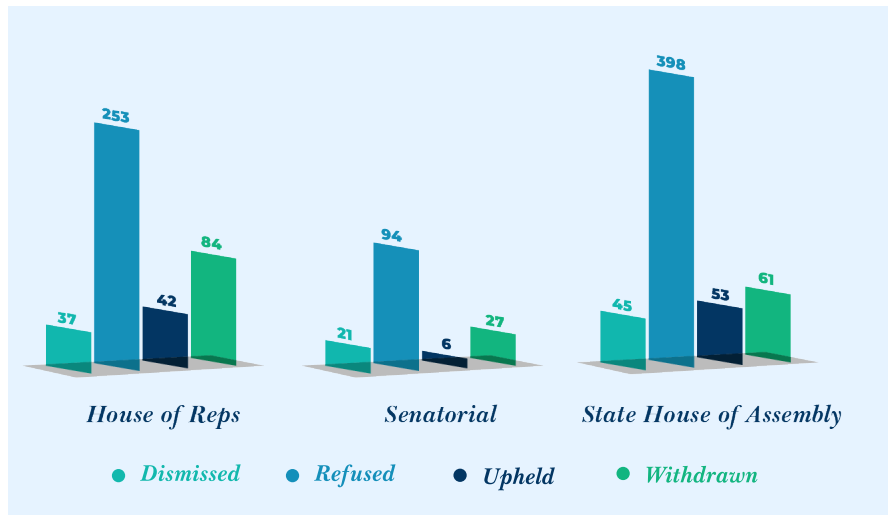
of the 2023 EDR proceedings from the EPTs to the Appellate Courts (Court of Appeal & Supreme Court), offering critical insights into the challenges faced and the overall dynamics of the court. It meticulously tracked the filing and resolution of petitions, encompassing Executive (Presidential and Governorship) and Legislative (National and State Assemblies) elections in 36 states of Nigeria and the Federal Capital Territory (FCT).

Drawing from a rich dataset, 1209 petitions were filed by candidates and political parties after the 2023 general elections – of the 1209 petitions, 206 (17%) were withdrawn and eventually struck out, 110 (9.1%) were dismissed, 790 (65.3%) were outrightly refused by the EPT panels while only 103 (8.5%) petitions were upheld (won at the various tribunals). In the presidential election, 5 petitions challenged the President’s return, with the Presidential Election Petition Court (PEPC) dismissing 3 and 2 of the petitions withdrawn by the petitioner. All three political parties and candidates filed appeals with the Supreme Court, which ultimately upheld the tribunal’s rulings, establishing the finality of the presidential election results.

A brief overview at the governorship elections held in 28 states shows that 83 petitions were filed to challenge the outcome of the elections in 24 states (4 states did not challenge the outcome of the election)- 32 were withdrawn and eventually struck out, 7 were dismissed, the EPT panels outrightly refused 42 while only 2 petitions were upheld. At the appeal level, the governorship tussle was very dynamic. Of the 33 appeals filed in 21 states at the Court of Appeal, only 3 were upheld, 27 were refused, and 3 were withdrawn. Only 3 of the 31 appeals filed at the Supreme Court were upheld. This is similar if we consider the overall 1209 petition filed at the court of first instance; the Tribunal upheld only 8.5% and refused 65.3% of these. This is consistent to the whole 1209 petitions filed at the court of first instance; the Tribunal upheld just 8.5 percent, denied 65.3 percent, and dismissed 9.1 percent of the petitions – while 17% were withdrawn

Likewise, the success rate at EPT for legislative elections is not far from the aforementioned. Petitions challenging legislative elections amount to 1121 petitions. Below is the disaggregation of the judgment status of legislative petitions at the EPT level.

Disaggregation  
of the Judgment  
Status of Legislative  
Petitions at the EPT  
level



The data strongly indicates a significantly low success rate in post-election dispute resolution proceedings in courts. However, depending on the perspective of interpretation, the data may potentially affirm the validity of the results declared by INEC, countering the popular perception that the 2023 election management was poor. This raised serious concerns about the motive for filing election petitions, even as it becomes increasingly difficult to win most of these cases in court. This report focuses on the motivations of most of the petitioners for filing out petitions, extracting conclusions from expository research that explain why the judiciary is still flooded with electoral petitions.

Correspondingly, this report revealed some patterns in the acceptance of election results at the first ballot – the state in northern Nigeria continues to file fewer petitions than southern Nigeria. Also, since 2015, all the states that have accepted governorship election results on the first ballot are northern states. While it is evident that a complex interplay of legal, political, and strategic considerations influence the decision to accept or challenge election results, different politicians and parties may make different choices based on their specific circumstances and assessments of the election. This report investigated how cultural and religious considerations continue to play a part in this. How consensus-building and significant influence by northern religious and traditional leaders on public opinion and political behavior can shape the culture of election result acceptance.

The study draws attention to the conduciveness of the tribunal facilities that led to the compliance to opening of tribunal registries seven days before the election day. This report noted the poor inclusiveness in the judicial human resources

deployed for the process, limited accessibility for persons with disabilities to court rooms and the absence of essential services like sign language interpreters. Despite being connected to the electric grid, air conditioning was lacking in many tribunals, impacting the conduciveness of the courtrooms.

The report investigated citizens' involvement in the EDR process, particularly among young people. The increase in public interest in the EDR process was noted; Nigerians, particularly young people, appeared to have gained electoral consciousness and awareness in greater numbers than in prior election years. This is evident in the amount of social media attention the 2023 EPT received, as the judiciary came under intense scrutiny from citizens. Judging from the social media analytics tool, the **#AllEyesOnTheJudiciary** amassed over 35 million impressions in less than a month. Many were asking questions regarding one aspect of the presidential election petition or another. This shows that young Nigerians were increasingly more interested in the post-election dispute resolution process. However, with the increase in young people's digital participation came a lot of false information and hate speech. In the media, there have been divisive discussions; manipulative conversation frequently distorts debate and influences people's perceptions to a single school of thought.

Moreover, administrative improvements were noticed at the EPT registries in 2023, there were noticeably more support staff to assist the tribunal secretaries in court processes without hindrance, unlike in 2019. Many of the registry staff also acknowledged the swiftness in the disbursement of funds, and they admitted that this makes their task execution seamless. Furthermore, there were irregularities with petition filling, with some petitioners filing only half of the petition paperwork and others filing out of the legal timeframe of doing so. While this indicates human interference, the report weighs into the conversation of what constitutes the effective date for filling a process – is it the date the Remita was paid or the date the secretary assessed the petition documents? The lack of legal clarity in this area accounted for some of the observed irregularities in petition filing.

We believe this report will serve as a vital resource for policymakers, electoral stakeholders, and the public, offering a nuanced understanding of the challenges and achievements within Nigeria's electoral framework. The KDI report articulated 26 recommendations, which aimed to fortify the electoral justice system, ensuring transparency and the consolidation of democratic ideals. Some



of the 26 recommendations are as under listed:

- **Establishment of a Special Court (Election or Constitutional Court):** The Nigerian judiciary is constantly inundated with electoral disputes (pre-and post every election). The establishment of a standing and specialized Court that will handle pre- and post-election dispute resolution and even electoral offense is highly recommended.
- **The sui generis nature of an election petition should be upheld and regarded with utmost importance. This maxim underscores the unique nature of election matters, necessitating a set of rules and laws distinct from those governing civil and criminal proceedings to prevent unwarranted legal technicalities.** In light of this perspective, we suggest that the provisions outlined in the second schedule of the Electoral Act 2022, in conjunction with the 1999 Constitution of the Federal Republic of Nigeria as amended, offer sufficient guidance for the Election Petition Tribunal processes and proceedings. Any necessary expansions or additions to the electoral laws can be seamlessly incorporated within the Electoral Act, eliminating cross-referencing or dependence on other legal instruments beyond the Constitution.
- One of the motivations for filing election petitions is the perceived poor election administration. **There is a need to improve the electoral process and clearly articulate some of the electoral laws' conflicting clauses to reduce the number of petitions filed.** The number of petitions filed against the 2023 general election increased to 1209 from 811 in 2019. Data also shows that the highest ground on why aggrieved parties approach the court borders on non-compliance with the legal framework and corrupt practices. This shows many believed that the election administration did not follow the required standards.
- **A call is made for true judicial independence.** As long as the court is not financially autonomous from the state to the federal level, there is a great possibility that the electorates will continue to perceive the judiciary's financial dependency on the executive as a huge opportunity for the judiciary to be compromised and politicized.
- Sections 285 (6) and (10) of the Constitution, along with sections 131 (6) and 132 (8) of the Electoral Act 2022, should undergo amendment to incorporate

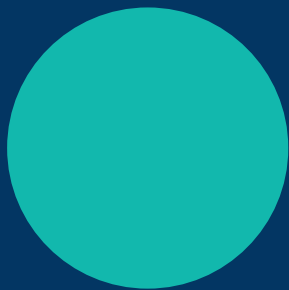
provisions stipulating that **the substance of cases be scrutinized during the pre-hearing conference stage.** This measure aims to assess whether the prayers presented are meritorious enough to progress to the hearing stage. By implementing this amendment, the adjudication process can prevent frivolous cases from advancing to the hearing stage, thereby averting the waste of the court's time and alleviating the burden on the legal system. Despite the recognized principle of fair hearing, certain legal matters, such as party nomination issues explicitly addressed by the Supreme Court, should be efficiently filtered at the pre-hearing stage to curtail redundant filings.”

- **Amend the laws to allow the burden of proof to swing amongst the petitioners, the respondents and INEC.** While the petitioner should prove his claim on the preponderance of probability, INEC should prove that the elections were, in actual fact, conducted in compliance with the relevant electoral laws; and that the elections were free and fair. There are also certain facts that are within the knowledge of the respondent, such as where the petitioner alleges that the respondent fed wrong information to INEC to qualify to contest an election, and the petitioner was able to prove this, the burden of proving that the information was indeed correct should shift to the respondent.

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**01.**

**Introduction**



Elections constitute the foundation and structure of democracy. In Nigeria, the electoral process has been highly competitive yet contentious. Often, there are incidents of violence or allegations of manipulation of election results and fraud. The Nigerian electoral process has been significantly influenced by the judiciary, as unsatisfied candidates and political parties are required by law to petition election tribunals or courts to contest the outcome of the election results on a variety of permissible grounds. Based on this, election litigations have become a norm after the conduct of any election in Nigeria and across the electoral cycle. Evidently, the election cycle in Nigeria is not complete until all election disputes are resolved by an Election Petition Tribunal (EPT), Court of Appeal or the Supreme Court, as the case may be.

### **2022 Electoral Act**

**Section 130(1)** *No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an “election petition”) presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.*

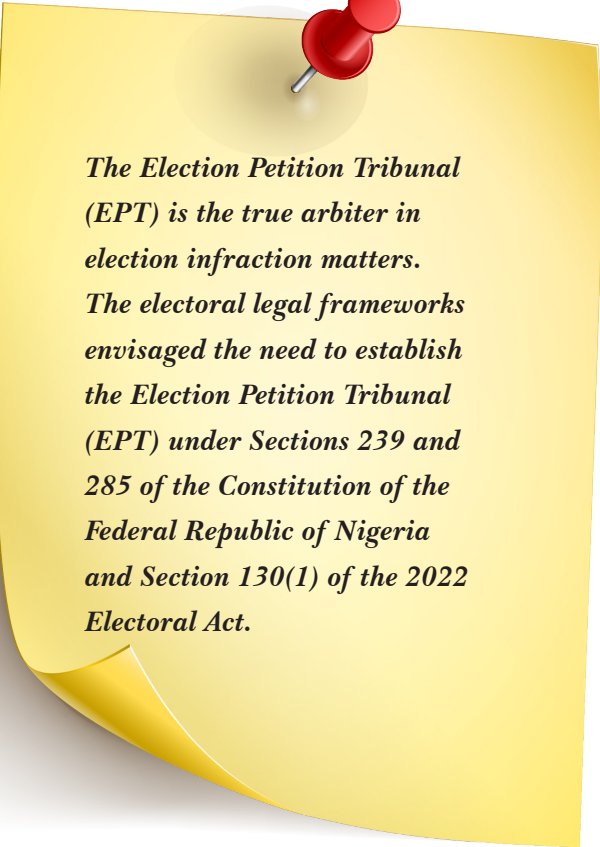
### **1999 Constitution of the Federal Republic of Nigeria (as amended).**

**Section 239 (1)** *Subject to the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether -*

- (a) any person has been validity elected to the office of President or Vice-President under this Constitution; or*
- (b) the term of office of the President or Vice-President has ceased; or*
- (c) the office of President or Vice-President has become vacant.*

**(2)** *In the hearing and determination of an election petition under paragraph (a) of subsection (1) of this section, the Court of Appeal shall be duly constituted if it consists of at least three Justices of the Court Appeal.*

- (1)** *There shall be established for each State of the Federation and the Federal Capital Territory, one or more election tribunals to be known as the National and State Houses of Assembly Election Tribunals which shall, to the exclusion of any Court or Tribunal, have original jurisdiction to hear and determine petitions as to whether -*
- (a) any person has been validly elected as a member of the National Assembly; or*
  - (b) any person has been validly elected as member of the House of Assembly of a State.*



***The Election Petition Tribunal (EPT) is the true arbiter in election infraction matters. The electoral legal frameworks envisaged the need to establish the Election Petition Tribunal (EPT) under Sections 239 and 285 of the Constitution of the Federal Republic of Nigeria and Section 130(1) of the 2022 Electoral Act.***

Both the Constitution and the Electoral Act also set out rules and procedures that will guide the conduct of such tribunals and courts established for the purposes of election dispute resolution. Such rules include:

- The composition of an election petition tribunal – S. 285(3) and Paragraphs 1 and 2 of the Sixth Schedule to the 1999 Constitution.
- The timeline for the constitution of election tribunals and the opening of such election tribunal registry for business – S. 130(3) of the 2022 Electoral Act.
- Quorum of an election tribunal - S. 285(4) 1999 Constitution.
- The timeline for filing a petition - S. 285(5) 1999 Constitution.

- Persons who may file a petition - S. 133 of the 2022 Electoral Act.
- The grounds for an election to be challenged - S. 134 of the 2022 Electoral Act.
- The timeline within which the tribunal/court must deliver judgment - S. 285(6) and (7) 1999 Constitution and

such other rules as are contained in the First Schedule (Rules of Procedure for Election Petition) to the 2022 Electoral Act.

In resolving election disputes, the judiciary, through the EPTs, play a critical role in safeguarding the integrity of elections, protecting both the candidates and voter rights, and upholding democratic principles. Its impartiality, interpretation of laws, adherence to the rule of law, and commitment to justice are essential for maintaining the legitimacy of the electoral process and bolstering public confidence in the electoral process. This is because citizens' role and fundamental right to choose who leads them in a democracy cannot be underestimated. While we rave about the important role of the judiciary in the electoral process – there are growing concerns about the potential for judicial capture of elections due to many factors. These include:

- **Political pressure**
- **Ethical lapses from judicial officers**
- **Noncompliance with electoral legal frameworks such as CFRN, Electoral Act, 2022, Evidence Acts, Electoral Judicial Manual and Rules of Court.**

These highlight the delicate balance that needs to be maintained when involving the judiciary in election-related matters. If the politicians see that the judiciary owns the prerogative of deciding who wins an election, and or the judiciary itself feels the same -it can also amount to judicial manipulation of the elections. Based on the preceding, vigilance and independent oversight are imperative to ascertain the judiciary's (EPTs) compliance with all extant electoral legal frameworks to provide reports that can enhance accountability and electoral justice reforms. Also, independent monitoring of the EPT processes and procedure to measure its level of compliance is important to ensure that the powers and sovereignty of the citizens to decide those who govern them are not compromised either by those organizing the elections or those tasked with resolving disputes that were bound to arise from such elections.

KDI, with the support of the

International Foundation for Electoral Systems (IFES), through the Election Petition Tribunal Monitoring (EPTM) Project started observing and monitoring the process and proceedings of EPTs in the 36 states of Nigeria, including the FCT, with the extant electoral laws. This monitoring effort fulfils KDI's commitment to make policy and practical recommendations available to relevant institutions such as the judiciary, the legislature, and EMBs to further reforms of the electoral justice system, improve the electoral justice processes, and enhance efficiency. Also, to ensure judicial accountability and contribute to the transparent, free, fair, and credible resolution of electoral disputes.

Across the EPTs in the 36 States and the PEPC, trained monitors tracked electoral disputes that were filed, the grounds for filing such petitions, the resources available to the tribunals/courts for the discharge of their duties and the compliance of the tribunals/courts to the laid down legal processes.

Just like in 2019, KDI's report and recommendations made were instrumental to some electoral justice reforms and reviewing the 2022 Judicial Electoral Manual, as indicated on page 3 of the manual. The 2023 report will draw patterns

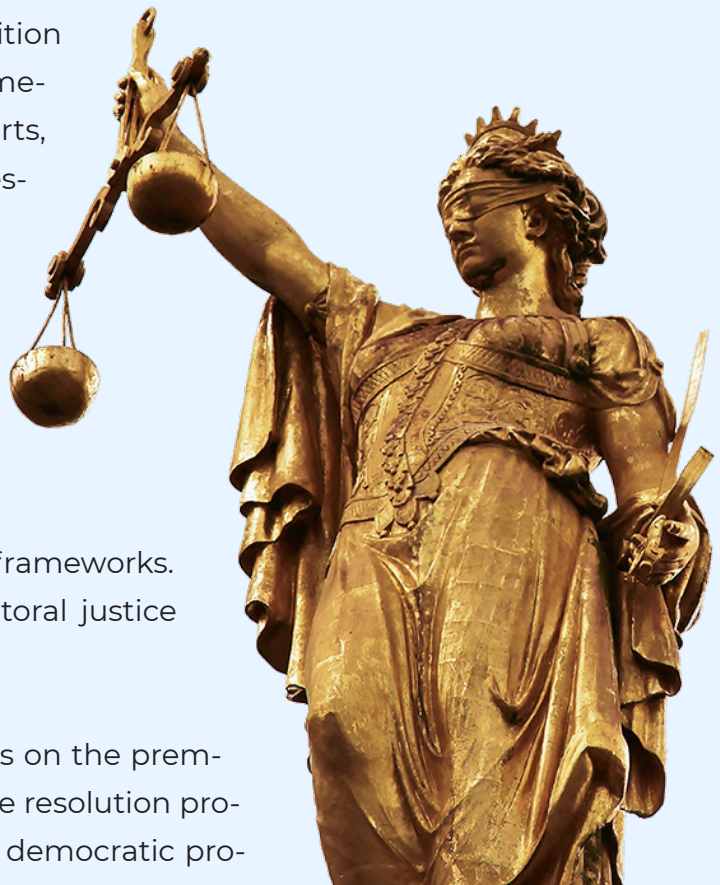
from the trajectory of an election petition. The patterns drawn by the project brought several concerns to the fore for discussion. Among other insights, the project took a critical look at administration of EPT and the legal framework for the same. It also viewed the system through an inclusion lens. Considering the amount of interest Nigerian citizens

showed in the 2023 EPT, the project examined public perception and issues around cyberspace and the security or insecurity of judicial officers involved in the 2023 EPT. The project drew some conclusions and threw up issues that need holistic reforms to consolidate our democracy.

## About the Election Petition Tribunal Monitoring (EPTM) Project

The Election Petition Tribunal Monitoring (EPTM) Project monitored and gathered data on the Nigerian Election Petition Tribunals' adherence to legal frameworks, up to the Appellate Courts, during the post-election dispute resolution process. KDIs' monitors attended election petition hearings, gathered information about the process and judgments across the 36 states of Nigeria and the FCT, using citizen observation techniques to measure tribunals' compliance with electoral legal frameworks. This is towards reforms in the electoral justice system.

The theory of change for EPTM rests on the premise that transparent electoral dispute resolution processes enhance the rule of law and democratic pro-





cesses. By systematically observing and reporting on Election Petition Tribunals (EPTs) processes across Nigeria, the project intervenes in the democratic ecosystem to address procedural inefficiencies and build public trust. Beyond procedural enhancements and fostering public trust, the EPTM acknowledges the fundamental principle of public participation. In the democratic process, citizens play a pivotal role as active participants, not just passive observers. Given this, the EPTM operates on the bedrock belief that a well-monitored judiciary, accessible to citizens, can serve as a bulwark against undue influence. This participatory approach, coupled with the vigilant eyes of informed citizens, acts as a deterrent against irregularities, keeping officials on their toes. The project envisions a Nigeria where public participation becomes synonymous with electoral integrity—a key driver for a resilient and accountable democracy.

The monitoring efforts are not isolated; before the release of the analytical report—the project extends to providing citizens with real-time insights into petition details, judgments, and analytical data in a digestible manner through the EPT Citizen Dashboard. This is in a bid to solve the challenge citizens face in accessing court judgments and information, coupled with low awareness of election dispute resolution.

### **The major activities of the EPTM include:**

- 1. Legal Framework Audit:** KDI, before any activity, will review the relevant laws, policies, and guidelines, with a primary emphasis on the electoral act. This activity is usually done to look at changes in the position of law whenever the parliament reform the laws. The outcome of this comprehensive review is meticulously documented and subsequently shared with stakeholders and simplified for the citizens, thus contributing significantly to their nuanced understanding of the legal framework governing election dispute resolution in Nigeria.
- 2. Capacity Building for Monitors:** Recognizing the pivotal role of informed monitors, the EPTM project strategically identifies and selects individuals across the 36 states and FCT. These monitors are then meticulously trained, with a curriculum encompassing an in-depth understanding of the legal framework for election dispute resolution, coupled with advanced data-gathering techniques.
- 3. Technical Review Committee:** KDI constitutes a technical review committee comprising retired judges, legal practitioners, civil society organizations, and



various stakeholders, which forms an integral component of the EPTM project. This committee convenes through at least two pivotal meetings, during which they critically review the extensive data collected from the 36 states and the FCT. The objective is to subject this data to a rigorous analysis aligned with the project's overarching goals.

- 4. Analysis and Report Compilation:** The project proceeds to edit and update the comprehensive report based on the insights derived from the technical review committee. International and regional obligations such as access to justice, the right to judicial review, timely remedy, proportionate sanctions, and best practices on EDR are considered when culminating recommendations into the final document. The report, rich with recommendations, is then presented across the six geo-political zones in Nigeria. This multi-layered approach ensures a collaborative validation process and fosters recommendations to fortify Nigeria's electoral justice system and instigate broader electoral reforms.
- 5. Engagement with Judicial Leadership:** The EPTM project orchestrates direct engagement with the judiciary's leadership to galvanise impactful change. This was achieved through a roundtable discussion with the President of the Court of Appeal and some Judges. The overarching goal is to foster dialogue incorporating recommendations derived from the EPT Report directly into the direction of institutional practice, thus effecting meaningful change at a foundational level.
- 6. Public Dissemination:** The pinnacle of the project involves disseminating the final report through a well-orchestrated media engagement and public presentation. This ensures that the findings, recommendations, and insights derived from the extensive monitoring efforts reach a broad spectrum of stakeholders, thereby contributing to increased awareness and advocacy for electoral justice reforms.



## Pre-election Dispute Resolution

The journey towards a democratic election in Nigeria is a multifaceted process that extends beyond the polling cubicles. Preceding the casting of votes, the pre-election period is a critical phase marked by various key events, including voter registration, intra-party processes, and party primaries. These milestones lay the foundation for the democratic exercise, shaping the landscape for political contestants and setting the tone for potential disputes.

Towards the 2023 general election, all political parties that fielded candidates conducted their party primaries between Monday, 4th April 2022, and Friday, 3rd June 2022<sup>1</sup>. The primaries of political parties for selecting presidential, governorship

and legislative candidates left a trail of judicial dyspepsia of all sorts. 1,893 pre-election cases were filed after the party's primaries, with 815 of the 1,893 cases appealed to the Court of Appeal and over 400 appealed to the Supreme Court.

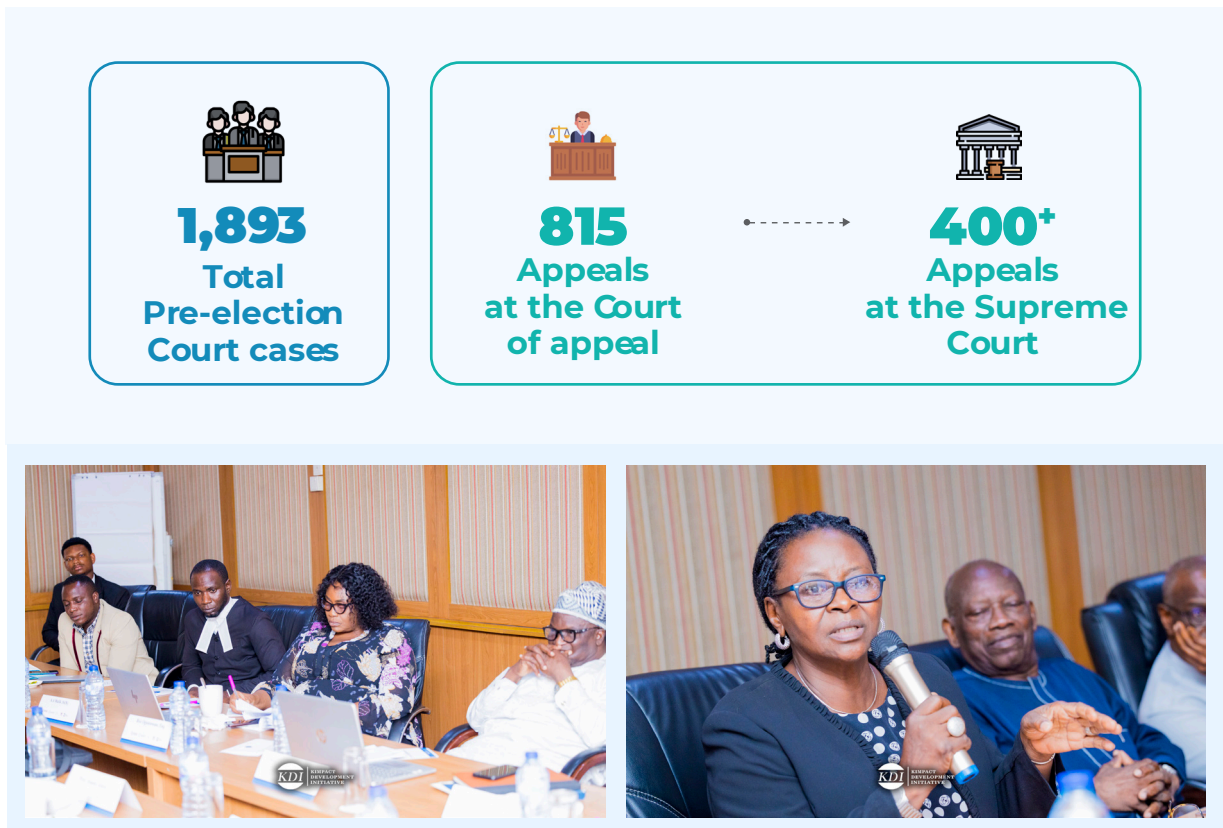
Issues of this pre-election litigation range from intra-party disputes arising from issues of qualification to disqualification, nomination, substitution, wrongful omission, a false declaration on oath, the conduct of primaries and sponsorship of candidates for the general election.

Worthy of note is that according to Sections 29(5) and 84(14) of the Electoral Act, 2022 – the Federal High Court (FHC) has jurisdiction to hear and determine pre-election cases. It

was obvious in the buildup to the 2023 general elections that these novel provisions of the electoral act that limits the hearing and determination of pre-election matters to the Federal High Court came with much pressure on the already overloaded dockets of the FHC judges, considering the infrastructural and manpower deficit of the FHC. The 77 court judges struggled to beat the statutory 180-day deadline for hearing and concluding the 1,893 pre-election cases before them. All these happened even though the court stalled most regular cases for pre-election suits. Practically, on January 20, 2023, the Supreme Court restored Godswill Akpabio as APC's Candidate for Akwa Ibom North

Senatorial district, just 35 days before the 2023 general elections.

If judgments were still delivered on pre-election appeals at the appellate court in January 2023, when general elections would be held in February 2023, this would bring to the fore the quality of preparation of INEC and political parties for the elections. This is with the understanding that as of February 6, 2023 – INEC, through its chairman, disclosed that the commission has been joined in 1,241 pre-election cases, making INEC one of the most litigated against agencies in the country. All of these have a way to hamper effective preparation of the election.



## Issues Identified from the Pre-election Litigation Process

In the erstwhile Electoral Act of 2010, section 87 (9) provided that an aspirant could approach the Federal High Court or the High Court of a State or the FCT for redress. This enabled aggrieved parties to approach the High Courts within the state not only Federal High Courts. Nonetheless, the jurisdiction of the High Court of a State and the FCT in pre-election matters was geographically confined then. While the High Court had jurisdiction over pre-election matters within its State or the FCT, it lacked jurisdiction over matters connected to other territories. This interpretation was reinforced by the Court of Appeal in *Soro v. Galadima* (2019) LPELR-49092(CA).

With the amendment reflected in Sections 29(5) and 84(14) of the Electoral Act, 2022, the jurisdiction to hear and determine pre-election cases is now exclusively vested in the Federal High Court (FHC), a departure from the prior provision of Section 87(9) of the Electoral Act, 2010.

### Issues Arising from Jurisdictional Limitation of Section 84(14) of the Electoral (Amendment) Act, 2022

Nigeria's electoral dispute resolution process has historically been slothful, often hampered by jurisdictional

complexities. The intention behind the earlier Section 87(9) of the Electoral Act, 2010, allowing aspirants to seek redress from Federal, State, or FCT High Courts, was to enable access to justice at the state level. This was abused by the incessant court injunctions and counter injunctions from other State High Courts on the same matter, creating an atmosphere of confusion pre-2022 Electoral Act. However, to cure this, the recent amendment restricts this jurisdiction solely to the Federal High Court, raising pertinent issues.

- **Logistical Challenges and Overstretching of the Federal High Court:** The exclusive jurisdiction conferred on the Federal High Court by Section 84(14) exposed the logistical challenges entrenched in the system. As of the time of gathering this report, the Federal High Court operates with 77 Judges and over 128,234 pending cases<sup>2</sup>. The effectiveness of the Federal High Court as a whole is being threatened by issues including a shortage of personnel and bureaucratic roadblocks. Confining pre-election matters to this court, known for its caseload, exacerbated existing challenges. The imminent influx of pre-election matters from all states and the FCT overwhelmed

the available manpower, jeopardizing the court's efficiency and timely dispensation of justice.

- **Time Constraints and Impact on Other Cases:** Under the constitutional framework, pre-election matters have stringent timelines. Section 285(9) and (10) dictates that such matters must be filed and concluded within 180 days each. This necessitates prioritizing pre-election disputes, potentially leading to a suspension of ongoing civil and criminal suits before the Federal High Court. The mandated resolution timeline for electoral disputes adversely affected the progression of other non-election-related cases.

Moreover, pre-election cases do not conclude at the Federal High Court (FHC) within the stipulated 180 days; there are avenues for appeal, including reaching the Supreme Court. Consequently, the resolution of pre-election cases could extend to at least 10 months if all available appeal options are pursued. This reality was evident in the lead-up to the 2023 general elections when, on January 20, 2023, the Supreme Court reinstated Godswill Akpabio as the APC's candidate for Akwa Ibom North Senatorial district, just 35 days before the scheduled elections.<sup>3</sup> If judgments

were still delivered on pre-election appeals at the appellate court in January 2023, when general elections would be held in February 2023, this would bring to the fore the quality of preparation of INEC and political parties for the elections. This is with the understanding that as of February 6, 2023 – INEC, through its chairman, disclosed that the commission has been joined in 1,241 pre-election cases, making INEC one of the most litigated against agencies in the country<sup>4</sup>. These legal battles have the potential to hinder the effective preparation of elections.

In contrast to post-election dispute resolution, legislative matters do reach the Supreme Court in pre-election cases. This continuously strain the Supreme Court. Discussions with a legal practitioner revealed that the Apex court is scheduling regular cases brought before it up to the year 2027. Recognizing this, it becomes imperative to explore alternative models for election litigation or potentially reduce the level of appeal to the Court of Appeal, aligning it with the post-election litigation process. This adjustment aims to prevent prolonged pre-election litigation, which could significantly impact the political landscape and the preparations of electoral bodies like INEC.

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# 02.

## **Election Petition Tribunal Administration**



The tribunal/court has the exclusive mandate to resolve post-election matters. They are expected to be set up, at the very least 30 days before the election over which the tribunal/court was going to preside. In other words, the EPT may be set up 50, 40, or even 31 days before the election, provided it does not go below 30 days. Anything below 30 days will be contravening section 130(3) of the 2022 Electoral Act. In addition, the

tribunals/court are expected to open their registries 7 days before the election.

Contravention of the law would occur when tribunal registries fail to open 7 days before the election. EPTM project surmised that the essence of the 2 timelines above – 30 days before the election for the constitution of the EPT and 7 days before the election to set up registries was so that the EPT and its registries were up and running and ready to receive petitions from aggrieved parties by the time set by law to receive same without any delay. Our monitoring effort revealed that the tribunal panels for various elections were set up by November 7, 2022, *which implies that the timeline for setting up the panels were complied with.*

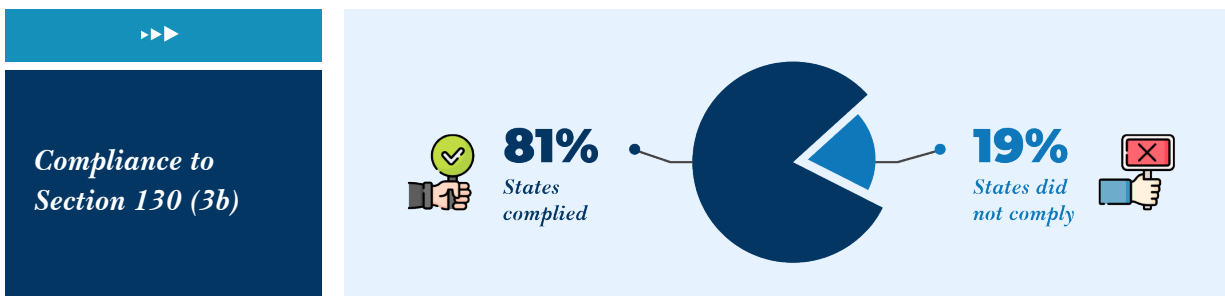
**Section 130(3)** *The election tribunals shall—*

- a. *be constituted not later than 30 days before the election; and*
- b. *when constituted, open their registries<sup>18</sup> for business seven days before the election.*

## Compliance with the Opening of Registries

The EPTM project tracked the election tribunal registries that were opened for business within the 7 days before the 2023 general elections to ascertain compliance with

the provisions of the Law. It is the findings of KDI that only 19% of the 36 States and FCT complied with the provisions of the law in registry opening.



## Breakdown of the EPTs and the Opening Dates.

Opening of Registries						February 2023 Calendar
Sun.	Mon.	Tue.	Wed.	Thur.	Fri.	Sat.
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16 Nassarawa and Ekiti	17 Bayelsa and Anambra	18 7 days FCT, Plateau, Zamfara
19 Nil	20 Niger, Ogun, Sokoto, Rivers, Akwa-Ibom, Kebbi, Taraba, Kaduna and Kwara	21 Adamawa, Delta, Enugu, Lagos, Yobe, Bauchi and Osun	22 Abia, Benue, Edo, Gombe, and Imo.	23 Katsina, Borno, Jigawa, Oyo and Ondo.	24 Kano	25 Election Day
26	27 Ebonyi	28				

A further look into why the other 81% failed or neglected to open the registry revealed that the Tribunal Secretaries who were expected to open the various registries had arrived in the various states. *However, a further check on this shows that most secretary could not open the registries even when they were present in the states for different reasons.*

*These reasons include:*

- *Insecurity*
- *Non-availability of space, and*
- *Non-conduciveness of the spaces provided for the EPT.*

The EPTM project took a further step in determining how the above-mentioned reasons affected the opening of registries. The issue of insecurity will be delved into further down in this report. However, it is worthy of mention that the proper measures which needed to be taken to ensure safety, delayed set-up in some states.

The Court of Appeal is that body of the Judiciary that oversees the election petition process and administration. By virtue of section 140(2) of the 2022 Electoral Act, the Court of Appeal is empowered to issue prac-



tice direction in respect of pre-election and post-election appeals and post-election matters.

Court of Appeal, in respect of pre-election and post-election appeals; and Election Tribunal, in respect of post-election matters.

*Section 140(2) The President of the Court of Appeal may issue practice directions to the—*

- a. Court of Appeal, in respect of pre-election and post-election appeals; and*
- b. Election Tribunal, in respect of post-election matters.*

However, the Court of Appeal does not have court halls in all the states

of the Federation. There are only 20 divisions in addition to the headquarters of the Court of Appeal in Nigeria. One of the Court's divisions is situated in the FCT, while the rest are spread across 19 States of the Federation. To ensure that all states of the Federation are catered for, the Court of Appeal relies on the Heads of Court in States to provide venue to set up EPT. This research found that while some of the venues provided by the heads of court in the states were not conducive for the purposes of EPT and some others, for one reason or the other delayed in providing spaces. The Court of Appeal had to wait for alternative arrangements to be made before the EPT secretariats were finally set up. All these created delay in opening of registry in 81% of the States.

## **EPT and Insecurity**

Nigeria's budding democracy is increasingly under risk from insecurity, which takes many different forms throughout the country: banditry, ethnic tensions, conflicts between communities, conflicts between farmers and herders, and secessionist activities. The trajectory was not different in the 2023 general election. The elections unfolded against a backdrop of heightened insecurity in states already grappling with

political turmoil, attacks, kidnappings etcetera, which lingered to the post-election phase. The EPTs in these States were established in the face of these threatening insecurity. This affected the opening of some EPT Registries while some panels had to relocate to other States. The table below gives detailed information of States that had their EPT relocated due to the underlining reasons above.



### Details of EPT Relocation:



### Reasons for relocation: Insecurity

Initial location	New location(s)
01. Ebonyi State	FCT, Abuja
02. Yobe State	Borno State
03. Imo State	Nasarawa State
04. Rivers State	FCT, Abuja
05. Zamfara State	Sokoto State

#### Note:

*Benue State Gov/SHoA were merged with Nasarawa state, Ekiti was merged with Kwara State – all for administrative convenience. Moreso, Abia State EPT was moved to Abuja due to the lingering Judiciary Staff Union of Nigeria (JUSUN) Industrial action.*

## Compliance with 21-day Filing Rule

It is the duty of the Secretaries to receive election petitions and all other court processes (documentations) from all parties involved in the proceedings. Like the tribunal itself, which must be concluded within 180 days, every stage within the election petition is time bound, and the timelines are sacred. The monitoring and tracking effort unraveled cases of non-compliance with section 285(5) of the 1999 Constitution in some registries.

There were cases of non-compliance tracked by EPT monitors wherein petitioners were allowed in some registries to file incomplete petition document to beat the 21 days deadline. In essence, such petitions presented in this manner may have been filed within time, but they were completed out of time. Some petitions were outrightly filed out of the 21 days allowed by law. Interestingly, no law forbade the Secretaries from receiving any petitions filed out of time. In fact, Paragraph 3 of the Rule of Procedure for Election Petitions (RPEP)<sup>5</sup> clearly specified what should happen when a petitioner(s) is presenting his/her petitions, to wit.

#### **Section 285(5)** Stated that :

*“an election petition shall be filed within 21 days after the date of the declaration of results of the election.”*

*The presentation of an election petition under this Act shall be made by the petitioner (or petitioners if more than*

*one) in person, or by his solicitor, if any, named at the foot of the election petition to the Secretary, and the Secretary shall give a receipt.*

*The Petitioner shall, at the time of presenting the election petition, deliver to the Secretary a copy of the election petition for each respondent and ten other copies to be preserved by the Secretary.*

*The Secretary shall compare the copies of the election petition received in accordance with subparagraph (2) with the original petition and shall certify them as true copies of the election petition on being satisfied by the comparison that they are true copies of the election petition.*

The only reason a petition may be deemed not to have been received by the Registry of the tribunal/court under paragraph 3 of the RPEP<sup>6</sup> is where the petitioner failed to pay for the service and the publication of the petition. However, receiving half document may be considered fraudulent and in contravention of paragraph 4 of the RPEP.<sup>7</sup> Paragraph 4(1) to (4) stated clearly what a petition should contain, while subparagraph 5 states what should accompany the petition, thus:

1. list of witnesses,
2. written statement on oath of the witnesses, and.

3. Copies or list of documents to be relied on at the hearing of the petition, etcetera.

#### **Sub-paragraph (6)**

*“A petition which fails to comply with sub-paragraph (5) shall not be accepted for filing by the Secretary.”*

Given the preceding, it is evident that filling incomplete document at the registries contravenes the provisions of the electoral act.

In addition, to the identified issue of incomplete documents been filed-discrepancies arose over determining the effective date of filing, with arguments supporting the date of assessment by secretaries or the date of payment on the Remita portal. This is against the backdrop of concerns about finding a balance between revenue generation, compliance with the statutory 21-day period to file a petition, and the need for a more transparent and reliable system to prevent fraudulent practices within the tribunal.

Nevertheless, none of the dates is immune to one disadvantage or another – the date of assessment by secretaries is open to human interference, leading to loss of revenue

and other corrupt practices like aiding the filling of incomplete petition documents, as earlier mentioned. However, the idea of making the date Remita was issued the actual date a petition was filed may seem perfect, save for the challenges of internet glitches and poor network coverage, which occur without warning. Discussions with experts also revealed that the Remita platform may sometimes be scrappy, and the server can experience downtime. This may cause a delay in filling a petition document if the date of payment on the Remita portal is chosen as the effective date of filling.

These underlying challenges go to question whether the statutory 21 days within which petitioners must file their petition is sufficient. Realistically, putting together a petition

document within 21 days when the petitioner is expected, according to Paragraph 4(1) - (4), to accompany his or her petition document with the list of witnesses, written statement on oath of the witnesses, and copies or list of documents to be relied on at the hearing of the petition, etcetera. In the face of growing concerns around assessing certain documents, such as electoral materials, 21 days may be impracticable. For instance, during this 2023 post-election dispute resolution process – we saw incidents where hoodlums barricaded the gate leading to the INEC office in a bid to hinder certain petitioners from assessing election materials. This alone may prevent such petitioners from putting together their petition documents within the 21 days.

## Conduct of EPT Bailiff/Officers

During the monitoring and tracking exercise, cases of respondents evading personal service were recorded, and the likely complicity of EPT bailiffs posed a great deal of challenge. The Electoral Act 2022 expressly provides that service of petition on the respondent shall be first by personal service, and where this proves abortive, a petitioner may approach the tribunal for substitute means of service. Not only did the respondent

benefit from this, but there were noticeable instances where the petitioner delayed the personal service process because of the act of filling incomplete documents – this delay would avail the petitioner ample opportunity to gather every needed document to complete the petition document.

There is no gainsaying; this goes to the heart of the EPT timeline – EPT

is time-bound, and all processes and proceedings must be completed within 180 days after the petition was filed. With the understanding that there is no specific date for which servicing should be done, this delay strategy also amounts to a waste of time, which sometimes affects the hearing timeline- specifically the time for each party to prove their cases. It is important for relevant stakeholders to look at ways for which this can be averted – one of which is considering that either personal service or substituted service can be done, this will reduce the amount of time used to apply to the court for substituted service.

Nonetheless, the KDI monitoring effort saw another challenge posed by the EPT administration in various states regarding the educational level of the EPT bailiffs. Most of these bailiffs could barely communicate in the lingua franca (the language of the Court, which is English) or ap-

pear to understand the implication of their complacency and inability to pay attention to details. There were instances where persons whom EPT bailiffs were meant to serve court documents mischievously backdated or pushed the actual or supposed date he/she received the document served on them forward. We are not unaware that the literacy standard issue regarding bailiffs is not a function of any issue that can be attributed to the EPT administrative structure. It is a broader issue in Nigeria's judicial system and public works. However, the EPT is in a class of its own, and all judicial officers involved should be well-trained about the implications of any procedural slips. Broadly, the judiciary needs to align the recruitment of lower cadre judicial officials strictly with wider public office requirements. This will uphold the values and standards of the judiciary, especially in adjudicating election petitions where judicial officers cannot afford to make mistakes.

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# 03.

## **2023 Election Petition Tribunal (EPT) Figures and Comparative Analysis**

KDI Election Petition Tribunal Monitoring project gathered data from the 36 states and the FCT- where 99 tribunal panels were set up. These consist of 98 panels (3 members each) adjudicating on all election petitions (Governorship/SHoA and National Assembly) except for the Presidential Election Petition Court

(PEPC), which is made of 5-panel members. 1,209 petitions were filed across various election petition tribunals in the 36 states and the FCT. These petitions challenged various elective seats based on the conduct and outcome of the 2023 general elections.



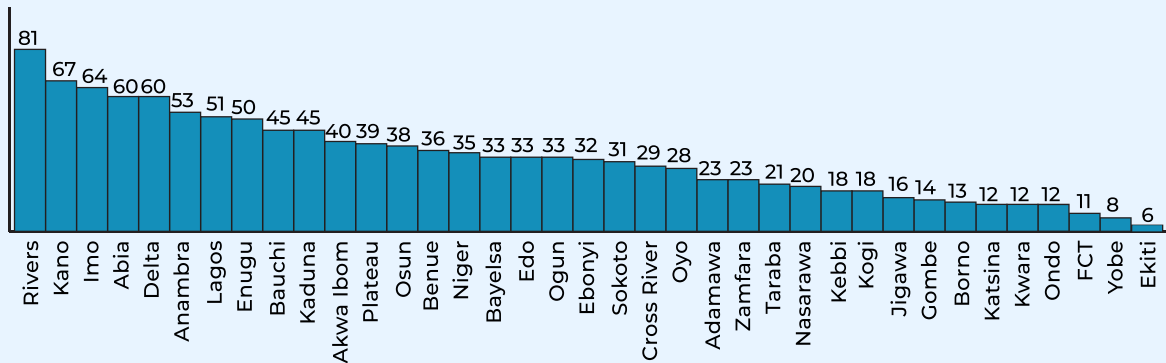
**1,209**

*Total Number of Election Petitions filed across the country as of 31st May, 2023*

*Breakdown of Petitions Filed per Election Type*

<b>5</b> <i>Presidential</i>	<b>83</b> <i>Governorship</i>	<b>557</b> <i>States House of Assembly</i>
<b>147</b> <i>Senatorial</i>	<b>417</b> <i>House of Reps.</i>	

*Breakdown of Petitions Filed per State*



The disaggregation of the petitions filed per state shows that Rivers State has the highest number of petitions filed in Nigeria, with 81 petitions. In comparison, Ekiti State has the lowest number with 6 petitions. It must be noted that Ekiti State did not hold a governorship election during the 2023 general election. However, states that are involved in off-cycle governorship elections like Imo, Anambra, Osun, Bayelsa, Edo, Kogi and Ondo, filed 64, 53, 38, 33, 33, 18 and 12 petitions, respectively. Unmistakably, not undergoing a gubernatorial election can't be said to be the reason for the low number of petitions filed in Ekiti state. The anecdotal record shows it may be due to the political dynamics and stability in the state because there were fewer contentious issues before the general elections.

Only 28 states went to the polls for governorship election during the general elections. The 8 states where the governorship election was not conducted are currently on the off-cycle election list. These states went off the general election cycle because of election petitions

**28 States**  
held Governorship  
Elections

**24 States**  
ended up at the  
Election Petition Tribunal

*In all the 36 States, the Senate, HoR and SHoA election were challenged.*

*Katsina, Kwara, Niger and Yobe States accepted the election at the first ballot.*

*Acceptance of Subnational Election results at First Ballot since 2015 General Elections*

**2015**

- Adamawa
- Bauchi
- Jigawa
- Kano
- Niger

**2019**

- Borno
- Jigawa
- Yobe

**2023**

- Katsina
- Kwara
- Niger
- Yobe

that were resolved in favour of petitioners by the Court of Appeal and or the Supreme Court in the past election years. The 8 states involved are Anambra, Bayelsa, Edo, Ekiti, Ondo, Osun and Imo, Kogi States. Regardless of the non-governorship election in the 8 states, other elections, such as State Houses of Assembly, House of Representatives, and the Senate, took place in those states.

Out of the 28 states where governorship elections were conducted, 4 states – Katsina, Kwara, Niger, and Yobe chose not to petition the outcome of the governorship elections in their states, thereby accepting election results at the first ballot.

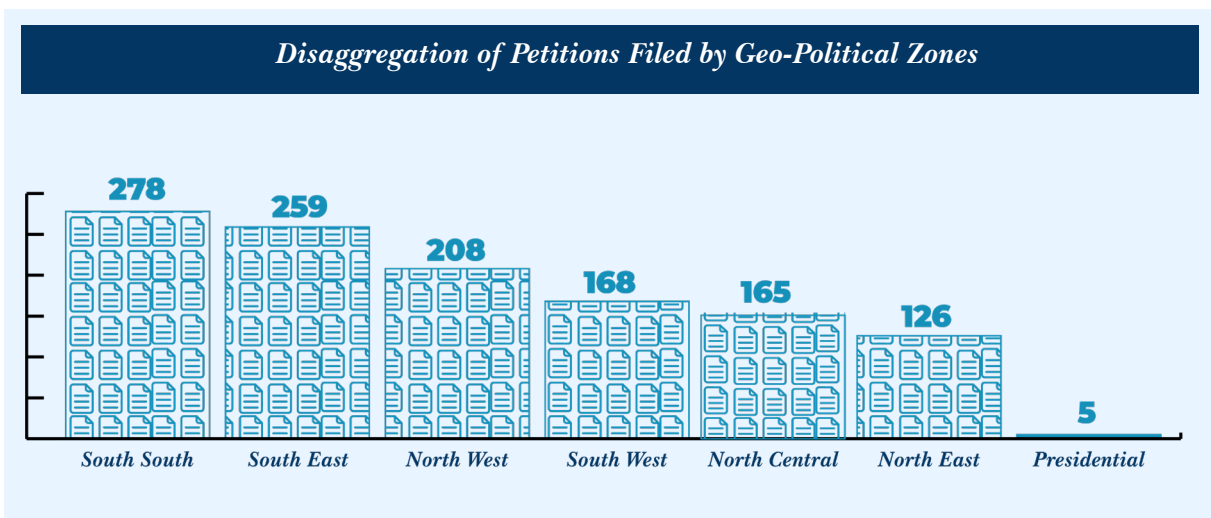


Though the states had no governorship petition filed, petitions were filed by aggrieved parties in these states, challenging the outcome of the National Assembly and State House of Assembly elections. Reflecting on this, it becomes important to note here that the states where governorship elections were accepted on the first ballot increased from three (3) that were recorded in 2019 to four (4) in 2023. However, this did not match with the five (5) recorded in 2015.

Since 2015, all the states that have accepted governorship election results on the first ballot are northern states. While it is obvious that the decision to accept or contest election results is influenced by a complex interplay of legal, political, and strategic considerations, different politicians and

parties may make different choices based on their specific circumstances and assessments of the election.

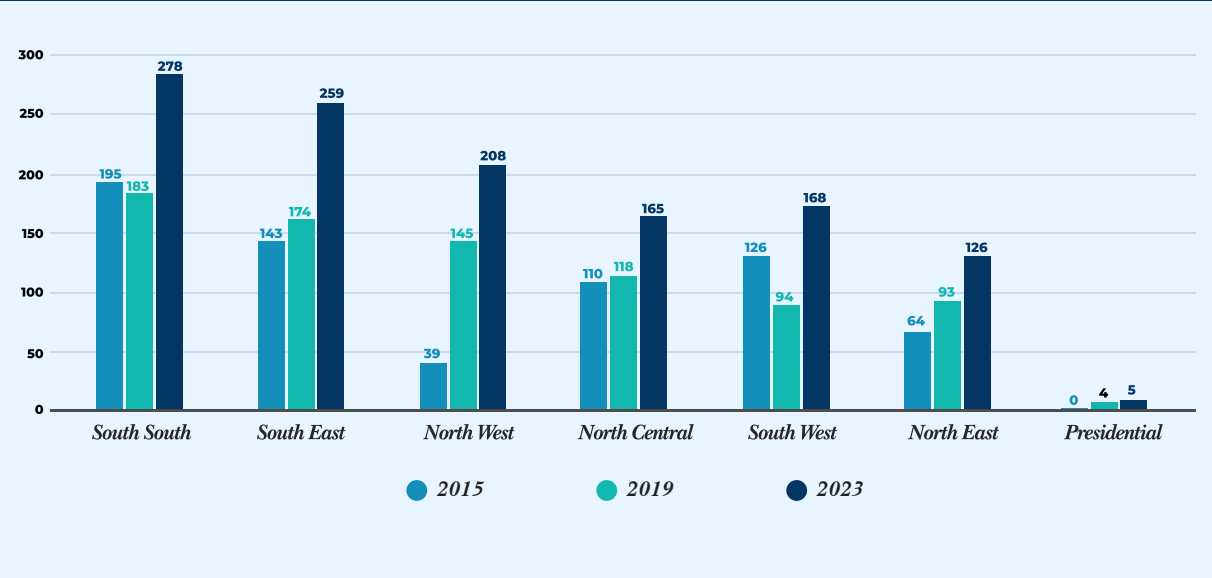
Yet, considering the trend- cultural and religious factors still play a role in this. Interaction with field monitors show that there is a greater emphasis on consensus-building and significant influence by northern religious and traditional leaders on public opinion and political behavior. These leaders often use informal alternative dispute resolution to push for a balance of power and shape how election results are perceived and accepted. In some cases, like the states mentioned above, it has led to a greater willingness to accept election outcomes without dispute than it is in the southern region.



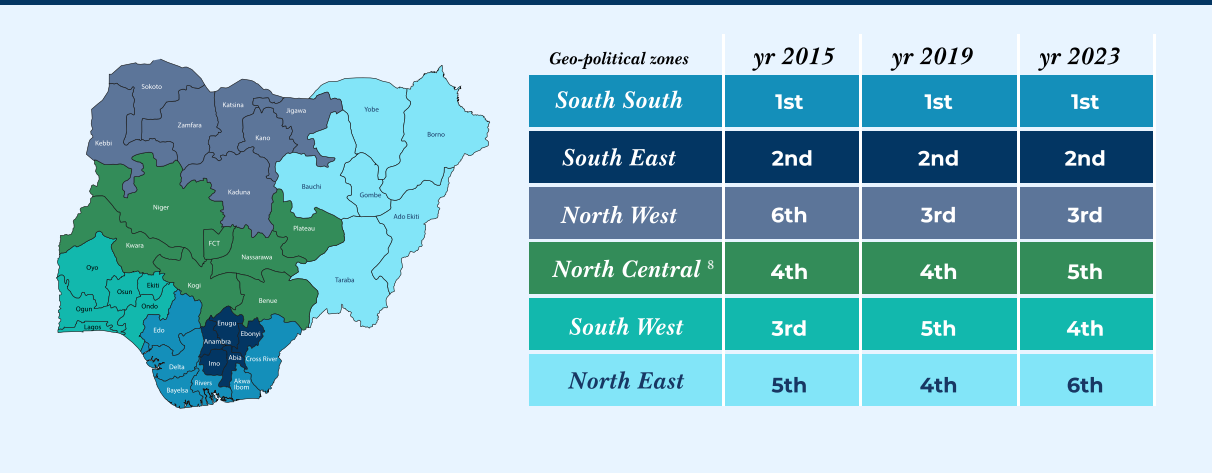
Choosing to look at the number of petitions filed by geo-political zones, the EPTM project found that South-south was at the forefront of petition filing with 276 petitions. Southeast followed closely behind with 259 petitions. Northwest and North Central are in-between, with 211 and 171 petitions, respectively. Southwest was not far below with 168 petitions. Northeast has the least number of petitions filed by going to the EPT, with 124 petitions.

Comparing the petitions filed by geo-political zones since 2015, data gathered show that the South-south region had consistently been leading in the number of petitions filed for three consecutive years, with the Southeast following in the second place. The Northwest zone had the least number of petitions filed in 2015, but in 2019 and 2023, the Northwest moved to the 3rd position in the number of petitions filed.

*Breakdown of Petitions Filed per Geo-political zones from 2015 to 2023*



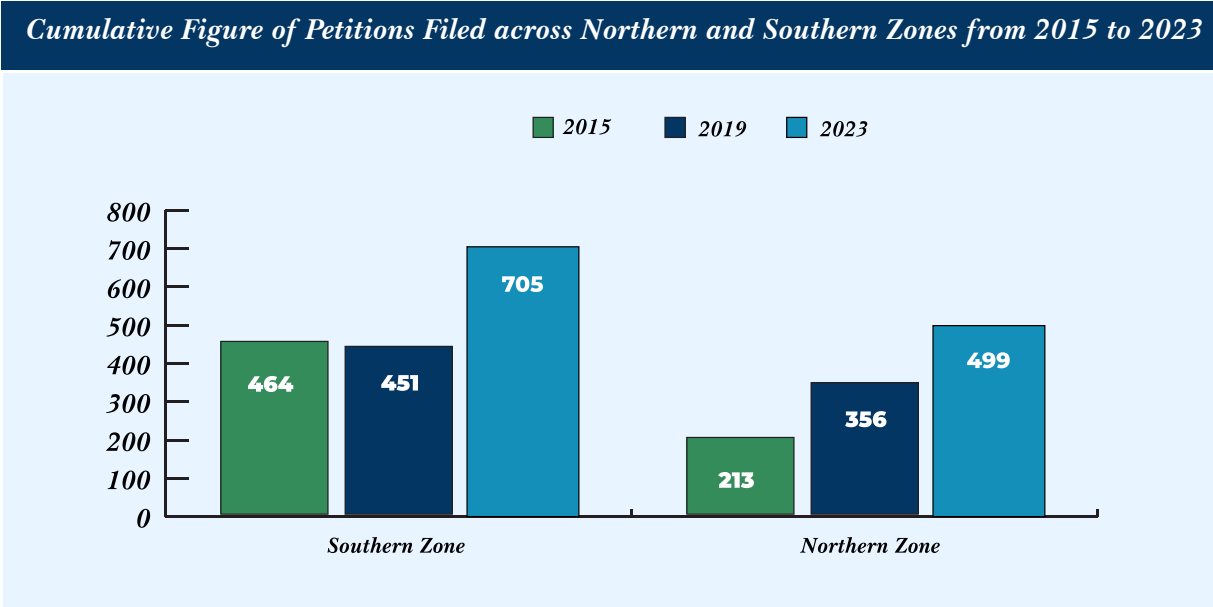
*Ranking of Petitions Filed by Geo-Political Zones from 2015 to 2023*



Excluding the presidential election petitions across the election year, the cumulative total of other election petitions filed show that southern zone has always had more petitions to resolve than the northern Nigeria whereas the number of available seats in the northern zone is more than the southern zone.

This buttresses the fact that cultur-

al and religious factors still play a role in how politician perceive election results and their reactions to post-election litigation. The Northern religious and traditional leaders' informal dispute resolution that emphasizes consensus-building and shapes how election results are perceived and accepted needs to be explored and developed.



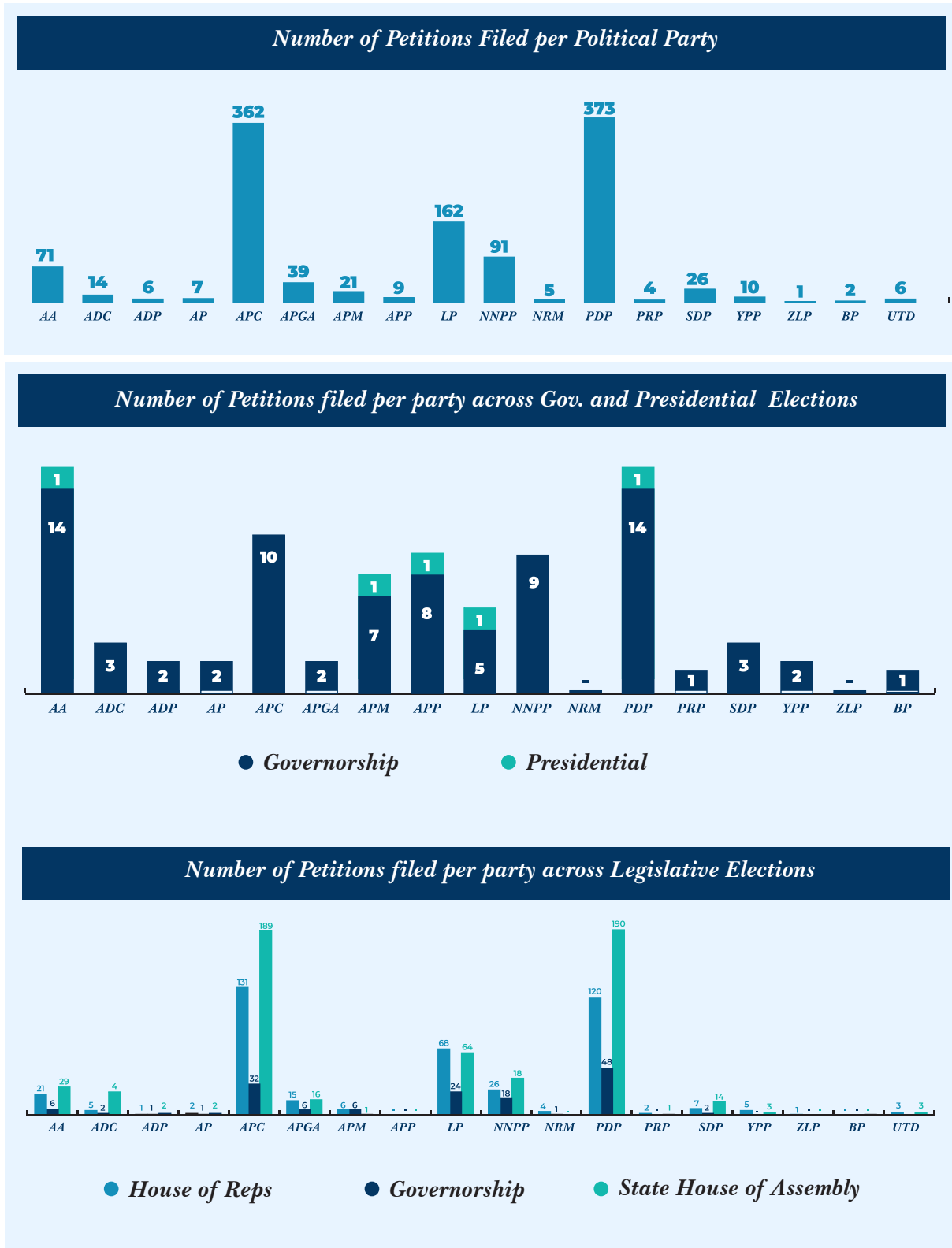
### Disaggregation of Petitions Filed by Political Party

In disaggregating the number of petitions filed at the 2023 Election Petition Tribunal along the line of political parties, it must first be noted that only 18 political parties participated in the 2023 general elections. After the elections, all the political parties headed for the tribunal to contest varying numbers of petitions. Peoples Democratic Party (PDP) led the

pack with 373 petitions across the 36 states and FCT and across election types. PDP was followed closely by APC, with 362 petitions filed. LP had 162 petitions filed, while New Nigeria Peoples Party followed with 91 petitions, and Action Alliance (AA) with 71 petitions. Interestingly, only 5 out of the 18 political parties that participated in the 2023 general elections

contested the presidential elections at the Presidential Election Petition Court. They are Action Alliance (AA), Allied Peoples Movement (APM),

Action Peoples Party (APP), Labour Party (LP), and Peoples Democratic Party (PDP).



## Grounds of Petition

It is widely known that the grounds on which a petition can be filed, as stated in section 134 (1) of the 2022 Electoral Act, is inviolable. No one may come before an election tribunal on any basis other than the three grounds which are specified in paragraph (a) – (c) of S. 134(1).

In essence, every grievance arising from the outcome of an election must be subsumed under these three (3) grounds. These include:

1. The winner or the running mate is not qualified to contest.
2. The election process and procedure is invalid by reason of corrupt practices and the provision of the electoral legal frameworks were not complied with during election administration.
3. The winner was not elected by the majority of lawful votes cast.

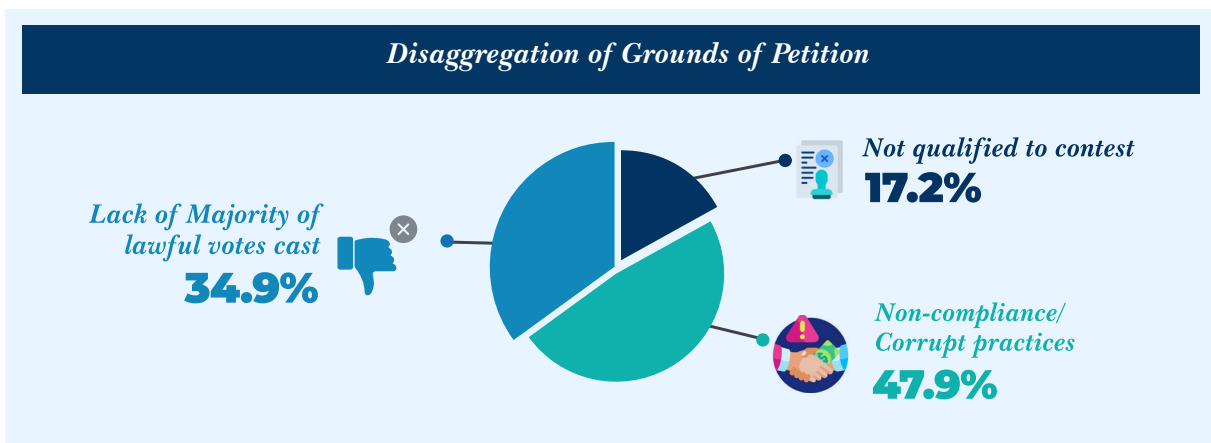
Where any grievance fails to align with these specified grounds, the

election tribunal would not have the jurisdiction to hear such matter or attend to such petition.

Analysis of these grounds, as specified in the petition document, shows that non-compliance with the provisions of the Act and Corrupt practices took the lead on the chart.

**1049** petitions, representing **47.9%** of the petitions filed, were based on the grounds of non-compliance to the provisions of the Electoral Act and corrupt practices. This high number is connected to the fact that most of the petitioners alleged mutilation of results in their petitions and that results of some polling units were not counted and included in the result among others.

**765 (34.9%)** of all the petitions were filed against candidates believed to have been elected without the majority of lawful votes cast. **378 (17.2%)** petitions were filed against candidates alleged not qualified to contest the elections.



## Comparative Analysis of Grounds of Petitions in 2015, 2019 and 2023

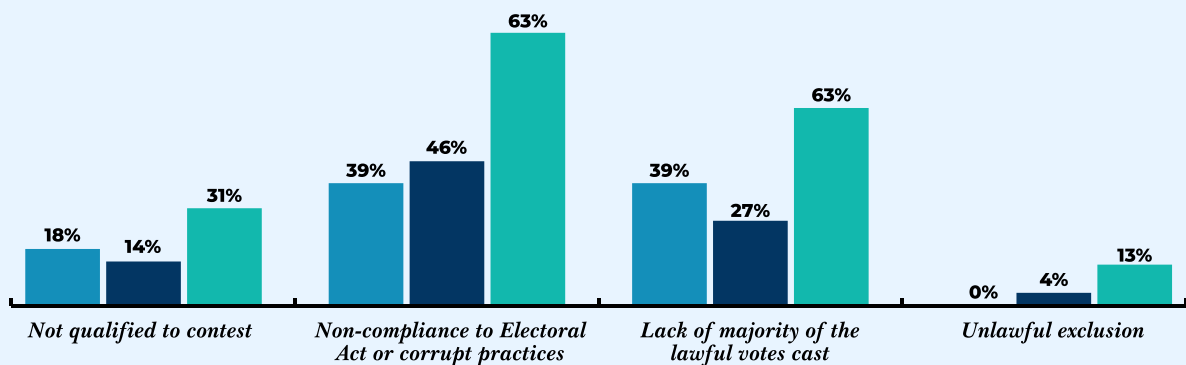
In doing a comparative study of the grounds of the petition since 2015, it is important to state that the legal instrument for this election varied when the immediate president of Nigeria – President Muhammadu Buhari, signed the Electoral Act

Amendment Bill 2022 into law on Friday, February 25, 2022,<sup>9</sup>. These had expunged section 138(1d) of the defunct 2010 Electoral Act as amended that focused on “Unlawful Exclusion” as a part of the grounds for challenging election results.

### *Section 138(1)(d)*

*of the defunct 2010 Electoral Act (as amended) stated that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.*

### *Comparative Analysis of the Grounds of Petitions filed in 2015, 2019 and 2023*



Though removed as ground, unlawful exclusion has been taken care of by section 42 of the new 2022 Electoral Act. Now, comparing the grounds of a petition in the three consecutive general election years show that corrupt practices and non-compliance with the provision of the Electoral Act have been consistently leading the log of issues that aggrieved parties in an election seek redress since

2015. This is always followed by the lack of majority of lawful votes cast and the ground of petition that borders on the winner or running mates not qualified to contest. Implicatively, the prevalence of corrupt practices and non-compliance with the provisions of the Electoral Act as top grounds for election petitions in Nigeria since 2015 can be attributed to several interrelated factors:

- **Electoral Violence:** The widespread violence in Nigerian elections can create an environment for irregularities such as voter suppression, intimidation, mutilation, and falsification of results figures. Since violence is not a ground for filing a petition, the aggrieved party will always link it to corrupt practices and or non-compliance with the provisions of the Electoral Act.

- **Political Patronage:** Losing politicians and political parties often file election petitions that are frivolous. This is often visibly seen when petitions are been determined. In some cases, fines and damages are awarded to the petitioner or the legal representatives for filing frivolous cases. Filing these cases sometimes is in a bid to negotiate political interest or exchange for support or protection from powerful individuals or groups.

- **Lack of Trust in Institutions:** The negative public perception that the EMB suffers in Nigeria is a big challenge. This often leads to a lack of trust in INEC's electoral operations. When political stakeholders do not have confidence in the fairness and impartiality of electoral bodies, they may be more likely to challenge election outcomes.

- **Lack of Effective Electoral Laws and Lack of Accountability in Electoral Management:** it could also mean that the electoral commission or its officials are engaged in uneth-

ical dealings to circumvent the process and or the electoral laws are weak, inconsistent, and inadequate to address the emerging issues in the electoral process.

Electoral management accountability has come under serious criticism. Over the years, we have seen INEC ad-hoc officers complicit in electoral irregularities. Nevertheless, section 133 (3) of the Electoral Act has always been interpreted to shield INEC officials from legal consequences. After all, the law already positioned that the official who committed the act should not be joined in the suit or petition.

*(3) If the petitioner complains of the conduct of an electoral officer, a presiding or returning officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint, and the Commission shall, in this instance, be—*

- a. made a respondent, and*
- b. deemed to be defending the petition for itself and on behalf of its officers or such other persons.*

Nevertheless, the same law in Section (144) enables INEC to prosecute electoral offenders based on the tribunal's recommendation. This only

empowers INEC as a judge in its own case. This should be reviewed to take prosecuting powers from INEC to an independent body.

In the previous chapter, this report already discussed the grounds of the petition – However, it is import-

ant to note that all these interrelated issues mentioned above culminate in the reason corrupt practices and non-compliance with the provisions of the Electoral Act topped the ground for the 2023 election petitions after the general elections.

## Breakdown of Election Petitions by Type Filed In 2015, 2019, and 2023

There has been a noticeable upsurge in election-related disputes after the conclusion of elections and the declaration of election results. A cursory look at the petition filed across election type since 2015- it is observable that election petition increases every year per election type.

Additionally, comparing the petitions filed across election year since 2003, over 5000 election petitions have been filed in EPTs across Nige-

ria, with the overwhelming majority being filled in the sub-national<sup>10</sup>.

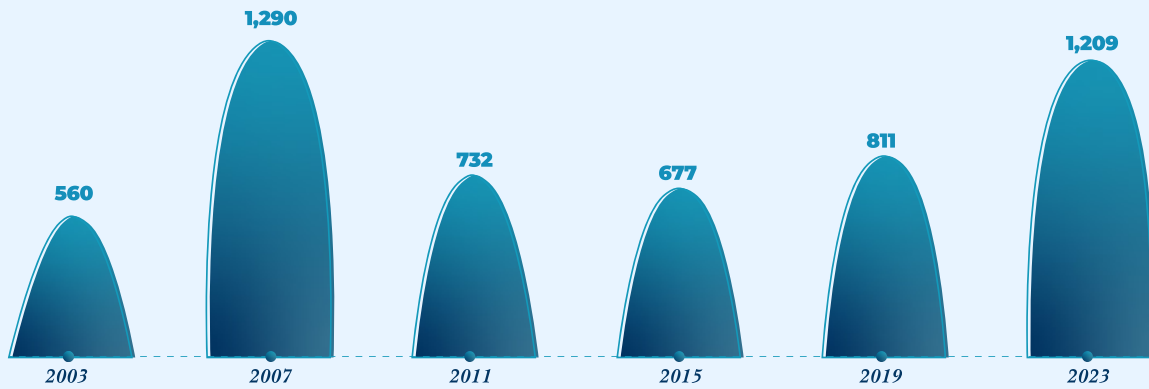
The 2023 election petition outlook is particularly overwhelming as the total number of petitions filed crossed the 1000 (one thousand) petition threshold. This will be the second time Nigeria will witness over 1000 election petitions since the reintroduction of democracy in 1999. The first was in 2007, when 1290 petitions were filed after the elections.

*Breakdown of Election Petitions by Type Filed In 2015, 2019, And 2023*

Petition Type	2015	2019	2023
Presidential	0	4	5
Governorship	36	67	83
Senatorial	77	105	147
House of Representatives	183	215	417
State Houses of Assembly	381	420	557
<b>Total</b>	<b>677</b>	<b>811</b>	<b>1209</b>



### Comparison of Election Petition with Previous Election Years

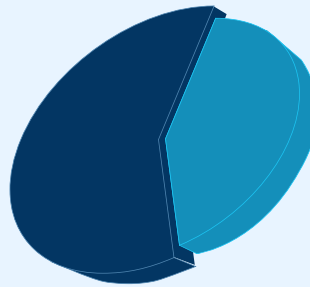


Many have likened the 2023 election to 2007. The 2007 election was popularly adjudged to be extremely flawed- with situations where voting was still underway in some states, and the electoral commission had announced the result. The 2023 presidential election has faced similar criticisms, particularly regarding

the transparency of the election result management and recurrent issues in election administration. This resemblance raises concerns about the electoral process. **Of the 1489 elective seats available to be filled in the 2023 election -58.4% of those seats are being challenged in over 1223 petitions after the elections.**

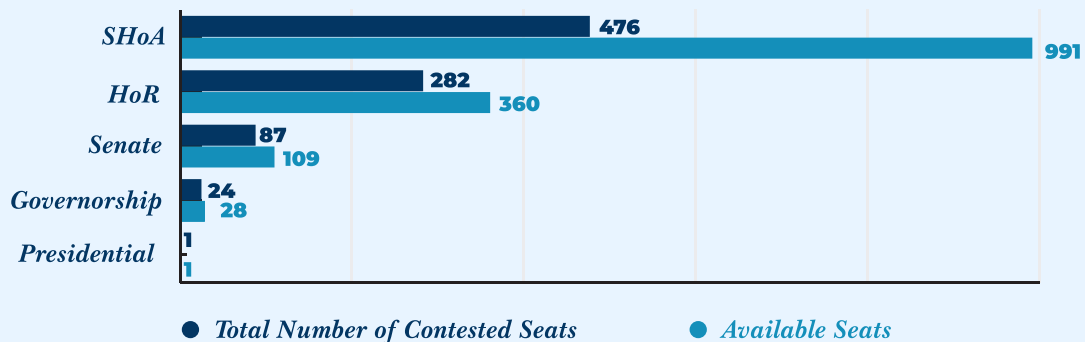
### Comparison of available contested and uncontested seats in the 2023 general elections

**58%**  
of Seats Contested:



**42**  
Total Seats not Contested

### Comparison of Available Contested Seat and Seats Contested per Election Types



*There is no single state without election petition challenging the national or state legislative seat. Election Petition were filed against one legislative or more at the tribunal.*

*Between 1974 and 2012, runner-up candidates have rejected the outcome of election results in 21% of presidential elections worldwide<sup>13</sup>. Similarly, about 75% of parliamentary and presidential elections in sub-Saharan Africa and about 34% globally have witnessed losing parties adopting legal and extra-legal mechanisms to challenge the results since 1990.<sup>14</sup>*

## Why the Influx of Election Petitions at the Tribunals?

Democracies, particularly the zero-sum type practised in Nigeria, are always bound to produce winners and losers. In most cases, winners take all. This has made elections a seemingly and keenly contested affair. However, the principle of competitive elections in an “ideal democracy” is also premised on two values. First, losers accept the legitimacy of the process; and second, losers have an unrestricted chance to participate in and win future elections<sup>11 12</sup>.

Globally, there has been a phenomenon where losers in elections develop negative attitudes toward the political process and, more especially, towards winners. This is par-

### Between 1974 - 2012



**21%**  
*of the outcome of election results of presidential elections worldwide rejected by runner-up candidates.*

ticularly associated with third-wave democracies where losing parties either make allegations to undermine the election’s credibility or outrightly reject the results.

In Nigeria, while it is widely known that the Constitution allows political parties and their candidates to seek legal redress if aggrieved by the outcome of an election, what remains genuinely unclear is why politicians rush to court following elections, which have resulted in a flood of election petitions inundating the courts. This is increasingly becoming a concern for major stakeholders because of the plausibility of corrupt practices between politicians and the judiciary. After all, recently, the Nigerian judiciary has come under severe attack. Specifically, judges have been accused of deliberate tardiness leading to unnecessary delays, conspiracy to frustrate litigants, corruption (including allegedly selling judgments to the highest bidder), undue politicization of the cases and downright travesty of justice<sup>15</sup>. etc. Also, there have been several attempts to judicialize the elections. Without a doubt, the separation of the judiciary from the electoral process is becoming more complex as we witness the courts announcing the poll winner as opposed to the ballot.

Furthermore, in 2019 – only one (1) petition of the sixty-seven (67) petitions filed against the governorship election in 29 states was ruled in favour of the petitioner<sup>16</sup>. Since 1999, petitioners' success rate at the presidential election petition tribunal has

been 0%. Given the low probability of having a favorable ruling, why do so many losing candidates in Nigeria invest time and money into election petitions? This paradox raises the possibility that petitioners may not be solely motivated by the desire to overturn electoral outcomes. Instead, other strategic and non-strategic reasons may drive post-election court challenges<sup>17</sup>.

There are so many intertwined factors responsible for these – It is not hidden that the influx of election petitions may be a testament to the effectiveness of the peace messaging by stakeholders to political elites – encouraging any candidate who is dissatisfied about the outcome or the process of an election to seek redress in the tribunal against resorting to violence. Also, some believe that the volume of petitions filed after every election is directly proportional to the widespread irregularity on election day and the popular unacceptability of the electoral outcome.

In probing into why there was an upsurge in the number of petitions filed, several reasons were given by experts in different conversations for the increase. The reasons include:

1. **Perceived Poor Election Administration and Management by EMBs:** For instance, in the build-up to the 2023 general election,

Nigerians were optimistic about the election because legal reforms had enabled earlier planning, and new technology had been deployed to improve voter accreditation and the transmission of results. Many young voters leveraged social media and other platforms to raise awareness, share information, and express their opinions on electoral issues. However, the outcome of the 2023 elections left the country divided; some Nigerians believe the elections were credible, while many others, especially youths, were disappointed that the electoral process failed to meet several requirements of the law and the guidelines the Independent National Electoral Commission (INEC) set for itself. INEC had repeatedly announced that it would transmit the election results through the Bimodal Voters Accreditation System (BVAS) to its INEC Results Viewing Portal in real-time. However, INEC failed to uphold its promise. Results were mostly not uploaded in real-time, and where they were uploaded, the information was blurry, thereby making it impossible to verify results for presidential election. In upbraiding INEC for lack of transparency and accountability, many filed a petition at the tribunal to discredit the veracity

and compliance of INEC to the legal framework of the electoral system. Other reasons many petitioners gave include: falsification of results, mutilation of result sheet, Logistical challenges that led to alleged voter suppression and deliberate boycott of BVAS.

- 2. Over-incentivized political institutions:** The report of the Revenue Mobilization Allocation and Fiscal Commission (RMFA) that determines the earnings of political office holders in Nigeria, revealed the annual basic salary of the president. The president's annual remuneration is estimated to be 14.58 million naira (\$36,500) when various allowances and benefits such as accommodation, furniture, vehicle, hardship, newspaper, wardrobe, and severance allowances are included. Similarly, a senator earns 12.77 million naira (\$32,000), and a member of the House of Representatives earns 9.66 million naira (\$24,200) per year.<sup>18</sup> The earnings of Nigeria's political office holders may not appear excessive when contrasted with the income of their counterparts in some other developed and developing countries; however, when compared to the average income of Nigerian citizens, the gap is much wider. According to the World Bank, Nigeria's Gross National Income

(GNI) per capita in 2020 was \$2,230; meaning that the average Nigerian earned about N888,000 (\$2200) per year.<sup>19</sup> This means that the president of Nigeria earns about 16 times more than the average Nigerian, while a senator earns about 14 times more, and a member of the House of Representatives earns about 11 times more. The financial rewards and the largesse involved in being an elected officer in Nigeria underscore one of the major reasons politicians will do anything to get to power, including exploring judicial options. While legal redress is a better alternative to post-election violence, the growing trend of a high influx of petitions to the court not only inundates the judiciary but also raises alarm bells about potential manipulation and capture of the judiciary by influential figures due to many factors. These include:

- Political pressure on judicial officers
- Ethical lapses from judicial officers
- Noncompliance with electoral legal frameworks such as CFRN, Electoral Act, 2022, Evidence Acts, Electoral Judicial Manual and Rules of Court.

The politicians know that the judiciary owns the prerogative of deciding who wins an election

if the petition is filed, and over the years, the potential of judicial manipulation of the elections becomes plausible, and the politicians are exploring these options, too.

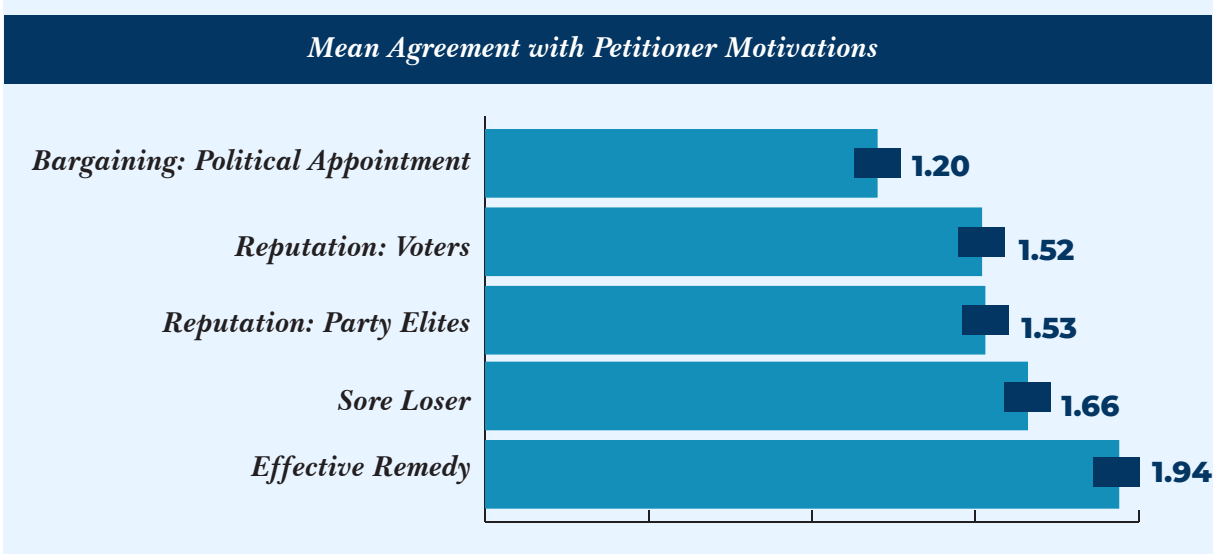
### 3. **Certain Awakening of Lawyers for Career Advancement:**

While it is obvious that southern Nigeria files more petitions than northern Nigeria – the petitions filed in the North are gradually rising. The observatory report of EPT monitors revealed that one of the reasons for the rise in petitions in the country's Northern region was the increased awareness of career advancement through election petition cases. The report suggested that the lawyers pursue a certain number of cases at the Court of Appeal and the Supreme Court to help them achieve the status of a Senior Advocate of Nigeria. Election matters seem to offer a faster way to accumulate the number of cases needed. Unlike the regular civil and criminal cases that would take several years before appeal and conclusion at the Supreme Court, Election petition cases reached the Supreme Court quickly and were concluded within a year of initiation from the election petition tribunal stage. It was believed that the country's Southern re-

gion is litigious and that it is one of the reasons that the region filed more petitions. However, this new observation about the Northern region lawyers questioned the litigious character of the South. Could the southern region lawyers have discovered this career advancement mode early enough? Some perspectives suggest that many of the lawyers handling election petition cases in the North are originally from the Southern region. Discussions with experts reveal instances where lawyers take up election petition cases pro-bono solely to have the opportunity to argue legal briefs at higher courts, thereby advancing their careers. This phenomenon indicates a potential increase in petition filings in Northern Nigeria. Unfortunately, the implication of this trend is that even when petitioners present cases with questionable merit, lawyers might be less inclined to advise against filing a petition at the court or tribunal, given the strategic career considerations at play.

Furthermore, to unravel the reason for the influx of election petitions in the tribunals, a study assessed the strategic motivations of politi-

cians on why they approached the tribunal between August 2019 and March 2020. The study involved face-to-face interviews with 360 candidates<sup>20</sup> who competed in Nigeria's 2019 Federal House of Representative elections<sup>21</sup>. 73% (mean = 1.94) of candidates "agreed" or "strongly agreed" that they were motivated by a desire to seek effective remedies to address perceived irregularities and fraud. The sore loser motivation gained the second highest level of support among respondents in the study (mean = 1.66). Most respondents (56%) agreed or strongly agreed that they are mainly driven by an emotional desire to avenge a loss they experienced in the polls. Approximately 50% of respondents "agree/strongly agree" that they are motivated to file election petitions because they want to build their reputation among party elites and voters. Mean respondent agreement with the two types of reputation-building motivations— among party elites (mean = 1.53) and voters (mean = 1.52) — is statistically identical and marginally lower than the sore loser motivation. Finally, respondents seem least supportive of the post-election bargaining motivation (mean = 1.20). 65% of respondents disagree/strongly disagree with this motivation.



**Post-Election Petition Motivation Framework**

<i>Petitioner Motivation</i>	<i>Description</i>	<i>Motivation's Category</i>
Effective remedy	Petitioners seek to remedy alleged fraud and irregularities that occurred during the elections.	
Sore loser	Petitioners seek emotional outcomes: get emotional closure; get back at winners by inflicting costs on them via litigation.	non-strategic motivation
Bargaining: political appointment	Petitioners seek to negotiate for political appointment and other material benefits from winners.	Strategic Motivation
Reputation building	Petitioners seek to build their reputation among party elites, donors, and voters to enhance future election prospects.	Strategic Motivation

Source: Nicholas K., Richard K., 2023. *Assessing the Strategic Motivations of Sub-National Post-Election Petitions in Africa*

It is obvious that candidates' motivation for approaching the election tribunals go beyond seeking effective remedies for irregularities. Implicatively, this portends risk for democratic elections and could hamper the voice of the voters to be heard.

We cannot over-emphasize how the vast number of election petitions will hinder the judiciary from dispensing justice swiftly in civil and criminal cases outside electoral matters.

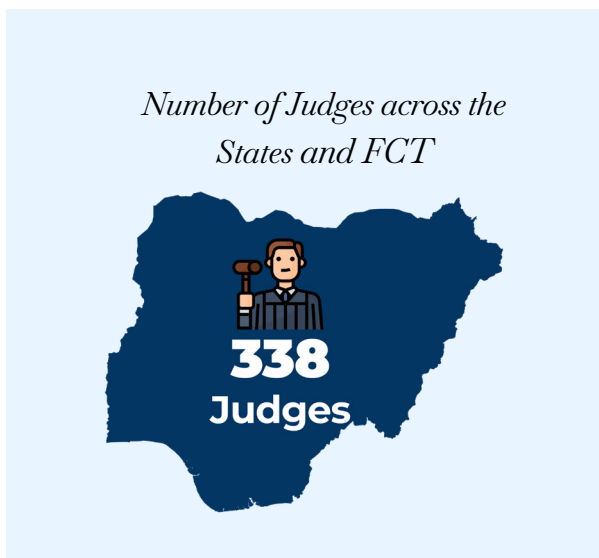


## Navigating the effect of prolonged election litigation on Nigeria's landscape

In the run-up to the 2023 general election and preparation for the post-election dispute resolution, the judiciary on November 7th, 2023, inaugurated judges to empanel the tribunals.<sup>22</sup> From the Court of Appeal (CoA), KDI gathered that 338 judges were inaugurated to man over ninety-eight (98) panels of election tribunals across 36 states and the FCT. Meanwhile, one (1) panel, making up five (5) Justices of the Court of Appeal, were charged with the Presidential election. It is instructive, to note that there was an initial inauguration of Judges- However, due to the increased number of petitions that greeted most EPT registries at the earlier stage, this necessitated the inauguration of additional 39 judges. Evidently, over 330 judges were laden with election tribunal duties for the 2023 election petition tribunal.

In comparison, more than 250 judges were appointed to 78 panels for the 2019 election petition tribunal. Apparently, the 2023 election petition tribunal received more election petitions than the number of petitions filed during the 2019 election petition session. Overtime, it is common knowledge that the CoA who is saddled with the administrative and oversight function over the EPTs do not have the required number of judges that can seat on the EPT panels when such voluminous petitions are filed.

In view of this, judges were drawn from High Courts of States in Nigeria and the High Court of FCT, Federal High Courts, National Industrial Courts, and other courts of coordinate jurisdiction. This has considerable repercussions on Nigeria's broader judicial system. With judges drafted into the tribunal process and having pulled them from their primary place of assignment – the cases and or proceedings pending before such judge are automatically stalled holding justice in limbo for a staggering 180 days. Knowing fully well that there may not be a transition arrangement to transfer most of these civil, criminal, human rights, and industrial cases to other judges





that are not drafted for EPT.

Conservatively, estimating the potential number of cases stalled with the assumption that each of the 338 tribunal-assigned judges handles an average of 200 cases, a staggering 67,600 regular cases could be awaiting attention. This backlog includes criminal cases, impacting individuals awaiting trial whose freedom depends on the timely resolution of their cases. This is not disconnected from the thoughts of the Chief Judge (CJ) of the Federal High Court (FHC), Justice John Terhemba Tsoho. He disclosed this when formally declaring the FHC 2021/2022 Legal Year open in Abuja.

The chief Judge of the Federal High Court stated succinctly that...

***“There were 40,822 civil cases; 30,197 criminal cases; 35,563 motions, and 20,258 fundamental rights enforcement applications pending at the end of the legal year.”<sup>23</sup>***

Inadvertently, judges of the Federal High Court currently on its bench, based on the honourable chief judge's assertion, have an average of over 1,700 cases to preside on. Taking the conversation further, Justice Tsoho asserted that.

***“During the 2022/2023 legal year, a***

***total of 7,295 appeals and 3,665 motions were filed in the 20 Divisions of the Court.***

***“The court still has a total of 39,526 Appeals pending as of 31st of August 2023. This is an increase from 34,037 pending in the Court in the 2021/2022 Legal Year.”<sup>24</sup>***

Additionally, the post-election litigation does not end after the 180 days and there are options for appeal depending on the type of Elections.

- For Presidential election, it takes approximately 8-9 months. Cases moved from the court of first instance (Court of Appeal) and end at the Supreme Court.
- For Governorship elections, it takes approximately 11-12 months. Cases moved from the court of first instance (EPT) to Court of Appeal to the Supreme Court.
- For legislative elections (SHoA and NASS), it takes approximately 8-9 months. Cases moved from the court of first instance (EPT) and ends at Court of Appeal.

With the prolonged post-election dispute resolution and to avoid running into constitutional crises, elected candidates are sworn in. It is evident that the incumbent in some instances abuse state resources by using taxpayers' money to fund most

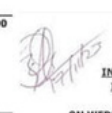
of these legal suits or their position to influence the tribunal panels directly or indirectly. There were instances of some State Governors offered their personal security aide to guard EPT premises in their respective States, especially States with records of violence. A certain State, KDI gathered that the State's government offered the government house to the election panel to use to hear proceedings due to insecurity. Also, it is a common knowledge that a State in its audited financial report – a whopping sum of 200 million Naira was earmarked to pay legal practitioner on EPT cases.

the prolonged post-election dispute in Nigeria leaves not only candidates who contested, win, or lose, an election, but also the electorates leave much to be desired. There are so much emerging conversations about the sustenance of this model of post-election dispute resolution.

KDI positioned that there is a need to look at the prolonged post-election dispute resolution by looking at reducing the chain of appeals – for instance, the presidential election petition can go directly to the Supreme Court as against the current model.

Looking at other African jurisdictions on the conduct of election petition tribunals, countries like Kenya and a host of others have made the layers for each election type rather seamless. This was achieved by allowing the Supreme Court of their country to be the court of first instance solely for presidential election petitions, with such petitions

decided within a reasonable period. This has not only saved time and resources, but it has also avoided unnecessary tensions and nostalgia associated with prolonged election petitions.

INSTRUCTION TO REPRESENT AND DEFEND MR SANWO-OLU BABAJIDE OLUSOLA IN: SUIT NO: FHC/CS/1979/2022- PEOPLES DEMOCRATIC PARTY VS INDEPENDENT NATIONAL ELECTORAL COMMISSION AND 42 ORS	50,000,000.00	 <p>IN THE COURT OF APPEAL OF NIGERIA IN THE LAGOS JUDICIAL DIVISION HOLDEN AT LAGOS ON WEDNESDAY THE 14<sup>TH</sup> DAY OF NOVEMBER, 2023 BEFORE THEIR LORDSHIPS</p> <p>YARGATA BYENCHI NIMPAR JUSTICE, COURT OF APPEAL SAMUEL ADEMOLA BOLA JUSTICE, COURT OF APPEAL PAUL AHMED BASSI JUSTICE, COURT OF APPEAL</p> <p>APPEAL NO. CA/1/EP/GOV/LAG/23/2023</p> <p>BETWEEN:</p> <p>GBADEBO PATRICK RHODES-VIVOUR - APPELLANT</p> <p>AND</p> <p>1) INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) 2) BABAJIDE OLUSOLA SANWO-OLU 3) DR. KADIRI OBAFEMI HAMZAT 4) ALL PROGRESSIVES CONGRESS (APC)</p> <p>RESPONDENTS</p>
INSTRUCTION TO REPRESENT AND DEFEND MR SANWO-OLU BABAJIDE OLUSOLA IN: SUIT NO: FHC/CS/1979/2022- PEOPLES DEMOCRATIC PARTY VS INDEPENDENT NATIONAL ELECTORAL COMMISSION AND 42 ORS	50,000,000.00	
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Additionally, this prolonged post-election dispute resolution also distract the sworn-in candidates to deliver on the mandate of governance. It takes almost a year for a governor to ascertain he or she can't be sacked by the court. The state of bewilderment and perplexity of

## The Need for Alternative!

Election dispute resolution does not start and end with post-election litigation. The cases that inundated the judiciary are not just post-election litigation – there are colossal amounts of pre-election cases that also take preeminence in the legal system for examples electoral offenders' cases. It then means that there are more election-related cases that stall civil, criminal, human rights, and industrial cases. Toward the 2023 general

elections, over 1893 pre-election cases were filed, 815 of these cases were appealed at the Court of Appeal and over 400 of the 815 were appealed at the Supreme. The Federal High Court has no more than 180 days to conclude the pre-election matter, 60 days in CoA and another 60 days at the Apex Court. If all appeal options are explored, it will take approximately 10 months to conclude pre-election cases.

### *Timeline of Dispensing pre-Election Cases at Different Court Levels (FHC to Supreme Court)*



This is the sole reason while in the 2023 general election, the Supreme Court in January 2023 are still delivering judgement on February 2023 elections.

Pre- and post-election dispute resolution take approximately 18 to 20 months of the judiciary and within this period non-election related cases are stall. The sole reason while civic and criminal cases linger for more

than decades to be concluded. From conversations with experts, the Supreme Court as at the time of this report now gives 2027 as the date to hear non-electoral matters.

The bogus case files on the desks of these judges, coupled with these judges being engrafted into election petition tribunal duties has done untold hardship to litigants, particularly on conventional cases than good.

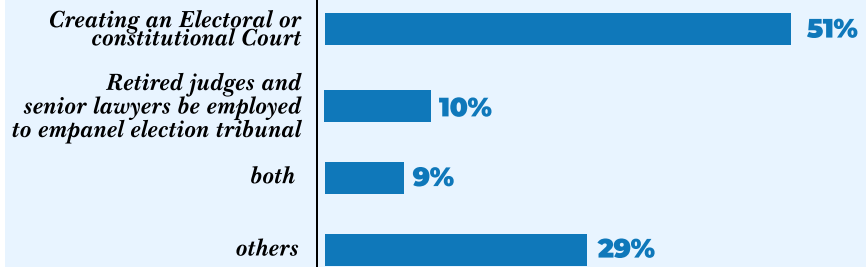
This underscores the need for an alternative route to nip these challenges in the bud. Many schools of thought have proffered the establishment of specialized law courts in the country as the antidote for this judicial difficulty. There are other school of thought that vehemently negate this- they strongly argued that elections are seasonal, and they come and go. According to this school of thought, the special court may not have so many to do after election petitions are resolved within the first 12 months.

KDI strongly believe that judges absorbed or appointed to empanel these special courts of law will have their hands full round the calendar before another election cycle. Taking into consideration the numbers of States going into off-cycle election due to judgements of law courts, specialized courts may get busy with election petitions being a direct consequence of these off-cycle elections. Also, from party primaries, which amount to party members rushing off to the law courts to seek redress, to post election disputes, to criminal offences committed during elections – the Special Court can also be given the jurisdiction for hearing matter of electoral offense this in itself will aid the speedy hearing of electoral offense.

Buttressing the need for specialized courts in Nigeria, having such will aid the expertise of the judges of the Specialized Court – Over the years, the judiciary have come under scrutiny from the legal writers, researchers, legal practitioners, and institutions over its judgement. There are judgements which go against the principle of the legal framework. Also, there are conflicting judgements often recorded. These issues are not disconnected from the lack of judicial officers understanding of the electoral processes and procedures. In the survey conducted by IFES after the 2019 general election - the judges that were empaneled at the 2019 election tribunal were asked what their recommendations would be to ensure that the judicial process is not put on hold for 180 days as it relates to regular cases due to serving judges called to service on election petition tribunal. out of the 130 EPT judges, 51% recommended creating an Electoral or Constitutional Court. Although 10% of the respondents recommended that retired judges and senior lawyers be employed to empanel election tribunal, 9% agreed that both the creation of specialized court and empaneling with persons other than serving judges was the right move to make.



*Response of 130 EPT Judges on what they think should be alternative to the current model of election adjudication*



With the workload in the regular courts and overburdened election tribunal, it is time to begin to start

looking at other alternatives to the setting -up of periodic election tribunals.

## Lessons from Post-election Dispute Resolution: A Case Study on the South Africa Electoral Court

### Introduction

The South Africa Electoral Court is a special court that oversees the conduct of elections and the performance of the Electoral Commission of South Africa (EC). It was established by the Electoral Commission Act of 1996 to replace a Special Electoral Court that supervised the 1994 elections, which marked the end of apartheid and the beginning of multi-party democracy. The court has a status similar to that of a division of the High Court and consists of a judge of the Supreme Court of Appeal as chairperson, two High Court judges, and two other members appointed by the President on the advice of the Judicial Service Commission. The court has its administrative offices at the Supreme Court of Appeal in Bloemfontein but it may hear cases anywhere in South Africa. The court meets only when a case is brought before it, usually around election time.

### Case Example:

*Several prominent cases heard by the Electoral Court are analyzed, including the Electoral Commission of South Africa v Minister of Cooperative Governance and Traditional Affairs and Others, which dealt with the postponement of local government elections due to the Covid-19 pandemic. Other cases, such as African Christian Democratic Party v Electoral*

*Commission, Inkatha Freedom Party v The Electoral Commission, and Diamond v African National Congress, provide additional insights into the court's diverse caseload.*

*Timeliness: The South Africa Electoral Court has a fast and efficient process of resolving electoral disputes, as it has a strict deadline of six months to conclude all cases. The court also has the power to expedite urgent matters and grant interim relief. The study finds that the Electoral Court can efficiently resolve disputes. Case examples, such as the one-day resolution in Inkatha Freedom Party v The Electoral Commission, provide context to the court's ability to act swiftly.*

*Transparency: The South Africa Electoral Court has a high level of transparency, as it publishes its judgments online and allows media and public access to its proceedings.*

*Drawing parallels with Nigeria's post-election dispute resolution, the study suggests lessons that can be learned from the South African model.*

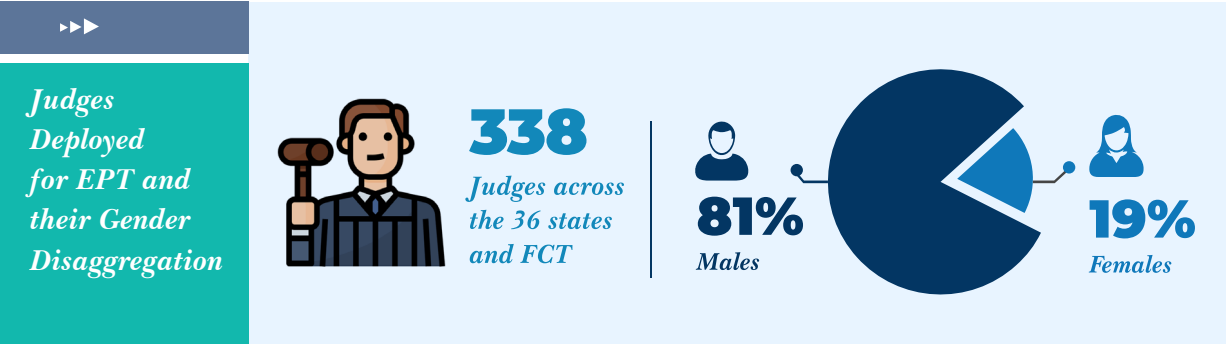
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# 04.

## **EPT Through the Inclusion Lens**

Inclusion in the judiciary is the idea that the judicial system should reflect the diversity of the society it serves. Diverse judiciaries produce better justice. It enhances judicial thinking and perspective. Diversity and inclusivity permit interaction and discussion among colleagues who have different backgrounds, life experiences, and viewpoints. Diverse judges challenge and enhance one another's perspectives. Public trust and confidence in the courts may improve when court users see that judges and staff reflect the commu-

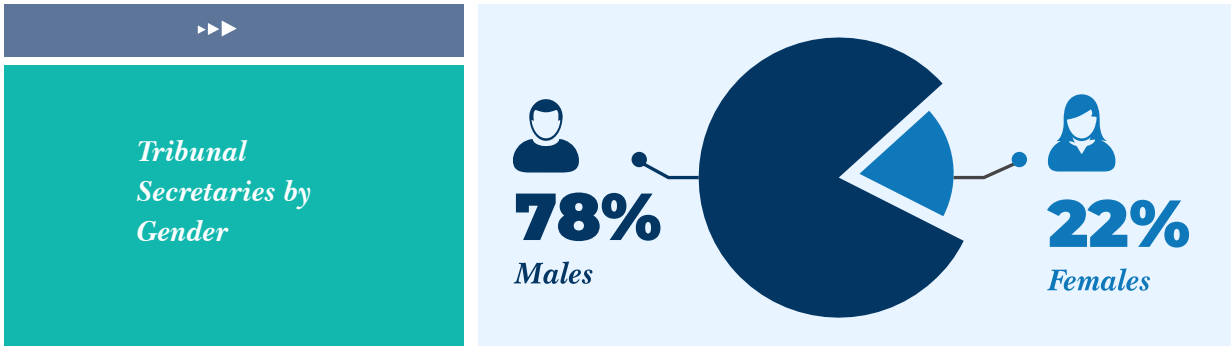
nities in which they serve.<sup>25 26</sup> Given the foregoing, KDI examined the gender composition of the 338 judges assigned to different Election Petition Tribunals (EPTs) around Nigeria. But there was a clear gender imbalance: only 19% of the judges on the EPT panels were women, while 81% of them were men. This stark contrast raises questions about the inclusivity and representation of women in the adjudicatory process, especially considering Nigeria's international commitments and constitutional guarantees.



While there is a school of thought that courts typically do not control judicial selection, they do decide who serve in special panels like EPTs, Tribunal Secretaries, judicial leadership and administrative positions held by non-judges. The Court of Appeal judges are empaneled on the Presidential Election Petition Court (PEPC) and as of the time of this report, the presiding Justices of the Court of Appeal judges are twenty (21)<sup>27</sup> in number (13 male / 8

females), Yet the PEPC panel of five are made up of 4 males and only 1 female. A cursory look at the administrative side- the secretaries that court decide on. Of the 37 secretaries, 29 (78%) were male, while the remaining 8 (22%) were female. This underlines the broader gender challenges persisting within the electoral dispute resolution framework and there is an urgent need to address this disparity and enhance gender inclusivity within the judicial system.

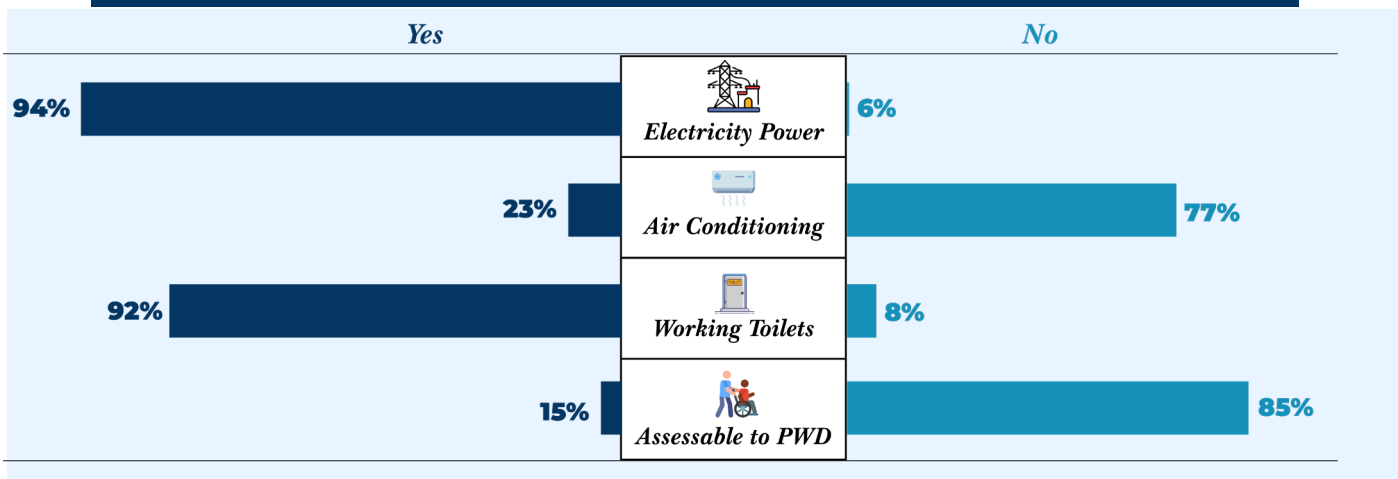




Inclusion in the judiciary is not only a matter of meeting demographic quotas but a commitment to creating a legal system that resonates with the values of equality, fairness,

and accessibility. KDI in her EPTM observed the condition of the court rooms used for the EPT proceedings. The data below shows the condition of the court rooms.

**Court Room Condition across 36 States**



In addition to demographic representation, inclusion in the judiciary extends to providing accessible facilities such as courtrooms. Appallingly, only 15% of courtrooms were accessible to Persons with Disabilities (PWD) – this may likely hamper persons with physical disabilities from participating fully and effectively in legal proceedings, and this contravened the principles of equality.

The limited accessibility of courtrooms to PWDs in the EPT process carries significant implications that extend beyond mere inconvenience. It infringes upon the rights of Persons with Disabilities, as enshrined in the National Disability Act of Nigeria. According to the *National Disability Act, 2018, in Part 11, section 3 -6, all public institutions and places are required to make their premises and services*

*accessible and usable for persons with disabilities within five years of the enactment of the Act<sup>28</sup>.* The lack of accessible courtrooms constitutes a violation of these rights.

Infrastructural issues observed in the courtrooms used for the 2023 EPTs are not limited to accessibility issues. The low percentage of courtrooms with air conditioning raises concerns about the adequacy of ventilation, potentially impacting the well-being of both judicial personnel and court users. Inadequate ventilation poses health risks to both judges and court users. Poor air quality can contribute to discomfort, fatigue, and respiratory issues. Judges, lawyers, litigants,

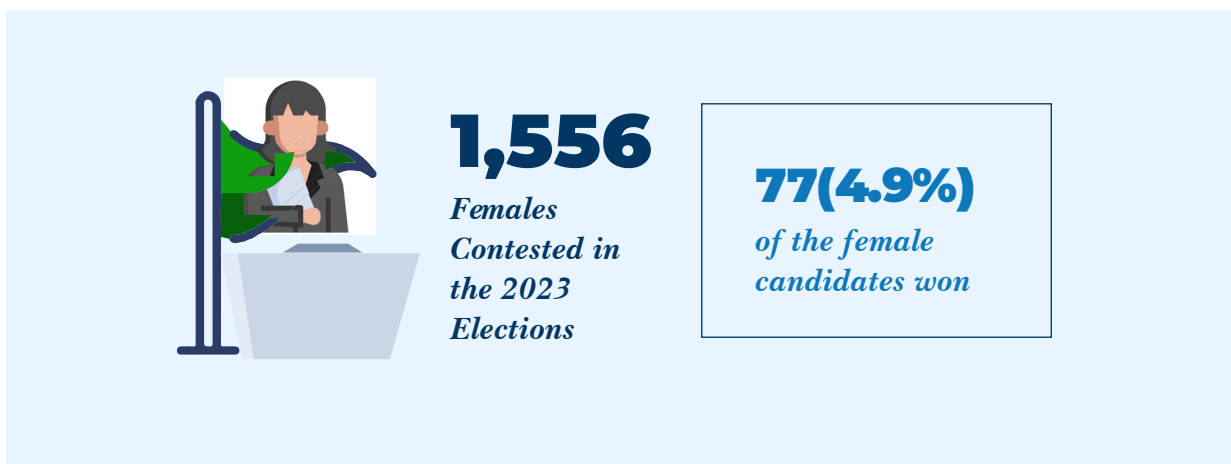
and spectators spending extended periods in poorly ventilated courtrooms may experience a decline in overall well-being.

Addressing the infrastructure gap in the courthouses is important. Conducting regular audits of court facilities and establishing mechanisms for continuous compliance monitoring can help identify deficiencies and ensure timely corrective actions. Additionally, courts should prioritize necessary upgrades to infrastructure, including ventilation systems and accessibility features, to create a conducive environment for all stakeholders.

## Examining Women’s Engagement with Election Petition Tribunals

The 2023 general elections in Nigeria witnessed an intriguing aspect of women’s political participation. 1556 female candidates contested for various positions, constituting 10.2% of

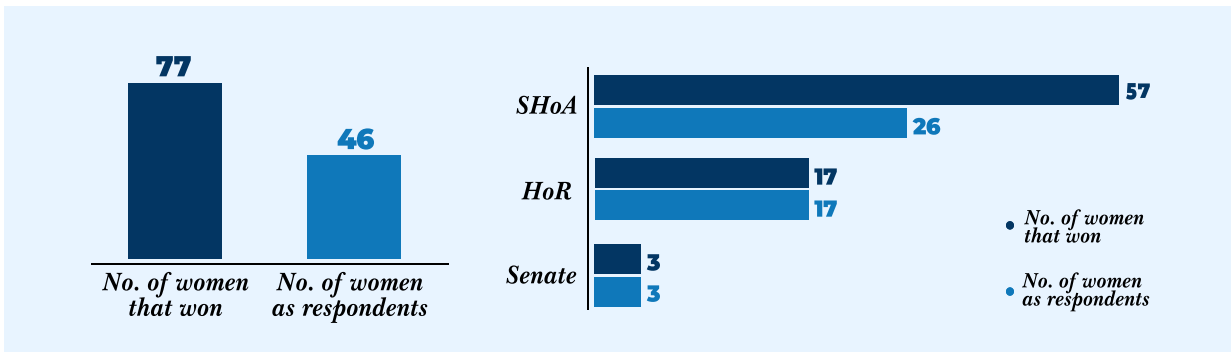
the 15,331 total number of candidates that contested. Out of the 1,556 female candidates who participated, a mere 77 (4.82%) emerged victorious. Available data shows that 60% of



these seats were challenged at corresponding tribunals. This means that 46 of the 77 female candidates

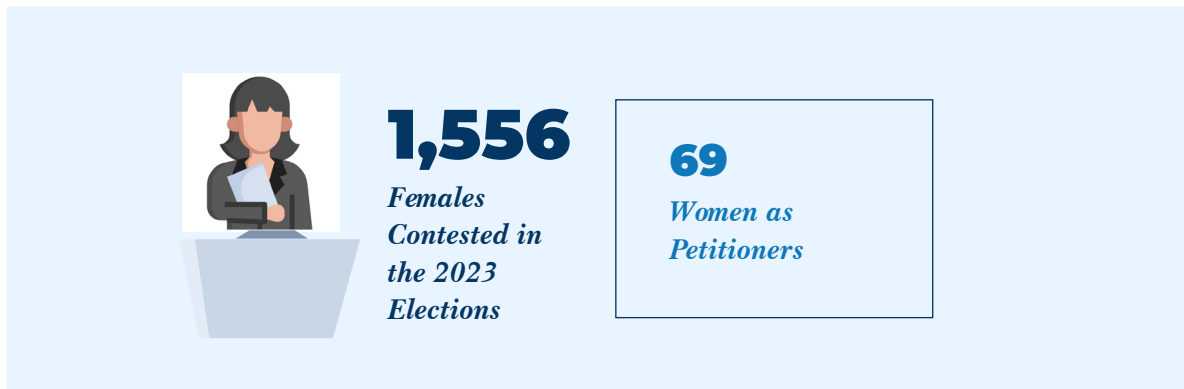
who won at the polls had to defend their victories at the EPTs.

*Comparison of women that won and the women who are respondents (their seats are being contested) at the EPTs*

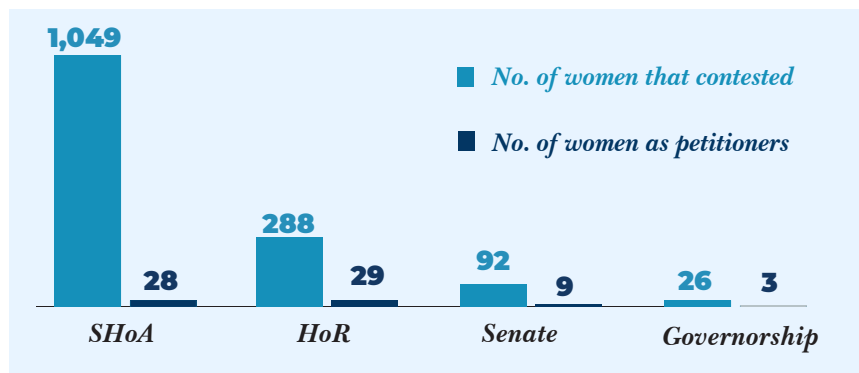


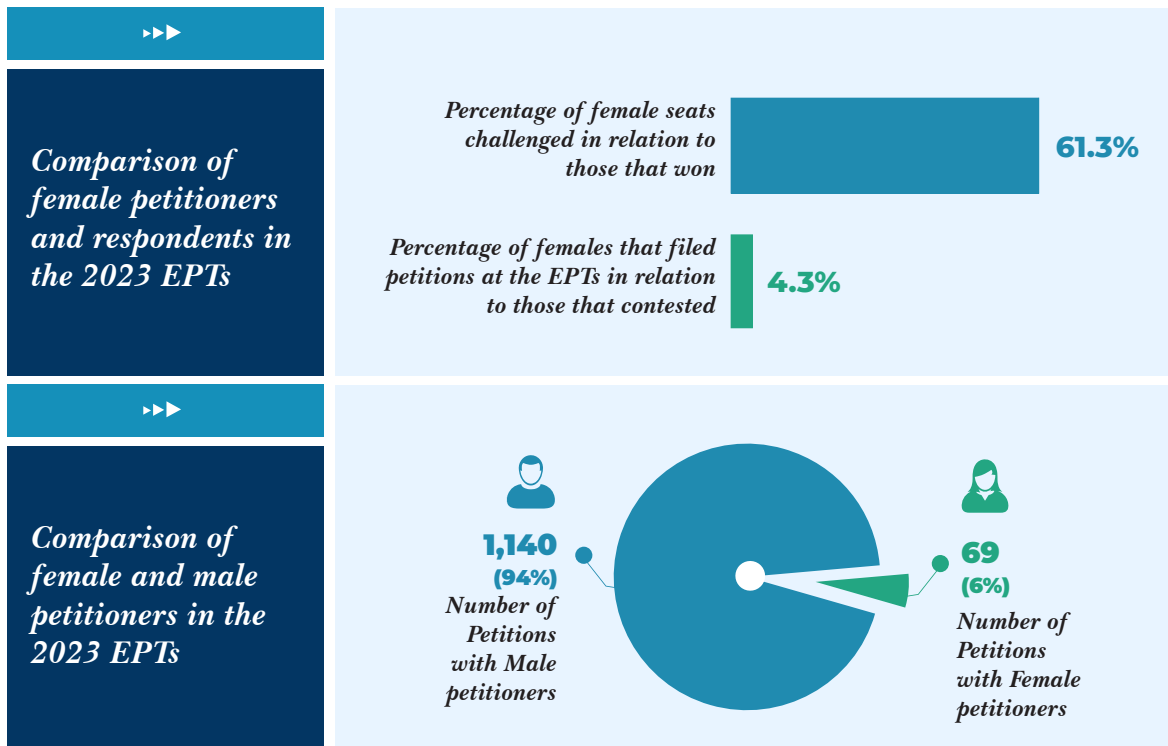
Another notable statistic is the number of women who filed petitions with the various EPTs. Only 69 (4.4%) of the 1,556 female candidates sought legal action. Compared to the percentage of women’s seats challenged at the tribunal and the num-

ber of women who filed petitions, it is clear that women candidates are not investing resources and energy in post-election litigation, despite allegations of voter intimidation, suppression, and other gender-based irregularities.



*Disaggregation of women that contested in the 2023 elections and the number of women petitioners*





Several factors contribute to this low engagement of female candidates in post-election litigation. These factors are not far from the perennial factors hampering increased women’s political representation: this includes:

- **Underrepresentation in Politics:** Women are often underrepresented in political leadership positions, and this lack of representation can result in fewer women participating as candidates in elections and subsequently filing election petitions.
- **Societal and Cultural Norms:** Societal and cultural norms discourage women from actively engaging in politics or seeking redress through election petitions. Gender stereotypes and traditional

expectations may limit women’s confidence in challenging election results through legal means due to potential backlash.

- **Intimidation, Stigmatization and Violence:** Women candidates face intimidation, harassment, and gender-based violence during elections or stigmatization, which can deter them from taking legal action through election petitions.
- **Limited Access to Resources:** Financial constraints and limited access to resources that women candidates may face compared to their male counterparts could make it challenging to fund election petitions, which can be costly and time-consuming processes.

- **Lack of Institutional Support:** Women may not be willing to challenge electoral infractions if they don't receive adequate support and backing from their political parties or other related political and institutional structures.
- **Lack of Confidence in the Legal System:** Women may lack confidence in the legal system's ability to provide fair and unbiased outcomes, leading them to avoid pursuing election petitions. In some cases, women may perceive the electoral and legal systems as inherently biased, leading them to believe that filing election petitions might not yield the desired outcomes or justice.

Conclusively, KDI conducted an analysis of judgments rendered at the Court of Appeal, the final stage of appeal for all National Assembly post-election litigation, to assess the gender distribution within the National Assembly. Out of the 109 senatorial seats contested across the

states, only three (3) were secured by female candidates. Notably, all the female lawmakers emerged victorious at both the EPT and Appeal levels. However, the court positioned Natasha Akpoti-Uduaghan as the duly elected lawmaker for Kogi State, thereby increasing the number of female lawmakers in the Senate to 4 out of 109.

Moving to the House of Representatives, where 360 seats were available, 17 members representing their respective Federal Constituencies won in the February 15th general election. However, the latest data indicates that the court's decisions have reduced the number of female lawmakers to 16. Considering that the EPT upheld the petition against Lar Beni Butmak. INEC returned her as the representative of Langtang North/Langtang South Federal Constituency of Plateau State. However, the Court of Appeal affirmed the decision of the EPT.

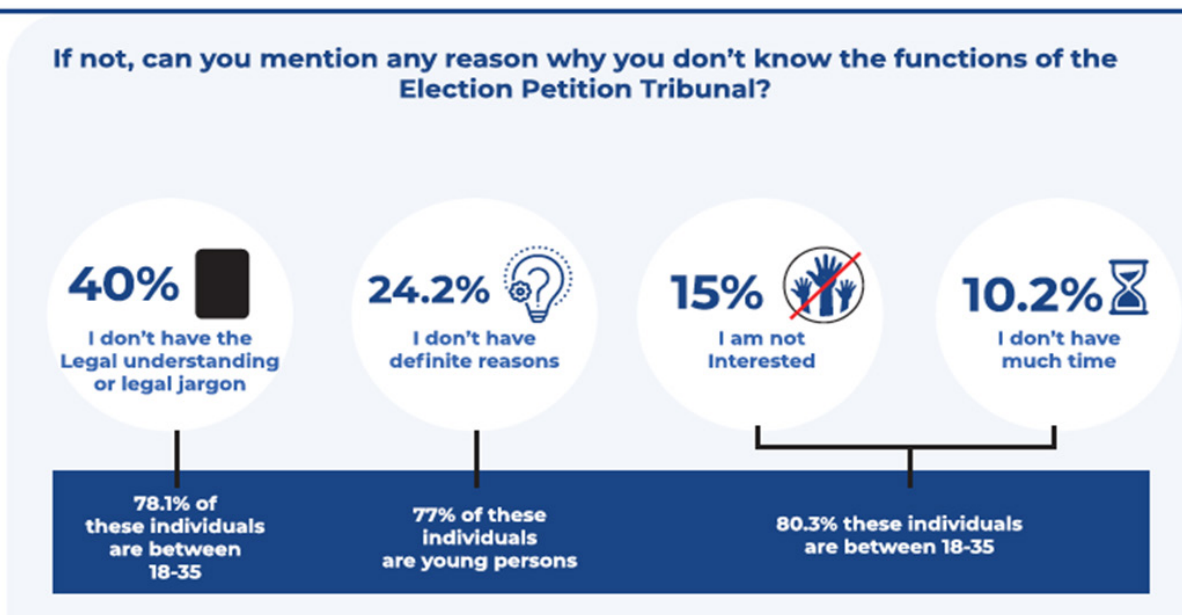
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# 05.

## **EPT and Public Perception**

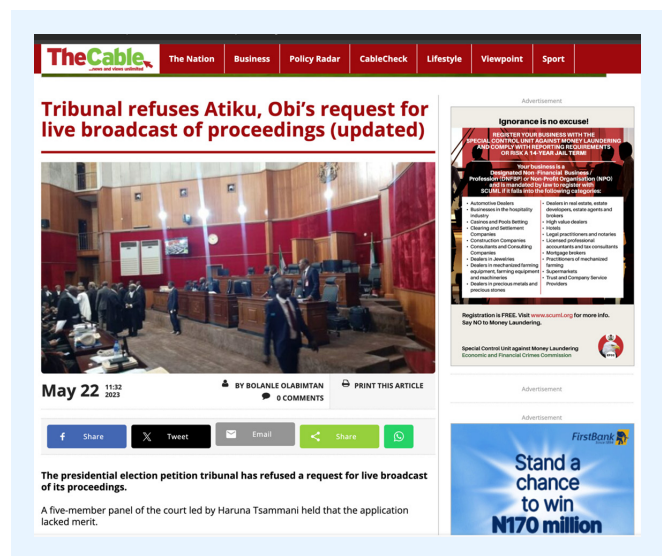
Historically, the judiciary, and legal practice in general, has been perceived to be shrouded in mystery. Non-legal practitioners often struggle to comprehend Nigeria's legal system due to its specialized vocabulary and language. Prior to the 2023 general election, KDI conducted a Public Perception survey on the Election Petition Tribunals revealed that 40% of respondents found it chal-

lenging to understand certain legal provisions, attributing this difficulty to the distinct language and structure of legal writings. Another 40% expressed that the laws were not engaging to read. Intriguingly, 78.1% of these respondents belonged to the 18-35 age group, prompting questions about the accessibility of legal language to the ordinary citizen.



Notwithstanding the struggles mentioned above, Nigerians after the 2023 general elections transferred their attention to the post-election dispute resolution process, particularly the Presidential Election Petition Court. This keen interest of Nigerians, especially young people brought about the call for live broadcast of the proceedings of PEPC, to give Nigerians the opportunity to follow the case and know what is happening. This call was backed by elder statemen, including the Arch-

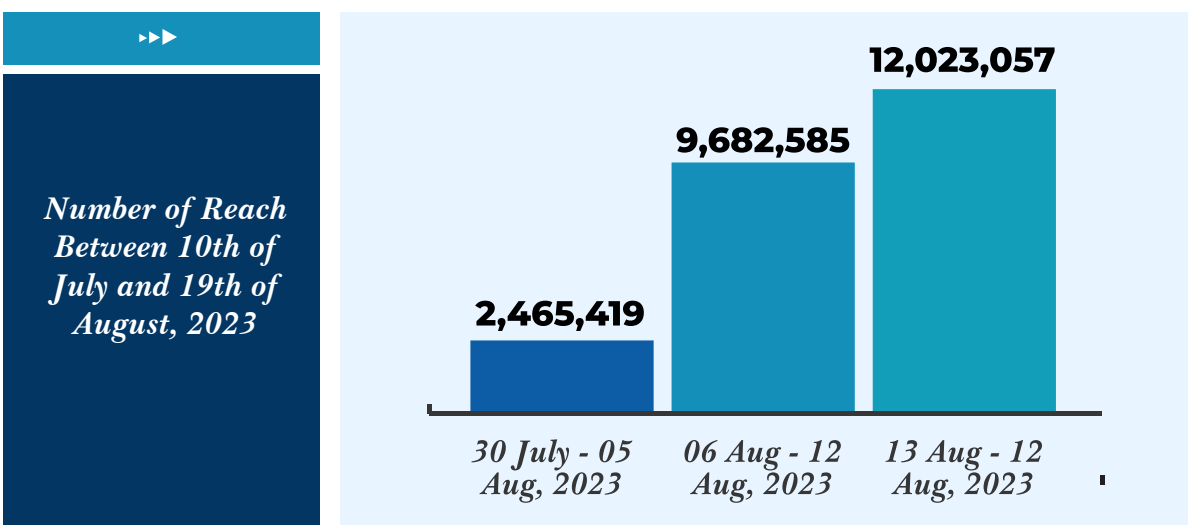
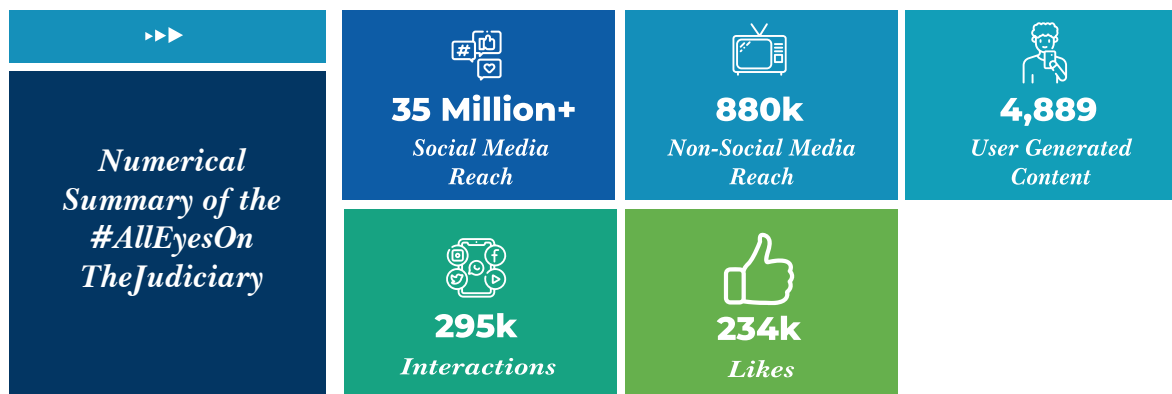
bishop Emeritus of the Archdiocese of Abuja, Cardinal John Onaiyekan<sup>29</sup>.



Sequel to this public outcry, the presidential candidates of the PDP and LP approached the PEPC – they sought an order to allow live broadcast of proceedings of his petition<sup>30</sup>. This was not granted. Despite this, young people volunteered to attend court room and leverage the social media and gave regular updates to a larger audience.

The hashtag **#AllEyesOnTheJudiciary** was another testimonial of the keen interest of young Nigerians

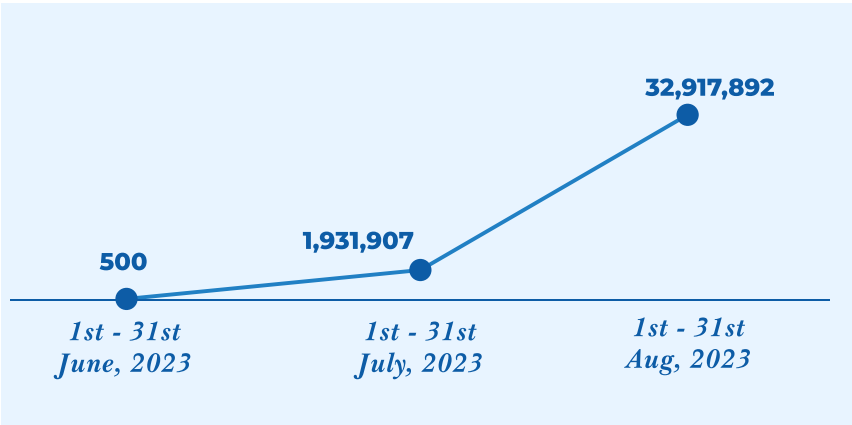
– This interest has been largely expressed on social media, with **#AllEyesOnTheJudiciary** leading the hashtag trends log virtually most days. The social media campaign that aimed to draw attention to the role and responsibility of the judiciary in resolving electoral disputes and upholding the rule of law. KDI conducted a hashtag analysis to ascertain the reach of the hashtag between 30 July and 19 August 2023





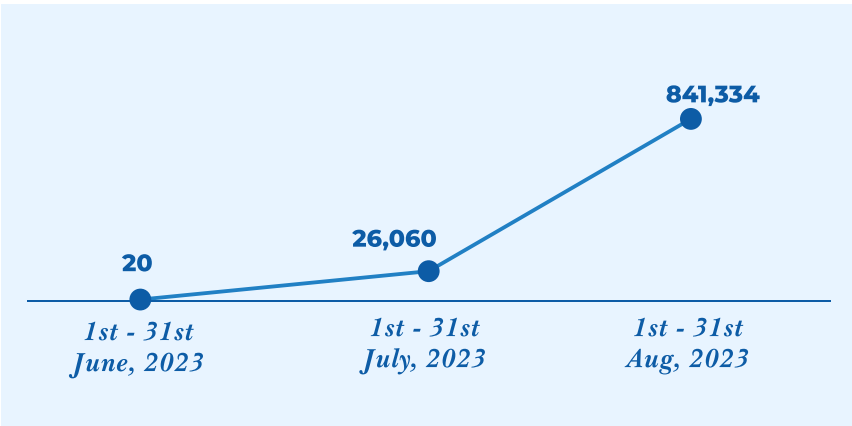
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### Number of Social Media Reach

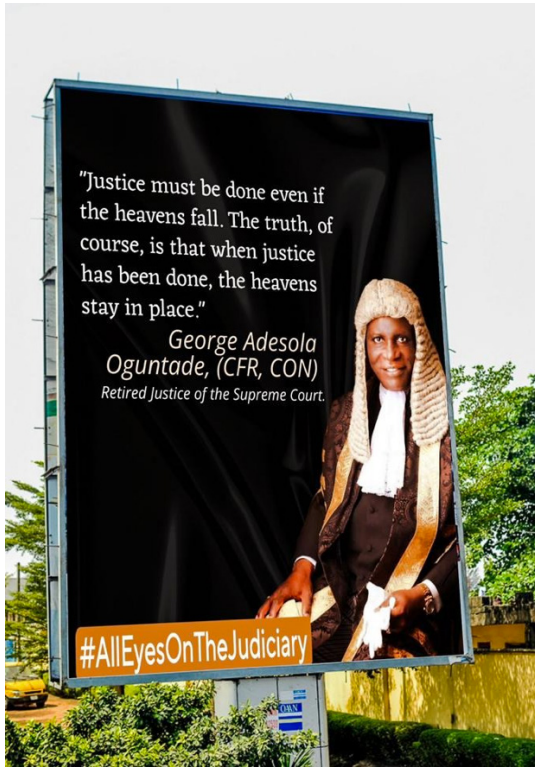


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### Number of Non-Social Media Reach



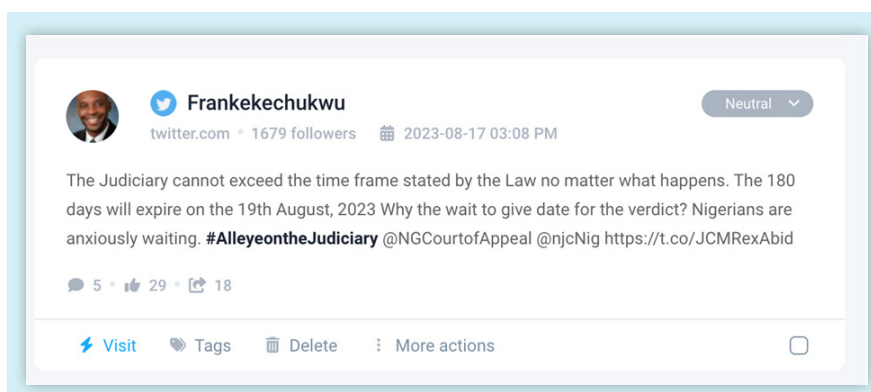
Within the space of one month, the hashtag had reached over 32 million users on social media platforms. However, this digital enthusiasm was moved off-line to the community level. Billboards and Photographs made rounds of individuals wearing materials with **#AllEyesOnTheJudiciary and the 2023 Presidential Election Petition Court (PEPC)** boldly written on them.



The number of reaches in August increased exponentially because there had been an overwhelming agitation as regards the delay of the PEPC announcing the date for its judgement.

As the digital activism increases, the issues of misinformation were also on the high side. Different political groups used deliberate

propaganda to control narratives about EPT proceedings, intensifying the attention on the judiciary. Some even flagrantly misrepresent facts. Suitable examples are the misinformation about – The PEPC judgement day, consolidation of petitions, and computation of 180 days.



The above image depicts an X (previously Twitter) user authoritatively proclaiming the date of the PEPC judgment day, which is false. Many comments were made on the calculation of 180 days, with conflicting views on whether to include weekends in the calculation. Yet not a time the court came to clarify some of these issues except when it releases a press statement that called the citizen to disregard the list of EPT judges flying around the media space<sup>31</sup>. If the Court of Appeal can do this, nothing stops the judiciary/ the Court of Appeal from putting up an information on its official website about the meaning and effect of consolidation of petition, clarification on the computation of 180 days once the petitions were consolidated.

So many persons rely on social media to get information of the happenings at the EPT. Sometimes, the information presented is not accurate or adequately reported.

Some reporting could be mischievous to mislead the recipient of such information. Yet, the Court of Appeal who is the custodian of the authentic information are in silence – Where then

will the right information be gotten to counter the misleading ones or for the fact checkers to rely on.

It is not customary for the judiciary to become embroiled in public debates. By tradition, judges are not allowed to respond to public statements regarding politics. But what about the judiciary's or the court's communications departments? The stories against the PEPC were distorted by the overtly manipulative communication that used phony, duplicate, and real social media accounts to spread false information.

There was an increase, if not the first time since the transition to democracy in 1999, that the PEPC or judges would face cyber threats. This was revealed on August 8, 2023, in a relational cyber threat post on the X platform (previously Twitter) to the Chairman of the PEPC, Hon. Justice Haruna Simon Tsammani, warning him of an impending implosion.

The tweet featured a photo of the Honorable Chairman of the PEPC with two infants.

happenings in court by establishing a public relations department that would educate the public on the



**Sources:**

- <https://twitter.com/santachidi/status/1688986962634387456>
- <https://twitter.com/gotec83/status/1689262469041012736>
- <https://twitter.com/theserahibrahim/status/1689000072082608129>

To avoid this, we believe the judiciary can self-regulate to create a balance between the quest to amplify information that will build citizens' understanding of the legal system and the call to avoid media trials that are detrimental to the justice system. This can be achieved when the court takes charge of

judiciary processes, especially when the court handles a sensitive case like elections. A very good scenario here was the social media upheaval and reactions that trailed the PEPC judgment; a certified true copy (CTC) of the judgment with the inscription **“Tinubu Presidential Legal Team (TPLT)”** at the far left top of every



page was in circulation. This caused a lot of uproar in both the digital and traditional media space, and this was fueled by the claim that petitioners are yet to be served the document. It was later revealed that the CTC of the judgment had been made available to all parties via the CoA's post on X; the court's proactiveness in making the post is what is expected of them in the age of social media.



Different narratives to misinform Nigerians were spread within hours – some border on the fact that the judges did not write the judgement and that the Tinubu legal team wrote it. Conducting an image assessment on the document – we discovered that the document contained scanned pages that were turned into a single PDF document. This is typical of a judgment document of this nature. Because CTCs are usually given in hard copies – anyone can convert them into PDFs. Possibly, in the process of conversion, the legal team added the inscription “Tinubu Presidential Legal Team (TPLT)”- because this is the only text that was editable in the PDF that went viral.

Another possibility is that this could be done by a mischievous person to spread misinformation and disinformation. Regardless, the Court of Appeal responded on the 10th of September by releasing the official CTC of the PEPC judgment to its official website and widely publicized the consolidated judgment on its media pages. We believe this is as a result of constant engagement with the EPT supervisory department in the CoA, especially that of Monday, 4 September 2023. KDI noted that the silence of the CoA on some salient issues and the lack of effective public relations fuels fake news (misinformation and disinformation). We believe this spur the CoA to officially release the judgment and douse the tension. We believe this is a step in the right direction because the court cannot continue to remain silent in this age of social media, which has changed the dynamics of how institutions are run and how democracy is practiced.

Also, partnership with Civil Society Organizations and other government agencies, such as the National Orientation Agency, with the capacity for public enlightenment on the justice system, may also help to take the burden of public enlightenment off the shoulders of the judiciary, just as the Civil Society community has always support INEC on voter education.

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# 06.

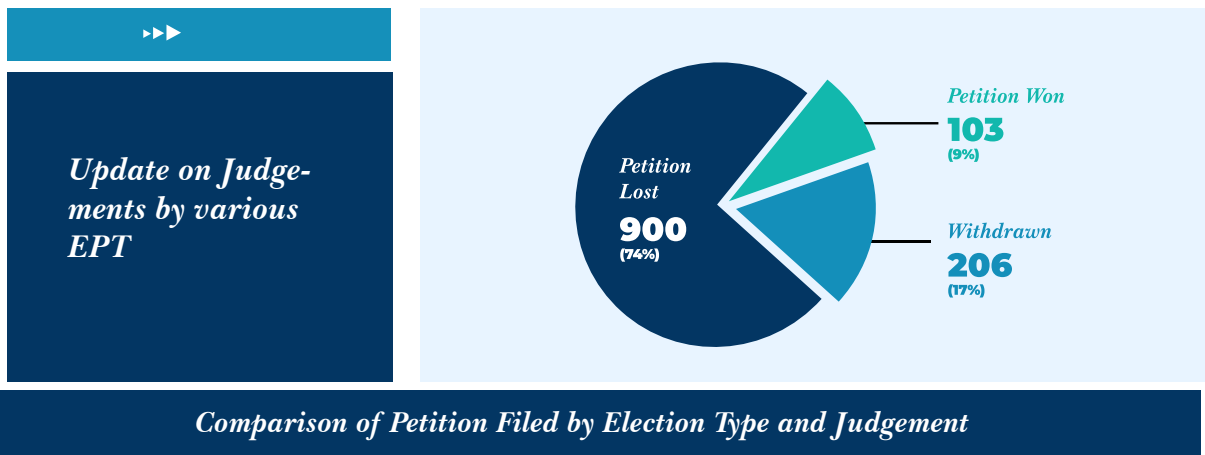
## **Judicial Resolution of the 2023 Petitions**

The journey through the judicial determination of Nigeria's 2023 Election Petitions shows a tapestry of legal intricacies, resurging technicalities, and budding electoral adjudication issues. Unravelling these dynamics, KDI studied the court's verdict on 1209 petitions filed after the 2023 general elections.

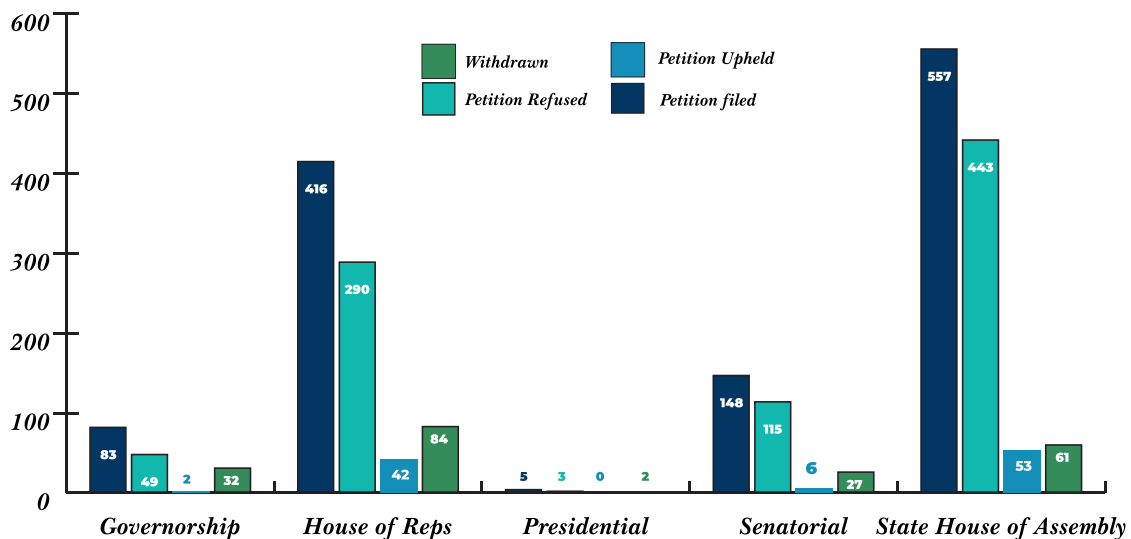


Evidently, the 1,209 petitions filed at the various election petition tribunals were all dispensed within the 180 days provided by S.285 (6) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999..

## Disaggregation of Election Petition Judgement

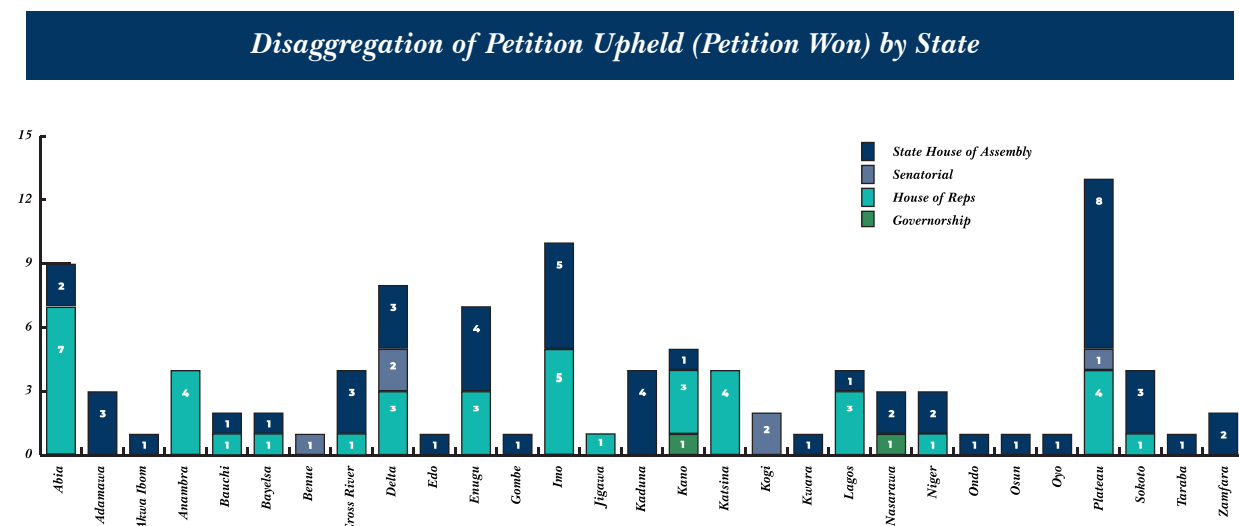
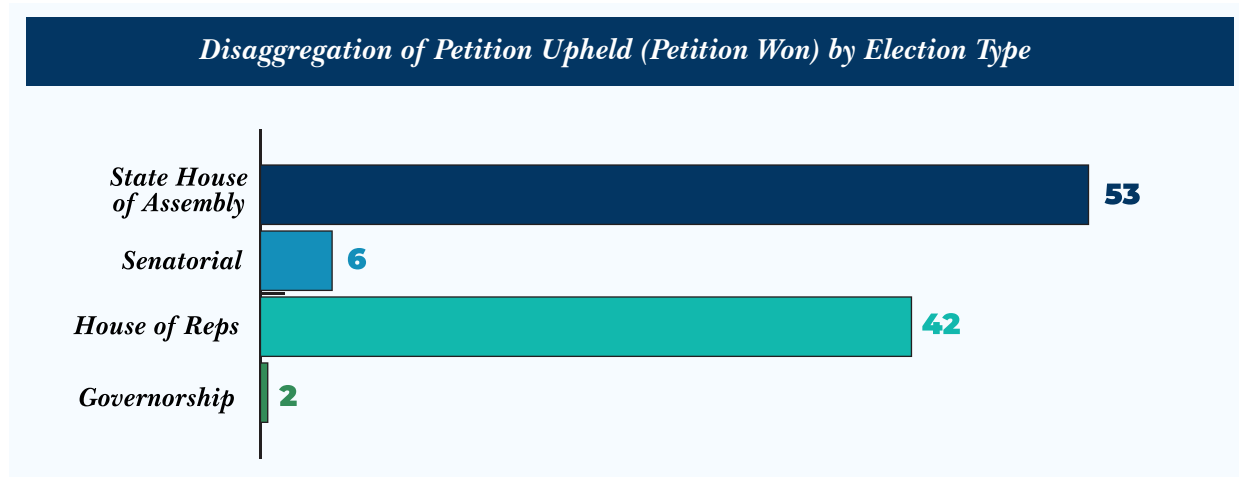


Comparison of Petition Filed by Election Type and Judgement

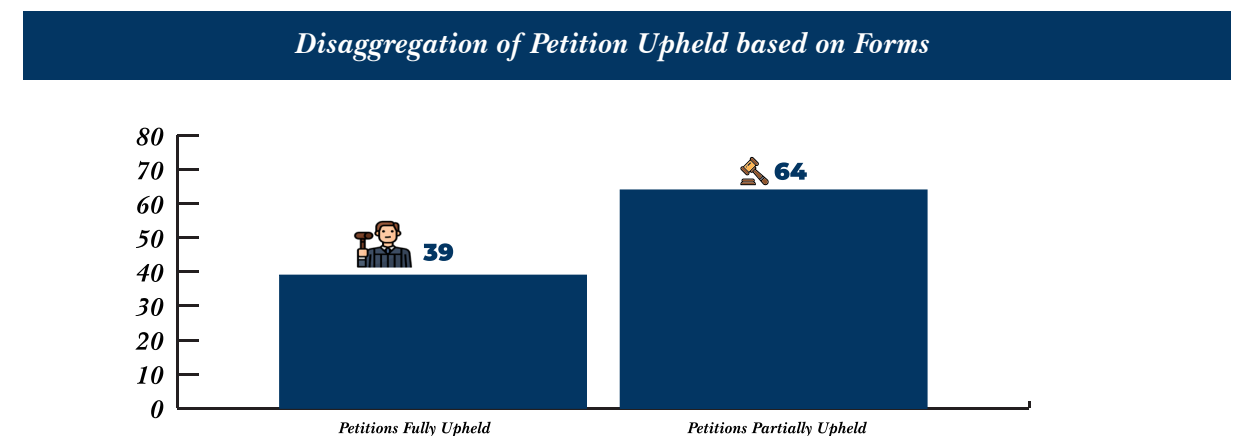


## Petitions Won at the Tribunal

In disaggregating how the 1,209 petitions were resolved, KDI noted that the tribunals upheld 103 (9%) petitions. This indicates that the petitioners in the 103 petitions successfully challenged the election outcomes declared by INEC.



Further classification distinguished between petitions that were fully upheld and those that were partially upheld.





The fully upheld petitions were judgments that led to the withdrawal of the certificate of return issued earlier by INEC and then issuing another certificate of return in line with S. 136(2) and (3) of the 2022 Electoral Act to the petitioners whose petitions were fully upheld. More so, the partially upheld petitions led to EPTs ordering a re-run election in the whole constituency or affected areas within 90 days, in line with Section 136(1) of the Electoral Act 2022. However, the re-run/supplementary election is contingent upon the person whose election was contested choosing not to appeal the EPT's decision within the stipulated days as noted in Section. 136(1)(a). Nevertheless, in our monitoring effort, all these judgments were appealed against at the Appellate Court – Court of Appeal.

## **Navigating Concerns: Judicial Practices of Courts Declaring Winners in Elections**

As earlier stated, the current legal framework, as outlined in Sections 136(1) to (4) of the Electoral Act 2022, provides for the nullification of an election if a candidate is found not to have been validly elected on certain grounds. However, there is a growing concern about the trend where courts directly declare a winner in an election dispute. While acknowledging the constitutional right to legal redress and the importance of electoral dispute resolution, it is crucial to strike a balance to prevent the judiciary from taking over the sovereign power of the voters or the EMB. The prevailing judicial practice of directly declaring a winner or a situation where the court assumed the role of collation officer by tabulating and manually calculating votes has sparked apprehension about its potential impact on Nigeria's democratic process. It raises questions about whether the court's role should extend to determining the ultimate victor, potentially undermining the democratic principle of respecting the will of the people. No gainsaying: caution should be taken.

The judiciary directly declaring winners in election disputes in Nigeria could have detrimental effects on democracy. This shift undermines fundamental democratic principles by diminishing the citizens' role in determining leaders through the electoral process. Such a trend risks declining public participation in elections because they believe the Court will still decide the winner. Potentially leading to skepticism and disillusionment among citizens. There is also the danger that political actors would prioritize legal techniques over substantive electoral strategies when they know the Judiciary has the last say on who wins an election.

This can lead to an increased reliance on legal battles, perpetuating a cycle of disputes that burden the judiciary and eventually drag it into the political sphere. Ultimately, this emphasized the need to balance legal adjudication with preserving the citizens' central role in the electoral process.

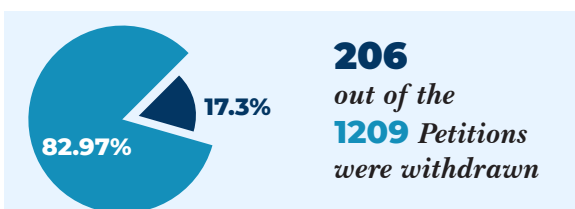
We believe that the court should maintain the provision of the Act that nullifies an election and mandates a fresh one within 90 days if a candidate is not validly elected. In cases where disqualification is grounds for nullification, the Electoral Act's provision to declare the candidate with the second-highest valid votes as duly elected or, if necessary, the candidate with the next highest votes can be upheld.

However, we strongly argue against courts directly declaring winners based on the interpretation of most valid votes cast. Instead, the court should focus on resolving disputes and ensuring fairness, leaving the determination of the winner to the people and the EMB. Recounts and audits, if required, should be conducted by independent bodies to maintain the integrity of the democratic system. This approach safeguards the court from overstepping its role and upholds the principle that citizens remain the ultimate decision-makers in elections.

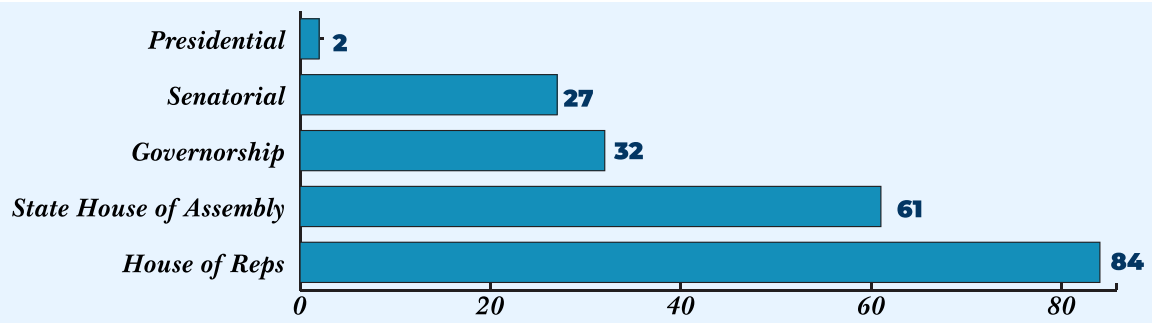
*The delineation of mandates between EMB and courts, as well as the types of remedies and sanctions that election judges can order, should be carefully reviewed in Nigeria electoral legislation; there are different practices throughout Africa that can be studied. Remedies and punishments vary widely based on the legal mandate and EDR model. Courts can have the authority to order votes recounts, scrutinize results, cancel elections (e.g. Kenya), certify or correct results (Benin, France), remove/reinstate voters (Senegal), and invalidate votes (e.g. Tanzania). Whatever is adopted should strengthen the citizen's faith and engagement in the democratic process rather than eroding the trust.*

### *Petitions Withdrawn at the Tribunal*

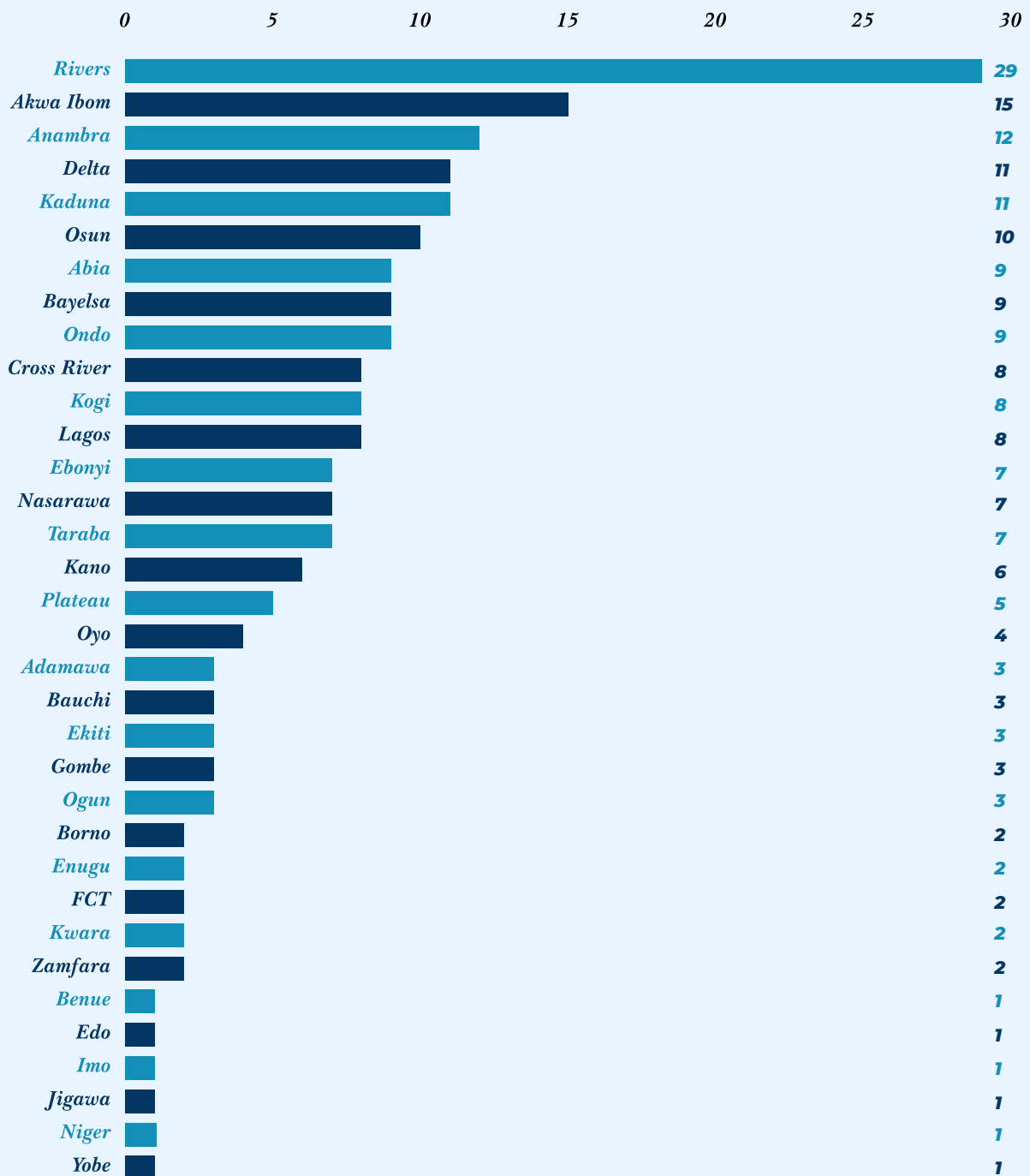
KDI's analysis revealed that out of the 1,209 petitions filed, 206 (17.03%) were ultimately withdrawn.



### Number of Petitions Withdrawn Per Election Type

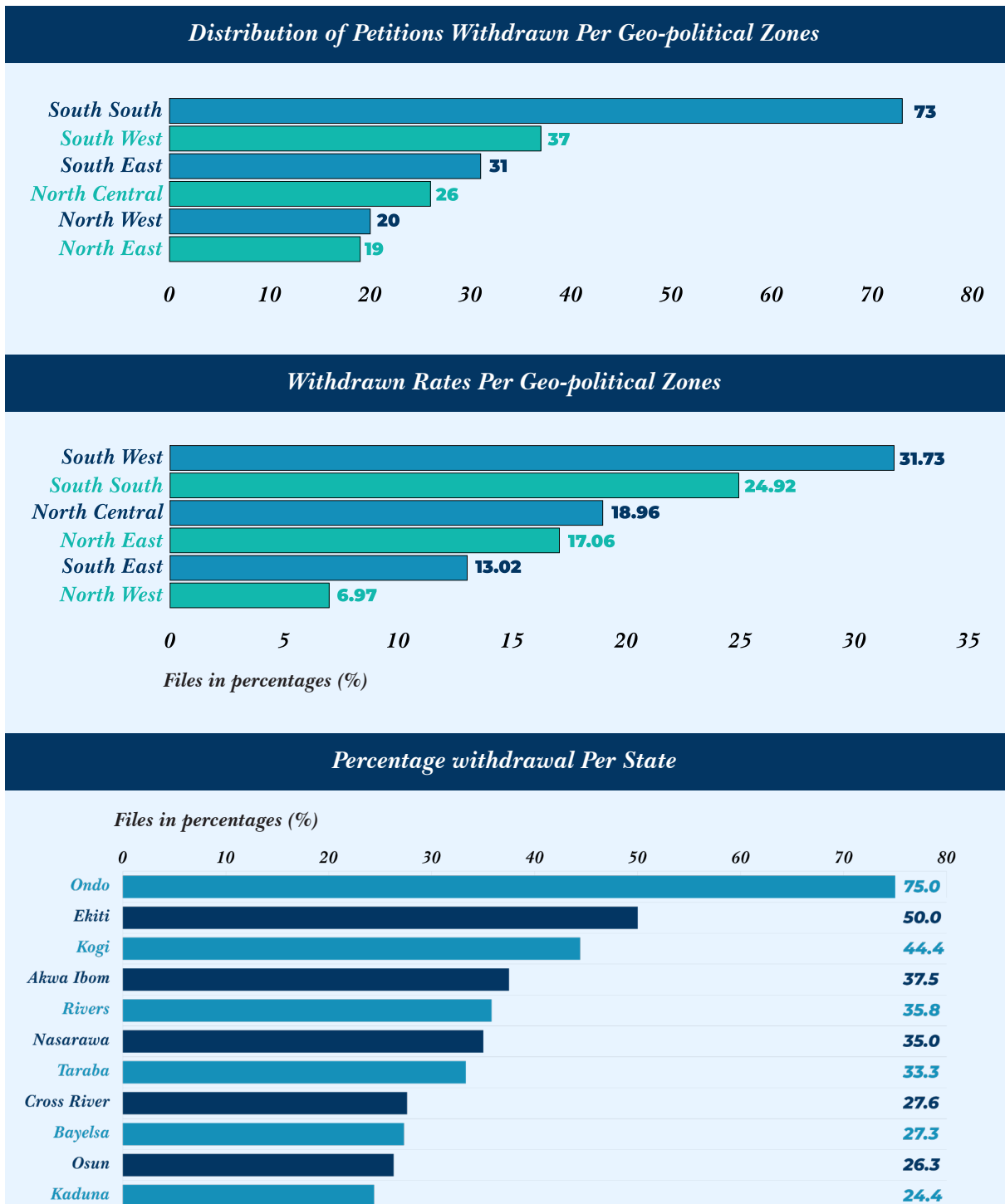


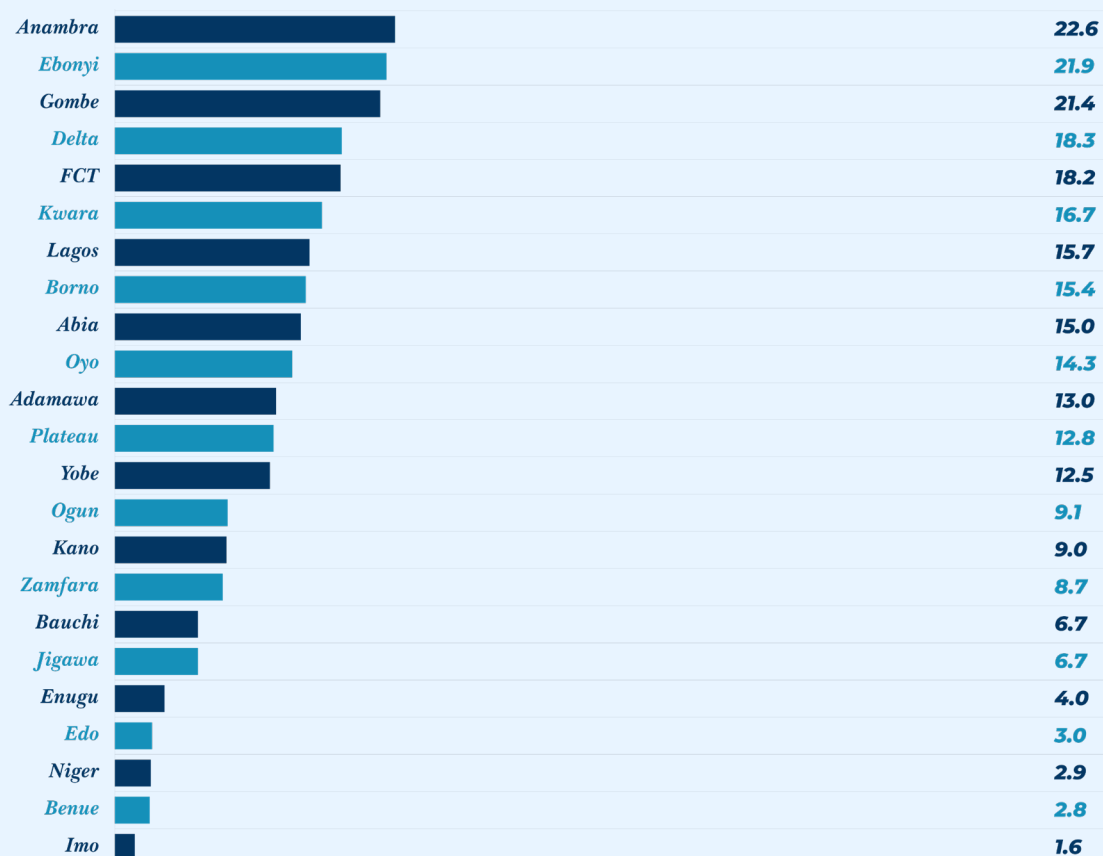
### Distribution of Petitions Withdrawn Per State



Examining regional patterns, KDI found that the South-South region had the highest number of withdrawn petitions. This trend correlated with the region also having the highest filing rate. Notably, Rivers State led in both petition filing and withdrawal, with 83 petitions filed and 29 withdrawn.

Moreover, the nuance of the withdrawal rate is not completely different regionally. However, it slightly differs for state-specific dynamics. Ondo State stood out with a withdrawal rate of 75%, emphasizing the need for a nuanced understanding of regional and state-specific dynamics.





Withdrawal Rate is calculated as the percentage of petitions that have been withdrawn compared to the total number of petitions filed in specific states.

$$WR = \frac{\text{Total Number of Petitions Filed}}{\text{Number of Withdrawn Petitions}} \times 100\%$$

State	Number of Petition	Number With- drawn	% of Withdrawal
Ondo	12	9	75.0
Ekiti	6	3	50.0
Kogi	18	8	44.4
Akwa Ibom	40	15	37.5
Rivers	81	29	35.8
Nasarawa	20	7	35.0
Taraba	21	7	33.3
Cross River	29	8	27.6
Bayelsa	33	9	27.3
Osun	38	10	26.3
Kaduna	45	11	24.4

Anambra	53	12	22.6
Ebonyi	32	7	21.9
Gombe	14	3	21.4
Delta	60	11	18.3
FCT	11	2	18.2
Kwara	12	2	16.7
Lagos	51	8	15.7
Borno	13	2	15.4
Abia	60	9	15.0
Oyo	28	4	14.3
Adamawa	23	3	13.0
Plateau	39	5	12.8
Yobe	8	1	12.5
Ogun	33	3	9.1
Kano	67	6	9.0
Zamfara	23	2	8.7
Bauchi	45	3	6.7
Jigawa	15	1	6.7
Enugu	50	2	4.0
Edo	33	1	3.0
Niger	35	1	2.9
Benue	36	1	2.8
Imo	64	1	1.6
Katsina	12	0	0.0
Kebbi	18	0	0.0
Sokoto	31	0	0.0

While unravelling the nuances of regional and state-specific dynamics- It is important to note that the significant number of withdrawals stimulates questions about the rationale behind initiating a petition that would later be withdrawn. Part Three of this report identified various motivations for filing election petitions. These include:

- Expressing grievances through the legal avenue rather than taking matters into one's hands. Approaching the Court is their constitutional right because of the belief of irregularities in the election process, and they file petitions

with the hope of obtaining justice, rectifying perceived electoral injustices, and potentially overturning election results.

- **Over-incentivized Political Institutions:** The financial rewards and benefits associated with political office may drive politicians to pursue legal options.
- Some lawyers may be motivated to handle election petition cases due to the perceived career advancement opportunities, especially in achieving the status of a Senior Advocate of Nigeria and not advising their clients against frivolous cases.

While the reasons for filing a petition are often rooted in expressing grievances, seeking justice, and maybe some other extrinsic reasons - the reasons for withdrawing are more diverse and include strategic considerations, finance, and internal party politics.

### **KDI unravelled some of the reasons why petitioners Withdrew their Petitions.**

#### **These include:**

- **Using the petition filed as a bargaining chip:** There are claims that petitioners may file cases strategically, not intending to win the litigation but using the petition as leverage in negotiations with the incumbent government for financial gains or elective seat nominations. Once objectives are achieved, they withdraw the petition. Unfortunately, this approach not only wastes the time and resources of the court but also disregards the impact on the justice system.
- **Lack of Adequate Funds:** Some petitioners faced financial limitations hindering their ability to sustain the legal pursuit of the petition. The costs associated with legal representation, filing court processes, and other related expenses became prohibitive. Withdrawal was practicable when the necessary resources to navigate the legal process adequately were lacking.
- **Political Party Internal Resolve:** In certain instances, party leaders or stalwarts intervened and facilitated negotiations or settlements that render legal actions unnecessary. If these discussions are successful, political parties may withdraw the petition it filed or instruct party members to do the same. There was an instance where the candidate continued to pursue legal redress while its party withdrew its petition. A similar instance happened in Rivers State – where APC counsel withdrew APC’s governorship petition seeking to nullify Similayi Fubara’s return. There were claims that the APC candidate Tonye Cole was never consulted on the topic.

- **Strategic Re-evaluation of Petition:** Some gave reasons that they opted to withdraw their petitions upon thorough re-evaluation of their case and legal advice. Considering their petition's legal strength and practical viability, they discern that their petitions are inherently weak or lack grounds for success.

## **A Case for Frivolous Cases to End at the Pre-Hearing Conference.**

Just before the commencement of legal proceedings at the open tribunal through a hearing, the parties are mandated by the Act to engage in a final yet crucial act, perhaps the most pivotal of all steps in the petition. The parties are required to sit down with the Chairman and other members of the tribunal in a pre-hearing and scheduling session. Effectively managing these sessions could successfully conclude the petition halfway<sup>32</sup>.

A pre-hearing conference (PHC) is a critical stage in the election petition process in Nigeria. During this phase, the Election Tribunal reviews the petition and related documents, determines its jurisdiction, addresses preliminary objections, and establishes the schedule and timelines for subsequent proceedings. The pre-hearing conference aims to ensure the petition is valid, adheres to legal requirements, and that the issues and claims are clearly identified and clarified. Moreover, it seeks to expedite the resolution of electoral disputes, mitigating unnecessary delays and adjournments. The pre-hearing session has a defined lifespan of 14 days, from commencement to termination, with hearings conducted daily as much as practicable. Upon conclusion, a report is published to guide the Court or Tribunal on the subsequent course of proceedings.

Failure of the petitioner or their counsel to attend the pre-hearing session, or to attend fully prepared and participate, empowers the Tribunal, under Paragraph 18 (3-5) of the Electoral Act 2022, to dismiss the petition. In the case of the Respondent, the tribunal is authorized to enter judgment against them for failing to attend the session or for not being fully prepared. However, this judgment can be set aside upon an application made within 7 (seven) days, with no possibility of extension.

If one of the functions of the pre-hearing conference is to ensure the validity of the petition and adherence to legal requirements, as well as to clearly identify and clarify issues and claims, why do we still hear judges, during their verdicts,



deeming cases brought by petitioners as frivolous? In some instances, costs are awarded against the petitioner, while in others, no costs are awarded. The current scenario allows cases labeled as frivolous to progress through the lengthy legal process, consuming valuable time, and resources. Judges, after a substantial period of 180 days, may then declare a lack of jurisdiction, leading to a substantial waste of the court's time and resources. The PHC, designed to identify and rectify such issues, appears to fall short in its current form. The necessity for reform becomes apparent when considering the financial and temporal burdens placed on the electoral justice system. Resources are expended in maintaining judges at their respective tribunal points for the prescribed 180 days, only to find that some cases could have been efficiently resolved or even dismissed during the pre-hearing conference.

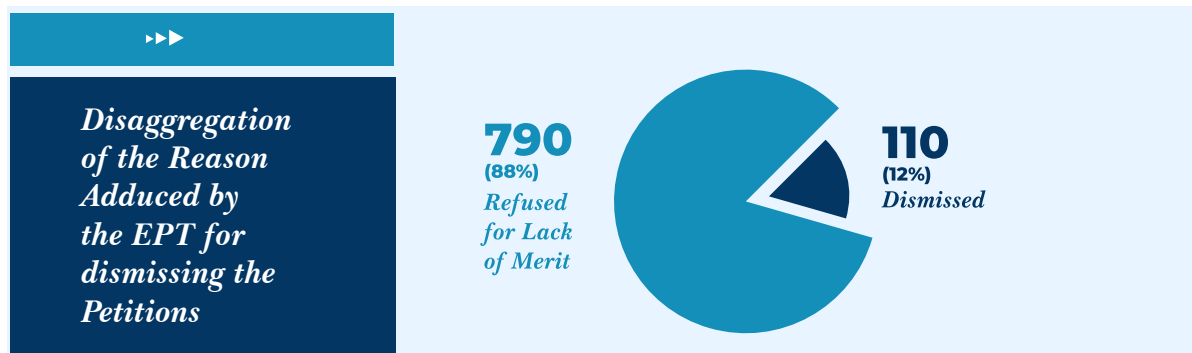
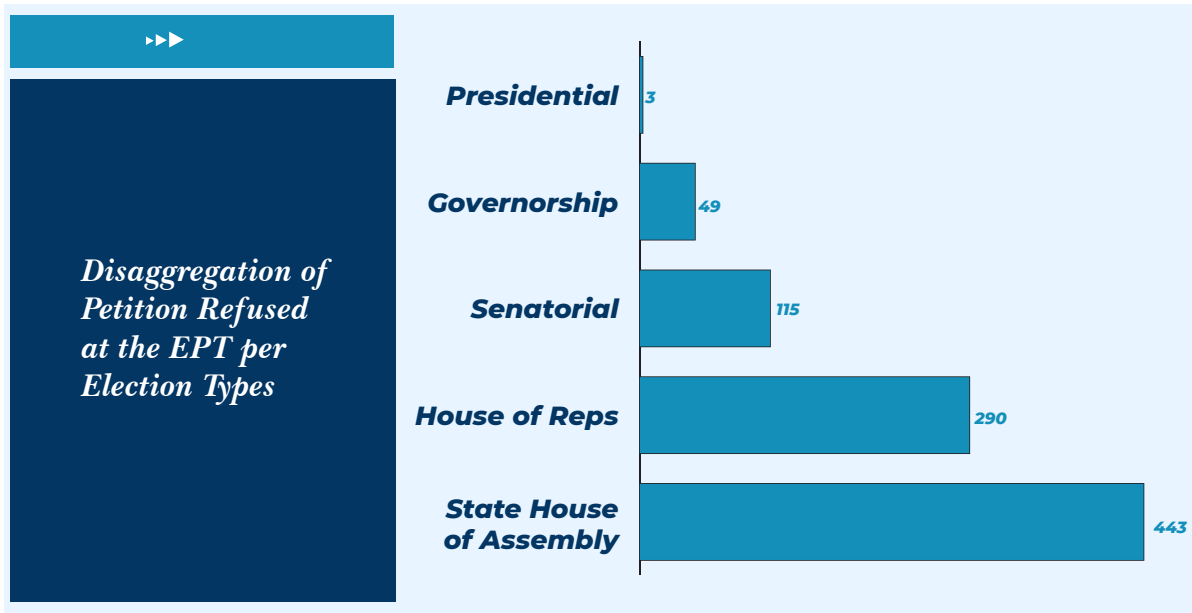
Some argue that such a proactive approach may contradict the principle of fair hearing. Nevertheless, it is contended that all parties are present at the PHC, and the petitioner could be advised to withdraw the petition. Alternatively, the court could set timelines that won't waste its time if it is evident that the case is frivolous and falls outside its jurisdiction. Many resources are expended in keeping judges at their respective tribunal points for 180 days. Instead, the court could collaborate with all parties to establish timelines that would not unnecessarily consume the court's time. While the constitution of the Federal Republic of Nigeria in S 285(6) mandates judgment delivery in writing within 180 days, It does not require the entire 180-day period to be exhausted.

### ***Petitions Lost at the Tribunal***

Analysis of lost petitions at various Nigerian election tribunals in 2023 reveals that, of the 1,209 petitions filed at various election tribunals, 900 (74.4%) were lost, representing a sizable majority.

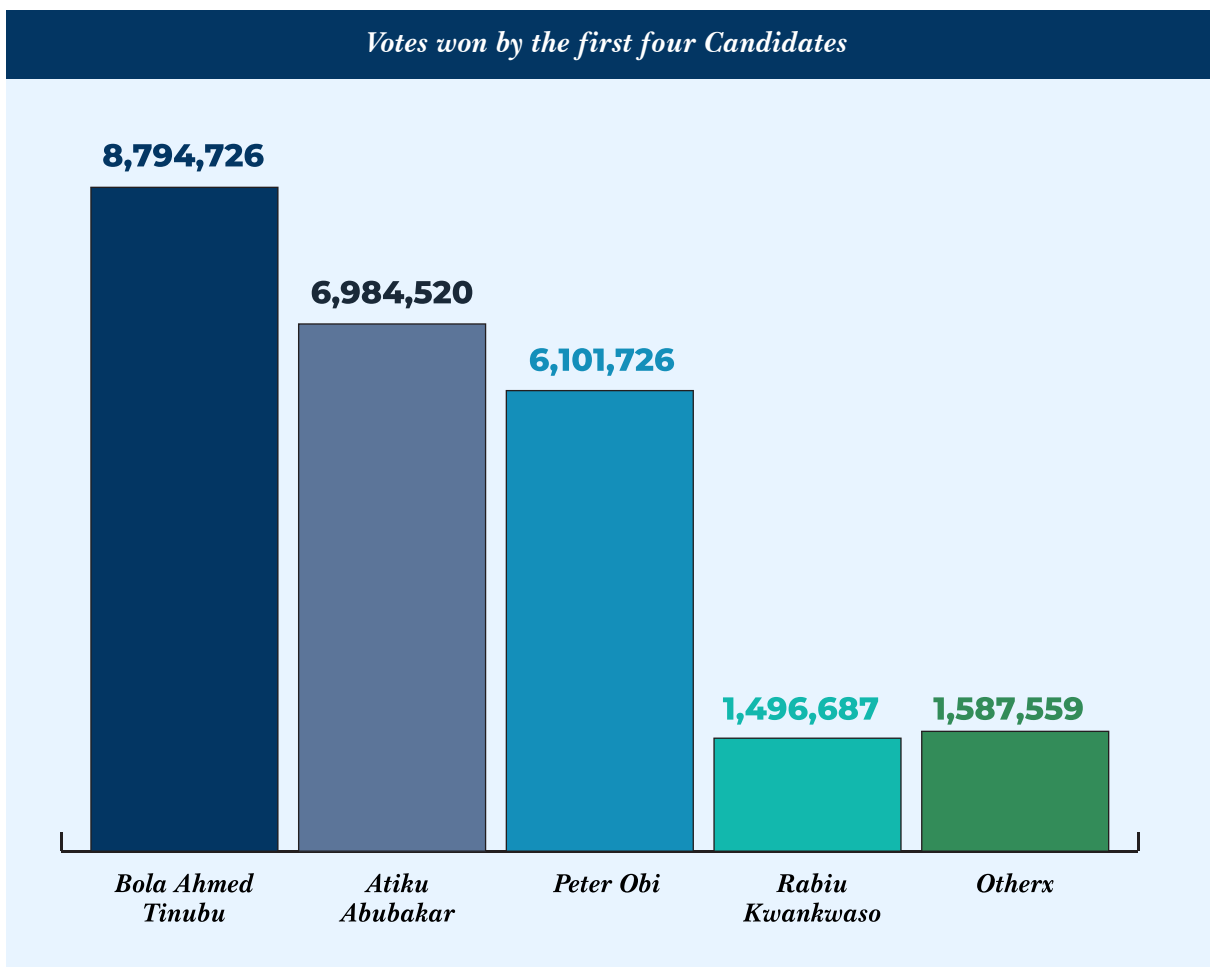
These petitions were predominantly deemed to lack merit or were dismissed due to a lack of diligent prosecution. Out of these 900 lost petitions, 790 (88%) petitions were refused for lack of merit. A petition lacks merit if the petitioner(s) cannot give enough evidence to sustain any or all grounds of his/their petition. Such a petition is discountenanced for lack of reasonable basis or legal justification to uphold it. It could be deemed frivolous, unfounded, or one that lacks substance and is of no moment. 110 (12%) were dismissed for lack of diligent prosecution. This occurs when the petitioner abandons the petition or refuses, fails, or neglects to prosecute the petition diligently; for example, if a petitioner fails to enter an appearance, or on several court sittings, absents themselves from the

Tribunal, or fails to file necessary documents for pre-hearing, the petition may fall into this category.



## Presidential Election Petitions Court

The Independent National Electoral Commission (INEC) declared Bola Ahmed Tinubu (BAT) as the duly elected President on March 1, 2023, having satisfied the provision of section 134 of the constitution of the Federal Republic of Nigeria. According to INEC, BAT defeated seventeen (17) other candidates who took part in the election, scoring 8,794,726 votes, the highest of all the candidates, and he got at least 25 per cent of the votes cast in 30 states.



After the declaration, there were five (5) petitions challenging the outcome of the elections – these petitions were filed by:

1. All People's Party.
2. Action Alliance and Solomon David Okaniguan
3. Allied People's Movement
4. Peter Gregory Obi and the Labour Party
5. Atiku Abubakar and The Peoples Democratic Party



**Peter Obi and LP's consternation about the declaration of INEC and the position of the PEPC can be seen below**

Ground of Petition and Issues Raised	Position of the PEPC
<p><b>Bola Ahmed Tinubu, at the time of the election, was not qualified to contest the election based on the following reasons.</b></p> <ul style="list-style-type: none"> <li>• The double nomination of Senator Kashim Shettima.</li> <li>• The \$460,000 fine for narcotics trafficking imposed on BAT by the United State District Court.</li> </ul>	<p>The Court found that the petitioner failed to prove that Tinubu was not qualified to contest the election.</p> <ul style="list-style-type: none"> <li>• On the qualification of Kashim Shetimma to contest, the Court opined that the matter bordered on nomination by his political party and that the power to nominate a party's flag bearer rests solely with each political party. <b>Peter Obi and LP including the Court do not have any business interfering in the matter of nomination.</b></li> <li>• On the narcotics tracking case and forfeiture allegations, the Court ruled that Peter Obi and LP were not able to prove that this was a criminal case as envisaged by the 1999 Constitution. <b>The Court found that the matter referred to in the allegation was a civil case for which the government of the United States of America was more interested in the property rather than the person concerned. The Court held that civil forfeiture does not equate to a criminal charge or conviction.</b></li> </ul>
<p><b>Bola Ahmed Tinubu's election was invalid because of corrupt practices or non-compliance with the Electoral Act 2022.</b></p> <ul style="list-style-type: none"> <li>• The totality of the Polling units' results was yet to be uploaded at the time of the declaration of the results.</li> <li>• Manipulation of results in Rivers, Lagos, Taraba, Benue, Adamawa, Imo, Bauchi, Borno, Kaduna, and Plateau against Obi.</li> </ul>	<p>This ground failed for lack of merit because the Court found that the petitioner could not prove their allegation of corrupt practices and non-compliance with the Electoral Act.</p> <ul style="list-style-type: none"> <li>• The PEPC stated that the witnesses presented by Peter Obi and LP were either not presenting the information in the Court from personal experience during proceedings or were not the author of such information/document. This made some of the evidence presented, such as spreadsheets, inspection reports, and forensic analysis, to be incompetent and therefore discountenanced. Also, these documentary pieces of evidence were not attached to the petition document when filing. The laws frown on this as not attaching such documents will deny the respondent the right to prepare adequately for their defence.</li> </ul>

	<p>Furthermore, the Court established that Peter Obi and LP were not able to prove substantial irregularities that could warrant cancelling the election by a few numbers of polling units, collation centers and places where the alleged irregularities took place.</p> <ul style="list-style-type: none"> <li>On the issues of transmission of results by INEC, the Court decided that it is the prerogative of INEC to determine how to transmit results, and there is no position of the law that mandated INEC to transmit electronically.</li> </ul>
<p><b>Bola Ahmed Tinubu was not duly elected by majority of the lawful votes cast.</b></p> <ul style="list-style-type: none"> <li>He did not meet the constitutional requirement of sections 133 and 134 of the 1999 constitution.</li> <li>Vote Suppression</li> </ul>	<p>This ground was dismissed because Peter Obi and LP failed to prove that their votes were suppressed by failing to prove the specific number of votes suppressed. The Court said although Peter Obi and LP claimed to have scored majority of lawful votes cast, they failed to show the number of lawful votes they scored.</p> <p>On the constitutional requirement of section 134 that the winner of the presidential seat should have majority of lawful votes and have at least on 25% of lawful votes in two-third of the states and FCT, the Court ruled that FCT is not superior or inferior to every other state in Nigeria, and that in the computation of 25%, FCT must be placed on the same pedestal as any other state in Nigeria.</p> <ul style="list-style-type: none"> <li>The ground was dismissed.</li> </ul>

- Abubakar Atiku, & PDP VS INEC, Tinubu Bola Ahmed, & APC**

Abubakar Atiku, & PDP's consternation about the declaration of INEC and the position of the PEPC can be seen below	
Ground of Petition and Issues Raised	Position of the PEPC
<p><b>Bola Ahmed Tinubu's election was invalid because of corrupt practices or non-compliance with the Electoral Act 2022.</b></p> <ul style="list-style-type: none"> <li>INEC failed to transmit results electronically.</li> <li>Bola Ahmed Tinubu and APC did not meet the constitutional requirement especially 25% of FCT votes.</li> </ul>	<p>The Court ruled that the Atiku and Obi failed to call any of their agents from the polling unit where allegations of non-compliance and corrupt practices were alleged to have taken place. The testimonies of the few agents who testified for the petitioner were held to be hearsay since they did not personally witness the incident, they testified about. Also, they were not able to prove that the Electoral Act</p>



<ul style="list-style-type: none"> <li>• The margin of lead principle was not obeyed.</li> <li>• Suppression of votes, manipulation of BVAS, Election materials and logistics and mutilations, overwriting and inflation of results in Sokoto, Kano, Kogi and Borno.</li> </ul>	<p>or the Guidelines made it mandatory for electronic collation systems.</p> <p>The Court ruled that FCT is not superior or inferior to every other state in Nigeria and that in the computation of 25%, FCT must be placed on the same pedestal as any other state in Nigeria. So, polling 25% of the total votes cast in the Federal Capital Territory is not a separate precondition for a candidate to be deemed as duly elected.</p> <p>This ground was dismissed because the petitioner was unable to prove substantial non-compliance and corrupt practices.</p>
<p><b>Bola Ahmed Tinubu was not duly elected by the majority of the lawful votes cast.</b></p> <ul style="list-style-type: none"> <li>• The results declared by INEC are wrong.</li> <li>• Infractions in 19,702 polling units.</li> <li>• <b>Forms EC8A of 4,307 polling units are without a stamp.</b></li> <li>• <b>Forms EC8A of 1,300 polling units do not have signatures of presiding officers.</b></li> <li>• The results of 6,418 polling units had zero accreditation.</li> <li>• Overvoting in 9,463 polling units across 30 States.</li> <li>• Wrongly entered score in 22 States.</li> </ul>	<p>This Court dismissed this ground of petition for lack of merit and for being incompetent.</p> <ul style="list-style-type: none"> <li>• On the issue of BAT not scoring the majority vote, the Court emphasized that Atiku and PDP only dumped loads of Certified True Copy of documents on the Court without linking them with specific complaints. Failure to link the documents to specific complaints is fatal and documents are rendered incompetent. <ul style="list-style-type: none"> <li>• The Petitioners failed to establish their allegations of corrupt practices and over-voting.</li> </ul> </li> </ul>
<p><b>Bola Ahmed Tinubu was not qualified to contest the Election.</b></p> <ul style="list-style-type: none"> <li>• He has dual citizenship.</li> <li>• Bola Ahmed Tinubu was previously convicted in a narcotic trafficking case in the United States.</li> </ul>	<ul style="list-style-type: none"> <li>• It was held that the petitioner did not plead facts in support of non-qualification of Tinubu as regards dual citizenship, presentation of forged certificate to INEC, and forfeiture arising from drug related offences in their petition, and their effort to remedy it through their replies to respondents' replies were belated, incompetent and of no avail.</li> <li>• This ground was discountenanced, and the issue resolved in favour of the respondents.</li> </ul>

If the three (3) presidential petitions were dismissed for lack of merit and 790 (88%) petitions of the 900 petitions that were refused by the court were due to lack of merit – then in itself raises some technical questions, such as:

- **WHY IS THE PETITIONER UNABLE TO PROVIDE ENOUGH EVIDENCE TO PROVE THEIR CASE?**

- **WHY IS THE WINNING RATE LOW IN NIGERIA'S POST-ELECTION DISPUTE RESOLUTION PROCESS?**

The plausibility of this question is also reinforced by the understanding that since the return of Democracy to Nigeria in 1999, no petitioner has been able to topple the presidential election despite allegations of corrupt practices and claims of non-free, fair and credible elections by national and international observers of the elections. Though no petitions were filed against the presidential elections in 2015. In 2019, four (4) petitions were filed against the presidential election, two (2) of the petitions were withdrawn, and two of the petitions went through the EPT process to a logical conclusion. Yet, all failed. Understanding why petitioners consistently face difficulties in proving their cases is crucial for evaluating the effectiveness and evenhandedness of the electoral judicial systems.

**Evidential Requirement for Petitioner to Prove its Case:** In the verdict of the PEPC on the 2023 presidential election petitions, some of the documentary evidence and testimonies of witnesses before the court in support of the petitioner's case were tossed out for being incompetent. These include documentary evidence that were presented in court by persons who were not the authors of the documents. The court has always distinguished situations where such act would be considered dumping evidence on the court to shop for explanation by itself, some of the act include witnesses testifying to issues that they were not first-hand witnesses to. The PEPC declared these testimonies in the 2023 presidential election petition judgment as hearsay.

**The Absence of a Harmonized Approach:** Often, judges rely on any of legal instruments to give rulings on documentary evidence in election petitions. This on the path of the judges makes them discretionary in their decision because there is no harmonized legal instrument to determine this. The absence of a harmonized approach raises questions about consistency and clarity in determining the admissibility of evidence in election petitions.

Not just this: the Electoral Act 2022 also provides that the Commission shall maintain a National Electronic Register of Election Results, which shall be an electronic database of polling unit results and collated election results of every election it conducts. The Act further states that the National Electronic Register of Election Results shall be admissible in evidence and shall be prima facie proof of the matters contained therein. This is a new provision that recognizes the use of technology in elections and the evidential value of electronic records, which



are not explicitly covered by the Evidence Act.

Furthermore, the Electoral Act 2022 stipulates that any document required to be tendered in evidence by the Commission or any party may be received in evidence if the document is certified by the maker of the document, or any other person authorized by the maker of the document or by law to certify it. This is similar to the Evidence Act, which allows certified copies of public documents to be admissible as evidence. However, the Electoral Act 2022 does not specify the mode or form of certification, unlike the Evidence Act, which prescribes the manner and form of certification for different types of public documents.

This is a question challenging the sui-generis nature of the election petition – this maxim underscores that it is in a class of its own because it is neither civil nor criminal. However, the Evidence Act, which is the legal instrument that governs the admissibility of evidence in civil and criminal cases, sometimes conflict with the Electoral Act. It is then important to note that the unique nature of election matters necessitates a set of rules and laws distinct from those governing civil and criminal proceedings to prevent unwarranted legal technicalities due to cross-referencing or election matter dependence on other legal instruments beyond the Constitution.

**Over-reliance on legal technicalities:** Finalizing the evidential challenges in election petitions - it was also observed that some of the evidence was thrown out because it was not front-loaded (filed alongside the petition when initiating the case). Frontloading involves filing the list of witnesses and evidence alongside the initial petition, ensuring transparency, and preventing ambush tactics. Despite its procedural significance, the concept of front-loading often resides in the realm of legal technicalities. It contributes to the transparency and fairness of proceedings. However, in the past -excessive reliance on such procedural rules overshadowed the substantive issues of a case, and these procedural intricacies have led to the dismissal of a case on grounds unrelated to its core merits. This often produces questions in the mind of an average Nigerian who, most times, finds these intricacies challenging to grasp, creating a potential gap in their understanding of election adjudication.

Given the above, over-reliance on legal technicalities has its impact on citizen trust in elections and the electoral justice system. Some of these include:

- **Perception of Unfairness:** Excessive reliance on legal technicalities, especially if it leads to the dismissal of meritorious cases, can create a perception of un-

fairness among citizens. They may view the electoral justice system as favoring procedural rules over the pursuit of justice.

- **Loss of Confidence:** Citizens may lose confidence in the electoral process if they perceive that legal technicalities are used to dismiss valid concerns or evidence of irregularities. This loss of confidence can extend to both the electoral management bodies and the broader justice system.
- **Potential for Social Unrest:** A widespread perception that the electoral justice system is inaccessible or biased due to technicalities could lead to social unrest. Because of the perception of bias, politicians may be discouraged from actively participating in post-election dispute resolution – they may resort to alternative means of expressing their dissatisfaction, potentially resulting in protests or other forms of civic unrest.
- **Undermining the Rule of Law:** If citizens perceive that legal technicalities are used inconsistently or unfairly, it can erode the foundational principle of the rule of law. The credibility of the legal system may suffer, impacting citizens' trust in the judiciary.

Addressing the impact of legal technicalities on citizen trust in elections and the electoral justice system requires a comprehensive approach. Striking a balance between procedural rigor and substantive justice, ensuring transparency in legal processes, and actively engaging in public education initiatives are crucial steps toward maintaining and building citizen trust in the electoral justice system.

## **The Burden of Proof and the Need for the Preponderance of Evidence**

In Nigeria, the courts operate an adversarial system<sup>33</sup> based on the Anglo-Saxon model of justice<sup>34</sup>. The judge maintains the balance between the parties to the action and decides the case on the evidence brought by both sides and by applying extant laws. This form of legal system sees that an accused person is presumed innocent until proven guilty. The prosecution, to prove its case, must prove it beyond reasonable doubt<sup>35</sup>. This is no different from the judicial system guiding Nigeria's post-election dispute resolution process, despite the general belief that it is in a class of its own. The EPT follow the adversarial nature of proceedings – the parties (petitioners and respondents) actively present their cases, call witnesses, and cross-examine each other. Also, it follows the principle of burden of proving allegation as that of the adversarial system where the party making the claim, in

this case, the petitioner, is to prove beyond reasonable doubt.

In the election petition, matters are won on the preponderance of the evidence, and *allegations of criminality, such as corrupt practices, demand a higher standard*—proof beyond a reasonable doubt. The standard of proof for corrupt practices in election petition cases is beyond reasonable doubt. The courts held in *Tunji V. Bamidele*<sup>36</sup> and *Doma V. INEC*<sup>37</sup> that where a petitioner alleges fraudulent cancellations, mutilations, or alterations, he must establish that there were cancellations, alterations, or mutilations in the electoral documents, and that the cancellations, alterations or mutilations were dishonestly made with a view to falsifying the result of the election.

Whether on the preponderance of the evidence or proof beyond a reasonable doubt, it behooves the petitioner to prove all claims made in their petition, and should they fail in this responsibility, then their petition fails automatically. This principle was emphasized in the court's decisions in the cases of *Omisore v. Aregbesola*<sup>38</sup>, *Audu v. INEC*<sup>39</sup> and *Emmanuel v. Umana*<sup>40</sup>.

Furthermore, to prove substantial non-compliance, the following listed processes are important for the petitioner to do:

- Petitioner must first plead the acts which amount to the alleged non-compliance. The pleading must be clear and precise enough to sustain the evidence in proof of such allegations.
- Secondly, they must tender cogent and compelling evidence to prove that such non-compliance occurred in the election.
- Thirdly, the noncompliance substantially affected the result of the election to the detriment of the Petitioner.

This was established in the case of *WAZIRI & ANOR V. GEIDAM & ORS*<sup>41</sup> and *ISYAKA & ANOR. V. AMOSUN & ORS*.<sup>42</sup> Navigating the intricate landscape of substantial non-compliance becomes even more complex. Section 135(1) of the 2022 Electoral Act introduces a safeguard, asserting that an election shall not be invalidated unless non-compliance substantially affected the result. This provision, echoed in *Buhari & Anor V. Obasanjo & Ors*<sup>43</sup>, places the onus on the appellant to establish both substantial non-compliance and its consequential impact on the election outcome.

*The case of Buhari & Anor V. Obasanjo & Ors at the Supreme Court interpreted S. 139(1) of the 2010 Electoral Act (which is in pari materia with S. 135(1) of the 2022 Electoral Act, that.*

*... after due consideration of the cases referred to above, I have no doubt that the learned Justice of the Tribunal rightly interpreted the provision of S. 139(1) of the Electoral Act 2010. This, in effect, means that the onus lies on the appellant to establish first substantial non-compliance and, secondly, that it did or could have affected the result of the election.*

However, the perennial challenge arises in defining *what constitutes “substantial” non-compliance* or *what level of non-compliance is substantial enough*. The law is silent on this; it leaves that decision to the tribunal/court by making the verdict discretionary – “as it appears to the election tribunal or court.

While intended to provide flexibility, this discretionary power inevitably raises concerns about the potential subjectivity in rendering verdicts. In an EPT review survey by the International Foundation for Electoral System (IFES), diverse opinions among 130 Election Petition Tribunal Judges and Justices further highlight the lack of consensus on what constitutes substantial compliance. Opinions on the gauge for measuring substantial compliance include:

- The adduced tribunal or court can determine substantial compliance or non-substantial compliance.
- Where the evidence before me as a judge shows that a substantial number of registered voters had participated and voted in the election.
- Where the election is devoid of violence.
- The gauge for measuring “substantial compliance” as stated in section 139(1) is sufficient in my opinion.
- ‘Substantial compliance ‘ relates to fulfilment of essential requirements of something that satisfies its purpose or objectives. So, in relation to election matters, satisfaction of the general requirements will satisfy the requirement of substantial compliance.
- That INEC performed its duty in accordance with the law.
- There cannot be any agreeable gauge. The law should just insist on complete compliance otherwise the election should be nullified.
- If it seems the petitioner has complied up to 70 -90% with the requirements of the Rules.
- If it is established that fundamental requirements have been met.
- It should be gauged on the conduct exhibited by the parties from the beginning to the conclusion of the election process.
- Both the Court of Appeal and the Supreme Court have set out conditions for substantial compliance with the Electoral Act in a plethora of cases.
- If proven non-compliance does not adversely affect the result of the election,

then there is substantial compliance.

The absence of a clear, universally applicable standard leaves room for varied interpretations and judgments, creating a conundrum in adjudicating election disputes. What one tribunal might perceive as substantial non-compliance, another might view differently, leading to inconsistency in legal precedents.

## **The Burden of Proof and the Electoral Adjudication Timelines**

Proving substantial non-compliance in a presidential election places an immense burden on petitioners if the petitioner alleges corrupt practices in the election and calls for the election's nullification. The petitioner must prove and provide evidence from a significant portion of the 774 local government areas and the 176,846 polling units designated by INEC. Compounded by the Rules of Procedure for Election Petition, as outlined in the 2022 Electoral Act (Paragraph 41(10)(e)), petitioners are mandated to present their case within a constrained timeframe of 7 weeks.

This seven-week window, integral to the 180 days stipulated by the 1999 Constitution for resolving election disputes, raises critical questions about feasibility. If petitioners opt to present evidence from a substantial number of polling units, the timeline may prove insufficient. The burden of proof becomes not just a matter of evidentiary weight but a logistical and temporal challenge.

The absence of a predefined threshold places the petitioner in the daunting position of proving irregularities in all claimed polling units, subject to discretionary determination by judges. Here, the suggested 25% threshold could offer a structured approach to evaluating substantial non-compliance, ensuring a fair and consistent application of the law.

Moreover, the burden of proof is exacerbated by the tight 21-day period allotted for filing a petition. While frontloading evidence is a procedural safeguard, petitioners, reliant on party agents and, at times, INEC for documentation, face hurdles in accessing essential materials within this timeframe. The recent strains on INEC, including manpower shortages and the post-election workload, contribute to this challenge.

Given the complexities and potential barriers, a critical question emerges: Is the

21-day window sufficient for petitioners to compile comprehensive evidence, especially when reliance on INEC is impeded? ***The question then becomes whether INEC should have the burden of proof because it is the commission that conducted the election, or it should be the nominal party that will provide documentary evidence.***

### **INEC's Responsibility: Proving the Quality of Elections or Nominal Parties' Obligation?**

A pivotal review in the landscape of election disputes centers on the allocation of the burden of proof. As stated earlier, the burden of proof rests on the petitioner. Many have said that the burden to prove claims in election petitions swings to the respondent. Nevertheless, it is no gainsaying that the evidence presented by the petitioner weighs more and, most times, determines the outcomes of the petition. There are increasing conversations regarding whether this weighty responsibility should rest on the shoulders of the Independent National Electoral Commission (INEC) or should squarely be the obligation of the nominal parties to furnish the necessary documentary evidence. Considering that INEC is the constitutional body entrusted with conducting the election,

Conversations with election experts, academics, CSOs, and lawyers at the Technical Review meetings show divergent views on this. The majority think INEC should be the party proving that the election it conducted was free and fair and is in compliance with the legal frameworks. Those who believe in placing the onus on INEC argue that the commission is uniquely positioned to provide a comprehensive and unbiased account of the proceedings as the primary body in charge of election administration and electoral processes. INEC's intimate involvement in the election's execution suggests that it holds a wealth of information crucial for resolving disputes. However, opposing views believe that INEC should be considered a nominal party responsible for supplying documentary evidence. The term "nominal party" implies that INEC might be involved in the legal process but not necessarily as the primary party responsible for proving or disproving claims in the petition. To further the argument – it was posited that if INEC is proving or disapproving claims, it puts the Commission in a position of joining forces with a party (either the respondent or the petitioner). It is important to note that the Commission should be an unbiased umpire.

What is not in doubt at this point is - the current role of INEC in post-election dispute resolution, as one of the respondents put INEC in a position where the

Commission consciously and unconsciously teams up with the first respondent. There were instances where INEC adopted the briefs or addresses of the first respondent. Also, during the observation and monitoring period, there were instances where INEC objected to the judges admitting documentary evidence that the commission issued or certified for the petitioner.

The perceived alignment of the Independent National Electoral Commission (INEC) with the respondent in election disputes carries profound implications for the fairness and credibility of the electoral process. INEC, entrusted with impartially overseeing elections, risks losing its perceived neutrality if it appears to be collaborating with one party, especially the respondent. This compromises the fundamental principle of INEC's independence, inviting questions about its ability to operate free from political influence. Such a scenario not only undermines the legitimacy of election outcomes but also erodes public confidence in the electoral system, potentially leading to reduced civic trust, legal challenges, and unrest.

We at KDI believe the resolution of this is basically finding a delicate balance between its role as an election manager and its obligation to maintain impartiality in post-election dispute resolution. To ensure that INEC remains an unbiased umpire in the electoral dispute resolution process. – INEC's role should primarily be as a nominal party to actively provide information, evidence, and expert testimony to help the courts or tribunals understand the electoral processes and procedures. Nevertheless, INEC should be called upon to defend the conduct of elections and explain the adherence to legal frameworks in instances where the grounds of the petition border on non-compliance with the legal frameworks.

## How the Presidential Election Petition Court Judgment Could Shape Nigeria's Political and Electoral Environment

*It is no news that all parties whose petitions were refused at the PEPC went on an appeal at the Supreme Court. The Supreme Court delivered its judgment on the appeals filed by Peter Gregory Obi of the Labour Party (LP) and the appeal of Abubakar Atiku of the Peoples' Democratic Party (PDP) On the 26th of October 2023. The judgment was telecast live. However, the APM withdrew its appeal less than 24 hours before the 23rd of October 2023, the day set aside for adopting the Appellants and Respondents' brief of argument. The Legal team of APM stated that the withdrawal was done after proper consultation with their client, APM. By the unanimous decision of a 7-man panel, led by Justice Inyang Okoro, the appeals of Atiku Abubakar of PDP and Peter Gregory Obi of LP were dismissed for lacking in merit.*

While the judiciary plays a crucial role in resolving electoral disputes and upholding the rule of law, when the result of every election is overly dependent on court pronouncement, it has significant implications for the country's democracy and future elections. Below are key points highlighting the likely implications of this pivotal ruling.

- **The judgement can impact future electoral dispute resolution processes:** the judgement posited that the issue of nomination borders on pre-election, and the tribunal does not have jurisdiction to hear the cases because the time has elapsed- citing the supreme court judgment of PDP vs INEC & 2ORS to support its position. This has implications for the ongoing EPT tribunals. Before the PEPC judgement, some 2023 Legislative EPTs in the states had already given their verdict on the double or invalid nomination and certificate forgery, nullifying the return of the candidates. One major one is the Elumelu Ndudi Godwin, PDP Versus INEC, LP, and Okolie Ngozi Lawrence – House of

*The petitioners (Elumelu Ndudi Godwin & PDP) prayed for the Tribunal to disqualify the respondent (Okolie Ngozi Lawrence) because he was not qualified to contest the election. Furthermore, the petitioners stated that the respondent was not properly sponsored by the Labour Party (LP), and he did not resign as a public office holder before contesting the election.*



*In the judgment, the three-member tribunal panel nullified the respondent's declaration as the election winner. The tribunal held that the Labour Party did not duly sponsor its candidate and that he was not a party member as of May 28, 2022, when the primary was purportedly held. This the petitioner proved by tendering the Labour Party members register to the tribunal to show that 30 days before the election, the Respondent, Okolie Ngozi Lawrence, was not yet a registered member of the Labour Party. The petitioner argued that this contravenes sections 77 (2) & (3) of the Electoral Act, 2022 and sections 65 and 66 of the Constitution of the Federal Republic of Nigeria. Moreso, the tribunal ruled in favour of the petitioner that the respondent did not resign from public office before contesting the election. Also, he continued to collect salaries and emoluments in breach of the law. Consequent to these, the return of Okolie Ngozi Lawrence of the Labour Party was nullified, and the petitioner. (Elumelu Ndudi Godwin of PDP), who was the first runner-up, was declared and returned as the election winner.*

The judgment on Nkiruka Onyejiocha & APC vs. Hon Amobi Ogah & Labour Party was another notable pre-PEPC's judgment.

*The EPT sitting in Umuahia, Abia State, nullified the election of Hon Amobi Ogah of the Labour Party, and declared Nkiruka Onyejiocha as the winner of the Isikwuato/Umunneochi federal constituency polls. Delivering judgement in the petition, the EPT panel held that Ogah's emergence as LP candidate did not comply with the provisions of the Electoral Act. According to the ruling, "How a candidate is sponsored by a political party is both pre- and post-election matter".*

After the PEPC judgement, not much changed. Between September 7 and 15, some EPTs nullified the elections of some candidates that INEC declared winners based on invalid and or double nominations. Some of these include:

- Plateau State EPT set aside the declaration made by INEC for the Jos South/ Jos East Federal Constituency Election and nullified the Dachung Bagos (PDP) elections. The Court declared Ajang Alfred as the rightful poll winner and ruled that the PDP candidate was not validly nominated by his party.
- Imo State EPT nullified the election of Hon. Ikenga Ugochinyere on the grounds of invalid nomination.
- Also, in Enugu, the Tribunal has nullified the election of Rt Hon Barr Sunday Cyriacus Umeha representing Udi/Ezeagu Federal Constituency. The Court said that he failed to properly resign his PDP membership before picking the

LP ticket. It declared PDP candidate Festus Uzor as the winner. By implication, these judgments may have been written by the EPT judges before the PEPC judgement and were based on the evidence before them. These judgments may be appealed to the appellate Court (Court of Appeal). Considering that the appellate court judges had already ruled that the issue of nomination borders on pre-election, and the tribunal does not have jurisdiction to hear the cases because the time has elapsed. Implicatively, most tribunal judgements will likely be set aside at the Court of Appeal.

Furthermore, there were judgments that aligned with the position of the PEPC on the invalid and double nomination as pre-matter. Implicatively, this may mean that the EPT Panel in these states only rely on the submission of the PEPC and not necessarily the evidence placed before them.

*To avoid the conflicting judgement from EPTs as it is now – it is important to amend section 134 of the Electoral Act 2022 to exclude the issue of nomination unambiguously from issues that can fall under not qualified to contest or non-compliance with the provision of the electoral act– because this is mostly the grounds where most politicians cite to back up their claims.*

*Additionally, there is a need to amend the constitution and the electoral act to limit the extent of appeal on pre-election litigation after the FHC verdict to just the Court of Appeal. This would reduce the overall amount of time to put finality to pre-election cases.* Practically, before the 2023 general elections, Close to 2,000 pre-election cases were filed in the FHC; 815 were appealed at the Court of Appeal, and over 400 got to the Supreme Court for final appeal. Invariably, it took 12 months to finalize over 400 pre-election cases. Suppose all the above amendments are not done as suggested. In that case, there might likely be an increase in the number of pre-election cases in consequent elections since the Court(s) process cannot stop the conduct of the election based on the provision of section 84 (15) of the Electoral Act. This may then see more pre-election cases disrupting the planning and preparation of INEC and other stakeholders for the election because of the uncertainty the court cases will create.

- Deepening the lack of confidence in electoral management bodies (INEC): INEC, before the election, has consistently maintained that the commission will transmit and make available results from the polling unit to the IReV through the BVAS machine. This is equally contained in the INEC guideline

for the said election. While it is a settled law that INEC is not mandated to transmit results electronically, an inability to transfer snapped copies of form EC8A at the polling units to IReV does not invalidate the result declared. It is important to note that the commission didn't significantly live up to the promise – The voting population may have difficulty trusting the institution's words based on this recent experience. The tribunal's pronouncement may signal that INEC can fail in its own promises and the provision of its guidelines. This can deepen the negative public perception that INEC is working towards changing.

- Furthermore, section 134 (2) of the Electoral Act 2022 should be amended to allow for the omissions and mistakes made by the commission's ad-hoc or permanent staff in elections based on the commission's instructions and directives as outlined in its Guidelines to be sufficient grounds for questioning the elections.

*134 (2) 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 this Act shall not of itself be a ground for questioning the election.*

As it stands now, section 134(2) inhibits electoral management accountability because INEC may disregard or politician may influence INEC or ad hoc staff to disregard the commission's guideline, and it won't be enough ground to question the validity of the elections.

*Aside from the preceding, the judgement posited that BVAS functions are limited to verifying voters by identification and authentication of the voter through fingerprints or facial recognition and storing the data of accredited voters. The judgement concluded that nothing in the Electoral Act and INEC Regulation showed that BVAS was meant to be used electronically to transmit or transfer results to the collation system. The judgment rightly mentioned that IReV is not a collation system, which is common knowledge, and that section 62(1) expressly provides that after recording and announcement of the results, the presiding officer shall deliver the result along with election materials under tight security to the person prescribed by INEC. Also, the INEC guideline expressly said that hard copies of election results should be used for collation.*

This shows that BVAS is only recognized by the law as only authentication and accreditation device - outside this, any other functionality of BVAS is just for INEC administrative purposes.

It is no news that most stakeholders welcomed the idea of scanning the polling unit result through BVAS to the IReV when INEC introduced it because it made the result management process more transparent. The polling unit is often regarded as the most authentic, and having the pictures sent directly to a database where everyone sees the figures is a step in the right direction. However, if results scanned to IReV are collated, and there are disparities from what was gotten from what INEC declared, it is not a ground to approach the Court because the law doesn't recognize IReV.

*With the quest for election result integrity and transparency, it is then important to move Paragraphs 38 (ii) and (iii) into the INEC guideline into the Electoral Act 2022 to be an alternative for the result collation other than just the manual process.* Both can be complimentary – The IReV can serve as a control to the manual collation. Moreover, we believe that e-transmitting results will reduce the risk of physical violence and make the process faster.



## **Comparative Analysis of Presidential Election Petition Judgment**

Presidential post-election dispute resolution is not new to Nigeria - The first presidential election held on August 11, 1979 in Nigeria after its independence was contested in court. Shehu Shagari (NPN), Obafemi Awolowo (UPN), and Nnamdi Azikiwe (NPP) were candidates in the election. Shagari won with 33.77% of the total votes. Awolowo, who got 29.18%, contested the result, arguing that Shagari didn't meet the required two-third majority in 13 states. Shagari won 12.66 states, plus 19.9% in Kano State, just 0.66% short. The Supreme Court however ruled in Shagari's favor<sup>44</sup>.

Since the advent of the fourth republic, aggrieved presidential candidates have been filing petitions at the court: The table below the details of petition filed and the decision of the court<sup>45</sup>.

<i>Presidential Election</i>	<i>Court Petition/Comments</i>	<i>Court Decision/Comment</i>
1979	Obafemi Awolowo v Shehu Shagari & Others (SC62 of 12979 [1979]] NGSC 49 of September 26, 1979]	Chief Awolowo's petition dismissed by Supreme Court
1983	Waziri Ibrahim v Shehu Shagari 1983 LCN/2173SC	Alhaji Waziri Ibrahim's petition dismissed by Supreme Court
1993	No petition. Result not declared and no candidate returned by the National Electoral Commission. Candidates were M.K. Abiola (SDP) and Bashir Tofa (NRC);	a) Association for Better Nigeria (ABN) obtained court injunction on June 10, 1993, stopping the election; b) NEC ignored injunction and conducted the elections; on June 12, 1993 c) ABN obtained another injunction on June 15, 1993, halting counting, verification and declaration of the result; d) NEC complied with the court injunction and did not declare results of the elections.
1999	Chief Olu Falae v Chief Olusegun Obasanjo	Chief Falae's petition dismissed by Court of Appeal. No appeal to Supreme Court.
2003	Muhammadu Buhari (ANPP) v Olusegun Obasanjo (PDP	Muhammadu Buhari's petition dismissed by Supreme Court
2007	Muhammadu Buhari (ANPP) v INEC & 4 Others (SC51/2008)	Muhammadu Buhari's petition dismissed by Supreme Court
2011	Muhammadu Buhari (CPC) v Goodluck Jonathan (PDP	Muhammadu Buhari's petition dismissed by Supreme Court
2015	No petition	
2019	Atiku Abubakar (PDP) v Muhammadu Buhari (APC)	Atiku Abubakar's petition dismissed by the Supreme Court
2023	Bola Ahmed Tinubu vs. Peter Obi and Atiku Abubakar	The tribunal dismissed all petition and upheld Tinubu's victory. Same was the position of the Supreme Court on the matter.

### *Comparative Analysis of Presidential Election Petition Judgement*

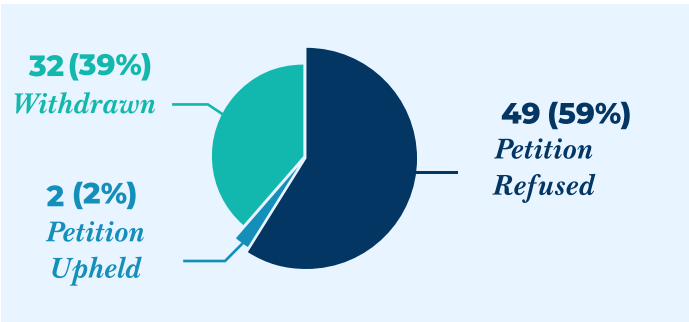
	<i>2015</i>	<i>2019</i>	<i>2023</i>
Petitions Filed	0	4	5
Petition Refused	0	2	3
Petitions Withdrawn	0	2	2
Petitions Upheld	0	0	0

## Governorship Election Petition Tribunal

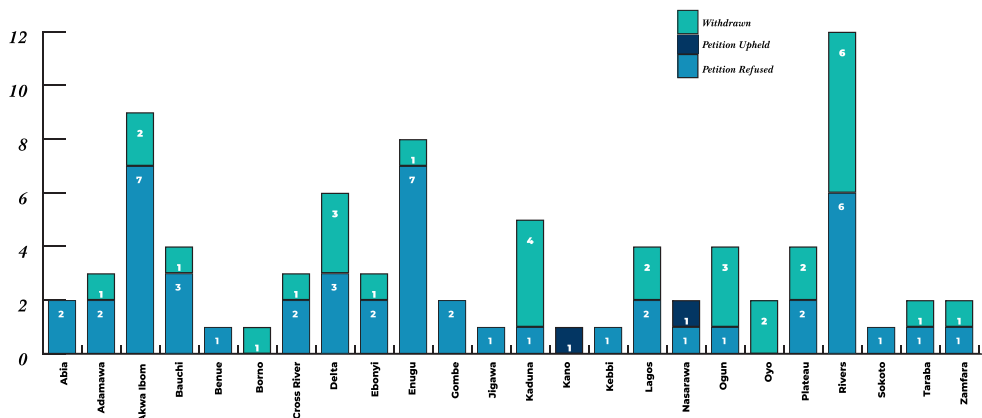
The Governorship Election Petition Tribunal for Nigeria's March 18th, 2023 elections received 83 petitions from 24 states. Some states, including Rivers, Akwa-Ibom, Enugu, and Delta, saw many petitions filed. Within the allowed 180 days, 49 of the 83 petitions were resolved against the petitioners.

**83**  
*Petitions were filed across 24 states that had Governorship Elections in Feb., 25, 2023*

*Disaggregation of 2023 Governorship Election Petition Tribunal Judgment*



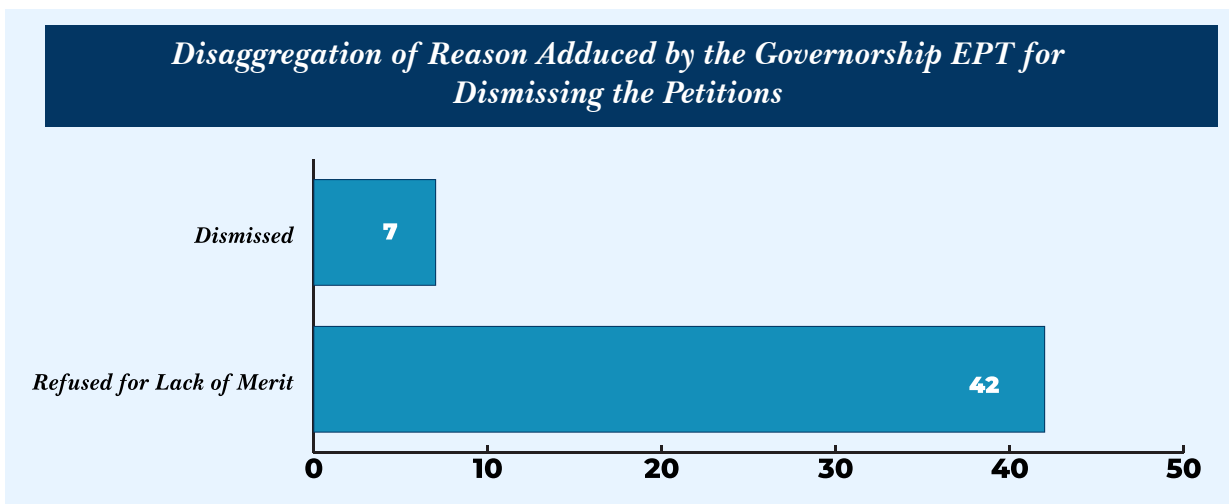
### Disaggregation of Governorship Petition into Decisions by State



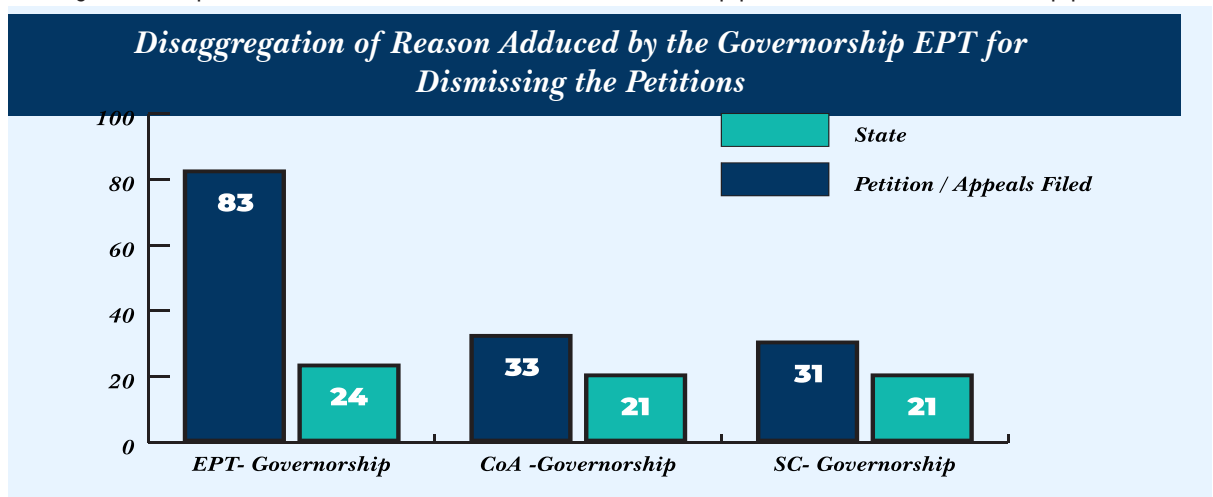
Out of the 83 petitions filed, 32 petitions were withdrawn, some due to a unanimous decision of the party and others due to financial constraints, underscoring practical challenges faced by petitioners. Notably, only two (2) petitions succeeded, reflecting the demanding nature of establishing cases at the tribunal -the Nasarawa governorship election was resolved in favour of PDP and its candidate, having been able to prove that the returned candidate did not win the election by a majority of the lawful votes cast in the State. In a decision of 2:1 panel member, the victory of the returned candidate of APC, Engr. A.A. Sule was nullified. However, the dissenting voice of one of the panel members dismissed the peti-

tion for lacking merit. The second petition was the governorship election petition of APC, and its candidate, Nasir Gawuna of Kano State, also succeeded at the EPT. The election of Abba Kabir Yusuf, gubernatorial candidate of NNPP, was held to be flawed with irregularities. The petitioner was also able to prove overvoting in many polling centers. The EPT subtracted the over-voted figure from the score of the declared winner and gave victory to the petitioner.

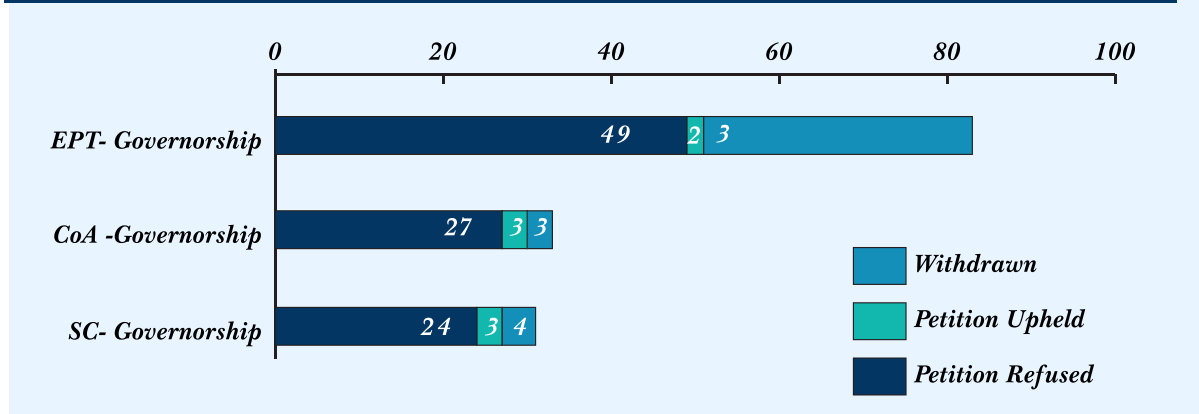
Of the 49 petitions resolved against the petitioner, 42 were dismissed for lacking merit and 7 for lack of diligent prosecution. This highlights the critical issue of the burden of proof in election disputes, with petitioners required to present convincing evidence. Challenges arose in obtaining necessary documentary evidence, often held by the election management body, INEC. The frequent joining of INEC as a respondent raised questions about its role, with suggestions that it should serve as a friend of the court rather than a respondent to facilitate smoother access to vital documentation.



KDI continued her tracking of the governorship election petition – After the Court of First Instance (EPT) gave their judgements on the governorship petitions – Many of the petitioners in 21 states went on an appeal at the Court of Appeal.



### Disaggregation of Reason Adduced by the Governorship EPT for Dismissing the Petitions



Petition Details	State	EPT	CoA	Supreme Court
EMMANUEL DAVID OMBUGADU, & PDP VS INEC, SULE AUDU ALHAJI, & APC	Nasarawa	Petition Upheld	Appeal Upheld (This time Sule was the appellant)	Appeal Refused (This time Ombugadu was the appellant)
NASIR GAWUNA, & APC VS INEC, ABBA KABIR YUSUF, & NNPP	Kano	Petition Upheld	Appeal Refused (This time Abba Kabir was the appellant)	Appeal Upheld (This time Abba Kabir was the appellant)
BELLO MUHAMMAD MATAWALLE, & APC VS DAUDA LAWAL, PDP, & INEC	Zamfara	Petition Refused	Appeal Upheld (This time Matawalle was the appellant)	Appeal Upheld (This time Dauda Lawal was the appellant)
DR. NENTAWE TILWATDA GOSHWE, & APC VS INEC, MUTFWANG CALEB MANASSEH, & PDP	Plateau	Petition Refused	Appeal Upheld (This time Dr Nentawe was the appellant)	Appeal Upheld (This time Mutfwang was the appellant)

*Note: The table only shows the flow of governorship petitions or appeals that were upheld or granted at one adjudication stage or another. 79 governorship petitions that are not on the table mean that the petitions were refused by the EPT to the appellate court or were not appealed to the higher court.*

Based on the table above and the overall petition filed for governorship elections- None of the candidates returned by INEC for governorship elections were dismissed by the Apex Court. Implicatively, it is a legal affirmation of the electoral outcomes, reinforcing the legitimacy of the candidate's declared winners by the electoral commission. For the candidates, it means that their victories have withstood legal scrutiny, providing a strong validation of their electoral mandates.



The courts' affirmation suggests that the election results were conducted in substantial compliance with the electoral laws and principles, and any challenges brought forward by petitioners failed in proving substantial irregularities or violations that would warrant a reversal of the declared outcomes.

However, it's important to note that the legal process is just one aspect of electoral legitimacy, the citizen perception is also another phenomenon that confers legitimacy on electoral officer. Public trust in the electoral process is essential for the smooth functioning of democratic governance. It ensures that the elected officials have the mandate and support of the people, which is crucial for effective policy implementation and public cooperation. Therefore, while legal validation is vital, the broader citizen perception and trust in the electoral system contribute significantly to the overall legitimacy of elected leaders and the democratic process.

## Comparative Analysis of Governorship Election

Comparing details of petitions across three election cycles shows that petitions filed in governorship elections increased across the election years.

<i>Comparative Analysis of Governorship Election Petitions in 2015, 2019 and 2023</i>			
	<i>2015</i>	<i>2019</i>	<i>2023</i>
Petitions Filed	36	67	83
Petition Refused	17 (47.2%)	30 (44.8%)	42 (50.6%)
Petitions Dismissed	8 (22.2%)	15 (22.4%)	7 (8.4%)
Petitions Upheld	3 (8.3%)	1 (1.5%)	2 (2.4%)
Petitions Withdrawn	1 (2.8%)	21 (31.3%)	32 (38.8%)

## Governorship Election Petitions

SN	STATE	GPZ	Petition Number	Petitioner(s)	Respondent(s)	Grounds of petition	Tribunal's judgement	
							DECISION	REASON(S)
1	Delta	South South	EPT/DL/GOV/1/23	PELA KAWHER-IEBIE KENNEDY, & LP	INEC, OBOR-EVWORI SHERIFF FRANCIS OROHWEDDOR, HON. MONDAY ONYEME, PDP, OMO-AGEGE OVIE AUGUSTINE, OSANEBI FRIDAY, & APC	["NQC"; "NCC"]	Petition Refused	Petition dismissed for lack of diligent prosecution.
2	Delta	South South	EPT/DL/GOV/2/23	GBAGI KENNETH OMEMAVAWA, & SDP	INEC, PDP, SHERIFF FRANCIS OROHWEDDOR OBOREVWORI, MONDAY ONYEME, APC, OMO-AGEGE OVIE AUGUSTINE, FRIDAY OSANEBI, LP, KENNEDY K. PELA, JULIE NWAGOGO MUKORO, APGA, GREAT OVEDJE OGBORU, & CHINEDU SYDNEY ALLANAH	["NQC"; "NCC"; "LMV"]	Petition Refused	Petition dismissed for lacking in merit.
3	Delta	South South	EPT/DL/GOV/4/23	HON. JENKINS DUVIE GIANE CWEDE	INEC, PDP, & OBOREVWORI SHERIFF FRANCIS OROHWEDDOR	["NQC"]	Withdrawn	Petitioner withdrew the petition and the same was consequently struck out.

4	Akwa Ibom	South South	EPT/AKW/GOV/03/23	SENATOR JOHN JAMES AKPANU-DOEDEHE, & NNPP	ENO UMO BASSEY, PDP, & INEC	["NCC", "LMV"]	Petition Refused	27/09/23. Dismissed for lacking in merit.
5	Delta	South South	EPT/DL/GOV/5/23	APP	SHERIFF OBOREWORI, PDP, & INEC	["NCC", "LMV"]	Withdrawn	Voluntarily withdrawn, and petition consequently struck out.
6	Delta	South South	EPT/DL/GOV/3/23	OMO-AGEGE OVIE AUGUSTINE, & APC	INEC, OBOR-EWORI SHERIFF FRANCIS OROHWEDOR, & PDP	["NCC", "LMV"]	Petition Refused	Petition dismissed for lacking in merit.
7	Borno	North East	EPT/BOR/GOV/01/2023	UMAR ALKALI, & NNPP	UMAR BABAGANA, APC, & INEC	["NCC"]	Withdrawn	Dismissed having been withdrawn by the Petitioner.
8	Delta	South South	EPT/DL/GOV/6/23	ESTHER ESEVO-HARE, & AA	INEC, PDP, OBOREV-WORI SHERIFF FRANCIS OROHWEDOR, & ONYEME MONDAY	["NCC", "LMV"]	Withdrawn	Voluntarily withdrawn, and petition consequently struck out.
9	Gombe	North East	EPT/GM/GOV/02/23	NAFIU BALA, & ADC	MUHAMMAD INUWA YAHAYA, MANASSEH DANIEL JATAU, APC, & INEC	["NCC", "NC-C", "LMV"]	Petition Refused	Dismissed for lacking in merit.
10	Gombe	North East	EPT/GM/GOV/01/23	JIBRIN MUHAMMAD BARDE, & PDP	INEC, APC, & YAHAYA MOHAMMED INUWA	["NCC", "NC-C", "LMV"]	Petition Refused	Dismissed for lacking in merit.
11	Rivers	South South	EPT/RV/GOV/12/23	MRS. BEATRICE ITUBO, & LP	INEC, REC RIVERS STATE, SIR SIMINALAYI FUBARA, & PDP	["NCC", "NC-C", "LMV"]	Petition Refused	Dismissed for lacking in merit.

12	Rivers	South South	EPT/RV/GOV/01/23	MR. TEKENA IYAG-BA, & BOOT PARTY	INEC, SIR SIMINALAYI FUBARA, & PDP	["NQC"; "NC-C"; "LMV"]	Withdrawn	Petition dismissed having been voluntarily withdrawn.
13	Rivers	South South	EPT/RV/GOV/02/23	INNOCENT EKWU, & APM	SIMINALAYI FUBARA, PROF. (MRS.) NGOZI NMA ODU, PDP, & INEC	["NQC"; "NC-C"; "LMV"]	Petition Refused	Petition dismissed for lacking in merit.
14	Rivers	South South	EPT/RV/GOV/03/23	APM	INEC, & FUBARA SIMINALAYI	["NQC"; "NC-C"; "LMV"]	Withdrawn	No Comment
15	Rivers	South South	EPT/RV/GOV/04/23	APP	SIMINALAYI FUBARA, PDP, & INEC	["NCC"; "LMV"]	Withdrawn	No Comment
16	Rivers	South South	EPT/RV/GOV/05/23	EMİYAREI ETETE SOBERE, PDP, & INEC	INEC, PDP, SIR SIMINALAYI	["NCC"; "LMV"]	Petition Refused	Petition dismissed for lacking in merit.
17	Rivers	South South	EPT/RV/GOV/06/23	DR. LEESI GABRIEL CBOROGBOSI, & APP	SIR SIMINALAYI FUBARA, PDP, & INEC	["NQC"; "NCC"]	Dismissed	No Comment
18	Rivers	South South	EPT/RV/GOV/07/23	BENJAMIN ABED-NEGO, & AA	INEC, PDP, SIMINALAYI FUBARA, & NGOZI ODU	["NQC"; "NC-C"; "LMV"]	Withdrawn	No Comment
19	Rivers	South South	EPT/RV/GOV/09/23	SEN. MAGNUS NGEI ABE, & SDP	INEC, SIMINALAYE FUBARA & PDP	["NCC"; "LMV"]	Withdrawn	No Comment
20	Adamawa	North East	EPT/AD/GOV/02/23	DR. UMAR ARDO, & SDP	INEC, UMARU FINITIRI, AMOS YUSUF, & PDP	["NCC"; "LMV"]	Petition Refused	2/10/23. Petition dismissed for being incompetent, defective, incongruous, and not properly instituted. Cost of #200,000 awarded against the Petitioners.

21	Adamawa	North East	EPT/AD/GOV/03/23	ACTION ALLIANCE	INEC & 3 ORS	["NCC", "LMV"]	Withdrawn	Dismissed having been withdrawn by the Petitioner.
22	Nasarawa	North Central	EPT/NS/GOV/02/23	NNPP, & YAKUBU ABDULLAHI MAIDOYA	INEC, ALHAJI ABDULLAHI SULE, DR EM-MANUEL AGBADU AKABE, & APC	["NCC"]	Petition Refused	Dismissed for lacking in merit.
23	Nasarawa	North Central	EPT/NS/GOV/01/23	EMMANUEL DAVID OMBUGADU, & PDP	INEC, SULE AUDU ALHAJI, & APC	["LMV"]	Petition Upheld	Two (2) panelists of the tribunal held that the petition had merit and accordingly granted the reliefs sought. One (1) petitioner gave a dissenting judgment dismissing the petition for lacking in merit.
24	Ebonyi	South East	EPT/EB/GOV/01/23	ODOH BENARD, & APC	INEC, NWU-FURU FRANCIS OGBONNA, & APC	["NCC"]	Petition Refused	Dismissed for lacking in merit.
25	Ebonyi	South East	EPT/EB/GOV/02/23	CHUKWUMA ODII IFEANYI, & PDP	INEC, NWU-FURU FRANCIS OGBONNA, & APC	["NCC"]	Petition Refused	The reliefs sought by the petitioners are dismissed in its entirety for lacking in merit.
26	Zamfara	North West	EPT/ZM/GOV/02/23	BELLO MUHAMMAD MATAWALLE, & APC	DAUDALAWAL, PDP, & INEC	["NCC"]	Petition Refused	Dismissed for lacking in merit and being without any probative merit.
27	Ebonyi	South East	EPT/EB/GOV/03/2023	CHIJINDU ODI, & AA	INEC, APC, & NWU/FURU FRANCIS OGBONNA	["NCC", "LMV"]	Withdrawn	Dismissed having been withdrawn by the Petitioners.

28	Sokoto	North West	EPT/SK/GOV/01/23	SAIDU UMAR, & PDP	ALIYU AHMED SOKOTO, MOHAMMED GOBIR IDRIS, APC, & INEC	["NCC", "LMV"]	Petition Refused	Dismissed for lacking in merit. Tribunal discounted all witnesses, affirmed that the primary certificate of the deputy governor was authentic, and affirmed that all tendered documents are dismissed for lacking in merit.
29	Cross River	South South	EPT/CR/GOV/03/23	AMB. WILFRED OTSANG BONSE, & NNPP	OTU BASSEY EDET, & APC, & INEC	["NCC"]	Petition Refused	The Petitioner failed to prove substantial non-compliance to the Electoral Act, 2022 and therefore their Petition failed.
30	Cross River	South South	EPT/CR/GOV/02/23	SENATOR PROFESSOR SANDY OJANG ONOR, & PDP	INEC, SENATOR BASSEY EDET OTU, HON. PETER ACBE ODEY, & APC	["NQC", "NC-C", "LMV"]	Petition Refused	Petition dismissed for lacking in merit.
31	Cross River	South South	EPT/CR/GOV/01/23	UZONG GEORGE MOSES, & AA	INEC, APC, OTU BASSEY EDET, & ODEY PETER EDET	["NQC", "NC-C", "LMV"]	Withdrawn	Struck out having withdrawn same.
32	Oyo	South West	EPT/OY/GOV/02/23	AA, & BABATUNDE SAMSON AJALA	INEC, MAKINDE OLU-SEYI ABIODUN, & PDP	["NCC"]	Withdrawn	Voluntarily withdrawn and consequently dismissed.
33	Oyo	South West	EPT/OY/GOV/01/23	APM	INEC, PDP, & MAKINDE OLU-SEYI ABIODUN	["NCC", "LMV"]	Withdrawn	Voluntarily withdrawn and consequently dismissed.

34	Kano	North West	EPT/KN/GOV/01/23	NASIR CAWUNA, & APC	INEC, ABBA KABIR YUSUF, & NNPP	["NQC", "NC-C", "LMV"]	Petition Upheld	Tribunal invalidated the election of the Respondent having deducted a good number of votes from the Respondent on the basis that the ballot papers were not duly stamped and signed and therefore invalid.
35	Enugu	South East	EPT/EN/GOV/01/23	EDEOGA CHIJOKE JONATHAN, & LP	INEC, & MBAH PETER NDUBUISI	["NCC"]	Petition Refused	Dismissed for lacking in merit. Parties to bear their cost.
36	Enugu	South East	EPT/EN/GOV/02/23	HON. ONMEJE NNAMDI, & ADP	INEC, PETER NDUBUISI MBAH, & PDP	["NCC", "LMV"]	Withdrawn	Dismissed having been withdrawn by the Petitioners.
37	Enugu	South East	EPT/EN/GOV/03/23	HON. CHRISTOPHER AGU, & PRP	INEC, PETER NDUBUISI MBAH, & PDP	["NCC", "LMV"]	Petition Refused	Dismissed for lacking in merit. Court held that to prove certificate forgery, a Petitioner ought to present the original certificate of the alleged forged certificate.
38	Enugu	South East	EPT/EN/GOV/04/23	APP	MR. PETER MBAH, & PDP, & INEC	["NCC", "LMV"]	Dismissed	Dismissed for lack of diligent prosecution.

39	Enugu	South East	EPT/EN/GOV/05/23	UCHE GEOFFREY NNAJI, & APC	MBAH PETER NDUBUISI, & PDP, & EDEOGA CHIJOIKE JONATHAN, & LP, & NWEKE FRANK NNAEMEKA (NRI), & APC, & INEC	["NCC", "LMV"]	Dismissed	Dismissed for lack of diligent prosecution.
40	Enugu	South East	EPT/EN/GOV/07/23	FRANK NNAEMEKA NWEKE (NRI), & APC	PETER MBAH NDUBUISI, & PDP, & INEC	["NCC"]	Petition Refused	Dismissed for lack of diligent prosecution.
41	Enugu	South East	EPT/EN/GOV/08/23	ACTION ALLIANCE	INEC, & PETER NDUBUISI MBAH, & PDP	["NQC"]	Dismissed	Petition dismissed for lack of diligent prosecution.
42	Enugu	South East	EPT/EN/GOV/06/23	COSMOS OKEY, & AA	INEC, & PETER NDUBUISI MBAH, & PDP	["NCC", "LMV"]	Dismissed	Dismissed for lack of diligent prosecution.
43	Rivers	South South	EPT/RV/GOV/08/23	MR. WENIKE-BRIGGS DANA-GOGO	PDP, SIR. SIMINALAYI FUBARA, INEC, REC, CHIEF (BAR) EZENWONYESOM WIKE	["NCC", "LMV"]	Petition Refused	Petition dismissed for lacking in merit.
44	Rivers	South South	EPT/RV/GOV/10/23	COLE TONYE PATRICK, & APC	INEC, FUBARA SIMINALAYI, & PDP	["NQC", "NCC"]	Petition Refused	Dismissed for lacking in merit.
45	Rivers	South South	EPT/RV/GOV/11/23	LULU-BRIGGS DUMO OWUKORI, & A	SIMINALAYI FUBARA, PDP, INEC, IGP, COLE TONYE PATRICK, APC, ABE MAGNUS NGEI, SDP, ITU-BO BEATRICE, & LP	["NCC", "LMV"]	Withdrawn	Voluntarily withdrawn.
46	Bauchi	North East	EPT/BA/GOV/01/23	HALLIRU DAUDA JIKA, & NNPP	INEC, MOHAMMED BALA ABDULKADIR, & PDP	["NCC", "LMV"]	Petition Refused	Petition dismissed for lacking in merit.



47	Bauchi	North East	EPT/BA/GOV/02/23	ABUBAKAR SADIQUE BABA, & APC	INEC, MOHAM-MED BALA ABDULKADIR, & PDP	["NCC", "LMV"]	Petition Refused	Petition dismissed as the Tribunal held that there is no strong reason to nullify the election as same was conducted in compliance with the law.
48	Bauchi	North-East	EPT/BA/GOV/03/23	APM, & AUWAL ISAH	INEC, MOHAM-MED BALA ABDULKADIR, & PDP	["NCC", "LMV"]	Withdrawn	Petition dismissed having been withdrawn.
49	Taraba	North East	EPT/TR/GOV/01/23	MR. UMARU DAN-JUMA, & APP	INEC, & PDP, & KEFAS AGBU	["NCC"]	Withdrawn	Dismissed upon being withdrawn by the Petitioner.
50	Taraba	North East	EPT/TR/GOV/02/23	YAHAYA MOHAM-MED SANI, & NNPP	INEC, PDP, & KEFAS AGBU	["NCC"]	Petition Refused	Dismissed for lacking in merit.
51	Ogun	South West	EPT/OC/GOV/01/23	NNPP	INEC, ABIODUN ADEDAOLOUSE-GUN, & APC	["NQC", "NC-C", "LMV"]	Withdrawn	No Comment
52	Ogun	South West	EPT/OC/GOV/02/23	AA, & AWOFALA AWOLOLA AWONI-YI	INEC, & DAPO ABIODUN, & APC	["NCC"]	Withdrawn	No Comment
53	Benue	North Central	EPT/BN/GOV/01/23	UBA TITUS, & PDP	INEC, ALIA HYACINTH IORMEM, SAMUEL ODE, & APC	["NQC"]	Petition Refused	Dismissed for lacking in merit.

54	Ogun	South West	EPT/OC/GOV/03/23	ADEBUTU OLADI- POPU OLATUNDE, & PDP	INEC, & ADEDAPU ABIODUN OLUSEUN, & APC	["NCC"]	Petition Refused	Dismissed for being incompetent. The tribunal held that it was declared incompetent because it referred to INEC result as "purported result".
55	Ogun	South West	EPT/OC/GOV/04/23	APP	PRINCE ADEDAPU OLUSEGUN ABIODUN, APC, & INEC	["NCC", "LMV"]	Withdrawn	No Comment
56	Akwa Ibom	South South	EPT/AKW/GOV/02/23	MR. AKANIMO A. UDOFIA, & APC	INEC, PASTOR UMO BASSEY ENO, PDP, SEN. ALBERT BASSEY AK- PAN, & YPP	["NQC", "NCC"]	Petition Refused	Dismissed for lacking in merit.
57	Akwa Ibom	South South	EPT/AKW/GOV/06/23	APM	INEC, PDP, & ENO UMO BASSEY	["NCC", "LMV"]	Withdrawn	Petitioner voluntarily withdrew the petition and same was struck out.
58	Akwa Ibom	South South	EPT/AKW/GOV/01/23	AKPAN ALBERT BASSEY, & YPP	INEC, ENO UMO BASSEY, & PDP	["NQC", "LMV"]	Petition Refused	29/09/23. Dismissed for lacking in merit.
59	Akwa Ibom	South South	EPT/AKW/GOV/05/23	APP	MR. ENO UMO BASSEY, PDP, & INEC	["NCC", "LMV"]	Dismissed	Dismissed for lack of diligent prosecution.

60	Akwa Ibom	South South	EPT/AKW/GOV/09/23	ENGR. EMEM COFFIE, & ACCORD PARTY	INEC, PASTOR UMO ENO, & PDP	["NQC", "NC-C", "LMV"]	Petition Refused	Petition dismissed for being unmeritorious and lacking in merit.
61	Lagos	South West	EPT/LAG/GOV/01/23	DR. AZEEZ OLA-JIDE ADEDIRAN, & PDP	INEC, MR. SANWO-OLU BABAJIDE OLUSOLA, DR. HAMZAT KADIRI OBAFEMI, APC, ARCH. RHODES-VI-VOUR GBADEBO PATRICK, & LP	["NQC", "LMV"]	Petition Refused	Petition dismissed for lacking in merit. The name of the LP's candidate was struck out from the Petition. Tribunal described the Petitioner as a "busy body".
62	Lagos	South West	EPT/LAG/GOV/02/23	APM	INEC, SANWO-OLU BABAKIDE OLUSOLA, APC, & HAMZAT KADIRI OBAFEMI	["NQC", "NC-C", "LMV"]	Withdrawn	Voluntarily withdrawn by the petitioner and consequently dismissed.
63	Lagos	South West	EPT/LAG/GOV/03/23	APP	MR. BABAJIDE OLUSOLA SANWO-OLU, APC, & INEC	["NCC", "LMV"]	Withdrawn	Petitioner voluntarily withdrew the petition, and it was accordingly struck out.
64	Lagos	South West	EPT/LAG/GOV/04/23	GBADEBO PATRICK RHODES-VI-VOUR	INEC, BABAJIDE OLUSOLA SANWO-OLU, DR. KADIRI OBAFEMI, HAMZAT, & APC	["NQC", "NC-C", "LMV"]	Petition Refused	Petition devoid of merit and consequently dismissed.

65	Plateau	North Central	EPT/PL/GOV/02/23	DABWAN ALFRED CLARK, & NNPP	INEC, MUTF-WANG CALEB MANASSEH, & PDP	["NQC", "NCC"]	Petition Refused	Petition dismissed for lacking in merit. the Tribunal clarified that the unlawful exclusion of the petitioners logo does not constitute valid grounds for the trial tribunal to quash the election.
66	Plateau	North Central	EPT/PL/GOV/03/23	DR. NENTAWE TIL-WATDA GOSHWE, & APC	INEC, MUTF-WANG CALEB MANASSEH, & PDP	["NQC", "NCC"]	Petition Refused	Petition dismissed for lacking in merit.
67	Plateau	North Central	EPT/PL/GOV/04/23	SOLOMON NANDY CHENDAN, & ADC	INEC, BARR. CALEB MUTFWANG, & PDP	["NQC", "NCC"]	Withdrawn	Petition was withdrawn by the Petitioner and the matter was struck out.
68	Plateau	North Central	EPT/PL/GOV/01/23	APM	INEC, MUTFWANG CALEB MANASSEH, & PDP	["NQC", "NCC"]	Withdrawn	Struck out of the cause list after the petition was voluntarily withdrawn by the Petitioners.
69	Zamfara	North West	EPT/ZM/GOV/01/23	AA	INEC, PDP, LA-WAL DAUDA, & SANI KABIRU	["NCC"]	Withdrawn	the petition was withdrawn and consequently dismissed.
70	Abia	South East	EPT/AB/GOV/1/23	CHIEF OKECHUKWU AMBROSE AHWE, & PDP	INEC, DR. ALEX CHIOMA OTTI, & LP	["NQC"]	Petition Refused	Petition dismissed for lacking in merit.

71	Abia	South East	EPT/AB/GOV/2/23	HIGH CHIEF IKE-CHI EMENIKE, & APC	INEC, LP, DR. ALEX CHI-OMA OTTI, PDP, CHIEF AMBROSE OKECHUKWU AHIWE, YPP, & HON. CHIMA ENYINNAYA NWAFOR	["NOC"; "NCC"; "LMV"]	Petition Refused	Petition dismissed for lacking in merit.
72	Jigawa	North West	EPT/JG/GOV/01/23	LAMIDO MUSTAPHA SULE, & PDP	INEC, NAMADI UMAR ALHAJI, & APC	["NCC"; "LMV"]	Dismissed	Dismissed for lack of diligent prosecution.
73	Kebbi	North West	EPT/KB/GOV/1/23	BANDE AMINU, & PDP	INEC, IDRIS NASIR, ABUBAKAR UMAR ARGUNGU, & APC	["NOC"; "NCC"]	Petition Refused	Petition lacked merit to warrant the cancellation of the election. Votes were deducted for both APC and PDP from Polling centers where there was over voting. However, the Tribunal held that those deductions did not affect the margin of lead.

74	Kaduna	North West	EPT/KD/GOV/4/23	MOHAMMED ASH-IRU ISA, & PDP	INEC, SANI UBA, & APC	["NCC", "LMV"]	Petition Refused	Preliminary objection succeeds on ground that Petitioners failed to apply for pre-hearing notice within time, therefore petition was dismissed. The merit of the petition was determined and the election declared inconclusive, re-run ordered in affected polling centers.
75	Kaduna	North West	EPT/KD/GOV/1/23	AA, & AMB SULEIMAN ABDULRASH- EED	INEC, APC, UBA SANI, & ADAMU TIMOTHY SHERMAN	["NCC"]	Withdrawn	No Comment
76	Kaduna	North West	EPT/KD/GOV/2/23	HON. JONATHAN ASAKE, & LP	INEC, SENATOR UBA SANI, & APC	["NCC", "LMV"]	Withdrawn	No Comment
77	Kaduna	North West	EPT/KD/GOV/5/23	SULEIMAN OTH- MAN HUNKUYI, & NNPP	UBA SANI, APC, INEC, MOHAM- MED ASHIRU ISA, PDP, ASAKE JONA- THAN, & LP	["NCC", "NC- C", "LMV"]	Withdrawn	No Comment
78	Kaduna	North West	EPT/KD/GOV/3/23	ADP	SEN. UBA SANI, APC, & INEC	["NCC", "NC- C", "LMV"]	Withdrawn	No Comment
79	Bauchi	North East	EPT/BA/GOV/04/23	PRP, & UMAR FA- ROUK AHMED	INEC, MOHAM- MED BALA ABDULKADIR, & PDP	["NCC", "LMV"]	Petition Refused	Petition dismissed for lacking in merit.
80	Adamawa	North East	EPT/AD/GOV/01/23	DAHIRU AHMED AISHATU, & APC	INEC, UMARU AHMADU FIN- TIRI, & PDP	["NCC", "LMV"]	Petition Refused	Petition dismissed for lacking in merit.

81	Akwa Ibom	South South	EPT/AKW/GOV/04/23	ARC. EZEKIEL NYA-ETOK, HON. UDOMAH JAMES UDUAK, & ADC	INEC, PAS-TOR UMO BASSEY ENO, PDP, BASSEY ALBERT AKKAN, YPP, AKAN UDOFIA, APC, SENATOR JOHN JAMES AKKAN UDO-EDEHE, NNPP, UDUAK UDOH, & LP	["NOC", "NC-C", "LMV"]	Petition Refused	Dismissed for lacking in merit.
82	Akwa Ibom	South South	EPT/AKW/GOV/07/23	JEREMIAH UDOH AKKAN, & AA	INEC, PDP, ENO UMO BASSEY EYAK-ENYI AKON ETIM	["NCC", "LMV"]	Withdrawn	No Comment
83	Akwa Ibom	South South	EPT/AKW/GOV/08/23	AKKAN JEREMIAH UDOH, & AA	INEC, PDP, & ENO UMO BASSEY	["NCC", "LMV"]	Petition Refused	Petition dismissed for being unmeritorious and lacking in merit.

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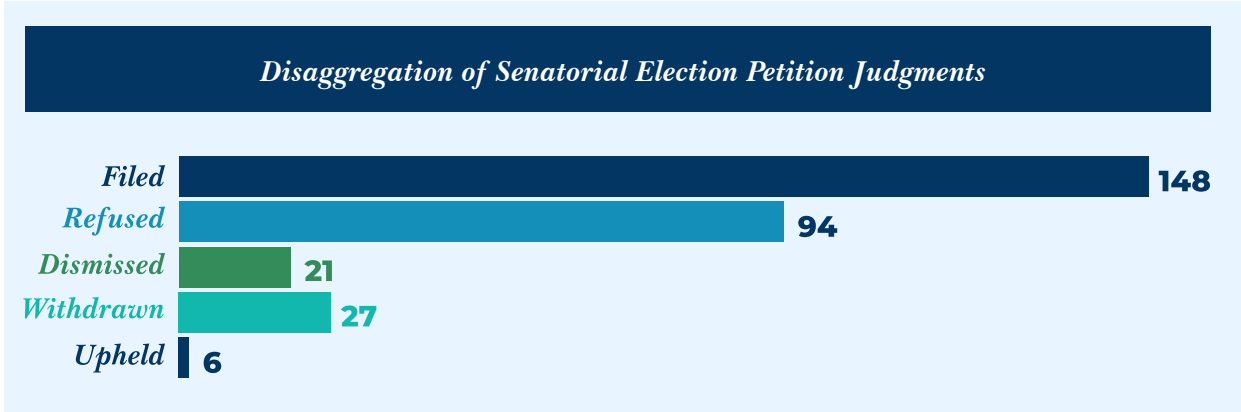
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# Legislative Election in the 2023 General Elections. (Infographics Session)

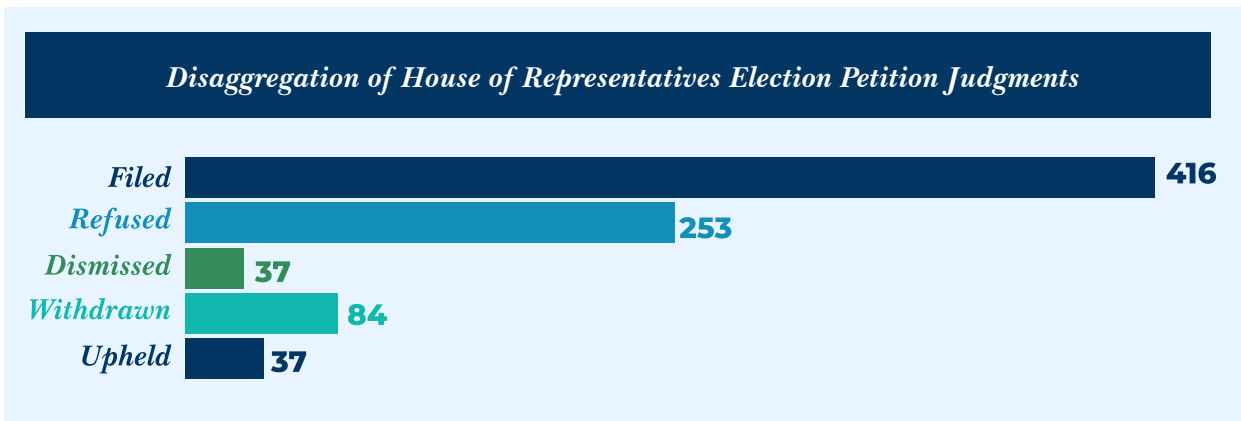
## Senatorial Election Petition Tribunal



*Comparative Analysis of Senatorial Election Petitions in 2015, 2019 and 2023*

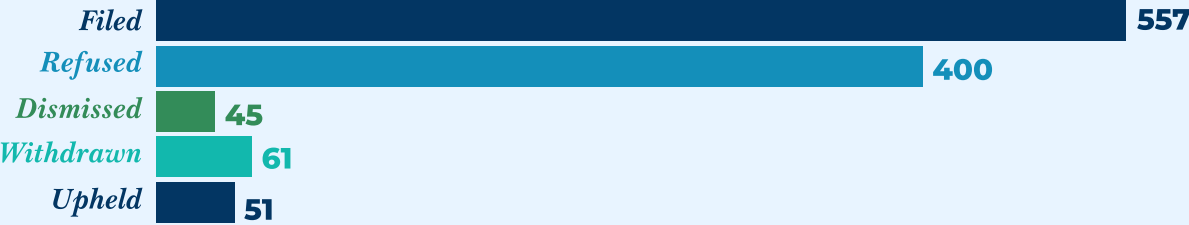
	2015	2019	2023
<b>Petitions Filed</b>			148
<b>Petition Refused</b>	68.05%	78.26%	94 (%)
<b>Petitions Dismissed</b>	11.12%	6.52%	21 (%)
<b>Petitions Withdrawn</b>	18.05%	15.22%	27 (%)
<b>Petitions Upheld</b>	2.78%	0%	6 (%)

## House of Representatives Petition Tribunal



# State House of Assembly Petition Tribunal

## Disaggregation of State House of Assembly Election Petition Judgements



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# 07.

## Recommendations

Having monitored the resolution of election disputes that arose from the 2023 general elections from the election petition tribunal stage through to the Court of Appeal and the Supreme Court, and in line with the overall goal of the EPT monitoring project, which is “to produce a tool for stakeholders’ engagement towards the improvement of elections and electoral justice system, KDI makes the following recommendations:

## Judiciary

- **Enhance Literacy Standards for Bailiffs:** Recognizing that literacy issues among bailiffs are systemic, it is recommended that the recruitment of lower cadre judicial officials align with broader public office requirements. This alignment will ensure that the judiciary maintains high standards in adjudicating election petitions, minimizing errors that could result from literacy challenges. This recommendation seeks to address a fundamental issue in the judicial system and elevate the quality of personnel involved in electoral dispute resolution.
- **Address Infrastructure Gaps in Courtrooms:** To enhance the well-being of judicial personnel and court users, it is recommended to address infrastructure gaps in courtrooms, including issues of accessibility and ventilation. Conducting regular audits and prioritizing necessary upgrades can create a conducive environment for all stakeholders involved in the electoral dispute resolution process.
- **Promote Gender-Inclusive Legal Environment:** Implement various strategies to promote gender inclusivity in election petitions, including capacity-building, financial support, legal assistance, political institution support, and celebrating success stories of women in legal challenges. These recommendations aim to remove barriers and encourage more women to participate in election petitions, fostering gender equality and representation.
- **Enhance Public Understanding of Judicial Processes:** The judiciary should self-regulate to balance the need for public information and the avoidance of detrimental media trials. Establish a public relations department within the court to educate the public on judicial processes, especially during sensitive cases like elections. Additionally, collaborate with Civil Society Organizations and government agencies for public enlightenment to share the burden of education on the justice system.
- **Limit Extent of Appeal on Pre-Election Litigation:** Amend the constitution and electoral act to limit the scope of appeal on pre-election litigation after the Federal High Court ruling to mainly the Court of Appeal and leave the Su-

preme Court out of the pre-election concerns. This approach seeks to shorten the overall time spent resolving pre-election cases, thereby increasing certainty and reducing disruptions to election planning and preparation.

- **Train and Retrain of Judicial Officers:** The judiciary should prioritize the comprehensive training and retraining of all its officers, starting from the lowest cadre. This training should incorporate modules on integrity and quality service delivery. By addressing issues related to illiteracy among bailiffs, this recommendation aims to elevate the overall competence and professionalism of the judiciary, fostering a more effective and reliable electoral dispute resolution process.
- **Reconsider Payment Modes for Court Processes:** To enhance accessibility and streamline the payment process, the judiciary should reconsider the mode of payment for court processes. Recognizing the challenges faced by lawyers in generating Remita retriever reference numbers and network issues, a reevaluation of payment methods can contribute to a more efficient and user-friendly system, ensuring timely filing of processes.
- **Set Criteria for Approaching the Court:** Establishing clear criteria for approaching the court, such as restricting parties that gather less than 20% of the vote from filing certain petitions, except it is on the question of valid vote. This can help curtail the number of petitions without merit. This recommendation seeks to align the motivation for approaching the court with substantive grounds, discouraging frivolous filings and promoting a more discerning use of the electoral dispute resolution mechanism.
- **Adapt Electoral Justice Systems to reflect of the current reality of the of the social media:** Electoral justice systems should adapt to the evolving challenge of disinformation. This involves developing clear guidelines, investing in fact-checking efforts, and collaborating with social media platforms to curb the spread of false information. By actively addressing disinformation, this recommendation seeks to uphold the integrity of electoral processes and maintain public trust in the democratic system.

## Legislature

- **Implement a Specific Timeline for Personal Service:** It is recommended that a specific timeline be established for personal service in election petition cases to mitigate delays. Delays arising from the lack of a defined timeframe for personal service can impact the overall hearing timeline, particularly in providing each party with sufficient time to present their cases. This recommendation aims to streamline the process and enhance the efficiency of the

electoral dispute resolution system.

- **Streamline Appellate Processes for Presidential Election Petitions:** There is a pressing need to streamline the post-election dispute resolution process, particularly for presidential election petitions. KDI recommends a reevaluation of the current multi-tiered appellate structure. The proposal advocates for a direct route for presidential election disputes to the Supreme Court. Drawing inspiration from successful models in other African jurisdictions, such as Kenya, where the Supreme Court serves as the primary tribunal for presidential election disputes, this adjustment aims to expedite the resolution process. By consolidating the layers of appeal, not only can this approach save valuable time and resources, but it also reduce unnecessary tensions associated with prolonged litigation of the existing system.
- **Uphold the Sui Generis Nature of Election Petitions:** The sui generis nature of an election petition should be upheld and regarded with utmost importance. This maxim underscores the unique nature of election matters, necessitating a set of rules and laws distinct from those governing civil and criminal proceedings to prevent unwarranted legal technicalities. Considering this perspective, we suggest that the provisions outlined in the second schedule of the Electoral Act 2022, in conjunction with the 1999 Constitution of the Federal Republic of Nigeria as amended, offer sufficient guidance for the Election Petition Tribunal processes and proceedings. Any necessary expansions or additions to the electoral laws can be seamlessly incorporated within the Electoral Act, eliminating cross-referencing or dependence on other legal instruments beyond the Constitution.
- **Establishment of a Specialized Electoral or Constitutional Court:** To lessen the overwhelming caseload of electoral disputes on regular court, it is recommended to establish a specialized court dedicated to pre- and post-election dispute resolution, including handling electoral offenses. Alternatively, reducing the chain of appeals, particularly for presidential election petitions, can expedite the resolution process. Drawing inspiration from successful models in other African jurisdictions to enhance the efficiency of the electoral justice system in Nigeria.
- **Ensure True Judicial Independence:** A call is made for true judicial independence. As long as the court is not financially autonomous from the state to the federal level, there is a great possibility that the electorates will continue to perceive the judiciary's financial dependency on the executive as a huge opportunity for the judiciary to be compromised and politicized.
- **Scrutinize Substance of cases during Pre-Hearing Conference:** Sections

285 (6) and (10) of the Constitution, along with sections 131 (6) and 132 (8) of the Electoral Act 2022, should undergo amendment to incorporate provisions stipulating that the substance of cases be scrutinized during the pre-hearing conference stage. This measure aims to assess whether the prayers presented are meritorious enough to progress to the hearing stage. By implementing this amendment, the adjudication process can prevent frivolous cases from advancing to the hearing stage, thereby averting the waste of the court's time and alleviating the burden on the legal system. Despite the recognized principle of fair hearing, certain legal matters, such as party nomination issues explicitly addressed by the Supreme Court, should be efficiently filtered at the pre-hearing stage to curtail redundant filings.”

- **Shifting Burden of Proof and Redefining INEC's Role:** Amend electoral laws to allow the burden of proof to shift among petitioners, respondents, and INEC. This recommendation seeks to clarify the responsibilities of each party in proving claims and underscores INEC's role as a nominal party, providing information and expert testimony to aid the courts. Redefining INEC's role aims to ensure unbiased participation in electoral dispute resolution.
- **Establish a Clear Standard for Substantial Non-Compliance:** Address the challenge of varied interpretations in determining substantial non-compliance by establishing a predefined threshold inspired by constitutional provisions. This recommendation aims to introduce a clear, universally applicable standard akin to the 25% requirement to ensure consistent interpretation and application across diverse cases.
- **Review Prosecution Powers Regarding Electoral Offences:** Amend Section 133(3) and 144 of the Electoral Act to review INEC's prosecution powers for electoral offences, transferring such powers to an independent body. This recommendation aims to ensure impartiality in the prosecution process and prevent any perception of INEC acting as a judge in its own case.
- **Avoid Courts Directly Declaring Winners:** While ensuring fairness and resolving disputes, it is recommended that courts refrain from directly declaring winners based on the interpretation of the majority of valid votes cast. Instead, focus on facilitating recounts and audits conducted by independent bodies to maintain the integrity of the democratic system. This approach upholds the principle that citizens remain the ultimate decision-makers in elections.
- **Review Unclear Provisions in the 2022 Electoral Act:** Addressing unclear and controversial sections of the 2022 Electoral Act, particularly issues like electronic transmission and collation of results, is essential. Clarity in legal provisions will minimize ambiguity and prevent discretionary interpretation by

INEC. This recommendation aims to provide a clear and unambiguous legal framework for electoral processes, fostering transparency and legal certainty. For instance, section 134(2) of the Electoral Act 2022 should be amended to allow omissions and mistakes made by INEC's ad-hoc or permanent staff to be grounds for questioning elections, provided they align with the commission's instructions and directives. The current provision inhibits accountability, as violations of INEC guidelines, even if influenced by external factors, do not presently constitute sufficient grounds for challenging election validity. This proposed change aims to ensure that adherence to the commission's guidelines is legally imperative, fostering a more transparent and accountable electoral process.

Additionally, the PEPC judgment highlighted the limited functionality of the Biometric Voter Accreditation System (BVAS) as solely an authentication and accreditation device, excluding electronic transmission of results. To address concerns about result integrity and transparency, Paragraphs 38 (ii) and (iii) of the INEC guideline can be incorporated into the Electoral Act 2022 to be an alternative for the result collation other than just the manual process. Both can be complementary – The IReV can serve as a control to the manual collation. Moreover, we believe that e-transmitting results will reduce the risk of physical violence and make the process faster.

### Civil Society Organization

- **CSOs and Academic should Explore the Regional Disparities in Acceptance of Election Results to see lessons that can be learnt:** Given the observed trend of northern states more readily accepting governorship election results, it is recommended that comprehensive research be conducted to explore the influence of cultural and religious factors. The findings can inform programmatic interventions by Civil Society Organizations (CSOs) to shape perceptions and acceptance of election results. This particularly can be used in violence prevention efforts.
- **Media Training on Election Petition Tribunal Reporting:** The media should undergo specialized training on election petition tribunal reporting to ensure accurate and informed coverage. Additionally, engaging political parties on the consequences of sponsoring fake news will contribute to reducing misinformation. By improving media accuracy, this recommendation aims to promote public understanding and trust in the electoral justice system.
- **Civil Society Organizations' Role in Public Education:** Civil Society Organizations (CSOs) should actively engage in educating and enlightening citizens



on the workings of the judiciary. Collaboration and support for the judiciary, similar to the support received by INEC, will contribute to public understanding and trust. Data-driven advocacy will assist in conveying the importance of public perception, fostering a positive image of the justice system.

## INEC

- **Improve Electoral Administration to Reduce Petitions:** Recognizing the correlation between perceived poor election administration and increased petition filings, there is a need to improve the electoral process and clearly articulate some of the electoral laws' conflicting clauses to reduce the number of petitions filed. The number of petitions filed against the 2023 general election increased to 1209 from 811 in 2019. Data also shows that the highest ground on why aggrieved parties approach the court borders on non-compliance with the legal framework and corrupt practices. This shows many believed that the election administration did not follow the required standards.

## Executive

- **De-incentivizing Elective Political Office:** Considering the attractiveness of elective political offices, it is recommended to de-incentivize these positions. The perks and privileges associated with such offices often motivate politicians to pursue election petitions even with minimal chances of success. De-incentivizing elective political office aims to reduce the instrumentalization of the electoral dispute resolution process for personal gains.

These recommendations, based on identified difficulties and opportunities, aim to improve the efficiency, fairness, and transparency of Nigeria's election dispute resolution process. Each recommendation is supported by a justification that emphasizes its importance in addressing certain problems of the electoral justice system.

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# 08.

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