



KIMPACT
DEVELOPMENT
INITIATIVE



Gauging Public Perception
and Citizen's Confidence Level in the
**ELECTION PETITION
TRIBUNALS IN
NIGERIA**

June 2023

www.kdi.org.ng



Disclaimer

This document has been produced by Kimpact Development Initiative (KDI) to provide information on the study done to gauge Public Perception and Citizens' Confidence Level in the Election Petition Tribunals (EPTs) in Nigeria ahead of the 2023 general elections.

KIMPACT hereby certifies that all the views expressed in this document accurately reflect the analysis of the information gathered from the field through trained field researchers. While reasonable care has been taken in preparing this document, KIMPACT shall bear no responsibility for errors or any views expressed herein for actions resulting from the information provided in this report.



About KDI

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.

Since March 2014, KDI has worked with local and International bodies to promote peaceful elections and active citizen engagement in democratic processes and reforms. KDI has administrative structures and partners in all 36 states of Nigeria.

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.

53 | A.N Amosu Avenue | NAF Valley Estate | Behind Mogadishu Barack | Asokoro | Abuja.

1 | Aresa Close | Behind Union Bank Gbodofon Area | Aregbe | Osogbo, Osun.

+234 813 482 8527 | +234 810 394 7690

info@kimpact.org.ng | www.kdi.org.ng

Table of Content

Acronyms_____	2
Background_____	3
About the Study_____	6
The highlight of the study's findings._____	7
Key Findings_____	8
Issues Raised by Respondents _____	17
Recommendations_____	30

Acronyms

KDI	Kimpact Development Initiative
EPT	Election Petition Tribunal
INEC	Independent National Electoral Commission
NJC	National Judicial Council



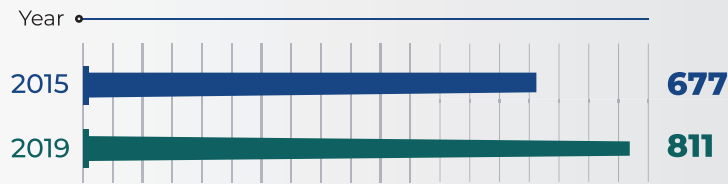
1.0

Background

Background

In Nigeria, the Election Petition Tribunal (EPT) is the true arbiter in election infraction matters – established under Sections 239 and 285 of the Constitution. EPTs remain the 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.

Figure 1: Total Number of Petitions filed Across 36 states and the FCT in 2015 and 2019



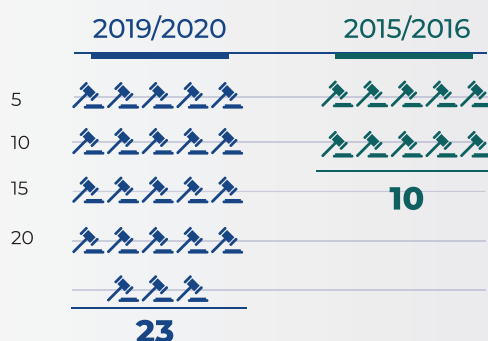
The Election Petition Tribunal (EPT) is established to hear and determine petitions as to whether any political elite, through an undue election, has been elected to an office/position and other related issues.

The Election Tribunals are neither criminal nor civil Courts; though essentially civil in nature, they are usually described as “sui generis”, which means “in a class of its own”. The EPTs are generally ad-hoc in nature. They are to be constituted not later than 30 days before the conduct of an election and, upon being constituted, open their registries for business seven days before the election. Hearing of election petitions must commence and be concluded within 180 days from the filing date of the petition, failure of which pending petitions must abate. Tribunals wind up as the requirement is strict and does not allow for extension, except the occurrence of “Force Majeure” - emergencies or uncontrollable circumstances such as natural disaster, war, or declaration of a national or state emergency which can prevent the filing or hearing of a pre-election matter or election petition by a Court or Tribunal. This is according to the fifth alteration of the Constitution of the Federal Republic of Nigeria, 1999, which was assented to by the president in March 2023. Over the years, there has been a noticeable upsurge in election-related disputes after the conclusion of elections and the declaration of election results. This is seen in the 19.8% increase in petitions filed after the 2015 and 2019 general elections. This is revealed by Kimpact Development Initiative in her Observing the Administration of Electoral Justice in Nigeria (an Analysis of Election Petition Tribunal for the 2019 General Elections). The report revealed that 811 petitions were filed after the 2019 general elections, while 677 were filed after the 2015 general election.

This is similar to the trajectory of the petition filed in the 2019 Bayelsa, Kogi states and 2020 Edo and Ondo state governorship elections. There was a considerable increase in the aggregated number of petitions, from 10 in the 2015/2016 governorship elections to 20 in 2019/2020.

It is important to state that it is in the ambit of the law if any candidates and political parties intend to complain against the conduct of an election, such party and or individual shall do so through a petition presented before a competent Election Tribunal and the Election Tribunals are the direct creation of the Constitution. However, there are a few concerns regarding why many petitions are usually filed before Election Tribunals in Nigeria after every election. This does pose many questions- These include but are not limited to:

Figure 2: Total Number of Petitions filed in off-cycle governorship Elections between 2015 and 2019



- *Are we moving towards a court-dependent democracy?*
- *How much do we want the court to stand in the gap for deficient election management or cover-up for the nation's near-eroded values?*
- *Is there an increase in the political elites and public trust towards the court or not?*

Considering that the Nigerian judiciary has come under severe attack. Specifically, judges have been accused of deliberate conspiracy to frustrate petitioners, corruption (including allegedly selling judgments to the highest bidder), undue politicization of the cases and downright travesty of justice . etc. Hence, it becomes imperative for KDI to gauge the public perception and citizens' confidence level of the Election Petition Tribunal in Nigeria so as to ascertain if the influx of petitions in the election tribunals correlates with political elites and or public confidence in the judiciary to resolve election disputes justly.

Furthermore, many have expressed that the influx of election petitions may be an aftermath of the peace messaging by stakeholders to political elites during elections – encouraging any candidate who is dissatisfied about the outcome or the process of an election to seek redress in the tribunal as against resorting to violence. While some believe the politicians increased love to approach the court after every election may be due to the plausibility of judiciary malfeasance, considering the long-standing perceived corruption in the judiciary. Also, one of the most common thoughts is that after voting on election day, most citizen feels the electoral activities is over and go about their daily routines. Little or no individuals follow the tribunal process. This can be due to many reasons, and we may not be able to say why this is so.

While the foregoing is founded on anecdotal records, KDI found it vital to gauge the perception and confidence level of the public on election petition tribunals in Nigeria in a bid to assess what Nigerians think of the evolving role of the judiciary in the electoral processes. Also, to elicit views and opinions of Nigerians on how citizens are aware and understand what election petition tribunals do, how they function and the acceptability of the verdicts of these tribunals and overall get to know how the system may be improved upon. This is with the belief that citizens' acceptance of the EPT judgement is directly proportional to public perception and trust. Knowing that the electoral justice system is essential for ensuring electoral integrity and accountability. Also, the system has the power to shape the electorate's level of actions and inactions in subsequent electoral processes – considering that public participation has an effect on the sustenance of democracy in a country like Nigeria

The judiciary cannot exist without the trust and confidence of the people.

About the Study

KDI conducted a study across each state in Nigeria and the Federal Capital Territory (FCT) using a mixed-method research design to gauge public perception and citizens' confidence level in the election petition tribunals in Nigeria. A sample size of 1068 respondents was drawn using a random sampling method. Also, a review of secondary sources, in addition to the questionnaires, was used by assessors to support the analysis.

Figure 3

Gender distribution of the respondents

1068 Total Respondents



Figure 4

Age distribution of the respondents

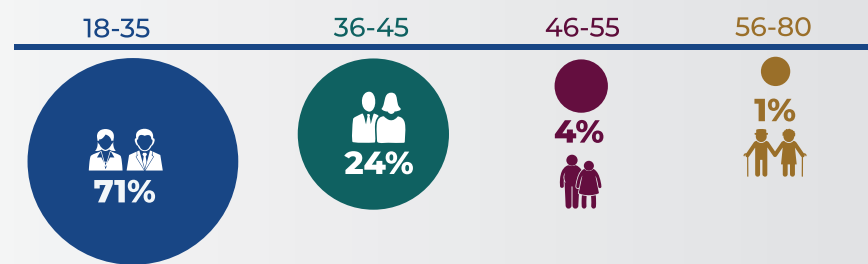


Figure 5

Occupational distribution of the respondents

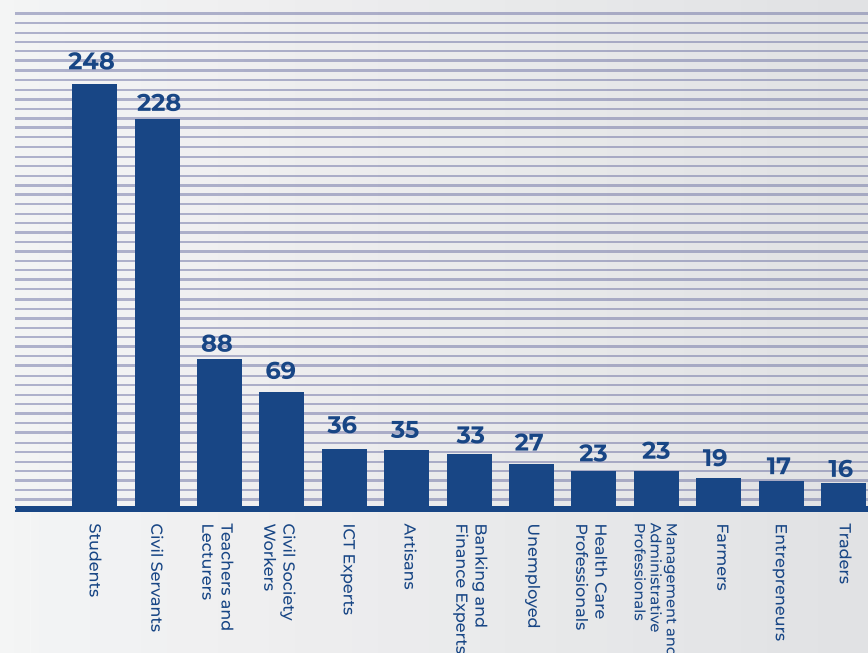
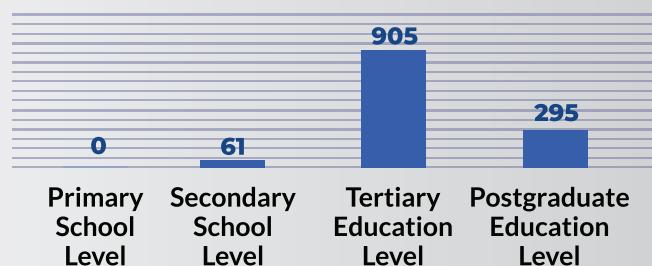


Figure 6:

Level of Education of Respondents



The Highlight of the Study's Findings.

Over 90% of the respondents are registered voters.

- 77% of the registered voters that are respondents of this survey indicated that they have previously heard of EPT, and most of these individuals believed they know the function of the EPT.
- When asked for the details of the EPT functions from those that indicated that they know, Almost half of those who thought they knew EPT's functions did not know!
- Only 68% specified that they followed the EPT process; that is about a 19% drop between those who knew the function and those who followed.
- 33% of the 68% that followed EPT processes did that through social media platforms and online news. At the same time, 25% followed EPT processes through Traditional news like TV News.
- Across the election years, followership of the EPT increased between 2011 and 2019
Off-cycle or bye-elections don't get more followership. The citizen followed more during the election year.
- Of the 13% of the total respondents that did not know the functions of EPT, 40% indicated a lack of understanding of legal terminologies and most of these individuals are between 18-35.
- Of the 33% of the total respondents that did not follow the process of EPT, 33.4% showed that they did not follow the EPT because they were not interested in the process. At the same time, 33.2% indicated that they did not trust the EPT process.

A few things stood out from the two data of people that didn't follow and know the function of EPT.

- Understanding of legal Jargon
- Citizens are disinterested.
- Distrust in the Electoral Justice System



2.0

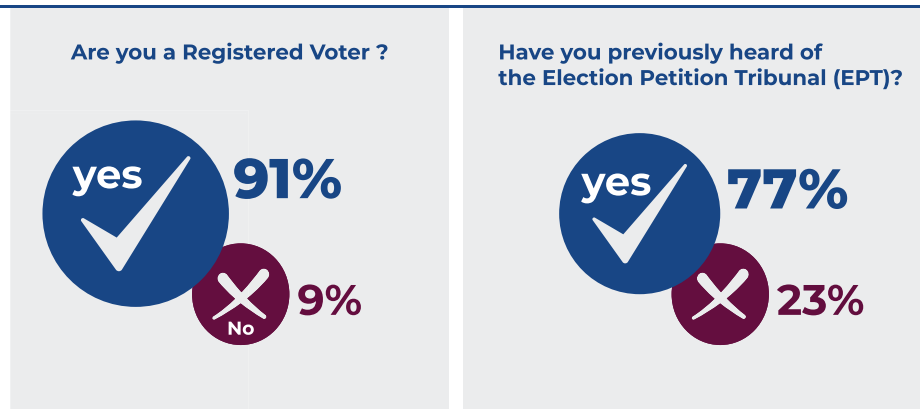
Key Findings

Awareness and knowledge of EPT processes

Most (91%) respondents are registered voters, and 9% are non-registered voters. Of the respondents who are registered voters, a vast number (77%) said they had previously heard of the EPT, while 23% said they had not heard of EPT as a word before.

Equally, the study elicited that of the individuals that have heard of EPT (87%) responded that they are aware of EPT and its functions. Of the 87% of respondents

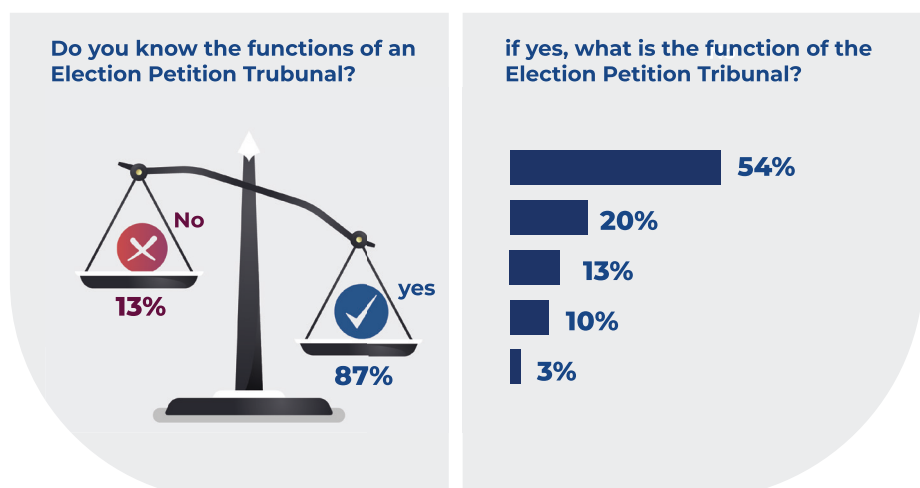
Figure 7 & 8:



that claim to know the functions of the EPT, only 54% were accurate when asked further about the specific functions of the EPT. These individuals opined that EPT is the true arbiter in election infraction matters. Conversation with a select few from this category spoke about the fact that they know EPT has a place where most politicians who are not satisfied with the outcome of an election go for settlement.

Whereas 20% of the 87% who think they know the function of EPT thought that the EPT seeks to put electoral offenders on trial, 13% think EPT aims to determine the extent of criminality in Internal-party Issues, and 10% bluntly opined that they don't know

Figure 9 & 10:



Almost half of those who thought they knew EPT's functions did not know!

The big question remains what could be responsible for the fact that the people who thought they knew turned out not to know?

To clarify certain ambiguity around the election, all stakeholders, including the EPT, rely on specific instruments for interpretation; these instruments include:

- Constitution of the Federal Republic of Nigeria 1999 as amended (CFRN 1999)
- The Electoral Act 2022 (EA 2022)
- The Electoral Judicial Manual (EPT practices direction)

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2022 establish Election Tribunals to adjudicate election disputes. See Sections 239 (1), 285 (1) (2) (3) (4) (5) (6) (7) & (8) of the CFRN 1999 (as amended) and Section 130, 131 (1) of the Electoral Act, 2022.

Constitution of the Federal Republic of Nigeria 1999 as amended.

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.*

285. Time for determination of pre-election matters, establishment of Election Tribunals and time for determination of election petitions

(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.*

(2) There shall be established in each State of the Federation an election tribunal to be known as the Governorship Election Tribunal which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor of a State.

(3) The composition of the National and State Houses of Assembly Election Tribunal and the Governorship Election Tribunal, respectively, shall be as set out in the Sixth Schedule to this Constitution.

Electoral Act 2022

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.

(2) In this Part “tribunal or court” means—

(a) in the case of Presidential election, the Court of Appeal; and

(b) in the case of any other elections under this Act, the election tribunal established under the Constitution or by this Act.

131. (1) There is established for the Federal Capital Territory one or more Election Tribunal (in this Act referred to as “the Area Council Election Tribunal”) which shall, to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine any question as to whether—

(a) any person has been validly elected to the office of Chairman, Vice- Chairman or Councilor;

(b) the term of office of any person elected to the office of Chairman, Vice-Chairman or Councilor;

(c) the seat of a member of an Area Council has become vacant;

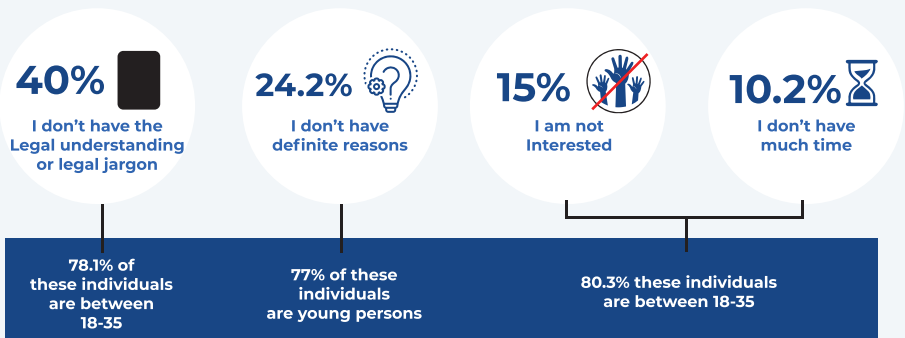
(d) a question or petition brought before the Area Council Election Tribunal has been properly or improperly brought.

Checking these provisions of each legal instrument that speak on where and mode of challenging an election and the provisions that emphasise the establishment of the election tribunals – it may be difficult for individuals without a legal or para-legal background can comprehend. This claim was consolidated when the respondents that do not know the function of the EPT were asked to explain EPT after reading section 285 (1) of the constitution and section 130 (1&2) of the Electoral Act 2022- 40% of this group stated that it is difficult for them because of the complication in the lexis and structure of legal writing comparing to the usual English lexis they are used to. Some of these 40% of respondents opined that the provisions are not so interesting to read. It is then important to look at the age demographics to avoid generalization – analysis shows that 78.1% of the respondents who express a certain level of complication in the lexis and structure of legal writing are between ages 18-35. The closest anyone explained EPT was with section 130 of the EA 2022.

Many stakeholders argued at the desk review of this study that the judiciary is the arms of the government that are billed to interpret laws made by the legislature.

Figure 11:

If not, can you mention any reason why you don't know the functions of the Election Petition Tribunal?



The judiciary cannot exist without the trust and confidence of the people.

If the citizen finds it difficult to understand the laws, the judiciary is always available to interpret them. However, what remains Important is that adequate knowledge of the judicial process and document is essential to improve citizen participation in judicial processes, especially the EPT because it is increasingly becoming part of the post-election phase of every election in Nigeria. It was also widely agreed that effective citizen participation is vital to keep the judiciary rascality in check. Having a citizen or simplified version of the electoral legal framework is essential. However, this should be done with all caution to avoid misconstruction of the principle of each provision. Recommendations revealed why this simplified or citizen version is needed; the judiciary should be involved in drafting a simplified version of any law to protect the originality of the law based on the theories of constitutional interpretation.

Theories of Constitutional Interpretation by American Constitution Society and The Federalist Society³

There are five sources that have guided the interpretation of the Constitution:

- (1) the text and structure of the Constitution,,*
- (2) intentions of those who drafted, voted to propose, or voted to ratify the provision in question,*
- (3) prior precedents (usually judicial),*
- (4) the social, political, and economic consequences of alternative interpretations, and*
- (5) natural law.*

There is general agreement that the first three sources are appropriate guides to interpretation but considerable disagreement about the relative weight that should be given to the

three sources when they point in different directions. Many interpreters of the Constitution have suggested that the consequences of alternative interpretations are irrelevant, even when all other considerations are evenly balanced..

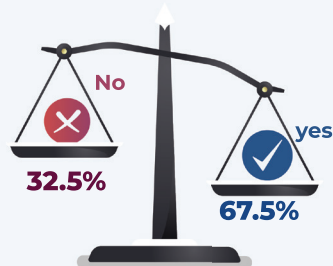
This piece further added a few thoughts to the interpretation:

- Any theory of constitutional theory that completely ignores consequences and focuses exclusively on text or original intentions is wrong.
- Any theory of constitutional interpretation that completely ignores either text or original intentions and focuses primarily on consequences is wrong.
- Certain times and places are better suited to one constitutional interpretation theory than other times and places.
- The Court should include justices with different approaches to constitutional interpretation. A Court without dissenters is a Court that will not adequately inform us of the costs of choosing the path taken.

Furthermore, there are other reasons given by respondents as the reason they do not know the function of the EPT – 15% expressed their level of apathy and said stated their indifference on electoral judicial matters, 24.2% stated that they couldn't predicate this on any factors and 10.2% said they don't have much time to dig into EPT issues.

Figure 12:

SOME THAT SAID THEY KNOW THE FUNCTION OF EPT DO NOT FOLLOW EPT PROCEEDINGS.



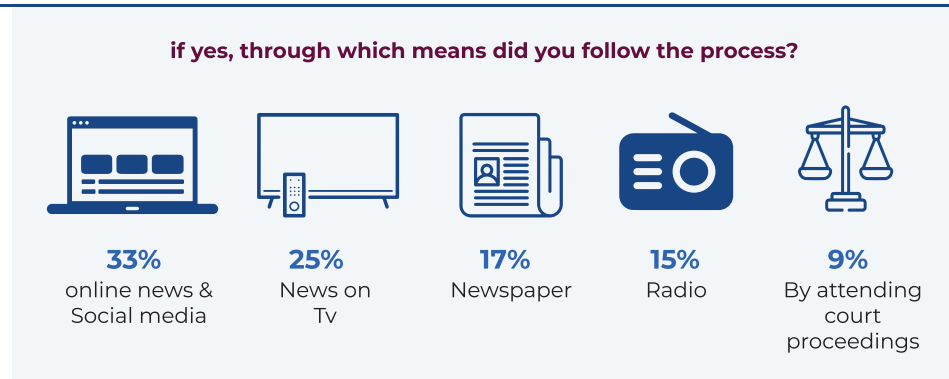
In the past, when the election dispute process at the Tribunal was taking place, did you follow the process?

Over two-thirds (67.5%) of the respondents who have previously heard of the Election Petition Tribunal affirmed that they followed its processes and procedures. Compared with those that indicated that they know the EPT's function, it shows a 19.5% drop. Apparently, knowing the function of EPT doesn't translate to automatic followership of the tribunal's processes and procedures because some said they knew the function of EPT but did not follow the process.

There is a 19% drop between those who knew the function of EPT and those who followed the process of EPT.

Despite the drop, the study further elicits how the respondent follows the process to leverage this platform to amplify more information based on citizens' prefer-

Figure 13



There is a 19% drop between those who knew the function of EPT and those who followed the process of EPT.

ences. A higher percentage (33%) show that online news media and social media are the best media for them to follow the EPT process; 25% follow through the news channel on Television, 17% through the newspaper, 15% through the FM Radio and only 9% attend the court proceedings. This shows that social and traditional media are essential tools for encouraging individuals other than attending court proceedings. The social media has transformed the way society communicates. The reach of social media presents unprecedented opportunities for the judiciary to spread the reach of judges' expertise, increase the public understanding of the law and foster an environment of open justice and closeness to the communities that judges serve. The use of social media by Judges for personal convenience and even in advancing the course of justice administration has come under serious scrutiny globally because of the risks and challenges inherent in the use of social media by the judges, which highlights issues of integrity and ethics. Some of these issues include :

- Exposure to the public's remarks and sentiments towards a case before trial can have an effect on judges. Of course, social media is not the only way public remarks are spread but one of the most accessible and popular ways. This is why it is widely believed that they must also be conscious of what information they receive and by whom. It is widely believed that Judges must be extra vigilant and exercise selective restraint to perform the solemn duty in the 'Temple of Justice' and preserve the sanctity of sacrosanct institutions like courts of law.
- Online judicial harassment: There have been instances where social media has served as a platform for online abuse or harassment of judges.
- Parody Accounts: Recently, one new phenomenon observed in the social media space is the rise of parody social media accounts. These parody accounts assume the online identity of another entity, purporting to present the views of the main person while posting satirical messages. Parody accounts engage in "brandjacking". This sometimes leads to the spread of misleading information.

However, if judges refrain from the use of social media due to some of these ethical issues, the question then becomes where and how will native internet users, who constitute a large chunk of the Nigerian populace and voting population, get accurate information. In this light, it is then important that the judicial institutions and their umbrella bodies feel this vacuum and intentionally use social media in line with the judicial ethical standards. Desk Research shows that the Court of Appeal, Nigeria, and the National Industrial Court have functional Twitter and Facebook accounts and, from time to time, update their timelines with relevant information about their activities. This will serve as a source of verifiable information for netizens, and it will be helpful in combating misinformation and disinformation.

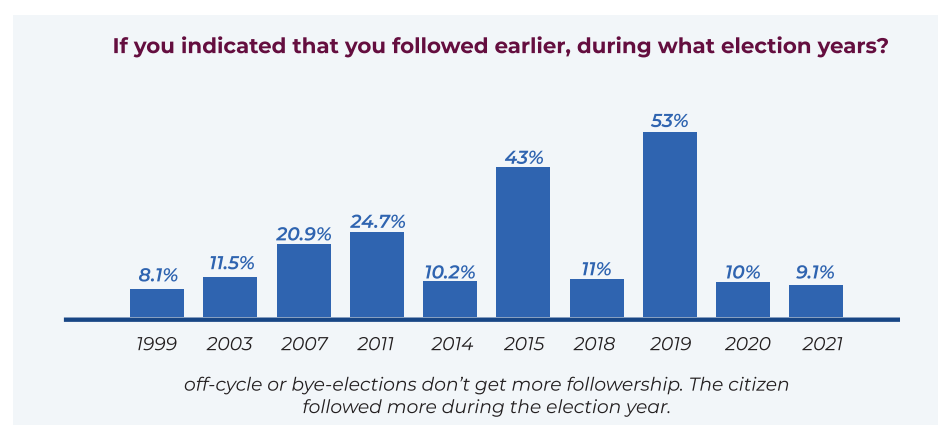
Aside from those mentioned above, the supreme court and the other courts are still lagging in using social media to enlighten the public. We cannot but highlight some challenges to the effective use of social media by the judicial institutions in Nigeria earmarked from the desk review. These challenges include:

- Lack of skilled human resources to handle this digital media:
- Training: the lack of periodic training on the use of digital media. The institution and the judges should be trained on such as:
 - issues of privacy and security of the platforms,
 - How these platforms operate.
 - What benefits are there to participating in these platforms.
 - What are the potential risks/consequences of such participation are.
 - How judges should participate with an appropriate reticence to protect their security and to fulfil their obligations to maintain judicial independence, the dignity of the office and public confidence.

Followership of EPT

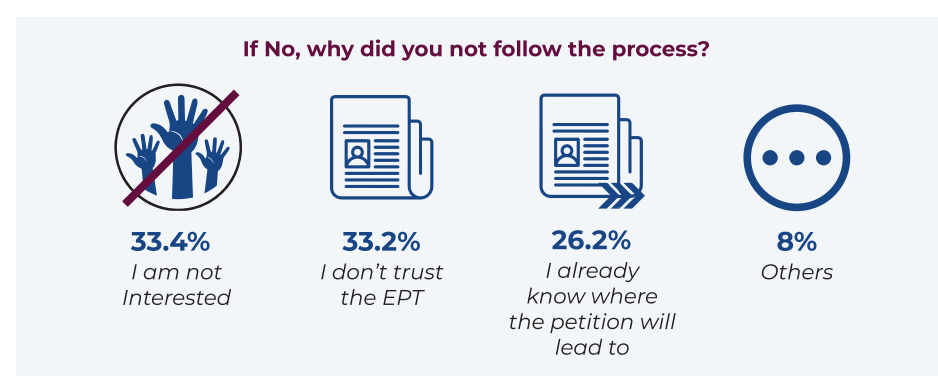
Furthermore, the study extracted responses from respondents who indicated they followed the EPT process which of the years they followed the tribunal – The analysis shows that since 1999, there has been a gradual increase across every election year- However, followership skyrocketed in 2015 compared to previous election

Figure 14



year like 2011, 2007, 2003 and 1999. More importantly, the data revealed lower followership of EPT for the off-cycle elections. Further analysis shows that only election experts and indigenes of each state where off-cycle elections happened follow off-cycle EPTs. With the event leading to and after the 2023 general elec-

Figure 15:



tions- we believe the increase in the political consciousness of Nigerians for the 2023 elections will also be transferred to the judiciary. The projected upsurge in the followership of the EPT post-2023 election is critical to the country's survival. Some schools of thought have said the case before the Lordships are not technical cases but political ones. It is, therefore, expected that the tribunal would do the best, not only in the form of justice but in the form of what we call better stability for Nigeria.

Besides, the study made the respondents who did not follow the EPT process reflect on the reason for that- Majority (33.4%) of the minimal number said they were not interested in following the EPT processes, 33.2% said they don't trust the judicial process, and they see no reason to be pre-occupied with the thought of the tribunal, 26.2% stated that they already know where the conclusion of the tribunal and 8% gave different reasons why they did not follow the EPT processes.

From the assessment of the EPT followership and understanding of the EPT functions. There are a couple of things that stood out, and a few include:

- Lack of understanding of the legal terminologies or the complications in the lexis and structure of legal writings.
- The case of judicial apathy based on the public distrust in the Electoral Justice System

The subsequent chapters of this report dug further into these three (3) issues noticed when the survey responses were analysed.



Issues raised by Respondents

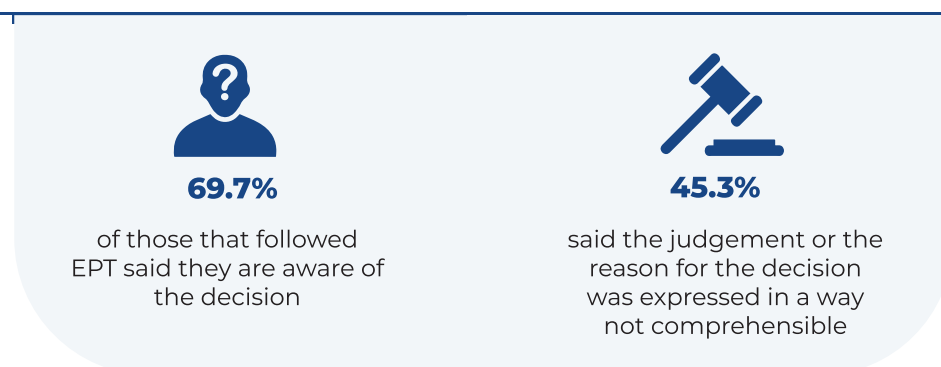
Issues Raised by Respondents

Lack of understanding of the legal terminologies or the complications in the lexis and structure of legal writings.

Data gathered in this study further explore if the individuals that indicated that they followed EPT are aware of the tribunal's decision. 69.7% of those that followed EPT processes and procedures are aware of the decision taken in the tribunal they kept a tab on. However, 45.3% indicated that the judgement of the tribunal or the reason for the decision was expressed in a way not comprehensible to them.

The part of the complications in the lexis and structure of legal writings has been addressed on page 10 of this report – this detailed the difficulty citizen experienced in understanding the applied nature of legal writing viz-a-viz their understanding of the function of the EPT. Nevertheless, this chapter explored why the media and the CSOs found it challenging to amplify legal information regarding election dispute resolution.

Figure 16:



The expert review revealed a few things that might challenge the CSO groups and the media due to their mandate being meant to fill this knowledge gap. This includes:

- Code of Conduct for Judicial Officers on Media Coverage and Appearance.
- The case of media trial
- Only a few media houses have created a niche around judicial matters.

Position Code of Conduct for Judicial Officer on Media Coverage and Appearance.

A dive into the Code of Conduct for Judicial Officers for the Federal Republic of Nigeria⁴, as revised by the National Judicial Council in 2016⁵ contains fifteen (15) rules against the defunct code of conduct with three (3) rules⁶. Interestingly, the revised Code of Conduct of Judicial Officers does not contain any provision prohibiting broadcasting, televising, recording, or photographing in the courtroom as it is in the defunct code of conduct in Rule 2 (10).



Federal Republic of Nigeria

Code of Conduct for Judicial Officers

Preamble

Whereas an independent, strong, respected and respectable Judiciary is indispensable for the impartial administration of Justice in a democratic State: And whereas a Judicial Officer should actively participate in establishing, maintaining, enforcing, and himself observing a high standard of conduct so that the integrity and respect for the independence of the Judiciary may be preserved.

And whereas the judicial duties of a Judicial Officer, which include all the duties of his office prescribed by law, take precedence over all his other activities: And whereas it is desirable that standard of conduct which a Judicial Officer should observe be prescribed and published for the information of the Judicial Officer himself and the public in general so that the objectives set out in this preamble may be achieved: Therefore, this Code of Conduct for Judicial Officers of the Federal Republic of Nigeria is hereby adopted.

Explanations

(i) In this Code, the term 'Judicial Officer' shall mean a holder of the office of Chief Justice of Nigeria, a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the Chief Judge or Judge of the Federal High Court, of a State and of the Federal Capital Territory, Abuja, the Grand Khadi or Khadi of a Sharia Court of Appeal of a State and of the Federal Capital Territory, Abuja, the President or Judge of a Customary Court of Appeal of a State and of the Federal Capital Territory, Abuja and includes the holder of a similar office in any inferior court whatsoever.

(ii) The Code applies to all categories of judicial officers throughout the Federation.

(iii) Violation of any of the rules contained in this Code shall constitute judicial misconduct or misbehaviour and may entail disciplinary action.

8. A Judicial Officer should abstain from comment about a pending or impending proceeding in any court in this country, and should require similar abstention on the part of court personnel under his direction and control.

This provision does not prohibit a Judicial Officer from making statements in the course of his official duties or from explaining for public or private information the procedure of the court provided such statements are not prejudicial to the integrity of the Judiciary and the administration of justice.

9. A Judicial Officer shall be bound by professional secrecy with regard to his deliberations and to confidential information acquired in the course of his duties other than in public proceedings.

10. A Judicial Officer should prohibit broadcasting, televising, recording or photographing in the court room and areas immediately adjacent thereto during sessions of court or recesses between sessions in order to prevent the distortion or dramatisation of the proceedings by such recording or reproduction. A Judicial Officer may authorize: (a) the broadcasting, televising, recording or photographing of investigative and other proceedings; (b) the electronic recording and reproduction of appropriate court proceedings by means of recording that will not distract participants or impair the dignity of the proceedings.

B - Administrative Duties

1. A Judicial Officer should diligently discharge his administrative duties, maintain professional competence in judicial administration and facilitate the performance of the administrative duties of other Judicial Officers and court officials.

2. Judicial Officer should require his staff and other court officials under his direction and control to observe the standards of fidelity and diligence that apply to him.

3. A Judicial Officer on becoming aware of reliable evidence of unethical or unprofessional conduct by another judicial officer or a legal practitioner should immediately take adequate steps to report the same to the appropriate body seized with disciplinary powers on the matter complained of.

If based on such disclosure, the parties, their representatives and or their legal practitioners, independently of the Judicial Officer's participation, all agree that the Judicial Officer's relationship is immaterial or that his financial interest is insubstantial, the Judicial Officer is no longer disqualified and may participate in the proceedings. The consent by the parties, their representatives and for their legal practitioners shall be recorded and shall form part of the record of proceedings.

Rule 3

A Judicial Officer should regulate his Extra- Judicial Activities to minimise the risk of conflict with his judicial duties.

A – A Vocational Activity:- A Judicial Officer may engage in the arts, sports and other social and recreational activities if such avocational activities do not adversely affect the dignity of his office or interfere with the performance of his judicial duties.

B(i) - Civil and Charitable Activities. A Judicial Officer may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. He may, therefore, serve as an officer, director, trustee, or non-legal adviser of an educational, religious, charitable or civil organisation not conducted for the economic or political advantage of its members subject to the condition that he should not serve if it is likely that the organisation will be engaged in proceedings which would ordinarily come before him or will be regularly involved in legal proceedings in any court.

B(ii) - Freedom of expression and association. In accordance with the fundamental rights enshrined in the Constitution, a Judicial Officer is like other citizens entitled to freedom of expression, belief, association and assembly. Provided, however, that in exercising such rights, he shall always conduct himself in such a manner as to preserve the dignity of his office and the impartiality and independence of the judiciary.

Rule 2: A-Adjudicative Duties

10. A Judicial Officer should prohibit broadcasting, televising, recording or or photographing in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions in order to prevent the distortion or dramatization of the proceedings by such recording or reproduction.

This is consistent with the provision of the constitution of the Federal Republic of Nigeria, 1999 (as amended), which provides in Section 36 (3) that any court proceedings shall be held in public. Even now, no rule or law prohibits recording or televising court proceedings. However, the effect and the impression of the defunct code of conduct still lingers in the mind of many today. Little wonder about the recent debate on the need to record and televise the 2023 Presidential Election Petition Tribunal.

No doubt, televising court proceedings will provide an informative, educational representation of the justice system. Further purported advantages include restoration of public confidence in the courts and crime deterrent value. However, there are so many arguments against televising court proceedings, and the weight of these arguments has been another reason why CSO groups and the media have been able to amplify judicial education.

CASE STUDY:

WHAT IS OBTAINABLE IN A FEW OTHER JURISDICTIONS ON RECORDING AND TELEVISIONING COURT PROCEEDING S7.

A look at the practice in most courts around the world reveals that historically courts have generally been careful to permit the public to make a recording of their proceedings. For example, as early as 1946, long before handheld electronic recording devices became commonplace, electronic media recording of court proceedings was prohibited in criminal proceedings in the United States of America under the Federal Rule of Crimi-

nal Procedure. Subsequently, in 1972 the Judicial Conference of the United States of America adopted the Code of Conduct for United States Judges, which prohibited the “broadcasting, televising, recording, or taking of photographs in the courtroom and areas immediately adjacent to it” in criminal and civil cases.

Even in some jurisdictions where live streaming of court proceedings is permitted, unauthorised recording of the proceedings by members of the public is still prohibited. An example is the practice in Connecticut in the United States of America. To expand public access to courts in the state, the Connecticut Judicial Branch in February 2021 began to live stream on YouTube civil and housing court proceedings in the state’s courts. Although members of the public are allowed to view the proceedings online, the public is warned that “other than the official recording prepared by the Judicial Branch, the recording of live-streamed proceedings is strictly prohibited. This prohibition is consistent with the rules regarding members of the public physically present in a courtroom. This includes audio recording, video recording through a cell phone, screen capture, screenshot, print screen, or other recording types.

In recent years, various court rules have been made in different parts of the world prohibiting the recording of court proceedings by members of the public without the court’s permission. For example, the California Rules of Court, Rule 1.150, provides that: “Except as provided in this rule, court proceedings may not be photographed, recorded, or broadcast.” The Rules further provide that a person “proposing to use a recording device must obtain advance permission from the judge.” A violation of the Rules is considered an “unlawful interference with proceedings of the court and may be the basis for . . . a citation for contempt of court.”

In the United Kingdom, broadcasting images and sound recordings from courts, except the Supreme Court, is prohibited by Section 41 of the Criminal Justice Act 1925 3 and Section 9 of the Contempt of Court Act 1981, respectively. Various exceptions have been made to section 41 of the Criminal Justice Act 1925 and section 9 of the Contempt of Court Act. For Example, The Crown Court (Recording and Broadcasting) Order 2020 permits the recording and broadcasting of sentencing remarks in the Crown Court made by the judge in open court. Recording takes place only with the permission in writing of the judge and by any conditions imposed by the judge.

There are many reasons for the near-universal practice of courts only allowing the members of the public to record the proceedings of the court with the court’s prior permission. These reasons include the following:

- The need to avoid misrepresenting the court proceedings, which could further undercut an already much-maligned judicial institution.
- Recording inherently will focus on court participants, exposing the parties’ interest and identity of victims and witnesses in court proceedings and, as a result, spotlighting them for possible community pressure, threats and abuse.
- In criminal cases, recording and live streaming tend to portray defendants as guilty and produce hostility toward defendants.
- Television reporting is inherently abridged and sometimes sensational. This may result in decisions based on passion and emotion rather than reason and rationality. Clearly, the court is avoiding any form of media or public trial.

Evidently, media trials could be detrimental to the dispensation of justice, where judges are pressured to give decisions in line with public opinion as against the rules laid down by the law. It can also lead to a breach of fair hearing.

What remains in doubt is how to balance the quest to amplify information that will build citizen capacity to understand the judicial process and the call to end media trial that is detrimental to the justice system.

Hiding under this imbalance has caused an age-long issue where judicial processes are shouldered in secrecy. Additionally, the judicial officers who can also clarify issues are limited by Rule 4 of the Revised Code of Conduct.

RULE 4 OF THE REVISED

Duty to abstain from comments about a pending or impending proceeding in any Court in this country

4.1 A Judicial Officer should abstain from comments about a pending or impending proceeding in any Court in this country, and should require similar abstention on the part of the Court personnel under his direction and control, provided that this provision does not prohibit a Judicial Officer from making statements in the course of his official duties or from explaining for public or private information, the procedure of the Court so long as such statements are not prejudicial to his integrity of the Judiciary and the administration of justice.

4.2 A Judicial Officer shall be bound by professional secrecy with regard to his deliberations and to confidential information acquired in the course of his duties. Accordingly, confidential information acquired in the Judge's judicial capacity shall not be used or disclosed by the Judge for any other purpose not related to the Judge's judicial duties.

We believe the judiciary can be transparent and self-regulate to create a balance. This can be achieved when the bench can take charge of the happenings in court by establishing a public relations department that would educate the public on the judiciary processes, especially where the court handles a sensitive case. There is also the need to demystify the public's image of the justice system. This can be done by introducing basic legal subjects at primary and secondary schools, which would help the citizen better understand the legal processes. This would help improve the perception of the judiciary in the public's minds.



The case of judicial apathy based on the public distrust in the Electoral Justice System,

Recall that majority (33.4%) of the respondent that did not follow the EPT said they were not just interested in following the EPT processes, 33.2% said they don't trust the judicial process, and they see no reason to be pre-occupied with the thought of the tribunal, 26.2% stated that they already know where the conclusion of the tribunal and 8% gave different reasons why they did not follow the EPT processes. It can be said that citizen judicial apathy cannot be disconnected from the long-standing trust deficit between citizens and the judiciary due to different narratives. One of it the history of judicial corruption. In previous times, Judicial corruption has become a recurring feature of Nigerian mass media coverage, both conventional and online. The scope relates to sad commentaries, perceptions and a wide range of corrupt activities, such as bribery, favouritism, conflict of interest and others involving the justices and judges.

(See Table 1 below for some selected media headlines and captions of judicial corruption in Nigeria).

Table 1 :

S/N	MEDIA HEADLINES/CAPTIONS	SOURCES	DATE
1	"Nigeria: Five sacked judges face corruption charges."	IRIN (Online)	April, 22, 2004.
2	"Corruption fetches Nigerian Judges N106 billion naira."	PLC Party (Online).	August 28, 2011.
3	"US: Nigerian Judiciary Corrupt with Impunity."	This Day Live,	May 25, 2012.
4	"Toying with corruption in the temple of Justice."	The Punch	September 23, 2012.
5	"Judiciary in Corruption Politics."	Nigerian Tribune,	February 7, 2013.
6	"Nigerian Judges in KLM case are accused of bribery and corruption."	World News Update.	March 10, 2013.
7	"Practical ways to combat corruption in Nigeria's Justice system- Okey Wali."	Daily Newswatch	April 13, 2013.
8	"More corrupt judges will go, CJN warns."	National Mirror,	June 4, 2013
9	"Judicial cleansing: How far can NBA's Anti-Corruption Commission go?"	Vanguard	July 11, 2013
10	"Expose Corrupt Judges."	PM News	September 18, 2012.
11	"Cleansing the rot in Nigeria's Judiciary: The Scape-goats and the Sacred Cows."	Desert Herald (Online).	October 2, 2013
12	Judicial Corruption Blamed On Undue Influence from Politicians, Monarchs."	The Will (Online)	October 4, 2013.
13	"Seven Nigerian Judges Targets Of EFCC Corruption Probe."	Saharan Reporter (Online).	November 11, 2013.
14	"EFCC and the war against corrupt judges."	Daily Independent,	November 17, 2013.
15	"Don advocates stiffer laws against corrupt judges."	News Agency of Nigeria (Online).	November 29, 2013
16	"A Case For Corruption-Free Nigerian Judiciary."	The Tide	December 11, 2013.
17	"Nigerian judiciary riddled with corruption, says Ayo Salami."	The Herald	December 13, 2013.
18	"NBA President seeks corruption-free, viable judiciary in 2014."	The Punch	December 21, 2013.
19	"Poverty Responsible For High Level of Corruption In Judiciary – Bello"	Information Nigeria (Online).	January 10, 2014.

As far back as 2010, the EFCC and the National Bureau of Statistics surveyed crime and corruption in Nigeria – this study revealed that “Nigerian courts of law receive the biggest bribes from citizens among all institutions in which corruption is rampant” . There are also several unproven cases of judicial corruption which are either under investigation or have not been disputed by those involved. Whether there has been an improvement or not in recent –is difficult to ascertain because the old narrative has become entrenched that it is increasingly becoming difficult for the judiciary to redeem itself from this unfortunate label. Long-age, the judiciary has been suffering from this, reinforcing the trust deficit, and it has undercut its operation.

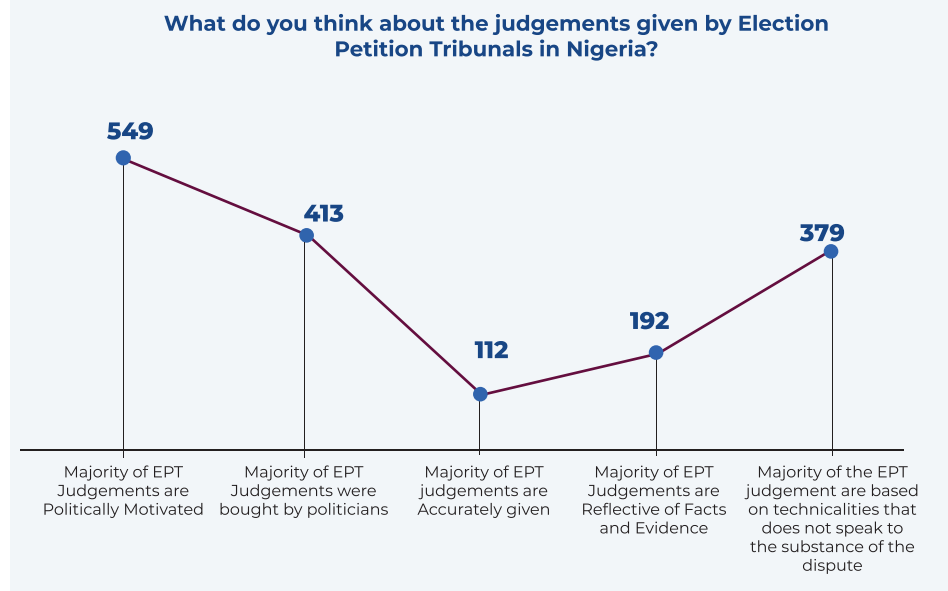
Based on the preceding, this study assessed the public on what they think regarding judicial integrity and capacity based on the indicators slated in the UNITED NATIONS’ Office on Drugs and Crime Technical Report. The UNODC stated that the main thrust to having a complete understanding of the levels of integrity and capacity of the various justice sector could be assessed in the following ways:

- Quality of justice delivery;
- Access to justice;
- Timeliness of justice delivery;
- Independence, impartiality and fairness of the judiciary;
- Public trust in the judiciary;
- Corruption within the justice sector

Quality of Judgement

Public perception determines the acceptability of any judgment, and how the judgment is perceived determines the legitimacy attached to them by the electorates for the benefit of whom the decision was made.

Figure 17:



When asked what respondents think about the judgements given by the EPTs in Nigeria - 43.5% of the respondents to this survey believe that most Election Petition Tribunal Judgments are politically motivated. In contrast, 32.7% thought politicians bought most of the Election Petition Judgments. Unfortunately, only 8.9% of the respondents believed that most EPT judgments are accurately given. 15.2% trust that most EPT judgments reflect facts and evidence. 30% believed that most EPT judgments are based

Looking at these variables assessed under the quality of judgement thrust, the public opinion regarding the quality of judgement by the EPTs is not positive.

on technicalities that speak to something other than the substance of the dispute. The views on judgement being politically motivated and brought by a politician cannot be disassociated from the trust deficit between the public and judiciary based on previous corruption-related happenings. Nonetheless, the recent trend of sacrificing justice on the altar of technicalities that resurfaced is something raised by 30% of the respondents.

Notably, from time immemorial, cases have been won and lost on the altar of technicalities in courts of law. Technicalities in law may be seen as safeguards provided by law to ensure its certainty and purity. Generally, where a thing is expected to be done and left undone or done wrongly, the rule of technicality will work against such. The perception of the respondents that the majority of EPT judgments are based on technicalities that do not speak to the substance of the dispute could be said to have flowed from a trail of judgments of EPT up to the Supreme Court, where the substantive issues are left unresolved while deciding such matters on technical grounds. For example, in the celebrated 2018 Osun State governorship case of Adeleke v Oyetola, where the case was dismissed on technical grounds. Many Nigerians are still asking why the Supreme Court did not pronounce on the substantive issue.

Figure 18:



Moreso, when asked if the respondents are confident that the EPT judges deliver good judgement, only 25% of the respondents to this survey are convinced that Election Petition Tribunals in Nigeria always deliver good judgment. 47% of the respondents disagreed. In comparison, 28% are undecided on the goodness or badness of judgments of Election Petition Tribunals. Irrespective of how much justice, according to law, the outcome of a court proceeding is, the party who wasn't ruled in favour of will believe the judgment is terrible. This is an issue the judiciary has had to grapple with for ages. Accepting a judgement is directly proportional to the entity the judgement favoured. Additionally, judicial ethics profess that Judges rule based on the fact before him/her. However, we cannot overrule the significance of the oft-repeated maxim – 'Justice should not only be done but also appear to be done'. This clearly puts the onus of wide acceptance of judgement on the judges- on how they demonstrate justly in the process leading to the judgement. This is also why sacrificing justice on the altar of technicalities is a dangerous trend because an average Nigerian may not logically understand how that came to be.

Desk review shows that before the advent of the Electoral Act 2022 - incessant contradictory and conflicting court orders/decisions were trends which not only caused

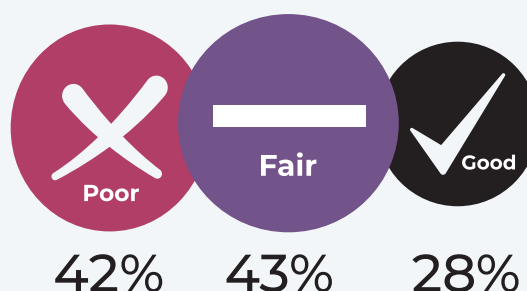
Judgement is often given within 180days

problems amongst legal officers but also raised serious concern and suspicions for those outside the bench, thereby questioning the authenticity and justiciability of the legal justice in Nigerian Courts. For example, in September 2020, the courts' conflicting judgments were demonstrated in Edo State Governor Godwin Obaseki's participation in the People's Democratic Party (PDP) governorship primary election. Here, the case received two conflicting orders. While a Federal High Court in Port Harcourt barred him from taking part, an Edo State High Court, sitting in Ekpoma, cleared him for the exercise. The Order of the Federal High Court in Port Harcourt, no doubt, conflicted with that of the Edo State High Court and hence generated divergent views in the polity. These conflicting pre-election court orders and judgments are very embarrassing and can destroy the foundation of the rule of law, democracy and any decent society. It erodes people's confidence in the judiciary, especially when judgments end up very confusing. Average Nigerians do not understand most of the reasons for this conflict or the judicial technicalities that may be playing out but when popular opinions condemn such judgement – it becomes entrenched and ultimately deepen the age-long negative public perception the judiciary suffers.

In rating the judges deployed to handle the Election Petition Tribunal that had been previously set up in the States, a meagre 28% of the respondents adjudged the judges good, while 43% considered them fair. 42% of the respondents rated the judges poor. It is safe to assume that these ratings stemmed from the acceptability of the judgments that proceeded from the Tribunal and media reporting, considering that only 9% of the respondents followed the process by attending the Tribunal sittings.

Figure 19:

How would you rate the Judges deployed to handle Election Petition Tribunals that have been previously set up in your state?



LOOKING AT THE ASSESSMENT OF THE INDEPENDENCE, IMPARTIALITY & FAIRNESS OF THE JUDICIARY, PUBLIC OPINION REGARDING THE INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY IS NOT POSITIVE.

Independence, impartiality and Fairness of the Judiciary

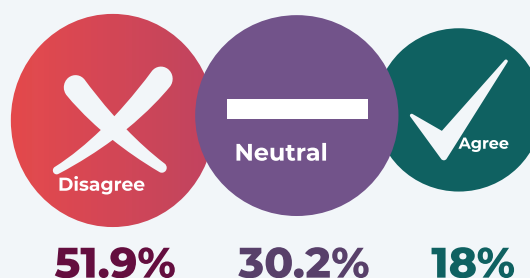
Assessing the independent and impartial nature of the EPT, 51.9% of the respondents disagreed that the election petition tribunal is genuinely independent and impartial. 30.2% are neutral, while 18% agreed that the election petition tribunal is independent and impartial.

Timeliness of Justice Delivery

As regards the timeliness of judgement delivery by EPT, the legal frameworks, especially Section 285(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), specify the number of days for which an election petition matter must be dispelled. The Constitution states – “an election tribunal shall deliver its judgment in writing within 180 days from the date of filing of the petition”.

Figure 20:

Do you agree that the election petition tribunal is genuinely independent and impartial?



Access To Justice:

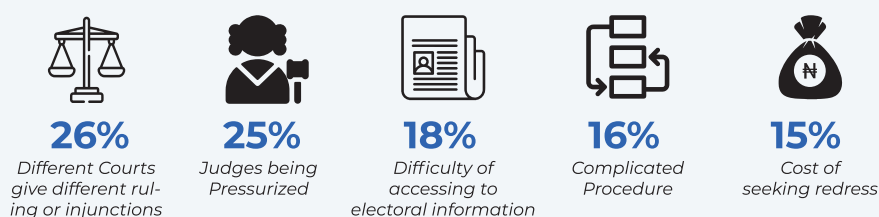
To ascertain the respondents' view regarding access to justice at EPT, 26% think that different courts give different rulings on a similar issue, 25% believe that Judges are being pressurized, 18% decried the difficulty of accessing electoral information, 16% asserted that the election petition is riddled with complicated procedures while another set of Nigerians making up 15% in the survey bemoan the high cost of seeking Redress.

While their apprehensions and assertions are not out of place, it is also important to state that no two matters, however similar they may be, can ever be the same. Hence the decision or pronouncement of the court of law on them will always vary. The justices adjudicate matters based on facts placed before them; these facts are now given judicial blessing or legal interpretations to give all parties their due. Moreover, it is essential to state that the study went ahead to ask respondents what type of pressure they are referring to; Some important points were made. These include:

- The pressure of the number of cases they must sit on and deliver judgment within the stipulated period.
- Pressure from highly placed and influential social figures for the judges to

Figure 21:

What do you think are the main problems with getting remedy on electoral cases



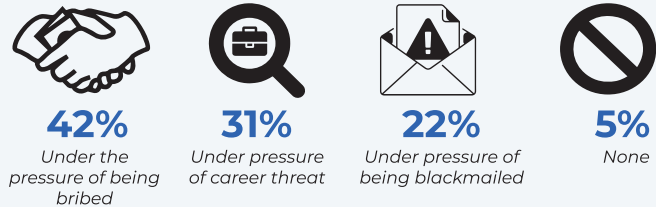
The Public Opinion Regarding The Timeliness Of Judgement Is Somewhat Neutral.

do their whims.

Empirically, 42% insisted that judges are mostly under the pressure of being bribed, 22% say they are under pressure of being blackmailed, 31% say judges are under pressure of career threat, while 5% said they have no view on this.

Figure 22:

Under what constant pressure would you say the Election Petition Tribunal Judges are?



It is in no way out of place that politicians can be pressurizing or making different moves to induce judges to adjudicate in their favour. After all, as of 2021- Nigeria's judicial officers are among the least paid globally . A judge at South Africa's labour or high court earns about three times higher than what the Federal Government pays a justice of the Supreme Court. Before the National Industrial Court ordered the upward review of the salaries of all Nigerian Judges on the 15th of July 2022 , the last salary review for public and judicial office holders was in 2007. Comparing the salary scale of judicial officers in Nigeria with some West African countries – as of April 1, 2020, and based on South Africa's new payment schedule for constitutional court judges, the total emolument of labour and high court judges who are placed on level 5, is R1, 882,486 or \$128,060. The amount also triples the total yearly package (N17,959,047) of justice at Nigeria's Supreme Court. This amount translates to \$43,589 based on the exchange rate as of September 2021. The President of the Court of Appeal is on the same salary scale as a justice. Hence, s/he also earns about one-third of what a judge at a labour court in South Africa is entitled to. An occupant of a position similar to Nigeria's Court of Appeal President, which is President of the Supreme Court of Appeal, goes home with R2, 606,428 or \$177,308. S/he is in the same salary bracket as the Deputy Chief Justice, with their salary scale slightly lower than the Chief Justice's R2.9 million (\$197,014). African Bar Association (AfBA) estimates the entry salary in Nigeria at €12,860, which is less than the average entry compensation package in Ghana - €38,763. A similar trend applies to intermediate and senior-level salary scales. A Ghanaian senior judge earns €81,300 on average, over four times higher than in Nigeria, where the senior level salary is €20,742.

Judicial officers, unlike other legal practitioners, are not permitted to engage in private practice, they need to earn adequate remuneration to minimise any likelihood of accepting bribes or inducement to pervert the course of justice. As of the time of this report, we cannot confirm if the National Industrial Court order for upward review of the salaries of all Nigerian Judges on the 15th of July 2022 was implemented by the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC) and National Judicial Commission (NJC).

Another factor is that sanctions on judicial officers should be amplified – Because more than half (68%) of the respondents indicated that they are unaware of any sanctions

Looking at access to Justice Thrust, public opinion regarding this is not positive.

Figure 23:

Despite all of these corrupt practices that have reinforced the public distrust in the judiciary



68%

of the respondent are not aware of any sanctions or removal or any EPT judges.

or removal of any EPT Judges. Judges found guilty of corrupt practices and sanctioned should be widely publicized. With or without EPT, the dismissal of any corrupt judges should be made known to members of the public. This may deter or minimize corruption amongst judges and help build confidence to ameliorate the age-long distrust amongst Nigerians for the Nigerian legal system and the judiciary.

However, weighing on the number of cases the judges must sit on and deliver judgment within the stipulated period. According to KDI 2019 EPT Monitoring project report, the tribunals sit for an average of 11 (eleven) hours a day. Once some tribunals sit at 8:00 am, they do not rise until between 7:00 and 9:00 pm, with a break of about 1 hour in-between. Having sat for such long hours and 180 days and having lived such a confined life for those days, emotional and mental fatigue is bound to set in. Also, we acknowledged that different panel members adjudicate on the different tribunals. But, if there are ten petitions from different petitioners in the judges' designated tribunals – they must deliver their judgement on the ten petitions within 180 days. This is a clear example of what the respondent termed as pressure. It must be noted that these same judges return to their regular courts, daily routines and the backlog pile of cases awaiting them after the expiration of the 180 days.

Recommendations

- There is also the need to demystify the public's image of the justice system- this, most times, reinforces the public malignment of the judiciary. This can be done by introducing basic legal subjects at primary and secondary schools, which would help the citizen better understand the legal processes. Additionally, the information desk and the public relations department can use media engagement, such as talk shows to educate the citizen – this will help them to be closer to the people, and this would help improve the perception of the judiciary in the public's minds.
- There is a need for all stakeholders to strengthen the Judicial Accountability process, and also the NJC should ensure that any judges found guilty of any corrupt acts are sanctioned.
- To aid citizen understanding of the electoral justice system and or legal system at large, there is a need to have the citizen or simplified version of the electoral legal framework. This should be done with all caution to avoid misconstruction of the principle of each provision. Additionally, the judiciary should be involved in drafting a simplified version of any law to protect the originality of the law based on the theories of constitutional interpretation.
- At this time, the judiciary needs to be more transparent and self-regulate to balance the quest to amplify information and the call to avoid media trials.
- The bench should establish a public relations department to update and educate the public on the judiciary processes. Also, CSOs should liaise with this department on ways they could support the public enlightenment process.
- For effective carriage of justice in election petition cases, specially trained Judges are required to man the election tribunals. There needs to be more than just a few days of training. Whether serving or retired, in-depth knowledge of the extant laws concerning elections is fundamental to effectively carrying out their duties as true umpires in resolving election disputes.
- A call is made for the true independence of the Judiciary. As long as the judiciary is not financially autonomous from the states to the federal level and the stakeholders and electorates keep perceiving the financial dependence of the judiciary on the executive, it will always be hard to convince them that justice is not sold and bought in election matters.



53 | A.N. Amosu Avenue | NAF Valley
Estate | Asokoro | FCT| Abuja.

1 | Aresa Close | Behind Union Bank
Gbodofon Area | Aregbe | Osogbo,
Osun.

+234 813 482 8527 | +234 810 394 7690
info@kimpact.org.ng

| www.kdi.org.ng



USAID
FROM THE AMERICAN PEOPLE

