



JOSEPH AYO BABALOLA UNIVERSITY LAW JOURNAL

VOL. 6 NO. 1 (2018)

CONTRIBUTORS AND ARTICLES

EUTHANASIA: AN APPRAISAL OF THE RIGHT TO DIE

O. B. AKINOLA, Ph.D & OLOREDE, G. O.

1-17

*AN EXAMINATION OF THE POWER OF THE
LEGISLATURE TO SUSPEND ITS MEMBER FOR
MISCONDUCT IN NIGERIA, AMERICA AND THE
COMMONWEALTH*

18-37

OLUFEMI ABIFARIN Ph.D, J.O. OLATOKE SAN Ph.D,
& STEVE ROSS OMISORE Ph.D.

*FINANCING RENEWABLE ENERGY PROJECTS IN
NIGERIA: OPTIONS AND ALTERNATIVES*

J.O. OLATOKE SAN, Ph.D, OLUFEMI ABIFARIN Ph.D,
& N.O.A. IJAIYA Ph.D

38-57

*"NAIJA FEMINISM": A TYPOLOGY OF AFRICAN
FEMINISM*

GANIAT MOBOLAJI OLATOKUN Ph.D

58-73

*ENHANCING INTERNAL PARTY DEMOCRACY AND
TRANSPARENCY: A CHALLENGE TO AFRICAN
CONSTITUTIONALISM*

74-99

ABDULFATAI O. SAMBO Ph.D

*LIFTING THE CORPORATE VEIL BY THE COURT:
NIGERIA AND ENGLAND IN FOCUS*

100-126

AHMED. A. MUHAMMED-MIKAAFEEL, LL.M &
FATIMAH. F. ABDULRAZAQ (MRS.) Ph.D

*AN OVERVIEW OF THE RELEVANCE OF ULTRA VIRES
DOCTRINE UNDER THE NIGERIA COMPANY LAW*

127-135

ZUHAIR JIBRIL, PhD & JUSTICE J.T.A. FISHIM, PhD

*THE EXTENT OF THE POWERS OF NATIONAL JUDICIAL
COUNCIL IN THE APPOINTMENT OF AND EXERCISE OF
DISCIPLINARY CONTROL OVER A STATE CHIEF JUDGE
THE RIVERS STATE OF NIGERIA 2014 CONSTITUTIONAL
CRISIS AS A CASE STUDY*

136-151

ABAYOMI B. SHOGUNLE

**JOSEPH AYO BABALOLA UNIVERSITY
LAW JOURNAL**

This Journal may be cited as

JABU-L.J Vol. 6 NO. 1, 2018

**PUBLICATION OF THE COLLEGE OF LAW
JOSEPH AYO BABALOLA UNIVERSITY
(Established by Christ Apostolic Church World
Wide
and the First Entrepreneurial University in
Nigeria)**

**IKEJI-ARAKEJI,
OSUN STATE, NIGERIA**

ISSN 2449-1853

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ENHANCING INTERNAL PARTY DEMOCRACY AND TRANSPARENCY: A CHALLENGE TO AFRICAN CONSTITUTIONALISM

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Abstract

The last two decades in Africa has witnessed constitutional surge to build stable politics and transparent internal party democracy. Central to the constitutional experimentation relates to the effort to embrace real democracy with bias for constitutionalism. One of the efforts is to redesign internal party democracy in order to ensure justice, fairness, transparency and other democratic norms. This institutional design has proved to be challenging, nebulous and vexatious. Constructing workable internal party democracy has been very difficult. Despite the notable numerous constitutional provisions and designs, as well as institutional engineering, brazen lack of transparency, endemic injustice and grave violation of party internal democracy principles continues unabated. Powerful minority VIPs of the parties always want to have their ways against the opinions of the majority. Explanations for this have centred on political culture and leadership as factors behind the gap between constitutional warrant for internal party democracy and the frequency of party malfeasance. This often leads to the apathetic conclusion that the Military Constitution cannot enhance transparency and reduce disrespect for internal party democracy. This paper acknowledges the complementary effects of political culture and leadership on transparency and internal party democracy. However, the paper argues that deficiency in African constitutional architecture generally and institutional designs of African constitutions on party democracy have largely contributed to the failure of transparency and internal party politics in Africa. This serious challenge has indeed threatened the future of constitutionalism as it affects transparency and internal party democracy. This paper focuses on these constitutional and institutional deficiencies in Nigeria, South Africa and Botswana. It suggests that constitutional and institutional reforms are required in these spheres in order to enhance transparency and internal party democracy in Africa, especially in countries under review.

1.0 INTRODUCTION

Africa, in the last two decades, has witnessed constitutional surge to construct viable politics and transparent internal party democracy. The core of constitutional experimentation relates to the effort to shift from democratisation to real democracy with bias for constitutionalism. One of the efforts is to redesign party democracy in order to ensure fairness, transparency and justice. This institutional design in Africa has proved to be problematic, vague and vexatious. Building viable internal party democracy has been very difficult. Yet, efforts are still being made to enhance internal party democracy and democracy. For instance, sections 221 -227 of the Constitution of the Federal Republic of Nigeria, 1999 as altered prohibits opaque activities of political parties, provides for their aims and finances. Section 228(a) specifically empowers the National Assembly to make laws and guidelines to ensure internal democracy within political parties, conduct of primaries, congresses and party conventions. Section 87 of Electoral Act mandates parties to conduct primaries. The Supreme Court of Nigeria noted that the purpose of section 87 is to ensure transparency and internal party democracy.²⁷⁵ Even political parties' constitutions, such as Article 20 of the All Progressive Congress Constitution, provide that candidates must emerge through democratic path. Some courts' decisions in South Africa²⁷⁶ and Botswana²⁷⁷ limit power of judicial review in internal affairs of political parties.

Despite the remarkable multiple constitutional provisions and designs, as well as institutional engineering, ostentatious lack of transparency, endemic injustice and grave violation of party internal democracy continues unabated. Powerful minority bigwigs of the parties always want to have their ways against the opinions of the majority. Thus, there are cases where primaries were not conducted at all despite many aspirants and situations where results of primaries were not used by political parties.²⁷⁸ There are also instances where members' ambitions are unjustly and undemocratically truncated by the powerful members of the political parties.²⁷⁹

Explanations for the intractability of brazen lack of transparency, prevalent injustice and grave violation of party internal democracy have centred on political culture and leadership as factors behind the gap between constitutional warrant for internal party democracy and the prevalence of party malfeasance. This often leads to the unenthusiastic conclusion that the Military should take

²⁷⁵ *JP v Sylvia* [2012] 13 NWLR (Pt 1316) 85 at 145

²⁷⁶ *Atsion and Others v Inkata Freedom Party and Magwaya-Msibi v Inkata Freedom Party* [2011] (4) SA 298 (KZP)

²⁷⁷ *Agorosi and Others v Botswana National Front and Others* MAHIT-000134 [2010] BWHC 429 (15 July 2010). *Authwete v Botswana Democratic Party and Others* [2004] 1 BLR 230 (HC)

²⁷⁸ *Hon Rotimi Chubuike Amueachi v Independent National Electoral Commission* [2007] 9 NWLR (pt 1040) 504. *Uguru and Anor v Hon Rotimi Chubuike Amueachi* [2016] 1 SC 367. *Mato v Hembe & 20 Others* SC733/2016 delivered on 23rd June 2017. *Shindufi v Yari* [2016] 1 SC 367. *Hon Rotimi Chubuike Amueachi v Independent National Electoral Commission* [2007] 9 NWLR (pt 1040) 504

²⁷⁹ *Ch Numbia & Ors (A 215/2015) [2016] NAHCMD 126 (22 April 2016)*

over government as the constitution can do little or nothing to enhance transparency and reduce disrespect for internal party democracy.

This paper acknowledges the complementary effects of political culture and leadership on transparency and internal party democracy. However, the paper argues that deficiency in African constitutional architecture generally and institutional designs of African constitutions on party democracy have largely contributed to the failure of transparency and internal party politics in Africa. This serious challenge has indeed threatened the future of constitutionalism as it affects transparency and internal party democracy. This paper focuses on these constitutional and institutional deficiencies. It suggests that constitutional and institutional reforms are required in these spheres in order to enhance transparency and internal party democracy in Africa.

To achieve the above aim, the paper will be divided into five key segments, including the general introduction of the paper as the first. The second segment will make a conceptual analysis to review scholarly literature on the nexus between transparency and internal party democracy on one hand and good governance on the other hand. The third segment will analyse the nature of constitutional and institutional designs of transparency and internal party democracy focusing on the constitutional and institutional framework for transparency and internal party democracy in Africa with focus on Nigeria, South Africa and Botswana. This is discussed together with a critical assessment of the role of courts in enhancing transparency and internal party democracy in Africa with particular reference to countries under review. The choice of these jurisdictions is informed by its relatively similar constitutional framework for transparency and internal party democracy. The fourth part examines the future of transparency and internal party democracy in Africa and agenda for reforms in terms of the implication of the above threat to constitutionalism and proposes reforms in the constitutional and institutional architecture of Africa's party politics in the light of the ongoing agitations for internal party democracy and constitutionalism in Africa. The last segment concludes the paper by highlighting the study's main arguments, implications and suggestions.

2.0 Transparency, Internal Party Democracy and Good Governance

Governance is defined in several ways. It is "the traditions, institutions and processes that determine how power is exercised, how citizens are given a voice, and how decisions are made on issues of public concern."²⁸⁰ Also, it may imply the "manner in which power is exercised in the management of a country's

²⁸⁰ J. Graham, A. Bruce and T. Plumptre, 'Principles for Good Governance in the 21st Century' (2003) Institute On Governance, Policy Brief No 15

economic and social resources for development.²⁸¹
activities or process of managing public affairs.²⁸²
government at various levels or corporate governance.

An author sees it as: "the
Its usages are in terms of

Good governance is therefore the "soundness of the guiding structure, mechanism, and process which direct socio-economic and political relationship of a nation."²⁸³ It consists of three interconnected domains of government: administrative, economic and political. It is all about excellent service delivery and accountable, transparent, fair, participatory and a society free of corruption.²⁸⁴

Thus, the key elements of good governance will be briefly discussed. Obedience to the rule of law is a major component of good governance.²⁸⁵ This implies that everything done by the government must be in conformity with the law. All manners of people in the society must be equal before the law. There must be a fair law with sound but humane implementation mechanism. The rulers and the ruled actions must not only be dictated by law but their actions can also be reviewed by the ordinary courts of the land.²⁸⁶ Judiciary must be independent.²⁸⁷ Adequate consideration should be given to human rights and minority rights.²⁸⁸

Another vital component of good governance is effective participation of the people in the affairs of their nation.²⁸⁹ Gender does not matter. Peoples' participation can be direct or through representation. Freedom of speech and association is cardinal to effective participation. The people must be taken along in decision making processes.

²⁸¹ World Bank, 1992. *Governance and Development*. Washington D C

²⁸² N. Abdun'Ethics, Religion and Good Governance' (2008) 5(2)OJAG, 62-66

²⁸³ A. O. Sambo and A. B. Abdulkadir, 'Ouster Clauses: Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and Malaysia' (2012) 5(9) *OIDA International Journal of Sustainable Development* 95-108

²⁸⁴ UNDP, 1997. 'The Ethics of Good Governance' in PARAGON Generic Training Module on Public Service Ethics and Accountability. Available at <http://unpan1.un.org/intradoc/groups/public/documents/eropa/unpan002618.pdf>. Accessed on 29/03/2018

See also P. Mauro 'Corruption and Growth' (1995) 110(3) (August), 29(1) (March), *The Quarterly Journal of Economics*, 681-712.

M. P. Hung, 'Corruption and Economic Growth' (2001) 29(1) *Journal of Comparative Economics*, 66-79. I. Shihata, 'Corruption: A General Review with an Emphasis on the Role of the World Bank' (1996) 15, *Dickinson Journal of International Law*, 451. V. Tanzi, 'Corruption Around the World: Causes, Consequences, Scope, and Cures' (1998) 45(4) (December), *Staff Papers - International Monetary Fund*, 549-594. World Bank, 2011. *World Development Indicators 2011*. Washington, DC: World Bank. Available at <http://data.worldbank.org/data-catalog/world-development-indicators>. Accessed on 16 March, 2018

²⁸⁵ World Development Indicators 2011. Washington, DC: World Bank. Available at <http://data.worldbank.org/data-catalog/world-development-indicators>. Accessed on 16 March, 2018

²⁸⁶ A. O. Sambo, *Judicial Review of Political Questions in Nigeria and Malaysia: A Comparative Analysis*. (Unpublished Ph.D. thesis, April, 2013, IUM, Malaysia) 273

²⁸⁷ Ibid.

²⁸⁸ H. A. Kadouf and A. O. Sambo, 'Minority Right to Freedom of Religion in International Legal Instruments and the Shari'ah in Syria: Kierkegaard (ed.), *Law & Practice: Critical Analysis and Legal Reasoning*. International Association of IT Lawyers, 2013, 544-558

²⁸⁹ B. Hughes, J. Devin, M. Jonathan, S. Timothy, and R. S. Jose, 'Strengthening Governance Globally: Patterns of Political Human Progress series. Boulder, CO, and New Delhi, India: Paradigm Publishers and Oxford University Press, 2014, 14

Likewise, governmental affairs need to be transparent, responsive and act in consensus.²⁹⁰ This implies that government should not be run like a secret society. Everyone, particularly those whose government actions affect, must be informed about the affairs of their nation. There should be press freedom. Institutions and processes should endeavour to, within a reasonable period, serve all stakeholders. Similarly, the government should carry on adequate consultations before making policies or decisions in national interest. This is achievable when the government understands the history, culture, and values of the people they govern. Justice according to law and logic should be the guiding dispute settlement mechanism in case of conflicts among the people.²⁹¹

Other components of good governance include equity and inclusiveness, effectiveness and efficiency, and accountability.²⁹² The society must be constructed on the principles of fairness and egalitarianism. Inclusive government, as different from winners take all tendencies, should be promoted.²⁹³ The welfare and security of the people should be primary purpose of the government. In this, discrimination is not permitted. The government must use the available natural and human resources to harness the best interest of the nation. The resources must not be used for personal gains. Accountability should be manifestly seen in all sectors of the nation.²⁹⁴ Political stability and effective government are also very important for good governance.²⁹⁵

2.1 Internal Party Democracy

2.1.1 Why Political Party?

There is certainly a link between democracy and political parties. The relationship between the two is complex and multi-tied.²⁹⁶ The reason is that at initial period, political parties were seen by some scholars as a phenomenon that is at variance with democratic norms. Political parties' establishment is seen as interest driven which may be against the interest of the people.²⁹⁷ Nonetheless,

²⁹⁰ D. Joshi, 'Good Governance, State Capacity, and the Millennium Development Goals' (2011) 10(2), *Perspectives on Global Development and Technology*, 339-360.

²⁹¹ M. G. Marshall and R. C. Benjamin, 'Global Report on Conflict, Governance and State Fragility' (2008) 18, *Foreign Policy Bulletin*, 3-21. M. G. Marshall, and R. C. Benjamin, 'Global Report 2009: Conflict, Governance, and State Fragility' Vienna, VA: Center for Systemic Peace and Center for Global Policy, 2009. M. G. Marshall, and R. C. Benjamin, 'Global Report 2011: Conflict, Governance, and State Fragility' Vienna, VA: Center for Systemic Peace, 2011.

²⁹² D. Kaufmann, K. Kraay and M. Massimo, 'The Worldwide Governance Indicators: Methodology and Analytical Issues' (2010) *World Bank Policy Research Working Paper* no. 5430. World Bank, Washington, DC.

²⁹³ Ibid.

²⁹⁴ Ibid.

²⁹⁵ Ibid.

²⁹⁶ S. Scarrow, 'Political Parties in Theoretical and Practical Perspectives: Implementing Intra-Party Democracy' (2005) NDR Publications, 3. Democracy and Legal Regulation of Political Parties, *USAID Conference Papers*, 2004. 21. J. D. Russell, M. F. David and M. Ian, 'Political Parties and Democratic Linkage: How Parties Organise Democracy' Oxford: Oxford University Press, 2011.

²⁹⁷ Ibid.

studies have shown that political parties play pivotal roles in the development of democratic norms.²⁹⁸

Thus, one of the roles of political parties is to articulate the demands of the society and translate it to policies. This promotes citizens' active participation in the affairs of their country.²⁹⁹ Link is also created in this way between the citizen and the government. Also, political parties serve as platforms for dialogue and democratic debate. The dialogue leads to exposition of merit and demerit of a particular policy thereby giving the citizens clear picture of what operates in their society. With debate and competition between parties, better outcome is served.³⁰⁰ More so, since political parties compete for political powers, the weaknesses of the other are exposed. This serves as a check on the government of the day and renders the government accountable to the people.³⁰¹ Also, people are recruited into leadership positions through the instrumentality of political parties.³⁰² Many countries leadership positions are gotten from the platform of political parties. Thus, political parties play an important role of democratic entrenchment, through citizens' active participation.

2.1.2 Need for Citizen's Active Participation in Politics

Citizens' active democratic participation is a central pillar to a functioning democracy.³⁰³ This shows the main difference between autocracy and democracy. Government must be responsible to the people they govern by making them have a say in their affairs to a large extent.³⁰⁴ Participation could come in several forms such as voting for their representatives at elections, protests, being part of the decision making, referendum and so on. However, the extent of allowable participation is subject to debate. On one hand, there is the notion of direct or participatory democracy which allows people's involvement in the process of law and policy formulation.³⁰⁵ The other is indirect or representative democracy where people participate through their elected representatives.³⁰⁶ Undoubtedly, both systems of democracy emphasise the

²⁹⁸ C. Steven, 'Political Parties as Mediating Institutions' (1994) 62 *University of Chicago Law Review*, 1484ff

²⁹⁹ S. Neuman, 'The Party of Democratic Integration' in M. Peter (ed.) *The Western European Party System*, Oxford: Oxford University Press, 1990, 46.

³⁰⁰ A. Schlesinger 'Can the Party System be saved' in Patricia Bonomi et al (eds.) *American Constitutional Systems under Strong and Weak Parties*, 1981, 122f

³⁰¹ M. Yigal, 'The Dissolution of Political Parties: The problem of Internal Democracy' (2006) 4 *International Journal of Constitutional Law*, 91.

³⁰² See for instance, section 131(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) which provides that a person is qualified as a President if, among others, is sponsored by a political party.

³⁰³ C. Kathe, *Elements of Effective Governance: Measurement, Accountability and Participation*, CRS Press (Taylor and Francis Group), 2006, 149.

³⁰⁴ D.V. Pierrie, 'It is my Party, I will do what I want to? Internal Party Democracy and section 19 of the South African Constitution' (2014) 30 *SACHR*, 30-55.

³⁰⁵ S. Theo, *Local Direct Democracy in Europe- A Comparative Overview* in Theo Schiller (ed.) *Local Direct Democracy in Europe* (2011) 10.

³⁰⁶ S. Theo, 'Direct Democracy and Theories of Participatory Democracy- Some Observations' in T. P. Zoltan et al (eds.) *Direct Democracy in Europe: Developments and Prospects*, 2007, 53f.

significance of citizens' participation in democratic activities and in internal activities of political parties. The question now is what amounts to internal party's democracy. This will be briefly examined in the next segment of this paper.³⁰⁷

2.1.3 Meaning of Internal Party Democracy

Let it be noted from the on-set that the term internal party democracy, like many legal terminologies, defiles a generally acceptable definition. But it can be said that internal party democracy is a way of putting party members in decision making and intra-party deliberations.³⁰⁸ This implies the extent to which party members have influence in the decision making processes of the party.³⁰⁹ It is essentially based on the notion of participatory democracy.³¹⁰

Thus, elements of a valid internal party democracy include:³¹¹ First, party members must have power and are allowed to nominate candidates for imminent elections whether local or general. This will not be served there is imposition of candidates by the leadership or powerful members of the party.³¹² Second, and in relation to the above, is the fact that party members must be allowed to elect candidates of their choice into party leadership through congresses.³¹³ The parallel congresses being witnessed across states at the moment is at variance with this ingredient. Third, party members should be able to participate in policy formulation or decision making processes of the party.³¹⁴ Fourth, political parties must hold periodic elections. This should be regular and should not be postponed at will by the leadership of the political party.³¹⁵ Fifth, majority rule must always apply. This implies that the basis of decision in a political party should be through the opinions of the majority as expressed through votes or consensus. Nonetheless, minorities too must be respected.³¹⁶ Also, free speech and freedom of association must be guaranteed within the party. There must also be transparency, especially with regard to funding and expenditure of party's funds.³¹⁷ Furthermore, the right to fair hearing of party members must be upheld particularly in terms of suspension, expulsion and other forms of party discipline

³⁰⁷ H. John, *Direct Democracy or Representative Government: Dispelling the Populist Myth*, Westlaw Press: USA, 2001, 1.
³⁰⁸ Susan Scarrow (n 22)
³⁰⁹ J. Mariyo, 'Preaching Water, Drinking Wine, Political Parties and Intra-Party Democracy in East Africa: Considerations for Democratic Consolidation' Paper Presented at the ASC Leiden Seminar Series, 2003, 8.

³¹⁰ Ibid

³¹¹ M. Yigal (n 27)

³¹² S. Scarrow (n 22)

³¹³ B. Maier, *Legal Regulation of Internal Party Democracy: A Study of South Africa and Germany* (Master's Degree Thesis, University of Cape Town, 2015)

³¹⁴ S. Scarrow (n 22)

³¹⁵ Ibid

³¹⁶ M. Yigal (n 27)

³¹⁷ S. Scarrow, 'Intra-Party Democracy and Party Finance' in William Cross and Richard Katz (eds) *The Challenges of Intra-Party Democracy* 2013, 150.

members. The processes must be fair procedurally and substantially.³¹⁸ Lastly, internal affairs of political parties must be subject to judicial review. This implies that political parties must not treat the decision of courts with disdain and disrespect.³¹⁹ The extent of compliance and how to enforce compliance with these internal party democracy elements remains a challenge. But, the issue here is whether compliance with internal party democracy is desirable in order to have good governance in Africa. This will be the focus of this paper in the next segment of this study.

2.1.4 Desirability of Internal Party Democracy for Good Governance

The common perception that achieving the principles of democracy is a goal in every state appears not to be the case with respect to internal party democracy. This is despite the fact that political parties, as earlier stated, play a pivotal role in a democracy. The reason is that political parties are considered as private bodies in many states. Hence, there should be no need for state legal regulation. This is particularly so since it is all about politics where politicians put their interests first before any other considerations.³²⁰ The argument for independence of political parties from state regulation is that internal party democracy is itself counter-productive for enforcement of party discipline as it weakens the political parties.³²¹ More so, internal party democracy may put the winning chances of the party at real voting level at stake since it may lead to selection of candidates that may not win the general elections.³²² It is not all party members that know much about politics. Hence, their much involvement may blink the parties' chances at poll. Furthermore, it is posited that it is only a non-state regulated political parties that can provide credible alternatives to the electorates thus playing a pivotal role in a democratic state.³²³ It is also argued that to be able to follow their ideologies, political parties must not be too democratic.³²⁴

Undoubtedly, a measure of discretion for political parties in respect of its internal affairs is necessary for its autonomy from government. This does not mean that internal party democracy should not be enforced. The reason is that firstly, parties that respect their internal party democracy may not likely run a government that is undemocratic. The interest of the citizens may be better represented in this regard than a party that does not follow its internal party

³¹⁸ M. Yigal (n 27).

³¹⁹ Sarah C. 'A Gendered Critique and Feminist Agenda' in C. William and R. Katz (eds) *The Challenges of Intra-Party Democracy* 2013, 81.

³²⁰ I. V. Biezen and D. R. Piccio 'On the Legal Regulation of Internal Party Organisation' in C. William and R. Katz (eds) *The Challenges of Intra-Party Democracy*, 2013, 30.

³²¹ M. Yigal (n 27), J. Muvo (n 35).

³²² M. Augustine 'Democracy within Political Parties: The State of Affairs in East and Southern Africa' in Danwood M. U. and L. A. N. *Accountable Government in Africa*, 2011, 202.

³²³ S. Issacharoff 'Fragile Democracies' (2007) 120 *Harvard Law Review* 1460.

³²⁴ M. Yigal (n 27).

democracy.³²⁵ Also, if citizens enjoy right to participation in democracy, the right should be extended to political parties whose role is primarily to facilitate democratic processes in the country.³²⁶ More so, through internal party democracy, unity may be fostered as it will prevent political parties with fragmentation with the help of disputes settlement mechanisms in the party such as equality based on democratic values.³²⁷ Furthermore, political parties with flawed internal party democracy may not wield much influence and power in the country.³²⁸ Besides, if political parties embrace the culture of internal party democracy, the people of the country may in a larger sense embrace the principles of democracy thereby leading to good governance.³²⁹

3.0 Constitutional and institutional designs of Transparency and Internal Party Democracy: This segment will analyse how the constitution has designed the constitutional and institutional framework for transparency and internal party democracy in Africa with focus on Nigeria, South Africa and Botswana. The choice of these jurisdictions is informed by its relatively similar constitutional framework for transparency and internal party democracy.

3.1 Nigeria

The Nigerian Constitution contains provisions dealing with political parties.³³⁰ It provides what the constitutions and rules of political parties shall promote and protect.³³¹ It also provides for what the aims and objectives of the parties must comply with³³² and finances of political parties.³³³ Also, under the Electoral Act, political parties can only change their candidates for election in the case of death or express withdrawal in writing by the candidate.³³⁴ The Act also provides rules, regulations and guidelines to be followed by political parties.³³⁵ Also, the Act provides that notwithstanding any provision in the Act or rules of political parties, an aspirant who complains about the violation of the Act or rules of the

³²⁵ M. Augustine (n 48)

³²⁶ M. Yigal (n 27)

³²⁷ J. Maiyo (n 35)

³²⁸ J. Gardener, 'Can Party Politics be Virtuous' (2000) 100 *Columbia Law Review*, 685

³²⁹ M. Augustine (n 47)

³³⁰ Section 222 of the Constitution of the Federal Republic of Nigeria, 1999 as altered (CFRN, 1999) requires the political parties to ensure that the names and addresses of its national officers are registered with Independent National Electoral Commission (INEC). Memberships are opened to every Nigerian irrespective of his place of origin, circumstances of birth, sex, religion, or ethnic group; a copy of its constitution is registered in the principal office of INEC and registers its altered constitutions; the symbol should not reflect religious or ethnic colouration and have its headquarters in the Federal Capital Territory (FCT) Abuja.

³³¹ Section 223(1) (b) of the CFRN, 1999 states that the rules and constitutions of political parties must provide for the periodical election on a democratic basis of the principal officers and members of the executive committee or other governing bodies of the parties; ensure that the members of the executive committee or other governing bodies reflect the Federal Character of Nigeria. See also section 223(2) of the CFRN, 1999.

³³² Section 224 provides that its aims and objectives must comply with fundamental objectives and directive principles of the state policy contained in chapter II of the CFRN, 1999.

³³³ See sections 225 and 226 of the CFRN, 1999 regulations relating to the finances of political parties.

³³⁴ See generally sections 32 to 36 the Electoral Act, no. 6, 2010 as amended Electoral Amendment Act no. 2, 2011 (the Electoral Act)

³³⁵ See sections 78 to 102 of the Electoral Act

political party may approach the Federal or State High Court for redress.³³⁸ However, it would appear that the Act does not allow the court to stop the holding of primary or general elections pending the determination of the case.³³⁹

In applying the above legal framework, courts in Nigeria have made pronouncements on key areas of internal party democracy. One of such areas is the grant of injunction (i.e. a restraining order) against political parties from performing certain actions. Thus, in *Akure v National Party of Nigeria Bernue* (2001),³⁴⁰ the plaintiff, a member of the National Party of Nigeria, brought an action to restrain the party from allowing the then incumbent governor from seeking another nomination under the party by participating in the primary elections. The reason for this was that the governor had misappropriated the public fund while in his first term in office and that nominating the governor for the second term would lower the esteem and integrity of the plaintiff in the eyes of the public as a member of the party. The Court was however of the view that the action was not fit for judicial determination being political in shape and in form and is purely a political matter.³⁴¹

Similar issue arose in the case of *Rimi and Musa v Peoples Redemption Party*³⁴² and *Obayemi v Awojolu*.³⁴³ The courts refused injunction against the political parties in these cases. However, the Federal High Court sitting in Abuja in *Timipre Sylva v Independent National Electoral Commission & ors*³⁴⁴ ordered the Peoples' Democratic Party (PDP) to suspend its scheduled November 19 gubernatorial primaries for Bayelsa State, till November 22, when a motion *ex-parte* filed by the embattled governor of the state, Timipre Sylva, will be determined. The Court even noted that it would not hesitate to declare whatever actions embarked upon in contempt of court order as nullity.

One other area where the courts have made pronouncements relates to the selection and nomination of candidates for elections by political parties. Thus, the opportunity to make pronouncement on this internal party democracy was the case of *Onuoha v Okafor*.³⁴⁵ The issue, in this case, was whether the Court has the power to review the decision of a political party dealing with nomination and sponsorship of candidate for election. The Supreme Court on appeal also affirmed the decision of the Court of Appeal unanimously on the ground that the

³³⁸See section 87(9) and (10) of the Electoral Act.

³³⁹See section 87(11) of the Electoral Act.

³⁴⁰(1984) 1 NCLR 449.

³⁴¹*Ibid* at 460.

³⁴²(1981) 2 NCLR 734.

³⁴³(1984) 1 NCLR 423.

³⁴⁴Delivered by Kolasoke J. (15th November, 2011). However, the Supreme Court (SC. 28/2012, SC. 8/2012 Consolidated) held that the Court lacked jurisdiction as the matter relates to pre-primary election matters and that dispute in this case affects the appellants who did not allow Sylva to contest the primaries. This case is discussed in more details for ease of presentation in 2.2 of this theme.

³⁴⁵(1983) 2 SCNLR 344.

matter falls under political questions not subject to judicial review. Similar conclusions were reached by courts in the cases of *Okoli v Mbadiwe*,³⁴⁴ *Ogunbanjo v Oshunride*,³⁴⁵ *Dalhatu v Turaki*.³⁴⁶

The courts justified the approach of non-intervention in matters relating to internal party democracy on the ground that since party members have freely mortgaged their consciences by joining a political party, with its rules and regulations, it is not for the courts to intervene.³⁴⁷

It is submitted that this reasoning is not justifiable in the context of internal political parties' activities in Nigeria. The reason is that political parties' operations evolved through Constitution and the law; hence it needs to comply with the law. Also, this position is too open-ended as its adoption creates way for abuse of power by the powerful political party members.³⁴⁸ Those with radical views may have their ambition truncated notwithstanding the views of the majority party members.³⁴⁹ Consequently, political parties' rules and regulations will be violated with impunity and internal party democracy will be lost. It should be stressed that this approach of non-intervention was based on the law at that time. However, the approach was self-induced by the courts as no law expressly prohibited the court from intervening in matters relating to internal party democracy.

Therefore, the year 2007 marks the remarkable departure from this approach of non-intervention in matters relating to internal party democracy. In the case of *Ugwu and Anor v Ararume*,³⁵⁰ the undisputed result of the primary election conducted in Imo State of Nigeria on the 14th April 2007 of the Peoples' Democratic Party showed that the 1st respondent scored the highest number of votes. The 1st appellant who also contested ranked 16 of 22 participants in the primary election. The name of the 1st respondent was, therefore, forwarded to INEC as the winner of the primary elections. A month, thereafter, the party forwarded the name of the 1st appellant to INEC as the party's candidate without stating the reason for its action. In reaction to this, the 1st appellant brought an action at the Federal High Court, Abuja against the party to review the action of the party because no cogent and verifiable reason was stated for his substitution. The Court denied judicial review on the ground that it was within the power of the party to change the candidates it wants to sponsor for election as doing that

³⁴⁴ (1983) 6 NCLR 724

³⁴⁵ (1986) 6 NCLR 611. The court relied on relying on section 83(2) of the Electoral Act 1982.

³⁴⁶ (2002) 15 NWLR (pt 845) at 244

³⁴⁷ See 347 paras F-G

³⁴⁸ See the interview with Senator Suleiman M. Ajadi, Senator Federal Republic of Nigeria, (1999-2005) in his Abuja Residence on the 19th July, 2011 (Transcript is in file with the Author) and Interview with Honourable Abioye, Member, Kwara State House of Assembly (1999-2003) at Wuye, Abuja, on the 20th July, 2011 (Transcript is in file with the Author)

³⁴⁹ Ibid

³⁵⁰ (2007) 12 NWLR (Pt 1048) 367.

...will be reviewing the internal affairs of the political party which the Court is not prepared to do. The Court of Appeal set aside the decision of the Court and allowed the appeal on the ground that the trial Court failed to consider all aspects of section 34(1) and (2) of the Electoral Act, 2006 and that the Court decision does not meet the justice of the case. On appeal to the Court, considering all aspects of section 34(1) and (2) of the Electoral Act, the Court rejected the argument that the Court cannot review the decision of the party changing its candidate amounts to internal affairs of the party. It held that the argument no longer has any support in whatsoever under any law in the country's present dispensation and the action is well justiciable.³⁵¹

The Court relied on section 34(2) of the Electoral Act, 2006 which provides that a party wishing to change its candidate must give cogent and verifiable reasons for doing so in going to the conclusion that where a party fails to give any reason or reasons which are cogent and verifiable, the aggrieved person has a legal right to seek redress in a competent court of law by virtue of section 6 of the Constitution.³⁵² Similar conclusion was reached in the cases of *Rt. Hon. Chubuike Amaechi v Independent National Electoral Commission*,³⁵³ *Saidu v Abubakar*,³⁵⁴ *Uzodinma v Izunaso*,³⁵⁵ However, the Supreme Court seems to have introduced another dimension to the issue of selection or nomination of candidates for election within the political party in *Peoples' Democratic Party v Timipre Silva & 2 Ors.*³⁵⁶ The Court while further noting that section 87(9) of the Electoral Act, 2010 which gives courts power to hear and determine complaints from a candidate that participated in the primaries is not applicable to a person who is not a candidate at the primary election.

Furthermore, since disputes in any human endeavours are inevitable,³⁵⁷ the court has intervened to ensure that political parties resolve their disputes in accordance with the law and the rules that guide their operations. Thus, in *Professor Dakum Shown and Ors v Vincent Ogbulafor and Ors*,³⁵⁸ the National Working Committee of the Peoples' Democratic Party (PDP) dissolved the State Executive Committee of Plateau State, appointed and inaugurated Caretaker Committee for the State. The plaintiffs, who are members of PDP in the State, sued to quash the dissolution on the ground *inter alia* that having been

³⁵¹ Ibid at 469 paras F-H

³⁵² Ibid at 510-511, paras F-H

³⁵³ (2007) 9 NWLR (pt. 1040) 504

³⁵⁴ (2008) 12 NWLR (Pt. 1100) Per Gurnel, JCA at 296 para E-G

³⁵⁵ (2011) 5 MISC (Pt. 1) 1 at p. 53 per Rhodes V. ISC See also Interview with the Justice by the Author conducted on the 4th day of July, 2011 at his office in the Supreme Court Complex, Abuja-Nigeria. (Transcript is on file with the author)

³⁵⁶ (2011) 5 MISC (Pt. 1) 1 at p. 53 per Rhodes V. ISC See also Interview with the Justice by the Author conducted on the 4th day of July, 2011 at his office in the Supreme Court Complex, Abuja-Nigeria. (Transcript is on file with the author)

³⁵⁷ SC 28/2012, SC 9/2012 consolidated delivered on the 20th Day of April, 2012 delivered by Bode Rhodes-Vivour, JSC who read the judgement of the

was incidentally delivered not too long after the author's interview with Bode Rhodes-Vivour, JSC who read the judgement of the

Supreme Court

³⁵⁸ See A.O. Sambo, and M.M. Akanbi, 'Subs As a Means of Dispute Resolution', in Adnan Franks & Hamid Hammad Ali Tuguldin (eds):

Principles, Instruments and Operations of Malaysian Current Law Journal, Malaysia, 371-382

³⁵⁹ See A.O. Sambo, and M.M. Akanbi, 'Subs As a Means of Dispute Resolution', in Adnan Franks & Hamid Hammad Ali Tuguldin (eds):

Principles, Instruments and Operations of Malaysian Current Law Journal, Malaysia, 371-382

democratically elected as State Executive Committees; they could only be removed through democratic means in line with the party's constitution and Nigerian Constitution.³⁵⁹ The Court held, while rejecting the argument that it was an internal affair, a political question meant to be decided at the party's platform; that the dissolution was null and void. The Court observed the need for decency and respect for human rights and democratic principles by politicians if the country is to make any meaningful progress politically and developmentally. Similar conclusion was reached by the court in *Rimi & Anor v Aminu Kano*.³⁶⁰ But in a situation where the political parties' decisions are in line with the law and party's constitution, the court will validate the decision as held in the case of *Balarabe Musa v Peoples' Redemption Party*.³⁶¹

Thus, the courts in Nigeria have exercised the powers of judicial review in almost all matters relating to internal party democracy discussed above. The initial attitude of the courts was that questions relating to internal party democracy were political in nature and courts could not intervene. This was an attempt to insulate itself from politics.³⁶² This, according to the courts, would amount to managing the affairs of the parties by the courts. However, happenstances and experience over the years revealed that the earlier position was too open-ended as politicians took the opportunity of non-court intervention to violate the rights of other members, the Nigerian Constitution, the parties' constitutions, rules and guidelines set for themselves. As a result, party discipline was lost. The courts, therefore, without expressly overruling its previous decisions began to exercise its power of judicial review in this respect. More so, since the Nigerian Constitution makes provisions in relation to certain activities of political parties and since no statutes expressly or can validly oust the courts jurisdictions in this respect at the moment, then, the courts will be failing in their duties if they do not void any internal affairs of political parties that contradict the Nigerian Constitution, the parties constitutions, and the rules and regulations which parties have set for themselves. Thus, courts have exercised its powers of judicial review with respect to injunction to stop activities of political parties; selection or nomination of candidates for elections, general disputes in the management of political parties; decisions of political parties and political defections as they are now justiciable issues in a competent court of law.

³⁵⁹ See the combined effect of section 221, 222, and 223 of the Constitution of the Federal Republic of Nigeria 1999 which provides for the way of electing and controlling political parties through democratic means. The court even voided Article 12, 72 (e) of the PDP constitution which empowers the National Working Committee and the PDP to dissolve democratically elected States Executive Committee. (1982) 3 NCLR 478.
³⁶⁰ (1981) 2 NCLR 763.
³⁶¹ A. O. Sambo, 'Shielding the Courts from Political Pressure: A Critical Exposition of the Doctrine of Political Questions' (2015) 10 *University of North Law Journal* 103-129; A. O. Sambo, & H. A. Kadouf, 'The Intensity of Judicial Review In Political Disputes: Measuring The Merits And The Risks,' (2014) 76 (2) *Pensee Journal*, 10. A. O. Sambo, *Judicial Review of Political Questions in Nigeria and Malaysia: A Comparative Analysis* (Ph D Thesis, IUM, Malaysia, April 2013). A. A. Shamrahayuk & A. O. Sambo, 'Internal Affairs of Political Parties and Judicial Review: An Expository Study of the Experience in Nigeria and Malaysia' (2011) 7:132 *ASR* (Special Issue for Law), 2257-2265.

Like Nigeria, South Africa does not have a comprehensive legal framework for internal party democracy. In other words, there is no political party law that is specifically meant to regulate the internal party democracy in terms of the structure and extent to which the party members can exercise their rights within a political party. This may account for the reasons why there is no remarkable internal party democracy in South Africa. However, the absence of specific legal framework does not mean that there are no pockets of laws which regulate African political parties cannot set standards of internal party democracy within the rules that govern their operations and rules.

The main role of political parties is spelt out in South Africa. In fact, the South African Constitutional Court noted in the case of *Ramokatsa and Others v Abgashule and Others*¹⁶³ that political parties play an important role in South African democratic system and political rights are exercised and facilitated through political parties. The South African Constitution equally captures the role of political parties by providing for their operations within the institutions of government and providing that representative democracy should be stimulated through the political parties.¹⁶⁴ This is even why section 1 of the South African Constitution stipulates that the country is founded, among others, on the values of 'a universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.'¹⁶⁵

One notable feature of the South African system is the multi-party democracy. Citizens' votes are for the political parties not the candidates.¹⁶⁶ The president, who is the head of government as well as the head of state, gets elected by the National Assembly. The citizens vote for political parties. The parties will then determine become the president thereby making the role of political parties more pronounced.¹⁶⁷

Furthermore, the concept of party supremacy works well in South Africa as there is a high level of party discipline. For instance, section 2.5.3.1 of the Constitution of DA prohibits open criticism of decisions of party legislative caucus, parties' principles and policies except through appropriate party structure.¹⁶⁸ Any party

¹⁶³ (CCT 109/12) [2012] ZACC 31; 2013 (2) BCLR 202 (CC) Para 65

¹⁶⁴ For instance, see sections 1(d), 19, 47(3)(c), 57(2)(c), 116(2)(c), and 263 of the Constitution

¹⁶⁵ Section 1(d) of the Constitution

¹⁶⁶ Section 46(1)(d) and 105(1)(d) of the Constitution. Loammu Wolf, "The Right to Stand as an Independent Candidate in National and Provincial Elections: *Majola v The President*" (2014) 30 SAJHR 159

¹⁶⁷ Section 86(1) of the Constitution

¹⁶⁸ Section 9.2.6 of the DA Federal Constitution 2010

member that violates these internal party rules may be sanctioned by the party. This may include suspension or expulsion of the member from the party. The effect of this is that under section 47(3)(c), where a party member loses his party membership, he also loses his seat as a member of the legislature. This makes party members to follow the dictates of their parties as against their consciences freely when voting.³⁶⁹

The Constitution of South Africa does not expressly place duty on the political parties with respect to their internal party democracy. Nonetheless, section 19 of the Constitution is very instructive. It provides that "(1) Every citizen is free to make political choices which includes: Right (a) to form a political party; (b) to participate in the activities of, or recruit members for, a political party; or c) to campaign for a political party or cause. (2) Every citizen has a right to free, fair and regular elections for any legislative body established in terms of the constitution."

Thus, section 19(1) (b) which provides for citizens' rights to participate in the activities of the political parties needs to be examined. This section is relevant to internal party democracy discourse. What is the extent and nature of the participation required by the section? Must the participation be carried out in a democratic manner? The Constitution does not provide further guidance on this. Similarly, the available Act of the National Assembly does not cure these obvious defects. The Constitutional Court however in the case of *Ramakatsa and Others v. Mugashule and Others* gave some directions on the import of section 19. In this case, six members of the ANC approached the court to set aside the Provincial conference including the resolutions adopted at the conference. The court held that irregularities complained of affects the right of the appellant to participate in the activities of the ANC.³⁷⁰ It was accordingly declared invalid. The court noted that the purpose of section 19 is to prevent endemic denial of citizen's political rights. It is actually to safeguard the activities of the party once a choice is made. In fact, these important provisions of the Constitution cannot be violated by the party without consequence. The court further noted that even though the constitution does not provide for how a party member can participate in parties' activities, the political parties can better prescribe how party members can participate in their affairs.

It can therefore be said that right to participate in the activities of political parties include the right to vote and be voted for within the party's legal framework. Members' duties in this respect should not be neglected within the context of participatory democracy. Thus, the court in *August & Anor v. Electoral*

³⁶⁹ Cora Hoexter, *Administrative Law in South Africa*, 2012, 73.
³⁷⁰ *Ramakatsa*, Para 110

*Commission & Others*³⁷¹ noted that universal adult suffrage is a fundamental value of the South African constitutional order. In this vein, this right cannot be unjustifiably restricted and legislations which deal with the right to vote must be interpreted to favour enfranchisement and not otherwise.³⁷² Therefore, it can be said that the core values of internal party democracy is, to an extent, protected by this section 19 of the Constitution.

Apart from the Constitution, there are national legislations which deal with internal party democracy in South Africa. For instance, the Electoral Commission Act 51 of 1996, Electoral Act 73 of 1998 and the regulations made under these Acts to regulate elections in South Africa. These frameworks, which essentially regulate the submission and registration of candidates, require that candidates' list must be registered and submitted by the political parties to enable them contest for elections.³⁷³ The issue is whether these rules have impacts on the political parties' internal structure. In this regard, section 15 of the Electoral Commission Act mandates parties that want to contest elections to furnish the commission with basic information in terms of their names, logo and party's constitution. This section, unlike the Nigeria's Constitution, does not provide for what parties' constitutions should contain. It does not also provide for how the internal affairs of the party will be structured or the degree of membership participation within the party. However, sections 16 and 17 provide that political parties that incite or hatred against any tribe, ethnic or religious group or offends members of the society on grounds of age, tribe, religion, conscience, belief, culture, language or disability or welcomes party members on the aforementioned grounds may not be registered or de-registered.³⁷⁴ This sections, at least, satisfies one of the elements of internal party democracy. Nonetheless, enforcement of this rule becomes an issue as the act does not provide mechanism to enforce it. For instance, it does not provide the extent to which members can participate in the election of party's leadership.

Furthermore, section 27 of the Electoral Act mandates a party that intends to contest to nominate and submit the list of candidates to the Commission. However, the procedure for nomination of candidates is left to the parties to decide as no provision is made in this section for that purpose. This discretion is left wide open as other provisions fail to limit the exercise of this discretion by the parties. Even section 30 of the Electoral Act that governs objection to

³⁷¹ (CCTR/99), [1999 ZACC 3, 1999 (3) SA 1, 1999 (4) BCLR 363]
³⁷² *August & Anor v Electoral Commission & Others* (CCTR/99), [1999 ZACC 3, 1999 (3) SA 1, 1999 (4) BCLR 363]
³⁷³ For instance, see Regulations on the Party Liaison Committees, 1998. Regulations for the registering Political Parties, 2004. Regulations relating to Permissible activities outside the voting stations on voting day, Regulations on the Accreditation of Voter Education Providers, 1998. Election Regulations, 2004. Regulations on the Submission of Candidates Lists, 2004. See also sections 26 of the Electoral Act, Teer Lodge, Handbook of South African Electoral Law and Regulations, 2004.
³⁷⁴ Sections 15(3)(d), 16(1)(c) and 17(1)(d) of the Electoral Commission Act

candidate's nomination does not provide for internal party democracy as a ground.

Apart from the Electoral Commissions Act and the Electoral Act, the provisions of Promotion of Administrative Justice Act (PAJA) 3, 2000 is another relevant piece of legislation on internal party democracy. This can be applied through the right to procedural fairness in sections 3 and 4 of the Act thereby giving effect to section 33(2) of the Constitution. However, PAJA's application in this respect is stringent in some senses. First, whether the activity for example, appointment of leadership of the party by the Executive Committee satisfies administrative actions as contained in section 1 of PAJA. Second, is the political party exercising public power or function?³⁷⁵ Is the legitimate expectation or member's right adversely affected? What is the direct external effect of the party's activity?³⁷⁶

Despite the above issues, it can be said that PAJA's right to procedural fairness is of little or no assistance to internal party democracy. This is because, as earlier stated, members' participation in the decision making process of the party is central to any claim to internal party democracy. The decision of the party must always be that of the members of the party not the leadership of the party. The right to procedural fairness on the other hand is just giving members reasonable opportunity for representation. Its value in protecting core internal party democracy is limited.

3.3 Botswana

Apart from Article 13 of the Botswana Constitution which provides for freedom of association which includes the right to form political parties, the Botswana Constitution is silent of the regulation of political parties in the country. The decisions of courts in *Mogorosi and Others v Botswana National Front and Others*³⁷⁷ and *Autlwetse v Botswana Democratic Party and Others*³⁷⁸ have not opened the frontiers for judicial intervention in matters relating to internal party democracy in Botswana. The courts have reasoned that political parties do not perform public functions; hence, they cannot be subject to the courts' power of judicial review. It can be said therefore that this position partly accounts for the reasons why political parties in Botswana do not have adequate internal party democracy.

³⁷⁵ I. Thornton, 'The Constitutional Right to Just Administrative Action: Are Political Parties Bound?' (1999) 15 SAJHR 151; see also section 1 (a) and (b) PAJA; section 33 of the Constitution; Cape Town Institute for Democracy in South Africa and Others v African National Congress and Others (9828/03 [2005 ZAWCHC 30, 2005 (5) SA 39 (c) 2005, 3 ALL SA 45 (c) paras 37ff

³⁷⁶ Sections 1 and 3(1) of the PAJA;

³⁷⁷ MAHFT-000134 [20]01 BWHC 429 (15 July 2010)

³⁷⁸ [2004] 1 BLR 230 (HC)

the major opposition party in Botswana, the BNP, witnessed political crises due to debatable primary elections outcomes.²⁹ This led to factions within the party, among the party regulations and established structures with division. It appears that the major split in the party happened during the run-up to the 1994 elections. Consequently, three splinter groups appeared from the BNP to form the Botswana Workers Front, the Social Democratic Party and the United Socialist Party in 1993 and 1994, the split in the party led to the loss of its stronghold in its traditional constituencies. The BDP won the constituencies.³⁰

In 1991, due to the leadership crisis, some BNP party stalwarts could not win central Committee elections. Those who lost the election created a splinter group. A congress was then convened to resolve the leadership crisis in 1998. Serious fight ensued at the congress leading to physical injuries on party members. The BNP lost some important members like eleven MPs and 68 councillors through resignation forming Botswana Congress Party (BCP). Consequently, the opposition got seven seats out of forty. The 2004 congress also led to factions as the concerned group factions won the central committee positions, emerging as hegemonic group in the BNP.

Factional politics has been a factor in not only in BNP politics but also the ruling BDP. However, it appears the BDP has workable dispute settlement mechanism and always focuses on state power. Perchance, the major setback of BDP's internal party democracy happened in 1998. Masire stepped down during the mid of his term as president. There were serious aspersions created on the internal democracy of BDP in spite of the fact that the move gave enormous goodwill to the party and country.³¹

Internal party democracy was also faulted when President Mogae, when deciding on the Vice-President, overlooked all long serving members of the party, and made Lt. Gen. Ian Khama retire from his position as commander of the Botswana Defence Force to become the country's Vice-President. Such a manoeuvre can only happen in a situation where the constitutions of the party as well as the country do not provide for an election of the President and the Vice-President by the electorate. As things stand, the BDP is the dominant party in the country and there is no evidence that the opposition is regrouping to present a strong challenge to it during the 2004 general elections.³² Assuming the status quo obtains, the BDP will be in power for the foreseeable future and according to

²⁹ M.G. Molomo, 'Political Parties and Democratic Governance in Botswana' in S.M. Molomo (ed.), *Opposition Political Parties* (London: Pluto Press, 2003).

³⁰ Ibid.

³¹ Ibid.

³² M.G. Molomo, 'Understanding Government and Opposition Parties in Botswana' (2003) PhD, *Communication and Comparative Politics*, 16.

Mogae's succession plan, if nothing dramatic happens, much to the disdain of some members of the BDP, Lt. Gen. Ian Khama is set to be the country's next president after Mogae has served his second term.³⁸³ There were also issues with the primary elections conducted in 2002 as it is said to fall short of party democracy.

The process of selecting party candidates is crucial to any claim to internal party democracy.³⁸⁴ Selection mechanism may be centralized or devolved to some other organs of the party.³⁸⁵ Selection may be by consensus, convention, through a committee. Whichever system is adopted, it is important that the party sets the rule it intends to follow clearly so that the eligibility criteria is thrown open to the people.³⁸⁶ In this regard, the BDP, pursuant to its Constitution, prescribes a document titled: 'the Primary Elections Rules and Regulations' in which the party's national congress approved in 2001. Regulations 1 (a)-(d), 3, 4, 8, and 12 provides for the procedure guiding primary elections in Botswana. The central committee remains the final decision making body on selection of candidates notwithstanding the party members' nomination. This wide power of the central committee is said to be important for a number of reasons. First, it prevents party destabilisation as a result of general selection perhaps by people who do not share the vision of the party. It also tells much about the image of the party if a wrong person is selected to fly the flag of the party. A wrong party selection has serious effects on election results. A chosen candidate is therefore an image of the party. Candidates' popularity outside the party also matters.

Crisis management is also part of internal party democracy; the BDP has serious issue of conflict management. Its inability to accommodate different shades of opinions has affected party internal democracy.³⁸⁷ These factions in the party seem to conflict with the core values of compromise and unity of the party.³⁸⁸ There are instances where internal elections in BDP were cancelled to achieve party unity. The problem in this arrangement is that internal party democracy is threatened and it becomes uneasy to identify the weak faction in the party as a result of compromises. An instance is Sir Kutumile Masire's presidential ambition in 1997.³⁸⁹

³⁸³ Ibid.

³⁸⁴ K. Lundell 'Determinants of Candidates' Selection: The Degree of Centralisation in Comparative Perspective' (2004) 10(1) *Party Politics*, 26; Sarrow (n 22) Katz, R.S., 'The problem of Candidate Selection and Models of Party Democracy' (2001) 7(3) *Party Politics*, 277.

³⁸⁵ M. Molomo, 'In Search of An Alternative Electoral System in Botswana' in M. Salith (ed.), *African Political Parties Evolution: Institutionalisation and Governance*, London: Pluto Press, 2003.

³⁸⁶ P. Norris, 'Legislative Recruitment' in L.D. Lawrence, R. Niemi & P. Norris (eds), *Comparing Democracies: Election and Voting in Global Perspectives*, London, Sage Publishers, 1996, 202.

³⁸⁷ R. K. Carty, 'Parties as Franchise System: The Stratarchical Organization Imperative' (2004) 10(1) *Party Politics*, 13.

³⁸⁸ Z. Maundeni, D. Sebudubudu, Z. Kebinang, Mokhawa, G. Dominant 'Parties: The Case of the Botswana Democratic Party'.

³⁸⁹ For details, see K. Zeind & R.W. Wenzel, 'Enhancing Intra-Party Democracy: The Case of Botswana Democratic Party' *South Journal of African Elections*, 141-150.

Thus, a sense of belonging, inclusion and link between the party members and its leadership is established by opening up party processes to its members. Inclusiveness must also extend to tolerance and effective dispute settlement within the party. This will prevent or reduce polarization of the party into different factions. This, as well as, frequent use of consensus list by parties in Botswana stifle and undermine the growth of internal party democracy in Botswana.

4.8 Future of Transparency and Internal Party Democracy in Africa and Agenda for Reforms

This segment discusses the implication of the above threat to constitutionalism and proposes reforms in the constitutional and institutional architecture of Africa's party politics in the light of the ongoing agitations for internal party democracy and constitutionalism in Africa.

What is the implication of the foregoing to African constitutionalism? The legal architecture for transparency and internal party democracy is generally deficient. The institutional designs of internal party democracy are also faulty in Africa, particularly in countries under review. These deficiencies, in terms of inadequate constitutional and legal provisions to promote transparency and internal party democracies in these countries, have largely contributed to the failure of transparency and internal party democracy in Africa. This is evident in inability, unwillingness or reluctance of leadership of many political parties to play politics according to the rule of law or in accordance with the rules of their constitutions set for themselves, as argued above. In fact, as at May, 2018 in Nigeria, the ruling party conducted abysmal congresses across the states.³⁹⁰ This is after much reluctance to conduct congresses in the first place.³⁹¹ The opposition parties are not in any way better in terms of conducting themselves in accordance with the principles of internal party democracy. In fact, the Supreme Court of Nigeria had, in Amaechi's case reviewed, noted the lawlessness of the present opposition party in Nigeria. With the recent violence witnessed in party congresses across the states, it portends serious danger in the nearest future. The reason is that if political parties cannot conduct themselves with civility in its internal party congresses, it will be difficult to have civility in the general inter

³⁹⁰ Vanguard, May 6, 2018, APC Crises Fester: One Killed, Oyegun, Dogara, Kwankwaso Boycott Ward Congresses. Available at <https://www.vanguardngr.com/2018/05/apc-crises-fester-one-killed-oyegun-dogara-kwankwaso-boycott-ward-congresses/>. Accessed on 10/05/2018.

³⁹¹ Business Day, May 5, 2018, Finally APC Releases Time-table for Conventions, Congresses. Available at <http://www.businessdayonline.com/finally-apc-releases-time-table-convention-congresses>. Accessed on 10/05/2018. see also Premium Times May 5, 2018, APC Congresses Unfolds Across States. Available at <https://www.premiumtimesng.com/news/top-news/267366-apc-congresses-unfolds-across-states.html>. Accessed on 10/05/2018.

party elections.³⁹² The situation is similar in South Africa and Botswana as there is no well entrenched system of internal party democracy in the countries.

The implication of the above is that a party that lacks internal party democracy will be undemocratic in its approach to national issues. Likewise, a political party that fails, neglects or refuses to comply with the dictates of their constitutions will breach the provisions of the nation's constitution and laws with impunity. Rule of law and ultimate constitutionalism will be jettisoned. There acts of non-compliance with transparency and internal party democracy have been justified on grounds of political exegesis and the need to will the general elections. Nonetheless, it is important that political parties and the citizens alike will feel safe where constitutionalism, transparency and internal party democracy principles are adhered to.

Efforts at enhancing transparency and internal party democracy in countries under review have not yielded the desired results. This is in spite of, for instance, sections 221 -227 of the Constitution of the Federal Republic of Nigeria, 1999 as altered which prohibits opaque activities of political parties, provides for their aims and finances. Section 228(a) specifically empowers the National Assembly to make laws and guidelines to ensure internal democracy within political parties, conduct of primaries, congresses and party conventions. Section 87 of Electoral Act mandates parties to conduct primaries. The Supreme Court of Nigeria noted that the purpose of section 87 is to ensure transparency and internal party democracy.³⁹³ Even parties constitutions, such as Article 20 of the All Progressive Congress Constitution, provide that candidates must emerge through democratic path. The South African Constitution is also very scanty in relation to internal party democracy. What is apparent is section 19 of the Constitution which guarantees the citizens' rights to participate in the activities of political parties. The provisions of the Electoral Act and Electoral Commission Act in South Africa are not enough to produce the desired internal party democracy. They border much on registration of political parties. In fact wide power given to the political party to maintain discipline in the political parties in terms of suspension of members and making them to unconditionally lose their parliamentary seats only adds to the failure of internal party democracy. As earlier stated, members find it difficult to freely express their views on deficient party policies. It also enables the leadership of the political parties to substitute their decisions with the decision of the party members in flagrant disregard for transparency and internal party democracy. Botswana on the other hand has very little provisions to promote internal party democracy. What is apparent from the Botswana Constitution is just section 13 of the

³⁹² A. Jega, 'Peace Building, and Sustainable Development in Nigeria' being a Democracy Day Lecture delivered on 28th May, 2018. Available on <https://www.channelstv.com/2018/05/28/jega-warns-of-danger-ahead-of-2019/> Accessed on 28th May, 2018.
³⁹³ P. C. Nwalo [2012] 13 NWLR (Pt. 1316) 85 at 145

...which provides a general right to freedom of associations. Parties which are most often than not, complied with by the ruling as well as the opposition parties stated above.

Despite the weak and inadequate legal framework on internal party democracy as stated above in countries under review, the courts have not generally salvaged the situation. Well, in Nigeria, the initial attitude of the court was to refuse judicial review as stated above in matters relating to internal party democracy. However, situations, happenstances and a lot of intrigues subsequently showed that there is a need for a rider to the approach. Consequently, the courts later reasoned that judicial review in matters relating to internal party democracy is necessary for a entrenchment of rule of law and constitutionalism in Nigeria. Courts then began to opine that since the political parties' constitution are rooted from the nation's constitution in section 221-227 and the provisions of the Electoral Act, political parties must be made to comply with the provisions of the law and the guidelines the parties have set for themselves. This is not without resistance from the political parties. The implication of this approach to constitutionalism is that first it can make the courts to enter into muddy politics by dabbling into political questions in which may not be fit for judicial intervention. Second, party members may lose interests in parties' affairs as the courts will be seen as a place for resolving all manners of political disputes. So, internal party democracy is lost in the process. Again, there will be too many political cases being submitted to the court for resolution. Obviously, the courts do not have the long term capacity to cope with this as the trend in Nigeria shows that there is much litigation on internal matters of political parties. Nonetheless, where this is properly managed, it has its own merits alike. First, it can serve as a catalyst for the needed political reforms in a country. This is true of situations where bad practices, lack of internal party democracy and transparency are the order of the day in political parties. The parties will be weary of their actions knowing full well that their actions may be nullified by the courts where they fail to comply with internal party democracy. This was the reason contemplated in April, 2018, to reconsider its earlier positions not to hold congresses across the nation.³⁹⁴ Also, freedom of speech, a necessary element of internal party democracy, will be promoted through judicial review.

In the same vein, there is some measure of resistance by the courts in South Africa to instill internal party democracy through judicial review of decisions of political parties. Courts' decisions in South Africa³⁹⁵ largely refuse judicial intervention in matters relating to internal party democracy. The courts cannot be

³⁹⁴ *Madiba and Others v Inkata Freedom Party and Madagwasa-Msibi v Inkata Freedom Party* [2011] (4) SA 298 (KZP)

totally blamed for this approach because there is no adequate legal framework for it to operate. The situation is similar in Botswana¹⁹⁶ as the courts largely refuse to exercise judicial review in internal party democracy of political parties. The situation is not surprising in Botswana as the Constitution makes little or no effort to make adequate provisions for entrenchment of internal party democracy in the country.

Therefore, what further actions can be taken in Africa or countries under review to enhance transparency and internal party democracy in activities of political parties? This will be the focus of discussion in the next segment of this paper as agenda for reforms.

4.1 Adequate Constitutional Guarantee for Internal Party Democracy

The constitutional designs, from the above analysis of the countries under review, are not adequate enough to guarantee internal party democracies in the countries. Although the Nigerian Constitution provides for details in terms of aims and objectives, finance, prohibited activities, and what the political parties' constitution should protect, it cannot be said to be adequate. The National Assembly, in 2011 through the enactment of section 22 of the 1st Alteration to the 1999 Constitution, attempted to cover this gap. This is by enabling the National Assembly to enact laws that will ensure internal party democracy within political parties and transparent conduct of party primaries, congresses and party conventions in section 228 of the Constitution. This is good provision. However, the National Assembly missed the point by not having a separate Political Parties Act to regulate the activities of the political parties. Rather, amendment of Electoral Act 2015 was preferred. Yet, frequent amendment of the Electoral Act has not resolved the nagging problem of internal party democracy in Nigeria. Also, the political objectives as it is contained in section 15, particularly, section 15(3)(d) be made justiciable. As it is, the provision is not justiciable by virtue of section 6(6)(c) of the Constitution.

In the same token, the South African Constitution, in section 19(1)(b) attempts to guarantee internal party democracy. However, the details in terms of extent and manner are not stated in the Constitution. So, compared to Nigeria, South Africa has less detailed provision for internal party democracy in the Constitution. Botswana Constitution has no direct provision for internal party democracy except the general right to freedom of association in section 13. Thus, the constitutions of these countries need to adequately make provisions for internal party democracy.

¹⁹⁶ *Mogorosi and Others v Botswana National Front and Others* MAHFT-000134 [2010] BWHC 429 (15 July 2010) and *Botswana Democratic Party and Others* [2004] 1BLR 230 (HC)

terms of number of gender, indigenous communities and national minorities in their party laws.

4.3 Strengthening Institutional Mechanism for the Control of Political Parties

After an effective separate political parties law to regulate political parties, institutions for controlling political parties in Africa need to be strengthened. The available law in Africa on internal party democracy is poorly enforced in countries under review. African political parties are so powerful that they need strong institutions that can cope with the reality of democratic system in Africa. This will reduce desperation on the part of leadership of various political parties to do things abysmally without regard to internal party democracy. It is not out of place for the countries to have a separate independent institution, apart from the electoral commissions, to enforce internal party democracy in these countries. It is clear that the business of elections and other ancillary functions, is enough to occupy the time of the electoral commissions.

In the meantime, the courts should continue to perform creative functions in such a way as to enhance internal party democracy in these countries. Although this is risky for the court in its long term, it has its own obvious advantages. Firstly, it can serve as a catalyst for the required political change in these countries. This is because bad practices, lack of internal party democracy and transparency seem to be the order of the day in political parties in these countries. The political parties will be cautious of their actions because the courts will intervene if they fail to comply with internal party democracy. Political parties will reconsider their stand on any violation of internal party democracy. Also, free speech, an essential component of internal party democracy, will be promoted through judicial review.

4.4 Political Will by Political Parties to Enhance Internal Party Democracy

There is the need for strong political will on the part of various political parties in these countries to change their ways and embrace the best practices of internal party democracy. This will prevent the winner takes all syndrome which has permeated the political space in these countries. This syndrome is an important component of what destroys internal party democracy in Africa. The political parties should have obedience to the rule of law and respect the right of the people to participate in the activities of their political parties. The decisions of the party's leaderships are different from that of the party. This will enhance the legal and institutional framework to ensure internal party democracy in Africa.

3.0. CONCLUSION

From the foregoing analysis, political parties play crucial roles in the development of democratic norms. These norms ensure peoples' participation in the affairs of their country thereby leading to transparency and good governance. More so, citizens' active democratic participation is a central pillar to an effective democracy. The term internal party democracy does not have a generally acceptable definition like most legal terminologies. Nonetheless, it suffices to say that it encompasses putting party members in the process of decision making and intra-party deliberation with majority always having their way. Thus, despite the importance of internal party democracy to a functioning democracy, the challenge in Africa is that the constitutional and institutional designs for transparency and internal party democracy are weak and ineffective. Consequently, inadequate internal party democracy and internal political crisis or controversy permeates political sphere of the countries under review. This obviously has effects of good governance and constitutionalism. A political party that does not respect internal democracy will not have respect for constitutionalism. Likewise, a political party that does not conduct itself with civility in primary elections, congresses, or other internal party matters will not be civil during general elections which involve other political parties and will not respect democratic rights of citizens. This lies the obvious challenge to African constitutionalism.

Thus, this paper suggests that the constitutions should be amended to enhance internal party democracy in these countries. Also, there should be separate political parties' law with strong institutional framework that will regulate the activities of political parties towards internal party democracy and transparency. The role of the courts in doing creative functions in this regard is of high significance. Likewise, politicians should have the will to enhance internal party democracy in order to enhance good governance in these countries.