



**AN APPRAISAL OF THE AUTONOMY OF THE JUDICIARY IN NIGERIA AND ITS
ROLE IN BUILDING A SUSTAINABLE NATIONAL DEMOCRACY**

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Abstract

The judiciary remains one of the three arms of government vested with constitutional powers to interpret law, administer justice and punish offenders. It is consequently rationally justifiable that the constitution to an extent provided measures to ensure its autonomy or independence so as to enhance separation of powers and checks and balances for purposes of good governance and sustainable development. It is however worrisome that the autonomy of the judiciary has continued to hang in the balance and at the mercy of the executive arm upon which it has continued to depend on for funding and appointment of judges, among others.. The finding shows that these adversely affect the role of the judiciary in building a sustainable national democracy.. The paper affirmed that judiciary is the guardian and protector of fundamental human rights as well as the arbiter of disputes among all levels of government. This is why the judiciary ought to be autonomous and independent so as to be free to perform its functions without fear or favour. The paper made some recommendations that the appointment, promotion and dismissal of judicial officers should be clearly removed from the control of the executive arm of government. The constitutional provisions mandating that funds for judges of superior courts should be drawn from the consolidated Revenue Fund should be enforced across levels of government and same should be extended to judges of inferior courts, among others.

Key words: Appraisal, Autonomy, Judiciary, Sustainable National Democracy, Nigeria.

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Introduction

Democracies in modern times are fundamentally composed of three arms of government; the Executive, Legislature and the Judiciary. Each of these arms of government derives its powers from the Constitution. With recourse to Nigeria, the 1999 Constitution as amended guarantees the powers of each of the three arms of government. Nigeria has two sets of Judiciaries: Federal Judiciary and States Judiciary: under the Federal Judiciary we have the Supreme Court, Court of Appeal, Federal High Court, National Industrial Court, and such other judicial bodies like the National Judicial Council, National Judicial Institute, Federal Judicial Service Commission and Judicial Service Committee Abuja. The State Judiciary comprises of the State High Court, the Sharia Court of Appeal, Customary Court of Appeal and applicable Judicial Service Commission (Gambo, 2019).

As an arm of government the Judiciary is financed through annual budget at the Federal and States levels. No wonder Gambo (2019) affirmed that the Judiciary is central to good governance and sustainable democracy, and therefore, there are high expectations about its functions particularly under civil rule. Therefore, in order to ensure rule of law in governance and for the purpose of building strong and virile national democracy the autonomy or the independence of the Judiciary should be sacrosanct. Pursuant to the above, the 1999 Constitution as amended made provisions for the financial autonomy of the Judiciary at Federal and State levels.

The above notwithstanding, the Judiciary is still confronted with several challenges including poor funding, undue executive interference and intimidation of judicial officers and judges, corruption, frequent strikes by Judiciary staff, poor facilities in court rooms, low morale of staff, poor staff welfare and motivation etc. These no doubt hampers the role of the judiciary in building strong national democracy. Gambo (2014) attributes these chains of challenges to poor funding; and by implication lack of autonomy of the judiciary in Nigeria.

Objective

This paper sought to interrogate the autonomy of the Judiciary and its role in building a strong national democracy.

Theoretical Framework

This paper adopted the Structural-functionalism as an offshoot of the systems approach and can be placed in the same methodological category. It can therefore be placed within the category of macro as opposed to micro approaches to political inquiry. Structural-functionalism, a sociological concept with fountain head of Malinowsky, emerged from the effort of scholars like Talcott Parson, David Easton, Gabriel Almond, Bingham Powell, and James Coleman to develop a comprehensive framework within which political system, past and present as well as Western and non-Western could be analyzed as a basis for scientific study of comparative politics and administration. The proponents of the structural-functional approach sought to develop a common scientific framework for the analysis of all political systems.

This approach has four related analytical goals with the acronyms CRIP:

- i. **Comprehensiveness:** The inclusion of Western and non-Western cases
- ii. **Realism:** The analysis of the actual behaviour, rather than formal rules
- iii. **Intellectual order:** The creation of a unified theory of politics which will bring together the fields of comparative government, political theory and international relations
- iv. **Precision:** The application of scientific and quantitative techniques in the study of political behaviour and phenomenon.

The core assumption of the structural-functional approach is that a universal set of political functions could be defined and associated with different structures in different political systems. In other words, all political systems perform the same core set of functions, although these functions may be performed by different structures from one society to another. Political system here refers to a set of interactions, institutions and agencies concerned with formulating and implementing collective goals of a society by employment or threat of employment of more or less legitimate physical compulsion. It exists in both domestic and international environment shaping, these environments and being shaped by the environment.

The literature on structural-functional analysis has identified five types of political structures located within the modern political system: political parties, interest groups, legislature, executives/bureaucracies, and the courts (judiciary). In existing Western systems, political parties are largely but by no means exclusively associated with interest aggregation; interest groups with interest

articulation, legislature with rule making or policy formulation, executives and bureaucracies with rule application or policy implementation and courts with rule adjudication.

The summary of the assumption of the structural functionalism is that for the effective operation of society different structures or institutions are created and each structure is assigned functions. Thus when the structures efficiently perform their assigned functions it will result to effectiveness and system efficiency but when any of the structures fail in its functions it automatically results in system dysfunction. The approach therefore, clearly explains the phenomenon of autonomy of the judiciary in relation to its role in building strong national democracy in Nigeria. If the judiciary is allowed to perform its constitutional roles without intimidation and undue interference, the rule of law, fundamental human rights and good governance will be ensure through quick dispensation of justice without fear or favour.

Methodology

The work is based on content analysis.

Conceptual Insights on Judiciary and Judicial Autonomy or Independence

As a matter of priority every academic discourse should commence with definition of terms for purposes of clarity and understanding. The word “judiciary”, therefore, is our main keyword in this paper and a better comprehension of that word is imperative in this context. Judiciary is a derivative of the word judicial which means “doing an act with wisdom, logic, foresight, fairness and honesty” (Yakubu, 1990). Judiciary therefore means doing something or acting logically, fairly and honesty. *Boviers Dictionary 3rd edition*, defines “judiciary” as “the system of courts of justice in a country. The department of government concerned with the administration of justice”. More so, *Webster’s Encyclopedic Unabridged Dictionary of the English Language New Revised Edition* (1994) defines the noun ‘judiciary’ as the branch of government, the system of courts of justice in a country; judges taken collectively.

In the light of the above definitions some key points are germane to the functional elements or prerequisites that constitute a judiciary, namely: judges, courts of law and administration of justice. More importantly however, the judiciary is represents a legal institution of the state and this predisposes it to not just ordinary or common dictionary meaning but more aptly to legal definition. Consequently, *the Black’s Law Dictionary 8th edition* defines the term judiciary thus, the branch of

government responsible for interpreting the laws and administering justice; a system of courts as well as a body of judges. In the submission of Oloko (1990) on the nature of the judiciary, he described the judiciary as the specialized differentiated structures, processes and personnel that are devoted to the task of performing on a continuous basis, one of the three inter-related and independent governmental functions in modern and modernizing societies. The specific governmental functions performed by the judiciary in these societies are what are known as rule adjudication as distinct from the two governmental functions of rulemaking and rule application. In addition, constitution has high regards to the powers of the judiciary just like the other arms of government; executive and legislature. Thus to the judiciary exclusively is committed the judicial powers of the federation and the states, the guardianship of specially entrenched fundamental rights, interpretation of the constitution itself and the power, where necessary, to strike down as unconstitutional, enactments of the legislature and or actions of the executive (Oputa, 2007).

Judicial Autonomy or Independence of the Judiciary

The concept ‘autonomy or independence of the judiciary’ can be consciously or unconsciously misconstrued by some government functionaries and politicians, by some politicians and by some members of the general public. In this paper autonomy and independence are used interchangeably. Consequently, it is only necessary to clarify the contextual connotation of the term. The concept of judicial autonomy or independence usually connotes wider judicial autonomy. The expression simply means that the courts that exist in any modern state must be allowed to exercise their judicial functions without interference from any quarters (Chukkol, 1995). Indeed, independence of the judiciary means more than the absence of interference from the other organs of government. That is, it means: that deciding officers shall be independent in the full sense, from external direction by any political and administrative superiors in the dispensation of individual cases and inwardly free from the influences of personal gain and partisan or popular bias; thirdly, that day to day decisions shall be reasoned, rationally justified in terms that take full account both of the demands of general principles and the demands of the particular situation (Jones, 1959 cited in Aguda, 1992; Karibi-Whyte, 1987).

The independence of the judiciary involves “both subjective independence as well as objective independence, it involves de jure independence as well as de facto independence; it involves structural independence as well as budgetary independence” (Oputa, 1990).

In practical terms, the independence of the judiciary according to Agu (1993) implies:

- a) that the judiciary shall have its own separate administration under the umbrella of, say, the judicial service commission or committee at the federal and state levels, which should take charge of the welfare and discipline of all judges and the judiciary staff and provide and maintain all necessary infrastructure and equipment for the due performance of their functions;
- b) that the judiciary shall control its own finances from funds to be budgeted for its capital and recurrent service by the government and become completely self-accounting;
- c) that subject to such general guidelines as the government may deem necessary to give, the judiciary be left free to perform its day-to-day functions without direction, dictation or control from any quarters.

Independence of the judiciary is the bedrock of the administration of justice. Judicial independence carries with it the absolute independence of every member of the Bench (Ijalaye, 1991; Oputa, 1992). According to Oputa (1990), “a judge must enjoy complete independence if he is to render, satisfactory service to the cause of justice”. “The principle of the complete independence of the judiciary from the executive” declared the great Winston Churchill “is the foundation of many things in our Island life.” As John Marshall, the third Chief Justice of the United States cited in Duru (2003) said many-many years ago: A judge must be completely independent with nothing to influence or control him but God and his conscience. As relevant as the above statement may seem, it raises pertinent serious questions, especially with recourse with current Nigerian political dispensation where autonomy of the judiciary is nothing but a charade.

Judicial independence means that the judicial branch or system is not influenced by other branches of government. Therefore, the main objectives behind granting judicial autonomy or independence are to avoid improper influence on the court from the other arms of government- Executive or the Legislatures (U.S. legal.com)- be that as it may, the point must be noted here that funding is central to the autonomy of the judiciary anywhere in the world. And cognizant of the fact those resources (money in this case) are limited and prioritization of their allocation creates competition among different public departments; resource allocation becomes more difficult when it comes to the judiciary as has been the case in Nigeria. The funding of the judiciary is in the hands of other state powers, the Executive and the Legislature; this poses serious threat to the role of the judiciary in building strong national democracy. However, this Policy where the Nigerians Judiciary are been influenced by other government bodies like the executives arms of the same government had so

much hampered the effectiveness of the Nigerian Judiciary to carry out their functions effectively till date.

With the above in mind, the principle of separation of power is crucial to avoid concentration of power in one single branch, but the one that holds the “power of the purse” has some extra weapon which could be used against the other branches. According to Obilade (2001) an effective power of purse gives the Executive a powerful trump card when disagreement arise between it and other branches of government, one that is so potent that it can threaten Judicial Independence (Webb and Whittington, 2004) opined that Judicial independence serves as a safeguard for the rights and privileges provided by a limited constitution and prevent Executive and Legislative encroachment upon those rights. Under an independent judicial system, the courts and its officers are free from inappropriate intervention in the Judiciary’s affairs. With autonomy or independence the Judiciary safeguards people’s rights and freedoms which ensure equal protection for all (Wikipedia.org, 2019). Accordingly, whereas the autonomy of the judiciary in terms of its finances, appointments and dismissal will be advocated by this paper the view that the judiciary should be completely autonomous or independent from the Government and society is a mere utopia. It is not realistic nor in tune with contemporary global trend in justice administration. Separation of power can only operate effectively where there is checks and balances and the judiciary cannot be a master of its own.

Interrogating the Importance of Judicial Autonomy or Independence

Democratic system is incomplete in the absence of the law courts. The judiciary thus is a stabilizing force by virtue of its constitutional roles. An independent judiciary therefore, is a fundamental element of democracy. In short, the strengthening of judicial autonomy or independence is a crucial element of the transformation of the judiciary and is fundamental to the creation of a democratic state. In the light of the very fundamental role that the judiciary performs in society, there is no doubt about the importance of ensuring its autonomy to the best practical level in the performance of its functions. In recognition of this fact, Winston Churchill in Duru (2003) had this to say:

The principle of complete independence of judiciary... is the foundation of many things in our life... it is perhaps one of the deepest gulfs between us and all forms of totalitarian rule. The only subordination which a judge knows in his judicial capacity is that which he owes to the existing body of legal doctrine

enunciated in years past by his brethren... and upon laws passed by parliament which have received the royal accent.

By the same token, Kelly (2001) also opines as follows: It is essential in all courts that the judges who are appointed to administer the law should be permitted to administer it under the protection of the law independently and freely, without favour and without fear. Thus provision of the law is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public whose interest it is that judges should be at liberty to exercise their functions with independence and without fear of consequences. Accordingly, it is vital that the judiciary enjoy autonomy or be independent so as to enable it perform its important and indispensable functions well. More so, according to Justice Nnaemeka-Agu (1993):

What cannot be doubted is that a judge must be completely independent, free and freed from all forms of external influence and control, before he can perform his functions well. This is true of judges all over the world. But, it is perhaps true in Nigeria where naira is the lord and some people think that even justice is a commodity which can be bought and sold.

However, the importance of judicial autonomy is further underscored by the following words from Akinkugbes (1972); If the Bar knows that its conduct will be judged by an independent, fearless and incorruptible Bench it will live up to expectation. From the points so far raised we can deduce that a strong independent and impartial judiciary is a force for stability in a democratic society by: a just resolution of conflicts and contradictions inherent in a democracy; ensuring that right is right as opposed to might is right, using the spirit of the law to engender non-violence social change (Ogbu, 2000). It must be conceded that considering the very nature of the judicial function, autonomy of the judiciary is not only desirable; it is imperative. Bitter experience has shown that an independent judiciary and equally independent Bar are essential and necessary pre-requisites for the maintenance of the rule of law as well as a proper, effective and efficient administration of justice. The International Commission of Jurists cited in Duru (2003) recognizes that an independent judiciary is an indispensable requisite of a free society under the rule of law.

In a complex, pluralistic, federal society like Nigeria, Duru (2003) maintains that the component parts must and can only be held together with the sinews of justice dispensed by an independent judiciary. The whole concept of the independence of the judiciary Duru continues is based on the assumption that to be able to effectively discharge their judicial functions our judges should be free from all political and executive pressures. Judicial independence is the element which makes

possible the deciding of important controversial issues on the basis of merit and principle rather than expediency. Judicial independence is designed to enable the judge resist the pressure of political hysteria or executive fanaticism. It allows the judge to rise above passion, popular clamour and the politics of the moment. Without judicial independence no judge or justice, however, well prepared by qualities of heart, mind and professional training can give his best in an atmosphere of political turmoil (Duru, 2003). Importantly too, independence of the judiciary instills public confidence in the judiciary. According to Justice John Evans of the Canadian Federal Court of Appeal cited in Budlender (2005), independence “is a necessary condition for obtaining and maintaining this confidence, without which the courts’ legitimacy ... will rapidly erode and with it human rights and the rule of law.” Independent courts are vital to ensuring access to justice for all members of society. Overall, judicial autonomy, itself an element of democratic transformation, facilitates the achievement of many of the other transformation goals in building a strong national democracy. Every nation, especially a fragile one like Nigeria must enact and uphold a public Policy /policies that must make their Judiciary system completely independence from the sledge hammer of the executive arms through their naira reign and monetary inducement if indeed a working Judiciary must be obtained in the society.

Judicial Autonomy: The Nigerian Reality

In spite of the existing constitutional and statutory safeguards, Ehiogie (2021) queries can we say that the Nigerian judiciary is truly autonomous or independent? This is very doubtful based on the below reasons he enumerated.

(A) ***Financial Dependence:*** Apart from the Federal judiciary which to some discernible extent enjoys some control of its budgetary allocations for the payment of re-current expenditure like salaries, it is not certain whether they exercise such control over the release and expenditure of capital votes without some measure of Executive influence. Even at this, policies like Treasury Single Account (TSA) which compels the judiciary to pay its income into TSA denies the judiciary of its much needed revenue and keeps it dependent on Executive Largesse. This is worse off at the state level in the country, where the judiciary virtually genuflects round Executive tables to sustain its role in nation building. This absence of real financial autonomy undermines the concept of judicial independence. Significant fallout from financial dependence of the judiciary on the Executive is that it breeds State corruption of the judiciary. By this, the State, using budget planning,

releases and privileges influence the outcome of judicial decisions in a manner that can hurt the rights of citizens and the growth of democracy. Eventually, national growth and development could be impeded. The same could be the case with the justice system.

(B) *Easy removal of Judges on the Prompting of the Executive:* In spite of what appears to be strong constitutional and statutory protection for the appointment, removal, financial security and some administrative control by the judiciary in the conduct of its own affairs, the biggest threat in today's Nigeria is the ease with which a judge can be removed on the prompting of the Executive. We have witnessed frequent arrest and prosecution of judges in Nigeria without subjecting such judges to the extant rules made by NJC pursuant to its constitutional powers on discipline of judges. In my view, every allegation of misbehavior by a judge, other than an allegation that a judge committed outright crime, is most likely founded on a breach of judicial oath of office. Such an allegation must first be subjected to the disciplinary domain of NJC before anything else can occur. Even a complaint against a judge for failing to comply with the code of conduct contained in the fifth schedule of the constitution is a breach of judicial oath spelt out in the seventh schedule of the same constitution.

The current trend of arraigning judges before the Code of Conduct Tribunal without any reference to NJC for failure to correctly declare assets is a flagrant and crude abuse of Executive powers. The Code of Conduct Tribunal is purely an Executive agency and ought not to be allowed to exercise unlimited jurisdiction over serving judicial officials. This is a very easy way to erode judicial independence as the slightest error contained on Asset Declaration Forms completed by a judge, is an invitation to arrest and harass such a judge. Where is the freedom therefore to dispense justice against all manner of State actors and individuals? The international standard as recognized by the United Nations is that judges may be dismissed only on serious grounds of misconduct or incompetence. Any decision to suspend or remove a judge from office should be fair and should be taken by an independent authority such as judicial council or a court of competent jurisdiction.

(C) *Decisional Independence:* Decisional independence of judges is the idea that judges should be able to decide cases solely based on the law and facts, without letting the media, politics or other concerns sway their decisions and fearing penalty in their careers for their decisions. There is a fair presence of decisional independence amongst Nigerian judges in respect of civil cases founded on common law and general criminal litigation. The area of concern has to do with the conduct of

political matters, whether pre-election or post-election ones. While it has been generally acknowledged that election matters are *sui generis* (one of its kind), many believe that some of the decisions given were largely influenced by political, religious, tribal and social actors. With respect to EFCC trials, there is a preponderance of opinion that the media has through sensationalism affected the outcome of several trials on the prompting of the Executive in a bid to demonstrate successes in the implementation of anti-corruption policies. This is an impediment to judicial independence as judicial decisions ought not to be subjected to such illogical influence.

Judicial Autonomy as a Recipe for Building Sustainable Democratic System

It is needed to point out here that a number of judges are also influenced by corruption, greed and avarice in the discharge of their duties. It is this notion that has given rise to such concepts as “black market” *ex parte* orders, “cash and carry” judgments and a host of uncomplimentary narratives surrounding the nature of some of the judgments delivered in Nigeria. The danger is that negative perception of this nature; erode the three basic elements of the independence of the judiciary, viz:

- (i) The judicial system must be publicly perceived as impartial in rendering decisions. Judges should not have personal interest, whether due to bribery and corruption or as a result of political pressures in the outcome of disputes between private parties and the government.
- (ii) Judicial decisions must be accepted and respected by the contesting parties and the larger public; and
- (iii) Judges need to be free from undue interference from the parties in a case, other branches of government and higher Courts within the National Judiciary.

Sequel to the above, the independence of the judiciary is the cornerstone of a democratic society and safeguard for the freedom and rights of the citizens under the Rule of Law. It is extremely important for the Judges to be free to make impartial decisions based solely on law and facts without interference, pressure or influence. In a democratic state it is the duty of the judiciary to formulate the rule of law through interpretation and application of law to respond with a verdict, settling disputes, checking illegality and so on. To help democracy thrive, the basic principles of democracy such as the rights contained in Chapter 4 of the Nigerian Constitution and other democratic rights must be upheld along the principle of compliance with extant laws.

Our country now relies on the judiciary and judicial means for addressing core legal, moral, political controversies and public policy questions on equality of rights, criminal justice, education, labour and environmental protection. In developed countries, the judiciary is even required to deal with issues ranging from religious liberties, reproductive and privacy freedoms. The importance of an independent judiciary to democracy was aptly captured by Alexander Hamilton, one of the framers of the U.S. Constitution when he offered justification for an independent judiciary in the 78th paper of “The Federalist” as follows: The complete independence of the courts of justice is peculiarly essential in a limited constitution.

Hamilton claimed that it is only an independent judicial branch of government that can impartially check an excessive exercise of power by the other branches of government. Ade Okeaya Inneh, a Senior Advocate of Nigeria in his paper titled: *The Adjudicatory process and the survival of Democracy (2010)*, postulates that the court being the tool of the judiciary, is the rudder upon which democracy must and should be kept afloat. This is indeed true. The learned Senior Advocate argued that from the registration of political parties, the interpretation of political party rules and regulations, election petition issues, the interpretation of the constitution as it relates to State and Federal powers, the powers of the Executive, the practice and procedure of the Legislative Arm of Government and the protection of human and civil rights through court orders, the Judiciary had made progressive impact on democracy in Nigeria. Hon. Justice Danlami added his views to the role of the Judiciary in a democracy. In his keynote address titled “Law and Nation Building delivered at the Nigeria Bar Association Law Week “ (Benin Branch) in 2003, the Learned Judge described the judiciary as the “bastion of resistance against the arbitrary or excessive exercise of power by the Executive and the Legislature”. His Lordship described the Supreme Court of Nigeria as one that has been visible and audible in the interpretation of the constitution and enthronement of constitutionalism in Nigeria. The clear meaning of his Lordship’s views is that the Judiciary guards the rule of law in a constitutional democracy as practiced in Nigeria.

It is important to protect the judiciary in a democracy as the judiciary is the defender of people from the intrusions and overreach by the government and powerful individuals. In this way it preserves a free and democratic society. The entire Bar and the public have a duty to guarantee the independence of the judiciary as the legal framework in our country is not enough to guarantee this critical element of our democracy. Linda Klein, past president of the American Bar Association

(ABA) (2017), captured the need to rally round the judiciary clearly in her message to ABA on June 1st, 2017. The eminent lawyer had this to say; Public trust is eroded when leaders attack judge's character and competence. Disagreeing with a decision is one thing. But personal attacks on judges are attacks on our constitution. The ABA and the legal community cannot tolerate assaults on the judiciary because they can chip away at the legitimate authority of that branch of government and give undue influence to the Legislative and Executive branches. Attorney Klein pointed out that in following professional codes of conduct, judges are prohibited from speaking about pending cases and are often prevented from publicly defending themselves from attacks. It is therefore up to the Legal Community and citizens to protect the integrity of the courts. The academia through research should accept the challenge and continue to educate the public about the role of the Judiciary in building a strong national democracy.

Our attention needs to drawn to what Timothy Snyder, a professor of History at Harvard University said in his book; *"On Tyranny"*. The erudite professor held the strong view that it is imperative to defend institutions like the courts and press. He argued that although these institutions normally defend people, there are times when the institutions cannot protect themselves and need to be defended by the people in order to maintain their vital roles in building an egalitarian society.

Enhancing the Autonomy of the Judiciary for Sustainable Democracy

It has been agreed that autonomy of the judiciary is germane to building a strong national democracy. Consequently, besides the issues already adduced, some critical points are worth recapping here. In terms of ensuring institutional independence, constitutional guarantees of the separation of powers and of non-interference in the judiciary by other branches of government are crucial. The United Nations Basic Principles on the Independence of the Judiciary states: The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. Moreover, institutional judicial independence requires that the judiciary has sole "jurisdiction over all issues of a judicial nature" (UN General Assembly, 1985).

On the other hand, (UN General Assembly, 1985) maintains that individual independence involves a variety of factors that help ensure that judges can act free from the influence of any outside sources. For instance, judges must have security of tenure either in the form of life-long

appointments, set terms of office or a mandatory retirement age. A well-defined process for removing judges from office also prevents the executive or legislature from dismissing judges in retaliation for an unfavourable decision and from using threats of impeachment to pressure judges. Likewise, judges should be removed only “for reasons of incapacity or behaviour that renders them unfit to discharge their duties” (UN General Assembly, 1985). Disciplinary procedures should also be “fairly and objectively administered.” Similarly, to protect them from fear of reprisals for their decisions, judges should be immune from civil suits arising from acts or omissions in the course of exercising their judicial functions (UN General Assembly, 1985).

Another important safeguard, financial security, is crucial to maintaining individual independence preventing other branches of government from using threats of salary reduction to influence judges. Financial security includes adequate remuneration and protections against the arbitrary reduction or suspension of judges’ salaries. Similarly, the adequate provision of resources allows the “judicial system to operate effectively without any undue constraints which may hamper” judicial independence (UN General Assembly, 1985). The judicial appointments process also impacts on individual independence. Judicial appointments “should be made on the basis of clearly defined criteria and by a publicly declared process.” The appointments process must also “safeguard against judicial appointments for improper motives”, and people selected should “be individuals of integrity and ability with appropriate training or qualifications in law” (UN General Assembly, 1985). If the appointment of judges were not based on well-defined criteria or not open to public scrutiny, the executive could try to appoint judges who shared its beliefs and would be unlikely to challenge government acts.

Similarly, if appointments are based on merit as opposed to party allegiance or other inappropriate factors, judges will be less likely to feel that they need to favour the people who appointed them. Merit-based appointments also help ensure that judges have the necessary legal education and experience, both of which help foster and reinforce the importance of judicial autonomy and contribute in building strong national democracy. Furthermore, to protect independence, any system of promoting judges “should be based on objective factors, in particular ability, integrity and experience” (UN General Assembly, 1985). If judges believe that the content rather than the quality of their decisions will impact on their likelihood of being promoted, they might be reluctant to make decisions upon which the government will look unfavourably.

Recommendations

The following recommendations are proffered;

1. The appointment, promotion and dismissal of judicial officers should be clearly removed from the control of the executive arm of government.
2. The constitutional provisions mandating that funds for judges of superior courts should be drawn from the consolidated Revenue Fund should be enforced across levels of government and same should be extended to judges of inferior courts.
3. There is need to separate the office of the Attorney-General from that of the Minister/Commissioner for Justice, as the case may be to enhance transparency and efficiency in the judicial process.
4. The National Judicial Commission should be restructured and be properly equipped with enabling powers to effectively check the activities of judicial officer for the purpose of disciplinary action in times of abuse of power.

Conclusion:

This paper has established the need for and importance of judicial autonomy or independence not only in Nigeria but across the world based on United Nations principles and other national legal instruments. However, the peculiarity of the Nigerian case was highlighted as it posed serious threat to effectiveness of the judiciary in its role in building strong national democracy. In conclusion therefore, we adopt the instructive opinion expressed by Attorney Klein (supra) that; the legal community must remain diligent and vigilant in their support of institutions, especially the autonomy of the courts. Judicial independence ensures the rule of law safeguards our democracy.

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