

REVIEW OF JUDICIAL INDEPENDENCE IN NIGERIA

Submission to the United Nations Special Rapporteur on the Independence of the Judiciary on the current
State of Nigerian Judiciary

By

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Introduction

A strong and independent judiciary plays a crucial role in the process of nation-building and safeguarding an open, free and fair democracy. The doctrine of independence of the judiciary is built on core principles which anchor the law in rationality, protecting it from arbitrariness, and ensuring equality and fairness without fear or favour.

An independent judiciary serves as a cornerstone for democratic systems worldwide and is largely reinforced by the well acclaimed theory of separation of powers and functions between the three branches of government. These three branches serve as a check on one another and provide oversight functions to ensure every branch does not act ultra vires its powers according to the country's constitution or state's laws.

It also serves as a safeguard for the rights and privileges provided by statutes and other established legal and ethical frameworks which requires judges to conform to a high standard and prevents 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. This presupposes that other branches of government, powerful interests' groups and persons should not be allowed by judges and or the courts to influence their decisions.

Legal Framework

Recognizing the importance of an independent judiciary in promoting transparency and democratic values, judicial independence is safeguarded by a number of international, regional and national Instruments such as the United Nations Basic Principles on the Independence of the Judiciary¹; the African Union Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003);

¹ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan in 1985

Constitution of the Federal Republic of Nigeria 1999 (as Amended); International Association of Judges the Universal Charter of The Judge, 1999 (updated, 2017); the International Bar Association Minimum Standards of Judicial Independence, 1982; the Bangalore Principles of Judicial Conduct; Lilongwe Principles and Guidelines on the Selection and Appointment of Judges, 2018; and the Code of Conduct for Judicial Officers. These legal frameworks stipulate and ensures that Judges are not subjected to pressure and influence when adjudicating matters and are free to make impartial decisions based solely on fact and law.

The Constitutional Structure and its Gaps

1. Appointment of Judges

The process of selecting and appointing judges in Nigeria is regulated by the Constitution and the National Judicial Council. Under the Nigerian Constitution, judicial officers for the Federation and States, are appointed by the executive arm.²

Nepotism

Critics have argued that Judicial appointment has become a thing of loyalty where managers of judicial appointments skew it deliberately to ensure pre-determined outcomes and filling those positions with their children, spouses and prodigies. This trend leaves room for manipulation with recent happenings lending credence to this.

The dominant role the Chief Justice of the Federation in the appointment of judicial officers have come under severe criticism as he or she not only serves as the chair of both Federal Judicial Service Commission (FJSC) and National Judicial Council (NJC) but is also responsible for the appointment of 14 of the 24 members of NJC. This vests considerable power in CJN to influence the Council's deliberations and decision making and makes it susceptible to manipulation and interference from external sources who may wield influence over the Chief Justice.

This practice of unfair and unmerited judicial appointments impedes on the ability of the judiciary to be fair and just and to also be seen as such violates the United Nations Basic Principles on the Independence of the Judiciary, as well as Judicial Code of Conduct established by the National Judicial Council itself³. As

² Section 270

³ Rule 8.3 which states that: "A Judge who takes advantage of the judicial office for personal gain or for gain by his or her relative or relation abuses power. A Judge must avoid all activity that suggests that his or her decisions are affected by self-interest or favoritism, since such abuse of power profoundly violates the public's trust in the judiciary."

prescribed under the Basic Principles, “any method of judicial selection shall safeguard against judicial appointments for improper motives.”

In July 2023, the Chief Justice of Nigeria (CJN) presided over a meeting of the National Judicial Council (NJC) where his son was appointed as a judge of the Federal High Court and sworn-in on 4 October lending credence to the fact that judicial independence had been trumped and appointments to the Bench had been politicized⁴. There is predominant allegations, that “sons and daughters of retired and serving judges and justices are being nominated for appointment into sensitive judicial positions at the expense of more qualified candidates without privileged support and backing.”⁵

A UNODC report⁶ on selection and appointment of judges in Nigeria stated that majority of the respondents believed that the selection and appointment process was vulnerable to political, ethnic, religious and emotional bias as well as nepotism⁷.

Screening and vetting

The process of screening and vetting nominees for judicial officers and judges over the years have been severely criticized on the basis that Judiciary appointments family affiliation, not merit have become the major criteria which violates regulations and constitutional principles of fairness, equity, and merit. Recently, a group of lawyers filed an action against the National Judicial Council (NJC) and the Kogi State government over what they termed an “illegal shortlist” for appointments into the state’s judiciary stating that the list was tainted with ethnic and political interference. They stressed that any such appointment should be on the basis of “merits, competence, sound knowledge of law, fairness, equality devoid of ethnic, familial and political considerations”⁸.

This trend violates the laid down vetting process for prospective judicial officials where in the case of federal court candidates, the head of a federal court first sends a notice to the Chief Justice and the Chairman of the Federal Judicial Service Commission. The federal court head will state the number of judicial officers intended to be proposed for appointment. Afterwards, a call for expression of interest by suitable candidates by way of public notice is placed on the website of the Judicial Service Commission concerned. The public notice is also sent to suitable courts and the Nigerian Bar Association.

⁴ <https://www.lawyard.org/news/odinkalu-exposes-politicization-of-judiciary-appointments-calls-for-reform/>

⁵ <https://punchng.com/judiciary-appointments-must-be-merit-based-not-family-affiliation-lawyers/>

⁶ Working Paper - Selection and Appointment of Judges in Nigeria: Analysis and Recommendations
<https://www.unodc.org/documents/nigeria//Working Paper - Judicial Selection and Appointments.pdf>

⁷ Ibid at page 17

⁸ <https://lawandsocietymagazine.com/ex-national-rights-commission-chair-lauds-kogi-sans-for-suing-kogi-government-njc-over-illegal-judicial-appointment/>

Political Interference

The political elites now use judicial appointments to dispense favors, settle political scores and secure their influence over future judicial decision-making. This influence peddling and interference of judicial independence was brought to the fore on June 10, 2023 during the valedictory session of the 9th Senate where an outgoing lawmaker, made a damning confession confirming infringing on the “freedom and independence” of his wife, while she was serving as a judge and President of the Court of Appeal, to favour his colleagues.⁹ This generated an outcry about the lack of independence and integrity within the Nigerian judicial system in violation of the United Nations Basic Principles on the Independence of the Judiciary¹⁰.

Influence Peddling and Allegations of Corruption

Following the conclusion of the Governorship Elections Petition Tribunal for Plateau State, there has been growing calls on the NJC to investigate justices of the Appeal Court over alleged gross abuse of the Revised Judicial Code of Conduct for Judicial Officers of the Federal Republic of Nigeria 2016, while others have called for disciplinary actions¹¹ against them over their conducts and comments in the course of the proceedings which resulted in the removal of over 16 candidates of the an opposition party who participated in the 2023 elections in the State¹². In a related instance, there was an alleged attempt to pervert the course of justice through corruption in the Kano State Election Petition Tribunal where lawyers were alleged to have offered judges N10m (Ten Million Naira) in bribes¹³.

Going by these trends, it can therefore be reasonably concluded that the procedure for appointment of judicial officers stipulated under the constitution and other enabling laws has had adverse effects on the ability of judges to act independently. And this has led to the eroding of public confidence in judiciary to safeguard democracy and promote the rule of law.

2. Removal of Judges

the biggest threat to the independence of judges and the judiciary in Nigeria is the ease with which a judge can be removed on the prompting of the Executive. Section 292 of the Constitution provides that: “A

⁹ <https://www.youtube.com/watch?v=2aNQv6PNLko>

¹⁰ Principle 2 which stipulates that: ‘The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason’.

¹¹ <https://www.arise.tv/senior-lawyers-ask-nigerias-judicial-council-to-discipline-appeal-court-justices-involved-in-miscarriage-of-justice/>

¹² <https://barristerng.com/plateau-judgment-probe-dongban-mensem-okon-abang-other-justices-group-tells-njc/>

¹³ <https://punchng.com/n10m-bribery-allegation-rocks-kano-election-petition-tribunal/>

judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances:

- a. in the case of –
 - i. The Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President, Customary Court of Appeal of the Federal Capital Territory, Abuja, by the President acting on an address supported by two-thirds majority of the Senate.
 - ii. Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State, praying that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct;
- b. in any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

A careful reading of this provision gives the impression that reference need not be had to the National Judicial Council (NJC) before a Judge is removed. This power granted to the Executive branch to appoint and remove Judges in no small measure robs the judiciary of its independence. Over the past years, there have been a rise in cases where judges are arbitrarily removed or suspended without first subjecting such judges to the disciplinary rules of National Judicial Council made pursuant to its constitutional powers on discipline of judges¹⁴.

The Code of Conduct Tribunal (an Executive Agency) has been used as a tool by the Executive to harass and intimidate judges without reference to the National Judicial Council for failure to correctly declare assets. In 2019, Justice Walter Onnoghen, the Chief Justice of Nigeria at the time, was arbitrarily suspended by President Muhammadu Buhari over an alleged non-declaration and false declaration of assets between 2005 and 2016 when he failed to submit a written declaration of his assets and liabilities within the prescribed period of three months after being sworn in as the Justice of the Supreme Court of Nigeria and refusal to declare his domiciliary account. This act was founded on unconstitutionality and

¹⁴ As prescribed by the provision of Paragraph 21 of Part One of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria

exercise of legislative exuberance as it was in violation of the procedure prescribed under Section 292 of the Constitution¹⁵.

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? In an earlier instance, an attempt was made in 2009 to remove the Chief Judge of Kwara State by the Governor where the Supreme Court ruled¹⁶ that the NJC is the only body, vested with the exclusive powers by law to exercise disciplinary control over Heads of Court (Chief Justices/Chief Judges) and other judicial officers and not by any token, the president or governor of a state or House of Assembly of a state¹⁷. The executive and legislative organs of government do not have the power or authority to discipline, suspend, sack or remove a judicial officer unless upon prior recommendation by the NJC.

In 2023, the Chief Judge of Osun State was suspended by the administration of Governor Adeleke on the grounds that the Governor was no longer comfortable with the Chief Judge's continuous stay in the service after President Tinubu signed into law a bill on uniform retirement age for all judicial officers in the country which extended the tenure of office of Nigerian judges including Justice Ojo from 65 to 70 years¹⁸. This act is a clear contravention of the grounds of removal of judges as stipulated by the United Nations Principles¹⁹

The National Judicial Council (NJC) assumes a pivotal role in overseeing judicial appointments, removals, and discipline, acting as a check on potential executive overreach. 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.

Conclusion

Despite being a distinct and separate arm with the existence of safeguards and guarantees, the independence of the judiciary remains in the in the stranglehold of the Executive. Rather than promote and consolidate judicial independence in Nigeria, the government policies on the subject have limited the

¹⁵ A sitting Chief Justice of Nigeria can only be removed from office by the president after at least two-thirds majority members of the Senate support such a move.

¹⁶ In the case of Hon. Justice Raliat Elelu-Habeeb & Anor v. The Hon. Attorney General of Federation & Ors (2012) LPELR-SC.281/2010; (2012) 13 NWLR Part 1318 page 423.

¹⁷ <https://www.vanguardngr.com/2012/02/supreme-court-reinstates-sacked-kwara-cj/>

¹⁸ <https://www.vanguardngr.com/2023/12/osun-chief-judges-removal-issues-politics-precedents/>

¹⁹ Principle 18: Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

role of judges and the justice system to effectively safeguard the rule of law and democratic norms in Nigeria. A Judiciary controlled by the other arms of government, directly or indirectly, cannot be said to be independent or a fearless judiciary if it is not independent.

Yours faithfully,



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