



2017 VOLUME 3 (ONLINE VERSION)

Recommended Citation: Orifowomo OA, Taiwo LO. (2017) "Separating Law and Politics for Social Sustainability: Challenges to Independence of the Judiciary in Nigeria" JWHSD, 3, 46-60. Available at: <http://wwhsc.org/jwhsd/articles/>.

SEPARATING LAW AND POLITICS FOR SOCIAL SUSTAINABILITY: CHALLENGES TO INDEPENDENCE OF THE JUDICIARY IN NIGERIA

OA Orifowomo and LO Taiwo

Faculty of Law, Obafemi Awolowo University, Ile-Ife, P. O. Box 2065, O.A.U. Post Office, Ile-Ife, 220005, Nigeria

* Corresponding author: oorifowo2003@yahoo.co.uk; orifowomo@oauife.edu.ng

Abstract

The paper examines the separation of law and politics as applicable to the concept of independence of the judiciary, to illustrate the dimension of social sustainability. It engages Nigeria as the political space for the discussion. The overall objective is to review the nexus between law and politics to illustrate the concept of independence of the judiciary. The finding is that there is an inexorable link between the organs of government, and between law, policy and administration: the exercise of governmental powers requires the full complement of the three arms – legislature, executive and the judiciary

1. Introduction

It is vitally important in a democracy that individual judges and the judiciary as a whole are impartial and independent of all external pressures and of each other so that those who appear before them and the wider public can have confidence that their cases will be decided fairly and in accordance with the law. When carrying out their judicial function, they must be free of any improper influence. Such influence could come from any number of sources. It could arise from improper pressure by the executive or the legislature, individual litigants and their lawyers, pressure groups, the media, self-interest or colleagues, for instance more senior judges. In the dispensation of justice between 'man and man', 'citizen and citizen' and between 'citizen and the state',ⁱ it is expedient that judges are found to be impartial and impervious to corrupting influences from both within and outside the judicial system.

According to the *Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government*,ⁱⁱ an independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law.

However, it is quite clear that the business of government requires a careful balancing of the exercise of power and functions among the recognized arms of government – Legislature, Executive and the Judiciary. The degree of success in this enterprise may go a long way to determine the extent to which persons in a given State would enjoy freedom and liberties and be able to pursue happiness, ultimately culminating into social sustainability. When all else fails, the judiciary is both conceived and perceived as the bastion of hope and the defender of democratic virtues, which in turn may only be guaranteed in the face of an independent and unfettered judiciary.



2017 VOLUME 3 (ONLINE VERSION)

Using doctrinal legal analysis, our objective is to review the nexus between law and politics, to illustrate the concept of independence of the judiciary. We use Nigeria as the political space for our discussion. Overall, we contribute to the literature on how to build a socially sustainable polity.

2. Allocation of Governmental Powers under the Constitution

Consistent with the practice the world over, governmental powers are recognized in the Nigerian State as consisting of the legislative, executive and judicial exercise of powers. Under the 1999 Constitution,ⁱⁱⁱ legislative powers of the Federal Republic of Nigeria are vested in a National Assembly for the Federation, consisting of a Senate and a House of Representatives. The National Assembly is vested with power to make laws for the peace, order and good government of the Federation or any part of it, consistent with the allocation of powers under the Constitution.^{iv} In the same vein, legislative powers of a State of the Federation are vested in the House of Assembly of the State, for the purpose of making laws for the peace, order and good government of the State or any part of it, as prescribed under the Constitution.^v

The executive powers of the Federation are vested in the President and may be exercised by him either directly or through the Vice-President and Ministers of the Government of the Federation or officers in the public service of the Federation as may be prescribed by any relevant law. This arm of government is responsible for the execution and maintenance of the provisions of the Constitution and all other laws made appropriately by the National Assembly.^{vi} The Constitution makes comparable provision vesting executive powers of a State in the Governor and which may be exercised through the Deputy Governor and Commissioners of the Government of that State or officers in the public service of the State.^{vii}

The judicial powers of the Federation are vested in the courts established for the Federation, while those of the State are vested in the courts established for that State.^{viii} The courts specifically mentioned under the Constitution shall be the only superior courts of record in Nigeria and shall have all the powers of a superior court of record.^{ix} The courts are vested with all inherent powers and sanctions of a court of law over all matters, actions and proceedings between persons, or between government or authority and any persons in Nigeria.^x

Thus, the judiciary serves as a counter poise to executive malfeasance. Above every other consideration, the judiciary provides a veritable platform for the ventilation and espousal of constitutionally guaranteed rights; its orders as the authoritative arbiter of what constitutes the law under the principle of the rule of law is binding on all concerned parties.^{xi}

3. Independence of the Judiciary – What it means

The concept of independence of the judiciary means many things as well as different things to different people. It has been regarded as a concept often misunderstood and always misconceived by politicians. According to Leohlola, Chief Justice of Lesotho, it only means “absence of undue influence, interference or control with the judicial functions of the court”. It does not mean lack of accountability (unruliness) or irresponsibility; judicial independence is complemented by genuine accountability and by meaningful communication by the Judiciary and the Executive under law and under the



2017 VOLUME 3 (ONLINE VERSION)

Constitution".^{xii} In simple terminology, judicial independence can be defined as the ability of a judge to decide a matter free from pressures or inducements.^{xiii}

According to the *U.N. Basic Principles on the Independence of the Judiciary*,^{xiv} independence of the judiciary, among other things, implies 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. There shall not be any inappropriate or unwarranted interference with the judicial process, and the judiciary shall ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

The basic principles formulated accompanying independence of the judiciary are:

- ✓ **Freedom of expression and association** - judges are entitled to freedom of expression, belief, association and assembly, but must always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
- ✓ **Qualifications, selection and training** - judicial officers shall be individuals of integrity and ability with appropriate training or qualifications in law.
- ✓ **Conditions of service and tenure** - the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
- ✓ **Discipline, suspension and removal** – a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure; and judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.^{xv}

The Bangalore Principles of Judicial Conduct^{xvi} identified the following principles:

- ✓ **Judicial independence** in both its individual and institutional aspects – a judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason; free from inappropriate connections with, and influence by, the executive and legislative branches of government; independent of judicial colleagues in respect of decision makings.
- ✓ **Impartiality** - applies not only to the decision itself but also to the process by which the decision is made.
- ✓ **Integrity** - essential to the proper discharge of the judicial office.
- ✓ **Propriety** - and the appearance of propriety, are essential to the performance of all the activities of a judge.
- ✓ **Equality** – ensuring equality of treatment to all before the courts.
- ✓ **Competence and diligence** - prerequisites to the due performance of judicial office.

The Commonwealth Principles on the Accountability of and The Relationship Between the Three Branches of Government^{xvii} identified the following as components of independence of the judiciary:



2017 VOLUME 3 (ONLINE VERSION)

- ✓ Judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process.
- ✓ Arrangements for appropriate security of tenure and protection of levels of remuneration.
- ✓ Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;
- ✓ Interaction, if any, between the executive and the judiciary should not compromise judicial independence.
- ✓ Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties.
- ✓ Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner.
- ✓ An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.

In brief, judicial independence may be described as being comprised of two components – the individual independence of judges and the institutional independence of the courts. Individual independence refers to the requirement that judges decide cases independently and impartially. Institutional independence is the independence of the judicial branch itself from the other branches of government, which enables it to carry out its role of safeguarding the judicial process and protecting the individual independence of judges. This independence not only refers to external influence but also to influence from other judges themselves.

4. Constitutional Guarantees of Independence of the Judiciary in Nigeria

It is pertinent to note that the Nigerian Constitution contains copious provisions protective of the judiciary and apparently intended to assert and facilitate its independence. We shall briefly examine these provisions.

4.1. *Appointment of Judges*

The President is empowered to appoint a person to the office of Chief Justice of Nigeria,^{xviii} Justice of the Supreme Court,^{xix} President of the Court of Appeal,^{xx} Chief Judge of the Federal High Court,^{xxi} President of the National Industrial Court,^{xxii} Chief Judge of the High Court of the Federal Capital Territory,^{xxiii} Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory^{xxiv} and President of the Customary Court of Appeal of the Federal Capital Territory^{xxv} on the recommendation of the National Judicial Council, subject to confirmation of such appointment by the Senate. He appoints a person to the office of a Justice of the Court of Appeal,^{xxvi} Judge of the Federal High Court,^{xxvii} Judge of the National Industrial Court,^{xxviii} Judge of the High Court of the Federal Capital Territory,^{xxix} Kadi of the Sharia Court of Appeal^{xxx} and Judge of the Customary Court of Appeal^{xxxi} on the recommendation of the National Judicial Council, without the requirement of approval by Senate.

In the same vein, the Governor of a State is empowered to appoint a person to the office of Chief Judge of the State,^{xxxi} Grand Kadi of the Sharia Court of Appeal of the State,^{xxxiii} and President of a



2017 VOLUME 3 (ONLINE VERSION)

Customary Court of Appeal of the State^{xxxiv} on the recommendation of the National Judicial Council subject to confirmation of the appointment by the House of Assembly of the State. He appoints a person to the office of a Judge of a High Court of the State,^{xxxv} Kadi of the Sharia Court of Appeal of a State,^{xxxvi} and Judge of a Customary Court of Appeal of the State^{xxxvii} on the recommendation of the National Judicial Council, without the requirement of approval by the House of Assembly of the State.

It may be noted that any person who has held office as a judicial officer shall not on ceasing to be a judicial officer for any reason whatsoever thereafter appear or act as a legal practitioner before any court of law or tribunal in Nigeria.^{xxxviii} Apparently, this prohibition may not prevent such an ex-judicial officer from taking up freshly or returning to a previously held academic position (for example, in a tertiary institution in Nigeria) or providing consultancy services or taking a role in an alternative dispute resolution (ADR) process.

4.2. *Tenure of Judges*

The Chief Justice and other Justices appointed to the Supreme Court as well as the President and other Justices of the Court of Appeal may retire on the attainment of sixty-five years of age or otherwise must retire on attainment of seventy years of age.^{xxxix} In the case of other judicial officers,^{xl} they may retire on the attainment of sixty years of age or otherwise must retire on attainment of sixty-five of age.^{xli}

4.3. *Remuneration of Judges*

The remuneration, salaries and allowances payable to judicial officers are guaranteed^{xlii} and have been made a charge upon the Consolidated Revenue Fund of the Federation.^{xliii} Also, the remuneration and salaries payable to them and their conditions of service, other than allowances, shall not be altered to their disadvantage after their appointment.^{xliv} Furthermore, the recurrent expenditure of their judicial offices has been made a charge upon the Consolidated Revenue Fund of the Federation.^{xlv}

4.4. *Pension*

The Constitution contains provisions guaranteeing pension rights of judicial officers upon retirement from office. A judicial officer who held office for not less than fifteen years and who retired at the retirement age specified under the Constitution,^{xlvi} shall be entitled to pension for life at a rate equivalent to his last annual salary and all his allowances in addition to any other retirement benefits to which he may be entitled.^{xlvii} Where he retired at the specified age but did not hold office up to fifteen years, he shall be entitled to pension for life at the same rate as in the foregoing, but pro rata the number of years he served as a judicial officer in relation to the period of fifteen years, and all his allowances in addition to other retirement benefits to which he may be entitled under his terms and conditions of service.^{xlviii} In any other case, he shall be entitled to such pension and other retirement benefits as may be regulated by an applicable Federal or State law.^{xlix}

It may be noted that the application of the constitutional provisions on pension rights of the judicial officers is without prejudice to the provisions of any other law that provides for pensions, gratuities and other retirement benefits for persons in the public service of the Federation or a State.¹ Furthermore, the



2017 VOLUME 3 (ONLINE VERSION)

payment of pension to the judicial officers has not been made a charge upon the Consolidated Revenue Fund of the Federation, unlike in the case of pension to the President or Vice President of Nigeria.^{li}

4.5. *Removal of Judges from Office*

A judicial officer shall not be removed from his office or appointment before his age of retirement except in the case of Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, President of the National Industrial 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.^{lii}

The Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, may be removed only by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State.^{liii} In the foregoing cases, the ground of removal may be inability of the judicial officer 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.

In the case of other judicial officers apart from those mentioned above, they may be removed 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 any of the reasons stated above.^{liv}

4.6. *Jurisdiction of Courts and Right of Appeal*

The jurisdiction of the various courts established for the federation under the Constitution are spelt out by a combination of provisions in the Constitution and other relevant statutes. Thus, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. In addition, the Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly; but this shall not entail vesting original jurisdiction in the Court over criminal matters.^{lv}

In the same vein, the Court of Appeal shall have original jurisdiction to hear and determine any question as to whether - (a) any person has been validly elected to the office of President or Vice-President under this Constitution; or (b) the term of office of the President or Vice-President has ceased; or (c) the office of President or Vice-President has become vacant.^{lvi} Furthermore, the Court shall have appellate jurisdiction to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Federal High Court, National Industrial Court, the High Court of the Federal Capital Territory, Abuja, High Court of a State, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a State, Customary Court of Appeal of a State and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly.^{lvii}

It should be noted that the jurisdiction of the other courts aside from the afore-mentioned are fairly spelt out in the Constitution and other relevant laws. The line of appeal from decisions of the various courts up to the Supreme Court as apex court is well spelt out in the Constitution. The decision of the



2017 VOLUME 3 (ONLINE VERSION)

Supreme Court on any matter is final; there is no appeal from its decisions to any other body or person. However, this is without prejudice to the exercise of the power of prerogative of mercy by the President or Governor of a State.^{lviii}

4.7. *Enforcement of court orders, decisions, etc.*

The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court.^{lix} The decisions of the Court of Appeal are to be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the court of Appeal.^{lx} Also, the decisions of the Federal High Court, National Industrial Court, a State High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, National Industrial Court, a High Court and those other courts, respectively.^{lxi}

4.8. *National Judicial Council, the Federal Judicial Service Commission^{lxii}*

The Constitution established for the Federation, among others, the National Judicial Council and the Federal Judicial Service Commission,^{lxiii} with specific composition and powers.^{lxiv} The National Judicial Council is empowered to make recommendations to the President or Governor as appropriate on judicial officers to be: appointed as heads of the various judicial offices; removed from office. It collects, controls and disburses all moneys, capital and recurrent, for the judiciary; advises the President and Governors on any matter pertaining to the judiciary as may be referred to the Council by the President or the Governors; appoints, dismisses and exercises disciplinary control over members and staff of the Council; controls and disburses all monies, capital and recurrent for the services of the Council; and deals with all other matters relating to broad issues of policy and administration.^{lxv}

The Federal Judicial Service Commission is vested with power to advise the National Judicial Council in nominating persons for appointment into various judicial offices; make recommendations to the Council on removal from office of such judicial officers; appoint, dismiss and exercise disciplinary control over the Chief Registrars and Deputy Chief Registrars of the Supreme Court, the Court of Appeal, the Federal High Court, National Industrial Court and all other members of the staff of the judicial service of the Federation not otherwise specified in the Constitution and of the Federal Judicial Service Commission.^{lxvi} Thus, from all indications, the duo of National Judicial Council and the Federal Judicial Service Commission perform very critical functions in the judicial sector, as a whole. The President is empowered to appoint the Chairman and members of the two bodies, subject to confirmation by the Senate. In making the appointment, the President is mandated by the Constitution to consult the Council of State.^{lxvii} Those so appointed enjoy specified tenure and may only be removed from office by the President acting on an address supported by two-thirds majority of the Senate praying that he be so removed for inability to discharge the functions of the office (whether arising from infirmity of mind or body or any other cause) or for misconduct.^{lxviii}

In exercising their powers to make appointments or to exercise disciplinary control over persons, the two bodies shall not be subject to the direction or control of any other authority or person.^{lxix} The



2017 VOLUME 3 (ONLINE VERSION)

remuneration, salaries and allowances payable to the Chairmen and members of the National Judicial Council and the Federal Judicial Service Commission are guaranteed under the Constitution, are made a charge upon the Consolidated Revenue Fund of the Federation and shall not be altered to their disadvantage after their appointment.^{lxx} Corresponding provisions are made in respect of the State Judicial Service Commission.^{lxxi}

4.9. *Financial Autonomy of the Judiciary*

By virtue of section 80 of the Constitution, essentially all revenues and monies of the federation are to be paid into a Consolidated Revenue Fund of the Federation. No withdrawals can be made legitimately from this Fund except in respect of expenditure that is authorised by the Constitution to be charged directly upon the Fund, or it is authorised by the Appropriation Act duly passed by the National Assembly, pursuant to an Appropriation Bill laid before it by the President.^{lxxii}

The President is charged with the responsibility of having prepared and laid before the National Assembly an estimate of revenue and expenditure of the Federation for each fiscal year, contained in an Appropriation Bill for consideration and approval of the National Assembly.^{lxxiii} However, it appeared from a careful reading of Section 81 (2) of the Constitution that the Appropriation Bill need not contain expenditure already authorised by the Constitution to be charged directly upon the Consolidated Revenue Fund.

In other words, the remuneration, salaries and allowances payable to judicial officers,^{lxxiv} recurrent expenditure of their judicial offices,^{lxxv} remuneration, salaries and allowances payable to the Chairmen and members of the National Judicial Council and the Federal Judicial Service Commission,^{lxxvi} among others, which have been made a charge upon the Consolidated Revenue Fund of the Federation (the same applies to State Judicial Service Commission of the States) need no further appropriation by way of the Appropriation Bill. The sums payable as such only must not exceed the amount as would have been determined by the Revenue Mobilisation Allocation and Fiscal Commission,^{lxxvii} being one of the bodies established for the Federation under section 153 of the Constitution.^{lxxviii}

For good measure, section 81 (3) of the Constitution^{lxxix} directs that any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of the Constitution. In the same vein, section 162 (9) of the Constitution specifies that any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Councils for disbursement to the heads of courts established for the Federation and the States under section 6 of the Constitution.

Consequently, the practice in Nigeria whereby the Executive takes charge of and responsibility for the financial matters of the Judiciary and the judicial officers in charge of the various courts have to go cup in hand to beg for release of funds meant for the Judiciary will appear unconstitutional. It is purely derogation from and an encroachment on the financial autonomy of the Judiciary as envisioned by the Constitution.

5. Independence of the Judiciary from External Environment



2017 VOLUME 3 (ONLINE VERSION)

Another component of independence of the judiciary is its freedom from unwanted, unwarranted and needless interference or encroachment from the external environment, not limited to the other arms of government. We shall now proceed to consider some of the likely external sources of interference.

5.1. *Independence from the Legislature*

In a sense, the judicial machinery is a creation of the Legislature to the extent that it (the judiciary) is a creation of law. The Constitution itself is an enactment, just as other statutes and liable to legislative amendments or repeal in accordance with stipulated procedure. Admittedly, both the Constitution and other relevant laws make wide ranging provisions for the establishment, structure, jurisdiction, etc. of courts as well as appointment, tenure, removal, etc. of judges. To this extent, there is no pure independence of the judiciary from the legislature.

However, this minimum nexus between the two organs of government have come to be accepted as a necessary component of modern systems of government. In itself, this is not worrisome nor does it portend derogation from the independence of the judiciary, as we understand it. The judges are by this not fettered in their responsibility to interpret the law, guided by hallowed rules of statutory interpretation.

It is instructive to note that Section 4 (8) of the Constitution provides that, except as otherwise provided by the Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law.

5.2. *Independence from the Executive*

The formulation of national policies (which could include administration of justice in the country) is the primary function of the Executive, the effect of which may be seen through laws passed by the Legislature. Under the Constitution, the President may, in his discretion, assign to the Vice-President or any Minister of the Government of the Federation responsibility for any business of the Government of the Federation, including the administration of any department of government.^{lxxx} The President shall hold regular meetings with the Vice-President and all the Ministers of the Government of the Federation for the purposes of determining the general direction of domestic and foreign policies of the Government of the Federation, among other things.^{lxxxi}

In other words, the government will have to formulate policies to give itself direction. A policy is a path of action to be pursued by a government or international organization to achieve a particular rationale, goal, or purpose. Laws are then made with a view to achieving the set goals articulated or envisioned in governmental policies.

The courts are generally loath to question matters of national policy except where it is inconsistent with the spirit of the provisions of the Constitution or principles of international law or natural justice. It is expedient of government to draw clear lines of demarcation between national/governmental policy and party policy. National/state policies should rather be founded on national instead of party interests.^{lxxxii}



2017 VOLUME 3 (ONLINE VERSION)

The judiciary owes a duty to the nation and the citizenry to watch that political correctness, party discipline, zeal or overbearing posture of government cum party do not surreptitiously blur the difference.

Apparently, the Executive have considerable interactions with the Judiciary, for example, through the various processes of appointment and removal of judicial officers. This can provide ample opportunity for an overbearing Executive to impair the independence of the judiciary. The view has been expressed that most politicians are neither committed to the establishment of a strong, virile and independent judiciary, nor do they believe that the judiciary should have the power to review legislative and executive decisions.

Some elected officials have a distorted view of the judiciary as an extension of the executive branch of government. This mindset encourages attempts to control and manipulate the judiciary and to turn judges into pliable instruments of state power. The pervasive influence of the executive, its powers of retaliation and ability to advance or hamper a judge's career make it difficult for judges to adjudicate disputes without fear or favor as required by their oath. Judges concerned about their careers and even their personal safety temper justice with self-preservation.^{lxxxiii} It will not be difficult to find cases illustrating the foregoing in Nigeria.

According to Hon. Justice Dahiru Musdapher, while serving as the Chief Justice of Nigeria identified some of the problems of the judiciary to include the lack of independence of the judiciary, especially at the state level, in terms of funding, political manipulation of the processes of appointment and removal of Judges by some state chief executives and their respective Houses of Assembly. According to him "while it is true that, in some cases, this is self-inflicted (because of the way some Judges portray themselves), it does not invariably follow that a distinct arm of government should, because of the actions of a few, be treated with disdain. Sadly, the judiciary in several states still goes cap in hand to the executive begging for funds.^{lxxxiv}

5.3. *Independence of the Judiciary from Lawyers and Litigants*

Increasingly, modern day realities show a growth in the corrupting influence of lawyers and litigants in the administration of justice. Indeed, the Nigerian landscape is inundated with allegations of corruption against judges in the dispensation of justice, secured by graft from litigants and their lawyers. There exists a perceptible popular distrust of the judiciary's integrity and its ability to protect civil rights and constrain the excesses of elected officials. For most Nigerians, the judicial process is nothing more than an auction in which justice goes to the highest bidder.

Convinced that judges decide cases on the basis of connections and gratification without regard to the legal merits of the case, citizens seek to influence the outcome of cases either by settling the judge, or intimidating judicial officers. Far worse, negative perceptions about the justice system encourage citizens to resort to violent, extralegal and possibly criminal practices to secure their rights. Popular distrust of the judiciary has fueled needless attacks on the integrity and the institution of the judiciary.^{lxxxv}

It is desirable that judges should be free from having their financial well-being dependent on the outcome of the cases they are deciding. Judges should be adequately remunerated, such that they need not endure economic hardship. From this threshold, it will be justified to visit delinquent and erring judges with appropriate sanctions, including removal from office in deserving cases. There is the



2017 VOLUME 3 (ONLINE VERSION)

assertion that there is a link between judicial remuneration and judicial independence from lawyers and litigants.^{lxxxvi} As put by Lord Bingham:

In most societies, and subject to most obvious exceptions, there is some perceived relationship between what someone earns and the status or prestige which he enjoys. Financial rewards are not, of course, everything, but nor are they nothing. Unless, therefore, the rewards of judicial office (with or without other benefits) are sufficient to attract the ablest candidate to accept appointment, albeit with some financial sacrifice, the ranks of the judiciary must be filled by the second best, those who (under our system) have

failed to make it in private practice, and there would be an inevitable lowering in the standing and reputation of the judiciary, and a sea change in the relationship between advocate and judge.

There would also, I suggest, be a loss of those qualities of confidence and courage on which the assertion of true independence not infrequently depends, because these qualities tend to be the product of professional success, not the hallmark of professional mediocrity.^{lxxxvii}

6. Personal Independence of the Judiciary

Of no little importance is the need for a judge to be free from the debilitating influence of self. Personal rectitude and an acceptable standard of morality will be self-preserving of the judge; hardly can anyone or anything save a person from himself. A judge must free himself from the burden of conflict between self-interest and work interest. Thus, it would be unethical of any judge to sit on a case where, known to him even if unknown to others, his impartiality is brought to question by personal interest.

Judicial independence is as much a matter of a judge's character, courage and discipline, as it is a matter of constitutional and structural safeguards. An independent and impartial judge must be courageous, daring and not timid; he must not be stampeded into giving a decision to appease anyone regardless of how high in rank or how powerful, or bow to political pressure; for example, demonstrations or press statements.^{lxxxviii}

It is imperative that the judicial system is engineered by persons of impeccable character, inviolable and incorruptible. In the words of Uwaifo JSC:

a corrupt judge is more harmful to the society than a man who runs amok with a dagger in a crowded street; while the man with the dagger can be restrained physically, a corrupt Judge deliberately destroys the foundation of society and causes incalculable distress to individuals through abusing his office, while still being referred to as honourable.^{lxxxix}

In the same vein, Oputa JSC (as he then was) opined:

No one should go to the bench to amass wealth, for money corrupts and pollutes not only the channels of justice but also the very stream itself. It is a calamity to have a corrupt



2017 VOLUME 3 (ONLINE VERSION)

judge. The passing away of a great advocate does not pose such public danger as the appearance of a corrupt judge on the bench, for in the latter instance, the public interest is bound to suffer and elegant justice is mocked, debased, depreciated and auctioned. When justice is bought and sold, there is no more hope for society. What our society need is an honest, trusted and trustworthy Judiciary.^{xc}

The judiciary deserves to be filled by knowledgeable and versatile judicial officers, imbued with the discipline and rigour of diligence, hard work, dedication to duty, thoroughness, perseverance and self-sacrifice for the utmost good of the nation and the people. An ignorant Judge is no better than a mass murderer, because, in his ignorance, he would have committed so much blunders that even the pains of appeal could not rectify.^{xcⁱ}

7. Judicial Accountability

The independence of the judiciary and of individual judges needs to be tempered by the duty of accountability. Accountability has political, financial, and legal dimensions. Unpopular judicial decisions may give rise to efforts to change the law on which those decisions are based and a judge whose decisions are criticized by civil society monitors or frequently overturned on appeal may lose prestige and respect (political accountability). The judiciary's management of resources and internal administration should be subject to review and audit (financial accountability). Judges, court personnel and lawyers should be subject to disciplinary action under established rules of conduct and subject to prosecution and liable for damages under the same laws as anyone else for willful misconduct (legal accountability).^{xcⁱⁱ}

8. Conclusion

There is an inexorable link between the organs of government; between law, policy and administration. The exercise of governmental powers requires the full complement of the three arms – legislature, executive and the judiciary. Such a complement would ensure social sustainability by helping the state thrive.

As with many aspects of human endeavour, the challenges of independence may not be so much of deficiencies in the law or its machineries as with the operators. The human functionaries of government can truly be a reflection of the society and its values. Independence of the judiciary may not be attained outside of the personal, inner convictions of the players, entrenched in values higher and beyond the natural man. Let each judicial officer make a firm resolve that he will do justice and equity, even if the heavens will fall.

ⁱ Courts and Tribunals Judiciary, "Independence" available at <<https://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/independence/>> (accessed 4 August 2015)

ⁱⁱ As agreed by Law Ministers and endorsed by the Commonwealth Heads of Government Meeting, Abuja, Nigeria, 2003

ⁱⁱⁱ Constitution of the Federal Republic of Nigeria 1999; Cap. C23 Laws of the Federation of Nigeria 2004



2017 VOLUME 3 (ONLINE VERSION)

- iv Section 4 (1) – (5) 1999 Constitution as amended
- v Section 4 (6) & (7) 1999 Constitution as amended
- vi Section 5 (1) (a) & (b) 1999 Constitution as amended
- vii Section 5 (2) (a) & (b) 1999 Constitution as amended
- viii See generally, section 6 of the Constitution as amended
- ix Section 6 (3) – (5) 1999 Constitution as amended
- x Section 6 (a) & (b) 1999 Constitution as amended
- xi Arewa, J. A. “Judicial Integrity In Nigeria: Challenges And Agenda For Action” available at <<http://www.nials-nigeria.org/journals/Arewa-Judicial%20Integrity.pdf>> (accessed 4 August 2015)
- xii Lehohla, M. L. “Sustaining the Independence of the Judiciary: The Dangers of Politicizing the Judiciary”; Being Lecture delivered at South African Chief Justices’ Forum Conference in Johannesburg on 13th – 14th August, 2010, available at <http://www.venice.coe.int/SACJF/2010_08_RSA_Johannesburg/Lesotho.pdf> (accessed 4th August, 2015)
- xiii Abdullahi I. “Independence of the Judiciary In Nigeria: A Myth or Reality?” International Journal of Public Administration and Management Research (IJPAMR), Vol. 2, No 3, August, 2014, pp. 55 – 66, available at <<http://rcmss.com/2014/IJPAMR-VOI2-No3/INDEPENDENCE%20OF%20THE%20JUDICIARY%20IN%20NIGERIA%2012%20Pages.pdf>> (accessed 4 August 2015)
- xiv Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at <http://apps.americanbar.org/rol/docs/judicial_reform_un_principles_independence_judiciary_english.pdf> (accessed 4 August 2015); see also International Bar Association Human Rights Institute Report, “Beyond Polokwane: Safeguarding South Africa’s Judicial Independence”, available at <<http://www.ibanet.org/Document/Default.aspx?DocumentUid=4c7e8c0f-652d-44bd-a459-d9ac85d6872e>> (accessed 4 August 2015)
- xv U.N. Basic Principles on the Independence of the Judiciary, *supra*
- xvi The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002
- xvii *Supra*
- xviii Section 231 (1) 1999 Constitution as amended
- xix Section 231 (1) 1999 Constitution as amended
- xx Section 238 (1) 1999 Constitution as amended
- xxi Section 250 (1) 1999 Constitution as amended
- xxii Section 254B (1) 1999 Constitution as amended (see section 6, Constitution of the Federal Republic of Nigeria (Third Alteration) Act No. 3 of 2010)
- xxiii Section 256 (1) 1999 Constitution as amended
- xxiv Section 261 (1) 1999 Constitution as amended
- xxv Section 266 (1) 1999 Constitution as amended
- xxvi Section 238 (2) 1999 Constitution as amended
- xxvii Section 250 (2) 1999 Constitution as amended
- xxviii Section 254B (2) 1999 Constitution as amended (see section 6, Constitution of the Federal Republic of Nigeria (Third Alteration) Act No. 3 of 2010)
- xxix Section 256 (2) 1999 Constitution as amended
- xxx Section 261 (2) 1999 Constitution as amended
- xxxi Section 266 (2) 1999 Constitution as amended
- xxxii Section 271 (1) 1999 Constitution as amended
- xxxiii Section 276 (1) 1999 Constitution as amended
- xxxiv Section 281 (1) 1999 Constitution as amended
- xxxv Section 271 (2) 1999 Constitution as amended
- xxxvi Section 276 (2) 1999 Constitution as amended
- xxxvii Section 281 (2) 1999 Constitution as amended



2017 VOLUME 3 (ONLINE VERSION)

- xxxviii Section 292 (2) 1999 Constitution, as amended
- xxxix Section 291 (1) 1999 Constitution, as amended
- xl By section 318 (1) 1999 Constitution, Judicial Officers are holders of the various judicial offices in relation to courts specified under section 6 of the Constitution
- xli Section 291 (2) 1999 Constitution, as amended
- xlii Section 84 (1) 1999 Constitution, as amended
- xliii Section 84 (2) 1999 Constitution, as amended
- xliv Section 84 (3) 1999 Constitution, as amended
- xlv Section 84 (7) 1999 Constitution, as amended
- xlvi Section 291 (1) & (2) 1999 Constitution, as amended
- xlvi Section 291 (3) (a) 1999 Constitution, as amended
- xlvi Section 291 (3) (b) 1999 Constitution, as amended
- xlix Section 291 (3) (c) 1999 Constitution, as amended; for example, *Pension Reform Act*, No. 4 of 2014
- l Section 291 (4) 1999 Constitution, as amended
- li Section 84 (5) & (6) 1999 Constitution, as amended
- lii Section 292 (1) (a) (i) 1999 Constitution, as amended
- liii Section 292 (1) (a) (ii) 1999 Constitution, as amended
- liv Section 292 (1) (b) 1999 Constitution, as amended
- lv Section 232 (1) & (2) 1999 Constitution, as amended
- lvi Section 239 (1) & 1999 Constitution, as amended
- lvii Section 240, 1999 Constitution as amended
- lviii Section 235, 1999 Constitution as amended
- lix Section 287 (1) 1999 Constitution as amended
- lx Section 287 (2) 1999 Constitution as amended
- lxi Section 287 (3) 1999 Constitution as amended
- lxii A State Judicial Service Commission is established for each State under the Constitution, with guiding provisions similar to those applicable to the Federal Judicial Service Commission; see sections 197 – 202, 1999 Constitution as amended
- lxiii Section 153 (1) & (2) 1999 Constitution as amended
- lxiv Third Schedule, 1999 Constitution as amended; paras 20 – 21 & 12 – 13 thereof
- lxv Third Schedule, 1999 Constitution as amended; para. 21 thereof
- lxvi Third Schedule, 1999 Constitution as amended; para. 13 thereof
- lxvii Section 154 (1) – (3) 1999 Constitution as amended
- lxviii Section 157 (1) & (2) 1999 Constitution as amended
- lxix Section 158 (1) 1999 Constitution as amended
- lxx Section 84 (1) – (4) 1999 Constitution as amended
- lxxi Section 124 (1) – (4) 1999 Constitution as amended
- lxxii Section 80, 1999 Constitution as amended; see section 120 for application to States
- lxxiii Section 81 (1) & (2) 1999 Constitution as amended; see section 121 for application to States
- lxxiv Section 84 (2) 1999 Constitution as amended
- lxxv Section 84 (7) 1999 Constitution as amended
- lxxvi Section 84 (1) – (4) 1999 Constitution as amended
- lxxvii Section 84 (1) 1999 Constitution as amended
- lxxviii Composition and powers of the Commission are spelt out under Paragraphs 31 & 32 Part 1 of Third Schedule to the 1999 Constitution as amended
- lxxix See section 121 (3) with reference to States
- lxxx Section 148 (1) 1999 Constitution as amended
- lxxxi Section 148 (2) 1999 Constitution as amended; see section 193 for application to the States
- lxxxii Lehohla, M. L. “Sustaining the Independence of the Judiciary: The Dangers of Politicizing the Judiciary”; *supra*



2017 VOLUME 3 (ONLINE VERSION)

^{lxxxiii} Okechukwu Oko "Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary In Nigeria" Brook. J. Int'l L., 2005, Vol. 31:1, pp. 9 - 82

^{lxxxiv} Hon. Justice Dahiru Musdapher, "The Nigerian Judiciary: Towards Reform Of The Bastion Of Constitutional Democracy" Fellows' Lecture Series, Nigerian Institute of Advanced Legal Studies, 2011, available at <<http://nials-nigeria.org/pub/THE%20NIGERIAN%20JUDICIARY%20Towards%20Reform%20Of%20The%20Baston%20Of%20Constitutiona%20Democracy.pdf>> (accessed 4 August 2015)

^{lxxxv} Okechukwu Oko "Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary In Nigeria" Brook. J. Int'l L., 2005, Vol. 31:1, pp. 9 - 82

^{lxxxvi} Thean, L. P. "Judicial Independence and Effectiveness" available at <http://www.aseanlawassociation.org/docs/w1_sing.pdf> (accessed 4 August 2015)

^{lxxxvii} Lord Bingham, "Judicial Independence", Judicial Studies Board Annual Lecture given on 5 November 1996, reproduced in Tom Bingham, *The Business of Judging*, 2000, at pp. 65 – 66; but see Thean, L. P. "Judicial Independence and Effectiveness" available at <http://www.aseanlawassociation.org/docs/w1_sing.pdf> (accessed 4 August 2015)

^{lxxxviii} Lehohla, M. L. (Chief Justice of Lesotho) "Sustaining the Independence of the Judiciary: The Dangers of Politicizing the Judiciary"; *supra*

^{lxxxix} Hon. Justice S.O. Uwaifo, "The Imperative of an Untainted Judiciary", THISDAY Newspaper, January 30, 2005 at p. 32; Being Valedictory speech delivered on Monday 24th January 2005, reproduced in (2005) 1 SCNJ at 20

^{xc} Oputa C, "Judicial Ethics, Law, Justice and the Judiciary", A Journal of Contemporary Legal Problems Vol. 1 No. 8.

^{xci} Hon. Justice Dahiru Musdapher, (Former Chief Justice of Nigeria) "Law Reform In Nigeria: Challenges & Opportunities"; Being Lecture Delivered at Federal University Dutse, Jigawa State, Nigeria, on 20th May, 2014 available at <<http://fud.edu.ng/sites/default/files/media-content/LAW%20REFORM%20IN%20NIGERIA.pdf>> (accessed 4 August, 2015)

^{xcii} Office of Democracy and Governance USAID Program Brief, "Reducing Corruption in The Judiciary" available at <http://pdf.usaid.gov/pdf_docs/Pnadq106.pdf> (accessed 4 August 2015)