

## Appraisal of Existing Frameworks on Judicial Independence in Nigeria

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### Abstract

Frameworks enhance the independence of the judiciary. Thus, there are different types of frameworks on the independence of the judiciary: legal and institutional. These are subjected to examination to bring them in line with current realities. This has necessitated the volume of pieces of literature proposing frameworks for reforms. Thus, in addition to the legal and institutional frameworks is the textual framework. The legal frameworks cover legislative enactments like the Constitution of the Federal Republic of Nigeria 1999(as amended), institutional frameworks like the regulations handed down by the National Judicial Council (NJC) and textual frameworks which are academic works of scholars, jurists and legal practitioners. This paper undertook an appraisal these frameworks and made proposals, like an amendment to s. 271 CFRN 1999, for further reforms, towards enhancing judicial independence in Nigeria and aligning it with international standards.

**Keywords:** Nigeria; Legal framework; Judiciary; *National Judicial Council* (NJC).

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## INTRODUCTION

Several frameworks are regulating judicial independence in Nigeria. Legal Frameworks is the laws that are aimed at guaranteeing the independence of the judiciary in Nigeria. That governing law is the CFRN 1999 (as amended)

They may be grouped into two broad groups: legal and institutional frameworks. Many scholars, jurists and legal practitioners have been concerned about the independence of the judiciary and have subjected the functionality of these frameworks to critical analysis. This paper examines these views and proposes frameworks to fill the lacunae.

Constitution Of The Federal Of Nigeria 1999 (As Amended)

The Constitution of the Federal Republic of Nigeria(CFRN) 1999(as amended) in sustaining the judiciary's independence and strengthening democracy has various statutory provisions that arguably can be said to be guaranteeing judicial independence. It is settled that the CFRN 1999 is the fundamental law, the *fons et origo* of all laws, the discharge of all powers and the root from which all laws, persons and institutions get their powers. Section 1(1) of the CFRN 1999 provides that the constitution is supreme and has binding force on all persons and authorities throughout Nigeria. Thus, the Court in *A. G. Abia State v. A. G. Federation* per Niki Tobi held as follows:

The Constitution is the *fons et origo*, not only of jurisprudence but also of a nation's legal system. It is the beginning and the end of the legal system. In Greek language, it is the Alpha and the Omega; it is the barometer with which all statutes are measured. In line with this kingly position of the constitution, all the three arms of government are slaves of the constitution, not in

the sense of undergoing servitude or bondage, but in the sense of legal obeisance and loyalty to it...

Section 1(3) further states that any law that conflicts with the provisions of the constitution, the constitution shall prevail and that law shall be void to the extent of the inconsistency. Section 6(1) and (2) provides that the federation and state judicial powers shall be vested in courts created for the federation and those created for the state. Section 6(5) lists the courts of record that are superior as follows;

1. The Supreme Court of Nigeria
2. The Court of Appeal
3. The Federal High Court
4. The National Industrial Court
5. The High Court of the Federal Capital Territory, Abuja
6. A High Court of a State
7. The Sharia Court of Appeal of the Federal Capital Territory, Abuja
8. A Sharia Court of Appeal of a State
9. The Customary Court of the Federal Capital Territory
10. A Customary Court of Appeal of a State

It is most significant to point out that the Constitution of the Federal Republic of Nigeria 1999 in section 17(1) and (2)(e) stipulates that the autonomy, fairness and integrity of the Courts of law shall be secured and maintained. A critical and jurisprudential perusal of section 17 (1) and (2) (e) of the Constitution is that the Constitution boldly and unequivocally guarantees judicial autonomy in its Fundamental Objectives and Directive Principles. However, the independence of the judiciary guaranteed under the Constitution falls under Chapter II which is non-justiciable and unenforceable by virtue of section 6 (6) (c). In *A.G. Ondo State v. A.G. Federation*, the Court held *inter alia* that as to the non-justiciability of the Fundamental Objectives and Directive Principles, section 6 (6) (c) said so; but while they remain mere declarations, they are unenforceable by legal process but it would be seen as a failure of duty of state organ if they act in clear disregard of them.

The independence of the judiciary is also constitutionally provided for in section 84(1), (2), (4), (7) and section 121 (3) of the Constitution. By the combined reading of section 84(1), (2) and (4), the salary and allowances of the Chief Justice of Nigeria(CJN), Supreme Court Justices, Court of Appeal President, Court of Appeal Justices, Chief Judge and Judges of the Federal High Court, President and Judges of the National Industrial Court, Chief Judge and Judges of the High Court of the FCT, Grand Kadi and Kadis of the Sharia Court of Appeal of the FCT, President and Judges of the Customary Court of the FCT, and Chief Judges and Judges of the High Court of states are made a charge on Consolidated Revenue Fund.. Section 84 (7) states that, the recurrent expenditure of judicial officers of the Federation shall be a charge upon the Consolidated Revenue Fund of the Federation while section 121 (2) provides that all monies from the State Consolidated Revenue Fund standing to the credit of the Judiciary should be paid to the heads of Court directly. The above, arguably, grants financial autonomy to the judiciary.

One fundamental innovation in the CFRN 1999 on judicial independence is the role of the National Judicial Council in judicial officers' appointments, removal and disciplines (Joshua, 2014). The drafters of the Constitution fantastically created an impediment such that the President or Governor cannot remove or appoint a judicial officer without recourse to the National Judicial Council which recommends who is fit and proper to be so appointed. The National Judicial Council is an institution created under section 153 (1) and its compositions and powers are provided for in paragraph 21, Part 1, Third Schedule to the CFRN 1999. Under the said paragraph 21, the Constitution provides that the NJC shall have the power to recommend to the President or Governor the removal from office of judicial officers and also

exercise disciplinary control over such judicial officers. Therefore, it follows that a judicial officer cannot be removed if there is no NJC recommendation to that effect.

Thus, in *Elelu Habeet v. A.G. Federation*, the Governor of Kwara State through the State House of Assembly purportedly removed the Chief Judge and the apex court held that the Governor cannot remove the Chief Judge without reference to the National Judicial Council. The apex Court also stated that by virtue of section 271 and paragraph 21(c) and (e), Part 1, Third Schedule to the CFRN 1999, the NJC is vested exclusively with the function of recommending to the Governor of a State qualified persons for appointments as Chief Judges of states and other judicial officers. Delivering the lead judgment, Mahmud Mohammed JSC (as then designated) stated thus:

It can be seen here again, although the Governor of a State has been vested with the power to appoint the Chief Judge of his own State, that power is not absolute as the Governor has to share the power with the National Judicial Council in recommending suitable persons and the State House of Assembly in confirming the appointment. In the spirit of the Constitution in ensuring checks and balances between the three arms of government, the role of the Governor in appointing and exercising disciplinary control over the Chief Judge of his State is subjected to the participation of the National Judicial Council and the House of Assembly...

The CFRN 1999 (as amended) elegantly provided for two grounds for judicial officers' removal to wit: inability to perform the functions of his office due to infirmity of the mind or body and misconduct or breach of the Code of Conduct (Ononye *et al.*, 2020). Suffice also to state that a judge may be summarily dismissed for a serious misconduct in his private life. In *A.G. Cross Rivers State v. Esin*, the Court held that a serious misconduct in the private life of a judge may warrant his summary dismissal.

On the retirement of judicial officers, the Constitution provides that the Supreme Court and Court of Appeal judicial officers shall not be removed from their offices before retirement. The retirement age for Supreme Court and Court of Appeal justices is seventy years. However, they may leave office upon the attaining sixty-five years. Also, those of all other Courts apart from the two above may retire and leave office at sixty-five years.

On the mode of judicial officers' appointment of the courts of records, the NJC is vested exclusively with the *vires* for recommendation to the President or Governor, those persons for the appointment into judicial offices. The National Judicial Council's role in the appointment methods in the Constitution, no doubt, can arguably be said to guarantee the autonomy of the judiciary.

Most significantly, the President cannot remove the Chief Justice of Nigeria, the President of the Court of Appeal, President of the National Industrial Court and the Chief Judge of the Federal High Court, Grand Kadi of the Sharia Court of Appeal, Chief Judge of the High Court Federal Capital Territory, President of the Customary Court of Appeal of the Federal Capital Territory without an address supported by two-third majority of the Senate. Also, the Governor cannot remove the State High Court Chief Judge, Grand Kadi of the Sharia Court of Appeal of the state and Customary Court of Appeal President of the State without a speech ratified by two-third majority of the State House of Assembly. The Senate and the House of Assembly of a state in the removal of the heads of Courts, no doubt, ensures checks and balances and reduces executive rascality.

From the foregoing, the provisions of sections 17, 84, 121, 153, 291, 292, *inter alia* and the tripartite roles of the three institutions of government, no doubt, strengthen the autonomy of the judiciary under the Constitution of the Federal Republic of Nigeria 1999.

#### Institutional Legal Frameworks

The laws regulating some institutions, unarguably, also regulate the independence of the judiciary. These include: National Judicial Council (NJC), Federal Judicial Service Commission (FJSC), State Judicial Service Commission (SJC), the Nigerian Bar Association (NBA), International Bar Association (IBA) and the United Nations

### The National Judicial Council (NJC)

As noted above, this is one major institution in Nigeria that promotes the independence of the Judiciary through its role and functions. It is the apex judicial decision making body in terms of standard in the conduct of judicial office holders in Nigeria. It is one of the federal executive bodies established under section 153(1) of the CFRN 1999 with a view to insulating and protecting the judiciary from the dictates, interference, whims and caprices of the other arms of government and to promote the independence of the judiciary as an institution of the state (Onuigbo & Eme, 2015).

Under Paragraph 20 in Part 1, Third Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended), the body consists of the following members;

1. The Chief Justice of Nigeria(CJN), who is the Chairman
2. The next most senior Supreme Court Justice who is deputize the Chairman
3. The Court of Appeal President
4. Five retired Supreme Court or Court of Appeal Justices selected by the Chief Justice.
5. The Federal High Court Chief Judge
6. The National Industrial Court President
7. Five Chief Judges to be appointed by the Chief Justice of Nigeria from amongst the State High Courts and the FCT High Court etc (Udemezue, 2021).

The National Judicial Council has several committees which are vested with the following responsibilities:

1. Interview of Nominees for appointment as judicial officers of courts of records.
2. Review of the CFRN 1999
3. Judicial ethics.
4. Appointments, promotion and discipline
5. Preliminary complaints and assessment
6. Due process of the federal judiciary etc.

Under paragraph 20, part 1, Third schedule of the CFRN 1999, the body has the powers to:

1. Recommend to the President, persons for the appointment to the offices of the Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, Chief Judge and Judges of the Federal High Court, President and Judges of the National Industrial Court and persons for appointment to the office of the Chief Judge and Judges of the FCT, Grand Kadi and Kadis of the Sharia Court of Appeal of the FCT, President and Judges of the Customary Court of Appeal of the FCT from the list submitted to it by the Federal Judicial Service Commission and Judicial Service Commission of the FCT.
2. Recommend for judicial officers removal from office in sub paragraph (a) and to exercise disciplinary control over such officers.
3. Recommend to the Governors, persons for appointment to the offices of the States' Chief Judges and Judges of the High Court, Grand Kadi and Kadis of the Sharia Courts of Appeal of states and President and Judges of the Customary Court of Appeal of States from the list by the State Judicial Service Commission.
4. Receive, control and disburse all monies for the judiciary.
5. Advise the President or Governor on any matter relating to the judiciary as the council may refer..
6. Appoint, dismiss and exercise disciplinary control over Council members and staff.
7. Control and disburse all monies for the services of the Council.
8. Deal with all other matters relating to broad issues of policy and administration.

### Federal Judicial Service Commission (FJSC)

This is another institution or body created in the CFRN 1999 and it is one of the institutions that play a key function in the independence of the judiciary. Under paragraph 12 Part 1, Third Schedule of the CFRN 1999, the body is composed of the Chief Justice of Nigeria, who is the chairman, Court of Appeal President, Attorney General of the Federation and other members stated in the aforementioned paragraph.

The commission has the powers to:

1. Advise the NJC in nominating persons for appointment in respect of the appointment to the offices of the judicial officers.
2. Recommend to the NJC, the removal from office of judicial officers.
3. Appoint, dismiss and exercise disciplinary control over Supreme Court, Court of Appeal, Federal High Court, National Industrial Court Chief Registrars, Deputy Chief Registrars and all other members and staff of the Federal Judicial Service Commission not listed in the Constitution.

A cursory glance at the functions of the Federal Service Commission no doubt shows that the commission takes part in the sustenance and independence of the judiciary.

### State Judicial Service Commission (SJSC)

It is one of the executive bodies created by the CFRN 1999 for each state. Paragraph 5, Part II, Third Schedule to the Constitution provides for the Commission's membership, which includes the Chief Judge of the State who is the chairman, the Attorney General of the State and others as mentioned in the paragraph above. Suffice to state that the Commission has powers to:

1. Advise the NJC on qualified persons for nominations to the office of judicial officers of the State.
2. Recommend to the NJC the removal from office of judicial officers of the State.
3. Appoint, dismiss and exercise disciplinary control over High Court Registrar and Deputy Registrar, Sharia Court of Appeal and Customary Court of Appeal Chief Registrars, Magistrates, Area Courts and Customary Courts Judges, members and all other members of the Judicial Service Commission of the State not specified in the Constitution.

### The Nigerian Bar Association (NBA)

The Nigerian Bar Association is a noble, professional and non-profit making body comprising of all the legal practitioners called to the Nigerian Bar after a compulsory one year vocational training at the Nigerian Law School. It is a body of legal practitioners that is engaged in promoting and protecting the rule of law which has the autonomy of the judiciary as a fundamental aspect, human rights and good governance in Nigeria. The Nigerian Bar Association has some core values which include integrity, excellence, courage and professionalism and it has its branches in all the 36 states. It is essential to state that the Nigerian Bar Association plays a fundamental role in the Nigerian legal system and its role cannot be underscored.

In recent times, the Nigerian Bar Association role in promoting the autonomy of the judiciary was clearly illustrated when the Association condemned the suspension of the CJN; Honourable Justice Walter Onnoghen by the President Muhammadu Buhari led Federal Government. A two day nationwide Court boycott was declared by the executive body of the Association which described the suspension of the CJN as a *coup* against the Nigerian judiciary. The NBA continues to advise, formulate frameworks and advocate for reforms that would enhance the independence of the judiciary.

### The International Bar Association (IBA)

This is the universal voice of the legal profession with a long standing record and achievement. It is the foremost association for international lawyers, bar associations and law societies. It was founded in 1947 shortly after the United Nations with the conviction that an association consisting of the global bar could contribute to world stability and peace through the administration of justice (Joelson, 2015).

This Bar Association has 190 Bar Associations and more than 80,000 individual international lawyers in its membership. It has the following committees and divisions:

1. Legal Practice Division
2. Public and Professional Division
3. Section Index
4. Regional Fora
5. Bar Associations

It is significant to state that the International Bar Association is one international institution that canvasses and promotes the independence of the judiciary through its calls and awareness campaigns. In recent times, this body canvassed for the independence of the judiciary in Egypt and Hungary.

### United Nations

The United Nations (UN) Conference formulated basic principles on the autonomy of the judiciary (Caracciolo, 2021). One of the principles is that judicial autonomy shall be guaranteed by states and enshrined in the constitutions of countries and that it is the duty of all governments or other institutions to respect and observe the autonomy of the judiciary.’ Thus, in 1983 in Canada, the UN held its first World Conference on Judicial independence and approved a Universal Declaration on the autonomy of the judiciary which states that,

The Judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source’  
The UN Charter further states that, ‘The Judiciary, as bearer of the judiciary office should be able to exercise the judicial power free from any social, economic or political pressure, independently of other judiciaries (High Commissioner for Human Rights, Centre for Human Rights, Geneva Staff, 2003).

In the same vein, the UN Congress on the Prevention of Crimes and Treatment of Offenders in 1985 adopted the basic principles on the autonomy of the judiciary thus:

- a. It is government duty to respect the autonomy of the Judiciary
- b. It is the Judiciary duty to decide matters impartially
- c. Judges must not be subject to or accept
  - (i) Restrictions
  - (iii) Improper influences
  - (iii) Inducements
  - (iv) Pressures
  - (v) Threats or interference of any kind with the judicial function
- d. Judges have the exclusive authority to resolve all disputes that come before them.
- e. Judges without any discrimination should be properly trained and selected.
- f. Judges appointment should be guaranteed up to fixed retirement age or the end of their term of office.
- g. Judges may only be removed for incapacity or behaviour making them unfit to perform their duty.

The European Convention of Human Rights, International Agreement on Civil and Political Rights and the African Charter on Human and Peoples Rights sanctioned the right to independent trial.

### Textual Frameworks

Scholars, jurists, and legal practitioners have defined, subjected the legal and institutional frameworks to critical analysis, and proposed frameworks for reforms. These are examined hereunder. One of Nigeria's foremost Constitutional Lawyer, Nwabueze states that the import of the independence of the judiciary involves three things:

It requires that judicial power, defined as power which every sovereign State must possess to decide justiciable disputes between its subjects or between it and a subject, must exist as a power, separate from, and independent of, executive and legislative powers, and must repose in the judicature as a separate organ of government, composed of persons different from, and independent of, those who compose the executive and legislature, and using a procedure different from that for execution and law-making (Nwabueze, 1993).

According to the learned author, the separateness and independence of the judiciary is the foundation upon which the other two factors depend. Therefore, it requires a constitutional vesting of judicial powers in the judicature either by express words or by necessary implication. And the procedure for altering those provisions must be cumbersome to guard its existence.

As a corollary to the above, the Constitution makers must make an express declaration as to the constitution's supremacy and that any other law that is inconsistent is void *pro tanto* as well as an express vesting of jurisdiction in the courts because without jurisdictions, the court cannot proceed in any cause. He further contends that judicial independence also concerns the method by which those who exercise judicial power are to be appointed, remunerated and removed by insulating Judges from political influence. I agree with the learned author to the extent that independence of the judiciary is necessary to preserve liberty and constitutionalism. I also agree that judicial independence is dependent on the method of appointment and removal of judicial officers but the author did not enumerate the contents of the method for judicial officers' appointment and removal since the extant position does not enhance the independence of the judiciary.

On his part, Kayode Eso, a renowned jurist, views the independence of the judiciary or judicial independence from *de ferenda* (what it ought to be) and states that it would imply courts which are not to be tied to the apron-strings of the Executive, courts which are free from political, ethnic or religious pressures and polarisation; courts which are adequately funded, and funded in a way that does not subject the judiciary to be a beggar institution of the Executive, courts which are manned by the best available brain attracted therein, apart from, patriotism, but by the honour and dignity of the office and also by the prevailing, but tempting and enviable conditions of service, courts which are not made incapable of (for, by or from reasons of ignorance, corruption, favouritism, prejudice, fear or favour) delivering a just verdict (Eso & Yakubu, 2003, p. 292).

He noted that the independence of the judiciary is sine qua non for the discharge of its role under the Constitution. Accordingly, a judiciary that is autonomous thrives in an atmosphere of 'unadulterated democracy' and rule of law (Stromberg, 2015). Consequently, a mere provision of separation of powers in the grundnorm of a country is not the alpha and omega of independence of the judiciary but regard must be had to the 'method of appointment of the judex, the conditions of service and security of tenure of the judex and the discipline, including the removal from office of the judex. These are coupled with the unwritten criterion of the calibre of the judex who must be above suspicion.

On the mode of appointment, the author decried the shift from the practice under the Independence Constitution of 1960 where the appointment, condition of service and security of Judges' tenure had a shade of independence from the interference of the other arms of government, especially the executive. The appointment of a Judge was done by the governor acting in accordance with the Judicial Service Commission, which was apparently independent of politics. Under the Republican Constitution of 1963, the mode of appointment was by the Governor acting on the Premier's advice, who was being advised by the Chief

Justice of Nigeria on the existence of a vacancy and a recommended nominee. The effect was that the role of the Premier was ceremonial since he merely acted on the chief justice's recommendation. The author also observed that during the period of military interregnum, judicial independence or autonomy was eroded by the fact that the appointing body of Judges were the nominees of the military Governor who was represented by the Attorney General. The effects were that:

1. The views of the Attorney General were more of Military views than that of objective law expected of a lawyer
2. He no longer could be relied upon not to become more executive than the executive whereas he represents the Executive in the body set up for appointments to the Third Arm.

The learned author argues that this was used and could still be used to give the Military Governor or Administrator's an undue licence to brief these nominees about the executive's preference or prejudice in the appointment of a Judge. And this could never yield the cherished independence of the judiciary.

On conditions of service, he noted that under the Independence Constitution the conditions were quasi-tailored to those in the civil service with emoluments just higher than the highest paid, the Solicitor-General. This was because all arms of government derived their revenue from the appropriation Act so no arm depended on another for funding but with the advent of the Military rule, governance was forced to follow Military discipline of 'order down the ranks' and the style ceased to be strict compliance with the Appropriation Act.

On the security of tenure of judges, Nwabueze noted that the 1979 Constitution was sufficient to guarantee judicial independence especially coupled with an appointment which is free from political colouring and good conditions of service under a democratic rule. The Constitutional provisions were that, the holder of the office of a judge shall be removed by the Governor if an address by the House shall pray that the Judge is incapable of dispensing the duties of the office either on grounds of infirmity of mind or body or misbehaviour. The address must be signed by the presiding officer stating that it was passed by no less than two-thirds of all the members. Nwabueze concluded with the following recommendations that:

1. Elevation of judicial officers should not be a matter of course as in the Civil Service
2. Good and attractive conditions of service
3. The judiciary should control its own budgets. That is, it should prepare, present and defend its budget before the National Judicial Council serving as Parliament of the judiciary and a disburser of funds to the judiciary
4. A unified Judiciary were all judicial officers for all the States shall be appointed by the National Judicial Council (NJC) while the Chief Judges should be appointed by the State chief Executive subject to confirmation by the House of Assembly of a State and Senate in the case of The Chief Justice of Nigeria, Chief Judge of the Federal High Court and Judges of the FCT High Court having regard to merit whilst upholding the principle of federal character.
5. Infrastructure to include mechanical recording system
6. Bifurcation of the office of the Attorney-General and Minister of Justice (Attorney General and Commissioner of Justice being an equivalent provision for the States) so that the Attorney-General would remain strictly a legal adviser to the Executive while the Minister of Justice is a member of the Executive cabinet.

While I align with Nwabueze on recommendations i, ii, iii, v and vi above, I respectfully disagree with him partially on recommendation iv and hold that it would not completely excise the influence of the Executive on the judiciary.

For Mowoe (2008), he is unequivocal that by virtue of the fundamental duty of the judiciary in society, it is pertinent that it is independent and impartial both in its appointment,



dismissal and remuneration. The details of each of these limbs are examined hereunder: On judicial officers' appointment for the Courts of record in the Constitution, the author comparatively holds that the provisions on the independence of the judiciary is better protected under the 1999 Constitution than under constitutions. The 1999 Constitution provides for the appointment of judicial officers by the President or Governor upon the recommendation made by the NJC. The author, however, observes that the powers of the Chief Justice as chairman NJC chairman should be reduced by reducing the number of persons over whose appointment he can exercise singular discretion. It is my respectful view that the learned author only approached the subject from the *lex lata* and neglected to make normative inputs towards judicial independence in terms of judicial officers' appointment.

On dismissal, the author lamented the verbose use of misconduct in section 292 of the CFRN 1999 in one of the grounds of removing a Judge. He, however, recommended that the procedure of removal of the CJN and States' Chief Judges should be extended to other Justices and Judges. For clarity, the procedure requires the President, Governor to act on a motion ratified by two thirds majority of the Senate or House of Assembly, respectively. He concluded by underscoring the need for an urgent amendment to the extant provisions without proposing a legal framework. On remuneration and service conditions, the learned author argued that despite the CFRN 1999 provisions under section 80 creating the Consolidated Revenue Fund and section 84(1) that empower the National Assembly to prescribe the public officers' salaries including Judges, the remuneration of Judges is not sufficiently rewarding to enhance their independence but he did not propose a paradigm.

Wifa, on his part examined judicial independence in the context of separation of powers under the various Nigerian Constitutions and came to the conclusion that both the CFRN 1979 and 1999 appear to have expressly recognized the doctrine of separation of powers. He, however, noted that 'mere exhortation to judicial courage may prove both inexpedient and ineffectual to Courts executive interference in dispensing judicial function, as experience has shown. Consequently, the author recommended that s. 153(1) &(2) and s. 197(1) &(2) of the CFRN 1999 should be amended so that National Judicial Council composition and the State Judicial Service Commission are not 'headed by persons who for the time being are heads of the Judiciary or of the Executive arm. They should, however, be ex-officio members as well as the Attorney General of the Federation and States. This is to ensure that a fairly independent body is charged with the responsibility to run an independent judiciary. On the probable reaction that this may amount to subjugation of the judiciary to a body outside the judiciary and may compromise its independence, he submitted that the current arrangement were the Chief Justice of Nigeria and States' Chief Judges are heads of the National Judicial Commission and State judicial Service Commission, respectively, violates one of the limbs of natural justice principle (*nemo iudex in casa sua*). I agree with the author that mere exhortation would not guarantee judicial independence but it is my respective view that the author omitted to identify the person who would nominate the head of the body and the status of the nominee.

Adangor in his seminal paper decried politicising the appointment of a Chief Judge of a state. According to him, this is largely due to the latent defects in the provisions of s. 271(1) of the CFRN 1999 which appears to confer discretion on the Governor of a state to appoint any lawyer not below ten years post call as Chief Judge of a State upon the National Judicial Council (NJC) recommendations (Adangor, 2015). One of the consequential effects, according to the learned author, is that it is open to ambiguous interpretations which a Governor may exploit to appoint a stooge as a state Chief Judge as was the case of *Governor of Rivers State v National Judicial Council* over Governor Rotimi Chibuike Amaechi's appointment of Hon Justice P. Aguma as the Chief Judge of Rivers State in defiance to the recommendation of the National Judicial Council which recommended Hon Justice Daisy Okocha. According to the

author, 'in this way, the autonomy and integrity of the Chief Judge as the head of the State Judiciary will be easily compromised.' As a solution, the author recommended that the provisions of s. 271(4) of the CFRN 1999 which provides for the most senior Judge of the High Court to be appointed as the Chief Judge of a State be replicated under s. 271(1) of the same Constitution. I agree with the learned author that the provisions of s.271 (1) of the CFRN 1999 is susceptible to manipulation by Governors, in collaboration with the State Judicial Service Committee to recommend a stooge to the NJC for appointment as a Chief Judge of a State.

For Salawu (2013), certain factors are impeding the independence of the Judiciary in Nigeria. These factors are: manipulation of Judges by the Executives, delays in trials (like frivolous applications by Lawyers/Litigants), corruption in the judiciary and procedure of appointment of Judges with greater emphasis on the role of politics on judicial independence and rule of law. This is having regard to the provisions of section 271(1) & (2) of the CFRN 1999 which involves the other arms of government manned by politicians to manipulate the appointment of Judges who would yield to their dictates. The author, however, contends that these institutional weaknesses bedevilling the judiciary in Nigeria are surmountable through concerted efforts of the three arms of government and courage in the individuals manning these arms.

Essien in his paper '*The Judiciary and Democracy in Nigeria: A Case for Independence*' has contended that the autonomy of the judiciary can be viewed from two perspectives- personal (inward) and impersonal (outward) as these relate to factors which fetter or inhibit the freedom of judicial action which are in turn derived from the Constitution in terms of security of tenure, appointment and remuneration/working conditions (Yusuf, 2006).

On appointment, the learned author noted that the provisions in section 271 of the CFRN 1999 are an improvement on the procedure of appointment under the 1979 constitution. He however regretted that there is no provision under section 271 of the CFRN 1999 warranting that the 'most senior' judge must be appointed as substantive Chief Judge of a state as it does warrant for the appointment of the Acting Chief Judge of a state by the Governor on the recommendation of the NJC. On removal of a judicial officer, the learned author decries the status quo provisions under section 292(a) & (b) of the 1999 Constitution which vests powers of removal of judicial officers in the joint actions of the Executive and Legislature for the set of judicial officers captured in section 292(a) while those under section 292(b) are removable by the Executive upon the recommendation of the NJC. It is the view of the author that the involvement of the Legislature should be excised by adopting the provisions under section 292(b) for the removal of all judicial officers based on NJC recommendation. On his part, Alagbe while underscoring the significance of an independent judiciary in a democratic setting notes that it is only an non-interfered and impartial Judiciary that can protect human rights between individuals and also protect the people from executive and legislative encroachment on their rights save for deserving circumstances.

The learned author identified some factors that constitute obstacles to the Nigerian judicial independence to include: appointment mode, security of tenure, corruption, polarization and politicisation of the judiciary, delay in judicial process, judiciary's lack of independent machinery to enforce its decisions and dependence on ouster clauses. On the mode of appointment of judicial officers, the author sees the provisions in the CFRN 1999 as an improvement on previous Constitutions having regard to the President/Governor's appointment of the head of respective Courts upon the recommendation of the NJC. The author however did not identify any threat in the procedure for the independence of the judiciary. On security of tenure, the author notes that the provisions under the CFRN 1999 for judges to be removed at the Legislative instance may be abused to the detriment of the autonomy of the judiciary because if the powers of hire and fire are wholly vested in either

the Executive or Legislature, then the Judiciary will become ineffective and porous shield in the defence of rights and justice. Regrettably, the author merely identified the obstacles without proposing remedies.

#### Proposal For Reforms

The following frameworks are proposed for reform.

1. There is an urgent need to further amend the CFRN 1999 to give effect to the judiciary's financial autonomy respecting the judiciary's capital expenditure.
2. The remuneration of judicial officers in Nigeria should be constitutionally protected such that there will be the insertion of a clause that the remuneration of judicial officers shall not be diminished or reduced as seen in the Constitutions of United States and South Africa. Also, a provision should be spelt out in the Constitution to protect arbitrary adjustment of the funds of the judiciary by the Executive (aided by the Legislature) in the Consolidated Revenue Fund.
3. On the appointment process of judicial officers, the powers of the President or the Governor to appoint a judicial officer should be removed and vested in the NJC, whose chairman is not the CJN or an appointee of the Executive. Thus, s. 232(1) and s272(1) CFRN 1999 (as amended) should be rephrased to read 'for nominal confirmation by the Senate or House of Assembly of a State.' The effect would be that the appearance of an appointee before Senate or House of Assembly Judicial Committee or Plenary is dispensed with. This will curb the executive discretion to appoint a person recommended by the NJC as was the case of Hon. Justice Diezy Okocha of the High Court of Rivers State.
4. The administration of oath on judicial officers should be done by a judicial officer. In that sense, the heads of Court should administer oath of office on newly appointed judicial officers. Where the appointee is to head a Court like the Chief Justice of Nigeria, all the procedures must be concluded so that the retiring Chief Justice administers oath on his successor at the last hour of his tenure and exits as was the case when Idris Kutigi handed over to Katsina Alu. Where the incumbent is incapacitated, the immediate past head of that Court or his predecessor alive should administer the oath.
5. On the elevation procedure of a judicial officer to a higher bench, it should be entrenched that the most senior Justice of the Court of Appeal or Judge of the Federal High Court or High Court of a state or other Courts of record, after the President or Chief Judge or head of Court (having regard to age on the bench not at the bar) should be nominated by the NJC not the President or Governor to occupy a vacant seat reserved for that state, respectively. This will curb any suspicion of manipulation by the executive to either elevate loyalist or non-conformist as was alleged in the elevation of Hon. Justice Ayo Salami, PCOA to the Supreme Court whereas the next most senior member of that bench of Kwara State origin should have been elevated.
6. Policies of the judiciary should not be subject to the approval of the Executive (President or Governor) as this power may be manipulated to make the judiciary subservient to the Executive instead of its equal status on the tripod of separation of powers. For instance, Governors consent and approval are required to commence Multi-Door Court system which aids the administration of justice.
7. A judicial officer must serve in a division for a stipulated fixed period before being transferred to another division to curb the tendency of manipulation of transfer of judicial officers when a certain judicial officer is not or capable of being manipulated to achieve desired judicial pronouncements

#### CONCLUSION

It is clear from the existing frameworks that there is no judicial autonomy due largely to the provisions in the law which permit the incursion of other arms, the Executive and legislature, into the affairs of the judiciary. This work therefore proffers frameworks for reforms to fill the lacunae in order to enhance the independence of the judiciary in Nigeria and also align it with international standards.

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