

A LEGAL REVIEW OF THE INDEPENDENT STATUS OF THE JUDICIARY IN NIGERIA

*Olukayode O. Aguda**

Abstract

The judiciary is an important arm of the government in Nigeria. It is usually considered as the last hope of the common man due to its adjudicatory role. In recent times, the executive arm of the government has interrogated the judiciary over issues of corrupt practices which has culminated in the trials of several judges and the removal of the Chief Justice of Nigeria. The aim of this paper is to carry out an analysis of the status of the independence of the judiciary considering that Nigeria operates a federal system of government that embraces the concept of separation of powers. In carrying out this research, attempts were made to consult several scholarly literature with the inclusion of statutes and case laws. This research reviewed the past and current practices with regards to the numerous involvement of the executive in the affairs of the judiciary and considered that it is against principles enshrined in the constitution of the Federal Republic of Nigeria 1999 (as amended). Amongst others, it was considered that due process should be followed in the selection and removal of judges in order to

* B.A, B.L, LL.M, Ph.D. Lecturer, Ajayi Crowther University, Oyo. Email: kayus2013@gmail.com

prevent arbitrariness and perceived over centralization of power in the executive arm of government.

Keywords: Judicial independence, Separation of Powers, Misconduct, Democracy, Constitution

1. Introduction

It has been observed that, “the bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing.”¹ This observation is a strong pointer to the fact that in a democratic system of government like Nigeria, it is important that our judicial system align itself to best practices devoid of interference from executive manipulations. Thus, it is important to emphasize that the call for a truly independent judiciary is long overdue.

Independence is “the state of wanting or being able to do things for yourself and make your own decisions without help or influence from other people”.² The judiciary, which is commonly conceived as the “third arm of government” is responsible for the administration of the court system of any country. Essentially, an independent judiciary is crucial to the growth and development of a great democracy. In Nigeria, there is nothing needed more than the realisation of an ideal state of governance. Thus, seeing that the current situation is a far cry from the ideal state, it has become

¹ Caroline Kennedy Topics on Judicial Quotes <<https://www.brainyquote.com/topics/judiciary-quotes>> accessed 28 July, 2020.

² Cambridge dictionary <<https://www.google.com/amp/s/dictionary.cambridge.org/amp/english/independence>> accessed 28 July, 2020.

necessary to examine the nature of the independence of the judiciary in Nigeria while drawing inferences from other jurisdictions.

2. A Brief History of Judiciary in Nigeria

Prior to the advent of the British Colonialists, the various parts of Nigeria had distinct methods of dispute resolution. There are however four distinct eras in the history of the judiciary in Nigeria, the period before 1842, 1843-1913, 1914-1953 and 1954-date.³ Traditionally, the Igbos similar to the practice of the Yorubas would approach the head of the family, then head of community up to the “Council of Elders” or "Oba" respectively for solution to disputes while the Hausas had in place an Islamic Sharia system. After 1842, native courts were established in the country.⁴ The British then came with the Foreign Jurisdiction Act of 1843 and 1893 which gave rise to the Courts of Equity and the consular courts. By 1863, the Ordinance No. 11 of 1863 established the Supreme Court of Lagos which later became the Supreme Court for Southern Nigeria by Supreme Court Proclamation Order No. 6. The North also had Sir Henry Gollan as Chief Justice by the Northern Nigerian Order in Council 1899.⁵

All of these courts evolved to become the various courts- Magistrate court, High Court, Court of Appeal, Sharia Court of

³ Niki Tobi, (1981), “Judicial Independence in Nigeria”, International Legal Practitioner, Vol. 6(ii), Great Britain.

⁴ A.O. Obilade, (1979), “Nigerian Legal System” <<http://www.ncjrs.gov/App/publications/abstract.aspx?ID=61220>> accessed 22 August, 2020.

⁵ Niki Tobi, (1981), “Judicial Independence in Nigeria”, International Legal Practitioner, Vol. 6(ii), Great Britain.

Appeal, Customary Court of Appeal, the Federal High Court, The Supreme Court, etc. in no particular order.⁶

3. Attributes of an Independent Judiciary

An independent judiciary is an ideal institution which places above all else justice and impartiality. An independent judiciary requires qualified and independent judges.⁷ This has necessitated the creation of the National Judicial Commission for states⁸ and the federation⁹ as well as provision for consolidated remuneration.¹⁰ Judicial independence is in two parts: decisional independence i.e. respect and compliance with courts' decisions and structural independence meaning freedom from interference in selection process, promotion, compensation and daily operations.¹¹ Political scientist, John Schmidhauser has identified several attributes associated with judicial independence. These measures are especially useful for comparative analysis and are described further

⁶ Yusuf Ali, "The Evolution of Ideal Nigerian Judiciary in the New Millennium
<https://www.yusufali.net/articles/THE_EVOLUTION_OF_IDEAL_NIGERIAN_JUDICIARY_IN_THE_NEW_MILLENNIUM.pdf> accessed 28 July, 2020.

⁷ Mia Swart, "Independence of the Judiciary", (2019),
<<https://oxcon.oup.com/view/10.1093/law-mpeccol/law-mpeccol-e339>>
accessed 3 August, 2020.

⁸ Section 197 CRFN 1999 (as amended)

⁹ Section 304 CRFN, 1999 (as amended)

¹⁰ Joshua, Samson Ayobami, (2014), The Provisions of 1999 Constitution of Nigeria on Appointment, Discipline and Removal of Judicial Officers and Implications for an Effective and Independent Judiciary, Journal of Law, Policy and Globalization accessed from www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.28, 2014 170 on 22 August, 2020.

¹¹ Independent Judiciary < <https://usa.usembassy.de/etexts/gov/freedpap4.htm>>
accessed 3 August, 2020.

in Martin Shapiro's *Courts: A Comparative Political Analysis*.¹² Attributes of an independent judiciary¹³ are more of an ideal state than reality however the following points have been compiled as factors that need to be in place to ensure the reality of independence of the judiciary:

- i) An impartial and high qualitative standard of judicial selection and appointment process. This is to ensure that judges will not be influenced by any reasons other than the objective criteria of “qualifications, integrity, ability and efficiency”.
- ii) Confidentiality of judicial deliberations
- iii) Discipline and removal of judges
- iv) Fairness and objectivity in internal court procedures.
- v) Functional separation of the highest judicial body from political branches of government.
- vi) Sovereignty of a constitution or grundnorm that guarantees same.¹⁴This law is respected by the government and other institutions. This is crucial in guaranteeing an independent judiciary.
- vii) Avoidance of bias: matters should be judged based on facts and not on biases, improper influences, inducements, threats, etc for any reason.

¹² *Ibid.*

¹³ Wheeler R., (2012), Judicial Independence in the United States of America. In: Seibert-Fohr A. (ed.) <https://doi.org/10.1007/978-3-642-28299-7_13> accessed 3 August, 2020.

¹⁴ United Nations Human Rights Office of the High Commissioner, (1985), “Basic Principles on the Independence of the Judiciary” <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>> accessed 3 August, 2020.

- viii) Exclusive jurisdiction: the judiciary should have exclusive jurisdiction over all matters of judicial nature.
- ix) Lack of unwanted Interference: other than judicial reviews, the decisions should remain final and binding.
- x) Provision of adequate resources to ensure independence. Such resources are including but not limited to security of tenure by law, adequate remuneration, conditions of service, tenure, promotion, etc.
- xi) Compliance with judicial decisions and court orders.

Given the above background, it is important to consider the independence status of the judiciary in other jurisdictions. This will be discussed in the following section.

4. Judicial Independence in Other Jurisdictions outside Nigeria

It is important to carry out a brief analysis of the judicial system in other jurisdictions in order to have an informed view of some of the global practices. The jurisdictions to be considered are the United States of America which is considered to possess one of the most independent judicial systems loosely fashioned around that of the United Kingdom and quite similar to the one obtained in Nigeria; French judicial system, a sharp contrast to that of the United States of America fashioned after the Romans; these two make for the major judicial systems and Venezuela, a country whose judicial system is a lot different from the aforementioned.

4.1 Independence of the Judiciary in the United States of America

The motto of the U.S. Supreme Court, “Equal Justice under Law” embodies the objectives of the judiciary in a democratic society.¹⁵ As Alexander Hamilton explained in “Federalist 78”, one of a series of newspaper editorials written in support of the proposed constitution in 1788: “The Judiciary, from the nature of its functions, will always be the least dangerous branch...The judiciary...has no influence over either the sword or the purse; no direction either of the strength or the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will but merely judgment...”, which underscores the importance of a sovereign law which grants independence of the judiciary.¹⁶

The primary basis of judicial independence in the United States is the protections guaranteed to judges under Article III of the Constitution, which is the article that provides for federal judiciary.¹⁷ Article III provides that federal judges will “hold their offices during good behaviour” and that they will “receive for their services, a compensation, which shall not be diminished during their continuance in office.”¹⁸ This provision assures that the executive, congress or any other arm of the government is unable to influence the outcome of judicial proceedings directly by either threatening removal or reduction for salary. Article II deals with “civil officers of the United States” and thus since judges are also

¹⁵ Independent Judiciary, above n.11.

¹⁶ *Ibid.*

¹⁷ Stephen Breyer, “Judicial Independence in the United States”, <<https://heinonline.org/hein/journals/stlulj40&div=49&id=&pdf>> accessed 3 August, 2020.

¹⁸ U.S. CONST. Art III s I.

civil officers, “good behaviour” is a caveat that guarantees discipline of judges which means that just like civil officers they can “be removed from office on Impeachment for, and conviction of, treason, bribery, or other high crimes or misconduct”. Alexander Hamilton echoed this in “Federalist 78”, explaining that because “nothing can contribute so much to¹⁹ firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient”.²⁰

The American Legal System is adversarial in nature. As a result, lawyers and judges play a much larger role in society and many grievances are defined in legal terms as “causes of action” appropriate for litigation. The American court is also known for its trial courts which consist of ordinary citizens randomly selected to give an outcome²¹ which is usually a court of first instance.

Just as each state legislates as it sees fit, each state has its own court system responsible for interpreting and enforcing state statutes and constitutions. While all federal judges are appointed for life terms by the U.S. President with the consent of the Senate, five methods are currently in use selecting judges in the states: partisan elections, nonpartisan elections, election by the state legislature, appointment by the governor, and the merit system also called the “Missouri Plan” after the first state to adopt it.²²

¹⁹ The Judiciary’s

²⁰ Susan Sullivan Lagon, *The Role of the Independent Judiciary*, Freedom Paper No. 4 <<https://usa.usembassy.de/etexts/gov/freedpap4.htm> > accessed 22 August, 2020.

²¹ Verdict in criminal cases and judgments in civil suits.

²² Sandra Day O'Connor, (2009), *Essentials and Expendables of the Missouri Plan*, *Missouri Law Review* Volume 74 Issue 3 Summer 2009 Article 3 Summer 2009 <<https://scholarship.law.missouri.edu/cgi/view>

The American judiciary exercises its greatest power through judicial review, the authority to declare acts of states, Congress, the presidency, or administrative agencies unconstitutional. In the rather unlikely legal case of *Marbury v. Madison*,²³ a unanimous Supreme Court through Chief Justice John Marshall declared that “an act repugnant to the constitution is void” and that it behoves on the judicial branch to make such determination.²⁴

Scholars have observed that “separation of powers is key to the workings of American government.”²⁵ Absent judicial misconduct falling within the traditional grounds for impeachment such as treason, bribery or other high crimes or misdemeanours, the appropriate remedies to address judicial decisions that are disfavoured are: (1) replacement of the judges through the electoral process in those systems where judges are elected; (2) enactment of legislation through the legislative process to overturn the court decision where it is not based on the constitution; and (3) constitutional amendment.²⁶

content.cgi?article=3830&context=mlr> accessed 22 August, 2020.

²³ 5 U.S. 137

²⁴ Dewey, Donald O. *Marshall Versus Jefferson: The Political Background of Marbury Vs. Madison*. New York: Knopf, 1970. <<https://www.loc.gov/tr/program/bib/ourdocs/marbury.html>> accessed 22 August, 2020.

²⁵ Susan Sullivan Lagon, The Role of the Independent Judiciary, Freedom Paper No. 4 <<https://usa.usembassy.de/etexts/gov/freedpap4.htm>> accessed 22 August, 2020.

²⁶ Michael H. Reed, (2018), “Judicial Independence-an essential American value”, <https://www.abajournal.com/news/article/judicial_independence_an_essential_american_value> accessed 3 August, 2020.

Notably, while American judiciary may be regarded as one of the strongest in the world, this power is by no means unlimited. There are numerous checks on its authority, some constitutional, some statutory and some customary. The Congress, under the constitution has numerous checks that can be used against the judiciary. First, it has control over funding the federal judiciary's budget. Though it cannot lower judges' salaries during their terms in office, it can reduce staff, lower operating costs, and withhold money for court-ordered actions. Second, Congress can propose new laws or constitutional amendments to override specific court decisions. Third, it can restrict the kinds of cases that can be appealed to the federal courts. In fact, though unlikely, Congress has the power to completely abolish the lower federal courts.²⁷

Unlike the two other branches, the judiciary is reactive rather than active. It must wait for cases to come before it and cannot initiate litigation. This limitation on the courts also allows matters time to "cool off" another check is that no one ascends to a federal judgeship without presidential appointment and senate approval." judge can also be removed by the congress or be rejected as anomie although uncommon; these are some of the checks on the American judicial system.

Internal checks include the principle of "stare decisis" which literally means, "let the decision stand", a use of precedents and that the decision of a lower court will be at most persuasive on a higher court.

4.2 Brief Analysis of the French Judicial System

²⁷ "An Independent Judiciary" < <https://www.crf-usa.org/bill-of-rights-in-action/bria-14-2-c-an-independent-judiciary>>accessed 3 August, 2020.

American courts are based on the English common law tradition while French courts practice Roman law. The French model is more prevalent than the Anglo-American judicial system. The courts administering the law in France are exceptionally complex, a structure the government defends as “the product of successive contributions from centuries of our history, and in it, tradition continues to play a very important role”.²⁸

France distinguishes between ordinary or regular courts (which handle civil and criminal matters) and administrative courts (which deal with cases involving government regulations). Thus, where conflict arises, an eight-member Tribunal of conflict headed by the Minister of justice who casts the tie-breaking vote, decides which court gets the case.²⁹ At the apex of the system is the Supreme Court of Appeal (Cour de Cassation) which has final jurisdiction in civil and criminal matters on points of law and enjoyed great prestige and respect. The jurisdiction of the Cour de Cassation is purely appellate and is divided into five sections³⁰ with 115 judges, each headed by a president. Seven judges are required to hear a case. The Supreme Court of Appeal has no power of judicial

²⁸ Laurent Cohen-Tanugi, (2016), “Case Law in a Legal System without Binding Precedent: The French Example”, <<https://cgc.law.stanford.edu/commentaries/17-laurent-cohen-tanugi>>/accessed 22 August, 2020.

²⁹ Gerald L. Kocx, (1960), *The Machinery Of Law Administration in France*, Vol.108:366 <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiI9Zye8K7rAhXaMMAKHStSCPIQFjACegQIARAB&url=https%3A%2F%2Fscholarship.law.upenn.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D6992%26context%3Dpenn_law_review&usg=AOvVaw00MV-kGLH8k2Lr2RdJgCbp> accessed 22 August, 2020.

³⁰ Family, property, commercial, social and criminal

review. It only possesses the power to quash³¹ the legal case and remand it to a different lower court for retrial.³²

Judges are removable only for misconduct in office, ill health that impedes their ability to perform their duty, and mandatory retirement at age 67.³³ The constitution of 1958 names the president of the republic as the “guarantor of the independence of the judicial authority”. There is public scepticism about judicial independence since the promotion of judges tends to be political. The Ministry of Justice also has a small budget and even has to advertise in newspapers and magazines to recruit judges.³⁴

Significantly, the Supreme Court does not have jurisdiction over constitutional matters. There is a High Court of Justice which can try members of government for high crimes and misdemeanours, but it can only be convened when indictments have been voted by majorities of both Senate and the National Assembly. Also, the only body with the power of judicial review is the Constitutional Council comprising of all former presidents of the republic and nine other members who are appointed for staggered nine-year terms by the president and the two legislative chambers.³⁵

4.3 Courts in Venezuela

³¹ Thus cassation from the French word, “casser” to break

³² The Power of an Appellate Court to Dispose of a Case without Remanding, Vol. 38, No. 7 (May, 1929), pp. 971-978, The Yale Law Journal Company, Inc., DOI: 10.2307/790502, *The Yale Law Journal*<https://www.jstor.org/stable/79050> <<https://www.jstor.org/stable/790502>> accessed 22 August, 2020

³³ 70 for those in the Supreme Court

³⁴ Susan Sullivan Lagon, (1993) The Role of the Independent Judiciary, Freedom Paper No 4.<<https://usa.usembassy.de/etexts/gov/freedpap4.htm>> accessed 3 August, 2020.

³⁵ *Ibid*

The judicial system of Venezuela is unitary headed by a nine-member Supreme Court. The country is divided into 17 judicial districts, each of which has at least one superior court. Beneath the superior courts are the courts of instruction, which draw up indictments; municipal courts in every town; district courts with original and appellate jurisdiction in cases involving sums of money fixed by law; and courts of first instance which operate much like U.S. District Courts. There are also special courts dealing with labour and the military, key components of Venezuelan society. The Venezuelan judiciary has the power of judicial review, although it rarely exercises it.

Life tenure of judges is not popular in Venezuela. Rather, judges on the Supreme Court are elected by the National Congress for nine years and terms of a third of them are renewed for three years. This feature allows for some continuity while limiting the role of politics on the court. The Constitution of 1961 also created a Council of the Judicature to ensure judicial independence³⁶ and guarantee certain benefits to the judges. Due to this, the council enjoys constitutional status, a highly visible bulwark against political encroachments on judicial authority.

5. The Constitution and the Judicial System

In Nigeria, the Constitution³⁷ provides that “the independence, impartiality and integrity of Courts of Law, and easy accessibility thereto shall be secured and maintained”.

³⁶ M.A. Ikhariale, (2009), “The Independence of the Judiciary under the Third Republican Constitution of Nigeria”, *Cambridge Journal of African Law*, Vol. 34, Iss. 2 < <https://doi.org/10.1017/S0021855300008287>> accessed 6 August, 2020.

³⁷ Section 17 (1) 9 (e) of the Nigerian Constitution 1999

In 1985, the General Assembly adopted the Basic Principles on the Independence of the Judiciary,³⁸ which set forth standards for achieving independent judiciary for countries all over the world. Generally, the United Nations basic principles on the independence of judiciary “represent a substantial degree of global consensus on what judicial independence is or should be”³⁹ which are:

- (i) Independence of the Judiciary;
- (ii) Freedom of expression and association;
- (iii) Qualifications, selection and training;
- (iv) Conditions of service and tenure;
- (v) Professional secrecy and immunity; and
- (vi) Discipline, suspension and removal.

Prior to this, the International Bar Association adopted in 1982 the IBA Minimum Standards⁴⁰ of Judicial Independence⁴¹ which emphasized on the principles of non-interference from either the executive or legislature into the judicial responsibilities of judiciary.

Recently, the International Association of Judicial Independence and World Peace adopted at the Mt Scopus International Standards of Judicial Independence, 2008 (as amended in 2011 and 2012). It “emphasized the importance of maintaining constitutional safeguards of judicial independence and securing judicial

³⁸ Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

³⁹ Linda Camp Keith, *Judicial Independence and Human Rights Protection around the World* <<https://www.utd.edu/~lck016000/JudicatureJudicialIndependence.pdf>> accessed 20 January, 2014.

⁴⁰ New Delhi Standards

⁴¹ IBA Minimum Standards of Judicial Independence. (1982) <<http://www.ibanet.org/Document/Default.aspx?DocumentUid=10917543-8f09-4a68-8324-9228bb6237a1>> accessed 26 January, 2014.

independence from numerous aspects.⁴² Globally, judicial independence is viewed from two perspectives: institutional independence of the judiciary and personal/individual independence of the judges in their decisions.⁴³

Institutional independence entails:

- i) Independence as to administrative matters
- ii) Financial independence
- iii) Decision-making independence
- iv) Jurisdictional competence

While individual independence relates to:

1. Appointment
2. Security of tenure
3. Financial security
4. Promotion
5. Accountability
6. Freedom of expression and association
7. Training and education

In Nigeria, the drafters of the 1999 Constitution introduced the National Judicial Council in good faith to secure the independence of the Nigerian Judiciary. practically speaking for a number of reasons, political ad non-political, and even constitutional, as far as budgetary allocation and control is concerned the NJC is nothing to the executive and legislature but a toothless bull dog.

⁴² International Association of Judicial Independence and World Peace.

⁴³ Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers <<http://www.ohchr.org/Documents/Publications/training9chapter4en.pdf>> accessed 5 February, 2007.

Administrative independence implies that the judiciary must be able to freely handle and carry out all administrative matters without any interference. The judiciary must be able to freely assign cases to judges without interference or intervention from the executive or legislature.⁴⁴

As an institution the judiciary must also be independent to render its opinion, judgments and orders free from any fear of executive legislature. For a judiciary to be independent as an institution, it must garner the respect of other branches by respecting its decisions.

For the rule of law to flourish, the executive, the police, the prison and other governmental agencies must respect orders of court even if they do not agree with them. They are also duty bound to prevent erosion of the orders and decisions given by the judiciary.

Independence of the judiciary also transcends the external relationship with other organs of government but also focuses on the relationship within itself-intra-independence. Courts whilst working with one another should also be independent of one another. Judges should also be free from interference or encumbrance when dispensing justice. On this Lord Davis stated:

Whatever a judge does, he will surely have critics. If in an effort to do justice he appears to make law, there will be cries that he is overweening and that he has rendered uncertain what had been regarded as established legal principles. On the other hand, if he sticks to the old legal rules, an equally vocal

⁴⁴ Principle 14 of the Basic Principles.

body will charge him if failing to mould the law to social needs⁴⁵

6. How Independent is Nigeria's Judicial System?

Since the 1990s which witnessed the injustice of Ken Saro Wiwa and eight other Ogonis; and Moshood Abiola, the judicial system has suffered a relapse and has been ridiculed. The advent of the military government who proceeded to make orders and abolish them, subverting judicial roles may have been the primary cause of this decline.⁴⁶it is therefore little wonder that the former Chief Justice of Nigeria, Hon. Justice Mariam Aloma Mukthar had on Monday, September 23, 2013 while inaugurating the 2013/14 legal year stated with worrisome concern that:

Statistics have shown that funding from the Federal Government has witnessed a steady decline since 2010, from ₦95bn in that year to ₦85bn in 2011, then ₦75bn in 2012 and dropped again in the 2013 budget to ₦67bn. Indeed with this, if the amount allocated to the extrajudicial organisations within the judiciary is deducted, the courts are left with a paltry sum to operate”.⁴⁷

On the other hand, the National Assembly particularly in the last two to three appropriation years has been engulfing over ₦150bn⁴⁸

⁴⁵ *Judicial Activism; Current Legal Problems* (1975) culled from Aluko A.O. “The Doctrine of *Stare Decisis* and the Nigerian Legal System; A Theoretical Perspective”, LASU Journal Vol. III (1998) p 23.

⁴⁶ “Nigerian Judiciary”, (2011), <<https://www.bths.edu.ourpages/auto/2011/9/14/65205157/NIGERIAN%20JUDICIARY.pdf>> accessed 4 August, 2020.

⁴⁷ “Nigerian Judiciary”, (2011), <<https://www.bths.edu.ourpages/auto/2011/9/14/65205157/NIGERIAN%20JUDICIARY.pdf>> accessed 4 August, 2020.

⁴⁸ *Ibid.*

with the executive equally taking good care of itself. The Nigerian Judicial system will now be compared as against the various characteristics that should guarantee its independence.

6.1 Appointment of Judicial Officers

Under the Nigerian Constitution, the appointment of judicial officers is the concern of the National Judicial Council who makes recommendations of qualified candidates to high bench at state and federal levels.⁴⁹This recommendation is by the President subject to the confirmation of the Senate in cases such as those of the Chief Justice of Nigeria, Justices of the Supreme Court, President of the Court of Appeal and Chief Judge of the Federal High Court while the other various heads of courts do not necessarily require confirmation by Senate and those of the state appropriately.⁵⁰

This is similar to what is obtained in New Zealand where the Justices of the Supreme Court, Court of Appeal and judges of the High Court are appointed by the Governor-General on the recommendation of the Attorney-General advised by the Chief Justice and the Solicitor-General.⁵¹ In the United States of America, it is also similar such that Article III Judges i.e. Justices of the Supreme Court and Court of Appeals and district judges are appointed to office by the President of the United States with the approval of the U.S Senate.

Thus, it is not strange neither does it undermine the independence of the judiciary when their members are being appointed by the

⁴⁹ Section 1, Part 1 of the Third Schedule to the 1999 Constitution.

⁵⁰ Section 238, 256, The Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁵¹ <https://www.courtsofnz.govt.nz/about-the-judiciary/role-judges/appointment/> accessed 22 August, 2020.

head of the executive. In any case, the creation of the National Judicial Council by the Constitution is to minimise any executive interference. There are various selection processes and none can be said to be best as long as it works for the state which it does in Nigeria. There may be room for improvement perhaps in the composition of the NJC to make for more roles for states to play particularly for their chief judges in respective states.⁵²

6.2 Security of Tenure

In Nigeria, this is enshrined in the Constitution and is covered under sections 291 and 292 which requires for the heads of courts of higher instance to also require legislative action i.e. two-third majority of the Senate or House of Assembly respectively.

However, when compared globally, this provision might not indeed guarantee it in light of realities of global trends surrounding the topic⁵³. The provision has been criticised on the grounds of being shallow such that it has left the power of removal⁵⁴ in the hands of politicians alone as seen in the recent case of the removal of the former Chief Justice of Nigeria, Walter Onnoghen. This will no doubt create a renewed loyalty to the executive president by the occupant of such position. Furthermore, this does not provide an

⁵² D.A. Ijalaye, *The Imperatives of Federal/State Relations in a Fledgling Democracy/Implications for Nigeria* Lagos: NIALS, 2001) 9.

⁵³ Ibrahim Sule, (2018), “Judicial Independence in Nigeria: Between Global Trends, Domestic Realities and Islamic Law”, <https://www.researchgate.net/publication/328914198_Judicial_Independence_in_Nigeria_Between_Global_Trends_Domestic_Realities_and_Islamic_Law> accessed 5 August, 2020.

⁵⁴ Diego Garcia-Sayan, (2019), “Judicial Independence under threat in Nigeria” <<https://news.un.org/en/story/2019/02/1032391>>and <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24152&LangID=E>>accessed 6 August, 2020.

avenue or opportunity for the judicial officer to be removed to defend himself or by a legal practitioner of his choice. There is no provision for a hearing or political address either before the President or Governor; or before the Senate or House of Assembly respectively. This is a clear contrast to the provisions of section 36 guaranteeing fair hearing.

6.3 Financial Independence

The funding of the Nigerian Judiciary is also enshrined in the Constitution in section 84 (1) (2).⁵⁵ The Supreme Court of Nigeria in *A.G. Federation v. A.G. Abia State & Ors*⁵⁶ held that “it is the Consolidated Revenue Fund and not the Federation Account that is charged with the salaries of Judicial Officers in the Federation. Furthermore, section 81 (1) provides:

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 this constitution”. The judiciary has become ill-funded which is day-to-day corroding the institutional independence of the Nigerian Judiciary which is also a threat to justice since “all the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous judiciary”.⁵⁷

⁵⁵ The Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁵⁶ (2002) 6NWLJ (Pt 7640 542 at 688).

⁵⁷ Andres Jackson, <<http://www.brainyquote.com/quotes/quotes/a/andrewjack401401.html>>accessed 23 January, 2014.

Thus it remains disheartening how far the judiciary has fallen. During a 2-day workshop on the rule of law organised by the Nigerian Bar Association, the former Chief Justice of Nigeria, Hon. Justice Mariam Aloma Mukhtar (as she then was) in May 2013 said that “21 judges are being investigated for alleged breaches of principles of the Code of Conduct for Judicial Officers, in the ongoing efforts of the National Judicial Council (NJC) at over hauling and reforming the judiciary”⁵⁸ yet so many news article surface almost on daily basis at the various atrocities being alleged against the Nigerian Judiciary.

7. Recommendations

The workings of the Nigeria’s justice system especially The Police, Courts and Prison reflect the Nigerian state and society. The Nigeria Police Force and its operations have been largely politicized while corruption and ethno-religious bigotry have permeated through both the rank and the file. The courts have also become business centres where people go in for services to be done as they pay for; corruption has become the order of the day. The judges are themselves confused, over-worked and uncoordinated thus contradicting one another in their actions and verdicts.⁵⁹ (Supreme Court of Nigeria Report, October 2016) the courts comprising of judges, etc are the interpreters of the laws, arbiters of disputes and have a unique role in the protection of human rights, and in the ideal sense, they are a fundamental cornerstone of democracy and protection of human rights.

⁵⁸ The Nigerian Voice of 15 May, 2013 < <http://www.thenigerianvoice.com/nvnews/113670/1/njc-probing-21-judges-for-corruption-cjn.html>> accessed 17 June, 2013.

⁵⁹ Salawu, A. (2016). Media Narrative Construction of Human Rights Abuses in Nigeria. *Loyola Journal of Social Sciences*, 30 (1), 107 - 124

Competence and hard work are therefore the indispensable tools for the effective performance of judicial functions.⁶⁰The judiciary has strategic roles of guarding, enforcing the constitutional limitations on power, guardians and dispensers of justice for all as enshrined in laws and resolution of conflicts between, among individuals and between individuals and state,⁶¹It is hereby recommended that there should be more state input in appointment of judges, the removal of judges should be according to due process and public and that all the arms of government respect court decisions.

8. Conclusion

An attempt has been made to analyse the Nigerian judicial system on the one hand and selected jurisdictions on the other hand. From the analysis, some problems and concerns were unsheathed which led to the proffering of some viable solutions to those problems. The Nigerian judicial system is in need of overhauling. It has been recommended that the Constitution should be amended. Furthermore, constitutional provisions should be revisited perhaps even the whole constitution and definitely the root cause identified and addressed. It is no longer time to sit back and watch but time for action. It is only when all these are put in place that there can be a renewal of the Nigerian Judicial System, one without impartiality

⁶⁰ Mohammed I.S et al, (2017), “Nigerian Justice System: The Ideal, Hope and Reality”, (2017)<https://www.researchgate.net/publication/323547033_NIGERIAN_JUSTICE_SYSTEM_THE_IDEAL_HOPE_AND_REALITY> accessed June 7 2020.

⁶¹ Nwabueze, B. (2007), *The Judiciary as the Third Estate of the Realm*. Ibadan: Gold Press Limited.

or interference from any institution such that it is not only able to dispense justice effectively, it will be able to have a world reputation of standard, integrity and most of all independence.