

**FINANCIAL INDEPENDENCE OF THE
JUDICIARIES:
A MIRAGE OR A REALITY**

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Introduction

In modern democracies there are three arms of government constituted by the Executive, Legislature and the Judiciary. Each of these arms of government derives its powers from the Constitution. The 1999 Constitution of Nigeria as amended guaranteed the powers of each of the three arms of government.

In Nigeria there are two sets of Judiciaries: Federal Judiciary and States Judiciary: The Federal Judiciary comprises of the Supreme Court, Court of Appeal, Federal High Court, National Industrial Court, and such other Judicial bodies like the National Judicial Council, National Judicial Institute, Federal Judicial Service Commission and Judicial Service Committee Abuja. The State Judiciary comprises of the State High Court, the Sharia Court of Appeal, Customary Court of Appeal and applicable Judicial Service Commission.

The Judiciary as an arm of government is financed through annual budget at the Federal and States levels. The Judiciary is central to good governance and sustainable democracy, and therefore, there is high expectations about its functions particularly under civil rule.

In order to ensure rule of law in governance and the independence of the Judiciary the 1999 Constitution as amended made provisions for the financial independence of the Judiciary at Federal and State levels. However the Judiciary is confronted with several challenges including corruption, frequent strikes by Judiciary staff, poor facilities in court rooms, low morale of staff, poor staff welfare and motivation etc. These chain of challenges are attributable to poor funding.⁹ This paper therefore, intends to interrogate how financial independence of the Judiciaries guaranteed by the Constitution is a mirage or a reality.

Brief History of The Nigerian Judiciary

The Judiciary is made up of various systems of courts in all the Jurisdictions in the country both at the Federal and States levels.

The History of the Judiciary in the country dates back to the period before the advent of British colonization. Long before 19th century historical records shows each of the territories that constitute Nigeria had a system of administration of Justice.

In Southern part of Nigeria, the British through a combination of Foreign Jurisdiction Act of 1843 and 1893 established laws under which various courts were set-up. Similarly in Northern Nigeria there were established

courts system under Islamic law where all litigations on civil and criminal cases were dealt with.¹

The above arrangement was sustained until 1914 when Northern and Southern protectorate of Nigeria were amalgamated. Provincial courts were established and also established were High Courts. The Judiciary of Nigeria continued to evolve to the present situation under the 1999 Constitution as amended.

Independence of the Judiciary

Judicial independence means that the Judicial branch or system is not influenced by other branches of government. Therefore, the main objectives behind granting Judicial independence is to avoid improper influence on the court from the Executive or the Legislatures (U.S. legal.com).

Resources (cash) are limited and prioritization of their allocation creates competition among different public departments; allocating more funds to the others. Resource allocation becomes more difficult when it comes to the judiciary. Its funding is in the hands of other state powers, the Executive and the Legislature.

The principle of separation of power is crucial to avoid concentration of power in one single branch, but the one that holds the “power of the purse”

has some extra weapon which could be used against the other branches. An effective power of purse gives the Executive Legislative a powerful trump card when disagreement arise between it and other branches of government, one that is so potent that it can threaten Judicial Independence² (webb and Whittington 2004).

Judicial independence serves as a safeguard for the rights and privileges provided by a limited constitution and prevents Executive and Legislative encroachment upon those rights.

Under an independent Judicial system, the courts and its officers are free from inappropriate intervention in the Judiciary's affairs. With independence the Judiciary safeguard people's rights and freedoms which ensure equal protection for all (wikipedia.org:15/7/19).

Funding of the Judiciary in Military and Democratic Regimes

The 3 Arms of government are funded through annual budget. Budget is a comprehensive plan expressed in financial terms in which an operating programme is effective for a given period of time, usually one year.

Under the military rule, the Supreme Military Council (SMC) directs the preparation of the budget, release of funds and budget implementation.

Similarly under the military the body that suppose to carefully debate and deliberate on the budget before announcing it to the nation is more or less a body of non-experts and individuals whose aim is to impress whoever is the head. The release of funds under the military both recurrent and capital was problematic and this hampered the operations of the courts.

In a democratic set up, the budgetary process is expected to be an embodiment of the operations of the political party in power. The Executive prepares the budget and the Legislature deliberates on it and pass it for executive assent and implementation.

Under the two regimes the military and civil rules the Judiciary relies on meager resources allocated to it by Supreme Military Council or the Executive to operate.

A funding mechanism based upon transparent criteria is necessary to maintain the independence of the Judiciary, as long as the Judiciary is closely involved in setting these criteria, the Judiciary is most likely to be financially independent.

Legal Provisions on Funding The Judiciary In Nigeria

1. *The Constitution*

There are enough and unambiguous provisions in the Nigeria's legal documents on funding the Judiciary. The 1999 Constitution as amended

stated unequivocally how the Judiciary at the Federal and States levels should be funded. Some of these provisions are:

Section 81(3) which states thus: “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 courts established for the federation and the states under section 6 of this constitution”.⁶

Similarly section 162(a) provides thus: “Any amount standing to the credit of the Judiciary in the Federation Accounts shall be paid directly to the National Judicial Council for disbursement to the heads of courts established for the Federation and the States under section 6 of this Constitution”.⁶

The fourth alteration to the 1999 Constitution under section 121(3) (b) states that “Any amount standing to the credit of the Judiciary in the Consolidated Revenue Fund of the state shall be paid directly to the heads of courts concerned”.⁶

2. *Court Judgments*

In the case of *Judicial Staff Union of Nigeria vs National Judicial Council and 73 others* delivered at the Federal High Court, Abuja. it was declared as follows:

i. 2nd – 74th defendants failure, neglect and or refusal to pay the funds/Amount standing to the credit of the states’ Judiciary in the Federation/Consolidated Revenue Fund directly to the Heads of Courts in the various states’ Judiciary *is a constitutional breach* which has to be abated forthwith.

ii. That an order is hereby made mandating/compelling 2nd – 74th defendants to comply with the provisions of sections 81(3), 162(9) of the 1999 constitution (as amended) in the disbursement of funds to the heads of court forthwith”.⁸

Considering the above constitutional provisions and courts judgments which has never been appealed against, the Judiciary has no cause to complain of lack of release of its funds by the Executive. However the Executive at the States level are reluctant to comply, hence the financial difficulties of the Judiciary.

Judicial Officers and Public Opinion on Funding The Judiciary

Hon. Justice Mustapha Akanbi stated that “Now as before funding the Judiciary has been one of the intractable problems with which the Nigerian Judiciary has had to contend. Conference after conference motions have been moved, resolutions passed, and decision taken on how to fund the Judiciary, yet the problem remains unsolved. The resolutions are hardly implemented”.⁵

Prof. Muhammed Tawfiq Ladan also quoted the draft constitution of 1999 that “the innovative provisions of the draft constitution of the constituent Assembly which read in part that moneys in respect of Capital and Recurrent Expenditure of the Judicial Service of the Federation charged upon the Consolidated Revenue Fund of the Federation shall be withdrawn from the fund and paid into a special account of the Federation under the control of the Judiciary of the Federation”.⁵ This draft was removed from the constitution hence the Financial challenges the Judiciary is facing. He further said that in the opinion of some Judicial Officers that the independence of the Judiciary will be meaningless in the absence of the Judiciary being financially autonomous. That how can an institution in distress give hope to anyone?⁵

It was reported in the Nation Newspaper of 14th October, 2014. A former Chief Justice of Nigeria in the occasion of swearing of Senior Advocate of Nigerian had this to say:

“A situation where budgetary allocation to Judiciary continues to drop while the general government budget is on steady increase every year is clearly an impediment to quick and effective dispensation of Justice in Nigeria and on the whole a setback to current effort at transforming the Judiciary.”⁹

At the National Industrial Court of Nigeria, Lagos in 2014 a lawyer had this to say:

“As I walked in to the court premises an eerie of silence pervade the entire environment. I was in for a rude shock. There was no power supply to the entire court complex. Its courtrooms were as hot as hell! If I thought that I had seen the worst, I was mistaken. Sooner than later, as the sweating condition inside the court room became increasingly intolerable, a lawyer sought leave of the Judge to take off his wig and gown. The Judge gave a blank approval to all the lawyers in the court room to do the same. As the hot situation became tense, the Judge asked the Chief Registrar to open all the windows and blinds. The respite was only marginal. Unable to hold it any longer the Judge appealed to all concerned to intervene in the criminal under funding of the Nation’s Judiciary with a voice laden with deep

emotions, the jurist informed the stunned audience that not only had the entire court been in darkness throughout the week due to lack of fund for purchase of diesel to power the generating set, he used his own fund to fly to Lagos for the court session (Punch Newspaper 24th March, 2014, P.81).⁹

In December, 2013, the NJC constituted a five man committee under the chairmanship of President Court of Appeal, Hon. Justice Zainab A. Bulkachuwa, CFR to find out:

- i. The appropriate constitutional framework for funding the Judiciary;
- ii. Determine how far there is compliance within the framework in funding the Judiciary, and
- iii. To determine the modalities of ensuring compliance within the framework (Tambawal, 2014) .

The committee had submitted its report but nothing significant has changed.⁹

In 2018 the Federal government passed into law an appropriation Act of approximately ₦9.2 Trillion and Judiciary was allocated ₦110b, however only ₦100b was released.

The Challenges in funding the Judiciary became more difficult especially on Recurrent Expenditure after the Supreme Court Judgment in a case of Attorney General of the Federation Vs Attorney General of Abia State and 35 other. It was held in part thus:

“It is hereby declared in favour of the 10th defendant that the underlisted economic policy and/or practices of the plaintiff are unconstitutional being in conflict with the 1999 constitution” that is “Funding of the Judiciary as a first-line charge on the Federation Account”.⁷

That is the Judiciary for you, they say it as it is, even if it is against themselves.

The practice before the above judgment is that states courts overhead including staff salaries and day to day expenses of the courts were funded through the National Judicial Council.

Recently it was reported that the President has inaugurated a Presidential Implementation Committee on autonomy of the State Legislature and State Judiciary. This is the latest effort made by the Executive at the Federal level to liberate the Judiciary from its financial challenges.

It is reported in the Leadership Newspaper of 11th July, 2019, that the National Judicial Council demanded immediate financial autonomy for States Judiciary. The NJC also commended President for his unequivocal

position on financial autonomy for State Judiciary where he charged State Governors to as a matter of urgency begin immediate implementation of financial autonomy for the Judiciary.¹⁰

Now having considered some of the constitutional provisions, court judgments as well as Judicial officers, legal practitioners, public opinion views and the presidential concern about the financial autonomy of the Judiciary, what is the way forward.⁷

Ways Forward on Financial Independence of Judiciary

In my opinion the underlisted are the ways forward that the NJC should establish or resuscitate:

1. Section 162(3) of the 1999 constitution as amended should be amended to read “Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments, Local Governments Councils in each state, federal and states Judiciaries on such terms and in such manner as may be prescribed by the National Assembly.
2. The Revenue Mobilization, Allocation and Fiscal Commission should be tasked to come out with an acceptable sharing formula in line with section 162(3) as proposed above.

3. The Committee of Chief Registrars and Secretaries of Judicial bodies in the country should be resuscitated to find solution to the problems. The Committee should constitute a powerful sub-committee to work hand in hand with the Federal and State Legislatures, as well as the Executive Governors of the States. It is a task that must be achieved by the Committee as the Accounting officers of the Judiciary.

Conclusion

Distinguished ladies and gentle men, Judiciary plays a key role in stabilizing and sustaining democracy in Nigeria. The survival of democracy and protection of the constitution and all its provisions rest substantially on the Judicial arm. The Judiciary therefore, must be independent. It has to have full control of its finances. Whatever is allocated to it based on the revenue sharing formula should be release to it through the National Judicial Council for disbursement to all the Heads of Courts.

Thank you and God bless.

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