NATIONAL JUDICIAL COUNCIL: AN ALBATROSS AGAINST THE INDEPENDENCE OF THE JUDICIARY IN NIGERIA*

Abstract
One of the hallmarks of constitutional democracy is a virile and independent judiciary. It is the judiciary that is saddled with the responsibility of disputes resolution without which the society is nothing but a quintessential state of nature or glorified forest. However, the judiciary in all civilized nations is protected from possible abuse by the other arms of government, hence the establishment of National Judicial Council in Nigeria. This study appraised the capacity of the Council to safeguard the independence of judiciary in Nigeria. Using primary and secondary sources of information, the study found that apart from the fact that the Council is an aberration in a federation; its membership is skewed in favour of officials of federal judiciary. These have made the independence of the judiciary difficult and elusive. The study concluded that the Council's inability to perform its constitutional mandates has vitiated the raison d'être *for its establishment. The paper therefore recommended its abolition by way of constitutional amendment for a new paradigm that recognises the federal structure of the country.*

Keywords: National Judicial Council, Albatross, Independence, Judiciary, Nigeria**1.**

1. Introduction

The judiciary is the mighty fortress against the tyrannous and oppressive laws. The importance of the judiciary cannot therefore be overestimated. It is not an overstatement to assert that an independent judiciary is the greatest asset of a free people. The judiciary, by the nature of its function and role is the citizen's last line of defence in a free society, that is, the line separating constitutionalism from totalitarianism.[1] One of the fundamental principles of any constitutional democracy is independence of judiciary. The concept is embedded in the philosophy of constitutional democracy[2] as contained in the preambles to the 1999 Constitution of the Federal Republic of Nigeria as amended (hereinafter referred to as the CFRN, which emphasises equality, freedom and justice[3]. The judiciary has no influence over the sword or the purse; it has no direction on the strength or the wealth of the society. It differs from any other arm of government not because of its compulsive character but its ability to create binding and enforceable rights. In a constitutional democracy, the judiciary constitutes an important component of the institutional guarantee for its survival. The existence of a solid independent judiciary is the cornerstone and indeed the pillars of the rule of law[4]. The primary purpose of the judiciary is to protect and serve the end of justice irrespective of colour, creed, gender, or tribes. The effigy of justice, a personification of the moral force of the judiciary exemplifies impartiality and balance. The judiciary plays a key role to secure that the rule of law is aimed at achieving one objective - the establishment of individual freedom and the protection against any manifestation of power by public authorities[5]. The judiciary further ensures that the legislature and the executive comply with the law thereby eliminating the sense of distance and confusion that exists between the law and the community. Contributing to a dialogue on the judiciary in a democracy, the Chief Judge of the United States Court of Appeal for District of Columbia said among other things that 'the most important thing is giving people access to court'[6]. A Professor of law at Georgetown University law school also said 'people must feel that judges are not beholden to the government and that they will get a fair and even-handed hearing'[7]. A system whereby an alleged offender, for instance, government, puts

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[1] Chukwudifu Oputa (JSC) . Quoted in Umaru Eri (2006) 'The Role of the Judiciary in Sustaining Democracy in Nigeria' in Oyeyipo Gummi, Umezulike (eds.), *Judicial Integrity, Independence and Reforms:* Essay in Honour of Hon. Justice M.L Uwais (CJN) Enugu: Snap Press Ltd (2006) p.178.

[2] Ben Nwabueze . *Constitutional Democracy In Africa* Vol. 1. Spectrum Books Ltd. Ibadan (2003). p.1)

[3]Section 17(1) of the 1999 CFRN. Section17 (2)(e) specifically provides that the section is non- justiceable, but section 36 (1) of the same constitution which is justiceable provides for right to fair hearing by a court or tribunal constituted in such a manner as to secure its independence and impartiality.

[4] Ben Nwabueze note 2.p.19. See also Chukwudifu Oputa . (1990) .'The Independence of Judiciary in A Democratic Society: Its Need, Its Positive and Negative Aspects' Justice. A Journal of contemporary Legal Problems. The official Journal of the Federal Ministry of Justice Abuja Nigeria. Vol. 1. No 3 p.21.

[5] Ellis Mark. (2005). 'Strengthening African Democracy. The Rule of Law and Institution Building' Nayee Law Publication Ltd, Lagos Vol. 01 eedition 005, , p.20.

[6] Layi Babatunde (1999). 'The Way Forward for Judiciary in the Next Republic'. The Guardian, Tuesday May 18, 1999. p.63

[7] (n, 6) p. 63

legal and constitutional bottlenecks in the way of a seeker of justice cannot be fair; neither does it cast the judicial system in good light before the ordinary citizens who are in any case the engine room of democracy. The crucial role the judiciary plays in a constitutional democracy is perhaps, better appreciated in the words of Raymond Ekpu when he said:

> when you look at the courts today and you would find judges who are willing to turn the law topsy-turvy in order to serve interest other than those of justice, then the courage of the few who realise that they are sitting on the throne of God and that they should do justice to all manners of men, strikes you deeply. For indeed, the seat of a judge is the throne of God.[8]

Honourable Justice Rhodes–Vivour (JSC), in *PDP v. Sylva*[9] quoting from the decision of the Supreme Court in *Ameachi v. INEC*[10] also underlined the importance of the judiciary as follows:

> This court and indeed all courts in Nigeria have a duty to ensure that citizens of Nigeria, high and low get the justice which their case deserve. The powers of the court are derived from the constitution not at the sufferance or generosity of any other arm of Government of Nigeria. The judiciary like all citizens of this country cannot be passive on looker when any person attempts to subvert the administration of Justice and will not hesitate to use the powers available to it to do justice in cases before it'[11].

With the low level of political, social and economic development in Nigeria, there can be no doubt that it is constitutionally desirable that a viable and virile judiciary is guarantee to serve as a bulwark against political and social tyranny. In other words, freedom of judiciary from abuse or other court related vices is a *sine qua non* for the establishment of a sustainable political order based on the rule of law and constitution[12]. So important is the place of judiciary in the scheme of things that the constitution forbids the Legislature from enacting any law that ousts or purports to oust the jurisdiction of the court[13]. Thus, this paper, as the title indicates, is an appraisal of the capacity of the National Judicial Council (hereinafter referred to as the NJC) to serve as a bulwark or a formidable fortress against the tyranny of the executive and the political power wielders in the society. In other to achieve this objective, the paper is structured as follows. The preceding introductory remarks served as section one. Section two analysed the lopsided or skewed membership of the NJC and its incongruity with the federal system of government. Section three focused on the functions and powers of the NJC. The financial independence of the judiciary as a separate arm of government is discussed in section four. Section five discussed the overbearing acts of the executive by way of savage attack on, and intimidation of judiciary, willful disobedience of court orders by the successive administrations and their penchant for breaching established constitutional boundaries in their relationship with the other arms of government. Section six concluded the discourse with projections into the future on how best to enhance the independence of judiciary for the triumph of the rule of law.

2. Conceptual Clarification

The theoretical framework upon which this study is fastened is the time-honoured concept of separation of powers of the three arms of government i.e. the Executive, the Legislature, and the Judiciary. This is with a view to making each arm independent of others for effective discharge of their respective functions. As for the judiciary, its concept of independence means many things as well as different things to different people. It has been regarded as a concept always misunderstood and misconceived by politicians. According to Hon. Justice Lehohla, former Chief Justice of Lesotho, it only means 'absence of undue influence, interference with or

[8] Afe Babalola (2019). 'Relevance of Separation of Power and its Application to Nigeria. Being' Text of a Lecture delivered at the N.B.A, Annual Law Week Lecture, July 5, 2019 at Afe Babalola Bar Centre, Ado-Ekiti. p.8.
[9] (2012) 13 NWLR (PT 1316) P. 85 at 139
[10] (2008) 5 NWLR (PT 1080) p.227
[11] Ibid, (n, 10), at p.324. See also the statement of Justice Mustapha (JSC) in *A.G (Abia state) v. A.G. (Fed.)* & ors (2006) 16 NWLR (pt1005) p.265 at p. 454
[12] M.A.Ikhariale.(1990). 'The Independence of Judiciary under the Third Republican Constitution of Nigeria' Available at h://www.soas.ac.u htps. p.1
[13] Section 4(8) CFRN. See the case of *All Nigerian Peoples Party & Ors V. Benue State Electoral Commission & Ors* (1999) 3 NWLR (pt.595), p314. It is interesting to note that of all the organs of government , only the judiciary was always shielded from banishment each time the military juntas took over the reigns of governance in the country. While the executive and the legislative arms of government were characteristically the first casualties of military interference in governance, the judiciary always remained, though not without some bruises. This perhaps accounts for one of the reasons for the envious position and prestige of the judiciary until partisanship surreptitiously crept into the judiciary leaving its prestige, sacredness, sanctity and independence almost extricated.

control of the judicial functions of the court'[14] it does not mean lack of accountability or irresponsibility. Judicial independence is complemented by genuine accountability and meaningful communication between the judiciary and the executive[15]. In simple terminology, judicial independence can be defined as the ability of a judge to decide a matter free from pressure or inducement. Independence of judiciary can be both institutional and individual. The gatekeepers of democratic ideals foresaw the possibility of cross interference among and between the men and women who would be entrusted with the task of governance. Incidentally, the concept prominently features under the allocation of powers under the 1999 CFRN[16]. Separation of powers which in itself is a celebration of rule of law[17] ensures that each organ of government[18] operates within its constitutionally allotted sphere of responsibilities in order to eliminate tyranny, despotism, dictatorship and totalitarianism[19]. The theory of separation of power was one of the most ancient in political theory which Montesquieu only modified and summarised as a system of legal checks and balances between the parts of a constitution[20]. He said: 'If the legislative and the executive authorities are one institution, there won't be freedom. There won't be freedom anyway if the judicial body is not separated from the legislative and executive authorities'[21] According to Taylor C.J. in *Re Mohammed Olayori*[22] 'If we are to live by the rule of law, It means the supremacy or pre-eminence of regular law in contra-distinction to influence of man or arbitrary power[23] or the absence of arbitrariness and prerogative and wide discretionary power on the part of the government.[24]. If we are to have our nations guided and restrained in certain ways for the benefit of the society in general and individual members in particular, then, whatever status, whatever post we hold, we must succumb to the rule of law[25]. Honourable Justice Chukwudifu Oputa (JSC) expressed similar sentiment in the case of *Government of Lagos State v. Ojukwu*[26] when he said that 'the state is subject to law and that the judiciary is a necessary agency of the rule of law'[27].

3. The National Judicial Council

To guarantee and reinforce judicial independence, most of the countries have created an institution whose role is to secure the judiciary from interference and whimsical tendencies of some external forces. The institution is responsible for the career management within the judiciary and administration of the courts. The relevant institution in Nigeria is the NJC[28] which is regarded as the National Parliament of the entire judiciary in Nigeria. The NJC is a creation of the constitution by virtue of section 153 (i) of the 1999 CFRN. It is the highest regulatory and supervisory Body in the judiciary. It is charged with the responsibilities of overseeing the activities of the entire judiciary in Nigeria which shall be discussed *in extenso* in the course of this paper. In consonance with the spirit of separation of power, the 1999 CFRN unequivocally provides for the independence of the NJC vis-à-vis directing and controlling it by any authority or person while exercising its

[14] O.A. Orifowomo &. L. O.Taiwo (2017), 'Separating Politics from Social Sustainability, Challenges to Independence of Judiciary in Nigeria' Journal for Wide Holistic Sustainability Development, Volume 3, online version. Available at http//ww/hsde.org/jehsd/articles p. 47.
[15] (n,14) p.48.
[16] Sections 4, 5, 6, 47, 90, 130, 230 of The 1999 CFRN.
[17] (n, 5). p.21. See also (n, 2) pp.19 -25
[18] The Legislature, the Executive and the Judiciary.
[19] S.A. Fagbemi . (2010) 'Legislative and The Imperative of The Rule of Law In Nigeria' The Constitution, Vol. 10 .No 2 p 47.
[20] Afe Babalola (n, 8) p.10
[21] The Majesty of Separation of Power Editorial the Guardian Nigeria. Available at www.guardian.ng .assessed on June 26, 2019
[22] (1969) 2 All NLR p.298,
[23] [23] The principle of the application of the rule of law was demonstrated in the case of *Eshugbayi Eleko v. Government of Nigeria* (1931) All E. R. p.44 where the traditional ruler of Lagos was deported without authorization of law. The Privy Council held that the action was done without any legal basis.
[24] Wole Olanipekun (2006) 'Assault On The Rule Of Law: A Veritable Threat To Democracy.' Being the Text of the First Annual Emeritus Professor D.A Ijalaye Lecture. Monday February 27,2006 at the Faculty of Law Obafemi Awolowo University, Ile- Ife, Nigeria p. 8.
[25] (n, 24), p.9.
[26] 1986. NWLR pt 18 ,621
[27] (n, 28) at p. 647.
[28]The objective of establishing the NJC is to insulate the judiciary from the whims and caprices of the executive and the legislature. The Body was a product of 1994/1995 Cconstitutional Conference convoked during the Military Regime of General Sanni Abacha. One of the chief reasons behind its adoption was, according to the Reports of the Conference 'to enhance the independence of the judiciary and improve the administration of justice'. It was therefore with relative ease that the idea of the Council found its way into the 1999 CFRN. The duties and roles of the Council are as contained in Paragraph 21 of part one of the the Third Schedule to the `1999 CFRN..

powers.[29]Although, the NJC is established to secure the independence of judiciary, in reality, it is more of a barrier than an avenue to judicial independence especially when the judiciary in Nigeria is hamstring in more senses than one especially in respect of financial independence which makes it subservient to the executive and therefore difficult for it to uphold the rule of law as we shall demonstrate *anon* in this study.

Composition or Membership of the NJC

The Composition or membership of NJC is as contained in the 1999 CFRN[30]. The cumulative numbers of members from this constitutional provision are twenty-three inclusive of the Chief Justice of Nigeria who is the Chairman.[31] A careful appraisal of the powers of the Chairman in connection with the appointment of other members of the NJC shows that the Chairman enjoys wide discretion except in the appointment of five members of Nigerian Bar Association who must be recommended by the Executive Committee of the Association[32]. Out of these twenty-three members, fourteen are singularly appointed by the Chairman – the Chief Justice of Nigeria, and such appointment is not subject to any control or consultation with any person or body. The five members of NBA, brings the numbers of members appointed by the Chairman to nineteen out of twenty-three. There is no doubt that the Chief Justice of Nigeria occupying the position of the Chairman is like the chief executive of the NJC which makes the decision of the Council a *fait accompli* i.e. a predetermined mind set of the Chief Justice of Nigeria[33]. It is humbly submitted that with the present composition of the NJC, there is deficit of democracy in the mode of appointment. This is because members are more likely to see themselves as the appointees of the Chairman than that of the constitution that empowers the Chairman. Closely related to this is the likelihood or possibility of bias that will arise in respect of discipline of a sitting Chief Justice. Though the Chief Justice may not preside as the Chairman, certainly, the arrangement will be absurd and unsavoury if the Chairman who is under disciplinary evaluation of the Council has fourteen as direct and five as indirect nominees in the Council.[34]

Another absurdity in the composition of membership of the NJC is that the judiciary of the constituent thirty-six states and that of the Federal Capital Territory are only represented by seven states for duration of two years. The membership is certainly skewed in favour of the officials of federal judiciary, On this, Honourable Justice S.F. Adetiloye, former Chief Judge of Ondo state rightly remarked that 'the state High Court and the High Court of the Federal Capital Territory, Abuja, have the preponderance of judicial officers for whose appointments, discipline, removal and funding the NJC was created'[35]. The Honourable Chief Judge also noted that it is the Chief Judges, the Grand Khadis, the Presidents Customary Courts of Appeal, most of whom are left out of the Council that need to be present to defend their nominations and assure the suitability of those being recommended for service in their courts.[36] It is along this trajectory that we submit most respectfully that if the Chief Justice of Nigeria, the President of the Court of Appeal and the Chief Judge of the Federal High Court must see their candidates through the NJC, so should all state Chief Judges be allowed to defend nominations made by their respective Judicial Service Commissions, This is because ratification of recommendations made by the Chief Judges and their Judicial Service Committees may be rejected on adverse comments by Chief Judges of other states.[37] In fact, the Supreme Court, the Court of Appeal and the Federal High Court are adequately represented in the NJC and generally speaking, these courts are already relatively adequately funded unlike the state judiciaries. Hence, Honourable Justice Adetiloye is pessimistic about the capacity of the NJC as presently constituted to enhance the independence of the judiciary especially at the state level. He enthused;

> Most of the States created in 1976 and after have no court complexes in their capitals or accommodation for judges in their Judicial Divisions…The State Government could

[29] Section 158 (1) of the 1999 CFRN.
[30] Section 20 Part 1 of the Third Schedule of the 1999 CFRN.
[31] (n, 35) (a).
[32] (n, 35) (i).
[33] This is clearly manifested in the suspension saga of Honourable Justice Ayo Isa Salami, former President, Court of Appeal. In spite of the fact that the various Committees set up by the Council to look into the crisis did not find Justice Salami guilty of any infraction but nevertheless went ahead to suspend him. The impartiality of the NJC in this matter is suspect given the high level of influence the former CJN wielded among the members of the NJC.
[34] This fear would have played out if the NJC had the opportunity to handle the allegation of non- declaration of assets leveled against former Chief Justice of Nigeria, Honourable Justice Walter Onoghen in 2019.
[35] D. A. Ijalaye. (2001). 'The Imperatives of Federal/State Relations in a Fledgling Democracy Implication for Nigeria' Being the Text of a lecture delivered at Nigerian Institute of Advanced Legal Studies Lagos. 2001, p.5.
[36] (n, 40) p.6
[37] (n, 40) p.6

> build a Governor's Lodge, State Secretariat and a House of Assembly, but the Court Complex was a non-issue, as they say, 'for lack of funds'… Under these conditions it will be beneficial to the states for every Chief Judge to be represented on the National Judicial Council to make a case for his or her financial needs. After all, the 36 states and Abuja are represented in the Federal Legislature. Every State of the Federation has a Minister in the Federal Executive Council.[38]

In view of the above, it is observed by Popoola that 'the composition and powers vested in the NJC have attracted strong reservation, if not condemnation'.[39] It has been speculated that the rationale for the establishment of the NJC is to wrestle the state judiciaries from the siege and whimsical tendencies of the state chief executives. Assuming without conceding that this is true, are the President and his numerous officials at the federal level not capable of exhibiting the same tendencies on state and federal judiciaries in the light of the immature level of our political development? We entirely align ourselves with the submission of the Honourable Justice Adetiloye and the learned professor A. Popoola and assert with justifiable reason[40] that it is only convenient for the centripetal forces to demonise the state chief executives in order to extort from their legitimate powers in furtherance of their insatiable appetite for centralism i.e. creation of uniformity in a federation. The feeble argument of wrestling the state judiciaries from the state executives flies in the air in the face of the reality that majority of Nigerians are the same irrespective of their position in life and status in the society. Turgood Marshall, the first Black American to be appointed to the Supreme Court of the United States said the following words of instinct about human being:

> People are people, strike them they will cry, cut them and they will bleed, starve them and they will wither away and die. But treat them with respect and decency, give them equal access to the levers of power, attend to their aspirations and grievances and they will flourish and grow, and if you will excuse an ungrammatical phrase-join together to form a more perfect union[41].

When he became blind and retired from American Supreme Court, he was confronted by journalists as to whether he would want to be replaced by a black man or a white man. He confirmed his earlier view of human being by saying that 'there is no difference between black snake and white snake, they both bite'. The issue at stake under this discourse is not what a black or white man can do. It is what Nigerians can do irrespective of ladder of life they find themselves. What Turgood Marshall said about human being is largely true of Nigerians in the sense that there is no difference between the officials of the state and federal levels. They can equally exert pressure and peddle influence. Hence, it is an illusion to invest the federal officials with the sanctimonious posture and self-righteousness which they may not necessarily possess. The centralization of the appointment of judicial officials in the federation is nothing but a barefaced usurpation of the powers and duties of the State Judicial Service Committees**.**[42]

Powers and Functions of the NJC [43]

One of the primal or pivotal roles of the NJC under the 1999 CFRN is the recommendation of appointment of judicial officers either to the President or the Governors as the case may be[44]. The prevailing questions are: first, does the present method of appointment of judges not undermine the hallowed principle of separation of powers? In other words, if, as the principle of separation of powers presumes, the three arms of government are to be unhindered in the exercise of their powers, is it logical that one of these arms, the judiciary, should

[38] Adeloye S.F (2000). 'Comment on the 1999 Constitution: The National Judicial Council in the Nigerian Judicial System' quoted with approval by Prof. A, O. Popoola (2000) 'Inter Governmental Relations, Federalism and Balance of Power Amongst levels of Government under the 1999 Constitution.' Commissioned paper delivered on the Review of 1999 Nigerian Constitution at the Workshop organised by Presidential Committee at the University of Ibadan. January 20-21, year 2000 p15.

[39] Ademola Popoola (n, 43), 'Inter Governmental Relations, Federalism and Balance of Power Amongst levels of Government Under The 1999 Constitution.' Commissioned Paper ddelivered on the Review of 1999 Nigerian Constitution at the Workshop Oganised by Presidential Committee at The University of Ibadan. January 20 -21, year 2000 p.15.

[40] It was the believe of the military junta that the high level of autonomy enjoyed by the four regions under the 1960 and 1963 constitutions led to the botched secession of the Eastern Region in 1966 hence the gradual centralization of both political and economic powers in the centre.

[41] D, A.Ijalaye..(1991) 'Justice as Administered by the Nigerian Courts'. Being the Text of a lecture delivered on the occasion of the fifth Justice Idigbe Memorial Lecture, University of Benin, 1991 p. 67,

[42] S. F.Adeloye, (.n, 43), p.1.

[43] Item I, Part 1, Third Schedule of the 1999 CFRN.

[44] Other functions of the Council are as contained in section 21 (a-i) of Item I, Part1 of the Third Schedule 1999 CFRN.

owe its key appointments to one of the other two arms? Secondly, is the establishment of the NJC not absurd and incongruous with the federal structure which Nigeria pretends to operate by virtue of section 2(2) of the 1999 CFRN? These and other issues are the focus of this section. A careful appraisal of the following sections[45] of the 1999 CFRN on the appointment of judicial officers of various courts of record in the country reveal that they vest the power to make the appointment in the President or the Governors on the recommendation of the NJC subject to confirmation by the Senate or the House of Assembly as the case may require.[46] It is also the President or the Governors who make appointment in acting capacity to these judicial offices and those appointments are not subject to confirmation by the Senate or the House of Assembly.[47] It is so obvious from these constitutional provisions that the involvement of the executive both at the federal and states levels is very pervasive. The executive exercises enormous influence on the appointment of judicial officers which in our view, seriously undermines the independence of the judiciary. It is not being insinuated that once the executive appoints, the judicial officers automatically become stooges and comes under the control and influence of the executive. However, because of the importance of the office of a judge in the administration of justice, the pervasive and overbearing influence of the executive in the appointment of judicial officers should be minimised if not complexly removed.[48] The reason for this as stated earlier, is the increasing judicialisation of politics in Nigeria. The sanctity of the ballot is no longer respected.[49] Apart from this, election petitions are very political. It generates a lot of tension and anxiety. It is a bitter contest for power which is fought with the same intensity as the elections. As a result, adjudication of electoral petitions put the judicial officers on the spot. In no distant future, the use of the appointment power to affect judicial opinions will become common place. What will it look like in Nigeria if a judicial officer is appointed because of his political affiliation and not because of his all-round competence?[50] The single most important issue in our election campaign will soon become who will get to fill the vacancies in the various courts of record. This is simply because these positions will become an important element in our election calculus[51] which eventually will expose judicial officers to political controversy[52]. The judiciary, which is regarded as the least dangerous of the three arms of government will be the sole determinant of election results. The judiciary, especially the Supreme Court has been turned to Electoral College. If democracy's paramount definitional imperative is that, it is a system of majority rule, no ruling of court will be substantially just or fair unless it reflects the clear electoral will of the majority. As a result, it is our considered view that it is contrary to extant democratic virtues for unelected judges rather than the people to whom popular sovereignty belongs[53] should be the ones to install government or to dethrone government elected by the people[54]. It may be argued that there is the NJC which recommends the appointment of judicial officers to the President or Governors, but the NJC is also made up of judges who are appointed on

[45] Sections 231, 238, 250, 256, 261, 266, 271, 276 and 281 of the 1999 CFRN.

[46] The National Judicial Council at its meeting of Tuesday 18 and Wednesday19 December 2019 recommended to the governors of Anambra, Kebbi Rivers, Ogun, Zamfara, Osun, Imo, Sokoto, Ekiti and Niger States 33 successful candidates for their judiciaries..

[47] Aguda *Oluwadare. Understanding the Nigerian Constitution of 1999.* MIJ Professional Publishers,(2000) Lagos. p.194.

[48] The case of Rivers state is a good example. The executive led by former Governor Rotimi Amaechi was so much involved in the appointment of the Chief Judge of Rivers state to the extent that he claimed he had the prerogative to reject the nominee of the NJC. Honourable Justice Daisy Okocha for his own preferred candidate Justice P.N.C. Agumagu. The state was without a Chief Judge from August 20, 2013 to June 31, 2015 when Governor Nyesom Wike was sworn in as a new governor. This certainly infringed on the independence of judiciary and the concept of separation of powers.

[49] The Supreme Court was the final arbiter in the Presidential election of February 13, 2019. It was only in January 9, 2020 that the Supreme Court dismissed the various appeals challenging the elections of governors Abubakar Bello of Niger State, Ifeanyi Okowa of Delta state, Okezie Ipeazu of Abia State and Darius Ishiaku Taraba state. Similarly, on December 12, 2019 The Supreme Court affirmed the election of governors Babajide Sanwo-Olu of Lagos State, Oluseyi Makinde of Oyo State, Nasr El-Rufai of Kaduna State, Udom Emmanuelm of Akwa Ibom state, David Umahi of Ebonyi state, Aminu Masari of Katsina State, Dapo Abiodun of Ogun State and Abdulahi Sule of Nassarawa state. On January 20, 2020 the Supreme Court affirmed the governorship elections' of Malam Ganduje of Kano State, Simon Lalong of Plateau State and Aminu Tambuwa of Sokoto state. Emeka Ihedioha had his election upturned by the Supreme Court. David Lyon of Bayelsa state had his election nullified by the Supreme Court on ground of alleged certificate forgery by his Deputy Governor- elect. .

[50] This is not an intrinsically bad practice. In the United States judges are appointed to the Supreme Court based on their political and ideological leanings.

[51] Duruheona Eze (2019).'Judicial Appointment in Nigeria: The need to Avoid American Experience'. The Guardian, Nigeria. December 27, 2019 p. 43. Also available at www.guardian .ng.

[52] On the need for judges to distance themselves from politics, the comment of Niki Tobi (JSC) in the election petition judgment in *Muhammodu Buhari v. Umaru Musa Ya'adua Suit No SC/51/2008 is* very relevant.

[53] (Section 13 (2((a) of the 1999 CFRN)

[54] For instance, it is the Supreme Court instead of the popular will of the people that installed the Governors of Imo, Hope uzodinma and that of Bayelsa state Duye Diri in spite of the humiliating defeat of their respective parties by the people in 2019 governorship elections elections.

the same political considerations. Thus, it is humbly submitted that the executive should be totally divested of powers of appointment of judicial officers not only in the spirit of separation of powers but also as a measure to insulate them from situations that may expose them to politics and ridicule.

The second question i.e. the absurdity of the NJC in a supposed federal structure can be answered with reference to the theoretical framework of the concept of federalism.[55] The concept preaches the relative autonomy of the constituent units. Wheare**,** one of the foremost scholars of federalism defines it as 'a constitutional arrangement which divide law-making powers and functions of the state between two levels of government which are coordinate in status.'[56]. Sagay defines it as:

> An arrangement whereby powers within a multi-national country are shared between a federal government and component units in such a way that each unit, including the central authority exists as a government separately and independently from others, operating directly on persons and properties within its territorial area and with a will of its own apparatus for the conduct of affairs and with an authority in some, exclusive of others.[57]

The summary of the various definitions by scholars[58] is to the effect that the federal government is a coordinating and not a controlling government but has exclusive responsibility for the common national service. The concept combines shared rule with self-rule. At the 1954 Constitutional Conference at Ibadan, Nigeria adopted a federal system of government where each regional government is independent of each other and the federal government. The centralisation of political powers came in as a result of military takeover of power in 1966. The Military created a behemoth centre by adopting a unitary structure which considers the units as appendages. They created bureaucratic prebendalism which behaves like a colossus.[59] Subsequent military regimes built on this monumental 'political mistake'. The trend continues till the present time and it appears difficult now to reverse the horror of 'political unification' in spite of the supposed federal constitution of 1999. Thus, the claim of Nigeria being a federation in section 2(2) of the 1999 CFRN is therefore fraudulent, fictitious and a grand pretention. Nigeria's constitution is more of a unitary than a federal system hence, the seamless insertion of the NJC in the 1999 CFRN as a legacy of military ideology of centralism to superintend the entire judiciary in Nigeria. Late Chief F.R.A.Williams, (SAN), rightly remarked that the 1999 CFRN made a radical departure from what obtained in the 1979 constitution by making the administration of justice revolve around the federal government. He continued:

> We are making a radical departure from the past. As from now on all appointments to the judiciary are made by the National Judicial Council based on the advice of the Judicial Service Commissions. What this means is that the entire judiciary at the federal and state level will become the burden of the federal government as provided for in section 84 of the Constitution[60]

Jadesola Akande also expressed very strong reservation about the NJC when she remarked as follows:

> The establishment of this body may have corrected one problem–the perceived problem of the manipulation of state judiciaries by the state Governors –but it has violated the cardinal principle of federalism, i.e. the autonomy of the federating units. The argument that the State Judicial Service Commissions have not been abolished and to this extent, the states through this body advise the National Judicial Council is not strong enough

[55] Ekarika Wisdom. A $ ors. (2017) . 'Federalism and the Challenges of Judiciary in Nigeria'. International Journal of Advanced Research in Public Policy, Social Development .and Enterprise Studies, Vol.2 No. 2 .p.125.
[56] Wheare K. C., *Federal Government,* Oxford University Press (1963), p.27
[57] Sagay, I (2001) ' Nigeria: Federalism, The Constitution and Resource Control' Being The Text of Speech delivered at The Fourth Sensisation Proramme organised by Ibori Vanguard at The Lagoon Restaurant . Available at https://www.waado.org/nigerdelta/essay/resourcecontrol/sagay.htm Last visited November 12, 2005. p.11
[58]Other eminent scholars of federalism define it from different perspective. For instance Elagwu 1 sees it as a compromise solution in a multinational state between two types of self-determination, the determination provided by a national government and the self determination of the component groups to retain their individual identities. Former Governor of Lagos State, Alhaji Bola Tinubu sees it as a division of labour where the federal government should focus on those few but essential things it can provide such as foreign policies, and defence etc. Kusamatu G. says federalism is a system where each government is supreme within its sphere; neither is supreme within the sphere of the other.
[59] Amuwo Kunle, Adigun Agbaje (eds).*Federalism and Political Restructuring In Nigeria* Spectrum Books Ltd .Ibadan (1998) p.39.
[60] Quoted with approval by Prof. A.O.Popoola . (n,43).p. 17-18.

> justification for taking a most important arm of the three arms of government and governance away from the state if there is true federalism.[61]

We therefore submit with humility that the centralisation of appointment of judicial officials in the federation is nothing, as earlier noted, but a barefaced appropriation of the powers and duties of the state Judicial Service Committees. Honourable Justice Adeloye confirms this when he said that the NJC 'derogates from the judicial authority of the states, rather than cooperation and joint enterprise between the national government and the states, which are the hallmarks of federalism, the present concept is more of a monster master to a servant'[62] Former governor of Lagos state Mr. Raji Fashola (SAN) agreed with the above statement and suggested the therapy for our pseudo-federalism when he said that 'we must imbibe and practice respect for the independence of the states, the rule of law, the solidarity of the centre with the federating unit in mutual cooperation'.[63]

Financial Independence

Former Ghanaian President, Kwame Nkrumah once said that political independence without economic independence is a ruse.[64] Whatever is the context; this is a truism because no institution or person can claim to be truly independent when someone else is in charge of his economic power. Thus, if the judiciary is not free financially, any other freedom it might lay claim to is useless. The 1999 CFRN envisages financial freedom for the judiciary when it provides that **'**Any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Council for disbursement to the head of courts established for the federation and the states under section 6 of this Constitution'[65].

This provision envisions that the judiciary should not be an appendage of, or subservient to any other arm of government in respect of finances to perform its constitutional mandates. Unfortunately, this provision is complied with more in breach than in observance especially at the state levels. This is in apparent disregard for the doctrine of separation of powers which gave birth to the three arms of government. The doctrine does not envisage a situation where one arm will depend on the other. Indeed, it was in the bid to ensure that this does not happen that the doctrine itself came to light. The judiciary's roles in our contemporary society are now made more complex than before. This practice called judicialisation of politics in Nigeria is actually an anathema in democracy. Democracy as popularised by Abraham Lincoln is the government of the people by the people and for the people.[66] Perhaps, democracy has to be redefined in Nigeria as government of the people by the judiciary but for the people (judicial democracy). The judiciary has to be financially independent to be able to deliver justice as appropriate. Where it has to go cap in hand[67] to the executive for funds, it is likely to dance to the tune of the executive or desperate politicians who are ready to offer the highest bid to 'purchase Justice' It is in realisation of this possibility that the President assented to the Constitution (First Alteration) Act No 6) 2010, which places the judiciary and some other agencies of government on the first line charge i.e. the amount standing to the credit of the judiciary shall be paid to the NJC for disbursement to the heads of courts established for the federation and for the states under section 6 of the 1999 CFRN. However, in spite of these constitutional provisions, there is still deficit of financial freedom for the state judiciaries; hence the President assented to the Constitution (Fourth Alteration) Act No 4 2014 which grants financial autonomy to the state judiciaries. We acknowledge the vital step taken by the federal executive aimed at enhancing the financial independence of the judiciary, but it seems to be operating on paper and therefore a mirage. Otherwise, the perennial and persistent complaint by the Heads of federal and state judiciaries would have abated. In order to enforce compliance with the constitutional provisions, the judiciary staff union of Nigeria instituted an action in 2014 at the Federal High Court in the case of *JUSUN v. National Judicial Council & 73 0rsl*[68] where the court held that, it was unconstitutional for the executive to withhold or release piece meal funds standing to the credit of the judiciary. Such fund, according to the court, should be paid directly to the NJC for onward disbursement to the Heads of courts as required under sections 81(3), 121(3) and 162(9) of

[61] Akande J.O., *Introduction to the 1999 Constitution of the Federal Republic of Nigeria*, MIJ Publishers (2000). p.271.
[62] Adetiloye S. F. **(**n, 43) p.1.
[63] Babatunde Fashola (2014) 'Judicial Federalism Under The Nigerian Constitution' Being His Presentation at The 8th Annual General Conference of the Section on Legal Practice of The Nigerian Bar Association. Uyo, Akwa Ibom State. November 11, 2014.
[64] Adegboyega Tunji (2019).' A Judiciary in Chains'. The Nation, Nigeria, Sunday September, 29 2019, p.17
[65] Section 162 ((9))81 (3). See also sections121 (3),) of the 1999 CFRN.
[66] Abraham Lincoln (1809-1865)Tthe 16th President of the United States of America, in his address at the dedication of the Mmilitary Ccemetery at Gettysburg, Pennsylvania on 19th November, 1863.
[67] Musdapher Dahiru. op,cit. pp.12-13
[68] Unreported. Suit No FHC\/ABJ/CS/667/13.

the 1999 CFRN[69]. The executive is certainly playing the ostrich by hiding under the nebulous phrase of 'lack of fund' to keep the judiciary prostrate and spineless. Thus, it is not surprising that the incumbent Chief Justice of Nigeria Hon. Justice Tanko Mohammed, openly lamented a situation where the judiciary has to go cap in hand to the executive begging for what constitutionally belongs to it. The Chief Justice soberly lamented;

> if you say that I am independent but, in a way, whether I like it or not, I have to go cap in hand asking for fund to run my office, I have completely lost my independence. It is like saying a cow is free to graze about in the meadow, but at the same time tying it firmly to a tree, where is the freedom?[70]

This is certainly anomalous in view of the fact that the other two arms hardly lament absence of their independence. It is therefore submitted with respect, that a financially independent, upright and incorruptible judiciary precipitates happiness and orderliness of the state. It offers a formidable panacea to the suffering and predicament of the masses[71]. The sober appeal by the Chief Justice of Nigeria cannot be more appropriate especially at this crucial time when our democracy is being desecrated and bastardized with executive rascality. The truth is that if the country's democracy is to be operated with the mindset of separation of powers envisioned by the 1999 CFRN[72] the funding of the judiciary must be done in a manner that can guarantee its independence[73]. The absence of financial independence for the judiciary has led to the manipulation of this important arm of government especially at the state level. For years, the governors have treated the judiciary as an extension of the executive arm of government. The present situation where the judiciary lobbies the governors for recurrent and capital expenditure[74] exposes it to ridicule and disdain. The efforts to wean the judiciary from the shackles of financial bondage and stranglehold of the executive arm of government are a collective responsibility[75]. This is because it is our collective rights that the political elites are abridging. However, the NJC cannot be exonerated in the present travails and tribulations of the judiciary as a result of its complacency and acquiescence.[76]

Executive Acts of Impunity

We have earlier noted that the NJC is an Executive Body established pursuant to section 153 of the 1999 CFRN and as a result, lacks the moral courage to ensure that the executive respects the concept of democratic trinity of organs of government. There are no better areas where the executive manifested its disdainful disregard for the judiciary than in the areas of disobedience of court orders, desecration of the sanctity of hollowed chambers of courts, harassment and intimidation of judicial officers and removal of judicial officers without regard to due process. A veritable threat to independence of judiciary and rule of law is the willful and flagrant disobedience of valid and subsisting court orders. This is regarded as a brazen attempt to emasculate the judicial system. In a nation where flagrant and open defiance to court orders are the order of the day, the rule of law and democracy is seriously imperiled. The litany of disobedience to court orders that has been a feature of the successive administrations in Nigeria is worrisome. The travails of Omoyele Sowore are symptomatic[77]. He was arrested on August 9, 2019 by the DSS for his planned protest tagged 'revolution now'. He and his co-accused Adewale Bakare were granted bail on September 24, 2019 by the Federal High Court which the DSS defiled. The court's order was not complied with until the court issued a notice of contempt against the Director – General of the DSS[78] . He was released on

[69] (n, 73). Per Justice Ademola Adeniyi J.

[70] 'Democracy without Independence of Judiciary.' Punch Editorial. Nigeria, Sunday, October 6 2019. p.16.

[71] Madueke v .C. Ojukwu C.G., Agbata I.F. (2016), 'Judiciary and the Theory of Separation of Powers in Achieving Sustainable Democracy In Nigeria (The Fourth Republic)' British Journal of Education Vol. 4 No 8 Available at www.eajournals.org.p.88

[72] Sections 4,5,6 CFRN)

[73] Ekarika Wisdom & Ors. (n, 60) 126.

[74] Ben Nwabueze (n, 2), p.290.

[75] It is heartening to note that on May 22,2020, President Buhari signed an Executive Oder No 10 of 2020 for the implementation of financial autonomy for the states Legislature and the Judiciary. This Order, the financial autonomy is already donated to the Judiciaries by the 1999 CFRN. The Order truly makes the Judiciary independent of the suffocating grip of state governors. This leads to transparency, accountability and responsibility in government which broadens and deepens democratic space. The Accountant-General of the federation is authorised to deduct from source any state's federal allocation and pays it directly to the judiciary of that state, if the state fails to release to its Judiciary allocation meant for it in line with the financial autonomy guaranteed by section 121(3) of the1999 CFRN.

[76] For financial independence of the Judiciary, see generally Ben Nwabueze op.cit Vol. 3 pp 80-83.

[77] Omoyele Sowore was a Presidential candidate of Action Alliance in the 2019 General elections in Nigeria.

[78] Other instances of detention in defiance of court orders are that of Col. Sambo Dasuki, former National Security Adviser. Ibrahim El-Zakzaky and his wife, Zainab were detained in spite of bail granted them by the court.

December 24, 2019. The same thing is replicated at the state level.[79] However, the dictum of O. Leary, in *Canada Metal Co. Ltd v. Canadian Broadcasting Corporation* No 2[80] which was cited with approval by Honorable Justice Walis JSC (as he then was) in the Nigerian case of *Ezekiel Hart v. Ezekiel Hart*[81] is very relevant. He said,

> To allow court order to be disobeyed would be to tread the road to anarchy. If order of court can be treated with disrespect, the whole administration of justice is brought to scorn. If the remedies that the courts grant to correct wrong can be ignored, then there will be nothing left for each person but to take the law in his own hands. Loss of respect for the court will quickly result in the destruction of our society[82].

Even during the Military era, which was perceived to have unenviable legacy of disobedience of court orders, the Supreme Court restated the necessity to obey court orders. It is therefore disheartening that the successive executive arm of government has since 1999 raised the bar of disobedience of court order to an unimaginable height. This creates the impression that the executive is above the law. If not, how else can one describe the ignoble disobedience of the Supreme Court judgment during the Obasanjo's administration in the celebrated case of *A.G. Lagos State v. A.G.(Fed)*.[83] The destructive consequences of ignoring, or choosing and picking which order of the court to obey is exemplified by the former Chief Justice of Nigeria Honourable Justice Muhammed Lawal Uwais when he said among other things in the case of *Governor, Lagos state v. Ojukwu*[84] that 'if anyone should be wary of orders of courts, it is the authority for they more than anyone else, need the application of the rule of law in order to govern properly and effectively'[85]. It is our respectful submission that for the executive to govern effectively, it has to abide by the rule of law even when it is not convenient. The executive has to be reminded that no man or authority is above or below the law. The law does not ask any man's permission when it asks for obedience. Obedience to law is demanded as a right not asked as a favour, for there could only be peace of the graveyard when the values espoused under the rule of law are infringed upon.

One other social aspect of life which epitomises how independence of judiciary and the rule of law is being assaulted, mutilated, and battered by the executive with the condonation of the NJC is the non-observance of due process as provided by law. By this we mean that there has emerged a tendency which is becoming a phenomenon to trample upon constitutional provisions relating to due process with impunity. This is as a result of morbid desire to achieve a self- serving ambition or to score political point in furtherance of dark motives. There can be no better recent evidence of this than the ignominious suspension and eventual removal of the former Chief Justice of Nigeria, Honourable Justice Walter Onoghen in 2019. This was achieved through a nebulous and reprehensible *ex-parte* order granted by the Code of Conduct Tribunal[86]. The Tribunal ordered Justice Onoghen to step aside and directed the President to swear in the next most senior Justice of the Court, Tanko Mohammed as the acting Chief Justice. This development is perhaps unprecedented as the Tribunal is an inferior court**.**[87] The haste in which the suspension was carried out and the prompt swearing in of the Acting Chief Justice suggested that there were other motives for the suspension and removal than meet the ordinary eyes. It is obvious that both the suspension and the eventual removal of the Chief Justice did not have the input of the NJC and the Senate contrary to the provisions of section 292 (1) (a) of the 1999 CFRN. It is therefore submitted that the removal of Justice Walter Onoghen as the Chief Justice of Nigeria is the highest point of executive highhandedness and interference in the judiciary which seriously erodes its independence.

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[79] Agba Jalingo was Charged with treasonable felony in Cross River state. He was granted bail but the government defiled the order of the court. He was released after he had spent three months in detention.

[80](1980) A. C.p.952.

[81] (1990) NWLR (pt 126) p. 276.

[82] (n, 86) at p.289

[83] (2004) 18 NWLR (pt 904) p.1 The administration unashamedly defiled the order of the Supreme Court to release the withheld funds for Local Government in Lagos State on the specious ground that Lagos state government created Local Government areas which were regarded as unconstitutional.

[84] (1986) NWLR (pt.18) p.621. See also M.I. Jegede. (1993) 'What is wrong with the law'? Being A Text of Lecture Delivered at Nigerian Institute of Advanced Legal Studies Annual Lecture Series 12 (1993) p.56.

[85] (n, 88). at p. 639. Honourable Justice Kayode Eso (JSC) in the same case also held the view that it is a serious matter for anyone to flout a positive order of the court.

[86] As reported by Vanguard, Nigeria. Thursday January 2, 2020 p.8

[87] See section 6 (3) of the 1999 CFRN.

The executive arm of government has also been involved in overt acts and arm - twisting tactics to bring the judiciary down to its knees without any condemnation by NJC. Examples abound in the form of desecration of the sanctity of the court room[88] and invasion of judge's home thereby exposing them to hazard. The residence of Honourable Justice Yinusa Musa, a Lokoja based High Court Judge was invaded and ransacked in a manner that defied logic and in a matter that was not connected with the performance of her official duties.[89] Honourable Justice Elizabeth Karatu of Kebbi state High Court was removed without following due process by the state governor, Atiku Abubakar Bagudu following the failure of Kebbi State House of Assembly to confirm her as the substantive Chief Judge of the state. It is our respectful view that it is an act of willful brigandage to set police men and secret police to raid judges' houses at midnight[90]. Also, monitoring judges through harassment, intimidation, sting operation or not, is an indirect way of silencing them to do the bidding of the executive arm of government. Though, the executive controls the coercive power of the state[91], but it is vested with that power not because the constitution wanted it to intimidate any other arm of government.

4. Future Projections

This paper has discussed the extent to which the NJC has so far failed to safeguard the independence of judiciary in Nigeria. In the process, we have noted that an independent judiciary is at the very heart of judicial functions in a democracy. This is not to serve the judges but the society in order to achieve the end of justice without which the law labours in vain[92]. However, it is regrettable that the NJC has not lived up to its expectation in this regard. The Body has not discharged its constitutional duties creditably. Today, that pristine lofty esteem that was the lot of judiciary seemed to be no more; and public confidence in the judicial system is drastically low. The hedge of protection has been broken by undue manipulation and interference by the executive arm and the political elites. Today, the judiciary is not insulated from the monster of corruption that is ravaging our society. Today, the judiciary, more than ever before depends on the good will and the pleasure of the executive for funding. The result is the limitation of the capacity of the judiciary to dispense justice as appropriate and with dispatch. The inevitable corollary is lack of public confidence in the judicial system which De Belzac warns is the beginning of the end of society.[93] It is therefore a matter of serious concern for the critical stakeholders in the administration of justice to ensure that the judicial system is raised beyond the level of pedestrians and charlatans. Otherwise, the vision of our founding fathers for a strong, independent judiciary would have been misplaced[94]. The restoration of core values such as impartiality, public confidence, probity and integrity of the judiciary do not lie in the NJC as presently constituted. The salvation is in a paradigm shift from the present excessive judicial centralism. We need to dislodge the present federal contraption and put in place a centrifugal one that promotes the heterogeneous nature of the country. It has therefore become imperative for these writers to recommend the following therapies for the judiciary in Nigeria to rise like the historical state of phoenix in the Maghreb, from the ashes of its past.

1. As stated above one of the greatest dangers to our present warped federalism is concentration of powers at the centre. This is contrary to what our heroes past negotiated for at independence in 1960. It was a loose federal arrangement that gave self-governing status to each region. The establishment of the NJC is one of the distortions of the arrangement. It is recommended that section 153 of the 1999 CFRN should be amended to limit the powers and functions of NJC to federal judiciary. Each constituent state should have its own Judicial Council reminiscence of state Judicial Service Committees under the 1979 constitution.
2. In a situation where section 153 of the Constitution is not amended as suggested above, the NJC should be imbued with extra strength as to enable it function in a manner devoid of fear or intimidation from any quarters including the executive. The NJC can do this by taking full advantage of section 158(1)

[88] The operatives of the SSS invaded the Federal High Court Abuja presided over by Justice Ijeoma Ojukwu in January 2020 in their attempt to re-arrest Mr. Omoyele Sowore who was alleged to have committed treasonable felony.

[89] Editorial .*Vanguard Newspaper*, Nigeria Tuesday July 16, 2019 p.18

[90] The official residences of the following judicial officers were similarly raided at midnight in 2016 in an operation called sting operations. Justices Adeniyi Ademola Nnamdi Dimgba, Kabiru Auta all of Federal High Court Abuja. Sylvester Ngwuata, John Okoro, both of Supreme Court and Justice Mohammed Liman of Rivers state High Court among others.

[91] See section 214 of the 1999 CFRN. See also the National Security Agencies Act 1986 which mandates The State Security Service, The Defence Intelligence Agency and National Intelligence agency to protect and defend Nigeria from domestic threats and to uphold the criminal laws of Nigeria.

[92] Dahiru Mustapher (CJN) (2011) **'**The Nigerian Judiciary: Towards Reform of The Bastion of Constitutional Democracy' Being a Fellow Lecture Series Delivered at The Nigerian Institute of Advanced Legal Studies, 2011 p 4.

[93] (n, 97) p. 19.

[94] Adegboyega Awomolo S. (2016)' Nurturing Nigeria's Democracy through the Law' Being the First Distinguished Guest Lecture of the Faculty of Law, Bowen University Iwo. Thursday April 7, 2016 p.98.

of the 1999 CFRN. The Body should be made subject to itself; the rule of law and the constitution. Only then will it be able to condemn the executive for its various egregious acts of impunity. The undignified silence or reticence of the NJC in the excesses of the executive may be interpreted as a legitimation of these acts.

3. The present servitude status of the Judiciary in Nigeria is not enviable. The involvement of the executive in the budget process of the judiciary is a testimony of the fact that the judiciary is under the tyranny of the executive. The First and Fourth (Constitutional Alteration) Acts are practical steps to unshackle the judiciary**.** Unfortunately, the Fourth Alteration Act has not been domesticated by many states. It is our humble recommendation that the state governments should be compelled to obey the order of Honourable Justice Ademola Adeniyi of the Federal High Court Abuja by all legal means[95] including actions by the civil societies especially by Judicial Staff Union. There is no doubt, the governors are satisfied with the *status quo* and will not be in a hurry to effect a change.
4. A thorough appraisal of the powers of the Chief Justice of Nigeria as the Chairman of the NJC shows that he has a lot of discretion and influence in the appointment of members of the NJC. It is recommended that this power should be whittled down because of the strategic importance of the Council in the administration of justice. When it becomes responsible to itself and the law, it should appoint members to replace those whose tenure has expired subject to confirmation of the senate.
5 It is very difficult to believe the rationale, wisdom or logic behind the provision that the five members of the Nigeria Bar Association in NJC are to sit only for the purpose of considering the name of persons for appointment to the superior courts. Their participation in any other deliberations of the NJC is as important as that of any other member. It is therefore recommended that the five members of the Nigerian Bar Association should participate in all deliberations of the Council especially when the issue of discipline, suspension and removal of judicial officers is being considered. This is more necessary since members of the Bar are the ones interacting with the judicial officers in their daily appearances in court.
6 The current system of appointment of judges in Nigeria is such that the executive exercises massive influence on those who are appointed as judges. Most often, the executives do not allow the names of those who are nominated to be sent to the NJC for scrutiny where such names do not include their anointed candidates. It is our respectful recommendation that there is a need to embark on constitutional and legal reforms that will see the complete removal of the roles of executive in the appointment of judicial officers. For instance, the appointment can be solely done by NJC when it is reconstituted along the above suggested lines.

It is our final submission that the world no longer has a choice between the rule of force and the rule of law. Indeed, if civilization is to survive, it must choose the rule of law through an independent judiciary. However, the Nigerian judiciary has not been a model of perfection like any other judiciary. It is under siege. It has always moved from one issue of concern to another. The memory of the days of the 'ouster clauses' and the unbridled stand of the judiciary is not lost on us. We cannot also forget so soon, the reckless, brazen interference and intimidation of the judiciary by the military junta. These were the dark days in the annals of Nigerian judiciary. Those days appear to be with us again in our constitutional democracy in the guise of executive brigandage. The executive has spectacularly suborned the judiciary to do its biddings. For a more effective and functional Judicial Council, if the first suggestion above is discountenanced, the Heads of superior courts at the federal and state levels should be included as members in order to imbue it with extra-strength and vitality so that the judiciary will be able to roll down justice like water and righteousness like an ever flowing stream[96]. By so doing, we will bequeath to the succeeding generations of Nigerians a judiciary that is 'anchored on a solid base reminiscent of the wise man or woman in the Christian scriptural Book who builds his or her house on a solid rock and not sinking sand'[97].

[95] Note that reliance on section 162 (9) of the 1999 CFRN to enforce the judgment of Ademola J. may be difficult since the Supreme Court has invalidated the section. The court described the section as superfluous and otiose in the case of *A.G (Fed) v A.G. Abia state No.2*. (2002) 6 NWLR (pt.764) p.542 delivered on April 5, 2002 Per Ogundare,(JSC).
[96] Amos Cchapter 5, Verse 24 of the Holy Bible.
[97] (n, 97)**.** p.32 See also Hymn 283 in Baptist Hymnal Book p.133