

JUDICIAL INDEPENDENCE UNDER THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999: MYTH OR REALITY?*

Abstract

The recent ugly developments in Nigeria with regards to the judiciary have called into serious question the independence of the judiciary in Nigeria. It is pertinent to ask whether judicial independence in Nigeria is a myth or actually a reality. If it is not a fiction, how then can the travail of the Chief Justice of Nigeria, Justice Walter Onnoghen CJN, who was single-handedly removed by President Muhammadu Buhari for alleged breach of the Code of Conduct, be explained? Indeed, can the President suspend the Chief Justice of Nigeria without the input of the judiciary and the legislature? What will be the explanation for the nocturnal arrest of some superior court Judges by operatives of the DSS without recourse to the National Judicial Council? Does any of the provisions of Constitution of the Federal Republic of Nigeria, 1999 (as amended) relating to the independence of the judiciary make real meaning with the desired kind of impact? With these troubling questions, it then becomes pertinent to interrogate the independence of the Judiciary in Nigeria. If judicial independence is important to the growth of democracy in Nigeria, recent events calls into question how independent the judiciary really is. If the independence of the judiciary is fictional and not real, there is a need for a new thinking on how to make the judiciary autonomous to be a true bastion of democracy in Nigeria. This is the focus of this article.

Keywords: *Judicial Independence, 1999 Constitution of Nigeria, Walter Onnoghen, Buhari, Myth or Realty*

1. Introduction

The judiciary is the third arm of government responsible for interpreting the law and administering justice. For the judiciary to be able to perform its constitutional functions as it ought to be, certain constitutional guarantees are required to ensure that the judiciary is equipped to administer justice fairly, impartially, independently and without compromise. Of interest is the fact that there is no specific and express provision in our Constitution on the independence of the judiciary unlike the Constitutions of some African countries. For example, the Constitution of the Republic of South Africa explicitly provide for judicial independence thus: (1) The judicial authority of the Republic is vested in courts; (2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice; (3) No person or organ of state may interfere with the functioning of the courts.¹ However, there are certain provisions of the 1999 Constitution from which the notion of judicial independence can be derived by implication. Despite this position, recent events in Nigeria actually brings to mind the troubling question whether the independence of the judiciary in Nigeria is a myth or a reality. To do justice to this article, we shall examine the conceptual foundations of the article; examine the pillars for the independence of the judiciary contained in the Constitution as well as imperatives to judicial independence in Nigeria. We shall also beam our searchlights on the doctrine of separation of powers and respect for the rule of law as desideratum to judicial independence. From this, we shall draw our conclusion with suggestions and recommendations aimed at making judicial independence a reality in Nigeria.

2. Conceptual Foundations

The notion of judicial independence presupposes that the judiciary has freedom from political control or interference to determine and organize its affairs according to the law and the dictates of justice as a separate arm of the government. The word, 'judicial' in the Black's Law Dictionary, means 'Of, relating to, by the court or a judge.'² The use of the word is therefore connected with a court or a judge and the judicial system and nothing more. 'Independence' on the other hand, is defined as 'the state or quality of being independent.'³ Within the context of the judiciary for example, it means being the ability of the judiciary to manage all its affairs without being subject to external control or influence. Judicial independence means that the judicial system is free from the undue influence

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¹ See s165, Constitution of the Republic of South Africa, 1996.

² B. A. Garner, (Ed.) *Black's Law Dictionary*, 8th ed. (St. Paul Minn: West Publishing Co. 2004) 862

³ *Ibid* at 785

of the other two arms of government, namely, the legislature and the executive. This is based on the principle that a judge is entitled to decide cases fairly, impartially, according to the facts and law and not according to the whim, prejudice, or fear, or the dictates of the legislature or executive.⁴ It ought to be stated that the expression 'judicial independence' and 'independence of the judiciary' are synonymous and can be used interchangeably. The use of 'judicial independence' in this article is purely a matter of preference.

It must be pointed out that jurisprudentially, the notion of judicial independence can be viewed from two basic perspectives. First, there is institutional independence which means independence from the other branches of the government as stated above. The second aspect deals with the right of individual judges to independently carry out their professional duties.⁵ The very idea of independence of the Nigerian judiciary as a branch of the government has the following implications, namely:

- i. The judiciary must enjoy institutional independence and that it must be independent of the other branches of government, that is, the legislature and executive;
- ii. The judiciary must be independent as to internal matters of judicial administration, including assignment of cases;
- iii. The judiciary must have independence in financial matters and to have sufficient funds to perform its functions efficiently;
- iv. The judiciary must be independent in handing down judgments/decisions; with a corresponding obligation on the part of government and its agencies to respect and comply with the decisions handed down;
- v. The judiciary must have jurisdictional competence meaning that there is judicial autonomy in the determination of questions of competence; and
- vi. The judiciary has both the right and the duty to ensure fairness in court proceedings and to issue reasoned judgments.

On the other hand, the notion of independence of the judiciary for the individual judge means that:

1. The individual judge must enjoy independence in the performance of his professional duties;
2. Individual judges have a right as well as duty to decide cases before them according to law, free from outside interference including the threat of reprisals and personal criticisms;
3. Individual judges must be appointed exclusively on the basis of their professional qualifications and personal integrity;
4. Individual judges must enjoy long-term security of tenure;
5. Individual judges must be adequately remunerated;
6. The promotion of individual judges must be based on objective factors; and
7. The question of individual accountability of judges for unethical professional behaviours must be dealt with by a fully independent and impartial organ ensuring due process of law.⁶

Based on the foregoing, the concept of judicial independence is not difficult to discern. The real challenge is how to secure judicial independence under our Constitution. To this consideration we shall now turn.

3. Pillars and Imperatives for Judicial Independence

According to Principle 1 of the United Nations Basic Principles on the Independence of the Judiciary, 'the Independence of the Judiciary shall be guaranteed by the state and enshrined in the constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.'⁷ This is very important because an independent and honourable judiciary is indispensable to justice in any

⁴ 'Legal Dictionary', available at www.duhaime.org accessed on 9/3/2019.

⁵ E. Azinge & J. F. Rapu, *Roadmap to Judicial Transformation: Through the Lens of the Retired and Serving Jurists of the Supreme Court* in *Judicial Reformed Transformation in Nigeria. A Tribute to Hon. Justice Dahiru Musdapher*, E. Azinge & C. J. D. Dakas (eds) (Lagos: NIALS, 2012) at 75.

⁶ *Ibid* at 97-99.

⁷ Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1985.

society.⁸ Indeed, it is beyond dispute that to sustain a democracy in a modern world, an independent, impartial and upright judiciary is a necessity.⁹ In Nigeria, judicial independence has been guaranteed by the Constitution, statutes as well as other relevant laws and codes on judicial administration, including international law. In this way, the judicial institution is shielded from needless interferences that would impede or hamper its role as the bastion of democracy. The notion of judicial independence was not conceived for the personal benefit of the judges themselves but was developed to protect abuse of power which will undermine individual rights and freedoms. Judicial independence is therefore not a license for a judge to act arbitrarily in deciding cases based on his personal whims and caprices.¹⁰ Judicial independence as a bedrock for impartial justice delivery was recognized and incorporated into the National Judicial Policy approved by the NJC on 14th April 2016.¹¹ The Policy is emphatic that the independence of a Judge is sacrosanct and very necessary to impartial justice delivery. All institutions and authorities must therefore respect, protect and defend that independence. A Judge in the performance of his judicial functions is subject only to the law and must consider only the law and must not take or attempt to take orders from anyone that may influence his decision in the performance of his judicial functions.¹² It is imperative to state that s17(1)(e) of the Constitution enacts a provision with respect to judicial independence when it provided that ‘the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained.’¹³ Admittedly, this provision falls under Chapter II of the Constitution on the Fundamental Objectives and Directive Principles of State Policy which is considered as a general principle of law to be non-justiceable under s6(6)(c) of the Constitution.¹⁴ However, it is not in doubt that the Constitution has expressed a firm commitment on the need to secure and safeguard the independence of the judiciary. In addition, the Constitution has made several provisions meant to secure judicial independence in Nigeria under the current democratic era. The pillars for judicial independence range from political, institutional and financial independence to personal independence of the Judges.

The first pillar is the doctrine of separation of powers concerned with the division of powers between the three arms of government, namely, the legislature, the executive and the judiciary. Each organ is expected to exercise its powers separately and independently as a check against abuse of power which is bound to occur if the three powers and functions of government are fused in one organ of government. Governmental powers express themselves in three forms: legislation, administration and judicial decision. It is then of prime importance to the theory of the organization of government to determine whether, and to what extent, these powers should be combined in three separate agencies, coordinated and mutually independent.¹⁵ While an inherent tension is probably inevitable in a system based on separation of powers, it is essential that the power of an arm of government is not used to undermine the efficient working of the other arm.¹⁶ A constitutional democracy presupposes a balanced system of divided powers.¹⁷ However, when it comes to the meaning, rationality, morality, civility, humanity and ultimate constitutionality of laws, the court or the judiciary is the final arbiter. Here, the courts exercise undisputed power.¹⁸ According to John Marshall, ‘a Judge must be completely independent with no power to influence and control him except God and his conscience’.¹⁹ In *Nganjiwa v. FRN*,²⁰ Obaseki-Adejumo JCA explained thus:

I need to opine that the Constitution of this country, being the grundnorm, and fundamental legal order of the state clearly recognizes and guarantees the doctrine of separation of powers and checks

⁸ C. A. Oputa, *Our Temple of Justice*, (Abuja: Justice Watch, 2014) at 9.

⁹ T. A. Aguda, *The Judiciary in the Government of Nigeria* (Ibadan: New Horns Press, 1983) at 34.

¹⁰ Azinge & Rapu, *Op. Cit.* at 74.

¹¹ www.njc.gov.ng accessed 14/1/2019.

¹² *Ibid.* See Paragraph 7.1(a), (b) & (c).

¹³ CFRN, 1999 (as amended).

¹⁴ See *Okogie v The Attorney General of Lagos State* (1981) 2 NCLR 337. It ought to be noted that the Supreme Court had later in a number of cases held that s6(6)(c) had not precluded the expression of those rights through other platforms and that any law made to that effect is not vitiated by virtue of inconsistency with the Constitution. See *A.G. Ondo v A.G. Federation* (2002) 9 NWLR (Pt. 772) 418 and *A.G. Lagos v A.G. Federation* (2003) 15 NWLR (Pt. 806) 113.

¹⁵ A. Appadura, *The Substance of Politics* (New Delhi: Fourth Impression, 2004) 516.

¹⁶ Azinge & Rapu, *Op. Cit.* at 95.

¹⁷ Oputa, *Op. Cit.* at 37.

¹⁸ *Ibid.*

¹⁹ *Ibid.* at 39.

²⁰ (2018) 4 NWLR (Pt. 1609) 301 at 343-344.

and balances. Sections 4, 5 and 6 thereof contain provisions relating to the legislative, executive and judicial arms of government. In most known democracy, the judiciary is always accorded the freedom to conduct its affairs without fear of interference, intimidation, threat, ill-will from any other arm of government.²¹

The second pillar is the doctrine of the rule of law which also plays a vital role in securing judicial independence. The rule of law is one of the most important political ideal of our time.²² The rule of law is perceived as a fragile but crucial ideal and one that is appropriately invoked to checkmate arbitrary and oppressive action of the government by short-circuiting the norms and procedures laid down in a country's laws or constitution.²³ The categories of actions that are regarded as an affront to the rule of law in the context of the judicial independence are not difficult to discern. They include interference with the judicial process through arbitrary arrest and removal of judges and the due exercise of judicial functions by the courts; lack of respect for court orders and outright disobedience of court orders; disrespect for the doctrine of separation of powers as a safeguard to abuse of judicial powers; disregard for the supremacy of the Constitution and other relevant laws in such a way as to engender a culture of lawlessness; arbitrary arrests and detention without any lawful justification; etc.²⁴ The principle of the rule of law posits that the Constitution is the supreme and overriding law of Nigeria and safeguards judicial independence.²⁵

Furthermore, focus on the establishment of the National Judicial Council (NJC), as an important judicial institution under s153 of the Constitution.²⁶ The establishment of the NJC is an innovation under the 1999 Constitution. The NJC is entrusted with the responsibility of playing significant roles in the appointment, discipline and removal of judges. This was meant to ensure the independence, integrity, impartiality and credibility of the judiciary.²⁷ The NJC composition is dominated by members of the judiciary and it oversees the affairs of the judiciary both at the Federal and State judicatures.²⁸ The NJC was established to insulate the judiciary from the caprices of executive power and to guarantee judicial independence so that the executive arm of government is excluded from directly performing such sensitive functions as the appointment, promotion, remuneration, discipline, control and supervision of judicial officers.²⁹ The independence of the NJC is guaranteed by the Constitution categorically that in exercising its power to make appointments or to exercise disciplinary control over persons, the NJC shall not be subject to the direction or control of any other authority or person.³⁰ This constitutional guarantee of the independence of the NJC received judicial approval in *Nganjiwa v FRN*³¹ where the court held as follows:

A cumulative reading of the relevant provisions of section 153(1), 158(1), Paragraph 21 (b) of Part 1 of the Third Schedule of the 1999 Constitution (as amended) is to the effect that the National Judicial Council (NJC) is the sole body with authority to recommend to the President for the appointment and removal of any Judicial Officer at the Federal level and also exercise disciplinary control over Judicial Officers.³²

²¹ This holding followed the decision on the doctrine of separation of powers in *A.G. Abia & Ors v A.G. Federation* (2003)4 NWLR (Pt. 809)124 at 177, *Elelu-Habeeb v A.G. Federation* (2012)13 NWLR (Pt.1318) 423, *A.G. Federation v Guardian Newspapers Ltd* (1999)9 NWLR (Pt.618)187 *Kayili v Yilbuk & Ors* (2015)7 NWLR (Pt. 1457) 26.

²² U. D. Ikoni, 'An Overview of Rule of Law as a Paradigm for Good Governance in a Democratic Society: The Nigerian Experience', University of Jos Law Journal January 2015, Vol.1 at 199.

²³ *Ibid* at 200.

²⁴ See the Resolutions of the Council of the International Bar Association (IBA) of 8/10/2008 on the rule of law which lucidly highlighted some of the basic assumptions of the doctrine of the rule of law by the Secretary General of the United Nations.

²⁵ See S.1 (1), (2) and (3) CFRN 1999 (as amended).

²⁶ CFRN 1999 (as amended).

²⁷ See Third Schedule, Part 1, Paragraph 21 (c) and (d) of the CFRN, 1999 (as amended).

²⁸ *Ibid*, Paragraph 20.

²⁹ *Azinge & Rapu*, Op. Cit. at 51.

³⁰ s158 (1) CFRN 1999 (as amended).

³¹ (2018)4 NWLR (Pt. 1609)301 at 340.

³² See also M. I. Anushiem, O. Mbanugo & C. N. Arinze-Umobi, 'Criminal Trial of Judges and the Imperative for Judicial Independence,' paper presented at National Association of Law Teachers Conference at Nigerian Law School, Bwari Abuja, 1st - 5th July, 2018.

Quite apart from regulating the courts and sanctioning judges, the NJC is also responsible for broad issues of policy and judicial administration. The NJC is empowered by Paragraph 21(d) and (i) of the 3rd Schedule, Part 1, CFRN 1999 to advise the President and Governors on any matter pertaining to the judiciary as may be referred to the NJC by the President or the Governor. This is meant to promote synergy between the two arms of the government.

Also, the Constitution has made provisions relating to the appointment of persons as Justices of the superior courts. For the Chief Justice of Nigeria, the Justices of the Supreme Court and President Court of Appeal, the Chief Judge, Federal High Court, the President National Industrial Court and the Chief Judge of the High Court of the Federal Capital Territory, the President shall make such appointment on the recommendation of the NJC subject to confirmation by the Senate.³³ Therefore, with effect from 1999, the NJC became entrusted with the constitutional responsibility for screening and appointment and elevation of persons to preside over the various superior courts both at the Federal and State levels. For other cadre of judicial officers, the appointment could be made by the President or Governor as the case may be, on the recommendation of the NJC, and in some instances, confirmation by the Federal or State Legislatures.³⁴ The Constitution equally makes provisions on eligibility requirement for appointment of judicial officers.³⁵ The appointment process begins with consideration of a list of persons submitted to the NJC either by the Federal Judicial Service Commission for the Federal judiciary or the State Judicial Service Commission for State judiciary.³⁶ The NJC in carrying its constitutional mandate ought to ensure that the calibre of persons appointed to occupy judicial offices are persons of integrity with the requisite professional qualifications and capacity to carry out the task of administering justice creditably to avoid any interference with the independence of the judiciary.³⁷

The NJC recognized Judicial Officers as the mainstay of the judicial system and under its judicial appointments policy established a Judicial Appointments Guidelines for transparent selection of candidates with the desired requisite qualifications, qualities and experience required to enhance the integrity and independence of the judiciary.³⁸ This point was affirmed by Ogebe JSC, a respected jurist thus: ‘The judiciary as the third arm of government and certainly the most stable arm which no military regime has been able to abolish, is critical for the survival of any regime. It is important therefore that at any given time the best available materials are appointed to the superior bench; men and women of integrity, sound knowledge of the law and capacity for industry should be considered’.³⁹ In truth, throughout Nigeria’s history, two arms of government, namely the legislature and the executive as well as other institutions of democracy have severally fallen as victims of Military intervention in government. However, the Judiciary as the third arm of government has hardly ever been crippled by the Military and has played a very critical stabilizing role in governance. The vital role played by the Judiciary during the Military era has been a function of the quality of Judges at that time that had the courage to stand up to the Military regime.

Closely associated with the issue of appointments into the superior courts is that of promotion, tenure of office, welfare of judges, training and pension rights. It is a prerequisite to judicial independence that issues relating to conditions of service of judges are properly managed and administered in order to ensure their independence. In fact, Principle 11 of the Basic Principles on the Independence of the Judiciary provides that ‘the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall

³³ss 231(1) and (2); 238(1); 250(1); 254(B)(1) and 256(1) CFRN, 1999 (as amended).

³⁴ss 250, 256, 261, 266 and 271, CFRN 1999,(as amended). The Constitution contains similar provisions in respect of superior court Judges of the States.

³⁵ s318 CFRN, 1999 defines Judicial Office as meaning all the offices created for superior courts of record in Nigeria from the different High Courts to the Supreme Court and states that a reference to a ‘Judicial Officer’ is a reference to the holder of any such office.

³⁶ See Paragraph 21(a) and (c) of the 3rd Schedule, Part 1 CFRN 1999 (as amended).

³⁷Rule 10 of the Basic Principles on the Independence of the Judiciary (Supra) actually states that persons selected for judicial office shall be individuals of integrity and ability with appropriate training and judicial qualifications in law, including non-discriminatory practices in the selection process.

³⁸ See the Judicial Policy on Appointment in Paragraph 2.1 of the Policy.

³⁹ J. O. Ogebe, Speech delivered at his valedictory session on 15/4/2010 in *Judicial Reform and Transformation in Nigeria*, Op. Cit. at 21.

be adequately secured by law.⁴⁰ Accordingly, s291 CFRN 1999 (as amended) provides for the tenure of office and pension rights of the different categories of judicial officers. A judicial officer appointed to the Supreme Court or Court of Appeal may retire at the age of 65 years and shall cease to hold office when he attains the age of seventy years.⁴¹ A judicial officer appointed to any other court other than those specified in s291 (1) CFRN may retire at sixty years and shall cease to hold office at the age of sixty five years.⁴² Upon retirement, a justice of the Supreme Court and Court of Appeal shall be entitled to pension for life at a rate equivalent to his last annual salary and all his allowances in addition to any other retirement benefits to which he may be entitled.⁴³ The Constitution equally makes provision in relation to the pension and other benefits of other category of judicial officers.⁴⁴ The bottom line is that in Nigeria, the tenure of superior court judges is protected. It is by providing judges with the security of tenure that their independence will be maximized and public confidence in the judiciary instilled. Principle 12 of the Basic Principles 1985 of the United Nations is to the effect that ‘Judges whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.’

On the welfare of judges, it is necessary to provide for their health needs together with other working conditions that would promote their well being, if they are to live above board. It also takes well trained judges to ably defend judicial independence as they carry out constitutionally assigned functions. The next point to be noted is that judicial officers once appointed cannot be removed or retired compulsorily except for reasons of misconduct as spelt out in the Constitution. In other words, judicial officers enjoy security of tenure under good behavior. Where misconduct is called into play as spelt out in s292 of the Constitution, a judicial officer shall be removed from his office or appointment before the retirement age. This is the point at which the issue of discipline, suspension or dismissal of judges is activated.

The Chief Justice of Nigeria, the President of the Court of Appeal and the Chief Judges of the superior courts of coordinate jurisdiction at the Federal level can be removed by the President acting on an address supported by two thirds majority of the Senate.⁴⁵ There is a corresponding provision for removal of members of the judiciary at the State level by the Governor acting on an address supported by two thirds majority of the State House of Assembly.⁴⁶ The grounds for the removal is that the judge be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.⁴⁷ This means that a judicial officer in this category cannot be easily removed by a member of the executive without the concurrence of the legislature. This is meant to fortify members of the judiciary from unjust removal and thereby enhance judicial independence.

Despite the above state of the law, President Muhammadu Buhari in an unprecedented manner on 25/1/2019 unilaterally suspended Justice Walter Onnoghen, CJN purportedly on an *ex parte* order by the Code of Conduct Tribunal.⁴⁸ President Buhari then swore in Justice Ibrahim Tanko Muhammad, the next most senior Justice as Acting CJN without recourse or input from the NJC or the resolution of the Senate. Justice Walter Onnoghen had been abruptly dragged before the Code of Conduct Tribunal few days prior to his removal for alleged breaches of the Code of Conduct Tribunal Act. The removal of Justice Walter Onnoghen has provoked widespread condemnations and severe criticisms. It has been described an assault on the doctrine of separation of powers and independence of the

⁴⁰ Op. Cit.

⁴¹ S. 291(1) Ibid.

⁴² S. 291(2) Ibid.

⁴³ S. 291(3) (a) Ibid.

⁴⁴ S. 291(3) (b) and (c) Ibid.

⁴⁵ S 292(1) (a) (i) Ibid. See also Paragraph 21(b), 3rd Schedule, Part 1 to the Constitution which gives the NJC power to recommend to the President the removal from office of these judicial officers and to exercise disciplinary control over this class of judicial officers.

⁴⁶ S.292 (1) (a) (ii), Ibid. See also Paragraph 20(d) 3rd Schedule, CFRN, 1999.

⁴⁷ See Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, revised with effect from 24/2/2016. Available at <https://njc.gov.ng/code-of-conduct> accessed on 28/12/2018.

⁴⁸ O. Fabiyi et al, ‘*Uproar as Buhari Suspends Onnoghen, Swears in Mohammad Tanko as Acting CJN*’ punch.com26/1/2019 accessed 5/2/2019.

judiciary. This may well be a pointer to Nigeria's descent to dictatorship. Paul Usoroh, SAN, President of the NBA said of the removal of Justice Onnoghen as follows:

The Nigerian Bar Association unequivocally rejects and condemns this attempted coup against the Nigerian judiciary and evident suspension of the Nigerian Constitution by the Executive arm of the Federal Government. The action of the Executive portends a slide into anarchy and complete deconstruction of the rule of law and due process. It amounts to an absolute breach of the Constitution and the usurpation of the powers of the Senate and the National Judicial Council.⁴⁹

The President claimed the removal was a suspension. Was that power derived from s292 CFRN, 1999? The answer is in the negative. In any other case outside the above class of judicial officers, the President or the Governor as the case may be, acting on the recommendation of the NJC that the judicial officer be so removed will suffice. Quite a number of judges have been removed in the current democratic dispensation for various breaches of the Code of Conduct or for misconduct. The overriding powers of the NJC with respect to discipline of judges for misconduct in a judicial respect, as a mechanism for safeguarding judicial independence was reiterated by the Court in *Nganjiwa v FRN*.⁵⁰ Disciplinary measures may be meted out to a judge in appropriate and deserving cases including suspension, reduction in salary, delay in promotion, restricted judicial responsibilities, dismissal etc. In such a case, it is important that due process is followed and the judge in question accorded fair hearing within a reasonable time by a body constituted in such a manner as to guarantee the body's independence and impartiality.⁵¹ The independence of the NJC was indeed re-enforced by s158(1) of the Constitution which makes it abundantly clear that the NJC in exercising its power of disciplinary control over judicial officers shall not be subject to the direction or control of any other authority or person.

The last point to consider is funding of the judiciary and this has been a vexed issue. Funding of the judiciary is constitutional matter covered by ss80 (2), 81(3), 84(1), (2), (4) & (7), 120(1), 121(1) & (3) and 162(9) of the Constitution. The relevance of the power of the purse to judicial independence cannot be over emphasized, it must be pointed out that the power of the purse is not domiciled in the judiciary as an arm of government but in the legislature and the executive. This explains why there have been agitations for financial autonomy for the judiciary to secure her independence from undue influence and interference by the other arms of government.⁵² A further perusal of some of the key provisions of the Constitution on this issue will show how it is a key enabler to the overall independence of the judiciary. s81(3) of the Constitution states that any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the NJC for disbursement to the heads of the courts established for the Federation and the State under s6 of Constitution.⁵³

Furthermore, by the combined reading of the relevant constitutional provisions, recurrent expenditure of judicial offices of the Federation, in addition to the salaries, remuneration and allowances of all superior court judges contained in s6 of the Constitution shall be charged upon the Consolidated Revenue Fund of the Federation. The Constitution makes it clear in s84(3) that the remuneration and salaries payable to the holders of the said offices and their conditions of service, other than allowances, shall not be altered to their disadvantage after their appointment.⁵⁴ s162(9) also states that any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the NJC for disbursement to the Heads of Courts established for the States under s6 of the Constitution. However, the Supreme Court in *A.G. Federation v A.G. Abia* (No.2)⁵⁵ has held that no funds can be assigned to the judiciary in the Federation Account because the funds in the Federation Account are meant to be shared between the

⁴⁹ Ibid.

⁵⁰ (2018) 4 NWLR (1609) 301.

⁵¹ See Principles 17-20 of the United Nations Basic Principles on the Independence of the Judiciary, 1985.

⁵² The Judiciary Staff Union of Nigeria (JUSUN) had embarked on a number of nationwide industrial actions (strikes) with a view to compel the legislature and executive in Nigeria to grant financial autonomy to the judicial arm of the government.

⁵³ See also s121 (3) of the Constitution which makes a corresponding provision with respect to the Consolidated Revenue Fund of the State.

⁵⁴ The remuneration, salaries and allowances of this class of Judicial Officers is actually determined by the Revenue Mobilization, Allocation and Fiscal Commission s84(1) Ibid.

⁵⁵ (2002) 6 NWLR (Pt. 764) 542 at 876-877.

Federal, State and Local Governments in the Country. This means it is the Consolidated Revenue Fund established under s80 of the Constitution and not the Federation Account that is charged with the salaries and allowances of judicial officers as well as recurrent expenditure of judicial offices at the federal level.

Due to the truism that a self-accounting system will guarantee financial independence as well as access to adequate funds for the judiciary, especially at the State levels, the Judiciary Staff Union of Nigeria (JUSUN) filed a suit before the Federal High Court in 2013 seeking declarations and orders with respect to financial autonomy of the judiciary as provided in the Constitution.⁵⁶ As a response to the continued agitation for fiscal autonomy for State judiciaries, President Buhari was recently purported to have signed into law the Constitution (4th Alteration) Act No. 22 which grants financial autonomy to the Judiciary and Houses of Assembly in the 36 States of the Federation.⁵⁷ The essence of the purported amendment is that the judiciary in the States will enjoy financial independence as their budgetary allocations will no longer go through the budgeting process of the executive arm in the States but will be transferred directly to their own accounts. Of course, as it turned out, the whole idea of the signing of the Constitution (4th Alteration) Act No. 22 as reported by the Special Adviser to the President on National Assembly Matters has turned out to be a mirage. Also, it was reported by the Senate that the President's refusal to sign the Bill was on the advice of the Chief Justice of Nigeria.⁵⁸ The funding and financial autonomy for the judiciary especially at State level has become a subject of political controversy. The agitation for funding of the judiciary is for it to be made a first line charge. The whole idea of autonomy has the underlying objective that all heads of recurrent and capital expenditure is automatically released or paid to the judiciary without any request to government as soon as the budget is passed and assented.⁵⁹ Despite the clear cut provisions above, the Constitution appears to be silent with respect to fiscal autonomy for capital expenditure and whether such capital expenditure should not be administered by the executive arm of Government.⁶⁰

4. Conclusion

We have considered meaning of judicial independence in this article. We also did an overview of the hallmarks of judicial independence and imperatives for judicial independence within the legal framework. To attain judicial independence, some of the issues canvassed in this article must be addressed. This includes a transparent judicial appointment and promotion policy; a fair and independent judicial discipline process; provision of adequate funding for the judiciary; putting in place a mechanism for ensuring the personal integrity of the Judge; and transparency of the justice system. Given the current state of affairs in the Nigerian Judiciary, judicial independence still appears to be a myth rather than a reality and urgent steps must be taken to reverse the ugly trend.

⁵⁶ (Unreported) Suit No. FHC/ABJ/667/13, *JUSUN v AG Federation & Ors.*

⁵⁷ O. Ogunmade, 'Buhari Signs Bill Stopping Vice President, Deputy Governors from seeking 2nd Term', <https://www.thisdaylive.com> accessed on 9/8/2018.

⁵⁸ D. Elumoye, 'Onnoghen Appears Before Senate Committee Over Buhari's Refusal to Assent to 17 Bills', available at [thisdaylive.com](https://www.thisdaylive.com) 24/11/2018 accessed 28/12/2018.

⁵⁹ E. Jegede, 'Appropriate Funding the Judiciary, the Challenges and Associated Responsibility, the Experience of States Judiciary', Paper delivered at the Annual General Conference of the Nigerian Bar Association held at Abuja, August 2015.

⁶⁰ *Ibid.*