

Financial Autonomy as a Legal Mechanism for Facilitating Human Rights and Access to Justice in Nigeria

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Abstract

The judiciary's unique role as a balancing umpire in regulating intergovernmental relations, citizen-business interactions, rule of law oversight in private or public dealings, and conduct, among other things, distinguishes it as a government organ that should be made up of men of integrity who live above board. The critical importance of this branch of government in Nigeria, like in most democratic countries, necessitated a constitutional guarantee of its independence for it to carry out its duties without interference. However, despite their constitutionally promised independence, there has been an avalanche of recorded examples of executive interference and control, casting doubt on or eroding their ability to make impartial decisions. The paper was commenced by reviewing the relevant concepts. The paper adopted a doctrinal research method. It was discovered among others that the financial autonomy of the judiciary was a legal mechanism for financing human rights and access to justice in Nigeria. It was based on the foregoing that recommendations were made.

Keywords: 'Financial autonomy', 'Separation of power', 'Judicial Independence', 'Human right', 'Access to justice in Nigeria'.

Introduction

The Executive, the Legislature, and the Judiciary are the three arms of government in modern democracies. The Constitution gives each of these branches of government their authority. The Black's Law Dictionary defines the judiciary as the "branch of government responsible for interpreting the laws and administering justice.¹ It functions as an independent arbiter in the determination of disputes brought before it; it also serves as a check on unconstitutional or

¹Bryan A. Garner (ed), Black's Law Dictionary (8th edition), USA 2004, 2480-2481

unlawful conduct of the other branches of government to enforce the rule of law, good governance, and peaceful coexistence among citizens.

The powers of each of the three arms of government were guaranteed in Nigeria's 1999 Constitution, as amended. The Supreme Court, Court of Appeal, Federal High Court, National Industrial Court, and other judicial institutions like the National Judicial Council, National Judicial Institute, Federal Judicial Service Commission, and Judicial Service Committee Abuja make up the Federal Judiciary. The State High Court, the Sharia Court of Appeal, the Customary Court of Appeal, and the appropriate Judicial Service Commission make up the State Judiciary.

The judiciary's unique role as a balancing umpire in regulating intergovernmental relations, citizen-business interactions, rule of law oversight in private or public dealings, and conduct, among other things, distinguishes it as a government organ that should be made up of men of integrity who live above board. The critical function of this branch of government in Nigeria, like in other democratic countries, necessitated a constitutional guarantee of its independence for it to carry out its duties without interference. The rule of law has been considered as a system of government in which the acts of agencies and officials of all kinds are subject to the principle of legality, and in which procedures are available to interested persons to test the legality of governmental action and to have an appropriate remedy when the action in question fails to pass the test. The Judiciary as an arm of government is financed through an annual budget at the Federal and States levels. The Judiciary is central to good governance and sustainable democracy, and therefore, there are high expectations about its functions, particularly under civil rule. The 1999 Constitution, as amended, provided for the financial independence of the judiciary at the federal and state levels to ensure rule of law in government and the independence of the judiciary. The Judiciary, on the other hand, faces several issues, including corruption, regular strikes by Judiciary employees, inadequate courtroom facilities, low staff morale, poor personnel welfare and motivation, and so on. Poor funding is to blame for this slew of

problems.² A funding mechanism based upon transparent criteria is necessary to maintain the independence of the Judiciary, as long as the Judiciary is closely involved in setting these criteria, the Judiciary is most likely to be financially independent. This paper, therefore, intends to interrogate how the financial independence of the judiciary is a legal mechanism for enhancing human rights and access to justice in Nigeria.

Financial Autonomy

Financial autonomy simply refers to the judiciary's competence to handle its funds and determine its internal financial issues.³ The judiciary's independence and financial autonomy are inextricably linked. In its most basic form, the idea of independence includes the desire for judges to carry out their judicial tasks without being influenced by other state entities or individuals. A financially reliant judiciary cannot claim to be completely independent.⁴ The judiciary is the guardian and protector of fundamental human rights as well as the arbiter of disputes among all levels of government. This is why the judiciary ought to be independent to be free to perform its functions without fear or favor. This is the primary goal of separation of powers - to enable the three arms of government to be functionally independent of each other.

But despite the constitutional provision, the judiciary is still dependent on the executive (governors at the state level) for their funding. A judiciary that has "no control over either the sword or the purse," as Alexander Hamilton put it, is incapable of protecting itself against the other arms of government. Financial independence is not the sole factor that ensures judicial independence. It is, nonetheless, a crucial factor. If the executive branch of government no longer has control over if, when, and how money is released to the court, it would be a significant step in the right direction.⁵ President Muhammadu in May 2020 signed an executive order granting financial autonomy to both the judicial and the

² Budget and organizational performance: A study of Judiciary in Nigeria by Ibrahim Tama Gambo, SEC 36 2014.

³ <https://www.linkedin.com/pulse/why-financial-autonomy-judiciary-difficult-achieve-onyebuchi-mciarb>

⁴ Ibid

⁵ Ibid

legislative arms of government.⁶ The president's decision was met with commendation, especially from the judiciary but state governors expressed concerns over its constitutionality and financial implications. The gazetting of the order was, however, suspended after the president met with the governors.⁷

Separation of Powers

The notion of separation of powers was first articulated by the French jurist Montesquieu in his book *L. Esprit Des Lois* (Spirit of Laws), published in 1748. As a result, he is regarded as a current proponent of this notion. In essence, Montesquieu's doctrine states that no single individual or group of people should be allowed to exercise all three of the government's powers: legislative, executive, and judicial. To put it another way, each organ should stay within its domain and avoid interfering with the others.

In the view of Montesquieu:

“When the legislative and executive powers are united in the same person, or the same body or Magistrate, there can be no liberty. Again, there is no liberty if the judicial power is not separated from the Legislative and Executive power. Where it is joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Where it is joined with the executive power, the judge might behave with violence and oppression. There would be an end if everything was the same man or the same body to exercise these three powers...”⁸

Montesquieu's "Separation" takes the form of mutual constraints, or "checks and balances," rather than insurmountable barriers and unalterable borders. The idea of separation of powers states that each of democracy's three pillars - the executive, legislature, and judiciary - has distinct functions and acts as distinct entities. The

⁶ <https://guardian.ng/news/supreme-court-throws-out-buharis-executive-order-10/>

⁷ <https://www.thecable.ng/explainer-what-financial-autonomy-means-for-judiciary-and-how-it-affects-you>

⁸ Montesquieu, *De L' Esprit des lois*, 1748 quoted in Justice D.D. Basu: *Administrative Law*, Edn. 199, p. 23

executive has the authority to make policy decisions and put legislation into effect. The legislature has the authority to pass laws. The judiciary is in charge of resolving conflicts. The doctrine is an element of the Indian Constitution's fundamental framework.⁹ As a result, the court conducts judicial review of executive and legislative actions, while the legislature examines the executive's performance. The ability of the court to maintain administrative acts within the bounds of the law is known as judicial control. It also suggests that an unhappy individual has the legal right to sue the government for an unlawful act. The basic goal of judicial oversight of government is to defend people's rights and liberties by ensuring that administrative actions are legal. Lord Bryce posits that there is no better test of the excellence of a government than the efficiency and independence of its judicial system¹⁰.

The below elements have been considered as the basic requirements for an independent judiciary:

- a) Appointment and removal of judicial officers and judicial staff
- b) Security of tenure and remuneration of judges and supporting staff
- c) Budgetary provisions (process)
- d) Individual and institutional freedom from unwarranted interference with the judicial process by the executive arm of government and politicians¹¹

The Funding of the Judiciary

The judiciary is funded through the state ministry of finance. Explaining how it is being funded by the ministry of finance, Jimoh Alonge, treasurer of the Judiciary Staff Union of Nigeria (JUSUN), posits that:

“As a chief judge of a state, you don’t have right over employing or replacing workers even if you are short of manpower. It is the governor that does that. Judiciary workers' salary is prepared in the state ministry of finance. Meaning if a staff dies or retires, they just remove his name from the payroll. There is a state presently that

⁹ Keshavananda Bharti vs. State of Kerala AIR 1973 SC 1461

¹⁰ <https://www.tribuneindia.com/news/archive/comment/the-challenge-of-timely-justice-572872>

¹¹ *Ibrahim*, note 1, 59

had about 2000 or more workers but as we speak, they have just about 600 workers because the state government did not allow them to replace workers.”¹²

Financial autonomy of the judiciary has been in the Constitution of the Federal Republic of Nigeria since 1999. This is established in the constitution's sections 81(2) (3), 84 (1), (2), (3), (4), (7), 121(3), and 162(9). The constitution expressly provides that any funds held in the federation account/consolidated revenue fund of the federal and state governments for the benefit of the judiciary shall be distributed immediately to the heads of the courts involved.¹³ Sections 81 (3) and 162 (9) of the Federal Republic of Nigeria's Constitution mandate that any amount held to the credit of the judiciary in the Federation's Consolidated Revenue Fund be paid directly to the National Judicial Council for distribution to the heads of the Federation's and States' courts. No portion of Nigeria shall be governed except in line with the Constitution, according to Section 1 of the Constitution.¹⁴

Executive Control

The president and Congress have some control of the judiciary with their power to appoint and confirm appointments of judges and justices. Congress also may impeach, alter the organization of the federal court system, and amend the Constitution.¹⁵ Courts also have limited power to implement the decisions that they make. For example, if the president or another member of the executive branch chooses to ignore a ruling, there is very little that the federal courts can do about it.¹⁶ The removal of a head of court must involve the executive and legislature, but the removal of other judges requires only the executive, acting on the recommendation of the NJC. The law is settled that the NJC has no power to dismiss or compulsorily retire a judge. However, its disciplinary powers include suspension which may be a challenge to exercise in some scenarios, including

¹² <https://www.thecable.ng/explainer-what-financial-autonomy-means-for-judiciary-and-how-it-affects-you>

¹³ *Ibid*

¹⁴ <https://www.linkedin.com/pulse/why-financial-autonomy-judiciary-difficult-achieve-onyebuchi-mciarb>

¹⁵ *American Government Online Textbook, www.ushistory.org/gov/9e.asp*

¹⁶ *ibid.*

where the NJC suspends a judge but the appointing authority – President or State Governor – refuses to act on the recommendation, what are the implication(s)? Can a judge be suspended by the NJC in perpetuity? This question was addressed in *NJC v Aladejana & Anor v NJC & Ors.*,¹⁷ In the case, the executive and legislature refused to act on the NJC's recommendation. The court concluded that 'rejection of the appellant's recommendation by the Governor ... did not affect the suspension of the judge'¹⁸ In the above case, the court held that the NJC acted *ultra vires* when it construed the suspension of the judge to mean that he ceased to be on the NJC's payroll and no longer a serving judge, but it refused to annul his suspension. As a matter of practice, when removal is recommended, the judge is placed on 'suspension until further notice.' As such, the case above showcases how other branches of government interference with the judiciary and access to justice.

Executive Control of the Judiciary

In practice, judicial power is dependent on executive power which often influences judicial decisions and interferes with judicial matters. Because the executive interferes in all aspects of judicial matters, the judiciary is weak. In actuality, the executive supervises the judges' careers, while the latter are unprotected from "retaliation" from the executive if they dare to make decisions that are contrary to the executive's wants and wishes. This implies that they must comply with the state's wishes. In these circumstances, justice can only represent the will of the ruling government. There have been various instances where there has been undue intervention by the executive in the full administration of justice by the judiciary.

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¹⁷ *NJC v Aladejana & Anor v NJC & Ors* [2012] LPELR-8381 (CA).*Aladejana* (n 61)

¹⁸ *ibid.*

¹⁹ *NJC v Aladejana & Anor v NJC & Ors* [2012] LPELR-8381 (CA). ⁶³ *Aladejana* (n 61).

²⁰ *ibid*

that he ceased to be on the NJC's payroll and was no longer a serving judge, but it refused to annul his suspension. As a matter of practice, when removal is recommended, the judge is placed on 'suspension until further notice.

In December 2000, the Supreme Court of Zimbabwe struck down as unconstitutional the key elements of the Mugabe government's "Fast Track" land reallocation program. The reaction of President Mugabe and his henchman was to intimidate and in March 2001 hound into resignation from office Zimbabwe's Chief Justice, the Honorable Anthony Gubbay.²¹

In 2011, the High Court of Australia struck down as unlawful the Gillard Government's scheme to transfer to Malaysia, without prior assessment of their claims for refugee status, up to 800 asylum seekers who had irregularly arrived in Australia after 25 July 2011.²²

The scheme entailed an arrangement between Australia and Malaysia, entered into on 25 July 2011, under which assessment of the asylum seekers' claims for protection as refugees would be carried out in Malaysia by the United Nations High Commissioner for Refugees. Unlike Australia, Malaysia was not a signatory to the Refugee Convention. Article 33.1 of the Refugee Convention provided:

"No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group, or political opinion."

Immediately after the High Court gave judgment, the then Australian Prime Minister, the Hon Julia Gillard MP, who had once practiced as a lawyer before entering Parliament, accused the High Court of missing an opportunity to "send a message" to people smugglers. With respect, the reaction of Prime Minister Gillard to the court outcome was not consistent with Latimer House Principles.

²¹ Blair, David: Zimbabwe Chief Justice agrees to stand down, Daily Telegraph (UK), 3 March 2001, Online Edition: <http://www.telegraph.co.uk/news/worldnews/europe/1324928/Zimbabwe-Chief-Justice-agrees-to-stand-down.html>

²² Plaintiff M70/2011 v Minister for Immigration and Citizenship (2011) 244 CLR 144

Human Rights

Human rights have become a global topic with global appeal, which is common knowledge. Human rights have attracted a great deal of attention, prominence, and significance in our modern world. Pluralism, variety, and interconnectedness are inherent in their makeup. Human rights are rights that all humans have as a result of their existence. Human rights, such as the right to life, human dignity, and personal liberty. Freedom of opinion, conscience, and religion, as well as a fair hearing. They offer a common code of conduct for the international community.

Judicial Independence, Human Rights, and Financial Autonomy

Politics, ethnic favoritism, and other fundamental considerations are all present in the appointment and removal of judges. According to Tobi, Nigeria's judicial independence is being hampered. He posits that:

“There were instances in the past where appointing bodies by sheer acts of favoritism and nepotism overturned the A.J.C. (Advisory Judicial Committee) list and planted their own by way of replacement.”²³

Apart from the issue of appointment and removal, the judiciary faces a slew of other challenges that eventually jeopardize its independence and impartiality. The Nigerian judiciary is underfunded. Even if, under the current circumstances, autonomy in the true sense of the word is not possible. A measure of financial autonomy is desired to be included in the constitution.²⁴ Furthermore, court officers' pay is not only insufficient but also ludicrous. The inference is that judicial officials are subject to avoidable corruption temptations, such that their decisions are determined by extraneous considerations rather than the legal rule, the forensic argument of counsel, precedent, and hard facts of the case. Many judges'

²³ N. Tobi, paper entitled Whether the Establishment of the National Judicial Council and the Set-Up Will Bring a Lasting Solution to the Perennial Problems Confronting the Judiciaries of this Nation 19, delivered at the Annual Conference of Judges held at the International Conference Centre, Abuja, Nigeria, between November 1-5, 1999.

²⁴ The 1999 Constitution empowers the National Judicial Council to “collect, control and disburse all moneys, capital and recurrent, for the judiciary.” CONSTITUTION, Third Schedule, Part 1, ¶ 21(e) (1999) (Nigeria)

plight is exacerbated by environmental obstacles such as a lack of social security and a large extended family.²⁵ As may be seen from the foregoing, the absence of actual judicial independence poses a significant issue. Independence is a powerful weapon. Similarly, it has human rights issues. Promotion and protection are equally difficult.

Access to Justice

Access to justice entails not only the ability for citizens to air their concerns in a court of law if their rights are violated by a fellow citizen or the government but also the ability to access the economic system that ensures an acceptable standard of living in a community. In Nigeria, the economic system is set up in such a way that wealth and means of production and trade are concentrated in the hands of a small number of people, primarily the political class. It is commonly known that civil and criminal matters take an eternity to resolve in either the trial or appellate courts.²⁶ Ladan posits that the term 'access to justice means that people in need of legal help, can find a solution through the accessible, affordable, speedy dispensation of justice fairly, and essentially the poor people without discrimination, fear, or favor.²⁷ The judicial system is vital for improving the lives of persons within its authority by ensuring that everyone has access to a system that provides justice in a fair, timely, and non-discriminatory manner. Individuals' basic rights can only be enforced when they have access to courts.²⁸

Access to justice, according to Oputa C.A., may be viewed from two different perspectives: limited and broad. It can be considered to be co-extensive with access to the law court in the limited sense, but it also encompasses access to political order and the advantages deriving from the state's social and economic growth in

²⁵ Muhammed Mustapha Akanbi, *The Judiciary and The Challenges of Justice* 45 (1996).

²⁶ Tombra 2020: A critical appraisal of the innovations, problems and Prospects of the administration of criminal justice act 2015, in the Nigerian justice system

²⁷ Laden L.T. "Justice sector Reform: Imperative For Democracy"(Being a Paper Presented at a Two-Day National Seminar on Justice Sector Reform and the Future of Democracy in Nigeria by Centre For Socio-legal Studies, Abuja on January 6-8, 2012

²⁸ Wole Olanipekun, An address delivered at the Continuing Legal Education Workshop Series, Journal of the Nigerian Bar Association 2003. The Nigeria Bar Association Lagos P xvi

the broad meaning.²⁹ In the absence of the potential to profit from the State's social, political, and economic growth, the narrow vision of access to justice is difficult to realize.³⁰

Access to justice, according to Wahab Shittu, would entail more than simply access to attorneys and courts. It is much broader than that, as it recognizes that everyone is entitled to the protection of the law and that whatever rights we seek to protect are meaningless unless they can be enforced with minimal restrictions on the aggrieved parties, and under conditions that ensure that all people are treated fairly according to the law and that they can obtain appropriate redress when they are treated unfairly.³¹

Obstacles of effective access to justice

Many factors lead to delays in the quick dispensation of justice. *Amadi*³² outlined some of those factors when he stated that obstacles to access to justice in Nigeria's civil justice system are challenging'. These obstacles include delays, cost of litigation, complex legal rules and procedures, lack of awareness and legal knowledge, additionally judicial corruption, and undue control of the judiciary by the executive are obstacles to access to justice. One of the major causes of delay in access to and delivery of justice recently is political meddlesomeness into the judiciary.

Internal Impediments to the Effective Administration of Access to Justice in Nigeria

The concept of judicial independence is defined by three fundamental variables: First, external, primarily executive pressure that can be applied to judges to influence their individual decisions (including appellate review of judgments);

²⁹ Oputa A, In the Eyes of the Law (Friends Law Publishers, 1992) p.5 no.5, 2002), pp 13-14

³⁰ Igwe Onyebuchi Igwe and Agbor Bassey, 2021. Review of the impacts of poverty on access to justice in Nigeria.

³¹ Wahab Shittu (2015); *What's wrong with Administration of Criminal Justice Act?* In The Nation Newspaper; August 25, 2015. Retrieved from <http://thenationonline.net/whats-wrong-with-administration-of-criminaljusticeact-2/> last accessed on 29/02/2020

³² Amadi J. "Enhancing Access to Justice in Nigeria with Judicial case management" An Evolving Norm in Common Law Countries, Titles://papers.ssrn.com/.50l papers cfm?abstracted_id=1366943. Accessed 23/03/2017.

second, the security of tenure of office; and third, the means of appointing judges.³³ The first two variables are mostly external, whereas the third is mostly internal, at least in the Nigerian context, because appointments to the bench are made either directly or with the court system's ultimate approval. Judges in Texas, for example, have only limited periods of office and are subject to popular and partisan elections, unlike in the United States, where judges are elected for fixed terms.³⁴

In Nigeria, technically, it is the judiciary that makes the appointment by determining to the executive whom to appoint or remove from office. The role of the President or Governors, as the case may be is merely ceremonial. In the exercise of these powers, the judges on the “recommending” executive bodies choose their relatives and cronies to take up judicial appointments.³⁵ Another manifest form of corrupt practices by the judges is via the outright manipulation of their decisions in favor of specific parties because of financial and other benefits that they get from such persons.

3. Conclusion and Recommendations.

In Nigeria, the judiciary plays a critical role in maintaining and stabilizing democracy. The Judicial branch is crucial to the survival of democracy and the protection of the constitution and all of its provisions. As a result, the judiciary must be self-contained. It must have complete financial control. Whatever funds are allotted to it under the revenue sharing formula should be released to it through the National Judicial Council for distribution to all heads of courts.

Without a doubt, concern for human rights is universal, which is why the concept of human rights has gained remarkable appeal and significance in our world of pluralism, diversity, and interdependence. Regrettably, the enjoyment of human rights in Nigeria—as in many nations across the globe—has been hamstrung by multifarious and multidimensional impediments. This is why atrocious violations of human rights still exist in Nigeria today. Many of the hindrances to human

³³ *S Levinson*, Identifying ‘Independence’, *Boston University Law Review* 86 (2006) 1299

³⁴ *Ibid*

³⁵ *J Ogunye*, A New Nigerian Judiciary Is Necessary, *Sahara Reporters*, 3 October 2011, <http://saharareporters.com/2011/10/03/new-nigerian-judiciary-necessary-jiti-ogunye>

rights protection in Nigeria have been sustained, and remain unabated, partly because of a lack of genuine and practical commitment on the part of the government to ensure meaningful enjoyment of these rights

Since human rights are most effectively protected at the national level, it is therefore imperative for each national government to take all legislative, judicial, and administrative measures to prevent, prohibit, and eradicate all human rights violations. The courts must at all times adopt a generous interpretation of human rights provisions—and avoid what has been called the austerity of tabulated legalism—suitable to give individuals the full measure of the fundamental rights and freedom.