

THE FRAGILE PILLARS: AN ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS FOR JUDICIAL INDEPENDENCE IN NIGERIA

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Abstract

Judicial independence serves as the cornerstone of the rule of law, ensuring an impartial judiciary free from executive or legislative interference to uphold democratic governance. In Nigeria, despite a comprehensive constitutional framework and supportive institutions like the National Judicial Council (NJC), this principle faces severe erosion from political meddling, inadequate funding, flawed appointment processes, and rampant corruption. This paper critically examines the legal and institutional mechanisms for judicial independence in Nigeria; through the lenses of the 1999 Constitution's provisions to international instruments such as the UN Basic Principles on Judicial Independence and the Bangalore Principles of Judicial Conduct, all intended to safeguard judicial autonomy. The analysis reveals critical implementation deficits, including executive dominance in judicial appointments, and persistent financial dependencies that undermine institutional integrity. Key challenges encompass threats, poor welfare, security of tenure vulnerabilities, and weak enforcement of codes like the Revised Code of Conduct for Judicial Officers (2016). Drawing from the analysis of domestic laws, the paper highlights how these challenges are contributing to a fragile judiciary, that is ill-equipped for fair adjudication. The paper concluded by suggesting transformative reforms that extend to,

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include merit-based depoliticized selections, automated financial autonomy, and full domestication of international best practices to fortify Nigeria's judicial pillars.

Keywords: Judiciary, Independence, Autonomy, impartiality, Accountability and integrity

1.0 INTRODUCTION

The judiciary stands as the cornerstone of constitutional governance, entrusted with safeguarding the rule of law, protecting fundamental rights, and ensuring that power is exercised within legal limits. Its authority to interpret and enforce the law makes it indispensable to democratic stability and social justice¹. Yet, these lofty responsibilities cannot be fulfilled without judicial independence, that is, the freedom of courts and judges to discharge their duties without interference from the executive, legislature, or other external forces². Judicial independence is not merely a constitutional ideal; it is the practical guarantee of impartiality, fairness, and accountability in governance³. In Nigeria, however, this principle has been persistently undermined due to the incidences of political interference, financial dependence, corruption, and weak institutional safeguards. Against this backdrop, this paper examined the conceptual foundations, challenges, and prospects of judicial independence as well as its significance in strengthening the rule of law and consolidation of the Nigerian democracy.

¹A. Nnamani. 'The Judiciary in the 1990s: Expectations And Challenges' Justice"(1990) *J. Of Contemporary Problems* 1 (3) P 27"

²WO Egbewole 'Judicial Independence, Its Origins and Its Operational Dynamics' In WO Egbewole (Ed.) *Judicial Independence in Africa* (Wildy, Simmonds & Hill 2018).

³WO Egbewole. 'Rule of Law under the 1999 Constitution of The Federal Republic of Nigeria: An Overview' (2005) 2, U. Ilorin LJ, 88

2. CONCEPTUAL FOUNDATIONS: DEFINING THE CONTOURS OF JUDICIAL INDEPENDENCE

The operational effectiveness of the judiciary rests upon a cluster of interconnected principles that define its relationship with the State and the public. These concepts collectively establish the necessary conditions for a just and fair legal system.

a. Independence

This concept, encompassing both decisional independence and institutional independence. It is a structural requirement of the constitution, serving as a shield for the judge, enabling impartial adjudication free from coercion, favour, or political pressure.

b. Autonomy

Often treated synonymously with independence, autonomy is the practical demonstration of freedom in self-governance. It ensures that the judiciary must have the final say over its budget, personnel recruitment, training, and internal disciplinary procedures, without subservience to the executive's bureaucracy.

c. Impartiality

This refers to the state of mind of the judge, ensuring decisions are based only on the law and evidence, and not on personal biases, prejudices, or the status of the parties involved. Impartiality is the ethical duty of the judge.

d. Accountability

Accountability holds judges and courts responsible for their conduct and compliance with the law and judicial ethics. Institutional mechanisms like the National Judicial Council (NJC) with its disciplinary powers ensure judges do not act arbitrarily or outside the bounds of their legal authority, thereby preserving public confidence.

e. Integrity

Characterized by honesty, transparency, and high ethical conduct. Integrity is the foundation upon which public trust is built, ensuring that the selection, tenure, and conduct of judges consistently align with the highest ethical standards."

3. CONCEPT OF JUDICIAL INDEPENDENCE

The concept of judicial independence, rooted in the separation of powers, ensures access to impartial and competent legal institutions⁴. It shields the judiciary from interference that could compromise neutrality.⁵ While no universal definition exists⁶, it fundamentally requires a conflict resolution by a neutral party based solely on facts and law.

Scholars categorize judicial independence into several frameworks. These include External attributes which involve constitutional structures supporting judicial functions, and internal attributes which relate to a judge's professional integrity and competence. The scholars categorize judicial independence into personal independence (secure terms of service), substantive independence (legal decision-making), and internal independence (freedom from influence within the judiciary)⁷. Most scholars distinguish between **individual**

⁴ SS Huchanavar 'Conceptualising Judicial Independence and Accountability' (2023) 9 (2) Oslo Lr 110, P110-148 Available at <https://Doi.Org/10.18261/Olr.9.2.3>

⁵ Lord Hodge, 'Preserving Judicial Independence in An Age of Populism' (Speech North Strathclyde Sheriffdom Conference, Paisley, 23 Nov. 2018. <https://www.Supremecourt.Uk/Docs/Speech-181123.Fclf> Accessed On 21 June, 2025

⁶ B Omipidan & WO Egbewole 'Conceptualising an Independent Judiciary'. In Egbewole, W. (Eds.) *Judicial Independence in Africa* (Wildy, Simmonds & Hill 2017) P9-19.

⁷ AT Shehu, M. K Tamim 'Suspension of Justice Issa Ayo Salami: Implications For The Rule Of Law, Judicial Independence And Constitutionalism' (2016) 9 (1) Article

independence, which protects a judge's personal decision-making, and institutional independence, which ensures the judiciary as a body remains free from executive or legislative control. Both forms are essential to maintaining the rule of law and are recognized in international and domestic legal frameworks.

3.1 PROBLEMS OF JUDICIAL INDEPENDENCE

The Constitution of the Federal Republic of Nigeria provides for judicial independence under the Fundamental Objectives and Directive Principles. However, the effectiveness of these provisions is often questioned, with ongoing debate as to whether this independence is genuine or merely illusory. Evidence reveals significant gaps in the legal and institutional frameworks supporting the judiciary.

Prominent scholars and jurists such as Dahiru Musdapher⁸ have identified consistent obstacles like inadequate funding, corruption, and political manipulation in judicial appointments and removals as problems of judicial independence. Ola highlighted general service conditions and removal processes as primary hurdles⁹. Ononye, Oguekwe, and Oguekwe emphasized budgetary constraints and political influence as factors undermining judicial authority¹⁰.

This research categorizes these systemic problems into Political Interference: Manipulation of appointments and removals; funding and

4, *African J. Crim. and Justice Studies*. Available At [Http://Didgitalscholarship.Tsu.Edu/Ajcjs/Vol9/Iss1/4](http://Didgitalscholarship.Tsu.Edu/Ajcjs/Vol9/Iss1/4) Accessed 17th November, 2024

⁸ D. Musdapher 'Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy' (Nigerian Institute of Advanced Studies, Lagos 2011) 1-36

⁹ F Ola 'An In Dependent Judicial System In Nigeria: The Challenges' 2016 Available At <https://www.Linkedin.Com> Accessed On 21 December, 2024. S. Sylvester, 'Challenges of Judicial Independence in Nigeria'. (September, 2009) 8(2) *University of Jos Law Journal*, 8

¹⁰ UI Ononye, UD Oguekwe, & AU Oguekwe, 'Independence Of The Judiciary: The Nigerian Experience' (2020) *Journal of Public and Private Law*, UNIZIK 10 P 61-76. <http://www.Ezenwaohaetorc.Org> accessed On The 13 June, 2024

resources: budgetary constraints and poor working environments; personal security: threats, intimidation, and lack of welfare and institutional integrity: corruption and security of tenure. Together, these factors create an environment where judicial independence is severely compromised, demanding urgent reforms to safeguard the judiciary's constitutionally guaranteed autonomy and integrity.

4.1 LEGAL FRAMEWORKS ON JUDICIAL INDEPENDENCE IN NIGERIA

(a) Constitution of the Federal Republic of Nigeria

The Constitution of the Federal Republic of Nigeria is the supreme law from which all governmental powers derive. It serves as the ultimate barometer for all statutes; any law inconsistent with its provisions is null and void¹¹. The Constitution recognizes the Judiciary as a vital government organ, defines its powers, and expressly forbids the legislature from ousting court jurisdiction¹². Furthermore, it maintains a hierarchical court system to support judicial precedent.

To safeguard independence, the Constitution provides for financial autonomy, mandating that judges' salaries and recurrent expenditures be paid from the Consolidated Revenue Fund. However, implementation challenges persist, particularly at the state level. The National Judicial Council (NJC) is established to oversee appointments, discipline, and service conditions, effectively limiting executive control over judicial officers¹³.

¹¹ A.G Abia & Ors V A.G Federation & Ors (2006) Legalpedia (Sc) 51151; Section 1 (1), (2) & (3) Of The Constitution

¹² Constitution Of Nigeria, Section 4 (8)

¹³ Constitution Of Nigeria, S. 84 (1), (2), (4), (7), And 121 (3), S 84 (7), S153 (1), *Elelu Habeeb V A. G Federation* (2012) *Lpelr-Sc*

Collectively, constitutional sections protect judicial appointments, retirement age, and remuneration from external influence. This financial and administrative autonomy is critical to preventing subservience to other government branches. The Supreme Court has further reinforced this by emphasizing that while some objectives may be non-justiciable, government authorities must adhere to these foundational principles to maintain a fair legal system¹⁴.

(b) UN Basic Principles on the Independence of the Judiciary

To ensure global judicial independence, the UN General Assembly adopted the Basic Principles on the Independence of the Judiciary in 1985. These principles guide member states in embedding judicial protections into their constitutions and national practices¹⁵.

The principles mandate that the judiciary remains impartial and free from external pressure, threats, or interference. Key requirements include the provision that only the judiciary may decide cases, and its decisions cannot be revised by non-judicial bodies and governments must provide adequate funding to ensure the court system functions effectively. It accords the Judges freedom of expression and association, provided these actions maintain the dignity of their office. To maintain integrity, the UN framework outlines specific standards for the judicial workforce to include merit-based appointments; security of tenure; and immunity¹⁶

Complaints against the judiciary must be handled through fair, confidential, and expedited procedures. A judge can only be suspended

¹⁴ s 1, 4, 6, 17, 84, 121, 153, 291, and 292 Constitution of Nigeria,

¹⁵ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26th August -6th of September,1985 and endorsed by General Assembly Resolutions 40/30 of 29th November,1985 and 40/146 of 3rd of December,1985

¹⁶ Un Basic Principles on the Independence of the Judiciary. Clauses 1- 16

or removed for incapacity or gross misconduct. Such decisions must adhere to established conduct standards and remain subject to independent review.

(c) The Bangalore Principles of Judicial Conduct 2002

The Judicial Group on Strengthening Judicial Integrity first met at the UN Office in Vienna in April 2000, including Nigeria's Chief Justice Muhammad Lawal Uwais. In 2001, the Group drafted the Bangalore Principles of Judicial Conduct, later endorsed by UN Economic and Social Council Resolution 2006/23 to promote ethical standards globally.

These principles build on existing UN norms, emphasizing that a competent, independent, and impartial judiciary is vital for protecting human rights and maintaining public trust. The principles outline six core values: independence, impartiality, integrity, propriety, equality, and competence and diligence. Independence is highlighted as a fundamental prerequisite for the rule of law and fair trials, requiring judges to perform their duties free from any external influence, pressure, or interference.

(d) Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2003

These principles were proclaimed by the African Commission on Human and Peoples' Rights. Clause 4 states that "the independence of judicial bodies and judicial officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies, and authorities." These principles are similar to the UN's basic principles on judicial independence. However, paragraph (g) specifically emphasizes that judicial bodies should be separate and distinct from the executive branch, in recognition of the doctrine of separation of powers.

The clause further stipulates that the appointment of judicial officers shall be transparent and accountable. It encourages establishing an independent body to safeguard the judiciary's independence and impartiality. The criteria for appointment include the integrity, qualification, and capability of the candidate. It is mandatory that tenure, adequate remuneration, pension, housing, transport, physical and social security conditions, age of retirement, disciplinary and recourse mechanisms, and other necessary conditions of service for judicial officers be prescribed and guaranteed by law.

(e) Commonwealth Principles on the Accountability of, and the Relationship between, the Three Branches of Government 2003

These principles were adopted by the Commonwealth Heads of Government at their 2003 meeting in Abuja with the primary objective of providing an effective framework for the Commonwealth's fundamental goals concerning governments, parliaments, and judiciaries. The principles not only recognize the reciprocal relationship between parliaments and judiciaries but also emphasize the independence of both parliamentarians and judicial bodies¹⁷. They acknowledge judicial independence as essential to upholding the rule of law, fostering public confidence, and ensuring the fair administration of justice.

To achieve these aims, it was declared that judicial appointments should adhere to clearly defined criteria and a publicly disclosed process that guarantees equal opportunity for all eligible candidates, prioritizing merit over trivial considerations. Adequate funding must be provided for the judiciary to prevent any hindrance to its independence. Additionally, the principles assert that the relationship between the executive and judiciary must remain uncompromised, and judicial

¹⁷ Commonwealth Principles on the Accountability of, and the Relationship Between, The three Branches Of Government 2003. Item Iii and Iv

officers should not face arbitrary punishment except as prescribed by established laws or rules. Furthermore, the proceedings of the Superior Courts should be published and made accessible to the public¹⁸.

(f) International Bar Association Minimum Standards of Judicial Independence

The International Bar Association (IBA) adopted standards for judicial independence in 1982 to guide and consolidate frameworks among its member nations. These standards address the judiciary's relationship with the executive¹⁹ and legislature²⁰, appointment terms, and the interplay between courts and the press.

The standards emphasize individual and substantive independence, ensuring judges perform duties free from external pressure or threats. As an institution, the judiciary requires autonomy over internal affairs. While minimal intervention is allowed in discipline, complaints should be handled by an independent body, and removal powers must rest with a judicial tribunal or neutral body.

Key provisions include Executive Duties to ensure that judgments are executed, and citizens must not be tried before ad hoc tribunals. It sets a legislative Limits by prohibiting the enactment of retrospective laws that diminish court power. It provides tenure of judges to be generally for life to ensure security of position. To give room for accountability, heads of courts may manage administrative transfers, independence does not exempt judges from public accountability. It further addresses

¹⁸ Commonwealth Principles on the Accountability of, and the Relationship between, The Three Branches of Government 2003. Item iv (A) – (D)

¹⁹ IBA Minimum Standards of Judicial Independence; S A Subsections 1-18, Section B Subsections 19-21, s C Ss 22-32

²⁰ IBA Minimum Standards of Judicial Independence. Section E Subsections 32-34; Sections G & H Subsections 43-46 of IBA

Judicial ethics in which judges must avoid political affiliations or personal influences that create a suspicion of bias, and the press is urged to exercise restraint regarding pending cases.

(g) The Judicial Office Holders (Salaries and Allowances etc) Act 2024

The Judicial Office Holders (Salaries and Allowances, etc.) Act 2024, signed by President Bola Tinubu on 9 August 2024, amends the 2002 Act (last reviewed 2008) by deleting section 2(b) and related provisions, introducing higher salaries, allowances, and benefits for judicial officers to curb corruption.

It targets superior court judges under section 318 of the 1999 Constitution, excluding state lower court judges, and tasks the Revenue Mobilisation Allocation and Fiscal Commission with enforcement and penalties. Enhanced remuneration aims to bolster judicial independence and reduce corruption.

(h) Federal Judicial Officers (Administration of Pensions) Act, 2007

Commencing on April 16, 2007, this six-section Act transfers the administration and payment of pensions for federal judicial officers from the Office of the Head of Service to the National Judicial Council (NJC)²¹.

The Act remains effective provided it aligns with section 291 of the 1999 Constitution. Key operational requirements include retirement age which is determined by the age documented upon their initial entry into the civil or judicial service. Officers must notify the NJC of their intent to retire at least three months in advance. Under the Act, Judicial

²¹Judicial Office Holders (Salaries and Allowances, Etc.) Act 2024, s 1

pensions are integrated into the annual budget submitted to the National Assembly to ensure consistent funding²².

The Act specifically excludes judges of State High Courts, State Sharia Courts of Appeal, and State Customary Courts of Appeal. Collectively, these measures centralize pension management under the NJC to enhance administrative efficiency and maintain constitutional oversight for federal judicial officers.

(i) Pension Rights of Judges Act Cap P5, Laws of the Federation, 2004

It was originally a 1985 Decree; this law was amended in 1991 and enacted as an Act in 2004 to regulate the pension rights of the Chief Justice of Nigeria (CJN) and other judicial officers.

The Act establishes specific financial benefits based on rank and years of service. For Chief Justice of Nigeria (CJN), upon retirement under pensionable circumstances, the CJN receives a life pension equal to their final annual salary, consolidated allowances, and the salaries of four domestic staff. This applies regardless of whether they served the standard fifteen-year periods. Officers who serve at least fifteen years are entitled to a similar rate, including their final salary, allowances, and domestic staff benefits. Officers with fewer than fifteen years of service who do not otherwise qualify for a full pension have their benefits calculated proportionally under the Pension Act, based on their actual years served.

These provisions ensure that judicial leadership and long-serving officers maintain financial security reflective of their final earnings.

²² Federal Judicial Officers (Administration of Pensions) Act, 2007, Ss 3, 4, And 5

Section 2(2) of the Act was interpreted in *Hon Justice James Aigbuloko Oyakhirome v Edo State Pension Board* (2021)²³, affirming pension entitlements under the Act and the Pension Reform Act 2014, which exempts judicial officers from general schemes. Section 3 grants life pensions to incapacitated officers not qualifying elsewhere, while Section 4 adopts the Constitution's section 318 definition of judicial officers.

(j) NJC Guidelines and Procedural Rules

The FJSC, SJSC, and FCT JSC must adhere to NJC rules when recommending judicial officers. Federal Heads of Court notify the Chief Justice/FJSC Chairman, copying the NJC Secretary, who assesses financial capacity. For State Chief Judges, the Governor is notified. The NJC Chairman then communicates the approved number of appointments based on these budgetary reviews²⁴. Following NJC clearance, the relevant Commission calls for expressions of interest via public notices. It seeks nominations from, Heads of Courts and Judicial Officers. The NBA President (Federal) or Branch Chairmen (State). Individuals with personal or professional knowledge of potential candidates²⁵.

The Council sets deadlines and creates a provisional shortlist typically double the number of vacancies. This list is distributed to serving/retired court officers, NBA branches, and Commission members for suitability comments. The Chairman presents the shortlist for approval, evaluating candidates on performance: quality of judgments in at least six contested cases over five years; legal knowledge and seniority. review of "form a"

²³ *Hon Justice James Aigbuloko Oyakhirome V Edo State Pension Board & 1 Or*, Suit No: NICN/Ben/09/2021 (National Industrial Court, Benin Division, 28 September 2021)

²⁴ NJC Guidelines and Procedural Rules 1, 2 Sub. 1, 2a & B, 3, 4, 5 And 6

²⁵ NJC Guidelines and Procedural Rules 3 Sub. 1,2,3,4 I-V, 5, 6,7

and memoranda regarding character, ethics, and honesty. adherence to geographical spread without compromising independence.²⁶

Unsuccessful interviewees are excluded. The Chairman then submits a memorandum to the NJC confirming guideline compliance and verifying that the executive has provided essential facilities, such as accommodation, vehicles, and security.

(k) Code of Conduct Bureau and Tribunal Act

The Code of Conduct Bureau (CCB), established under section 1 of the Code of Conduct Bureau Act, maintains morality standards for public officers, including judicial holders. It receives and examines asset declarations, handles complaints (referring to the Tribunal unless admitted in writing), monitors activities per the Second Schedule para 5, and prohibits foreign accounts, bribery, abuse of office, and incompatible associations. The CCB regulates integrity and accountability in public service²⁷.

(l) Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria 2016

The Code regulates judicial conduct to ensure high standards of behaviour, fostering the integrity and respect necessary for the judiciary. Its preamble emphasizes that an independent and respectable judiciary is vital for justice in Nigeria's democracy. The Code applies to all judicial officers; violations constitute misconduct subject to legal sanctions.

²⁶ Rule 3 Sub. 1,2,3,4 I-V, 5, 6,7

²⁶Rule 4 Sub 1,2, 3, 4, And 5

²⁷ Code of Conduct Bureau Act, S 2 And 3.

Key regulatory areas are professional integrity which entails fidelity to the constitution, propriety in appearance, and maintaining high standards in administrative duties. It also contains rule against conflict of interest: regulations on personal and fiduciary financial interests, disqualification rules, and the prohibition of gifts, loans, or bribes, restrictions on public controversies, comments on pending cases, and guidelines for travel and publications. There is Strict limits on family, social, and political relationships to prevent external influence.

The cumulative goal of these rules is to dignify the judicial office. A critical focus is the prohibition of close relationships with politicians extending even to a judge's relatives to safeguard against control. Ultimately, the Code exists to protect the fundamental principle of judicial independence.

m) Judicial Discipline (Prescribed Procedures) Regulations 2023

Disciplinary action is vital for safeguarding judicial independence. To prevent executive interference and uphold the separation of powers, the Constitution assigns the disciplinary role to the National Judicial Council (NJC). In 2023, the NJC formulated new regulations, revoking the 2014 version, to serve as the legal framework for handling misconduct.

These regulations apply to all judicial offices and officers created by the Constitution or under the Council's supervision. They establish a rigorous process for initiating complaints, hearing petitions, and making final determinations.

The regulation provides that meetings may be require by at least one-third of the members and must be presided over by the Chairman. Decisions can be made without a meeting unless a member requests a

formal deferral. The NJC has the prerogative to summon public officers and demand official documents relevant to disciplinary matters. Council members enjoy immunity from lawsuits regarding acts, words, or omissions performed during official assignments.

This regulatory framework aims to utilize discipline as a strategic tool for strengthening the judiciary and sustaining its independence.²⁸

n) National Judicial Institute (NJI) Policy 2017

The Institute is established under section 2(2) of its enabling Act, the 2017 NJI Policy focuses on judicial independence, ethics, case management, and the efficient disposal of corruption and economic crimes. It positions judicial officers as the system's mainstay, asserting that true independence requires a transparent, merit-based appointment process that prioritizes skills over mere seniority²⁹.

Core Pillars of the Policy are Discipline and Confidentiality which requires that disciplinary actions must be fair and handled with strict confidentiality, specifically avoiding premature media publication. It provides for impartial administration where Court management must remain transparent and unbiased to ensure the effective administration of justice. It recognizes the institutional autonomy and Judicial independence is treated as sacrosanct. The judiciary must resist external influences, maintain trial fairness, and prudently manage public funds to ensure accountability. The policy encourages a healthy relationship with other branches of government while strictly prohibiting lobbying for favours and upholding the separation of powers³⁰.

²⁸ Art 5

²⁹ Items 2.1 of The Policy Document

³⁰ Item 7.0 of The Policy Document

Ultimately, the 2017 framework provides the essential mechanisms such as transparent appointments, fair discipline, and financial prudence that is needed to safeguard the Nigerian judiciary's independence.

4.2 Institutional Frameworks on Judicial Independence in Nigeria

Nigeria has established various institutional structures to ensure the judiciary operates without interference from the executive or legislature. Historically, the executive controlled judicial appointments, funding, and removals. Today, these affairs are managed by specialized bodies including the State Judicial Service Commission, the Federal Judicial Service Commission, and the National Judicial Council (NJC).

These institutions serve to insulate the judiciary from other government branches, except in specific constitutional instances required for checks and balances. By removing judicial management from the direct control of the executive and legislature, these frameworks prevent judicial autocracy while protecting the courts from political whims. The following sections detail the key institutions essential to maintaining this independence.

(a) National Judicial Council (NJC)

The National Judicial Council was first proposed during the 1994 National Constitutional Conference led by Justice A. G. Karibi-Whyte. Although the concept was included in the 1995 draft constitution, it faced significant debate; while the Supreme Court and NBA supported its creation, groups like the Alliance for Democracy and Northern Elders Forum opposed it. Ultimately, the Constitution Debate Coordinating Committee adopted the proposal, leading to the Council's formal establishment under Section 153(1) of the 1999 Constitution. Its primary mandate is to preserve the sanctity of the judiciary and ensure independence driven by integrity.

The National Judicial Council comprises the Chairman and twenty-three other members, including the Chief Justice of Nigeria (Chairman); the next most senior Supreme Court Justice (Deputy Chairman); the President of the Court of Appeal; five retired Justices; appointed member among the Chief Judges of federal and state courts; members of the Nigerian Bar Association; and non-legal practitioners known for their integrity. The Chief Justice appoints most members, except for non-legal practitioners, who are appointed by the Chief Justice based on their integrity³¹.

Under Paragraph 21 of the Third Schedule of the Constitution, the NJC holds the power to recommend the appointment and removal of federal and state judicial officers to the President or Governors. Beyond personnel roles, the Council exercises disciplinary control and manages judicial funding to ensure institutional autonomy. It further advises the executive on judicial policy while overseeing its own internal administration. Despite debates regarding its effect on federalism and the complexities of fund disbursement, the NJC's core mission remains the maintenance of a financially independent, competent, and integrity-driven judiciary³².

To uphold its mandate, the NJC utilizes specialized committees to oversee interviews, performance evaluations, budget monitoring, and judicial ethics. These mechanisms ensure the recommendation of qualified candidates and the enforcement of strict discipline.

The Council actively maintains judicial integrity by imposing sanctions, such as suspensions and mandatory retirements, for misconduct.

³¹Constitution of The Federal Republic of Nigeria, Paragraph 20 of The Third Schedule

³²Constitution of The Federal Republic of Nigeria, Paragraph 21 A (Ii), C (Ii); B, C, D, E, F, of The Third Schedule

Furthermore, landmark legal cases have consistently affirmed the NJC's constitutional independence and protected its functions from external interference³³.

o) Federal Judicial Service Commission (FJSC)

The Commission is established under Section 153 of the 1999 Constitution, the FJSC is vital for federal judicial independence. Its origins date back to the 1960 Independence Constitution, which created a dual judicial structure. Though sidelined under the 1963 Constitution in favour of direct executive appointments, the Commission was revived and refined by the 1979 Constitution to balance power. The 1999 Constitution retains the established membership structure, which now includes the Chief Justice of Nigeria (Chairman); the President of the Court of Appeal; the Attorney-General of the Federation; the Chief Judge of the Federal High Court and President of the National Industrial Court and two legal practitioners (minimum 15 years' experience) and two non-lawyers of high integrity, all appointed by the President. This diverse composition ensures that federal judicial oversight remains a shared responsibility rather than an executive prerogative.

The Federal Judicial Service Commission (FJSC) holds primary advisory and administrative powers over the federal judiciary. Under Paragraph 13 of the Third Schedule, its key functions include: Advising the NJC on nominations for top judicial roles, including the Chief Justice, Supreme Court Justices, and the heads of the Court of Appeal, Federal High Court, and National Industrial Court. It also recommends the removal of these officers. Exercising direct authority to appoint,

³³ JA Ajakaiye. 'The Constitutional Role of The National Judicial Council About Collection and Disbursement Of Funds To The Judiciaries: Problems And Prospects' (Paper Presented At All Nigeria Judges' Conference, Abuja 2001. (Spectrum Law Series, Ibadan 2002) 131 At 142. K. Okenyodo, 'Judicial Oversight in Nigeria; Challenges And Opportunities' (Friedrich-Ebert-Stiftung, 2018) p 12

dismiss, and discipline Chief Registrars and supporting staff within federal courts and the commission itself and recommending the appointment of the NJC Secretary to the Council. By managing both senior judicial recommendations and essential administrative personnel, the FJSC ensures the federal courts remain professionally staffed and independent³⁴.

p) Judicial Service Committee of the FCT

The committee is created under **Section 304 of the 1999 Constitution**, the Judicial Service Committee of the Federal Capital Territory (FCT) manages the territory's courts, which function similarly to state-level courts. The Committee is chaired by the Chief Judge of the FCT. Other members include: the Attorney-General of the Federation; the Grand Kadi (Sharia Court of Appeal) and President (Customary Court of Appeal) of the FCT; a legal practitioner (minimum 12 years' experience) and a non-lawyer of high integrity appointed by the President.

Mandate and Powers of the committee include judicial recommendations by nominating candidates to the NJC for appointment as the Chief Judge, High Court Judges, Kadis, and Customary Court Judges within the FCT. It also recommends their removal. The Committee holds direct power to appoint, dismiss, and discipline Chief Registrars and all support staff for FCT courts. It exercises full disciplinary control over Magistrates, District Court judges, Area Court members, and all staff of the FCT judicial service not specifically named in the Constitution.

³⁴ 1999 Constitution, S 153(1) and Paragraph 12, Part 1; Para 13(A) & (B), Part 1 of the Third Schedule

q) State Judicial Service Commission (SJSC)

Nigeria's dual judicial system necessitates parallel bodies at the federal and state levels³⁵. Historically, state judicial staff were managed by the executive-led Public Service Commission. This changed with the 1979 Constitution³⁶, which established the State Judicial Service Commission to insulate the judiciary from executive control. This status was reinforced by the **1999 Constitution**³⁷, establishing the SJSC as an independent executive body.

The Commission is chaired by the State Chief Judge. Other members include the State Attorney-General; the Grand Kadi (Sharia Court of Appeal) and President (Customary Court of Appeal), where applicable two legal practitioners (minimum 10 years' experience) and two non-lawyers of unquestionable integrity appointed by the Governor. Appointed members serve a five-year tenure³⁸.

The State Judicial Service Commission's powers mirror those of the FCT Judicial Service Committee but apply to state-level courts: It nominates candidates to the NJC for appointment or removal of the Chief Judge, High Court Judges, and Kadis of the Sharia or Customary Courts of Appeal. It holds exclusive power to appoint, dismiss, and discipline Magistrates, judges of lower state courts, Chief Registrars, and all State Judicial Service Commission staff. As affirmed by the Supreme Court, the Commission operates autonomously and is not subject to the direction or control of any other authority or person³⁹.

³⁵ O. A. Okoye, 'Law in Practice in Nigeria -Professional Ethics and Skills (Snapp Press Nigeria Ltd, 2015) p 345

³⁶ Constitution of Nigeria, s 178 (1) of 1979 established the State Judicial Service Commission

³⁷ s 197 (1), And Paragraph 5, Part II, Third Schedule

³⁸ Paragraph 5, Part II, Third Schedule

³⁹ *Kwara State Judicial Service Commission & Ors v Miss Yetunde Zainab Tolani*. Suit No Sc/63/2010 Delivered by the Supreme Court on the 1st of February 2019

(e) The Nigerian Bar Association (NBA)

The Nigerian Bar Association is the umbrella body for all qualified lawyers in Nigeria, dedicated to promoting the rule of law, human rights, and judicial independence. With 125 branches nationwide, it serves as a critical watchdog for the legal system.

The NBA has consistently resisted executive overreach. A prominent example is its nationwide court boycott following the arbitrary suspension of Chief Justice Walter Onnoghen. Beyond protests, the Bar provides institutional support, such as its 1998 memorandum which was instrumental in establishing the National Judicial Council (NJC) despite heavy opposition.

While the relationship between the Bar and Bench can be adversarial, the NBA remains a statutory member of key bodies like the NJC, FJSC, and SJSC. Individual members also leverage litigation to protect the judiciary. Olisa Agbakoba successfully sued the federal government to agitate for financial autonomy for the judiciary⁴⁰ while other Members have challenged state governments, such as in Oyo State, over unconstitutional compositions of Judicial Service Commissions⁴¹.

By setting benchmarks for recruitment and discipline, a fully harnessed NBA acts as a vital oversight mechanism, ensuring that judicial appointments remain merit-based and free from political interference.

⁴⁰ Agbakoba V Fg & Ors Fhc/Abj/Cs/63/2013

⁴¹ ⁴¹Adebayo Akinlade Esq V. Governor Of Oyo State & 3 Ors Suit No Fhc/Abj/Cs/1660/2023 Filed In November 2023 Challenging The Composition Of Oyo State Judicial Service Commission By Governor Seyi Makinde

f) International Bar Association (IBA)

Founded in 1947, the IBA is a global assembly for legal professionals, bar associations, and law societies. It serves as a leading voice for the rule of law and international legal reform, working to strengthen the administration of justice worldwide.

The IBA promotes judicial independence through its "Minimum Standards of Judicial Independence" and the Judicial Integrity Initiative (2015), which investigates and combats judicial corruption. It created the Gender Disparity Initiative which highlights significant imbalances in the judiciary, noting that women hold only 33% of senior judicial roles globally. Through its various divisions including the Legal Practice and Public and Professional Divisions, the IBA conducts awareness campaigns and calls for reform in member states to protect judicial freedom.

The Association utilizes disciplinary studies and longitudinal research to help member nations maintain high ethical standards and eliminate systemic barriers within their judiciaries.

5. Conclusion and Way Forward

Judicial independence in Nigeria remains more aspirational than realized. Despite constitutional safeguards, political manipulation of appointments, chronic underfunding, and corruption continue to erode judicial autonomy. These systemic failures undermine court credibility and public trust, necessitating comprehensive restructuring rather than minor reforms. Ultimately, a fearless judiciary is essential for protecting rights and ensuring the survival of democracy.

6. Critical Recommendations:

- i. **Enforceable Constitutional Autonomy:** The guarantee of judicial independence must be moved from the non-justiciable

Chapter II to a fully enforceable (justiciable) operative section.

This empowers the judiciary to legally defend its own autonomy.

- ii. **De-politicized Appointments:** Overhaul the **State Judicial Service Commissions** to reduce executive influence. The National Assembly should mandate a merit-based, objective points system for appointments to minimize political bias.
- iii. **Domestication of Global Standards:** Prioritize the legal implementation of international frameworks, such as the **UN Basic Principles** and **Bangalore Principles**, to provide external benchmarks for conduct.
- iv. **Automated Financial Independence:** Amend the Constitution to ensure funds charged to the **Consolidated Revenue Fund** are released directly to the **NJC** and **SJSCs** via automated quarterly releases, bypassing executive intervention.
- v. **Strengthening Oversight:** Review the leadership selection process within the **NJC** to insulate it from internal politics and executive pressure, ensuring more effective judge accountability.