

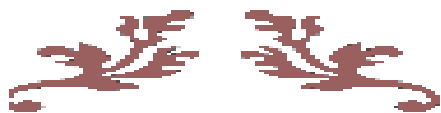
Accountability Brief Financial Autonomy of the Judiciary

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Rule of Law & Empowerment Initiative (also known as Partners West Africa Nigeria)
Number 46 Mike Akhigbe Way, Jabi, Abuja.
Phone: +234 809 125 7245.

FINANCIAL AUTONOMY OF THE JUDICIARY



Executive Summary

The judiciary is the third arm of government, saddled with the responsibility of adjudication of disputes between citizens amongst themselves or the various organs of government, agencies and institutions. It is said to be the last hope of the common man and maintains an equitable stance in the society free from any bias or other encumbrances to the fulfilment of its roles and responsibilities.

The independence of the judiciary is a vital tool that ensures a check and balance within the government structure and promotes no abuse of power by either of the branches. For this responsibility to be adequately achieved, it is important for the citizenry to be assured that the judiciary oversees discharging its duties without fear or favour.



Quote

"Judicial finance should be exercised free of interference by agents of the executive branch of government, in the same manner, that the executive and legislative branches administer the funds appropriated for their internal operations."¹

¹ <https://core.ac.uk/download/pdf/216747643.pdf> (Accessed 12/01/2022)

Background

In Nigeria, there are three organs of government, namely, the Legislative organ, the Executive organ and the Judicial organ. The judiciary is the third arm of the government, which administers justice according to Law. The judicial component of government comprises the courts, the judges, magistrates, adjudicators and other support personnel who help run the system.² Each organ of government works independently of the others to provide the necessary oversight and ensure that the doctrine of separation of powers is absolute.

Separation of powers refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions to prevent the concentration of power on anyone organ and provide for checks and balances.³ The doctrine should apply to the discharge of the duties of each organ of government to ensure that they perform it free from interference from any of the other organs. Interference from any other organ of government over another organ can manifest in several forms and diminish the public perception of the independence of the organ and a lack of confidence in that organ. In Nigeria, the judiciary is the organ of government that interface daily with the citizenry and ought to be seen as just and fair in all its decisions as actions can be instituted by a citizen against the government or its agencies and institutions or by government agencies and institutions amongst itself. The independence of the

² https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_5.1_RoleOfTheJudiciary.pdf

https://www.parliament.qld.gov.au/documents/explore/education/factsheets/Factsheet_5.1_RoleOfTheJudiciary.pdf

³ <https://www.ncsl.org/research/about-state-legislatures/separation-of-powers-an-overview.aspx>

judiciary contributes to building public confidence and trust. One of the significant obstacles in ensuring judicial independence in Nigeria is the lack of financial autonomy. The judiciary in the current financial structure is answerable to the executive and legislative arms when seeking approval of their yearly budgetary allocation.

Judicial fiscal independence is essential for preserving the doctrine of separation of powers. According to the principles underlying the separation of powers in the Nigerian constitutional system, unless it is to be a subordinate branch of government, a status contrary to the provisions of most state constitutions, the judiciary must possess either the express or implied power to preserve its integrity and perform its duties. Since the degree of financial support is a major, if not the determinative factor in the quality of justice, the use of inherent power to sustain and promote proper and necessary judicial functions can arguably be justified.⁴

Opinions on the financial autonomy of the judiciary

Over the years, the judiciary and other stakeholders have reiterated the fundamentals of ensuring its financial autonomy and how the lack of same affects the discharge of the responsibilities as contained in the provisions of section 6 of the 1999 Constitution of the Federal Republic Nigeria (as amended). Hon. Justice Mariam Aloma Muktar, the former Chief Justice of Nigeria, in her speech at the all Nigerian Judges Conference held in December 2013, suggested that an independent judiciary was in the interest of the entire country. It was time the Constitution provided for the independence of the judiciary, especially at the state level where state governors were in the habit of interfering with judicial activities.⁵ Agbakoba, a Senior Advocate of Nigeria, argued that *"the continued dependence of the judiciary on the executive arm of government for its budgeting and funds release is directly responsible for the present state of underfunding of the Judiciary, poor and inadequate judicial infrastructure, low morale among judicial personnel, alleged corruption in the judiciary, delays in the administration of justice and judicial service delivery, and generally low quality and poor out-put by the judiciary."*⁶ Furthermore, the Chief Justice of

Nigeria (CJN), Hon. Justice Tanko Muhammad, during the opening of the new legal year of the Supreme court on 23rd September 2019 in consideration of the financial autonomy of the judiciary, highlighted how it affects the independence of the judiciary and stated thus:

"Be that as it may, when we assess the judiciary from the financial perspective, how free can we say we are? The judiciary's annual budget is still a far cry from what it ought to be. The figure is stagnated for a long period or goes on a progressive decline. The only thing I can do at this juncture is to plead with all concerned to let us enjoy our independence holistically.⁷ If you say that I am independent, but in a way, whether I like it or not, I have to go cap in hand, asking for funds to run my office, then I have completely lost my independence. It is like saying a cow is free to graze about in the meadow while tying it firmly to a tree. Where is freedom? We don't pander to any whims and caprices. If there is any deity to be feared, it is the Almighty God."⁸

"The gross underfunding and neglect of the judiciary over the years have impacted negatively on the infrastructure and personnel within the system. To a large extent, it affects productivity, increases frustration, and deflates morale. That is certainly not a good omen at this stage of our nationhood. The Constitution provides for the separation of powers and independence of the three arms of government. I am using this medium to appeal to governments at all levels to free the judiciary from the financial bondage it has been subjected to over the years. Let it not just be said to be independent but should be seen as truly independent in words and actions. There should not be any strings attached. We would not like to negotiate our financial independence under any guise. Even as I speak now, some States Judiciaries are still having issues with their respective governments. A stitch in time will certainly save nine. Let the judiciary take its destiny in its hands."⁹

The position of the CJN is shared by legal scholars, practitioners and other stakeholders who keep emphasizing how the lack of financial autonomy of the judiciary is affecting the discharge of its duties and has

⁴ <https://core.ac.uk/download/pdf/216747643.pdf> (Accessed 14/04/2021 4:36)

⁵ <https://www.channelstv.com/2013/12/09/nigerias-judiciary-seeks-financial-autonomy/> (Accessed 13/01/2022)

⁶ <https://www.financialnigeria.com/achieving-judicial-and-legislative-financial-autonomy-in-the-states-blog-558.html> (Accessed 13/01/2022)

⁷ <https://www.thecable.ng/government-must-obey-court-orders-says-cjn> (Accessed 13/01/2022)

⁸ <https://tribuneonlineng.com/ensuring-our-judiciary-works/> (Accessed 13/01/2022)

⁹ <https://tribuneonlineng.com/judicial-financial-autonomy-a-way-forward-for-the-administration-of-justice-in-nigeria-3/>

led to a decay of the system in terms of infrastructure and other necessities that the other two organs of government freely enjoy. How can the public believe that the judiciary that adjudicates on matters brought to it against these other two organs will do so equitably when the Head of the Judiciary defends its annual budget like a ministry or other agency and not as the third arm of the government.

The process of funding the judiciary ought to be clear and laid down to ensure transparency and accountability. To recognize and protect the financial independence of the judiciary, the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for how the judiciary at all levels should be funded. Section 81(3) provides that *"Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the Federation shall be paid directly to the National Judicial Council for disbursement to the heads of the courts established for the Federation and the State under section 6 of this Constitution."*

Section 162(9) provides that *"Any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Councils for disbursement to the heads of courts established for the Federation and the States under section 6 of this Constitution."* Section 121 (3) provides that *"Any amount standing to the credit of the judiciary in the Consolidated Revenue Fund of the State shall be paid directly to the heads of the courts concerned."*

The above Constitutional provisions provide for the process of funding the judiciary and, if followed as prescribed, will increase the financial autonomy of the judiciary and ensure its independence.

Flowing from advocacy by various stakeholders on the necessity for autonomy, President Muhammadu Buhari, on 22nd May 2020, signed Executive Order 10, which seeks to enforce the implementation of the 4th Alteration to the Constitution and provide a practical framework for the legislative and judicial arms of state governments to have financial autonomy. The 4th Alteration, which amended Section 121(3) of the Constitution, provides that: "Any amount standing credit of the – a) House of Assembly of the state, and b) Judiciary, in the Consolidated Revenue Fund of the state shall be paid directly to the said bodies respectively; in the case of the judiciary, such amount shall be paid directly to the heads of the courts concerned." Prior to this amendment, Section 121(3) – and the similar provision contained in Section 81 of the Constitution, which relates to the federal government –

provided autonomy for only the judiciary.¹⁰ The decision by the President was welcomed by the stakeholders who viewed this as a light in the tunnel for judicial financial independence. However, lack of enforcement of the order has led to a manifestation of freedom of the judiciary in words and not in actions; and led to a nationwide strike by the Judiciary Staff Union of Nigeria (JUSUN) on 6th April 2021. The union directed all its members across the Federation to shut down all courts after the expiration of the 21-day ultimatum earlier given over the failure of the government to implement Executive Order 10. The union was demanding for financial autonomy of the judiciary, especially at the state level where the governors have deliberately denied the judiciary access to their fund in gross disregard to Section 121(3) of the 1999 Constitution and have insisted on the continuation of the strike until their demands are met.¹¹ The strike lasted for about two months leading to devastating effects for the public who could not access justice and increasing the backlog of cases for the already overburdened judiciary. It was suspended with a Memorandum of Action (MoA) signed between the Nigeria Governor's Forum (NGF) and the union on 20th May 2021. However, the JUSUN Chairman in his speech noted: "National Judicial Commission and Chief Justices prevailed on us to suspend the strike considering the suffering of the people. But if the implementation is not adequately followed, we may have no look for other options than to resume the strike."¹² One of the resolutions from the suspension of the strike was the setting up a five-person committee to monitor the implementation of the memorandum signed between the parties.¹³

So far, 24 out of the 36 states have complied with the Executive Order 10 and passed Laws to ensure the financial autonomy of the judiciary. This is an applaudable development, but the implementation of the provisions, needs to be encouraged. Furthermore, with the 2023 elections drawing near, and changes in the leadership of the government taking place, it is important for advocacy and implementation strategies

¹⁰ <http://www.financialnigeria.com/achieving-judicial-and-legislative-financial-autonomy-in-the-states-blog-558.html> (Accessed 14/04/2021 5:20)

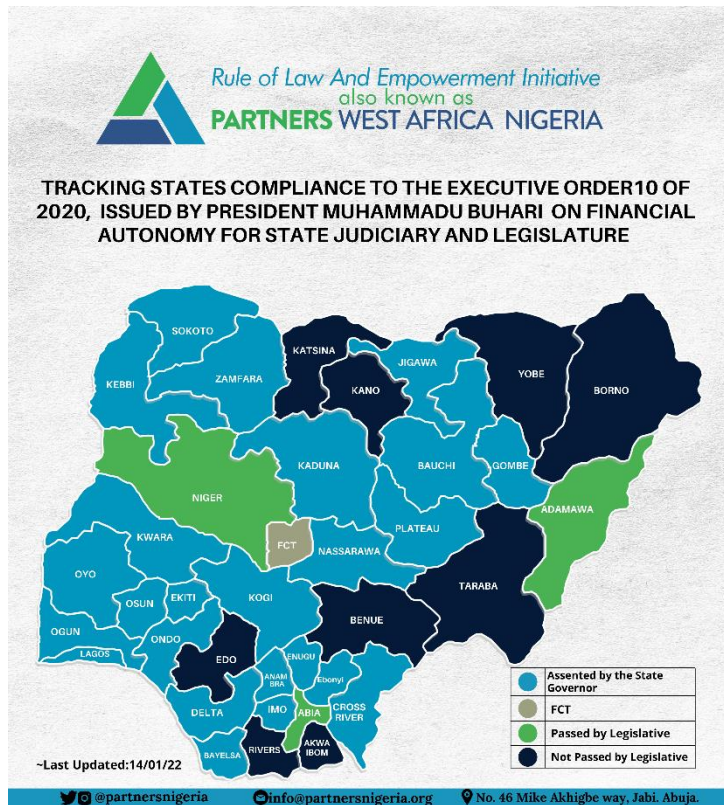
¹¹ <https://tribuneonlineng.com/fg-meets-striking-judicial-workers-today/> (Accessed 14/01/2021 5:40)

¹² <https://dailypost.ng/2021/06/10/we-may-resume-strike-again-jusun-warns/> (Accessed 13/01/2022)

¹³ <https://thenationonlineng.net/financial-autonomy-njc-constitutes-panel-to-monitor-36-governors-compliance/> (Accessed 13/01/2022)

to be agreed upon if the priorities of the incoming government do not align with that of the outgoing.

4. Lack of confidence in pronouncements made by the judiciary – the perception of the public on the judiciary will be impaired where it is considered to be financially submissive to the other organs of government and lead to judgments being given in support of any organ being viewed as biased even when the justice of the case was done.



Recommendations

1. Advocacy to states yet to pass the Law to encourage passage and begin implementation of the provisions of the Law
2. Develop a financial autonomy implementation structure that will be transparent and open to the public to ensure accountability.
3. Ensure there is adequate funding and legal provisions on budgetary allocation for the judiciary.

Conclusion

For there to be a vibrant democratic nation, it is crucial to guarantee a system of government that ensures the doctrine of separation of powers with appropriate checks and balances as provided for by the Constitution. Independence of the judiciary will guarantee dispensation of justice without fear or favour - adjudicating and arbitrating among individuals and institutions, subject only to the Law.

Effect of lack of financial autonomy of the judiciary

The following are effects of lack of financial autonomy of the judiciary:

1. Lack of independence of the judiciary – the judiciary will be considered reliant on the other two organs of government and therefore not independent.
2. Poor remuneration for staff and possible industrial actions – the judiciary will be limited in the ability to allocate and increase its staff's wages and benefits, which will leave them disgruntled and inefficient, leading to corrupt practices and possible strikes such as that undertaken in April 2021.
3. Lack of adequate infrastructure – the infrastructure of the judiciary, especially in the states, is in a deplorable state, with some courts sitting for prolonged hours without access to electricity and lawyers having no access to the courtrooms for insufficient seats.¹⁴

¹⁴ <https://guardian.ng/features/law/a-tale-of-nigerian-courts-infrastructure-deficit/> (Accessed 13/01/2022)

