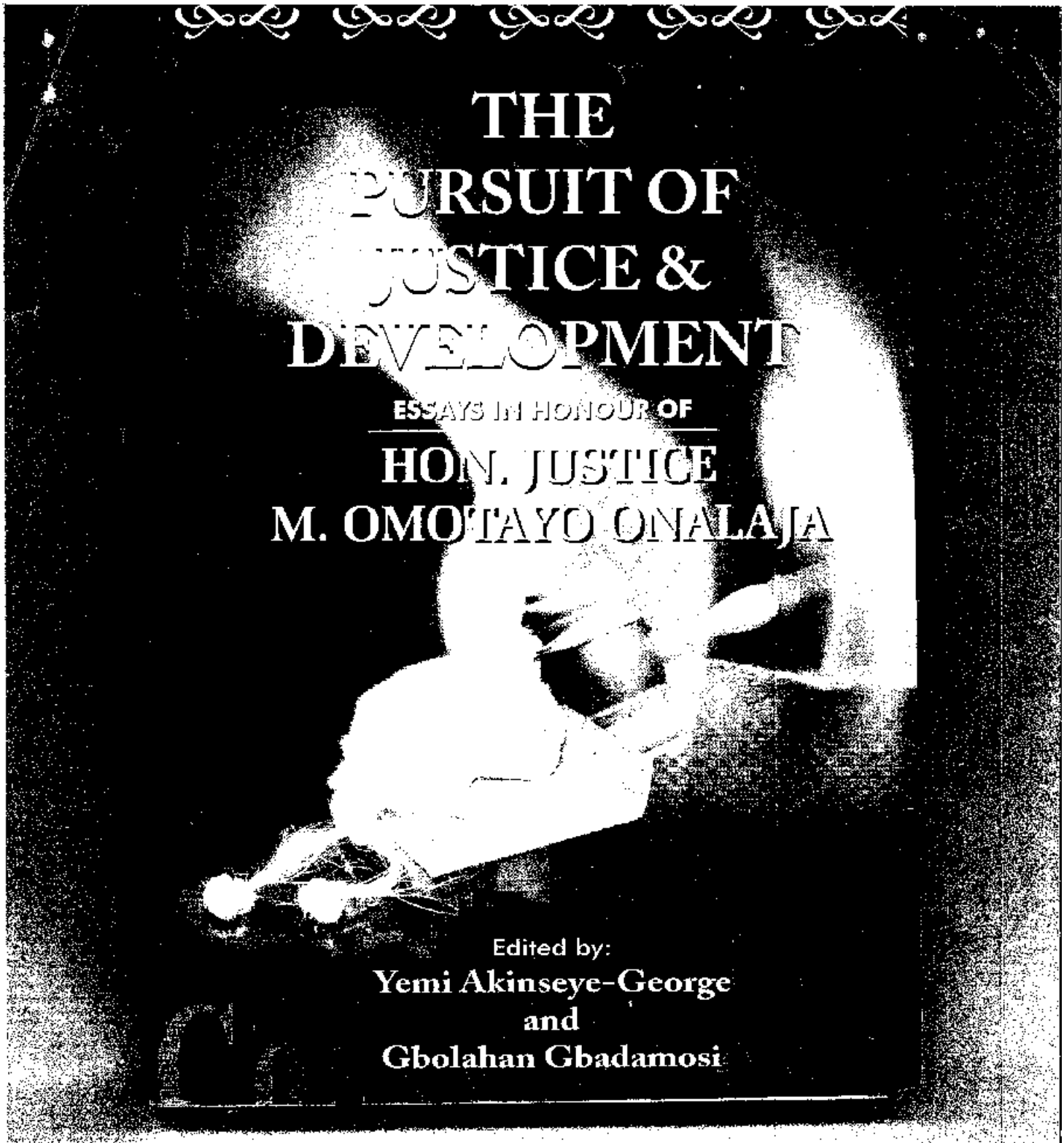
THE PURSUIT OF JUSTICE & DEVELOPMENT

ESSAYS IN HONOUR OF

HON. JUSTICE M. OMOTAYO ONALAJA



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CHAPTER TWO

SAFEGUARDING JUDICIAL INDEPENDENCE UNDER THE 1999 CONSTITUTION

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Introduction

It is definitely true that an independent, impartial and upright judiciary is basic to any constitutional democracy. The judiciary exists primarily to adjudicate disputes between the government and the governed, and also between individuals and the society. The judiciary is also saddled with the responsibility of ensuring orderliness and fairness in the society.

It is the judiciary that has the responsibility of ensuring that both the government and the governed act in accordance with the law. The judiciary evidently occupies a unique position in any constitutional democracy. It is the arm of government that is constitutionally empowered to nullify the acts of the executive and the legislature, which are *ultra vires* the constitution. In order to effectively discharge their sacred functions, it is imperative that judicial

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officers, especially judges of high and appellate jurisdictions, should be independent. They must also be persons of proven integrity.

Some of the external and internal safeguards necessary to sustain the independence and integrity of judicial officers are examined below. The objective is to test the efficacy or otherwise of the provisions of the 1999 Constitution vis-a-vis the sustenance of judicial independence. Where the provisions are found to be inadequate, appropriate suggestions will be proffered to redress identified lapses.

Definition And Background

One basic fact of life is that there is no universally-acceptable definition of words. It is trite that words are mere verbal recommendations, which depend mainly on the Speakers' abstraction. It is also trite that the objective of law is to ensure peace and order in the society. A lawless society will definitely experience anarchy. Unless there is machinery for resolving disputes and inhabitants of the society repose confidence in such machinery, disorder will likely prevail. The residents of such a machinery society will surely resort to self-help in order to redress actual or perceived wrongs committed against them. It is consequently necessary that those who dispense justice should enjoy; the confidence of litigants in order to avoid disputes being settled extra-legally; they must be men and women of integrity. They must also be incorruptible.

The need to appoint incorruptible judges, who will dispense justice fairly and fearlessly, finds support in the valedictory speech of Moses to the Israelites before they entered the Promised Land. He counselled thus:

> *"Appoint Judges and officials for each of your tribes in every town your Lord God is giving you, and they shall judge the people fairly. Do not pervert the cause of justice or show partiality. Do not accept a bribe for a bribe blinds the eyes of the wise and twists the words of the righteous. Follow justice and justice*

alone, so that you may live to possess the land your God is giving you."[1]

Judicial Independence

Independence of the judiciary is synonymous with freedom from interference or pressure from the executive and legislative arms of government, along with friends, relations and peers. Judicial independence deals with the state of mind and attitude of judicial officers to their sacred judicial functions. It also focuses on the relationship of judicial officers with others, especially the executive and the legislature. Judicial independence further connotes the ability of a judicial officer to decide a case on merit, without fear or favour. Judicial independence is associated with the resolution of disputes by judges, informed only by good conscience, understanding and interpretation of law, rather than settlement of disputes, by arbitrary injustice or political, physical and economic might.

The United Nations' declarations on basic principles on the independence of the judiciary stipulates that:

> *"The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law without any restrictions, improper influences, inducements, interferences, direct or indirect from any quarter for any reason.*[2]*"*

Judicial independence finds justification in the requirement of the separation of powers and the promotion of the rule of law. Equality before the law cannot exist where there is no rule of law. It is also futile to think of the rule of law without independent judiciary. The origin of judicial independence is traceable to the confrontation between King James I of England and Lord Justice Coke.

[1] Deuteronomy 16: v. 19 – 19. The Holy Bible. New International Version
[2] See Declaration A/RES/40/32 of November, 1985

The former had attempted to personally try some cases. The King had reasoned that he could do so because the law was based on reason. He was, however, challenged by Lord Justice Coke, thus:

> *"True it is, please your majesty that God has endowed your majesty with excellent science as well as great gifts of nature, but your majesty will allow me to say so with all reverence, that you are not learned in the laws of this your realm which is an art which requires long study and experience. The law is golden set-wand and measure to try causes of your majesty's subjects, and it is by that law that your majesty is protected in safety and peace."*[3]

The above confrontation heralded the emergence of the judiciary as a separate and independent arm of government in many nations. The concept of judicial independence is evidently pervasive in its effect. It is now the acid test for distinguishing between humanitarian democracy and dictatorship. The Chief Justice of Nigeria, Hon. Justice M. L. Uwais, rightly observes that:

> *"The Declaration of Independence of the United States of America, for example, listed as one of the grievances of the American Colonists against King George III the fact that "**He made judges dependent on his will alone, for the tenure of their offices and the amount of payment of their salaries**". It was this experience that made James Madison in' drafting amendment to the United States Constitution, which became the Bill of Rights of that country to assert*

[3] Denning, *What Next in the Law?* London, Butterworths (1982) p. 311 - 312

(i) *Independent tribunals of justice will consider themselves in a peculiar manner the guardians of these rights, ' they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the Declaration of Rights."*[4]

Judicial independence first found written expression in the American Constitution. This resulted from the efforts of the authors of the American Constitution who gathered in Philadelphia in 1787. It was their lot to specifically provide in Chapter III of the document for the judiciary as a separate arm of the government. As an off-shoot of this government was the new phrase, "The independence of the judiciary which is base standard for any Constitutional Democracy".

It suffices to state that judicial independence also finds written expression in the 1999 Constitution of the Federal Republic of Nigeria. Under Section 17(E), "the independence, impartiality and integrity of courts and easy accessibility thereto shall be secured and maintained". Section 36(1) further provides that, in the determination of civil rights and obligations, a litigant is entitled to fair hearing by a court or tribunal established by law and constituted in such manner as to secure its independence and impartiality.

Judicial Integrity

Judicial integrity connotes the respect which citizens have for judicial officers and judicial decisions. Integrity means adherence to truth, soundness, uprightness and purity. The strength of the judiciary lies in the command it has over the hearts and minds of men and women. Corruption and integrity are strange fellows. A corrupt judiciary will definitely lack integrity and respect.

[4] Keynote address delivered at the Judicial Independence Workshop. Hosted by the National Centre for State Courts Abuja on 29/01/2003 at p. 20.

Respect for, and dignity of, the judiciary do not suddenly emerge. They grow. The growth is steady. They flourish only when judges are, and are perceived by the public to be, independent in the fullest sense of the word. As rightly observed:

> *"It is in the court and not the legislature that our citizens primarily feel the keen cutting edge of the Law. If they have respect for the work of the courts, their respect for the law will survive the shortcomings of every other branch of government."*[5]

Lord Denning, of blessed memory, had also contended, that "judges should be beyond reproach and scorn. They should not be persons who can be questioned by the people with scorn that 'who made thee a ruler and a judge over us'."[6]

Independent Judiciary: External And Internal Attributes

Judicial independence and integrity have continued to attract attention at both global and municipal levels. A careful survey of the efforts at sustaining the independence and integrity of judicial officers reveals the existence of both external and internal attributes. The former involves the erection of sound constitutional mechanisms nurtured by the growth of a judicial tradition. The latter focuses on the individual qualities of a judicial officer, including professional competence, uprightness and incorruptibility.

Transparency in the appointment of judicial officers; security of tenure of office; payment of adequate remuneration, salaries and allowances; available mechanisms for correcting erroneous decisions, availability of avenue for complaints against erring judicial officers; and speedy resolution of such complaints, are some of the factors which promote judicial independence.

[5] Vanderbilt, *The Challenge of Law Reform* Princeton University Press 3rd Ed. P.3
[6] *The Road to Justice*, London, Stevens &Sons Ltd. 1995 pp. 30 - 32

The adoption of the Code of Conduct for judicial officers, constant review and the enforcement of the Code, provision of adequate infrastructural facilities, avoidance of partisan politics, avoidance of open alliance with the executive and legislative arms of government, are other identified "blocks"[7] for the building of an independent judiciary. Some of the identified "blocks", along with the provisions of the 1999 Constitution, are utilized below as the basis of the discussion on the sustenance of judicial independence and integrity in Nigeria.

Appointment, Promotion And Removal Of Judicial Officers

Appointment and Promotion

Under the 1999 Constitution of the Federal Republic of Nigeria, both the appointment and promotion of judicial officers are centralized. Justices of the Court of Appeal, judges of High Courts, members of Customary Courts of Appeal, and khadis of Sharia Courts of Appeal are all appointed by the President or State Governors, as the case may be, on the recommendation of the National Judicial Council[8] (NJC). The Chief Justice of Nigeria, justices of the Supreme Court, President of the Court of Appeal, Chief Judges of Federal and State High Courts and High Court of Federal Capital Territory, presidents of Customary Courts of Appeal or States and Federal Capital Territory and grand khadis of Sharia Courts of Appeal of States and of the Federal Capital Territory. are appointed by the President or the State Governor, as the case may be, on the recommendation of the NJC. These appointments are subject to the confirmation of the Senate or State House Assembly, as the case may be.[9]

[7] James Apple: "Starting down the long trail of Judicial Independence: The Experience of Russia". January 2000 CIJL year book pp. 188 - 189

[8] Sections 250(2), 256(2), 261(2), 266 (2), 271(2), 276(2) and 281(2) of the 1999 Constitution

[9] Sections 231(1), 231(2), 238(1), 250(1), 256(1), 261(1), 266(1), 271(1), 276(1) and 281(1) of the 1999 Constitution

The restriction of the role of the legislature, (the confirming authority) to the appointments of the Chief Justice of Nigeria and justices of the Supreme Court and heads of other Courts, undermines the integrity of the judiciary. The impression created is that other judicial officers are unimportant and undeserving of legislative attention. The arrangement is also invitation to aspirants to the positions of the Chief Justice of Nigeria, justices of the Supreme Court and heads courts to lobby the legislative arm of the government for timely and favourable confirmation of the request, by the executive, for their appointments.

The procedure and criteria for the appointment and promotion of judicial officers are devoid of transparency. The Federal Judicial and State Service commissions are constitutionally empowered to advise and nominate to the NJC suitable persons for appointment and promotion to judicial offices[10]. However, except for the requirement of post-call experience, the factors, which influence the members of the Commission in their decision on whether or not to nominate an aspirant for appointment or promotion are not within the domain of the public. This has resulted in intensive lobbying by aspirants to judicial offices. In some cases, appointments and promotions are evidently not based on merit but on the strength of the connection of the appointee. A judicial officer whose appointment or promotion is the product of lobbying is unlikely to be independent in cases involving their sponsors. Such as judicial officer is also unlikely to find it wrongful for counsel and litigants to lobby them for favourable decisions.

The introduction of the NJC is an innovation of the 1999 Constitution[11]. Under the 1979 Constitution, judicial officers were appointed by the State Governor on the recommendations of the State Judicial Commission. Incidentally, these commissions consisted mainly of the nominees of the Governor. It was, therefore, possible, for a Governor to influence the appointment of his friends, relations and party loyalists as judicial officers. It was also possible under the 1979 Constitution for the Governor to either

[10] Third Schedule Part I Section 13

[11] Section 153(1)(i); Third Schedule Part I Sections 20 - 22

remove from office or humiliate judges who delivered judgements, which were unfavourable to the executive. It was against the backdrop of the need to safeguard the independence and integrity of the judiciary that the NJC was introduced. It is charged with the responsibility of recommending the appointment and removal of judicial officers from office.

The Report of the 1994/95 Constitutional Conference highlights the merits of the NJC. According to the Report "The NJC will enhance the independence and impartiality of the judiciary during civilian regimes. While justice and fairness will be assured to the citizens, it will maintain uniform standards and equality among judicial officers in the country through appropriate vetting and assessment of potential appointees. The establishment of the NJC is not inconsistent with the federal structure of the country. It will enhance the independence of the judiciary and improve the administration of justice."[12].

Advocates of the federal principle criticize the establishment of the NJC Prof. Akande, for example, argues thus:

> *"The establishment of this body... has violated the cardinal principle of Federalism i.e autonomy of the Federating units. The argument that the State Judicial Commissions have not been abolished and that to this extent, the States through this body advise the NJC is not strong enough justification for taking a most important arm of the three arms of government and governance away from the state if there is true federalism"* [13]

Prof. Akande's position finds support in the report of the 1988/89 Constituent Assembly. The Assembly justified its rejection of the proposal to establish the NJC thus:

[12] Report of the 1994/95 Constitutional Conference pp. 94 - 95
[13] Akande, J. O. *Introduction to the Constitution of the Federal Republic of Nigeria 1999* p. 271

> *"it is our view that the establishment of a NJC is a sure means of introducing unitary form of Government in Nigeria. It can be defended in a unitary regime which is one line command but surely it cannot be defended in a civilian era ,,*[14].

Nnaemeka-Agu (J.S.C. as he then was) also endorsed the Federal principles of application thus:

> *"...It appears we are once more tending to accept a Federal political structure, we have to accept the fact that judicial power is one of the attributes of a Federal State power in the tripartite state power. A state will be entitled, ' I believe to resent dictation from the Federal Government in the selection of the Chief operatives of its judicature. So I believe that having a separate Federal Judicial Service Commission for the Federal Courts, original and appellate and a separate Judicial Service Commission for each State of the Federal is more logical and politically expedient"*[15]

Contrary to the views expressed above, there is nothing anti-federal in the establishment of the NJC. The point ignored by advocates of the federal principle is the glaring co-operation which remains the golden thread running through our judicial system. Ours is a system based on co-operation and interdependence between state and federal courts, as well as between state and federal judicial officers. The noticeable co-operation between federal and state courts include: the bindingness of the decisions of Supreme Court

[14] Report of the Constituent Assembly 1988/89 Vol. II p. 379
[15] *Law, Development and Administration in Nigeria*, Awa Kalu and Yemi Osinbajo (Eds.) (Lagos Federal Ministry of Justice) p. 522

and Court of Appeal on all state high courts, the entertainment of appeals by the Supreme Court and Court of Appeal, from Federal High and state high courts, state customary courts of appeal and state sharia courts of appeal. Judges of state high courts, the Customary Court of Appeal and the Sharia Court of Appeal are eligible for appointment to Court of Appeal and thereafter, to the Supreme Court. State courts settle disputes arising from Federal Law and vice versa. The decisions of the Supreme Court and the Court of Appeal are federal in the sense of being courts established for the Federation. These glaring examples of co-operation and interdependence between federal and state courts, and judicial officers definitely whittle down the potency of the arguments, of advocates of the application of Federal principles to the judiciary.

This is not to say that all is well with the functions and composition of the National Judicial Council. There is definitely a need for a rethink on the powers vested in the Chief Justice of Nigeria. The Chief Justice is the centre of a hub around whom; the activities of the Council revolve. As rightly observed by Dr. Aduba, "an interesting feature of the abuse is the enormous powers given to the Chief Justice of Nigeria. He not only chairs the National Judicial Council; he selects the five retired justices of the Supreme Court and Court of Appeal. He appoints five chief judges of high courts of the states from among the chief judges of the state and High Court of the Federal Capital Territory, Abuja in rotation to serve for two years. He appoints one president of the Customary Court of Appeal from among the Presidents of Court of Appeal to serve in rotation for two years. He appoints five members of Nigeria Bar Association on the recommendation of the National Executive Committee to serve for two years, subject to re-appointment. The two persons who are not legal practitioners are expected to be, in the opinion of the Chief Justice of Nigeria, of unquestionable integrity. This writer feels this is too much!"[16].

The basic qualifications for appointment as judicial officers are 15 years, 12 years and 10 years post-call for aspirants to the Supreme Court, Court of Appeal and high courts respectively[17]. The Constitution is also silent on the

[16] *Independence of the Judiciary under the 1999 Constitution: A Critique. Justice in the Judicial process (Essays in honour of Justice Ubaezonu)* Nweze (Ed.) p. 399 - 450

[17] Sections 230(3); 238(3); 250(3) and 271(3) 1999 Constitution

character of a potential appointee. The Constitution is also silent on the need for a due diligence reports on a potential appointee. The Constitution is further silent on the relevant experience of the appointee from date of qualification until the date of appointment. It is suggested, that an integrity specific clause be inserted in the Constitution, such that only persons of proven or unquestionable integrity are appointed as judicial officers. There is also the need for a provision, which enables only persons with relevant experience to be appointed as judges.

A source of worry, and definitely a controversial area is the application quota system/Federal Character to judicial appointments and promotion of judicial officers. The need to strike a balance between qualitative justices through appointments based on merit and Federal Character through appointments based on ethnic considerations is evident. Advocates of Federal Character and quota system readily rely on sections 14(3) and (4) of the 1999 Constitution for support. The said provisions read:

14(3) "The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the Federal Character of Nigeria and the need to promote national unity and also to command national loyalty thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in that Government arm or in any of its agencies.

"14(4) "The composition of the Government of a State, a Local Government Council or any of his agencies of such Government or Council and the conduct of the affairs of the Government or Council or such agencies shall be carried out in a manner as to recognize the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation".

The above provisions find justification in the need to cultivate a sense of belonging and avoid the feeling of marginalization on the part of all concerned, especially the minority group in our Federation. But the questions to reflect on are: to what extent should we apply the Federal Character principle to judicial appointments and promotions? Should judicial appointments be based on Federal Character, bearing in mind that justice dispensed is a precious commodity, which must be fairly dispensed by knowledgeable persons of proven integrity? It is it suggested that in the appointment and promotion of judicial officers, the Federal Character principles should have no place. Merit, as opposed to ethnic considerations, should be the decisive factor.

Removal From Office

The 1999 Constitution tries, as far it can, to ensure security of tenure of judicial office holders. Accordingly, once appointed, judicial officers are entitled to remain in office until the attainment of compulsory ages of retirement namely, 65 and 70 years for judges of high and appellate courts, respectively[18]. In effect, judicial officers can neither be dismissed nor relieved of their posts, except on grounds recognized by the Constitution prior to the attainment of the prescribed ages of retirement. The security of tenure of office aims at ensuring that judges have no cause to worry about premature dismissal or retirement from office, even when they give unfavourable judgments against the executive or legislative arms of government.

Both the Federal and the State Judicial Service commissions are empowered to recommend to the NJC the removal of judicial officers from office[19]. It is on the basis of their recommendation that the NJC recommends to the President or the State Governor, as the case may be, for a judicial officer[20] to be removed from office on the ground of inability to discharge the functions of office or appointment (whether arising from infirmity of body or mind), or for misconduct or contravention of the Code of Conduct[21]. Inasmuch

[18] Section 291(1) & (2) 1999 Constitution
[19] Third Schedule, Part I Section 13(b) 1999 Constitution
[20] Third Schedule, Part II Section 6(b) 1999 Constitution
[21] Third Schedule, Part I Section 21(B) 1999 Constitution

as the Executive removes a judicial officer from office on the basis of the recommendation of the NJC (consisting mainly of serving and retired judicial officers) the arrangement under the Constitution fosters independence of the judiciary. The arrangement further ensures that a judicial officer cannot be removed from office unless his peers believe that he is no longer deserving of his appointment as a judicial officer.

The provision of the Constitution on the removal of the Chief Justice of Nigeria, President of Court of Appeal, and other heads of courts are capable of undermining of the independence and integrity of the judiciary. This is underscored by the fact that these judicial officers can only be removed from office (on specific grounds) by the President or Governor, as the case may be, on an address supported by two-thirds majority of the Senate or the State House of Assembly, respectively[22].

The involvement of the legislative arm of government in the removal of the Chief Justice of Nigeria and heads of other courts undermines judicial dependence. Where, for example, the executive controls and exercises influence on the legislature, it will be difficult to remove from office a Chief Judge who has been recommended for removal by the NJC if the Governor is not in support of such. However, where there is hostility between the executive and the legislature, a head of court, who has the capacity to lobby the legislature, may remain in office, notwithstanding the request by the executive for his removal.

The President or the Governor, as the case may be, is expected to predicate his request for the removal of the Chief Justice of Nigeria or of a chief judge of the Federal or State High Court on the recommendation of the NJC.

The NJC is chaired by the Chief Justice of Nigeria. NJC consists of serving and retired judicial officers[23]. The present arrangement, which renders it possible for the legislature to indirectly overrule the decision of NJC on the removal from office, of a judicial officer, found wanting, undermines the integrity of the judiciary. Again, the arrangement encourages the head of a court, who

[22] Section 292(1) 1999 Constitution
[23] See Third Schedule Part I Section 20 1999 Constitution

has been recommended for removal from office (by the NJC) to lobby the legislative arm of government with a view to non-implementation of its recommendations. In some cases, the legislative arm may conduct public hearings on its recommendation. It may even summon its members to defend their recommendations! The recommendations of the NJC may or may not be upheld by the legislature. The fact that its recommendations are liable to scrutiny by the legislature undermines the integrity of the judiciary. **The judiciary and not, the legislature should be allowed to decide whether a judicial officer should be removed from office or not. The judiciary should not be a pawn in the hands of politicians.**

The preservation of the integrity of the judiciary justifies the provision of Section 292(2) of the Constitution. According to this, any person who has held office as a judicial officer, on ceasing for any reason to be a judicial officer, shall not appear as a legal practitioner before any court of law or tribunal in Nigeria. An exception to the rule is where the retired judicial officer is precluded from appearing in court to advocate the cause of his client.

Funding

The focal points in the discussion on funding include the payment of adequate salaries and allowances to judicial officers, and the control by the judiciary of its funds. "It is implicit in the concept of independence," argued Dr. Aguda, of blessed memory, "that provision should be made for the adequate remuneration of the judiciary and that a judge's right to the remuneration settled for in his office should not be altered to his detriment during the tenure in office"[24].

It is in realization of the fact that there can be no judicial independence, in the absence of financial autonomy, that specific provisions have been inserted into the Constitution. First, the remuneration, salaries and allowances of judicial officers, as determined by the Revenue Mobilization Allocation and Fiscal Commission, are charged upon the Consolidated Revenue Fund of the Federation[25]. Secondly, remuneration and salaries and conditions of

[24] *The Judiciary in the Government of Nigeria*, Ibadan, New Horn Press, p. 10
[25] Section 84(2) 1999 Constitution

service of judicial officers cannot be altered to their disadvantage after appointment[26]. There is, however, no protection against the alteration of allowances. In effect, allowances of serving judicial officers may be altered to their detriment. This is a dangerous omission. The omission has the capacity of reducing the purchasing powers of judicial officers, especially in cases where the allowances are quite handsome.

Section 84(7) of the Constitution further provides that the recurrent expenditure of judicial officers shall be charged upon the Consolidated Revenue Fund. Under Section 81(3) of the Constitution, any amount standing to the credit of the judiciary shall be paid directly to the NJC is disbursement to the heads of the courts established for the Federation and the states under Section 6 of the Constitution.

The pertinent question to address is whether these provisions adequately safeguard the financial independence of the judiciary. By charging the remuneration, salaries, allowances of the judicial officers and recurrent expenditure of the judiciary to the Consolidated Revenue Fund, there is a theoretical attempt, to free judiciary from financial dependence on the executive. The NJC's power to collect, control and disburse all moneys due to the judiciary[27] seeks to free the judiciary from shackles of civil service bureaucracy, thereby ensuring the financial autonomy of the judiciary.

But how adequate are the remuneration, salaries and allowances of our judicial officers? Are there sufficient safeguards for prompt and regular payments of these salaries and allowances? Are they exciting enough to attract men and women of Proven integrity? Can they attract our successful members of the Bar? Or are they just good enough for crooks and persons of unproven integrity, or those who see appointment to the Bench as a mere advancement in their career as civil servants? Hon. Justice Akanbi rightly observes that:

> *"Poor salary will not attract honest and decent men to the Bench and it will be a sad day for us all when those who aspire to judicial offices*

[26] Section 84(3) 1999 Constitution
[27] Third Schedule Part I Section 21(E)

are all crooks and cranks. When crooks completely take over we are doomed"[28].

It is self-evident that the current salaries and allowances of judicial officers do not entice many successful legal practitioners. This is unlike the position in England and some other jurisdictions, where successful private legal practitioners find appointments to the Bench attractive.

It is, therefore, necessary to improve on remuneration, salaries and allowances of serving and retired judicial officers. An arrangement, which enables pensions paid to retired judicial officers to be regularly reviewed upwards, in order to cushion the effect of inflation in the economy, is also desirable. Judicial officers, whether serving or retired, must be free from financial anxieties. We must bear in mind the wise counsel of Ron. Justice Akanbi to the effect that:

> *"The mind that administers justice must be free from financial embarrassment. He must be able to think straight to be able to deliver good judgment. All things being equal, a good judgment flows from a mind that is not bogged down by the thought of where do I get my next meal or where do I get the money to pay my son's school fees? Poor conditions of service disturb the mind. It is an obstacle to clear and positive thinking. Hence an obstacle to justice according to law"*[29]

The protective provisions of the Constitution on salaries and remuneration are restricted to judges of high and appellate courts and other courts recognized under the Constitution. These provisions are inapplicable to magistrates, presidents and members of customary courts, and khadis of sharia courts.

[28] *The Judiciary and the Challenges of Justice*, Lagos: Patriomi Books (1996) p. 22
[29] Akanbi: "The Many Obstacles to Justice," All Nigeria Judges' Conference Papers (1995) M.I.J. Professional Pulishers Ltd. Lagos. pp 50 - 51

They are treated as part of the civil service structure. They also experience the problems which confront civil servants.

Chief registrars, registrars and other supporting staff of judges of high and appellate courts are also not judicial officers. The protective provisions in the Constitution on financial independence are consequently inapplicable to them. These officers, however, perform critical roles in the administration of justice. The arrangement has resulted in the preparation and operation of two different budgets in Federal and State judiciaries. Quite apart from the problems associated with the operation of two different budgets, there if the problem of corruption. It is futile to think of a corruption-free judiciary if magistrates who deal with bulk of the cases and court registrars who are charged with sensitive administrative duties have financial anxieties. Where they are corrupt, their corrupt activities will negatively impact on the work of judges. We cannot clean one sector of the judiciary and disregard the others. The unclean sector will surely contaminate the clean sector. What is required is an all-embracing arrangement designed to tackle corruption in the judicial system.

Judicial Immunity

Acts of, and omissions by, judges in the course of their judicial functions are immune from lawsuits. In other words, an aggrieved litigant cannot sue a judge for things done or omissions made in the performance of their judicial functions. Immunity of judicial officers from lawsuits is one of the strategies for sustaining judicial integrity. The immunity finds justification in public policy. As rightly argued, no man but a beggar or a fool would be a judge if he is liable to be sued on account of his judgments[30].

Karibi Wythe J.S.C. (as he then was), in the case of *Egbe v. Adefarasin*,[31] admirably justified the immunity granted to judicial officers thus:

[30] *Arenson v. Casson Bechman* (1977) A. C. 405 at 440
[31] (1985) NWLR Part 3 p. 549 at 567

> *"It is of considerable interest to the administration of justice and the stability of our society and the Constitution that the thin and fragile fabric of our judicial wall should be protected from wanton attacks of irate litigants whose only grievance is that they have lost or falsely believe they are persecuted".*

Judicial immunity does not extend to crimes[32] committed by judicial officers, or to personal action, which are unconnected with the discharge of functions of office of a judicial officer.

The immunity enjoyed by our judges is evidently precious. Regrettably, some judicial officers abuse it. While some judges ignorantly render questionable decisions, there are others who deliberately pervert the cause of justice, with the assurance that they enjoy immunity from lawsuits and that affected litigants are helpless.

The immunity accorded judicial officers must not be abused, otherwise the confidence which members of the public should have in the judiciary will be impaired. A judicial officers who abuses his judicial immunity misconducts himself. The NJC is empowered to recommend the removal of such an officer from office for misconduct. It is suggested that the above power can be utilized to discipline a judge who abuses his judicial immunity.

Code of Conduct

Judicial officers are public officers. They are therefore bound by the provisions of the conduct for public officers as stipulated in the Constitution[33]. The constitutional provisions apply to all public officers, judicial and non-judicial alike.

The general provisions of the Constitution on the Code of Conduct for public officers do not adequately address the peculiar problems of the judiciary.

[32] *Ikomi v. The State* (2002) 7 WRN 121

[33] Section 172, 209, Fifth Schedule Part I 1999 Constitution

There is the need for judges to be judged/disciplined in accordance with agreed Code.

It is gratifying that, consistent with the arrangements in other developed countries, there exists a Code of Conduct for judicial officers in Nigeria. The Code, which became operational in 1997, aims at addressing issues which are peculiar to the judiciary. The Code is, however, not problem free. The existence as well as the content of the Code is evidently within the exclusive knowledge of judicial officers. Most legal practitioners, along with the members of the public who are the victims of judicial misconduct, are not aware of the existence of the Code.

From the viewpoint of sustaining the integrity of the judiciary, adequate publicity must be given to the Code. Members of the legal profession and the public must be made to be aware of the provisions of the Code and the machinery for its enforcement. This will enable them decide whether the conduct of a judge is consistent with its provisions. There must be an adequate enforcement machinery and timely determination of reported violation of the Code. A code of conduct can also serve as a shield to judicial officers. It can be utilized to justify a refusal by judicial officers to attend public functions where they have no role to play. The Code may also be a basis for challenging a Chief Judge or a judicial officer who has an uncomfortable association with politicians whether in the executive or the legislature.

The content of the Code must be specifically incorporated into the Oath of Office of judicial officers in order to bind present and future judicial officers. A code must be a living document. Accordingly, it must be regularly amended in order to reflect necessary and desirable changes in the society.

General Observations and Conclusions

An attempt has been made above to examine some (not all) of the constitutional devices for securing the independence and integrity of the judiciary. Evidently, these devices do not adequately sustain judicial independence and integrity. However, the judiciary is the ultimate guarantor of its independence and integrity. If persons of courage, probity and unassailable intellect are appointed to the Bench, there is the assurance that

the judiciary will command respect. However, appointments based on friendship, or on political and ethnic considerations will surely produce bad material and ultimately lead to disrespect for the judiciary.

It is consequently right to agree with Schwartz that:

> *"The quality of justice depends more on the quality of men who administer the law than on the content of the law they administer. Unless those appointed to the bench are competent and upright and free to judge without fear or favour, a judicial system, however sound its structure may be on paper, is bound to function poorly in practise"*[34]

Corruption, incompetence and delays in the dispensation of justice are some of the identified enemies of judicial integrity. These should be addressed if the judiciary is to earn the respect of citizens and litigants. **While "an incompetent judge is a misfit, a corrupt judge is a disgrace to his peers or of course to our noble profession"[35]. It takes integrity to fight corruption. If persons of integrity are appointed as judicial officers, corruption will be minimized, if not eliminated. Corruption can also be tackled through prompt and thorough investigation of reports of corruption. A judicial officer adjudged guilty of corruption should be dismissed without any benefit.**

The problem of delay in the administration of justice requires that judges should be less generous and should be slow to grant requests for adjournments. It is also necessary to re-examine different rules of court in order to jettison provisions which delay the expeditious disposal of cases.

The activities of the judiciary are sometimes criticized by the media. Some of these criticisms are borne out of ignorance on how the judicial system

[34] American Constitutional Law 1955 p. 130

[35] Okay Achike: *Administration of Justice under the Military.* A paper delivered at the Court of Appeal Annual Conference on 16/12/93

works. There are some criticisms which are negative and derogatory. Judicial officers are defenders of freedom of speech. As such judicial officers must be consistent and therefore accommodate the media when criticized in the exercise of press freedom guaranteed under the Constitution. The Nigerian Bar Association should, in appropriate cases, defend the judiciary against unwarranted criticisms.

Finally, incompetence and failure to respond to changes in the society on the part of judges attract disrespect for the judiciary. We must put in place arrangements for the systematic training and retraining of judicial officers. They must continue to learn to remain learned.