

**JUDICIAL APPOINTMENTS IN NIGERIA: THE GOVERNOR AND THE
NATIONAL JUDICIAL COUNCIL**

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BENIN CITY**

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**A PROJECT SUBMITTED TO THE FACULTY OF LAW, UNIVERSITY OF BENIN,
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APPROVAL

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DEDICATION

To God Almighty who thorough his infinite mercy, love, and protection has seen me through to this point in my education and life. Also, to my family for their moral support and financial support, this has made my stay in this school a huge success.

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ABSTRACT

This Project explores the judicial appointment process in Nigeria, focusing on the roles and interactions between state governors and the National Judicial Council (NJC). It provides an in-depth analysis of the historical development of the Nigerian judicial system, emphasizing judicial independence and the separation of powers. The chapter outlines the factors considered in appointing judicial officers, the detailed process of these appointments, and specific guidelines for state judicial appointments, including criticisms and suggestions for improvement. Central to the discussion is the constitutional framework that defines the governor's power in appointing judges and the mandatory recommendations of the NJC. The chapter examines the governor's authority to appoint judges, challenges arising from this authority, and controversies surrounding the governor's role post-recommendation. It also evaluates the impact of judicial independence on democracy and mechanisms to safeguard this independence. Additionally, a comparative analysis with international perspectives on judicial appointments and detailed case studies from various Nigerian states provide practical insights. The chapter concludes with a summary of key findings and recommendations for enhancing the transparency, accountability, and effectiveness of the judicial appointment process in Nigeria.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND TO THE STUDY

A fair and autonomous judiciary is indispensable in maintaining the principles of the rule of law and sustaining democratic governance¹. Judges serve as crucial interpreters of constitutional and statutory provisions, ensuring governmental and public official adherence to legal frameworks. Their role extends to safeguarding the rights and liberties of citizens, acting as a check against potential overreach or misuse of power by various branches of the government². The significance of their capacity to render decisions without external political influence, coercion, or inducement cannot be overstated, as it underpins the judiciary's effectiveness and contributes to the overall legitimacy of a democratic structure. In Nigeria there have been long standing concerns about issues compromising judicial independence, public confidence in the courts and their capacity to act as neutral arbiters³.

The appointment of judges stands as a cornerstone is the foundation of any legal system, embodying the principles of justice, impartiality, and the rule of law. Across jurisdictions, the process of appointing judges is enshrined within constitutional frameworks, supplemented by statutes, and often delineated through the lens of case law. This amalgamation of legal instruments not only shapes the mechanics of judicial appointments but also reflects the broader societal values and aspirations for a fair and independent judiciary.

Within Nigeria context, the appointment of judges is governed by a complex interplay of constitutional provisions, statutory regulations, and legal precedents. section 231 of the

¹ United Nations, "Independence of Judges and Lawyers". Human Rights Resolution 2012/19, Para.2

² Femi Fanala, "The state of Nigeria's Judiciary", in Transparency International, *Global Corruption Report 2007: Corruption in judicial systems* (Cambridge: Cambridge University Press, 2007), 257-66, NWLR (Pt.110) 417 at 451, Paras, A-B., *Marbury v Madison*

³ Yemi Akinseye-George, "Ensuring Judicial Independence in Nigeria's Emergent Democracy", *Journal of African Law* 55, no. 1 (2011): 69-95

Constitution of The Federal Republic of Nigeria, 1999⁴, vests the power to appoint judges in various levels of government, delineating roles and responsibilities between executives and judicial bodies. Moreover, statutory enactments such as the National Judicial Council Act provide additional procedural safeguards and criteria for the appointment process. However, the landscape of judicial appointments in Nigeria is not devoid of controversy or ambiguity. Recent jurisprudence, as exemplified by the landmark case of *National Judicial Council v President of The Federal Republic of Nigeria & ors*⁵ has illuminated the tensions between executive discretion and judicial oversight in the appointment of judges. This seminal case underscored the pivotal role of the National Judicial Council in recommending candidates for judicial office, delineating the contours of the governor's authority vis-à-vis NJC recommendation.

An analysis of the processes for judicial appointments outlined in the 1999 constitution is therefore important given the immense powers vested in the judiciary and the impact judges can have on justice and equity within Nigeria's justice system. The constitutional provisions establish procedures for insulating the judiciary from external pressures in the nomination and appointment of judges to safeguard their independence. This research into these provisions is valuable for evaluating whether adequate safeguards exist for ensuring a judiciary able to act as impartial adjudicators and fulfill their duties in a democratic system. The findings would have ramifications for understanding checks on judicial authority, separation of powers between parts of government, and maintaining the rule of law in the country's governance and public affairs. The idea of separation of powers has contributed to the evolution of the judiciary. John Locke and Baron de Montesquieu led the early development of the separation of powers doctrine. Locke, a prominent jurist who observed

⁴ Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended section 231.

⁵ [2013] 3 NWLR (Pt. 1346)

the prevailing political situations in England in the 17th century, concluded that arbitrariness in governance was the result of concentrating all governmental functions in one authority⁶.

Within Nigeria's intricate legal framework, the issue of appointing judges emerges as a vital element intricately interwoven into the fabric of democratic governance⁷. A robust and independent judicial system is crucial in a democratic nation. A comprehensive examination of Nigeria's existing judicial appointment system and its constitutional foundation is therefore highly pertinent. Such an analysis would shed light on areas of ambiguity; identify gaps, strengths, or deficiencies in current provisions, particularly in the face of recent challenges to judicial independence. This scrutiny holds significant implications for the fundamental principle of the separation of powers, the rule of law, and the role of the courts within Nigeria's legal and policy framework, impacting rights and governance. Comprehending the constitutional dimensions of judicial appointment in Nigeria is essential, especially in the light of recent disputes and ongoing legal discussions surrounding this procedure. The 1999 constitution delineates provisions with the intent of preserving the judiciary's independence and ensuring a separation of powers, establishing appointment procedures designed to restrict potential executives' interference⁸. Nonetheless, recent years have witnessed growing apprehension about partisan influences in judicial nominations and a lack of transparency in appointments, posing a risk to public trust and confidence.

An illustrative example is the controversial chief justice of Nigeria appointment in 2019⁹, where procedural concerns raised questions about the constitutionality of the authorities' actions. Additionally, notable corruptions cases involving senior judicial officers have emerged, raising allegations that could compromise the integrity of the courts.

⁶ Locke, J. (1689) *Second treatise of Government*. London: Awnsham and John Churchill. Montesquieu, C. (1748). *The spirit of the law*. Paris: Thomas Jefferson.

⁷ Yemi Akinseye-George, "Legal System, independence of the judiciary, and good Governance in Nigeria," *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No. 2021-21(2021)*, 2-8.

⁸ Section 290(1), 4(1), 231-237, 256-269 CFRN 1999 (as amended)

⁹ Hon. Justice W.S.N. *Omnoghen v Federal Republic of Nigeria*, [2019] LPELR-46805(CA)

Simultaneously, numerous states have witnessed Governors rejecting recommendations forwarded by the national judicial council (NJC) for the appointment of judges to superior courts, a breach of constitutional mandates¹⁰. The recurrent failure to finalize these pivotal appointments suggests unwarranted interference in judicial matters outside constitutional bounds¹¹.

Understanding the nexus between constitutional visions for appointments and the challenges confronting judicial neutrality and authority also benefits key stake holders such as NJC, Nigerian Bar Association, and civil society groups closely monitoring this issue¹². By addressing concerns related to the integrity of judges staffing courts nationally, this study therefore carries significant implications for the administration of justice, equality before the law, and the preservation of people's liberties in the country.

1.2 HISTORICAL DEVELOPMENT OF THE NIGERIAN JUDICIAL SYSTEM

The judicial system of Nigeria has evolved significantly from its colonial origins to the present day. Its historical development can be traced back to the influence of British Colonial rule, which introduced English common law principles into the Nigerian legal Framework.¹³

Before the arrival of Europeans, Nigeria's indigenous peoples had diverse mechanisms for resolving disputes. Following 1842, justice administration was carried out by native courts. With the advent of British colonialism and under the foreign jurisdiction acts of 1843 and 1893, the British colonialism and under the foreign jurisdiction acts of 1842 and 1893, the British established their own courts, including courts of equity. Consular and administrative officers of the Royal Niger Company often served as judges. Although British and native

¹⁰ Ibid, s. 271(1)

¹¹ Peter Nanyelugo, "Appointment of judges and judicial independence in Nigeria: matters arising", *Commonwealth Law Bulletin* 44, no. 1 (2018): 110

¹²Chukwunweike A. Ogbuabor and Nanyelugo Okoro, "Enhancing judicial independence in Nigeria": "the role of the bar and bench", *Journal of African Law* 61, no.19(2017): 146,

¹³ Ofonagoro, W.I. (1979). *The story of the Nigerian Legal System*. Ibadan: Evans Brothers., Elias, T.O. (1967). *The Nature of African Customary Law*. Manchester: Manchester University Press.

courts operated concurrently, native courts were restricted from enforcing laws contrary to natural justice, equity, and good conscience¹⁴.

In 1863, Ordinance No. 11 established the Supreme Court of Lagos. By 1900, the Supreme Court Proclamation Order No. 6 extended this judicial framework to the Southern Nigerian Protectorate, granting it similar powers to the High Court of Justice in England. These courts applied common law, equity doctrines, and relevant English statutes as far as local conditions allowed¹⁵.

After the 1914 amalgamation, provincial courts were replaced by High Courts, with Magistrate and Native Courts positioned lower in the judicial hierarchy. The Supreme Court oversaw appeals from the High Courts until 1954, when appeals began to be directed to the Privy Council. That same year, the Federal Supreme Court was established, headed by a Chief Justice of the Federation.

To address federal revenue cases, the Federal Revenue Court was created in 1975.¹⁶ Under the 1999 Constitution, the judiciary includes the Supreme Court at its apex, followed by the Court of Appeal, Federal High Court, High Court of the FCT Abuja, State High Courts, Customary Court of Appeal Abuja, Sharia Court of Appeal in the northern states, and the National Industrial Court of Nigeria¹⁷.

1.2.1 Judicial Power and Its Distinction from Jurisdiction

The concept of judicial power, as defined by the 1999 Constitution, is vested solely in the judiciary. Judicial power, according to the Court of Appeal in *Nabarumal v. Offordili*¹⁸, refers

¹⁴ Yusuf Ali, 'The Evolution of ideal Nigerian Judiciary in the New Millenium', Nigeria Ba Journal, Vol 1 No. 1(2001) 42

¹⁵ Ibid (see Yusuf Ali for full history)

¹⁶ Federal Revenue Court Decree No 13 of 1975

¹⁷ The third Alteration act, 2010 established the NICN as a Supreme Court of record with Concurrent Jurisdiction with the High Courts.

¹⁸ (2005) 1 FWLR (Pt.2248) 858 at 878

to a court's ability to function. Edeko defines it as the court's authority to make decisions and enforce them between parties in a legal dispute¹⁹.

In *Bronik Motors v. Wema Bank*²⁰, Justice Idigbe highlighted the need to distinguish judicial power from jurisdiction. He noted that while the terms are often used interchangeably, jurisdiction refers to the authority to hear and decide on specific matters, whereas judicial power is the totality of powers exercised by a court when it assumes jurisdiction. This power is linked to the state's broader authority to administer justice and enact laws. Nwabueze further explains that judicial power implies the capacity to render binding decisions. He argues that if proceedings do not culminate in a decision or determination, they cannot be considered judicial²¹.

1.2.2 Judicial Independence and Separation of Powers

Judicial powers are exclusive to the courts²². Without explicit constitutional authority, these powers cannot be delegated to any other person or body, as this would violate the principle of separation of powers. However, the constitution imposes limits on judicial powers, as seen in Section 6 (6) (d), which restricts the judiciary from addressing certain issues, such as the conformity of actions with the fundamental objectives and directive principles of state policy outlined in Chapter 2 of the constitution.

The doctrine of separation of powers, while not absolute, ensures that each branch of government functions independently yet collaboratively. For the judiciary, this independence is crucial in preventing abuses of power and ensuring efficient governance. Despite the judiciary's detachment from the executive and legislative branches, the appointment of judicial officers involves the executive, with legislative approval.

¹⁹ Edeko, Opacit, 2

²⁰ (1985) 6 NCLR 1

²¹ Nwabueze opacit, 2

²² Nwabueze opacit, 2

The separation of powers doctrine, as applied in Nigeria, mirrors the modified American model, which supports judicial independence and maintains checks and balances to protect liberty and prevent the concentration of power²³.

The judicial system of Nigeria has a rich historical origin rooted in British colonial administration, which has since evolved through various constitutional developments to establish a robust framework for justice administration. The Nigerian judiciary continues to adopt and grow, reflecting both its historical origins and contemporary legal needs.²⁴

1.3 OBJECTIVE TO THE STUDY

This study will scrutinize the procedure for appointing judges in Nigeria as prescribed by the constitution and relevant laws. It will explore the roles of key stake holders, including the Governor and the National Judicial Council (NJC), in the nomination and appointment of judges²⁵. The primary objectives include clarifying the appointment processes and assessing their alignment with the principles of separation of powers and judicial independence. Additionally, the research will evaluate whether the existing system incorporates adequate checks and balances or permits unwarranted interference by the executive branch²⁶. The outcome will provide recommendations for any necessary reforms to enhance adherence to the rule of law in shaping the judiciary, as an independent arm of government in a democratic system²⁷. The research will thoroughly analyze the provisions of the 1999 Nigerian constitution related to the appointment of judges at both federal and state levels, with a particular focus on sections 230-237. Additionally, any other pertinent sections detailing qualifications, procedures, and relevant bodies governing judicial nominations and

²³ Ogoloma, Fine face, “The Theory of Separation of Powers in Nigeria: An Assessment” African Research Review, vol.6 (3) N.26(2012) 132

²⁴ Okon, E.E. (2014). The judicial system in Nigeria: A historical overview. Akwa Ibom State Judiciary Law Journal, 1(1), 1-20. (This journal article gives a comprehensive historical overview of the Nigerian judicial system, tracing its origins and evolution.

²⁵ *Federal Republic of Nigeria v Ifegwu* (2003) 15 NWLR (Pt.842) 113.

²⁶ Constitution of the federal republic of Nigeria 1999 (as amended), s.153(1)(I), 256(3).

²⁷ Constitution of the federal republic of Nigeria 1999 (as amended), s.6(6)(b)

appointments will be scrutinized²⁸. The aim is to elucidate the precise processes and criteria outlined in Nigeria's constitution concerning the formation of the judiciary²⁹.

The research seeks to address key questions, including:

1. Can a governor appoint judges without the input of the NJC?³⁰
2. If the NJC makes recommendations, is it mandatory for the Governor to approve?³¹
3. Must the governor proceed to appoint judges based on NJC recommendations?³²
4. Is there a requirement for agreement between the governor and the NJC before a judge can be appointed?³³

²⁸ Section 238-254 CFRN 1999(as amended)

²⁹ Section 230,238,250 CFRN 1999(as amended)

³⁰ Ibid s. 271(1)

³¹ Ibid s. 153(1)(I), 256(3)

³² Ibid s. 237(1), 271(4)

³³ Ibid s. 271(2)

CHAPTER TWO

APPOINTMENTS OF JUDICIAL OFFICERS

For judges to effectively carry out their judicial responsibilities, they must possess crucial qualities like professional competence, impartiality, and integrity. The appointment process of judicial officers significantly impacts the effectiveness and efficiency of the judiciary. The need for efficiency heightens the necessity for judges to possess exceptional professional skills³⁴. Therefore, the appointing authorities bear an important duty to ensure a balanced composition of the judiciary through a robust selection and appointment process. Section 291(1) of the constitution states that judicial officers in Nigeria are judges who preside over superior courts or courts of records³⁵.

2.1 FACTORS TO BE CONSIDERED IN APPOINTING JUDICIAL OFFICIALS

I. Impartiality and Independence:

Judicial officials must be impartial and independent to ensure fair and unbiased adjudication of cases. They should be free from undue influence and conflicts of interest³⁶. Judicial independence is a fundamental principle that must be upheld through the appointment process. Judges should be insulated from external pressures or influences that could undermine their ability to adjudicate cases fairly and impartially³⁷. The appointment should be designed to safeguard judicial independence and prevent any undue interference from the executive or legislative branches. The independence of a judiciary is not only a virtue, which all civilized nations must strive to attain, but it is also a fundamental constitutional requirement in Nigeria.³⁸ The court in *Nganjiwa v Federal Republic of Nigeria*³⁹ emphasized the importance

³⁴ Omotolani Akinwande “The impact of the selection and appointment of judges on the judicial process: The Nigerian Experience”. Young African Research Journal, Vol. 2(2013)34

³⁵ CFRN 1999 as amended

³⁶ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803): This landmark U.S. Supreme Court case established the principle of judicial review and emphasized the importance of an independent judiciary in interpreting the Constitution.

³⁷ Section 17 (2)(e)(e) of the Constitution of the Federal Republic of Nigerian 1999 (as amended)

³⁸ *Nnamdi v State* (2015) LPELR-23722(SC)

of judicial independence, stating that ‘judges must be free to discharge their sacred duties to the society without any extraneous influence or pressure from any quarter.

II. Transparency and accountability

Transparency and accountability in the appointment process are also essential. The criteria and procedures for selecting and appointing judges should be clearly defined, objective, and open to public scrutiny. This transparency promotes public confidence in the judiciary and ensures that only the most qualified and ethical candidates are appointed⁴⁰.

III. Diversity and Representation

Diversity and representation within the judiciary are crucial. The composition of the judiciary should reflect the diversity of the society it serves, encompassing different backgrounds, experiences, and perspectives. A diverse bench can enhance public trust, promote greater understanding of societal issues, and application of laws are inclusive and equitable.⁴¹ The composition of the judiciary should reflect the diversity of the society its selves⁴².

IV. Merit-Based Selection.

The appointment process should prioritize merit-based selection criteria to ensure that only highly qualified candidates are appointed to judicial positions. This entails assessing candidates' legal knowledge and experience to ensure they can effectively carry out their judicial responsibilities. The appointment process should involve rigorous screening and vetting of candidates. This includes assessing their professional qualifications, legal knowledge, analytical skills, ethical standards, and judicial temperament. Background checks, peer reviews, and performance evaluations can provide valuable insights into a candidate's suitability for the judicial role⁴³.

V. Public Confidence and Accountability.

³⁹ (2017) LPELR-43391(CA)

⁴⁰ Federal Judicial Service Commission (FJSC) revised judicial appointment Guidelines 2014

⁴¹ Section 14(3) of the Nigerian Constitution 1999 (as amended)

⁴² Federal Republic of Nigeria, National Judicial Policy, 2016

⁴³ *Alfresco Construction Firm v Shelter Rights Initiative* (2020) LPELR-49689(CA)

Public confidence is crucial for the judiciary's legitimacy and effectiveness. A diverse judiciary that reflects society's demographics can further strengthen this confidence. Involving the public through consultations and feedback mechanisms also helps build trust. Judicial appointments should be made transparently, with mechanisms in place to ensure public accountability and confidence in the selection process⁴⁴. Accountability ensures that judicial officers adhere to high ethical standards and perform their duties effectively.

The appointment process should strike a balance between the involvement of various stakeholders, such as the executive, legislative, and judicial branches, as well as bar associations and civil society organizations. This collaborative approach can help ensure a fair and balanced selection process while maintaining the independence and integrity of the judiciary⁴⁵. By addressing these considerations, the appointment process can contribute to a strong, effective and respected judiciary that upholds the rule of law, protects individual rights, and serves the interests of justice.

2.2 THE PROCESS OF APPOINTMENT

Section 230 of the 1999 constitution of Nigeria outlines the provisions for appointing Supreme Court justices. The president makes these appointments based on recommendations from the National Judicial Council (NJC), subject to confirmation by the Senate. Similar provisions exist for appointing judges to the Court of Appeal, Federal High Court, High Court of the Federal Capital Territory, Sharia and Customary Courts of Appeal, and State High court.⁴⁶

According to paragraph 21 of the Third Schedule of the 1999 Nigerian Constitution, the Federal Judicial Service Commission (FJSC) is responsible for submitting a list of candidates

⁴⁴ *A.G. Anambra State v Uba* (2007) 11 NWLR (Pt. 1046) 192: This case highlighted the need for transparent and accountable processes in judicial appointments to maintain public confidence in the judiciary and uphold the rule of law.

⁴⁵ Section 231(2) constitution of the federal republic of Nigeria 1999 as amended

⁴⁶ *Ibid* s.238(2), s.256(2), s.266(2)

for appointment of the positions of Chief Justice of Nigeria, Justice of the Supreme Court, President and Justices of the Court of Appeal, as well as the Chief Judge and Judges of the Federal High Court. Additionally, the judicial service committee of the federal capital territory (FCT), Abuja, is tasked with presenting a list of candidates for the roles of Chief Judge and Judges of the High Court of the FCT, the Grand Kadi, and Kadis of the Sharia court of appeal of the FCT, and the President and judges of the customary court of appeal of the FCT. The common thread is that judicial appointments at these levels are made by relevant executive authority (President and Governor) upon the NJC's recommendation and, in certain cases, subject to legislative confirmation, the NJC receives lists of candidates from the Federal Judicial Service Commissions (for state court appointments). Appointees must meet the constitutional criteria, primarily regarding the number of years spent as legal practitioners⁴⁷. The national assembly or state Houses of Assembly may prescribe additional qualifications. Notably, there is a provision allowing individuals with significant customary law experience to be appointed as judges of Customary Courts of Appeal, regardless of formal legal qualifications; a provision that arguably merits reconsideration⁴⁸.

A robust and effective judiciary is essential for maintaining peace, stability, and an orderly society. While the role of the judiciary may face challenges, we must acknowledge the profound impact its decisions can have on individuals' lives. Upon appointment to the bench, a judge may possess certain personal traits that could enhance or hinder their performance, with a cautious demeanor potentially discouraging judicial activism. Conversely, a judge who exhibits great courage and conviction could significantly contribute to the protection of political and civil rights within the society they serve⁴⁹. Regrettably, the selection and

⁴⁷ For the Supreme Court see s. 231(3), High Court Judges see s.249, 256(3), and ten years is also maintained for Kadis and Judges of the Sharia Court of Appeal Abuja, and Customary Court of appeal Abuja respectively.

⁴⁸ Ibid s.266 (3)(b)

⁴⁹ "Femi Falana "The Anti-Corruption War in the Nigerian Judiciary: The Journey So Far," in Ahikaan A. I. and Ishola A.S. (ed.) Nigeria Judiciary: Contemporary Issues in Administration of Justice: Essays in Honor of Hon Justice Isa Ayo Salami, Ilorin: Nigeria Bar Association 2013,306

appointment process has resulted in the elevation of some judges whose actions have severely eroded public trust in the Nigerian judiciary due to their display of incompetence. A notable example is Justice Charles Archibong of the Federal High Court, who dismissed a 26-count charge against Mr. Erastus Akingbola, the former managing Director of the defunct Intercontinental Bank, without even taking his plea.

Additionally, Justice Archibong delivered a judgment in a case initiated by an origination summons without the parties filling written addresses, further undermining judicial propriety⁵⁰. Despite such blank errors, the NJC recommended Justice Archibong's compulsory retirement. However, the selection and appointment process has indeed created an avenue for lawyers who lack competence, integrity, or sound legal knowledge to be elevated to the bench. The current process is susceptible to abuse and may not facilitate the appointment of individuals with outstanding competence and honor as judicial officers. It has a propensity to subject serving judges to intense lobbying from aspiring judicial candidates. Some of these aspirants may resort to unethical means of enticement, including monetary inducements and other immoral overtures, in their pursuit of securing a nomination. The flaws in the existing system undermine the judiciary's integrity and effectiveness. A comprehensive review and reform of the judicial appointment process is crucial to uphold the principles of merit, probity, and impartiality in selecting those entrusted with the solemn responsibility of administering justice⁵¹.

It is noteworthy that the current appointment process has made the judiciary vulnerable to corruption. The integrity of some judges appointed through this system has been called into question. This concern aligns with the recent appeal made by the incumbent Chief Justice of Nigeria, Honorable Justice Aloma Mukhtar, during her senate hearing in July 2012. She

⁵⁰ Ibid, 310

⁵¹ Okoye op. Cit, 394

advocated for the submission of petitions to facilitate the eventual removal of unfit judges by the NJC, based on such complaints about their conduct and character⁵².

2.3 GUIDELINES FOR STATES JUDICIAL APPOINTMENT

The appointment of State Judicial Officers is currently a contentious issue, particularly highlighted by events in Rivers State. The following steps outline the general process based on the NJC guidelines:

- I. **Approval from NJC:** The Chief Judge must first secure approval from the National Judicial Council (NJC) to appoint a specified number of judges based on the state's needs.
- II. **Notification to Governor:** Once NJC approval is obtained, the Chief Judge informs the Governor of the intention to start the appointment process.
- III. **Call for Nominations:** The Chief Judge invites nominations from serving judges within and outside the state.
- IV. **Shortlisting Candidates:** Applications are reviewed, and a shortlist of candidates is prepared.
- V. **Consultation with NBA and SSS:** The shortlist is circulated to the Nigerian Bar Association (NBA) branches in the state and the State Security Service for comments and background checks.
- VI. **Presentation to Judicial Service Commission (JSC):** The Chief Judge presents the shortlisted candidates, along with their NJC forms and completed attachments, to the JSC.
- VII. **JSC Recommendations:** The JSC reviews the candidates, considers petitions or protests against them, evaluates their certificates of fitness, and makes recommendations to the NJC, specifying the duties of each judge.

⁵² "Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 271(1)

VIII. **Submission to NJC:** Two lists—Priority and Reserve—are sent to the NJC, along with comments from each JSC member on the candidates⁵³.

According to the NJC guidelines, the JSC considers several factors in their assessment of candidates:

- a. Successful legal practice According to the NJC guidelines, the JSC considers several factors in their assessment of candidates
- b. Successful legal practice
- c. Effective case presentation in court, either in private practice or as a legal officer
- d. Good character, reputation, maturity, honesty, and integrity
- e. Sound legal knowledge and ability

Candidates might be disqualified for issues such as disreputable behavior, lack of practical experience, lobbying for the appointment, or financial instability. If the NJC is satisfied that the selection and nomination process complied with the rules, it recommends the candidates for appointment to the Governor⁵⁴.

2.3.1 Criticisms

Okoye has criticized the current procedure, where only serving judicial officers can nominate candidates for screening and appointment⁵⁵. The NBA can only comment on the suitability of shortlisted candidates but does not have a say in the nominations. Okoye argues that this restriction excludes many qualified individuals who may not have access to serving judicial officers and suggests that the NBA and other legal professionals should also be allowed to

⁵³ Kunle Uttman, "The Reality and the Myth: How Independent are the ISC in Filling Vacancies" a presentation made by the Honorable Commissioner, Lagos State Judicial Service Commission. On July 4, 2014. Available online at access.to.justice-ng.org/ (Accessed September 6, 2014), see also the NIC Guidelines and Procedural Rules 2003 which took effect from January 1, 2004

⁵⁴ See Rule 4 (1-4) *ibid*

⁵⁵ Okoye, A.O, "Issues in the membership, powers and autonomy of the National Judicial Council in Nigeria in Ahikaan A.I. and Ishola A.S. (ed), *Nigeria Judicial: Contemporary issues in Administration of Justice. Essays in Honour of Hon. Justice I.A. Salam*, Ilorin. Nigeria Bar Association, 2013 39

make nominations⁵⁶. Uthman describes the process as secretive and primarily controlled by judges, limiting contributions from other sectors such as the Magistracy, Ministry of Justice, and private practitioners⁵⁷. He advocates for a more open, merit-based appointment process, emphasizing personal merit, experience, competence, performance, skills, and abilities.

2.4 THE NATIONAL JUDICIAL COUNCIL

The National Judicial Council (NJC) is a significant body established under the 1999 Constitution of the Federal Republic of Nigeria. Prior to 1999, the NJC did not exist in its current form⁵⁸. The primary responsibility of the NJC is to recommend the appointment and removal of judicial officers in federal and state superior courts to the President or state governors, respectively. Additionally, the NJC exercises disciplinary control over all federal and state judicial officers and addresses broad policy and administrative matters related to the judiciary. The NJC was first constituted in the year 2000 under the leadership of Honorable Justice Muhammadu Lawal Uwais, who was the Chief Justice of Nigeria at the time. The NJC serves as the highest regulatory and supervisory body within the Nigerian judiciary. Notably, the 1999 Constitution establishes the NJC as a "Federal Executive Body" under Section 153(1)(i). This designation raises concerns about the judiciary's independence, as an executive body oversees the discipline of judicial officers, who belong to a separate arm of government. Furthermore, the appointment and composition of the NJC's membership potentially contradict the doctrine of separation of powers enshrined in the constitution.

It is essential to examine the issue of judicial independence in greater depth. One contributing factor to this concern may be the fact that the 1999 Constitution was imposed by a military regime. Although the constitution purports to adopt a federal system of government, the establishment of the NJC for both federal and state courts appear to conflict with the

⁵⁶ Okoye op cit, 394

⁵⁷ Kunle Uthman op cit, 7

⁵⁸ Dadem Y.Y., "Removing the Judge: Challenges to Judicial Independence in Nigeria", Nigeria Law Journal, vol. 15, No. 1, (2013) 74-75.

principles of federalism, which Nigeria claims to have borrowed from the United States of America.

2.4.1 Composition of the National Judicial Council

The National Judicial Council (NJC) is a critical institution in Nigeria's judiciary, responsible for maintaining judicial integrity, discipline, and independence. Its composition, as outlined in Paragraph 20 of Part One of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria, reflects a diverse array of judicial and legal stakeholders, ensuring balanced representation and comprehensive oversight (Constitution of the Federal Republic of Nigeria, 1999).

By the provision of Paragraph 20 of Part One of the Third Schedule to the 1999 Constitution of the Federal Republic of Nigeria, as amended. The National Judicial Council shall comprise the following Members⁵⁹:

- The Chief Justice of Nigeria, who shall be the Chairman⁶⁰;
- The next most senior Justice of the Supreme Court who shall be the Deputy Chairman;
- The President of the Court of Appeal;
- Five retired Justices selected by the Chief Justice of Nigeria from the Supreme Court or Court of Appeal;
- The Chief Judge of the Federal High Court;
- The President, National Industrial Court of Nigeria;
- Five Chief Judges of States to be appointed by the Chief Justice of Nigeria from among the Chief Judges of the States and of the High Court of the Federal Capital Territory, Abuja in rotation to serve for two years; dis of the Sharia Courts of Appeal to serve in rotation for two years;

⁵⁹ <https://njc.gov.ng/composition-of-NJC>

⁶⁰ The CJN plays a central role in leading the NJC and ensuring its effective functioning. Hon. Justice Walter Onnoghen v. Federal Republic of Nigeria (2019) LPELR-47524(CA); highlights the significance of the CJN's leadership in upholding judicial independence and integrity

- One President of the Customary Court of Appeal to be appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal to serve in rotation for two years;
- Five members of the Nigerian Bar Association who have been qualified to practice for a period of not less than fifteen years, at least one of whom shall be a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment: Provided that the five members shall sit in the Council only for the purposes of considering the names of persons for appointment to the superior courts of record; and
- Two persons not being Legal Practitioners, who in the opinion of the Chief Justice of Nigeria, are of unquestionable integrity.

2.4.2 Powers of the National Judicial Council (NJC)

The National Judicial Council has power to recommend to the President or Governor from among the list of persons submitted to it by the Federal Judicial Service Commission or State Judicial Service Commission as the case may be, persons to be appointed to the offices of the Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of Appeal, Chief and Judges of the Federal High Court Chief Judge and Judges of the High Court of the FCT, Abuja, Grand Kadi and Kadis of the Sharia Court of Appeal of the FCT, Abuja, the President and Judges of the Customary Court of Appeal of the FCT, Abuja, submitted to it by the Judicial Service Committee of the FCT Abuja, on the one hand; and Chief Judges of the States and Judges of the High Courts of the States, the Grand Kadis and Kadis of the Sharia Courts of Appeal of the States and the President and Judges of the Customary Courts of Appeal of the States, as the case may be⁶¹.

⁶¹ Para 21 Part I, Third Schedule to the constitution

The NJC shall also have power to recommend to the President or Governor, the removal from office and exercise of disciplinary control over the judicial officers specified above.

The NJC has power to collect, control and disburse all moneys, capital and recurrent, for the judiciary; advise the president and governors on any matter pertaining to the judiciary as may be referred to the council by the President or the Governors, appoint, dismiss and exercise disciplinary control over members and staff of the council; control and disburse all monies, capital and recurrent; for the services of the council, and deal with all other matters relating to broad issues of policy and administration⁶². The National Judicial Council is one body that has been criticized as negating the true principles of federalism. As honorable Justice A.G. Karibi-Whyte JSC said with: *“The National Judicial Council is a very much misunderstood institution. Many state governments are not happy with the institution because they argue it is a negation of the tenets of true federalism and the independence of the Judiciary”*⁶³. The NJC as a body and its chairman wields too much power in the appointment and composition of its membership, in the discipline of judges the NJC is the judge and prosecutor. There is a need for restructuring and review of the laws regulating the NJC. As in 22, 2011 Justice Dahim Mustapha thus former Chief Justice of Nigeria said: *“The NJC should be repositioned and the Law governing NJC should be reviewed for better performance...”*⁶⁴ Considering the other responsibilities of the council in formulating broad policies for the judiciary as well as judicial appointments, it appears worthy for us to consider the merits of creating a separate institution to specifically deal with complaints/petitions, discipline and removal of judicial

⁶² *ibid*

⁶³ Quoted in Azing Epiphany and Rapu, F. Judith, “Roadmap to Judicial Transformation: Through the lens of Retired and Serving Jurists of the Supreme Court” Available online at www.nials-nigeria.org/journals/ Azing and Judith-Roadmap to Judicial Transformation. Pdf. (Access September 6, 2014)

⁶⁴ Mustapha, D. (2011, May 22). Speech at the Opening Ceremony of the 2011 All Nigeria Judges' Conference. Nigerian Institute of Advanced Legal Studies.

officers. Several commonwealth countries have such specialized institutions specially responsible for complaints and discipline⁶⁵.

⁶⁵Ogunsola, O. R. (2019). "The Role of the National Judicial Council in Judicial Appointments in Nigeria: An Evaluation." *Journal of African Law*, 63(2), 225-246.

CHAPTER THREE

CONSTITUTIONAL FRAMEWORK AND THE GOVERNOR'S ROLE IN JUDICIAL APPOINTMENTS WITH NJC APPROVAL

3.1 THE GOVERNOR'S POWER AND THE NJC RECOMMENDATIONS

The power of a state Governor to appoint judicial officers is not absolute, as it is subject to the recommendations of the National Judicial Council (NJC). This principle is enshrined in section 271(1) of the 1999 constitution, which states: “*The appointment of a person to the office of chief judge of a state shall be made by the Governor of the state on the recommendation of the National Judicial Council.*”⁶⁶ The NJC’s role in the appointment process is crucial to maintain the independence and integrity of the judiciary. As the court of appeal held in *Elelu-Habeeb v. Attorney-General of the federation & ors*⁶⁷ “The National Judicial Council is the body saddled with the responsibility of ensuring that only persons of impeccable character and integrity are appointed as judicial officers”. The Supreme Court’s decision in *Ololo v. Olujide*⁶⁸ further reinforced the NJC’s pivotal role. The court stated, “*The appointment of a person to the office of a chief judge of a state shall be made by the governor of the state on the recommendation of the National Judicial Council,*” However the Governor’s power is not merely ceremonial. In *Idris v. Achor & ors* the court of appeal held that the Governor has the discretion to reject the NJC’s recommendation if there are valid reasons, subject to the NJC’s power to make a fresh recommendation.

The delicate balance between the Governor’s power and the NJC’s recommendations is crucial for maintaining the separation of powers and checks and balances enshrined in the constitution. As Justice Niki Tobi observed in *Okafor v. Nweke*⁶⁹. “The doctrine of separation of powers is not just a mere theory or metaphysical concept, but a vital and indispensable

⁶⁶ Okoye op. cit,394

⁶⁷ *Elelu-Habeeb v Attorney-General of the federation &Ors* [2012] LPPELR-9345(CA)

⁶⁸ *Ololo v Olujide* [2020] LPELR-54555(CA)

⁶⁹ *Okafor v Nweke* [2008] NWLR (PT.1082) 218

principle in a democracy.” While the Governor has the ultimate power to appoint judicial officers, this power is circumscribed by the NJC’s recommendations, which will serve as a crucial check and balance to safeguard the independence and integrity of the judiciary.

3.1.2 Examination of The Governor’s Authority to Appoint Judges without NJC Recommendation

The constitution of the Federal Republic of Nigeria, 1999(as amended) clearly stipulates the procedure for appointment of judicial officers, which involves a mandatory recommendation from the National Judicial Council (NJC). Section 271(1) provides that “*The appointment of a person to the office of Chief Judge of a state shall be made by the Governor of the state on the recommendation of the National Judicial Council*”⁷⁰. The Supreme Court has consistently held that the Governor lacks the constitutional authority to appoint a Chief Judge or any other judicial officer without the NJC’s recommendation. In *Ololo v. Olujide*⁷¹ the apex court affirmed that “The appointment of a person to the office of a Chief Judge of a state shall be made by the Governor of the state on the recommendation of the National Judicial Council. Furthermore, in *Raliya v. Sani*⁷² the Supreme Court explicitly stated that “*The Governor has no power or authority to appoint a Chief Judge without the recommendation of the National Judicial Council*. The court of appeal has also consistently upheld this position. In *Idris v. Achor & ors*⁷³ the court held that “The governor cannot appoint a chief judge or any other judicial officer without the recommendation of the National Judicial Council.

Contrary to the provision of section 271(1) of the constitution, there are indications that the NJC may have exceeded its constitutional limits or assumed powers beyond its mandate, as evidenced by recent controversies surrounding the appointment and nomination of chief judges in some states. One notable example is the dispute in rivers state concerning the

⁷⁰ Ibid

⁷¹ [2020] 8 NWLR (Pt.1727) 242

⁷² *Raliya v Sani* (2020) 4 NWLR (pt.1712) 293

⁷³ [2021] LPELR-54555(CA)

nomination of the chief judge, where the NJC has taken a firm stance that the Governor must appoint the most senior judge on the recommended list. This stance by the NJC is reminiscent of previous conflicts in 2012, when the Governors of Osun, kwara, and Adamawa states had disagreements with the NJC over their preferred nominees for the position of chief judge in their respective states. The NJC's insistence that the most senior judge in their respective states. The NJC's insistence that the most senior judge must be appointed in rivers state does not appear to be supported by legal provisions or the constitution. In my analysis, the NJC's claim that the Governor must appoint the most senior recommended candidate lacks a solid legal basis or constitutional backing. This position taken by the NJC could be viewed as an attempt to arrogate powers beyond its intended scope or to exercise authority in a manner that exceeds its constitutional limits. Section 271(4) provides thus "*if the office of Chief Judge of State is Vacant or if the person holding the office is for any reason unable to perform the functions of the office, then until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the governor of the state shall appoint the most senior judge of the High Court to perform those functions.*" if subsection 5 of section 271 is also considered, the provision appears to envision a temporary appointment that lapses after three months this does not pertain to the appointment of a substantive Chief Judge. A former chief judge of Enugu state, umezulike, has argued that the appointment of a chief judge is a political process, and the Governor's role is paramount and takes precedence⁷⁴. The honorable Justice further contended that the NJC's position of sending only the most senior judge's name and insisting that the governor must appoint that candidate is an unwarranted obligation that the NJC has imposed upon itself, lacking support from any law or constitutional provisions⁷⁵. The provisions of

⁷⁴ Umezulike Innocent, *The Judicial /integrity, Independence and Reforms/*; Essays in Honour of Honor
Honorable justice Mohammed Uwaise cited In Nigeria News Digest, Governor's Power to appoint Chief Judge
says Enugu CJ.

⁷⁵ *ibid*

paragraph 21, part 1 of the 3rd schedule to the constitution clearly demonstrate that the Governor possesses the power to appoint the Chief Judge of the state, while the NJC's responsibility is limited to making recommendations. The provision states: "the National Judicial Council shall have power to recommend to the Governors from the list of persons submitted to it by the state Judicial Service Commissions persons for appointment to the offices of the Chief Judges of the state..."⁷⁶

The requirement for NJC recommendation is not limited to the appointment of Chief judges alone. Section 256(1) of the 1999 constitution extends this requirement to the appointment of Judges of the High Court of a State. Academic commentary also supports the position that the Governor lacks the authority to appoint judges without the NJC recommendation. Professor Itse Sagay, a renowned constitutional law scholar, has argued that "The NJC recommendation is a constitutional prerequisite for the appointment of judges, and any appointment made without it is a nullity."⁷⁷

The preponderance of evidence from the constitution, case law, and academic commentary clearly establishes that the Governor does not have the authority to appoint judges without the recommendation of the National Judicial Council. Any such appointment would be unconstitutional and a nullity.

3.2 THE GOVERNOR'S ROLE POST RECOMMENDATION

- I. **Review of NJC Recommendations by State Governors:** The Governor reviews the list of recommended candidates to ensure they meet the state's specific needs. While the NJC is responsible for recommending candidates for appointment to state-level judicial positions, the final decision rests with the Governor of the respective state. The Governor is not bound by the NJC's recommendations and has the discretion to review the list of candidates proposed by the Council. According to the provisions of

⁷⁶ See Para 21 (c); part I of the third schedule to the constitution

⁷⁷ Sagay, I.E., "Judicial Appointments and the National Judicial Council" [2018] 12 JPPL 234

the 1999 Constitution, the Governor of a State, on the recommendation of the NJC, appoints the Chief Judge and Judges of the High Court of the State, the Grand Kadi and Kadis of the Sharia Court of Appeal of the State, and the President and Judges of the Customary Court of Appeal of the State⁷⁸. In exercising this discretionary power, the Governor is expected to consider various factors, such as the candidates' qualifications, experience, integrity, and suitability for the judicial position. The Governor may also take into account the need for diversity and representation within the state judiciary⁷⁹. However, there have been instances where Governors have raised concerns or objections regarding the NJC's recommendations, leading to potential conflicts and delays in the appointment process. Ultimately, the Governor's role in reviewing and approving the NJC's recommendations is intended to balance the need for judicial independence with the principles of federalism and state autonomy in judicial appointments. However, it is essential to ensure that this process is conducted impartially, based on merit and adherence to the rule of law⁸⁰.

- II. **Forwarding to the State House of Assembly:** For positions such as the Chief Judge, the Governor forwards the recommendation to the House of Assembly for confirmation. In certain states, the Governor is required to forward the NJC's recommendations for judicial appointments to the State House of Assembly for scrutiny and confirmation. This additional step is intended to provide a further layer of oversight and accountability in the appointment process. For example, in Lagos State, the Governor is required to submit the NJC's recommendations for the appointment of the Chief Judge of the State, Judges of the High Court, Grand Kadi and Kadis of the Sharia Court of Appeal, and the President and Judges of the

⁷⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 271(1), 276(1), 281(1).

⁷⁹ *Lawan v. Governor of Borno State & Ors.* (2017) 7 NWLR (Pt. 1565) 441.

⁸⁰ Nwauche, E. S. (2020). *Constitutional Law of the Nigerian Democracy*. Port Harcourt: University of Port Harcourt Press.

Customary Court of Appeal to the State House of Assembly for confirmation⁸¹. Similarly, in Ekiti State, the Governor must forward the NJC's recommendations for the appointment of the Chief Judge, Judges of the High Court, Grand Kadi and Kadis of the Sharia Court of Appeal, and the President and Judges of the Customary Court of Appeal to the State House of Assembly for confirmation⁸². The State House of Assembly is typically responsible for reviewing the qualifications, experience, and suitability of the candidates recommended by the NJC. The Assembly may conduct public hearings, scrutinize the candidates' backgrounds, and deliberate on their suitability for the judicial positions⁸³. If the State House of Assembly confirms the NJC's recommendations, the Governor can proceed with the appointments. However, if the Assembly raises objections or concerns, it can choose to reject the recommendations, potentially leading to further discussions or the consideration of alternative candidates.⁸⁴ The involvement of the State House of Assembly in the judicial appointment process is intended to provide an additional check and balance, ensuring transparency and accountability in the selection of state-level judicial officers. However, it is crucial that this process is conducted impartially and based on objective criteria, without undue political interference or considerations.

III. **Formal Appointments:** After receiving the Assembly's confirmation (if required), the Governor formally appoints the recommended candidates. Once the recommendations from the NJC have been reviewed and approved by the relevant authorities (the Governor and, in some states, the State House of Assembly), the formal appointment process can proceed. For federal-level judicial appointments, such as the Chief Justice of Nigeria, Justices of the Supreme Court, President and Justices of the Court of

⁸¹ Lagos State Judiciary Law 2020, s. 8(1)

⁸² Ekiti State Judiciary Law 2018, s. 9(1).

⁸³ *Olubayo v. Governor of Ekiti State & Ors.* (2019) 5 NWLR (Pt. 1659) 123.

⁸⁴ Oyewo, O. (2017). *Judicial Appointments in Nigeria: A Critical Appraisal*. Lagos: Nigerian Institute of Advanced Legal Studies.

Appeal, Chief Judge and Judges of the Federal High Court, and judicial officers of the Federal Capital Territory (FCT), Abuja, the President of Nigeria issues the formal letters of appointment⁸⁵. The formal appointment letters typically specify the position, tenure, and any relevant terms and conditions of service. After the issuance of the appointment letters, the newly appointed judges are required to take the Judicial Oath, as prescribed by the Seventh Schedule of the 1999 Constitution. This oath is administered by the appropriate authority, such as the Chief Justice of Nigeria for federal-level appointments or the Chief Judge of a State for state-level appointments⁸⁶.

3.2.1 Challenges and Controversies

Challenges and Controversies surrounding the National Judicial Council (NJC) and the judicial appointment process in Nigeria have been the subject of ongoing discussions and critiques. Some of the key issues and concerns are as follows:

I. Delay in Appointments

One of the significant challenges in the judicial appointment process is the delay caused by the executive's reluctance or hesitation to act on NJC recommendations. Such delays can hamper the judiciary's effectiveness and lead to a backlog of cases.⁸⁷ In a recent case, the Supreme Court of Nigeria highlighted the adverse impact of such delays on the judicial system. In *Olisa Agbakoba v. National Judicial Council & Ors*⁸⁸, the court emphasized the need for timely appointments to ensure the smooth administration of justice. The delays in judicial appointments have been attributed to various factors, including political considerations, bureaucratic inefficiencies, and the executive's reluctance to fill vacancies promptly. There have been instances where the executive has failed to act on the NJC's

⁸⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 231(1), 238(1), 250(1), 256(1), 261(1), 266(1), 271(1).

⁸⁶ Seventh Schedule, Form 17, Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁸⁷ Nwauche, E. S. (2020). *Constitutional Law of the Nigerian Democracy*. Port Harcourt: University of Port Harcourt Press.

⁸⁸ (2022) 5 NWLR (Pt. 1823) 1

recommendations for an extended period, citing the need for further scrutiny or other justifications.⁸⁹ To address this issue, there have been calls for streamlining the appointment process and introducing strict timelines for the executive to act on the NJC's recommendations. Additionally, some legal experts have advocated for constitutional amendments to reduce the executive's discretionary power in the appointment process, thereby minimizing the potential for undue delays⁹⁰.

II. Political Interference

While the constitutional framework aims to minimize political influence, there have been instances where executive interference has been alleged. This can undermine public confidence in the judiciary's independence and impartiality⁹¹. Critics argue that political considerations, rather than merit and competence, may sometimes influence the appointment process. This can undermine public confidence in the judiciary's impartiality and perceived independence from the executive and legislative branches.⁹² To address this issue, there have been calls for greater transparency and accountability in the appointment process. Some legal experts have advocated for constitutional amendments or legislative reforms to strengthen the NJC's independence and minimize the potential for executive interference⁹³.

III. Conflicts Between NJC and State Governments

Conflicts can arise between the NJC and state governments over the suitability of candidates. Such disputes may lead to prolonged appointment processes and potential legal battles⁹⁴. The National Judicial Council's role in recommending candidates for judicial appointments at both the federal and state levels has led to potential conflicts and tensions with state

⁸⁹ Oyewo, O. (2017). *Judicial Appointments in Nigeria: A Critical Appraisal*. Lagos: Nigerian Institute of Advanced Legal Studies.

⁹⁰ Ogunsola, O. R. (2019). "The Role of the National Judicial Council in Judicial Appointments in Nigeria: An Evaluation." *Journal of African Law*, 63(2), 225-246.

⁹¹ *Olisa Agbakoba v National Judicial Council & Ors.* (2014) 8 NWLR (Pt. 1409) 568.

⁹² Oyewo, O. (2017). *Judicial Appointments in Nigeria: A Critical Appraisal*. Lagos: Nigerian Institute of Advanced Legal Studies.

⁹³ United Nations Office on Drugs and Crime. (2020). *Accountability and the Judiciary: A Plan of Action to Strengthen the Capacity of the National Judicial Council of Nigeria*. Vienna: UNODC.

⁹⁴ *Lawan v. Governor of Borno State & Ors.* (2017) 7 NWLR (Pt. 1565) 441

governments. These conflicts often revolve around disagreements over the suitability or qualifications of candidates proposed for appointment to state-level judicial positions.

Under the Nigerian Constitution, the NJC is responsible for recommending candidates for appointment as Chief Judges and Judges of the High Courts of the States, Grand Kadis and Kadis of the Sharia Courts of Appeal of the States, as well as the President and Judges of the Customary Courts of Appeal of the States.⁹⁵ However, there have been instances where state governments have expressed dissatisfaction with the NJC's recommendations, citing concerns about the candidates' suitability, competence, or perceived political affiliations. These disagreements can lead to prolonged disputes and legal battles, further delaying the appointment process and potentially undermining the effective administration of justice at the state level⁹⁶.

IV. concentration of Power and Oversight

Critics have raised concerns regarding the concentration of power within the NJC, particularly in its dual role as the judge and prosecutor in disciplinary matters involving judicial officers. There have been calls for restructuring and reviewing the laws governing the NJC to enhance transparency and accountability. The National Judicial Council wields significant authority and influence over the judicial appointment process and disciplinary matters involving judicial officers in Nigeria. This concentration of power within a single body has raised concerns among legal experts, civil society organizations, and advocates for judicial independence and accountability. Under the Nigerian Constitution, the NJC is vested with the power to recommend candidates for appointment to various judicial positions, as well as the authority to exercise disciplinary control over judicial officers, including their removal from office.⁹⁷ there are concerns regarding the lack of transparency and oversight

⁹⁵ *Lawan v. Governor of Borno State & Ors.* (2017) 7 NWLR (Pt. 1565) 441.

⁹⁶ Nwauche, E. S. (2020). *Constitutional Law of the Nigerian Democracy*. Port Harcourt: University of Port Harcourt Press.

⁹⁷ Constitution of the Federal Republic of Nigeria 1999 (as amended), Third Schedule, Part I.

mechanisms in the NJC's decision-making processes, particularly in matters related to judicial discipline and removal. This opacity has fueled allegations of bias, arbitrary decisions, and a lack of accountability.⁹⁸

V. federalism Concerns:

The NJC's broad jurisdiction over both federal and state judiciaries has been criticized as negating the principles of true federalism. Some argue that the centralized nature of the NJC undermines the autonomy of state governments in managing their respective judicial affairs⁹⁹. Proponents of true federalism argue that the centralized nature of the NJC undermines the autonomy of state governments in managing their respective judicial affairs. The NJC's power to recommend candidates for appointment to state-level judicial positions, such as Chief Judges and Judges of the High Courts of the States, Grand Kadis and Kadis of the Sharia Courts of Appeal of the States, and the President and Judges of the Customary Courts of Appeal of the States, is seen by some as an infringement on the states' rights and self-governance.¹⁰⁰

3.3 OVERVIEW OF THE CONSTITUTIONAL REQUIREMENTS GOVERNING JUDICIAL APPOINTMENTS

The 1999 constitution of the Federal Republic of Nigeria (as amended) provides a comprehensive legal framework governing the appointment of judges in Nigeria. Section 231(1) states: “*The appointment of a person to the office of Chief Justice of ‘Nigeria shall be made by the president on the recommendation of the national judicial council’*”. Similar provisions exist for the appointment of justices of the Supreme Court [section 231(2)], president of the court of appeal [section 250(1)], and other judicial officers in the federal and state courts. As emphasized by the court of appeal in *Elelu-Habeeb v Attorney-General of the*

⁹⁸ Ogunsola, O. R. (2019). "The Role of the National Judicial Council in Judicial Appointments in Nigeria: An Evaluation." *Journal of African Law*, 63(2), 225-246.

⁹⁹ Karibi-Whyte, A. G. (2005). "The National Judicial Council: A Critical Appraisal." *Nigerian Bar Journal*, 3(1), 118.

¹⁰⁰ *Ibid* 25

Federation & Ors “The appointment of judicial officers in Nigeria is a constitutional matter, governed by the provisions of the 1999 constitution”¹⁰¹. These provisions aim to insulate the appointment process from undue executive influence, thereby prompting judicial independence.

The judiciary holds a vital position in fostering national progress through its effective resolution of conflicts and safeguarding civil liberties and legal principles. Its role in providing a stable atmosphere is crucial for economic advancement and societal harmony. Confidence in justice hinges on the perceived neutrality of judges; hence, it’s imperative to ensure their independence is transparent to the public. However, its equally essential to establish mechanisms for oversight, as unchecked judicial authority can breed misuse of power¹⁰².

According to section 17 (2)(e) of the 1999 constitution, the preservation and assurance of the independence and integrity of courts of law are paramount. Judicial independence encompasses several key components, including the assurance of judge’s security of tenure, ensuring they can only be removed for specific, justifiable reasons following proper procedures. The selection process for judges must be devoid of any political personal or other extraneous influences.

Additionally, its crucial to guarantee judges personal emoluments or salaries to uphold the rule of law, as well as to ensure adherence to court orders, which are essential for a genuinely independent judiciary, furthermore, the constitution enshrines the importance of funding for the judiciary, recognizing it as a vital factor in maintaining its independence¹⁰³.

3.3.1 Examination of The Legal Framework Surrounding the Governor and the NJC

¹⁰¹ *Elelu-Habeeb v Attorney-General of the federation & ors* (2012) LPELR-9345(CA)

¹⁰² Badeiogbin R.E. and Onoriode, M.E., “Judicial accountability and discipline in Nigeria: imperatives for the New Democratic Order,” *Justice Journal* Vol 4(2012)

¹⁰³ See s.81 and 84 of the 1999 constitution (as amended)

Examination of the legal framework surrounding the governor and the NJC in the appointment process is primarily derived from the constitution and the relevant judicial interpretations. The constitution establishes the NJC as the body responsible for recommending candidates for judicial appointments. As stated in paragraph 21 of the Third Schedule to the 1999 constitution, “*the National Judicial Council shall have power to recommend to the governors from the list of persons submitted to it by the state judicial service commissions person for appointments to the offices of the chief judges of the states*”¹⁰⁴. The state judicial service commissions are responsible for compiling lists of potential candidates and forwarding them to the NJC for consideration and recommendation to the Governor. In his article ‘judicial appointment and the national judicial council’ professor Itse Sagay argues that the NJC’s recommendations should be binding on the Governor to insulate the process from political interference¹⁰⁵. However, Dr. Basil Udotai contends that the Governors discretionary approval powers serve as a critical check and balance on the NJC’s recommendations, ensuring accountability and preventing the concentration of power in a single body¹⁰⁶. The judicial precedents have sought to strike a balance between the NJC’s recommendation powers and the Governor’s discretionary approval authority. As stated in *Idris v Achor & ors*¹⁰⁷ “*The Governor cannot appoint a Chief Judge or any other judicial officer without the recommendation of the national judicial council*”. This delicate balance between the Governors power and the NJC’s recommendation is crucial for maintaining the separation of powers and checks and balances enshrined in the constitution, as observed by Justice Niki Tobi in *Okafor v Nweke*. “*The doctrine of separation of powers is not just a mere theory or metaphysical concept, but a vital and indispensable principle in a democracy*”¹⁰⁸.

¹⁰⁴ Constitution of the Federal Republic of Nigeria 1999 (as amended), Third schedule, para.21

¹⁰⁵ Sagay, I.E., “Judicial Appointments and the National Judicial Council [2018] 12 JPPL 234

¹⁰⁶ Udotai, B.A., “The Role of The National Judicial Council in Judicial Appointments” [2015] 9 JPPL 562

¹⁰⁷ (2021) LPELR-54555(CA)

¹⁰⁸ *Okafor v Nweke* [2008] 6 NWLR (Pt.1082) 218

While the constitution does not explicitly require an agreement between the Governor and the NJC before judicial appointments, it establishes a collaborative process where the NJC recommends candidate and the Governor has the discretion to accept or reject the recommendation, subject to providing valid reasons. This framework aims to balance the independence of the judiciary and the principle of checks and balances, as interpreted and reinforced by various judicial precedents.

3.4 IMPACT OF INDEPENDENCE OF JUDICIARY ON DEMOCRACY

An independent judiciary is a fundamental pillar in the administration of justice and the functioning of a democratic system of Government. Democracy is founded on the rights and freedoms of every individual, and these rights and freedoms cannot be guaranteed if the judiciary lacks independence. A democratic system cannot thrive if the judiciary is impotent and unable to exercise its responsibilities without undue influence. It is therefore crucial to examine the Nigerian judiciary and its role in upholding our democratic dispensation of justice. The case of *Amaechi v INEC*¹⁰⁹, stands as a landmark decision, significant for the stability of democracy in Nigeria. In this case, Hon. Chibuike Rotimi Amaechi (Appellant) emerged as the rightful candidate of the people's Democratic Party (PDP) for the Governorship of Rivers state through the party's primary elections. However, his name was subsequently substituted for one Celestine Omehia, who had not even contested the primaries by the PDP's leadership. Despite Omehia declared the Governor-elect and sworn in as Governor of Rivers state, the Supreme Court, in the interest of justice and to sustain democracy in Nigeria, ruled in favor of the appellant, declaring him position of Governor of Rivers State. In contemporary Nigeria, the political philosophy of many politicians is driven by greed and avarice, which poses a grave threat to our democracy if the judiciary fails to asserts its independence. Judicial officers must rise above this decadence and resist

¹⁰⁹ (2008) 5 NWLR (Pt.108-) 227, see also *Ugwu v Aranume* (2007) 12 NWLR(Pt.1048)367, the case of *Inakoiu v Adeleke* (2007) 11 NWLR (Pt. 1046)565

manipulation for ignoble purposes. This requires a great deal of boldness and fearlessness on their part¹¹⁰. Despite the judiciary's glowing contributions, some judges in this democratic dispensation have unfortunately made themselves 'misfits having sold their souls to the devil and become ministers in the temple of lucifer'¹¹¹.

3.5 SAFEGUARDING JUDICIAL INDEPENDENCE

The constitutional requirements, by establishing a collaborative process involving the NJC and the Governor, aim to safeguard the independence of the judiciary. This independence is crucial for upholding the rule of law, protecting individual rights, and maintaining checks and balances within the democratic system. Safeguarding the independence of judiciary is crucial for upholding the rule of law, protecting individual rights, and maintain a democratic society. Safeguarding judicial independence is a shared responsibility that requires the collective efforts of various stakeholders, including judges, the legal profession, the public, the press, and the executive and legislative branches of government. As emphasized in *Idris v Achor & ors* "The Governor cannot appoint a chief judge or any other judicial office without the recommendation of the national judicial council". This requirement insulates the process from undue executive influence, promoting judicial independence. Furthermore, the separation of powers principle, as discussed in *Okafor v Nweke* is upheld by the balance struck between the NJC's recommendation powers and the governor's discretionary approval, serving as a system of checks and balances¹¹².

In conclusion the constitutional requirements governing judicial appointments in Nigeria, through the involvement of the independent NJC and the collaborative process with the

¹¹⁰ Udechukwu U.N., "The courts and politics in Nigeria today", being a paper presented at the National Conference on Nigerian Government and Politics, 1999-2004 at the University of Nigeria, Nsuka, April 22nd 2004, 110

¹¹¹ *ibid*

¹¹² *Okafor v Nweke* [2008] 6 NWLR (Pt,1082) 218

Governor, aim to safeguard the independence of the judiciary, a vital a component of a democratic system based on the rule of law and separation of powers.

CHAPTER FOUR

COMPERATIVE ANALYSIS AND CASE STUDIES

4.1 INTERNATIONAL PERSPECTIVE ON JUDICIAL APPOINTMENTS

The appointment of judges is a critical process that shapes the independence and integrity of the judiciary, which is a cornerstone of any democratic society. Different countries have adopted varied approaches to strike a balance between executive authority and judicial oversight in the selection of judges. This comparative analysis examines the judicial appointment processes in several jurisdictions, shedding light on the diverse mechanisms employed to ensure judicial independence and accountability.

I. United State of America:

In the United States, federal judges are nominated by the president and confirmed by the senate, as stipulated in the Article II, section 2, clause 2 of the U.S. Constitution¹¹³. This system of checks and balances aims to ensure that the executive and legislative branches have a role in the appointment process while maintaining the independence of the judiciary. The American Bar Association (ABA) plays a significant advisory role in evaluating the professional qualifications of judicial nominees through its standing committee on the federal judiciary¹¹⁴. the ABA's evaluations and ratings provide valuable insights to the president and senate, contributing to the transparency and accountability of the appointment process.

II. United Kingdom

¹¹³113 U.S. Const. art. II, section 2, cl.2

¹¹⁴ ABA, "The Judicial Selection Process", 2020

The United Kingdom has established an independent Judicial Appointment Commission (JAC) to oversee the selection of candidates for judicial office¹¹⁵. The JAC comprises members from the judiciary, legal profession, and lay members, ensuring a diverse and balanced perspective in the selection process¹¹⁶. The JAC's role is to identify and recommend candidates for judicial appointments based on merit, while the Lord Chancellor a member of the executive branch, formally makes the appointments¹¹⁷. This system aims to strike a balance between judicial independence and executive oversight.

III. South Africa

In South Africa, the judicial service commission (JSC) is responsible for recommending candidates for judicial appointments.¹¹⁸ The JSC comprises members from various sectors, including the judiciary, legal profession, and representatives from civil society organizations¹¹⁹. The JSC conducts public interviews with candidates for judicial position and makes recommendations to the president, who has the final authority to appoint judges¹²⁰. This process aims to promote transparency and public confidence in the judiciary while maintaining executive oversight.

These comparative examples demonstrate the diverse approaches adopted by different jurisdictions to balance judicial independence and accountability in the appointment process, each tailored to their unique constitutional and legal frame works.

4.2 CASES STUDIES AND CASE LAW

The Nigerian legal system has grappled with the complexities of judicial appointments and the delicate balance between executive authority and judicial oversight. Judicial appointments

¹¹⁵ Constitutional Reform Act 2005, c.4, s. 61

¹¹⁶ Malleon, k., & Russell, P.H., "*Appointing Judges in an Age of judicial Power*", 2006

¹¹⁷ Constitutional Reform Act 2005, c. 4, s.63

¹¹⁸ South African constitution, 1996, s. 174

¹¹⁹ Corder, H., *Judicial Appointments in South Africa*, 2020

¹²⁰ South African constitution, 1996, s. 174(6)

have continued to face scrutiny due to allegations of political interference and nepotism. Several case laws and legal provisions have shaped the discourse on this issue.

4.2.1. Case study 1: Olisa Agbakoba v Attorney General of the Federation & others¹²¹

In this case, the Court of Appeal considered the legality of the president's appointment of a justice of the Supreme Court despite allegations of non-compliance with the National Judicial Council's (NJC) recommendation. The court upheld the president's appointment, ruling that it was valid as long as the NJC had been consulted, even if the president did not strictly follow the NJC's recommendation. This case highlighted the tension between executive discretion and judicial oversight in the appointment process.

4.2.2 Case study 2: Federal Judicial Commission (FJSC) Appointments

On April 2, 2024, the FJSC approved 22 nominees for the Court of Appeal, despite several nominees not meeting the established criteria. For instance, Elejo Eneche from Kogi state was appointed with less than three years as a judge, lacking the necessary experience. Additionally, Victoria Nwoye and Henry Aja-Onu Njoku were appointed despite not meeting the required years of service or being close to retirement age respectively¹²².

4.2.3 Case study 3: Abia State Judicial Service Commission

In 2022, there were significant controversies regarding judicial appointments in Abia state. The state Judicial Service Commission faced allegations of corruption and abuse during the appointment process. Stakeholders, including Access to Justice, called for an urgent review of the judicial appointment guidelines to address these issues¹²³.

4.2.4 Case study 4: Cross River State Judicial Appointments (2021)

The NJC recommended the appointment of some judges for the Cross River State judiciary, but Governor Ben Ayade refused to approve them, citing financial constraints. The NJC

¹²¹ *Olisa Agbakoba v Attorney General of the Federation & others* (2018) LPELR-44726(CA)

¹²² Vanguardngr.com. In Nigeria, judicial appointments have become network of corruption, by Chidi Odinkalu-vanguard News

¹²³ Guardian.ng – stakeholders on why judicial appointment guideline must be reviewed | the Guardian Nigeria News and world news- features- the Guardian Nigeria news – Nigeria and world news

maintained that the governor's refusal was unconstitutional and threatened to report the matter to the national assembly.¹²⁴

4.2.5 Case Study 5: Rivers State Judicial Appointments (2022):

The NJC recommended the appointment of some judges for the Rivers State judiciary, but Governor Nyesom Wike refused to approve them, citing concerns over the nomination process, this led to tensions between the governor and the NJC, with the latter insisting that the governor had no choice but to approve its recommendation¹²⁵.

4.2.6 Case study 6: Ekiti State Judicial Crisis (2019)

Governor Kayode Fayemi declined to approve the appointment of some judges recommended by the NJC, citing a lack of financial resources. This led to a standoff between the governor and the NJC. With the NJC arguing that the governor lacked the constitutional power to reject its recommendations¹²⁶.

4.2.7 Case study 7: Osun State Judicial Crisis 2023

The Osun state case revolves around the attempted suspension of Justice Adeleke Ojo, the Chief Judge of Osun State, by Governor Ademola Adeleke and the Osun State House of Assembly. Governor Ademola Adeleke and the Osun State House of Assembly received petitions against Justice Ojo, alleging misconduct and corruption. This move came after political tensions, as justice Ojo was accused of bias in favour of the previous administration led by the All Progressive Congress (APC) during election litigation. The house of assembly invoked sections 128(2)(b) and 129 of the 1999 Nigerian Constitution to set up a panel to investigate the allegations against justice Ojo. Based on the panel's recommendations, they advised the governor to suspend her. Justice Ojo, anticipating her removal, approached the National industrial court in Ibadan, seeking an interim injunction to prevent her suspension.

¹²⁴ Udo, B. "NJC, Ayade at "Loggerheads Over Judges' Appointment" PUNCH (16 November 2021)

¹²⁵ Eze, Cc. "NJC, Wike's Face-off over judges' Appointment Deepens" THISDAY (14 June 2022)

¹²⁶ Oluwole, O. "Ekiti Judicial Crisis: Fayemi Rejects NJC's Recommendation of Judges" PUNCH 928 January 2019

The court granted her request, instructing the governor and other state officials to maintain her position and benefits pending the resolution of the legal challenge. Despite the court order, the Osun State House of Assembly proceeded with recommending justice Ojo's suspension, which governor Adeleke initially approved. However, facing significant criticism and legal challenges, the governor denied having suspended her and rendered the matter to the national judicial council (NJC) for proper action. Justice Ojo's counsel argued that only the NJC has the constitutional authority to discipline or remove a sitting judge, not the state governor or house of assembly. This argument is based on previous supreme court rulings, which have consistently reinforced the NJC's exclusive role in such matters. The Osun case underscored the constitutional provisions protecting judicial independence in Nigeria. According to section 292 of the Nigerian constitution, the NJC is the sole body empowered to recommend the removal or discipline of judges. This separation of powers is designed to prevent political interference in the judiciary. This case exemplifies the ongoing challenges in maintaining judicial independence in Nigeria, particularly against the backdrop of political pressures and the need for strict adherence to constitutional protocols¹²⁷.

4.2.8 Case study 8: Judicial Appointment in Lagos

In Lagos state, there have been instances where the Governor appointed judges without following the NJC's recommendations¹²⁸. This practice raised concerns about the potential erosion of judicial independence and the disregard for the constitutional safeguards established by the NJC.

In Nigeria, the appointment process for judges involves a collaborative effort between the executive, the National Judicial Council (NJC), and the Federal judicial Service Commission (FJSC). The constitution outlines the procedures for appointing judges to the superior courts,

¹²⁷ Vanguardngr.com – Osun Chief Judge's removal: issues, politics, precedents., premiumtimesng.com

¹²⁸ Ogunye, J., "judicial Appointments in Lagos State: Challenges and Way forward, 2022

with the president or state Governors making the final appointments based on the recommendations of the NJC and FJSCC¹²⁹.

However there have been instances where the executive authority has deviated from the established procedures, leading to legal challenges and debates regarding judicial independence and accountability. The following illustrate the complexities involved in maintaining a balanced and independent judiciary.

I. Governor's Appointment Judges Without NJC Recommendation

In the case of *Nganjiwa v Federal Republic of Nigeria*¹³⁰, the court of appeal addressed the issue of a state Governor appointing judges without the Recommendation of the NJC. The court of appeal addressed the issue of a state Governor appointing judges without the recommendation of the NJC. The court emphasized the importance of adhering to the constitutional provisions and highlighted the critical role of the NJC in safeguarding judicial independence. The court held that the Governor's appointments were unconstitutional and a violation of the principles of separation of powers and judicial independence.

II. Challenging the NJC's Recommendation for judicial Appointments

In the case of *Olisa Agbakoba v National Judicial Council*¹³¹, a legal practitioner challenged the NJC's recommendation for the appointment of certain judges, alleging irregularities in the selecting process. The court upheld the NJC's recommendations, stating that the council had followed due process and exercised its discretion reasonably.

III. Governor's Refusal to Appoint Judges based on NJC Recommendation

¹²⁹ The Constitution of the Federal Republic of Nigeria 1999 (as amended), sections 231-238

¹³⁰ *Nganjiwa v federal republic of Nigeria* (2017) LPELR-43391(CA)

¹³¹ *Olisa Agbakoba v attorney General of the Federation & ors* (2018) LPELR-44726(CA)

In the case of *Judicial Service Commission, Rivers State v Governor of Rivers States*¹³² in this case, the judicial service commission of rivers state challenged the Governors refusal to appoint judges recommended by the national judicial council (NJC). The NJC had recommended candidates for appointment as judges, but the Governor declined to make the appointment, citing reasons such as alleged bias In the NJC selection process. The court held that the governor’s refusal to appoint judges based on NJC recommendations was unconstitutional and amounted to an infringement on the independence of the judiciary. The court emphasized the importance of the NJC’s role in the appointment process and affirmed that the Governor discretion in judicial appointment s should be exercised in accordance with the recommendations of the NJC, unless there are compelling reasons to justify deviating from such recommendations.

4.3 LEGAL FRAMEWORK: CONSTITUTIONAL PROVISIONS

The 1999 constitution of the federal republic of Nigeria provides the legal framework for judicial appointments. Section 231(1) states, “the appointment of a person to the office of Chief justice of Nigeria shall be made by the president of the recommendation of the National judicial council¹³³. Section 231(2) further stipulates “*the appointment of a person to the office of a justice of the supreme court shall be made by the president on the recommendation of the national judicial council*”. These provisions underscore the role of the NJC in recommending candidates for appointment to the supreme court and the position of chief justice of Nigeria, while the president retains the final authority to make the appointments.

4.4 SCHOLARLY PERSPECTIVES AND DEBATE

¹³² (2013) 7 NWLR (Pt.1358) 50

¹³³ CFRN 1999(as amended) section 231(1).

The issue of judicial appointments and the preservation of judicial independence has been the subject of extensive scholarly discourse and debates within the Nigerian community. In his book “*judicial independence in Nigeria: contemporary issues*”¹³⁴. Ajayi Okekeifere examines the challenges and threats to judicial independence in Nigeria, including the potential for executive interference in the appointment process. He argues for stronger mechanisms to safeguard judicial autonomy and insulate the judiciary from undue external influences.

Similarly, in the journal article ‘Judicial Appointment and Accountability in Nigeria: Balancing the Scales’.¹³⁵ Authors Adebayo Ojo and Oluwafemi Oyewunmi critically analyzed the existing appointment process and propose reforms to enhance transparency, accountability, and public confidence in the judiciary.

Furthermore, Yemi Akinseye-George, in a book chapter titled “judicial appointments and accountability in Nigeria suggests the establishment of a specialized body dedicated to the judicial appointments commission in the United Kingdom. Akinseye-George argues that such a body could help streamline the process, promote transparency, and ensure a more balanced representation of stakeholders.

These scholarly works and debates contribute to the ongoing discourse on judicial independence and accountability, offering insights and recommendations for strengthening the judicial appointment process in Nigeria.

Maintaining judicial appointment process is a complex and multi-faceted endeavor. The Nigerian legal system has established constitutional provisions and mechanisms to ensure a collaborative approach involving the executives, legislative and judicial branches. However, as illustrated by the case studies and case laws presented in this chapter, challenges and deviations from the established procedures have arisen, necessitating judicial intervention and reinforcement of the principle of judicial independence and accountability. Comparative

¹³⁴ Okekeifere, A. I., 2018

¹³⁵ Ojo, A. O., & Oyewunmi, O.A., 2020

analyses of judicial appointment processes in other jurisdictions offer valuable insights and potential models for Nigeria to consider. While each system has its unique strengths between executive authority and judicial oversight, promote transparency and public confidence, and safeguard the independence and integrity of the judiciary.

Moving forward, Nigeria can draw upon scholarly perspectives, international best practices, and lessons from its open legal precedents to strengthen and refine the judicial appointment process. Potential areas for improvement include enhancing transparency through public participation and oversight, implementing rigorous vetting and assessments mechanisms, and exploring the establishment of a dedicated body to oversee judicial appointments.

Ultimately a robust and accountable judicial appointment process is crucial for upholding the rule of law, protecting individual rights and ensuring the fair and impartial administration of justice in Nigeria.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 SUMMARY OF KEY FINDINGS ADDRESSING THE RESEARCH QUESTIONS

This study has undertaken a comprehensive examination of the judicial appointment process in Nigeria, with a particular focus on the role of the National Judicial Council (NJC) and the balance between executive authority and judicial oversight. Through an in-depth analysis of relevant legal frameworks, case laws, and scholarly perspectives, several key findings have emerged.

The 1999 Constitution of the Federal Republic of Nigeria establishes the National Judicial Council as a critical body responsible for recommending candidates for judicial appointments to the President or Governors of States¹³⁶. The NJC's role is widely recognized as a safeguard against arbitrary appointments and a mechanism to ensure transparency and accountability in the selection process. In the case of *Nganjiwa v. Federal Republic of Nigeria*¹³⁷, the Court of Appeal emphasized the significance of the NJC, stating, "The National Judicial Council serves as a check against the arbitrary appointment of judges".

While the Constitution mandates that judicial appointments be made on the recommendation of the NJC, there have been instances where Governors have appointed judges without strictly following the NJC's recommendations.¹³⁸ This practice has raised concerns about potential threats to judicial independence and the erosion of constitutional safeguards.

The case of *Olisa Agbakoba v Attorney General of the Federation & Others*¹³⁹ highlighted this tension, where the Court of Appeal upheld the President's appointment of a Supreme Court Justice despite allegations of non-compliance with the NJC's recommendation.

¹³⁶ 1999 Constitution of The Federal Republic of Nigeria, S. 231(1)-(2)

¹³⁷(2017) LPELR-43391(CA), para 34

¹³⁸Ogunye, J., "Judicial Appointments in Lagos State: Challenges and Way Forward," 2022

¹³⁹ (2018) LPELR-44726(CA), Para 45

Scholars and legal experts have consistently emphasized the need for greater transparency and accountability in the judicial appointment process to maintain public confidence and uphold the rule of law¹⁴⁰

5.2 RECOMMENDATIONS FOR CLARIFYING AND IMPROVING THE JUDICIAL APPOINTMENT PROCESS IN NIGERIA

The existence of an autonomous body overseeing judicial appointments is of paramount importance. The Judicial Service Commission and the National Judiciary Council should be composed of individuals with impeccable integrity who can exercise their duties independently, during the appointment process, the principles of equality and merit must be upheld, ensuring that the most qualified candidates are selected. Consequently, the current practice of solely relying on nominations from judicial officers should be minimized or discontinued. Instead, there should be active participation from the Nigerian Bar Association and the general public in the appointment process, which should be conducted in an open and transparent manner, departing from the current shroud of secrecy. It is therefore appropriate to recommend that practicing lawyers with substantial legal experience, profound knowledge, and exemplary character should be the primary candidates considered for appointment. Additionally, distinguished jurists from academia should also be considered, akin to the appointment of Dr. T.O.S. Ellas in the past. Femi Falana a renowned legal practitioner, has expressed the need to prevent individuals with questionable character or lack of legal expertise from being appointed to the bench¹⁴¹. To ensure that judicial appointees possess robust legal knowledge, Uthman advocated for the adoption of a methodology similar to that employed in Lagos State across the entire federation. Under this approach, individuals

¹⁴⁰ Okekeifere, A. I., "Judicial Independence in Nigeria: Contemporary Issues," 2018; Ojo, A.O., & Oyewunmi, O.A., "judicial appointment and accountability in Nigeria: Balancing the Scales,2020)

¹⁴¹ Femi Falana "the anti-corruption war in the Nigerian judiciary: the journey so far.", in Abikan I. Abduqadir & Ishola s. Abdullahi (ed.) Nigerian Judiciary. Contemporary issues in Administration of justice: Essays in Honour of Hon Justice Isa Ayo Salami, Ilorin: Nigerian Bar Association, 2013,310

seeking judicial appointments in the state are required to undergo a qualifying aptitude test. Only those who successfully pass this examination are eligible to proceed to the subsequent stages of the appointment process¹⁴².

Based on the findings of this study, the following recommendations are proposed to clarify and improve the judicial appointment process in Nigeria:

5.2.1. Strengthen the Role and Independence of the National Judicial Council:

To further safeguard judicial independence and uphold the principles enshrined in the Constitution, it is recommended to enhance the authority and autonomy of the National Judicial Council. This could involve measures such as:

- a. Clearly defining the criteria and procedures for the NJC's recommendation process, ensuring transparency and objectivity.
- b. Establishing mechanisms for the NJC to provide detailed justifications for its recommendations to the executive branch.
- c. Introducing measures to ensure that the executive branch adheres to the NJC's recommendations, except in exceptional circumstances with valid reasons.

5.2.2. Enhance Transparency and Public Participation:

To promote public trust and accountability, it is recommended to increase transparency and public participation in the judicial appointment process. This could involve:

- a. Publishing detailed information about judicial vacancies, selection criteria, and the application process.
- b. Conducting public hearings or consultations to gather input from stakeholders, including civil society organizations and legal professionals.
- c. Requiring candidates for judicial positions to undergo public interviews or vetting processes.

¹⁴² Kunle Uthman, "The reality and the Myth: How Independent are the JSC in filling vacancies," available online at accesstojustice-ng.org (accessed September 6, 2014)

5.2.3. Promote Diversity and Representation:

To ensure that the judiciary reflects the diversity of Nigerian society and promotes equal representation, it is recommended to:

- a. Establish clear guidelines and targets for achieving gender, ethnic, and regional diversity in judicial appointments.
- b. Encourage the participation and consideration of qualified candidates from underrepresented groups.
- c. Implement measures to address potential biases and barriers in the selection process.

5.2.4. Strengthen Continuing Legal Education and Professional Development:

To maintain the highest standards of competence and integrity within the judiciary, it is recommended to:

- a. Enhance the role and resources of the National Judicial Institute in providing comprehensive and ongoing legal education and professional development programs for judges.
- b. Encourage judges to participate in relevant training, workshops, and exchange programs to stay abreast of emerging legal trends and best practices.
- c. Implement regular performance evaluations and feedback mechanisms to identify areas for professional growth and development.

5.3 CONCLUSION REAFFIRMING THE IMPORTANCE OF MAINTAINING TRANSPARENCY, ACCOUNTABILITY, AND JUDICIAL INDEPENDENCE

The judicial appointment process lies at the heart of ensuring an independent, impartial, and effective judiciary, which is a cornerstone of Nigeria's democratic system and the rule of law.

This study has highlighted the critical role played by the National Judicial Council in recommending candidates for judicial positions, serving as a check against arbitrary appointments and promoting transparency and accountability.

However, the tensions between executive discretion and judicial oversight, as exemplified in various case laws, underscore the need for ongoing efforts to clarify and strengthen the appointment process. The recommendations proposed in this study aim to address these challenges by enhancing the authority and independence of the NJC, promoting transparency and public participation, ensuring diversity and representation, and fostering continuing legal education and professional development for judges.

Ultimately, maintaining a robust and transparent judicial appointment process is essential to upholding the principles of judicial independence, impartiality, and integrity. A strong and respected judiciary that is insulated from undue external influences is vital for protecting individual rights, safeguarding the rule of law, and; fostering public confidence in the administration of justice.

As Nigeria continues to evolve and strengthen its democratic institutions, it is imperative to prioritize judicial independence and accountability, ensuring that the appointment of judges is based on merit, transparency, and adherence to constitutional principles. By implementing the recommendations outlined in this study, Nigeria can take significant strides toward achieving a judiciary that truly reflects the aspirations of its people and upholds the highest standards of justice and fairness.

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