

JUDICIAL AUTONOMY IN NIGERIA: A MYTH OR A CONSTITUTIONAL ALBATROSS?

Ugochukwu Godspower Ehirim*

Private Law Department, Delta State University, Nigeria
ehirim.ug@delsu.edu.ng

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Abstract

The recent threat by Judiciary Staff Union of Nigeria (JUSUN) exuding resolve to stage yet another industrial strike-action to demand realistic autonomy of the Nigerian Judiciary has re-enacted the conversation for judicial autonomy in Nigeria. The power architecture in Nigeria has made both the state and federal legislative and judicial branches of governance the recipients of incremental erosion of independence by a flourishing state bureaucracy for purposes of executive expediency. Adopting the doctrinal research methodology of analysis which leverages on primary and secondary sources, this paper contends that judicial autonomy is a fundamental ingredient for effective dispensation of justice which is a fundamental factor in modern democracies. The paper examines the constitutional guarantees for the hallowed notion of separation of political powers across the branches of governance in Nigeria, with focus on the funding and general administration of the judicial organ of governance. The paper contributes to the proper conceptualization of 'judicial autonomy' to implicate the manner of funding which is at the very root of judicial emasculation in Nigeria. It concludes through its findings that judicial autonomy in Nigeria is attainable despite the seeming challenges, with a courageous bar and willing judiciary. Some recommendations are made that would help the realization of judicial autonomy for proper justice administration in Nigeria.

Keywords: Autonomy; Constitution; Judiciary; Nigeria; Separation of Powers

* The author holds a Doctor of Laws (Ph.D.) from Delta State University, Oleh Campus, Nigeria.



I. INTRODUCTION

The year 2021 passed with bitter memories for litigation lawyers in Nigeria. JUSUN across its strata in the entire Nigerian federation had embarked on industrial strike action, in the first quarter of the year, to exert pressure on the Nigerian government to implement financial autonomy for the judiciary. The Association had argued and protested against the age-long ingenious and pernicious patterns of subjugation and emasculation of the judiciary by successive administrations, notwithstanding constitutional provisions to the contrary.¹ It is of great concern that JUSUN threatened to embark on yet another strike for the same purpose in 2023 despite the harrowing experience such a strike leaves on lawyers and the public at large, in its wake. There have yet been pockets of threats of strike by judiciary workers in select states of the federation in the first quarter of 2025. The nonchalant stance of the government to JUSUN's demands have become rather too familiar. This trend has been identified as cancerous in a civilized society where protection of individual liberties against over-zealous state bureaucracies are essential to maintain order and stability through the legal process. It is contended that the rule of law is of no moment without a guarantee of demarcation of powers, particularly by ensuring judiciary's independence.² Fleck suggests that autonomy of the judicial axis of state governance combines with other factors to define the legal order which affords institutional guarantees that enhances mental and cultural dispositions within the justice delivery matrix.³ Adams does not conceive the independence of judges and court administration in itself as an end but as a necessary prerequisite in contemporary civil society which prioritizes governance by law as against the governance by the whims of men, particularly for the safeguard of constitutional liberties. This is important

¹ Kato Gogo Kingston, Victor Nonso Enebeli, and Felix Chukwuemeka Amadi, "Judicial Financial Autonomy and the Inherent Powers of the Executives in Nigeria: Lessons from Australia, Britain and Canada," *African Journal of Social Sciences (AJSS)* 12, no. 1 (2022): 20.

² Andrew Le Sueur, "Developing Mechanisms for Judicial Accountability in the UK," *Legal Studies* 24, nos. 1–2 (2004): 73.

³ Zoltan Fleck, "Changes of the Political and Legal Systems: Judicial Autonomy," *German Law Journal* 22, no. 1 (2021): 1298.

because without independence, a fully-fledged judiciary is a wishful thinking and does not exist.⁴

The 1999 Constitution of Nigeria (CFRN) provides for judicial independence which resonates with the jurisprudence of clear demarcation of powers.⁵ Section 6, CFRN expresses states' judicial powers in Nigeria which is domiciled with the courts. The funding of the court and entire justice administration requires remarkable non-interference by the agents of other branches of governance, particularly the executive (the government) in order to guarantee constitutionality and confidence of citizens in the democratic society. The pragmatic implementation of the relevant text in Section 121(3), CFRN with regard to funding of the judiciary has generated so much controversy that the revered doctrine of judicial autonomy which situates at the roots of dispassionate adjudication of disputes in Nigeria has become illusory. Executive recklessness and political manipulation of the judiciary has aided maintenance of the unfortunate tradition in Nigeria, having been identified as the major weakness to the proper implementation of judicial independence in Nigeria. However, while the government at the center under the stewardship of President Muhammadu Buhari sought a political solution to the quagmire by the making of Executive Order 10, some leaders of the Nigeria Bar Association took steps to get a proper interpretation of the CFRN on the matter, having faith in the fact that the CFRN has not expressed judicial autonomy with ambiguity.

The complexity of the subject of judicial independence has not lent itself plethora of published works in Nigeria. Most scholars discuss the doctrine more in relation to the doctrine of checks and balances than as a distinct subject deserving scholarly arguments. Oraegbunam discussed judiciary's autonomy as an integral aspect of power sharing within the Nigerian constitutional democratic arrangement.⁶ His work presents judicial independence as necessary

⁴ John Adams, *The Works of John Adams*, vol. 3 (Boston: Little, Brown and Company, 1851), 522. See also *Agbaje v. COP* [1969] 1 MNLR 176, 177 (Nigeria), where John Adams was quoted with approval.

⁵ Ugochukwu Godspower Ehirim et al., "Constitutional Safeguard for Preservation of Democratic Political Culture and the Legitimacy of Political Porting in Nigeria," *Udayana Journal of Law and Culture* 9, no. 1 (2025): 11.

⁶ Ikenga Kenneth Emeka Oraegbunam, "Separation of Powers and Nigerian Constitutional Democracy," *Vanguard*, January 19, 2005.

in a democratic society to ensure justice and order. He failed to state it as a mandatory requirement in a constitutional democracy. This paper addresses the gap, highlighting the fact that judicial independence is not directory but mandatory in the governmental affairs of the Nigerian state. Mrabure and Awhefeada in their article which focus on the judicial-executive relationship conundrum engages the case study of Onnoghen CJN to examine how the display of stark powers by the Nigerian President aligns with the time-tested theory of power sharing among organs of governance in Nigeria. The paper analyzes the relevance of judicial autonomy, describing it as the livewire of boldness, firmness and integrity that underlines dispensation of justice in contemporary society. They conceived judicial autonomy to be the insulation of the judicature from interference by other arms, particularly the executive.⁷ Concentrating on the controversial removal of the head of Nigeria's judiciary (CJN) from office by government fiat, the article frown at politicking with the judiciary at the topmost level. It, however, fell short of integrating the workings of the judiciary into the analysis, particularly in respect of funding which should not requiring the judicial institution to kowtow to its executive counterpart. This short fall is the crux of the extant research. Amuda-Kannike et al examine the beneficial principles of fiscal autonomy for the judiciary, as well as general governance of justice in their article.⁸ The authors dwell on judicial autonomy at the central configuration of governance, to the exclusion of the statutory states comprised in the federation, relying heavily on *Olisa Agbakoba v The Attorney-General of the Federation & 2 Ors* which sought interpretation and enforcement of Sections 81(1) & (2) and 84(1) of the CFRN. Nigeria is a federation and besides the central control of judicial officers through the Nigeria Judicial Council (NJC), every federating state has its independent Service Commission (JSC) fashioned after the NJC. Consequently, the omission of the states which constitutes the

⁷ Kingsley Omote Mrabure and Ufuoma Veronica Awhefeada, "Onnoghen's CJN Conundrum: Exercise of the Executive Powers of the President and the Practice of Separation of Powers in Nigeria," *Commonwealth Law Bulletin* 46, no. 3 (2020): 1.

⁸ Abiodun Amuda-Kannike, Awudumapu Godfrey Obe Agorodi, and Yusuf Amuda-Kannike, "Examining the Mutual Concepts of Judicial Fiscal Autonomy and Administration of Justice," *Redeemers' University of Nigeria Journal of Jurisprudence and International Law* 3, no. 2 (2023): 260.

grassroots for dispensation of justice is a gap that this paper seeks to fill by analyzing the authority of *John Aikpokpo-Martins, Esq & Anor v Governor of Delta State & 5 Ors* which is an attempt at enforcing judicial independence at the state level in line with Sections 120(4), 121(2) & (3) and 124(4) of the CFRN. The issue of judicial independence transcends political boundaries, extending to wherever formal justice is desirable, and deserving of comparative analysis. Consequently, Chan makes an authoritative effort in engaging with comparative analysis regarding the practicality of judiciary's insulation from interference in South Sudan and India.⁹ The author appreciates judicial independence from the optics of ensuring principles of liberal-democracy, particularly checks and balances, to contain executive arbitrariness. Scrutinizing the procedure for judges' appointment, employment security, finance and general court administration, the author identifies loopholes which reduce the concept of judiciary independence to an academic exercise. The author found that the judiciary is helpless when it comes under assault by overbearing executive. The paper falls short of appreciating the fact that it is not at all times that the judiciary is helpless against the intrusion of the executive, particularly where there are willing collaborators in the enterprise of defending judicial autonomy. The jurisprudential complexity of judicial autonomy across the globe may inform particularity in making a case for the phenomenon. Hence, Awawda's work was an evaluation of *de jure* autonomy of the judiciary, particularly Constitutional or Supreme Courts.¹⁰ The author's concentration on Constitutional Court which is but an integral part of the judiciary leaves much field uncovered, particularly in jurisdictions where the constitution has not afforded the state the discretion to pick and choose which categories of court or institutions of the judiciary should be accorded independence. This work makes a case for the entire judiciary as an arm of government, equal in relevance to other arms in a democratic state such as Nigeria thereby filling the gap created by Awawda. This could be seen in the cases of challenges by

⁹ Wol Deng Akech Chan, "Comparative Analysis of Judicial Independence in South Sudan and India," SSRN, June 13, 2018.

¹⁰ Osayd Awawda, "Assessment of De Jure [by law] Judicial Independence of Constitutional Courts According to International Guidelines," *Constitutional Review* 10, no. 1 (May 2024): 202.

persons outside the judiciary such as the Bar leaders.¹¹ The neglect to address the aspect of enforcement of the notion of constitutional provisions of Judicial autonomy for the restoration of judicial integrity as was the case in Nigeria is a gap which this work addresses. On his own part, Okaisabor examines the struggle for financial independence for the judiciary in Nigeria, highlighting its obstacles.¹² The article makes a comparative analysis between Nigeria and some jurisdictions such as the Netherlands in terms of budgetary allocations against the backdrop of the annual budget through the years, highlighting paucity of funds as primary element militating against judicial autonomy as enshrined in the Nigerian constitution. This paper disagrees with Okaisabor, positing that financial autonomy of the judiciary does not dwell with the abundance funds but in the procedure for budgeting and disbursement of the available state funds among the three arms of government. However, the author like Amuda-Kannike et al, builds his arguments majorly on the cases of 2014 without reference to the more recent case of *Aikpokpo – Martins v Governor & 5 Ors* decided in 2023.¹³ *John Aikpokpo – Martins* introduced the matrix of federating states into the debate of judicial autonomy in Nigeria. The omission to discuss the benefits of *John Aikpokpo – Martins*, given the recency of the article creates a huge knowledge gap which this paper addresses.

This paper examines the pragmatic effect of trite constitutional dogmas regarding power separation in a federation, with bias on judicial autonomy and its impact on justice governance in Nigeria.¹⁴ Its novelty lies in the fact that it deepens arguments and the prospect of enforceability of the constitutional doctrine of judicial financial autonomy at the state levels of the Nigerian federation which was hitherto viewed as a matter for discourse at the federal level.¹⁵ It sets out

¹¹ Federal High Court Abuja, *Olisa Agbakoba v. Attorney-General of the Federation & 2 Ors.*, Suit No. FHC/ABJ/CS/63/2013, judgment delivered by Mohammed J., May 26, 2014.

¹² Jeremiah Osasume Okaisabor, "The Quest of Fiscal Autonomy for Judicial Independence: The Case of the Nigerian Judiciary and Its Challenges," *African Identities* 23, no. 3 (2025): 756–80.

¹³ Delta State High Court Asaba, *John Aikpokpo-Martins, Esq. & Anor v. Governor of Delta State & 5 Ors.*, Suit No. A/164/2022, judgment delivered by Hon. Justice Briki-Okolosi, March 7, 2023. See also Federal High Court Abuja, *Judiciary Staff Union of Nigeria (JUSUN) v. National Judicial Council & 74 Ors.*, Suit No. FHC/ABJ/CS/667/13, judgment delivered by Ademola J., January 13, 2014.

¹⁴ Okaisabor, "The Quest of Fiscal Autonomy", 756.

¹⁵ Prior to 2023, arguments on judicial financial autonomy in Nigeria had been advanced largely at the federal level; hence, the governors of the 36 federating states challenged Executive Order No. 10 signed by the President.

to establish that judicial financial autonomy is mandatory and not a matter for political convenience in Nigeria. In this paper, judicial autonomy may be used interchangeably with judicial financial autonomy (JFA).

II. RESEARCH METHODOLOGY

This paper is doctrinal in approach. It is primarily based on library research devoid of empirical analysis. Accordingly, it engages a critical desk analysis of data comprised in primary and secondary source-materials, including current legislations, articles, caselaw, law reports, books, policy statements and sundry documentations relevant to the discourse. Peer – reviewed and gray literature within Nigeria and beyond are evaluated. The complexity of the discourse instructs the engagement of specific case studies of judicial pronouncements which address the subject. The notion of judicial autonomy pervades the entire culture of justice dispensation across the globe, however, the choice of Nigeria as a focus draws from the fact of near complete-erosion of confidence and trust with the country's judiciary flowing from the inability of the arm of government to stand firm against executive rascality which has resulted in JUSUN strikes as the only way to drive the grievances of the judiciary for the attention of the public. Reference to other jurisdictions is for comparative analysis.

The paper has been structured in parts beginning with the introduction which sets the template for the discourse. The second part is the forgoing which presents the methodology engaged throughout the process of the data analysis. This aspect covers the type of legal research, showing the manner by which data was obtained and evaluated. The third part conceptualizes judicial autonomy, dwelling on the history and development of judicial autonomy in Nigeria with a sub-heading detailing financial autonomy in Nigeria. Furthermore, the paper examines the constitutional safeguards for judicial autonomy in Nigeria with a sub-heading on Executive Order 10 issued for the working-implementation of the arrangement. The paper then proceeded to discuss judicial interventions on matters of Judicial Financial Autonomy (JFA) in Nigeria with a sub-heading on experiences from other jurisdictions, particularly South Sudan.

Recommendations and conclusion follow accordingly and respectively. Based on the available literature, comparative analysis as well as the field-experience of the philosophy and workings of the judiciary in Nigeria, the paper makes pragmatic recommendations for better funding to enhance judicial accountability through independence but with cooperation with other arms of government.

III. CONCEPTUALISING JUDICIAL AUTONOMY IN MODERN DEMOCRACIES

The concept of judicial autonomy or independence as an inextricable super structure of administration of justice is not a recent phenomenon. Amuda-Kannike *et al* conceive judicial autonomy as the duty or manner of conferring independence or self-administrative status on the judicature in a state in order to guarantee sustained discharge of the judicial mandates.¹⁶ Consequently, judicial autonomy implicates an arrangement in which a judge handles cases and dispenses justice in a manner insulated from interference, influence or inducement whatsoever by the complementary organs of state governance. Judicial autonomy is a fundamental rubric equitable legal architecture which guarantees accountability and equality at law.¹⁷ The whole idea of judicial autonomy begins with the manner of employing judicial officers, and includes the conditions around optimization of their employment goals.¹⁸ Thus, Dijk and Vos suggest that accountability and judicial independence are twain democratic virtues evaluated with reference to the judicial architecture on the one part and the individual judges, on the other part.¹⁹ Accordingly, the test for autonomy of the judiciary in any given circumstances is both subjective and objective, admitting of assessment through the mechanism of specific indicators.²⁰

¹⁶ Amuda-Kannike et al, "Examining the Mutual Concepts," 266.

¹⁷ Fritz Edward Siregar, "Between the People and the Populists: Safeguarding Judicial Independence in a Changing World," *Constitutional Review* 10, no. 1 (May 2024): 171.

¹⁸ Sultan Mehmood, "Judicial Independence and Development: Evidence from Pakistan," AMSE Working Papers 2041 (Aix-Marseille School of Economics, December 2020).

¹⁹ Frans Van Dijk and Geoffrey Vos, "A Method of Assessment of the Independence and Accountability of the Judiciary," *International Journal for Court Administration* 9, no. 3 (2018): 1–21.

²⁰ The European Network of Councils for the Judiciary (ENCJ) outlines 22 indicators with 64 sub-indicators. See Inglo Keilitz, "Viewing Judicial Independence and Accountability through the 'Lens' of Performance Measurement and Management," *International Journal for Court Administration* 9, no. 3 (2018): 23–36.

Judicial autonomy therefore is hinged on the age-long teachings on check and balances which denote the practice of power sharing among the tripartite arms of government. Kosar et al demonstrate with the Hungarian Constitutional development, in comparison with the Czechia and Austria, that the strength and weakness of the legal system in modern times depends on such factors as the operations and applicability of constitutional power sharing in the state governance.²¹ Oraegbunam conceives the notion of mapping the powers among the arms of governance as a critical index in contemporary democracies.²² Analogous to the economics theory of division of labor as espoused by Adam Smith, the scholar contends that ‘separation of powers’ is meant to target efficiency, and much more critically, to guard against corruption and abuse.²³ The contemporary state masks human rights abuses with statutory limitations which in the circumstances reasonably invoke the courts’ powers for judicial review for the sustenance of constitutionalism. Advancing the realist jurisprudence, Buana suggests that where the executive and legislature are ‘drunk’, the judiciary should be ‘sober’ to drive an orderly society. Consequently, in attempting to explain the jurisprudence of power-mapping, Montesquieu espoused the importance of the arrangement to be the guarantee of individual liberty for according to him, liberty may only be assured when the judicial power of the state is separated from those of the legislature and executive.²⁴ Vile, nevertheless, observes that Montesquieu’s postulations on separation of powers with respect to English Constitution exuded economy (taking his generation into cognizance) demonstrating more of a picture of a utopian rather an actual state.²⁵ This is so, because the organ of government that is supreme under the English legal system is the Parliament, not the judiciary whether or not it administers justice with interference.

²¹ David Kosar, Jiri Baros, and Pavel Dufek, “The Twin Challenges to Separation of Powers in Central Europe: Technocratic Governance and Populism,” *European Constitutional Law Review* 15, no. 3 (2019): 427.

²² Oraegbunam, “Separation of Powers.”

²³ Mirza Satria Buana, “Weak-Form Review and Judicial Independence: A Comparative Perspective,” *Constitutional Review* 10, no. 2 (2024): 343.

²⁴ Baron de Montesquieu, *De l’esprit des lois [The Spirit of the Laws]* (n.p., 1748), chap. 11, secs. 3–6.

²⁵ Maurice John Crawley Vile, *Constitutionalism and Separation of Powers* (London: Oxford University Press, 1967), 84–85.

The call for total judicial independence in modern democracies transcends the geographical boundaries of Nigeria or any country whatsoever. In 1998, the Commonwealth of Nations met to discuss the burning issue of judicial independence as one of the root causes of corruption and political uncertainty in majority of member-states.²⁶ The resolution of the meeting on judicial independence produced the following guide to members:²⁷

- a) Judicial appointments should ensure: equal platform for all who are qualified and desirous of judicial office; engagement based on merit with appropriate attention given to the necessity for prioritization of gender equity and elimination of other primordial considerations tending towards discrimination;
- b) Arrangements to guarantee appropriate tenure security and sustained levels of wages must be established;
- c) Adequate funding of the judiciary to enhance its effective operations free from bottlenecks designed as constraint to desirable independence;
- d) Interaction, if any, among arms of government should be conducted in a manner as not to compromise autonomy for the judiciary.²⁸

The Latimer House Principles (LHPs) guarantees financial autonomy of the judiciary. It provides for sufficient and sustainable funding of the judiciary for effective performance in such a manner that such funds are protected from misappropriation and insulated from being a tool of improper judicial interference.²⁹ It has been suggested that the values or LHPs are irreversibly integrated in the standards and beliefs of the Commonwealth 2003, having been evaluated and adopted at a conference of the organization's Heads of Government held in Abuja, Nigeria.³⁰ The LHPs, arguably strengthens extant creed and goals

²⁶ The Commonwealth of Nations is an umbrella body of countries, excluding the United States of America, that were formerly British dominions and that use English as an official language. Nigeria became a member of the Commonwealth upon attaining political independence on October 1, 1960.

²⁷ These guidelines or principles which were declared at Latimer House Commonwealth Secretariat, London is currently known as the Latimer House Principles.

²⁸ Commonwealth of Nations, *The Commonwealth Latimer House Principles Practitioner's Handbook* (London: Commonwealth Secretariat, 2017).

²⁹ Commonwealth of Nations, *The Commonwealth Latimer House*.

³⁰ Okaisabor, "The Quest of Fiscal Autonomy for Judicial Independence."

for which the organization is known as set down in Singapore in 1971.³¹ Similarly, the heads of the judiciary in the Asian-Pacific countries met in 1995 at Beijing, China to evolve a uniform standard for the enhancement and safeguard of judicial independence, and more importantly, judicial financial autonomy.³² Thus, it may be apt to posit that the judiciary around the world face similar challenges in the discharge of its mandates even as courts are universally under legal obligation to make definitive decisions pertaining to the lives, liberties, privileges, obligations and estate of citizens.³³

As elegant and legally expedient as the argument for judicial independence appears, the complex chain of dependencies and inter-dependencies which define the day-to-day interactions between the government and the judicature has made judicial autonomy a conundrum, not only in Nigeria but in several countries of the Commonwealth. Stevens conceive that where the judiciary is practically independent, arbitrary use and abuse of power of judicial officers is inevitable.³⁴ Ojo stresses that absolute mapping of power is neither realistic nor necessary for effective governance.³⁵ In *USA v Bromim*,³⁶ Earl Warren, CJ observed that the demarcation of governmental powers enacted in the American Constitution could certainly not be for the purpose of promoting government efficiency. It was rather intended as a safeguard against tyranny. According to Ojo, the essence of the doctrine is to obviate tyranny by proscribing the arrogation of overwhelming power to any one entity or arm and the moderation of one power by another.³⁷ It is therefore expected that there may be overlapping functions from time to time.³⁸ It is to this end that the constitution of modern democracies entrench

³¹ Okaisabor.

³² This adoption of uniform standard of judicial independence is known as "The Beijing Statement of Principles of Independence of the Judiciary in the LAW ASIA Region".

³³ Keith David Ewing, "A Theory of Democratic Adjudication: Towards a Representative, Accountable and Independent Judiciary," *Alberta Law Review* 38 (2000).

³⁴ Robert Stevens, *Law and Politics: The House of Lords as a Judicial Body, 1800–1976* (Chapel Hill: University of North Carolina Press, 1978), 6.

³⁵ Afe Babalola, "Relevance of Separation of Powers and Its Application in Nigeria" (A Lecture Delivered at the NBA Annual Law Week Held July 5, 2019).

³⁶ *United States v. Brown*, 381 U.S. 437, 443 (1965).

³⁷ John Ikongbeh, "Separation of Powers Under the Constitution of Nigeria 1999: A Critical Review of Its Application since 29 May 1999," *Nigeria Law Journal* 1, no. 1 (2003): 92.

³⁸ Andrew Borokini, "The Doctrine of Separation of Powers and the 1999 Constitution," *Journal of Private and Commercial Law, Faculty of Law, University of Ado-Ekiti* 1, no. 1 (2008): 146–47.

separateness with insistence on interdependence; autonomy with deference to reciprocity.³⁹ It may therefore be germane to de-escalate the constant feud by the government and the judiciary for greater ideals of the society as the executive organ of governance claims the greatest entitlement to democratic validation in every modern state. Hence, perfect co-operation among the organs of government, much more than constitutional prescriptions, is essential for efficient regime of justice.

IV. HISTORY AND DEVELOPMENT OF JUDICIAL AUTONOMY IN NIGERIA

Judiciary in Nigeria consists of the whole machinery or organs of the courts at various levels. The earliest attempt to establish a judicial arm of government in modern Nigeria was made by Britain before 1914 upon the need to establish a proper avenue for entrenchment of the British legal system.⁴⁰ The Anglo-model tribunals were, however, instituted between 1862 through 1874 to include courts with civil and criminal jurisdictions, and the appellate court for West Africa.⁴¹ The judiciary has developed through various constitutional stages to its present status as enacted by CFRN. However, how this development impacts justice delivery has generated discussions, raising the bar against situations where political actors undermine the autonomy of the judiciary by dictating or influencing court judgements.⁴² In Africa, the pressure to erode judicial independence by political leaders is most palpable in electoral cases, particularly in countries with weak institutions like Nigeria and Madagascar.⁴³

³⁹ Uchechukwu Wilson Nwosu, "Separation of Powers and the Constitutional Basis of the Court of Appeal Judgment in *Hon. Justice Nganjiwa v. Federal Republic of Nigeria—A Critique*," *International Journal of Public Administration and Management Research* 5, no. 1 (2019): 28.

⁴⁰ Anthony Obi-Okoye, *Law in Practice in Nigeria: Professional Responsibilities and Lawyering Skills* (Lagos: Snaap Press Nigeria Limited, 2011).

⁴¹ Taslim Olawale Elias, *The Nigerian Legal System* (London: Routledge & Kegan Paul, 1963), 39–45, 52.

⁴² David Kosar and Samuel Spac, "Post-communist Chief Justices in Slovakia: From Transmission Belts to Semi-autonomous Actors?," *Hague Journal on the Rule of Law* 13, no. 2 (2021): 107, 142.

⁴³ Ramalina Ranaivo Mikea Manitra and Adya Paramita Prabandari, "Judicial Independence Under Political Pressure: The High Constitutional Court and Electoral Justice in Madagascar (2009–2023)," *Constitutional Review* 11, no. 2 (2025): 393–421; Izoukumor Afedolor Noah, "Analysing the Application of the *Lex Specialis Derogat Legi Generali* [special law overrides general law] Principle in *Peter Obi v. INEC* (2023): A Focus on Issue Two; Electronic Result Transmission," *African Journal of Law and Justice System* 3, no. 1 (2024): 94.

The principle and doctrine of judicial independence is traceable to Seventeenth Century England and Wales.⁴⁴ In 1607,⁴⁵ King James I adjudicated and delivered judgement on a land matter which was appealed against before Lord Justice Edward Coke who chaired the Common Pleas Court of England.⁴⁶ Lord Coke, in upholding the appeal rightly stated the law when he berated the King's usurpation of the adjudicatory powers of the courts. His Lordship further remarked that, 'No King of England since the conquest has arrogated to himself the powers to adjudicate any cause howsoever'. Any matters which concern the regime of justice within the British realm are exclusively decided by the Courts of Justice.⁴⁷

However, despite Lord Coke's bold statement against executive interference with judicial independence, successive English monarchs⁴⁸ persisted in interfering and manipulating the judicature prior to the Glorious Revolution in 1688⁴⁹ when the judiciary experienced minimal independence.⁵⁰ The Act of Settlement enacted in 1701 during the reign of King Williams III gave security of tenure to the judges thereby insulating judges from the 'hire-and-fire' intimidation by the monarch. Thus, judicial independence in Britain has evolved through case law and conventions⁵¹ leading to the Constitutional Reform Act 2005⁵² which expressly gave 'administrative' autonomy to the judiciary by guaranteeing judicial independence without specific stipulations on fiscal autonomy for the judiciary.

⁴⁴ Thomas Henry Bingham, *The Business of Judging: Selected Essays and Speeches* (Oxford: Oxford University Press, 2000), 55–58.

⁴⁵ See the case of *Prohibitions Del Roy* [1607] 7 ER 1342.

⁴⁶ Owen Hood Phillips, *Leading Cases in Constitutional Law* (London: Sweet & Maxwell, 1957), 46–47.

⁴⁷ Owen Hood Phillips, *Leading Cases in Constitutional Law*.

⁴⁸ Lord Woolf, "The Rule of Law and a Change in the Constitution," *Cambridge Law Journal* 63, no. 2 (July 2004): 317, <https://www.jstor.org/stable/4509106>. The interference reached its height during the Stuart dynasty.

⁴⁹ Diana Woodhouse, "United Kingdom: The Constitutional Reform Act 2005—Defending Judicial Independence the English Way," *International Journal of Constitutional Law* 5, no. 1 (2007): 153–65.

⁵⁰ Nicholas Addison Phillips (Lord Phillips), "Judicial Independence and Accountability: A View from the Supreme Court" (paper delivered at the UCL Constitution Unit launch of the research project on the politics of judicial independence, February 8, 2011).

⁵¹ Shimon Shetreet, "Fundamental Values of the Justice System," *The European Business Law Review* 23, no. 1 (2012): 61–75.

⁵² The Constitutional Reform Act 2005 expressly guarantees the independence of the judiciary in Britain, particularly in respect of the recruitment process and tenure of judicial officers. The finances of all arms of government in United Kingdom is centralised and managed by the Chancellor of the Exchequer within the office of His Majesty's Treasury. See Keith Whittington, "Legislative Sanctions and the Strategic Environment of Judicial Review," *The International Journal of Constitutional Law* 1, no. 1 (2003): 446–74.

The independence so guaranteed is subject to parliamentary supremacy in the British system of unwritten constitution and the age-long United Kingdom's governance structure which retains the monarch as member of all the three arms of government.⁵³

Beyond Britain, the conversation on judicial independence in modern democracies has become a global phenomenon which became more fortified through the twentieth century. Awawda identifies four documents setting out guidelines of international relevance with definitive bearing on personal, procedural, and institutional elements of judicial independence.⁵⁴ These include the soft laws prescribing the basics on what constitutes judiciary's independence, in conjunction with the Universal Charter of Judges.⁵⁵ The Montreal convergence of global stakeholders in the justice sector in June 1983 magnified the discourse on judiciary's autonomy. The international summit on independence of justice came up with global declaration regarding autonomy for Justice.⁵⁶ It was no comfort that the instrument of the declaration now known as the Montreal Declaration was silent in matters concerning the fiscal autonomy of the judiciary which is so critical to ideal judicial independence.

Similarly, prior to Montreal Declaration, New Delhi played host to the convention organized by the International Bar Association (IBA) sometimes in October 1982. IBA deliberated on judicial autonomy and evolved the instrument described as New Delhi Standards for Judicial Independence. This instrument subsequently received the endorsement of other critical global stakeholders in 1982.⁵⁷ Discussions have continued at the world stage on the need for proper independence of the judiciary to salvage the deepening 'organizational atrophy'

⁵³ David Clerk, "The Struggle for Judicial Independence," *Macquarie Law Journal* 12, no. 1 (2013): 21.

⁵⁴ Awawda, "Assessment of De Jure [by law] Judicial Independence," 202..

⁵⁵ See United Nations, *Basic Principles on the Independence of the Judiciary*, UN Doc. A/CONF.121/22/Rev.1 (August 26–September 6, 1985), art. 1; see also International Association of Judges, *Universal Charter of the Judge*, approved November 17, 1999, art. 1.

⁵⁶ See *Montreal Declaration: The Universal Declaration on the Independence of Justice*.

⁵⁷ See International Association of Judicial Independence and World Peace, *Standards for Judicial Independence* (Zurich, 2018), <https://www.jiwp.org>. The International Conference on Judicial Independence was held in Jerusalem on January 4–6, 2022.

⁵⁸ in the justice sector and to recalibrate the courts into progressive, evolving and, above all, proactive institutions.⁵⁹ Judicial independence, to say the least, has become a global public policy instrument for attainment of justice.⁶⁰

It suffices to say that barring Britain and its legal system which has been imbibed in Nigeria, the notion of judiciary's autonomy in Nigeria may just be traceable to the Nigeria Constitution (CFRN). ⁶¹ In *Alao v African Continental Bank Limited*,⁶² Karibi-Whyte, JSC emphasizing the boundaries and limitations placed on the court by the CFRN observed that the demonstration of jurisdiction by the Supreme Court is statutory, with its powers also prescribed in the text of the Statute. This pronouncement implicates that where the CFRN has prescribed some powers or privileges such as the court's jurisdiction, extending howsoever to its autonomy in operational and financial matters, the prescription is mandatory and binding on all stakeholders.

4.1. Independence of the Judiciary in Nigeria: Focus on Financial Autonomy

It is an essential principle of constitutional democracy that the judicature assumes the constitutional obligation for dispensation of justice, and for the same reason be accountable for the daily business of the courts.⁶³ A judiciary with the capacity to administer itself through funding and other monetary allocations from a source insulated from executive manipulations develops capacity to enhance court performance and general institutional turn the entire justice system around. Autonomy for the judiciary implicates non-interference by other arms of government in recruitment of judiciary staff, welfare and discipline for judiciary staff and provision of capital infrastructure for the effective justice delivery. In constitutional democracy, it has become a global tradition for the

⁵⁸ Tin Bunjevac, "Court Governance in Context: Beyond Independence," *International Journal of Court Administration* 4, no. 1 (2011): 35.

⁵⁹ Gar Yein Ng, "A Discipline of Judicial Governance?," *Utrecht Law Review* 7, no. 1 (2011): 102.

⁶⁰ Adam Mordecai Dodek, "Judicial Independence as a Public Policy Instrument," *Comparative Research in Law and Political Economy Research Paper* 5, no. 2 (2009): 1–36.

⁶¹ Federal Republic of Nigeria, *Constitution of the Federal Republic of Nigeria 1999* [CFRN], sec. 121(3).

⁶² *Alao v. ACB Limited* [2000] 9 NWLR (Pt. 672) 129; *Ubani v. Director, SSS* [1999] 1 NWLR (Pt. 625) 129, 150–51 on the determination of powers and jurisdiction of the Supreme Court. This case resonates with the prescription of the boundaries of other arms of government by the Constitution.

⁶³ James King, "A Judiciary-Based State Administration—The South Australian Experience," *Journal of Judicial Administration* 3, no. 1 (1993): 136. See also John Logan, "Executive Intervention in Judicial Functions and Judicial Encroachment into Executive Functions—Defining the Boundaries," *Federal Judicial Scholarship* (2017): 23.

legislature to be responsible for appropriation of funds while the government takes responsibility for fiscal administration. However, the combined power of appropriation and fiscal administration can be engaged by the twin organs of government to castrate the judiciary by reducing or refusing appropriation of funds. For example, in 2013, the federal courts in the United States of America (US) had their statutory budget sequestered by a deliberate political decision, resulting in an automatic 5% cut midway into the fiscal year. The development forced the judiciary to downsize its staff strength which adversely affected courts' justice delivery capacity.⁶⁴ The need for judiciary's independence was re-echoed by Lord Denning in his opinion stating that Judges ought to be extricated from all influences from persons who hold power if they must be trusted to determine whether or not authority is being misused or abused.⁶⁵

In Nigeria, recent developments have strengthened renewed agitations for autonomy of the judiciary. These agitations question the sanctity of the country's article of faith as a constitutional democracy. The queries arise from appointment of judges, removal of judges without due process and under bizarre circumstances⁶⁶ as well as the deplorable state of *court* infrastructure, particularly the courts under the administration and control of state governments in Nigeria. The prevailing status of the judiciary in Nigeria reveals a coordinated attempt to drive the organ into irrelevance or make it an appendage of the government of the day. Decrying the foregoing experience, Mogoeng observes the seeming reluctance by contemporary governments to clothe the judiciary with the garb of a proper organ of the State which deserves to exercise independence. The truth is that the judiciary is a valid organ of the State which should be accorded its rightful status in all respects; it should never be treated or seen as an appendage of the Executive arm.⁶⁷

⁶⁴ Justin Apperson, "Comity or Confrontation: Budgeting Independence of the American Judiciary," *Constitutional Review* 10, no. 1 (May 2024): 137.

⁶⁵ Alfred Thompson Denning, *What Next in the Law* (Oxford: Oxford University Press, 1982), 310.

⁶⁶ Mrabure and Awhefeada, "Onnoghen's CJN Conundrum," 19.

⁶⁷ The statement is credited to Hon. Justice Thomas Mogoeng, the Chief Justice of the Constitutional Court of South Africa. See United Nations Office on Drugs and Crime (UNODC), "Independent Judiciary: Key to a Better Performing Judicial System," 2014.

By the dispensation of things, the judiciary appears incontrovertibly as the weakest organ of governance when compared with others within the triangular configuration.⁶⁸ Hence, Hamilton et al decried the configuration by stating the helplessness of the judiciary even to enforce its own judgment which is its sole weapon governance.⁶⁹ It rather relies on the executive for strength and the force required for the efficiency of its judgments.⁷⁰ However, no matter the resolve to operatively subjugate the judicature to other complementary branches of state governance, it is in court and nowhere else that citizens naturally experience the cutting-edge of the law. Where the court is fortified to earn the citizens' respect, such respect inures in favor of the law even if it diminishes in respect of any particular arm of government, and for the overall benefit of the society.⁷¹

In Nigeria, conversations for judicial independence appear rather too ideological for policy makers to grasp. Policy makers often identify judicial independence with judicial officers' welfare, hence the attitude of holding commendation sessions in Nigeria whenever wages are improved for judicial workers or some infrastructure of the judiciary given a face-lift. The crux of the case for autonomy for the judiciary is funding and control of finances budgeted for the judiciary as of right. Consequently, what the judiciary needs to flourish in Nigeria is full financial autonomy as guaranteed under the CFRN. Olumide Akpata captures a picture of the failure in demonstrating full financial autonomy for the judiciary.⁷² He frowns at the spectacle where heads of courts literally beg for the general welfare and overheads costs of the institutions from high-handed executives at the federal or state levels, stating it as an ugly situation highlighting the apparent subservience of the branch of governance to the executive branch from which it should be autonomous. The development presents a somewhat

⁶⁸ Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Simon & Schuster, 2004), 78.

⁶⁹ The principle was affirmed by the Supreme Court in the classic case of *Okumagba v. Egbe* [1965] All NLR 62, on the extent to which the judiciary may be independent of other arms of government for societal cohesion.

⁷⁰ Arthur Twining Vanderbilt, *The Challenges of Law Reform* (Princeton, NJ: Princeton University Press, 1955), 4–5.

⁷¹ Uwadineke Chukwemeka Kalu, "Separation of Powers in Nigeria: An Anatomy of Power Convergences and Divergences," *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 9, no. 1 (2018): 124.

⁷² The statement is credited to Olumide Akpata, former President of the Nigerian Bar Association. See Alex Enumah, "Body of SANS Lament Executive, Politicians' Interference with Appointment of Judges: NBA Seeks Full Financial Autonomy for Judiciary," *ThisDay*, October 5, 2020.

master-servant relationship which upends the entire idea of autonomy for the judiciary. The unfortunate situation is nonetheless the reality of the interaction between the Judiciary and the government in present-day Nigeria.⁷³ Consequently, the Nigerian judiciary continues to labor under the weight of under-funding or withholding of funds which translates into poor justice delivery. A judiciary that cannot settle its over-heads without external endorsement of the executive leaves much to be desired. Financial autonomy would embolden the judiciary to discharge their duties without fear or favor.

4.2. Constitutional Safeguards for financial autonomy of the Judiciary in Nigeria

It has been stated that judicial independence encompasses a spectrum of issues which insulates the judicature against interference by complementary organs of state governance, safe for the purpose of reciprocity. Financial autonomy for the judiciary is integral to the notion of independence by the judicial organ of the state, and perhaps the livewire of the entire debacle. The independence of the judiciary, particularly as regards financial autonomy, has been grossly misconceived not only by policy makers but by those who should drive the agitation. Ariwoola, CJN, stated that the Nigerian Judiciary operates without any extraneous influence, being extensively independent in the conduct of its affairs, particularly with respect to taking decisions on matters before it. The jurists maintained without mincing words that the Nigerian Supreme Court is completely independent in its judgments. Nevertheless, the jurist expressed the view that, when the judiciary in Nigeria is viewed from the financial optics, it is truly yet to be independent. He further noted that the annual budget of the judiciary in Nigeria which constitutes paltry and regrettable wage package is a major concern deserving urgent attention. Such welfare package of judicial officers could hardly, adequately cater for them upon retirement. It is worrisome that most judicial officers serve the government for record period of 40 to 45

⁷³ Enumah, "Body of SANS Lament Executive."

years before retirement, justifying the desirability befitting retirement benefits after painstaking service to the nation.⁷⁴

The irony of the foregoing text credited to the Honorable Chief Justice of Nigeria is that while he set out to lend a voice to the need for independence of the judiciary on financial matters, the emphasis of his speech was on judicial officers' welfare. It does appear that the welfare of judicial officers has for a long time been confused with financial autonomy for the judicial organ of the state. The truth is that welfare of judges to the taste and standard befitting of their status is only an aspect of the agitation for judicial autonomy. Such construction of judicial independence which perceives judicial autonomy or independent administration of justice as implicating greater involvement of judges or the enhancement of their welfare falls short of sufficiently distinguishing *de facto* from *de jure* judicial autonomy, thereby fails to align with the customary pontifications on judicial independence.⁷⁵ The doctrine of *de facto* judicial independence sacrifices economic performance or welfare of judges on the altar of defence of judicial property rights.⁷⁶ The judiciary is much more than the judges and encapsulates all machineries of justice including infrastructure and staff other than judicial officers.⁷⁷ Financial autonomy does not abide in the paucity of funds made available to the judiciary or the abundance of it for the purpose of bequeathing unto the judicial officers the comfort befitting their status and commensurate with their job demands but in the manner in which funds are accessed, controlled and allocated for the overall improvement of the justice sector from the treasury pool of the nation's commonwealth.⁷⁸ Simply

⁷⁴ Olukayode Ariwoola, the Honourable Chief Justice of Nigeria, "Opening Speech," Made at the Special Session of the Supreme Court of Nigeria to Mark the Commencement of the 2022/2023 Legal Year and Swearing-in of Newly Conferred Senior Advocates of Nigeria Held at the Main Court Room of the Supreme Court on November 28, 2022.

⁷⁵ David Kosar and Samuel Spac, "Conceptualization(s) of Judicial Independence and Judicial Accountability by the European Network of Councils for the Judiciary: Two Steps Forward, One Step Back," *International Journal for Court Administration* 9, no. 3 (2018): 37-46, <https://doi.org/10.18352/ijca.284>

⁷⁶ Frans Van Dijk and Philip Langbroek, "Reaction on the Comments on the ENCJ Study on Methods for Assessment of Judicial Independence and Accountability," *International Journal for Court Administration* 9, no. 3 (2018): 76-78, <https://doi.org/10.18352/ijca.283>

⁷⁷ On who is a judicial officer in Nigeria, see Section 291 of the CFRN (Fifth Alteration Act No. 37, 2023) which reviewed the retirement age of judicial officers in Nigeria.

⁷⁸ Federica Viapiana, "Funding the Judiciary: How Budgeting System Shapes Justice: A Comparative Analysis of Three Case Studies," *International Journal for Court Administration* 10, no. 1 (2019): 23-33.

put, a discourse on fiscal autonomy for the judicature is an interrogation of the constitutionality of the prevailing budgetary practice in Nigeria which is skewed to achieve under-appropriation against the judiciary and the pattern by which the appropriated funds are accessed by the judiciary.⁷⁹

The constitutional basis for the case for fiscal autonomy for the Nigerian judiciary is enacted in Sections 120(1) – (3), 121(1) – (3) and 12 (1) – (4) of the CFRN. The foregoing provisions when given a community reading with Sections 81(3), 84(1), (2), (3), (4) and (7) of the CFRN show a deliberate attempt to guarantee independence of the judiciary with respect to funding.⁸⁰ By the CFRN text in Section 81(1), the President has a duty to direct the preparation and presentation before ‘the federal legislature’ all proposals of incomes and expenditures of the federation regarding the fiscal year, no matter the period within the fiscal year. The CFRN went further to state prescribe the inclusion of the judiciaries’ estimated heads of expenditure in Appropriation Bills presented by the executive. Consequently, any funds validly allocated for spending by the judicature, domiciled with the Federation’s Consolidated Revenue Fund (CRF) is mandated for direct remittance for disbursement to the administrators of the courts through the NJC.

The foregoing provisions stopped short of expressly providing for autonomy of any sort to the judiciary within the ordinary meaning of autonomy.⁸¹ The position is fortified by the constitutional retention of the strangle-hold of the executive in as much as the funds earmarked for the judicature would first be paid to the NJC before it is disbursed through the administrators of courts and without any stipulated sanctions against the legislature, the executive or the NJC for failure or delay in disbursing such funds. The defects in the identified constitutional

⁷⁹ Alexander Rosselli, “Judicial Independence and the Budget: A Taxonomy of Judicial Budgeting Mechanisms,” *Indiana University Maurer School of Law* 5, no. 1 (2020).

⁸⁰ The CFRN, Sections 120(1) – (3) and 121(1) – (3) deal with state judiciary while Sections 81(1) – (2) and 84(1) – (3) of the CFRN deal with the federal judiciary. See section 6 of the CFRN for courts established by the CFRN.

⁸¹ Autonomy is defined as the (the right to self-government; freedom of will. Simply put, financial autonomy of the judiciary implies the capacity to self-government, overall freedom to act or function independently; to own and control its financial with degree of freedom. See Diana Lea, *The Oxford Advanced Learner’s Dictionary*, 10th ed. (Oxford: Oxford University Press, 2020), 85; see also Lucas Swaine, “The Origins of Autonomy,” *History of Political Thought* 37, no. 2 (Summer 2016): 216.

provisions which have been misconstrued as grant of financial autonomy would continue to frustrate financial autonomy indeed until the appropriated clauses are inserted. However, the foregoing provisions of the CFRN have received judicial interpretations.⁸² These judicial decisions have not been complied with by any Governor in Nigeria.⁸³ The persistent agitation to realize the ends of financial autonomy for Nigeria's judicature, and rescue the legislature from the powerful grip of state governors at the state level in the light of the identified constitutional defects in implementation of Section 121(3) propelled President Muhammadu Buhari to sign Executive Order (EO) Number 10.⁸⁴

V. EXECUTIVE ORDER NO. 10 [EO] AND JUDICIAL FINANCIAL AUTONOMY

On 20 May 2022, President Muhammadu Buhari in the exercise of his powers as contained in Section 5, CFRN signed EO 10 for the purpose of enforcing financial autonomy. The EO 10 mandated the federation's Accountant-General to extract and remit to the judiciary and legislature, all such allocations accruing to them directly from the federation account. Section 121(3), CFRN stipulates direct remittances of any amounts to which the judicature is entitled from the CRF of the concerned states to the administrators of the beneficiary courts.

The EO 10 was applauded as a bold step by the government of the day to ease its emasculation of the legislature and the judiciary, particularly from high-handed State Governors. However, the express imputation of the EO 10 whereby

⁸² See *Judiciary Staff Union of Nigeria (JUSUN) v National Judicial Council & 74 Ors* (Unreported Suit No. FHC/ABJ/CS/667/13: On Judicial Financial Autonomy of the Federal Judiciary in Nigeria, Judgement Delivered by Ademola J, of the Federal High Court Abuja on January 13, 2014) and *Olisa Agbakoba v The Attorney-General of the Federation & 2 Ors.* (Unreported Suit No. FHC/ABJ/CS/63/2013 *On the Interpretation of the Constitution on Judicial Independence: Judgement Delivered by Mohammed, J. of the Federal High Court Abuja on May 26, 2014*). See also, *John Aikpokpo – Martins, Esq & Anor v Governor of Delta State & 5 Ors.* (Unreported Suit No: A/164/2022: On the Interpretation of the Constitution on Judicial Financial Autonomy of Courts in Delta State of Nigeria: Judgement delivered by Honourable Justice Briki-Okolosi (Judge) of Delta State High Court, Asaba on March 7, 2023).

⁸³ CFRN, Section 121(3) which provided for monies meant for the state judiciaries to be paid to the state judicial services commission has been amended vide the Fourth Alteration, No. 4, Act No 7 of 2017. The said sub-section provides for such funds meant for the judiciary to be paid directly to the heads of courts concerned.

⁸⁴ The Executive Order No. 10 was signed by President Muhammed Buhari on 20 May 2020 with the intention of evoking the full effects of Section 81 and 121 of the CFRN in response to the agitations for judicial financial autonomy.

States of the Federation are mandated to include allocations of the judiciary and legislature in their Appropriation Laws unsettled some constitutional doctrines and raised germane legal questions. These questions include:

1. Can the executive legislate without being specifically delegated by statute in that regard under the ancient constitutional jurisprudence prescribing separation of powers?
2. Can Presidential EO authorize the President or Governor to do an act that he is not authorized to do by statute? Similarly, can EO take the place of Statute in a constitutional democracy?
3. Can the President direct action of a Governor by fiat in a constitutional federation like Nigeria?
4. Does a Presidential EO have capacity to derogate from or vary Section 162 of the CFRN which already provides for the manner of administering revenue in the distributable pool account of the federation?
5. Where provisions of a statute such as Section 121(3) of the CFRN is unambiguous, can EO direct specific compliance to the said provisions without meddling with law-making or judicial functions?

The validity of the EO 10 must therefore be tested within the confines of its conformity with the CFRN rather than the unilateral desire of the President to deepen the tenets of democratic governance, no matter how well intended. It is argued that EO 10 is *ultra vires* the President for attempting to coerce the State Governors to comply with a non-existent law. The truth is that the invention of the words 'Judicial Financial Autonomy' by the President is alien to the CFRN and therefore void and of no consequence. In the light of the fact that allocation of funds to various arms of government has already been enshrined in the CFRN, it is contended that the president should have leveraged 'judiciary's independence' which exudes statutory familiarity instead of 'judicial financial autonomy (JFA)' which though integral to judiciary's independence, is not recognized with particularity under the extant Nigerian Laws.

Consequently, State Governors in the country challenged the EO 10 in Court.⁸⁵ By a majority decision, the Apex Court nullified EO 10, declaring it unconstitutional and of no effect. The intervention of Nigeria's apex court appears to have made a mockery of the good intentions of the Buhari-led administration to settle the issue of independence of the judiciary once and for all. This has thus returned the agitators for judicial financial autonomy to the drawing table. The practical realities of the legal brick-walls awaiting proponents of JFA reinforced the concept as a constitutional albatross. The agitations would not go away anytime soon as the autonomy of the judiciary remains a constitutional principle without any frameworks for its actualization.

VI. JUDICIAL INTERVENTIONS ON MATTERS OF 'JFA' IN NIGERIA

The question of JFA is at the heart of justice administration in Nigeria and, so important as to elicit legal steps by critical stakeholders in the legal community. On this project, critical stakeholders have not only canvassed the need for JFA at various fora but some took further steps to seek judicial construction of the applicable constitutional provisions on the subject. In *Agbakoba v A-G, Federation & 2 Ors*,⁸⁶ a past Bar leader instituted an action seeking enforcement of Sections 81(1) & (2) and 84(1), (2), (3), (4) & (7) of the CFRN regarding funding of the judiciary in Nigeria. Plaintiff contended that the prevailing arrangement which requires the judiciary organ of the state to route its budget through the budget office, an agency of the executive organ of governance, amounted to rewriting the texts of the CFRN. After reviewing the laws, the Court granted the reliefs sought by the plaintiff on the vexed question of JFA being persuaded that in declaring the vexed practice as unconstitutional, the judiciary would be assisting the government to stick to the stipulations of the CFRN. The presiding judge was unable to find any provisions of the CFRN that subjugates the Judiciary to

⁸⁵ Supreme Court of Nigeria, *Attorney-General of Abia State & 35 Ors. v. Attorney-General of the Federation* [2022] LPELR-57010 (SC), on the legality of Executive Order No. 10 issued by the President of the Federal Republic of Nigeria.

⁸⁶ Federal High Court Abuja, *Olisa Agbakoba v. Attorney-General of the Federation & 2 Ors.*, Suit No. FHC/ABJ/CSJ/63/2013, judgment delivered by Mohammed J., May 26, 2014.

the Executive under any coloration, without prejudice to Checks and Balances as contained in the CFRN. The court therefore upheld fiscal autonomy for the judiciary as prescribed under the CFRN.

Also, in *JUSUN v NJC & 73 Ors*,⁸⁷ the union sought reliefs from court, mandating defendants to honor the JFA the breach of which has militated against the smooth administration of justice in Nigeria. The union had consistently embarked on industrial actions over unpaid salaries and other entitlements excused by paucity of funds to the judiciary. The Plaintiff ensured that major critical stakeholders and bureaucrats in the justice sector were made parties to the suit. Declaring JFA and in favor of the plaintiff, Ademola, J. construed the law rightly when he stated as follows:

- (a) The neglect, failure and refusal to pay-out funds allocated to the judiciary is in breach of CFRN and should not be allowed to persist.
- (b) The obedience or valid adherence to the provisions of the CFRN regarding JFA is immediate. The government would not be left to persist in violating of the prescriptions of the CFRN in such a manner as to render the judiciary inconsequential.⁸⁸
- (c) The emphasis on the *JUSUN* case is ‘the federating states.’ Consequently, the court nullified and declared as unconstitutional, the failure of the government to directly disburse funds allocated to the state judiciaries in the CRF to the administrators of courts throughout the federating states.⁸⁹

The *JUSUN* decision left the impression that since Nigeria is a constitutional democracy, all State Governors would comply with the order of the courts in their various states. This is, particularly so as there is no pending appeal or application to stay execution of the judgment. However, the executive has continued to honor the judgments of court on JFA in breach thereby forcing further steps to compel compliance with the judgements. Thus, in *John Aikpokpo-Martins, Esq & Anor v*

⁸⁷ Federal High Court Abuja, *Judiciary Staff Union of Nigeria (JUSUN) v. National Judicial Council & 74 Ors.*, Suit No. FHC/ABJ/CS/667/13, judgment delivered by Ademola J., January 13, 2014.

⁸⁸ See Amuda-Kannike *et al*, “Examining the Mutual Concepts,” 268.

⁸⁹ Ameze Guobadia, “The Relationship Between the Judiciary and the Political Branches, Judicial–Executive Relations in Nigeria’s Constitutional Development: Clear Patterns or Confusing Signals?,” in *Separation of Powers in African Constitutionalism*, ed. Charles Manga Fombad (Oxford: Oxford University Press, 2016), 255.

Governor of Delta State & 5 Ors,⁹⁰ two former national officers of the NBA⁹¹ had filed an action challenging the continued breach of the CFRN and the deliberate refusal to abide by the various decisions of court applicable to Delta State on JFA by the Delta State government. Claimants had sought judicial interpretation and appropriate consequences for breach of Sections 120(4), 121(2) & (3) and 124(4) of the CFRN⁹² with particular focus on ‘the mode of implementation of the said Constitutional provisions. Claimants called in aid of their case, the authorities of *Agbakoba v the A-G, Federation & 2 Ors*, and *JUSUN v NJC & 73 Ors*⁹³ to argue that the practice whereby the judiciary kowtow to the executive for the purpose of funding is an aberration and that Delta State, being a party to the suit in the authorities relied upon, is bound to honor the judgments in obedience, not in breach.⁹⁴ The trial court agreed with claimants that the present case was on all fours with *Agbakoba’s* case except that the present case is with respect to judiciary at the state level while *Agbakoba’s* case relates to the Federal Judiciary.⁹⁵ In granting the reliefs sought, Briki-Okolosi, J. stated the law pungently rejecting the argument that the judiciary’s practice of submitting its monetary budget to the executive arm before funds could be released to it upends the doctrine of judicial autonomy. In the same vein, the court vehemently held that the requirement for submission of annual budgetary estimates by the 3rd, 4th and 6th Defendants to the executive organ of government to scrutinize for the purpose of inclusion in the Appropriation Bill is a misconception clothed in illegality. Consequently, the Delta State government was ordered to adhere to the letters of the CFRN, as interpreted in the judgement and quit the practice which mandates the state judiciary to present its yearly budget to the agents of the government for scrutiny and possible inclusion in the state’s Appropriation Bill.⁹⁶

⁹⁰ Delta State High Court Asaba, *John Aikpokpo-Martins, Esq. & Anor v. Governor of Delta State & 5 Ors*.

⁹¹ John Aikpokpo-Martins (1st Claimant) is an activist and former 1st Vice President of the NBA. Olukunle Edu (2nd Claimant) is a human rights crusader and former Publicity Secretary and Welfare Officer of the NBA.

⁹² As amended by the Fourth Alteration, No. 4. Act No. 7 of 2017.

⁹³ See Delta State High Court Asaba, *John Aikpokpo-Martins, Esq. & Anor v. Governor of Delta State & 5 Ors*.

⁹⁴ The Governor of Delta State was the 21st defendant, while the Attorney-General of Delta State was the 22nd defendant on record in the JUSUN case.

⁹⁵ Delta State High Court Asaba, *John Aikpokpo-Martins, Esq. & Anor v. Governor of Delta State & 5 Ors*, Suit No. A/164/2022, judgment delivered by Hon. Justice Briki-Okolosi, March 7, 2023, 15.

⁹⁶ Delta State High Court Asaba, *John Aikpokpo-Martins, Esq. & Anor v. Governor of Delta State & 5 Ors*, Suit No. A/164/2022, judgment delivered by Hon. Justice Briki-Okolosi, March 7, 2023, 20.

The foregoing cases reveal that the agitation for judicial independence, particularly on the fiscal aspect has made appreciable progress in its second stage. The actualization of JFA in Nigeria has been identified in three stages. The first stage is the constitutional amendment. This has been settled in the Fourth Alteration of the CFRN in 2017. The second stage is the interpretation of the constitutional provisions or amendments so made by the courts. The decisions in *Agbakoba*, *JUSUN* and *Aikpokpo-Martins* relate to this stage. *Aikpokpo-Martins's* case is particularly unique in its prayers and approach. The decision shows an effort to expand the frontiers of the argument by not only seeking a declaratory relief but a prohibitory order against the Delta State House of Assembly by making it illegal and unconstitutional for it to receive the budget and expenditure of the Judiciary from the Executive should there be any reasons that the Delta State Judiciary is intimidated to defer to the Executive. The decision also prohibits the Judiciary itself from submitting its annual budget and expenditure through the Executive as was the practice. The decision localizes the struggle for judicial independence, bringing it to the door steps of the critical offenders. With *Aikpokpo-Martins* being the law in Delta State, the legal community watches with keen interest to see how the judiciary would treat its own judgment as it relates to JFA.

The third and final stage involves the execution and enforcement of the product of the second stage. To this end, more energy is required to push through the stage which would guarantee the full, unrestricted financial autonomy to the judiciary in Nigeria.

VII. JUDICIAL AUTONOMY: LESSONS FROM FRANCE, SOUTH SUDAN AND CANADA

Financial independence of courts in France may be analyzed from the optics of financial crisis experienced by the ordinary courts to which the political has not given sufficient attention. The French financing arrangement for the judiciary guarantees autonomy to constitutional and administrative courts, but much more to the *Conseil Constitutionnel* (Constitutional Council). The common financial

pool for the three arms of governance is referred to as the ‘public power’ which is administered as an endowment while the funds are known as *dotation*.⁹⁷ The ‘pool’ otherwise known as the ‘global provision’ grants access to the heads of the arms of governance to the extent of their obligations to run the administration of the relevant arms in a manner that resonates with the jurisprudence of power sharing. Political interference is most minimal or non-existent as no performance indicators attach the annual budgetary allocations. The Constitutional Council does not rely on the Justice Ministry for approval, even on capital projects.

While financial autonomy of the Constitutional Council is modelled to realize true separation of powers, other layers of court cannot be said to be autonomous except with respect to their budget management. This implicates that such lower courts do not participate in budgeting but the moment their annual budget is approved, they are autonomous in managing it, subject to the oversight of the justice ministry.⁹⁸ To this extent, the judicial architecture that most loudly represents classical model of judicial independence in France is that which is applicable to the Constitutional Council which is similar in function and status as Nigeria’s Supreme Court. Other court systems in France may only enjoy budgetary autonomy. Applying this experience to Nigeria for the purpose of guaranteeing independence for the judiciary, a sovereign account/consolidated fund could be created for the smooth operations of the organs of state governance to be domiciled with the Central Bank of Nigeria. This arrangement, backed by law, would enable the judiciary to draw its running cost as a first charge without having to kowtow to executive preferences. It would be suggested with respect to Nigeria that the funds are drawn from the same source as other arms of government in such a manner as to make any dishonor of drawings from the judiciary to be a suspension of drawings by other arms of government. This arrangement would reduce executive or political interference which would grind the entire bureaucracy to a halt. Where the accounts are

⁹⁷ Caroline Expert-Foulquier, “The Financial Independence of the Judiciary in France,” *International Journal for Court Administration* 11, no. 1 (2020): 1–16.

⁹⁸ Philippe Bas, “Allocution de clôture [Closing Speech],” *Revue française de finances publiques* [French Review of Public Finance] 142 (2018): 164.

separated as the case currently, other arms of government can emasculate the judiciary through funds restrictions and withholding, while the affairs of the state remain unhindered. The French model of judicial financial autonomy is commendable in modern democracy.

South Sudan presents a sharp contrast with the Nigeria's judiciary architecture in terms of autonomy, particularly on financial matters.⁹⁹ The Country's Transition Constitution¹⁰⁰ separates the state powers into the customary three domains of autonomy, particularly the legislature, executive, and judicature organs of state governance. It stipulates Judiciary's autonomy and separation from the operations of the Legislative and Executive domains.¹⁰¹ Under the arrangement, an institution designated the Judicial Service (JS) Council is established with mandate to draw up the annual budget of the judiciary in reference to the constitution, and the JS Act.¹⁰² The judiciary draws its budget directly from the consolidated fund, the management of the funds is basically the remit of the judiciary. The arrangement represents a full, commendable model of judicial independence. The Chief Justice disburses the funds as may be necessarily in the best interest of the judiciary.¹⁰³ Consequently, the judiciary in South Sudan has developed a self-accounting mechanism to ensure prudence and credit when subjected to public audits to which the Judiciary is routinely subjected.¹⁰⁴ It is suggested that Nigeria should borrow a leaf from Sudan. The model identified with South Sudan answers to the best aspirations of the Nigeria's judiciary because it demonstrates clear separation of powers which underpins Nigeria's legal system.

In Canada, the Constitution Act of 1867 enshrines judicial autonomy.¹⁰⁵ Notwithstanding the constitutional guarantees, Canadian Judiciary's budget is largely handled by the Executive and the Legislature. Canada has however,

⁹⁹ Mabel Osato Oniha and Bright Erazé Oniha, "A Critique of the Judiciary Financial Autonomy and Fund Management: Delta State Judiciary in Focus," *DELSU Law Review* 9, no. 1 (2023): 95.

¹⁰⁰ Republic of South Sudan, *Transitional Constitution of the Republic of South Sudan* [TCSS] (2011)

¹⁰¹ Republic of South Sudan, *Transitional Constitution of the Republic of South Sudan (Amendment No. 2)*, secs. 124–25.

¹⁰² Republic of South Sudan, *Judicial Service Council Act* [JSCA] (2008), sec. 6(3).

¹⁰³ JSCA, secs. 75–79.

¹⁰⁴ TCSS, sec. 125(3); JSCA, secs. 77–78.

¹⁰⁵ Canada, *Constitution Act, 1867*, secs. 96–100.

evolved a unique arrangement for judicial autonomy that is not outrightly based on financial self-governance.¹⁰⁶ In *Valente v Queen*,¹⁰⁷ the Canadian Supreme Court construed independent tribunal within the ambit of the Constitution.¹⁰⁸ The court held that judicial independence constituted in tenure security, financial security and institutional autonomy. The principles may be expounded as institutional and decisional independence. Institutional independence implicates exercise of self-governance from within and without external influence or coercion. Whereas decisional independence guarantees the insulation of the judge from liabilities arising from a decision validly rendered. This concept more than any other donates the courage to the judicature to uphold justice, without fear or favor. Suffice it to say that in Canada, judicial autonomy does not mean financial independence from sister organs of governance but security of tenured-employment, salary security and judicial privileges. The Canadian system resonates with the Australian structure which guarantees job security, immunity from liabilities, stable remunerations and sundry benefits to judges without a clear-cut judicial fiscal autonomy.¹⁰⁹ Gleeson suggests that since the judicature, like any other public institution is not immune from influences, particularly from the Executive, greater legitimacy should be enshrined by clearly enthroning judicial (financial) independence.¹¹⁰ The Canadian jurisprudence may well pass for judicial welfarism or ‘qualified’ autonomy which is not devoid of slight external influences as the Parliament fixes judicial officers remuneration following the report of an independent commission, effecting reviews every four years. This is because the proper autonomy resides in the right to administer resources without external influence as in the case of South Sudan. However, courts are allowed to manage their internal budgets, granting them administrative controls over their daily operations.

¹⁰⁶ Kathy Mack and Sharyn Roach Anleu, “Managing Judicial Performance: The Changing Ethical Infrastructure,” *Australian Law Journal* 97 (2023): 664.

¹⁰⁷ *Valente v Queen*, [1985] Can LII 25 (SCC); [1985] 2 SCR 673, on the construction of judicial independence in Canada.

¹⁰⁸ See Canada, *Canadian Charter of Rights and Freedoms*, s. 11(d), 1867.

¹⁰⁹ Tom Frederick Bathurst, “Separation of Powers: Reality or Desirable Fiction?” *New South Wales Judicial Scholarship* (2013): 39

¹¹⁰ Jacqueline Gleeson, “Advancing Judicial Legitimacy: The Stakes and the Means,” *The Judicial Review* 15, no. 1 (2023): 1.

VIII. RECOMMENDATIONS

The Nigerian courts in their hierarchy should be bold and courageous to uphold JFA whenever the case presents itself. There should be an end to appreciating the executive for providing for the judiciary instead of tasking the judiciary to help itself. There should be a synergy between the private bar and the bench to compel the Executive to honor the constitutional provisions guaranteeing JFA. The stakes are too high for the struggle for JFA to be left to the academics, private legal practitioners or JUSUN in isolation of judicial officers.

It is further suggested that Claimants in cases favorable to JFA should be courageous to take steps to enforce such judgments. The courts' courage at such auspicious times should manifest in granting directions for accelerated hearing of such enforcement or contempt proceedings against unscrupulous bureaucrats. The NBA should lobby the National Assembly and other critical stakeholders in the justice delivery enterprise to further amend the CFRN with a view to expressly ironing out the identified 'shields' of the executive against full blown JFA. This may include express sanctions for breaches of such constitutional provisions.

IX. CONCLUSION

The judiciary is no doubt the critical organ of governance which is constitutionally empowered to contain tyrannous and despotic tendencies of the other two organs, particularly the Executive, through decisive judgments. The sacred obligation of the judiciary to identify and strike down executive lawlessness by declaring such actions unconstitutional is inhibited by the judiciary's inability to access funds for its overheads and other expenditure without going cap-in-hand to the execution. The extant practice which derogates from the customary theories of power sharing has engaged informed debates. The judicial decisions on cases challenging executive encroachment into the hallowed domain of the judiciary show that indeed, judicial autonomy in Nigeria is attainable. However, JFA which is integral to full, pragmatic autonomy of the judicature in Nigeria has assumed a constitutional albatross given the unequivocal prescriptions of the CFRN, the practical reality from the response to such provisions by the

Executive arm, and the apparent stance of heads of courts in Nigeria who are more interested in judges' welfare than the pursuit of JFA. It is suggested that since constitutional prescriptions, such as judicial independence, are mandatory and not directory, the Nigerian state should revisit the principles of EO 10 to align it with workable parameters to ensure quality justice delivery within the Nigerian legal system. More importantly, the State governments should, in consultation with the Judicial Service Commissions at the various state levels, evolve frameworks that would guarantee enforceability of financial independence for the various state judiciaries without relying on the federal government's template. That, in itself, is the beauty of a federation.

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