

STUDIES IN THE SOCIAL SCIENCES

VOLUME 1, NO 1.

MARCH 2020



**A Publication of the
Faculty of Social Sciences,
Federal University, Oye Ekiti
Ekiti State, Nigeria.**

CONTENTS

1. Impact of Thrift and Loan Associations in reducing Poverty among Farmers in Lafia Local Government Area of Nasarawa State, Nigeria
OJO, S. Stephen, AYESORO S. Adesina, & OJILE, O. Anita
2. New Technology, Electoral Process and Elections Credibility in Africa: Insights from Nigeria's 2015 General Elections
Luqman SAKA & Oluwashina Moruf ADEBIYI
3. Income and Marital Status as Correlates of Psychological Wellbeing among Formal Caregivers in Abeokuta Township
OYELEKE, Ajiboye Isaac & WAZIRI B. Adisa
4. Determinants of Social Bonding among Undergraduate Students in a Nigerian University
TEIBOWEI, Juliet Bodisere & UZOBO, Endurance
5. Moderating Role of Core self-evaluation on the Relationship between Basic Need Satisfaction at Work and Day-to Day Experiences of Nigerian Nurses
Ikechukwu V. N. UJOATUONU, Baba K. AHMED, Afolabi B. AROYEWUN & Kasie M. UGWU
6. Violence in the Health Industry: An Analysis of Violence against Healthcare Professionals in Yenagoa, Bayelsa State.
UZOBO, Endurance, ORIYE, Benibo Emmanuel & OMU, Ruth Ebikaboere
7. An Ardl Bound Testing Approach to the Effects of Foreign Debt on Domestic Growth in Nigeria
AGU Osmond Chigozie, ATTAMAH, Nicholas, MBAH Stella Ada, OBAJAJA, Christopher K. & NGWOKE, Ifeanyi
8. Gender Difference and the Role of Parenting Styles on Self -Efficacy among Adolescents in Ekiti State
Helen F. OLAGUNDOYE, ²Dare A. FAGBENRO & Deborah, O. ODINAKA

9. Transportation of Petroleum Product in Nigeria: the Institutional, Environmental and Distributional Constraints
A. P. AJAYI & D. O. OLORUNFEMI
10. Development and Validation of Academic Connectedness Scale among University Students
Adebukola K. TAIWO
11. Legislature and Political Violence against Women in Nigeria: The Myth and the Reality *Umar Aminu*
12. Executive-Judiciary Conflict in Nigeria's Fourth Republic: Implication for Democratic Consolidation
Elijah Ola OLORUNSUWA, Moses Danjuma BOT & Luke Ikwulono OKO, Esq

EXECUTIVE-JUDICIARY CONFLICT IN NIGERIA'S FOURTH REPUBLIC: IMPLICATION FOR DEMOCRATIC CONSOLIDATION

¹OLORUNSUWA, Elijah Ola, ²BOT, Moses Danjuma & ³OKO, Luke, Ikwulono, Esq

¹*Department of Political Science, University of Jos, Jos, Nigeria*

²*Department of Political Science, University of Jos, Jos, Nigeria*

³*Principal Partner, L. I. Oko & Co, Jabi Abuja*

ABSTRACT

Nigeria has been faced with numerous challenges since her return to civil rule on the 29th of May, 1999; while some of these challenges are carried over from the military era, a few are new and as such are linked with the new democratic regime in the country. Peculiar attention has been taken by issues of inter-governmental conflicts as well as conflicts involving various arms of government. State machineries have at some times been grounded on the bases of tortuous conflicts between the three arms and tiers of government alike. Of particular interest is the issue of disharmony and conflict involving the arms of government especially the executive and judiciary arms of government. The long period of military occupation of the national political space provides an explanation for this ugly trend. This trend has often thrown a spanner into the wheel of democracy and its consolidation, thereby, taking the country several steps backwards in her journey towards effective governance and democratic consolidation. The paper while relying on secondary data collection methods; it adopts the theory of checks and balances as framework of analysis. The paper seeks to examine conflicts that involve the executive and judicial arms of government in the Nigeria's Fourth Republic democratic experiment. The study provides an in-depth analysis into the causes of such conflicts and its effects on democratic consolidation of the Nigerian nascent and fledgling democracy. It however goes further to offer solutions to stem such ugly trend.

Keywords: Executive, Judiciary Democratic-consolidation, Nigeria, Conflict

INTRODUCTION

The essence and flavour of democracy can only be made manifest under a serene atmosphere of freedom and independence of the arms of government. The proponents of the theory of separation of powers and the principle of checks and balances have envisaged a situation where the liberty of the citizens would gravely be in jeopardy were the three powers (legislature, executive and judiciary) fused in an individual or group of individuals. Jack (2005) has rightly captured the need to tame the monster inherent in individuals that are entrusted with power. He summarily captures it in the following words:

Ambition must be made to counteract ambition. It may be a reflection of human nature, that such device should be necessary to control the abuses of government. The government itself is but the greatest reflection on human nature. If men were angels no government will be necessary. If angels were to govern men, neither external nor internal control on government would be necessary. In framing a government which is to be administered by men over men, the difficulty lies in this, you must first enable the government to control the government; and in the next place, oblige to control itself (Jackson, 1995).

The three arms of government must within a reasonable sphere of constitutional recognition have the liberty to operate without the undue interference of one another, while they must also at all times stand-by to avoid the concentration of too much power in one body of government to make them strong enough to trespass into the other's power (McHugh, 2002) to ensure that no one goes beyond the constitutional boundaries. To Mbah (2007:187), separation of powers as a doctrine becomes imperatively important so as to keep tyranny at bay. He affirms as follows:

The reason for proposing the doctrine of separation of powers is to fragment government power in such a way to defend liberty and keep tyranny at bay. This is because of human and the assumption that if unrestrained by external checks, any given individual or groups of individuals in power will go beyond the limit of their authority, in order to establish a political system where no individual or group could dominate others....

It is only in the above situation that the liberty of citizens can be guaranteed which is a hallmark of good governance and democracy. However, situations do present itself to the contrary of the above; the crush of the relationship of checks and balances between the arms of government is not (always) a harmonious relationship but rather putting the powers of one another to checks, which provides the fertile ground for, and generates tension and crises between the three arms of government (McHugh, 2002). In such cases the judiciary which is dubbed as the hope of the masses is looked up to for remedies and resolution of crises either among citizens, between citizens and government, among the other two arms or between the tiers of government. Conflicts among arms of government in emerging democracies like Nigeria, is usually unhealthy which sometimes results in gross abuse of constitution and gridlock in government processes.

The Nigeria's emerging democracy, with weak institutions and structures that are largely (still) undergoing trials and experimentations has made issues of checks and balances, cooperation and complementarities among the three organs of government to be in a continuous contention (Okeke & Idike, 2017). The Fourth Republic was birthed on the 29th of May, 1999 after a long period of military rule that has left the Nigerian polity without a well strengthened governmental structures and institutions but rather with emerging strong individuals that have taken advantage of the weakened political system to wield absolute power in fragrant abuse of the law. This phenomenon imposes on Nigerian polity the culture of abuse of human right, disrespect of rule of law and disregard for the judiciary which has destroyed the fabrics of the state (Hakeem, 2009).

The checkered unpalatable culture is demonstrated by the selective obedience of court orders by government as well as the culture of impunity that pervades the land immediately the nation returned to democratic rule. The Fourth Republic democratic experiment from inception has continued to witness protracted crises among the various arms of government. Executive-judiciary face off has consistently doted the polity since the return to civil rule.

The judiciary has had an unpalatable history of antidemocratic credentials especially during the long years of military rule where it has been used to perform some hatchet jobs like the annulment of the June 12th, 1993 election (Obutte, 2016 cited in Okeke & Adike, 2017) and the killing of the Ken Saro Wiwa and the nine Ogoni environmental activists. There have been series of corruption related cases brought against members of the bench, which no doubt has heightened the conflict between it and the executive.

It is in the light of this that this research work aimed to provide an x-ray into the series of executive-judiciary conflicts in the Fourth Republic. Further to this, the paper is guided by triple-fold research questions as follows: i. what are the causes of the incessant face-off between the executive and judiciary in the Nigeria's Fourth Republic. ii. What are the implications of such conflicts on democratic consolidation and good governance, and, iii. what are measures to be put in place stem the future occurrences of such conflicts.

THEORETICAL REVIEW

This study adopts the theory of checks and balances as the framework of theoretical analysis. One of the key perimeters for gauging the extent of the deepening of good governance in a democratic society is the availability of liberty and freedom of citizens, the existence of rule of law as well as the extent to which the government (executive) obeys the decision of the judiciary (court rulings). All these according to Montesquieu (1748) and Hamilton & Madison (1788) can only be guaranteed if the three powers are not united in an individual or a group of individuals.

Checks and balances as a theory is rested on the principle of division of powers as espoused by the French Jurist and political thinker Baron De Montesquieu (1689-1755) in his book the *Spirit of Law* (*Espirit des Loix*) published in the year 1748 emphasises the mechanism of control (legal) that is put in place to check the excesses of the various organs of government by one another. Montesquieu has posited that the combination of these powers in one individual or group of individuals produces tyranny and despotism where the lives and liberty of citizens will be in jeopardy. In his words:

When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because many apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression (Montesquieu quoted in O'Regan (2005).

The drafting of the Federalist list (No. 51) authored by Hamilton and Madison in 1788 relied heavily on the view of Montesquieu when they asserted that:

To what expedient, then, shall we finally resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that as all these exterior provisions are found to be inadequate, the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper place... In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Some difficulties, however, and some additional expense would attend the execution of it.

The executive and legislative arms derive their powers from the people through election, while the judiciary is jointly appointed by both the executive and legislature. The legislature exercises control over the executive by having to review its budget, pass bills sent to it by the executive, exercise oversight functions over it and by the ratification of certain actions and decision of the executives including appointments of certain heads of agencies of government, deployment of troupes during war, as well as entering into diplomatic relations with other countries among others; the executive on the other hand checks the legislature by its power of assent and veto on bills passed by parliament. The executive is empowered to appoint members of the bench, but such appointment requires the consent and ratification of the legislature to take effect. On the other hand, the judiciary, (through its power of judiciary review as contained in sections 6 and 315 (3) of the Nigerian Constitution) can declare laws passed by the parliament and actions of the government (executive) as null and void.

These complex network of control (checks and balance) is put in place to ensure that no arm is powerful enough to the extent of being corrupt in power as the English historian and writer John Emerich Dalberg- Acton rightly put it in his letter to Bishop Mandell Creighton in 1887 that: "*power tends to corrupt and absolute power corrupts absolutely. Great men are almost always bad men*". "Checks" refers to the ability, right, and responsibility of each organ to monitor the activities of the other(s); "balance" on the other hand refers to the ability of each entity to use its authority to limit the powers of the others, whether in general scope or in particular cases.

Checks and balances as a control mechanism among the three arms of government takes two forms: 1) functional checks and 2) dysfunctional checks. Functional checks exists when the relationships that exist among the arms of government are cordial, constructive and harmonious. while on the other hand dysfunctional checks is one that is laced with acrimony, conflict, crises and trouble as we mostly have emerging democracies like Nigeria's. The later is however fast becoming a characteristic of Nigerian democracy. The focus of this research work is the dysfunctional checks and balance which has featured prominently in the Nigeria's Fourth Republic.

The Supreme Court of India is empowered by Article 143 of the constitution of India to entertain such issues that are referred to it by the constitution. While the opinion and advice offered by the court under this situation are not binding, they are hardly ignored. Apart from the above roles, the judiciary also perform miscellaneous functions like constituting special tribunals, commissions or panels. In Nigeria, the judiciary is at the fore front of setting the pace on electoral matters. It also has a role to perform in the impeachment of the president, governors or council chairmen.

Another area of agreement among scholars is the acceptance of independence of court as a fundamental requirement for an effective and efficient judiciary, which according to Johari (2002) will make the judiciary act impartially and expeditiously. Mode of appointment, better remuneration, tenure of office, post retirement appointment and restriction on public contacts are pre-condition for independence of the judiciary.

The Executive

The executive is the second branch of government that is responsible for the application of policies and the authoritative rules of the society (Anifowose, 2008). The executive arm is concerned with maintenance of law and order, formulation of government policies, running of government machinery and ensuring that the policy formulated are implemented in the best possible means (Abonyi, 2006 in Fatile, 2016). The executive arm is strategic and important to the operation of democracy as well as the attainment of democratic good. This is because they coordinate government and the activities of its various units. It initiates policy and programmes and ensures the implementation of them after such (programmes and policies) may have being passed into law by the legislature (Fatile, 2017). Executive arm is the 'brain box' and the 'heart' of the state, just as the view of Hewood (2007) echoed by Fatile (2017) concluded that it is "the irreducible core of government".

For effective functioning of the machinery of government, there must be a continuous interaction among and between the organs of government. This interaction could take the form of conflict, cooperation, negotiation, bargaining, and reconciliation (Bassey et'al, 2013). On the contrary, the situation in Nigeria is in direct opposite of the view of Bassey et'al. Fatile while ruminating on Hammond and Buttler (2003)'s view concludes in the following words:

The concomitant effects of the institutional arrangement of presidential system often pose the crucial problem of relationship between the executive and legislature which is pejoratively referred to as 'deadlock', 'gridlock' or 'stalemate'

Democratic Consolidation

Democratic consolidation aptly falls in the group of topical concepts that has in no small measure attracted the attention of several scholars since the inception of the '3rd' wave of democratization across Africa (Adeosun, 2014) as the concept just like many social science concepts, assumes an amorphous nature depending on the scholars. In the opinion of Schedler (1998), *democratic consolidation* is "an omnibus concept, a garbage-can concept, a catch-all concept, lacking a core meaning that would unite all

modes of usage. The duo of Linz and Stephan (1998) and Venezuela (1992) as reviewed by Adeosun (2014) classified democratic consolidation into two: firstly, democratic consolidation is avoiding democratic breakdown (Linz and Stephan 1998) and secondly it is evolving from a diminished sub-type of democracy to a consolidated liberal democracy (Valenzuela, 1992). Schedler (1998) cited in Adeosun (2014) holds the view that the latter classification focuses on the process of engendering, completing, organizing and institutionalizing democratic practices; while the former is majorly concerned with the processes involved in stabilization as well as maintaining of new democracies. Nascent democracies face lots of challenges and threats of collapsing into its former state of authoritarian rule. The growth of such democracy easily comes under the threat of being retarded or better still regressing into authoritarian regime. Deliberate measures must therefore be put in place to ensure that nascent democracies are consolidated in the fastest possible time.

In the views Schmitter (1992) and Lee (2007) reviewed in Akubo and Yakubu, (2014), Democratic consolidation is observed from two perspectives; firstly as a “minimalist conception”, which lays emphasis on procedural or formal democracy. Minimalist view of a consolidated democratic regime is “the process of transforming the accidental arrangements, prudential norms, and contingent solutions that have emerged during the transition into relations of cooperation and competition that are reliably known, regularly practiced, and voluntarily accepted by those persons or collectives that participate in democratic governance (Schmitter, 1992).” The second conception in the view of Lee(2007) is the “maximalist view, which examines on the outcomes of politics, such as institutionalization of political institutions, social justice, and economic equality.

Schedler describes democratic consolidation in the following words:

The term “democratic consolidation” was initially described as the “challenge of making new democracies secure, of extending their life expectancy beyond the short term, of making them immune against the threat of authoritarian regression, of building dams against eventual “reverse waves.” To this original mission of rendering democracy “the only game in town,” countless other tasks have been added. As a result, the list of “problems of democratic consolidation” (as well as the corresponding list of “conditions of democratic consolidation”) has expanded beyond all recognition. It has come to include such divergent items as popular legitimation, the diffusion of democratic values, the neutralization of anti-system actors, civilian supremacy over the military, the elimination of authoritarian enclaves, party building, the organization of functional interests, the stabilization of electoral rules, the routinization of politics, the decentralization of state power, the introduction of mechanisms of direct democracy, judicial reform, the alleviation of poverty, and economic stabilization (Shedler, 1998)

To Okeke (2015), democratic consolidation is a feature of democracy and the process of growing and strengthening the defense mechanisms of democracy. The need for building the defense mechanisms of democracy however is more pronounced in developing democracies. This necessitates the conscious fortification of democracy against such attacks. It includes among others the strengthening of certain government institutions; such as the electoral system, party system, independence of judicial and respect for human rights (Valenzuela, 1990) cited in (Akubo & Yakubu 2014). Democratic consolidation is the process of institutionalizing democratic value, culture and norms such as freedom of choice of citizen in leadership recruitment, respect for human right and liberty, periodic free, fair credible elections as well as accountability of political leadership that guarantee the survival and flourishing of democracy (Adakai & Olorunsuwa, 2019).

Judiciary in Nigeria's Fourth Republic: a Review

The Nigeria's judiciary came into the fourth republic with a battered image, lowly rated integrity, complicity and complacency (Hakeem, 2009). This is because the court was seen as an accomplice in the perpetuation of military rule; as well as a partner in the abuse of the liberty of citizens during military era. The judiciary in the word of Okeke and Idike (2017) has played the role of an “anti-democratic institution particularly during the military rule in the country” especially with their role in the annulment of the presidential election of 1993 (Obute, 2016 cited in Okeke and Idike, 2017). An Abuja High Court judge Justice Bassey Ikpeme granted an injunction against holding the election just two days before the poll day, in spite of a subsisting law that forbade courts from entertaining any case relating to the election (Okeke & Idike, 2017).

Judiciary in Nigeria is reputed for shady deals, judicial highhandedness and corruption. It has been implicated as being neck deep in ensuring that Nigeria democracy is perverted as it assumes the reputation of anything goes, hence a lot of people have being perverting both civil and political justice (Aver & Orban, 2014 and Okeke and Idike, 2017). Aver & Orban (2014) taking a clinical look at the Nigerian democracy observed that Nigerian judiciary has provided the ground that has weaken the system, thereby making democracy chronically sick in the country. They went further to assert that:

More worrisome of these defects is the facts that the system has failed to respond to the periodic and episodic surgical of democracy especially the ability of this important organ of government associating itself with unbridled corruption where desperate politicians go to great lengths to corrupt judges in order to secure undue advantages for themselves at the detriment of the poor masses. The integrity of Nigerian judiciary contrary to the assertion that the judiciary is the last hope of the common man, when the chips are down it has always sided with the rule of class in Nigeria against the poor masses as such it does not promote the development of democracy in the country.

Hence, the integrity of the Nigerian judiciary has become questionable (Okeke & Idike, 2017), as Babatunde (2010) echoed in Aver and Orban 2011 reported that in 2003 members of the Akwa-Ibom State Governorship Election Tribunal were sacked from the nation's judicial service on the allegation of bribery; chairman of the Tribunal, Hon. Justice M. M. Adamu; Hon. Justice D.T. Ahura, Hon. Justice A.M. Elelegwa and Chief Magistrate O.J. Isede were all found guilty of receiving large sums of money as bribe from the Governor of Akwa-Ibom State. In a similar manner Shehu 2012 has also reported that Hon. Justice Okwuchukwu Opene and Hon. Justice David Adedoyin Adeniji were found guilty of receiving large sums of money in the Anambra South Senatorial District Elections Tribunal in 2005. While Enweremadu (2011) holds the opinion that the Nigerian democracy has had some appreciable reforms since the nation's return to civil rule, he agrees however that the general and lingering opinion of the public is that the Nigerian judiciary is an institution that is stained with corruption as there are undoubted evidences of widespread sectional bias and corruption within the bench. Just as a former Chief Justice of Nigerian Supreme Court Justice Dahiru Musdaphar (2011) submitted that: "the judiciary is sadly not insulated from the monster of corruption that is ravaging the society". Musdaphar went further to paint a graphic picture of the unacceptable and appalling situation the judiciary has found itself and the ignoble perception of the public about it; he captured the situation in the following words: "*In light of the challenges that the Nigerian judiciary grapples with, there is no disputing the fact that, as it stands today, it appears that the society we serve is not entirely satisfied with our performance*". The perception and rating of the public about the Nigerian judiciary has therefore being greatly bruised because the reality on ground is a direct contrast to the submission of Enweremadu (2011) that 'judges must be competent, learned and of high integrity in order to command universal respect and approval'. While the knowledge and competence of the Nigerian bench may not be in doubt, the integrity is in question. Relying therefore on the statement of Mackenzie as echoed by Justice Dahiru Musdaphar that:

Without armies to carry out their judgments, courts are dependent on the consent of the governed no less than the other branches [of government]... When the image of the judiciary is tarnished, the moral authority of the courts is critically undermined. The appearance of partiality... is the greatest threat that confronts our Judges. A judiciary that is sufficiently armored with a good reputation for integrity can withstand other threats.. It, therefore, follows that the authority of the judiciary rests squarely on the public perception of its propriety

And the conclusion of Musdaphar that:

The authority of the judiciary rests squarely on the public perception of its propriety. Where public confidence in the judicial system is high, the incidence of people taking the law into their own hands will be minimal. The reverse is obviously the case where public confidence in the judiciary is low

It could hence be inferred that the conflict between the executive and the judiciary is (among other factors) rooted in the perception of, and the confidence of the executive in the judiciary. As much as the Nigerian judiciary has lost international recognition and patronage, it has also lost its usefulness and value at home as depressing state of affairs of judiciary in the country has resulted in the inability of the (judicial) system to administer civil, political and criminal cases in proper manners (Okeke & Idike, 2017). It is further emphasized by Okeke and Idike (2017) that allegations of corruption and bribery that are been levelled on Nigerian Judges, leaves National Judiciary Commission (NJC) without carrying out proper investigation to ascertain the truthfulness of the allegations. According to them "Justice in contemporary Nigeria seems to be on sale" just as the "degree of the judicial decadence has made it impossible for those who are not politically connected to get justice in the Nigerian courts very difficult".

Executive - Judiciary Conflicts in Nigeria's Fourth Republic: a Retrospective Analysis of Selected Cases

A Chief Judge of Kwara Justice Raliat Elelu-Habeeb was removed in 2009 by the then Governor Bukola Saraki on May 4, 2009 on the alleged ground that she engaged in act that contravenes the constitution, without recourse to the Nigerian Judicial Council. He chose to consult with the state executive council whose decision was ratified by the House of Assembly following Mr. Saraki's request. She was however reinstated by the nation's apex court (Thisday, May 4, 2009, Premium Times, February 17, 2012).

Justice Ayo Salami, a former President of the Appeal Court, under whose watch as the head of the nation's Appeal Court, the opposition party secured legal victory in the state of Osun, Ekiti and Edo plus many seats in the National Assembly was suspended following his alleged disclosure to the media of an attempt by the then Chief Justice of Nigeria, Aloysius Katsina-Alu, to influence the decision of the Appeal Court, in a Sokoto governorship election matter pending before the court at the time.

A panel of inquiry led by Justice Ibrahimauta was commissioned to investigate the petitions against the duo of Mr. Ayo Salami and Katsina-Alu respectively. The later was exonerated while former was implicated and found guilty. Salami was implicated of lying on oath against the then CJN and asked to tender an apology to Mr. Katsina-Alu within seven days. He was suspended based on the recommendation by the panel whose recommendation was received and accepted by the NJC on August 9, 2011. Even while that matter was pending in court, the NJC held an emergency meeting on August 18, with most of its principal members absent; and the apparent disregard for, and failure of the NJC to follow the right channel, by recommending the said suspension first to the President, Goodluck Jonathan, Mr. Jonathan directed Mr. Salami to vacate his position which signified a hatchet job being carried out again a man whose posture has caused the ruling party to lose four states to the opposition party.

In April 2012, the NJC, headed by the then new Chief Justice of Nigeria, Dahiru Musdapher hinging their decision on the recommendation of a three-member committee headed by retired justice Mamman Nasir, recommended the reinstatement of Mr. Salami to President Jonathan, but Mr. Jonathan refused to implement the recommendation for the reinstatement of Salami. The NJC, under Mr. Musdapher through the three man panel later found out that Salami's suspension was pre-judicial as the committee reported that: "It became evident that Katsina-Alu CJN's administrative decision that the case should be put on hold, should not have been made by him. In any case, the CJN should not in the first place have written direct to the Justices in Sokoto judicial division as the power to do so lies in the PCA (President of the Court of Appeal)." (Shehu and Tamim, 2016, Vanguard, August 22, 2011, Premium Times, Sept., 28, 2017)

The assault on Justice Ayo Salami under Goodluck Jonathan's reign as Nigerian's president was a ploy to subjugate the Court of Appeal who had the constitutional mandate to decide and was the final court of arbiter for all election petition cases except the presidential election; as Aver and Orban 2014 posited that: "the Nigeria Judiciary took a difference face with the coming of Goodluck Jonathan as President Federal Republic of Nigeria, with huge financial inducements to rig cases before them, Nigerian judicial officers handling election petitions now qualify to be inducted into the inner sanctum of the super rich overnight". An unyielding Court of Appeal under the leadership of Salami must be cracked, as such Salami had to be attacked and taking out to stem down the tide of electoral-legal misfortune that was befalling the then ruling party(PDP).

Rivers State Judiciary was thrown into crises between 20th August, 2013 when Hon. Justice Iche N. Ndu, the immediate past Chief Judge of the State went on retirement and the 1st of June, 2015 when Justice Daisy W. Okocha was appointed and sworn in as Ag. Chief Judge by Governor Wike (Adangor, 2015). The crises was generated and prolonged by the insistence of the former governor of the state Mr. Rotimi Ameachi that he has the prerogative power to reject the recommendation of NJC so long as he feels unpleasant by it. The NJC on the other hand insisted that it has a culture of seniority in the appointment of high ranking judicial officers like chief judge of a state that must be respected. It all started when the former Chief Judge of the state Justice Iche Ndu sent the names of Justice Peter Agumagu, the President of the Customary Court of Appeal and Justice Daisy Okocha as the two most senior judges in the state to the Rivers State Judicial Service Commission for their consideration and recommendation to the National Judicial Council (NJC)(Thisday, May 26th, 20015), the National Judicial Commission in observation of its own culture of respect for seniority recommended Justice Daisy Okocha to the governor for appointment as the Chief Judge as against Justice Peter Agumagu that was recommended by the Rivers State Judicial Commission. The Governor, Rotimi Amaechi subsequently declined the recommendation of NJC and went ahead to appoint Justice Peter C. Agumagu former President, Rivers State

Customary Court of Appeal as the Chief Judge of the State in consideration of the judgment of the judgment delivered by Hon. Justice Lambo Akanbi, J., of the Federal High Court Port Harcourt (in the case between the Governor of Rivers State & others v. National Judicial Council & others) which over rule the recommendation of the NJC to the former Governor of Rivers State to appoint Hon. Justice Daisy Okocha to the office of Chief Judge of Rivers State, the former Governor of Rivers State in purported exercise of his power under s.271(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (Adangor, 2015). The governor insisted that the recommendation of Hon. Justice Daisy Okocha by the NJC for appointment to the office of Chief Judge of Rivers State was merely directory since the Constitution of the Federal Republic of Nigeria 1999 (as amended) vests the actual power of appointment of the State Chief Judge in the Governor. The NCJ reaction to the insistence of Ameachi not to honour its recommendation, the newly appointed Chief Judge, Justice Agumagu was suspended and barred from performing his duties as chief judge by the NJC for accepting to be appointed and sworn in as chief judge without recommendation by the commission. The crises became more complicated as the National Judicial Commission appointed Justice Daisy Okocha as the 'Administrative Judge' of River State with the responsibilities to assign cases and see to the smooth running of the state judiciary. The state government swiftly reacted by issuing memo barring the staff of the state judicial service from having any dealing with Okocha with threat to fire any staff to go against the instruction. In reaction to this, the state chapter of Judiciary Staff Union of Nigeria (JUSUN) declared an endless strike in the state that led to closure of court for more than a year in Rivers State (Adangor, 2015, Punch, March 6, 2016).

A long rift of perceived insubordination of the Hon Justice Nasiru Ajana the Chief Judge of the state by Mr. Yahaya Bello the governor has been on for months ; this rift later culminated in a thwarted attempt by the state House of Assembly to remove the chief Judge on account of financial impropriety. The House on the promptness of the governor has commissioned its committee on Public Accounts to look into the books of the state judiciary, the committee however returned with a report indicting the Chief Judge of gross financial misconduct, and subsequently asked him to step aside to allow for proper investigation (Cable News November 2, 2019). The Governor has been at logger head with the Chief Judge over the refusal of the latter to submit the state judiciary to the former's policy of table payment, citing the case of autonomy of the judiciary that was recently passed by the National Assembly. The court has been closed for months in the state over withholding of more than ten month salaries of the state judicial workers for their refusal to submit to data capturing and table payment (Punch, April 2, 2019, Nations, April 28 2019). This act the governor considered as an affront on his authority, and he vowed to punish the Chief Judge.

Alh Atiku Abubakar Bagudu the governor of Kebbi State on the 14th of July, 2019 relieved Justice Elizabeth Asabe Karatu her duties as the Acting Chief Judge of the state in flagrant abuse of procedural and constitutional process of removing judicial officials of her standing. This is in utter disregard for her being recommended by the NJC since

May 9th, 2018 in her 86th meeting. She has being consistently denied being confirmed as substantive Chief Judge in spite of her recommendation. The government on the other hand has consistently insisted that Mrs. Karatu doctored her age, and as such she is not fit for such exhorted office. Justice Karatu petitioned the NJC about her maltreatment by the state government on the ground of her faith citing Justice Ambrusa who is the next in line as an accomplice of the government in her persecution (Otteh, 2019). The government has however not shown any intention to prosecute her for forgery and alteration of records.

The height of her humiliation was her being prevented by an officer of National Civil Defense Corps from accessing her court to deliver judgment on the 5th of July. The officer was quoted to have said he was acting on an order from above to prevent Justice Karatu from performing further judicial function (Sahara Reporters, July, 8, 2019).

In Abia State, governor Ipkeazu in a style similar to a palace coup, the state Chief Judge Justice Theresa Uzokwe was removed on the 26th of January, 2018 by resolution of the Abia State Houe of Assembly. The House claimed to be acting on a purported petition before that Justice Uzokwe was unaware of the Governor, acting on the illegal action of the House few hours after the action of House sworn in Justice Obisike Oji as Acting Chief Judge of the state. The NJC reaction to the matter was to condemn the action of the House and put Justice under suspension for acting against judicial procedure of appointment of Chief Judge. Sadly, the embattled Chief Judge, Justice Uzokwe was asked to step aside, after which he was sent on compulsory retirement. Further actions and inaction of the NJC would suggest its involvement in the whole judicial drama (Premium Times, January 29th, 2018, Thisday, June 24, 2018).

President Muhammadu Buhari on 25 January 2019, in executing an order 'ex-parte' of the Code of Conduct Tribunal granted on 23 January 2019, suspended the Chief Justice of Nigeria, Walter Onnoghen from office on account of corruption related cases that have being preferred against the CJN before the Code of Conduct Tribunal. Justice Ibrahim Muhammed, the most senior Supreme Court Justice, was immediately sworn in as the Acting Chief Justice of Nigeria. Justice Onnoghen was reported to have grossly violated the provisions of the Code of Conduct for public officers, as stipulated in the Constitution of Nigeria by deliberately refusing to declare some cash asset worth more than a billion naira in various bank accounts, as well as some 55 house in choice areas across the country. The CJN when confronted with the facts, had earlier admitted in writing that he did not remember to declare some of his assets to the CCB (Ajewole, 2019).

The removal of Onnoghen from office as CJN expectedly generated heated arguments and reactions alike as the America Government through her embassy expressed her deep concern and European Union condemned the act saying that it could derail the nation's democracy (Wallace, 2019). The bases (order 'ex-parte' of the Code of Conduct Tribunal

granted on 23 January 2019) for removing the CJN notwithstanding, the constitution seem not to have envisaged, hence it never demarcated temporary removal (suspension) from a permanent removal (sack) (Okakwu, 2019). Section 292 of the Nigerian constitution (quoted below) deals with the removal of some public officials including the CJN has highlighted in clear terms situations and procedures for relieving officials such as CJN of their positions:

A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances –

(a) in the case of –

“Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President, Customary Court of Appeal of the Federal Capital Territory, Abuja, by the President acting on an address supported by two-thirds majority of the Senate.”

(b) in any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

President Buhari in carrying out the order of the Code of Conduct Tribunal which according to (Odugbemi, 2019) was *sua sponte* (because the Tribunal did not listen to the argument of the prosecuting counsel that sought the motion as it is in judicial practice) was too hasty and as such failed to take cognizance of the relevant provision of the constitution relating to such issue; as a sitting CJN can't be removed from office by the president unless at least two-thirds majority members of the Senate support such act.

This however raises much doubt as per the sincerity of Buhari's action in the whole issue as the matter was never brought before the Senate. As Ajewole(2019) opined that Onnoghen's removal has a lot to do with the declining fortune of Buhari Administration and that the government simply cashed in on the Onnoghen's act of wilful forgetfulness to score cheap anti-corruption point. She went further to purport that, in a similar manner with Mr. Goodluck Jonathan's reasons for removing former president of the Court of Appeal, Justice Ayo Isa Salami, Buhari government and party moved against Onnoghen to stem the causality of likely post-election legal

battle for which the stance of Onnoghen is unknown.

Wallace(2019) while re-echoing the submission of the American Government and the European Union respectively on the removal of the CJN started as follows: "the U.S. said it's "deeply concerned" about the issue and there's a danger Onnoghen's removal could "cast a pall over the electoral process. "The timing, just before the swearing in of justices for electoral tribunals and the hearing of election-related cases, has also raised concerns about the opportunity for electoral justice"

Executive- Judiciary Conflicts: Drowning Nigeria's Democratic Consolidation

The executive- judiciary (through many of its self-inflicted calamities) conflict has made Nigeria's democracy in the word of (Aver and Orban, 2014) to become chronically sick and paraplegic having suffered serious congenital defects that have prevented the country's democracy from growing up to maturity. The series of assaults, maltreatment and humiliations that have been meted out to the judiciary by the executive are rooted in three main factors: the first factor is the inordinate desire of the executive to always have their ways at all times, this they do either by: i. compromising judges who are willing to do their bidding- this is evident in the manner at which courts give orders and counter orders or ii. by moving against those (judges) that either appear to be above board or that they are not willing to play games(or those their postures suggest so) for whatever reasons. The removal of Justice Ayo Yakubu as the head of the Court of Appeal in 2012 by Mr. Goodluck Jonathan and Justice Walter Onnoghen as the Chief Justice of the Federation by Mr. Mohammed Buhari in 2019(Otteh, 2019) provide good cases to support this assertion. However, in the executive's pursuits of maximum control, none of the judges in the above categories are safe from attack. In a situation where it becomes difficult to effectively carry out the attack on the judiciary, they infiltrate the judiciary through the Judicial Service Commission who is itself an appendage of executive as provided for in Section 153 of the constitution (Odugbemi, 2019). That method was used to oust Salami from office and to sustain the illegal removal of Justice Nwosike as Chief Judge of Abia State while correspondents between her and NJC were selective addressed() and Justice Ayo Salami

The second factor is the self-inflicted injuries the judiciary willingly inflicts on itself. These injuries however range from: i. outright corruption of members of the bench which was alluded to by the immediate past CJN during his confirmation by the Senate and many previous CJN before him (MUSDAPHER, 2014)ii. the inordinate ambition of judges who nurture the ambition of ascending to the office of Chief Judge, which most time makes them collude with the executive to supplant their

principals- such was the case of Abia State in 2014 when Justice Obisike Oji offered himself to be sworn in as Acting Chief Judge of the state even when he knew that the act is against National Judicial Commission's rule. In Kebbi State, Justice Karatu continued to finger Justice Ambrusa (who is next to her) in the plot to frustrate her confirmation as substantive Chief Judge, the crises ended in an ignominious display of absurdity when she was prevented from accessing her court to deliver judgment on her last day in office; iii. The inability of the bench to stand aloof of politics has gravely resulted in series of image denting cases that have dwarfed the reputation of the judiciary. This was the case when the former CJN, Justice Aloysius Katsina-Alu became so political to the extent that in 2012, he went beyond his powers to direct the Court of Appeal Sokoto from giving judgment in a case of gubernatorial electoral dispute between PDP and DPP that was of great interest to the government. This directive of the CJN was protested by the then President of the Court of Appeal, Justice Ayo Salami whose unceremonious removal from office through a process that was fraught with both legal and procedural errors is anchored on the issue. In this instance, justice was miscarried as the case was never decided; it again gave the executive the opportunity to launch an attack on the judiciary by removing Mr. Salami(who presided over the Court of Appeal whose verdicts on electoral disputes were against the government of the day from Office). These series of self-inflicted injuries have resulted in poor perception and relevance of the bench. All these give the executive the leeway to always attack and rubbish the independence of the judiciary. The attacks invariably have great negative impacts on the growth, development and consolidation of Nigeria's democracy in the Fourth Republic. Indeed, it is safe to conclude that judiciary has really made democracy chronically sick. The first factor is reinforced by the second one, such that the compromised.

The third factor is the weakened structure and institutional decay of Nigeria's system that permits and encourages violation of the laws and procedures without consequences. This explains why procedures are circumvented and laws are broken at the behest of the executive as visible in the executive chose the court rulings to obey. This unpalatable trend is taking a great toll on the engendering of the democracy in Nigeria as liberty of citizens is in danger. Rule of law is fast being replaced by rule of choice.

Conclusion and Recommendation

The views of (Olurode 1990; Unobe 1990) as espoused by Enweremandu (2009) that series of Nigeria's past democratic failings have been due to the inability to construct an impartial and honest judiciary that commands the respect and confidence of most of the members of Nigeria political class and masses. Judiciary still remains the stabilizer of democracy in all climes in that it assumes the role of an arbiter and

adjudicator between the other arms of government and between government and her citizen. Its sanctity must therefore be protected by itself through a conscious effort of self-preservation and self-respect; and by other arms of government by accepting to be bound by the laws.

It has being discovered that judiciary – executive relationships in the Fourth Republic at both the national and sub-national levels have being fraught with serial dysfunctional conflicts rather than cooperation as well as disputes instead of harmony which has great negative implications for the consolidation of Nigeria's democracy. Past occurrences of such have not only driven cog into the wheel of democracy but in most cases it drags the country backward in her quest for good governance and democratic consolidation. Hence, efforts must be made to ensure executive- judiciary harmony is robust, not however to the extent that the judiciary will aid executive in abusing the rule of law(as they are mostly tempted to do), but only to the extent that rule of law will be upheld and everyone be made accountable to it. Executive- judiciary harmony is germane to the engendering of democracy.

Therefore, the laws of the land, structures and institution of government must be strengthened to be able to protect itself against any abuse by being competent enough to meet out adequate and effective sanctions on law breakers. By so doing, members of the executive and judiciary will be deterred and tamed from abusing procedures and laws which are acts capable of jeopardizing democratic growth.

Erring judges, either in term of corruption, abuse of office, political involvement or those that collude with members of the executive to subvert the system because of their own inordinate ambition must be awarded stiff penalties like long years of jail terms that are strong enough to discourage such ignominious acts. The current practice of NJC to punish erring judges with compulsory retirement looks more like a part on the back rather than a slap on the cheek. Abuse of court process, contempt of court or refusal of government official to obey court order should attract jail terms.

It is also recommended that the order of appointment and removal of judges should be reorganized, such that the judiciary would be able to make recommendations for appointment and removal directly to the legislature for confirmation while the executive merely carries out the resolution of the legislature in that regard. Refusal of the executive to carry out the resolution of the legislature on appointment of judges should be overturned in the same manner with bills. By so doing, the judiciary would have being removed from the political influence of the executive.

REFERENCES

- Adakai, F. A. & Olorunsuwa, E. O. (2019) Executive- Legislative Conflict in Nigeria's Fourth Republic: Implication for Good Governance: University of Jos, *Journal of Political Science (UJPS)*, Vol. 5, Issue 5.
- Adeosun, A. B. (2014) :“Democracy and Democratic Consolidation in Nigerian Fourth Republic: Issues and Challenges”, *IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Volume 19, Issue 10, Ver. VI(Oct. 2014), PP 05-10e-ISSN: 2279-0837, p-ISSN: 2279 @0845. www.iosrjournals.org*
- Adangor, Z. (2015). Depoliticising the Appointment of the Chief Judge of a State in Nigeria: Lessons from the Crisis over the Appointment of the Chief Judge of Rivers State of Nigeria: *Journal of Law, Policy and Globalization*, Vol.44.
- Akubo, A. A. & Yakubu, A.(2014) : “Political Parties and Democratic Consolidation in Nigeria's Fourth”. *Global Journal of Political Science and Administration Vol.2, No. 3*
- Ajewole, I.(2019). Nigeria: Suspension of the CJN and the Rule of Law – a Class Analysis @<https://www.marxist.com/nigeria-suspension-of-the-cjn-and-the-rule-of-law-a-class-analysis.htm>
- Aroney, N. & Kancaid J.(2017). Courts in Federal Countries: in Aroney, N. and Kancaid J. eds Courts in Federal Country: Federalist or Unitarirists? Canada: University of Toronto Press.
- Aver, T. T and Orban, W. J. (2014). Judiciary and Democracy: Issues in Contemporary Nigerian Society: *Global Journal of Arts, Humanities and Social Sciences*, Vol.2.No.1, pp. 85-95.(European Centre for Research Training and Development UK (www.ea-journals.org))
- Bassey, A.O., Rapheal, P. A., Omono, C. E., & Bassey U. A.(2013):“An Examination of Causes and Consequences of Conflict Between Legislature and Executive in Cross River State, Nigeria” , *Academic Journal Interdisciplinary Studies Constitution of the Federal Republic of Nigeria (1999 as amended)*
- Enweremadu, D. U.(2009).The Judiciary and the Survival of Democracy in Nigeria: *Analysis of the 2003 and 2007 Elections: African Elections Vol.10, No.1, pp114-142*
- Fatile, J. O. (2017): “Legislative- Executive and Public Policy Formulation and Implementation in Lagos State Nigeria”, *OIDA International Journal of Sustainable Development* [http://www.ssrn.com/link/OIDA-intl -Journal-sustainable-Dev.html](http://www.ssrn.com/link/OIDA-intl-Journal-sustainable-Dev.html)

- Hakeem O. Y. (2009). The Judiciary and Political Change in Africa: Developing Transitional Jurisprudence in Nigeria *International Journal of Constitutional Law*, Volume 7, Issue 4, Pgs 654–682, <https://doi.org/10.1093/icon/mop027>
- Jackson, K. T. (1995). *The encyclopedia of New York: the New York Historical Society*. Yale: University Press.
- Johari: J. C. (2002): *Principle of Modern Political Science*, New Delhi: Sterling Publishers Private Limited
- Maduekwe, V. C., Ojukwu, U. G. and Agbata I. F. (2016). Judiciary and the Theory of Separation of Powers in Achieving Sustainable Democracy in Nigeria (The Fourth Republic): *British Journal of Education Vol. 4, No. 8*, pp. 84-104.
- McHugh, M.C. (2002). Tension Between the Executive and Judiciary, speech delivered on the 10th of July, 2002 at Australian Bar Association @ <http://www.hcourt.gov.au/assets/publications/speechd/former-ju>
- Musdapher, D. (2011). The Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy, *Fellows' Lecture Series*, Nigerian Institute of Advanced Legal Studies, Abuja, NILS Press.
- Obike, G. (2019). The Suspension of the Chief Justice of Nigeria Is Constitutional! But Also Questionable: Dubawa @ <https://dubawa.org/the-suspension-of-the-chief-justice-of-nigeria-is-constitutional-but-also-questionable/>
- Odugbemi, G. (2019). The Recent Suspension of the Chief Justice of Nigeria: Reports and Legal Discourse. Available at SSRN: <https://ssrn.com/abstract=3324694> or <http://dx.doi.org/10.2139/ssrn.3324694>
- Okakwu, E. (2019) What the Law Says on Removal of Chief Justice of Nigeria: Premium Times, Lagos @ <https://www.premiumtimesng.com/news/headlines/307973-what-the-law-says-on-removal-of-chief-justice-of-nigeria.html>
- Okeke, R. C. (2015): "Democratic Consolidation In Nigeria: Progress And Challenges", *Arabian Journal of Business and Management Review (OMAN Chapter) Vol. 5, No. 5*
- Okeke, R. C. and Idike, A.N. (2017). The Judiciary and Democratic Consolidation in Nigeria Under the Buhari Administration, *Speciality Journal of Law and Politics, Vol 2(4)*
- O'Regan, K. (2005). *Checks and Balances Reflections on the Development of the Doctrine of Separation of Powers under the South African Constitution*: F W De Klerk Memorial Lecture Delivered at Potchefstroom on 10th October, 2005.

Otteh., J. Justice Karatus Treatment: Example of Assault on Independence of Judiciary: Punch, Lagos available at: <https://www.vanguardngr.com/2019/07/justice-karatu-treatment-example-of-assault-on-independence-of-judiciary/>

Schedler, A (1998): "What is democratic consolidation?" *Journal of Democracy*, 9(2), pp 91-107 (<https://muse.jhu.edu/article/16883>)

Shehu, A.T. and Tamim M. K.(2016). *Suspension of Justice Isa Ayo Salami: Implications for Rule of Law, Judicial Independence and Constitutionalism. African Journal of Criminology and Justice Studies (AJCJS): Vol. 9, Issue 1*

Suberu, R. T.(2008). The Supreme Court and Federalism in Nigeria: The Journal of Modern African Studies Volume 46, Issue 03 pp 451 -485

Wallace, P. (2019). *Nigeria Leader Sparks Pre-Vote Crisis by Replacing Top Judge : Boomberg* @<https://www.bloomberg.com/news/articles/2019-01-25/buhari-suspends-nigeria-s-top-judge-ahead-of-election-aide-says-jrcau3pn>

<https://www.thecable.ng/kogi-assembly-seeks-removal-of-chief-judge>

<https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-51>

<https://www.britannica.com/biography/Charles-Evans-Hughes>

Newspapers

Cable News November 2, 2019

Nations, April 28 2019

Premium Times, January 29th, 2018

Punch, March 6, 2016

Punch, April 2, 2019

Premium Times, Sept. 28, 2017

Premium Times, February, 17, 2012

Sahara Reporters, July, 8, 2019

Thisday, May 4, 2009

Thisday, May 26th, 20015

Thisday, June 24, 2018

Vanguard, August 22, 2011