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EXECUTIVE INTERFERENCE AND JUDICIAL INDEPENDENCE IN RIVERS STATE, 2012-2022

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Abstract

The continuous interference of the executive arm of government and politicians in the process of judicial appointment has become an issue of concern both at the federal and state levels, as it is becoming a subtle means of intimidating, controlling and directing the judiciary. The judiciary's function in a democratic society is to adjudicate between members of the society and the state and between members of the society themselves. While the legislature designs the legal framework by which society lives and the executive is responsible for the administration of society. All this various function must be carried cut in accordance with the rule of law, and an independent and efficient judiciary is the pillar of the rule of law. The relationship between the arms of government in a democratic state should be complementary, with no one arm being "supreme" or dominating the other. Rather the will of the people should be expressed through democratic process.

Keywords: Executive Interference, Judicial Independence, Rivers State, 2012-2022, Separation of Powers, Rule of Law

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Judiciary

In all democratic societies, the judiciary is charged with the duty of protecting the individual against all possible encroachment by the State. The judiciary is vested with the power of safeguarding the rights of the citizenry. It is the judiciary's supreme responsibility and in cases where the citizen's right is threatened or violated, the individual has constitutional right to seek redress from the judiciary. It may also be noted here that the court could take action only if an individual has been denied some freedom or liberty in violation of an existing law but the parties do not have to wait until their rights are actually violated, they can appeal to the courts, if they have sufficient reasons to believe that attempts would be made to violate their rights.

According to Adrienne (2009), the judiciary is also charged with the duty of interpretation and guarding of the constitution. The judiciary's responsibility is to interpret laws. Since it interprets laws it is also incumbent on the judiciary to protect the laws it interprets

Executive Interference

This is the continuous interference of the executive are of government and politicians in the process of appointment of judicial office holders. This interference is a subtle means of controlling, intimidating and directing the judiciary and it is seen both at the federal and state level.

Judicial Independence

According to Burbank (2003), the independence of the judiciary is that principle that states that the judiciary should be politically insulated from the legislative and executive power, meaning that courts should not be subjected to improper influence from the other branches of government, or from private or partisan interest. The idea of judicial independence is dealt with by various nations through different means of judicial selection, or choosing judges.

The independence of the judiciary means the right and protection given to the members of the judiciary under the law to enable the judges to decide cases before them without fear or favor. According to Robertson (2013, p2), judicial independence is fundamental to every democracy, both as a guarantor of the separation of power in the State and of the rule of law. It ensures justice and equity through the predictability of court decision that cannot be overruled by a political establishment.In some countries, the ability of the judiciary to check the legislature is enhanced by the power of judicial review. This power can be used for example, when the judiciary perceives that legislators are jeopardizing constitutional rights such as the rights of the accused.

Legoaba (2016) opines that several reasons abound why the judiciary should be independent of other organs of government and it includes:

1. To enable judge to execute their duties effectively without being bias.
2. To ensure public confidence in the judiciary
3. To safeguard the fundamental rights of the individual
4. To effectively check the excesses of the legislature and executive.

The independence of the judiciary can only be safeguarded, if the following conditions are met:

1. The appointment of judges is handled by an independent body, likewise the Dismissal of judges and their promotion.
2. Judges are given a fixed term of office (security of tenure), they should be well or adequately paid. They should have a fixed salary which should be paid from the consolidated fund or account and they should not take part in partisan politics

Independent Judiciary a Panacea to Democratic Stability.

Nigeria's legal system is based on a combination of common law, statutory (legislative) law, customary law derived from traditional norms and practices, and sharia law, used in the predominantly Hausa and Muslim north. At the federal level, the judicial branch consists of the Supreme Court, Court of Appeal, and Federal High Court. At the state level, there is the State High Court, and, at the local level, there are the sharia courts and customary courts. The federal and state courts operate according to statutory and common law, whereas local courts are based on customary and Islamic laws. While the independence of the judiciary has been a principle in the many Nigerian constitutions, in practice, the authority of the judiciary was severely undermined during the years of military rule, especially during the Abacha regime. More recently, the Supreme Court and federal Court of Appeal have shown more independence, but the state and local courts remain grossly under-funded. This has contributed to huge problems in court administration, as it takes years to get a case through court. Typical caseloads for magistrates are about 20 cases per day. It is estimated that up to 90 percent of inmates are awaiting trial. The penal institutions, which are in terrible condition, are controlled by the federal government, but most of the penal codes are enacted by state law. There is virtually no computerization with record-keeping done by longhand. There are few law libraries and those that exist are very small. In general, there is a pronounced deterioration in the quality of the courts from the federal courts downwards to the state and local courts. There is less corruption among the federal judges, although some have a tendency to favor the state. Judges are appointed by the National Judicial Council, which is an executive body that controls appointments and promotions. Judges that come from the bar tend to be more professional, while those that come up from the magistrate tend to behave more like civil servants. Like other civil servants, they often do not get paid on time. The popularity of the sharia courts initially emerged in counterpoint to the abysmal condition of the state and local courts, but the sharia courts have encountered similar problems as elsewhere, in part related to a lack of resources and the broader problems in the rule of law. There is inadequate access to legal representation, defendants are not informed of their rights, and judges are insufficiently trained. Part of the reason that the Supreme Court has emerged as a bright spot in the country's justice system is its history, with Nigeria's Supreme Court always having had a strong record, even providing chief justices for elsewhere in the region. External pressures on a day-to-day basis are not as pronounced at that level as at lower levels, and judges tend to be individuals of distinction, with the process of appointment being most stringent to the Supreme Court and Court of Appeal. The poor condition of the state and lower courts reflect inadequate political will for their improvement as the resources allocated to the justice system at this level contribute too many of the deficiencies, and the Nigerian government needs to decide whether or not to address this fundamental shortcoming.

Executive Interference on the Judiciary in Nigeria's Democratic Dispensation

Executive interference is an emerging threat confronting the judiciary in Nigeria. The judiciary relies on the Executive for funding and some judges allow their sense of judgment to be compromised. According to Soniyi, 2019, some members of the bench gratuitously behold to the executives just to get favor and in the process, they compromise and pervert the

course of justice. Judges are now willingly surrendering the independence to the executive in order to get favor. The APC National chairman had accused Justice Augustina Kingsley Chukwu, of being bias. The Supreme court had nullified APC'S congresses in Rivers State and this denied the party the opportunity to participate in the 2019 general election. The party however set up a caretaker committee, but court actions were instituted against it and Justice Kingsley-Chukwu granted an injunction restraining the APC and the caretaker committee from taking any further step. By civil procedure rules of the Rivers State High Court, the APC was entitled to 21 days within which to enter an appearance and file their necessary processes in defense, but Justice Augustina Kingsley Chukwu had abridged that time to 48 hours. It was later discovered that that the husband of Justice Augustina Kingsley Chukwu was a top leader of the People's Democratic Party (PDP), who had previously contested for the position of chairman of Obio/Akpor local government area and currently serves as the legal adviser of the PDP in Rivers State. Thus the judge in this case may not be able to discharge her duties objectively without interference.

Rivers State of Nigeria was effectively without an incumbent Chief Judge from August 20th, 2013-May 31st, 2015 due to the antics of political office holders. According to Azu and Oloyede (2018) in August 2013, following the retirement of Justice Iche Ndu as the Chief Judge of Rivers State, the then Governor, Rotimi Amaechi, forwarded the name of Justice Peter Agumagu to the State House of Assembly for confirmation as Chief Justice, against the recommendation of the NJC nominating Justice Daisy Okocha, being the next most Senior Judge in the State judiciary.

The National Judiciary Council (NJC) responded by suspending Agumagu for violating the constitutional provision. The problem degenerated into closure of all courts under the State judiciary for more than one year and left the state without a Chief Judge either in Acting or substantive capacity throughout the period, as the number of cases brought before the judiciary and the numbers of legislative acts the judiciary must apply have increased. (CCJE 2015).

The executive and legislative powers are under obligation to provide all necessary and adequate protection where the function of the courts are endangered by physical attacks or intimidation directed at members of the judiciary and politicians must never encourage disobedience to judicial decisions.

However, Kalu (2018) posits that "In Nigeria, the executive arms of government today appears to dwarf the other arms of government in the amplitude and plenitude of powers it wields. The legislative and judicial arms of government appear to be at the receiving end in the endless erosion of their powers by a blossoming state bureaucracy or executive expediency".

The country since 1999 has had its longest experience of civil governance in its post-independence history. However since the return of democracy, the most serious challenges to Nigeria's continued viability as a state has been posed by intergovernmental disputes on spheres of power in a lopsided federation. It is also associated with unhealthy struggle for power among the political elite, massive corruption and the absence of effective dialogue among various stakeholders to foster a consensual basis for the continued existence of the state.

The essence of the doctrine of separation of powers is to prevent tyrannical or autocratic rule, oppression and despotism. Because absolute power leads to tyranny, which is a reflection of

the depraved nature of the average man who is generally bad. The question posited by Kalu (2018) can there ever be a complete or straitjacketed separation of governmental powers in any society? Hence to answer the question, separation of powers does not necessarily mean equal balance of power, but power must create room for overlapping co-operation and coordination among the arms, so that government business will not come to halt due to rigidity and opposition. They are partners in good governance. The independence of the judiciary is to ensure that those who man the judiciary i.e. the judges at all levels from the magistrates to the justices of the Appellate courts would be able to carry out their duties without fear or favor to enable them deliver judgment in all matters before them.

In the words of Babalola (2019) when you look at the courts today and you find judges who are willing to turn the law topsy-turvy in order to serve interest other than those of justice, then the courage of the few, who realize that they are sitting on the throne of god and that the only expectation is that they should do justice to all manner of men, strikes you deeply. For indeed the seat of a judge is likening to the throne of God. If a man has the power of life and death over another, what more can he ask for except the humility to approach his job with reverence and do justice to all without fear or favor affection or ill-will.

Recommendation

The Nigerian judicial system is in urgent need of radical surgical reform. Like doctors in an emergency ward, the performance of the judiciary is mostly based on where the judiciary falters than where it succeeded. This study gives voice to the fact that the judiciary must rise above its formidable challenges to restore the hope and confidence of the citizens in its ability to engender democratic stability**.**

1. Radical reforms are needed in the Judiciary with adequate and sustainable funding to prevent corruption.
2. Government through the NJC should standardize the process and tenure of judicial appointment. Thus, persons selected for judicial office should be individuals of integrity and ability with adequate and appropriate training or qualifications in law and promotion should be based on the principle of meritocracy.
3. The Judiciary in Rivers State should be absolutely independence and any opposition should be rejected in its totality. It should operate independently without any external disturbance either from the executive or legislative or even any political parties.

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