

## Judiciary and Democratic Consolidation in Nigeria: A Review (1999-2014)

Shuaib O. Moyosore<sup>1</sup> and Muawiyyah Abdullahi<sup>2</sup>

Department of Political Science, Federal University Lokoja, Nigeria

<sup>1</sup>moyo4os@yahoo.com, <sup>2</sup>muawiyyaabdullahi@gmail.com

### Abstract

*This paper has three focal points and depends largely on secondary sources for its analytical discourse. It undertakes a critical review of Nigeria's judiciary in the quest for democratic consolidation vis-à-vis the tenets of democracy. It also attempts an in-depth and dispassionate overview of the linkage between democracy and judiciary. The paper infers that democracy is about politics and that politics is about conflict generation and resolution hence any disagreement that devoid political resolution requires constitutional interpretation so as to avoid a recourse to a state of 'nature'/lawlessness. This, we argue is antithetical to democratic virtues and that if not checked, a return to autocracy is imminent. The third focal issue dwells on the challenges before the judiciary with a view to providing options for addressing the hindrance. It is held that given its constitutional roles of conflict resolution, the judiciary has fared better and consolidating democracy is a factor of varied myriads. Thus, the role of the judiciary and other stakeholders can not be underestimated if the Nigerian State does not want recourse to military dictatorship.*

**Keywords:** Democracy; Judiciary; Consolidation; Corruption; Nigeria.

### Introduction

The Nigeria political landscape since attainment of independence in 1960 has been plagued with political instability and had a tumultuous thirty months civil war. The military (constitutionally empowered to defend the country against internal insurrection as well as external aggression) had abdicated her traditional role on two occasions by toppling democratically elected officials (1966 and 1983) citing election irregularities, corruption amongst others as the reason for their action. The return to democratic rule 1999 was epochal given people's disillusionment to the military incursion occasioned by the Abacha junta. Hence, the return was welcomed with encomium hoping that a democratic order enhances and entrenches fundamental Human right, including the franchise to elect who one thinks can promote and protect general interest. The new democratic environment has manifested itself in changing the rule of the political order and brought about meaningful reforms including constitutional engineering leading to about five amendments (the latest being the "not too young to run") to the 1999 constitution.

Since 1999 also, the people of Nigeria have witnessed an unprecedented multi-party system which in some quarters is seen as a good omen for the country, almost 20 years under a democratic order, and the longest in the history of the country's democratic experience. This, it is insinuated, calls for celebration, scrutiny and dissecting so as to move the country from new democracies to an established democracy status. Consolidation is a combination of several actions into one. It can also be used synonymously with stabilization or sustainability. Looking at it from several action perspectives, democracies can be said to contain the democratic minimum of elections, conducted under a free, fair and transparent processes, observance of fundamental rights and adherence to the rule of law. Literally, the term is used in relation to deepening or completing democracy (Faulenbach, 2007). Although, an opinion expressed is that we talk about consolidation when "... no one can imagine acting outside the democratic institutions, when all the losers want to do is to try again within the same institutions under which they have just lost" (Przeworski; 1991). Without gain-saying, the judiciary has a critical role to play when some group(s) feels there was an abuse or irregularities as the courts can calm frayed nerves. This conclusion is based on the fact that the judiciary is empowered constitutionally to settle conflicts from resulting to public disturbances and has a duty as an impartial arbiter to address and correct infraction or arbitrariness in the application of the law. In other words, actors in the polity become habituated to the fact that political conflict within the state will be resolved within the bounds of established norms, procedures, and institutions sanctioned by the new

democratic process and that violations of these norms are likely to be both ineffective and costly (Linz and Stepan, 1996).

The attitudes and behaviours of the various actors viz-a-viz their legitimacy acceptance of their institutions, whether is favourable to them or not cannot be underplayed. Within this premise, the overwhelming majority of the actors (governmental and non-governmental forces alike) is bounded to accept even in the face of severe political and economic crises, deep dissatisfaction with incumbents, that democratic procedures and institutions are the most appropriate way to govern collective life and hold sacrosanct that political change must emerge from within the parameters of democratic procedures. In short, democracy becomes routinized and deeply internalized in social, institutional, and even psychological life, as well as in political calculations for achieving success (Linz and Stepan, 1996). Without exaggeration, the role of the judiciary is indispensable, it is against this background that this paper tries to assess the role of the judiciary vis-a-vis ensuring democratic consolidation in the country. The question being asked; what are the factors responsible for this and what can be done to consolidate democracy in Nigeria. Without gain-saying myriads of factors are responsible for the country's democratic sustenance.

## **Theoretical Framework**

### ***Separation of Powers***

It could be observed that the modern state is composed of the executive, the legislature and the judiciary. Hence, any state with a democratic order must as a matter of necessity “advocates the independent exercise of these three governmental or constitutional functions, by different bodies of persons, without interference or control or domination by the other (Sagar, n.a). This implies that each branch’s powers are statutorily and constitutionally specified, with a view to prevent any of the branches from encroaching into others assigned roles. To this end, “the power to make laws is shared so that no one branch can consistently ignore the others in performing this key function of government”. The simple analogue from this is that the basic division of labour in governance is that the legislatures make the laws; executives implement and administer them, while the judiciaries adjudicate disputes arising from their implementation (Hislope and Mughan, 2012).

Baron Montesquieu, who popularised the doctrine also averred that “every man invested with power is apt to abuse it ... There can be no liberty where the legislative and executive posts are united in the same person or body of magistrates”. He also espoused the idea by stating that: Again, there is no liberty if the judicial power is not separated from the legislature and the executive. There would be an end to everything if the same person or body, whether of the nobles or of the people, were to exercise all three powers (Egbewole, 2006). The rationale behind these separations is the need to preserve individual and collective or group liberty, as it is widely believed that there is tendency towards abuse when an individual or a group wields absolute power. One-time Deputy Speaker of the House Representative was quoted to have said that “the separation of powers doctrine today is observed. The executive tries of course to encroach upon the functions of the legislature, but it is met this time with civilized resistance” (Levan, 2015). This implies that mere stipulation does not ensure compliance but what determines its applicability is the readiness of the actors to compel adherence.

Thus, the need for the separation of powers is desirable as a measure for preserving the constitution, averting the danger inherent in making one organ more powerful and preventing encroachment on the powers of the other organs. The emphasis here is derived from the fact that:

The peace, the prosperity and the very existence of the union are invested in the hands of the ... judges. Without their active co-operation the constitution, will be a dead letter; the executive appends to them for instance against the encroachments of the legislative powers; the legislature demands their protection from the design of the executive, they defend the union, the public interest against the interest of private citizen

(Alexis de Tocqueville, in Egbewole, 2006)

It must be noted that “a water tight separation of powers is not however advisable in governance as each arm of government must be independent in order to make for positive and progressive governmental interaction”. This brought to the fore the idea of checks and balances as advocated by strong supporter of the theory in America (Egbewole, 2006). Situating this doctrine into Nigeria's context shows that the Constitution Drafting Committee for the 1979 constitution justifies the separation of the organs of the state on the need to toil modern day governmental practice and co-ordination, and to secure individual and group liberty. The rationale for the adoption was coined in the following words;

Modern government should be a co-operative, coordinated effort and not a thug of war between the principal organs of government ... Some separation is necessary and desirable, if limited government and individual liberty are to be secured, but certainly not a rigid separation (Egbewole, 2006).

The idea of checks and balances helps to prevent abuse. It becomes imperative from a natural point of view for one power to act as a check on another. As the French philosopher Montesquieu puts it “Power should be a check to power” (Heywood, 2011).

### Concept Clarification

#### *Democracy*

Democracy as a concept is devoid of a generally acceptable definition reason being that as a concept, it is vulnerable to varied measurements. In view of this, the paper intends not to align with any of the definitions but tries to present it in different shades as presented by scholarly explications. Hence, we try to conceptualise democracy without necessarily being definitional.

For Ntalaja (1989), democracy is “a political concept founded on three underlying ideas, namely, democracy as a value, a process and a practice. To him, democracy as a value, means a basic human need, a necessity and therefore becomes a political demand of all freedom loving human beings because every human being desires a permanent aspiration for freedom, for a better social and political order. From a sociological point of view man always feel the need to improve his material conditions of life, security and his social goods which is one of the universal basic principles.

Democracy as a social process, he opined “is a continuous process of promoting equal access to fundamental human rights and civil liberties for all”. This goes with (i) the fundamental rights of the human person to life and security, (ii) freedom of religion, assembly, expression, press, association etc. (iii) economic, social and cultural rights; the caveat is that "democracy is meaningless when the basic needs of the population are not satisfied and, (iv) the rights of peoples, including the inalienable right to self-determination. He equally emphasized the importance of fundamental human rights as its absence would make democracy incomplete. This social process notion ensures people strive to expand these rights with the political space necessary for promoting and defending them effectively. Democracy as a practice connotes organizing and exercising power in accordance with certain universal norms and principles. The frequently mentioned universal principles of democracy, according to him are;

- i).* The idea that legitimate power or authority emanates from the people, who exercise it either directly through popular assemblies.
- ii).* The concept of rule of law i.e. the exercise of power by the representative of the people should be in accordance with the rules. Thus, the inevitability of the judicial impartiality as a protector of the law and rights and liberties of individual and groups.
- iii).* The principle that rulers are chosen by and accountable to the people

- iv). The right of the people to participate in the management of public affairs through free, transparent and democratic elections.
- v). The right of the people to change a government that no longer serves their interest or the rights to revolution.

Modern liberal democracies, Fukuyama (2015) asserts, is a combination of “three basic institutions: the state, rule of law, and democratic accountability”. The state, he states, “is a legitimate monopoly of coercive power that exercises its authority over a defined territory”, and uses its power to defend the state from external aggression, enforce laws, and provide basic public goods for the promotion of citizens welfare. The rule of law, he says, “is a set of rules, reflecting community values that are binding not just on citizens, but also on the elites who wield coercive power”. The absence of constraint on the powerful, he submits, “amounts to commands of the executive and constitutes merely rule by law”. Democratic accountability as he averred “seeks to ensure that government acts in the interests of the whole community, rather than simply in the self-interest of the rulers”. The rationale behind this can be situated within the purview of providing a level playing ground for free and fair multiparty elections, and procedural accountability which he says is not a guarantee for substantive accountability.

In the views of Austin Ranney and Wilmore Kendall, the basic features of democracy are; popular sovereignty, political equality and popular constitution and majority rule (Popoola, 2007). He also avers that equally important is the “provision of basic freedoms for the citizens and political competition for power to be organized through political parties”. In a succinct form, he opined that what Africa needs “is a social democracy anchored not only in the existence and viability of democratic institution like a democratic constitution, an independent judiciary, the rule of law, viable political parties and an alert judiciary”.

But also a democracy that promote the sustenance and durability of democratic forces like a vibrant civil society, non-governmental organization (NGO), all these are in addition to the time honoured norms of liberal democracy like multi-partism, periodic elections, adult suffrage, fundamental right, popular participation, outlawing of military rules, provision of basic needs, employment and the social and economic rights of the citizens (Popoola, 2007).

Notwithstanding the intense debate about the appropriate definition, scholars, according to (Kesselman, Krieger & Joseph, 2013:26-27) agree that the following conditions must be present.

- i). Selection to the highest public offices is on the basis of free and fair elections. For an election to qualify as fair, there must be procedures in place guaranteeing candidates the right to compete, all citizens must be entitled to vote, and votes must be counted accurately, with the winning candidate(s) selected according to pre-existing rules that determine the kind of plurality or majority required to gain electoral victory.
- ii). Political parties are free to organize, present candidates for public office, and compete in elections. The opposition party or parties enjoy the right to organize and to criticize the incumbent government.
- iii). The elected government makes policy according to procedures that provide for transparency in decision-making and the accountability of elected officials through electoral procedures, a free media, and established judicial procedures.
- iv). All citizens possess political rights—the right to participate and vote in periodic elections to select key state officeholders; as well as civil liberties—the right of free assembly, conscience, privacy, and expression, including the right to criticize the government without fear of official reprisals.

v). The legal system is based on “the rule of law,” according to which no person or organization is above the law, and the principle of legal equality, meaning that all citizens are treated equally by the law. The political system contains a judiciary with powers

independent of the executive and legislature, charged with protecting citizens’ political rights and civil liberties.

- vi). The elected government exercises effective authority, including control over the military and over private power-holders (including large landowners, and corporations); thus, no hidden, private groups exercise a veto power over the government, that is, effectively exercise control.
- vii). There is a commitment that conflicts—political, social, economic, and identity based—will be resolved peacefully, without recourse to violence, and according to legally prescribed procedures.

### **The linkage between Democracy and the Judiciary**

Though politics have been defined by various authors, scholars and politicians, the definition which fails to capture politics from the angles of conflict generation and resolution has failed to integrate into his/her definition the understanding that politics takes place at the realm of public domain which in a proper dissect involves a mass of people and given this there is bound to be disagreement and that through this same mechanism the conflicts generated are addressed. But where the disagreement is not settled through political means the next point of call for amicable resolution is the court, otherwise, it becomes a war with bloodshed.

The task of statutory interpretation of the Constitution is a fundamental principle in every society and serves as a means for regulating and checking excesses and a determinant of the acceptable modes of behaviour; by individual, groups either as elected or appointed representatives or an ordinary citizen. Once the courts have been called upon to interpret the law, it ought not to restrain itself, because opting out is detrimental to the organisational set up of the polity. Any organ of the state (be it the executive or legislature), informal structures (political parties, nongovernmental organisations) that acted, in the opinion of some people, contrary to the constitution, is subject to judicial scrutiny if such an action is challenged. As a measure to checkmate government and the state apparatus against unconstitutionality or illegality, the use of discretionary power is defined and increasingly limited. This laid the basis for citizens’ action to challenge perceived abuse, deprivation and unconstitutionality by the State and its officials. The absence of such a process would deprive the citizens from being able to exercise their political rights with full freedom and independence (Linz and Stepan, 1996).

Since competitive election is the principal route to legislative and some executive political offices, adherence to the rules of procedure is determined by the courts when a legal action is instituted against the person declared as a winner of an election. In Nigeria, we have the Governorship and State Legislative elections petition tribunal, the National Assembly and Presidential elections petition tribunal which determines the validity of an election. The perception of the electorates, likewise the candidates in elections, when elections are rigged, should be that justice will be served by the election petition tribunals. Confidence building is assured, if the people feel that the perceived irregularities have been corrected. Put differently, they would see democratic procedures and institutions as; (i) the most appropriate way to bring about the desired changes (ii) the veritable tool for correcting improper action. The Electoral Act and the Constitution are combined to determine the rules of the contest and to set the limits for participants with a view to create acceptance of the outcomes in any democratic contest. To cap it all, Linz & Stepan (1996: 18-19), observed that the necessary degree of autonomy of civil and political society must be embedded in, and supported by the rule of law. In fact, judicial participation in the sustenance of democracy lies within the precinct of rule of law. The rule of law, in the words of Fukuyama (2015: 12) “is a set of rules, reflecting community values that are binding not just on citizens, but also on the elites who wield coercive power”.

We cannot talk about democracy without including the notion of respect for basic fundamental inalienable liberties of man; (freedom of the press, of association, of speech, the right to habeas corpus, etc.) as well as the protection of minority rights. These inalienable rights are prerequisites for competitive elections with broad participation (as the law permits), as its absence is tantamount to negation of irreplaceable values of a democratic order. However, the determinant of observance “requires a clear hierarchy of laws, interpreted by an independent judicial system and supported by a strong legal culture in civil society” (Linz & Stepan, 1996:19). So, the rule of law and democratic accountability seek to constrain power and ensure that power is used in the public interest as a state without constraining institutions becomes a dictatorship (Fukuyama, 2015:12). This brought to the fore the role of the judiciary as a restraint mechanism for illegality under a democratic regime. An analogue derived from this is "the idea that man is governed by law and regulations and not by the caprices of the rulers" (Akanbi & Shehu 2012). The logic of this exposition is that there is a tendency to have a higher quality of democracy and better the society if the institutions of the state function according to the principle of the state of law (Linz and Stepan, 1996).

### **Judiciary and Democratic Consolidation**

Judiciary is the only organ that deals with the administration and dispensation of justice in any democratic nation (Okeke and Idike, 2017). Therefore, the role of judiciary in democratic consolidation in Nigeria cannot be overemphasized, especially on its position in providing peaceful democratic processes by reconciling many electoral disputes among the key political actors and between democratic institutions of the state. As Maduekwe, Ojukwu and Agbata (2016) aptly argued that for effective democratic consolidation and administration of justice, the judiciary has a definite and decisive role to play, because it has the power to review the actions of both executive and legislature and indeed, the last hope of the common man and defender of democratic processes and its consolidation in Nigeria. Enweremadu, equally asserted that;

Since 1999, judiciary has been playing an increasingly assertive role as a courageous and impartial arbiter in the country’s democratic politics in general and its electoral disputes more specifically. The clearest evidence of this fact is the increasing number of judicial decisions that have overturned the results of several rigged elections, mainly in favour of opposition parties or individuals opposed to the federal government (Enweremadu, 2011).

Although, being it as an arbiter, there are many challenges facing the judicial arm of government in Nigerian, the most disturbing one specifically is the allegation of corrupt practices among some judges at the various ladder within the institution. This was captured by the Punch; there are indeed corrupt judges and lawyers just as there are corrupt persons in all walks of life (The Punch, 28 June 2017). Yet, this cannot be used fully against the entire judicial arm of government in Nigeria considering many cases of electoral manipulation that were nullified and restored especially by the Supreme Court and the Federal Court of Appeal.

For instance, the issue of internal party democracy is very crucial in strengthening democratic values among party members thereby improving the overall democratic culture across the country. Therefore, efforts in restoring internal party democracy by Nigeria’s judiciary can be observed from the case of Dr. Chris Ngige who was illegally declared as the Governor of Anambra State in April 2003. It was the court that restored the people’s mandate freely given to Peter Obi. Also, former Vice President Atiku Abubakar would not have served out his tenure neither would he have contested the 2007 presidential election under the Action Congress (AC), if not because of the Supreme Court ruling that joint candidacy of contestants and their running mates end at the polls and does not extend to government (the Punch, 28 June 2017). This was an indication that the judiciary is ready to sanitize and deliver a healthy electoral process thereby setting up a good atmosphere for democratic consolidation in Nigeria.

Again, when Chibuike Amaechi of Rivers State contested and won the nomination of his then party, the Peoples Democratic Party (PDP) in December 2006 only to be unlawfully replaced by Sir Celestine Omehia without cogent and verifiable reasons, it was to the court he ran to for assistance. The Supreme Court on October 25, 2007, declared Amaechi the rightfully elected candidate of the PDP even though he did not campaign nor have his name on the ballot, but he was sworn in immediately by the Apex Court (The Punch, 28 June 2017).

However, the judicial pronouncements which restored state governors wrongfully removed from office in the course of disagreement with the federal government or political godfathers were attributed to great efforts towards the democratic consolidation in the country (Enweremadu, 2010). Among were the Supreme Court overturning of the unconstitutional impeachment of former Governor Murtala Nyako of Adamawa State, Governor Dariye of Plateau State, who refused to support the 2003 re-election bid of President Olusegun Obasanjo and the Governor Ladoja of Oyo State that was engineered by the local godfather in 2005, even though the godfather is an Obasanjo ally (The Punch, 28 June 2017). However, other impeachments that were reinstated by courts include; Peter Obi, who was wrongfully impeached by the Anambra State House of Assembly and reinstated by the Court. Even when the Independent National Electoral Commission (INEC) conducted governorship election in the state in April 2007 which saw to the emergence of Andy Ubah as the new governor then, it was the same court that Obi ran to. Ubah was sacked by the court ruling that the Obi's tenure started count from the time he was sworn into office. To expose it all, it is still in record that former Governors like Olusegun Mimiko of Ondo State, Kayode Fayemi of Ekiti State, Adams Oshiomhole of Edo State and Rauf Aregbesola of Osun State might have never been as governors if not for the judiciary that assisted to retrieve their mandates.

Not only that the judiciary has also nullified many of the rash and unconstitutional impeachments of many Deputy Governors by the State Houses of Assembly. Among was the nullification of impeachments of the ex-Deputy Governors like; Sunday Onyebuchi of Enugu State, Mohammed Garba Gadi of Bauchi State, and Ali Olanusi of Ondo State (The Punch, 28 June 2017). It is clear that without the active role of judiciary, Nigeria's democracy would not flourish as it is today. To that extent, many politicians today prefer to use judicial channels to resolve their conflicts, and more importantly, these politicians are also learning to accept the decisions of the courts as final, whether or not they are in their favour (Enweremadu, 2011). Furthermore, when some governors were trying to elongate their tenure through the backdoor by misinterpreting Section 180 (2) of 1999 Nigerian Constitution as amended in 2010 to say that their tenure started to count from the day they were sworn in after winning a re-run election, it was the Supreme Court which in a landmark judgment on January 27, 2012 that correctly interpreted that section of the law that any governor whose election was annulled and asked to be re-conducted, should he win the re-run, his tenure will start to count from when he was initially sworn in and not the time he wins a re-run. This position was later reflected in the 2010 Constitution Amendment. It was through judicial activism that Nigeria now has staggered election in which case governorship elections in Anambra, Kogi, Bayelsa, Ekiti, Edo, Ondo, and Osun now hold on different dates (The Punch, 28 June 2017).

It was also judicial intervention that rescued some of the National Assembly members (the Senate and House Representatives), like Senators, Alhaji Lau of Taraba state, Ben Obi and Joy Emordi of Anambra State, Jenkins Gwede of Delta State, Senator Bassey Etim of Akwa Ibom State, Ben Nwankwo of Anambra State, and Senator-elect Shuaibu Isa Lau of Taraba State and House of Representatives member Mrs. Dorathy Mato of Benue State. On the other hand, in 2017, the Supreme Court also sacked Senator Sani Abubakar Danladi (PDP, Taraba North), Senator Bassey Akpan (PDP, Akwa Ibom North) and the lawmaker representing Vandeikya/Konshisha Federal Constituency of Benue State in the House of Representatives, Herman Hembe (APC) and Sopoluchukwu Ezeonwuka of the PDP as the representative of Orumba North/South of Anambra Federal Constituency. In fact, not only removed but also authorized to return the salaries and allowances collected in the last two (2) years for illegally occupying their offices within 90 days (The Punch, 28 June 2017). All these

demonstrated that the Nigerian judiciary was moving to consolidate and improve on its role as an agent of democracy (Enweremadu, 2011). In one way or the other, all the above-mentioned judgments have contributed in consolidation of Nigeria's democracy and set up a bench mark within which all the politicians and democratic institutions can play their game without making wounds one another vis-à-vis strengthening and giving direction to the democratic processes in the country.

### **Challenges of the Judiciary in Democratic Consolidation in Nigeria**

#### ***Corruption***

Where corruption is pervasive and systemic it is woven into every process and procedures such that it becomes difficult to delineate the normal official processes from opportunistic corrupt procedures (Adebisi, Undated). Corruption is the most devastating and reprehensible malady of the judiciary in Nigeria. Despite increase in the Judge's salaries and condition of service and by virtue of their professional training and culture they are supposed to be men and women of integrity and honesty. Yet some of the judges still compromise their integrity in favour of corruption and impunity thereby making Nigerian judicial system to be weak and encourages criminality as many of the criminals could find their way home even after being arrested and prosecuted (Madu, 2015). A recent survey by the Economic and Financial Crimes Commission and National Bureau for statistics with the support of United Nations Office on Drugs and Crimes found out that:

“Nigerian Courts of law receive the biggest bribes from citizens among all institutions in which corruption is rampant, even though bribery in the judiciary was less frequent than in many agencies, but it required the biggest transactions” in (Oyetibo, 2012).

As a matter of fact, bribery and favouritism in Nigerian judiciary lead judges to approach adjudication with ideas and sentiments that prevent or impede neutral, fair, and objective evaluation of matters before them (Okechukwu, 2009). For instance, Aver and Orban (2014) rightly observed that Nigeria's judiciary during former President Goodluck Jonathan was identified as a mess with huge financial inducements to rig cases before them. The judicial officers that handled election petitions became qualified to be inducted into the inner sanctum of the super-rich overnight. Many cases abound at the state level where judges are frequently influenced by the governors to delay, pervert the case or do something scandalous to favour those who lost out in election. It is little surprise then that those who lost elections genuinely or were otherwise rigged out of their victories head to tribunals to do their own rigging in their own way and get to power through the back door. Good examples were the governorship cases in Sokoto, Benue, Akwa-Ibom, Jigawa, Borno and Imo states among others. Judges capitalize on every little loophole in cases, particularly political cases, either to dismiss the case or embark on escapade of endless adjournments. To that extent, in October 2016, Federal government executed the arrest of serving Nigerian judges suspected to have aided and abetted corruption over the years. Especially, those who allegedly took huge cash to pervert the cause of Justice before, during and after the 2015 general elections by operatives from the Department of Security Services. Among those taken into custody were two Supreme Court Justices, who allegedly played ignoble but crucial roles in subverting judgment in favour of one of the two leading political parties and three judges from Sokoto, Bauchi and Kano who were also taken into custody for allegedly collecting bribes (Daniel in Okeke and Idike, 2017).

However, Nigeria's judiciary through the National Judicial Council (NJC) has been working tirelessly trying to sanitize the issues of corruption that paraded the institution for long. This fact can be seen from some of the disciplinary action taken against some judges particularly those who have found unworthy of remaining in the position of judge by the NJC. Some of the cases in point include: the dismissal of the members of Akwa Ibom Election Tribunal who were indicted for accepting bribe, the former Chief Judge of the Federal Capital Territory (FCT) who was alleged to have taken exhibit money from his court when he was serving in Sokoto State. Prior to these, Justices Okwuchukwu

Opene and David Adeniji, from the Court of Appeal, were removed from their posts for well-proven acts of corruption in 2005 (Egbewole and Imam, 2015).

### **Dependence of the Judiciary**

An independent, impartial and informed judiciary holds a central place in the apprehension of a good, transparent and accountable government. This is necessarily made possible by the provision that charges the judiciary with the function and responsibility to determine all matters between persons, or between government or authority and any person in Nigeria, and to all actions and proceedings relating to the determination to any question as to the civil rights and obligations of any person. Judicial independence therefore means the ability of a judge to decide a matter free from pressures or inducements. The principal role of an independent Judiciary is to uphold the rule of law and to ensure the supremacy of law within its area of jurisdiction (Abdullahi, 2014).

Independence of the judiciary means nothing when an arrogant government can frustrate proceedings, influence and manipulate the judges. No judiciary can be said to be truly independent when judges are appointed by government and depend on government for essential facilities like housing, transportation, and support staff (Okechukwu, 2009). Drawing from the state level for instance, the appointment of the Attorney General of a State and two members from the private bar and two other persons who are non-legal practitioners to the Judicial Service Commission are often abused in practice. They are appointed contrary to the Constitution based on political considerations and more often than not are used to veto important decisions of the Chief Judge of the State especially where the decisions do not go down well with the interest of the State. Moreover, access to judges outside official channels has been one of the greatest problems that further threaten the independence of the Judiciary in Nigeria. Governors at the State levels have direct access to judges within the state even as it relates to matters in court and lawyers and clients often boast of their accessibility to judges or even to panel of an election petition hearing particular cases. On the issue of finance, Shehu and Tamim (2016) noted that most of the heads of courts across the States still go to the Chief Executives to beg for the release of their budget. This was also re-affirmed by the former Chief Justice of Nigeria, Dahiru Musdapher that:

“Most heads of courts have to go, cap in hand, to the Governors of States, in order to receive the State Judiciary’s budget. I dare say how demoralizing and damaging this can be to the independence of the judiciary” (Shehu and Tamim, 2016).

At the Federal level, the suspension of the former President of the Court of Appeal (PCA) Justice Ayo Isa Salami by the NJC and his compulsory retirement by the then President Good luck Jonathan and the subsequent re-called of Isa Ayo Salami from suspension by the NJC as well as the refusal of then President GoodLuck Jonathan to approve the acts of the NJC raises questions regarding the partisan nature and level of dependence of the Nigeria Judiciary on the Executive arm. This evidence alone signifies the fact that the appointment and removal of judges in Nigeria have been and continue to be in the hands of politicians and a lot of judges have faced and some are still facing harassment at the hands of these politicians (Abdullahi, 2014).

Therefore, to ensure effectiveness, optimal performance and independence of the judiciary at all levels of government in Nigeria, the procedure of appointment and removal of judges, composition as well as the financing of the judiciary must to be re-structured. The hands of politicians must to be removed away totally in the processes, which could be a long tall dream in Nigerian democratic system. However, if achieved it will go a long way to further consolidate and inculcate a strong democratic value in the hearts of Nigeria’s politicians and the electorate as a whole.

### Peoples' Perception

Another major challenge of the Nigeria judicial system is the peoples' perception towards political and other general issues or cases under judicial proceedings across the country, especially because of the above issues (corruption and dependence of the judiciary) discussed.

Nigerian citizens would always look at the judiciary system in Nigeria as an institution where everything goes on. Whenever judgment is given by any Court of law, whether it is in line with the dictates of law and due process or not, the perception of people is always that the winner is either a very rich man or has connection with politicians and government officials at one level of governance or the other. Egbewole and Imam (2015) rightly observed that citizens' perceptions of such attitude especially in election disputes undermines the role of the judiciary as protector of citizens' rights as well as credibility of elections which always served as a yard stick of measuring democratic consolidation. Furthermore, in any democratic society, the role of the judiciary is to protect the right of the citizenry and uphold the dictates of the law of the land from encroachment by any other person or institutions within the State. that means, if this is applied and practiced objectively with all sincerity of purpose, the culture and values of democracy would grow faster thereby providing enabling environment through which democracy can be consolidated. But, in a situation where people are suspicious of the guardian of their right, definitely the consolidation of democracy is in danger and it is detrimental to the judicial system as a safe guarder of democracy as a whole.

### Conclusions and Recommendations

The paper established the fact that judicial system in Nigeria is very necessary for democratic consolidation. This is because, it is the only institution by the virtue of its responsibilities empowered by the Constitution to protect the rights and obligations of the citizens, intervene where necessary between political institutions i.e. executive and legislative and uphold the law of the land through the interpretation of its provisions in order to strengthen and sustain the democratic process across the country. However, the paper identified the fact that despite its weak effort towards consolidation of democracy in Nigeria, the institution is also surrounded by many ills and diseases that always hampered its attempt in making democracy better in the country. Among the issues include: corruption, dependence of the institution and the perception of the general public towards the activities of the judiciary. These issues need to be cured urgently for our democracy to grow, nurture, prosper and be consolidated.

### References

- Abdullahi, I. (2014). Independence of the judiciary in nigeria: a myth or reality? *International Journal of Public Administration and Management Research*, 2(3), 55-66.
- Adebisi, J.A. Judicial Integrity in Nigeria: Challenges and Agenda for Action
- Akanbi, M.M. and Shehu, A.T. (2012). Rule of law in nigeria. *Journal of Law, Policy and Globalization*, 3, 1-8.
- Aver, T.T. and Orban, W.J. (2014). Judiciary and democracy, issues in contemporary nigerian society. *Global Journal of Arts, Humanities and Social Sciences*, 2(1), 85-95.
- Egbewole, W. and Imam, I. (2015). Nigerian judiciary and the challenge of corruption: islamic options as panacea. *Journal of Islam in Nigeria*, 1(1).
- Egbewole, W.O. (2006). Independent judiciary and sustainable democracy in nigeria in Emmanuel O.O. (ed.) *Challenges of Sustainable Democracy in Nigeria*. Ibadan: John Archers Publishers, 209-234.
- Enweremadu, D.U. (2011). The judiciary and the survival of democracy in nigeria: analysis of the 2003 and 2007 elections. *Journal of African Elections*, 10(1), 114-142.
- Faulenbach, C.F. (2007). The concept of democratic consolidation: a tool to aid actors with democracy assistance? *A Bachelor Thesis*, Submitted at the University of Twente, Germany.
- Fukuyama, F. (2015). Why is democracy so performing poorly. *Journal of Democracy*, 26(1), 11-20.
- Heywood, A. (2011). *Political Ideologies: An Introduction*. 3rd Edition, Macmillan: Palmgave
- Hislope, R. and Mughan, A. (2012). *Introduction to Comparative Politics: The State and its Challenges*. Cambridge: Cambridge University Press.
- Kesselman, M., Krieger, J. and Joseph, W.A. (2013). *Introduction to Comparative Politics: Political Challenges and Changing Agendas*, Sixth Edition, International Edition. USA: Wadsworth, Cengage Learning.
- Levan, C.A. (2015). *Dictators and Democracy in African Development: The Political Economy of Good Governance in Nigeria*. Cambridge: Cambridge University Press.
- Lin, J.J. and Stepan, A. (1996). Toward consolidated democracies. *Journal of Democracy*, 7(2), 14-33.

- Madu, C.T. (2015). Insecurity in northern nigeria: causes, consequences and resolutions. *International Journal of Peace and Conflict Studies*, 2(4).
- 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*, 4(8), 84-104.
- Ntalaja, N. (1989). The State and Democracy in Africa in Ntalaja, Nzongola and Margret C. Lee (Eds.). *The State and Society in Africa*. Harare, Zimbabwe: AAPS Books.
- Okechukwu, O. (2009). The lawyer's role in a contemporary democracy, promoting the rule of law, lawyers in fragile democracies and the challenges of democratic consolidation: the nigerian experience. *Fordham Law Review*, 77(4), 1295-1331
- Okeke, R.C and Idike, A.N. (2017). The judiciary and democracy consolidation in nigeria under the buhari administration. *Journal of Politics and Law*, 2(4), 24-32.
- Oyetibo, T. (2012). The Role of the Judiciary in combating Corruption in Nigeria, [www.premuimtime.com](http://www.premuimtime.com), retrieved on Saturday, October 13, 2018.
- Popoola, O.A. (2007). Sustaining Democracy and Democratic Development in a Plural Society: Nigeria, Being a Paper Presented at the Annual General Conference of the Nigerian Bar Association (NBA) in Ilorin, Kwara State: 2630th, August.
- Przeworski, A. (1991). *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America*. Cambridge: Cambridge University Press.
- 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*, 9(1). The Punch, 28 June, 2017.
- velopment. Cambridge, MA: Harvard University Press.