

**Beatrice Onoriode Ofowena<sup>1</sup>**

## **A Comparative Analysis of Judges Selection Between Nigeria and United Kingdom in a State of Judicial Independence**

### **INTRODUCTION**

A nation loses credibility when her justice system is inefficient<sup>2</sup>. Constant reforms are needed to be at par with other nations globally. The very people entrusted with lives, properties and redeeming injustice are the Judges. This amongst other reasons is why the selection of judges is of the utmost importance. While different methods are used in the appointments of Judges, whatever method that is used for a particular country is irrelevant provided the goal of having an impartial, independent and incorruptible judge is achieved<sup>3</sup>. Only when that is achieved will public trust be assured and retained. The following quotes reflect the present state of Judiciary in United Kingdom and Nigeria:

Neuberger, Din his annual law lecture has this to say: *“The judiciary of England and Wales has earned a well-deserved reputation for being the best in the world because it is impartial, independent and incorruptible.”*<sup>4</sup>

Lord Chief Justice, Lord Burnett of Maldon the longest Chief Justice in the last 30 years who retired the 30<sup>th</sup> day of September 2023 summed up the achievements of judiciary of England and Wales. *“We have transformed judicial welfare and education and introduced professional support which was lacking in the old arrangements inherited from the Lord Chancellor’s Department by the Judicial Office. We have become much more active in local communities and schools and have a diversity and inclusion strategy which will continue to deliver results. There remain difficulties in recruiting to some judicial offices which is the subject of ongoing work.”*<sup>5</sup>

However, in Nigeria Prof. Osinbajo, the then Vice president of Nigeria who is a Senior Advocate of Nigeria has this to say at the Nigeria Bar conference concerning Nigeria Judiciary; *“We must take a second look at the appointment of Judges. The merit-based system is necessary. We need to look at how our Judges are selected. It is not enough to rise through the ranks in the judiciary with judges going to the Supreme Court from the Court of Appeal. We must be able to bring in practicing Lawyers and the academics to become judges. We owe it to ourselves to change the rules. Change is necessary and reform of our judiciary process should be urgent”*.<sup>6</sup>

In this paper, my focus will be on the selection of judges using judicial commissions because both countries have functioning judicial commissions. Most importantly, I will be emphasizing on the composition of the council, who appoints the members and the Chairman or President. This paper will focus on Nigeria and Britain because they have shared history on colonial relationship,

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<sup>1</sup> PhD Student, Faculty of Law and Political Sciences, University of Szeged, Hungary.

<sup>2</sup> ADEKUNLE OYEYEMI ADENIYI et al: The Impact of Judicial Reforms on Legal Systems: *A Review in African Countries* 6(3), (2024). pp. 198-211. Available at: <https://doi.org/10.51594/ijarss.v6i3.850> (Accessed: 21 October 2024).

<sup>3</sup> KOSAŘ D ŠIPULOVÁ K, KADLEC O: The Case for Judicial Councils as Fourth-Branch Institutions. *European Constitutional Law Review*. 2024; 20(1). pp. 82-119. doi:10.1017/S1574019624000038

<sup>4</sup> NEUBERGER, D: 'The judiciary of England and Wales has earned a well-deserved reputation for being the best in the world because it is impartial, independent and incorruptible'. Speech delivered at Cambridge Freshfields Annual Law Lecture, 12 February 2014

<sup>5</sup> Lord Chief Justice to retire after distinguished career. Evening Standard. Available at: <https://www.standard.co.uk/news/uk/lord-chief-justice-retire-high-court-justice-b1042285.html> (Accessed: 24 October 2024).

<sup>6</sup> Osinbajo, others seek reforms in appointment of judges — Nigeria — The Guardian Nigeria News – Nigeria and World News

judicial systems<sup>7</sup> and eventual judicial reforms although what influenced their reforms differs greatly, but the aim is the same. Through the course of these reforms, they both have robust laws in the form of judicial commissions, procedures and processes for selection of judges of the Courts. Their Court hierarchy is almost the same as the Supreme Court is the apex Court in both countries. Finally, Nigeria derived part of her laws from Britain. In the early years after independence, Nigeria lawyers were British trained. Today, the law culture in England regarding ‘Law Dinners’ is still very much in existence at the Nigeria Bar and Bench, as is legal terminologies, and their wardrobes. However, while Nigeria lawyers are called to Bar and registered in the Supreme Court on graduation from the Law School to practice as Barrister and Solicitor in present day Nigeria, the same cannot be said about Britain because in England, you are only a Barrister or a Solicitor. Notably, while England is the head of the commonwealth, Nigeria is a member of the Commonwealth.

Although reforms build up over time, certain elements must influence or trigger it as it does not just happen<sup>8</sup>. Such elements could be inherited factors or international influence; the third could be a combination of both<sup>9</sup>. This is why, even when both countries have almost the same apparatus in place for the selection of Judges, different results have emerged. While Britain has attained the ‘impartial, independent and incorruptible’ reputation, same cannot be said of Nigeria if the Chief Justice of Nigeria who happens to be the judicial head and the chairman of the Judicial commission is still complaining about the undue political influence in Judges selection bringing about a decline to the quality of judges at these times.<sup>10</sup>

The purpose of this study is to compare the contributions that both countries have made with regards to their judicial reforms particularly, as it touches on the selection of Judges. In Nigeria, the National Judicial Council which is empowered by the 1999 Constitution of the Federal Republic of Nigeria to appoint Judges, has been in operations but has yet to achieve the desired result of ‘merit-based’. Britain on the other hand, officially created her commission in 2006 as the latest of her reforms and was able to achieve much. I will be drawing lessons from Britain on certain parameters that were used to arrive at the judiciary that is incorruptible, impartial and independent. These lessons will be beneficial to Nigeria when applied as further reforms.

In comparing both countries, I am guided by the fact that comparative law is like someone who is “traveling from one’s country to another, learning new cultures and comparing same to your own. The traveler is invited to break away from their daily routine, to meet the unexpected and get to know the unknown. The journey might be exciting, full of unexpected surprises or fruitless and wasted efforts.<sup>11</sup> By the appeal of the Nigerian Chief Justice, the type of judges a country has reflects the process of their selection and the interest of those that appointed them because such interest must be served. Not only that, but it also reflects in their judgments.<sup>12</sup>

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<sup>7</sup> YUSUF, H.O: Colonialism and the dilemmas of transitional justice in Nigeria. *International Journal of Transitional Justice*, 12(2), 2018 pp. 257-276.

<sup>8</sup> MORGAN, R.H.S.D: Judicial Independence in the 21st Century-UK. (2016)

<sup>9</sup> BADÓ, A: ‘Fair’ Selection of Judges in a Modern Democracy. In: Badó, A. (eds) Fair Trial and Judicial Independence. *Ius Gentium: Comparative Perspectives on Law and Justice*, (2014) vol 27. Springer, Cham. [https://doi.org/10.1007/978-3-319-01216-2\\_2](https://doi.org/10.1007/978-3-319-01216-2_2)

<sup>10</sup> CJN Onnoghen on politicisation of judicial appointments. *The Nation Newspaper*. Available at: <https://thenationonlineng.net/full-list-chief-justices-of-nigeria-from-inception-till-date/> (Accessed: 24 October 2024).

<sup>11</sup> FRANKENBERG, G: Critical comparisons: Re-thinking comparative law. In *Legal Theory and the Legal Academy*, (2017). pp. 245-289. Routledge

<sup>12</sup> BRASHEAR TIEDE, LYDIA: ‘Selecting Judges’, in Lee Epstein, and others (eds), *The Oxford Handbook of Comparative Judicial Behaviour* (online edn, Oxford Academic, 18 Dec. 2023), <https://doi.org/10.1093/oxfordhb/9780192898579.013.18>, accessed 15 Nov. 2024.

While acknowledging that there may be other areas in this topic that may distract me during comparison, I have advised myself to be focused on drawing the distinctions between the characteristic of the commission of Nigeria and that of Britain while paying attention to the problems that led to the reforms, and the aftermath of the reforms from a historical perspective.

I will restrain myself from launching into the definition of Judicial Council as there are a plethora of articles about Judicial Councils, Merit commission, or Judicial commission<sup>13</sup> including origins of councils, that originated from French<sup>14</sup> as authors have written about what they stand for. Suffice it to say however that, it is a measure in place for the Judge's true independence shielding him from influence of whatever kind while accountability, impartiality and incorruptibility in his duties are expected. This was brought about as a reform to safeguard judicial independence as separation of powers of the three arms of government in conformity with the basic principles of separation of powers.

### **COLONIAL ERA JUDICIAL APPOINTMENTS: A SHARED HISTORY OF NIGERIA AND THE UK**

Notably, since our focus is on the selection of Judges between Nigeria and Britain, we will be exploring both countries' socio-legal relationship during and after the colonial eras as it relates to this subject. The first Chief Justice of Nigeria, Sir Edwin Speed, served from 1914 to 1918.<sup>15</sup> He was appointed by Lord Lugard, who was the Governor General of Nigeria at the time. This pattern of appointment is what has been introduced into today's Nigerian Constitution with modification of recommendations by the National Judicial Council. This is the foundation for political and Executive influence that has been rooted deeply, since the appointment of Chief Justice is of interest to the executives in winning elections.<sup>16</sup> Though their mode of selection is largely unknown, they were all from England.

Chief Justice Ademola Adetokunbo was appointed by the colonial government. He served from 1958 – 1972 as the first indigenous Chief Justice of Nigeria. He was British trained and called to the Middle Temple Bar in 1934. Spanning from pre-independence to independence and into the Nigeria civil war, he was the longest serving justice in Nigeria helping to influence the establishment of the Nigeria Law School in Lagos as prior to that, every legal practitioner was trained and called to the English Bar.<sup>17</sup> However, one distinct feature of his appointment is the executive influence of his appointment without criteria as Justice Olumuyiwa Jibowu was already a Supreme Court of Nigeria serving Justice and was in line for promotion.<sup>18</sup> Flowing from the above, it was no wonder that successive regimes followed this pattern of selection.

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<sup>13</sup>BOBEK, MICHAL, AND DAVID KOSAR: "Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe." *German Law Journal* 15, no. 7 (2014) pp. 1257–92. <https://doi.org/10.1017/S2071832200019362>.

<sup>14</sup> VAUCHEZ, ANTOINE: "The Strange Non-Death of Statism: Tracing the Ever Protracted Rise of Judicial Self-Government in France." *German Law Journal* 19, no. 7 (2018) pp. 1613–40. <https://doi.org/10.1017/S207183220002318X>.

<sup>15</sup> The last of the colonial Chief Judge being Sir Stafford Foster-Sutton in 1955 – 58

<sup>16</sup>TAIWO & LATEEF, 'National Judicial Council: An Albatross against the Independence of the Judiciary in Nigeria' (2021) 3 IRLJ p.202.

<sup>17</sup>Full List: Chief Justices of Nigeria from Inception Till Date. *The Nation Newspaper*. Available at: <https://thenationonline.net/full-list-chief-justices-of-nigeria-from-inception-till-date/> (Accessed: 24 October 2024).

<sup>18</sup>Judiciary And The Tortuous Journey To Nationhood. *LawCareNigeria*. Available at: <https://lawcarenigeria.com/judiciary-and-the-tortuous-journey-to-nationhood/> (Accessed: 24 October 2024).

However, it is worthy of note that prior to the advent of the British, Nigeria had her established judicial system in place and operated side by side by the British established Courts. Other than the Chief Justice of Nigeria, District officers select Judges for district and Magistrates Courts.<sup>19</sup> Ukhuegbe's account would be that Supreme Court was not formally established till 1956.<sup>20</sup>

## **JUDGES SELECTION DURING THE NIGERIAN MILITARY REGIME**

During the military regime that lasted between 1966 till 1999 with a lull of 1979 to 1983, the Chief Justices of Nigeria, were appointed by the Armed Forces Ruling Council (A.F.R.C.) without process and at the president's discretion. The second Chief Justice of Nigeria, Taslim Elias that was appointed by the military regime in 1972 -1975 never had a background as a judge before his appointment. In quick succession, he was removed and another, Justice Darnley Alexander was appointed and served during the period of 1975 -1979. Notably, this appointment took place while there were other judges way ahead on the seniority list.<sup>21</sup> Justice Atanda Fatai Williams was appointed to replace the previous chief justice unceremoniously and he served from 1979–1983. During their era, there were no procedural rules of appointment as “no explanation, no obligation” was the order of the day. There was no visible rule of law, separation or judicial independence. When the then Supreme Court questioned the Federal Military Government's power to legislate laws, (Forfeiture of Public Officers Assets decree 1966) and declared same void, the then Federal Military Government headed by General Agunyi Ironsi retaliated with Decree number 1 (Suspension and Modification Decree). This decree bars the courts from entertaining any matter in the constitution not being preserved by the military decrees.<sup>22</sup> This gives them authority over the existing constitution.<sup>23</sup> Notably, the military not only plays the role of the executive but refuses to obey courts orders.<sup>24</sup> In 1999, Nigeria transitioned to a civilian government and enshrined the independence of the three arms of government in its Constitution, with a strong emphasis on the separation of powers.

## **FRAMEWORK FOR APPOINTMENT OF JUDGES IN THE UNITED KINGDOM**

United Kingdom is unique when it comes to Constitution. Although there is not one body of law codified as a constitution that is supreme to other laws<sup>25</sup>, it is governed by several mechanisms in place that are written and unwritten law. First you have what is called the common laws developed from customs, heard and ruled upon in courts by Judges, preserved in records by law

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<sup>19</sup> OLOWOFOYEKU, A.A: The beleaguered fortress: Reflections of the independence of Nigeria's judiciary. *Journal of African Law*, 33(1), 1989. pp.55-71.

<sup>20</sup> UKHUEGBE, S: Recruitment and Tenure of Supreme Court Justices in Nigeria. 2011 Available at SSRN 2034920.

<sup>21</sup> IGBANIBO, S.T: Military rule and the bane of corruption in the Nigerian judiciary. *Research Journal of Humanities, Legal Studies & International Development*, 2(1), (2017). pp. 2536-6564.

<sup>22</sup> AIHE, D. O: “Nigerian Federal Military Government and The Judiciary: A Reflection On Lakanmi v. Attorney-General (Western State Of Nigeria).” *Journal of the Indian Law Institute*, vol. 13, no. 4, 1971, pp. 570–80. JSTOR, <http://www.jstor.org/stable/43950298>. Accessed 24 Oct. 2024.

<sup>23</sup> Nigerian Government Gazette, Supplement (1970). No. 26, Part A, 9 May. Available at: <https://archive.gazettes.afafrica/archive/ng/1970/ng-government-gazette-supplement-dated-1970-05-09-no-26-part-a.pdf> (Accessed: 24 October 2024)

<sup>24</sup> OLOWOFOYEKU, A.A: The beleaguered fortress: Reflections of the independence of Nigeria's judiciary. *Journal of African Law*, 33(1), 1989. pp.59

<sup>25</sup> BLICK, A. AND DICKSON, B: Why does the United Kingdom now need a written constitution?. *N. Ir. Legal Q.*, 712020. p.59.

reporting and used as future reference as guidance, then you have the statutes and parliamentary conventions.<sup>26</sup> One of such mechanism is the Constitutional Reform Act of 2005. The legal framework on the selection and appointment of judges is provided by the Constitutional Reform Act 2005<sup>27</sup> and the Judicial Appointment Regulations 2013<sup>28</sup>. The Constitutional Reform Act prescribes comprehensive procedures for the selection and appointment of judges and clearly defines the role of the Lord Chancellor. In part 3 sections 25 to 31 and schedule 8, the Act regulates the process of appointment of presidents and justices of the Supreme Court of the United Kingdom and other Courts.

### **Requirements for appointment**

The applicants who wrote for expression of interest to be appointed as Judges must have occupied a judicial office for not less than two years. Judicial offices referred to in this instance, includes the High Court of England and Wales, and Northern Ireland, Court of Appeal Judge of England and Wales, and Northern Ireland. On the other hand, applicants who have been qualified as Lawyers and have been in law practice for 15 years post qualification as a Barrister or Solicitor in England and Wales. Applicant can also be deemed to be qualified if he had 15 years post qualification experience as an advocate in Scotland or a Solicitor that has appeared in Court of Session, High Court in Scotland or Northern Ireland. As a member of the Bar in Northern Ireland or a Solicitor in the Judicature court of Northern Ireland. That is if they had the required experience and are versed with the laws of the regions mentioned.<sup>29</sup>

### **Appointment of Judges in the United Kingdom**

Prior to the 2005 Constitutional Reforms Act, appointments of Judges in England and Wales have always been at the recommendation of the Lord Chancellor to the Prime Minister. He wields too much power in the entire selection process and of the appointments.<sup>30</sup> Although there are contradictions as to exactly when the office of the Lord Chancellor started functioning, its importance cannot be ignored as it is multifaceted in nature. This is observed in his roles as a senior member of cabinet, a speaker of the House of Lords, and as the Head of the Judiciary. He performs the functions of the three arms of government: executive, legislature and Judiciary as there was no distinction between them. Members of Parliaments were also members of House of Commons

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<sup>26</sup>CALZOLAIO, E: The Distinction between Written and Unwritten Law and the Debate about a Written Constitution for the United Kingdom. *Право и управление. XXI век*, (4), 2016 pp.55-62.

<sup>27</sup>Constitutional Reform Act 2005, Part 2. Available at: <https://www.legislation.gov.uk/ukpga/2005/4/part/2> (Accessed: 24 October 2024).

<sup>28</sup>Judicial Appointments Commission Regulations 2013. Available at: <https://www.legislation.gov.uk/ukdsi/2013/9780111100233> (Accessed: 7 November 2024). Judicial Appointments Regulations 2013. Available at: <https://www.legislation.gov.uk/uksi/2013/2191/content/made> (Accessed: 24 October 2024).

<sup>29</sup>The Constitutional Reform Act 2005, sect. 52 (2-5)

<sup>30</sup>GEE, G: ‘Rethinking the Lord Chancellor’s role in judicial appointments\*’, *Legal Ethics*, 20(1), (2017) pp. 4–20. doi: 10.1080/1460728x.2017.1345085.



where the Lord Chancellor was the speaker.<sup>31</sup> People had reservations and complaints, but nothing was being done<sup>32</sup> as “England time has not come.”<sup>33</sup>

Some factors would later culminate into the judicial reforms. Collective opinions on the expanding role of Lord Chancellor in the judiciary in Judges selection. However, the roles and office of the Lord Chancellor though not being abused were a fertile ground for eventual abuse. There was also the need to enforce the decisions from the ‘Strasbourg’ Courts in the English Court as United Kingdom ratified the European Convention on Human Rights in 1952.<sup>34</sup> The implication of being a signatory is that the Convention has precedence over her legislation and practice. The need to bridge the gap between the European Union Convention brought the Human Rights Act 1998 through the Act of Parliament. Judicial reviews are piling up. One school of thought believed though judges were triggered by the then pending reforms, but the content of the reforms were not particularly surprising as discussions had been ongoing before the administration of Tony Blair.<sup>35</sup> Although tension had been building over time on the lack of boundary between the three arms of Government, the reforms was not to their timings.<sup>36</sup> Also, of consideration were the Lords running into conflict of interest seeing as they had served as Lawmakers before becoming Lords thus the tendency for the matters they previously legislated upon to be brought before them as Judges cannot be ruled out and how can they sit in such matter without being bias?

Further to the above, there was the need to secure the independence of the judiciary from any form of interference and draw a boundary between the three arms of Government by establishing a new supreme court, giving clarity to the office and functions of the Lord Chancellor and reforming the Judicial Appointment Act to be at par with other nations. The functions of the Lord Chancellor are now reduced as he no longer controls the entire process of the Judges selection rather, he writes the Judicial Commission to convene an independent selection commission on each process. The Judiciary now has a true independence on judges’ selection, appointment and discipline by the provisions of the Constitutional Reform Act of 2005 and the Judicial Appointment Regulations 2013. Reflecting on the judiciary after the reform, Lady Carr, Lady Chief Justice of England and Wales till date have this to say;

*“Yet until recently, the UK’s uncodified constitution maintained a less than purist approach to this. My predecessors and the Law Lords sitting and occasionally voting in Parliament certainly posed a challenge to Locke and Montesquieu on this point. As, of course, did the Lord Chancellor; an office that used to exemplify fusion or unity of powers, rather than their separation. Then the Constitutional Reform Act 2005 arrived: it barred serving judges from sitting in the House of Lords and left the Lord Chancellor solely with their role in the Cabinet, albeit with the statutory duty to uphold the rule of law and secure adequate funding for the efficient and effective running*

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<sup>31</sup>Justice System and the Constitution. *Judiciary of England and Wales*. Available at: <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jud-acc-ind/justice-sys-and-constitution/> (Accessed: 24 October 2024).

<sup>32</sup>SUSANNA F. FISCHER: *Playing Poohsticks with the British Constitution - The Blair Government's Proposal to Abolish the Lord Chancellor*, 24 Penn St. Int'l L. Rev. (2005) p.257

<sup>33</sup>ANDREW LE SUEUR: *From Appellate Committee to Supreme Court: A Narrative*, in The Judicial house of lords 64 (Louis Blom-Cooper, Brice Dickson, & Gavin Drewryeds, 2009)

<sup>34</sup>European Court of Human Rights (ECHR). (n.d.). Country profile: United Kingdom. Available at: [https://www.echr.coe.int/documents/d/echr/CP\\_United\\_Kingdom\\_ENG](https://www.echr.coe.int/documents/d/echr/CP_United_Kingdom_ENG) (Accessed: 28 October 2024).

<sup>35</sup>Judicial watchdog to vet judges'. *BBC News*. Available at: [http://news.bbc.co.uk/2/hi/uk\\_news/3720952.stm](http://news.bbc.co.uk/2/hi/uk_news/3720952.stm) (Accessed: 28 October 2024).

<sup>36</sup>MALLESON, K: The effect of the Constitutional Reform Act 2005 on the relationship between the judiciary, the executive and parliament. (2007). Available at: <https://publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15110.htm> (Accessed: 24 October 2024).

*of the justice system; it moved the Law Lords into the UK Supreme Court. All in all a state of affairs much more consistent with a commitment to formal separation of powers.*"<sup>37</sup>

## PROCESS OF JUDGES' SELECTION: UNITED KINGDOM

It is observed that the entire process of Judges' selection in the United Kingdom is a thorough and comprehensive one. According to the process as of 20<sup>th</sup> April 2020<sup>38</sup>, the Queen appoints Judges to the Supreme Court based on the recommendation of the Lord Chancellor<sup>39</sup>. The Lord Chancellor calls for the constitution of independent committee for the selection process by writing a letter to the president of the Court. The President of the Court is the chairman of the selection committee by statute and the most senior judge from the United Kingdom is made deputy.<sup>40</sup> Three others are members of the appointment commission from England and Wales, Scotland and Northern Ireland judicial appointments respectively but one must be a lay person.

Whenever a president of the Supreme Court is to be selected, the law bars the outgoing president from participating. In his place, the non-legal member becomes the chairman of the committee. Though the selection committee is independent, there is a provision for the consultations that should take place<sup>41</sup> before selection is completed. Selection must be on merit.<sup>42</sup> When complaints arise from the appointments based on the process of selections, the Conduct ombudsman is a body to handle same.<sup>43</sup> The Act also provides for the selection of only one person as a candidate for appointment.<sup>44</sup>

However, when other judges are to be appointed, to increase ethnic minority representation in judicial appointments, the Judicial Appointments Commission uses statutory consultations, merit<sup>45</sup>, and good character checks, including external checks, to increase ethnic minority representation in the apex courts as best practices.<sup>46</sup> In the statutory consultation process, a person or persons known as the consultor(s) must have held the same judicial office as the candidates or have relevant expertise.<sup>47</sup> Statutory consultees should evaluate candidates for their competence, character, and qualities for the position they seek. Thereafter, he gives objective feedback and

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<sup>37</sup> CARR: Lady Chief Justice of England and Wales. "Judges – On and Off the Bench." Lowry Lecture, Belfast, 4 September 2024. Reported in Courts and Tribunals Judiciary, 5 September 2024

<sup>38</sup> Selection process for Supreme Court justice launched 2020. *UK Supreme Court*. Available at: <https://www.supremecourt.uk/news/stories/selection-process-for-supreme-court-justice-launched-2020.html#:~:text=The%20appointments%20process%20will%20be%20overseen%20by%20an,in%20the%20Constitutional%20Reform%20Act%202005%2C%20as%20amended> (Accessed: 24 October 2024).

<sup>39</sup> This designation has been reflected as Secretary of State for Justice in 2005 Reform Act

<sup>40</sup> Crime and Courts Act 2013. It used to be president and the next senior justice of the Supreme Court till the crime and Court Act changed it.

<sup>41</sup> Paragraph 60 (1) 2005 Constitution Reform Act.

<sup>42</sup> Paragraph 27 (1) 2005 Constitution Reform Act

<sup>43</sup> The Constitutional Reform Act 2005 sect. 23 (2), (5) and (6))

<sup>44</sup> Constitution Reform Act 2005 Sect. 27(iv)

<sup>45</sup> MCKEEVER, G., & SMYTH, L: The Judicial Appointments Commission and Merit-based Selection in the UK. *Journal of Public Law*, 15(4), 2018 pp. 505-529.

<sup>46</sup> Brie Stevens Hoares, who is a professional commissioner from the United Kingdom shares more light on the criteria that guides judicial appointment as; leadership, exercising judgement and assimilating and clarifying information, self-assessment, independent assessment and qualifying test online and competency based interview. Osinbajo, others seek reforms in appointment of judges. *The Guardian Nigeria*. Available at : [https://guardian.ng/news/osinbajo-others-see-reforms-in-appointment-of-judges/#google\\_vignette](https://guardian.ng/news/osinbajo-others-see-reforms-in-appointment-of-judges/#google_vignette) (Accessed: 24 October 2024).

<sup>47</sup> The Constitutional Reform Act 2005 as amended by the Crime and Courts Act 2013, sect. 20).

responses based on verifiable information from the candidate to the Judicial Appointment Commission (JAC).

The composition of the Judicial Appointment Commission is 15 members referred to as commissioners. The chairman and eleven members are recruited through an open and competitive process.<sup>48</sup> The judge's council selects three judicial members. The chair and members serve a renewable four-year term. The Commission comprises two professional members with distinct qualifications (one a Barrister the other a Solicitor), five lay members, and a professional who is a non-lawyer but a judicial member. The Commission aims to increase its knowledge, expertise, and independence.<sup>49</sup> The Judicial Appointments Commission must consult a statutory consultee before recommending an appointment, unless the chair, Lord Chancellor, Lord Chief Justice or a senior president of the Tribunal dispenses with this duty.<sup>50</sup>

## FRAMEWORKS FOR THE APPOINTMENT OF JUDGES IN NIGERIA

The Judiciary is the third arm of government in Nigeria<sup>51</sup> and has the Constitution of the Federal Republic of Nigeria 1999 (as amended), as the legal Framework. The constitution meets the standard of separation of powers that originated from Britain between 1642 -1660 when there was parliamentary and monarchical struggle. British philosopher John Locke in his book clarified the reasoning behind this theory that humans are not infallible from taking advantages when presented with the opportunity to advance their interest.<sup>52</sup> There is adequate provision for separation of powers between the Executive, Legislative and the Judicial arms in sections 4, 5 and 6. The release of the constitution coincided with the then just concluded meeting of the commonwealth countries held in Latimer House, Buckinghamshire, United Kingdom in 1989 where the discussion for separation of powers and the need for Judicial Independence took place. There was also a suggested mode of implementation amongst the over 20 nations that attended. This would later progress to be called the Latimer House Principles.<sup>53</sup> Possibly still reeling from the meeting, the Constitution made provision for a Judicial council to be established called National Judicial Council.<sup>54</sup> This council oversees recruitment of Judicial officers, payments, pensions, discipline and recommendation to the president where there is need for appointment and relieve of duties<sup>55</sup>. Not satisfied, the constitution granted financial autonomy to the Judiciary that every money standing to the credit of the Judiciary should be paid through the consolidated revenue form to the

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<sup>48</sup> Available at <https://judicialappointments.gov.uk/appointment-of-commissioners/> (Accessed: 21 October 2024).

<sup>49</sup> BREWER, K., DINGEMANS, J., & SLINN, P: Judicial appointments commissions: a model clause for constitutions. (2013). Available at: <https://www.icj.org/wp-content/uploads/2018/01/Judicial-Appointments-Commissions-CLA-CLEA-CMJA-Report.pdf> (Accessed: 21 October 2024).

<sup>50</sup> Regulation 30

<sup>51</sup> ONONYE, I.U., OGUEKWE, U.D. & OGUEKWE, A.U: *Independence of the Judiciary: The Nigerian Experience*. *Journal of Public and Private Law, UNIZIK*, Vol. 10. (2020). Available at: <https://ezenwaohaatorc.org/journals/index.php/UNIZIKJPPL/article/viewFile/1057/1059> (Accessed: 28 October 2024).

<sup>52</sup> MOSES, A: 'Separation of Powers in the Local Government: The Legislative Experience' in TONY, O (2011) (ed.) *Key Issues In Local Government and Developments: The Nigerian Perspective*: Enugu: Praise House Publishers.

<sup>53</sup> KINGSTON, K.G., ENEBELI, V.N., & AMADI, F.C: 'Judicial financial autonomy and the inherent powers of the executives in Nigeria: Lessons from Australia, Britain and Canada'. *African Journal of Social Sciences (AJSS)*, 12(1), (2022) pp. 19-32.

<sup>54</sup> Section 153 1999 Constitution (as amended)

<sup>55</sup> Constitution of the Republic of Nigeria, 1999, sect.153 and paragraph 21 of the Third Schedule.



National Judicial Council.<sup>56</sup>Working with the National Judicial Service is the Federal Judicial service commission (FJSC)<sup>57</sup> and State Judicial Service commission (SJSC).

## **COMPOSITION OF THE NATIONAL JUDICIAL COUNCIL**

The Constitution also provides the composition of the National Judicial Council as follows:<sup>58</sup>Chief Justice of Nigeria as chairman. Subsequent highest ranking Justice of the Supreme Court, Justice of the Supreme Court, Justice of court of appeal, five retired justices from Supreme Court and Court of appeal (selected by the chairman), Federal high court chief judge, President of the National Industrial Court, five Chief Judges of the 36 States High Courts(selected by the Chief Justice of Nigeria), One Grand Khadi from the existing Grand Khadis of Sharia Court of Appeal, five members of the Nigeria Bar Association recommended by the Body and two non-legal person who are in the opinion of the Chief Justice of Nigeria, of unquestionable character.

## **FEDERAL JUDICIAL SERVICE COMMISSION**

The composition of the Federal Judicial Service Commission (FJSC) includes the following members. The Chief Justice of Nigeria serves as the chairman. The members include the President of the Court of Appeal, the Attorney General of the Federation, the Chief Judge of the Federal High Court, the President of the National Industrial Court, two nominees from the Nigeria Bar Association with a minimum of 15 years of post-qualification practice, and two additional individuals deemed by the chairman to possess impeccable character.

## **PROCESS OF JUDGES' SELECTION: NIGERIA**

There are two ways of appointment of Judges into the Supreme Courts and all Courts covered by the Federal Judicial Commission (FJSC).<sup>59</sup> When the Chief Justice of Nigeria is due for retirement, he gives notice to the National Judicial Council, who writes the President of the Federal Republic recommending the next most senior Justice in acting capacity.<sup>60</sup> The president appoints the most senior in acting capacity for 3 Months.<sup>61</sup> At the expiration of acting capacity, Federal Judicial Council processes names and forwards same to the NJC. After receipt and conducts of interviews, NJC forwards two names to the President of the Federal Republic of Nigeria including the person in acting capacity. The President forwards one name to the Senate who in turn forwards to the senate Judicial committee for screening and competence checks. Senate committee confirms

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<sup>56</sup>OKAISABOR, J. O.: The quest of fiscal autonomy for judicial independence: the case of the Nigerian judiciary and its challenges. *African Identities*, (2024) pp. 1–25. <https://doi.org/10.1080/14725843.2024.2349613>

<sup>57</sup> *Federal Judicial Service Commission (FJSC)*. Available at: <https://fjsc.gov.ng/structure-of-fjsc/> (Accessed: 28 October 2024).

<sup>58</sup> *Ibid.*, para. 20 (1), Third Schedule, part I.

<sup>59</sup>Section 318(1) CFRN

<sup>60</sup> The removal of Justice Walter Onnoghen who was the Chief Justice of Nigeria in 2019 by the Muhammadu Buhari administration on trumped charges related to non disclosure of assets is considered as a backdoor approach to appoint another Chief Justice of Nigeria. In 2024, Justice Walter Onnoghen was discharged and acquitted of all charges.

<sup>61</sup>Section 231(4) CFRN

and returns to the President of the Federal Republic. He appoints and refers to NJC who announces the appointment.<sup>62</sup>

Other than the CJN, other Judges covered by the FJSC process of appointments includes Court of Appeal president, Justices of Court of Appeal, Justices of the Supreme Courts. In their case, the CJN writes to all heads of courts including the Nigeria Bar Association to submit names suitable for consideration into such esteemed offices as legal or judicial officers. Those recommending must write on the characters of the persons they are nominating. The NJC makes a short list that is double of the numbers that they will employ and circulate for comments from every association of the Court; Nigeria Bar Association (NBA), serving and retired Judicial officers for comments on the suitability of the candidates. Candidates with bad reputations are screened out and the list and forms are sent to the selected ones to fill and return with necessary documents including medicals, security reports while considering the workload of candidates' Court. They undergo interview mode that is determined by the council and appointed when successful.<sup>63</sup>

## **SELECTION OF JUDGES IN NIGERIA AND THE UNITED KINGDOM: COMPARATIVE ANALYSIS**

In this section, attempts will be made to highlight the important elements that constitute the significant differences between the process of appointment of judges in both Nigeria and the United Kingdom. Notably, from the earlier sections of this paper, it can be deduced that the President of the Federal Republic of Nigeria appoints judges to the Superior Courts of Record of the Federation based on recommendations by the NJC and with Senate confirmation, whereas such duty is imposed on the Monarch who appoints the Judge based on the recommendation of the Prime Minister as recommended by the Lord Chief Justice in the United Kingdom.

The selection of justices of the Supreme Court is made by the Selection Commission made up of the President and Deputy President of the Supreme Court in the United Kingdom. In the case of Nigeria, the selection of Supreme Court Justices is made by the Federal Judicial Service Commission and the Chief Justice who is the Chairman of the National Judicial Council is also the chairman. In this regard, the appointment of the justices of the Supreme Court is directly made from the Court of Appeal subject to vacancy in the Supreme Court of Nigeria. In terms of Political Influence, while the UK system stresses independence through commissions, the Nigerian system is more vulnerable to political influence because of the President and Senate's involvement. Furthermore, the selection bodies are critical institutions that strengthen the process in the UK. Thus, the UK utilizes independent commissions like the JAC to guarantee impartiality, whereas Nigeria depends on the NJC. One could therefore note that in order to reduce political meddling, the UK places a greater focus on transparency and merit.

Notably, the issue of selecting the most qualified for the judges position has always been an issue particularly in Nigeria whereas the position is open for the most qualified in the United Kingdom. This is definitely so because the several commissions will ensure that the best hands are selected.

Concerns have been raised concerning the person of the Chief Justice of Nigeria (CJN) in the National Judicial Council and Federal Judicial Service Commission in Nigeria. It is observed that

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<sup>62</sup> Constitution of the Federal Republic of Nigeria, 1999, sects. 231 (1), 238 (1) 254 B (1). 256 (1) 261 (1) 261 (1) (2), 266 (1) (2).

<sup>63</sup> National Judicial Council (NJC) Procedural Rules. Available at: <https://www.njc.gov.ng/procedural-rules> (Accessed: 7 November 2024)

he wields too much power especially as he gets to appoint 14 of the 24 members. The duplicity of membership extends to PCA, CJFHC and PNIC. A quorum of interest can be formed with this membership if you have your interest aligned during the compilation and submission of candidates as expressed by Davies<sup>64</sup> In addition to the above, the National Judicial Council places emphasis on merit and competence but no elaboration was given in the extant laws on how merit will be achieved as political factors tends to dictate the appointments.<sup>65</sup> In 2020, the National Judicial Council (NJC) faced intense scrutiny over its judicial appointment recommendations. A petition by the Open Bar Initiative<sup>66</sup> alleged that several nominees lacked the requisite qualifications and were chosen based on their connections or familial ties to prominent judicial figures. The petition specifically identified individuals such as Hafsat Abba-Aliyu, daughter of Justice Uwani Abba-Aji of the Supreme Court, and Njideka Nwosu-Iheme, daughter of Justice Mary Odili of the Supreme Court, among others. Critics argued that the selection process violated established NJC rules and procedures, sparking concerns about favoritism, insider influence, and the integrity of the judiciary's appointment process.<sup>67</sup>

The implication of the above is that there are circumstances where the serving Chief Justice of Nigeria and possibly other justices will influence the appointment of their relations or cronies into judicial positions. Such appointments have indeed taken place in the previous exercise as documented by National Judicial Council.<sup>68</sup>

Thus, as evidence that judicial independence had been overruled and bench appointments had become politicized, the Chief Justice of Nigeria (CJN) Justice Olukayode Ariwoola chaired a meeting of the National Judicial Council (NJC) in July 2023 during which his son was appointed as a judge of the Federal High Court and sworn in on October 4 2023.<sup>69</sup> Furthermore, a glance at the list of potential judicial officers reveals that sons and daughters of retired and serving judges and justices are being nominated for appointments into sensitive judicial positions at the expense of more qualified candidates without privileged support and backing. According to a UNODC report on the appointment and selection of judges in Nigeria, the majority of respondents thought that nepotism and political, ethnic, religious, and emotional prejudice may affect the process.<sup>70</sup>

It should also be noted that the National Judicial Council (NJC) recommends candidates for State Chief Judges, and State Governors appoint them after receiving approval from the State House of Assembly.<sup>71</sup>

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<sup>64</sup> DAVIES, ARTHUR E: “Independence of the judiciary: problems and prospects”, *African Study Monographs*, vol. 10, No. 3 (1990), pp. 125–36.

<sup>65</sup> CHUKWUDI, O: The Judiciary in Nigeria: Strengthening Independence through Reform. *Journal of Constitutional Affairs*, 19(2), 2020. pp. 154-168.

<sup>66</sup> In May 2020, the Open Bar Initiative submitted a petition to President Muhammadu Buhari, alleging that several judicial nominees were unqualified and selected due to their connections or family ties to high-ranking judicial figures. The petition, signed by conveners Silas Onu and Chidi Odinkalu, along with other members, highlighted concerns about nepotism in the judicial appointment process.

<sup>67</sup> NJC PRESS RELEASE: 21st December, 2020, NJC Recommends Appointment of Sixty-nine (69) Judicial Officers [National Judicial Council](#) (Accessed: 24 October 2024).

<sup>68</sup> As earlier discussed, the NJC is responsible for the Appointment, Promotion and Discipline of Judicial Officers.

<sup>69</sup> These were contained in the press release by the NJC as part of the process for the announcement of new judges. <https://njc.gov.ng/press-release> (Accessed: 24 October 2024).

<sup>70</sup> Working Paper - Selection and Appointment of Judges in Nigeria: Analysis and Recommendations [https://www.unodc.org/documents/nigeria/Working\\_Paper\\_-\\_Judicial\\_Selection\\_and\\_Appointments.pdf](https://www.unodc.org/documents/nigeria/Working_Paper_-_Judicial_Selection_and_Appointments.pdf) (Accessed: 24 October 2024).

<sup>71</sup> Sections 270 (2) (a) and 271 (1) of the 1999 Constitution, describes this procedure.

There have however been tussles over the recommendations from the Governor, the state Judicial Service Commission and the National Judicial Commission. Thus, following the vacancy in the substantive Chief Judge of Gombe State, the Gombe State Judicial Service Commission (JSC) exercised its authority and submitted the names of two current High Court of Gombe State judges to the National Judicial Council (NJC) for its recommendation. The NJC received a petition from Hon. Justice Beatrice L. Illiya, who is reportedly the most senior judge in the State High Court, who was upset that her name was left off the list. She claimed that this was a violation of an earlier NJC directive that the name of the most senior judge be included in the list. She noted that the removal of her name from the list violated a long-standing legal practice of appointing the most senior judge in the state high Court as the State Chief Judge. It was also considered an injustice. On November 27, 2020, the National Judicial Council reportedly rejected the list due to the omission of the said most senior judge, Justice Beatrice Illiya.

On this matter, the Supreme Court noted in *Elelu-Habeeb & Anor v. AG Federation & Ors*<sup>72</sup> that it is evident once more that while a state governor has the authority to name the chief judge of his state, this authority is not unqualified since the Governor must collaborate with the National Judicial Council to suggest qualified candidates and the State House of Assembly to confirm the appointment. In keeping with the Constitution's goal of maintaining checks and balances between the three arms of government, the Governor's appointment and disciplinary authority over his State's Chief Judge are subject to the involvement of the National Judicial Council and the State Assembly in order to guarantee openness and respect for the law. Thus, it is therefore the opinion of the Court that the Governor in consultation with the NJC and the house of Assembly can appoint any member of the bench irrespective of seniority.

In United Kingdom, the criteria for merit-based selection includes leadership, exercising judgement, assimilating and clarifying information, self-assessment, independent assessment, qualifying test online and competency-based interview.

## CONCLUSION

In this paper, the shared colonial relationship between Nigeria and British was explored paying attention to the appointment or selection of Judges, inherited legal culture and practice due to training in England of Nigerian Lawyers who became indigenous Justices after being called to Bar in England upon her independence. The paper also explored the framework for the selection of Judges in both countries and the incontrovertible fact is that both countries have robust laws in place for Judicial Independence to prevail regarding Judges' selection. However, from the comparison, the United Kingdom has the Judicial Appointment Commission (JAC) which is an independent body that is saddled with the responsibility of judges' selection for Courts and Tribunals in England and Wales. For the Supreme Court justice's selection, the committee comprises of 5 persons: 1 Supreme Court president, 1 most senior judge in the United Kingdom, and 3 lay members. The Lord Chancellor is only for checks and balances just so there is a medium of accountability regarding the statutory consultations. United Kingdom selection is merit based, competitive, most qualified and devoid of political influence or input.

Supreme Court Judges and all Federal Court heads in Nigeria are appointed by the President on recommendation of the National Judicial Council, subject to the confirmation of the Senate. State Governors also appoint State Chief Judges upon the recommendation of the National Judicial Council subject to the confirmation of the State House of Assembly.

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<sup>72</sup> (2012) LPELR-15515(SC) Per MOHAMMED ,J.S.C ( Pp. 70-71, para. D )

The United Kingdom reform of her judiciary was designed to be independent from political interference while Nigeria has more political roles in the selection process.<sup>73</sup> Political interferences,<sup>74</sup> influences of certain interest, corruption, and nepotistic traits have been embedded for too long into the fabric of the Nigeria Judiciary<sup>75</sup> to achieve this. Recently in the World Justice Project 2024, Nigeria was ranked 120 out of 142 in overall rule of Law, in absence of corruption, she was ranked 121 out of 142.<sup>76</sup> Notably, a Federal High Court in Abuja dismissed a suit challenging the appointment of 12 judges to the High Court of the Federal Capital Territory (FCT). The case, filed by lawyer Azubuikwe Oko from Ebonyi State, alleged the marginalization of Ebonyi in the appointment process. Oko claimed that the Chief Judge of the FCT, the National Judicial Council (NJC), and the Federal Judicial Service Commission (FJSC) excluded lawyers from Ebonyi while giving multiple appointments to states like Oyo and Kogi. Justice Inyang Ekwo ruled that Oko lacked the legal standing to bring the suit, as he failed to show personal injury or represent individuals directly affected. The judge emphasized that public interest litigation requires clear authorization or demonstrated harm, neither of which Oko provided. Consequently, the court struck out the case for lack of locus standi.<sup>77</sup> It would have been interesting however for the court in this instance to have considered the merit of the case so as to show whether competence and merit was considered in the appointment process.

It must be emphasized that England and Wales has continued to emphasize selection process that is now competitive, merit and inclusivity based.<sup>78</sup> The United Kingdom was able to achieve their present stand by “securing the independence of the judiciary, 'redrawing the relationship between the judiciary and the other branches of government' and putting it on a 'modern footing'<sup>79</sup> through the 2005 Judicial reform Act. Authors have lent their voices to the merit-based selection in Nigeria and to an end to the meddlesomeness of the executives.<sup>80</sup> Nigeria can borrow a leaf from the United Kingdom by recruiting independent persons to oversee the selection and submit the most qualified to the Nigeria Judicial Council rather than allowing the CJN who heads both NJC and Federal Judicial Commission to submit names for appointment to regain the public trust that has been lost.<sup>81</sup>

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<sup>73</sup>This is highlighted from the NJC report which announced the appointment of the wife of a sitting Federal Capital Territory Minister as a Justice of the Supreme Court. <https://njc.gov.ng/press-release> (Accessed: 7 November 2024)

<sup>74</sup>NWOGU, C: Nigeria's Judiciary: Political Interference and Reforms. *African Constitutional Journal*, 27(3), 2021 pp. 145-159.

<sup>75</sup>OGBU, M: The National Judicial Council and the Challenge of Judicial Independence in Nigeria. *Nigerian Journal of Public Law*, 31(1), 2020. pp. 187-201.

<sup>76</sup> <https://worldjusticeproject.org/rule-of-law-index/country/2024/Nigeria/> (Accessed: 18 November 2024).

<sup>77</sup> Unreported FHC/ABJ/CS/205/2024

<sup>78</sup>MALLESON, K: The Role of Judicial Appointments in Promoting Diversity in the Judiciary: Lessons from the UK. *International Review of Law and Politics*, 14(1), 2020. pp. 119-134.

<sup>79</sup>MALLESON, K: The effect of the Constitutional Reform Act 2005 on the relationship between the judiciary, the executive and parliament. 2007 Available at: <https://publications.parliament.uk/pa/ld200607/ldselect/ldconst/151/15110.htm>

<sup>80</sup>SHEHU, A. T. AND TAMIM, M. K: "Suspension of Justice Isa Ayo Salami: Implications for Rule of Law, Judicial Independence and Constitutionalism," *African Journal of Criminology and Justice Studies*: Vol. 9: Iss. 1, (2016) pp. 41-60

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