

## **RESEARCH PROPOSAL**

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**TITLE OF THESIS:** Developing an Effective Judiciary for the Consolidation of Democracy in Nigeria

**SESSION OF ADMISSION:** 2019/2020 Session

**MATRICULATION NUMBER:** PG/LAW1002830

**FACULTY:** Law

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**DEGREE IN VIEW:** PhD

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## **ABSTRACT**

In spite of the end of the Cold War and the triumph of democracy worldwide, political structures and trajectories in Africa raised concerns among scholars and watchers of the democratic process in Africa. Those concerns were whether there was an imminent danger of democratic reversal rather than democratic consolidation in the continent and the centrality of key institutions, like the judiciary, in solidifying democratic ethos. These concerns led to two great trends of democratization and judicialization in legal scholarship. Consequently, there is an increasing scholarly literature at a cross-national level on the intersection of democratization and judicialization, showing that an effective judiciary is necessary for the consolidation of democracy. From the literature and annual indices, democracy remains nascent in Nigeria after more than two decades of unbroken democratic practice. The study therefore intends to find out whether the Nigerian judiciary is effective or strong in the democratic project of the country. Or, is the judiciary weak and unable to serve as a catalyst for democratic consolidation in Nigeria? If yes, what are the reasons for this inability? How can the Nigerian judiciary be developed into an effective institution that serves as a catalyst for the consolidation of democracy?

The study shall adopt a doctrinal approach. The study shall begin with a multidisciplinary and cross-national assessment of the intersection between an effective judiciary and the consolidation of democracy. Thereafter, the study shall review the status of Nigeria's democracy and judiciary using statutory provision, decided cases, extant literature, and existing indicators. An assessment of the role of the judiciary in Nigeria's current democracy will be carried out as a follow-up to the ascertainment of its status to find out why the judiciary has not been an effective catalyst for the consolidation of democracy in Nigeria. Through a synthesis of past reform proposals of commissions, committees, and study groups after testing with cross-national

examples, proposals on how to develop the judiciary into an effective institution that will serve as a catalyst for the consolidation of democracy in Nigeria shall be offered. The multi-disciplinary approach is adopted for the study because the resources, data and evidence to be employed cut across the fields of law, political science, and history.

The study expects to find that an effective judiciary is one that is able to maintain the balance of power between the arms of government, constrain abuse of power and shape political culture, as a vital institution for horizontal accountability which protects and enhances democratic ethos and the constitutional order of modern societies. The study expects to find further that Nigeria has a fragile democracy which in practice is at best a 'hybrid regime', and the judiciary in Nigeria has not been able to maintain the balance of power between the arms of government and has been unable to constrain abuse of power. Thereafter, the study shall propose reforms on how to develop the judiciary into an effective institution.

## STATEMENT OF RESEARCH PROBLEM

Democratic consolidation and the possibility of democratic reversal has been a major global concern to scholars and watchers of democracy worldwide. This has led scholars to postulate several reasons for lack of democratic consolidation. Some scholars are of the view that the form of government adopted could guarantee democratic consolidation. Others believe that the form of government is not in itself a guarantee of democratic survival, however, a more effective institution like the legislature or the judiciary is most apt in ensuring democratic survival. In contemporary thought, courts are central components in any political settlement aimed at achieving a functioning democratic order. The judiciary is the foundation upon which democracy grows and develops. Unfortunately, in weak democracies the judiciary is similarly docile.

Nigeria's democratic history is an immensely chequered narrative. Nigeria's democracy is still classifiable as an emergent and fragile type (EIU 2020, 43; Adeosun 2014). Its structures and trajectories are still undergoing trials and experimentation. The foundation of Nigeria's democracy has accordingly remained palpably weak. It is clear from available literature that democracy in Nigeria is far from being consolidated (Egbe 2014; Ibietan & Ajayi 2015).

The presence of strong institutions of democracy such as the judiciary is therefore necessary for the consolidation of democracy in Nigeria. There are a plethora of scholarly literatures on the judiciary, as an institution, and democracy, as a system of government. Likewise, there is a rapid growth in the number of literature succinctly reviewing the interplay of democratization and judicialization (Smith, 2017; Pócza, 2020). Democratization is understood to denote the totality of processes involved in the entrenchment of the tenet and principles of democracy within the political system and constitutional order (Nwabueze, 1993; Diamond,

1999; Arishe, 2017), while Judicialization is understood as the process by which the judiciary gains prominence within the political system and constitutional order (Tate 1995, 28; Alter & Hafner-Burton, 2019). The study intends to investigate whether the Nigerian judiciary is strong or effective enough to support a drive towards democratic consolidation, or whether it is too weak to act as a catalyst for democratic consolidation in Nigeria. If yes, what are the reasons for this inability? And what can be done to make a relatively weak judiciary effective and a catalyst for democratic consolidation.

The research questions formulated for the purpose of resolving the research problems are:

1. Has democracy in Nigeria been consolidated?
2. What role does the judiciary play in consolidating and protecting democracy?
3. Has the judiciary in Nigeria helped in the consolidation of democracy since 1999?
4. How can the judiciary be strengthened to be a mechanism for the consolidation of democracy in Nigeria?

## SCOPE OF THE STUDY

Linz and Stepan (1996), in a detailed study of consolidated democracies, gave one of the most cited clarifications on consolidated democracy as “a political regime in which democracy as a complex system of institutions, rules and patterned incentives has become, in a phrase, the only game in town, behaviourally, attitudinally and constitutionally” (Linz and Stepan 1996, 15). An effective judiciary, being an institution for horizontal accountability, is central to achieving this. However, the study does not propose that an effective judiciary is all that is required for democratic consolidation in Nigeria, as the effectiveness of other vital institutions like the civil society, the legislature, amongst other key factors, would further help in this quest for a consolidated democracy. Nonetheless, because the study is time bound, we shall limit our analysis to the judicial institution.

Therefore, the study shall examine the role played by the judiciary in the pursuit for democratic consolidation under Nigeria’s Fourth Republic, although lessons will be drawn from Nigeria’s past political and constitutional experiences, while laying out a viable framework for the networking of the judicial institution in the promotion of democratic ethos. The reason for this choice of Nigeria’s Fourth Republic seems obvious, as the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) is the longest operative constitution that has been in force post-independence, and this has been the longest period of uninterrupted democratic/civilian rule in Nigeria. It is relevant to note that this research critiques the role played by the judiciary in corruption cases involving the political elites, human rights cases involving the political arm of government, cases of abuse of power by members of the political arm of government and electoral cases in Nigeria. Thereafter, the study shall propose reforms on how to develop the judiciary into an effective institution.

## **AIM AND OBJECTIVES**

The aim of the study is to determine how to develop an effective judiciary for the consolidation of democracy in Nigeria.

The objectives of the study are to:

1. analyze the state of Nigeria's democracy;
2. examine the attributes of an effective judiciary;
3. discuss the relevance of an effective judiciary to the consolidation of democracy;
4. assess the impact of the judiciary on democracy in Nigeria; and,
5. make proposals for strengthening the judiciary to become an effective institution for the consolidation of democracy in Nigeria.

## **RESEARCH METHODOLOGY**

The doctrinal approach is adopted for the study by reviewing theoretical and empirical works respectively. The doctrinal approach, in the study, shall entail the use of statutes and law reports from libraries which shall form the primary research materials. Whereas textbooks, newspapers, magazines, law journals by academic writers and the internet shall form the secondary research materials. Secondary research materials shall provide the detailed and critical literature needed for this research. In essence, the theoretical aspect of the study shall review the existing literature on democracy/democratization and the judicial institution to establish the theoretical framework for our analysis; showing the nexus between the two concepts. The study shall also review various regional and international organizations' reports and surveys to identify major indices for measuring a strong judiciary and for assessing democracy; which would be a basis for our enquiry on the impact of a strong judiciary on democracy and how to strengthen an already weak judiciary towards democratic consolidation.

The study shall also undertake an empirical study of all the political cases, human right cases, corruption cases and other related cases of the superior courts since 1999 to find out their impact on democratic norms and present same in tables. The research approach adopted in the study is considered suitable for this type of research because the resources, data and evidence to be employed are scattered over an overlapping discipline of political science, law and history of the human experiences.

The study also presents a cross-national assessment and enquiry on this subject on a comparative basis, and uses cross-national indices to assess judicial intervention in democratisation in Nigeria; ascertaining the judicial institution's strength with a view to making recommendations on how to strengthen it. The study shall undertake a three level assessment of

the judiciary in Nigeria using the Economist Intelligence Unit Global State of Democracy Index (EIU 2020), the Transparency International Checklist for Evaluating Judicial Performance (Hammergren 2016, 19-22) and the Judicial Reform Index (ABA ROLI 2019) to assess the formation and set-up, output and posture, and reforms of the judicial institution in Nigeria respectively, by reviewing articles and commentaries, and relevant Nigerian cases from 1999 till date (i.e. under the 4<sup>th</sup> Republic) affecting the democratic set up and political culture in Nigeria. In specifics, the study shall assess the Nigerian judicial output, posture and responses to cases of corrupt officials of the political branches of government; as corruption, especially amongst political elites, is inimical to democratic ethos. Likewise, the study shall review cases where attempts have been made to use the judiciary to legitimize undemocratic acts under Nigeria's Fourth Republic; separated distinctively along the lines of a deferential judiciary, inert judiciary and an assertive judiciary.

To further assess the impact of Nigeria's judiciary on democracy, the study shall attempt to review a catalogue of cases and instances of disobedience to court orders and the norms of such orders by members of the political branches of government and its impact on judicial strength and present same in tables. Relying on previous reports by relevant committees related to democracy and the judiciary, the study shall present a roadmap on how to strengthen the judiciary in Nigeria; addressing issues related to judicial corruption, legal culture, ethnic configuration, political exposure, remuneration, recruitment, capacity-building, inability to initiate public interest proceedings *suo motu*, amidst other issues, within the judicial institution.

## EXPECTED FINDINGS

The expected findings of the study are that:

1. democracy in Nigeria is fragile and its practice is at best a 'hybrid regime';
2. an effective judiciary is one that is able to maintain the balance of power between the arms of government, constrain abuse of power and shape political culture;
3. an effective judiciary is a vital institution for horizontal accountability which protects and enhances democratic ethos and the constitutional order of modern societies;
4. the judiciary in Nigeria has not been able to maintain the balance of power between the arms of government and has been unable to constrain abuse of power; and,
5. the Nigerian judiciary will be effective if structures are developed to combat corruption within it, review the recruitment and capacity-building process as well as the remuneration and security of judicial officers, and if judicial officers are empowered to initiate public interest proceedings *suo motu*.

## **EXPECTED CONTRIBUTIONS TO KNOWLEDGE**

The expected contributions to knowledge of the study are as follows:

1. Recruitment based on merit, an enhanced capacity-building mechanism, the empowerment of judicial officer to initiate public interest proceedings *suo motu*, and the utilisation of an in-depth comparative legal scholarship by judicial officers will make the judiciary an effective institution.
2. Building a reputation and legitimacy as an impartial and disinterested arbiter will make the judiciary an effective institution and consequently enhance compliance with its decisions.
3. Developing an effective judiciary to efficiently and effectively resolve political conflicts involving democratic ethos will bolster democracy in Nigeria.

# **THESIS OUTLINE/PLAN OF WORK**

## **CHAPTERS**

### **CHAPTER ONE: GENERAL INTRODUCTION**

- 1.1 Introduction
- 1.2 Statement of the Problem
- 1.3 Purpose of the Study
- 1.4 Research Questions
- 1.5 Significance of the Study/Research
- 1.6 Methodology
- 1.7 Scope of the Study
- 1.8 Structure of the Thesis
- 1.9 Conclusion

### **CHAPTER TWO: LITERATURE REVIEW**

- 2.0. Introduction
- 2.1. Nature and Scope of Democracy in the Modern State
- 2.2. Evolution of the Judiciary as a Branch of Government in the Modern State
- 2.3. The Centrality and Growing Relevance of the Judiciary to Democratization
- 2.4. Theoretical Framework
  - 2.4.1. Separation of Power
  - 2.4.2. Democratization and Democratic Consolidation
  - 2.4.3. Popular Attitudes toward Democracy
  - 2.4.4. Democratization and Counter-majoritarian Institutions

- 2.4.5. Judicialization
- 2.4.6. Judicial Independence
- 2.4.7. Judicial Power, Judicial Review and Judicial Disapproval
- 2.4.8. Judicial Activism versus Judicial Passivism
- 2.4.9. Judicial Attitude and Reasoning
- 2.4.10. Judicial Immunity
- 2.4.11. Judicial Supremacy
- 2.4.12. Judicial Accountability
- 2.4.13. Legitimacy
- 2.4.14. The Theory of Resistance
- 2.4.15. Institutionalisation
- 2.5. Attributes of Judicial Effectiveness
  - 2.5.1. Indices for Measuring Judicial Effectiveness
- 2.6. Relevance of an Effective Judiciary to Democratic Consolidation
- 2.7. Conclusion

### **CHAPTER THREE: DEMOCRACY AND DEMOCRATIZATION IN NIGERIA**

- 3.0. Introduction
- 3.1. The History of Democracy in Nigeria
- 3.2. Constitutional Design and Democracy in Nigeria
- 3.3. Democracy and Neo-Patrimonialism in Nigeria
- 3.4. Democracy and the Imperialist Executive in Nigeria
- 3.5. Measuring the Current State of Democracy in Nigeria
- 3.6. Conclusion

## **CHAPTER FOUR: JUDICIALIZATION AND DEMOCRATIZATION IN NIGERIA**

- 4.0. Introduction
- 4.1. The Evolution of the Judiciary in Nigeria
- 4.2. Constitutional Design and the Judiciary in Nigeria
- 4.3. Measuring the Effectiveness of the Judiciary under Nigeria's Fourth Republic (1999-2021)
  - 4.3.1. Judicial Formation and Set-up
  - 4.3.2. Review of Cases with Democratic Relevance
  - 4.3.3. Track Record of Judicial Reforms
  - 4.3.4. The Judiciary versus the Political Branch: Disobedience of Courts' Orders/Norms
  - 4.3.5. Informal Interference in the Judiciary
- 4.4. Corruption and Judicial Officers
- 4.5. Judicial Attitude and Reasoning in Nigeria
- 4.6. Perception of the Judiciary in Nigeria
- 4.7. Constraints of the Judiciary in Nigeria
- 4.8. A Constitutional Court versus Supreme Court in Nigeria
- 4.9. Conclusion

## **CHAPTER FIVE: DEVELOPING AN EFFECTIVE JUDICIARY IN NIGERIA**

- 5.0. Introduction
- 5.1. Judicial *Trilemma*
- 5.2. Judicial Empowerment and Reforms in Nigeria
- 5.3. Conclusion

## **CHAPTER SIX: GENERAL CONCLUSION**

6.0. Summary

6.1. Findings

6.2. Recommendations

6.3. Conclusion

## **Bibliography**

## CONCLUSION

Concerns about democratic reversal have become global, especially with regards to fragile democracies such as Nigeria. The role of strong institutions, such as an effective judiciary, is crucial to the consolidation of democracy. However, the Nigerian judiciary appears to have been burdened by the perception that it is the third arm of government (i.e. the weakest arm of government) (Pela 2020; Hamilton 1968, 465-466; Ibekwe and Nweze 2020); hence, it has at some point been absolutely deferential to the whims and caprices of the political arms of government. Consequently, there is a need to revamp the extant judicial arm of government in Nigeria. This generally entails developing an effective judiciary as a tool for sustaining a better democracy in Nigeria.

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## CERTIFICATION

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