

Desk Review on the Nigerian Judiciary (1999-2016)

Background

The Judiciary is the third arm of government in Nigeria. It is made up of the various systems of courts in all the jurisdictions in the country and is structured to fit Nigeria's Federal system. As an institution, the Judiciary consists of the "Bar" and the "Bench", and many of the laws and much of the hierarchy of the country's court system are based on the inherited British system.

To strengthen the independence of the Judiciary, Nigeria's 1999 Constitution introduced some changes that are a departure from the British model. Two significant examples were the establishment of:

- i) The Federal Judicial Service Commission (FJSC)
- ii) The National Judicial Council (NJC)

These two institutions were designed to protect the Judiciary from undue interference from the Executive arm of government. The composition of each body and their statutory functions indicate how this is supposed to work.

The Federal Judicial Service Commission

The nine-member Federal Judicial Service Commission is chaired by the Chief Justice of Nigeria. It is mandated to advise the National Judicial Council in nominating persons for appointments to various high judicial offices. These are:

- i) The Chief Justice of Nigeria
- ii) Justices of the Supreme Court
- iii) The President of the Court of Appeal
- iv) Justices of the Court of Appeal
- v) The Chief Judge of the Federal High Court
- vi) Judges of the Federal High Court
- vii) The President of the National Industrial Court
- viii) Judges of the National Industrial Court
- ix) The Chairman and members of the Code of Conduct Tribunal

The FJSC also has the responsibility of recommending to the NJC the removal of any of the judicial officers listed above. Moreover, the FJSC is empowered to appoint, dismiss, and exercise disciplinary control over the Chief Registrars and Deputy Chief Registrars of the Supreme Court, the Court of Appeal, the Federal High Court, the National Industrial Court and all other staff of the Judicial Service of the Federation not otherwise specified in the 1999 Constitution.

The National Judicial Council

Established by the 1999 Constitution to insulate the Judiciary from the whims and caprices of the Executive and vested with considerable powers, the National Judicial Council is also chaired by the Chief Justice of Nigeria. The enabling law further provides for over twenty other members who, for the most part, should be senior judicial office holders. The other members are:

- The next most senior Justice of the Supreme Court who shall be the Deputy Chairman;
- The President of the Court of Appeal;
- Five retired Justices selected by the Chief Justice of Nigeria from the Supreme Court or Court of Appeal;
- The Chief Judge of the Federal High Court;
- The President, National Industrial Court;

- Five Chief Judges of State to be appointed by the Chief Justice of Nigeria from among the Chief Judges of the States and of the High Court of the Federal Territory, Abuja in rotation to serve for two years;
- One Grand Kadi to be appointed by the Chief Justice of Nigeria from among Grand Kadis of the Sharia Courts of Appeal to serve in rotation for two years;
- One President of the Customary Court of Appeal to be appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal to serve in rotation for two years;
- Five members of the Nigerian Bar Association who have been qualified to practice for a period of not less than fifteen years, at least one of whom shall be a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to reappointment: Provided that the five members shall sit in the Council only for the purposes of considering the names of persons for appointment to the superior courts of record; and
- Two persons not being Legal Practitioners, who in the opinion of the Chief Justice of Nigeria, are of unquestionable integrity.

In the light of recent happenings, specifically the arrest of some Judges in October 2016 by the Department of State Services (DSS) over allegations of corruption, a move that has been criticised in some quarters as Executive interference, it is important to examine the powers of the NJC.

Powers of the National Judicial Council

The National Judicial Council is empowered to:

1. Recommend to the President from among the list of persons submitted to it by–

- The Federal Judicial Service Commission, persons for appointment to the Offices of the Chief Justice of Nigeria, the Justices of the Supreme Court, the President and Justices of the Court of Appeal, the Chief Judge and Judges of the Federal High Court, and
 - the Judicial Service Committee of the Federal Capital Territory, Abuja, persons for appointment to the Offices of the Chief Judge and Judges of the High Court of the Federal Capital Territory, Abuja, the Grand Kadi and Kadis of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and the President and Judges of the Customary Court of Appeal of the Federal Capital Territory, Abuja;
2. Recommend to the President the removal from office of the Judicial Officers specified in sub-paragraph (a) of this paragraph, and to exercise disciplinary control over such Officers;
 3. Recommend to the Governors from among the list of persons submitted to it by the State Judicial Service Commissions persons for appointments to the Offices of the Chief Judges of the States and Judges of the High Courts of the States, the Grand Kadis and Kadis of the Sharia Courts of Appeal of the States; and President and Judges of the Customary Courts of Appeal of the States;
 4. Recommend to the Governors the removal from office of the Judicial Officers specified in sub-paragraph (c) of this paragraph, and to exercise disciplinary control over such officers;
 5. Collect, control and disburse all moneys, capital and recurrent, for the judiciary;
 6. Advise the President and Governors in any matter pertaining to the judiciary as may be referred to the Council by the President or the Governors;

7. Appoint, dismiss and exercise disciplinary control over Members and staff of the Council;
8. Control and disburse all monies, capital and recurrent, for the services of the Council; and
9. Deal with all other matters relating to broad issues of policy and administration.
10. The Secretary of the Council shall be appointed by the National Judicial Council on the recommendation of the Federal Judicial Service Commission and shall be a Legal Practitioner.

Other Functions of the National Judicial Council

The National Judicial Council is saddled with other functions and responsibilities some of which are administrative in nature and or concerned with prudent financial management. Of these other functions, two are most worthy of note. These are:

1. **Screening/Interview of Candidates/Judges/Justices for Judicial Appointments**

The NJC screens/interviews all candidates/Judges/Justices for appointment to all Superior Courts of Record (Customary Court of Appeal, Sharia Court of Appeal, High Court of Justice, National Industrial Court of Nigeria, Federal High Court, Court of Appeal & the Supreme Court), in the Federation.

2. **Performance Evaluation of Judicial Officers of Superior Courts of Record in the Federation**

The Judges' Performance Evaluation Committee of the NJC assesses and evaluates the performances of all Judicial Officers in the Federation based on their quarterly Returns of cases to the Council.

The Report of the Performance Evaluation of Judicial Officers in Superior Courts of Records in the Federation is particularly important because it serves as a means to determine the actual needs of Courts vis-a-vis appointment of Judges and budget considerations. It is also a mechanism to discipline Judges. This is a significant point because it shows that the NJC already has the means and ways of exercising disciplinary control over Judges. Indeed, it has been recorded that the NJC has sanctioned over 70 judges in recent years, with the most recent sanctions announced to the public just days before the DSS raids.

Reforms in the Judiciary

Besides the establishment of the NJC and the considerable powers bestowed on it, other notable reforms in the Judiciary include:

- i) **The establishment of the National Industrial Court:** The court has exclusive jurisdiction in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matter incidental thereto or connected therewith. The court also has exclusive jurisdiction in civil matters relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Workmen's Compensations Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws.
- ii) **Alternative dispute resolution mediums:** These include the Abuja Multi-Door Courthouse, the Lagos State Multi-Door Court House, among others.
- iii) **The frontloading system:** This means that at the time of filing originating process, all other documents to be relied upon in the matter are to be filed alongside the originating process. The

system has changed the manner in which court trials are conducted for the better.

Landmark Cases from 1999 to Date

Ahead of the April 2007 gubernatorial election in Rivers State, Rotimi Amaechi contested and won the Peoples Democratic Party (PDP) gubernatorial primaries of the state and his name was subsequently sent to the Independent National Electoral Commission (INEC). Nevertheless, the PDP later replaced Amaechi's name with that of Celestine Omehia who did not participate in the primaries. Pending the determination of successive suits and countersuits, the elections were held and Celestine Omehia was returned as Governor.

On the 25th of October 2007, the Supreme Court passed a landmark judgment in the case of *Amaechi v. INEC*¹ which led to the emergence of Amaechi as the new Governor of Rivers State.

The most cogent point of law, according to legal pundits, was that the PDP acted in contravention of Section 34 (1) and (2) of the Electoral Act 2006, which requires a political party seeking to change a candidate to give cogent and verifiable reasons to INEC. The only reason given by the PDP was "error". The Supreme Court of seven justices in its judgment held inter alia:

"The court has the right to grant reliefs to do substantial justice without regard to technicalities. The only way to ensure that his rights are restored is to declare that he (Amaechi), not the second respondent (Omehia) must be deemed to have won the election".

¹ [2008] 10 WRN 1. THE FULL TITLE OF THE CASE IS RT. HON. ROTIMI CHIBUIKE AMAECHI VS. INDEPENDENT ELECTORAL COMMISSION & ORS (2) CELESTINE OMEHIA (3) PEOPLES DEMOCRATIC PARTY

Similar to Amaechi's case is the case of Ugwu V. Ararume² in Imo State. It was held that Ifeanyi Ararume was the legal candidate of the PDP in Imo State gubernatorial election of April 14, 2007.

Also noteworthy is the Supreme Court judgment in the Atiku Abubakar and Action Congress V. INEC³ case. The apex court ruled to the effect that neither INEC nor any other government agency has the power to disqualify or stop any person from contesting an election except where the alleged indictment is confirmed by a competent court of law.

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Apart from electoral matters, the Supreme Court upheld the need to abide by constitutional provisions in the matter of impeachment of state chief executives. No less than three state governors were booted out of office by less than the constitutionally-recognised two-thirds of members of their State Houses of Assembly, notably Rashidi Ladoja of Oyo State, Peter Obi of Anambra State and Joshua Dariye of Plateau State.

The Court observed that courts have jurisdiction to examine a claim if it was not satisfied that impeachment proceedings were instituted in compliance with the provisions of the 1999 Constitution. If, on the other hand, there was compliance with the pre-impeachment process, then what happened thereafter were the internal affairs of the House of Assembly and a Court of Law would have no jurisdiction to intervene.

There was also the suit instituted by Governor Peter Obi⁴ of Anambra State to determine when his tenure of office would end. Obi, who had been engaged in a long-drawn legal battle with Chris Ngige of PDP, was declared winner by the Election Tribunal in 2006 when his colleagues in other states had spent roughly three years in office. The Supreme Court directed that the governor be allowed to complete his four-year term which will end on 17 March 2010, since Obi took oath of office on 17 March 2006.

² (2007) LPELR-3329(SC)

³ LPELR-CA/A/101/07

⁴ (2007) LPELR-CA/E/94/2007

Furthermore, on Friday 8 November 2002, the Supreme Court declared as unconstitutional the guidelines used by INEC for the registration of political parties.

Another area in which the Supreme Court has upheld constitutionalism is in preserving the sanctity of the Nigerian Federation and Fiscal Federalism. Decisions that resolved constitutional issues included the cases of Attorney-General of the Federation V. Attorney General of Abia State and 35 ors⁵ in which the court defined the boundaries of the Littoral states and dealt with other principles of derivation and revenue allocation.

There was also the Attorney-General of Lagos State V Attorney-General of the Federation and ors⁶, in which the court held that *“urban and regional planning matters are within the competence of the states and not the Federal Government”*.

Also instructive is the case of Ukeje v. Ukeje⁷ where the apex court held that female children should not be excluded from inheriting their father’s estate.

PWAN’s Interventions towards Strengthening the Judiciary

To help foster a culture of accountability, transparency, and improved service delivery in the Judiciary, the Rule of Law and Empowerment Initiative (also known as Partners West Africa-Nigeria) has worked closely with some branches and units of the Nigeria Bar Association, some courts in the Federal Capital Territory High Court system, and

⁵ (2005) LPELR-SC.245/2003

⁶ CITATION: (2004) LPELR-SC.70/2004

⁷(2014) LPELR22724(sc)

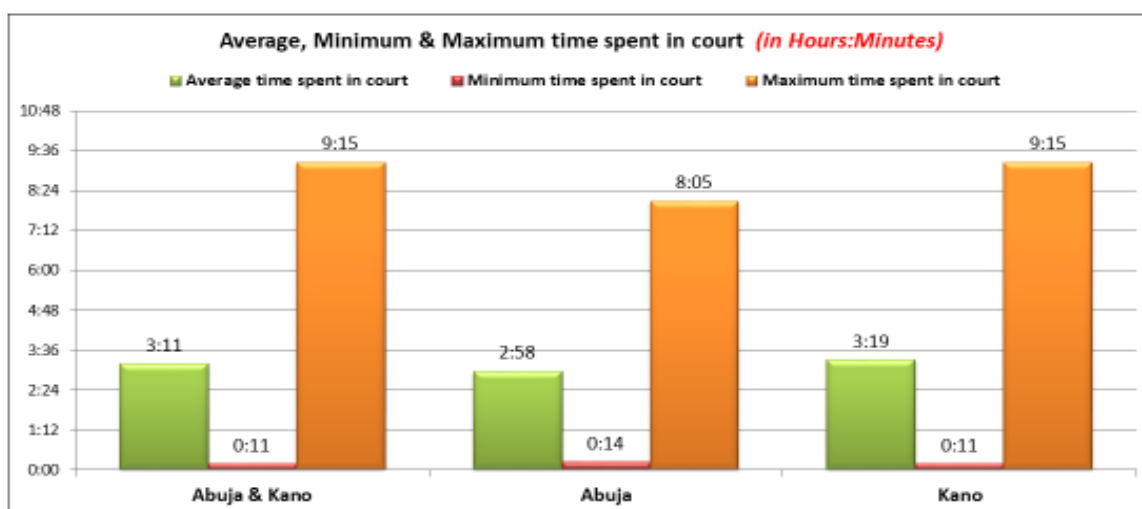
Kano State High Courts in a pilot programme named the **Judicial Integrity Project**.

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 77 observers were deployed across the selected High Courts in the Federal Capital Territory and Kano State.
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Specifically, the Judicial Integrity Project, which is being implemented with support from the US Department of State Bureau of International Narcotics and Law Enforcement Affairs (INL), seeks to increase civil society’s access to government information as a tool to fight judicial corruption; increase citizens’ access to justice, and expand citizens’ engagement with the government.

In pursuit of these objectives, a total of 77 observers were deployed across the selected High Courts in the Federal Capital Territory and Kano State. This took place in the months of October and November 2016, and each observer was in court for at least a total of 14 days within this period. Additionally, to conduct a Court User Satisfaction Survey, 863 persons were interviewed over the same two-week period across the courts being observed in the FCT and Kano.

From both the Court Observations and the Court User Satisfaction Survey, significant information and data emerged. For instance, Court Observations in both Abuja and Kano showed that the duration of court sittings varied greatly from as little as 11 minutes to over nine (9) hours as depicted in the chart below:



The implications of such erratic court sittings on the dispensation of justice cannot be overstated. Arising from this, at the public presentation of the findings from the Court Observations, Partners West Africa-Nigeria recommended that the NJC and state Chief Judges should agree on a standard timeframe for courts. At the same forum and in a statement to the press, PWAN also called on the Judiciary to improve on the management of transfer of judges, magistrates, and their engagement in out-of-court assignments as the Court Observations showed that the current approach tended to stall cases in courts.

In addition to other recommendations, the Court Observations and the Court User Satisfaction Survey also brought several noteworthy issues within the court system to the limelight. For instance, as the infographic below shows, while there are adequate interpreters in the courts, access for people with disability remains a challenge.

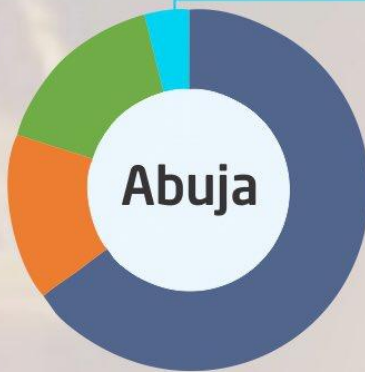
Court Users' Observation Results



Nature of Users & parties support Available

 **(16%)**
Access for Disabled

 **(16%)**
Others

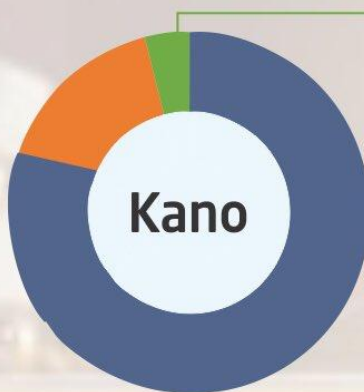


 **(15%)**
Legal aid

 **(65%)**
Interpreter

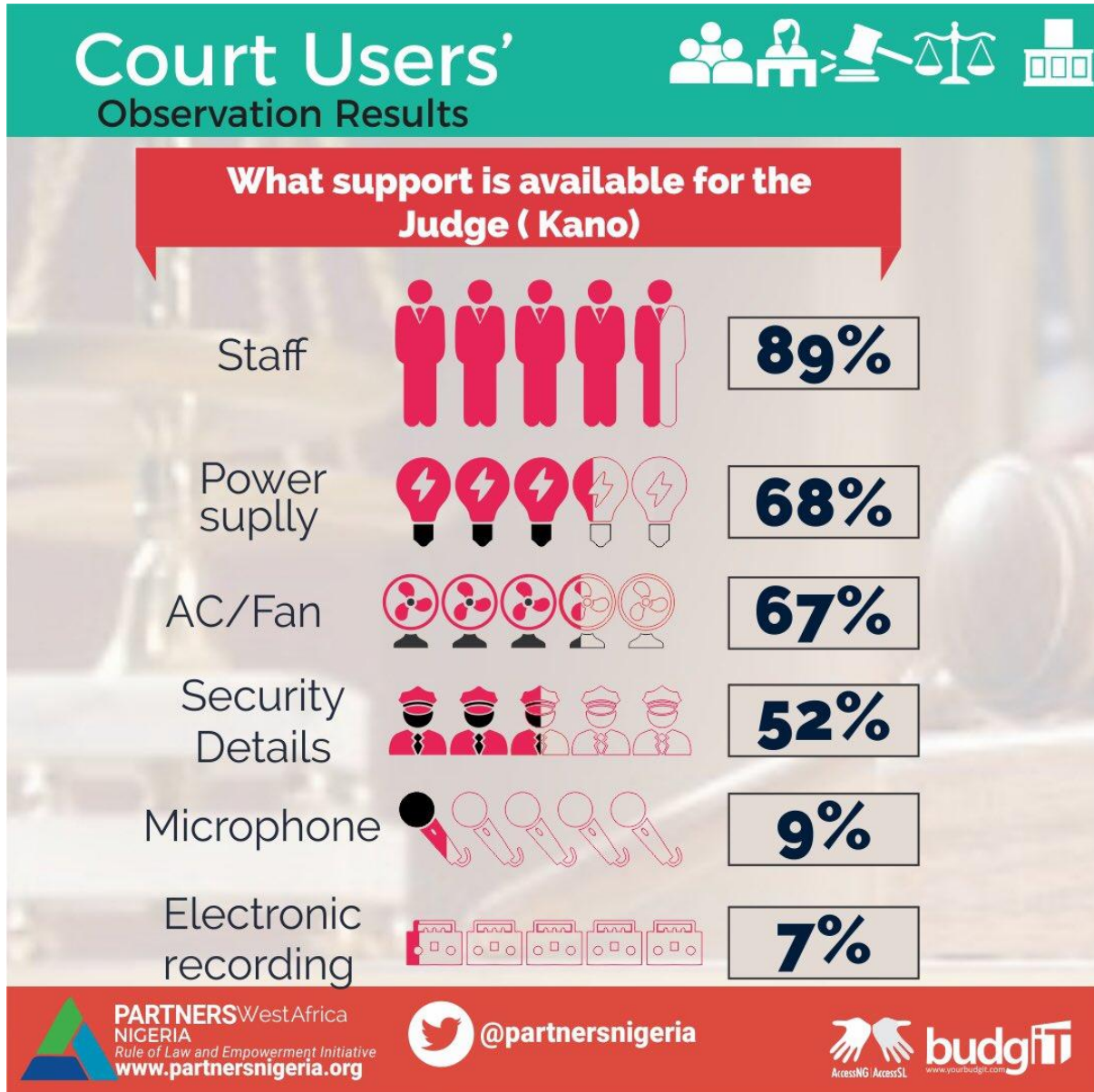
 **(11%)**
Legal aid

 **(5%)**
Access for Disabled



 **(84%)**
Interpreter

Moreover, it was equally brought into the public domain (as depicted in the following infographic) that while Judges in Kano courts have sufficient staff support, there is little or no electronic record keeping.



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The lack of electronic recording equipment in courts in an era where many aspects of citizens' lives have gone digital buttressed the points raised in a memo that PWAN sent to the National Judicial Council on the 31st of October, 2016. In the memo, PWAN noted that “The judiciary is the arm of government which is said to be the ‘last hope of the common man’. However most ‘common man’ do not have an understanding of the ‘workings’ of this sector. It is also a sector which has been shrouded in so much secrecy and the seeming opaqueness of the sector has given room to a lot of allegations, rumours, etc.”

The organisation, therefore, urged the NJC to commence live media broadcast of court proceedings in Nigeria in the hope of “fostering transparency and accountability within the judicial sector.”

PWAN further stated that such broadcasts “would provide an opportunity to follow through court proceedings, which will contribute to improving citizens understanding of the process. The introduction of live media broadcast would also provide an opportunity to effectively monitor the implementation of the court rules, laws and ethics. This novel step if embraced by the National Judicial Council will also lead to an evolution or reform of some of our laws and practices; for example, the video recordings could form part of court processes.”

The memo was concluded with a call on the National Judicial Council “to embrace positive deployment of technology to enhance transparency and integrity of the judiciary.” Unfortunately, as at the time of putting together this Desk Review, PWAN has not yet received a response to the memo from the NJC.

Be that as it may, it is on record that following the arrest of Judges in October 2016, PWAN issued a press statement which categorically declared that, “The National Judicial Council (NJC) has the responsibility of ensuring that the independence of the judiciary is maintained, it also has a responsibility for investigating accusations and petitions of corruption that are brought before it against judges.”

In the same statement, the organisation made it clear that the “accountability of the judicial sector to the laws of the land and to average Nigerians cannot be compromised.”

Other relevant portions of PWAN’s statement on the arrest of the Judges read as follows: “It is our belief that if the NJC has become ineffective, steps need to be taken to ensure that its internal accountability mechanisms are strengthened so as to ensure it plays its rightful role within the judicial oversight system.

“The fight against corruption should be systemic aimed at building effective institutions which is one of the critical pillars of a viable democracy. Failure to do this creates a group of sympathisers that can take advantage of the lack of due process to continue to perpetrate actions that undermine the credibility of the nation state.

“In the light of the above, we would like to call for the immediate release of the judges arrested, while the appropriate agencies take over investigation and prosecution of the cases. The Judicial Discipline Regulations issued by the NJC in 2014 remain the relevant tool in the circumstances. In order to maintain the sanctity and integrity of the judiciary, we recommend that the SSS/DSS bring the complaints against the said judicial officers to the NJC stating the details of findings against them. We believe that anybody found wanting should be made to face the full extent of the law because nobody irrespective of the position he or she occupies is above the laws of the land.”

Taken together, these interventions demonstrate the seriousness with which PWAN takes the mandate of its Rule of Law programme area to focus on improving integrity and strengthening institutions that play a role in safeguarding the Rule of Law through a cooperative advocacy approach including engagement with all stakeholders across the spectrum.

APPENDIX

Annual Basic Salaries of the Judiciary⁸

Categories of Judicial Officers	Recommended Annual Basic Salary (₦)
FEDERAL	
Chief Justice of Nigeria	3,363,972.50
Justice of the Supreme Court	2,477,110.00
President of the Court of Appeal	2,477,100.00
Justice of the Court of Appeal	1,995,430.00
Chief Judge of the Federal High Court	1,940,095.00
President Nigeria Industrial Court	1,940,095.00
Judge of the Federal High Court	1,804,740.00
Chief Judge of the FCT	1,940,095.55
Judge Nigeria Industrial Court	1,804,740.00
Judge of FCT High Court	1,804,740.00
Grand Kadi FCT Court of Appeal	1,804,740.00
President FCT Customary Court of Appeal	1,804,740.00
Kadi Sharia Court of Appeal	1,669,385.00
Judge FCT Customary Court of Appeal	1,669,385.00
STATE	
Chief Judge of State	1,940,095.55
Judge of State High Court	1,804,740.00
Grand Kadi State Sharia Court of Appeal	1,804,740.00
President State Customary Court of Appeal	1,804,740.00
Kadi State Sharia Court of Appeal	1,669,385.00
Judge State Customary Court of Appeal	1,669,385.00

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http://www.nigerianmuse.com/important_documents/?u=ECONOMIC_CONFIDENTIAL_Jumb

o accessed on 19/11/2016.