



Thematic Convening Paper Series:

Papers presented during thematic convenings on topical issues relating to PWAN's program areas.

20th December, 2019

SOCIAL ACCOUNTABILITY OF THE JUSTICE SECTOR

By: Prof. Yemi Akinseye-George, SAN, FCI Arb.



Introduction

The Justice Sector refers to the lawyers and judges, courts and others who are responsible for the administration of justice in the country.

Although the Police and other law enforcement bodies are generally regarded as justice sector institutions, this paper focuses mainly on the judiciary or judges who are primarily in charge of the dispensation of justice.

It must be noted however, that the effectiveness of the judiciary often depends on the quality of the support services available. Such services are provided by legal practitioners, police officers, court registrars and other administrative personnel.

This paper is focused on issues of transparency and accountability which primarily affect judges who are the dominant figures in the justice sector. There is no gainsaying that any significant judicial reform endeavor must necessarily involve the simultaneous reform of the support services as well.

The Judiciary is expected to play a major role in delivering GOOD GOVERNANCE.

This obligation necessarily imports the ethos of transparency and accountability which are embedded in the concept of judicial independence, impartiality and integrity.



CLARIFICATION OF CONCEPTS

The justice system is part of the intangible but important infrastructure which is crucial to the protection and proper functioning of the physical infrastructures of roads, railways, airways, water, electricity and telecommunications.

By upholding order, protecting human rights and contractual obligations and settling disputes, the justice system helps to sustain peace and democracy.

Transparency and Accountability refers to the system by which governments are answerable to the people for the way they spend public money and run the affairs of the country. The question arises whether the judiciary is supposed to be answerable to the people?

In the justice sector, the concepts of transparency and accountability simply refer to the level of integrity of the sector. Judges are not made subject by the Constitution or global best practice to the vagaries of accountability to the public.

with exemption from financial accountability to the public and the legislative arm of government. Under the guise of independence of the judiciary, the financial dealings of the judicial branch are often shrouded in secrecy and opaqueness.

Their fidelity and loyalty must be to the Rule of Law rather than the Rule of the mob. Therefore, when people including civil society activists carry placards and stage demonstrations in court premises with a view to compelling decisions favorable to their causes, they undermine the accountability of the judiciary to the Rule of Law.

By intimidating judges, they are probably as culpable as the political elite who dangle the carrot before poor judicial officers to procure favorable decisions. However, a common error in our country is to confuse independence of the judiciary



The object of judicial immunity (Section 31 of the Criminal Code Law) is not to protect corrupt or malicious judicial officers but to protect the public from the danger to which the administration of justice will be exposed if judges were made subject to inquiry or litigation by aggrieved litigants who allege malice.



This is the reason why despite the huge allocations to the judiciary, (increased from 100 to 120 billion under the 2018/19 National Budget), the courts still suffer huge shortage of human and material resources.

In the struggle to enthrone financial transparency and accountability in the public sector, there is need to beam a searchlight on resource utilization in the judiciary. Openness on this front should make it more likely that resources will be better allocated and used optimally. There is need to develop standard mechanisms for improving access

to information on the financial dealings of the judiciary. It is likely that many heads of court and senior administrative officials have a lot to contribute to the debate on the extent of transparency in the financial management of the courts. This more so as It is open secret that bureaucratic corruption adds at least 25 to 50% to the costs of procurement of goods and services by the courts.

This frequently results in inferior quality of infrastructure- court rooms, furniture, unnecessary purchases and superfluous expenditures.

Independence of the judiciary connotes the freedom of judges to decide cases without undue influence, restrictions, threats, pressure or other interferences, direct or indirect from any quarter or for any reason. Three forms of judicial independence may be identified: **personal independence** - that is

when the terms and conditions of judicial service are adequately secured to ensure that individual judges are not subject to executive control.

Substantive independence exists when in discharge of his or her judicial function, a judge is subject to nothing but the law and commands of his conscience. **Internal independence** occurs when in 'the decision-making process, a judge feels no pressure from his judicial superiors and colleagues.

Independence of the judiciary is the life-blood of constitutionalism in all democratic societies. This includes immunity granted to judges by the law from personal liability for exercising judicial functions. This protects judges from civil or criminal liability for matters done in lawful exercise of judicial power. The rationale for judicial immunity is rooted in public policy: to protect judicial officers from wanton attacks of



Independence of the judiciary connotes the freedom of judges to decide cases without undue influence, restrictions, threats, pressure or other interferences, direct or indirect from any quarter or for any reason.



infuriated litigants whose main grouse is that they have lost a suit. (**Egbe v. Adafarasin** (1985)¹ NWLR (Pt.3) 549 at 567.

The object of judicial immunity (**Section 31 of the Criminal Code Law**) is not to protect corrupt or malicious judicial officers but to protect the public from the danger to which the administration of justice will be exposed if judges were made subject to inquiry or litigation by aggrieved litigants who allege malice. However, Judicial immunity does not extend to criminal liability by a judge for offences under the criminal or penal Code. The case of **Nganjiwa v. FRN (2018)** is instructive.

Here, the Court of Appeal, per Obaseki-Adejumo, JCA, delivering the judgment of the Court of Appeal in respect of an alleged corruption case brought by the EFCC against a judge, stated:

‘If any judicial officer commits a professional misconduct within the scope of his duty and is investigated and arrested and subsequently prosecuted by security agents, without a formal report to the NJC, it will be a usurpation of the latter’s constitutionally-guaranteed powers under section 158 and paragraph 21 part 1 of the Third Schedule thereby inhibiting the NJC from carrying out its disciplinary control over erring judicial officers as clearly provided by the Constitution. It is only when the NJC has given a verdict and handed over such a judicial officer (removing the toga of judicial powers) to the prosecuting authority that he may be investigated and prosecuted by the security agencies’

The EFCC has since appealed this decision to the Supreme Court. It will be a big surprise if the Supreme Court reverses this decision which many legal pundits consider expedient to free judges from the intimidating

posture of anti-corruption agencies which prosecute cases before them. In a democracy, the constitutional duty of the court is not to convict at all cost but ALWAYS to maintain a balance between the state and defendants who are accused of wrongdoing. No matter how unpopular some judicial decisions may be, judges must be courageous in performing their oath to do justice to all without fear or favour.

THE IDEAL JUDICIARY

Democracy has three branches: Executive, legislative and judicial. The Executive and the Legislative branches are the political branches.

The three branches are separate but mutually interdependent. The major distinguishing characteristic of the Judicial branch is its independence of the political branches. Independence can only be assured where the following attributes are present:

a) a self-governing, independent budget-authority and a rule-and-policy making autonomy;

b) a transparent recruitment process that guarantees open:

- judicial selection,
- promotion,
- discipline,
- Promotion
- Transfer and
- removal from office of judicial officers;

c) a transparent system with an effective-

- case allocation,
- case management,
- clear judicial productivity and performance standards,
- pre-determined performance monitoring and evaluation processes

d) public access to court proceedings and records

e) a standardized continuing judicial education and training.

ENVISAGED OUTCOMES

The results expected from an independent judicial system include: an effective access to justice, by all. This must be speedy, certain, consistent and predictable. This ultimately gives rise to a DIGNIFIED JUDICIAL SYSTEM that enjoys the respect, awe and confidence of the public and before which every citizen feels a sense of duty to willingly respect and obey.

CHALLENGES CONFRONTING THE NIGERIAN JUDICIARY

The Nigerian system, over the years, is confronted by monumental challenges such as:

a) collapse of the ethical/moral fabric of the judicial system, occasioning a near total erosion of the dictates of conscience in many judges and an unprecedented invasion of the judiciary by prevalent societal currents of which pervasive corruption exerts the most strangle-hold on the capacity of judges to

dispense justice without fear or favor.

b) decrepit and dilapidated court rooms, inefficient management and case filing systems, out modeled equipment, old fashioned mode (long hand) of taking evidence and the absence of modern automated technologies e-court facilities like cameras, conferencing facilities and virtual registries.

In view of the positive modernizing influence of technology in a fast globalizing world today, it can safely be said that the Nigerian Judicial system has remained obstinately impervious to change and has thus been left behind as the virtual cave-man of the global judicial village.

c) dismal continuing education program on account of which there appears to be a serious decline already especially in the intellectual capacity of judicial officers to effectively/efficiently deliver justice.

d), absence of a sincerely corrective Nigerian Bar most of whose members now wantonly abuse ethics and rules of professional conduct with the attendant consequences that many Ministers of the Temple of justice have become eminently corruptible and willing perverts of the due legal and judicial processes.

e) Outdated Laws - the existence of a largely unreformed body of laws that lends itself easily to the exploitation of self-serving lawyers and corrupt judicial officers both of whom profit in the unfair use (by lawyers) of procedural legal technicalities to the detriment of substantive matters.

f) Excessive concentration of administrative and discretionary powers and privileges in the heads of courts - By tradition, the heads of Nigerian courts are usually chosen on the basis of seniority. This is calculated not by reference

to the experience at the bar or time of admission to the bar but by reference to the date of appointment to the particular court. There are advantages and disadvantages of choosing heads of court by seniority.

CONSEQUENCES

The inability of the Nigerian Judiciary to remedy the pervasive evidence of cut-throat politics, election rigging, corruption, nepotism and geo-ethnicity.

Over the years, these challenges have occasioned a dip in the public perception index of the Nigerian judges and by extension the integrity of the Nigerian judicial system.

The Nigerian Judiciary has come to be identified more as a zone of despair especially for the common man seeking justice, than as the proverbial 'last hope of the common man' that it ought to be.

The system has especially acquired a sickening notoriety for complexity and tedium in arriving at justice- from filing, findings to final

judgment; and these ills, added to the growing juridical and advocatory incompetence in the system, inevitably occasion unwarranted delays that make a mockery of the maxim which asserts that 'delay defeats justice'.

These are in addition to the existence of bad or deficient laws and procedures.

None has captured this rot more poignantly than the eminent jurist, Justice Kayode Eso, in a memo to the Musdapher Judicial Reform Committee, where he said:

"There has been no time in the history of the judiciary of this nation that the institution has sunk this low". He was referring to the Ayo Salami-Katsina Alu judicial scandal which had immediately predated Musdapher's appointment as Chief Justice of the country.

The late Justice Dahiru Musdapher was the first Chief Justice not to follow the sedate, publicity-shy style of his predecessors. He was not about to keep quiet and sanctify the aura of judicial secrecy that had

always shrouded the operations of the judicial system. In fact his was a very public tenure motivated by the resolve to constitute himself into a one-man bureau of dissemination to get the message across to the public that the Nigerian legal system was dogged and bedeviled no less by deficient laws and moribund procedures, than it was by human frailties and foibles the most debilitating of which is corruption.

Musdapher it was who had the rare courage to break the yoke of judicial esoterism by publicly confessing to serious challenges bothering particularly on the ethical and moral substructures of the Nigerian judicial system, its dilapidated courts and its decrepit administrative machinery, and worst of all its dismal continuing-judicial-education program.

And because his ideas on how to reform the Judiciary were considered somewhat revolutionary especially for such a sedate institution, Musdapher thought he needed to enlist the moral support of

the victim-public in order to entrench the reform. He had picked especially popular and controversial causes that resonated deeply with the people. Like ‘plea bargaining’ which he described as “a novel concept of dubious origin” smuggled into our legal system in order “to provide soft landing to high profile treasury looters”.

Justice Musdapher spoke painfully also about the habit of most judges in allowing lawyers exploit, for their clients’ benefit, technicalities inherent in the law, -technicalities which over the years neither Parliament (through legislation) would pick the gauntlet to amend, nor judges themselves through judicial ‘legislation’, to remedy. Most Nigerian judges have persisted always in elevating legal technicalities above the overarching need to engender justice. Many of them appear to have a self-serving penchant for glorifying ‘procedure law’ – making the attainment of justice a chance game- over and above ‘substantive law’ - which more likely guarantees justice.

BROAD ISSUES FOR URGENT ATTENTION AND ACTION

In all there are three broad issues to be tackled urgently, namely:

a) Restoring Integrity

restoring integrity of the judicial system by getting Ministers in the Temple of justice to sustain true allegiance to their judicial oaths, abide by the Code of Conduct for Judicial Officers and worthy arbiters of truth acting according to the dictates of their consciences

b) Rebuilding infrastructure

revamping the collapsed judicial infrastructure by rebuilding physical structures and by imbibing avant-garde technologies to bring the system at par with judicial best practice all over the world

c) Restoring Public confidence

Restoring lost public confidence by getting Nigerians once again to believe, respect and trust the judicial system enough to willingly subjugate before it.

PRACTICAL MEASURES

a) Need for Comprehensive National Judicial Policy/Development Plan.

Clearly, no short-cut measures will be able to reverse the downward spiral of the Nigerian judiciary. It is therefore expedient to develop a comprehensive National Judicial Policy/Development Plan to give clear direction to the type and extent of reform required to reverse the rot in the Judiciary.

b) Digitalization of the court system.

The proposed Judicial Policy and Development Plan should consider a phased computerization or digitalization of the judiciary. It is clearly unrealistic to consider full computerization of the Nigerian Judiciary at this point in time owing to the problem described as 'NEPA' which is the original acronym for the National Electric Power Authority. Although the name has been officially changed to the Power Holding Company of Nigeria (PHCN), the masses have not experienced any improvement in

electricity supply. Therefore, the acronym, NEPA is popularly interpreted as NEVER EXPECT POWER ALWAYS. Other aspects of the judicial system to be considered for computerization should include: the litigation process to improve filing and case management efficiency with a view to repositioning the courts for faster and more efficient justice delivery.

c) Reformed recruitment process.

The mode of recruiting judges must be overhauled and made transparent. This would enhance the quality of the new entrants to the Bench. It should begin with the entrants to the Law Faculties and Nigerian Law School where lawyers are trained for the Bar and Bench.

The requirements for appointment of judges must be reviewed and reformed. In addition to pure merit, morals of prospective appointees should also play an important role in their selection. This calls for greater openness and more participatory process which involves the Nigerian

Bar Association and the general public. Nominees for judicial appointments should be subjected to public scrutiny whereby names and qualifications of shortlisted candidates are published for public comments and as a prerequisite to a rigorous screening, selection and interview process.

Other considerations may include the diversification of the pool from which appointments to the higher courts are made. A wider diversity of experience by candidates appointed from outside the judiciary, including the Chief Justice, should add quality to judicial deliberations in court. Senior members of the Bar especially should be eligible for appointment straight to the Appellate Bench in addition to judges who will rise traditionally through the ranks. However, with the present abysmal level of salaries and shabby treatment of judges, it is doubtful whether any successful senior member of the bar will consider accepting an appointment to the Court of Appeal and Supreme Court, talk less of the High Court. It

is worthy of note that in England, High Court judges are often selected from the rank of Queen's Counsel (QC) which is equivalent to the rank of Senior Advocate of Nigeria (SAN). In this respect, it is instructive that a judge in the UK with much less workload and no pressure from politicians earns about £180,000 per annum, £30,000 more than the Prime Minister.

Their counterparts in Nigeria with greater workload earn less than N12,000,000 (about £28,000) per annum. Even if we cannot afford to pay so much to judges, why can't we create a more decent reward system as has been in place in Lagos State for some years now? This can be achieved through a more transparent and accountable budgeting and management of resources.

In a recent paper, Hon. Justice Ayo Salami, OFR, former President of the Court of Appeal, revealed that a retiring CJN is reportedly paid about N3billion Naira which includes the provision of a mansion by the NJC; other retiring justices of the same

court get nothing. Further, he asked what is the use giving a retiring 70-year old man a seven-bedroom mansion? This same fund could be used to acquire a befitting retirement house for all the justices of the court and provisions made for lump sum payments to them to make life easier in retirement. This is just one illustration of the many contradictions inherent in the mode of paying serving and retiring justices and judges. Compare that with Lagos State where a judge is never sworn in until a befitting duplex building is ready for him or her. The keys and title deeds are handed over to each new judge at the swearing-in ceremony.

d) Revitalized Disciplinary mechanism.

It is necessary to create a more systematic and transparent disciplinary process for monitoring, reporting and disciplining erring judicial officers. This must extend to ways of rewarding or incentivizing outstanding performance and weeding out those who abysmally fall below the minimum

performance standards. Furthermore, effective means of preventing misconduct and insulating judges from unacceptable vice must be established and scrupulously applied. The recommendations of a Judicial Performance Committee by the Justice Kayode Eso Judicial Reform Committee may be reconsidered.

e) Structural Reforms of the Courts.

This calls for a review and streamlining of the structure of courts with a view not only to making the judicial process effective, efficient, and fast, but so that judgments of courts are not only clear, fair and just but also consistent with the doctrine and rules of judicial precedents. Since 1973 when the Federal High Court was created, the controversy shrouding its jurisdiction remains a challenge to the legal profession.

Also, many High Courts and the appellate courts are heavily congested, especially the ones in the urban areas. Rather than devolving

more work to the magistrates, the lawyers who operate these lower courts continue to face discriminatory treatment as they are not regarded as judges. Yet they are often the first level where the average citizen experiences the justice system. More importantly, there are magistrates who have served meritoriously for twenty years and highly qualified for appointment to the High Court but are not considered whilst novices but better 'connected' individuals are appointed straight to the High Court Bench.

f) Need for a specialized body to handle administrative matters

create a separate specialized institution –as does exist in most Commonwealth countries- in place of the NJC to primarily deal with complaints, petitions, discipline and removal of judicial officers and thus allow the NJC to concentrate on the no less onerous duty of formulating broad policies for, and judicial appointments in, the Judiciary.

A situation whereby the NJC considers, at every meeting, about 40 petitions and complaints against judges, in addition to policy and appointment matters, is inimical to the thoroughness required to discipline errant judges.

It may be necessary to create a separate, discipline-only body and to which should be added the duty of 'Intelligence Measurement Performance System' especially for maximizing the utility of performing judicial officers and weeding out under-performing ones.

CONCLUSION

The problems of the Nigerian Judiciary are invariably rooted in the palpable lack of transparency and accountability. Rather than focusing on the symptoms of these judicial ailments, better and durable results will be achieved if the Civil Society groups and other stakeholders shift their attention to these root causes.

The Judiciary faces many challenges which have incapacitated it from

being able to perform optimally like its counterparts elsewhere. It is therefore necessary to address the internal challenges which make the judiciary vulnerable to subtle and blatant erosion of its powers by the political branches and the elite. However, for any reform to succeed it must be holistic and must leave no STONE unturned. Such will certainly require significant sacrifice and commitment on the part of the leadership of the judiciary. With the continual absence of reform-minded political elite whose members appear to be more comfortable with a judicial system that is inefficient, slow, uncertain, inconsistent and unpredictable, the question is quo vadis?