

# A RIGHT TIME TO RING THE CHANGES

## REFORM OF JUDICIAL APPOINTMENT AND DISCIPLINARY SYSTEMS OF LOWER COURTS

### IMPERATIVE TO ARREST DECLINE IN JUSTICE SERVICES DELIVERY

## A Study of Two Jurisdictions

Edited by Joseph Otteh

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REPORT PRODUCED BY ACCESS TO JUSTICE



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## PREFACE

The performance of any Judiciary rests on a cocktail of factors - the degree of independence it enjoys, the level of compensation and conditions of service of its personnel (judges and staff), the strength and calibre of its judges; and the effectiveness of its system of accountability - among others. This report examines two components of these indices - the quality of the system of appointing judges and their accountability (discipline) when recruited.

Nigeria's Constitution federalizes control and oversight of superior courts<sup>1</sup> of record in terms of appointments and discipline of judges (and justices) of these courts, and the NJC, the big policeman entrusted with overseeing its affairs on these matters has developed elaborate policies and guidelines related to appointments and discipline of these judges/justices. Although the application of these policies/guidelines, it must be conceded, has been patchy and not measured up to scratch, these appointment and disciplinary instruments nevertheless reflect and embody a conviction that Nigeria's Judiciary will perform better where it is able to recruit the most competent and suitable persons, and is able, also, to exercise effective disciplinary supervision over them. Implementing these guidelines can expectedly produce significant improvements in the performance and integrity of superior courts in Nigeria.

However, Nigeria's Judiciary is not constituted only by superior courts of record. The respective States and the Federal Capital Territory(FCT)operate number of other courts too -Magistrates courts, Sharia/Area courts, Customary courts, etc. that have a sprawling presence throughout the country and the Constitution gives States/FCT power to control the organization and operations of these courts.

In undertaking this project, our goal was to flag the absence of action in many States to improve the performance of their judiciaries in the areas of appointments and disciplinary control over lower court judges.

This report looks at how two jurisdictions - Lagos State and the FCT - manage little exception, on “judicial officers” of these courts.

In undertaking this project, our goal is to flag the absence of action in most States to improve the performance of their judiciaries by reforming procedures related to selecting/appointing lower court judges and exercising disciplinary control over them. We escalate these concerns in order to trigger policy engagement and reform in these

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<sup>1</sup> State High Courts, the Federal High Court, National Industrial Court - Court of Appeal, Customary Court of Appeal, Sharia Court of Appeal, and Supreme Court

areas, particularly given that our Judiciary has been bumping along the bottom for a long time now: the abject lack of attention to issues of appointment and accountability - in the States particularly - has put a damper on the capacity of our Judiciary, as a whole, to function competently and with integrity, as well as adversely impacted public confidence in the judicial process. The Judiciary needs all the help it can get now.

We thank the researchers (Mrs. Grace Young and Bryan Olekanma) who helped us with the field studies in the FCT and Lagos State. We also thank all those who supplied the information we relied on for this report. We thank too, the **National Endowment for Democracy (NED)**for supporting our interest in undertaking this effort.

**Joseph Otteh, Director, Access to Justice**

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### Access to Justice

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**“In recent times there has been much concern by the public about the efficiency, effectiveness and transparency of the judicial system. ... Such concerns make it imperative to identify issues and problems militating against a credible justice delivery system that would command the confidence of the citizen.”**

**“Some of the issues that can readily be identified include: efficiency of the judicial appointment process; transparency and accountability in the judicial process and of administration of justice; judicial performance; and, the capacity of the superior courts to promote and protect the rule of law.”**

- Paras. 1.5 and 1.6 of the National Judicial Policy issued by the NJC, 2016

## **TRIBUTE**

To: Dr. Adenike Aiyedun

Access to Justice' Deputy Director who was working on this project and its report but translated while she was still on the assignment.

# **INTRODUCTION**

Lower courts - Magistrates/Customary/Area/Sharia Courts etc. - it has often been said, process over seventy percent (70%) of court cases in Nigeria. These courts are relatively small claims' courts of summary jurisdiction with much deeper penetration in urban and rural communities across the Nigerian landscape. However, in spite of the impressive size of their caseload-ratio as well as their geographical spread, lower courts and matters pertaining to their operation and administration remain mostly under the radar, and, virtually across board, initiatives to strengthen the quality of services rendered by these courts, improve their performance and make those who man these courts accountable in a real sense have been few in possibly in all of Nigeria.

## **Thematic Focus on Judicial Appointment And Disciplinary Procedures**

This research looked at two aspects of court administration that have significant implications for the performance of judges: the first is appointment to judicial office and the second, disciplinary oversight procedures.

### **Research Sites: FCT Judiciary and Lagos State Judiciary**

This research used the FCT Judiciary and Lagos State Judiciary as case studies, to ascertain the procedures applicable to recruiting judicial officers of lower courts alongside those relevant to exercising disciplinary control over them. We were interested in examining the nature of reforms that have been made in these areas since the transition to civil rule in 1999, and ascertain whether extant procedures and rules have the capacity and potential to achieve good, up to the mark results and outcomes.

*For purposes of judicial appointments, what standards or procedures would be up to the mark? It must be those procedures that promote core values of openness, accessibility, competitiveness and merit in the recruitment process*

### **Criteria for the assessment**

For purposes of judicial appointments, what standards or procedures would be up to the mark? It must be those procedures that promote openness, accessibility, competitiveness and merit in the recruitment process. And to make judges accountable, what procedures would pass muster? The procedures must guarantee dependable, effective and accessible complaint intake and investigation, and systematically lead to credible outcomes.

We conclude the research by recommending a number of ways states and federal jurisdictions can reform and strengthen their recruitment and accountability systems and urge them to do so.

## Research Method

We engaged two lead researchers to collate information from both the FCT and Lagos Judiciaries and court users in those jurisdictions respectively to help us make determinations of the existence, scope and strength of procedures available in the two judiciaries relevant to our inquiries. The researchers also conducted field surveys to obtain court users' perspectives where it was considered useful to get their insights and/or experiences, and gauge the level of knowledge they had about existing procedures. In particular, we interviewed court users on their knowledge of complaints systems in the courts, and about feedback they received on complaints made. We also spoke with some authority figures including officials of the respective Judicial Service Commissions ("JSCs"), although not all wanted us to put them on record.

### 1.3 Research questions

The questions asked explored the following:

- The availability of written guidelines or policy framework for the appointment of lower court judges; the context and use of unwritten forms;
- Adherence to any such guidelines/policies;
- Publicity/Advertisement of judicial vacancies;
- The transparency, objectivity and competitiveness /selection procedures;
- Procedures governing the reception of complaints against court judges or personnel;
- Internal mechanisms with responsibility over the reception and investigation of complaints;
- Whether the complaints systems' offered a credible framework for ensuring that the Judiciary functioned with integrity and its officials complied with the relevant Codes of Conduct for judicial officers and court staff;
- The nature of complaints routinely made against court officials/lower court judges;
- The speed at which urgent complaints were resolved;
- The sense among court staff, or lower court judges that if they did anything wrong, they would be held accountable;
- The effectiveness of any actions taken by the leadership of the court to combat corruption in the (lower) courts; and

- Awareness amongst court staff and Judges of the applicable Codes of Conduct, with specific reference to these Codes, by the leadership of the courts.

## **1.4 Limitations of the study**

The number of jurisdictions selected for the study is admittedly a very small sample segment and limited fragment of the available spectrum, given the number of “judicial” jurisdictions in Nigeria; therefore, a study of this nature can only provide findings that are not, by their strength, broadly representative in any important way.

In reality however, they lend credence to the many pointers showing that there has been very little activism in the areas covered by the research by state and federal judiciaries, besides of course, the NJC, which has, at least more recently, been on its front foot in relation to strengthening judicial appointments and disciplinary procedures. The findings of this study will still be very representative, in an anecdotal way, of the position of things in most of the States.

The jurisdictions we selected for this study are those of Nigeria's most significant demographics in many respects. Lagos State Judiciary serves the commercial capital of Nigeria, is located in the South of Nigeria and is, unarguably, Nigeria's busiest court jurisdiction. The FCT Judiciary serves Nigeria's political capital territory, is located in the Northern part of Nigeria, is a federal institution that is, likewise, a busy court.

# EXECUTIVE SUMMARY

## General Findings

### A. Judicial Appointment Process

**I. Reforms to Improve Process Have Been (almost totally) Lacking:** There has not been any significant efforts to reform procedures of judicial appointments into lower courts of the FCT and Lagos State Judiciaries since the transition to civil rule in 1999. The current legislations and regulations on the subject, where they exist, are quite dated and do not mirror what is now considered, virtually universally, the appropriate criteria for recruitments - the requirements of accessibility, transparency objectivity and merit- now seen as vital prerequisites of a good judicial appointment process. In essence, they are well behind the curve of what is “best practice”.

**ii. Judicial Service Committee of the Federal Capital Territory (“FCT-JSC”)**

**Regulations Come Close to the Mark, But Not Close Enough:** The FCT Judiciary does have robust written guidelines (in the form of regulations and legislations) governing the selection of judicial officers into the FCT Judiciary. With some “tweaking”, these guidelines can offer the basis for a much improved appointment system. At this time however, the guidelines still remain inadequate; they are fragmentary and rudimentary, and do not sufficiently address the spectrum of elements that need to guide and inform any judicial recruitment exercise aspiring to ensure fairness, transparency, competitiveness and objectivity. These laws and regulations need to be revised and updated.

**iii. Lack of Engagement by JSCs on Strengthening the Appointment Process:** Both the FCT JSC and the Lagos State JSC have not kept matters relating to strengthening the judicial appointment systems in their respective jurisdictions on the front burner, but have largely been content with applying the low-standard, loosely-framed parameters of the existing

systems that are quite susceptible to being easily influenced. There is no indication that both Judiciaries have, in the last decade, engaged stakeholders in a process of improving the judicial appointments system in the respective jurisdictions.

**iv. Judicial Vacancies are not Properly Publicized, thereby Denying Potential Applicants Access to Recruitment Information:** Lower court judicial vacancies are not systematically advertised or are inadequately advertised in both jurisdictions. Notices of judicial vacancies (or those requesting expressions of interest by candidates) are not placed on the websites of both judiciaries, or on the Judiciaries' notice boards, nor yet on notice boards of the respective branches of the NBA as a matter of routine.

In the FCT Judiciary however, notices of vacancies are often placed in courts where the vacancies occur, but on a number of occasions, done in a way that practically denies reasonable notice to potential candidates, thereby effectively shutting them out. Therefore, it can be supposed that many eligible potential applicants for those positions do not access the information about the vacancies when they occur.

**v. The Selection Process is Not Transparent and Open:** Procedures leading to judicial appointments in lower courts of both jurisdictions are not transparent or open, and there is no verifiable process or record to show that persons selected to fill lower court vacancies are selected objectively and meritoriously, following competitive assessments of their individual competencies and skills. Therefore, the process is too vulnerable to being influenced and tele-guided by persons having an interest in the outcomes or interest in particular candidates.

## **B.Judicial Discipline (Accountability)**

There are substantial differences between the two jurisdictions in these area. But their common features include:

**I. Disciplinary Procedures of Both Judiciaries Are Loosely Structured and Not Up to Par:** Given the principles and standards that define an effective disciplinary system, the disciplinary procedures of both the FCT and Lagos Judiciaries fail to meet the minimum thresholds of an effective accountability system.

**ii. Public Awareness of Disciplinary Systems in both Jurisdictions Very Low:** There is very little public knowledge about the disciplinary systems in both jurisdictions and how they operate. Disciplinary or complaint information is not found on the websites of the Judiciaries of both jurisdictions and disciplinary institutions (i.e. the JSCs) function in relative obscurity. This under-serves the court user constituency in this regard, given that there ought to be adequate public information of court users' rights to make complaints, alongside information of how the rights can be exercised. The general view amongst court users is that the disciplinary systems of both jurisdictions are not having much of an impact on the performance of the courts.

**iii. No Evidence That The Disciplinary Systems of Both Judiciaries Run Smoothly or Have Strong Internal Mechanisms:** there was very little evidence suggesting that the disciplinary systems of both judiciaries were operating efficiently and were following through complaints made against judicial officers or court staff consistently and effectively. While there was some evidence that actions were being taken on some complaints, it appeared that whether or not actions were taken or not depended on the exercise of considerable discretion, and, in a number of cases, depended on how hard a complainant pushed to get his or her complaint taken up. Even where a decision was taken to investigate particular complaints, how that investigation took place was also subject to the exercise of personal discretion of court officials.

- iv. **The Disciplinary Systems Promote Assuagement, not Accountability:** In varying degrees, the research found that there appears to be a certain level of institutional hesitance in both judiciaries to sanction judicial officers or court staff for misconduct, even where a liability for misconduct was established. For example, someone may be asked to return a property illicitly acquired from a court user than be formally disciplined for it by a reasonable sanction.
- v. **Proportion of Persons Aggrieved by Conduct of Court Officials Widely Higher than those Who Make Complaints:** many court users interviewed in this study felt dissatisfied with their court-use or attendance experiences and said their vulnerabilities were exploited by court personnel and some of the instances they referenced were disturbing. In spite of this, those who narrated these reports did not do anything about the actions that aggrieved them. The fear that they may be victims of retaliatory action was cited as a major damper to any push for accountability. Therefore, unless the Judiciary instates adequate safeguards for persons who make complaints or report their observations or grievances, or adopts measures encourage the report of complaints in an anonymous way, it is unlikely that court users will develop a more positive attitude to airing their grievances or complaints.

- vi **Feedback on Complaints Made not Guaranteed:** A majority of those who file complaints against judicial officers are not, in a systematic manner, informed of the outcomes of their complaints and whether any action was eventually taken on their



Justice I.U. Bello, Chief Judge of the FCT High Court and Chairman of the FCT JSC

Overall, both judiciaries have made too little efforts to inspire public confidence in their disciplinary process, or demonstrate an adequate level of commitment to ensuring integrity in the lower courts. Although the FCT High Court has fared better in this respect, its disciplinary system is overly influenced by one official. It still does have a long way to go to strengthen its accountability and disciplinary process.

### **Judiciary Specific Findings**

#### **The Judiciary of The Federal Capital Territory**

a. The FCT High Court has recently adopted new complaints procedures. These procedures are written and elaborate and seek to streamline how complaints against lower courts judicial officers and court employees may be made. Information notices detailing how to make complaints addressed to court users have also been produced, and were expected to be displayed in Magistrates courts in the FCT.

b. Other courts in the FCT - Area Courts and Customary Courts - do not have similar systems and rely mainly on extant regulations made by the FCT-JSC. Complaints are often investigated - “mediated” may be a better word - by administrative officers of the courts themselves, and are often not escalated to the JSC for deliberation notwithstanding the regulations.

#### **The Lagos Judiciary**

c. **No Accessible Written Guidelines governing Handling of Complaints:** Although the Lagos State Judiciary has written/published regulations/guidelines governing the receipt and investigation of complaints against lower court judges/court staff, these are not publicly accessible and it took considerable effort to locate them.

**d. Perceptions/allegations of unethical conduct in lower courts are high:** There were many allegations by court users of unethical conduct in the delivery of services in the court room. Some of these reports were disturbing. In spite of this, those who narrated these reports did not do anything about the situation. It did appear that unless adequate safeguards were put in place to protect court users who report their observations or grievances, or measures adopted to encourage the report of complaints in an anonymous way, it is unlikely that court users will develop a more positive attitude to airing their grievances or complaints.



Hon. Justice Olufunmilayo Atilade, retired Chief Judge of Lagos State

[She was Chief Judge of Lagos State at the time when research was undertaken for this report]

# CHAPTER 1

## Why Systems of Judicial Appointment and Accountability are important for Justice

The strength of any system of judicial appointments and accountability has a huge impact on the overall integrity of that system of justice. If the Judiciary does not recruit the most qualified candidates, or does not provide credible opportunity for complaints against its judges to be aired, or take serious action when complaints are made, the quality of the administration of justice in such a system will predictively remain below par and unsatisfactory to court users in that jurisdiction.

*... actions taken by the NJC to reform judicial appointment procedures and strengthen the judicial disciplinary system for superior court judges, should point the way to go for State Judiciaries, in managing issues of appointments and discipline in lower courts. State Judiciaries must not be allowed to pretend that all is well when they are not...*

**Judicial appointments:** Let us take the question of appointments first. At the time of the to constitutional democracy in 1999, Nigeria's judiciary was in a really bad spot - many would say had rock-bottomed following, partly, the impact and consequence of many bad judicial appointments.

Quite a number of influential voices spoke to this. For example, speaking at the 1999 Conference of Judges, (late)former Justice of the Supreme Court, Anthony Aniagolu JSC had lamented that:

**“candidates who are known to be openly corrupt manage to secure appointments as judges. Even less scrutiny is made in the appointment of members of the lower bench”.**<sup>2</sup>

From the Bar, the late Chief F.R.A. Williams, one of Nigeria's foremost advocates, also made the point eloquently when he said that:

***I think the most important instrument for ensuring high quality judges is the appointing authority. If the appointing authority is unable to perform its work well, then you get a number of bad appointments and we are all stuck with those bad appointments. That is the problem. So I believe that in any future revision of the***

<sup>2</sup> Speaking at the same Conference, the late Hon. Justice Niki Tobi of the Supreme Court, also worried that:

***“Although the constitution makes clear provisions on the appointment of judicial officers, the application of the provisions at times bring some problems. There are known instances where recommendations are not made on the merits but on grounds of favouritism and nepotism. That is the position in some cases these days. ... The position is fairly ugly these days”.***

*constitution, we have to look very carefully at the machinery for appointing judicial officers. I have been very gravely disturbed by reports, which have been coming in about the performance of some of them and more particularly, the revelation of corrupt practices.... But we don't want that. In fact, the incidence of corruption among judges would not be as high as it is if the right type of appointments has been made in the first place.*

**The Transition to Civil Rule and Reform Judicial Appointment Procedures:** The case for reforming the system of appointing judicial officers in Nigeria was pressed by many stakeholders particularly after the transition to democracy in 1999. It was already self-evident that major changes were needed given the alarming decline that the Judiciary witnessed over the considerable period of military rule, as well as wide public perceptions that corruption and wrong judicial appointments were major fault-lines of that deterioration. Getting the right people to the bench was considered therefore, one good way of arresting the decline, strengthening the Judiciary and restoring public confidence in it.

At the start, efforts to reform judicial appointments and disciplinary procedures were quite slow off the mark, but gradually gained some traction subsequently; the problem however, was that the reforms have largely been limited to procedures applicable to superior courts of record. In November 2014, the NJC issued new guidelines for the appointment of superior court Judges named "**Extant Revised NJC Guidelines & Procedural Rules for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria** (hereafter called **Revised Guidelines**) to regulate the procedure for all judicial appointments into superior courts of record in the country. The Revised Guidelines make an impressive effort at plugging the deep, unflattering flaws of the Guidelines earlier made by the NJC, which facilitated a patronage system of judicial selection that denied many qualified people access to judicial office. The later (2014) Guidelines alleviated that situation and made a number of important changes to the procedure of appointing Judges.<sup>3</sup>

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<sup>3</sup> These reforms include elements of: **Openness and Transparency** - requiring greater openness and transparency in procedures leading up to judicial appointments, beginning with the *announcements of judicial vacancies*, which must now be done openly, through websites of Judicial Service Commission/Committee (hereafter JSC), notice boards of courts and the Bar (Rule 3:1). **Merit and Competence** – requiring that the heads of the respective JSCs make, from among the applications/nominations, "*a provisional shortlist on the merits*" (emphasis added). **Strengthening of Safeguards** - A number of measures are included for safeguarding against the consideration or appointment of otherwise unsuitable persons, such as: 1. Shortlists of candidates made by the heads of the JSCs are expected to be widely circulated to the Bar, retired and current Judges and members of the JSCs who are expected to give their opinions of the candidates' suitability; (2) persons whose reputations have been tarnished or are low are not expected to be on the list. The Guidelines disqualify candidates who "lobby" or "canvass" for appointments, whether directly or indirectly, or who peddle influence or engage in bad or corrupt behaviour whether in or out of court. (Rules 3:4 and 7, Rule 4:2).

While the 2014 Revised Guidelines for judicial appointments in superior courts may have been a foot in the door, the relationship between the new guidelines and their implementation has been as different as chalk and cheese and very far from satisfactory. Overall, however, the adoption of the Guidelines was itself an acknowledgment that a better framework was needed to deal with a flawed and them represents a deferred promise. However, the Revised Guidelines are applicable only to superior courts of record and not binding on State Judicial Service Commissions (“State JSCs”) or the FCT Judicial Service Committee in their administration of lower courts. Powers of appointments to lower courts are exercised by the respective State JSCs.<sup>4</sup>

**Accountability (Disciplinary) Procedures:** We turn to disciplinary control of Judges. Judicial discipline is an expression of judicial accountability; it expresses the idea that Judges (and court officials for that matter) are answerable for their conduct and will be held liable for any misconduct on their part. A Judiciary that does not have an effective means of ensuring its judges and employees are accountable will predictably foster a culture of impunity within itself, leaving court users at the mercy of officials who can abuse and exploit them, without much regard for consequences. Such a Judiciary will find that many of its users are dissatisfied and frustrated with its services.

Nigeria's judiciary has indeed gone through rough patches of this nature. And still is. But there have been significant efforts to strengthen accountability of the judiciary through improving the process for handling and investigating complaints particularly at the level of the superior courts by the NJC. A Code of Conduct for Judicial Officers (CCJO) as well as a Code of Conduct for Court Employees (CCCE) were adopted, first in 1998 for this purpose. The CCJO has been revised

But the effort to hold judicial officers accountable for their conduct has not been replicated across Nigeria's landscape, and, in many States, accountability of lower court judges and court employees exists at very low thresholds if they do at all, up to this time

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<sup>4</sup>In the case of the FCT, by the Judicial Service Committee.

since then and both Codes establish rules of conduct that judicial officers and court employees are required to observe in the course of discharging their respective duties. In addition to this, the NJC has adopted guidelines governing the reception and investigation of complaints against the conduct of superior courts' judges/justices and the current version of these guidelines is known as the **National Judicial Council 2014 Judicial Discipline Regulations ("Discipline Regulations")**. Using the CCJO and applying its Discipline Regulations, the NJC has sanctioned many Judges and Justices of appellate courts for misconduct, recommending some of them for removal or retirements.

But the effort to hold judicial officers accountable for their conduct has not been replicated across Nigeria's landscape, and, in many States, accountability of lower court judges and court employees exists at very low thresholds if they do at all, up to this time. The pervasive presence of corruption within judiciaries across State jurisdictions reflects the limited progress made in this area as well as the weak systems of accountability found in different jurisdictions. Recently, in October 2016, Nigeria's Vice-President<sup>5</sup> had cause to say, about the Nigerian Judiciary, that it was "severely threatened by corruption" and "activities and actions in the legal profession and the Judiciary in general were threatening both the integrity and existence of the sector....", saying further that the "... trend if allowed [to] continue would completely destroy the legal profession and throw [the] entire judicial system into chaos".<sup>6</sup>

### **Access to Justice and Judicial Appointments and Discipline in Lower Courts**

Weak judicial systems negatively impact public rights of access to justice and justice services, and often translate into an inadequate poor delivery system. It is sad that most State Judiciaries have not taken substantial action to reform the delivery of justice within their jurisdictions and, because of this, many court

If Nigeria's judiciary must regain dignity and confidence, Federal and State judiciaries must do much more to improve how judicial services are delivered; beginning with making sure that the right people are recruited into judicial office and ensuring that everyone involved in the delivery of those services are held accountable to a high degree of performance and accountability

<sup>5</sup> The Acting President at the time – Professor Yemi Osinbajo SAN.

<sup>6</sup> In an address at Ado Ekiti. See <http://thelagostimes.com.ng/judiciary-severely-threatened-by-corruption-osinbajo>

users groan under the distress of flawed, inefficient and ineffective processes through which justice is administered. It is no compliment to the Nigerian Judiciary that it has remained placidly unmoved by these concerns, and unresponsive to the needs of court users in various states. This attitude basically translates to a “take it or leave it” reality, and there is no one to call State Judiciaries to account or require them to articulate a better framework for the delivery of justice in their territories. If the NJC has seen clearly that it is important to reform procedures of judicial appointments and discipline to strengthen the administration of justice in superior courts, why is there no pressure on State judiciaries to do something similar? Why are lower courts that cater to the needs of a vast majority of Nigerians not attracting commensurate attention? Are lower courts not essential agencies and vehicles of justice? Is justice administration in lower courts not required to function at efficient and competent levels? Shouldn't courts of records across board insulate court users from defects which plague the organisational structures of the judiciary while simultaneously making genuine effort to rid themselves of said flaws which more often than not wreak injustice on the affairs of court users?

#### Choice of Jurisdictions where Study was Carried Out

We chose to look at what was obtainable in two judiciaries in Nigeria - the FCT Judiciary and the Lagos State Judiciary - in relation to the issues of appointments and accountability of judges. While two jurisdictions out of thirty-seven, appears like a small sample size, there is already a body of anecdotal evidence suggesting that issues of appointment and discipline of lower court judges have not benefitted from much attention from State judiciaries across Nigeria and the situations in the judiciaries we have studied could be fairly representative of a broad segment of other judiciaries across the country.

If the NJC has seen clearly that it is important to reform procedures of judicial appointments and discipline to strengthen the administration of justice in superior courts, why is there no pressure on State judiciaries to do something similar? Why are lower courts that cater to the needs of a vast majority of Nigerians not attracting commensurate attention?

We think that the actions taken by the NJC to reform judicial appointment procedures and strengthen judicial disciplinary system for superior court judges, should point the way to go for State Judiciaries, in managing issues of appointments and discipline in lower courts. State Judiciaries must not be allowed to pretend that all is well when they are not, or to remain indifferent in the face of the poor performance of their judicial systems to the needs of their various users and stakeholders. If Nigeria's judiciary must regain dignity and confidence, Federal and State judiciaries must do much more to improve how judicial services are delivered; beginning with making sure that the right people are recruited into judicial office and ensuring that everyone involved in the delivery of those services are held accountable to a high degree of performance and accountability.

## CHAPTER 2

### The Constitutional Role and Powers of the Judicial Service Commission/Judicial Service Committee of the FCT

#### Introduction

Any discussion of judicial appointments and accountability in State Judiciaries, or the FCT Judiciary, must, per force, reference the pivotal role of the Judicial Service Commission/Judicial Service Committee (of the FCT) in both processes. The Constitution gives these bodies power over matters related to the appointment, discipline and dismissal of “judicial officers” and court employees of the various States’ Judiciaries and that of the FCT. So we propose to outline the composition and powers of these bodies to begin with.

The Constitution establishes a State Judicial Service Commission for each State of the Federation (i.e. one for each of the 36 States (Sec. 197). It also establishes the Federal Judicial Service Commission (hereafter FJSC) for the Federal Judiciary (Sec. 153) and a Federal Judicial Service Committee for the FCT Abuja (Sec 304).

The composition of the State Judicial Service Commission is as follows:

- (a) the Chief Judge of the State, who shall be the Chairman;
- (b) the Attorney General of the State;
- (c) the Grand Kadi of the Sharia Court of Appeal of the State, if any;
- (d) the President of the Customary Court of Appeal of the State, if any;
- (e) two members, who are legal practitioners, and who have been qualified to practice as legal practitioners in Nigeria for not less than ten years; and
- (f) two other persons, not being legal practitioners, who in the opinion of the Governor are of unquestionable integrity<sup>7</sup>

The composition of the Judicial Service Committee of the FCT Judiciary is as follows:

- (a) the Chief Judge of the FCT, Abuja (Chairman).
- (b) the Attorney-General of the Federation;
- (c) the Grand Kadi of the Sharia Court of Appeal of the FCT, Abuja;

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<sup>7</sup> Section 5 of Part 11 of the 3<sup>rd</sup> Schedule to the Constitution.

- (d) the President of the Customary Court of Appeal of the FCT, Abuja;
- (e) one person who is a legal practitioner and who has been qualified to practice as a legal practitioner in Nigeria for a period of not less than twelve years; and
- (f) one other person, not being practitioner, who in the opinion of the President is of unquestionable integrity.

### **Judicial Service Commissions and their Troubled History**

State and Federal JSCs are responsible for, among other things, the appointment, dismissal and disciplinary control of (lower court) judicial officers and court employees in their respective jurisdictions. The Constitution establishes the State JSC under Section 197 (1) (C), with its composition, functions and powers set out in Part II of the Third Schedule to the Constitution. A State JSC is headed by the Chief Judge. By Sections 202 and 204 of the 1999 Constitution (as amended), the State JSC is independent, and may make its own regulations. The Constitution provides further that in the exercise of its powers, the State JSC shall not be subject to the directives and control of any other authority, or person. Similar provisions apply to the Judicial Service Committee of the FCT<sup>8</sup> (Sec. 304(2)).

In spite of the guarantees of their independence, however, State JSCs have amassed a baggage of notorious history and have not lived up to expectation. Historically, those of their number who are government appointees have been widely regarded as being the eyes and ears of the government in power, and who will ensure that the JSC does what government bids it to do. Under the 1979 Constitution, for instance, it was widely believed that many JSCs were influenced or controlled substantially by State Governors and were instrumental in ensuring that political loyalists could be rewarded with judicial appointments. Reflecting on the Judiciary's experience under that Constitution, former Chief Justice of Nigeria Justice Mohammed Bello stated poignantly, in a Memorandum, that:

*... experience has shown that between 1979 and 1983, some civilian Governors abused the Commissions [Federal Judicial Service Commission and States' Judicial Service Commissions] through their power of appointment of the majority members of the Commissions.*

*Many unsuitable persons were employed as Judges of States High Courts. Most of the Judges purged by the Military Regimes were the products of such abuse.*

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<sup>8</sup> <http://jsc.lagosstate.gov.ng>

The 1999 Constitution has done nothing to strengthen the independence of State JSCs in order to give them stronger insulation from political influence or control. On the contrary, the 1999 Constitution weakens their autonomy by increasing the numerical strength of State (executive branch) appointees into membership of the Commission. Under the 1979 Constitution, besides the Attorney General, a State Governor could only appoint two (2) members of the Commission. Under the 1999 Constitution, a Governor may appoint five (5) members out of seven (7) or even up to eight (8) members of the JSC in some cases. Interestingly, the situation is however, different with respect to the JSC-FCT.<sup>9</sup>

Thus, while JSCs were created to maintain the independence of the Judiciary and ensure proper management of its affairs by a representative body of key stakeholders in the judicial system, State JSCs have, historically, been weak institutions unable to effectively safeguard the Judiciary's independence at the State level. If history provides a useful context, it is not far-fetched to say that across the Nigerian landscape, outside of the ex-officio members of the JSCs (with the exception of the Attorney-General) the other members of JSCs have tended to be those with political loyalties to the government of the day who can be trusted to keep their fingers on the pulse of what "government" wants the Commission to do in any particular case, whether it be in the appointment of judicial officers or their removal.



**Hon. Justice O. Oke,  
Current Chief Judge of Lagos State**

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<sup>9</sup> The variation arises from the types of courts established within the State. A State with a Customary Court of Appeal and a Sharia Court of Appeal will have heads of these courts as members of the State JSC.

## **CHAPTER 3**

### **The Framework For Appointing And Disciplining Judges In The FCT Abuja And Lagos Judiciaries**

#### **The Judiciary of the Federal Capital Territory**

The system for appointing judges is administered by the Judicial Service Committee of the FCT. The following legislations / regulations govern appointment of lower court judges of the FCT Judiciary:

The Constitution of the Federal Republic of Nigeria 1999 (as amended);

FCT Judicial Service Committee Regulations (1985);

Public Service Rules of the Federal Republic of Nigeria 2008;

The District Court Laws of the Northern Nigeria (N.N.L.N. 149 of 1961).<sup>10</sup>

The FCT Area Court (Repeal and Amendment) Act 2010.<sup>11</sup>

Sharia Courts Law 1960.<sup>12</sup>

Order VI of the Sharia Court of Appeal Rules, Abuja.

The Customary Court Act.<sup>13</sup>

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<sup>10</sup> This created all the District Courts in the (then) Northern Region of Nigeria, and, by implication, the District Court of the FCT. It also made provisions for the District Court Rules currently being used in the Magistrates Courts of the FCT. The District Court of the FCT is presided over by a District Judge (the equivalent of a Magistrate in other jurisdictions). Section 7 of the *District Court Law* provides that:

*“The public Service Commission shall have power to appoint District Judges which shall be styled Senior District Judges and District Judges of the first, second and third grade, and may appoint any fit and proper person to be a District Judge of such grade as it may think fit”.*

<sup>11</sup> Section 3 of the Act empowers the JSC to appoint and exercise disciplinary powers on any Area Court judge. While the Act did not make any specific provisions regarding the criteria for appointment as a judge of the FCT Area Court, it, however, provides that *“the appointment and discipline of an Area Court Judge shall be in accordance with the rules and regulations applicable to Area Court Judges”*.

<sup>12</sup> The power to appoint Judges of the FCT Sharia Court and the FCT Sharia Court of Appeal alike vests in the Judicial Service Committee. To qualify for appointment as a Judge of the Sharia Court, the proposed appointee must be qualified to practice law in Nigeria and must be substantially knowledgeable in Sharia laws and practices.

<sup>13</sup> The Customary Court, created in 2007, is established by virtue of the *FCT Customary Court Act 2007*, (Act, No, 8) to adjudicate on all matters relating to Customary Laws amongst persons within its territorial jurisdiction. Section 5(1) of the *FCT Customary Court Act* vests the power to appoint, dismiss, suspend or otherwise exercise any disciplinary control over any member of a Customary Court in the Judicial Service Committee. But in exercising its power of appointment the Committee is guided by the Provisions of Sections 4 and 5 of the *FCT Customary Court Act 2007*. This section provides that for any person to qualify for appointment as the **Chairman** of a Customary Court in the FCT, such a person shall be qualified to practice as a legal practitioner in Nigeria and shall have been so qualified for a period of not less than 5 (five) years.

By virtue of the provisions of Rule 010101 of the Public Service Rules (2008), the judges of the FCT lower courts are public servants, and are governed by the provisions of the Public Service Rules.<sup>14</sup>

Rule 020207 of the Public Service Rules provides that the employment process shall be undertaken by the Federal Civil Service Commission. The following procedure is employed for this purpose:

- Vacancies shall be advertised by the Federal Civil Service Commission;
- When a pool of applications and CVs are collected, the short-listed candidates shall be subjected to examinations; and
- Based on their performance, the successful candidates shall be employed; and posted accordingly.

Section 304 of the 1999 Constitution (as amended) however establishes the FCT JSC and Part 3(2(2))(c) of the Third Schedule to the 1999 Constitution empowers the FCT JSC to appoint, promote and exercise disciplinary control over judicial officers and the staff of the FCT Judiciary. Therefore, as the Constitution overrides every other legislative instrument, the JSC is the appropriate body that can employ/appoint staff of the FCT Judiciary and judicial officers of the FCT lower courts.

Nevertheless, the JSC takes account of the following instruments in exercising its powers to appoint judicial officers and court staff:

The Judicial Service Committee Regulations of 1985;

The Public Service Rules;

The Specific Acts of the Relevant Courts;

The Constitution of the Federal Republic of Nigeria.

Part iv (12 - 14) of the FCT Judicial Service Committee Regulations 1985 (as Amended in 1994) provides that:

- (1) Where vacancies are not to be filled solely by persons already in the judiciary, the public shall, unless the Committee otherwise directs, be informed by advertisement of the existence of such vacancies in time to enable candidates to make their applications in accordance with that advertisement.

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<sup>14</sup> Furthermore, the definition of “Civil Service” under Rule 01010 3 of the Rules does not include the officials of the Judiciary; therefore Judiciary staff are regarded as public servants, and, accordingly, governed by the provisions of the *Public Service Rules*

- (2) The Committee shall accord to the claims of meritorious officers in the Judiciary of the FCT to take precedence over any comparable claims of persons not already in the service of the Judiciary of FCT unless the Committee otherwise directs in any particular case.
- (3) The FCT Judicial Service Committee may constitute selection boards to interview candidates either generally or in relation to a particular vacancy.
- (4) Unless the FCT Judicial Service Committee otherwise directs, the Chief Registrar may constitute, either generally or in relation to a particular vacancy, a judicial selection board or boards to advise him before he makes a recommendation to the FCT Judicial Service Committee
- (5) Where a selection board is constituted, the board shall forward its report to the Secretary of the FCT Judicial Service Committee.
- (6) Where any delay is likely to result from carrying out the procedure prescribed by the Selection Board, and the delay appears to the Chief Registrar likely to cause serious inconvenience, he may so inform the Committee and make recommendations to it for a person to act in the office concerned and the Committee may approve such recommendations without further compliance with these Regulations.(Emphasis added)

Part iv (11) of the *FCT Judicial Service Committee Regulation 1985* provides that the FCT JSC is empowered to exercise supervision over and approve all methods of selection for the appointment of the lower court judges in the FCT.

In practice, when a judicial vacancy exists in the lower courts of the FCT Judiciary, the vacancy could be filled solely by persons already in the employment of the judiciary without any form of advertisement or notice to outsiders. In such cases, the Chief Registrar may make recommendations to the Committee, of persons who may be suitably appointed/promoted to fill the vacant position. The Chief Registrar may, also, at the direction of the Committee, advertise the vacancy to the general public and the method of such advertisement is recommended by the same officer:

the advertisement may be in a Gazette, or in newspapers or on the walls of the court. Occasionally letters of such advertisement are sent out to the Nigerian Bar Association for interested members of the Bar to apply.

However, there is evidence suggesting that the FCT Judiciary, sometimes, only pays lip service to requirements to advertise judicial vacancies in lower courts. In a certain case, an advert was placed on the notice board of the court for a few hours and removed at the close of work on that same day. In another instance, some adverts were placed on the boards shortly before the deadline for applications expired and then left open on the board for several weeks thereafter.

It must be inferred, that the aim of these “short-window” advertisement periods was to allow only a limited number of persons access information of the advertisement and respond to it within the available time left on the deadlines.

Sometimes, even people within the Judiciary are not aware that a recruitment exercise is taking place. In a particular case, a judicial officer of a lower court had gone to submit his “return of cases” to the JSC. Within the JSC premises, he mistakenly opened a door of a meeting room and was told by an official that they were conducting interviews for magistrates and that he should submit his returns in another office. According to this judicial officer, neither he, nor any of his colleagues knew that a process was on-going to recruit judicial officers and no advertisements were known to have been made.

### **Screening of Applications and Question of “Privileged Candidates”**

All applications and curricula vitae submitted are screened by the JSC but preference is given to serving Judiciary staff. When persons from within the Judiciary are selected for appointment as judicial officers to fill FCT vacancies, selections are often made from high-ranking officers such as registrars, senior registrar I, senior registrar II (including legal/research assistants) and principal registrars.

Therefore, from the very beginning, the selection process is skewed in favour of internal applicants, and this comes at the expense of others who may actually hold stronger credentials for such positions.

The JSC may even employ/appoint a judicial officer even without advertisements on some occasions. It also lies within the discretion of the Committee to **summon any of the candidates for any vacancy for interview by the Committee notwithstanding the procedure set out in any regulation (See Pt. iv (13) of the JSC Regulations).**

HOWEVER, THERE IS EVIDENCE THAT SUGGESTS THAT THE FCT JUDICIARY SOMETIMES, ONLY PAYS LIP SERVICE TO THE RULES REQUIRING IT TO ADVERTISE JUDICIAL VACANCIES IN LOWER COURTS

## **Judicial Appointment Procedures in Lagos State**

Like other States of Nigeria, Lagos State has a Judicial Service Commission (JSC) headed by the Chief Judge of the state High Court. Besides Nigeria's Constitution, two legislations provide the framework for recruiting lower court judges and court staff and holding them accountable for their conduct. These are the Magistrate Courts Law of Lagos State 2009(as amended) - ("MCL") and the Customary Court law of Lagos 2011. These laws provide only the basic requirements for appointments and discipline but are short on specific details, particularly on the parameters on which our inquiries are based. It is not clear whether the State's Civil Service Rules/Regulations are regarded as being applicable to the Judiciary.

### **Appointment of Magistrates**

Section 4 (1) of the MCL provides that: "*There shall be appointed by the Commission, such number of Magistrates as may be specified from time to time by notice in the Gazette*

*(2) Any legal practitioner of not less than 5 years post call with relevant experience, shall be eligible for appointment as a magistrate by the Commission.*

*(3) All magistrates appointed to the magistracy of the state shall serve as judicial officers to the exclusion of any other function as may be provided for under this Law*

*Section 5-A Magistrate, upon appointment shall before proceeding to discharge the duties of his office take an oath or affirmation of Office to be administered by the Chief Judge of the State.*<sup>15</sup>

It is a matter of some surprise that there are no other (written/codified) administrative guidelines that provide more specific details on procedures for appointments or discipline of judicial officers. In the course of our research, we interviewed a member of staff of the Commission who gave us a verbal description of the procedure, and it is as follows:

- The Commission deliberates and approves to recruit magistrates.
- The Chief Judge writes the Governor of the state informing him of the Commission's decision to appoint magistrates.
- The Commission writes to all judges of the High Court of Lagos State requesting them to nominate suitable candidates.
- Interested candidates who meet the requirement prescribed by Section 4(2) of the MCL may apply but having a post graduate degree in law is an added advantage.
- The interested candidate must get a letter of good standing from their local branch of the Nigerian Bar Association.
- Such a candidate, alongside the above documents, must purchase an application form of N1,000.00 (One thousand Naira) from the Commission, and submit same to the Commission.
- Qualified candidates are shortlisted but this is done totally at the discretion of Commission.
- The shortlisted candidates are given a written test, set and determined by the Commission.
- Successful candidates from the written test go for an oral interview conducted by the Commission.
- The Commission then considers the profiles of the successful candidates and makes the appointments.

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<sup>15</sup> The Magistrate Court law and rules 2009 & 2010.

## **Appointment of Customary Court President and Members**

In relation to appointments into customary courts, the Customary Court Law provides thus:

*Section (1:) The Lagos State Judicial Commission (referred to in this law as “the Commission”) shall establish the customary courts acting on the recommendation of the Attorney General, subject to the approval of the Governor.*

***Section (3): The Commission shall have power to-***

- a) Appoint as many members of the Customary Court as may be required from time to time, by Legal Notice in Lagos State Official Gazette and*
- b) Dismiss or exercise disciplinary control over such members.*

The Customary Court Law does not provide any further details; however, it does make some provisions regarding the qualification and character of persons aspiring to be appointed into office. The Law provides as follows:

- For a person to hold office as a president or member of the customary court, such person must be a person of proven character, and good standing in the society.
- A person of means properly placed by his or her circumstance to perform the function as a member of the customary Court.
- A person with educational qualification not below school certificate.
- Must have attained the age of 50 years.<sup>16</sup>
- The vacancy is placed on the public notice board of the commission.
- Interested candidates who meet the requirement are advised to come to the Commission to purchase an application form for the sum of N500.00 (five hundred Naira) only.
- Shortlisted candidates are determined by the Commission.
- Shortlisted candidates are then invited for a written test by the Commission.
- Successful candidates are invited for an oral assessment, after which they are recruited, by the Commission.

It is instructive to note that the procedures take (or are expected to take) about two (2) months from commencement to conclusion. Our research shows that members of the public are rarely aware when vacancies are advertised, and this is not surprising given that not many members of the public know they can apply for these positions or know where they can find the relevant information about making an application.

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<sup>16</sup> Section 5(1) of the Customary Court Law 2010.

## **General Observations: What the Selection Procedures of Both Judiciaries tell Us**

1. The applicable laws and regulations in both jurisdictions furnish broad stipulations concerning how the selection process should be conducted, and it is obvious that the laws/regulations could offer a good conceptual framework for ensuring a fair, credible outcome of that process. In the hands of administrators who want to produce objectively fair results, the frameworks are quite enabling. However, where those who manage the process desire to curve the selection process to serve their own ends, the framework does not do much to stop them. The requirements they impose are framed in ways that are too loose to offer any meaningful safeguard against their contravention.

The frameworks lack critical specificities, are loosely worded and are quite “dated” as they stand. The existing legislations/regulations were framed at a time when the use of information technology in public institutions was at relatively low thresholds in Nigeria; therefore, they fail to make any reference to the use of modern information technology in advancing access to information for members of the public which could have taken care of the information deprivation and fairness gaps found in the recruitment procedures. A modern review of those legislations/regulations should, for instance, require that vacancies be placed on the websites of the Judiciaries in addition to other means of public advertisement.

Therefore, there are dissemination of information issues: information about vacancies is not widely disseminated in both jurisdictions, and it is safe to assume that many of those who are qualified for these positions and could be interested in applying for them are effectively denied information vacancies are not well advertised.

2. Moreover, there are no objective means of verifying that the persons selected for appointments in both jurisdictions following the respective procedures of appointments are indeed selected on the merit or were the most qualified.
3. There are no safeguards against lobbying by, or on behalf of the candidates.

4. It would clearly be better to supplement the judicial selection procedures established by current instruments in both jurisdictions with additional provisions that plug the existing gaps, and strengthen the objectivity of the selection process. New guidelines should also address the lack of transparency surrounding the operationalization of the judicial appointments framework.

In conclusion, as things stand, it is difficult to establish that the system of appointments of lower court judges in both jurisdictions is merit-based, competitive, transparent and fair. Overall, the implication of these weaknesses is that the recruitment systems for lower court judges in both Lagos and the FCT Judiciaries fail to meet basic standards of openness, accessibility, transparency and competitiveness. And this is a problem, because these flaws create serious risks for the administration of justice in these jurisdictions.

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## **CHAPTER 4**

### **Ensuring Accountability in the Exercise of Judicial Power: Disciplinary Control of Lower Courts**

#### **The FCT Judiciary**

The Constitution, alongside other legislations, provide for the powers of the Judicial Service Committee(FCT JSC) to exercise disciplinary control over judicial officers and staff of the FCT Judiciary.

Under the Constitution, the FCT JSC has powers *inter alia* to appoint, promote, and exercise disciplinary control over the;

- Chief Registrars of the High Court, the Sharia Court of Appeal and the
- Customary Court of Appeal of the FCT
- Magistrates, Judges and Members of the District Courts of the FCT
- Judges of the Area Courts of the FCT Abuja
- All members of staff of the Judicial Service of the FCT Abuja not otherwise specified in this Constitution; and
- All members of Staff of the JSC of the FCT.

Some specific Acts also grant further recognition to the powers of the FCT JSC. For instance, Section 5 Customary Court Act 2007 provides as follows:

- 5.- (1) *The Power to Appoint, Dismiss, Suspend or Otherwise Exercise any Disciplinary Control Over any Member of a Customary Court shall Vest in the Judicial Service Committee.*
- (2) *The Judicial Service Committee shall make rules or regulations providing The terms and conditions of service of Members of the Customary Court.*

The disciplinary power of the FCT JSC is invoked when an allegation of misconduct has been made against any judicial officer or staff employed by the Committee. In exercising these powers, the Committee is guided by the provisions of the FCT JSC Regulations, although it is not clear the extent to which the Committee considers the Public Service Rules as binding on it in this respect.

According to the Regulations, “*Any misconduct by an officer shall be dealt with under these Regulations as soon as possible after the time of its occurrence.*” (Emphasis added)

Section 30(1) of the Regulations defines “misconduct” to be “*a specific act of wrong doing or improper behaviour which is inimical to the image of the Public Service and which can be investigated and proved*”. It can also lead to termination and retirement”. It includes the following acts:

- (a) Scandalous conduct such as immoral behaviour, unruly behaviour, drunkenness, foul language, assault, battery;
- (b) Refusal to proceed on transfer or to accept posting;
- (c) Habitual lateness to work;
- (d) Deliberate delay in treating official document;
- (e) Failure to keep records;
- (f) Unauthorized removal of public records;
- (g) Dishonesty
- (h) Negligence;
- (i) Membership of cults;
- (j) Sleeping on duty;
- (k) Improper dressing while on duty;
- (l) Hawking merchandise within office premises;
- (m) Refusal to take/carry out lawful instruction from superior officers;
- (n) Malingering;
- (o) Insubordination; and
- (p) Discourteous behaviour to the public.<sup>17</sup>

The regulations further define “Serious Misconduct ”as“ *a specific act of very serious wrongdoing and improper behaviour which is inimical to the image of the service and which can be investigated and if proven, may lead to dismissal*”<sup>18</sup>”.[Emphasis provided].

Rule 030402 of the *Public Service Rules* lists serious acts of misconduct to include:

- (a) Falsification of records;
- (b) Suppression of records;
- (c) Withholding of Files;
- (d) Conviction on a criminal charge (other than a minor traffic or sanitary offence or the like);
- (e) Absence from duty without leave;
- (f) False claims against Government Officials;
- (g) Engaging in partisan political activities;
- (h) Bankruptcy/serious financial embarrassment;
- (i) Unauthorised disclosure of official information;

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<sup>17</sup> See r. 030301 of the *Public Service Rules*.

<sup>18</sup> See r. 030401 of the *Public Service Rules*.

- (j) Bribery;
- (k) Corruption;
- (l) Embezzlement;
- (m) Misappropriation;
- (n) Violation of Oath of Secrecy;
- (o) Action prejudicial to the security of the State;
- (p) Advance Fee Fraud (Criminal Code 419);
- (q) Holding more than one full-time paid job;
- (r) Nepotism or any other form of preferential treatment;
- (s) Divided loyalty;
- (t) Sabotage;
- (u) Wilful damage to Public property;
- (v) Sexual Harassment; and
- (w) Any other act unbecoming of a Public Officer.

It is not only the Regulations that provide a basis for disciplinary action. The *Code of Conduct for Judicial Officers*(CCJO) as well as the *Code of Conduct for Court Employees*(CCCE) are also applicable standards governing the conduct of judicial officers and court employees. The violation of any of the Rules contained in the respective Codes may trigger disciplinary action against the defaulting officers.<sup>19</sup>

By virtue of the provisions of Part VI of the *FCT Judicial Service Committee Regulations*, petitions by aggrieved persons against the conduct of a judge of an FCT lower court or court staff should be addressed to the Chief Registrar of the FCT High Court, who is expected to route the complaint to the FCT JSC. When a case comes to the attention of the FCT JSC, if the Committee is of the opinion that disciplinary proceedings should be instituted against an officer, the Committee may, notwithstanding any other provision of the Regulation, “direct the Chief Registrar to institute such proceeding in accordance with the Regulations”. Alternatively, the Committee may, by itself, initiate proceedings in that behalf in such manner as it thinks fit.<sup>20</sup>

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<sup>19</sup> It is also not clear whether other instruments – such as the *Code of Conduct of Public Officers* as spelt out in the 5 Schedule to the *1999 Constitution*”, the Public Service Rules and the Civil Service Rules are applicable to court judges and employees and can form the basis of disciplinary action against them.

<sup>20</sup> See Section 29 of the JSC Regulations.

In practice, rules governing the consideration of petitions are not regarded as hard and fast with regard to which person or body handles them by the FCT JSC. When petitions arrive at the Chief Registrar's table, he sometimes forwards those petitions to other officials of the FCT High Court or officials of other courts within the FCT Judiciary where the complaints concern those courts. The Chief registrar could direct the complaints/petitions to the Director of Magistrates, an administrative office within the FCT High Court for example, if the complaint is against a Magistrate; he could direct those petitions to the Director of Area Court (for Area Courts/Sharia Courts) or to the Deputy Chief Registrar, Inspectorate Division of the Customary Court of Appeal, for the Customary Courts.

This department of the applicable Court in turn conducts preliminary investigations into those complaints and forwards its observations to the Chief Registrar of the High Court. Based on their recommendations, the Chief Registrar exercises a discretion to summarily dismiss the complaints or send them to the FCT JSC.

Upon referral of petitions to the Committee, the Committee causes a query to be issued to the affected judicial officer or staff. Where not satisfied with the response of the said officer or staff, the Committee would constitute an investigative panel to look into the complaint. The Investigative Panel is usually constituted by a Chairman, Secretary and Members, the number of which remains at the discretion of the Committee.<sup>21</sup> There are no specific provisions governing how to route petitions against the Chief Registrar.

The Investigative Panel would usually invite the petitioner and person complained against (“respondent”) jointly or separately to its proceedings. The respondent is required to file a written defence to the petition against him/her within a specified period of time (usually seven days) addressed to the Secretary of the said Panel. The failure of a respondent to file a defence within the stipulated time is construed as insubordination and possibly an admission of the allegation, which may lead to a disciplinary action. Upon receipt of the written defence, the Petitioner is invited to lead evidence - oral or documentary - to prove his or her case. An opportunity is further given to the respondent to defend himself/herself in person or by a legal practitioner of his/her choice.

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<sup>21</sup> In practice, only a member of the JSC can be appointed Chairman of an Investigative Panel. The Secretary of an Investigative Panel is usually a high-ranking Management Staff of the Court (e.g. the Director of Administration). The other Members of the Panel are chosen randomly from the management of the Lower Courts.

### **Commencement and Duration of Disciplinary Investigations**

The FCT JSC Regulations provide that disciplinary proceedings must swing into action “*as soon as possible*”. However, there is no specific length of time between the time when a complaint is received and the conclusion of an investigation, but the terms of reference of the Panel will usually state its life span. However, the disciplinary procedure is deemed to commence when the respondent is invited to defend himself or herself. However, the *Public Service Rules*<sup>22</sup> provide that all disciplinary procedures must commence and be completed within a period of 60 days except where it involves criminal cases, but it is not clear if the FCT JSC regards this rule as binding on it. At the conclusion of the panel's investigations, it makes its findings and recommendations to the FCT-JSC.

Nevertheless, in any disciplinary proceedings instituted against a judicial officer or judiciary staff, if the Committee considers that the interest of the judicial service requires that such officer or staff should cease forthwith from exercising the powers and functions of his/her office, the Committee may suspend such a person from office by placing him/her on interdiction in the case where the affected official holds an appointment other than a temporary appointment. In the case of a holder of a temporary appointment, such an appointment may be terminated and one month's salary paid to the official in lieu of the appropriate notices.<sup>23</sup> Persons on interdiction are placed on half salaries.<sup>24</sup>

### **The “Ombudsman” Unit of the High Court**

In 2013, the (then) Chief Judge of the FCT High Court Hon. Justice Bukar (rtd) created an “Ombudsman” Unit of the FCT High Court as a department within the Abuja Multi Door Court House, giving it responsibilities to investigate and resolve complaints against judicial officers and staff of the High Court “branch” of the FCT Judiciary. The creation of the Ombudsman was meant to strengthen the grievance redress system and offer a centralized institutional forum for resolving complaints against staff and judicial officers of the High Court. According to the instrument<sup>25</sup> setting it up, the Ombudsman was to “provid[e] a platform for the general public and in particular, the court users, to effectively participate in the confidence building process and to redress problems and complaints when they occur” and to “...provide for a responsive, dignified and more user-friendly courts and restore public confidence in the FCT Judiciary”.

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<sup>22</sup> 030307 (xiii)

<sup>23</sup> See Part VI (32) of the FCT Judicial Service Committee Regulations 1985.

<sup>24</sup> In cases of emergency, the Chief Registrar may order the immediate withdrawal of the powers and functions of a Junior Ranking Officer/Staff and then report to the FCT JSC through the Chief Judge, the Grand Khadi or the President of the Customary Court of Appeal for ratification. But if the JSC refuses to ratify the order, the officer(s) shall be informed accordingly.

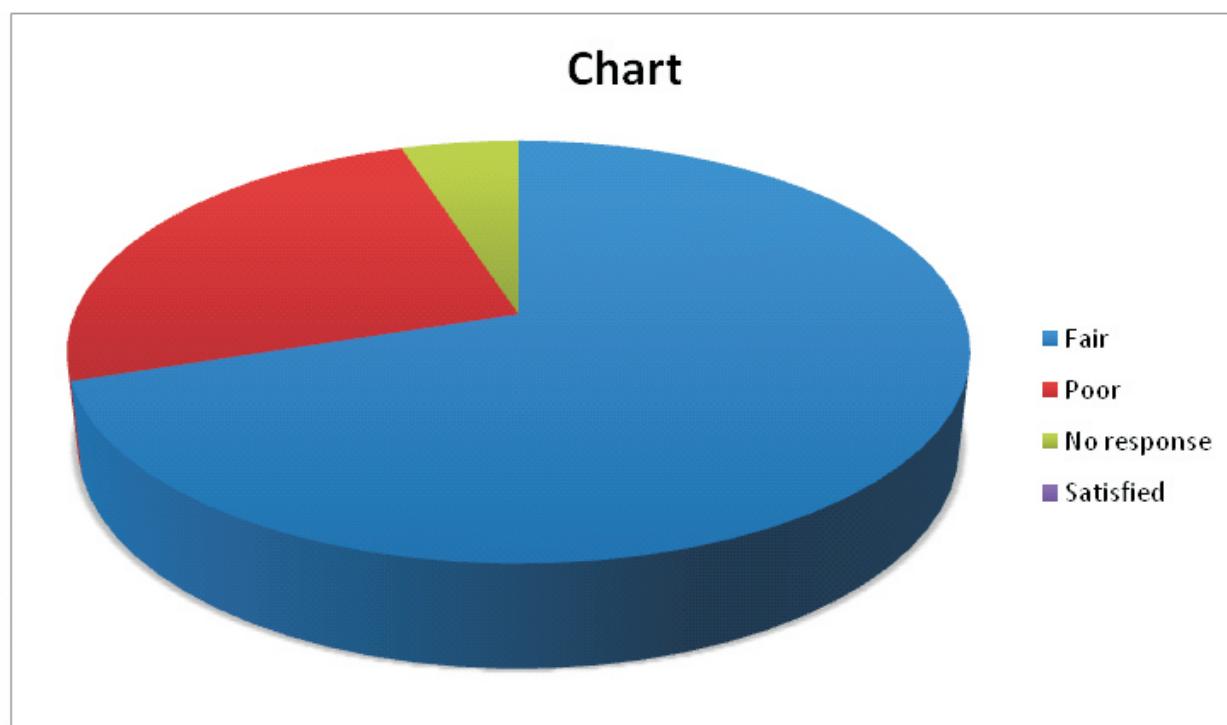
<sup>25</sup> Practice Direction dated 3 Dec. 2013

The Ombudsman has powers to “invite and hear from the complainants or petitioners and the court staff against whom such complaints or petitions have been made” and “enquire as to compliance or otherwise of any legal or administrative procedures in the discharge of the court service/s complained against”. To accomplish this, the Ombudsman was given “...access to such official records and information as are necessary to enable him exercise his functions.”

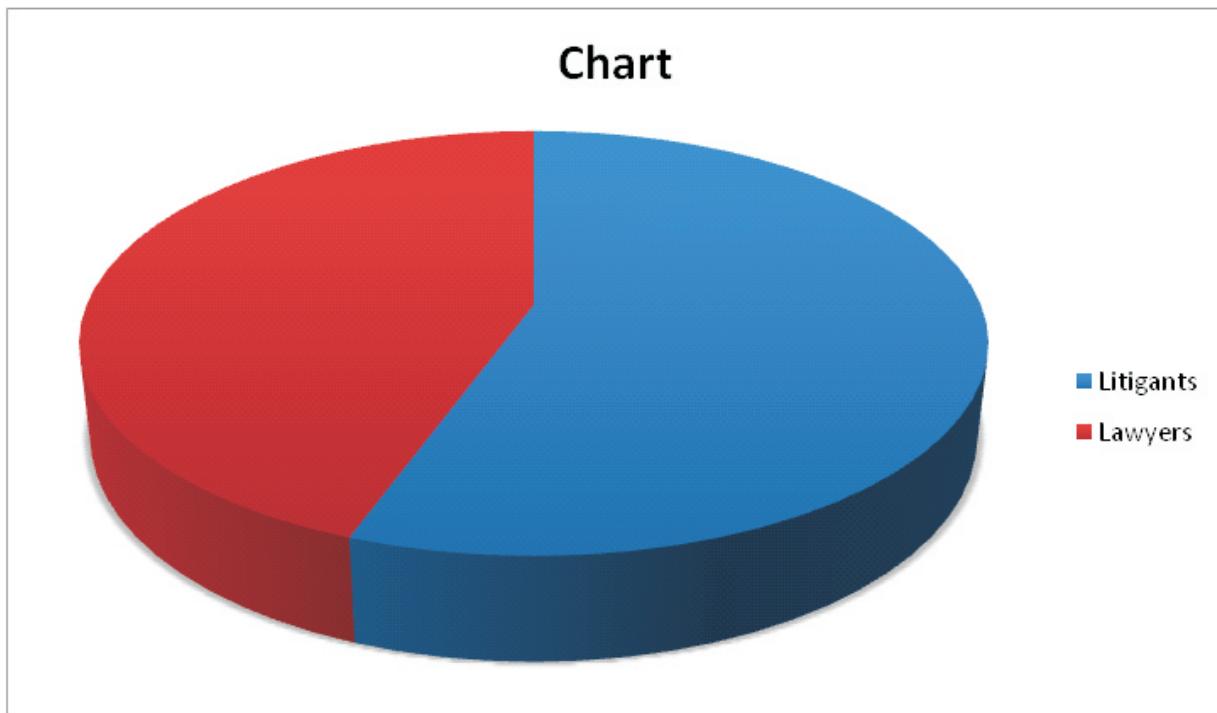
The Ombudsman Unit Head Salaudeen Abdulateef, speaking with our researcher for the FCT Judiciary, confirmed that currently, the Ombudsman is “not very active”, saying that there was a drastic drop in the rate of referral of cases to the Unit. According to him, this may be due to the creation of other Committees with overlapping jurisdiction to the Ombudsman to investigate complaints against staff and judicial officers of the FCT High Court. These are the Senior Staff Disciplinary Committee and the Junior Staff Disciplinary Committee. He, however, recommended that television and radio jingles would go a long way in creating awareness as to the appropriate means of channeling complaints to the FCT Judiciary.

## COURT USER SURVEYS

### Feedback on satisfaction of court staff with disciplinary procedures in the FCT Judiciary



**Feedback on the level of awareness of litigants and lawyers of disciplinary procedures in the FCT Judiciary**



## **Some Notable Features of the FCT Disciplinary System**

**1. Disciplinary Mandates are overly Diffused and Shared Amongst Officials and Ad Hoc Bodies.** Although the Constitution makes the FCT-JSC the sole authority to exercise disciplinary control over the judicial and non-judicial officers of the FCT Judiciary, that authority has now been administratively devolved to a chain of multiple actors and committees which have overlapping mandates over any specific case. A complaint against a Magistrate, for example, may be referred by the Chief Registrar to the Director of Magistrates, or to the Ombudsman, or, even to the FCT-JSC that may likewise set up an investigation panel comprised of both members and non-members of the Committee. It is not clear whether the FCT- JSC is even aware of all the petitions that ought ordinarily to come before it since those petitions are re-channelled to other bodies by the Chief Registrar of the High Court before they make their way to the JSC, if they ever do.

Therefore, the complaints determination procedure in the FCT Judiciary does not, in practice, run on the template of the fixed framework in the way the JSC Regulations have provided, or operate in a default, pre-defined way so that it is known beforehand where a complaint will be sent to and what the procedure for resolving it will be. A complaint can be processed through any of the adhoc or available administrative officials or body that exercise some responsibilities over the subject of the complaint.

The vast amount of discretion to decide how and where to route a complaint placed in the hands of a single official of the FCT Judiciary is arguably a draw-back for its disciplinary system. To inspire public confidence, disciplinary procedures should be structured to enhance systemic uniformity, consistency, and predictability.

*“Therefore, the complaints determination procedure in the FCT Judiciary does not, in practice, run on the template of the fixed framework in the way the JSC Regulations have provided, or operate in a default, pre-defined way so that it is known beforehand where a complaint will be sent to and what the procedure for resolving it will be.”*

- 2. Discretion Plays a Large Role in Determining If or How Complaint is Resolved**  
Not all complaints against judicial officers or court employees go through a formal resolution and accountability process. Some complaints too, do not receive attention or a response at all in some of the courts comprised within the FCT Judiciary and it may take some level of persistence to get a complaint acknowledged and taken up.
- 3. The Complaints Resolution Framework Promotes Assuagement, not Accountability**

It appears that complaints against court judges or staff are more likely to be informally settled, than formally channelled to the JSC where they will be taken through a formal investigation; informality ensures that no formal sanctions are meted out to an erring judge or official, and formal disciplinary actions to advance accountability are avoided, even though complaints raise serious allegations of misconduct and are proved. In other words, many complaints are settled “in-house” and aggrieved persons are pacified by some remedy - such as the restitution of something taken illicitly - and no further action is taken against the official involved. Complaints against court officials fall largely in this category.

In one case, a judicial officer of the FCT lower court filed a petition against his Court Registrar, demanding that the Registrar be dismissed from office. The Registrar cross-petitioned against the judge, alleging that the judge was guilty of misappropriating court revenues. The relevant court department investigated and confirmed that the judge was, indeed, in the habit of receiving money from litigants to prepare their complaints and he would not revert to the registry for proper documentation and receipts. A report was sent to the Chief Registrar and that was where the matter ended. The Judge was later transferred, and neither the Judge nor his Registrar were penalized.

THE VAST AMOUNT OF DISCRETION TO DECIDE HOW AND WHERE TO ROUTE A COMPLAINT PLACED IN THE HANDS OF A SINGLE OFFICIAL OF THE FCT JUDICIARY IS ARGUABLY A DRAW-BACK FOR ITS DISCIPLINARY SYSTEM.

#### 4. Administrative Issues Can Ensnare Fair Resolution

Persons (judges and court staff) interdicted following a complaint stand the risk of entering into an institutional “black hole” even after they have been cleared of the allegations against them because of administrative lapses that can become major obstacles in the way of a quick and fair resolution of a grievance. Oftentimes, accruable allowances and outstanding back salaries of interdicted officials (only half of their salaries are paid during the period of an interdiction) are not given back to them if they are found “not guilty” of the allegations against them. Sometimes the excuse given is that these monies were not included in the operating budget of the Judiciary of that year. At other times, the excuse is that the FCT-JSC has not directed the payment of outstanding salaries and allowances to the affected officials. Sometimes too, some “malice” against the respondent by top administrative officials is implicated.

In a particular incident, the Chief Registrar in the exercise of his administrative powers, carried out a general postings/transfers involving all the courts, and omitted the names of Court officials who were interdicted following complaints against them from the exercise. The said officers were subsequently prevented from submitting their yearly emolument forms, the reason being that they had not been posted to any court. Subsequent salaries were, therefore, not paid to them.

In another case, a judge of the FCT lower court who underwent an interdiction following complaints against him told us that he “fell out of favour” with the Chief Registrar in the course of dealing with the complaint. As a result, when the judges of the various Courts were reshuffled, his name was omitted from the exercise. Ultimately, he ended up as a judge without a Court, resulting in the withdrawal of certain benefits and entitlements due to him. This situation lingered on for a long time even after he was exonerated by the disciplinary panel. It was only reversed when he was able to secure the intervention of some members of the FCT-JSC on the matter.

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## **Disciplinary Control of Judges and Court Staff in the Lagos Judiciary**

As already stated, the Lagos JSC is the constitutional body responsible for exercising disciplinary control over lower court judges (Magistrates, Customary Court judges) and court employees in Lagos State. However, our research showed that most court users, with the exception of legal practitioners, were not aware of the existence of this body. And this is hardly surprising. The only accessible source of information about this body is the website of the Commission and roll-up banners found in the premises of the Commission - which is not located within any court premises. The only information contained on the roll up banner is the JSC's constitutional function of appointment, promotion and discipline of judicial officers and court staff above level grade 7.

The conduct of lower court judges as well as court staff are regulated by the *Code of Conduct for Judicial Officers*(CCJO) and the *Code of Conduct for Court Employees*(CCCE) (for court staff).In 2009, the Lagos-JSC adopted the Judicial Service Commission Rules 2009 (JSC- Rules). These Rules govern the disciplinary process for both judicial officers of lower courts as well as court employees.

The Rules provide that a complaint may be made “about the ability and behaviour of a judicial service staff” and such a “Complaint shall be in writing and identify the complainant and Judicial Service Staff.”

Rule 8(2) provides that a complaint may be made in relation to:

- “competence in performing duties.
- A matter that is or has already been the subject of investigation.
- A matter that may constitute a criminal offence
- Any other matter considered appropriate by the Commission”.

The JSC “shall conduct preliminary enquiry of [the] complaint”, which shall, “as far as practicable” be in private. After this inquiry, the JSC may then either “summarily dismiss the complaint” or “Classify the complaint as serious which could justify the removal of the staff from office” or “Classify the case as minor”.

The JSC is, by Rule 8(6), required to dismiss a complaint if, in its opinion;

- It is not required to deal with [the complaint is] Frivolous or vexatious [the complaint is] trivial
- There is an alternative satisfactory method of addressing the complaint [It]
- Relates to the exercise of judicial function
- [The] Person complained about is no longer a judicial service staff
- Further consideration of the matter is unnecessary.

Where the complaint is not dismissed by the JSC, it may be dealt with by the Commission, or referred to the relevant head of court or body “if it does not warrant an investigation committee” or to an investigative committee. In the case of alleged misbehaviour, the investigating committee is constituted by a serving or retired judge and not more than persons. The committee shall then examine the complaint and “investigate where necessary”. The investigating committee (and indeed the JSC) is not limited to the matters initially raised in a complaint,<sup>26</sup> which must mean that it can also examine conduct on the part of the official complained against, which, in the course of its investigation it finds to also suggest other wrong doing. Any person “named in complaint has right to all information in the complaint and the right to respond to all matters referred to” and all parties, including the investigating committee may be represented by counsel. The investigating committee may, at the conclusion of hearings, dismiss the complaints on the grounds aforementioned, or where the complaint has not been substantiated. The investigating committee shall submit a report on its findings to the JSC, and the JSC may: a) ask the committee to undertake further investigations, or provide supplementary report on issues specified by the Commission or c) decide to take no action and advise the AG accordingly.

Under the Rules, misconduct is defined as

- Willful act or omission or general misconduct to the scandal of the public e.g, corruption, dishonesty, drunkenness and false claims
- Conviction of a criminal offence (other than a minor traffic or sanitary offence)
- Serious financial liability

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<sup>26</sup> Rule 8(17)

- Engaging in political activities
- Engaging in trade or business
- Disobedience of lawful order
- Disclosure of official information
- Being a member or taking part in any society incompatible with the functions or dignity of office<sup>27</sup>

## Sanctions

The JSC may impose the following sanctions where misconduct has been established:

1. Dismissal
2. Termination of appointment
3. Discharge on grounds of general unsuitability for further employment in the case of a person holding a non-established and non-pensionable office.<sup>28</sup>

## Research Findings

1. **The Lagos State Judiciary's disciplinary system functions in relative obscurity:** The general view amongst court users is that the disciplinary system of the Lagos Judiciary functions largely in obscurity; the right to make a complaint is not adequately publicized, and this, in effect, means that it is not serving its constituency as well as it should, given that its target users have very little awareness of its existence/functions and how to access the body in order to report complaints they have.
2. **Poor Public Perception of the Integrity of the Disciplinary System:** Empirical surveys we carried out showed that many court users feel judicial officers of lower courts and court registrars are “*laws unto themselves*” and that petitioning any of them amounts to an exercise in futility. This mind-set, our researchers said, “discourages court users from making complaints against erring lower court judges”. There is also a strong perception, arising from the survey, that court users feel that the system (judiciary) protects its own and this has impacted on its willingness to fight against malpractices within the court system. Some court users (mostly lawyers) who knew about the existence of the JSC and its role, say the

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<sup>27</sup> Rule 9(2)

<sup>28</sup> Rule 12(7)

institution has not done enough to build awareness around its mandate, and encourage court users to report allegations of misconduct to it.

**3. Rules Governing How Complaints are Investigated and Handled are Inaccessible:** The lack of accessibility of the JSC's Rules governing how complaints against lower court judges/court staff are received, investigated and resolved add to concerns about the effectiveness of the disciplinary system. Those who make complaints have no certainty about the procedure for treating their complaints, what procedural rights or obligations they have, or what to expect from the process, and, if the procedures returns a blank at any time, how they can remedy the situation. This is clearly inadequate to guarantee an effective process.

**4. Uncertainty about Effectiveness of Disciplinary System:** Given the level of obscurity around how the Commission functions, there is uncertainty about whether the system works efficiently, dependably and with integrity. There is also the question of the willingness of the JSC to maintain a high level of accountability for lower court judges (and court staff) in the delivery of justice in the State.

Empirical surveys we carried out showed that many court users feel judges and court registrars are "laws unto themselves" and that petitioning any of them amounts to an exercise in futility

Majority of court users interviewed for this study felt strongly that justice delivery in the lower courts of Lagos State is poor for reasons partly connected with the weaknesses of the system for fostering accountability amongst those delivering justice services in the state. According to many court users, "most of the lower court Judges do not sit on time, and some sit at their convenience" and many were worried about the length of time Magistrates' courts take to conclude matters before them. Some court users expressed the view that the lack of accountability has created room for low quality judgments from courts. There were other views expressed about the integrity of the courts, but these are outside the purview of this report.

## **CHAPTER 5**

### **What Principles Ought to Govern the Accountability Process**

*My point is that accountability of the judiciary cannot now be seen in isolation. It must be viewed in the context of a general trend to render governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power- legislative, executive and judicial - are entrusted to perform their functions on condition that they account for their stewardship to the people who authorise them to exercise such power. Behind this notion, in turn, is a more fundamental one. It involves the concept that public power, of its character, derives from the source of all lawful coercive power. Once the citizens are seen as the ultimate sovereign in a nation, the principle of requiring the accountability of the judiciary to the citizens, or their representatives, becomes irresistible - Justice M. Kirby<sup>29</sup>*

The idea of making judges accountable for their conduct - not their decisions - is a widely accepted principle, and there are, in various countries, established procedures for holding judges to account for violations of their official Oaths or the applicable Codes/Principles of Conduct governing their conduct. Holding judges and court staff to account protects public confidence in the judicial process, judicial integrity as well as judicial independence.

Persons aggrieved by the conduct or actions of a judicial officer (besides merely being disaffected with a judicial decision) may make a complaint to the appropriate authorities concerning that conduct or action of the judge. The complaint procedure is, therefore, the default mode of bringing judicial officers or court staff who are deemed to have breached the appropriate standards of conduct expected or required of them to account. The availability, accessibility, transparency and strength of any complaint system, therefore, is vital to the judicial accountability system in any jurisdiction.

The complaints handling procedure should consist of two parts. The first part should be intended for your customers, explaining the process of filing a complaint and what to expect; and the second part should cover the activities that need to be conducted internally, by your employees.”

- Ana Meskovska

<sup>29</sup>

“Judicial Accountability in Australia” Legal Ethic Vol 6 No1 43-44.

At the national level, the NJC recognizes this, and its National Judicial Policy emphasizes the need to strengthen existing judicial discipline procedures to ensure easy accessibility by complainants and transparency and fairness in the process both to the Judge and to the complainant, in a way that would meet international standards(emphasis supplied).

At the international level, the Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct<sup>30</sup> (The Implementation Measures) provides, in the area of discipline of Judges, that: “*A person who alleges that he or she has suffered a wrong by reason of a judge's serious misconduct should have the right to complain to the person or body responsible for initiating disciplinary action.*<sup>31</sup>

On its part, the **Latimer House Principles** provides:

“Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible government relies. In addition to providing proper procedures for the removal of judges on grounds of incapacity or misbehaviour that are required to support the principle of independence of the judiciary, any disciplinary procedures should be fairly and objectively administered. Disciplinary proceedings which might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness.”

... ANY **DISCIPLINARY PROCEDURES SHOULD BE FAIRLY AND OBJECTIVELY ADMINISTERED - LATIMER HOUSE PRINCIPLES**

<sup>30</sup> Adopted by the Judicial Integrity Group in Lusaka, Zambia 2010. The group is a “loose consortium of senior constitutional judges from OEGD and developing countries”. See a short description at:<https://www.giz.de/en/workingwithgiz/10038.html>. The Bangalore Principles of Judicial Conduct had been ratified by the United Nations Economic and Social Council (ECOSOC 2006/23).

<sup>31</sup> Strengthening basic principles of judicial conduct”. See the text at [http://www.unodc.org/pdf/corruption/corruption\\_judicial\\_res\\_e.pdf](http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf)

An effective complaint handling system must meet basic minimum standards; those standards include the principles of **fairness, accessibility, responsiveness, efficiency and integration**. An effective system of handling complaints must involve an acknowledgment of the complaint, its assessment and timely investigation, an outcome and a formal response to the complainant, and while some officials must of necessity make decisions on the allegations made against court officials, no part of this system must run or depend on the personal whim of any one official. Furthermore, complaints handling staff must be skilled and professional.

## CHAPTER 6

### General Recommendations

Judicial Service Commissions of the 36 States alongside the Judicial Service Committee of the FCT (and the Federal Judicial Service Commission), have a huge constitutional and social responsibility to ensure that courts within their respective jurisdictions are functioning competently and efficiently, and providing adequate satisfaction to court users and enjoying their trust and confidence. Therefore, they ought to keep on the front burner, how they organize matters related to the performance and accountability of lower courts, and ensure continuous adaptation to new business and operational models that improve on extant procedures and practices.

Reforming systems of judicial appointment and discipline in lower courts are integral to any programme to improve the quality and performance of the Nigerian Judiciary as the NJC has itself shown by the steps it has taken to strengthen the rules for judicial appointment and discipline in the superior courts of record.

Therefore, we urge the respective Judicial Service Commissions/ Committee to do the following:

#### Judicial Appointments

1. Urgently reform the system of selecting judicial officers into lower courts and make these procedures more transparent, competitive, merit-based and accessible. When vacancies occur, these vacancies should be published in advertisements placed in publicly accessible places - such as the websites of the relevant JSC, as well as, in courthouses and the state offices of the relevant Bar Association.

**“It is a basic and fundamental aspect of the Judicial Policy that the judicial appointments process must be transparent and merit-based and skill-based. A transparent and carefully designed appointment process is indispensable to an efficient and independent judiciary, able to command public confidence in the administration of justice and capable of promoting and protecting the rule of law and human rights.” -**

Para 2.1.1 of the National Judicial Policy issued by the NJC

2. Adopt written and publicly accessible judicial appointment guidelines/regulations that form the standard operational guidelines for the recruitment of persons into judicial offices. Even where there are existing legislations or regulations on the subject, there will likely (as in the case of the FCT High Court) be the need to review them considerably to strengthen the transparency and fairness of the appointment process. Para 2.1.4 of the National Judicial Policy states that: **“Such Guidelines would contain provisions to ensure that - everyone who has the requisite qualifications and qualities needed and desires to be considered for appointment to the judicial office is not excluded from declaring his/her interest”.**
3. Establish appropriate and non-discriminatory recruitment eligibility criteria beforehand, and ensure that the preliminary screenings of aspiring candidates to the advertised vacancies are fairly and transparently undertaken by persons who are trustworthy and of proven competence. Guidelines should provide grievance redress opportunities for candidates who are dissatisfied with the outcomes of the preliminary screening process.
4. Ensure that the evaluation process of candidates aspiring to judicial office is transparent and relies on objective indicators for the assessment of the strengths and merits of individual persons and that outcome of any recruitment exercise, as much as possible, objectively reflect the meritorious standing of the aspiring candidates. Guidelines should expressly prohibit lobbying of any kind by candidates. As the National Judicial Policy issued by the NJC states in para 2.1.2: **“Every aspect of judicial appointment process should, therefore, be such as would command public respect and confidence that the best persons in terms of skill, learning, integrity and courage are appointed as Judicial Officers”.**
5. Short-listing considerations and criteria should be fully spelt out in published guidelines, and short-lists should be determined by a body or panel that is independent, and unbiased. It should report directly and exclusively to the Judicial Service Commission/Committee and not just to the Chief Judge.<sup>32</sup>

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<sup>32</sup>Para. 2.1.6 of the National Judicial Policy 2016 provides that: **“There should at all levels of the appointment process, screening of candidates through screening Committees that would be charged with evaluating each candidate in regard to the minimum standards set by the Judicial Appointments Guidelines and making recommendations to the relevant bodies at each of the levels”.**

6. Once candidates have been short-listed for consideration and appointment, it is expedient that their names are published for public scrutiny. The JSCs should use the opportunity to invite memoranda from the public reflecting on the suitability of the shortlisted candidates for judicial offices in order to gather further information about their suitability and integrity.
7. No one individual should exercise over-riding control over any stages of the appointment process and whenever assessments or evaluations are to be undertaken during the process, they should be undertaken by an impartial body that reports directly and exclusively to the Judicial Service Commission/Committee.

#### **Judicial Discipline (Accountability)**

1. Judicial Service Commissions (FCT Committee) should establish written policies/guidelines governing the process for holding judicial officers accountable for their actions where these are not already in existence. These guidelines may be articulated in the form of a Complaints Policy, Operating Procedures or Regulations. Information about how court users can bring complaints and how these complaints would be investigated should be widely disseminated within courtrooms and be available on the website of the respective judiciaries. Physical copies should be left with specific officers of the court from whom court users can request them for purposes of information or enlightenment. These policies/regulations can also be translated into local languages for ease of understanding.
2. Where such guidelines are already in existence, they should constantly be reviewed to ensure that they achieve the goals of making the disciplinary system effective, dependable, more accessible and efficient.

3. The complaints guidelines/regulations must also clarify the basis of what constitutes misconduct for which a judicial officer (or court employee) will be held accountable. For this purpose, it is also important to publish the Code of Conduct for Judicial Officers for the information of judicial officers, as well as the public, as the standard against which the conduct of judges will be measured; publication should also be made of other rules regulating the conduct of judicial officers - such as the Public Service Rules, if they are applicable to judicial officers. All of these should be placed on the website of the court
4. Any guidelines made must manifest features that inspire public confidence in the efficacy and effectiveness of the disciplinary system. The elements of such a system must include:
  - I. Timely acknowledgment of the complaint;
  - ii. Fair and timely investigation of the complaint by an impartial body or person, with reasonable notices to both the complainant and the respondent; and
  - iii. A decision on the merit on the complaint, communicated to the complainant in reasonable time as well as reasonable and deterrent action taken where the complaint is substantiated.
5. Guidelines must provide a framework that enables the court use complaint information and outcomes of investigations to draw inferences about the delivery of services by judges and court staff and to make system-wide decisions that target improvements on judicial performance, court user satisfaction with the delivery of justice in lower courts, alongside policies that better promote the administration of justice in the State.
6. We urge the NJC to ensure that the “principles” embedded in the National Judicial Policy 2016 made by the Council are applied by State Judiciaries in areas of judicial appointments, performance and discipline. We urge the Council to obligate Chief Judges of States (the FCT High Court and Federal High Court inclusive) to work towards reform that will strengthen the disciplinary and accountability systems of their respective jurisdictions, incorporating the principles and guidelines espoused by the Council in its National Judicial Policy 2016. While the powers of the NJC are constitutionally limited to the oversight of superior courts’ Judges, the Council does have constitutional powers to **“deal with all other matters relating to broad issues of policy and administration”**

(Section 20 of Part 1 of the Third Schedule to the Constitution). The NJC can exercise these powers to ensure State Judiciaries are effectively playing their part in reforming the administration of justice in Nigeria.

7. In addition to this, the performance of Chief Judges of the various High Courts (who are - with the exception of the Chief Judge of the Federal High Court- the Chairmen of the respective Judicial Service Commissions/Committee in their jurisdictions) are subject to the oversight powers of the NJC, and the Council can leverage on its powers in this regard to see that Chief Judges are exercising the duties of their offices competently and efficiently and conforming to broad policies set by the Council. And holding them accountable if they aren't.

## CHAPTER 7

### CONCLUSION

There is an overarching need to introduce standardised processes for both selecting and appointing lower court judges and exercising disciplinary control over them in each state/federal jurisdiction in Nigeria. It is also imperative that the framework for selecting those who will sit in judgment over others and decide their fates when put to question, is a reliable one that can produce rich outcomes.

It is therefore advisable that each State develops its own judicial appointment and disciplinary guidelines or regulations, and if there is any doubt whether this is necessary to do, the example of the NJC will be a useful reference and pointer. It is something of a shame that nearly twenty years after the return to democratic rule, not much progress has been made in these areas in the States. Now is the time to overhaul and re-create the procedures that play a major part in defining a judiciary's performance, strength and trust. Without these reforms, the judiciaries of the various States and federal jurisdictions will be on their back foot; they will continue to function sub-optimally and will not attract the level of public and stakeholder confidence that they ought to command.

*Commitments like this are a good starting point for reforms aspiring to rebuild professionalism and accountability in the lower courts*



#### COMMITMENT STATEMENT

We the staff of Lagos State Judiciary are committed to Lagos State and the Community.

Our mission is to provide quality and professional service in a knowledgeable manner. We take pride in our work and hold ourselves accountable to the highest standard of performance.

Our goals are achieved through mutual co-operation, a strong sense of integrity, a positive attitude and teamwork

# A RIGHT TIME TO RING THE **CHANGES**

## Reform Of Judicial Appointments And Disciplinary Systems Of Lower Courts

