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MAIN REPORT

- **National Judicial Council and the Unfinished Business of Judicial Reform in Nigeria.**

OTHER REPORTS

- **A Judiciary under Siege: Revisiting the Two-Day Barricade of Ekiti State High Court Complex.**
- **Justice Served: Five Suspended Abia State Judiciary Staff are Reinstated to Office.**

GUEST INTERVIEWS

Hon. Justice Idris Legbo Kutigi (CJN)

Olisa Agbakoba SAN, President NBA

Hon. Justice E.O. Ayoola JSC (rtd.)
Chairman, ICPC

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Access to Justice (AJ) sets out to defend rights of equal and non-discriminatory access to courts of law, expand access of marginalized people to equal and impartial justice, attack corruption in justice administration, support legal struggles for human dignity and disseminate legal resources that help achieve these purposes. Operating under three mutually reinforcing programmes, the Judicial Integrity and Independence Programme (JIIP), the Legal Access Programme (LAP) and Legal Resources Programme (LRP), all of AJ's work address critical problems in justice administration and human rights, serve important public needs and target significant achievement in democratic reform. Access to Justice welcomes public participation in and support for its work. To find ways of getting involved, please write to The Executive Director, at the address or email below.

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Our Mouth Piece

This publication has come out in Nigeria at a time when the confused nature of government of Nigeria demands that something must be done to right the wrongs that pervade the entirety of the Nigerian nation. You are doing a crucial job for the emancipation of this country. May Almighty God bless you as you carry on the Herculean task.

Justice in Nigeria demands that all aspects of the Nigerian life must scrutinize its behaviour to accord with the international standard required the world over to achieve justice. The present government appears to pay lip service to what justice requires in a normal situation. It is necessary that we keep on reminding them. You are our mouth piece in this regard.

Hon. Justice A. N. Aniagolu, Justice of the Supreme Court (rtd).

Objective, Well Thought Out and Solution Oriented

The Justice Observatory Journal brings up for discussion some of the most important issues in the Nigerian Justice System. It is clearly a welcome development as it fills the need for an objective, well thought out and solution-oriented forum for raising and analyzing the problems of the Nigeria judiciary....

The interview sections have targeted the most interesting and inspiring, and sometimes the more controversial figures in the Nigerian Judiciary. With particular reference to volume 4 of the Journal, the main report is an interesting indication that the press can play a critical oversight function even in the affairs of the highest judicial appointees and organs in the country. In this regard *The Justice Observatory Journal* has great potentials of keeping us all well-informed and better attuned to improving our judicial system.

Ade Ipaye, Senior Special Assistant (Legal Matters) to the Governor of Lagos State.

Excellent and Innovative

"This excellent and innovative publication provides both a fascinating insight into the thoughts and work of the judiciary as well as a platform for a continuing dialogue with civil society."

Iain Byrne, Senior Lawyer, International Centre for the Legal Protection of Human Rights (INTERIGHTS), London

ABUJA: Hon. Justice Belgore Retires as CJN

Wednesday, 17th January 2007 marked the formal exit of Hon. Justice Salihu Modibo Alfa Belgore from the apex Court and indeed the Bench. Justice Belgore retired as the ninth indigenous Chief Justice of Nigeria after about 42 years of remarkable service on the Bench, including 21 years of outstanding service at the Supreme Court.

Justice Belgore's seven months in office as the Chief Justice of Nigeria were eventful. Notable landmarks of his tenure include the precedent-setting speed with which the Supreme Court determined the "Governor Ladoja" impeachment case and the suspension of four Chief Judges for their partisan roles in the impeachment of their state governors. The Attorney General of the Federation and Minister of Justice, Bayo Ojo SAN, said at a valedictory session in honour of Justice Belgore; "his [Belgore's] tenure is one of the most memorable chapters in the chequered history of the nation's judicial development and is characterized by a robust regime of the rule of law founded on the age-long concept of separation of powers and independence of the judiciary"

ABUJA: NJC Suspends Four Chief Judges

At an emergency meeting held at Abuja on 20th December 2006, the National Judicial Council acting with powers vested on it by paragraph 21(d) of the Third Schedule to the 1999 Constitution suspended the Chief Judges of Anambra, Plateau and Ekiti states for the partisan roles they played in the impeachment of the governors of their respective states.

According to the Statement signed by the Executive Secretary of the NJC, Mr. Danladi Halilu, at Abuja, those suspended were Hon. Justice Chuka Okoli, Chief Judge of Anambra State; Hon. Justice Ya'u Dakwang, Chief Judge of Plateau State; and both the Chief Judge of Ekiti State, Justice Kayode Bamisile, and a former Acting Chief Judge of the State, Justice Jide Aladejana. The suspension took immediate effect.

ABUJA: Justice Kutigi Sworn-In As New CJN

It was a new dawn as Hon. Justice Idris Legbo Kutigi was, on Tuesday January 30, 2007 formally sworn-in as the Chief Justice of the Federation at the Council Chambers of the State House, Abuja. The Senate had on January 24, 2007 confirmed him as the substantive Chief Justice of Nigeria sequel to President Olusegun Obasanjo's letter to the Senate to that effect.

Born in 1939 in Niger state, Justice Kutigi was appointed a Justice of the Supreme Court 15 years ago. By this recent appointment he becomes the 10th indigenous Chief Justice of Nigeria. Hon. Justice Kutigi has promised to continue the reforms initiated by his predecessors in office. See fuller details in the interview with Justice Kutigi at page...

ANAMBRA STATE: Acting Chief Sworn-In

Honourable Justice Umegbolu Nri-Ezedi was sworn-in as the Acting Chief Judge of Anambra State on Friday the 19th of January 2007 by the Governor of the State, contrary to resolutions by the Anambra House of Assembly urging the Governor and the Judicial Service Commission to

disregard any pressure or plans to appoint and swear-in an acting Chief Judge for the State.

The Governor's action was in obedience to the advice from the immediate past Chief Justice of Nigeria, Justice S.M.A. Belgore on behalf of the National Judicial Council urging the Governor to appoint an acting chief judge following the suspension of the State Chief Judge, Justice Chuka Jideofor Okoli.

ABUJA: High Court Judges Sworn-In

Twelve newly appointed High Court Judges were, on Wednesday, April 15 2007, sworn into office at Abuja. The newly appointed Judges are Justices Abubakar Idris Kutigi, Danlami Zana Senchi, Jude Obunike Okeke, Jamilu Tukur Yammama, Mairo Aiyoyo Nasir, Chizoba Nkemakonam Oji, Suleiman Bolaji Belgore, Kekemeke Ugoukunmo Peters, Olukayode Adegbola Adeniyi, Othman Angulu Mua, Agbaza Omokiano Charles and Affen Peter Oyinkenmiemi.

The Chief Justice of Nigeria, Justice Idris Legbo Kutigi, called on the judges to exhibit courage and steadfastness in the discharge of their duties and to be fair to all concerned. He also charged judges not to be intimidated by any governmental agency, including the Independent National Electoral Commission (INEC) in the discharge of their duty, saying Nigeria expects so much from the judiciary. He further beckoned on government agencies to adhere to the rule of law.

GOMBE STATE: Presiding Chief Magistrate Attacked.

On Tuesday 20th March 2007, Mr. Joseph Shinga, a presiding Magistrate in a criminal trial of the gubernatorial candidate of the Democratic Peoples' Party (DPP) in Gombe State, Alhaji Abubakar Hashidu, was macheted in open court by thugs reportedly loyal to the accused person after the ruling of the court that the accused should be remanded in prison custody until the case comes up on a later date.

Alhaji Abubakar was reportedly arrested on Sunday, March 18, 2007 along with 14 others after violence broke out during a campaign rally that led to the destruction of public property. He was then arraigned at the Magistrate Court and charged with inciting violence.

The Magistrate had decided to adjourn the case and have Hashidu remanded in custody till Wednesday, the 21st of March. This decision infuriated the politician's supporters. In a brutish reaction, the supporters and some thugs numbering about 20 went berserk. They stormed the courtroom armed with cutlasses, machetes and guns and overpowered the staff, beating and inflicting injuries on the Magistrate and other security operatives before whisking away Hashidu to an unknown destination.

We have mostly seen the Judiciary as a conservative institution, staffed by mostly conservative Judges not given to loud expressions of their discontent with either executive or legislative flagrancys. If there was need to vocalize pressing concerns, the Bar mostly did that on behalf of a bench accustomed to quiet reservation. But that now is changing.

In Uganda, the Judiciary, led by Chief Justice Benjamin Odoki went on strike on March 1, 2007, over what the Judiciary and the Bar said was the gross infringement on the independence of the Judiciary by the Executive. The strike was called to protest the invasion of the High Court by scores of armed government security operatives, the second such incident in less than two years. During the invasion, security operatives "intimidated and assaulted civilians, vandalized court property, before they forcibly re-arrested six rebel suspects of the People's Redemption Army shortly after they were granted bail." "All judicial business for all the courts in Uganda is suspended with effect from March 5, 2007," announced the acting Chief Justice Laetitia Mukasa Kikonyogo at a news conference in Kampala. The judges cited "the repeated violation of the sanctity of the court premises, disobedience of court orders with impunity and the constant threats and attacks on the safety and independence of the Judiciary and judicial officers" as some of the major reasons for striking.

President Yoweri Museveni later met with Chief Justice Odoki, to resolve the standoff and later announced that a compromise had been reached to resolve the matter. But the Bar Association, the Ugandan Law Society said it would down tools after the end of the judiciary's strike, to protest the incident. The Society also voted to suspend five high-level government officials, including the Attorney-General, Khiddu Makubuya, the Inspector General of Police, Maj. Gen Kale Kayihura, and the Director of Public Prosecution, Richard Butera, for what the Law Society said was their perceived roles in the events leading up the March 1 attacks. The Law Society said these officials were "a disgrace to the profession and to this Country by abusing their authority."

In Pakistan, President Pervez Musharraf of Pakistan suspended the country's Chief Justice, Iftikhar Mohammad Chaudhry on March 9, 2007, accusing him of abuse of power and nepotism. Mr. Chaudhry's suspension has provoked nationwide protests, by lawyers and other members of the public. But the judiciary is also making its voice heard. At least eight judges have resigned since the incident, leading to a very serious political crisis in Pakistan. Lawyers and opposition parties saw it as an attempt to

"If the law is not firm and fair, every one has the right to behave like an animal. The result is chaos in human society and the violations of Rule of law. This is where the judiciary is called into action."

- Hon. Justice (Prof.) A.F.D. Kuti, *Legal and Judicial Sector Reform in Nigeria*

undermine the independence of the judiciary. They say the main reason for the suspension was to avoid “having an independent-minded justice in the Supreme Court when it met to review cases that could challenge the legality of the president's hold on power.” Justice Chaudhry had embarrassed the government by taking up cases surrounding forced disappearances, in which Pakistani intelligence agencies are charged with holding citizens without due process. Human rights groups say that at least 400 people have disappeared in that way since 2001, when Pakistan joined United States efforts against terrorism.

Will the precedent set by Ugandan Judges spread? Should it? And what if it does? Is this some signal of a quiet revolution taking place in the legal profession? Or is this some radicalization of expression, but not a major paradigm shift? Maybe it's too close to call, but the development surely looks to be interesting in the overall effort to defend judicial independence. It may be recalled that in 2005, Malawian Judges went on strike to press government to replace their ten year old Toyota Corolla cars, and ended the strike after government promised them a fleet of new cars.

“The independence of all those who try causes between man and man, and between man and his government, can be maintained only by the tenure of their office. I have always thought, from my earliest youth till now that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and sinning people, was an ignorant, a corrupt, or a dependent Judiciary”

- John Marshall, address to the Virginia state Convention of 1829-30

Sometime in June, newspapers reported that Otunba Alao-Akala, after being sworn-in on May 29, 2007 as the Executive Governor of Oyo State, summoned the then Acting Chief Judge of Oyo State, Hon. Justice Olagoke Ige (now purportedly removed), to his office. The meeting, it was reported, was to prevail on Hon. Justice Ige to use his office to facilitate the expeditious hearing and favourable outcome of a lawsuit the Governor was preparing to file to challenge his indictment for fraud and abuse of office, by the out-gone administration of the State, during the period the current Governor acted as the Governor of Oyo State. After the elections of April 2007, a number of litigations have been filed attacking the elections that brought Alao-Akala to power in Oyo State. One of the grounds of attack is that the Governor, Otunba Alao-Akala should not have been allowed to contest the elections having been indicted by an administrative panel of inquiry for fraud and abuse of office. The Governor appears to reckon that if he successfully quashes the indictment against him, it would take the sail out of the case of those contesting his election.

Hon. Justice Olagoke Ige, it was reported, answered the “summons” of the Governor. There are no official transcripts of what transpired at this meeting, but media reports say that Governor Alao-Akala issued directives, backed up with threats to the Chief Judge concerning how the filing was to be facilitated. Events which immediately followed this meeting, including the arbitrary and unceremonious removal of Hon. Justice Ige as Acting Chief Judge of Oyo State, lend weight to these media reports.

The practice, by Chief Executives, of holding meetings with Chief Judges is, unfortunately, gaining notoriety by the day, not only in their frequency, but the way the meetings are “summoned” at the behest of the chief executives. When chief executives summon Chief Judges at their pleasure, it says something about the position and office of a Chief Judge, *vis a vis* that of the chief executive. It says something about the stature of the office of a Chief Judge, and the head of a coordinate branch of government. It says something about the independence of Judges, and it says something too, about the way the public will see the independence of the judicial branch of government.

“The principle of the complete independence of the judiciary from the Executive is the foundation of many things... it is perhaps one of the deepest gulfs between us and all forms of totalitarian rule. The only subordination which a judge knows in his judicial capacity is that which he owes to the existing body of legal doctrines.”

-Sir Winston Churchill, Britain's wartime Prime Minister.

The judiciary is a co-equal branch of government; heads of States' and Federal Judiciaries represent a branch of government not institutionally inferior to any other branch. It is true that the Executive branch coordinates together with other branches to govern, but this kind of coordination must not necessarily lead to the executive "summoning" Chief Judges like teachers summon their pupils, which is probably analogous to what the chief executives are doing with the Chief Judges.

Perhaps more disturbing however, is the public impression created by these conferences. There is no way of knowing what is discussed between the Governors and the Chief Judges. Given the intense political interest in the affairs of the Judiciary by the Executive, whether these be related to litigations before courts, or appointments to judicial offices, many reasonable people will be suspicious, and very uncomfortable with periodic meetings between Chief Judges and chief executives, and they would, given the experiences we have had in this regard, be very entitled to hold those suspicions.

The conduct of many a Chief Judge in recent times, in fact, justify and warrant these fears. Some Chief Judges are political activists, and are undisguisedly partisan; some are beholden to chief executives who appointed them (sometimes inordinately) and manipulate judicial processes to achieve favoured political results for them; others align with other political currents sometimes hostile to the chief executives and do the opposite. The impeachment cases richly illuminate these observations, and the action of the NJC in removing the Chief Judges implicated in them substantiate them. In fact, the story does not end there. In some cases, the relationship has extended to that of criminal conspiracy with the chief executive. In at least one case, a Chief Judge was to be prosecuted by the ICPC for passing bribes from a Governor to a panel of election petition tribunal members some time ago. What does all this show? That many Chief Judges are not worthy of the trust placed on them, and have repeatedly abused that trust.

We understand that we cannot generalize on these observations, for there are others who work hard to insulate themselves and their judiciaries from illicit reach, and politicization. But the sad truth is that executive branch officials will often have

"The framers understood the need for checks and balances. The Constitution artfully constructed a balance among the three branches of government: executive, legislative and judicial. The branches of government are independent of one another. For the courts, becoming subservient to Congress, for instance, would be an express route to the rule of men, not law."
 Seattle Post-Intelligencer, April 13, 2005

designs on the Judiciary, and the public has increasingly come to distrust the judiciary's ability to defend the inviolability of its own space. Experiences so far have shattered that kind of faith. Even in countries with relatively well respected judiciaries, extra-judicial meetings between Judges and executive branch officials often spark curious public concern, and interest in unraveling the content of whatever communication took place between officials of these separate branches.

If there is need for interaction between heads of judiciaries, and heads or officials of other branches of government, - and perhaps, the case for some level of bilateral interaction, is an arguable one - Chief Judges should show more decorum, increased respect for office, greater concern for the image of the judiciary, and greater sensitivity to image problems that their meetings would create in the minds of many.

How can they do this: first, they should understand that it is not always necessary for them to attend meetings with chief executives, and in many cases, Chief Registrars can represent the Judiciary in meetings where it is necessary to attend. Second, if their presence is clearly inexorable, they should attend meetings with their Chief Registrars, and perhaps also, ask one or two other Judges to accompany them to such meetings. But more importantly, they should always see that the transcripts of such meetings are always produced after the meetings, and these transcripts are forwarded to the National Judicial Council, and perhaps also, brother Judges of the State concerned, with all those who attended the meetings signing. Lastly, Chief Judges must refuse to be summoned to meetings with chief executives; they could possibly entertain scheduled visits of chief executives to their chambers; or request to see the chief executive themselves; or attend special functions on proper invitation, but they must never be summoned, whether by word or deed.

The office of the Chief Judge is too dignified (even if some of the occupants don't live the part) to respond to "summons" however couched, by the chief executive. The damage done to the perception of the Judiciary is too insufferable, to permit this to continue. Chief Judges have a duty to avoid cheapening the Judiciary, and its image in this way.

"The legitimacy of the Judicial branch ultimately depends on its reputation for impartiality and nonpartisanship"

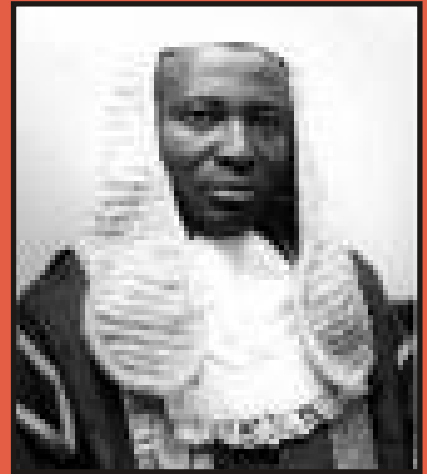
- Mistretta v. United States, 488 U.S 361, 407 (1989)

National Judicial Council and the Unfinished Business of Judicial Reform in Nigeria

1

■ Chinedu Nwagu Esq.

Since the transition, the Judiciary has posted many important successes. At both the centre and the States there have been a number of well-meaning initiatives aimed at addressing key problems and reforming the Nigerian justice landscape. The National Judicial Council has helped to change judicial conduct and paradigms of integrity in a substantial way, alongside enhancing services delivery by Judges. Also quite a few countries, multilateral agencies and donors have invested their resources towards reinvigorating institutions and procedures of justice with the active collaboration of the Judiciary.



Hon. Justice Kutigi, CJN & Chair, NJC

However, an objective appraisal of the evolution of our justice system, particularly in the last eight years of democratic governance, reveals that there are yet several yawning gaps and dysfunctions in the justice administration arena. This is perhaps traceable to the fact that although we are sparsely engaged, to some degree, in the long and laborious process of institutional reform, there is no official blueprint and coherent agenda for judicial reform in Nigeria. The evolution of judicial reforms should, ordinarily, grow from the broad aspiration of the leadership of the judicial faculty to create a judiciary, which performs in an efficient and timely manner, operates independently, gains public trust and serves the public interest. As the nation ushers in a new democratically elected government, we are in a very opportune moment to canvass new frontiers in the justice environment, advance work already begun with fresh impetus and make a signal difference to the struggle to reinvent the legal and judicial system to make them better serve the Nigerian people. There is thus an urgent and immediate need for a well-articulated, coherent, strategic and indigenous reform agenda, tailor-made to deal with the vicissitudes of the Nigerian judicial system.

The Present Challenges

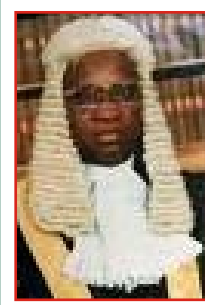
The prevailing system of administration of justice has proved to be grossly inadequate. There is still much to overcome. The courts face a number of challenges in the administration of justice; insufficient remuneration to judicial officials and personnel, credibility and integrity issues, poor and inadequate court facilities such as courtrooms, library, cumbersome system of recording trial proceedings, congestion and costs, permissive rules of procedure that indulge delays and abuse of processes, and corruption of clerical and administrative personnel.

The immediate past Chief Justice of Nigeria, Hon. Justice S.M.A. Belgore (rtd), in his valedictory speech, observed inter alia, *"For more than a century, from colonialism to the present, there has been no remarkable progress in our corpus juris. The world is an ever moving object in the universe that dictates that things in the world including Judiciary must move. We need a complete overhaul of our laws,*

"It is imperative, if our judiciary is to have a good image that the administration of justice should be pure from its roots and unpolluted from its source. It is equally imperative that the machinery for good, speedy and effective justice should be put in good order."

-Hon. Justice Chukwudifu Oputa JSC (rtd.) *The Law and the Twin Pillars of Justice.*

especially Criminal Law and Procedures and generally procedural approach to courts. Lagos State has tried to break the logjam; however their new code of civil procedure is yet to address costs and delays in litigation. We are tied to the apron string of old colonial systems, as if we had no system or that we cannot think and devise our system without offending fair trial."



Hon. Justice Belgore (rtd), Former CJN

Like the distinguished jurist rightly observed, the world as a global community is steadily advancing and so is the law. The judiciary, to retain its relevance in such a fast-paced society, must therefore adapt to new challenges. Our justice system, therefore, needs improvement; that is why a coherent, long-term reform agenda and a clear action plan to redefine the system is imperative.

Redefining the System

The Judiciary should be at the fore of any reformative action in the country. This is because the judiciary plays a key role in the nation's development process. A fair, independent and efficient



Bayo Ojo, SAN, AG, Fed.

judiciary supports equitable social development, promotes economic growth and provides greater protection of civil liberties and freedom. We need to approach justice sector reforms creatively. Successful judicial reform requires that the Judiciary must conceive and develop its reform programme. Notably, successive Attorneys General of the federation had sought to chart the course for reform in the justice administration arena; from the consultative committee set up under the Bola Ige, and Akin Olujinmi Ministerships, to the Justice Ejiwunmi led Presidential Committee for the Reform of the Justice sector set up under Mr. Bayo Ojo, SAN, the present Attorney-General in March 2006. The Justice Ejiwunmi Committee published in November 2006 a "working paper" for the reform of the justice sector, (broadly defined to include the judicial system, the police as well as the penitentiary systems, legal profession and education). Although that paper reiterates some useful concept of reform goals for the Judiciary, it is not, in our humble view, a formulation of a specific reform action plan.

There is a great deal of good work to be continued in the realm of judicial reform, perhaps rearticulated and reinvigorated, but fresh grounds also need to be cultivated. The NJC must step forward, take the initiative and drive the reform process. It has unparalleled insights into the challenges and needs of the justice system; it controls and administers a major part of the administration of justice funding, and exerts control over those who themselves manage judicial business in their respective state and federal domains. This advantageously positions it to sort out judicial reform priorities and maximize the impact of the reforms on the justice landscape.

"The rationale for justice administration and the rule of law is the desirability and indeed necessity of resolving conflict within, and not outside, the legal and judicial system and framework. In the absence of a properly functioning legal and judicial system, force rather than law would rule and anarchy will result."

Olisa Agbakoba SAN, *Legal and Judicial Sector Reform in Nigeria*

Judicial reform is an ongoing process of change that needs to be managed. It aims to reform institutional culture and create new capabilities within the judiciary. The NJC should therefore, take leading responsibility for managing the justice system reform agenda.

Judicial reform is an ongoing process of change that needs to be managed. It aims to reform institutional culture and create new capabilities within the judiciary. The NJC should therefore, take leading responsibility for managing the justice system reform agenda. The NJC could, for example, have set system-reform benchmarks for the leadership of the various State Judiciaries as part of an organic, country-wide strategy of reform. They, the Federal and State Judiciary leaders, could be made, as part of the performance auditing process instituted by the NJC, to

verifiably account for how they are dealing with the challenges of improving the delivery of judicial services. They must be reforming, to be seen as performing. This way, the Judiciary would have initiated a self-propelling formula for bringing about change in the shortest possible time.

Meaningful and sustainable judicial reform requires real commitment and dedication from the Executive and legislative branches of government. The delivery of justice is a public service that only the government can credibly provide. The NJC therefore, needs to build consensus on the need for judicial reform among the branches and key departments of government to ensure the success of the reform efforts. Communicating the benefits of judicial reform mobilizes support for the reform process.

The Primary Objective: Access to Justice

Easy and ready access to the courts is one of the fundamentals of a civilized legal system. Ordinarily, our court system as it is today is very complex and technical in many respects. These technicalities and complexities often result in unnecessary delays that in turn deny citizens, particularly the poor and powerless, access to justice. Drastic changes in the procedures to be followed in courts are urgently required. The justice delivery system needs complete review. We need a court system that is simple, accessible yet effective and efficiently responsive to the varied needs of the various court users. We need to develop simpler Court Procedural Rules that are court-user friendly; there is also need to encourage Alternative Dispute Resolution mechanisms (which are faster, cheaper, and less technical and cumbersome) in resolving conflicts in society. Our goal should therefore be to model the justice system in such a way that it will provide and afford easy access to justice to Nigerians, irrespective of their status or standing in life.

Easy access to Justice is conditioned by several factors, including quality, timeliness and affordability of justice services delivery. The affordability of the justice system is a crucial element for access to justice. Survey reports from the UNODC assessment of the integrity and

“Judicial independence is not an end in itself, but a means to an end. It is the kernel of the rule of law, giving the citizenry confidence that the laws will be fairly and equally applied. Nowhere is this interest more keenly exposed than in the judicial protection of human rights.” - Justice Sandra Day O'Connor, Former Associate Justice of the U.S Supreme Court, “The Importance of Judicial Independence”, September 15, 2003

capacity of the justice system in three Nigerian States reveal that both the judges and the court users agree that the court system is “*seldom affordable*.” This is a saddening report. To enhance the affordability of our justice system, court fees should be reviewed to ensure that they are both appropriate and affordable.

Court fees are, however, not the only factors determining the accessibility of the justice system. Overly lengthy proceedings also discourage citizens from seeking solutions through the formal justice system. The length of proceedings hinders access to justice in two ways. One, it increases costs, for example in terms of transportation and non-productive time. Second, lengthy proceedings frustrate complainants and induce them to seek either informal solutions or simply not to defend their rights at all. To ensure timeliness of justice delivery, increased consultation should take place between the judiciary and the Bar to eliminate delay and increase efficiency. Every case must reach a time bound destination. To this end, requests for adjournment should be considered more seriously and granted less frequently. Courts at all levels should also endeavour to commence on time.

Access to justice equally depends on the public's confidence and trust in the justice system to uphold the rule of law. Public confidence in the justice system is as much influenced by its independence, impartiality and fairness as by its efficiency. Public trust in the courts will not improve significantly unless the justice system operates more efficiently. Efforts should therefore be made to ensure reliable, timely and consistent enforcement of judicial decisions, particularly when such decisions are linked to the basic security concerns of the citizen and the prevalence of the rule of law.

Access to justice can be expanded through provision of more legal aid by a deliberate and well-patterned partnership or collaboration between governmental access to justice institutions and non-governmental legal service providers.

Funding and Welfare of Judicial Officers

Resources are needed to improve judicial services, increase the competencies of judges and court personnel, and provide incentives to reduce corruption. The conditions of service for judicial personnel should be such as would attract talent and ensure integrity. According to the **United Nations Basic Principles on the Independence of the Judiciary**, “*It is the duty of each member state to provide adequate resources to enable the judiciary to properly perform its functions.*”

There are several arguments in favour of the idea that the independence of the judiciary should

Easy and ready access to the courts is one of the fundamentals of a civilized legal system...We need a court system that is simple, accessible yet effective and efficiently responsive to the varied needs of the various court users.

“The great essential to our happiness and prosperity is that we adhere to the principles upon which the Government was established and insist upon their faithful observance. Equality of rights must prevail.... [T]he integrity of the courts, and the orderly administration of justice must continue forever the rock of safety upon which our Government securely rests.”

-US President William McKinley, Inaugural Address, 1897

be enhanced through independent funding; the Judiciary should be a self-funded institution instead of one that goes cap in hand to the Executive asking for funds, particularly at the state levels. Justice Sandra Day O'Connor, retired Associate Justice of the U.S Supreme Court aptly buttresses this point thus, *"An independent judiciary requires protection from systemic influence from other parts of government. A fundamental aspect of this institutional independence is ensuring that the judiciary is adequately funded. Just as salary protection is necessary to individual judges' independence; overall financing issues can influence the work of the judiciary as a whole."*



Justice Sandra Day O'Connor, (rtd) US Supreme Court

Current international trends favour the judiciary's management of its own affairs. This approach was endorsed by fifty independent countries, at the Commonwealth Law Ministers Meeting held in Mauritius from 15-19 November 1993, whose law ministers noted that to provide judiciaries with their own budget *"both bolstered the independence of the courts and placed the judiciary in a position to maximize the efficiency with which the courts operate."* **The Cairo Declaration on Judicial Independence**, formulated in the Second Arab Justice Conference in February 2003 also urged governments to *"guarantee the financial independence of judiciaries."* Ensuring adequate and unconditional financing, in accordance with these Declarations' recommendations is a crucial step in insulating the judiciary from improper conduct.

Strengthening Judicial Independence

A truly independent judiciary is a cornerstone prerequisite for democracy, development and the rule of law. **The Cairo Declaration on Judicial Independence**, *"agree[d] that an independent judiciary is the main pillar supporting civil liberties, human rights, comprehensive development processes, reforms in trade and investment regimes, regional and international economic cooperation, and the building of democratic institutions."*

Our Constitutional framework envisages an independent judicial system, insulated from partisan political influences. However, with the general decline of moral and social values in the society, we have witnessed partisan inclinations and opportunistic political influences in the judicial domain. During the impeachment cases, for instance, some State Chief Judges conducted themselves as "active undisguised politicians judicially attired" by their ignoble parts in the impeachment processes. Fortunately, the NJC was quick to suspend all 4 Chief Judges involved in the impeachment drama. At other times, we have seen wanton Executive interference with the judicial process and in the appointment and removal of judicial officers. In Enugu State, for example, the appointment of Justice Innocent Umezulike as Chief Judge of the state in December 2004 was a clear arm-twisting of the NJC by the State Executive. The Executive merely forced its preferred candidate on the NJC, over the NJC's original candidate

"To no one will we sell, to no one will we refuse or delay, right or justice."

- Magna Carta, Cap. 40, 1215

for that office. Also in 2006, it took the Executive Governor of Abia state to remove the then Chief Judge of the State, Justice K.O. Amah, from office despite weighty allegations of corruption and other improprieties levelled against him.

The judiciary and its officers must be independent and apolitical. It cannot always expect to have a comfortable relationship with the Executive because a situation may arise where it has to defend the rule of law by differing from the government. While a good relationship between the Judiciary and the other arms of government should be encouraged, it should, however, not compromise the tenets of separation of power, nor entail the abandonment of principle and the rule of law. Sometimes friction amongst the various arms of government is indicative of a healthy state.

A truly independent judiciary is a cornerstone prerequisite for democracy, development and the rule of law.



Former US Chief Justice Harlan Stone

The primary challenge confronting the judiciary is not necessarily undue political interference but rather insufficient capacity and integrity inside its own institution. Steps from within the judiciary are equally necessary to ensure its independence. The National Judicial Council should be more proactive in protecting judicial integrity and independence by providing a more effective machinery, which will ensure both the independence and impartiality of the judiciary at all levels. In the United States, for instance, maintaining a fair and independent judiciary has been accomplished with remarkable success through self-administered ethical norms. In the words of a former US Chief Justice Harlan Stone, “the only check upon our exercise of power is our own self restraint”.

According to the **Bangalore Principles of Judicial Conduct**, “the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country”. Judges are therefore enjoined to “exercise the judicial function independently”; to “encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary”; and to “exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence”.

Issues of Judicial Integrity

A democratic society should not tolerate a culture of corruption in the government, and more particularly in the judicial branch. In Nigeria, the sheer size of substantiated indictments against Judges, and an intermittent wave of still appalling conduct show just how long a way

“A serious impediment to the success of any anti-corruption strategy is a corrupt judiciary. An ethically compromised judiciary means that the legal and institutional mechanism designed to curb corruption, however well-targeted, efficient or honest, remains crippled. Unfortunately, evidence is steadily and increasingly surfacing of widespread corruption in the courts in many parts of the world.”

-UNODC on strengthening Judicial Integrity

The judiciary and its officers must be independent and apolitical. It cannot always expect to have a comfortable relationship with the Executive because a situation may arise where it has to defend the rule of law by differing from the government.

we have to go on the issue of judicial integrity. While acknowledging the modest efforts the NJC and State Judicial Service Commissions are making in this regard, it is doubtful however, whether we can win a transformative struggle against corruption in the Judiciary only by using disciplinary remedies that are mostly post-dated and reactive.

There is need perhaps to reinforce safeguards that will reduce the misappropriation of judicial authority for private profit. By reforming, for example, judicial recruitment procedures, by increasing vigilance mechanisms over courts, by using more discreet methods to monitor judicial conduct, and by improving conditions of service for our Judges. Our court registries, and administrative departments such as the Sheriffs and Bailiff sections, the Magistracy, and other lower courts, are parts of the justice system, that need urgent attention. No matter what the NJC does to restore public confidence and integrity in the judicial system, public perception will not likely change much if lower courts and registries of courts are still reeling with corruption.

Judicial corruption needs to be addressed using a variety of approaches. There is significant need to continually reinforce judicial integrity through capacity building. One way to do so is by developing ethics training for judicial officers and court staff with the purpose of raising awareness of the ethical challenges facing the judiciary, and training staff on how to handle these challenges. This will help strengthen internal and external integrity safeguards. Also, to prevent departures from judicial integrity and to address the systemic causes of corruption, it is essential to have in place ways to monitor and audit judicial performance and the handling of complaints about departures from high standards of integrity in the judiciary. In Vol. 4 of *The Justice Observatory Journal* (JOJ), Access to Justice featured a report on allegations levelled against a Court of Appeal Justice, Hon. Justice Chidiebere Uwa, who was elevated to the Court of Appeal despite corruption allegations pending against her before the NJC. There are no indications that the petition was investigated and that the allegations were cleared before her elevation to the Higher Bench.

Eradication of corruption from the justice system is a joint task involving not only judges and members of the legal profession, but literally all stakeholders, including all branches of Government, the media and the civil society. However, any approach to enhancing judicial integrity must also contain measures to restore public trust in the credibility of the judiciary. Public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

"We must keep in mind that judicial independence is a means towards a strong judicial institution. The strong judicial institution is a means towards securing the basic goals of people: human liberty and a reasonable level of prosperity."

- Honorable Justice Stephen G. Breyer

"Comment: Liberty, Prosperity and a Strong Judicial Institution"

Conclusion

The call to judicial reform is *sine qua non* if we are to achieve the noble objective of creating and maintaining an independent, high-performing, responsible, efficient and accessible judiciary. We must therefore begin to articulate and pursue a strategic judicial reform agenda. A comprehensive action plan for the judiciary should be developed and published, containing a clear agenda for judicial reform and succinct procedures for implementation within specific time frames. This would require a little more imagination and initiative from the leadership of the judiciary, the political will of the government, the cooperation of the bar, the media and civil society. All these are well within reach.

A democratic society should not tolerate a culture of corruption in the government, and more particularly in the judicial branch.

"A perception of corruption, bias, or other unethical traits can be almost as harmful to society's confidence in its legal system and its respect for the rule of law as the reality of those traits. Judges must not only avoid impropriety, but also the appearance of impropriety, if public confidence in the judiciary is to be maintained"

**- Justice Sandra Day O'Connor, Former Associate Justice of the U.S Supreme Court,
"The Importance of Judicial Independence", September 15, 2003**

Interview with Hon. Justice I. L. Kutigi Chief Justice of Nigeria

9



On January 30, 2007, **Hon. Justice Idris Legbo Kutigi** became the 10th indigenous Chief Justice of Nigeria. Hon. Justice Kutigi, is assuming office as Chief Justice at a time the Supreme Court is itself, on the thresholds of what is arguably a revolutionary transition; the Nigerian Supreme Court is engaging adjudicational exigencies erupting from the political landscape, and with dizzying pace, in ways never before observed in our history. Predictably, there will be more causes that will need this type of turn-around adjudication time, as more people look up to the Supreme Court for immediate relief. How will the Supreme Court engage with more pressure for accelerated decision-making? What other frontiers will its leadership unlock to make, not only the Supreme Court, but other courts as well, true defenders of democratic freedom, and the rule of law. Chief Justice Kutigi field questions on these and other issues from *The Justice Observatory Journal's* editor, Joseph Chu'ma Otteh.

JOJ I want to thank you for the honour, it is a big privilege to come and talk to you. On behalf of Access to Justice, I am deeply grateful for that privilege. Thank you very much.

CJN Thank you too.

JOJ I want to know how you are settling down into your office and having to cope with several more administrative things that you now have to combine with judicial duties.

"A successful judicial system is a valuable part of the development process, not just in the way it may aid in obtaining economic prosperity, but also in the way it may protect civil liberties and freedom"

-Eveline N. Fischer, Deputy general Counsel, Asian Development Bank in "Lessons learned from Judicial Reform: The ADB Experience"

How is that going with you sir?

CJN I try my best to cope with the situation, for in this place as a Chief Justice, there is a lot to do more with administration than the previous days when I used to confine myself to the cases I have in court and writing my judgments. Those were my preoccupation in the past but now, just like you, people are here and they want to know so many things. These ones come, we want to interview you, and some will say we want an appointment. In fact, a lot of time is taken up in administration. Of course that one includes the cases too, a lot of lawyers will come and complain about cases which are in court which they want disposed of at a certain time for one reason or the other. As much as possible we are trying hard to cope, it's not easy but we are getting used to it

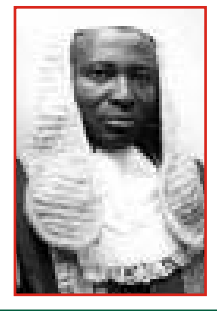
my predecessor, set up committees for reform of the rules of court that will speed up trial. As much as possible I tend to pursue those areas unless of course other things crop up which will have to be dealt with, but generally, I am going to tow that line.

JOJ Sir, what should Nigerians expect from your judicial leadership in this country and what particular priorities will define your period in office. What particular areas will you like to look to reform while you are the Chief Justice of Nigeria?

CJN These areas have been flogged over and over again. I intend to follow the footsteps of my predecessors. The priority now is to reform the civil procedure system and the criminal justice system. Right now, apart from the awaiting trials in the lower court - Area Courts and Magistrate Courts- in the Supreme Court, we have no awaiting trials, all the criminal cases we have are disposed of in that year except for few cases. In fact all murder cases are disposed of that very year. We have no awaiting trial for a whole year, our concern here is just to do with the quick dispensation of justice and that is already in motion. The President set up a reform committee for the criminal justice system. We have the Attorneys-General and Ministry of Justice, so far, making moves. The Court also, my predecessor, set up committees for reform of the rules of court that will speed up trial. As much as possible I tend to pursue those areas unless of course other things crop up which will have to be dealt with, but generally, I am going to tow that line.

JOJ There is something refreshingly different about the way the Supreme Court disposed of some political cases, to be more specific, the impeachment cases a while ago. Some might say they did that with some jet speed. We think that was really remarkable and it awakened quite a number of people. Is there anything you think Appellate Courts should do that will see them deciding cases that come before them quicker than they are currently doing? Is there anything about the Appellate Courts -not just the Supreme Court- the Court of Appeal as well, that you are likely to look to reform so that we can

"If you will accept bold ideas, new theories, courageous innovation, and disputed principles with an open and inquisitive mind and a renewed commitment to make the law an instrument of advantage for disadvantaged people, we will be a significant generation."
- E. Clinton Bamberger, first Director of the OEO Legal Services Program, Speech to National Legal Aid and Defender Association, Scottsdale, Arizona, November 18, 1965



Hon. Justice Belgore (rtd), Former CJN

have something similar to, (maybe not exactly at that same speed) but something like an improvement on what is currently the situation?

CJN The Constitution gives the Court of Appeal and even allows all courts three months to deliver their judgment, so it depends on the panel. If the panel feels that the facts can be digested, they are not complicated, they are not confusing, then it can take less than three months and deliver its judgment. There is no

hard and fast way about it all because the Constitution gives the court three months to deliver their judgment from the last address they heard. That is statutory constitutional provision, but then it is for the panel, if the panel hears a case and sees that it is not complicated, nothing new, nothing extra-ordinary has happened, they don't need a lot of research, no serious issue to be resolved, then the court will decide what date, how many days it will take to write and deliver its judgment. That applies to all courts: High Court, Court of Appeal, Supreme Court, three months for you to deliver judgment. So it depends on the work the court has to do to reach its decision. I am sure no court keeps the cases in its records for nothing, either for pressure or political or anything, as far as we are concerned justice is justice. The courts' business is to do justice whether political or not political. That is the aim, to do justice.

JOJ There are a number of courts that are acquiring electronic recorders and transcribers to facilitate the speed and the ease with which records of proceedings are taken; just a few of those courts. Many other courts across the country have not taken up such initiatives. Of course I know that your jurisdiction does not reach all the States in Nigeria but perhaps in some way you might be able to talk to those who have such influences. Perhaps also make a case for some kind of extra-budgetary allocation to the judiciary that will enable the Federal Government provide some kind of grants-in-aid to State Government to purchase electronic recorders. This I believe will infinitely enhance the speed at which courts determine their cases. But also in addition to that it is also a worry to some of us that some of the courts that actually have this recording machines, like the Federal High Courts, have not been putting the machines to use and judges are still taking notes in long hands which defeats the whole purpose of getting these machines. Do you see any role you can possibly play in changing some of this?

CJN You know that all those machines you are talking about need light to work them. Yesterday in the Supreme Court we had no light throughout. The electricity is not there and there was no diesel for the generator so there was no light in the Supreme Court the whole of yesterday. Light came up only this morning, so even the clerks could not produce judgments, they could not produce anything so there are a lot of handicaps.

*"...In a democratic society which has a Constitution and with a Bill of Rights or which has subscribed to regional or international instruments on human rights and which is seeking to build a fair and just society, judicial activism on the part of the Judiciary is an imperative, both for strengthening participatory democracy and for realization of basic human rights by large number of people in the country." -Justice P.N. Bhagwati, former Chief Justice of India in *The Role of the Judiciary In the Democratic Process: Balancing Activism and Judicial Restraint**

Even if you go inside the country where there is not much activities, the High courts in the bush, for example, even if the whole gadgets are there, how will you use it if there is no light. That is the problem, but the Federal Government has always assisted us in getting those gadgets we send to courts.

Joseph Otte, ED, Access to Justice and Justice Kutigi, CJN



- JOJ** Perhaps the judiciary needs to work a little harder to overcome some of these infrastructural problems perhaps getting generators.
- CJN** We have generators but there is no diesel. It is the country, we buy generators but there is no diesel to pay for. What are we going to do? Sometimes the courts have to sit in those circumstances; we remove our gowns because the thing is so hot and you are sweating. In the Supreme Court we do that sometimes. So there are a lot of limitations to those gadgets, the thing breaks down and nobody can repair it. Some days ago, somebody complained that the machine was not recording and that the machine did not fully record what took place in the court. What do you do to that type of person? You see there are a lot of limitations to what the machine can do especially in a situation where power supply is not available or in some places there is no generator or the generation breaks down or you look for diesel and there is no diesel. I came to the Supreme Court yesterday and the whole power was off, no generator, no light, and no diesel. We have a depot where we store it but the people supplying have to pour it there. There was nothing the Supreme Court could do. Even those of us that wanted to buy diesel, could not. Those are limitations. What we are talking of, of course, mainly applies in the trial courts where they take long trials and the witness goes on to talk. Luckily in the Supreme Court and Court of Appeal we have the records already printed that we read. Also when counsel address us, they have already prepared their briefs in writing, it is only when they summarize or enlarge all they want to expatiate that we take notes. So the main problem is in the lower court where these trials take place.
- JOJ** Your predecessor in office, that is, Justice Uwais had at some point cried out over the way court orders were being disobeyed in Nigeria particularly by Executive agencies. I will like to ask, are there still developments in our country today that give you those kinds of concerns?

"Judicial independence is an indispensable component of a democracy. If a declaration of rights was incorporated into the constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislature or executive."

-James Madison, the principal author of the US Constitution

Yesterday in the Supreme Court we had no light throughout. The electricity is not there and there was no diesel for the generator so there was no light in the Supreme Court the whole of yesterday.

CJN Our duty is to deliver judgments and make orders that we are supposed to make. Unfortunately the Executive that has the machinery for enforcing our orders sometimes disobeys these orders. People and Politicians talk about the rule of law everyday. We will do what we are meant to do. We pass orders and give the proper judgment we want to make, that is our duty. It is the Executive who will enforce and they will obey. We don't have our own police men or armed forces, we do have the executives.

JOJ If we have an opportunity to do a constitutional reform, would you advocate for, like they do in some countries like the US, Judicial Marshals who implement decisions and orders too?

CJN Tell the politicians, so that the politicians will decide not the judges. If they decide to introduce it, okay. There are many things we decide which we cannot introduce on our own, so what do we do?

JOJ Do you think that this is what the judges will like happening in this country? If they ask the judiciary what do you think its position will be?

CJN There is no doubt the judiciary will like to see its orders enforced and obeyed. I wouldn't say more than that but we definitely want to see our orders obeyed and carried out.

JOJ There has been some concern even from some Chief Justices; your predecessors have spoken about this in the past; concern about the way some judges have conducted themselves. Many of them have ended up being removed for malfeasance or other forms of misconduct even up to the Court of Appeal Judges and it does, perhaps (I don't have any empirical evidence on this), look like the problem is also spreading out. How do you intend to tackle this concern? Do you see any need to reinforce or just continue the current struggle against judicial misconduct? Is there anything out of the ordinary that you think you might do, for example prosecuting judges who have been indicted for corruption? That might be a new angle to the anti-corruption war or do think the present system is just satisfactory?

CJN As far as I am concerned, the law at present is there in the constitution; we have the National Judicial Council, which has the power to exercise disciplinary control over judges. In the States, they have the State Judicial Service Commission to exercise power

"We can end the existing denial of justice to the poor if we can secure an administration of justice which shall be accessible to every person no matter how humble."

- Reginald Heber Smith, JUSTICE AND THE POOR (1919)

over Magistrates and so on. As long as there is evidence before the National Judicial Council that a particular judge is found wanting, a petition is made to that effect to the Governor or to the President to retire him or to dismiss him. That is the proper action. As far as I am concerned, I think that system works well now for us. Everybody is on his guard. Once a report is made to the National Judicial Council, the case will be investigated. The only trouble is that when you talk of prosecution, you need evidence, concrete evidence to be able to

prosecute anybody for that matter. When someone comes out that he gave the Judge so and so much, so and so present, those are the cases you maybe go to prosecution, and you may find it difficult to prove; maybe the man who allegedly gave money wouldn't come forth to say he gave any money out at all by the time you are prosecuting him. But once the National Judicial Council investigates by itself and finds that something doubtful has happened, the decision it will take is to recommend to the Governor or the President to dismiss the Judge which to me for some time may be sufficient. Irrespective of that, I am sure that the ICPC in the past, I don't know, tried prosecuting some judges. I don't know whether they were successful or not but in the end you find out that nobody is coming forth to give evidence. The Supreme Court was accused in the past; people said they give us millions of dollars but up till today nobody has come forth to say I gave Mr. X millions of dollars. Definitely, there was an allegation, which the pressmen printed and carried about. That is the problem with Nigerians, they make allegations but they cannot substantiate them.

As far as I am concerned, I think that system works well now for us. Everybody is on his guard. Once a report is made to the National Judicial Council, the case will be investigated.

JOJ There has also been this worry about the quality of the Bench in Nigeria. I know that one of the Supreme Court Justices while he was retiring at his valedictory spoke quite strongly on this. Even retired Supreme Court Justices and many people who are knowledgeable in this field say that the standard is coming down a little and that there is need to shore up the capacity and the sagacity of the Bench. I also know that there are quite a number of people who say that we also need to look at the process (the judicial recruitment process) through which we bring in people into the Bench. Perhaps if we strengthen that process more than we already have done we can address that problem, at least to some extent. Do you agree in the first place that there has been some kind of reduction in standards amongst judges; if you do agree, what do you think or what will you likely do about that issue during your tenure?

CJN I don't agree with that statement you made. My point is that the Justice you are talking about was complaining about the recruitment of judges; how judges were appointed.

"If governments treat courts orders with levity and contempt, the confidence of the citizen in the courts will be seriously eroded and the effect of that will be the beginning of anarchy in replacement of the rule of law"

Hon. Justice M.L Uwais CJN (*ThisDay*) Tuesday March 28, 2006

What he was talking about is the method by which judges are appointed. He was suggesting that if the NJC heard about a particular person who is a candidate, even if rumours are heard that he is corrupt or doing something, all sort of things will be taken into account and people should be asked about their opinion whether a particular judge was corrupt. But in law you need more than mere allegation, you need evidence to substantiate. I believe that was the area that my learned colleague who retired was talking about. In law, there are certain procedures, certain steps taken before a judge is appointed especially in the high court. The nominations are made by people on the Bench, these lists are usually circulated to the Bar Associations to comment, before the collation then goes to the State Judicial Commission where it is vetted before it comes up to the National Judicial Council, then it is sent back. There are procedures to check if anybody is not suitable for judicial appointment. But it is not just enough to say because you heard a certain judge was corrupt when he was in so and so station, people are complaining he was doing so and so thing without any concrete evidence. All these things must be considered, but how many people will come forth and say when this judge was in so and so, and this was what I gave him. Nobody has come to tell you that. I don't think any standard has fallen at all in the quality of our justice delivery system. We are quite a number of judges; presently we are on the right track although one can talk of general decline in legal education but that is not limited to the judges alone. That is the general complain even the within the Bar. Everybody knows when the Universities (people who train these lawyers to become judges) are on strike most of the time not teaching the children, what do you produce? It's the whole system not just the judiciary.



Hon. Justice Kutigi, CJN

JOJ Across the world, many countries make the process of judicial recruitment more open and more participatory, for example, England from where we have borrowed some of our procedures. When they want to recruit for superior courts positions, those positions are announced and people who feel qualified can apply for it and then there is a rigorous selection process. The same thing is going on in Canada and the same thing in South Africa. People are like saying this is a democracy and if we have positions that are available, public service positions, we will throw this opportunity open to everybody and not just make them available to those who will be nominated by some who have some leverages within the system. In other words, there is democratization of access to judicial office. Is the judiciary in Nigeria thinking along this line at present?

CJN I do not know about that. Although you talked of South Africa I do not know actually

"Government keeps its promises, or does not keep them, in its courts. For the individual therefore... the struggle for constitutional government is a struggle for good laws, indeed, but also for intelligent, independent and impartial courts."

Woodrow Wilson, former US President.

how they do their own, and how other countries do their own but you can as well say as they do in America, election to appoint judges. You can as well suggest that. If you say judges should be elected then you go for elections and if that is your suggestion but now I don't know, as laymen, if they want to appoint a doctor or a physician and I am not a doctor or a physician I don't know what help I will give in the appointment of a doctor or a physician.

I don't think any standard has fallen at all in the quality of our justice delivery system. We are quite a number of judges; presently we are on the right track although one can talk of general decline in legal education but that is not limited to the judges alone.

JOJ In some of these countries what happens is that a body similar to the NJC or the State Judicial Commission advertises that they have this and this position vacant, and then lawyers and others that are members of the academic community and those who are qualified can apply. They then look at the list of those who have applied and make their selections.

CJN Even now as I am telling you it is not limited to NJC, even the Nigerian Bar Association, they receive notice, they can also make recommendations to the state or the National Judicial Council for the appointment of judges. In a State, if a Chief Judge wants to appoint a judge in his State he will communicate to all the Chief Judges in the federation asking them for nomination. I think that's the fairest we can do to the judiciary. Our Supreme Court is working at least two third that we have is working. We don't have to work like any other country or copy what they do.

JOJ They are many worries of administrative corruption in the registries of the High courts. Many Chief Judges, of the State High court or the Federal courts, are not taking action to stem the corruption that goes on at the registries there, with the bailiff sections, the sheriff sections and the process sections generally. These things contribute significantly to delays. That is not so good for the image of the judiciary. In fact, I know that one Chief Judge actually witnessed the very scandalous level of corruption and I think sacked the entire sheriff section and recruited new people. We tried to ask Chief Judges as part of their oversight functions to come down hard and address this problem because if they address this problem it will help in achieving a faster rate or will bring about a speedier adjudication of cases because many times when you go to court, you see that bailiffs, after you have paid all the filing fees, haven't served your process and then you have to take another adjournment. Is there something you think you might be able to do during your tenure because it's actually an issue for some of us who work from the states and who have experiences of some of these things?

CJN I don't know, I don't agree with most of what you have said. I don't think any Chief

"The Constitution protects judicial independence not to benefit judges, but to promote the rule of law: Judges are expected to administer the law fairly, without regard to public reaction."

Former US Chief Justice William H. Rehnquist, Los Angeles Times, April 25, 2005



Judge worth his appointment will close his eyes to naked corruption occurring in his court and taking no action about it but gladly you mentioned one Chief Judge who took decisive reaction to sack all the people involved in the corruption. That is the right thing to do which I am sure every Chief Judge should do. It is not enough because what we talk about is allegation. It is an allegation being made but if such allegation you have made it before the Chief Judge, is investigated, and if it is established, I am sure action will be taken. Nobody will condone corruption.

JOJ Sometimes when you go to court and a case is called, a process has not been served and you tell the judge, 'Your Lordship we have paid for service and we have done everything' and sometimes the judges tell 'are you not a Nigerian go and find a way to facilitate the service of this process'.

CJN There may be reasons, perhaps if the bailiff is called upon and you have paid for something, there are bound to be reasons why it has not been served.

JOJ Exactly

CJN That needs to be found out before you say it's a result of corruption that is why he has not done so. That is your conclusion now, that it was not served because the bailiff is corrupted.

JOJ Well, not because he has been corrupted, maybe because you have not done everything that the bailiff expects you to do.

CJN I do not know about that one.

JOJ We have actually done some stuff on this matter.

CJN Then you put it down. If you have done anything on it, you put it down. Get the record, serve the complaint to the Chief Judge, give the name of the bailiff, and see what he will do.

JOJ We will send you a copy of that sir

"Unlike the Executive, whose authority relies ultimately on the armed forces, and the Legislature whose authority ultimately relies on the power of the purse, the judiciary rests ultimately on nothing but public confidence."

**Former Chief Justice F.L. Nyalali of Tanzania,
*Ethics and Accountability of the Judiciary.***

CJN Please do so. If you serve the Chief Judge and he does nothing, send it to us and we shall tell him to investigate it. NJC will tell him to investigate it and take action and I am sure he will.

JOJ I will take up the challenge sir.

CJN Do so. Get all the particulars down. I am sure no Chief Judge will condone this type of thing at all.

CJN But the things that delay service of process either the man can not be found or the man is there and says he is not the one and the bailiff does not know him. But if you lead him to the man; that this is the man you are to serve then he will serve him. Bailiffs do not know the people, they only make enquires. If they say the man traveled two weeks ago to England, and he is not likely to come back, he has to wait till the man comes back from London.

JOJ If we had another opportunity to restructure the justice system, are there any particular areas you would like to see some changes?

CJN Restructure?

JOJ Yes

CJN The whole system?

JOJ No, if we have the opportunity for example, another constitutional review process. If we had that opportunity -and many of the presidential candidates are offering that they would do this when they come into power- if we had that kind of opportunity, are there any areas you think you would like to see some changes in the judiciary?

CJN The question is too general. What I will say is that the action on the on-going reform (as I said before) of the civil procedure system, criminal justice system are some of those needed for speed of court. All hands are on deck now, which is what we are doing and as long as they achieve results, let us continue improving on what we have and not the wholesale change.

JOJ Thank you very, very much. I'm very grateful

I don't agree with most of what you have said. I don't think any Chief Judge worth his appointment will close his eyes to naked corruption occurring in his court and taking no action about it...Nobody will condone corruption.

"Differences in the ability of classes to use the machinery of the law, if permitted to remain, lead inevitably to disparity between the rights of classes....And when the law recognizes and enforces a distinction between classes, revolution ensues or democracy is at an end."

- Reginald Heber Smith, JUSTICE AND THE POOR (1919)

A Judiciary under Siege: Revisiting the Two-Day Barricade of Ekiti State High Court Complex.

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■ Chinedu Nwagu Esq.

“Justice without Compromise”- this is the motto that keeps the wheels grinding in the administration of justice in Ekiti state. Until the 2006 impeachment drama, which saw the suspension of two top judicial officers from Ekiti state judiciary, the judicial department in that state has been peaceful and vibrant. However, the state of affairs changed on Tuesday, 17th April, 2007 when a contingent of mobile policemen and armed soldiers sealed off the High Court Complex premises in Ado-Ekiti, Ekiti State. The contingent reportedly arrived at the High Court premises at about 8. 30am, and went into all the offices within the High Court premises ordering all staff out of the premises. They then mounted a barricade on the major road leading to the court premises, barring access to the courts to lawyers, litigants and even judges. No reasons or explanations were given for this action and no indications were given as to who ordered or authorized the action.

The Ado-Ekiti Bar Condemns the Siege

The Ado-Ekiti Bar came out strongly to condemn the siege as “barbaric, shameless and crude”. The press statement issued and signed by Mr. Bamidele Omotoso, Chairman NBA, Ado-Ekiti branch denounced what he described as the “illegal invasion of the court premises and harassment of innocent members of the Judiciary and Lawyers”. He further warned politicians in the state “not to turn the court premises to a political ground and not to subject Ekiti judiciary and its supporting staff to unwarranted intimidation and subjugation.”

He told Access to Justice/ *The Justice Observatory Journal* in an interview that he was not in town the day the siege commenced but upon his return, issued the press statement when no official statement or explanation was forthcoming from the State Executive. Subsequently, he said the Ado-Ekiti Bar met and endorsed his actions with a vote of confidence.



Mr. Bamidele Omotoso

The Attorney-General Attempts an Explanation

The Attorney General of Ekiti State, Gboyega Oyewole, in a paid advertorial published in national dailies confirmed “the deployment of security agents to the High Court Complex”. He said that they were there to “forestall the sinister machinations of some evil elements to create an atmosphere of insecurity in the State by attacking and burning public buildings”. The way the High Court complex was barricaded, however, did not substantiate the Attorney General's explanations.

There was nothing that evinced a security risk in Ekiti State particularly to the judicial arm, which could have warranted the action taken. If there were indeed credible threats to the

“An independent judiciary is a critical guardian of our most precious liberties. Tampering with that independence is in no sense conservative; it represents a frightening break with tradition.”

Excerpted from “Popular or not, independence of judges must be protected”,
Blioxi Sun Herald, April 14, 2005

security of the court complex, there were less intrusive ways of dealing with those threats. Security agents could, for example, have increased surveillance over the court premises, and taken measures to ensure that those who were entering court premises did not carry harmful objects. For instance, when there was a bomb scare at the Ikeja High Court during the trial of Major-General Bamaiyi and others for the attempted murder of Chief Alex Ibru, the courts were not completely sealed off, rather security was beefed up around the court premises and searches were conducted on litigants and other court users before being permitted entry into the court. Bomb experts were also brought in to thoroughly search the court premises. But beyond that, the courts were neither sealed off for public entry nor were judicial proceedings disrupted in the process.

The siege was not also extended to other important public buildings in the state such as the Government House and the Secretariat. These situations render the Attorney-General's explanations rather implausible.

The Attorney-General of Ekiti State in the referenced face-saving advertorial also claimed that the Chief Judge of Ekiti State was aware of the siege on the courts even before it was carried out. It may be difficult to accept this claim, because, we would have assumed that had the CJ been aware of the proposed “barricading” of the courts, she would, most probably, have directed judges and other judicial staff to stay away from work on the designated days of the “siege”, and that direction would have prevented the abrupt termination of on-going judicial proceedings on the said date.

The circumstances surrounding the siege leave much to be desired. The hearing of a sensitive case instituted by the suspended Deputy Governor of the state, Mrs. Abiodun Olujimi, challenging her impeachment was scheduled to hold on the day the siege started. The cordoning off of the Ekiti State High Court on those days was, therefore, perhaps, either coincidental or a calculated ploy to interrupt the already scheduled hearing of the case. More so the siege, which was allegedly inspired by a security scare, was limited to the High Court complex in Ado Ekiti while the other High court premises in the state were left unprotected. The siege was not also extended to other important public buildings in the state such as the Government House and the Secretariat. These situations render the Attorney-General's explanations rather implausible.

Access to Justice/ *The Justice Observatory Journal* conducted a fact-finding visit to Ado-Ekiti to clarify these issues. Unfortunately, we could not meet with the Ekiti State Attorney General. We also called at Hon. Justice Modupe Fasanmi, the Acting Chief Judge's office but, she was away at Abuja on official engagements. Access to Justice/ *The Justice Observatory Journal* spoke with Mr. Adewunmi Omodele, counsel to the deputy governor whose case is widely-believed to have motivated the action. “There was no security risk or alert in the state particularly in Ado-Ekiti”,

“Judges must be impartial. They must maintain their independence and act as a check against the power of the other two branches of government. The pressure on them brought by politicians is reprehensible.”

Hartford Courant, April 7, 2005

The sanctity of the courts and the inalienable right of access to them is fundamental, and is, in fact, the lifeblood of any system of constitutional democracy.

he said, “the siege was an eyesore and has political undertone. The paid advertorial by the Attorney General was illogical and an afterthought. He (the Attorney General) has created history which shall continue to haunt him.”

The situation in Ekiti State is a direct and brutal attack on democratic governance and is reminiscent of the ordeals of the judicial institution under previous military dictatorships. It may be recalled that in November 1994, the Supreme Court was sealed off by heavily armed security

operatives the day it was to deliver judgment in Abiola's case over the cancellation of the June 12, 1993 elections. These inexplicable interruptions and interferences with the judicial arm tend to assail the only distinction that exists, even if notionally, between military dictatorships and constitutional democracy.

Implications of the siege on the judiciary

The action of the Security operatives gravely undermines the operations of the judicial branch of government, and directly interferes with the exercise of rights of access to court. The right of recourse to courts of law is very well-entrenched in the Nigerian Constitution, and in treaties and undertakings binding on Nigeria, including the African Charter on Human and People's Rights, and the International Covenant on Civil and Political Rights, (which Nigeria has ratified). The sanctity of the courts and the inalienable right of access to them is fundamental, and is, in fact, the lifeblood of any system of constitutional democracy.

Sealing-off the courts constitutes a gross abuse of the rights of citizens to judicial recourse, and gross disrespect for the rule of law. This action violates the constitutionally guaranteed independence of the judicial branch and negates all the important values enshrined in the **United Nations Basic Principles on the Independence of the Judiciary**. One of those principles states; “The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law *without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.*” (Italics added). Furthermore, Article 2 (3) (1) of the ICCPR enjoins the Nigerian government (having ratified the Covenant on 29th July 1993) to “*ensure that any person whose rights or freedoms are violated, whether by persons acting in official capacity or not, shall have their rights thereto determined by a competent judicial authority*”. Judicial independence is a platform upon which guarantees of rights are defended and substantiated. Section 17 (1), (2) (e) of the 1999 Constitution declares that “*the state social order shall be founded on the ideals of freedom, equality and justice, and that in furtherance of the social order, the independence, impartiality and integrity of courts of law, and easy accessibility thereto shall be secured and maintained*”. Section 126 of the Criminal Code Act, also

“The courts form the last line of defence in any free society. It is therefore absolutely essential that, that vital line of defence is kept impregnable. When that line is overrun by the menacingly advancing avalanche of moral decay and corruption or of interference, or of pressure or of all three, then all hope is lost and then also the warning shots are being audibly fired for the inauguration of the reign of terror or else for the era of disorder and despair. A sound, honest, healthy and efficient judiciary is the last hope of the common man.”

-Hon. Justice Chukwudifu Oputa JSC (rtd.), *The Law and the Twin Pillars of Justice*.

makes it a punishable offence to obstruct, prevent or defeat the course of justice.

Conclusion

The judicial institution has undoubtedly held the fort for the success of our democratic transition. They should be allowed to continue without any clog or hindrance. It behoves the Executive arm to demonstrate greater respect for the rule of law and deference to the integrity and sanctity of the courts. Law enforcement agents ought to serve the rule of law, and defend the integrity and authority of rule of law institutions, such as courts, and not subvert the roles they play in a democracy. Unfortunately, security agents are increasingly being used to attack important democratic values at this critical juncture in our life as a democracy and a country. Directing law enforcement agents to block access to courts of law clearly constitutes an unfortunate departure from the constitutional responsibility of these security agencies to maintain the rule of law and the sanctity of rule of law institutions. This ought not to be so. Rights of access to court and an independent judiciary are essential to the rule of law. Nobody should be denied access to the courts of justice; this is a cornerstone principle of our constitutional democracy.

Rights of access to court and an independent judiciary are essential to the rule of law. Nobody should be denied access to the courts of justice; this is a cornerstone principle of our constitutional democracy.

"An independent judiciary is an indispensable prerequisite of a free society under the Rule of law. The Rule of law implies the existence of courts where the judges are completely insulated from pressure from the Legislative or Executive arms of government; where the judges, secure from any fear of interference or removal, do their duty fearlessly, holding the balance and the scales evenly, not only between man and man but also between man and the state."

-Hon. Justice Chukwudifu Oputa JSC (rtd.), The Law and the Twin Pillars of Justice.

Interview with Olisa Agbakoba, SAN, OON President of the Nigerian Bar Association

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Olisa Agbakoba, SAN, OON was elected President of the Nigerian Bar Association in August 2006. A veteran human rights activist, past president of one of Nigeria's premier human rights group, the Civil Liberties Organisation (CLO) and a member of several international bodies. He is also a life bencher. Mr. Agbakoba now has a unique, highly sought-after opportunity to remould the Bar in Nigeria, and define the role of law and lawyers in Nigeria's struggle for her future. He articulated the vision of his leadership of the Nigerian Bar, as well as his convictions on other burning issues in this interview with Chinedu Nwagu, Assistant Editor, *The Justice Observatory Journal*.



JOJ Sir, first we want to congratulate you on your election as the President of the Nigerian Bar Association. We wish you the very best in your tenure and pray that God would help you achieve all your set objectives.

Agbakoba Thank you very much.

JOJ The returns posted by the state judiciaries particularly in election and impeachment cases give great cause for concern. In virtually all the states where impeachments have occurred, the judiciary's active partisanship was beyond question. What is going on in the judiciary? Why are we witnessing the regular flip-flops? How can we begin to deal with them?

Agbakoba The judiciary by the constitution should be an institution that is independent of the Executive and to a large extent that is the case. But Nigeria is a very challenging country. The Supreme Court can be said to be very independent and I do not think that independence is really spelt out in the Constitution, it is the experience they have at that level. But for the High Courts, the Chief Judges and the role they played in the impeachment process, you know that the Chief Judge often depends on the Executive for support so in time it was difficult not to say that the Chief Judge did not have a strong role to play. The Chief Judges have played roles either for or against the Executive. Take the case of the Ekiti State Chief Judge for instance, the allegation was that he was biased in favour of the Governor and therefore he packed the panel with pro-Fayose people. In other instances you have cases where the Chief Judges are anti the Executive. So whether it is pro or anti that is not the way it should be. The Chief Judge, according to the dictum of Niki Tobi JSC in the lead judgment in "Ladoja's" case, should be fair minded in appointing the seven-man panel. But why do they not do this? It is because of the pressure that the Executive exerts one way or the other. How can we solve it? It is by making

"This is all true and deeply depressing. But the answer is not to assault the separation of powers. Certainly not to empower congress to regulate decision making by retroactively removing lifetime appointees. The non-deranged way to correct the problem is to appoint a new generation of judges committed to judicial modesty."

-Excerpted from: "Judicial Insanity", Washington Post, April 22, 2005

sure that we appoint competent, credible men to occupy that exalted position.

JOJ Do you think the NJC has done enough or is doing enough to protect the integrity and the independence of the judiciary?

Agbakoba The NJC is doing well enough but I think that the NJC mechanisms require a complete overhaul. They have done quite well, no doubt, but as I said to the former CJN, speed is essential. If judges know that they will get punished immediately, they will be more inclined to follow the due process. We on our part at the NBA level have spoken to the relevant authorities to say that we need to have a clear set of guidelines that in each particular case determines what happens to an erring judge. We need to know what those guidelines are. Though the Code of Conduct is one but I think that in the context of what has happened, maybe that Code requires to be revised substantially so that the judges are clear on what they do. A lot of people tell me that what they want to see is the dispensation of instant disciplinary measures against erring judges. So there, the NJC needs to be more proactive.

JOJ Is that the extent of overhaul you feel the mechanism of the NJC needs?

Agbakoba The NJC needs a lot more. The NJC needs to become the arbiter of judicial performance. We are looking at a mechanism that expands the role of the NJC so you begin to talk about (I know Access to Justice has talked about it quite a bit) performance indicators, how do you measure performance? Because the Judiciary and the service they provide should be the stabilizing factor, so if judges do not carry the load they should carry how do they get punished? I would like to see the NJC's function expand from just discipline. It is almost like it is reactive; we want the NJC to have proactive functions.

JOJ What about Executive interference with the role of the judiciary? You mentioned that the independence of the Judiciary from the Executive is less at the state level...

Agbakoba And the maturity of the Judges too

JOJ What do you think could be put in place to deal with the situation?

Agbakoba It is in place already, Section 153 of the Constitution defines independent institutions. Apart from that, the Constitution makes the judiciary a self-accounting body. But for some reason the judiciary has not actually been proactive in asserting its independence. The

I would like to see the NJC's function expand from just discipline. It is almost like it is reactive; we want the NJC to have proactive functions.

"One of the most ignoble and injurious effects of disobedience to court orders by any Chief Executive of government is that the pronouncement of the Court is ignored leaving the impression that the Court may well bark but it cannot bite thereby making it a worthless bulldog."

-Hon. Justice Pats Acholonu JSC (*This Day*) Tuesday April 11, 2006



money given to the judiciary should be paid first line, not by the Executive and not piecemeal. Even the last CJN, Justice Belgore lamented the fact that they get paid month by month. But I think that on the part of the judicial administrators, the CJN and the Chief Judges, they should first dialogue with the Executive and say to them that these are the conditions that define our mandate, it is set out in the Constitution and we expect no less. So at the beginning of the year, once the budget is passed, they must pay to the NJC as a first line charge so that they can now run their affairs, capital and recurrent.

So they are now free. That is the main reason why the Executive interferes. So once you give the Judiciary financial independence, I think they will be able to do their work without fear or favour because already they have, by and large, a good thrust in the Constitution that guarantees their tenure so what is missing really is that aspect dealing with financial independence and here we can copy South Africa's Chapter 9. Because Chapter 9 of their Constitution defines institutions that consolidate democracy and the judiciary is part of it. You also have the Police, INEC and so on. These are all paid first line, not through the Executive. That is the recommendation that I have.

JOJ You mentioned something about putting credible people at the High Court level to strengthen it, are you satisfied with the process of judicial appointment in Nigeria?

Agbakoba The process of appointment is that anybody who is 10 years at the Bar is qualified to be a judge in the first instance, and then if you are 12 years, you are qualified for the Court of Appeal and 15 years for the Supreme Court. The Constitution itself did not really define anything but by practice the NJC has put in some other qualifications. You now have to show that in the last two years prior to your appointment you have argued ten decided cases before you are appointed into the office of a judge. That is good because that shows that you are active at the Bar. But somebody must take a decision and sometimes you may have a lawyer who has done ten years, who has ten cases decided in two years but is not a person of unquestionable character. So there is always a measure of discretion; that is why the Bar should play a role. Unfortunately, the relationship between the Bar and the Bench on appointment has not been too clear. At a point in time the Bench will refer it to the Bar and if the Bar says no, then that is it but now they do not do so. That is one area that requires to be strengthened. The other area that requires to be strengthened is the appellate courts; we need to overhaul the system of appointment. Right now, it has become promotion. I am not sure that any member of the Appeal Court has come from the Bar. That is bad. Every High Court judge views elevation to the Court of Appeal as a promotion. But it is not indeed a promotion; it is an elevation, a translation

"Lawyers must be activists to leave a contribution to society. The law is more than a control; it is an instrument for social change. The role of the OEO Legal Services Program is to provide the means within the democratic process for the law and lawyers to release the bonds which imprison people in poverty, to marshal the forces of law to combat the causes and effects of poverty."

**- E. Clinton Bamberger, first Director of the OEO Legal Services Program,
Speech to National Legal Aid and Defender Association, November 18, 1965**

as the word is called. It is a translation or elevation. And there is no reason why you cannot translate a competent, qualified Barrister from the private Bar straight into appellate Bench and also to the Supreme Court. And so in that sense you strengthen the quality of the appellate Courts, that I think we also need to see done.

JOJ You mentioned the need to strengthen the relationship between the Bar and the Bench especially in the area of appointments, as the President of the National Bar what efforts are you making to address this problem?

Agbakoba It is not so much of an effort as in a relationship with the respective judicial authorities particularly the CJN. Already I have spoken out, - not just me as the President of the NBA but also my predecessors going back to the time of Wole Olanipekun- on the need to have competent Barristers at least at the SAN level go to the appellate Courts. And the relationship between the NBA and the Bench has now resulted in some kind of agreement that a SAN can be appointed to the Court of Appeal. What is left for us to do now is to continue dialogue and see if we can take it up to the Supreme Court and then see that those appointments are made. It is a continued engagement and I have not had that opportunity to expand that dialogue but it is one of my key priorities to make sure that it is a policy recognised by the Bench that qualified practitioners can go to the highest level of the courts including the Supreme Court.

JOJ Talking about judicial appointments generally, how do you see the call for democratizing the appointment procedure and using more merit based criteria for judicial appointments?

Agbakoba Absolutely, I do not know about democratization but clearly in terms of using clear criteria, same with the issue regarding Senior Advocate of Nigeria appointments. At a point, people wanted to know exactly what were the qualifications entitling a person to be called to the inner Bar. Same with the elevation to the superior courts of record either of High Court, Court of Appeal or Supreme Court. Let us know exactly what the criteria are. When I was Chair of the Judiciary Committee under Wole Olanipekun, my co-Chair was Akeredolu SAN; luckily, he was partner to Olujinmi who was then Attorney general so we convinced him about the need, in addition to the requirement of the Constitution that you show ten years, twelve years or fifteen years that you must also show these cases. But since then there has been no discussion really on this merit-based approach but I think it is more than right that we should have clear criteria. The argument has always been that the Constitution requires 10,12 or 15 years, but I am all for the argument that we need now to be very clear on whether the next most

The other area that requires to be strengthened is the appellate courts; we need to overhaul the system of appointment. Right now, it has become promotion.

"In order to achieve accountability, there is a need that both civil society and the judiciary recognize that the judiciary operates within the civil society it serves. It is essential to adopt every available means of strengthening the civil society to reinforce the integrity of the judiciary and the vigilance of the society that such integrity is maintained."

-UNODC on strengthening Judicial Integrity against corruption, Vienna, March 2001

senior judge should simply become the CJ or the CJN or there should be something. That is the next field of debate that I should be happy to get information on. So if it is an area that Access to Justice promotes clearly as a legal service NGO because the challenge also that I am grappling with is to reconnect all sectors of the NBA so that every sector understands the need for us to all work together for the betterment of the Bar-Bench relationship. So it not just NBA, it is everybody. I will be more than happy to have proposals that enables us to interrogate the possibility of defining clear merit-based criteria for appointments to the superior courts of record.

JOJ The Supreme Court, by its recent judgment in the Ladoja Appeal demonstrated sensitivity to issues of democratic governance. What implications do you think this has for our democratic system particularly the legal and justice system?



Agbakoba Yes, it is a role that the Supreme Court should play. I have always felt that the Supreme Court is a court of policy. I used to have that argument with Justice Uwais the former CJN and he was concerned about the scope of policy in the work of the Supreme Court because it then sometimes detracts from the whole basis of the jurisdiction of the court that there must be a dispute, there must be a controversy and without a controversy the Supreme Court cannot assume jurisdiction. But I think that the way the American Supreme Court has worked would be very conducive to the Nigerian democratization process. We need to see a court that relates its jurisdiction and powers to the social problems. Some say that the Ladoja case was actually a policy decision because on the facts of the case, it was possible to say that the Court of Appeal

was wrong to decide the Ladoja case as it did without giving the Respondent the opportunity of being heard on the facts. When the case went to the Supreme Court, the main point in the case was that the Court of Appeal should have allowed the Respondent the opportunity to file a counter affidavit. But the Supreme Court judgment said that given the state of impeachment, it was here that the Supreme Court engaged in policy discussions. I am tired of the Supreme Court taking land matters, business cases; that is not the proper function. The Supreme Court should be engaged in constitutional pronouncements; that is its role. I would like to see the Supreme Court go more in the direction of policy. It was the policy of the Supreme Court in the Ladoja case that absolutely killed impeachment cases and strengthened the process of democratization.

JOJ The 2007 elections are around the corner, and once again, the judiciary's role in the democratic process will be heightened. Our past experience has not been quite cheerful

"As lawyers, our first responsibility is, of course, to see that the legal profession provides adequate representation for all people in our society. I would suggest there is no subject which is more important to the legal profession, that is more important to this nation, than...the realization of the ideal of equal justice under law for all." - President Richard Nixon, Speech to the National Legal Aid and Defender Association, October 1962

concerning both the integrity of election tribunals and the period taken to resolve election disputes. How can the NBA help at this time to ensure speedy resolutions and more forthright decisions?

Agbakoba What we did, unfortunately we did not succeed, was we had engaged INEC, the National Assembly and the President of the Court of Appeal because these are the interlocutors in the election dispute machinery. The National Assembly because we wanted them to amend the Electoral Act, which they have now done, to give powers to the President of the Court of Appeal to make the Rules of Procedure. That did not work out because if it had happened, we have a draft set of rules which had case management systems, frontloading etc but that did not happen so we are stuck with small amendments to the Election Petition Rules. I would have wanted to see mJOJor amendments following the model that the Lagos High Court has adopted. The other challenge is drawing from the experience of 1999 and 2003. I think the Election Petition Tribunals were too technical in their approach. The NBA has proposed to the President of the Court of Appeal that we should have a workshop, a dialogue with the proposed judges because as I speak the President of the Court of Appeal is appointing the various members of the various Tribunals. When we get the full list of the membership of the Tribunals, we should have a dialogue with them. We have a lot of materials from many NGO's, HURILAWS, and LDC. We will put these on the table, then we will relate back on the performance of the tribunals and the overarching issue that we will present to the new members of the Tribunal will be the need to deal with the cases on the merits. Far too many cases were dismissed on technical grounds, which caused all the problems. But if we can get that psychology, that judicial psychology, that culture into the minds of the new judicial officers who would man the Tribunals, then I think 80% of the problems will be solved. The one of speed will depend on each Tribunal, but happily, you can now see that the Supreme Court has set a new precedent. Now every judge would want to go very fast and I think the Tribunals will pick that up. These are the two big things; first, the Tribunals should avoid making technical judgments. Second, the Tribunals should try as much as possible to decide the cases on the merit.

JOJ What further reforms do you think are necessary to strengthen the justice system, enhance its public perception and improve its ability to deliver justice quicker and cheaper?

Agbakoba That would mean the entire overhaul of the justice sector administration. It would mean that the key justice sector actors are aware that there is a perception of lethargy in the judicial service sector. Not all the relevant authorities are aware. They do not just know. They do not understand that they have to do things in the modern new way, that we have to

It was the policy of the Supreme Court in the Ladoja case that absolutely killed impeachment cases and strengthened the process of democratization.

"The legal profession owes it to itself that wrongs do not go without a remedy because the injured has no advocate....Does the lawyer ask, who is my neighbor? I answer---the poor man deprived of his just dues."

- Charles Evans Hughes, Speech to the American Bar Association, August, 1920

That is why it is always very important to have at the apex court a CJN who understands the cutting edge discussions... One hopes that Justice Kutigi the new CJN will take up from where Justice Belgore stopped, because the NBA is helpless if it has no partners.

conform to the current trial management techniques. Unfortunately, the NBA cannot do much if the judges do not want to engage what I will call the culture of judicial management versus judicial administration, which means that the judge sits but he is not engaged in the process. He abdicates too much power to the counsel who, of course, takes a lot of time. That culture really requires to be addressed. When I started this whole Case Management Study, it was a Judge in Australia, who introduced me to case management. He said although you might have new rules but if the judicial culture remains the same you would have no results, because in truth a judge who wants to administer justice does not need any rules. He just needs to have a judicial mind of speed. So that is the big challenge, how to grow the culture into the justice administration system. One way to do so is by what we described, how do we have a merit-based system so that judges who get appointed understand this process? So it is going to be an on-going thing but I think we have seen some CJ's who are very forward looking or some Attorneys General like Lagos who because of their understanding of the issues advance the course of justice. In other places, with all the workshops that we have run and with all the dialogues, nothing happens. That is why it is always very important to have at the apex court a CJN who understands the cutting edge discussions. Justice Belgore came and he was keen to do this huge programme about simplifying court rules. One hopes that Justice Kutigi the new CJN will take up from where Justice Belgore stopped, because the NBA is helpless if it has no partners. We need an effective partner to make the system work.

JOJ Could you give us a summary of your vision and reform initiative for the NBA?

Agbakoba The vision is contained in my programme. I have five thematic areas and like I could summarize, the NBA has not been a keen actor in the Nigerian discussion, not just within the justice sector but even on the level of development. It has not been an effective interlocutor. I was keen to bring the NBA into the discussion either from democracy, social policy, whatever, but of course taking into account our own direct constituency. What I need to do is to say I need to see better standards of lawyering. We are going to look at all the overarching frameworks that sustain the legal profession and there are three; legal education, legal practice and the Rules of Professional Conduct. When we looked at all these overarching pillars we found them to be decayed so they require to be dismantled. The two important steps for a modern lawyer are his training at the University and Law school level and his continued training as a lawyer. You cannot force lawyers to train if you do not revise the law to introduce mandatory, compulsory continued legal education, which we now have done. We are waiting for the Act to be passed. So before you can get a license to practice, you must show what you carried in the

"If the Rule of law is to be maintained, the courts must use their jurisdiction to prevent disobedience to laws, which the exercise of powers without regard to empowering status entails, and to prevent arbitrariness which immunity from accountability for administrative actions, which affect the rights of others, promotes."

-Hon. Justice Ayoola JCA (as he then was) in Guardian Newspaper Ltd. v. AG Fed

previous year, either as a pro bono lawyer or in the field of education. You must be current. You cannot go and get a pilot license and then disappear. You must continue to train because when that happens, it takes the standards up. Going back to the Universities, the method of teaching is outdated. We want to introduce clinical legal education, so that as soon as you get in you begin to receive practical knowledge about law. You go to the prisons, police stations, you engage in legal institutions so that when you come out to the Law school where you now have further clinical education, in fact actually by the time you are in law school you are practically qualified to be a lawyer. So one big field for me is the review of the overarching legal framework.



The other important one is the need to make the Nigerian developmental model more responsive to law. There is a failure to connect the impact of law in the discussion on development. Nobody has actually understood it, even in NEEDS, although Prof. Soludo rightly identifies the role law can play but the needed translation theories have not come out in NEEDS and so we have technical reforms. Reforms are on-going but they are statistical. With all the nice boohoo we hear about reforms how has it transformed the lives of ordinary Nigerians? Law can play a role and that is a big issue for the NBA. And of course connected to that would be the entire democratic process, elections and who will be Nigeria's President? I am having a press conference, which will say that the NBA is keen as an interlocutor to point Nigerians in the way that they should go. Nigerians have not had the opportunity of listening and distilling from politicians what the issues are. The biggest single issue facing Nigeria is poverty. All the development indicators UNDP, World Bank name them, all show that poverty is growing and the recent census report shows that Nigeria is now doing 120 to 130 million people in extreme poverty. In that context the law has a role. So that is part of the objective of the NBA, to show how law can play a role. We as the body of lawyers have a strong and key role to play. How can the poor access capital, it is law. How can you convert the informal sector and make it formal, it is law. So the tool of law is the key, for me, that unlocks the mystery of poverty. That is the second big role.

Then looking inwards, because part of the reason why we have poor standards in the legal profession is how much the people get paid, I am very concerned to have an employment policy. How can we stop the incursion into the legal profession by other professions and how can we look after young lawyers so that all of these young lawyers, who now grow, carry ethics so that money is not the big issue? Those are the challenges and at the end of the day, it lifts standards, it lifts the ethical things and those are the guys who now become judges. So there is that link. Third is to revamp the way the NBA governs itself because the NBA has been a

"A strong Bench is the biggest insurance against abuses both for the government and for the community. The disappearance of an eminent lawyer is not as tragic as the appearance of a weak and uninformed mind on the Bench. It is a calamity to have a weak Bench for in the hands of a weak Magistrate or Judge public interest will surely suffer as the ignorance of the Bench is the misfortune of the innocent."

-Hon. Justice Chukwudifu Oputa JSC (rtd.), The Law and the Twin Pillars of Justice.

...They have brought the Rules up to date. Professional misconduct is also now defined to include when you disobey a court order.

voluntary organisation historically. The President comes and after a nice meal, the General Secretary reads the report, but that is a long time ago. I want a shift around the NBA and make it more professional; reduce the number of national officers, get more professional capacity in the NBA so that it can do its work, it can deliver results and services better. These are some of my programmes.

JOJ Talking about looking inwards, how does the NBA intend to deal with legal practitioners whose roles in the political domain are anti the Rule of law?

Agbakoba That is the Rules of Professional Conduct, which we talked about. The Rules were last amended, I think, in the 70's or so and Dr Orojo has just finished revising the Rules, which has now been signed into law regulation by the Attorney General of the Federation, Bayo Ojo SAN. That deals with what you are saying. They have brought the Rules up to date. Professional misconduct is also now defined to include when you disobey a court order. When we have these new Rules, it is going to catch a lot of people because, while the court boycott last year by my predecessor Lanke Odogiyon was good but it was not right based, it was not based on any framework. But now with a framework that says to disobey a court order is professional misconduct all you have to do is find the issue of disobedience. There is no argument about it whether the particular Attorney General who says this or that is disobeying a court order. It is just there, you show the court order, and then it is professional misconduct. So what you do is to match the order with the disobedience and get the results. I feel that with the revised legal framework, which hopefully will be in place by June, we will be changing the face of legal practice.

We are thinking of pupillage, for instance. Students come out of the law school, should they really jump into law practice or should they go into pupillage? I am really strong about the fact that they need to go into pupillage. Should the law school continue to be the sole regulator of education via the Council of Legal education or should the NBA play a role? I think the NBA should play a role. I am not sure the time has come when the NBA can actually take over legal education as it happens in America. So maybe what we need to do is to separate the Council of Legal Education as regulators and then allow service providers so the present structure of the law school into four campuses can be managed by whatever method that will be more efficient. That was the point Bayo Ojo was making but he was misunderstood, just like Oby Ezekwesili's concept of managing the Unity schools was misunderstood. My daughter went to Gray's Inn but the law school was not managed by Gray's Inn, it was managed by the City of London University. The law school has its stance now, it can be managed by anybody while the Council

"Equality before the law in a true democracy is a matter of right. It cannot be a matter of charity or of favor or of grace or of discretion."

**- U.S. Supreme Court Justice Wiley Rutledge,
Speech to American Bar Association, September 29, 1941**

becomes a pure regulator. That is the way I think we should go.

I feel too, very strongly, and we are going to see how that will play out, that the NEEDS discussion has overlooked and bypassed legal institutions. They are revamping NCC, they are revamping the National Planning, they are revamping this and that, why are they not revamping the Nigerian Institute of Advanced Legal Studies (NAILS)? Why are they not revamping legal institutions? That needs to be put on the table and that is a strong role that NBA can play that if there is a connection between law and development then the economic planners will get better mileage because it is only a strong institutional base that drives forward development.



JOJ Lastly is the issue of public perception of the judiciary. When the public sees the judiciary as strong, they obey the orders that come from the judiciary...

Agbakoba Absolutely

JOJ Now one of the greatest hindrances or distortions to that perception is Executive disregard for court orders. Whenever the Executive disobeys a judicial order, it affects the public confidence in the judiciary because they feel that the balance is tilted somewhat against them when it has to do with the government and in our country, we have had very strong cases of Executive disregard for court orders. In the past we had court boycotts by the NBA, are you revisiting those cases?

Agbakoba Yes, I think the policy required on how the NBA should deal with this issue of disobedience to court orders requires a very carefully thought out programme. But the starting point is that the NBA cannot do more than the judicial actors so we will go back again to the need to have at all times people of integrity, people of unquestioned strength. Because if you have a weak CJ, that is a problem. What the NBA does is that it signs up for what the Bench cannot publicly get into. We can get into public confrontation. The NBA only supports the Bench. Imagine where the NBA goes on strike and the Bench is sitting, you see that is the problem. So the Bar/Bench relationship is important to really strengthen both sides because when public confidence in the judiciary and their judgments is raised it also raises the profile of the lawyer, so that the EFCC, the Army and the Police would cease to be debt recovery agents. People go there because they do not have confidence that the lawyer can do it and recover, because they feel that the lawyer will take too much time and the courts will not give justice and

"Our responsibility is to marshal the forces of law and the strength of lawyers to combat the causes and effects of poverty. Lawyers must uncover the legal causes of poverty, remodel the system which generates the cycle of poverty and design new social, legal, and political tools and vehicles to move poor people from deprivation, depression, and despair to opportunity, hope, and ambition."

**- E. Clinton Bamberger, first Director of the OEO Legal Services Program,
Speech to National Conference of Bar Presidents, Chicago, Illinois, February 8, 1966**

This is an opportunity to renew the invitation because I have been a bit disappointed in the response of legal service NGOs with the fact that their man is on seat. I am not seeing anything.

even if they do, nobody will obey it. It is a whole process that requires a very clever intervention policy. Again, I return to the invitation that was extended to legal service NGOs because the NBA, like the Civil Liberties Organisation (CLO), when we established it, is a general advocacy group that would have a lot of intervention and relationship with specialist legal services NGOs. This is an opportunity to renew the invitation because I have been a bit disappointed in the response of legal service NGOs with the fact that their man is on seat. I am not seeing anything. So I use this as an opportunity to renew the call

that what I need to be able to drive the programmes, that your questions suggest, forward successfully is to have that active relationship. There has to be an active relationship. In other words, by saying, look we can do this, that, that and that. We are the guys and we have done it for the past 10 years. Why should I want to reinvent the wheel? All I need to do is to create the map of challenges and then delegate those challenges to the agencies or the NGOs that have already demonstrated capacity and expertise. It is not just an NBA thing because a lot of your questions suggest that the legal services NGOs are not even represented. The legal service NGOs still view themselves in that little cocoon. It is important to use this medium to reinvent the legal service NGOs to play a crucial role in partnering with the NBA. That is why I set up a programme department within the NBA, so as to build for the first time (because we never had this) the NBA's capacity to respond to some of these fine advocacy platforms beyond just press statements, which anybody can do. When you are able to respond to performance indicators of judges, that is somewhat special.

JOJ As a last word, if you had an opportunity to talk to the both the Bar and the Bench at the same time particularly considering the challenging times ahead what would you say?

Agbakoba I would say we all belong to the one big profession that people look forward to as the so called, I do not like to use the word, but the so-called "last hope of the common man". That hope that the common man places in the judiciary is a special hope because usually you have been defeated, you have been broken but you say to yourself I will get justice. Now to get justice means that the courts and the lawyers have to work hard at their optimum level. They have to have a good relationship because what is required of the justice sector, both from the Bar and the Bench, is to deliver justice. I was taken aback, when I was in the Governor Boni Haruna appeal, about how little Governors are in court. But once they are outside of court their sirens are going. I was stunned to see that the Governors, who had come to support Governor Boni Haruna (who was my client and I was happy he won), were all humbled by three invisible people who they, the Governors would drive off the road but in the court their fate was in the

"The Court's authority- possessed of neither the purse nor the sword- ultimately rests on substantial public confidence in its moral sanctions. "

Justice Felix Frankfurter, US Supreme Court

hands of these three judges.

It is so much ironical that it is only when they are in court that judges can be important. So the challenge for lawyers and judges is to continue to make it clear to the public that if all else goes wrong, the legal profession and the judges will be there to deliver justice. Just like Ladoja, he is happy. With all the intrigues by Adedibu and all, finally he got justice from three people. So that is the challenge for the legal profession and the judiciary. That is what I will be telling them if I am speaking to them. You do not know the kind of power that you have in delivering justice. Like Peter Obi now, he has won his case in the court and he is very pleased. Even Dariye, who in spite of the other problem he has, cannot be impeached by six people. It is not possible. If the court of appeal says this is wrong, he will feel good but we will remind him that he should also not steal money but the fact is that he will feel good. The public needs to have that continued confidence. That is the message that will be addressed to the lawyer and the judge. And it is how you act that gives the confidence, because the Federal government could have said to the Supreme Court that we will not obey Ladoja. But somehow because of the veneer and allusion of the spiritual power of the Supreme Court, once they pronounce it is final. We must keep that up.

...the challenge for lawyers and judges is to continue to make it clear to the public that if all else goes wrong, the legal profession and the judges will be there to deliver justice... the public needs to have that continued confidence.

"We cannot believe that the construction we have put upon this section will result in any practical hardship, or that the courts will have any difficulty in commanding the services of able and conscientious members of the bar, when such services are required for the protection of the poor and defenseless, whose rights or wrongs are the subjects of judicial inquiry in civil actions. The eager desire of young practitioners to take part in the exciting contests of the bar; the opportunity afforded to the ambitious to achieve reputation by a display of forensic talent; and the higher motives supplied by feelings of humanity and benevolence will, as we believe, in every case, secure a prompt response to the appointment of the court where the gratuitous services of an attorney are called for."

-Indiana Supreme Court, Board of Commissioners vs. Pollard, 153 Ind. 351, 1899

Justice Served: Five Suspended Abia State Judiciary Staff are Reinstated to Office

The much anticipated and sought after relief for the Five Abia State Judiciary staff came at last on Tuesday November 14, 2006. The Abia State Judicial Service Commission (JSC) under the leadership of the new Chief Judge of the state, Hon. Justice S.N. Imo, reinstated them to their various offices with full benefits, after 37 months of indefinite suspension without pay and subsequent compulsory retirement. Justice has been served, albeit, not without a price. Theirs is a tale of travail and unyielding courage even in the face of daunting persecution and intimidation.

It all began sometime in 2002 when five members of the Court Registrars Association of Nigeria (CRAN) now Judiciary Staff Association of Nigeria (JUSAN) brought petitions to the National Judicial Council (NJC) and the Abia State House of Assembly against the erstwhile Chief Judge of Abia State, Hon. Justice K.O. Amah, accusing him of corruption, gross misconduct and other malfeasance. Their petition stirred up the hornet's nest and launched them into a grueling 37 month-long battle for their careers and livelihood. Piqued by the petitions against him, Justice K.O. Amah employed all the leverages of his office as Chief Judge and Chairman of the Judicial Service Commission (JSC) to haunt these "transparency" crusaders. After a series of unwarranted queries, the JSC, under Amah's directions suspended these activists without pay in November 2003; and compulsorily retired them in May 2005.

Though victimized, these activists continued to pursue their cause with untiring vigour. They sent fresh petitions to the National Judicial Council (NJC), the Economic and Financial Crimes Commission (EFCC), the Code of Conduct Bureau, and the Independent Corrupt Practices Commission (ICPC). These petitions put forth their case strongly, revealing the perturbing depth of corruption and official misconduct that pervaded Justice K.O. Amah's tenure as Chief Judge of Abia State.

Access to Justice, among other groups and activists, lent its voice and joined the campaign for the vindication of these activists. Access to Justice also made representations to the NJC and eminent persons in the legal community drawing their attention to the gravity of the situation in Abia State and rallied support for these activists. Reports of this campaign were elaborately featured in volumes 2, 3 and 4 of this Journal.

The first note of victory, however, came on Monday 13th July 2006, when the Abia State Governor, Orji Kalu, directed Justice K.O Amah's removal from the office of the Chief Judge of Abia State, after all the judges in the state had passed a vote of no confidence in Justice Amah. These courageous five, who were compulsorily retired for speaking out against the inept administration of Justice K.O Amah, were finally vindicated. But that was not all; they were still suffering the loss of their careers from the privations of their arduous campaign. Once more, fresh campaigns started; this time to recognize the sacrifices they have made and to repair the injustices they were subjected to in the course of their gallant but bruising campaign.

"The Rule of law knows no fear; it is never cowed down; it can only be silenced. But once it is not silenced by the only arm that can silence it, it is accepted in full confidence to be able to justify its existence."

Hon Justice Kayode Eso JSC (as he then was) in *Garba v Federal Civil Service Commission* (1988) 1 NWLR Pt. 71 P. 449

Access to Justice made written representations, on their behalf to the successive acting Chief Judges of the State urging them to revisit the case of the activists and reinstate them to their offices. When, therefore, the news of their reinstatement came, it was so very welcome. Justice was served indeed. Access to Justice immediately sent a letter of commendation dated November 20, 2006, to Hon. Justice Imo, Chief Judge Abia State Judiciary, to commend him for reinstating the five judiciary staff.

Access to Justice received an enthusiastic letter dated December 20, 2006, conveying the “heartfelt appreciation of the 5 reinstated Registrars of the Abia State High Court” (see a copy of the letter at page...). We had followed their story, advocated their cause, assisted them in their struggle, and therefore know that their reinstatement is a testimony of their vindication and a victory, not just for them but for the entire justice system also. We believe their reinstatement would go a long way to redress the injustice they suffered and to restore confidence in the impartiality and fairness of the state judiciary particularly in the perception of the public and other stakeholders in the justice system.

“Equal justice under law is not just a caption on the facade of the Supreme Court building. It is perhaps the most inspiring ideal of our society . . . It is fundamental that justice should be the same, in substance and availability, without regard to economic status.”

- U.S. Supreme Court Justice Lewis Powell, Jr.

C/o Chief Registrar's office
High Court of Justice
Umuahia
Abia State.
20th December, 2006

Joseph C. Otteh Esq.
Executive Director
Access to Justice
Lagos

Dear Sir,

HEARTFELT APPRECIATION OF THE 5 REINSTATED REGISTRARS OF THE ABIA STATE HIGH COURT

When we were thrown out of our jobs for pursuing the legitimate cause of the less privileged workers of the Abia State Judiciary, you doggedly stood by us!

When everybody and Institutions that matter in the society conspired against us for our temerity of rising against corruption and man's inhumanity to man by Justice K.O. Amah- Chief Judge of Abia State, who was on 3rd July, 2006, REMOVED from office on account of corruption, misconduct, etc you winged us comfortably to the glory of the Almighty God!

When we were at the verge of despondency, you consoled and gave us hope!

When we had no money to maintain a living with our families, you assisted us in no small measure.

When the Constitution of the country, the Public Service Rules and like laws were being misapplied to cover the injustices against us, you insisted that Justice must be done and Justice has eventually been done!

We are grateful to inform you that the Abia state Judicial Service Commission (JSC), under the God-fearing Chairmanship of the Chief Judge of the State- His Lordship, Hon. Justice S.N. Imo, on Tuesday 14th November, 2006, reinstated us to our jobs with FULL BENEFITS, after 37 months (November 2003 to November 2006) we were unmindfully subjected to the non-existent, albeit, illegal punishment of "Indefinite Suspension" without pay and Compulsory Retirement- all at a stretch.

We thank the Almighty Father for using you to midwife our recall to our jobs. We cannot thank you enough. We pray that God continues to bestow you with good health, sufficient strength and long life.

We have the honour to be

Sir

Yours faithfully,

Sir I.A. Nwaonumah
Assistant Chief Registrar 1

R.I. Okiyih (Mrs.)
Principal Registrar

Mr. V.U. Asonye
Assistant Chief Registrar 1

S.C. Onyekwere
Senior Registrar 1

L.C. Onuoha
Senior Registrar 1



Hon. Justice Ayoola, JSC (rtd.) Chair, ICPC

Hon. Justice Emmanuel O. Ayoola is an accomplished, highly respected jurist of international repute. A retired Justice of the Nigerian Supreme Court, Hon. Justice Ayoola, had served as President of the UN Special Court for Sierra Leone, Chief Justice of the Gambia, President of the Court of Appeal of Seychelles and Chairman of the National Human Rights Commission. He is now Chairman of the Independent Corrupt Practices and other Offences Commission, (ICPC). Hon. Justice Ayoola, fielded questions about his work and related issues in an interview with Mr. Leonard Dibia of Access to Justice.

JOJ: Sir we have been seeking audience with your lordship for a while now, which your lordship's busy schedule has rendered very difficult; but all the same, we are happy for the privilege of being granted audience today. We also wish to express how well

impressed we are with your activities and programmes since your assumption of office as ICPC chair.

Ayoola: Thanks for your kind compliments.

JOJ: We seek your lordships permission to delve into specific incidents regarding judicial officers and corruption in Nigeria. We are aware that some of these cases like Justice Idiong's case in Akwa-Ibom, Justice K.O. Amah's case in Abia State and lately, the case involving Justice Chidiebere Uwa of Abia State in respect of which we had written to ICPC in a letter dated November 22nd 2006 were submitted to your organisation for investigation and other necessary action. My lord, except the Justice Uwa's case, the other two cases have been on the saddle for an embarrassing length of time and stakeholders cannot help but wonder if the delay can even be satisfactorily explained. What will be your reaction to this sir?

Ayoola: I inherited, upon my resumption as chairman of ICPC, a huge backlog of pending petitions among which are the cases you have mentioned. Because of the daunting number of pending petitions, I devised a reverse system of dealing with the latest petitions first and progressively attended to the earlier petitions. It is my firm expectation that at the rate we are going, the cases you mentioned would soon be attended to. Let me assure all concerned of one thing. There is no case pending before the ICPC that will not receive investigative and other necessary attention. Every case in respect of which our enquiry is sought shall be given full and exhaustive attention, and will be driven to its logical conclusion.

JOJ: The pace appears slow sir, what could be the challenge?

"An independent judiciary must be a co-equal branch of government. Judges must be shielded from the pressure of mob politics. Their job is to interpret fairly and impartially how the law applies to particular sets of facts, not to bend this way or that based on the passions of the moment."

Philadelphia Inquirer, April 10, 2005

"There is no case pending before the ICPC that will not receive investigative and other necessary attention. Every case in respect of which our enquiry is sought shall be given full and exhaustive attention, and will be driven to its logical conclusion."

Ayoola: Well, I could write volumes on that. But having said that, I know that trained manpower is a constraint. I will say this too, the setting up of bodies like EFCC, ICPC and all that is a great innovation in the anti-corruption crusade. But I wish that between the inauguration of these bodies and the commencement of operation, there had been a process of incisive planning, capacity building and insightful structuring of these bodies. This would have given them the capacity to deal with myriad of complaints/petitions streaming in from disparate regions of a country of over 140 million people. You can imagine an anti-corruption body in Nigeria receiving over 6,000 petitions calling for its urgent attention within a short

time. The exertion involved in investigating just one case is unimaginable. The complexities trailing these cases demand more than just interrogation of culprits. Can you appreciate the problem now?

JOJ: We do appreciate these constraints. But we also get agitated over what seems like selective (biased) attention on some complaints over some other complaints. My lord, the public impression is that cases involving friends of the ruling personalities are left to rust in your dockets while complaints concerning "enemies" of the hegemony are given quick attention and speedy conclusions. What do you have to say sir, on this widely held impression?

Ayoola: Selectively in terms of giving priority to some complaints over other is relative and sometimes justifiable. In other words, there is justifiable selectivity and unjustifiable selectivity. All cases of complaints do not have equal amount of urgency. Some cases are critically time-bound, such that if they are not investigated and concluded within reasonable time, other factors or issues may suffer. That, in my view, is a selective approach to our work; and it is justifiable. Selectivity is also justifiable in cases where the issues at stake are of considerable national importance. But I agree that when selectivity is based on political interests, it is wrong and condemnable. An anti-corruption body that yields to political pressure in selecting which complaint to deal with should be shut down. Political selectivity is bad and I condemn it too.

JOJ: Thanks my lord. But there are cases within the justice sector that has made us incline towards the impression that this selective approach is worrisome. We have in mind the cases earlier mentioned Justice K.O. Amah and Justice Chidiebere Uwa both of Abia State Judiciary. The case against Justice K.O. Amah was squarely a case of corruption. The Five CRAN members who stood up for probity and accountability in Abia judiciary had submitted a

"Judicial corruption influences unduly access to and outcome of judicial decisions. The decision will remain unfair and unpredictable and consequently the rule of law will not prevail."

**-UNODC on strengthening Judicial Integrity against corruption,
Vienna, March 2001**

petition to ICPC for over three years now, without any response from your organization or the NJC. The fact that it took the state governor to relieve Justice Amah of his position as CJ of Abia state did not resonate positively with the image of both the ICPC and oversight bodies like the NJC. Although the CRAN members have been re-instated and Justice Amah retired, the allegations of misappropriation and embezzlement which were made to ICPC have neither been investigated nor have arrests or interrogations been made. Justice Amah rests in the comfort of his country home, reportedly enjoying his loot while the complaints are still hanging. We are concerned sir. May we have your comments sir?



Ayoola: I recall the case vividly. It is one of those cases which as I have assured you, will be conclusively looked into as our investigations proceed. We are concerned and committed towards addressing all complaints or petitions on our stable, no matter how long it takes. It will be looked into and everything necessary to achieve justice will be done. The same goes for Justice Idiong's case. As I said earlier, our sequence of operation is directed from the latest to the earliest on account of the heavy back-log we inherited, as well as the need to address burning issues at a time when they engage public attention critically.

JOJ: We shall really be glad to have these cases investigated and dealt with soonest. The ripples that accompany the frustrating delays can be damaging to public response to issues of corruption in this country, and we know that your intervention in these cases will go a long way to sustain public interest on issues of accountability. But sir, there is still this case from the justice sector concerning Justice Uwa on which we would ask for your comments in two capacities: as chairman of ICPC- before whom our letter of 22nd November, 2006 is pending, and as a member of the NJC -before whom allegations of corruption (supported by documentary evidence) is pending. With regards to the NJC, we wish to have your comments on why the serious allegations of corruption supported by compelling documentary particulars have not been investigated since and, if investigated, why findings of the NJC was not communicated to the petitioner-even if for reasons of sheer courtesy. We also wish to feel-you-out on why findings of the NJC on serious complaints are so classified, such that even a petitioner is not entitled to the facts found by the NJC?

Ayoola: I am not aware that findings of the NJC on complaints over conduct of judicial officers are classified. I am not aware of any rule or regulation in NJC that precludes a complainant or petitioner from having a report of the findings of the NJC on a petition sent by him/ her (the petitioner). In fact, there is an agitation to expand the publicity of our findings

“Eradication of corruption from the justice system is a joint task involving not only judges and members of the legal profession, but literally all stakeholders, including all branches of Government, the media and the civil society.”

-UNODC on strengthening Judicial Integrity against corruption, Vienna, March 2001

The Bar of today obviously is facing greater challenges than in our days...my word for the Bar is to ensure professional integrity of its members. The same counsel goes to the Bench.

amongst interest groups that are strategically relevant to justice sector issues. Secondly, I am not aware of any matter pending before the NJC on the judicial officer you mentioned.

JOJ: My lord, we are indeed surprised to hear that there is no case pending against Justice Chidiebere Uwa before the NJC. We had, in our petitions to both the NJC and ICPC expressed our concern over the elevation of a Judge (from the High Court to the Court of Appeal) against

whom allegation was pending before the NJC. Even in our publication (*The Justice Observatory Journal Vol. 4*) we copiously spotlighted the absurdity of such elevation in the face of corruption charges, especially, as such neglects, by the NJC smears the perception of the judiciary in the eyes of the public.

Ayoola: It would be hard for me to accept that there was a matter of the magnitude you talked about before the NJC against a serving judicial officer and the NJC will elevate or approve the elevation of such an officer to an appellate bench. The NJC will not do such a thing. I am at difficulty in accepting this and as I said earlier, the NJC will not do such a thing. Such an officer cannot be elevated to a higher bench in the face of heinous allegations of complaints.

JOJ: My lord, we are embarrassed and surprised to hear that this matter (Justice Uwa's case) did not come before the NJC and is not pending before the NJC. We are even privy to a letter of acknowledgement sent by the retired CJN Hon. Justice Muhammad Uwais (as Chairman of the NJC) to the petitioner acknowledging receipt of the petition. We are therefore at a loss upon hearing that the matter did not come before the NJC.

JOJ: Finally Sir, we would like you to leave a word for the Bench and Bar, bearing in mind your observation of developments in the profession vis-à-vis the political climate in the country.

Ayoola: The Bar of today obviously is facing greater challenges than in our days. The political engagements are a bit more turbulent and the Bar is required to grapple with these developments. My word for the Bar is to ensure professional integrity of its members. The same counsel goes to the Bench. In our days, a lawyer's word was a clean bill and could stand any test any time. My word for the Bar is to work towards ensuring integrity of its members.

JOJ: We are grateful for your time Sir.

"Judicial accountability, in fact, complements and reinforces judicial independence by creating the public confidence on which judicial independence ultimately depends. There is no gainsaying that the point is sometimes made in relation to their functions that judges are subject to a higher degree of accountability and transparency than any other public officer."

- Hon. Justice (Prof.) A.F.D. Kuti, Legal and Judicial Sector Reform in Nigeria

Access to Justice is carrying on work aimed at improving access to justice, judicial integrity and independence in Nigeria. Situations characterized by a deliberate perversion of justice like corruption or the reluctance to investigate and punish judicial corruption “suspect” judicial conduct (such as conduct evidencing an interest by a judge in a matter before him/her), the persecution of those fighting judicial corruption; or judicial conduct so oppressive or overbearing that it stifles ease of access to justice will be of interest for our work.

Also of paramount interest to us is the persecution of judges or those working in the rule of law domain for whatever reason (it may be because they have rendered decisions offending an interested party); intimidation or harassment of judges, or the subversion/disobedience of court decisions or orders.

If you encounter any of these situations in whichever part of Nigeria, or know about them, please let us know too. We will exert every effort to investigate what we hear and possibly report on it. Please write to;

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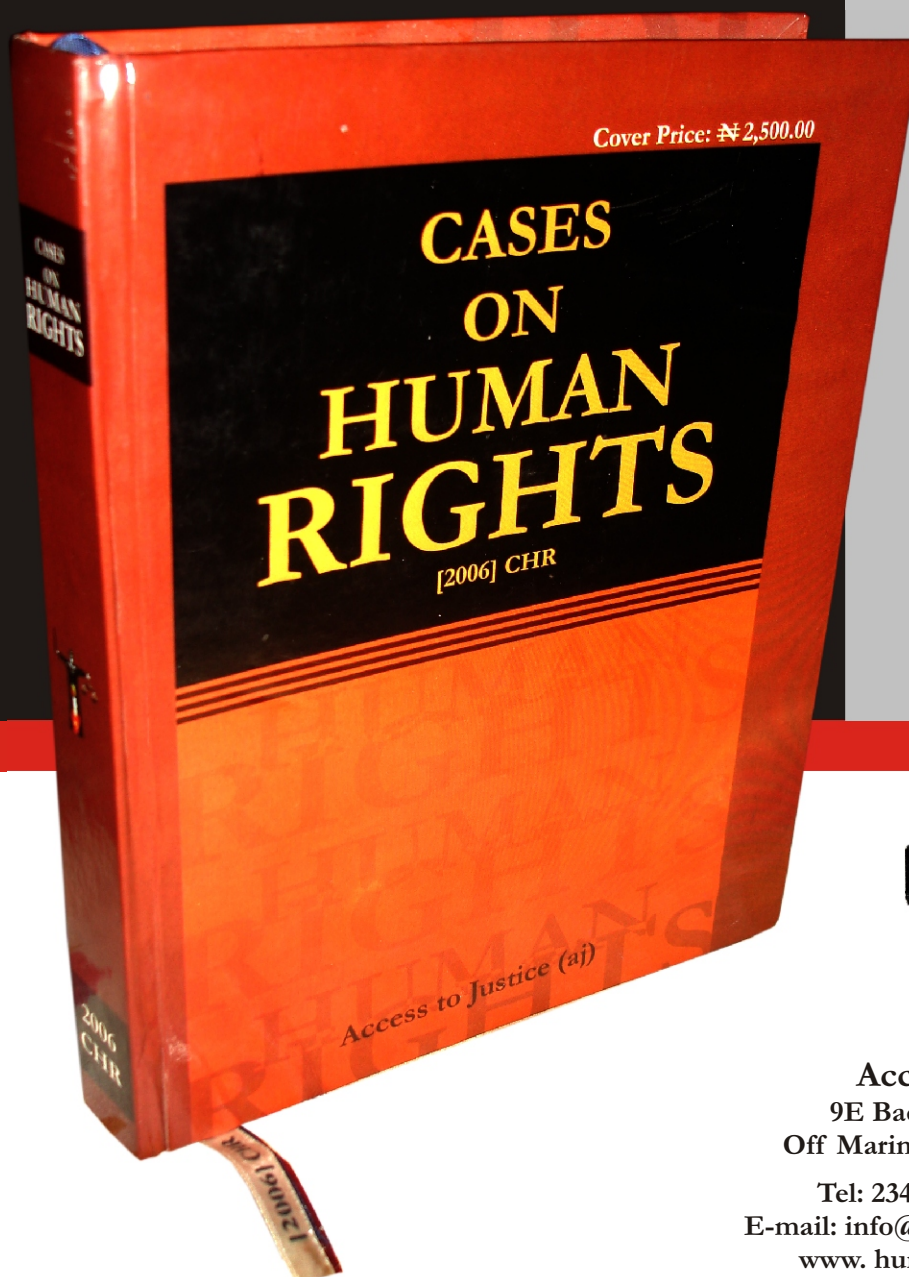
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