

# Upping the Stakes on Judicial Reform

ast week I was at the Supreme Court to witness the swearing - in of 30 new Judges of the Federal High Court 8 of whom were women. The Chief Justice Mahmud Mohammed in congratulating the new judges on scaling through the most rigorous selection

process ever conducted by the Federal Judicial Service Commission (FJSC) and the National Judicial Council (NJC). He noted that they were the first Judges of the Federal High Court to be appointed under the 2014 Revised National Judicial Council Guidelines and Procedural Rules for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria. He added that 'The National Judicial Councils new guidelines provide a more transparent and inclusive process for appointment of Judicial Officers. I have given my full support to the new guidelines he said because they provide for a more comprehensive, robust and transparent method of appointment, leading to the emergence of only the best legal minds with high moral standards and temperament to serve as Judges in our revered temples of justice. The Chief Justice earlier in the year commented on the new rules at the swearing in of Justice Amuru Sanusi as a Justice of the Supreme Court, stating that 'acts such as lobbying for appointment, exhibition of bad behaviour in and out of court, influence peddling, rendering dishonest or questionable legal opinions, submission of false credentials are just some of those conducts exhaustively listed in the 2014 guidelines as acts that would preclude appointment to Judicial office and I make bold to say that all such acts were considered in the final configuration of this process.'

Generally, judicial officers in Superior Courts of Record such as the Supreme Court, the Court of Appeal and the Federal High Court, are appointed by the President on the recommendation of the NJC. However appointments as heads of the various courts mentioned above are subject to the approval of the Senate. The appointment to the office of the Chief Judge of the State is by the Governor on the recommendation of the NJC subject to the approval of the state house of assembly.

From the foregoing it is clear that the NJC plays a crucial role in the appointment of judges with the Constitution vesting in it the power to recommend candidates for appointment into the offices of the Chief Justice of Nigeria, the Justices of the Supreme Court, the President and Justices of the Court of Appeal, the Chief Judge and Judges of the Federal High Court, after considering names submitted to it by the FJSC. The NJC is also in charge of the discipline and removal of judicial officers

Due to the hue and cry about the mode of appointment of judicial officers including criticisms of irregularity, political interference and allegations of lobbying, the Guidelines for the Appointment of Judges were revised in 2014 to make the process transparent and to demonstrate accountability. This time around it is interesting to note that the process began in 2014 by an advertisement in the media calling for prospective candidates to register their interest in filling the vacancies. 2,000 applications were received by the FJSC for consideration. One could but see that the judicial reforms being so rightly demanded are slowly but surely taking place even though there is still so much more to be achieved. It is however a clear step in the right direction.

Justice sector reforms have been posited since the beginning of this democratic

dispensation in 1999 but an objective evaluation of the Administration of Justice in Nigeria will show that the pace has been rather slow these past 16 years. The Judiciary is stronger today than it was then, with a good number of courageous men and women to be found on the Bench in Nigerian Courts today however, in comparison to the other two arms of Government the Judiciary does not occupy the pride of place that it could as the equitable dispenser of justice and last line of protection of everyday Nigerians against the arbitrary abuse of wealth and power that is now prevalent today. It is indeed sad to note that the Judiciary is getting vilified left, right and centre and one wonders what the effect of all this would be in the very near future.

I read the keynote address of President Muhammadu Buhari, delivered by the Vice President Prof. Yemi Osinbajo SAN, at the opening ceremony of the All Nigeria Judges' Conference held in Abuja on November 23, 2015. The President in his speech noted that the Conference offered a platform for the reaffirmation of our collective belief in the crucial role of the Judiciary as one of the great pillars of constitutional democracy and the ultimate arbiter on constitutional and other potentially divisive issues. The need for a constructive relationship between the Judiciary on one hand and the Executive and the Legislative arms on the other is therefore indisputable he noted.

He further added that 'I am, of course, aware that it has not always been a smooth ride. The Judiciary has also faced its peculiar challenges. These are in such areas as funding, infrastructure inadequacy, integrity questions surrounding the conduct of some Judges, delays in the administration of justice process, the burden of relying on out-dated rules and legislation in a fast modernising society, weaknesses of the appointment process for Judicial officers and the overall performance of the Judiciary. These challenges and short-comings have regrettably resulted in a situation where service delivery by our Judiciary may still fall short of the expectations of our people.' Furthermore he noted that 'while it is undeniable that the Judiciary continues to make incremental progress in playing its constitutional role, it is still the consensus of observers that overall levels of judicial service delivery still leave something to be desired. Urgent reforms therefore remain imperative in several areas.' He went on to urge that 'the Nigerian Judiciary must do all that is possible to fight against the perception and the reality of growing judicial corruption. As an institution dedicated to the protection and promotion of human rights, the Judiciary must go the extra mile to sanitise itself and improve its capacity to act independently, courageously and timeously.'

Who then has the responsibility to repair the system one has to ask? The Executive is driven by quadrennial goals and objectives that are necessarily achievable within the guaranteed four years of any guaranteed administration, especially considering that the administration of everyday government preoccupies this arm. The Legislature may attempt to remedy problems by new legislation but it too is preoccupied with the business of the National Assembly. It is therefore easy to believe that the responsibility of reforming the Justice Sector is the Judiciary's but if it has been attempting to do so by itself for over a decade and a half and still has not succeeded in reaching a level of function that is acceptable by even its own standards, it is unlikely that the Judiciary can by

itself drag the Justice Sector forward to reach the standards modern Nigeria needs it to. If there is a fundamental problem with the Executive arm, it is a national problem which the governed and the governing are forced to look at. Scandals in the Legislature are a matter for all of Nigeria, and so too is the reform of the Justice Sector.

For the sake of effectiveness and for the reform of the Justice Sector to be achieved it will require both political will and the mandate of the law. The financial independence of the judiciary is still key. In some states the judges have not been paid for over 3 months. In others the judiciary receive and /or rely on largesse from the state government thereby rendering them beholden to the said state government. The judiciary is at the mercy of the other 2 arms of government therefore a constructive relationship between the Judiciary, Executive and the Legislative still cannot be built as things stand today. With the Judiciary actually being left in limbo to sink or swim on its own.

Drawing inspiration from the judiciary in Kenya we can reform our judiciary by amending our Constitution to reflect the values of transparency and accountability by allowing public participation in the appointment process. Chief Justice and President of the Supreme Court of Kenya Willy Muntunga stated that the Kenyans reformed their judiciary by promulgating a Constitution that provides for the appointing of people with integrity by an independent and broadly representative Judicial Service Commission; by providing for institutional and decisional independence of the Judiciary and the judicial officers respectively; through the vetting of judges and magistrates who served before August 27, 2010 by a Board which had a broad criteria upon which to determine the suitability of these judicial officers; by setting up the Judiciary Fund to signal financial independence of the Judiciary; and finally by creating a new apex court, the Supreme Court that would act as the final protector and custodian of the supremacy of the Constitution. By vetting the old judicial officers and by recruiting new judicial officers in a transparent and competitive manner that called for public participation, the new Constitution created a new Judiciary. The interview for the recruitment of judges, including the Chief Justice, is carried out in the open, in the full glare of the media. As much as I would like some of the Kenyan reforms to be promulgated in this country we must tailor them to suit our own unique peculiarities.

The various strikes carried out by Judicial Staff Union of Nigeria (JUSUN) last year are a painful reminder about the current status of judicial funding in Nigeria, where the members of the judiciary are heavily dependent on the executive for their monthly allocations, contrary to Sections 81 (3), 121 (3) and 167 (9) of the Constitution. The Chief Justice noted at the All Nigeria Judges Conference that lack of financial autonomy threatened the independence of the Judiciary. The CJN stated that with about 1% of the federation's budget allocated to the Judiciary, the courts were not truly independent.

Looking back at the judgment of the Federal High Court delivered on January 13, 2014 by Justice Adeniyi Ademola restraining the Federal Government and the 36 state governors from holding on to funds meant for the judiciary, he ruled that funds meant for the judiciary should be disbursed directly to the heads of court and not to the executive arm of government. Justice Ademola further



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held that the practice of the executive disbursing funds to the judiciary was unconstitutional and also threatened the independence of the judiciary. Relying on the provisions of sections 83(1), 212(3) and 162(9) of the 1999 Constitution as amended, he stated that the provisions were clear and straightforward and should therefore be complied with. Another judge of the Federal High Court, Justice Ahmed Mohammed held that the remuneration, salaries, allowances and recurrent expenditure of the Judiciary, being constitutionally guaranteed charges (or 'first line charges') on the Consolidated Revenue Fund of the Federation, did not form part of the estimates to be included in the Appropriation Bill.

It is sad to note that not all states have complied with the judgments, occasioning unnecessary hardship for the judiciary and for example leading to JUSUN to resort to strike action in some states to compel their state governments to obey the court. While in other states (Benue and Plateau) JUSUN instituted garnishee proceedings and about N1.6bn was claimed from the accounts of the states as monies belonging to the states' judiciaries.

Recently, the Chief Judge of Anambra State, Justice Peter Umeadi set up a mobile court to help decongest the police cells because JUSUN has been on strike for three months in that state.

In the UK for example the Senior Salaries Review Body (SSRB) provides independent advice to the Prime Minister, the Lord Chancellor and the Secretary of State for Defence on the remuneration of the judiciary, senior civil servants and senior officers of the armed forces, Members of the House of Commons, Members of the House of Lords and other groups that are referred to it from time to time.

In the United States the judiciary is funded by discretionary appropriations which are sufficient to cover its expenses. Commenting on the fiscal year 2015 appropriations Judge John Bates, Director of the Administrative Office of the U.S. Courts stated that 'the funding levels are sufficient to enable the courts to operate effectively and we appreciate that Congress has again made the Judiciary a funding priority. Although the federal judiciary's budget is only two-tenths of one percent of the federal budget, adequate resources are essential for the courts to dispense justice in a timely fashion.'

Nigeria should borrow a leaf from these developed countries and safeguard the financial autonomy of the judiciary so that the courts can improve on infrastructure and acquire state of the art technology to ensure the smooth running of the courts. We must look to the other two arms of government for support in making the judiciary independent enough to allow it deal with all its numerous problems.