
**THE NIGERIAN JUDICIARY:
TOWARDS REFORM OF THE BASTION OF
CONSTITUTIONAL DEMOCRACY**

Fellows' Lecture Series

**THE NIGERIAN JUDICIARY:
TOWARDS REFORM OF THE BASTION OF CONSTITUTIONAL
DEMOCRACY**

By

Hon. Justice Dahiru Musdapher, GCON, FNIALS
Chief Justice of Nigeria



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Nigerian Institute of Advanced Legal Studies.

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Foreword

This year's Fellows' Day Lecture is special in many respects. First, it is the first to be delivered by a sitting Chief Justice of Nigeria, My Lord, Hon. Justice Dahiru Musdapher, GCON, FNIALS. Second, it is the first to be delivered by a speaker who has had the distinction of being a State Attorney-General, State Chief Judge and the Chief Justice of Nigeria. Third, it is the first to be delivered by a sitting Chairman of the Governing Council of the Institute.

Given the challenges that the Nigerian judiciary currently grapples with, the Lecture addresses a theme whose time is NOW. The Lecture examines the mandate of the Nigerian judiciary, explores its role as the bastion of constitutional democracy against the backdrop of the context and challenges of dispensing justice at a time when public confidence in the judicial system is ebbing away, and charts a robust agenda for the reform of the Nigerian judiciary.

Proceeding from the premise that "the authority of the judiciary rests squarely on the public perception of its propriety", the Lecture underscores the imperative of judicial integrity pursuant to which "there is no middle ground and no space on the bench for those adjudged to be unworthy arbiters of truth." Accordingly, His Lordship, expresses his resolve to ensure that, under his watch, the process of appointment and elevation of judges will be subjected to "the highest standards of probity, accountability and transparency", in consequence of which "only paragons of integrity, the best and the brightest will be appointed and elevated" under his watch. Consistent with this undertaking, His Lordship further expresses his resolve to ensure diversification of the pool from which judicial appointments to superior courts are made in response to "the declining intellectual depth and overall quality of the judgments of some of our judges as well as the frequency with which some judges churn out conflicting decisions in respect of the same set of facts." This and other groundbreaking proposals are refreshing and commendable.

The Lecture is breathtaking, incisive and penetrating in its analysis, surgical in its diagnosis, sagacious in its prognosis and seminal in its distinctive contribution to charting an agenda for repositioning the Nigerian judiciary as the bastion of constitutional democracy.

Professor Epiphany Azinge, SAN

Director General

November 2011.

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*P*reamble

I consider it a great honour to be entrusted with the privileged task of delivering this year's Fellows' Day Lecture of the Nigerian Institute of Advanced Legal Studies, Nigeria's apex institution for cutting edge research and advanced studies in law. I am grateful to the Management of the Institute, under the dynamic and visionary leadership of its Director-General, Professor Epiphany Azinge, SAN, for counting me worthy of this honour.

I am extremely delighted by the reasoning of the Institute to dedicate this year's Fellows' Lecture to the most critical challenge facing the judiciary and the legal profession in Nigeria today. Permit me to reiterate that this issue is my utmost priority and I crave your indulgence in allowing me to repeat my views and perceptions on it at every opportunity. I urge you all to realise the need for engendering a sense of urgency relating to these issues; and further hope that our joint efforts in this regard will be crowned with success for the benefit of all.

However, before going into the "*thick of things*" it is worth recalling the fact that the Institute was established in 1979 to, *inter alia*, (a) "conduct research into any branch of the law or related subjects with a view to the application of

the results thereof in the interest of Nigeria”; (b) “provide information, supervision, guidance and advice to post-graduate students and other researchers who are working for post-graduate degree of any University in the field of law and related subjects”; (c) “to conduct courses of instruction in legislative drafting leading to the award of post-graduate diploma or a post-graduate degree”; and (d) “co-operate with Nigerian universities, the Nigerian Law School, the Nigerian Law Reform Commission and such other bodies (whether in Nigeria or elsewhere) engaged in any major field relating to law reform, development or research in the mobilisation of Nigeria’s research potentials for the task of national development and dissemination of research findings for the use of policy makers at all levels”.

With particular reference to the Institute’s mandate relating to legislative drafting, it is instructive to note that the Institute is the only institution in Nigeria statutorily mandated to offer postgraduate training in that coveted and specialised area of law. At the moment, the Institute runs postgraduate programmes leading to the award of postgraduate diploma, Masters and Ph.D in legislative drafting.

I have followed the activities of the Institute with keen interest, particularly in my capacity as the Chairman of its Governing Council, and I can state, without any fear of contradiction, that the Institute has, over the years, justified its existence. Consistent with its motto, “knowledge that makes the difference”, the Institute has raised the bar of result-oriented research, expanded the frontiers of knowledge in a very profound manner and concomitantly made substantial contributions to the development of

Nigeria. I am, therefore, confident that its founding founders must be basking in the euphoria of its accomplishments.

As a measure of my confidence in the Institute, I have mandated it to prepare various draft amendments to all the laws that are critical to repositioning the Nigerian judiciary for optimal performance. In a similar vein, the Institute's Director General is one of the distinguished Nigerians that were invited to serve on Stakeholders Forum, to chart an agenda for the reform of the Nigerian Judiciary. I assure the Institute of my resolve to continue to support its efforts at transforming the landscape of legal research and impacting "knowledge that makes the difference".

The Mandate of the Nigerian Judiciary

The mandate of the Nigerian judiciary, as encapsulated in section 6(6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), "extend[s], notwithstanding anything to the contrary in [the] Constitution, to all inherent powers and sanctions of a court of law" and "to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person." Furthermore, as a measure of the importance that the Nigerian Constitution attaches to the role of the judiciary, section 4(8) thereof forbids the legislature from enacting any law "that ousts or purports to oust the jurisdiction of a court of law or of a judicial tribunal established by law".

The judiciary's mandate is not an end in itself. It is a means to a higher end. The thrust of the judiciary's mandate is the cause of justice. Therefore, in interpreting the law, all Judges must always reckon with the imperative need to engender justice. As My Lord, Hon. Justice Kayode Eso, JSC, aptly puts it "without justice, law labours in vain."¹ In the perceptive words of Iyer, "Law, without justice, is legitimation of tyranny; justice, without law, is fraught with anarchy; justice riding law, with a mission and a vision, arrives at destination."²

In executing its mandate, the judiciary is not beholden to the apron strings of any political party, pressure group, religion, racial or ethnic group, sex, geo-political entity, etc. Consistent with the symbol of justice, which is depicted as a blindfolded person holding two even scales, the judiciary's mandate is to dispense justice to all manner of people, without fear or favour, affection or ill-will.

As Lord Atkin admirably puts it in *Liversidge v. Anderson*:

...amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has been one of the pillars of freedom, one of the principles of liberty... that the Judges are no respecter of persons and stand between the subject

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1. Kayode Eso, JSC: Valedictory Speech, *reproduced in* (1990) SCNJ, at 9-15, esp. at 12.
 2. V. R. K. Iyer: *Law Versus Justice: Problems and Solutions* (Deep & Deep Publications, 1981), at 119.

and any attempted encroachment on his liberty...alert to see that any coercive action is justified in law.³

Under Nigeria's constitutional scheme, "only a court of law has the power and the right to say authoritatively and conclusively what the law is...And once a superior court of record has spoken, then, its pronouncement however perverse or blatantly wrong it may appear to be, establishes the law unless and until it is reversed on appeal by a higher court."⁴ As Lord Radcliffe points out in *Smith v. East Elloe Rural District Council*:

An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Until the necessary proceedings are taken at law to establish the cause of invalidity or otherwise upset it, it remains as effective for its ostensible purpose as the most impeccable of orders.⁵

My Lord, Hon. Justice Iguh, JSC, captures the rationale underpinning the presumption of validity of judicial decisions in the Nigerian case of *Josiah Cornelius Ltd & Ors v Chief C. K. Ezenwa*.⁶

3. Lord Atkin in *Liversidge v. Anderson* (1942) A.C. 206 at 244.

4. Ben Nwabueze: *Nigeria 93: The Political Crisis and Solutions* (Ibadan: Spectrum Books Ltd., 1994), at 40.

5. (1956) A. C. 736 at 769-770.

6. (1996) 1 N. M. L. R. (Pt.2), 42 at 71.

In this regard, it cannot be over-emphasised that a judgment or order of a court...remains valid and binding unless and until it is set aside by an appellate court or by the lower court itself, where it acted without jurisdiction, and there is an unqualified obligation on every person against whom it is to obey it unless and until it is so set aside. The rationale is that to hold otherwise will be to clothe a party against whom a judgment or order is given with the discretion to decide, in his own wisdom, whether the judgment or order is invalid and not binding on him; a situation which rightly has been described as amounting to an invitation to anarchy.

In the discharge of our responsibilities, all Judges must be conscious of the fact that, as Lord Denning, in characteristic fashion, puts it “[t]he English language is not an instrument of mathematical precision”;⁷ in consequence of which “a Judge should not be a ... mere mechanic in the power house of semantics. He should be the man in charge of it”.⁸ This, in turn, reinforces the need for Judges to subordinate technicalities to the overarching need to engender substantial justice. In the words of My Lord, Hon. Justice Chukwudifu Oputa, JSC:

7. Lord Denning in *Seaford Court Estates Limited v. Asher* (1949) 2 K.B. 481 at 498-499.

8. Lord Denning: *The Discipline of Law* (Butterworths, 1979), at 56-57.

The picture of law and its technical rules triumphant and justice prostrate may no doubt have its admirers. But the spirit of justice does not reside in forms and formalities, nor in technicalities, nor is the triumph of the administration of justice to be found in successfully picking one's way between pitfalls of technicality. Law and all its technical rules ought to be but a handmaid of justice and legal inflexibility (which may be becoming of law) may, if strictly followed, only serve to render justice grotesque or even lead to outright injustice. The court will not endure that mere form or fiction of law, introduced for the sake of justice, should work a wrong, contrary to the real truth and substance of the case before it.⁹

My Lord, Hon. Justice Kayode Eso, JSC, echoes the same message, reinforcing the need for judges to approach their constructionist task with an eye on substantial justice:

It would be tragic to reduce judges to a sterile role and make an automaton of them. I believe it is the function of Judges to keep the law alive, in motion, and to

9. Oputa, JSC, in *Bello v. Attorney-General of Oyo State* (1986) 5 NWLR (Pt. 450), 828 at 886.

make it progressive for the purpose of arriving at the end of justice, without being inhibited by technicalities, to find every conceivable, but acceptable way of avoiding narrowness that spells injustice. Short of being a legislator, a judge, to my mind, must possess an aggressive stance in interpreting the law.¹⁰

It is important to appreciate the fact that this does not mean, however, that the law is, as Thomas Jefferson cynically puts it, “a mere thing of wax in the hands of the judiciary, which they may twist and shape into any form they please”.¹¹ Indeed, as Benjamin Cardozo cautions:

...a Judge is not to innovate at pleasure. He is not a Knight-errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion, informed by tradition, methodized by analogy, disciplined by system and subordinated to the primordial necessity of order in social life.¹²

10. Kayode Eso, JSC, in *Transbridge Trading Company Ltd. v. Survey International Ltd* (1986) 4 NWLR (pt. 37) 576 at 596-7.

11. Jefferson, *quoted in* L. P. Goldberg & E. Levenson (eds), *Lawless Judges* (Da Capo Press, 1970), at 11.

12. Benjamin N. Cardozo: *The Nature of the Judicial Process*, at 141.

As Judges, we are conscious of the fact that we are human beings with mortal frailties but, unlike most human beings, the nature of our training and professional calling imbue us with specialised skills to dispense justice according to the dictates of the law. As Judges, we do not profess perfection. Neither should any human being. As Justice Frankfurter of the United States of America rightly points out in *Cooper v. Aaron*, because a court of law is “composed of fallible men, it may err. But revision of its errors must be by orderly process”.¹³ My Lord, Hon. Justice Chukwudifu Oputa, JSC, succinctly expresses the same sentiment, in the specific context of the Supreme Court, in the following terms:

We are final not because we are infallible, rather we are infallible because we are final. Justices of this court are human beings capable of erring. It will certainly be short-sighted arrogance not to accept this obvious truth.¹⁴

Mr.Chairman, My Lords, distinguished ladies and gentlemen, it is important to keep this admonition in mind in order to better appreciate the role of the Nigerian judiciary as the bastion of constitutional democracy; an issue to which we shall now turn.

13. 358 US (1) 195.

14. *The Law and the Twin Pillars of Justice* (Owerri: Government Printers, 1981), at 108.

The Nigerian Judiciary as the Bastion of Constitutional Democracy

At the special session of the Supreme Court to mark the commencement of the new Legal Year on September 20, 2011, I underscored the role of the Nigerian judiciary as the bastion of constitutional democracy in the following words:

We fully appreciate that the success or failure of our young democracy largely depends on our judicial system; and we shall do our utmost to improve our capacity to perform our constitutional responsibilities, enhance protection of democratic values, and entrench the rule of law.

Given the history of our political odyssey, one need not look far to appreciate the fact that the success or failure of democracy or a democratization agenda depends, in large measure, on the judiciary.

I am happy to note that the National Judicial Council, which I am honoured to chair, has over the years taken, and will continue to take, decisive disciplinary measures against Judges who abuse their office – ranging from those engaged in corrupt practices (whether in the context of political cases or otherwise) to those who are lazy, delinquent and unproductive.

On the other hand, even the most trenchant critics of the Nigerian judiciary would concede that our Judges have, through several ground-breaking decisions, bolstered and deepened our democracy.

As I have admitted on previous occasions, the extent to which prevalent societal currents have also engulfed the judiciary demands great concern. Judges and the judicial system must remain politically neutral and rise up to safeguard our fledgling democracy. We must deflect the tides of impropriety and immunize the entire judicial system against all identified iniquities.

We have a vision of a Justice system that is simple, fast, and efficient. It must be responsive to the needs and yearnings of the citizenry. I strongly believe we can succeed by adhering to the Fundamental Objectives and Directive Principles of State Policy as contained in sections 13 to 24 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 23 provides that:

The National Ethics shall be **Discipline, Integrity, Dignity** of Labour, **Social Justice**, Religious Tolerance, Self reliance and **Patriotism**.

It is of fundamental importance that in the adjudication of any matter that is placed before us particularly, those dealing with the interpretation of the Constitution and other statutes, to bear these principles in mind. These are the goals that Nigerians have set for themselves so we are bound to adhere to these ideals if we are to obliterate cut-throat politics, election rigging, corruption, nepotism, ethnicism and many other wrong doings from our polity.

As Judges of our country's courts, we must act according to the highest dictates of our conscience. We

must be guided by the fundamental values and principles of constitutional democracy as well as the value of simple decency. Our judgments and pronouncements must not appear to be against the essence of justice. Surely, the application of these broad principles cannot produce judgments that appear unfair or unjust.

In spite of the foregoing, and in spite of some hiccups, I am of the respectful view that the Nigerian judiciary remains the bastion of constitutional democracy. However, we must do more to earn the respect and confidence of our people and ensure that we play our role in promoting peace and justice in Nigeria.

Things Fell Apart: Context and Challenges

For a better understanding of the role – and limitations – of the judiciary as the bastion of constitutional democracy, it is important to take stock of the challenges that it grapples with. These include the lack of independence of the judiciary, especially at the state level, in terms of funding, political manipulation of the processes of appointment and removal of Judges by some state chief executives and their respective Houses of Assembly; delays in the administration of justice occasioned, in part, by institutional limitations and incapacities; and corruption.

It is regrettable that some state chief executives treat the judiciary as an appendage of the executive arm. While it is true that, in some cases, this is self-inflicted (because of the way some Judges portray themselves), it does not invariably follow that a distinct arm of government should, because of the actions of a few, be treated with disdain. Sadly, the judiciary in several states still goes cap in hand

to the executive begging for funds. By section 162(9) of the Constitution, any amount standing to the credit of the judiciary in the Federation Account is paid directly to the National Judicial Council (NJC) for disbursement to the heads of superior courts, including those at the state level. However, a significant part of the funding requirements of state judiciaries, especially in the area of the provision of infrastructure and welfare of Magistrates and other lower court Judges, remain the responsibilities of states. The plight of the state judiciaries is compounded by the fact that, in spite of the best efforts of the NJC, the processes of appointment and removal of Judges/security of tenure is the subject of political theatrics.

Delay in the dispensation of justice remains a major challenge due, in large measure, to institutional incapacities in the area of infrastructure (especially e-infrastructure), in-built delay mechanisms in the law, as well as failings on the part of some Judges, the official and private Bars, law enforcement agencies, litigants and witnesses. Thus, as My Lord, Hon. Justice Timothy Akinola Aguda, succinctly puts it:

The chorus ‘justice delayed is justice denied’ has become a senseless nuisance to most of the persons and institutions which are intimately connected with the administration of justice in our country and a saddening reminder to those directly affected, of a totally bankrupt system of administration of justice. This

is of course extremely sad, since that chorus is absolutely true.¹⁵

The sobering reality is that “[i]f court backlogs grow at their present rate, our children may not be able to bring a lawsuit to a conclusion within their lifetime. Legal claims might then be willed on, generation to generation like hillbilly funds; and the burden of pressing them would be contracted like a hereditary disease”.¹⁶

Furthermore, the judiciary is sadly not insulated from the monster of corruption that is ravaging the society. Whatever the motivations and predilections, as Judges, we must be mindful of the fact that:

A poor Judge [in terms of integrity] is perhaps the most wasteful indulgence of the community. You can refuse to patronise a merchant who does not carry good stock, but you have no recourse if you are haled before a Judge whose mental or moral goods are inferior. An honest..., able and fearless Judge is the most valuable servant of democracy, for he illuminates justice as he interprets and applies the law...¹⁷

15. T. A. Aguda: “The Challenge for Nigerian Law and the Nigerian Lawyer in the 21st Century”, being a Nigerian National Merit Award Winners Lecture, September 14, 1988, at 3-4.

16. Laurence Tribe, *quoted in* V. R. K. Iyer, *op. cit.*, at 129.

17. Charles Evans Hughes, *quoted in* Itse Sagay: *Recent Trends in the Status and Practice of the Rule of Law* (Ibadan: ASUU Press, 1988), at 36.

Similarly, My Lord, Hon. Justice Samson Uwaifo, JSC, captures the incalculable harm that a corrupt Judge inflicts on the society in these graphic terms:

A corrupt Judge is more harmful to the society than a man who runs amok with a dagger in a crowded street. The latter can be restrained physically. But a corrupt Judge deliberately destroys the moral foundation of society and causes incalculable distress to individuals through abusing his office while still being referred to as 'honourable'.¹⁸

It is in view of this reality that in my speech at the commencement of the new Legal Year, I was unequivocal in my denunciation of corruption. As I pointed out, "there is no middle ground and no space on the Bench for those

18. Uwaifo, JSC, Valedictory Speech, *reproduced in* (2005) 1 SCNJ, at 20. In the words of Oputa, JSC:

...no one should go to the Bench to amass wealth, for money corrupts and pollutes not only the channels of justice but also the very stream itself. It is a calamity to have a corrupt Judge. The passing away of a great Advocate does not pose such public danger as the appearance of a corrupt Judge on the Bench, for in the latter instance, the public interest is bound to suffer and elegant justice is mocked, debased, depreciated and auctioned. When justice is bought and sold, there is no more hope for society. What our society needs is an honest, trusted and trustworthy judiciary.

C. Oputa, "Judicial Ethics, Law, Justice and the Judiciary", *A Journal of Contemporary Legal Problems*, Vol. 1, No. 8.

adjudged to be unworthy arbiters of truth. The choice is simple and our resolve is absolute – *“plata o plomo (Gold or Lead)*. Henceforth, there shall be zero tolerance to judicial corruption or misconduct”.

However, as I further pointed out, it is of equal importance that accusations of impropriety against judicial officers should not be made lightly. It must be appreciated that the integrity of the Judge and the judiciary is a sacred public trust that must be protected and upheld by all. Today, mere suspicions of impropriety emanating from unconfirmed rumours, together with foul innuendoes find ready spaces in our media without proper concern for the far reaching damage being done to not only the Judge in question but the entire institution of justice. It is rather unfortunate that on several occasions, the media has wittingly or unwittingly allowed itself to be used as a tool by political litigants keen on whipping sentiments towards their cause to disparage the reputation of Judges and the judiciary without exercising due caution.

With the enactment of the Freedom of Information Act, there is no longer any excuse, however tenuous, for speculative journalism. Neither should the era of citizen journalism be misconstrued as a licence for revelling in smear campaigns. An open and democratic society thrives on robust and constructive exchange of ideas, not whimsical and capricious figments of imagination touted as facts.

As we strive to extricate the judiciary from prevailing iniquities, we hope we can rely on the media and other stakeholders to support our efforts and allow us to perform

our constitutional duties without being unwittingly dragged into political controversies.

A remarkable feature of the relationship between the judiciary and the media is that, properly understood, they are mutually reinforcing. The independence of the judiciary and the independence of the media are both fundamental to the continued exercise, and indeed the survival, of democratic liberties. Furthermore, while the judiciary plays a central role in the protection and sustenance of media independence, judicial independence and integrity are also dependent on these freedoms. Consequently, I am of the firm conviction that the days when the possibility of active communication between the judiciary and the media was regarded as an anathema, are wrong in principle and gone forever. This is an age of communication in which, without any infringement on their independence, they can and should speak to each other, to ensure transparent administration of justice and preserve the freedom of the press which are indeed cardinal pillars of constitutional democracy.

Agenda for Reform: My Vision for the Nigerian Judiciary

In light of the challenges that the Nigerian judiciary grapples with, there is no disputing the fact that, as it stands today, it appears that the society we serve is not entirely satisfied with our performance. Hard as it may be to accept, it is less important to focus on whether this assessment is

fair or not. The important thing is for us to look at ourselves in the mirror and transparently come to terms with the prevailing realities, accept the gap in expectations, and do our utmost to bridge it. Much as we try, we cannot wish away the perception – rightly or wrongly – of the “consumers” of justice. More importantly, we are conscious of the fact that, as Mackenzie rightly points out:

Without armies to carry out their judgments, courts are dependent on the consent of the governed no less than the other branches [of government]...When the image of the judiciary is tarnished, the moral authority of the courts is critically undermined. The appearance of partiality...is the greatest threat that confronts our Judges. A judiciary that is sufficiently armored with a good reputation for integrity can withstand other threats...¹⁹

It, therefore, follows that the authority of the judiciary rests squarely on the public perception of its propriety. Where public confidence in the judicial system is high, the incidence of people taking the law into their own hands will be minimal. The reverse is obviously the case where public confidence in the judiciary is low. Therefore, when some Nigerians resort to jungle justice, we – as well as lawyers, law enforcement agents and other stakeholders in the

19. John P. MacKenzie: *The Appearance of Justice* (New York: Charles Scribner's Sons, 1974) at x.

justice sector – must, while deprecating their conduct, take a look at ourselves in the mirror, instead of playing the ostrich, and make amends, where necessary. Breaking the mirror is not the solution. Instead, it aggravates the problem. It simply targets the messenger and ignores, often at great peril, the message. When people patronize shrines and other unorthodox means of seeking redress, we must, instead of scornful, sanctimonious dispositions, take a look at ourselves in the mirror and resolve to make amends, where necessary.

Without a scintilla of doubt, I am convinced that public confidence in the Judge and the judicial system reinforces conviction in the “consumers” of justice that no person, institution or government no matter how powerful or wealthy is outside the sphere of legal authority. Conversely, as De Balzac warns, “the lack of public confidence in the judiciary is the beginning of the end of society”. Therefore, it is a matter of serious concern that prevalent societal currents and iniquities, including the collapse of core values such as integrity, probity, accountability, etc, have also engulfed a significant segment of the judiciary. This is sad. It is an urgent call to action.

In our resolve to restore public confidence in the judiciary, I assure you of our determination to robustly enforce the Code of Conduct for Judicial Officers, the Code of Conduct for Public Officers and other relevant laws and regulations. It is also imperative to explore ways through which to strengthen the provisions of these laws and regulations and the mechanisms for their enforcement. To give one example, I am of the considered view that the

Code of Conduct for Judicial Officers should expressly forbid Judges from giving extra-judicial advice to other branches of government. Neither should a Judge engage in any other public or private undertakings that could generate public suspicion of impropriety. In the case of the other branches of government, this stance is consistent with the separation of powers. Besides, it is within the province of the ministries of justice and other relevant legal departments to give legal advice to the other branches of government. More importantly, the issue in respect of which legal advice is extra-judicially sought from a Judge might eventually become the subject of litigation and cause embarrassment not only to the Judge concerned but to the entire system of administration of justice. It is not enough that the Judge in question declines to handle the case because of his/her prior advice. The mere idea of Judges cuddling with the functionaries of the other branches of government, other than in connection with judicial matters, raises suspicion of impropriety. I must not be misunderstood as saying that the judiciary should antagonise the other branches of government. On the contrary, we are part of the government and must strive to engender a symbiotic relationship among all the branches of government. However, we cannot afford to sacrifice our standing and propriety on the altar of personal relationships or political expedience. I am emboldened in my position by an illuminating example from the United States.²⁰

This illustration stems from the rather cosy relationship between Justice Frankfurter and President Roosevelt (FDR). Apparently no subject was off limits for Justice

20. See MacKenzie, *op. cit.*, at 4, 12-14.

Frankfurter, who bombarded President Roosevelt with advice on a wide range of issues and went so far as to commend the latter for his “admirable letter” on wiretapping which he had just published and was one of the things that “rejoice my heart.” This correspondence was, of course, private, but became public, as such correspondences often become, in 1968 and caused considerable embarrassment to the admirers of both men. Testifying about the impact of the published correspondence, Dean Acheson, who had been Justice Frankfurter’s regular morning walking companion, told the Senate that the “intimate and notorious friendship” of the President and the Justice “did harm to the public reputation of both the Court and the Justice.” According to Acheson, while he could vouch that Justice Frankfurter was not in the President’s pocket, “I cannot expect those who did not know him to share this opinion”.

As Chief Justice Jay of the United States pointed out as far back as 1793:

These being in certain respects checks upon each other, and our being Judges of a Court in the last resort, are considerations which afford strong arguments against the propriety of our extra-judicially deciding the questions alluded to, especially as the power given by the Constitution to the President, of calling on the heads of department for opinions, seems to have been purposely as well as expressly united in the Executive departments. We

exceedingly regret every event that may cause embarrassment to your Administration, but we derive consolation from the reflection that your judgment will discern what is right, and that your usual prudence, decision and firmness will surmount every obstacle to the preservation of the rights, peace, and dignity of the United States.

I warmly commend this wise counsel to all Judges, especially heads of courts. In keeping faith with my commitment at the commencement of the new Legal Year to reposition the Nigerian judiciary for optimal performance, I have constituted a Judicial Reform Committee, convened a Stakeholders Forum and engaged a renowned international judicial reform consultancy firm to painstakingly x-ray the judiciary and propose innovative ways through which to strengthen its capacity to optimally respond to the yearnings of the “consumers” of justice. I have further mandated the Nigerian Institute of Advanced Legal Studies and the Nigerian Law Reform Commission to, in furtherance of their mandate, beam their searchlight in this direction.

Without prejudging the outcome of these initiatives, permit me to lay out a broad outline of some proposals which I, in consultation with my colleagues, have put together towards bolstering the capacity of the bastion of constitutional democracy to discharge its mandate in a manner that is credible and consistent with democratic ethos.

We envision a judicial system that is simple, fast, efficient and responsive to the needs and yearnings of the citizenry. In this respect, we shall ensure full computerisation of our operations. The benefits of computerization and online access are, of course, obvious. In specific terms, it will, *inter alia*:

- Ensure efficient and speedy processing of court documents;
- Make it possible for court processes to be filed electronically (e-filing) thereby saving valuable time;
- Simplify and fast track case management;
- Fast track compilation (and transmission) of records of proceedings and other vital documents;
- Make it possible for a Judge, with the click of a mouse, to find out if new processes have been filed and give appropriate directions;
- Enable court registries to post decisions of the courts and other relevant information online;
- Enable Judges, litigants, lawyers, researchers and the general public to have easy access to online legal databases;
- Enable court registries to devise electronic mailing lists through which the

- larger society is kept abreast, through alerts, of current judicial developments;
- Provide a veritable platform for networking;
 - Engender an informal system of peer review of judicial decisions, given that judges of comparable standing in other jurisdictions can access our judgments; and
 - Provide a platform for comparative jurisprudence.²¹

We are conscious of the fact that this will require revision of some of the Rules of Court and we are determined to expedite action on this. We are also conscious of the fact that we need to build our own capacity and the capacity of our support staff in ICT, in order to leverage the infinite possibilities of the InfoTech Age. We further enjoin the political branches of government to address the parlous state of our infrastructure, especially the power sector, to enable us fully realise the goal of our computerization initiative.

As I stated on other occasions recently, we advocate for an amendment of section 233(2) of the Constitution to compulsorily require leave of the Supreme Court before an appeal may lie from decisions of the Court of Appeal. This will engender a filtering mechanism that ensures that frivolous appeals do not continue to clog our cause list and

21. See Dakas C.J. Dakas: "Nigerian Court Registry: The Imperative and Challenges of the InfoTech Age," Vol. 1, No. 1, *Jos Bar Journal* (2003), 51.

thereby cause undue delays and backlogs. The statistics are staggering: During the 2010-2011 Legal Year alone, the Supreme Court disposed of 163 cases, consisting of 78 judgments and 85 motions. However, 1,149 civil appeals, 58 criminal appeals and 177 motions are still pending before us. It is clear that given current realities, even if we have a full constitutional complement of 21 Justices of the Supreme Court, it will certainly take several years before we clear the backlog. In light of this, a situation where most of the appeals that come before us beg for the determination of settled issues that do not provide reasonable grounds to support a departure from well established principles is clearly untenable and unsustainable.

Again, on the appointment of Judges, we are also of the respectful view that there is considerable merit in the call to diversify the pool from which judicial appointments to superior courts are made. We are concerned by the declining intellectual depth and overall quality of the judgments of some of our Judges as well as the frequency with which some Judges churn out conflicting decisions in respect of the same set of facts. A wider diversity of experience will undoubtedly add quality to judicial deliberation in our courts. We enjoin the Judicial Reform Committee, and the other bodies which we have empanelled, to devise objective and transparent criteria for the actualization of this objective. In the meantime, I assure you that under my watch, we will subject the process of appointment and elevation of Judges to the highest standards of probity, accountability and transparency.

Consequently, only paragons of integrity, the best and the brightest will be appointed and elevated under my watch.

Ethics is at the heart of probity at the Bench. In view of the fact that today's Judges were yesterday's lawyers, I urge the faculties of law and the Nigerian Law School to pay greater attention to ethics in preparing new entrants into the legal profession. Similarly, the Nigerian Bar Association should ensure that the Rules of Professional Ethics in the legal profession are strictly adhered to by all lawyers.

We shall also introduce "Intelligent Performance Measurement Systems" for both judicial and non-judicial staff to weed out those who are unproductive. As part of the efforts towards engendering integrity and transparency on the part of Judges, we propose that Judges who have held office for at least twelve years and retired as prescribed by the Constitution should be entitled to pension for life *at a rate equivalent to the annual salary of the incumbents of their respective offices.*

With a view to reinforcing the framework for capacity building, the National Judicial Institute and the Nigerian Institute of Advanced Legal Studies should intensify efforts at building the capacity of judicial officers and their support staff.

We shall, by way of strategic planning, put in place a National Judicial Policy and Development Plan, after a thorough SWOT (strengths, weaknesses, opportunities, threats) analysis and bolstered by a robust M & E (monitoring and evaluation) mechanism.

The Bar and the Bench are partners in progress. We, therefore, look forward to constructive, mutually

reinforcing and productive engagement with the Nigerian Bar Association (NBA) and other stakeholders in the justice sector to actualize our reform agenda.

We shall sustain and raise the bar of our collaboration with international organisations, such as the United Nations Office on Drugs and Crime control, especially in the area of strengthening judicial integrity and capacity building.

We further enjoin the Judicial Reform Committee, and the other bodies which we have empanelled, to explore the following issues:

- How best can we fortify the independence of the judiciary?;
- How best can we insulate Judges from political manipulation and control?;
- Should serving Judges continue to undertake *ad hoc* assignments, such as election petition cases? What are its implications for delays in handling regular cases? Will such assignments make them vulnerable to corrupt practices?;
- In addition to the measures we have proposed above, how best can we fast track justice delivery?;
- In the absence of infirmity of the body or mind, should Justices of the Nigerian Supreme Court, as is the case with, for instance, Justices of the US Supreme Court, hold office for life?

- How best can we strengthen the mechanisms for disciplining erring Judges?;
- The propriety of introducing the American-style system of judicial clerkship into our judicial system;
- The propriety of establishing a Constitutional Court.

In exploring these issues, it is advisable to also consider the report of the Hon. Justice Kayode Eso-led Judicial Panel on the Reform/Reorganisation of the Judiciary, 1994. However, I am confident that at the end of our reform agenda, we shall hold our heads high, reinforce and justify the view that:

The judiciary is the mighty fortress against tyrannous and oppressive laws...The importance of the judiciary cannot therefore be overestimated...It is not an overstatement to assert that an independent Judiciary is the greatest asset of a free people. The judiciary by the nature of its function and role is the citizen's last line of defence in a free society, that is, the line separating constitutionalism from totalitarianism.²²

22. Hon. Justice Chukwudifu Oputa, JSC, *quoted in* Umaru Eri: "The Role of the Judiciary in Sustaining Democracy in Nigeria", in Oyeyipo, Gummi, Umezulike (eds), *Judicial Integrity, Independence and*

I must reemphasise the urgent need to address the speed of justice dispensation and the backlog of cases pending in our various courts. This is a cardinal aspect of the on-going reform program.

It is safe to assume that the demands on the justice system are bound to increase, due to increasing enlightenment and education, complexity of transactions, population growth, etc. We must therefore embark upon reforms that address not only the present problems but also rollout the infrastructure that would enable us cope with foreseeable future challenges.

The solution does not require reinventing the wheel. Not long ago, making a simple phone call in this country was a big undertaking. Making an international call required physically going to the telephone company and queuing up to make the call. That was when only a few had access to phones and yet the process was extremely cumbersome, inefficient and ineffective. Today, exponentially much more citizens have access to effective and efficient telephony. We may also recall the long queues in banking halls across the country, just to withdraw a small sum of money. No one now needs to even visit the bank for small withdrawals. Deployment of appropriate technology was the solution.

Courts can do the same and obtain similar results. Appropriate technology will enable our courts render speedier and more effective and efficient justice. In order to get a clear perspective, permit me to look at another

Reforms: Essays in Honour of Hon. Justice M. L. Uwais (GCON) (CJN) (Enugu: Snaap Press Ltd., 2006), at 178.

country of comparable population and perhaps complexity too, Brazil, with approximately 190 million inhabitants, had 85.6 million lawsuits pending in the year 2010. Approximately 20.6 million new cases are filed yearly. In the state of Rio Grande do Sul, 1.5 million new cases were filed in the year 2008, a proportion of 14 new cases per 100 inhabitants.

Brazil, like many other countries, looked to the deployment of appropriate technology to cope with these cases. Statistics from the Regional Labour Court of the 13th Region (Tribunal Regional do Trabalho da 13^ª Região), that comprises the State of Paraíba – Brasil, illustrate the gains. Indications are that, with the deployment of appropriate court technology, average time lapse between the beginning of a case and final judgment was reduced, from 2 years and 1 month to 2 months and 3 days.

The Nigerian Judiciary must follow the path, like all serious judiciaries in the world, of employing court technology in the discharge of its responsibilities. A lot needs to be done. We must come up with a Judicial Information Technology Policy (JITP) that will chart the road map. We must invest in laying the technical infrastructure, in terms of acquiring the hard and software and nurturing the technical support manpower.

This is by no means a small venture, considering the fact that the use of technology in most of our courts today does not transcend word-processing. It will require a lot of funds initially, but it will pay, not just in terms of the societal peace and harmony, but in monetary terms too. In the Brazilian example, it was found that the savings from

1000 cases covered the entire cost of the infrastructure for one court.

From the foregoing, it shall be clear that we must deploy appropriate court technology and we are on that path. We shall very soon send persons to Brazil for exploratory and in-depth studies of the system. We are also in contact with the United States' National Centre for State Courts (NCSC) on the deployment of a Case Management System (CMS) that has proved successful in Bosnia and Indonesia.

Our democracy is gaining traction. Our legislature, the youngest of the three arms, is witnessing accelerated maturity in the conduct of legislative business. The judiciary should not fail the nation. We will not.

I must make specific mention of the need for Judges to prioritise criminal matters bordering on official corruption that are placed before them. It has since been recognised that corruption is the bane of development in Nigeria. Therefore it is imperative for all Judges to realise that these cases are of extreme importance to Nigerians and must be dispensed with swiftly. I hereby strongly advise all Judges to accelerate the hearing of such cases and ensure that they are dispensed with within 6 months of filing. If for any reason the prosecution is not ready to proceed with the case, then the matter should be struck out rather than leaving the public with the impression the judiciary is not performing its necessary role in curbing corrupt practices in Nigeria. These delays cannot be tolerated any longer.

Conclusion

By the grace of God, I have had the privilege and distinction of serving my dear country in a judicial capacity for over 32 years. Within this period, my judicial career has traversed both the state and federal judiciaries, culminating in my current status as the Chief Justice of Nigeria. This experience is, for me, both fulfilling and humbling. The Bench has become, in every sense of the word, my home. As I approach the final lap of my career on the Bench, I look forward to leaving behind a Judiciary that is anchored on a solid base, reminiscent of the wise man/woman who builds his/her house on a solid rock and not sinking sand! That is the Judiciary that I envision and will do everything in my power to transform into reality. That, for me, will be a fitting tribute and a worthy legacy. I entreat you all to join me in making this vision a reality.

In closing this address permit me to restate as follows:

It matters a great deal how matters are decided in our courts. A Judge must decide not just who shall have what, but also who has behaved well, who has met the responsibilities of citizenship, and who by design or greed and insensitivity, has ignored his responsibilities to others, or exaggerated theirs to him. If the decision at the end of the day is unfair, then the whole society has inflicted a moral injury to one of its members because, it has stamped him in some degree as an outlaw.

This injury is gravest when an innocent person is convicted of a crime, but it is no

less excruciating for a plaintiff with a sound claim to be turned away by the courts, or when defendant leaves the court with an undeserved victory. Difficult as the task is, Judges must nonetheless perform their judicial functions with zest, candour, magnanimity and integrity.

As Judges, we do not aspire to power and do not seek to rule. We must not break the chains that bind us as Judges. It must always be the rule of law and not the rule of the Judge. We hope that adherence to these simple ideals would ensure that we make a positive difference in our declining society. We further hope that history vindicates our resolve at so doing.

Finally, I urge us all to take a moment and engage in deep self-introspection if only to confirm that your primary allegiance to truth, justice, decency, morality and the Rule of Law is as it should be. We must constantly reflect and remember that as we sit at trial, we also stand on trial!

Mr. Chairman, My Lords, distinguished ladies and gentlemen, I thank you for your kind attention.