



NIGERIAN INSTITUTE OF ADVANCED LEGAL STUDIES LAGOS, NIGERIA



ROUNDTABLE ON EVALUATION OF JUDICIAL PERFORMANCE AND INTEGRITY INDEX SINCE 1999

10th February, 2010

COMMUNIQUE

INTRODUCTION

As part of the restructuring going on at the Nigerian Institute of Advanced Legal Studies, the **MOHAMMADU LAWAL UWAI CENTRE FOR JUDICIAL INTEGRITY ASSESSMENT** was established in July 2009 by the governing Council under the leadership of Hon. Justice Katsina-Alu JSC, CON, Former Chairman of Council of the Institute.

The major mandate of the centre is to conduct research, survey and roundtables for purposes of evaluating judicial performance and integrity index. The thinking of the institute is that the process of activating the National Judicial Council is mainly through petitions and this is prone to abuse and reckless application. Consequently, the institute resolved to design an acceptable flawless and empirical process of evaluating the Integrity index of the judiciary.

It was in fulfillment of the above that the institute on 10th February, 2010 organized a One-Day Roundtable on "Evaluation of Judicial Performance and Integrity Index since 1999" under the auspices of the Mohammed Uwais Centre for Judicial Integrity Assessment.

The Perspectives of the One-Day Roundtable include Judicial Reasoning, Administration of Justice, Public Confidence/Perceptions, Independence of the Judiciary, Integrity Index, Discipline on the Bench, Calibre and Quality of Appointment, Election Tribunals: Challenges and Reservations, Growth of the Law and Development of Critical Infrastructure. Various speakers made presentations at the event. In attendance were the Representatives of the former Chief Justice of Nigeria and President of the Court of Appeal, Distinguished Senior Advocates of Nigeria, Constitutional Law Experts, Sociologists, and other stakeholders in the justice sector. The Roundtable was chaired by Chief Akin Olujinmi, SAN, former Attorney General of the Federation and Minister of Justice.

OBSERVATIONS:

The Roundtable made the following observations:

- 1) The need to evaluate judicial performance periodically to ensure that the judiciary is made accountable for its actions and pronouncement on the bench without necessarily breaching the principles of judicial immunity or incessantly inundating the National Judicial Council with petitions.
- 2) The judiciary remains the last hope of not only the common man but everyone including the heads of the executive arms of government and other well meaning Nigerians. There is the need, therefore, to preserve the Institution and promote its sanctity and respectability.
- 3) That the welfare and conditions of service of judicial officers have improved considerably in Nigeria. But there are still States yet to appreciate the role of staff of the judiciary.
- 4) Most topical issue today when analyzing judicial performance and integrity is that of corruption. Corruption is all pervasive as it has affected all arms of government and other facets of society. The National Judicial Council (NJC) should be commended in this regard for its efforts in sanitizing the judiciary and in being pro-active.
- 5) The need to define and/or identify the indicators for measurement of judicial performance and integrity and mainstreaming such indicators noting that integrity can be seen from two perspectives, namely, corruption and bias - the former bordering on financial inducement and the latter on perceptions and preconceptions. These two perspectives influence decisions made by judges.
- 6) The National Judicial Council (NJC) has developed a framework for measuring performance and NIALS should liaise with NJC in developing and fine-tuning the framework using instruments like accountability, accessibility, affordability, availability, convenience, intelligibility, and responsiveness of the judicial process.
- 7) There is a Code of Conduct for Judicial Officers. It is however not clear to what extent the Code is being complied with.
- 8) The individual capacity of Nigerians to analyse national issues including the performance of the judiciary is growing and should be sustained instead of reliance on opinion of the others whose opinions may be biased.
- 9) In many landmark cases especially election petition cases, the judiciary has helped in supporting and sustaining democratic institutions.
- 10) That judicial officers and lawyers are partners in the justice sector though one may appear more dominant than the other. The temperament, disposition, composure and attitude of one is likely to affect the relationship. Consequently, Lawyers have very important role to play in ensuring that Judges and Judicial Officers perform optimally, efficiently and effectively and to present cases where Judicial Officers fall short of these requirements to the appropriate authorities.
- 11) The challenges posed by the continuous use of ex parte applications despite the directives of the NJC that such orders should be given sparingly. However, it was observed that granting of ex parte orders is not unconstitutional.
- 12) Although progress has been made in the area of delivery of substantial justice and not technical justice, the absence of critical Infrastructure like electricity, recording facilities, Internet facilities, proper furniture, air conditioning and general conducive environment has impeded the growth and development of the judicial sector. Where such infrastructure is provided, it must be updated regularly because law is becoming very scientific forensic experts are being brought and unless the judges are fully equipped, they may not be in a position to appreciate the evidence presented. Lagos State has done very well in this regard and should be commended.
- 13) The National Judicial Institute (NJI) should be commended for its efforts to build and develop capacity in the judicial sector. However, such capacity building should be geared towards developing specialization in various areas of legal practice. Similarly, various judicial divisions should be created and manned by judicial officers with relevant experience and training. A situation where complex cases in specialised areas are assigned to judges without any background in the area should be discouraged.
- 14) With the introduction of the new civil procedure rules, it is almost impossible to delay judicial proceedings, as there are timeliness with sanctions attached to them. But Judges and Lawyers must see to it that the rules are strictly adhered to.
- 15) Judges in the appellate courts are expected to write their own opinions including dissenting opinions. However, the writing of dissenting opinions is now minimised because of the conference method adopted.
- 16) A key component of judicial development is the discipline of the bench especially in relation to one another. This should be jealously guided and maintained.
- 17) No aspect of government legislature, executive and judiciary can escape from the environment in which it operates. In Nigeria, poor utilization of resources, corruption and lack of basic infrastructure affect the operation of any arm. Also, nationals of other countries are not better than Nigerians but the environment is not the same. As soon as we put in place the principles of accountability and acceptance of standard norms, our Judges will behave like their counterparts in other jurisdictions. This is because there are systemic failures and they affect how our laws are applied.
- 18) Noted that there are perception issues at various levels with the general public and the lawyers on the issue of administration of justice especially in the courts of records. However, the bulk of the judicial matters are handled at the lower bench magistrate/area courts. Thus Magistrates and Area Court judges influence what happens in the judiciary considerably.
- 19) The adversarial system depends on the issues presented by the parties and/or their Lawyers. Therefore the quality of the judgement is a function of the presentation by the counsel to the parties or parties themselves.
- 20) Nigeria has enough constitutional and statutory frameworks for the independence of the judiciary. However, the institutions must be strengthened and clear criteria set by the institutions for the appointment of Judicial Officers.

RECOMMENDATIONS

At the end of the Roundtable, the following recommendations were made:

- 1) The Judges in writing judgments should be guided by the need to ascertain the *ratio decidendi* of a case. By so doing, a mechanism for ascertaining judicial reasoning will be developed and judgements can be systematically analysed. This is so because judgments are the product of a process and the process should be understood and appreciated.
- 2) The judiciary has a self-checking mechanism through the appellate system. To this extent, the incident of corruption should be minimized and reduced at the higher bench. However, where it is established by the NJC that a judge is corrupt, the punishment should not be limited to removal from office. Such a judge should be handed over to the law enforcement agency for prosecution. In the same vein, Lawyers who bribe or attempt to bribe Judges on behalf of litigants should be reported for appropriate disciplinary action by the NBA.
- 3) Judicial Inspectorate Unit to be established to monitor corrupt practices, check compliance with rules of practice, determine temperament and predisposition of Judges and generally evaluate judicial performance.
- 4) Regular surveys should be scientifically conducted where the opinions of consumers of the judicial service lawyers, litigants and the general public on the integrity of the courts are evaluated.
- 5) Judicial service delivery is an aspect of good governance. Efforts should be made therefore to ensure that judicial service delivery is properly monitored. In doing this, the process of recruiting judicial personnel, the temperament, composure, antecedent, passion, social standing, background, experience and intellectual bent of such judicial personnel should be carefully analysed. Similarly the recruiting institutions and personnel should take these criteria into account.
- 6) Administration of justice in a globalised world poses challenges for the judiciary especially in the area of complex commercial transactions and implementation of treaty obligations. The changes introduced by the reform of the rules of civil procedure are no less daunting. Consequently, judicial officers should be trained regularly for them to keep pace with developments in these areas and the administration of justice in general. Similarly, computer appreciation courses should be organised for judges so that they will all become IT-compliant.
- 7) Nigerian Institute of Advanced Legal Studies should champion the course of highlighting inconsistencies in judicial pronouncements of courts of coordinate jurisdictions and call for harmonization of opinion especially when the facts are clearly on all fours in both cases.
- 8) The provision of critical infrastructure in the justice sector including the lower bench should be given priority. In this regard, welfare package and improved conditions of service for judicial and ancillary staff in the courts of records should be extended to the magistrate/area courts. The developments in Lagos State in this regard should be emulated by other states.
- 9) To take full advantage of the reform of civil procedure rules, lawyers should avoid frivolous interlocutory applications and if such applications amount to abuse of process, the lawyers should be personally sanctioned. Similarly the judges should be conversant with the rules for ease of application.
- 10) For Nigeria's Jurisprudence to grow, Judges must be innovative, courageous and creative in interpretation of constitution and statutes.
- 11) Salaries and allowances of Judges should be reviewed periodically to forestall the temptation of being corrupt.
- 12) The practice of writing dissenting opinions should be encouraged in order not to stifle independent opinions on the bench.
- 13) Systems and structures should be put in place and operated by persons with capacity to operate them. Similarly, there is the need to demystify the court process and procedure and it is hoped that the civil procedure rules will lead to such demystification.
- 14) In our adversarial system, lawyers should prepare adequately for their cases and ensure that the facts and law are presented to the judges. In so doing, if a judgement has been reached *per incuriam*, it should be brought to the attention of the judges.
- 15) The Nigerian Bar Association (NBA) should be more proactive in defending judges and be more discerning in criticising judgements and not the judges. This will contribute to the reform of the justice sector and such reform will promote excellence in the judiciary.
- 16) The workload of justices in the higher bench should be reduced through the appointment of more justices and creation of conducive environment. Similarly, Judges should be made comfortable. This should be extended to Magistrates and other ancillary staff.
- 17) Judges are products of our society. Members of the society should change. If this happens, this will affect the judiciary.
- 18) The bar should be more proactive in defending the judiciary. News conferences should be avoided since there is an appellate system.
- 19) Funding of Judiciary at State level must not be tied to the whims and caprices of the executive. This is bad for independence of the judiciary and for the principles of separation of powers.
- 20) Judges should be constantly exposed to International Conferences to enable them fraternise with their colleagues from other jurisdictions and exchange ideas.
- 21) Discipline at the High Courts especially between Judges and Chief Judges must be strengthened to avoid constant bickering and vindictiveness.
- 22) As a condition precedent for appointment to the bench, candidates must be subjected to rigorous medical scrutiny. Once appointed, Judges should be entitled to best medical treatment obtainable anywhere in the world.
- 23) Roundtable commends successive Chief justices of Nigeria, Presidents Court of Appeal, Chief Judges of Superior Courts, Presidents of Customary Courts of Appeal, Grand Khadi's for their excellent leadership roles sine 1999 and urge them to take the judiciary to another level in the new decade.

Signed:

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Director General

Lagos, Nigeria
February 10th, 2010



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