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Judicial Reform in Democratising Nigeria

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Abstract

Judiciary occupies a very important position in any democratic institution of government. Judiciary is therefore expected to ensure that the executive and the legislative arms of government keep faith with the cardinal goals of democracy, good governance and above all observance of rule of law, fundamental doctrine of separation of power, independence of judiciary, and check and balances. The Nigerian judiciary over the years has been grappling with the challenges of keeping or restricting each branch of government within its constitutional boundaries. These have proven difficult the expectation of the Nigerian Judiciary to engender a true democratic culture and constitutionalism in the Nigerian polity. The role of the judiciary as the bastion of constitutional democracy in a democratised Nigeria has been put to test in recent times even to its elastic limit. The problem with Nigerian judiciary is not limited to lack of courage and temptation to corruption in deciding political cases especially the determination of election petitions but it also extend to inherent institutional challenges such as; delay in dispensation of justice, incidence of conflicting judgements, and embarrassing prevalence of judicial corruption and unethical practices. This development calls for reform in the judiciary. This paper posits that Nigeria had a chequered history of series of judicial reforms. Nonetheless, the debates are still rife as to whether the reform exercise has assisted the common man aspiration and expectations in a democratised polity in

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view of the mounting virulent criticism of judicial corruption, incompetence of judges, political infiltration and interference in the justice sector, delay in the administration of justice, lack of independence of the judiciary, and technical justice among others. This development has accentuated the call for a major reform in the Nigerian judiciary. This paper therefore joins in the advocacy for holistic reform in the Nigerian justice sector in order to meet the goals of democratic culture and good governance.

1.0 Introduction

The Judiciary occupies a very important position in any society regardless of its form of government. It is an institution necessity to regulate socio-economic and political relationship especially in the modern society. Its inception is as old as human history. It thus seamlessly follows that every organised society desires the observance of the rule of law, due process, justice and equity. The absence of these may signal a propensity for anarchy and disorderliness. While the concept of justice is synonymous with the primary aim of every legal system, justice from jurisprudential perspective may be relative. However, fairness and equity stand as the common denominator of the general notion of justice. To give meaning to the ideal of justice and its actualisation, judiciary as a sacred institution is saddled with the responsibility of administration of justice in accordance with the rule of law. Therefore, the extent to which the institution of judiciary in Nigeria has actualised and fulfilled these sacred tasks especially in a democratised polity depends largely on its actual performance and public perception about it. This will also be keeping faith with the cardinal goals of democracy, good governance and above all observance of rule of law, fundamental doctrine of separation of power, measure of its independence, and check and balances in respect of the executive and the legislative branches of government.

The performance of the Nigerian judiciary since the return of the nation to democratic dispensation has not met the expectations of Nigerians to engender a true democratic culture and constitutionalism in the Nigerian polity. The role of the judiciary as the bastion of constitutional democracy in a democratised Nigeria has been put to test in recent times even to its historic unit. The problem with Nigerian judiciary is not limited to lack of

courage and temptation to corruption in deciding political cases especially the determination of election petitions but it also extend to inherent institutional challenges such as; delay in dispensation of justice, incidence of embarrassing conflicting judgements, and prevalence of judicial corruption and unethical practices. This development calls for reform in the judiciary. This paper posits that Nigeria had a chequered history of series of judicial reforms. Nonetheless, the debates are still rife as to whether the reform exercise has assisted the common man aspiration and expectations in a democratised polity in view of the mounting virulent criticism of judicial corruption, incompetence of judges, political infiltration and interference in the justice sector, delay in the administration of justice, lack of independence of the judiciary, and technical justice among others. This development has accentuated the call for a major reform in the Nigerian judiciary. This paper therefore joins in the advocacy for holistic reform in the Nigerian justice sector in order to meet the goals of democratic culture and good governance.

2.0 Historical Developments of the Nigerian Judiciary

Judiciary in Nigeria has a chequered history. It has evolved over the time with several reforms and most importantly institutional reforms. The historical evolution of the Nigerian Judiciary can be linked with the events sequel to the eventual demarcation of African continent by the imperial powers at the Berlin Conference. The evolution of the Nigerian judiciary can be rightly categorised under four different historical epochs or eras viz. the period before 1842, 1845-1912, 1914 to 1953 and 1954 to 1999, which generally represent the pre-colonial, colonial, military and the first to third republic.

Before 1842 and the arrival of the Europeans in Nigeria, the various nation states and communities that later constituted the present day Nigeria had numerous traditional administration of justice systems that held sway until later introduction of English type court system. There was evidence of pattern of traditional constitutionalism which provided a system of checks and balances and to some extent restrained paramount

rulers from abuse of power.⁷ Among the Yoruba and Ibo, the system revolved around their traditional institutions. It was fashionable among the Yoruba to refer contentious matters to the head of the family.⁸ If he could not settle the dispute, the matter was taken to the head of the compound until a solution could be found up to the Oba.⁹ Similar systems existed among the Ibo.¹⁰ In the North, there was a bit of formalization of the justice system as founded on the Islamic legal system, the Sharia. There was an elaborate system of court systems, the hub of which was the Alkali system. The Emir was the ultimate appellate judge.¹¹

With the emergence of colonialism across Africa and the cession of Nigeria to Britain during the scramble and partition of Africa continent, British-type legal system was introduced to the 'Niger area'¹² to consolidate and legitimise the colonial rule.¹³ Thus after 1842, the power to administer and dispense justice in Nigeria was mainly vested in native courts created by the British colonialists. It should be noted that these Native Courts are the forerunners of the present day Customary, Area and Sharia Courts.¹⁴

The colonisation got firmly established in the Southern part of Nigeria between 1843 and 1913, and the British through a combination of Foreign Jurisdiction Act of 1843 and 1893 established laws under which various courts were set up. The first court called the Court of Equity was

⁷ Popoola A.O., 'Politics of the Nigerian Judiciary,' being a paper presented at the 32nd Annual Conference of the Nigerian Association of Law Teachers held at Nigerian Institute of Advanced Legal Studies, Lagos on 10-13 May, 1994, p.65

⁸ Oyelade O.S., 'Administration of Justice in Traditional Africa' in Nigerian Bar Association Ikeja, *Law, Politics and Development* (Nigerian Bar Association Ikeja Branch, Lagos 2010) p.356 citing Schapera, *Government and Politics in Tribal society* and Green M.M., *Igbo Village Affairs* (1964) p.132.

⁹ See generally Emiola A., *The Principles of African Customary Law*, pp. 51-73; Tonwe S.O and Edu O.K., *Customary Law in Nigeria*, pp. 69-89; Oyelade O.S., *Ibid.*, p.355

¹⁰ Green M.M., *Op. cit.*

¹¹ Ali Y.O., 'The evolution of ideal Nigerian judiciary in the new millennium' <http://www.yusufali.net/articles/THE_EVOLUTION_OF_IDEAL_NIGERIAN_JUDICIARY_IN_THE_NEW_MILLENNIUM.pdf> accessed on 8 June 2012

¹² Later reformulated to coin the present 'Nigeria' by Lady Lugard.

¹³ Sani A.M., 'The Nigerian Judiciary Trends since independence' (2009) 5 (1) *UIJ* p.222

¹⁴ Ali Y.O., *Op. cit.*

established in 1854.¹⁵ During the same period, the Royal Niger Company was by virtue of a Royal charter granted in 1886 empowered to govern and administer justice in its areas of operations. The Charter was revoked in 1899.¹⁶ Despite the establishment of British Courts, native courts were still allowed to function, in so far as the native law and custom they administered were not repugnant to natural justice, equity and good conscience.¹⁷

In 1863, the system of Nigerian judiciary went over a major reform. By Ordinance No 11 of 1863, the first Supreme Court was established for the Lagos colony. In 1899, the Northern protectorate was established by virtue of the Northern Nigerian Order-in-Council 1899, with a Supreme Court. In 1900, a Supreme Court was also established for the Southern Nigerian protectorate via the Supreme Court Proclamation Order No. 6 of 1900. These Courts exercised same powers and jurisdictions as were vested in Her Majesty's High Court of Justice in England.¹⁸

As at 1914 when the amalgamation took place, Nigeria had three courts in the judicial hierarchy – Supreme Court, Provincial Courts and Native Courts.¹⁹ But upon the amalgamation, Provincial Courts were abolished and in its place were established High courts which consisted of Chief Judges, Judges and assistant Judges. Below these High Courts were Magistrate Courts. Native Courts will remain at the bottom of the judicial hierarchy.²⁰

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Obilade A.O., *Nigerian Legal System* (Spectrum Books Ltd, Ibadan); Park A.E.W., *The Sources of Nigerian Law* (Sweet & Maxwell, London 1968) pp. 65-96.

¹⁸ Egbewole W.O., 'The Place of the Judiciary in the sustenance of Democracy' in *Democracy and Development in Nigeria: Conceptual Issues and Democratic Practices* (Concept Publication Ltd, 2006) p.291; Egbewole W.O., 'Independent Judiciary and sustainable democracy' in *Challenges of Sustainable Democracy in Nigeria* (John Archers (Publishers) Ltd., 2006) p.214; Ali Y.O., *Op. cit.*

¹⁹ Egbewole W.O., *Ibid.*

²⁰ Ali Y.O., *Op. cit.*; Egbewole W.O., *Ibid.*

The Supreme Court exercised appellate jurisdiction over the High Courts. Between 1934 and 1954 appeals from the Supreme Court went to the West African Court of Appeal (WACA) while appeals from the WACA went to the Privy Council.²¹ However from 1954, appeals from the Supreme Court of Nigeria lay directly to the Privy Council.²²

- In 1954, a Federal Supreme Court was established and was presided over by a Chief Justice of the Federation. Nigeria then consisted of regions, each region then has a High Court presided over by a Chief Justice. While appeals from each of the High Court of the regions laid to the Federal Supreme Court; appeals from Magistrate Courts, Customary or Native Courts Grade A went to the regional High Courts.²³

It is important to mention here that all through the colonial era, the judiciary was not separated from the executive. It was in fact a department of and controlled by the executive branch of government²⁴ because the courts were mostly manned by principal agents of trading firms, consular or other administrative officers who acted as the judges.²⁵ The above represents the structure and status of the Nigerian judiciary until 1960 when Nigeria attained independence and got its own constitution that acknowledged the judiciary as an independent branch of the government.²⁶ By the independence, appeals to the WACA were abolished and later in 1963, appeals to the Privy Council were also terminated.²⁷

²¹ Ali Y.O., *Ibid.*; Egbewole W.O., *Ibid.* See also Sani A.M., *Op. cit.*, p.222 and Musdapher D., 'Challenges of Judicial Reform in the 21st Century: The Nigerian Experience' (Being a lecturer delivered at the 5th M.M.A. Akanbi Faculty of Law Public Lecture organised by the Faculty of Law University of Ilorin on 21st March 2012).

²² Ali Y.O., *Ibid.*

²³ *Ibid.*

²⁴ Karibi-Whyte A.G., 'The relevance of the judiciary in the polity in historical perspective,' being a lecture delivered at the Fellows' day public lecture organised by the Nigerian Institute of Advanced Legal Studies, Lagos, 1987, p 53; Sani A.M., *Op. cit.*, p.222; Musdapher D., *Op. cit.*, p.5

²⁵ Ali Y.O., *Op. cit.*

²⁶ Sani A.M., *Op. cit.*

²⁷ Egbewole W.O., *Op. cit.*; Sani A.M., *Op. cit.*

In 1967, Nigeria became a Federation of twelve states each with its own state judiciary. In the same year, the Western State via the Court of Appeal Edict, No. 15 of 1969 established a Regional Court of Appeal. In the Western State, the Supreme Court ceased to have direct jurisdiction to hear and determine appeals in any matter from the high Court of the state (including appeals in any proceeding pending in any court in the State) except in any case in which notice of appeal to the Supreme Court had been filed before 1st June 1967.²⁸ The law setting up the Western Court of Appeal was replaced around 1976²⁹ when a single Court of Appeal was introduced for the federation. Its function among others was to hear and determine appeals from the State High Courts and the Federal Revenue Courts³⁰ that have been created³¹ at the time. It is instructive to note that the division of the erstwhile regions into constituent states, creation of the single Court of Appeal for the nation and changing the status of the Supreme Court of Nigeria³² from a court of first instance to an appellate court³³ all occurred during the era of military rule which started in January 1966.

The emergence of the military witnessed the disruption of the three-tier system of government and fusion of executive and legislative arms of the government,³⁴ suspension of the constitution, proliferation of ouster clauses, and others.³⁵ This act undermined the independence of the

²⁸ Ali Y.O., *Op. cit.*

²⁹ *Ibid.*

³⁰ Now known as 'Federal High Court'. It was established by virtue of the Federal Revenue Court Decree No 13 of 1975 in 1970.

³¹ The Federal Revenue Courts were created at that time, in order to meet the need for cases involving the revenue of the Federal Government to be expeditiously determined

³² Which was originally created as the Federal Supreme Court (FSC).

³³ As a court of first instance then, the Supreme Court (FSC) has original jurisdiction over matters that are now exclusively for the State High Courts. Even though it still has original jurisdiction but that only relates to disputes between two states or between state(s) and the Federal Government. See section 232 of the 1999 Constitution of the Federal Republic of Nigeria.

³⁴ Wheeler H., 'Democracy In a revolutionary era' cited in Eso K., 'The place of Law in a Democracy' (Being a lecture delivered at the 1st T. O. Elias (Jurist of Distinction) annual Memorial Lecture, University of Ibadan, 1999) p. 238

³⁵ Egbewole W.O., *Op. cit.*, p.214; Sani A.M., *Op. cit.*, p.223; Musdapher D., *Op. cit.*, p.5

judiciary. And that was the position for the periods when the military ruled although interpolated by the second republic. But notwithstanding the excessive powers arrogated by the military authorities, the judiciary was always left extant though impotent.³⁶ And despite the despotic nature of the military regimes, the judiciary still attempted to have its voice heard and created the deserved niche for itself as an arm of government. The courts continually made pronouncements on matters of fundamental rights and rule of law even when the culprit was the military government.³⁷

The military finally gave room for democratic governance on the 29th of May 1999 the same day the federation of Nigeria had a new constitution³⁸. Presently under the 1999 Constitution, the Courts recognized as constituting the judiciary are the Supreme Court, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory Abuja, the Customary Court of Appeal, Abuja, and the States High Courts, the Sharia Court of Appeal of the States and the Customary Court of Appeal of the states.³⁹ These courts are vested with the functions or duties of dispensing justice, in accordance with jurisdiction vested in them.⁴⁰

3.0 The Role of Judiciary in a Democratic Dispensation

Having attempted an exposition of the historical development of the Nigerian Judiciary and most importantly its enduring experiences during

³⁶ Oyeboade A., 'Is the military still the last hope of the Common Man?' in Oyeboade A., *Law and Nation Building in Nigeria: Selected Essay* (CEPAR. Lagos 2005) p.129; Kayode Eso JSC in *Governor of Lagos State v. Ojukwu* (1986) 2 NWLR (pt. 18) 621; Sani A.M, op. cit., p.224; Kayode Eso JSC in *Lakanmi & Ors. v. Attorney General (Western State) & Ors*, suit No. SC58/69 reported in (1970) LPELR

³⁷ See generally the pronouncements of the courts in the following cases: *Governor of Lagos State v. Ojukwu* (supra); *Lakanmi v. A.G. (Western State)* (Supra); *Chief Gani Fawehinmi v. General Sani Abacha & 3 Ors* (1996) 9 NWLR (pt. 457) 710 at 758; *Garba v. Federal Civil Service Commission* (1988) 1 NWLR 449; *Obeya Memorial Hospital v. Attorney General of Federation* (1987) 7 SC 152.

³⁸ The Constitution of the Federal Republic of Nigeria 1999 (popularly referred to as 1999 Constitution).

³⁹ See section 6 (6) of the 1999 Constitution of the Federal Republic of Nigeria. See also Aguda O., *Understanding the Nigerian Constitution of 1999*, p. 191.

⁴⁰ See generally chapter VII (sections 230-284) of the 1999 Constitution.

the colonial, post-independence and military eras, this segment of the discourse focuses on the role of judiciary in a democratic set up. At the special session of the Supreme Court to mark the commencement of the new Legal Year on September 20, 2011, the Chief Justice of Nigeria, Hon. Justice Dahiru Musdapher 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."

And he stated further that:

*"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."*⁴¹

The expectations of Nigerian judiciary under a democratic polity remains unresolved problem due to negative perception of the performance of the judiciary in the discharge of its constitutional duties and responsibilities and most importantly the prevalence of corrupt allegations and unethical behaviour against judicial officers.

However, the judiciary as was rightly observed is a necessary partner in governance.⁴² The judicial power of the courts emanates from the constitution as an arm of the tripartite power units.⁴³ The institution is charged by the constitution with the responsibility of seeing that society's

⁴¹ Hon. Justice Dahiru Musdapher, CJN, "The Nigerian Judiciary: Towards Reform of the Bastion of Constitutional Democracy", Fellows' Lecture Series, 2011, Nigerian Institute Advance Legal Studies.

⁴² Ademola Yakubu, *Constitutional Law in Nigeria*, Demyaxs Law Books, 2003, p.316.

⁴³ *Ibid*

laws are observed and adjudicating over disputes resulting from non-compliance or breach of these laws and awards damages or sanctions as the case may be.⁴⁴ Judiciary performing this function becomes a viable institution in a democratic dispensation to ensure that the rule of law prevails over the rule of the might. In this regard, judiciary is seen as the safeguard of people's liberty and of their property under the constitution. Judiciary is the last hope of a man, i.e. both the common man (the weak) and the strong or mighty. With respect to the enforcement of fundamental human rights, it is the first hope of every one that evokes it to come to his or her rescue to seek for justice against any infraction of his or her fundamental rights.⁴⁵

In the present democratic dispensation in Nigeria, the judiciary provides sufficient measures of hope against any executive and legislative lawlessness. According to Oputa JSC, as he then was, stated:

*"Judiciary is the mighty fortress against tyrannous and aggressive laws. It is the judiciary that has to ensure that the state is subject to the law, that government respects the rights of the individual under the law. the courts adjudicate between the citizens inter se and also between the citizen and the state."*⁴⁶

The above quotation reiterates the fact that judiciary in a democratic regime must strive towards protecting the rights of the oppressed. It is therefore the role of the judiciary as emphasised under Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 as amended, to engender access to justice and fair hearing within reasonable time. Judicial independence and equality before the law are the two aspects of the right to fair hearing. In line with the provision of Section 36 of the 199 Constitution as amended the court in *Nwanegbo v. Oluwale*⁴⁷ state thus:

⁴⁴ Wahab Shittu, "The Judiciary, Rule of Law and Challenges of Nigerian Democracy", *The Jurist*, Vol.16, 2011 pp.43-74, at 47.

⁴⁵ Ademola Yakubu, n.42, p.317.

⁴⁶ *Ibid*, quoting Hon. Justice C. Oputa, "Understanding the Place and Role of the Judiciary in Our Society", cited in E. Amucheazi and Hon. Justice O.Olatawura (eds.), *The Judiciary and Democracy in Nigeria*, at p.113.

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"clearly whenever the need arises for the determination of the civil rights and obligations of every Nigerian, this provision guarantees to such a person a fair hearing within a reasonable time... which is synonymous with fair trial and as implying that every reasonable and fair minded observer who watches the proceedings should be able to come to the conclusion that the court or other tribunal has been fair to all parties concerned."

The mere fact that democracy is now fully enthroned in Nigeria does not obviate occasional enactment and enforcement of negative and oppressive laws. That is the reason why judiciary in a true democratic dispensation must raise to the occasion by evoking its endowed constitutional powers to strike down on such laws and tendencies. It was reported that Sir Winston Churchill once described the English judges in a glowing terms as follows:⁴⁸

"There is nothing like them in our land. They have to interpret the law according to their learning and conscience. They are distinguishable from the great officers of state and other servants of the Executive, high and low; from leaders of commerce and industry. The British judiciary with its traditions and records is one of the greatest living assets of our race and people and its independence part of our message to the ever growing world that is rising swiftly around us."

We are in doubt if the same can be said about the present Nigerian judiciary especially with reference to its integrity, functionality and transparency of conduct by majority of the judges and other judicial officers in the administration of justice in a democratic regime.⁴⁹ It is paradoxical that a judiciary that strived tirelessly to uphold the rule of law and the supremacy of the constitution⁵⁰ despite the containment of its

⁴⁸ Ademola Yakubu, n.42 at 319.

⁴⁹ See M.M.A. Akanbi, Restoring Confidence in the Judiciary, 8th edition of the J.I.C. Taylor Memorial Lecture organized by the Nigerian Bar Association, Lagos Branch, 30th November, 2011.

⁵⁰ *Uwaifo v. A-G Bendel State & Ors* (1983) 4 NCLR 1.

power under the military regime has now degenerated to being used by the executive branch of government to achieve political ends. The role of the judiciary whether under the military regime or democratic dispensation is to observe the rule of law and ensure that all manner of people and government at all level follow suit. This role never changes though it might suffer some limitations under the military especially through the ouster of jurisdiction of courts. A judiciary without integrity will definitely be inhibited in guarding against executive lawlessness and that is why Hon. Justice Uwais JSC (as he then was) warned in the case of *Ojukwu v. Governor of Lagos State & Ors*⁵¹ thus:

"If government treat court 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 the replacement of the rule of law."

Thus, judiciary will function effectively in a democratic set up if its independence is guaranteed. A transparent judiciary can only be assured if men and women of integrity and of high moral standard are appointed to administer justice. As Ademola Yakubu opined, "an open society that enables persons to air their grievances through the universally recognised institution of the judiciary is a *sine qua non* for the achievement of peace, stability, happiness, good governance-democracy and the rule of law."⁵² The pertinent question to ask here is whether Nigeria judiciary fare better in securing its independence and up-holding the tenet of the rule of law under the present democratic regime. It is beyond peradventure that the rule of law is no longer determined and enforced by the army. It depends upon public confidence in lawfully constituted authority⁵³, i.e. the executive, the legislature and the judiciary. And what percentage of men and women of integrity are still in the service of the Nigerian judiciary?

4.0 Judiciary and Challenges of Nigerian Democracy: Issues and Contentions

⁵¹ (1986) All NLR 233

⁵² Ademola Yakubu, n.42, at p.321.

⁵³ Gleeson C.J., Court and the Rule of Law (Melbourne University, 7 November, 2001)

4.1 Delay in the Administration of Justice

Delay in the administration of justice has been one of the major problems Nigerian judiciary has been grappling with even before the full return of the nation to a democratic rule. Delay in the dispensation of justice is a fundamental issue that goes to the root of access to justice and the concept of fair hearing since justice delayed is justice denied. Decline in the administration of justice according to Olisa Agbakoba, SAN, manifest itself through unprecedented delays in case processing, and increasing backlogs of cases pending before the courts. The failure of courts to resolve cases in a timely manner has tended to diminish the citizens willingness and ability to access justice. The public perceives that the time required for a typical civil case in court is excessive. Most judges, lawyers, litigants and the general population share this perception.⁵⁴

The Chief Justice of Nigeria, Hon. Justice Dahiru Musdapher, also admitted that delay in the dispensation of justice remains a major challenge to the Nigeria judiciary. His lordship however, profile the following as the major factors responsible for the protracted delay in the dispensation of justice in Nigeria: institutional incapacities in the area of infrastructure (especially e-infrastructure), in-built delay mechanisms in the law, as well as failure on the part of some Judges, the official and private Bars, law enforcement agencies, litigants and witnesses to ensure smooth running of court proceedings.⁵⁵ It is interesting to note that the head of the judiciary is equally aware of the major causes and danger of delay in the dispensation of justice in Nigeria. Hon. Justice Timothy Akinola Aguda, however succinctly captured the gravity of the consequence of delay in the dispensation of justice and the most affected victim of same when he stated thus:⁵⁶

⁵⁴ Agbakoba O., 'Current concepts and issues in Justice Sector Reform' <http://www.agbakoba-associates.com/admin/uploads/pubs/current%20concepts%20and%20issues%20in%20justice%20sector%20reform.doc> accessed on 15 May 2012

⁵⁵ Hon. Justice Dahiru Musdapher, CJN, n.41.

⁵⁶ 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.

"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."

The above observation by Hon. Justice Timothy Akinola Aguda, was made some times in 1988 and sad enough it seems no immediate solution is at sight to the growing incidence of delay in the administration of justice in Nigeria. The reality was brought closer to us when the Chief Justice of Nigeria lamented that: "if 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".⁵⁷

If the provision of the constitution is anything to go by, hearing of court proceedings must be concluded within a reasonable time. And a reasonable to our understanding is not a life time and most especially in a democratic dispensation whereby issues of freedom and fundamental rights, political questions and electioneering disputes are common cases before our courts. Justice Obaseki JSC (as he then was) defined reasonable time in *Ariori vs. Elemo*⁵⁸ as; "the period of time which in the search for justice does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to reasonable person to have been done".⁵⁹

While the presence of the military in Nigeria political landscape significantly atrophied the rule of law and rule of fair hearing, the same cannot be accepted in the present democratic regime where the constitution is expected to run its full course. If Nigerian democracy must

⁵⁷ Hon. Justice Dahiru Musdapher, CJN, n.35.

⁵⁸ (1983)1 SNNLR 1

⁵⁹ See also the case of *Effiom vs. State* (1995)1 NWLR (pt 373) 507. Though this is a criminal case but it seems the definition of reasonable time by Supreme Court in this case will also extend to civil case. According to the court a reasonable time is such "length of time as may fairly, properly and reasonably be allowed or required, having regard to the nature of the act or duty or of the subject matter and to the attending circumstances."

strive and flourish, delay in dispensation of justice must be seriously addressed beyond any further rhetoric.

4.2 Corruption/Unethical Practices

Corruption may be loosely perceived as manifestation of greed and insecurity especially in a developing country like ours. People pay bribes to get things done. They want the recipient to show them a favour depending on the object of offering the bribe. Or one may want the recipient to act quickly.⁶⁰ We do not intend to delve into the details of the theoretical exposition of the concept and definition of corruption. In this discourse we prefer bribe to mean a reward to pervert the course of justice, the judgement or corrupt the conduct.⁶¹

Interestingly, Section 15(5) of the Constitution of the Federal Republic Nigeria, as amended, provides that the state shall abolish all corrupt practices and abuse of power as part of the fundamental objectives and directive principles of state policy. This provision is a clear state political objective which the three branches of government, judiciary inclusive, are mandatorily directed to pursue in the discharge of their respective constitutional roles and responsibilities. However, incidence of allegation of corruption and abuse of power are reoccurring decimals among the arms of government (including the judiciary) since Nigeria returned back to democratic dispensation in 1999.

The Nigerian judiciary until recently had always been placed high and above board like Caesar's wife. This is no longer the case as the institution has finally succumb to pressure from the executive, the legislative branches of government and business sector and became influenced by political leaders who finally dictate the tune of justice

⁶⁰ Denis Osborne, "Corruption as Counter-Culture: Attitudes to Bribe in Local and Global Society" in *Corruption: The Enemy Within*, 9-34, at page 10, ed. By Barry A.K. Rider, Kluwer Law International, 1997.

⁶¹ For further definition of corruption see R.Theobald, *Corruption, Development and Underdevelopment*, Durham, U.S.A, Duke University Press, (1990), and Herbert H. Werlin, "Receiving Corruption: With a New Definition", *International Review of Administrative Sciences* 60 (1994), 547-558

through bribes and other forms of gratifications. The recent report titled, "Department of State's Country Reports on Human Rights Practices, 2011", which was submitted to the Congress of the United States of America, identified that corruption and overbearing influence from political leaders on judicial institution are the bane against efficient administration of justice in Nigeria. The report also observed that, "there was a wide perception that judges were easily bribed and that litigants could not rely on the court to render impartial judgements. Citizens encountered long delays and alleged requests from judicial officials for bribes to expedite cases or obtain favourable rulings."⁶²

The above damning negative report of corruption in the Nigerian judiciary is quite unfortunate. The issue of whether Nigerian judiciary is bedevilled with the problem corruption is not in contention in view of the erosion of confidence in the integrity of the institution. Furthermore, it clear that the judiciary is not any way insulated from the monster of corruption that is ravaging the Nigerian society. Judges were however advised elsewhere to be mind of the fact that:⁶³

"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."

Oputa, JSC (as he then was) gave similar admonishment to our judicial officers thus:⁶⁴

"...no one should go to the Bench to amass wealth, for money corrupts and pollutes not only the channels of justice but also the

⁶² See US: Nigerian Judiciary Corrupt with Impunity- available on <http://www.thisdaylive.com/articles/US-nigerian-judiciary-corrupt-with-impunity/116562/> . Accessed on 16th June, 2011.

⁶³ Hon. Justice Dahiru Musdapha, CJN, n.35.

⁶⁴ Uwaifo, JSC, Valedictory Speech, reproduced in (2005) 1 SCNJ, at 20. See C. Oputa, "Judicial Ethics, Law, Justice and the Judiciary", A Journal of Contemporary Legal Problems, Vol. 1,

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."

Question of Corruption in the Judiciary is a serious issue in a democratised Nigeria because it has the potentiality to shatter peoples' hope and expectation in the Nigerian nascent democracy. This is in line with Mr. Yemi Adebawale submission that,

"Corruption within the judiciary has made it impossible for it to play a neutral and fair role when political disputes arise. Controversial judgments and frivolous injunctions have cost the judiciary the people's confidence, and subsequently affected the democratic ethos in Nigeria. The Nigerian judiciary had never before been so ridiculed as it was during the aborted Third Republic. Judicial decisions were given political colouration. There were many conflicting judgments before, during and after the crisis that engulfed June 12, 1993 elections. Some of the judgements were clearly against judicial practice. This state of judicial ding-dong that government, on June 23, annulled the election. Government said it was compelled to do so in order to rescue the judiciary from intra-wrangling and to protect our legal system from being ridiculed and politicized.⁶⁵

4.0.3 Interference with Independence of the Judiciary

⁶⁵ Quoted by Honourable Olatawura JSC (as he then was) in his paper titled 'AWAKENING HOPE IN THE NIGERIA PROJECT: "THE ROLE OF THE JUDICIARY IN THE NIGERIA PROJECT" presented at the inauguration of Mustapha Akanbi Foundation at the Kwara Hotels on 12 September 2006.

Aside from the above challenges, another area of challenge which the judiciary is grappling with in a constitutional democracy relates to the independence of the judiciary. The matter is even worst at the state judiciary. Judiciary at state level is not reasonably independent 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. It may be implied that political pressure both at the federal and state level of the judiciary is responsible for the prevalence of corruption in the judiciary.

It is observed that in some states the chief executives treat the judiciary as an appendage of the executive arm. This is true in the sense that the funding of the judiciary is primarily controlled or supervised by the executive branch of the government. This is most unfortunate in view of the provision of section 162(9) of the Constitution, which provides that 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, it must be noted that the provision of infrastructure, welfare of Magistrates and other lower court Judges, fall within the purview of state government's responsibility. In the area of appointment of judges, the executive at the federal and state level do have over bearing influence despite the effort of the NJC to ensure that the processes of appointment and removal of Judges/security of tenure is not subject to political manipulation. There are few cases of an attempt by the state executive to remove judges of the state judiciary without any recourse to the rule of law and due process. The case of the purported removal of the Chief Judge of Kwara by the former governor based on recommendation of the state assembly is instructive with regards to the state of the independence of judiciary in a democratised Nigeria.

5.0 Reforms Agenda

We are not unmindful of the fact that the Chief Justice of Nigeria soon after his assumption of office, set up a committee to see into the reform of the Nigerian judiciary, and that the committee had since submitted its report. However the following are our recommended agenda (that may

be relevant in the process of considering and implementing the report) for the reform of the Nigerian judiciary in view of problems identified above;

5.1 Capacity Building for Judges:

This should be given priority in the process of the proposed reforms in order to ensure competence and further instil confidence in the judicial officers. It will be easier for parties to disobey court orders once they could read lack of confidence and competence in the judge rendering that order. Competence is a *sine qua non* for an effective justice system. This factor affects the human resource component of the justice system. Judges and Magistrates have to be continually acquainted, through specialized trainings, with evolving legal issues, which they are called upon to deal with. This also concerns the registry staffs that assist these judicial officers in discharging their responsibilities. This proposition stemmed from the fact that many jurisdictions now rely on specialized tribunals to deal with disputes based on their peculiarities, which thus require corresponding need for judges and magistrates to be specialist.⁶⁶ It is therefore submitted that as the human resource is crucial to the enhancement of competence in the judicial sector; this alone will not be sufficient if it is not effectively backed up with training, material resource and technology. Both human and material resources are equally essential to achieve appropriate level of competence that the justice system needs.⁶⁷ It is further suggested that budgetary allocations to the judiciary should be significantly increased to allow for the continuing education of judges, magistrates and their staff.

We equally recommend the practice in Madagascar, which has adopted this new approach by establishing a school solely dedicated to the training of judicial personnel.⁶⁸ The school may be run by the National Judicial

⁶⁶ UNODC, *Strengthening Judicial Integrity and Capacity* (United Nations, New York 2011) p.19; Nigeria Village Square, 'Ideas and Suggestions for President Goodluck Jonathan from Nigerian Village Square' <<http://www.nigeriavillagesquare.com/forum/downloads/87789-TOC-Jonathan.pdf>> accessed on 8 Jun 2012

⁶⁷ Agbakoba O, 'Current concepts and issues in Justice Sector Reform', op. cit.

⁶⁸ Ibid.

Institute but its curriculum should take a shift away from the periodic workshop ritual for the judicial officers. It should be a school where the judicial officers' skills will be effectively honed with the aim of creating specialised judicial minds.

5.2 Computerisation of Judicial Processes:

The present era we live in has been severally described as the electronic age, space age, internet age, information age, etc all because of the state and rapidity of our communication system, which has also rubbed off on many sectors of our polity. One of the factors that account for delays in the progress of judicial proceedings in Nigeria is poor communications. Similarly, too much reliance is still placed on snail/surface mail service which often does not guarantee the effective delivery of summons and other court notices, particularly in cases of parties living in faraway places or having uncertain addresses.⁶⁹ However, it is observed that the judicial sector still remains one major sector that has failed to utilise the benefits presented by the information and communication technology. And to effectively achieve the proposed reforms, there is need for both cultural and systematic change in the delivery of justice. The change is expected to include court modernization, as well as training of judges, court personnel, and lawyers in information and communication technology. Many judges and lawyers do not know how to turn on a computer system let alone operating same or even accessing the internet. It is not also sure if a judge will take it lightly noticing a counsel recording the court's proceedings on an IPAD notebook while the judge himself is writing in long hand.

It is thus suggested that sequel to the implementation of the recommendation on capacity building, the courts should be equipped with more current information and communication gadgets and internet facilities to assist in speedy filing of cases. For instance, a counsel may send a court process with evidence of payment of filing fees (through the banking facilities) by email to the registry without having necessarily appearing in person in the registry. This will reduce the long queues in the registry that sometimes lead to backdoor dealings. Also, where court

⁶⁹ *Ibid*

proceedings are recorded through electronic gadgets, it will reduce fatigue of the judge and give him adequate opportunity to attentively listen to the evidence and watch the demeanor of the witnesses, as indeed the submissions of the counsel. While playing back, he will be opportune to adequately reflect on points made during the proceedings and may even watch the proceedings all over to make further notes of salient matters that skipped his attention during the proceedings. This, it is believed will improve the performance ratings of the judges and may assist the appellate judges in proper determination of the appeals that come from such cases. It should however be noted that we are neither suggesting the introduction of information and communication technology at the expense of the traditional system nor presenting it as the total remedy to the existing problems but it will enhance the case management system of the courts.

5.3 Transparent and Purposeful Appointment Processes:

With the growth of our human endeavours and expansion of our economic exploits come the emergence of more disputes but most of the judicial divisions in Nigeria do not have available, the human and material resources that they need to be fully operational. Most at times, a haphazard recruitment and promotions process aid in establishing the situation of judicial collapse that we are experiencing today.⁷⁰ Competence as a goal however, is only achievable to the extent that there is in place an adequate selection and promotion process.⁷¹ A rigorous process of selection of judges, magistrates and paralegal personnel is therefore necessary to achieve an appropriate level of competence.

It is therefore recommended that adequate recruitment should be made to meet up with the growing number of litigations.⁷² It is further recommended that the process of appointment of judicial officers should

⁷⁰ *Ibid.*, p.3

⁷¹ *Ibid.*, p.6

⁷² Uzundu J, 'A Case For The Judiciary' <<http://www.nigeriannewsworld.com/content/case-judiciary>> accessed on 8 Jun 2012; UNODC, *Strengthening Judicial Integrity and Capacity* (United Nations, New York 2011) p.1

place emphasis on *character and learning*,⁷³ *integrity and courage*.⁷⁴ Thus while respecting the constitutional provisions on Federal Character,⁷⁵ the National Judicial Council should bear in mind that only men and women of proven ability, learning and character should be appointed to the Bench⁷⁶ and not allow appointment of judges to become consideration to compensate political loyalty⁷⁷ or redemption of a sinking legal practitioner. Thus the National Judicial Council must not in any way be deterred from following their guidelines for appointment.⁷⁸

5.4 Provision of Conducive Environment for Judges and Judicial Staff:

Inadequate material resources are also accountable for the ineffectiveness of the judicial system. Some jurisdictions have had to contend with dilapidated office buildings, inadequate supplies and regular power outages. This dismal state of affairs applied not just to judges and magistrates, but to judicial staff as a whole, including court clerks and process servers. Court clerks have an important role to play with regard to

⁷³ Olatawura J, 'Awakening hope in the Nigeria Project: The Role of the judiciary in the Nigeria Project' (Being a lecture delivered at the inauguration of Mustapha Akanbi Foundation held at the Banquet Hall, Kwara Hotel, Ilorin on Tuesday 12th September 2006) <http://www.mafng.org/inauguration/role_of_judiciary.htm> accessed on 8 Jun 2012; UNODC, *Strengthening Judicial Integrity and Capacity*, p.18

⁷⁴ Kasunmu A.B. (ed), *The Supreme Court of Nigeria 1956 -1970* (Heinemann Educational Books, Ibadan 1977) p. 10. See also, *The Guardian*, March 14, 1989, p. 3, where Chief Gani Fawehinmi complained about the secrecy surrounding appointment of judges. He advocated advertisement in official gazette for qualified persons to apply.

⁷⁵ Section 14 (3) of the 1999 Constitution of the Federal Republic of Nigeria

⁷⁶ Daudu J.B, 'The Independence Of The Nigerian Judiciary In The Light Of Emerging Socio-Political And Security Challenges' (Being A Key Note Speech delivered at the Inauguration of the new legal year of the Borno State Judiciary on 15th April 2011) <<http://www.nba.org.ng/web/the-independence-of-the-nigerian-judiciary-in-the-light-of-emerging-socio-political-and-security-challenges-being-a-key-note-speech-by-the-president-of-nba-jb-daudu-san.html>> accessed on 8 June 2012.

⁷⁷ See the view of Nnamani JSC as captured in the *Nigerian Tribune* of 27 July, 1989, pp. 1 and 6; see also the editorial of the *Nigerian Tribune* of 1 August, 1989, p. 9; Aduba J.N, 'Independence of the judiciary In Nigeria's Third Republic

<<http://dSPACE.unijos.edu.ng/bitstream/10485/191/1/26%20INDEPENDENCE%20OF%20THE%20JUDICIARY%20IN%20NIGERIA.pdf>> accessed on 8 Jun 2012

⁷⁸ Olatawura J, *op. cit.*

the maintenance of commercial registries. So do process servers with regard to execution of judgments. Both have fundamental role to play in administration of justice. It goes without saying that unless they are provided with the means to perform their respective functions, all transactions that are dependent on their functions are bound to be affected.⁷⁹

5.5 Effectively Combating Corruption:

We are aware that discussions on corruption in Nigeria have become a cliché yet we cannot overlook the issue. To achieve a meaningful reform of the judicial sector, corruption must be adequately tackled. And no combat against corruption can either be credible or complete unless at the end of the day there is in place a justice system which is strong, credit worthy and merciless, if need be, to count on.⁸⁰ However, it needs be stated that the combat against corruption is not necessarily the unilateral role of the judiciary. It rather concerns to all elements of society including political leaders, of course, but also public officials, the press, the private sector and the public in general.⁸¹ It is suggested that to achieve a corrupt – free judiciary, independence of the judiciary must be fully entrenched, but judicial independence will be meaningless if it is not accompanied by economic independence. It is therefore necessary to take steps to ensure that judges and magistrates can enjoy a professional status capable of guaranteeing them the required amount of professional independence coupled with an adequate remuneration package that can effectively isolate them from corrupt influences, temptations and material and pecuniary pressures.⁸²

⁷⁹ Agbakoba O, 'Current concepts and issues in Justice Sector Reform', op. cit., p.4

⁸⁰ *Ibid.*, p.5

⁸¹ *Ibid.*, p.4; Langseth P, 'Prevention: An Effective Tool to Reduce Corruption' (Paper presented at the ISPAC conference on Responding to the Challenge of Corruption, 19 November 1999,

Milan) p.7

⁸² Ogunye J, 'A New Nigerian Judiciary Is Necessary' <<http://saharareporters.com/article/new-nigerian-judiciary-necessary-jiti-ogunye>> accessed on 8 June 2012.

6.0 Conclusion

The issue of judicial reform is a discourse that has been ongoing among stakeholders in the judicial sector for a very long period. However, with the renewed commitment of the present Chief Justice of Nigeria to this agenda, it becomes imperative to relook into the perennial issues and contentions that surround the calls for the judicial reforms. This paper therefore while setting out to satisfy the foregoing objective, highlighted the historical development of judiciary in Nigeria before the present dispensation. It was found that during the colonial era, the judiciary was run as a department of the colonial administration thus impeding its independence. Independence of judiciary was eventually recognised under the first Nigerian Constitution but that soon gave way upon the emergence of the military juntas that ruled Nigeria for around two decades. The military was found to fuse the legislative and executive arms of government while always making decrees that oust the jurisdiction of the courts in many matters. However, the courts in some instances try to hold their own against the military despotism. The paper also examined the role of judiciary in a democratic dispensation and identified the judiciary as a necessary partner in the good governance but concluded that the hope of the populace in the judiciary as the defender of the common man is fast eroding due to dwindle in the dignity of the judicial sector. This was traced to a number of factors which were discussed above. The paper also set certain agendas for the reform of the judiciary while concurrently proffering recommendations along the way. It should however be noted that the issues and contentions and agenda reforms highlighted in this paper are not exhaustive but it is believed that if they are implemented, they will assist in restoring the lost glory of the judiciary.

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