

Judicial Oversight in Nigeria

Challenges and Opportunities

'KEMI OKENYODO

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- This study, published by the Friedrich-Ebert-Stiftung (FES), enlightens its readers on the core issues and challenges of the judicial oversight. The establishment and promotion of freedom, solidarity and social justice are at the centre of the individual and societal quest. The rule of law is essential for good governance, democracy, and consequently, societal development.
- The instances of the backlog of cases, delayed hearings, bribing of judicial officers and biased judgments in favour of the rich and the well-connected individuals point to corruption. They raise questions on the integrity of the judiciary and its efficiency in the process of oversight responsibility.
- Evolving reforms, strategised media, civil society organisations and the citizens' participation and information technology applications following the case studies of Kenya and India are evidence-based suggestions that could handle the challenges of the judicial oversight in Nigeria.

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by

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Executive Summary

The judiciary in Nigeria has been burdened with a credibility crisis arising from allegations of corruption, which culminated in the dramatic arrests of seven senior judges in October 2016, by the Department of State Services (DSS). As controversial as the arrests were, what could not be wished away was the widely held perception that the judiciary had not done enough within its own systems to root out corruption and hold erring judicial officers accountable.

While officially, the National Judicial Council (NJC) has a major role to play in upholding discipline within the judiciary and therefore helps in ensuring judicial oversight, it is doubtful if it has been effective in performing this responsibility. However, judicial oversight is not the NJC's sole responsibility. Some other institutions also play critical roles in judicial oversight.

This study, therefore, sought to clarify the various roles constitutionally assigned to different institutions to ensure that the judiciary is held accountable. The study looked at how the different bodies have fulfilled their assigned oversight roles to keep corruption within the justice system at bay. In furtherance of this objective, the study looked at past and present attempts to reform the Nigerian judiciary, especially, in terms of achieving a better oversight role for the country's judiciary. In identifying opportunities to improve or even reorganise the oversight of the Nigerian judiciary, cases from other countries with a similarly burdened judiciaries were scrutinised to introduce measures that will improve the oversight and to intensify the fight against corruption.

A key recommendation from this study is the need to ensure that the processes within the judiciary are made more transparent. The oversight function cannot be accomplished in any country without involving the people, particularly the users of the agencies or institutions in question. Bringing the Nigerian judiciary closer to the broader public sector reforms, which include compliance to the Freedom of Information Act (FOIA), extension of the commitment of the Open Government Partnership (OGP) to the realm of the judiciary, etc. are areas that can be explored.

The Kenyan model provides a good example that Nigeria can draw insight from. The model is suggested because Kenya has a similar background of challenges and colonial heritage like Nigeria. Contemplating the structures that are on the ground, one can say that it is the effectiveness and functionality of the available structures that are the challenges.

There is the suggestion to introduce the use of technology in the management processes of the judiciary. This recommendation is backed by lessons from the reform processes in Lagos State, Kenya, India and the success of the Partners West Africa-Nigeria (PWAN) court observer application (App). The PWAN App demonstrated that technology should have a major role in reforming the judiciary by helping address issues related to the backlog of cases and cutting off unnecessary human contact, which can be compromised by people without scruples.



Abbreviations and Acronyms

Chief Justice of Nigeria	CJN
Citizen Advocacy for Social and Economic Rights	CASER
Civil Liberties Organisation	CLO
Civil Society Organisations	CSO
Court Automation Information System	CAIS
Danish Centre for Human Rights	DCHR
Department of State Services	DSS
Economic and Financial Crime Commission	EFCC
Federal Capital Territory	FCT
Freedom of Information	FOI
Freedom of Information Act	FOIA
Friedrich-Ebert-Stiftung	FES
Global Corruption Barometer	GCB
Independent Corrupt Practices Commission	ICPC
Independent Electoral Boundaries Commission	IEBC
Independent National Electoral Commission	INEC
Legal Practitioners Disciplinary Committee	LPDC
National Assembly	NASS
National Human Rights Commission	NHRC
National Judicial Council	NJC
National Judicial Institute	NJI
Nigerian Bar Association	NBA
Non-governmental Organisation	NGO
Open Government Partnership	OGP
Partners West Africa-Nigeria	PWAN
Senior Advocate of Nigeria	SAN
State Judicial Service Commission	SJSC
State Security Service	SSS



Abbreviations and Acronyms

Transparency International	TI
United Nations	UN
United Nations Office on Drugs and Crime	UNODC
Youth Initiative for Advocacy, Growth & Advancement	YIAGA



Judicial Oversight in Nigeria: Challenges and Opportunities

Abstract

Ideally, every society through its government works towards establishing a peaceful and liveable environment by seeking laws to protect the interest of its citizens and those who live within its bounds. With the judiciary, an arm of a democratic government, as it is in Nigeria, assigned a major role in administering the laws of the land, it becomes an issue of deep concern when such arm of government is riddled with accusations and convictions of corruption.

This study analyses the corruption issues and challenges in Nigeria. For a comparative view, it adopts case studies of two countries with similar challenges and background as Nigeria. Evolving reforms, directing participation of the media, the civil societies, and involving the citizens are some of the proposed solutions for an effective discharge of oversight functions.

1. Introduction

In October 2016, Nigeria's Department of State Service (DSS) raided the homes of seven senior judges, including two Supreme Court justices, and arrested them on charges of corruption. Despite the long-standing perceptions of a questionable credibility of Nigeria's judiciary and of the commercialisation of justice in the country, this move against the symbolic and substantive custodians of justice and law enforcement in the country was unprecedented. The incident quickly became a media fiasco in which public opinion was divided. It clearly raised several noteworthy and somewhat contentious issues: the independence of the judiciary, corruption and other forms of dishonesty within the institution, redress for those 'wrongly accused' and the place and practice of effective judicial oversight in the country. Over a year later, the case(s) against some of the judges have been resolved by the National Judicial Council (NJC).¹ There remain questions about the incident and how the judicial oversight architecture in Nigeria could be restructured to make the judiciary more efficient, objective and independent.

Is there an established and demonstrable crisis of corruption in Nigeria's judiciary? If yes, how did it come about, how deep is it, and what can be done about it? That the DSS defended its actions with what it termed the NJC's lethargy *vis-à-vis* judicial malpractice raises further questions about the administration of justice and judicial oversight in Nigeria: Who else, beyond the NJC, is responsible for judicial oversight? Is the whole oversight architecture doing enough to prevent and address corruption in the judiciary? Is there a need for alternative mechanisms to strengthen the external and internal accountability of the judiciary? These are some of the questions that led to the current study, which aimed to stimulate critical discussion of the state of judicial oversight in Nigeria and how well the judiciary is positioned is to control or prevent dysfunctions in the judiciary of which corruption has been identified as the most severe.

The subject of this paper is important because the judiciary, in Nigeria as elsewhere, is an administrative institution of the rule of law and equitable access to justice. The judiciaries that cannot function independently, impartially and with integrity

are a threat to national and global justice and specifically to the control of crimes like corruption. This study is also an important contribution to debates about the global problem with judicial corruption and a timely intervention in discussions of judicial sanctity in Nigeria, given the recent removal of the Abia State's Chief Judge by the state house of assembly and the fact that three of the arrested seven judges were recalled in June 2017 owing to delays with their prosecution. Intended as a critical policy discussion paper, this study draws instances for analysis from existing knowledge on judicial problems and oversight, including those of other jurisdictions such as from India, Kenya and Ghana, interviews with legal, civil society and media professionals and ongoing research on judicial social accountability by PWAN. The case studies of the judges' arrests and judicial regulation in other countries interrogate the implications of judiciary's lack of integrity and illustrate how judicial oversight is performed elsewhere. The paper ended with recommendations, based on identified gaps and opportunities, to make Nigeria's judiciary more credible, from within and without, in line with Chief Justice Walter Onnoghen's avowed determination to rescue the judiciary's reputation through radical reforms.

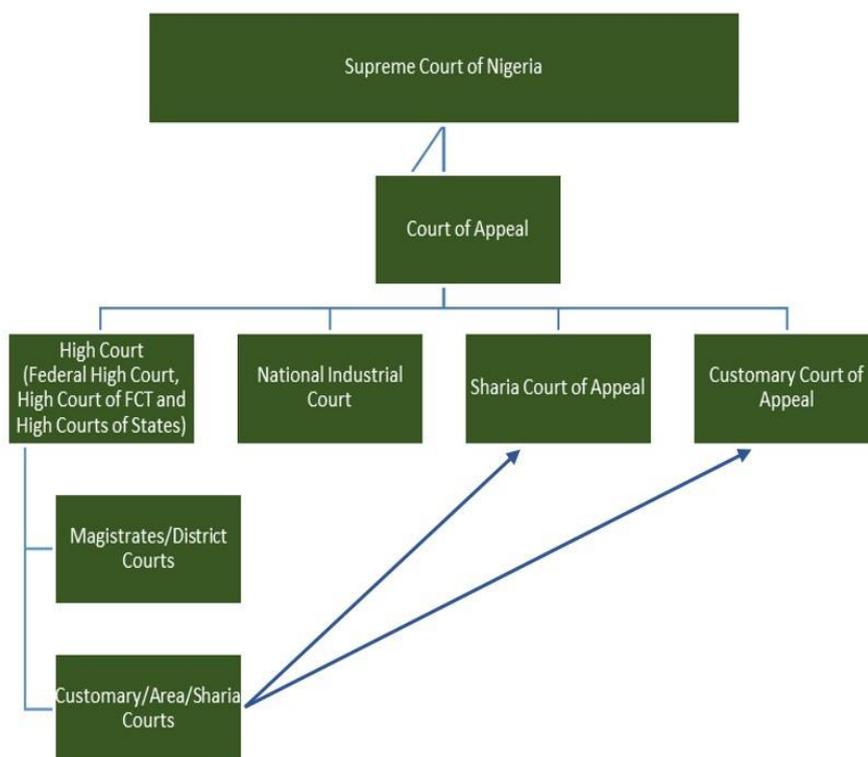
1.1 The Nigerian Judiciary

Nigerian judiciary is the principal party among the complex actors that administer justice in a mixed system of common law, Islamic law and customary law. The institution dates to pre-colonial times when it was established and modelled on the British judiciary. While it has devolved to some extent from its imperial roots, Nigeria's judiciary retains, in form and function, a

considerable resemblance to its colonial origins. It is made up of two groups: judges of superior courts established by the 1999 Constitution and judges of a range of lower courts—those that are subordinate to a high court—which the national and respective state assemblies have the powers to establish.

This section focuses on those courts and their judiciaries that are mentioned specifically in the 1999 Constitution.ⁱⁱ The Nigeria's judiciary and court system, diagrammatically represented in *Figure 1* below, have their functions explained as follows:

- i. **The Supreme Court of Nigeria:** is the country's highest court. It has original jurisdiction in any dispute between the federation and a state or between states, and it is the apex court on all appeal matters. It consists of the Chief Justice of the Federation and such number of Justices of the Supreme Court, not exceeding 21, as may be prescribed by an Act of the National Assembly (NASS). Currently, the Supreme Court is made up of the Chief Justice and 16 other Justices.ⁱⁱⁱ
- ii. **The Court of Appeal:** consists of the President and such number of Justices of the Court of Appeal, not less than 49 among which at least 3 must be learned in Islamic personal law and three in customary law. It has exclusive jurisdiction to hear and determine appeals from the Federal High Court, High Court of the Federal Capital Territory (FCT), State High Court, Sharia Court of Appeal, Customary Court of Appeal, National Industrial Court, a court-martial or other tribunals prescribed by an Act of the NASS.^{iv}

Figure 1: The Nigerian Judicial and Court System

Source: Yemisi Dina, John Akintayo & Funke Ekundayo, Nigerian Judicial System, 2015, <http://www.nyulawglobal.org/globalex/Nigeria1.html>

- iii. **The Federal High Court:** consists of the Chief Judge and other Judges of the Federal High Court, the number of which is to be determined by an Act of the NASS. The appointment of the Chief Judge and Judges of the Federal High Court is done by the President on the recommendation of the NJC, and for the Chief Judge, upon confirmation by the Senate. The court has exclusive jurisdiction in civil cases and matters relating to the revenue of the government of the federation such as taxation, customs and excise duties, banking, copyright, admiralty, citizenship, etc.
- iv. **The High Court of the Federal Capital Territory, Abuja:** consists of a Chief Judge and such number of Judges as may be prescribed by an Act

of the NASS. Being a federal court, the appointment of the Chief Judge of the High Court of the FCT and the Judges of the court is done by the President on the recommendation of the NJC and for the Chief Judge, upon Senate confirmation.

- v. **The Customary Court of Appeal of the Federal Capital Territory, Abuja:** consists of the President of the court and other Judges whose number is determined by the NASS and whose appointment is the same as that of the federal high court of the FCT.
- vi. **Sharia Court of Appeal of the Federal Capital Territory, Abuja:** is established by the Constitution with a territorial jurisdiction limited to the FCT. It has a Grand *Kadi* (or *Qadi*, an Arabic for magistrate or judge) and other *Kadis*, the number of which is

determined by the NASS through an Act. The Grand *Kadi* and the other *Kadis* are appointed by the President on the recommendation of the NJC and for the Grand *Kadi*, subject to the Senate's confirmation.

It is imperative to note that the Federal Judicial Service Commission (FJSC) is constitutionally mandated to advise the NJC on nominating persons for appointment to the office of the Chief Justice of Nigeria (CJN), a Justice of the Supreme Court, the President of the Court of Appeal, a Justice of the Court of Appeal, the Chief Judge of the Federal High Court, a Judge of the Federal High Court and the Chairman and members of the Code of Conduct Tribunal (Third Schedule, Part 1, Paragraph 13).

- vii. **The State High Courts:** are headed by a Chief Judge and supported by such number of Judges as may be prescribed by a law of the State House of Assembly. The High Court has unlimited jurisdiction to hear and determine any civil and criminal proceedings under any law of the state. All judges for the state high courts are appointed on the recommendation of the NJC, which is also responsible for their discipline and recommends their removal. Each court consists of the Chief Judge of the State and other Judges whose numbers are to be determined by the respective State Houses of Assembly. The Chief Judge and other judges of the state are appointed by the respective governors of each state on the recommendation of the NJC. In making recommendations, the NJC acts on the advice of the State Judicial Service Commission (SJSC) (Third Schedule, Part 2, Paragraph 6). The appointment of the Chief Judge is

confirmed by the respective State Houses of Assembly.

- viii. **Other Courts of a State:** include the Magistrate Courts, the Sharia Courts of Appeal and the Customary Courts of Appeal for states that require them. In addition to these, each state has a National and State Houses of Assembly Election Tribunal and a Governorship Election Tribunal. These tribunals have original jurisdiction to hear petitions arising from legislative and gubernatorial elections respectively (Chapter 7, Part 3, Section 285 of the 1999 Constitution).

The NJC serves as an autonomous executive body, which insulates the judiciary from the executive arm of government, ensuring its independence as provided in the Nigerian constitution. It holds an important place in the appointment and discipline of judges; that is discussed in more detail in the section on judicial oversight.

1.2 The Strengths of the Judiciary

The judiciary as the third arm of government is said to be the last hope of the common man.^v This is based on the fact that the judiciary is the arm of government that protects the citizens from the excesses of the other arms of government. It interprets the law to ensure that there is stability in the polity. The judiciary, while interpreting the law, can also be said to be involved in the development of the law like the legislature. This is because as the judiciary interprets the law, the extent of its interpretation can determine the implementation of and adherence to the law by the citizens.

There are various instances on the judiciary playing role and/or demonstrating its strengths. One of such roles is the 2010 decision by the Hon Justice Okechukwu Okeke of the Federal High Court, Lagos in *Agbakoba v the Attorney General of the Federation et al.* in which the learned judge



ruled that constitutional amendment without the president's assent is null and void.

Such cases look more like the examples of maintaining the *status quo* rather than expounding the frontiers of the law. Cases of judicial activism may be more relevant here. In the case of the Attorney General, Lagos State v the Attorney General, Federation, the Supreme Court held that the president had no constitutional powers to withhold the statutory allocation of the state.

1.3 Challenges Facing the Judiciary

This section constitutes an overview of the multifaceted challenges facing Nigeria's judiciary that correlate in various ways with its susceptibility to corruption. Debates about corruption in the judiciary are not new and date back to the early 1990s as suggested in a recent piece by a political commentator, Joe Igbokwe.^{vi} According to the current Vice President, Professor Yemi Osinbajo, corruption was uncommon in the Nigerian judiciary before the country's 30-year military rule, which weakened all the institutions of justice in the country.^{vii}

Further, as indicated in a 2017 media series on justice reform in Nigeria, these challenges have been the subject of numerous meetings. For this reason, the fact that they continue to persist raises questions about the reform management process, which is discussed in section 5. This section considers the problems facing the judiciary from a longitudinal perspective, over different time periods. It discusses corruption in the judiciary as both a factor and an outcome of other problems. Beginning with an outline of corrupt judicial practices and trends, it considers three broad groupings of challenges:

firstly, those challenges pertaining to the social and political climate in which the judiciary operates;

secondly, challenges that derive from the everyday operations of the judiciary; and

thirdly, ethical questions.

This study recognises a second level of apparent weaknesses, disconnections and inconsistencies in judicial oversight and regulation mechanisms that are apparently failing in preventing or controlling perceived corruption in the judiciary; these are elaborated in section 2.

1.4 Corruption and Its Forms in Nigeria's Judiciary

The scale of corruption in the judiciary is not known as there have been no detailed studies on it and the government does not keep accurate data on judicial corruption. Corruption cases and allegations of corruption against judges and judicial officers compiled from media reports is attached below (*Table 1* Case study: the arrests of senior judges in Nigeria). While even the most senior judges and legal professionals admit that corruption exists, they argue that the perceptions of its intensity may outweigh its true scope.^{viii} A professor of law, Okechukwu Oko, posits that corruption in Nigeria's judiciary is hard to measure because interests are so entrenched that it rarely gets out unless one party feels cheated or displays an "uncommon sense of duty". But he assesses judicial corruption as "endemic and pervasive" based on his research and observation.^{ix}

The term 'corruption' is contested and there are widespread policy and academic debates about how 'global' definitions and conceptions vary from interpretations in various locales and how interpretation might affect anti-corruption efforts.^x It is not defined explicitly by the Nigerian prevailing anti-corruption legislation; The Independent Corrupt Practices Commission's (ICPC)

Corrupt Practices and other Related Offences Act 2000 and the Economic and Financial Crimes Commission (EFCC) Act 2002, which was amended in 2016. All that the ICPC Act says is, “‘Corruption’ includes bribery, fraud and other related offences.”^{xi} This section does not attempt to define corruption but discusses acts that have been identified as such in relation to specific allegations of corruption by sections of Nigeria’s judiciary (many of these acts fall foul of the Code of Conduct for Public Officers as laid out in the 1999 Nigerian Constitution as well as the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria).^{xii} This section also draws instances from a 2005 book on the problems and failures of Nigeria’s judiciary by Okechukwu Oko, professor of law at the Southern University Law Center, Louisiana, United States, whose submission still resonates today.^{xiii}

Using the case study, of judicial corruption incidents compiled during this study from media reports and other documents, the prevalent forms of corruption in Nigeria’s judiciary can be summed up to include demanding, offering and collecting bribes, perverting justice by disclosing confidential information to parties to court cases and election judgement fraud. Other forms of corruption not featured in this list but identified by other publications on “*Perception of Corruption in Nigerian Judiciary*,” by Eniofe, Ezeani and Enichie (2015) and “*Tackling Unresolved High Profile Cases*,” a report by Oladimeji Ramon (Punch Newspaper, November 2, 2017) of a roundtable meeting by judicial stakeholders include cronyism and nepotism in the appointment and promotion of judicial officers which compromise judicial quality and effectiveness.^{xiv}

The study noted that at least two judges were accused of multiple types and/or counts of

corruption, suggesting that corruption may be habitual—an interesting focus of further research. Also noted is that although some actions were taken in each case, apart from two or three cases, the rest are currently inconclusive, leading to a perception that there is no stringent discipline for corrupt judges to serve as a deterrent to others. In one instance, some Senior Advocates of Nigeria (SAN), were arraigned in an Abuja high court for presenting ‘gifts’ to some officers of the Independent National Electoral Commission (INEC). The lawyers were arrested but discharged immediately by a high court on the day of their arraignment on frivolous technical grounds.^{xv}

2. Environmental and Contextual Challenges

Against the background of the high expectations that accompanied Buhari’s return to power in 2015, Nigerians are increasingly disillusioned with what they see as his failure to fulfil his campaign promises; to fight corruption.^{xvi} Amid signs of political tension, it is unclear whether the judges’ arrests were desperate moves to score political points ahead of 2019’s elections or signals a cleavage and loss of confidence in Buhari’s leadership by his own government.

This context is marked by what some suggest is a long-standing disdain for judges by politicians and state institutions,^{xvii} and a growing trend in the unilateral unlawful action against the former by the latter. One case in point is the suspension, removal and replacement, on 26 January 2018, of the Abia State Chief Judge, Justice Theresa Uzokwe, by the Abia State House of Assembly for “alleged acts of tyranny and gross misconduct”.^{xviii} Responding to a petition signed by two directors of a Non-Governmental Organisation (NGO), the Assembly removed Justice Uzokwe in absentia and set up a committee to

Table 1***Case study: the arrests of senior judges in Nigeria***

On the night of 8 October 2016, Nigeria's State Security Service (SSS), also known as the Department of State Security (DSS) arrested seven judges from their homes, including two Supreme Court justices and one federal high court judge. The DSS reported that it was acting based on allegations of corruption against the said judges and claimed that it recovered over 93 million Naira (approximately 306,000 US dollars) and 530,000 US dollars in cash from three of the arrested judges.⁴⁶

Descriptions of the searches and arrests as 'brazen' conveyed the indignation of many, particularly legal professionals, including the NJC (discussed in more detail below) whose basic functions are to preserve the judiciary's independence as well as ensure that judges work within the rule of law. The NJC said that the judges' arrests were "a threat to the independence of the judiciary, which portends great danger to our democracy" and "a clear attempt by the Department of State Service to humiliate, intimidate, denigrate and cow the judiciary."

The NJC's reaction seemed to stem less from its awareness of incidents and allegations of corruption within the judiciary than its position, shared by many, that the DSS, whose jurisdiction in the matter was questionable, did not follow due process in addressing the allegations. Its press statement detailed several incidents of judicial corruption and professional misconduct for which the NJC had recommended suspension from office, compulsory retirement and other penalties.

All the judges were suspended and three of them were subsequently charged to court. By June 2017, only one case had been concluded, that of Federal High Court judge, Justice Adeniyi Ademola, who was acquitted of corruption charges. He was recalled in June 2017 alongside five other judges at the instance of the NJC on the grounds that the government had taken too long to prosecute their cases and their continued absence was compounding an existing backlog of cases.

As mentioned earlier, this case brought to the forefront again the issues relating to the causes and the extent of corruption in the judiciary, oversight of the institution, political interference, judicial independence, the image of the judiciary and citizens' trust in the institution's ability to dispense justice equitably according to established laws.

investigate the allegations.^{xix} Though it is too early to determine the veracity of the claims against her, the case may not be unrelated to a reported crisis in the Abia State Judiciary in 2017 over a standoff between Justice Uzokwe and the state Attorney General,^{xx} which would imply undue political interference in judicial process—a practice that Okechukwu Oko stated is a legacy of Nigeria's history of military rule.

The incident is also a further illustration of the diminishing credibility of and regard for Nigeria's judiciary, blamed by some for

delays or denials of justice in the anti-corruption fight:

The few cases that manage to get to the court are frustrated by a combination of legal and procedural technicalities, delays, the peculiarities of an antiquated court system and what appears to be an unusual coincidence of kindred-feeling among the Nigerian judiciary for suspects in a white-collar crime. That is the only way to describe the fact that most suspects in the most

egregious corruption cases in Nigeria, invariably, get bailed and soon thereafter receive judicial blessings to travel for overseas medical attention for unclear ailments, often to the countries where they are alleged to have stashed away their loot.

In most cases, those defendants are also serving or recent public officers who proved unwilling to provide to the public or invest in social services, including hospitals, while they had the opportunity to do so. Most Nigerians will describe much of the jurisprudence—with the occasional exceptions—as indifferent; often reading complicit; sometimes with more than a whiff that it has been preceded by some form of a *quid pro quo*. The capacity of the judiciary to offer any meaningful dispute resolution or remedies amid such habitual corruption has become compromised and our jurisprudence has, to put it most charitably, become quite tolerant of or complicit in corruption.^{xxi}

Disregard for the judiciary manifests also in occasional physical attacks against them and court property. Some selected incidents are detailed below as reported in the media.

- February 2017: Hoodlums invaded and set fire to Court 2 in Ado-Ekiti (southwest Nigeria), a court handling some sensitive cases and poured petrol in the court registry but left without burning that section.^{xxii}
- January 2017: Gunmen suspected to be members of a notorious kidnap and armed robbery syndicate invaded the Owerri High Court (eastern Nigeria) and rescued a suspected member of their gang, Henry Chibueze, arrested for kidnapping and other criminal charges.^{xxiii}
- May 2015: Youths in Kano (northwest Nigeria) burnt down a sharia court scheduled to hear a case of blasphemy against Prophet Mohammed.^{xxiv}
- December 2014: Youths suspected to be political thugs invaded Ebonyi Court complex in Abakaliki (eastern Nigeria) and disrupted proceedings in the various courts. An eyewitness told the News Agency of Nigeria (NAN) that about 1,500 people besieged the court premises and attacked judges and other judicial workers with different types of weapons and chanting war songs.^{xxv}
- September 2014: ‘Thugs’ or supporters of the then-governor-elect Ayodele Fayose allegedly attacked courts and judges in Ekiti State. They reportedly tore the suit of Mr Justice John Adeyeye at the Ado-Ekiti High Court premises and invaded the courtroom of the Ekiti State Chief Judge, Justice A. S. Daramola, destroying court records.^{xxvi}
- September 2014: At least 30 unidentified ‘thugs’ in Kano burnt down a magistrate court in Koki local government area. The attack was said to be motivated by the judge’s apparent lack of leniency in judging thuggery and drug-related cases.^{xxvii}
- June 2004: An ‘unidentified assailant’ attacked the Abia State Chief Judge on a road trip (eastern Nigeria), purportedly in connection to his adjudication of a land dispute.^{xxviii}
- March 2004: At a court of appeal hearing in Enugu (eastern Nigeria), the presiding judge, Justice

Okechukwu Opene, publicly stated that he received threats from persons interested in a case. The judges hearing the case were forced to flee halfway through the case shortly after one of them delivered his minority opinion when supporters of one of the parties to the case invaded the court premises and threatened to physically harm the judges.^{xxxix}

- December 2001: In a well-known and still unsolved case, former Attorney General and Minister of Justice, Chief Bola Ige, was murdered at his Ibadan (southwest Nigeria) home in 2001 by assailants who were arrested and prosecuted and subsequently released after multiple judges refused to hear the case, citing pressure from ‘unnamed highly persons’. The killing is rumoured to be connected with his pending probe of corruption in the country’s oil sector.^{xxx}

These cases do not appear to have anything to do with corruption. Rather, they are about the breakdown of law and order and the refusal of the executive to provide adequate security for the courts and judicial officers. The media also documents growing incidents of verbal attacks, some during court proceedings, against judges by parties dissatisfied with their rulings, prompting complaints by erstwhile Chief Justice Mahmud Mohammed^{xxxii} and commentary by other actors.^{xxxiii}

3. Operational Difficulties

In a media interview in late 2017, Chief Justice Walter Onnoghen and the now-retired Chief Judge of the Federal High Court, Justice Ibrahimauta identified six major problems facing the judiciary and indicated their determination to reform them.^{xxxiiii} The first item, corruption in the judiciary, has been discussed above and thus not repeated here. The judges also mentioned backlogs of cases which appear to be as much a product

of structural challenges as deliberate stalling by some judicial officers to exploit those seeking justice through the courts for financial gain.^{xxxv}

Inadequate court infrastructure poses problems in some jurisdictions: PWAN’s study of the court conditions under a judicial integrity project in northwest Nigeria found that varying levels of electricity failure and the unavailability of electronic recording in some courts can slow judicial processes and jeopardise the health of judicial officers.^{xxxvi} This suggests that there is a disparate access to the digital facilities that Justices Onnoghen and Auta said were acquired with support from the United Nations Office on Drugs and Crime (UNODC).

Other challenges include insufficient judicial and non-judicial personnel, and avoidable and unnecessary delays in hearing and determining civil, criminal and electoral cases and appeals that lead to considerable backlogs and a lack of reliable research resources with which to decide cases.^{xxxvii} In 2017, Chief Justice Onnoghen reported that the Supreme Court had delivered 243 judgements (17.8 per cent) out of a total of 1,362 cases treated within the 2016/2017 legal year.^{xxxviii}

In a 2017 progress report on anti-corruption, Chief Justice Onnoghen decried the practice of some politically exposed persons of wasting court time and resources by attending corruption hearings with up to 100 lawyers—Senate President Bukola Saraki reportedly attended one sitting with 106 lawyers.^{xxxix} This matches what Okechukwu Oko described as the ‘overweening grip’ that politicians and powerful Nigerians have on the judiciary.^{xl} While one source cites inadequate remuneration of the judicial personnel as a problem, it seems to be more the case that the judiciary’s financial dependence on the executive has been and

remains a source of manipulation of the judiciary by sitting governments.^{xi}

4. Judicial Regulation and Oversight in Nigeria

There are two levels of judicial regulation and oversight in Nigeria: (i) bodies endowed with the legal responsibility to regulate and determine cases of judicial integrity, and (ii) other individual and corporate entities that are not necessarily implicated by law but whose activities have some bearing on or relevance to this matter. Both are discussed briefly below by way of an assessment of the workings and effectiveness of the judicial regulatory framework in Nigeria.

During the interviews conducted while writing this paper, it was obvious that the average Nigerian who has no dealing with the judiciary has little or no knowledge about the regulatory framework of the judiciary. 70 per cent of the non-lawyers interviewed did not know that the judiciary could be or was being regulated. For the interviewees with some legal background, they agreed unanimously that the mechanism for regulating the judiciary is the NJC at the federal level and the SJSC at the state level. The regulatory powers of the SJSC at the state level are expressly linked to the powers of NJC, such that the SJSC for example, can only recommend dismissal of judicial officials to the NJC but cannot carry out such dismissal independently. (An explanation is necessary because the duty of the SJSC is to recommend to the NJC the removal from office of judicial officers like the State Chief Judge, Judges of the High Court, President and Judges of the Customary Court of Appeal, etc.) Other mechanisms that were suggested were the Legal Practitioners Disciplinary Committee (LPDC).^{xii}

The judiciary has its oversight mechanism which vests responsibility in the office of the Chief Judge. The Chief Judge is the highest-ranking judge of a court that has more than one judge. In the case of Nigeria, the Supreme Court is presided over by the Chief

Justice, while the Court of Appeal is headed by the President. The Federal High Court and High Courts of various states of the federation are headed by their Chief Judges, while the National Industrial Court is headed by a President. The Chief Judges of the different courts have the responsibility to ensure that the heads of courts at the lower and higher courts are disciplined and comply with the ethics of the profession. To this effect, the Chief Judges can discipline any judge or lawyer under their jurisdiction found wanting of any misconduct.

The courts as presided over by these judges have the special responsibilities to preserve and enforce the moral pillars upon which the society is built. Judges are described as very powerful when it comes to confronting injustice in the plethora of cases brought before the court, which collectively makes the difference between a humanitarian democracy and a ruthless dictatorship (Udombana 2017).

Some of the main roles of the judges are to interpret the law, assess the evidence presented and control how hearings and trials unfold in their courtrooms. More significantly, judges play vital roles as impartial decision-makers in the pursuit of justice. Nigeria has what is known as a confrontational or adversarial system of justice where legal cases are argued and contested between opposing sides, which ensures that evidence and legal arguments will be fully and forcefully presented. The judge, however, is expected to rise above the fray and remain neutral, providing an independent and impartial assessment of the facts and how the law applies to those facts.

Finally, the United Nations (UN) pointed out that unless judges unconditionally play their respective key roles in maintaining justice in society, there is a serious risk that a culture of impunity will take root, thereby widening the gap between the government authorities and the rest of the population especially those at the grassroots level. Various cases

have shown that people who encounter problems in securing justice for themselves have been driven to take the law into their hands, resulting in a further deterioration in the administration of justice and, possibly, new outbreaks of violence.

4.1 The National Assembly (NASS)

The NASS is one of the arms of government recognized by the Constitution of the Federal Republic of Nigeria 1999 (as amended), which in its Section 4 vests the NASS with the powers to make laws for the peace, order and good governance of the country. The NASS also has broad oversight functions. It is empowered to establish committees of its members to scrutinise bills and the conduct of government institutions and officials including the judiciary and judicial officers.

The NASS being a bicameral legislative body is divided into the Senate and the House of Representatives of the Federal Republic of Nigeria. The Constitution confers exclusive powers to the Senate such as the power to scrutinise and confirm major appointments of the executive; for example, the Ministers, Special Advisers, Ambassadors, top Judicial Officers heading specified levels of the courts, etc. The Senate also has the exclusive power to impeach erring judges and other high executive officials¹.

The role of the Senate is based on the principles of the twin doctrines of separation of power and checks and balances, which have been criticised in some quarters as not operating maximally to yield the desired effect on governance. Osagie (2017) pointed out that these dissenting views may not be unconnected to Nigeria's history of military incursions in governance wherein both the executive and legislative functions were fused together, and decrees made to oust the jurisdiction of the courts. This mentality has prevailed in successive government

administrations even after the return to democracy; resulting in cases where the legislature and executive arms constantly battle each other to the detriment of the common man, while constantly ignoring judicial directives (Osagie 2017).

Recently, the effectiveness of NASS oversight responsibilities has come up for discussions in the public sphere. Within the NASS, there are various committees that have been tasked with the oversight responsibility of the judiciary, namely; the Senate Committee on Judiciary, Human Rights and Legal Matters, the House Committees on FCT Judiciary and Federal Judiciary. The challenge of ineffective oversight of specialised oversight committees is something that keeps coming up for discussions in the public sphere. The entry point for oversight of the judiciary is usually tailored around 'corruption'. Although corruption is a challenge, it cannot be the only issue that should trigger oversight mechanisms.

For example, one would have expected that the NASS committees should have joint sessions that would allow them interface with the NJC, NBA and thematic focused NGOs (those working on judiciary, budget, service delivery etc.) to periodically review and assess the effectiveness of the judiciary with the aim of providing recommendations that would be a whole spectrum approach to judicial effectiveness in the country. Thus, the non-inclusion of joint sessions among the stakeholders could be an issue of concern that calls for judicial oversight.

4.2 The National Judicial Council (NJC)

The NJC is a federal executive agency created by Section 153 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Its mandate is mainly to insulate the judiciary from the whims and caprices of the executive; hence guaranteeing the independence of the judiciary, which is a necessity for any democratic dispensation.

¹ <https://infoguidenigeria.com/functions-nigerian-national-assembly/>

The NJC is vested with enormous powers and functions, and it is chaired by the CJN. The enabling law further provides for other members who, for the most part, should be senior judicial office holders and senior members of the legal profession.

The NJC, true to its enabling mandate, has set itself various attainable goals such as ensuring:

- an entrenched and preserved independent judiciary;
- a judiciary that is committed to the rule of law;
- a financially autonomous judiciary;
- a pro-active and vibrant judiciary that has judicial officers and staff with proven integrity and impeccable character;
- a dynamic judiciary manned by officers with various backgrounds, discipline, experience and competence; and
- a judiciary that is information technology-driven and equipped with the latest stenographic recording machines.

The NJC has constitutional powers to make recommendations to the President on whom to appoint as the presiding judges of superior courts including the CJN and other members of the bench of such superior courts and the courts within the FCT. It also reserves the powers to recommend to the President the removal from office of any erring judicial officer from these courts and to exercise disciplinary control over such officers. These powers go beyond the federal courts to include the recommendation for appointment or removal of Chief Judges of state high courts and other judges; and the composition of other courts of records within the various states.

The Council's enormous constitutional powers also include:

- collection, control and disbursement of all moneys, capital and recurrent,

for the judiciary and for the services of the council;

- dealing with all other matters relating to broad issues of policy and administration; and
- conducting performance evaluation of judicial officers of superior courts of record in the federation, among other important functions.

Over the years, some powers of the NJC has come under severe criticism, especially their powers to recommend the appointment and removal of Chief Judges and Judges of state high courts and other officers of the courts within respective states, which essentially usurps and undermines the primary role of the SJSC, thereby contravening the policy and principle of judicial federalism. To further buttress this irregularity, Uthman (2015) observes that the judges in question are judges of the state high courts and not federal judges; underlining their limited spheres of influence and jurisdictions within the geographical delineated boundaries of their states as opposed to federal judges.

The NJC has been very conservative and inward-looking. That means it is not open to trying new ways of ensuring it implements its mandate of accountability. For example, in 2016, the Citizen Advocacy for Social and Economic Rights (CASER) engaged the NJC about making court processes more transparent to foster the citizens' confidence in the judicial system. CASER's position is that introduction of cameras into the courts for some of the proceedings to be broadcast to people's homes and offices would be an innovative way of bringing transparency in the courts' activities and increasing the confidence of the citizens in the courts. This is presently being done at the NASS.

Another NGO, known as Access to Justice has also worked with the NJC in respect to benchmarking appointments, promotions and disciplinary processes. It is not certain if the NJC has adopted some of the recommendations from the intervention.

The NJC, however, needs to be commended for organising periodic training and retraining programmes for members of the bench. That notwithstanding, it seems to lack a monitoring framework on how to test the impact of the training that has been organised on the work being carried out by members of the bench.

The incident of 8 October 2016, when 7 judges were arrested from their homes, is claimed to be a response to the ineffectiveness of the NJC.^{xlii} However, in December 2017, the Court of Appeal ruled that the steps taken by the DSS were tantamount to a breach of the constitution while referring to Section 153 subsection 11 and paragraph 1 of 3rd Schedule of the 1999 Constitution as amended. There are other views that stated that the decision of the Court of Appeal tried to convey an immunity protection on the judges, which was not the intention of the constitution.^{xliii} These arguments have brought to the forefront the need for a process that is regulated and time-barred. How long can one expect the NJC to take in reviewing applications and petitions relating to complaints from members of the public in respect of members of the bench? When can it be said that an applicant or a petitioner has satisfied a reasonable test of waiting for the NJC to take a decision before the applicant and petitioner can seek redress elsewhere? These are some of the lapses that seem to taint the NJC.

4.3 The Nigerian Bar Association

The NBA is a professional, non-profit, umbrella association which comprises all lawyers who have been called to the Nigerian Bar. The association sees its core mandate as engaging in the promotion and protection of human rights, the rule of law and good governance in Nigeria. It also has the responsibility of ensuring that all its members uphold the ethics of the legal profession with a view to promoting professionalism and integrity. The NBA has a working partnership with many national and international NGOs concerned with

human rights, the rule of law and good governance in Nigeria and in Africa.

The NBA's oversight responsibilities extend to the judiciary through the LPDC, which can discipline any judge or lawyer found wanting of any misconduct. The association has a membership of over 105,406 lawyers active in 125 branches across the 36 states, including the FCT, of Nigeria. It is organised into three practice sections, eleven forums and two institutes, thereby offering a unique national platform that is not available to any other civil or professional organisation in Nigeria.

The effectiveness of the LPDC is yet to be assessed. One thing is obvious; the potentials of NBA being a strong oversight body have not been fully utilised. As a professional legal association, it can set benchmarks for recruitment, appointment, discipline etc. for the judiciary. The NBA, Kano Branch, used the findings from the PWAN court observation process to engage the Kano State Judiciary in periodic Bar v Bench interaction. The same branch of NBA is reputed for making formal reports on activities of its members including judges to the LPDC and that led to disciplinary actions against those found guilty.

4.4 The Civil Society

The term 'civil society' is generally used to refer to social relations and organisations outside the state or governmental control. It is described as the comprehensive group of NGOs and other organizations or institutions that manifest the interests and will of the people. Generally, 'civil society' refers to NGOs and associations that people belong to for social and political reasons: churches and church groups, community groups, youth groups, service organisations, interest groups and academic institutions and organizations, for example. It also refers to the activities of these organisations.

Though independent of the governmental structure, these organisations frequently become involved in political activities. They

try to influence governmental decision-making and participate in a variety of public participation processes. As such, the establishment and maintenance of a healthy civil society are extremely important for the successful development and operation of democratic political systems.

Although civil society exists independently of the state, it is dependent on the state's acceptance to be able to grow and flourish. People must have the freedom to associate, to speak freely, to publish and to participate in social and political processes without being afraid of repercussions. Without such freedom, civil society will be stunted at best.

Civil Society Organisations (CSOs) such as NGOs, the media and academia have taken steps over the years to beam their searchlights on various aspects of the Nigerian judiciary with a view to making them more accountable and credible. Access to Justice, an NGO based in Lagos, Nigeria, has implemented various projects with support from international development partners to enhance judicial integrity. Some of their projects were aimed at developing performance appraisal and appointment systems with the intention of making the process of judicial appointment transparent and open by providing clear criteria to guide the process. This is in line with the provisions and principles of freedom of information (FOI) and access to information.

Also worthy of note, PWAN is among the organisations that have done some work in judicial accountability.^{xliiv} Over the past two years, it recruited, trained and deployed observers in courts across the country. Additionally, the organisation developed an application (APP) called 'PWAN Court Observer'. The APP is on the Google Play store which is available for free for android phone users. The App is presently being used by members of the NBA and court observers deployed across some states in the country. The findings of the court observations are

released quarterly to the judiciary first before the public.

On its part, CASER continues to engage with the NJC in respect of making its process transparent. It does so by its advocacy in encouraging the use of cameras in the courts.

These illustrations buttress the point that the main role of civil society actors is to watch how state officials use their powers, and to raise public concern about any abuse of power and how to strengthen state institutions to make them effective. They are usually primed to lobby for access to information, including FOI laws and rules. They engage institutions to control corruption. Other roles played by CSOs include exposing corrupt conduct of public officials and lobbying for good governance reforms. An example of such reform effort is the *Not Too Young to Run* bill, signed into law by President Buhari on May 31, 2018. The bill, which was conceptualised by the Youth Initiative for Advocacy, Growth & Advancement (YIAGA) Africa, a youth-based NGO, sought to alter the Sections 65, 106, 131, 177 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) to reduce the age qualification for the office of the President from 40 years to 30 years; Governor 35 to 30, Senate 35 to 30, House of Representatives 30 to 25 and State House of Assembly 30 to 25. The bill also sought to mainstream independent candidacy into Nigeria's electoral process.² It is a proven reality that even where anti-corruption laws and bodies exist, they cannot function effectively without the active support and participation of civil society.

4.5 The Media

The role played by the media in dispensation of justice cannot be overemphasised as it is a subject that has assumed vital importance for

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<https://www.premiumtimesng.com/news/headlines/270538-breaking-buhari-signs-not-too-young-to-run-bill.html>

the Nigerian society in recent times. The media also plays a constitutional role as enshrined in Section 22 of the 1999 Constitution (as amended) and as such is fundamental to serve as the watchdog against the excesses of public officers and to uphold the Chapter II rights of the citizens. With the emergence of the media as a powerful source of information and education, its role in the dispensation of justice has also become rather significant. The judiciary and the media have somewhat become partners in the dispensation of justice as the media enjoys the privilege to investigate crimes and to act as a catalyst in the process of dispensation of justice while the judiciary is supposed to deliver justice. The media and the judiciary are described as two important pillars of the state on which rests the edifice of the judicial system.^{xlv} The two, therefore, owe it to society to uphold and deliver justice.

The media has a multidimensional role to play in the promotion of societal values and virtues as well as in the dispensation of justice. It can be instrumental in uncovering crime besides playing a key role in projecting a vision of order, justice, stability and change. The media also has the role of digging out and exposing corporate crimes that invariably have a direct bearing on the nation's political and economic life. The Nigerian media has been playing this role over the years by exposing corruption in high places. It has succeeded in bringing many culprits to the courts.

The media played a critical role in breaking the news about the arrest of the judges by the DSS to Nigerians in October 2017. NGOs, including PWAN and CASER, also work closely with the media. The findings from the court observation processes are released periodically with close media collaboration, that is traditional and social media platforms. CASER also organises periodic media engagements based on its area(s) of interest. The judiciary through the courts has public relations officers who have the responsibility

of relating with the media by ensuring that any information they need to get across to the public is made available.

Recently, in Nigeria, the Human Rights Radio, 101.1 FM in Abuja has a flagship programme called Brekete. It is an award-winning reality radio show that takes complaints from members of the public on different issues. The show has received complaints from members of the public in respect of issues concerning the judiciary, particularly, the conducts of judicial officers. The Chief Judge of the FCT has on several occasions responded to telephone calls seeking clarifications, feedback in respect of cases or complaints referred to him by the presenter of the programme.

The Nigerian judiciary has passed through various phases of undue interference and suppression due to the repeated derailment of democracy in the country as already mentioned. As well, the leadership of the judiciary frowns at the media which the former said the latter sometimes oversteps its boundaries by pronouncing (its) verdict even before a trial starts. By that, the media ignores the principle of *innocence until proven guilty* on cases that are *sub judice*³, and in that way, violates the principle of a fair trial.

Invariably, sensationalism by the media has some effects on the judges as on every other human; thus, the opinion created by the media earlier than the actual trial may often influence the pronouncement of the judges. A proposed solution to this issue is not to stifle the freedom of the media, but rather for the so-called fourth estate of the realm to show some self-restraint (Okakwu 2018). Likewise, the public's rational participation in the polity is also being advocated to create a balance between a fair trial and an independent media.

³ In law, *sub judice*, Latin for 'under judgment', means that a particular case or matter is under trial or being considered by a judge or court.

It is expected of persons at the helm of affairs of the media to ensure that the trial-by-the-media does not hamper fair investigation by the investigating agency, and more importantly, that the media does not prejudice the defence of an accused in any manner whatsoever. It will amount to a travesty of justice if either of this causes impediments in the accepted judicious and fair investigation and trial.

As two pillars of democracy, the media and the judiciary need each other and the public needs both; but as already mentioned, the judiciary has often voiced its unease about media trying to steer the course of justice. The media needs to be reminded that according to the law, a suspect and/or an accused is entitled to a fair procedure and is presumed to be innocent until proven guilty in a court of law; the media trials of mere suspects or accused persons, even those accused by the agencies of our criminal justice system such as EFCC, ought to stop.

The media is not necessarily an integral part of the judiciary. However, with the contemporary information explosion, there is a massive need for the media to play a huge role in regulating and utilising information for the benefit of all in the quest for reporting true information for justice.

5. Judicial Reforms in Kenya and India

The challenging issues outlined in this discourse are not peculiar to Nigeria. For a comparative analytical purpose, it is necessary to provide examples of other countries with similar challenges, and the steps they have taken towards judicial reform, addressing the issues. Kenya and India have been selected because of a similar colonial background and heritage in the case of Kenya, and a similar legal system in the case of India. This section also aims to draw parallels, regardless of the differences in the political system among the three countries.

5.1 Kenya

The Kenyan judiciary was riddled with challenges relating to the backlog of cases, low public confidence, deficiency in integrity, frail structures and thin resources (Princeton University 2015). Accountability was weak, in part because the judiciary was a mystery to many Kenyans. “The population does not understand how the courts work, or why they work the way they do,” said Executive Director George Kegoro of the Kenyan section of the International Commission of Jurists (Princeton University 2015).

The citizens did not have the knowledge to demand quality services, the judiciary lacked systems to track the status of cases and the citizens do not know they can hold judicial officers accountable for delays. The dearth of resources compounded organisational problems. Against the population of about 41.4 million Kenyans, they had 53 judges and 330 magistrates. The location of courts meant that Kenyans had to travel long distances to access the judicial systems. A popular saying, ‘Why hire a lawyer when you can buy a judge?’ sums up many Kenyans’ views of judicial integrity. Given the long delays and the cumbersome procedures, it was common for those involved in hearings, motions and other processes to pay for expediency (Princeton University 2015). The registry staff would give hearing dates to litigants depending on who bribed them to get earlier dates, which is also the case in Nigeria.

More so, corruption also influenced the outcomes of cases; a litigant or lawyer might bribe an administrative staff to ‘lose’ the case file, thereby preventing opponents from receiving a hearing or litigants might simply pay judicial officers to rule in their favour. According to TI’s 2010 Global Corruption Barometer (GCB), 43per cent of Kenyans who sought services from the judiciary

reported paying bribes (GCB 2010). The courts also had a reputation for political bias. The judiciary was perceived as a partial umpire.

By 2007, Kenyans had lost total confidence in the judiciary. When President Mwai Kibaki appointed new judges and Independent Electoral Boundaries Commission (IEBC) commissioners just a few days away from an election, and the election results were seen to have been tampered with, it instigated anger and suspicion that led to the post-election violence which killed many and left even more internally displaced. After an international mediation process was carried out by Kofi Annan, Kenya formed a coalition government and an independent commission was appointed to draft a new constitution that would address among other things, the weakness of the judiciary.

The reform embarked upon in Kenya in 2011 met with opposition, mainly internally, because the challenge to overcome was mainly cultural. According to Duncan Okello, the Chief of Staff in the office of the Chief Justice, “the judiciary had developed a culture of unaccountability, distance, hierarchy and opacity—sometimes driven by a self-serving invocation of the principle of independence,” (University of Princeton 2015). Efforts were made to enlighten members of the public on how the judiciary works; getting commitment from members of the judiciary—this also included getting information on the conduct of judicial officers outside Nairobi, improving the capacity for the judicial officers (magistrates and judges), promotion was based on seniority and not on capacity, and finally, adequate resource allocation.

Kenya set up a strategy team with members drawn from outside the judicial system—Kenyans who had lived and worked in the

diaspora and had gained requisite skills and experience were part of the team. They drew from past reform reports that had been carried out in the country fused with the lens of outsiders and came up with a 5-year strategy, which was aimed at transforming the judiciary in the country. The process involved extensive consultations with all stakeholders to ensure that there was buy-in. The reform was driven around four pillars namely; i.) people-centred delivery of justice, ii.) organisational culture and professionalism of the staff, iii.) adequate infrastructure and resources and iv.) information technology as an enabler of justice.

Good practices have emerged from the initiatives that took place—case management systems were set up to address backlog of cases, judicial officers (magistrates and judges) were trained on the process, information technology was introduced in the courts, registries have become more responsive by communicating appropriate information to the litigants and other court users. Procedural and organisational improvements have taken place, an internal ombudsman process has been set up. The first level is headed by a magistrate and deputy registrar. The responsibility of another level office of the Judiciary Ombudsman within the office of the Chief Justice is to collect and resolve citizens’ complaints about administrative issues. The channels of making complaints were walk-in, calling, sending SMS, letters or email. The office reviews and acts on the complaints based on their mandate. Where the matters are outside their mandates same is communicated to the complainants. The judicial reform initiatives in Kenya were also hinged on the government’s commitment to the OGP.

5.2 India

The judiciary in India faces challenges very similar to Nigeria's, mainly due to the many similarities in the judicial system they both inherited from their colonial past. They both practice the common law, adversarial, plural and federal legal systems. The similarities with the judicial challenges could also be explained by the heterogeneous societies that both countries comprise, coupled with their enormous populations per landmass.

As in Nigeria, various cases have shown that despite constitutional provisions for judicial independence and accountability; corruption is more and more apparent in India's judiciary. One such case saw the Indian Supreme Court giving a verdict in the 2002 Gujarat communal riots, which exposed the system's failure to prevent miscarriages of justice by exonerating persons loyal to the party in power (Habibullah 2004). The second involved the convenient discharge and acquittal of nine people in 2006 who were allegedly involved in the murder of a young woman, Jessica Lal in 1999; even though the incident took place in the presence of a few witnesses. One of the accused persons was the son of a politician.

These incidences of judicial venality in India highlight among other things that corruption is systemic in its wider justice institutions and not so much among officers in the upper judiciary (Transparency International [TI] 2007). There is a general loss of confidence due to the perceived corruption as is the case with Nigeria; mainly due to the delays in the judiciary, blatant disposal of cases, shortage of judges and complex procedures, all of which are exacerbated by a great number of new laws.

The enormous number of adjourned cases coupled with limited number of judges in the various courts lead to a massive backlog of cases which in turn lead to long

adjournments, and situations where litigants and other court users are prompted to pay for their cases to be brought forward or sped up; which is, in fact, a sad case of corruption. To tackle this vice, reforms have been suggested to combat corruption in the judiciary considering all the components that make up the justice system, which include the investigating agencies, the prosecution department, the courts, the lawyers, the prison administration and laws governing evidence (TI 2007).

These recommendations for reform which the Indian judiciary has since mostly heeded include: increase in the number of judges and prompt filling of existing judicial vacancies both in the federal and state levels to prevent the cases backlog from further increasing; commitment to improving judicial accountability and creating an effective mechanism for ensuring it; initiating the adoption of a code of conduct for judges, which includes conflict of interest guidelines on cases involving family members, and conduct with regard to gifts, hospitality, contributions and the fundraising.

Other recommendations include: using information technology to manage court records, which has so far enabled the Supreme Court to reduce its backlog by bundling cases that seek interpretation on the same subject; providing computer rooms in all court complexes, laptops to judicial officers, and technology training to judicial officers and court staff; providing a database of new and pending cases, automatic registries and digitisation of law libraries and court archives.

These recommendations, some of which have been implemented by the Nigerian judiciary, underscore the importance of learning from different jurisdictions, especially those with which Nigeria shares many similarities such as India. To conclude,

a former Indian Supreme Court Justice, Krishna Iyer, once inferred that research shows that the court zigzags towards its goal, uncertain and wavering, and condemned to fail if it is devoid of radical restructuring, socially sensitised engineering, modernised methodology and perspective-based recruitment policy; which in turn breed a justice process with added corruption. This statement is true for the Nigerian judiciary as well, specifically with a focus on the implementation of existing reform initiatives. However, like India, we can begin to do more to repair the broken system.

6. Judicial Reform in Nigeria: An Overview

This section takes a brief glance at past and ongoing judicial reform efforts as a precursor to the recommendations for further improvement in the concluding section. Though it highlights judicial reform as an integral part of broader justice reforms since judicial corruption is not an isolated problem, this discussion is not exhaustive, since that would be beyond the scope of this study.

6.1 Types of Reform

One of the earliest recorded attempts at judicial reform in Nigeria occurred in 1993 under the military regime of the late General Sani Abacha. He set up a panel on the Reform and Reorganisation of the Judiciary, headed by late Justice Kayode Eso, a retired Justice of the Supreme Court, to conduct a review of the judiciary. In a four-part report submitted in 1994, the panel recommended actions to curb judicial corruption and indicted 47 judges for ‘alleged corruption, incompetence, dereliction of duty, lack of productivity or corrupt use of *ex parte* orders.’^{xlvi}

A white paper that would have made the report an official policy and compelled the regime to act on it was not issued. Critically, as Oluyemi Osinbajo writes in an insider

commentary on judicial reform in Lagos State in the 1990s, the military regime did not implement the panel’s recommendations. In 1999, the civilian president, Olusegun Obasanjo, set up the second panel to review the work of the Kayode Eso panel. The former’s report led to some of the indicted judges being dismissed or retired compulsorily.

Subsequently, the 1999 constitution created the NJC as a central agency to address the appointment and removal of judicial officers, identified by Osinbajo as a ‘potential aspect of judicial corruption’.^{xlvii} In 2001, the Justice Eso panel report was referred to the NJC which set up a review panel to revisit the cases of the indicted judicial officers.^{xlviii} One outcome of this process was the establishment in 2003 of the Performance Evaluation Committee of Judicial Officers within the NJC. At a reflection in Eso’s honour in 2012, Abimbola Oluseun, president of the NBA, Ibadan, said that the partial implementation of the panel’s recommendations was the cause of the prevailing problems with the judiciary.^{xlix}

From 1999 to 2005, as part of broader federal reforms carried out by the NJC, the then governor of Lagos State, Bola Ahmed Tinubu, created a justice policy committee to review the state’s legal system in what was at the time a pioneering effort at the state level to address judicial corruption.¹ Following a survey of 200 legal practitioners, a judicial corruption perception survey among residents of the state and reviews of various aspects of judicial administration in Lagos, several changes were made. That helped reduce corruption among judicial officers. A new appointments process was introduced involving examinations and interviews and allowing legal practitioners and the local bar association to take part in the selection of judges by writing confidential notes to the

Judicial Service Commission on nominees' competence and integrity.

Compensation packages for judges were improved drastically in consultation with human resources professionals. Civil procedure rules were revised to limit the number of case adjournments and amendments that could be made to claims and defences. Five free Citizen Mediation Centres were opened in Lagos in a bid to ease the burden on the formal court system and a Court Automation Information System (CAIS) was set up to assign cases randomly to judges and to calculate court fees automatically. According to Osinbajo, the CAIS helped to reduce case backlogs and the court delays. Between 2001 and 2007, the NJC's review panel reviewed 130 judges and took disciplinary measures ranging from reprimand to compulsory retirement against 36 of them. Interactive short training was held with bar associations, civil society groups and senior judges on standards of judicial conduct that helped participants to strengthen relationships.

Through a Justice Sector Project implemented by the UNODC in Nigeria, from January 2013 through June 2016, the European Union supported justice reform efforts by the Federal Ministry of Justice in nine pilot states. The three targeted outcome areas were; increased coordination and cooperation among justice sector institutions, with improved legal and sector policy frameworks; enhanced training, research and operational capability of the justice sector; and increased access to justice and respect for human rights and the rule of law, especially for disadvantaged and vulnerable groups, including women, children and persons with disability. It involved judiciaries, oversight bodies, other state parties to the justice system and CSOs.^{li}

The new agenda for judicial reform announced by Chief Justice Onnoghen in mid-2017 was the latest attempt to address the problems identified earlier in this study in the country's judiciary. He set up a 13-member committee known as the Bilkisu Bashir Commission to coordinate judicial reforms in the country, tasking it to identify, and submit a report within one month, the obstacles to and recommendations for building a more effective and efficient judiciary.^{lii} The report is not publicly accessible, but the commission's mandate is detailed in several media reports.^{liii}

While Onnoghen's resolve must be commended, the utility of this commission is debatable, given, as has been previously pointed out, that the problems with Nigeria's judiciary are an open secret and have been reiterated by successive previous commissions and reports.^{liv} It has been suggested that available resources would be better directed towards the creation of a panel of eminent lawyers and jurists to review the proposals of previous judicial reform initiatives and discussions with a view to implementing key recommendations.^{lv} Further, it is not clear what linkages exist between federal justice reforms and an apparently parallel process in Abia State where the state government also set up a committee on judicial reform which tendered its report to the governor in October 2017.^{lvi}

The proposals for improving judicial oversight in Nigeria have not explored the option of citizens' oversight over the administration and delivery of justice. First, the public has no role in the appointment of judges and even where members of the public have strong evidence of misconduct against nominees for judicial positions, there appear to be no opportunities to engage them [the public] with the appointing authorities. Again, the Code of Conduct for Judicial



Officers is hardly known outside the circle of judges and lawyers. Citizens can only intervene when they know the rules guiding judges and the process for laying complaints. Such a process needs not to involve paying a legal practitioner to present the case against a judicial officer.

In summary, judicial reform in Nigeria has involved activities and collaborations by state and non-state actors and has occurred at federal and state levels. Specific activities have included research and information gathering by the state- and federally-appointed commissions of inquiry, legal experts and CSOs, several of which are cited in this study. Other reform tools have included policy action and the creation or overhaul of judicial administrative bodies. Training and capacity building have also occurred. In one of many examples, the National Human Rights Commission (NHRC) partnered the Civil Liberties Organisation (CLO), the National Judicial Institute (NJI) and the Danish Centre for Human Rights (DCHR) to hold a human rights training programme court for lower court judges organised from 1998.^{lvii} Procurement and upgrading of court facilities, and dismissal, prosecution and other disciplinary measures against corrupt judicial officers have formed an equally important aspect of judicial reform in Nigeria.

It is immediately noticeable, however, that these reforms seem to have focused more on enhancing judicial performance than on oversight of the judiciary. Further, reforms have been led by different actors with varying priorities and little to no evident correlation among their disparate efforts or agendas. Although the reform agendas are quite ambitious and comprehensive, their implementation and effectiveness are highly contingent on political will and commitment, which have varied at both state and federal

levels. In Lagos, judicial reform worked under Governor Tinubu because the government made it a priority and appointed competent, committed professionals to oversee the process. Results at the federal level appear to have been more mixed, ostensibly because of the higher stakes and different political climate of corruption.

7. Proposals for Enhancing Judicial Oversight in Nigeria

In summary of the discourse, the following are proposed for enhancing judicial oversight functions in Nigeria;

i. Continuous and Evolving Reform

Democratic institutions such as the judiciary are catalysts for good governance and development in any nation. Therefore, this research recommends that it is vital and imperative to make provisions for continuous reforms in the judicial sector in Nigeria to overcome its challenges and inability to enhance democracy sustainably.

ii. Involvement of Citizens and not Only Enhancement of Judicial Institutions

The role of oversight organisations or institutions generally is that of regulating the processes and the institutions. They form an integral part of any reform initiative. Enhancing judicial oversight in Nigeria cannot be limited to strengthening institutions that have been tasked with the responsibility of performing judicial oversight. It needs to extend to processes which could involve citizens' participation at different levels. Kenya provides a good example of this.

iii. Adoption of Ideas and Due Processes that are Necessary for Transparency

One of the key lessons to be learnt from Kenya is the adoption of the commitments under the OGP to the criminal justice sector, particularly, the judiciary. There are ongoing reforms within the public service, which can be adopted into the judicial sector. For example, the application of the OGP commitments into the sector; compliance to

the principles of the FOI, which is hinged on the fundamental right to access information; procurement and due diligence can be embraced. The opacity in the judiciary needs to be demystified.

iv. **Coordination and Periodic Meeting of Oversight Bodies for Update**

The NASS needs to become a coordinating hub to be poised to carry out its oversight functions effectively. It can do this by commencing periodic coordinated meetings that bring all oversight bodies together. A similar oversight body coordinating platform was initiated under the recently concluded Justice 4 All programme of the British Council for police oversight bodies and anti-corruption agencies. The success of these coordinating platforms is detailed in the success stories of the programme. It provides a platform for information sharing, harnessing of resources and mutual reinforcing of mandates.

v. **Use of Judicial Ombudsman to Facilitate Complaints Handling**

The introduction of a judicial ombudsman could work in Nigeria. This office will be tasked with the responsibility of getting complaints from court users based on stipulated criteria. It would also need to provide feedback to the public. The whistle-blowing policy should be adopted to make the work of proposed ombudsman more effective. It will allow the office to get information that is verifiable from both staff and non-staff of the judiciary. The information received can be reviewed and utilised to improve the workings of the system.

vii. **Establishment of Specialised Courts for Specific Cases Handling**

In a bid to deal with the backlog of cases and enhance professionalism there have been suggestions about having specialised courts; probate, criminal, civil etc. In February 2018, the Chief Justice of Nigeria announced the establishment of dedicated courts to handle anti-corruption cases; Lagos State

established Sexual Offences Court. In Lagos State, there are specialised courts for specific cases. For example, criminal, civil, probate, family etc. In the FCT when the Chief Judge attempted to introduce similar initiatives, there was a pushback by the NBA. This shows the influence the NBA has on the judiciary.

viii. **Embracing Information Technology in the Management of the Judiciary**

The NJC could be encouraged to be more receptive to embracing information technology in the management of the judiciary. The reform in Lagos State, Kenya, India and the demonstration of the PWAN court observer App have shown that technology can play a big role in reforming the judiciary by addressing the issues related to the backlog of cases, reducing interactions which can be taken advantage of and eventually manifests as corruption etc. Recently, the CJN announced that court proceedings should be filed via email.

ix. **Involvement of the Media and the Civil Society**

Engagement with the media and CSOs by the key formal oversight agencies; the NASS, the NJC and the NBA, needs to be strengthened. They need to see each other as partners and not adversaries. The civil society and media are known to be agents of change and there are various examples of civil society and media being agents of change even in Nigeria. A good example is civil society and media engagement in elections. Over time the relationship has grown, and it has made the INEC stronger and effective. The civil society and citizens' oversight over the administration and delivery of justice is imperative. The procedure for appointment of judges should be made open with the advertising of names of shortlisted individuals in the popular media, with a call on any person who has information that could disqualify a nominee to come forwards and present same to the authorities. Also, there should be massive public sensitisation on the Code of Conduct

for Judicial Officers and the procedure for laying complaints against erring judicial officers. Such a process must not be cumbersome with technicalities but a transparent one where complaints may be laid in writing or on an electronic portal.



Endnotes

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