

**THE NIGERIAN BAR ASSOCIATION AND PROTECTION OF JUSTICE: HOW NOT TO DEFEND A JUDGE\***

**Abstract**

*The consciousness that “justice” is highly cherished and that the life of every human society depends on it to thrive is as old as time although the approach to its administration has continued to evolve over the ages. Yet the concept stands on three indispensable pillars – equality before the law, fair hearing and transparency - which have continued to determine its quality with equal force. The duty of lawyers as officers in the temple of justice is to encourage Judges to project their official obligation over personal pride and disposition by ensuring a recourse to rectitude whenever the tune of faltered justice is echoed until this sobriety becomes permanent and inherent in them. No other but the legal profession can play this role rightly. Therefore, the recent statement by the Nigerian Bar Association President blaming lawyers who criticised the judiciary for some baffling verdicts calls for review of the role this body is expected to play and an appraisal of the performance in this dispensation. This article examined the duty of the judiciary in Nigeria to dispense impeccable justice and the civic responsibility of all citizens, especially lawyers, to contribute thereto by making polished criticisms whenever necessary. The research adopted the analytical method by perusing relevant literature. The study found, among others, that contrary to the tradition there is a growing aberration of personalising the protection of justice by defending Judges perceived by the citizenry as having erred in their official responsibility. It therefore recommended, in substance, that more effort should be made to prevent perversion of justice than to shield erring Judges from criticism.*

**Key words: Justice, Judges, Promotion, Nigeria Bar Association.**

**1. Introduction**

Justice has become the ethical fountain balancing the benefits and burdens of all actors in the society. Part of the expectations of its seekers is that its fairness should transcend error, leaving no room for compromise, least of all deliberate perversion.<sup>1</sup> Driven by such passion to hold the administrators of justice in very high esteem, they feel utterly disappointed when the system fails for avoidable reasons. They follow up with suggestions of conceivable solutions within the limit of their understanding but drift into criticism when positive change is long in coming. As members of the inner caucus lawyers in Nigeria have the responsibility of ensuring that the justice institution operates without blemish. This article concentrated on the efficient performance of this duty as a means of averting or at least reducing the distraction of uncontrollable attacks by the public at large. It is structured to suit the logic that this costly mudslinging will lose purpose and terminate when the court’s application of justice synchronises with the public’s appreciation.<sup>2</sup>

**2. Conceptual structure**

This section of the research contains analyses of the major concepts on which the study is based.

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<sup>1</sup> R Muftau, ‘Access to Judicial Justice in Nigeria: The Need for Some Future Reforms’, (2016) (47) *Journal of Law, Policy and globalization*, 144; A T Denning, *The Due Process of Law* (London: Butterworths, 1980) 5.

<sup>2</sup> F Abdul-Ethem, ‘The Role of The Judiciary In The Protection of Human Rights and Development: A Middle Eastern Perspective’, (2002) 26 (3) *FILJ*, 161.

## 2.1 Justice

“Justice” is a fragile and complicated multidisciplinary concept which means different things to different people without losing the core value of fairness.<sup>3</sup> It is about the most important moral value in the spheres of legal systems and politics as neither of them can accomplish law and order without embedding it.<sup>4</sup> In the broadest perspective it depicts the principle that people should receive what they deserve with the definition of “deserving” influenced by diverse view-points including concepts of moral correctness founded on ethics, rationality, law, religion, equity and fairness.<sup>5</sup> Ancient Greek philosophers like Plato and Aristotle propounded the earliest theories of justice.<sup>6</sup> However, advocates of divine command theory hold the view that justice emanates from God.<sup>7</sup> On their part 17<sup>th</sup> Century philosophers like John Locke posited that natural law is the source of justice.<sup>8</sup> Another opinion is that of Jnsnaturalism theory of law: all people have inherent rights, conferred on them by God, nature or reason but not by an act of legislation.<sup>9</sup> Accordingly justice is believed to be the fair distribution or enjoyment of these rights and benefits. It modifies diverse spheres of human endeavour and is thus given definitions to suit them. In that regard social justice is the notion which supports equal economic, political and social opportunities for everyone regardless of race, gender, or religion.<sup>10</sup> Distributive justice is the equitable allocation of resources and assets, rights and duties in society.<sup>11</sup> Environmental justice focuses on fair treatment of all persons as it relates to environmental benefits and impacts.<sup>12</sup> Restorative justice is concerned with reinstating victims or restoring the position of those who have suffered legal harm unfairly.<sup>13</sup> Retributive justice deals with punishment of persons who commit

<sup>3</sup> M B Robinson, ‘Justice as Freedom, Fairness, Compassion, and Utilitarianism: How My Life Experiences Shaped My Views of Justice’, (2003) 6 (4) *Contemporary Justice Review*, 329-340; U P Obioha, ‘The Nature of Justice’, (2011) 29 (2) *J Soc Sci*, 183-192.

<sup>4</sup> M T Tolibjonovich & S Umidbek, ‘The Essence of the Concept of Equality and Justice in Law’, (2021) 7 (3) *Novateur Publications*, 17.

<sup>5</sup> D Rubinstein, ‘The Concept of Justice in Sociology’, (1988) 17 (4) *Theory and Society*, 527-550; T Nagel, ‘The Problem of Global Justice’, (2005) 33 (2) *Philosophy & Public Affairs*, 113-147; J Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1999) 266; F A Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (Oxfordshire: Routledge & Kegan Paul, 1976) 78.

<sup>6</sup> D Rubinstein, *supra*, n. 4; J Konow, ‘Which is the Fairest One of All? A Positive Analysis of Justice Theories’, (2003) 41 (4) *Journal of Economic Literature*, 1188-1239.

<sup>7</sup> J Rachels, ‘*God and Human Attitudes*’ in P Helm, *Divine Commands and Morality* (Oxford: Oxford University Press, 1981) 325-337; G C Graber, ‘In Defense of a Divine Command Theory of Ethics’, (1975) 43 (1) *Journal of the American Academy of Religion*, 62-69.

<sup>8</sup> A Hamed, ‘The Concept of Justice in Greek Philosophy’, (2014) 5 (27) *Mediterranean Journal of Social Sciences*, 1163; B Arneil, ‘John Locke, Natural Law and Colonialism’ in B Arneil, *History of Political Thoughts XIII* (Devon: Sovereign Printing Group, 1992) 587-603.

<sup>9</sup> H Kelsen, *General Theory of Law and State* (New Jersey: The Lawbook Exchange, 2007) 392.

<sup>10</sup> B Arrigo, *Social Justice, Criminal Justice: The Maturation of Critical Theory in Law, Crime, and Deviance* (Belmont, CA: Wadsworth, 1999) 253; G Barak & S Henry, ‘An Integrative-Constitutive Theory of Crime, Law, and Social Justice in B Arrigo (ed.), *Social Justice, Law, Crime, and Deviance* (Belmont, CA: Wadsworth, 1999) 201-235.

<sup>11</sup> R W M Dias, *Jurisprudence* (London: Butterworths, 1985) 65; A Funsho, *Jurisprudence* (Durban: LexisNexis Butterworths, 2008) 197.

<sup>12</sup> P Mohai and others, ‘Environmental Justice’, (2009) 34 (1) *Annual Review of Environment and Resources*, 406; R Holifield, ‘Defining Environmental Justice and Environmental Racism’, (2001) 22 (1) *Urban Geography*, 78-90.

<sup>13</sup> R Webber, ‘A New Kind of Criminal Justice’, (2009) *Parade*, 6; C B N Gade, ‘Is Restorative Justice Punishment? (2021) 38 (3) *Conflict Resolution Quarterly*, 127-155.

crimes.<sup>14</sup> Procedural justice is concerned with implementing legal decisions in compliance with fair and impartial processes.<sup>15</sup>

Due to its broad application and importance scholars have developed several extrapolations based on the ethical-philosophical perception that people need to be treated impartially, fairly, properly and reasonably by the law and its administrators, that laws are to protect persons but also that where harm is done the victim and the offender receive a morally correct consequence judging by their actions.<sup>16</sup> Manuel Velasquez and others defined it as giving to each person what he or she deserves as his or her due.<sup>17</sup> In one of the earliest written definitions of the concept, Aristotle, the philosopher stated that it consists of righteousness, or complete virtue with respect to a person's neighbour. In addition he espoused the perception of justice as a form of character, an organised set of dispositions, attitudes and positive habits leading to the treatment of equals equally and unequals unequally in their respective proportions.<sup>18</sup> To Plato, Justice is not a conception of rights but of duties connected to true liberty; an indispensable quality of moral life binding the individual and the state.<sup>19</sup> The term has also been defined in wide context as the quality of treating others justly or fairly; administration or compliance with the law.<sup>20</sup>

Iris Marion Young opined that justice is not merely a set of debts people owe themselves but it consists of a combination of relations between social groups. It necessarily involves the elimination of institutionalised domination of oppression. Accordingly, ideals of justice should address and evaluate every form of social organisation and tradition which enhanced domination and oppression.<sup>21</sup> In this context individual culture becomes relevant to the notion of social justice, not limited to individual persons. Funso Adaramola analysed the concept as a connotation of legal equality founded on the dignity of the human person. He emphasised its crystallisation in the form of equal treatment of all citizens before the law in particular and in society generally for all purposes.<sup>22</sup> Ijaiya and Ijay understood justice to mean the legal or philosophical theory which enables the administration of fairness in a society or system.<sup>23</sup> Olatunji appraised the concept as a crucial component of the administration of any society which ensures equality and freedom on the same pedestal without discrimination.<sup>24</sup>

## **2.2 Importance of Justice**

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<sup>14</sup> N T Nwkpasi and others, 'The Concept of Justice and its Application in a Developing Country Such as Nigeria', (2021) 9 (1) *International Journal of Innovative Legal & Political Studies*, 52-62.

<sup>15</sup> Ethics Unwrapped, 'Justice', [ethicsunwrapped.utexas.edu](https://ethicsunwrapped.utexas.edu) accessed 10 February 2023.

<sup>16</sup> M Velasquez, *Business Ethics, Concepts and Cases* (3<sup>rd</sup> edn., Englewood Cliffs, N.J: Princeton Hall, 1992) 2-38; J Rawls, 'Justice as Fairness: Political Not Metaphysical', (1985) 14 (3) *Philosophy and Public Affairs*, 223-251.

<sup>17</sup> M Velasquez and others, 'Justice and Fairness', (1990) 3 (2) *Issues in Ethic*, 1.

<sup>18</sup> W Villones, 'Some, Reflections on Aristotle's Concept of Justice', (2017) A Chroust & D L Osborn, 'Aristotle's Conception of Justice', (1942) 17 (2) *Nature Dame L. Rev.*, 129; S Benn, 'Justice in P Edwards (ed.), *The Encyclopedia of Philosophy Vols. 3 & 4* (New York: Macmillan Pub., Notre Dame L. Rev, 129) 298-299; S Benn, 'Justice in Macmillan Pub, 1967.

<sup>19</sup> A Hamed, *supra*, n. 7; E Barker, *Greek Political Theory Plato and His Predecessors* (London: Methuen and Co., 1952) 149-153.

<sup>20</sup> J M Sinclair, *Collins English Dictionary* (Glasgow: Harper Collins, 1979) 837; M Robinson & G Davidson, *Chambers 21<sup>st</sup> Century Dictionary* (New Delhi: Allied Chambers (India) Ltd 1997) 739.

<sup>21</sup> I Young, *Justice and the Politics of Difference* (New Jersey: Princeton University Press, 1990) 22.

<sup>22</sup> F Adaramola, *Basic Jurisprudence* (Lagos: Nayee Publishing Co. Ltd, 2003) 226.

<sup>23</sup> H Ijaiya & H Ijay, 'Law as a Means of Serving Justice in Nigeria', (2018) 13 (1) *Pandecta*, 1-9.

<sup>24</sup> F O Olatunji, 'The Value and the Indispensability of Justice in the Quest for Development in Africa', (2015) (24) *Uludag University Faculty of Arts and Sciences Journal of Philosophy*, 229.

The justice institution is the predominant pillar which sustains the functioning of all other authorities and the enjoyment of human freedoms in society. Apart from maintaining order among citizens generally it is also responsible for protection of people's right from invasion by government and individuals, thus unleashing morals of socio-economic progress in broad ramifications.<sup>25</sup> Its formulae for accomplishing these goals include the following social equality.<sup>26</sup> The principle of social equality, as a product of the foremost human right<sup>27</sup> has become a universal standard. Accordingly, an evidence of efficient justice system in any jurisdiction is its ability to protect this principle. It is about society's recognition and application of diversity of needs, status and ambitions of individuals, and the effort to improve their capabilities by eliminating discrimination and prejudice in tackling the economic, political, legal, social and physical obstacles limiting their potentials.<sup>28</sup> It has been identified as the outstanding genuinely egalitarian notion of equality<sup>29</sup> in the debate on the efficiency of the currency of justice, as involving the kind of equality that is important. It narrows down to resources, welfare or capabilities on the one hand and the pattern of distribution, that is whether equality alone is significant or whether justice will be better accomplished through prioritising resources for the less privileged on the other hand.<sup>30</sup> Despite the disparity of opinions, social equality rhymes most with the identification of that form of life where people treat one another as equals.<sup>31</sup> This philosophy underpins its role as the foundation of fairness in the context of adjudication - an integral component of modern substantive democracy.<sup>32</sup>

### 2.3 Judge

Any person who by lawful authority exercises judicial power, howsoever designated, is a Judge.<sup>33</sup> Another definition is that he is a public official authorised to determine disputes brought before a court.<sup>34</sup> Following lexical history the word "judge" came from the old French word "jug" or "juge"

<sup>25</sup> M Ramos-Maqueda & D Chen, 'The Role of Justice in Development: The Data Revolution', Policy Research Working Paper 9720, June 2021, 3-10; D Acemoglu and others, 'The Colonial Origins of Comparative Development: An Empirical Investigation', (2001) 91 (5) *American Economic Review*, 1369-1401; R Pande & C Udry, *Institution and Development: A View from Above, Technical Report Center Discussion Paper No. 928* (New Heaven CT: Yale University, 2005) 1.

<sup>26</sup> C Fourie, 'What is Social Equality?', (2012) 18 (2) *Res Publica*, 107-126.

<sup>27</sup> UDHR, 1948, Art. 1

<sup>28</sup> T Burchardt & P Vizard, *Definition of Equality and Framework for Measurement: Final Recommendations of the Equalities Review Steering Group on Measurement* (London: Centre for Analysis of Social Exclusion, London School of Economics, 2007) 1-3.

<sup>29</sup> C Fourie, *supra*, n. 26.

<sup>30</sup> J Rawls, *supra* (n. 5) 54-55; R J Arneson, 'Equality and Equal Opportunity for Welfare', (1989) (56) *Philosophical Studies*, 77-93; R J Arneson, 'Distributive Justice and Basic Capability Equality: Good Enough is not Good Enough' in A Kaufman (ed.), *Capabilities Equality: Basic Issue and Problems* (New York: Routledge, 2006) 17-44; H Frankfurt, 'Equality as a Moral Idea', (1987) (98) *Ethics*, 21-43; R Crisp, 'Equality, Priority and Compassion', (2003) (113) *Ethics*, 745-763; M O'Neill, 'What Should Equalitarians Believe?', (2008) (36) *Philosophy & Public Affairs*, 119-156.

<sup>31</sup> D Miller, 'Equality and Justice' in A Mason (ed.), *Ideals of Equality* (Oxford: Blackwell, 1998) 38.

<sup>32</sup> N Kolodny, 'Rule Over None II: Social Equality and the Justification of Democracy', (2014) 42 (4) *Philosophy & Public Affairs*, 286-336; TRS Allan, 'Justice and Fairness in Law's Empire', (1993) 52 (1) *The Cambridge Law Journal*, 64-88; T W Merrill, 'Fair and Impartial Adjudication', (2019) 26 (3) *Geo. Mason L. Rev.*, 897; A Barak, 'The Supreme Court – Foreword', (2002) 116 (16) *Harvard Law Review*, 19-162.

<sup>33</sup> United Nations Office on Drugs and Crime, *The Bangalore Principles of Judicial Conduct* (Vienna: United Nations 2018) 17.

<sup>34</sup> J R Nolan and others, *Black's Law Dictionary* (St. Paul, Minn.: West Publishing Co., 1990) 841; H Alexander and others (eds.), *The New International Webster's Comprehensive Dictionary of the English Language* (Southampton: Typhoon International, 2004) 690.

meaning judge<sup>35</sup> which originated from the Latin “iudex”.<sup>36</sup> In due course it attracted a limited meaning which covered only judicial officers in charge of superior courts.<sup>37</sup> At some point in England before the Judicature Acts it meant a common law judge but did not include a chancery Judge.<sup>38</sup> Under the Supreme Court of Judicature Procedure Act 1894 the term meant a Judge sitting alone, not including a Divisional Court.<sup>39</sup> In presiding over proceedings, the Judge may sit alone or be part of a panel of Judges.<sup>40</sup>

### **2.3.1 Role of the Judge**

Essentially the Judge adjudicates disputes before him by applying relevant law.<sup>41</sup> There is also the postulation that this role of the Judge is a blend of obligations to apply the law, improve and protect it.<sup>42</sup> Given the fundamental contribution they make to society’s function, it is imperative that Judges are independent and free from bias in the performance of their duties.<sup>43</sup> In the process of combining these roles Judges are sometimes constrained to act as lawmakers when the laws applicable to the cases before them contain lacunae and ambiguities allowing their exercise of discretion to suit situations.<sup>44</sup> In a sense this makes them agencies of social change, a precarious role imperilled with obvious limitations. The leading one is the intellectual, which obliges them to offer sufficient reasons for their conclusions. Others are institutional – the obligation to defer to the authority of a different branch of government; political – the caution to evade involvement in matters that are deeply partisan in nature; and psychological – acknowledging the part individual bias plays in exercising judicial discretion.<sup>45</sup> In addition, considering their primary duty line, it is clear that litigation does not serve as an ideal channel for conducting a thorough social inquiry which elicits from them more tact and discretion in delving into social adjustment in general with the background of judicial experience. This handicap is compounded by the power system which insulates Judges from direct accountability to the public unlike politicians who fill executive and legislative positions in the government.<sup>46</sup>

### **2.3.2 Dignity, Public Esteem and Ethics of Judges**

In all civilised societies people hold Judges in very high regard because of the role they play in upholding law and order as the pathway to smooth coexistence and social progress. They are seen as a select class that has devoted life and time to the equal treatment of all men and women.<sup>47</sup> Like their dignity, the public’s expectation of their uprightness has no limit as it gauges a nation’s growth, and the morals of the people. In the words of Sydney Smith –

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<sup>35</sup> J Boatright, ‘The History, Meaning, and Use of the Words Justice and Judge’, (2017) 49 (4) *St. Mary’s Law Journal*, 727.

<sup>36</sup> *Ibid.*

<sup>37</sup> J S James, *Stroud’s Judicial Dictionary* (London: Sweet & Maxwell Limited, 1973) 1444; *Elsley v. Kirby*, 12 L.J. Ex. 97; *Kissam v. Link* (1896) 1 QB574.

<sup>38</sup> *Miles v. Presland*, 4 My. & C. 431.

<sup>39</sup> S. 1(1); Judicature Act 1925, C. 49, s. 31; *Ruf & Co. v. Pauwels* (1919) 1 KB 660.

<sup>40</sup> M K Levy & A S Chilton, ‘Challenging the Randomness of Panel Assignment in the Federal Court of Appeals’, (2015) (101) *Cornell L. Rev.*, 1.

<sup>41</sup> A Barak, *The Judge in a Democracy* (Princeton: Princeton University Press, 2006) 306-316; M Yusuf and others, ‘Role of the Judge in Creating Justice as an Instrument of Social Change’, (2016) 1 (1) *I Ubelaj*, 13.

<sup>42</sup> L Green, ‘Law and the Role of a Judge’, (2014) (47) *Oxford Legal Studies Research Paper*, 1.

<sup>43</sup> A Dieng, ‘Role of Judges and Lawyers in Defending the Role of Law’, (1997) 21 (2) *Fordham International Law Journal*, 550.

<sup>44</sup> I L M Richardson, ‘The Role of Judges as Policy Makers’, (1985) (15) *V.U.W.L.R.*, 46; M Cappelletti, ‘The Law-making Power of the Judge and Its Limits: A Comparative Analysis’, (1981) 8 *Monash L. R.*, 15, 34.

<sup>45</sup> E White, *The American Legal Tradition* (Oxford: Oxford University Press, 1976) 371-372.

<sup>46</sup> ILM Richardson, *supra*, (n. 44)49-50.

<sup>47</sup> R N Pemu, ‘Judicial Ethics, Code of Conduct and Comportment for Judges’, (*Paper Presented at the 2017 Induction Course for Newly Appointed Judges and Kadis*, 3<sup>rd</sup> – 12<sup>th</sup> July, 2017) 1.

Nations fall when Judges are unjust because there is nothing which the multitude thinks worth defending; but nations do not fall which are treated as we are treated. And why? Because this country is a country of law; because a Judge is a Judge for the peasant as well as for the palace; because every man's happiness is safeguarded, by fixed rules from tyranny or caprice.<sup>48</sup>

It is therefore this capacity to influence the fate of a whole nation – and *a fortiori* the world – that has positioned the Judge as the focus of all seekers of truth, justice, fairness and orderly development of society. He has thus amassed tremendous dignity arising from the people's belief that their continuous civility by obeying his "orders" will ensure peace and progress in society.<sup>49</sup> Nevertheless, like the statue of justice, he is expected to be regal, neutral and blind to external influence. As aptly summarised by Professor Judith Resnik –

The goddess herself - aloof and stoic - represents the physical and psychological distance between the Judge and the litigants. Justice is unapproachable and incorruptible. The scales reflect even-handedness and absolutism. The sword is a symbol of power, and like the scales, executes decisions without sympathy or compromise. Finally, the blindfold protects Justice from distractions and from information that could bias or corrupt her. Masked, Justice is immune from sights that could evoke sympathy in an ordinary spectator.<sup>50</sup>

To this end the integrity and independence of the judiciary are mandated and guaranteed, making its severance from the executive and legislature a treasure of modern government. In essence justice's blindfold represents both a disposition of impartiality in every case in hand and an institutionalised imperviousness to all outside influences from other branches and sectors.<sup>51</sup> Accordingly special ethics are formulated to guide Judges in their conduct and comportment in various jurisdictions, for instance, India,<sup>52</sup> England and Wales,<sup>53</sup> United States of America,<sup>54</sup> Nigeria,<sup>55</sup> South Africa.<sup>56</sup> Underscoring the value of integrity in the Nigerian context, Hon. Justice Rita N. Pemu counselled Judges to uphold and promote the independence, integrity and impartiality of the Judiciary, and avoid extra-judicial and political conflicts.<sup>57</sup>

### 2.3.3 Protection of Justice

To protect means, broadly, to shield, defend or guard someone or something from attack, harm or injury; to make it impossible for the impact of such attack to affect the beneficiary of the protection.<sup>58</sup> Since

<sup>48</sup> P R Aiyar, *Legal and Professional Ethics, Duties and Privileges of a Lawyer* (New Delhi: Wadhwa and Co., 2003) 392.

<sup>49</sup> M O Rendell, 'What is the Role of the Judge in Our Litigious Society', (1995) 40 (4) *Villanova Law Review*, 1115.

<sup>50</sup> J Resnik, 'Managerial Judges', (1982) (96) *Harv. L. Rev.*, 374, 383.

<sup>51</sup> H Rishikof & B A Perry, "Separateness but Interdependence, Autonomy but Reciprocity": A First Look at Federal Judges' Appearances Before Legislative Committees', (1995) (46) *Mercer L. Rev.*, 667, 668.

<sup>52</sup> Restatement of the Values of Judicial Life, 1999; The Bangalore Principles of Judicial Conduct.

<sup>53</sup> Guide to Judicial Conduct, 2013; United Kingdom Supreme Court Guide to Judicial Conduct, 2019.

<sup>54</sup> Code of Conduct for U. S. Judges, 2019.

<sup>55</sup> National Judicial Council, Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, 2016.

<sup>56</sup> Judicial Service Commission Act No. 9 of 1994, Code of Judicial Conduct for Judges.

<sup>57</sup> R N Pemu, (n.47) 17-18.

<sup>58</sup> A W Read and others, *The New International Webster's Comprehensive Dictionary of the English Language* (Southampton: Typhoon International, 2004) 1013; *Longman Dictionary of Contemporary English* (Essex: Pearson Education Limited, 2009) 1396.

the dispensation of true and even justice has been confirmed as a catalyst for national development<sup>59</sup> it behooves all categories of persons to contribute to this growth by protecting justice. Thus, inasmuch as Judges are the ones directly involved in determining cases, lawyers, litigants and the public at large have varying degrees of responsibility in this assignment. For it goes beyond the final decision of success or failure of a case to engulf all the factors and circumstances capable of affecting or influencing it by any degree. The safest means is to secure the impartiality of Judges by primarily enforcing the independence of the judiciary from external pressure.<sup>60</sup> The impact of the whole exercise can only be felt adequately when all stakeholders act in unison, saving in particular, the Judges from the distraction of speculating upon divergent opinions to call them to order. The entire objective also stands to be defeated when the impression is created by a faction that Judges have the latitude to define and determine justice even when it is incongruous.<sup>61</sup> Despite conflicts in their views, it is better for scholars and interest groups to speak up against deviation from justice than to shirk this role out of frustration or complacency which could lead to social retrogression.<sup>62</sup>

## **2.4 Nigerian Bar Association and the Quest for Justice**

In consonance with international best practice the Nigerian Bar Association (NBA) was inaugurated to promote the access to justice in Nigeria. Its major aims and objective include the maintenance and defence of the integrity and independence of the bar and Judiciary in Nigeria,<sup>63</sup> and the promotion and protection of the rule of law as well as respect for fundamental rights, human rights, and people's right.<sup>64</sup> As the recognised association of legal practitioners in the country, it liaises with other regional and international bodies like Georgian Bar Association (GBA), American Bar Association (ABA) and International Bar Association (IBA) to, among others, contribute to the administration of justice and ensure rule of law.<sup>65</sup> It is therefore also engrossed in exploring modalities for upholding the integrity of the bench through the elimination of service conditions that render the profession prone to ethical abuse.<sup>66</sup> However, while supporting the call for improved conditions for Judges, the position of the NBA is that even substandard working conditions cannot justify deliberate perversion of Justice.

### **2.4.1 The Bar and Judicial Ethics: International Approach**

In general, the Bar as the organised group of legal practitioners in every country is committed to the advancement of the rule of law and unblemished dispensation of justice, though, among others, compliance with judicial ethics.<sup>67</sup> The practices adopted in some other jurisdictions are considered below.

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<sup>59</sup> M Ramos-Mequelda & D Chen, n. 25.

<sup>60</sup> I Abdullahi, 'Independence of the Judiciary in Nigeria: A Myth or Reality?' (2014) 2 (3) *IJPAMR*, 55-66; C Oputa, 'Judicial Ethics, Law, Justice and the Judiciary', (Lagos: MIJ Professional Publishers Ltd, 1990) 34.

<sup>61</sup> D J Sachar, 'Judicial Misconduct and Public Confidence in the Rule of Law', unodc.org accessed 2 February 2023.

<sup>62</sup> M Ozekhome, 'Criticising Judges and Judgments: The Dividing Line Introduction', Law pavilion.com accessed 2 March 2023; L T Brown, 'Criticising Judges: A Lawyer's Professional Responsibility', (2021) 56 (1). *Georgia Law Review*, 161.

<sup>63</sup> Nigerian Bar Association Constitution, 2021, s. 3(1).

<sup>64</sup> Nigerian Bar Association Constitution, 2021, s. 3(11).

<sup>65</sup> L I Nwokike, 'Bar Associations as Watchdogs to National, African Commonwealth and International Law/Arbitration: Analysis of the Legal Strength in Nigerian, African, Commonwealth, and International Bar Associations' Constitutions', (2012) 9 (3) *Global Journal of Politics and Law Research*, 59-72.

<sup>66</sup> O Fapohunda, 'The Nigerian Bar Association in the 21<sup>st</sup> Century: The Interest of the Legal Practitioner and the Competing Duty to Act in the Public Interest', (2019) 10 (1 & 2) *Afe Babalola University J. of Sust. Dev. Law & Policy*, 304.

<sup>67</sup> M Warren, 'The Duty Owed to the Court-Sometimes Forgotten' (*Speech Delivered at the Judicial Conference of Australia Colloquium, Melbourne on 9 October 2009*) 1; International Bar Association, *Maintaining Judicial Integrity and Ethical Standards in Practice* (London: International Bar Association, 2021) 130-135; J Sillen,

### 2.4.2 United States of America

Since its first scheme under Chief Justice William Howard Taft in 1922 the American Bar Association (ABA) has been involved in drafting codes of ethics for Judges but the most significant is the 1990 Judicial Code from which the 2007 edition was developed.<sup>68</sup> Therein four major rules of conduct are outlined (in 4 canons) on the Judge's duty to uphold and promote the independence, integrity, and impartiality of the judiciary; to conduct his personal and extrajudicial activities to reduce conflict with official obligations, and to abstain from political activities.<sup>69</sup>

### 2.4.3 Central and Eastern Europe

The ABA is also collaborating with some Central and Eastern European nations to formulate strategies to review the rule of law programme. One of the major objectives is to sanitise the judiciary by applying effective ethics.<sup>70</sup>

### 2.4.4 Other parts of Europe

In liaison with the GBA, Ukrainian National Bar Association and others, the European Union and the Council of Europe prepared a framework of the regional project on "Strengthening the Profession of Lawyer in Line with European Standards" covering Armenia, Belarus, Georgia, Republic of Moldova and Ukraine.<sup>71</sup> The work highlighted the role of lawyers and Judges as independent actors in the justice system but emphasized the importance of the Judges' fairness and respect for ethics.<sup>72</sup>

### 2.4.5 International Bar Association

The International Bar Association (IBA) acknowledges the devastating effect of corruption on the judiciary, and how it is corroding public trust and confidence in the system. It is thus poised to promote a culture of judicial integrity among all Judges. Its Judicial Integrity Initiative (JII), launched in 2015, is a commitment to combatting judicial corruption through insistence on judicial ethics. With the "IBA Judicial Integrity Initiative" Judicial System and Corruption produced in May 2016, and subsequent publications, it is assembling concrete processes for holding Judges accountable for misconduct.<sup>73</sup> The exercise is founded on the Global Judicial Integrity Network established by the United Nations office on Drugs and Crime in April 2018 as drawn from Article 11 of the UN Convention against Corruption.<sup>74</sup>

### 2.4.6 The International Association of Judges

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'The Concept of "Internal Judicial Independence" in the Case law of the European Court of Human Rights', (2019) (15) *European Constitutional Law Review*, 104; Gianarelli (1988) 165 CLR 543, 578; *Re Gruzman* (1968) 70 SR (NSW) 316, 323.

<sup>68</sup> P L Ostermiller, 'The New ABA Judicial Code as a Basis for Discipline: Defending a Judge', (2007) 28 (3) *The Justice System Journal*, 309-316; W B Jones, 'First Legal Code of Ethics Adopted in the United States', (1922) 8 (2) *American Bar Association Journal*, 111-113.

<sup>69</sup> *Ibid.*

<sup>70</sup> M S Ellis and others, *American Bar Association Central and East European Law Initiative: Country Strategies for the Rule of Law Program for Alabama, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, and Slovakia* (Washington: American Bar Association, 1993) 6-140.

<sup>71</sup> European Union and Council of Europe Partnership for Good Governance 2019-2022, *Professional Standards of Interaction for Lawyers and Judges in Courts in Armenia, Belarus, Georgia, Republic of Moldova and Ukraine* (Strasbourg: Council of Europe, 2022) 19-90.

<sup>72</sup> *Ibid.*

<sup>73</sup> International Bar Association, (n. 67) 31-35, 85-89..

<sup>74</sup> United Nations Treaty Series, Vol. 2349, P. 41; Doc. A/58/422.



The International Association of Judges – an organisation with membership from over 92 countries across the world - has also joined the crusade to strengthen global guidance on judicial integrity and independence.<sup>75</sup> Among its focal points is the legal protection of judicial officers' independence from other State powers.<sup>76</sup> At regional level, Judges are beginning to adopt the rationale that since the powers entrusted to Judges are essentially tied to the values of justice, truth and freedom, their methods of dispute resolution should necessarily inspire confidence.<sup>77</sup>

### **3. Criticism of Judges: Reasons and Response**

Worldwide litigants, lawyers, observers, sympathisers and the media as stakeholders of democracy criticise Judges for diverse reasons. It is an ancient phenomenon transcending geographical distinctions. While some critics react as victims of “skewed verdicts”, others generally comment objectively on their perceived failure of the courts to effect positive social change with their decisions in sensitive controversies of global impact. There are also cynics who are pathologically doubtful of every move and decision of the judiciary as an institution during their active era. In the fourth category are commentators who conclude from clear observations the likelihood of compromised judgments. In this tangle of perception and motive the reader battles with the ordeal of distinguishing personal goals from state obligation characterised by a detached application of rules in various countries.

#### **3.1 United States of America**

For instance, in the USA there was a period when the Supreme Court was subjected to vituperative and rather unreasoned criticism for every decision involving communists and suspected communists.<sup>78</sup> At a point the chart designed by Senator Eastland of Mississippi<sup>79</sup> amplified the sentiment that in every pending case if the side supported by the communists does not lose the court is pro - communists. In a column analysing *Watkins vs. United States*<sup>80</sup> David Lawrence stated that –

The Supreme Court of the United States has crippled the effectiveness of congressional investigations. By one sweeping decision, the court has opened the way to communists, traitors, disloyal citizens and crooks of all kinds ...to refuse to answer any questions which the witness arbitrarily decides for himself are not “pertinent” to legislative purpose... Naturally, Moscow should be happy .....the communist “Daily Worker” editorials have assumed all along that the court would decide someday as it did this week, that a man can betray his country and in certain circumstances get away with it.<sup>81</sup>

At another time the school segregation cases, decided in *Brown-vs-Board of Education*<sup>82</sup> generated animosity toward the court as Southern Judges and lawyers teamed up with Southern politicians and newspaper editors in castigating the verdict as immoral, illegal and even unconstitutional.<sup>83</sup> The

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<sup>75</sup> The New Universal Charter of the Judges, Updated in Santiago, Chile on 14 November 2017.

<sup>76</sup> New Universal Charter of the Judges, 2017, Art. 21.

<sup>77</sup> Opinion No. 3 of the Consultative Council of European Judges to the Attention of the Committee of Ministers of the Council of Europe on the Principles and Rules Governing Judges Professional Conduct, in Particular Ethics, Incompatible Behaviour and Impartiality, Strasbourg, 19 November 2002; M Simonis, ‘The Role of Judicial Ethics in Court Administration: From Setting the Objectives to Practical Implementation’, (2017) 10 (1) *Baltic Journal of Law & Politics*, 90-123.

<sup>78</sup> A Lewis, ‘The Supreme Court and Its Critics’, (1961) (45) *Minnesota Law Review*, 305; *Jencks v. United States*, 353 U. S. 657 (1957)

<sup>79</sup> 104 Cong. Rec. 13343 (1958).

<sup>80</sup> 354 U. S. 178 (1957).

<sup>81</sup> *Washington Evening Star* (19 June 1957, Metropolitan es.), A 27, Col. 1.

<sup>82</sup> 347 U. S. 483 (1954).

<sup>83</sup> A Lewis, (n. 78) 307.

Supreme Court Justices were even accused of, *inter alia*, “undertaking by judicial decrees to carry out communist policies for which impeachment request was made against six of them.<sup>84</sup> Even Presidents from Thomas Jefferson to Franklin Delano Roosevelt had expressed dissatisfaction with some decisions involving the doctrine of judicial review.<sup>85</sup> The legal luminaries have also been attacked on the ground that their decisions are influenced by the views of other elite they consider important for personal rather than strategic reasons.<sup>86</sup> Subsequent verdict variations following consistent criticism by influential groups account for this conclusion as *Richmond Newspapers, Inc.-vs-Virginia*<sup>87</sup> overturned *Gannett-vs-Depasquale*,<sup>88</sup> and the decision in *Minersville School District -vs-Gobitis*<sup>89</sup> was reversed three years later in *West Virginia State Board of Education-vs-Barnette*.<sup>90</sup>

### 3.2 England

In England the tirade against Judges who wrongly convict Defendants on criminal trial has a long history, particularly since Adolf Beck was found guilty when factually innocent.<sup>91</sup> On the other hand, the Court of Appeal is regularly criticized for protracting miscarriages of justice by refusing to rectify wrongful convictions promptly. Among several others the most outstanding example was the case of *R v. Cooper and McMahon*<sup>92</sup> which lasted till the sixth appeal, when both Defendants had died, before the conviction was quashed finally. It is an illustration of a clear wrong treatment of the persons on trial.<sup>93</sup> Apart from that other areas identified as responsible for its poor performance include defence to the jury,<sup>94</sup> reverence for finality;<sup>95</sup> and its function of review rather than rehearing (meaning that it adjudicates on whether the jury ‘could’ have convicted, not on whether it ‘should’ have convicted).<sup>96</sup> There are also complaints that the court’s over-reliance on “due process” leads to the perverse conclusion that even if an innocent person is convicted as far as due process is applied, no miscarriage of justice has occurred.<sup>97</sup> In all, politicians and the media dominate criticism of Judges as most politicians interpret every unfavourable judgment as a threat to government and its policy. In 2003

<sup>84</sup> Resolution Requesting Impeachment of Six Members of the United States Supreme Court, I Georgia Laws 1957, 553-568.

<sup>85</sup> Cohn & Bolan, ‘The Supreme Court and the A.B.A. Report and Resolutions’, (1959) (28) *Fordham L. Rev.*, 233, 237-241.

<sup>86</sup> L Baum & N Devins, ‘Why the Supreme Court Cares About Elites, Not the American People’, (2010) (98) *The Georgetown Law Journal*, 1515.

<sup>87</sup> 448 U. S. 555, 580 (1980).

<sup>88</sup> 443 U. S. 368, 391 (1979).

<sup>89</sup> 310 U.S. 586, 599-600 (1940).

<sup>90</sup> 319 U. S. 624, 642 (1943).

<sup>91</sup> R Pattenden, *English Criminal Appeals 1844-1944* (Oxford: Clarendon Press, 1996) 28 -30; S Robert, ‘Post – Conviction Review in England and Wales: Perpetuating and Rectifying Miscarriages of Justice’ in G Lennon and others (eds.), *Counter-terrorism, Constitutionalism and Miscarriages of Justice: A Festschrift for Professor Clive Walker* (London: Hart Publishing, 2018) 249-267.

<sup>92</sup> [2003] *EWCA Crim* 225.

<sup>93</sup> C Walker, ‘Miscarriages of Justice and the Correction of Error’ in M McConville & G Wilson (eds.), *Handbook of Criminal Justice Process* (Oxford: oxford University Press, 2002) 506; C McCartney & C Walker, ‘Criminal Justice and Miscarriages of Justice in England and Wales’ in C R Huff & M Killias (eds.), *Wrongful Conviction International Perspectives on Miscarriages of Justice* (Philadelphia: Temple University Press, 2008) 192-193.

<sup>94</sup> D Seaborne-Davies, ‘The Court of Criminal Appeal: The First Forty Years’, (1951) *I J. S.P.T.L.*, 425.

<sup>95</sup> K Malleon, ‘Appeals Against Conviction and the Principle of Finality’, (1994) *Journal of Law and Society*, 151; P Hill, ‘Finding Finality’, (1996) *New Law Journal*, 1552.

<sup>96</sup> C McCartney & S Roberts, ‘Building Institutions to Address Miscarriages of Justice in England and Wales: “Mission Accomplished?”’, (2012) (80) *University of Cincinnati Law Review*, 1333; S Roberts, ‘Reviewing the Function of Criminal Appeals in England and Wales’, (2017) (1) *Institute of Law Journal (Jersey)*, 1.

<sup>97</sup> M Naughton, *The Innocent and the Criminal Justice System* (London: Palgrave Macmillan, 2013) 26.

Justice Collins delivered a verdict about the provision of support to destitute asylum seekers,<sup>98</sup> which was unpalatable to Ministers who desired to restrict state support access to asylum seekers. Addressing the News of the World, David Blunkett, the Home Secretary bared his disagreement when he declared that “he was ‘personally fed up’ with Judges overturning decisions made by politicians.... It’s time for Judges to know their place”.<sup>99</sup> On another occasion Justice Sullivan was criticized by Prime Minister Tony Blair for affirming the ruling of a panel of immigration adjudicators which was denied by the Secretary of State. It concerned six Afghani nationals, who hijacked a plane to escape the Taliban. The learned Judge held that the Secretary of State’s decision refusing the men to remain in the UK was an abuse of power and violation of Article 8 of the European Convention on Human Rights.<sup>100</sup> The Prime Minister retorted that “it’s an abuse of common sense frankly to be in a position where we can’t deport these men”.<sup>101</sup> Reprieve later came when the Court of Appeal dismissed the Home Secretary’s appeal against the ruling and commended Justice Sullivan’s “impeccable judgment” at first instance.<sup>102</sup> There have been others.<sup>103</sup> Media criticism, on the other hand, is targeted at any judgment perceived as unfavourable to important public interests but the negative image ascribed to the Judge is in a state of flux.<sup>104</sup>

### **3.3 South Africa**

In South Africa, the general approach of Judges and the attitude of the public have two phenomenal dimensions: apartheid and post-apartheid periods. The prime criticism of the old South African judiciary centred on the predominant adulteration of the legal system by the repressive apartheid policy which constrained Judges to administer immoral laws.<sup>105</sup> This earned it the reproach of being “the most unjust society in the world.”<sup>106</sup> The effort by liberal Judges to ease the moral burden by resorting to judicial review in the drastically attenuated setting could not yield much success as the mode of redress was reserved for only “grossly unreasonable” decisions culminating in a “recognised irregularity”.<sup>107</sup> Its occasional sensitivity to human rights was thus obscured by the overwhelming mixed record in race and security cases.<sup>108</sup> In the post-apartheid era, the Constitutional Court has been the headline as the only court with power of judicial review of constitutional issues,<sup>109</sup> and to declare when parliament or the President fails to fulfil a Constitutional obligation.<sup>110</sup> Its decisions have been criticised regularly by indigenous commentators for not being thorough in constitutionalising a benchmark of the socio-

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<sup>98</sup> *R (Q) v Secretary of State for the Home Department* [2003] EWHC 195 (Admin).

<sup>99</sup> News of the World (23 February 2003).

<sup>100</sup> *R (S) v Secretary of State for the Home of Department* [2006] EWHZ 1111.

<sup>101</sup> *BBC News* (10 May 2006).

<sup>102</sup> *R (S) v Secretary of State for the Home of Department* [2006] EWCA 1157, para. 50.

<sup>103</sup> H L Select Committee on the Constitution, ‘Relations Between the Executive, the Judiciary and Parliament’, *6<sup>th</sup> Report of Session 2006-07*, para 42; Lord Dyson, ‘Criticising Judges: Fair Game or off-limits? (*Third Annual Bailii Lecture*, Judiciary of England and Wales, 27 November 2014) 1 at 18.

<sup>104</sup> Lord Dyson, (n. 103)14; S Shetreet & S Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary* (2<sup>nd</sup> edn.), Cambridge: Cambridge University Press, 2013) 388.

<sup>105</sup> J W Pitts II, Judges in an Unjust Society: The Case of South Africa’, (1986) 5 (1) *Denver Journal of International Law & Policy*, 49; *Regal v. African Superslate (Pty) Ltd.*, 1963 (1) S. A. 102 (A); *Trust Bank van Afrika Bpk v. Eksteem*, 1964 (3) S. A. 402 (A).

<sup>106</sup> B Barry, ‘Injustice as Reciprocity’ in E Kamenka & A S Tay (eds.), *Justice* (London: Edward Arnold, 1979) 75.

<sup>107</sup> *Nat’L Transport Comm. v. Chetty’s Motor Transport*, 1972 (3) S. A. 727, 735 (A. D.); *Goldberg v. Minister of Persons*, 1979 (1) S. A. 14 (A.D.) 38.

<sup>108</sup> S Kentridge, ‘The Pathology of Legal System: Criminal Justice in South Africa’, (1980) 28 *U. Pa. L. Rev.*, 603, 615; S Kentridge, ‘Telling the Truth About Law’, (1982) (99) *S. Afr. L. J.*, 648.

<sup>109</sup> Constitution of South Africa 1996, s. 167.

<sup>110</sup> Constitution of South Africa 1996, s. 167 (4) (e).

economic rights it would enforce.<sup>111</sup> For instance *Government of the Republic of South Africa v. Grootboom*<sup>112</sup> was a case instituted by homeless citizens in Cape Town who were ejected from their homes located on private land planned for formal low-cost housing. They improvised shelter on a sports field, in the winter rains, with structures made of plastic sheeting. The court held that it was unreasonable that government's housing plan did not provide for the neediest, like Mrs. Grootboom. It emphasised that the Constitution:

requires the state to devise and implement within its available resources a comprehensive and coordinated programme progressively to realise the right of access to adequate housing... The programme must include reasonable measures ...to provide relief for people who have no access to land, no roof over their heads, and who are living in intolerable conditions or crisis situations.<sup>113</sup>

This striking declaration, short of a direct order of specified action, left Mrs. Grootboom to die years later, penniless and still homeless.<sup>114</sup> In another case it decided that government's failure to establish a national healthcare programme using the drug nevirapine to prevent "mother-to-child transmission of HIV at birth" was unconstitutional and ordered that the new treatment programme be undertaken.<sup>115</sup> Observers were dissatisfied that the court declined from ordering the government to revise its policy and submit it for the court to satisfy itself that it was consistent with the Constitution.<sup>116</sup>

#### 4. Public Criticism of Judges in Nigeria: Contemporary Dimension

Previously the allegation against the Nigerian judiciary used to be relatively mild - expression of people's anxiety to witness the court's role as an independent facilitator of the democratic machinery. Even during the military regimes, it was rare to find Judges display with impunity unguarded romance with, and subservience to, the government like political appointees. This earned the institution deep reverence despite the fact that there were losers in litigations then. Three epochal case types illustrate the value of the judiciary's integrity: while two explain the quandary that can result from this duty, the third is a concession that timeous response to unethical conduct can save the judiciary from both corporate decay and public ridicule. The first is *Awolowo v. Shagari*.<sup>117</sup> Obafemi Awolowo challenged the declaration of Shehu Shagari as winner of the 11 August 1979 Presidential election. The major contention was that as against the statutory requirement of 25% of total votes cast in at least two-thirds of the then 19 States in the country, Shagari who met the condition in 12 States did not qualify as the winner. The Supreme Court dismissed the petition and affirmed Shagari's victory; it was flayed by some scholars.<sup>118</sup> The second is the 12 June 1993 saga. The transition to civilian rule in 1993 was scuttled with a court order halting conclusion of the results of the presidential election unofficially won

<sup>111</sup> D Bilchitz, 'Avoidance Remains Avoidance: Is it Desirable in Socio-Economic Rights Cases?', (2013) (5) *Const. Ct. Rev.*, 296; J Dugard, 'Beyond Blue Moonlight: The Implications of Judicial Avoidance in Relation to the Provision of Alternative Housing', (2013) (5) *Const. Ct. Rev.*, 264.

<sup>112</sup> (2001 (1) SA (CC) at para. 4.

<sup>113</sup> *Id.* at para. 99.

<sup>114</sup> P Joubert, 'Grootboom Dies Homeless and Penniless', *Mail & Guardian* (8 August, 2008) 1.

<sup>115</sup> *Minister of Health v. Treatment Action Campaign*, 2002 (5) SA 721 (CC) paras. 4-5; 135.

<sup>116</sup> S J Ellmann, *The Struggle for the Rule of Law in South Africa*, (2015 - 2016) (60) *N.Y.L.Sch. L. Rev.*, 57.

<sup>117</sup> (1979) All NLR 120.

<sup>118</sup> S O Awofeso, 'Awolowo vs. Shagari: The Day The Law Died in Nigeria', *saharareporters.com* accessed 20 January 2020; M O Adediran, 'Awolowo v. Shagari and others: A Case of Compromise Between Law and Political Expediency', (1980) (12) *Zambia Law Journal*, 38-52; F O Osador, 'Constitutional Grounds for Questioning Elections in Nigeria: An Overview', (2019) 12 (3) *Journal of Politics and Law*, 167-177.

## **IBINGO: The Nigerian Bar Association and Protection of Justice: How not to Defend a Judge**

by Moshood Abiola.<sup>119</sup> Another pronouncement involved the disputed National Chairmanship position of the People's Democratic Party occupied by Mr. Uche Secondus. On 24 August 2021 a Judge of the Rivers State High Court, by an *ex parte* order restrained Prince Secondus from parading himself as the party's National Chairman. That order was countered on 26 August when another Judge of Kebbi State High Court made his order reinstating Prince Secondus as the National Chairman. Thereafter another interim order emanated from the Cross River State High Court restraining him from resuming office as National Chairman. The then Chief Justice of Nigeria (CJN), Justice Tanko Muhammed had to call the officers to order after summoning the Chief Judges of the affected courts.<sup>120</sup>

Although, there was a visible conspiracy against democracy, the circumstances did not justify holding the judiciary reprehensible considering its obligation to determine the suit instituted by the Association for Better Nigeria (ABN). To its vindication the military ruler, General Ibrahim Babangida later annulled the election causing widespread protest and political unrest.<sup>121</sup> In the two categories analysed, the judiciary still enjoyed public sympathy and benefit of doubt as there was no real likelihood of compromise on its part. The third class was different, as some Judges fell into the error of integrity oblivion in sensitive political cases. Generally, it took the shape of conflicting *ex parte* orders of different courts in the country. For instance, in September 2020, the participation of Edo State Governor, Godwin Obaseki, in the governorship primary election in the People's Democratic Party (PDP) received two conflicting orders: the Federal High Court in Port Harcourt barred him, but the order of the Edo State High Court, Ekpoma Judicial Division, favoured him. The rift between Ikpeazu and Ogah in 2016 is another example. A Judge of the Federal High Court in Abuja delivered a judgment in which he ordered Ikpeazu to vacate office as Governor of Abia State and directed INEC to issue a fresh certificate of return immediately. It took a phoney twist – INEC had earlier issued certificate of return to Ogah but another court in Abia State made an order restraining the Chief Judge from swearing him in.

Again, on the eve of the presidential election in 1993 Justice Bassey Ikpeme of the High Court of Federal Capital Territory made an order restraining the conduct of the election; it took the orders of other Judges to nullify it.<sup>122</sup> It is noteworthy that despite the spate of condemnations thrown at the judiciary by some members of the public and the legal profession the CJN was not distracted when he took the measure for internal cleansing. On the contrary, the new wave of criticism against the judiciary is taking a strange - even dangerous - dimension. Two decisions are responsible. The first is the controversial victory of Senate President, Ahmad Lawan. His candidature was challenged as he did not partake in the primary election organised by the All Progressives Congress (APC) when he was vying for the presidential ticket.<sup>123</sup> The second is the candidature of Godswill Akpabio who allegedly did not also take part in the primary election for the senatorial seat as he was engaged in the battle for

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<sup>119</sup> P M Lewis, 'Endgame in Nigeria? The Politics of a Failed Democratic Transition', (1994) 93 (372) *African Affairs*, 232-340.

<sup>120</sup> J C Azu and others, 'How Courts Keep Issuing Conflicting Orders Despite Criticism', *Daily Trust* (5 September 2021) 1; A Y Isah, 'Can The CJN's War End Conflicting Court Orders? THIS DAY, [cdn.ampproject.org](http://cdn.ampproject.org) accessed 1 March 2023; R Nkannebe, 'The Judiciary and The Menace of "Black Market" Injunctions', *The Cable* (2 September 2021) 1 or [www.thecable.ng](http://www.thecable.ng) accessed 1 February 2022.

<sup>121</sup> C E Welch, 'Civil-Military Agonies in Nigeria: Pains of an Unaccomplished Transition', (1995) 21 (4) *Armed Forces & Society*, 593-614; J C Okoroji, 'The Nigerian Presidential Elections', (1993) 20 (58) *Review of African Political Economy*, 123-131; E Nwokedi, 'Nigeria's Democratic Transition: Explaining the Annulled 1993 Presidential Election', (1994) 83 (330) *The Round Table*, 189-204.

<sup>122</sup> M M Osuman, 'Conflicting Orders and Decisions of Courts on Political Matters', *The Guardian* (23 August 2022) 1.

<sup>123</sup> Premium Times, 'Senate President Ahmad Lawan Wins Yobe North Senate Seat by Landslide', *Premium Times* (27 February 2023) 1.

presidency.<sup>124</sup> Stakeholders, journalists and academics alike are finding it difficult to fathom judgments of the Supreme Court in both instances, giving rise to scathing remarks. It was the bid to stop this trend that made the CJN order the public to refrain from adverse comments on the apex court's verdicts thenceforth.<sup>125</sup> In an address delivered at the Valedictory Court session in honour of Justice Ibrahim Buba on 9 February 2023, the NBA President, Mr. Yakubu Chonoko Maikyau, SAN berated lawyers for making disparaging comments about the Supreme Court judgment in the *Machina v. Ahmed Lawan* case; he also cautioned judicial officers to respect their code of conduct.

#### 4.1 The New Challenge before the NBA

It looks unsafe for Judges to engage the populace in this matter as victory appears uncertain, even impossible. Firstly, a cardinal rule of natural justice - *nemo iudex in causa sua* - will disentitle them. However, if this case is to be prosecuted and defended its venue would shift from the cosy court room to the market square, a leveller where class or wealth, learning nor popularity, age nor beauty is valued. Secondly, confidence cannot be forced out of people by command: when it is lost it dies in them only to be resuscitated when the vital components are reactivated. Thirdly, coercing them into silence will be interpreted as a veiled concession of guilt. Fourthly, the gravitation of this feud will portray the judiciary as suppressing freedom of speech, an integral element of democracy. The NBA needs to assure the citizens that justice delivery has not been compromised despite the escalated misgivings emanating from the momentary aberration. Committed to the reign of justice<sup>126</sup> lawyers are obliged to prevent loss of confidence in the judiciary by urging Judges to retain the people's support through transparency in both conduct of cases and judgment.<sup>127</sup> Judges must concede to the people their right to see how justice is being done. The configuration of judgment may be the exclusive preserve of trained minds who interpret and apply the law, policy and rules to the facts of a case. When, however, it comes to evaluating justice using the formula whether it can be seen to have been done, it is liberated from enigma as what matters is the candid opinion of a dispassionate observer. For instance, when the system lures the judiciary into dangerous romance with the other arms, and in particular makes it subservient to them for its needs, a straight-minded by-stander is very much likely to suspect foul play. This is the ordeal of the Nigerian judiciary characterised by the overbearing disposition of some State Governors who literally demonstrate in public that they fund and control it. Apart from the utterances at project commissioning venues, it is utterly demeaning for the courts to shut down and for all the revered Judges to be conscripted into a loyal political support group for a Governor whenever he orders their presence at events. This demotion of the judiciary to an appendage of the Executive has eroded public confidence

<sup>124</sup> C Ukpong, '2023: APC Leaders Ask Akpabio to Withdraw from Senatorial Election', *Premium Times* (22 February 2023) 1.

<sup>125</sup> D Antia, 'Criticism of the Supreme Court: The Virtue of Moderation', *Nigerian Tribune* (7 April 2023) 1 or [tribuneonlineeng.com](http://tribuneonlineeng.com) accessed 1 June 2023; W Igbintade, 'Supreme Court Warning: Veteran Journalist Accuses CJN of Plot to Gag Free Speech, Criticism', [thisdaylive.com](http://thisdaylive.com) accessed 1 June 2023.

<sup>126</sup> S A Fagbemi, 'X-Raying the Roles of Legal Practitioner in Adversarial System of Justice in Nigeria', (2017) 5 (3) *International Journal of Innovative Legal & Political Studies*, 21-32; G Tsa, 'Judge Tasks Lawyers on Ethics, Code of Conduct', *The Sun* (18 July 2022) 1; O Oko, 'The Lawyer's Role in a Contemporary Democracy, Promoting the Rule of Law, Lawyers in Fragile Democracies and the Challenges of Democratic Consolidation: The Nigerian Experience', (2009) 77 (4) *Fordham Law Review*, 1295.

<sup>127</sup> G Corstens, 'Criticism of the Judiciary: The Virtue of Moderation', (2017) 101 (2) *Judicature International*, 1; O Delano, 'Restoring Confidence in the Judiciary: The Role of the Bar and the Bench', *Paper Presented at 8<sup>th</sup> Annual J.I.C. Taylor Memorial Lecture*, 27<sup>th</sup> November 2011) 1-13; N Udombana, 'Restoring Public Confidence in the Nigerian Judiciary', *Conference: Fourth Public Lecture of Ritman University, Ikot Ekpene*, April 2019, 9-10.

in it especially among litigants who have cases against Government and its associates.<sup>128</sup> Nigerians are still grappling with the mystery shrouding the emergence of Hope Uzodima as Governor of Imo State. The Supreme Court judgments in the senatorial bids of Ahmad Lawal and Godswill Akpabio have now come to compound their quagmire, warranting demand for clarification – Do Judges apply laws only known to them? Are the facts of a case useful in determining success or failure? Among the dignitaries who have openly condemned the perversion of justice and sounded the urgent need for the Supreme Court to redeem its image are James Ogebe, a retired Justice of the Supreme Court, Olisa Agbakoba, a Past President of NBA, Prof. Farooq Adamu Kperogi, a Nigerian – American Professor, and Richard Akinmola, a renowned journalist - proving that the issue has crept beyond criticism to a substantial demand for restoration of the court’s integrity.

#### **4.2 Appreciating the Value of Public Confidence**

Regular evaluation of the justice system aids a nation’s progress. It is also important for the judiciary to enjoy public support and confidence in order to operate successfully.<sup>129</sup> In some countries formal apparatuses are installed to measure public confidence in the judiciary and other sectors. In Moldova, for example, the benchmark used is the biannual public opinion poll called Barometer of Public Opinion (BOP),<sup>130</sup> which covers both the opinions of those who have directly interacted with the courts and the rest of society. To complement national efforts Transparency International conducted a public opinion survey on corruption including the judiciary in 86 nations, the Global Corruption Barometer.<sup>131</sup> In acknowledgment of its value one of the measures recommended to boost global perception of the courts is the periodic independent survey among lawyers, litigants, court users and others.<sup>132</sup> It has gained so much traction that in some jurisdictions Judges adopt it as “public repute discourse” where they evaluate how their actions appear to the public.<sup>133</sup> The session is not restricted to discussions of the appearance of justice as it also encompasses interactions where Judges discover if their verdicts will undermine public confidence, not necessarily to garner public support but to protect the court’s legitimacy,<sup>134</sup> in the normative or legal context.<sup>135</sup>

#### **4.3 The Way Forward**

NBA’s target is to support a judiciary that will be respected for its unflinching commitment to justice without blemish. The role calls for a new orientation where lawyers, as ambassadors of justice, can interface with Judges, not omniscient but fallible mortals, susceptible to errors but ready to heed good

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<sup>128</sup> O Oko, ‘Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria’, (2005) 31 (1) *Brook. J. Int’l L.*, 9; I O Agbede, ‘The Rule of Law: Fact or Fiction’ in A Yakubu (ed.), *Administration of Justice in Nigeria: Essays in Honour of Hon. Justice Mohammed Lawal Uwais* (Michigan: University of Michigan, 2000) 137, 143; A G Karibi-Whyte, ‘The Place of the Judiciary in the 1999 Constitution’, (1999) *All Nigeria Judges’ Conference*, 1 November 1999) 163.

<sup>129</sup> *Baka v. Hungary* [GC] ECtHR, no. 20261/12, 164 23 June 2016; J Omejec, ‘Strengthening Confidence in the Judiciary – Appointment, Promotion and Dismissal of Judges and Ethical Standards’, (*Speech Presented at European Court of Human Rights Opening of the Judicial Year Seminar, Strasbourg*, 25 January 2019) 2.

<sup>130</sup> Department of State, USA & Freedom House, *Judicial Integrity: Achievements, Challenges, Prospects* (Washington: Freedom House, 2018) 4.

<sup>131</sup> *Ibid*

<sup>132</sup> United Nations Office for Drug Control and Crime Prevention, ‘Judicial Integrity and Its Capacity to Enhance the Public Interest’, (*Global Programme 2002*) 46.

<sup>133</sup> F Schumann, “‘The Appearance of Justice’: Public Justification in the Legal Relation’, (2008) (66) *U. Toronto Fac. L. Rev.*, 189.

<sup>134</sup> F Schumann, *supra*, (n. 133) 190; C Davidson, ‘May It Please The Crowd? The Role of Public Confidence, Public Order, and Public Opinion in Bail for International Criminal Defendants’, (2012) 43 (2) *Columbia Human Rights Law Review*, 349.

<sup>135</sup> R Fallon, ‘Legitimacy and the Constitution’, (2005) (118) *Harv. L. Rev.*, 1787, 1790; A Buchanan & R O Keohane, ‘The Legitimacy of Global Governance Institutions’, (2006) (20) *Ethics & Int’l Affairs*, 405.

counsel. It will reduce Judges' shortcomings and people's grievances thereby restoring the court's dignity. For true perception is pervasive: it dominates the memory and only fades when a superior experience replaces it, resisting forced obliteration.<sup>136</sup> During the days of Gen. Ibrahim Babangida as military President, Concord Press of Nigeria (CPN) and most Nigerians perceived that Supreme Court Justices compromised their integrity by receiving exotic car gifts from him. The Honourable Justices of the Supreme Court filed a N450m libel suit against CPN but even its withdrawal after an amicable settlement by the parties did not change the impression.<sup>137</sup> Only Judges can activate the new regime and ensure restoration of public confidence. After all public suspicion of compromise expressed as criticism helps to drive judicial integrity by calling Judges to order. As acknowledged by most legal systems in the remarks of Lord Atkin "Justice is not a cloistered virtue. She must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."<sup>138</sup> The best way for the NBA to protect Judges against ridiculous criticism is to defend justice by prevailing on the Judges to refrain from justice perversion. Otherwise all the efforts disguised to intimidate aggrieved voices will be futile.

## 5. Conclusion

To construe the current complaints against the deviation of the Nigerian judiciary from the trajectory of justice as offensive criticism is a misconception of justice and the respective roles of related institutions in accomplishing it. Given the background of dereliction there would not have been need for this outcry if the Bar and Bench were proactive. The protest of the masses can rescue the nation from judicial anarchy and unpredictability if the NBA is prepared to press for corrective measures. The moment this effort stimulates the remorse that the Supreme Court applied the wrong remedy by commanding dissenting voices to silence, the new dawn is here.

## 6. Recommendations

The study recommends as follows –

1. The financial autonomy of the judiciary should be fully implemented.
2. The practice of parading Judges like obedient political appointees behind Governors at project commissioning should be discontinued.
3. Judges should be more amenable to public comments on their performance.
4. The Nigerian Bar Association should perform its role as the people's watchdog in the justice sector.

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<sup>136</sup> A Alhassan & I Udofot, *Introduction to Psychology* (Lagos: National Open University of Nigeria, 2006) 67-73; F J Hanna and others, 'The Power of Perception: Toward a Model of Cultural Oppression and Liberation', (2000) (78) *Journal of Counselling & Development*, 430; R J Sternberg, 'Intelligence, Wisdom, and Creativity: Three is Better Than One', (1986) 21 (3) *Educational Psychologist*, 175-190.

<sup>137</sup> Daybreak Nigeria, *Supreme Justices .v. Concord Press 1993*, *Daybreak Nigeria* (20 July 2021) 1.

<sup>138</sup> *Ambard v. A. G. of Trinidad and Tobago* (1936) AC 322.