

The Impact of Judicial Education on Judicial Reform in Nigeria being a paper presented by Hon. Justice R. I. B. Adebisi at the Refresher Course for Judges and Kadis on Modern Judicial Practice and Procedure, 20th - 24th March 2017.

The goal of Judicial Education is to maintain and improve the competence of all persons engaged in the Judicial function so as to enhance the effectiveness of the Judicial system.

JUDICIAL REFORM

Judicial Reform is the complete or partial reform of a country's Judiciary. Judicial reforms can be extensive or limited but usually would address aspects of the Judiciary such as appointment and discipline of Judges, Judicial systems, maintaining social fairness and justice, strengthening human rights protection, enhancing judicial capabilities and judicial powers.

The Nigerian Judiciary has been persistently criticised for delay in disposing of cases therefore affecting business interest and ultimately investor confidence. Citizens are often frustrated as matters are not concluded with dispatch and this sometimes results in self-help and loss of confidence in the Judiciary.

Judicial Reforms is therefore a topical front burner issue which is constantly being discussed and examined.

The objectives of Judicial Education are in tandem with the objectives of judicial reform and almost identical with the principles of judicial conduct.

OBJECTIVES OF JUDICIAL EDUCATION

The objectives of Judicial Education are defined by Judge Sandra Oxner⁽¹⁾, Head of the Commonwealth Judicial Education Institute, Halifax, Canada as

- I- Impartiality
- C- Competency
- E -Efficiency
- E -Effectiveness.

The successful mix of these four objectives will result in community confidence in the Judiciary. Before proceeding further, it is necessary to define and analyse these objectives in order to enhance in further discussions.

The first is Impartiality. It denotes fairness and equity. It is essential to the proper discharge of the judicial office and applies to the decision as well as the process by which the decision is made. The symbol of justice that is almost unnecessarily applied, with slight variations in different jurisdictions, is commonly seen at Court houses, law schools, law libraries and other legal institutions.

The lady with the balance scales, sword and blindfold.

The symbol comes from ancient history. The scales are used to measure the strengths and weakness of the parties cases. This depiction dates back to ancient Egypt where the God Anubis was frequently depicted with a set of scales on which he weighed a deceased heart against the feather of Truth⁽²⁾. The sword represented authority in ancient times and symbolises the finality of justice, whilst the blindfold represents impartiality. This depicts the idea that justice should be applied without regard to wealth, status or power.

In this Country, reference to impartiality usually connotes fair hearing. Fair hearing is defined in S. 36 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as follows:

"36. (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality".

Fair hearing as defined in a plethora of authorities denotes access to justice, the opportunity to be heard and the process by which the decision is taken. The attributes of fair hearing was defined by the **Supreme Court in Pam V Mohammed (2008) 16 NWLR Part 1112 @ 85 paras B-E per Tobi JSC** (who delivered the dissenting Judgment) as follows:

"The basic criteria and attributes of fair hearing include:

- (a) That the Court or Tribunal shall hear both sides not only in the case but also in all material issues in the case before reaching a decision which may be prejudicial to any party in the case.
- (b) That the Court or Tribunal shall give equal treatment, opportunity and consideration to all concerned.
- (c) That the proceedings shall be heard in public and all concerned shall have access to and be informed of such a place of public hearing and
- (d) That having regard to all the circumstances in every material decision in the case, justice must not only be done but must manifestly and undoubtedly seen to have been done."

The second is Competency. This relates to knowledge of substantive and procedural laws as well as the softer important judicial skills such as the act of judging, decision making, oral and written communication skills and the art of appropriate exercise of judicial discretion.

Efficiency includes case management, timely pre and post-trial practises, efficient compliance with Rules of Court, process efficiency and Reform of Rules and procedures. This includes the efficient collaboration of all aspects of the entire administration of justice system as well as the efficient use of time, the Rules of Court, Alternative Dispute Resolution (ADR) techniques and case scheduling by individual Courts.

The last but no less important factor is effectiveness. For the Judiciary to be considered effective, it must be relevant, respectful and trusted by the Community it serves.

Community satisfaction can be measured by statistics on access to justice, adherence to Court orders and frequent surveys of Court users particularly counsel.

A Judicial Academy whether a formal one like what we have the privilege of having, National Judicial Institute (NJI) or designated Judges charged with the responsibility of identifying training needs and organizing suitable training supports judicial reform.

An effective Judicial Academy must first identify areas of weaknesses within the Judiciary and the Administration of Justice Sector and design programmes to address them.

These areas of weaknesses may be frequent areas of law which commonly form grounds of appeal and are subsequently overturned by the appellate Courts, new or revised areas of substantive law, case management procedures, outdated or inefficient processes, technological enhancement, insufficient use of ADR techniques to mention a few.

In identifying areas of weaknesses, a holistic review of the entire system is necessary periodically, to ensure that programs are developed to improve the capacity and effectiveness of the support staff of the Judiciary who play a major role in the Administration of

Justice Sector and in the successful implementation of Judicial Reforms.

The review process should invariably identify Judicial Reforms which will result in the development of tailor made trainings to successfully midwife such reforms.

Before proceeding to proffer judicial education methods and standards that should be adopted, it is important to understand the relationship between judicial education and the principles of judicial conduct.

JUDICIAL EDUCATION/ JUDICIAL CONDUCT

There exists in this country a code of conduct for judicial officers which was revised in February 2016.

The preamble to the Revised Code of Conduct states in part as follows:

"The Nigerian Judiciary, as the Third Arm of Government under the Constitution of the Federal Republic of Nigeria recognizes, accepts and affirms that;

- An independent, strong, respected and respectable judiciary is indispensable for the impartial administration of Justice in a democratic state.
- It is the duty of every Judicial Officer to actively participate in establishing, maintaining, enforcing and himself observing a high standard of conduct that will ensure and preserve transparently (sic) transparency, the integrity and respect for the independence of the Judiciary."

The Code of Conduct for Judicial officers of the Federal Republic of Nigeria was one of the draft copies of judicial conduct considered in drafting the Bangalore Principles of judicial conduct which was developed by the judicial group on strengthening judicial integrity (the judicial integrity group) and adopted by the United

Nations Social and Economic Council Resolution 2006/23 of 27th July 2006.

The judicial integrity group commenced in 2000. It was an informal group of Chief Justices of Bangladesh, India, Nepal, South Africa and Nigeria (Chief Justice M. L. Uwais) under the chairmanship of the Vice President of the International Court of Justice. The group held its first meeting at the United Nations office in Vienna upon the invitation of the United Nations Centre for International Crime Prevention.

The background to the meeting was the loss of confidence in judicial systems in parts of the world by citizens who perceived that they were corrupt or partial. The United Nations invited the Judiciary to put its house in order by raising public confidence in the Rule of Law. Several additional meetings were held thereafter; the second meeting was held in Bangalore, India from 24th - 26th February 2001 which explains the name ascribed to the principles. It was at the second meeting that the core values of judicial conduct were identified, the relevant principles were formulated and the Draft Code agreed.

As the Bangalore (Draft Code) was developed, principally by Judges from common law countries, it was agreed that the input of Judges from other legal traditions should be obtained to give the draft code an international status. The Draft code was shared widely among judges of both civil and common law systems, presented and discussed at several judicial conferences and meetings and a revised version developed in November 2002 at a meeting facilitated by the Department for International Development of the United Kingdom supported by the United Nations Centre for International Crime Prevention Vienna and the office of the High Commissioner for Human Rights, Geneva. The meeting was presided over by the former president of the International court of Justice- Judge Weeramanty.

The BANGALORE PRINCIPLES OF JUDICIAL CONDUCT emerged from that meeting, the core values developed in the conduct are INDEPENDENCE, IMPARTIALITY, INTEGRITY, PROPRIETY, EQUALITY, COMPOTENCE AND DILIGENCE.

Nigeria was an integral part in the drafting and development of the Bangalore principles of judicial conduct. The former CJN- Hon Justice M. L. Uwais was a member of the Judicial Integrity Group up to the development of the final document and even further up till the development of the Draft commentary in March 2006. The commentary to the Bangalore Principles contains a definition of each value and explanations and examples of each of the values.

Interestingly and logically, there exists a strong correlation between the objectives of judicial education and principles of judicial conduct.

Objectives of Judicial Education	Bangalore Principles of Judicial Conduct
1. Impartiality	1. Independence
2. Compotency	2. Impartiality
3. Efficiency	3. Integrity
4. Effectiveness	4. Propriety
	5. Equality
	6. Compotence and Diligence

The principles are defined as follows:

Independence: Judicial Independence is a pre-requite to the rule of law and a fundamental guarantee of a fair trial. A Judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Impartiality: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Integrity: Integrity is essential to the proper discharge of the judicial office.

Propriety: Propriety and the appearance of propriety are essential to the performance of all of the activities of a Judge.

Equality: Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Competence and Diligence: Competence and diligence are pre-requisites to the due performance for judicial office.

JUDICIAL TRAINING/EDUCATION

Judicial training is usually targeted at enhancing competence, in addressing substantive law deficiencies and efficiency and diligence, such as learning ADR skills (mediation), computer and other technology skills.

The emphasis in the administration of justice has shifted from administering technical justice to doing substantial justice.

This was succinctly and ably stated by **Supreme Court in Inakoju V Adeleke (2007) 4 NWLR Part 1025 @ 635 paras F-H per Tobi JSC**

"Good law, in my opinion, must have a human face, good law should not patronise technicalities that will give rise or room to undeserved victories in litigation. Good law should discourage technicalities such as the one canvassed by the learned Senior Advocate for the appellants that the case should be remitted to the trial Judge for trial on the so-called merits of the case. When I know that the matter will never be concluded before the 29th May 2007, when the office of the governor will be

filled. Good law will not encourage a situation where a party in litigation will only return home with pyrrhic victory which in reality is no victory at all. After all it is good law that courts of law do not give orders in vail and in the context of this case, an order given after 29th May 2007 restoring the 3rd Respondent to his office of Governor, will certainly be in vain, I will never be a party to such a tall order which has teeth but cannot bite. Teeth that cannot bite are useless to their owner".

The Rules of Civil Procedure nationwide have not only adopted this paradigm shift but incorporated provisions to reduce delay and improve efficiency and effectiveness.

The increased use of ADR techniques, active case management techniques and the development of Court connected Multi- Door Court Houses are some of the innovations.

The National Judicial Policy 2013 a public notice made pursuant to the National Judicial Institute Act Cap No.53 LFN 2004 was promulgated to maintain and enhance the standard of adjudication and administration. In the dispensation of justice among all judicial officers and employees of the Judiciary in Nigeria.

The National Judicial Policy is all encompassing and far reaching. It contains provisions on Judicial Independence, Accountability, Judicial ethics, Judicial Administration, Case flow management, Technology, Access to Justice, ADR procedures, Review of Outdated laws and Promoting Public Awareness, Trust and Confidence in the Judiciary.

The National Policy if adopted as a document for the development of relevant training for Judges and Court staff would within a short period bring about far reaching Judicial Reforms.

An aspect of Judicial Reform and corresponding Education that I have personally been involved with was in the Implementation of the High Court of Lagos State Civil Procedure Rules 2012. The Civil Procedure Rules of Lagos State had gone through major changes in 2004 by the implementation of frontloading of witness deposition and exhibits to be relied upon at trial and Pre-trial conferences.

The 2012 Rules was developed to address the shortcomings identified in the 2004 Rules as well as to further improve efficiency and delay. The major innovation in the 2012 Rules was the introduction of the Pre- Action Protocol, the ADR Track and mandatory screening of cases filed for suitability for ADR.

The preamble to the 2012 Rules provides as follows:

- "(a) to promote a just determination of every civil proceeding
- (b) to construe these Rules to secure simplicity in procedure, fairness, in administration elimination of unjustifiable expense and delay, efficient and speedy dispensation of justice
- (c) amicable resolution of disputes by use of Alternative Dispute Resolution (ADR) mechanism

2. 1. The Court shall further the overriding objectives by actively managing cases Active case management includes

- (a) mandating the parties to use an (ADR) mechanism where the Court considers it appropriate and facilitating the use of such procedure
- (b) assisting the parties to settle the whole or part of the case
- (c) fixing timetables or otherwise controlling the progress of the case
- (d) giving directions to ensure that the trial of the case proceeds quickly and efficiently
- (e) requiring the Claimant and his Legal Practitioner, to cooperate with the Court to further the overriding objectives by complying with the requirement of the Pre-action Protocol to wit:

- (i) that he has made attempts at amicable resolution of the dispute through mediation, conciliation, arbitration or other dispute resolution options
- (ii) that the dispute resolution was unsuccessful and that by a written memorandum to the defendants, he set out his claim and options for settlement; and
- (iii) that he has complied as far as practicable, with the duty of full and frank disclosure of all information relevant to the issues in dispute.

3. Parties and their Counsel shall help the Court to further the overriding objectives of these Rules”.

These are innovations that necessitated extensive training of Judges, Registrars, Mediators and members of the Bar. Several Stakeholders Summit were held both before, during and after implementation of the Rules. The reforms in this instance preceded judicial education.

In order to deliver on the objectives of judicial education and maintain the values of the judiciary judicial education is necessary. However, usually judicial reforms will precede judicial education. An analysis of the Judiciary will have to be undertaken, the topics that require studying will be identified and the processes to be improved upon. Once processes requiring improvement are identified then programs can be put in place to improve the processes, these may include tools, manuals, bench books and other legal and judicial information.

These are inexpensive and effective means of coverage of Judges and judicial staff. The use of technology by web broadcast, live and recorded teaching aids would greatly assist particularly in this country, which is large and expansive.

THE NATIONAL JUDICIAL INSTITUTE

The National Judicial Institute, our own Judicial Academy, was established by Decree No. 28 of the 1999 Act. It is charged with the responsibility to provide Judicial Education to Judges at all levels of Court from the Supreme Court, Court of Appeal, Federal High Court, National Industrial Court, High Courts, Sharia Court of Appeal, Customary Court of Appeal, Customary Court, Magistrates Court, Area Courts, Sharia Courts and Customary Courts as well as all judicial support staff.

The objectives and functions of the institute is stated in paragraphs 1&2 of the National Judicial Institute Act as follows:

" (1) The Institute shall serve as the principal focal point of judicial activities relating to the promotion of efficiency, uniformity and improvement in the quality of judicial services in the superior and inferior courts.

(2) For the purposes of subsection (1) of this section, the Institute is hereby empowered to---

(a) conduct courses for all categories of judicial officers and their supporting staff with a view to expanding and improving their overall knowledge and performance in their different sections of service;

(b) provide continuing education for all categories of judicial officers by undertaking, organizing, conducting and facilitating study courses, lectures, seminars, workshops, conferences and other programmes related to judicial education;

(c) organize once in two years a conference for all Nigerian Judges of superior and inferior courts respectively;

(d) disseminate by way of publication of books, journals, records, reports or other means of information about any part of its activities, to the extent deemed justified by the Board and generally as a contribution towards knowledge; and

(e) promote or undertake any other activity which in the opinion of the Board is calculated to help achieve the purpose for which the Institute was established."

The Programmes /Courses offered by the NJI include Biennial All Nigeria Judges conference for Superior Court and Lower Court, annual Induction for Newly Appointed Judges and Kadis, Refresher Course for Court Judges and Kadis, National workshop for judicial librarians for Court Registrars, for Magistrates, Sharia Court Judges, Area and Customary Court Judges , Junior Staff of the Judiciary, Judicial admin workshop for Chief Registrar, secretaries of Federal and State Judicial Service Commission and workshops on Information Technology for Confidential Secretaries & Typists in the Judiciary. In addition, the NJI also organizes seminars and workshops in collaboration with other organisations in Nigeria and abroad on other specialist areas such as Human Rights, Oil & Gas, Maritime, Telecommunications, ADR, Banking, Money Laundering, Cybercrime to mention a few.

The NJI also identifies and recommends suitable international programmes for Judges to attend.

In terms of a judicial academy, the NJI has the qualities of a well-functioning judicial academy. One major one being a formidable Board made up of Distinguished Justices, Judges the Attorney General and other distinguished members of the profession under the chairmanship of the Hon. Chief Justice of Nigeria.

However, there is no system that does not have its limitations and problems, I am sure the NJI itself will be quick to point some of them, I cannot hold Court for the distinguished members and must be careful not to turn this into a critique of their activities, which it is not intended. The aim of this foray into the activities of NJI is to identify the areas of shortcoming and proffer some suggestions on

how we can all within our respective Courts and jurisdictions compliment their efforts.

JUDICIAL EDUCATION

Training is expensive and resources are never unlimited, the number of Judges and Court staff nationwide vis a vis the number of training programmes available yearly poses great challenges of effective coverage, so much so that Judges and Court staff in some jurisdictions may have not attended an NJI programme in five years or more.

This poses great challenges for judicial reform as the ability to train Judges and staff is a panacea for judicial reform. Placing the facts on their head, can it be said that judicial reforms have not been taking place due to the deficiencies in the coverage of judicial education?

It would be uncharitable and inaccurate to even suggest that the Judiciary and the Administration of Justice Sector has remained stagnant. I have had the privilege to be on the bench for the past 15 years. Numerous reform have been introduced by way of new laws, case laws, monitoring policies (Returns) disciplinary measures, growth and adoption of ADR techniques to mention a few which have supported judicial reforms.

However, it is clear that more drastic measures are required to improve the quality of justice delivery and restore community /societal confidence in the judiciary.

Judges who attend NJI courses should be required to train their colleagues in their respective jurisdictions, train the trainer courses should be included in the curriculum of the Academy to develop these skills. Furthermore, Judges identified as faculty for the academy require skills to act efficiently as educators. These include

adult teaching techniques and presentation skills. Distance learning techniques must also be developed and deployed.

At the level of each Court, training should be provided on the areas of law, peculiar to each Court, such as Maritime Law for the Federal High Court, Industrial Law for the National Industrial Court, Workshop on Crimes prevalent in Society for the High Court and Magistrate Courts. Common approaches should be set for dealing with requests for adjournments and other delay tactics to address effectiveness, Case study training should be adopted in the review of Bangalore Principles of judicial conduct to address impartiality and therefore improve community confidence. Filing processes should be reviewed and case flow charts developed to address efficiency.

These interventions already exist in some Courts, the challenge is for those Courts where they do not. Even where they exist, how often are refresher programmes held? These interventions must be championed by the Heads of Courts, and do not require a large budget, physical or administrative structure to succeed. A few Hon. Judges with some administrative support constituted into a committee can achieve exceptional results.

We are in the 21st Century, things are ever changing, there are innovations in all spheres of our modern life, increased use and reliance on cyberspace has brought increased cybercrime, the financial sector continues to innovate, telecommunication continues to take on new dimensions. Terrorism is rife and often funded by complex money laundering techniques, climate change, intellectual property, sales of goods and services are increasingly being conducted through cyberspace (Uber, Air B & B), information is sought now by a search engine 'google' not the traditional book shelf in the library, physical crimes are now being committed online such as bullying. Libel and slander are now committed on social media, the internet has facilitated the occurrence of packaging and delivery of

goods and services in multiple locations. This is a colossal amount of content and new laws for Judges to understand and learn.

If we relate this back to the objectives of judicial education, training in these areas address competency and effectiveness only. Impartiality and efficiency are goals that need to be addressed proactively by attaching the 'softer' issues particularly on judicial ethics and conduct so that the judiciary is respected for its integrity for being transparent, impartial and independent.

A Judge with knowledge without the requisite judicial education in areas that address effectiveness such as court room decorum and case management is in danger of towing the line of the Hon Sir Hugh Imbert Penam Haalet in Jones V National Coal Board (157) 20 b55 described by Lord Denning in his book, the Due Process of Law @ page 59 & 61 as follows:

"No one can doubt that the Judge, in intervening as he did, was actuated by the best motives. He was anxious to understand the details of this complicated case, and asked questions to get them clear in his mind. He was anxious that the witness should not be harassed unduly in cross examination, and intervened to protect them when he thought necessary. He was anxious to investigate all the various criticism that had been made against the board, and to see whether they were well founded or not. Hence, he took them up himself with the witnesses from time to time. He was anxious that the case should not be dragged on too long, and intimated clearly when he thought that a point had been sufficiently explored. All those are worthy motives on which judges daily intervene in the conduct of cases and have done for centuries."

"Such are our standards. They are set so high that we cannot hope to attain them all the time. in the very pursuit of justice, our keenness may outrun our sureness and we may trip and fall.

That is what has happened here. A judge of acute perception, acknowledge learning and actuated by the best of motives, has nevertheless himself intervened so each of them- has come away complaining that he was not able properly to put his case; and theses complaints are, we think, justified.

In these circumstances, we think we must grant the widow a new trial. There is one thing to which everyone in this country is entitled, and that is a fair trial at which he can put his case properly before the judge. The widow and the National Coal Board stand in this respect on the level. No cause is lost until the Judge has found it so; and he cannot find it without a fair trial, nor can we affirm it."

In conclusion, I submit that a robust judicial education system at all levels of the judiciary will ultimately raise the level of Public confidence in the Rule of Law and accentuate judicial reforms.

Thank you for listening.

Hon. Justice R. I. B. Adebisi

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