PROMOTING INTEGRITY AND TRANSPARENCY

IN THE ADMINISTRATION OF JUSTICE

BEING A PRESENTATION BY

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A: PREAMBLE:

It is indeed a privilege for me to serve as a resource person in this Refresher Course for Magistrates on Modern Judicial Practice and Procedure. In March and April of last year, I had the opportunity to make presentations in similar fora for judges and magistrates on Emerging Issues in Civil Litigations. Permit me to appreciate and commend the Board of Governors, the Administrator and Management of the National Judicial Institute for these yearly Refresher Courses for Judges and Magistrates. There is no doubt that these courses provide a veritable means of continuing education and capacity-building, as well as a forum for exchange of ideas and for Judges and Magistrates. I am also grateful to them for the privilege to be part of this laudable endeavour.

My task is to present a paper on: **PROMOTING INTEGRITY AND TRANSPARENCY IN ADMINISTRATION OF JUSTICE.** I wish to observe that viewed liberally, this topic is an overly wide one. As an integral part of governance, justice administration extends beyond the determination of civil and criminal matters by our courts. For instance, Section 36(2) of the Constitution provides that no law shall be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law provides an opportunity for the person whose rights and obligations may be affected to make representations to the administering authority before the decision affecting that person is made; and the law contains no provision making the determination of the administering authority final and conclusive. Widely viewed therefore,

administration of justice extends even to those decisions or determinations of government bodies affecting the rights and obligations of the populace.

Conscious of the audience for whom this presentation is meant however, it has become necessary that I confine the scope of this discourse to the administration of civil and criminal justice by our courts. In line with this narrowed scope, I shall proceed to consider the general framework or machinery for justice administration and examine the factors which are imperative to its integrity and transparency and some of the problems which affect its integrity and transparency. In the process, I shall attempt to propose some solutions or measures which, in my humble and respectful view, may promote the integrity and transparency of administration of justice in Nigeria.

B: GENERAL FRAMEWORK/MACHINERY FOR JUSTICE ADMINISTRATION IN NIGERIA:

Administration of justice whether civil or criminal justice, is an imperative part of the governance. Its over-arching objective is to ensure the existence of a peaceful and conducive society – one in which its populace feel secure and able to realize their individual and collective potentials. The machinery of justice administration, especially in the context of this presentation, essentially comprises of the body of substantive laws, procedural legislations, the precedents of the appellate courts and the various justice sector institutions saddled with administration of justice.

1. SUBSTANTIVE AND PROCEDURAL LEGISLATIONS:

By substantive law is meant the law which creates the rights and obligations within society. In Nigeria, this refers to the principles of common law, the doctrines of equity and statutes, including statutes of general application (where there are no Nigerian statutes covering the same subject). See: **C. I. OLANIYAN & ORS. v UNIVERSITY OF LAGOS & ANOR. (1985) LPELR-2565(SC), per Oputa, JSC.**

In applying substantive law to a cause of action however, the settled position is that it is the law in force at the time the cause of action arose that should be applied. See: **SPDC v. ANARO & ORS (2015) LPELR-24750(SC), per Aka'ahs, JSC at page 29, paras. B – G; SUN INSURANCE NIGERIA PLC v UMEZ ENGINEERING CONSTRUCTION COMPANY LTD (2015) LPELR-24737(SC), per Kekere-Ekun, JSC at page 38, paras. D – E; and CBN v OKEFE (2015) LPELR-24825(CA), per Omoleye, JCA at pages 69 – 70, paras. F – C.** Thus, a change in the law after the cause of action had arisen will not affect the rights and/or obligations of the parties under the old law unless the new law is made retrospective.

Apart from the substantive laws, the justice sector institutions are guided by procedural rules in the implementation of their various functions. Some of these procedural rules may be embodied in the establishment statutes of these institutions or in rules/regulations made thereunder to facilitate the discharge by those institutions of their respective functions. One principal procedural statute used in administration of justice is the Evidence Act, 2011.

In civil proceedings, the main source of rules of practice and procedure in civil cases are the District Courts Rules (Practice Directions) made pursuant to Section 89(1)(a) of the District Courts Law of Northern Nigeria now adopted by the States in the Northern part of the Country, and the Magistrate Courts (Civil Procedure) Rules most of which originated from the rules made for the Eastern and Western Regions.

In criminal justice administration, apart from the laws creating federal offences, there has been no uniformity in the criminal law and procedure applied among the States of Nigeria. Although the systems of administration of criminal justice are similar, there exist some differences in the laws applicable in the Northern and Southern states. The substantive laws which apply in the Southern States are derivatives of the Criminal Code Act, while those that apply in the Northern states are derived from the Penal Code Act. Similarly, the rules of procedure applied in the Southern are essentially from the Criminal Procedure Act while the Northern states apply the Criminal Procedure Code, except for the FCT and some few States which have enacted new procedural legislations for administration of criminal justice.

It is important to note that while in the case of substantive law the legal position is that it is the law at the time the cause of action arose that is to be applied, it is not so in the case of rules of court. Rather, it is the Rules of Procedure in force at the time of the proceedings that should be applied, and this is so even if the rules are changed midway into the proceedings. See: **NWIGBO & ORS. v EBUBEALOR & ORS. (2012) LPELR-9704(CA), per Abdulkadir, JCA at page 25, paras. A – C;**

AKINYEMI v LAWAL (2013) LPELR-22326(CA), per Akinbami, JCA at pages 34 – 35, paras. B – D; and OBA J. A. AREMO II v S. F. ADEKANYE & ORS (1999) LPELR-5990(CA), per Ba'aba, JCA at pages 24-26, paras. D-B, [which decision was also affirmed by the Supreme Court, cited as **(2004) LPELR-544(SC), per Edozie, JSC**].

2. JUDICIAL PRECEDENTS:

In addition to these, there are also precedents embodied in the decisions of appellate courts which espouse the status of the law and guide the administration of justice particularly by the lower courts. As stated by our current Chief Justice of Nigeria, His Lordship Onnoghen, JSC (as he then was) in **ARDO v. NYAKO & ORS (2014) LPELR-22878(SC),** "**…**the principle of judicial precedent or stare decisis is designed to ensure orderliness, certainly and discipline in the judicial process." The principle therefore is one of the measures that secure public confidence in the integrity and transparency of the justice process.

Despite the differences in substantive and procedural laws applicable in the various States, the challenges faced in the administration of justice at the Federal level and in the States remain essentially the same. One of such challenges is the propriety and efficacy of the substantive and procedural laws in meeting public expectations. There is no doubt that where the substantive laws do not address public concerns or the procedural rules do not encourage a fair, just and expeditious administration of justice, the public are likely to lose confidence in the system of administration of justice.

Although considerable strides have been made in civil proceedings by reforming the rules of civil procedure in the High Courts, with introduction of innovations like the frontloading system, pre-trial conferencing and settlement of issues, limitations of adjournments and use of written addresses, not much appears to have been achieved in the Magistrate (District) Courts. Except for State like Lagos which has made some strides through its Magistrate Courts (Civil Procedure) Rules, 2009, the rules of procedure in most States have remained the same even in the face of new challenges requiring their urgent reform. In criminal proceedings, except for the recent efforts at the Federal level and in some few states which have enacted new administration of criminal justice laws the rules still remain the Criminal Procedure Code and the Criminal Procedure Act.

A major problem with our body of substantive and procedural criminal laws therefore is their archaic and outdated nature. As stated above these laws were derivatives of the Criminal Code Act and Criminal Procedure Act of the Southern Region; and the Penal Code and Criminal Procedure Code of the Northern Region. Not surprisingly, the penal scope contained in these laws has remained largely custodial, with the punishments contained in these legislations ridiculously out of tune with the modern methods of crime control. Whilst most of the offences described in these old laws have mutated to become more complex as a result of the advancements and developments in human life, the custodial and monetary punishments for the offences have also become ridiculously low, inadequate and obviously outdated to serve the objective of crime control. Except for the recent reforms undertaken at the Federal level and in some few states like Lagos, Cross River, Enugu, etc., which have enacted new procedural legislations to expand the

penal scope to non-custodial sentences and address some other deficiencies, the body of our criminal law has largely failed to meet public expectations as instruments of effective criminal justice administration.

One must observe that even the reforms recently carried out have been largely in the area of procedural legislations. The recent Evidence Act, 2011 has commendably tried to address inter alia, the problems of admissibility of modern types of evidence. The Administration of Criminal Justice Act, 2015 enacted at the Federal level, as well as new Administration of Criminal Justice Laws made by some States have also tried to correct deficiencies and inadequacies in the previous procedural laws with the objective of ensuring a greater access to justice and a more fair and timeous system of criminal justice administration, both at pre-adjudicatory, adjudicatory and post-adjudicatory stages. Some of these reforms include measures aimed at ensuring greater accountability in the handling of suspects by investigative, prosecutorial and custodial institutions, the expansion of the penal scope to include non-custodial sentences like community service, parole and probation; as well as the balancing of the tripod of interests in criminal justice litigation by reinforcing the imperatives of compensation, restitution and restoration.

While these reforms represent some achievements towards correcting some of the procedural impediments to the administration of justice, it appears little attention has been given to the reform of substantive criminal law legislations. Apart from the fact that some offences described in these laws have mutated and become more complex, requiring a better description, the punishments in these

legislations still remain either terms of imprisonment or fines or both. Most of these punishments are ridiculously low compared to the current complexity and severity which these offences have acquired. Indeed, some of the penalties are still denominated in pounds. Clearly, our substantive criminal laws are not in tandem with the reforms which have been introduced in the new procedural legislations, especially in the area of the non-custodial sentences stated above. This situation clearly makes it difficult for the judicial officer (judges and magistrates) to impose the non-custodial sentences contained in the new procedural law instead of those expressly provided for the offences in the substantive laws.

There is no doubt that the deficiencies in the substantive and procedural laws which drive the system of justice administration do limit the ability of the system to meet public expectations. The propriety and efficacy of these laws in meeting the demands of justice will certainly elicit more public confidence not only in the laws themselves but also in the administration of justice. Serious law reform is therefore required in the body of our criminal laws by the Federal Government and by the States, particularly in the offences and punishments which these laws impose, in order to promote the integrity and transparency in our system of justice administration.

In the Federal Capital Territory where the new ACJA, 2015 has introduced non-custodial sentences, the necessary institutions needed to give effect to these non-custodial sentences, such as community service centres, parole and probation services and yet to be established. Similarly, the requisite specialized human

resources to man these institutions are yet to be provided. It is therefore difficult if not impossible for judges and magistrates to give effect to those non-custodial penalties.

3. INSTITUTIONAL CAPACITY:

Critical to the integrity and transparency in administration of justice is the capacity of justice sector institutions to efficiently deliver justice. These institutions include the courts, the investigative and prosecutorial agencies, the Bar, custodial institutions and other support agencies. Institutional capacity is therefore an imperative requirement to the integrity and transparency of justice administration. This institutional capacity starts with the adequacy of institutional infrastructures as against the public demand for the services which these justice sector institutions are mandated to provide. It is a known fact that virtually all the justice sector institutions have no adequate institutional presence and capacity to cope with the public demand for their services.

(i) Investigation: The investigative institutions, all of whose mandates are national in nature, have not been able to cover the geographical scopes of their functions. Even where branches of these institutions exist, the structures are usually not in good condition and lacking in the requisite personnel and tools which will enable these institutions to effectively deliver on their mandates. The Nigeria Police whose cases are mostly handled by the Magistrate Courts has remained inadequately manned, ill-equipped and under-funded to effectively investigate crimes. It is lacking even in the most basic of crime investigation tools such as crime scene equipment and forensic facilities. Complainants often have to

fund the investigation of their complaints, as the expenses of investigating police officers (IPOs) are not provided for by the Government. Police management is still unable to device ways to minimize the problems of transfers of detectives and investigating police officers (IPOs) without due regard to their imperative roles in the adjudicatory process.

(ii) *Prosecution:* Obviously, those officers of the police who prosecute on behalf of the institutions face the same problems. However, this story appears to be the same for the other prosecutorial institutions. Apart from the inadequacy of prosecutors compared to the case load, the prosecutors have not been empowered to perform their functions effectively. Most of the prosecutors are lacking in the requisite training. In fact, in most states, lay prosecutors still prosecute before our Magistrate Courts. These lay prosecutors lack the basic legal training to undertake efficient prosecution of cases. Even in states which have done away with lay prosecutors, such as the FCT, a new problem of the dearth of prosecutors has cropped up, as a result of the inability of the government to ensure adequate number of legal practitioners who could replace them. In addition, the prosecutors are poorly paid, poorly motivated and ill-equipped to effectively handle their functions.

(iii) *Adjudication:* In most States court rooms are inadequate and judicial officers have to share court rooms. Where the court rooms exist, they are mostly in dilapidated state. The method of recording proceedings has also remained tediously manual in even the most urban of our centres. Although the constitution has made provisions to secure the independence of the judiciary,

including its financial independence by requiring in Section 162(9) that monies meant for the judiciary in the Federation Account be paid directly to the National Judicial Council for disbursement to heads of courts, the State Governments to have been reluctant to finance even their own established Magistrate Courts not to talk of the entire capital expenditure of the judiciary in their respective States. Several efforts made towards solving this problem, including court intervention, have proved abortive.

(iv) *The Bar:* Although we produce thousands of legal practitioners yearly, the issues of capacity and quality of the rendition of legal services remain a problem to efficient justice administration. First, it is beyond doubt that the quality of training in our law institutions has waned over the years, thus affecting the quality of legal services rendered by legal practitioners. The system of continuing education which should exist in the profession is still not so articulate and reinforced. Second, most law firms are basically sole practice in outlook and the legal practitioners personally handle most of their cases and refuse to employ juniors. Hence not only are they usually ill-prepared to personally give adequate attention to the number of cases they have, they frequently delay the dispensation of such cases in court by constantly asking for adjournments or stand downs to enable them handle other cases. Even in large law firms, principals are reluctant to handover to juniors or delegate them to handle some of those cases. These have affected the capacity of the Bar to effectively provide the requisite legal representation for efficient administration of justice.

(v) *Legal Aid:* Another major problem with legal representation is its affordability. As earlier stated, the Federal Government has established the Legal Aid Council of Nigeria (LACON), vide the Legal Aid Act, 2011. Despite the expansion of the scope of such legal aid in the new Act to cover criminal and civil defence and community services, LACON virtually suffers from the same infrastructural, financial and human resource deficiency as the other government justice sector institutions. Because of these deficiencies, the Council has been unable to effectively provide legal aid to all those in need. This has invariably limited the right of access and of legal representation to indigent and vulnerable groups to justice. Although pro-bono services by lawyers could have ordinarily covered the yawning gap, the pro-bono services offered by lawyers has not been well structured and monitored. Rather, it has largely been left as a voluntary gesture, and for those who may want to utilize same to boost their future aspirations in the profession. The result has been that legal aid for the indigent and vulnerable groups has been largely restricted due to problems of its availability.

(vi) *Custodial Institutions:* Our custodial institutions are in no different state with regard to these problems. The infrastructure in our prisons is not only inadequate but is in the most dilapidated of conditions, with some of the prison buildings dating back to the colonial era. The congestion in our prisons is legendary, with inmates packed in small rooms like sardines. We do not have adequate boarstal facilities and child remand or protection homes to take care of our juvenile offenders. The existing custodial institutions are also lacking in the

requisite facilities and expertise for reformation, rehabilitation and reintegration of offenders. Indeed, it has severally been stated that our prison inmates come out of our custodial institutions worse than they have entered. Worse still, there are virtually no child-related institutions to cater for the handling of children who come into contract with the law.

It is important to state that our custodial institutions are primarily meant to serve as correctional centres. The period of imprisonment is supposed to be used to ensure as much as possible that upon his return to society the offender is not only willing but able to lead a law abiding and self-supporting life. The failure of the our custodial institutions, in particular the Nigeria Prisons Service to effectively provide these services has undoubtedly reflected on the justice sector's inability to meet its primary objective, the correction and reintegration of offenders back to the society as good citizens. This has affected the level of public confidence in the integrity of justice administration.

C. INSTITUTIONAL CONTROL MEASURES:

Apart from institutional capacity, there are constitutional, statutory or regulatory controls to the exercise of the functions and powers of justice sector institutions (stakeholders), all aimed towards ensuring a transparent and accountable system of justice administration. These controls are both in the legal confines put in place to ensure the integrity and transparency in the discharge of the functions of these institutions, and in the control of the conducts or attitudes of the personnel who run these institutions.

1. INVESTIGATING INSTITUTIONS:

Apart from the constitutionally established Nigeria Police Force which is by Section 4 of the Police Act, Cap P19, LFN, 2004 generally empowered to investigate crime, other statutory agencies have been established with more specific mandates to investigate specific types of crimes. Examples of these agencies are the Economic & Financial Crimes Commission (EFCC), the Independent Corrupt Practices & Other Related Offences Commission (ICPC), and the National Drug Law Enforcement Agency (NDLEA), which are established to investigate economic and financial crimes, corruption and illicit drug trafficking, respectively. All these investigative agencies have been conferred with wide police powers especially in their respective establishment statutes. These include the powers of arrest, search and detention.

Given the enormity of these powers and their effect on the liberties of the populace, the Constitution as well as other relevant statutes have provided legal confines within which such powers can be legitimately exercised with appropriate sanctions for breach thereof. In Chapter IV relating to fundamental human rights, the Constitution of the Federal Republic of Nigeria, 1999 has made elaborate provisions as to the circumstances in which the police powers of investigative institutions can be legally exercised. Of note is Section 35 of the 1999 Constitution which regulates the use of powers of arrest and detention by investigative institutions. In addition to those constitutional safeguards, the establishment laws and regulations of the respective investigative institutions as well as other

relevant laws have made provisions which guide and control the exercise of those powers.

Most public complaints and loss of public confidence in the transparency and integrity of investigative institutions at the pre-adjudicatory stage, stem from the brazen abuse of these police powers by the personnel of these investigative institutions. In several instances investigative institutions have ventured into purely civil transaction contrary to their statutory mandates. See: **MCLARENCE v JENNINGS (2003) 3 NWLR (PT. 808) 470; and AFRIBANK NIG. PLC v ONYIMA (2004) 2 NWLR (Pt. 858) 654.** Our courts continue to be inundated with fundamental rights enforcement cases resulting from the abuse of police powers by investigative institutions and their personnel. Millions of public funds have been lost to damages awarded against these institutions and their personnel for human right abuses by the Courts. In most cases the personnel of these institutions who are culpable for these infringements and public losses (both losses of public resources and of public confidence) are hardly brought to book. But it is important to state that these cases rank the most in building public confidence for the Judiciary, because they seek to protect the individual against arbitrariness by the institutions of State. Efforts must therefore, be made to hold the investigative institutions and their personnel to a greater level of accountability in the powers which they exercise during the performance of their investigative functions.

2. PROSECUTORIAL INSTITUTIONS:

Sections 174 and 211 of the 1999 Constitution (as amended) respectively empower the Federal and State Attorneys-General to institute, takeover or discontinue criminal proceedings against any person in any court of law in Nigeria except a court martial. The Attorney-General of the Federation exercises these powers with respect to violation of Federal laws, while the Attorneys-General of the States do so in respect of violation of the laws of their respective States, although the latter may exercise their powers in respect of Federal laws meant to take effect as state laws, e.g. the Robbery and Firearms (Special Provisions) Act, 1970. See: **EMELOGU v THE STATE (1988) NWLR (Pt. 78) 524.** These powers of the Attorneys-General may be exercised by them or through officers of their departments. In **A-G, KADUNA STATE v HASSAN (1985) 2 NWLR (Pt. 8) 483,** the Supreme Court held that the powers of the Attorney General are personal to him and same can only be exercised by another person if the Attorney- General delegates them to that person, and that before such a delegation can be made there must be an incumbent Attorney-General who can delegate the powers.

In the recent case of **SARAKI v F.R.N (2016) 2 NWLR (Pt. 1495) 25,** it was held that as a constitutional or statutory office created by Section 150 of the 1999 Constitution, the office of the Attorney-General of the Federation if a continuum and remains in existence as an artificial juristic person and can only be abolished by a constitutional amendment. Although the office of the Attorney-General is a continuum, the duties and functions of the Attorneys-General can only be performed by biological or natural persons appointed to occupy the offices.

The Attorney-General can also brief private legal practitioners to prosecute on behalf of the Federation or State as the case may be, either alone or with a member of the Attorney-General's Chambers. Section 4 of the Law Officers' Act, LFN, 2004 also provides that in the absence of the Attorney-General, the Solicitor-General may perform the duties of the Attorney General. In the exercise of these powers, the Attorneys-General are mandated to have regard to the public interest, the interest of justice and the need to prevent the abuse of legal process.

Apart from the constitutional powers of the Attorney General, other statutory investigative institutions like the Police, the EFCC and ICPC have been conferred with prosecutorial powers. The Nigeria Police which by Sections 4 and 23 of the Police Act has the powers of investigation and prosecution of criminal cases under Federal and State laws, has been using non-lawyer general duty police officers (lay prosecutors) to prosecute cases before the Magistrate Courts throughout the Country. But the recent reforms introduced in the Federal Capital Territory and in some States has done away with these lay police prosecutors and limited such powers of prosecution to only lawyers. For instance, Section 106 of the Administration of Criminal Justice Act, 2015 applicable in the Federal Capital Territory, has done away with the use of lay prosecutors to prosecute criminal cases in the Federal Capital Territory. The Section has now limited the power of prosecution to the Attorney General of the Federation or a law officer in his Ministry or Department or a legal practitioner authorized by the Attorney-General or by the Act or any other Act of the National Assembly. This has now modified the Supreme Court decision in **OSAHON v FRN (2006) 2 SC (Pt. II) 1,** in the sense that only lawyers within the Nigeria Police Force can prosecute criminal cases

under the Administration of Criminal Justice Act, 2015. It is however observed that lay prosecutors are still being used to prosecute cases in Magistrate Courts in most States.

There is no doubt that the convergence of investigative and prosecutorial powers in institutions like EFCC and ICPC has reduced considerably the delays in the interdependence between the investigative and prosecutorial institutions, especially in the delays experienced awaiting legal advice and prosecutorial decisions on investigated cases. But the flip side to this achievement is that sometimes the checks and balances which should exist between the two segments is lost when the investigation and prosecution of offences by these institutions is hurried as a result of government or public pressure brought to bear on the management of these institutions.

It is important to stress that by virtue of the over-arching constitutional powers of the Attorney-General of the Federation, the prosecutorial powers of these institutions are deemed to be exercised on behalf of the Attorney-General of the Federation; and in the case of state offences prosecuted by the Nigeria Police, on behalf of the Attorney-General of the State.

Apart from governmental institutions, the law also permits prosecution by private persons. Sections 143 of the Criminal Procedure Code (CPC), 342 of the Criminal Procedure Act (CPA) and Section 109 of the Administration of Criminal Justice Act, 2015 permit the institution of criminal prosecution by private persons other than a law officer. But this is under certain conditions. A private person seeking to

prosecute must obtain an endorsement on the information by a law officer certifying that he has seen such information and does not intend to prosecute the offence contained therein at the instance of the public. The private person must also enter into a recognizance in the sum of N100.00 (One Hundred Naira) only, together with surety in the like sum and undertake to prosecute the said information diligently. But under the CPC, the institution of criminal proceedings by private person is done by the Court taking recognizance of an offence from information received from persons other than a police officer if the court has reason to believe or suspect that an offence has been committed. Hence, the CPC does not specify the requirement of a recognizance or surety or any deposit in lieu thereof.

But under Section 383 of the Administration of Criminal Justice Act, 2015, it is a private legal practitioner who is empowered to prosecute and before he does so he must obtain an endorsement of the Attorney-General of the Federation or a law officer on the information. He must also enter a recognizance in such sum as may be fixed by the Court with a surety to prosecute the information to conclusion; pay cost as may be ordered by the court and deposit in the registry of the court such sum of money as the court may fix.

The new provisions in the ACJA, 2015 seeks to safeguard against frivolity, such that only private legal practitioners who are serious enough should commence criminal prosecutions. By the provisions of Section 383(2) of the ACJA, where the Attorney-General of the Federation declines to give consent to a private legal practitioner he shall give reasons in writing within 15 working days from the date

of receipt of the application. Where the Attorney-General refuses to endorse a private information or charge and refuses to give reasons as aforementioned, he is compellable by an order of mandamus to do so. See: **FAWEHINMI v AKILU (1987) 11-12 SCNJ 151.**

It is worthy of note that although the ACJA has replaced lay prosecutors with legal practitioners, there is currently the challenge of availability of legal practitioners in the Federal Ministry of Justice to take charge of the prosecution of criminal cases under the ACJA before our Courts. Prosecutorial absence is still being recorded in the Magistrate Courts and in the High Courts. In most cases, the Prosecutors who handle several cases in a given day had to kangaroo-jump from one court to another in order to try to meet up the prosecutorial demands. This has hampered effectiveness in the prosecution of criminal cases. Therefore, there is the urgent need to do an assessment of the number of cases before our courts as against the available prosecutorial capacity. The obvious gaps in prosecutorial capacity must be remedied to ensure effectiveness in this area.

To streamline prosecutorial functions and ensure the integrity and diligence of prosecutorial personnel, the Body of Attorneys-General under the Chairmanship of the Hon. Attorney-General of the Federation has prepared a National Prosecution Policy, Guidelines for Prosecutors and a Code of Conduct for Prosecutors. It is hoped that when these instruments are effectively put to use some of the observed problems associated with the prosecution of criminal cases before our courts will be obviated, and the integrity and transparency of the justice process will be more enhanced.

3. LEGAL REPRESENTATION (THE BAR):

The law grants the right to legal representation to persons involved in civil or criminal litigations before our courts. Section 36(6)(c) and (d) of the 1999 Constitution (as amended) grants a person who is charged with a criminal offence the right to defend himself in person or by legal practitioners of his choice, and the right to examine in person or through his legal practitioners the witnesses of the prosecution before any court or tribunal and also present his own witnesses to testify on his behalf. Also, Section 8(1) of the Legal Practitioners' Act provides for the legal practitioner's right of audience in all courts of law in Nigeria.

It is significant to state that the right to legal representation of one's choice invariably raises a question of affordability of legal services. In criminal cases, some indigent defendants charged with criminal offences do not have the wherewithal to afford legal representation. Although the government has established the Legal Aid Council of Nigeria (LACON) under the Legal Aid Act, 2011, such aid has been largely restricted due to factors of availability. Under the law a defendant charged with capital offence must be represented by a Counsel at every stage of the proceedings. See: **UDO v THE STATE (1988) 6 SCNJ 181 at 199; UDOFIA v STATE (1988) 7 SCNJ (Pt. 1) 118 at 123; JOSIAH v STATE (1985) 1 NWLR (Pt. 1) 125; and SAKA v STATE (1981) 11-12 SC 65.**

Indeed, in **ADEBOYE v. THE STATE (2011) LPELR-9091(CA),** Nweze, JSC explained this constitutional right to legal representation in the following words:

> A perusal of section 36 (6)(b) and (c) of the Constitution of the Federal Republic of Nigeria would reveal that this matter goes beyond legal technicalities. The net effect of the sections is that an accused person must be afforded adequate time and facilities for the preparation of his defence and to defend himself in person or by a legal practitioner of own choice. Indeed, such is the robust corpus of case law on this question that one may, legitimately, speak of the jurisprudence of legal representation in capital offences.

One of the major issues with legal representation is its affordability by indigent and vulnerable groups. Before now the entitlement to legal aid services was restricted only to indigent defendants charged with capital offences. But the new Legal Aid Act, 2011 has expanded the scope of legal aid beyond cases involving capital offences. By Section 8 of the Act the scope of legal aid now covers three broad areas of criminal defence service, civil litigation service and community legal services. Unlike before, the new policy on legal aid lays more emphasis on the indigent status of those in need of legal aid, than on the nature of the case for which legal aid is sought. Whilst this is a welcome development which improves access to justice, the challenge now is that of availability of the legal aid services. While inability to afford legal representation in civil cases may be of a lesser effect, in criminal proceedings it could be of very grave consequences.

By Rule 30 of the Rules of Professional Conduct for Legal Practitioners, “a lawyer is an officer of court and accordingly, he shall not do act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of

justice.” This duty of the lawyer to the court is more important than his duty to his client. In **UDOFIA V. THE STATE (1988) LPELR-3305(SC),** Oputa, JSC emphasized this duty when he held:

> In my view, a right to have one's case or defence conducted by a legal practitioner inevitably imposes an obligation on that legal practitioner, otherwise that right becomes hollow and meaningless.

Indeed, in THE QUEEN v JOHN UZOMKWU (1958) 3 F.S.C. 14, the Federal Supreme Court spelt out some of a legal practitioner's obligations in murder cases, thus:

> We wish to make it known, however, that in our view no more important professional duty, and we emphasise the word "duty" falls to members of the Nigerian Bar than that of representing persons charged with murder and that once counsel accepts instructions in such a case, he is expected to give it priority to all other engagements, however important or lucrative they may be..."

Unfortunately, legal practitioners have not been held to a greater level of accountability with regard to their status as officers of court in this Country. To underscore this point, I make reference to the English case of **MEEK v FLEMING (1961) 2 Q.B. 366-385.** In that case, Victor Durand, QC, who is also a member of the Nigerian Bar, was suspended from practice for two years for concealing certain facts from the court. In a case of assault and wrongful imprisonment against the Metropolitan Police, he was the defence counsel before a judge and

jury. At the time the case was filed, the Defendant, Chief Inspector Fleming who was central to the case and a key witness was a Chief Inspector, but at the time of trial he had been reduced in rank by a disciplinary board to a Station Sergeant for being part of an arrangement to practice deception on a court of law. This fact which was known to the Defendant's legal advisers led by Victor Durand who took a decision not to make it known to the court. Even when the Defendant affirmed under cross examination that he was a Chief Inspector and had been in the Force since 1938, Victor Durand who knew it was a lie did nothing to correct it throughout the trial. Though he won, the judgment was set aside on appeal and Victor Durand paid dearly for the failure in his duty to the court. His career was in ruins.

But in our clime it has practically become the norm for lawyers including senior lawyers to employ various antics to delay, obstruct or adversely affect justice. This attitude has caused great havoc upon the integrity of the justice process. Unhappily, most of the blame is heaped upon the judiciary and the judicial officers before whom these matters are pending.

In one of his first public outing at an anti-corruption forum in Sheraton Hotel, Abuja, after he was sworn in as the substantive Chief Justice of Nigeria, His Lordship Hon. Justice W.S.N. Onnoghen, CJN alluded to the fact that most times judges are ready to proceed with the matters before them, but it is the Counsel that bring one reason or the other to delay or obstruct the progress of the cases. I shall examine this problem towards the end of this presentation when I consider

performance accountability. I shall then attempt to proffer some seemingly radical solutions to this problem.

4. THE JUDICIARY (COURTS):

Section 6 of the Constitution establishes courts for the Federal Republic of Nigeria. These include the superior courts listed therein and such other courts as may be established by laws of the National Assembly or the Houses of Assembly of the States. The Magistrate Courts belong to the latter category, being courts established by the laws of the National Assembly (only in the case of Magistrate Courts in the FCT) and by Houses of Assembly in the States.

Right of Access: Section 6(6)(b) Constitution of the Federal Republic of Nigeria 1999 (as amended) grants right of access to courts. It provides that the judicial powers "shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person."

Although the right of access to justice cited above is an immutable constitutional right which cannot be taken away by any other law, the right of access to justice as granted above has received judicial interpretations over the years. Apart from the imperative requirement of a cause of action, a claimant must also show sufficient interest in the cause or matter in order to have the standing or competence to bring the action to court for redress. In legal parlance, a claimant must show his locus standi to be able to bring the action. See: **TAIWO v**

ADEGBORO & ORS (2011) LPELR-3133(SC), per Rhodes Vivour, JSC at page 14, para. E.

There is no doubt that as an aspect of justiciability, the requirement of locus standi, like that of cause of action, has served the purpose of safeguarding the courts from frivolity. However, this legal requirement suffers from the same complexities and difficulties inherent in justiciability. For instance, it is seen by proponents of public interest litigations as an impediment to ensuring transparency and accountability in the conduct of public affairs. They argue that the inability of the public to be able to access the courts for redress even in the face of glaring public dereliction has affected public confidence in the ability of the justice system to provide the mechanism through which they can hold those in positions of public trust to account. For this reason they continue to agitate for more open access to the courts in the public interest. Whilst the agitations continues to rage, it is observed that some of the negative public perception of the judicial system stems from the exclusion from the right of litigation by members of the public of cases which the public, rightly or wrongly, perceive to be glaring infractions of public trust on the part of public officers.

Apart from the right of access to courts, the mode of access is also very important to the integrity of justice administration. The mode of approach to the courts must not make the exercise of the constitutional right of access difficult in such a way as to defeat its essence. In civil proceedings before the District and Magistrate Courts, cases are commenced by way of plaint or claim. [See Order II Rule 1 of the District Courts Rules and Order 1 Rules 1 and 4 of the Lagos State

Magistrate Courts (Civil Procedure) Rules]. The rules provide that upon application by the Plaintiff, the Registrar shall enter into the cause book the plaint or claim.

A plaint or claim is a statement containing the names and last known place of abode of the parties and the substance of the action. Under Rule 2(1) of the District Court Rules, the District Court is empowered to refuse to entertain a plaint if on its face it does not disclose a cause of action or if it contains a subject matter which is not within the court's jurisdiction or where the Plaintiff fails to state his address. [See also Order 1 Rule 5 of the Lagos State Magistrate Courts (Civil Procedure) Rules where a claim may be refused for the same reasons]. In the District Court Rules, the refusal of the court to entertain a Plaint is however appealable as an order of court and such a refusal does not preclude the Plaintiff from filing a fresh plaint in respect of the same cause of action. [See: Order II Rule 2(2) & (3)].

Under Section 143 of the CPC, the five ways in which criminal proceedings may be commenced in the Magistrate Court are: (1) when an arrested person is brought before the court under Section 40 or 41 of the Code; (2) upon receiving a First Information Report under Section 118; (3) Upon receiving a complaint in writing from the Attorney General; (4) upon receiving a complaint of facts which constitute the offence; and (5) if from information received from any person other than a police officer the court has reason to believe or suspect that an offence has been committed. Under Section 77 of the CPA however, access to

Magistrate Courts in criminal proceedings is by way of a complaint whether or not on oath.

Whilst the above modes of initiating criminal proceedings in the Magistrate Courts still remain most of the Northern and Southern States, the new Administration of Criminal Justice Act, 2015 applicable to Federal offences and offences in the FCT has blended and modified the these modes. Under Section 109 of the ACJA, 2015, criminal proceedings may be instituted in the Magistrate Court by a charge or complaint whether or not on oath or upon receiving a First Information Report.

It must be stressed that access to court is an imperative element of an effective judicial system. The populace must be able to easily access the courts regardless of their social status or income level. In this regard, the mode of access must be made less cumbersome and less expensive. In civil proceedings, the fees payable for the filing of the suit and other processes must be such as would enable the population in general to have recourse to the courts without hindrance. Although the modes of access stated above appear to meet this requirement, its smooth usage has in practice been made difficult by the corrupt practices of court staff who employ all antics to clog its smooth usage. This has hampered the access to justice by court users who lack the financial resources to face the licit and illicit litigation costs.

D: IMPERATIVE VALUES OR PRINCIPLES OF JUSTICE ADMINISTRATION:

As a directive principle of state policy, the Constitution provides in Section 17(1) that the State social order is founded on the ideals of freedom, equality and justice. In furtherance of that objective, subsection (2)(e) of that section states inter alia, that the independence, impartiality and integrity of courts of law and easy accessibility thereto shall be secured and maintained.

The Constitution therefore, recognizes that the effectiveness of the justice process as an instrument of achieving social order founded on ideals of freedom, equality and justice, is dependent on the independence, impartiality and integrity of our courts. These fundamental values and principles of adjudication have also been reflected in the Code of Conduct for Judicial Officers.

1. INDEPENDENCE:

The independence of the judiciary is an objective characteristic. It is a derivative of the theory of separation of powers. Judicial independence applies both to judiciary as an institution and to the judicial officers who are saddled with the onerous task of adjudication. Other than the law and the facts adduced before them, judicial officers must be capable of discharging their duties free from any form of influence or pressure by the executive or legislative branches of government or even by their superiors or economic interest groups.

In **MAGAJI v NIGERIAN ARMY (2008) 8 NWLR (Pt. 1089) 388,** the Supreme Court, per Tobi, JSC held at 376 that:

> It is straight and strict law that tribunals or courts of law, by their special place in the adjudicatory process, should not condescend to the nitty-gritty of the dispute or flirt with the evidence in a way to compromise its independent and unbiased position in the truth searching process. A tribunal or court is expected to hold the balance in an egalitarian way so that the parties and the person present in court will not accuse the body of bias. This is the real essence of our adversary system of the administration of justice as opposed to the inquisitorial system of the French prototype.

It must be observed that contrary to bandied thoughts, judicial independence is not a privilege to the judicial officer for his personal benefit. Rather, it is an necessary requirement in order to protect the public from arbitrariness and abuse of power.

2. IMPARTIALITY:

This is a supreme value which encompasses the values of independence and integrity. It is a moral value embodied in the person's inner self. In the realm of adjudication, it means evaluating facts based on applicable law in a balanced manner, devoid of any prejudice and/or predilection. In procedural terms, it means holding the balance of scale evenly, devoid of any act that would favour the interests of any of the parties involved. In **OKODUWA & ORS v THE STATE (1988) LPELR-2457(SC),** the Supreme Court, per Nnaemeka-Agu, JSC held emphasized this imperative requirement, thus:

> Basically it is the role of the Judge to hold the balance between the contending parties and to decide the case on the evidence brought by both sides and in accordance with the rules of the particular court and the procedure and practice chosen by the parties in accordance with those rules. Under no circumstance must a judge under the system do anything which can give the impression that he has descended into the arena, as , obviously sense of justice will be obscured.

It is clear from the above, that even appearance has become a value, as it is not enough for a judicial officer to be impartial; he must be seen as impartial by the users of justice. This imperative of transparency was also lucidly captured by Hewart, CJ in the English case of **R v SUSSEX JUSTICES EX PARTE MACARTHY (1924) 1 K.B. 256,** when he held at page 259 thus:

> It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

The above dictum was quoted with approval by the Supreme Court in **LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE v CHIEF GANI FAWEHINMI (1985) 2 NWLR (Pt. 7) 300.** See also: **THE ADMIN. & EXEC. OF THE ESTATE OF ABACHA v EKE-SPIFF & ORS. (2009) LPELR-3152(SC), per Aderemi, JSC at pages 36-37, paras. E – G; OLASEINDE & ORS v FHA & ORS (1999) LPELR-6235(CA), per Aderemi, JCA (as he then was) at page 14, para. D; and OKOMU OIL PALM LTD. v OKPAME**

(2006) LPELR-7708(CA), per Aderemi, JCA (as he then was) at page 20, paras. A – D.

It is important to point out that while independence of the judicial officer is a necessary requirement of his professional calling, impartiality is more of a personal disposition required of the individual who exercises the functions of that calling. In other words independence means there should be no subordination whatsoever, while impartiality means the absence of any prejudice, passion, weakness or personal feeling. Independence is viewed in relation to a third party, while impartiality is analyzed in relation to the judicial officer himself.

3. INTEGRITY:

This is an inner characteristic connoting that the judicial officer acts in accordance with specific principles and values making no compromises either at work or in private life. The Bangalore Principles of Judicial Conduct referred to integrity as an attribute of rectitude and righteousness, whose components are honesty and judicial moiety and that it requires the discharge by the judicial officer of his duties honourably and in a manner free from fraud, deceit or falsehood. In other words, the judicial officer must live by the values of honesty, good faith, propriety and diligence in the discharge of his duties as well as in his private life. He must be good and virtuous in behavior and character. In **EBEBI & ORS v DENWIGWE & ORS (2011) LPELR-4909(CA),** Eko, JCA (as he then was) held that "the word integrity, which is further, qualified by the adjective, unquestionable, means the quality of being honest and having strong moral principles. It also means the state of being whole and not divided. [P. 30, paras. F – G].

4. PROPRIETY:

The requirement of propriety connotes that the judicial officer should not only behave appropriately in all given situations but must also give the appearance of propriety by showing himself as doing so. The judicial officer must avoid exhibiting inappropriate conduct in and out of court. In other words, any conduct which may jeopardize the integrity and transparency of the proceedings must be avoided. Some of these acts of impropriety which should be avoided have been enumerated in the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria. These include respect for and compliance with the laws of the land; avoidance of improper social relationships; avoidance of abuse power; maintenance of a dignified, patient and courteous disposition toward court users; compliance with the requirements of law and procedure; according hearing to every person who is legally interested in a proceeding or his legal representative; be diligent and accountable in the exercise of his administrative duties and getting his staff and other court officials to do so; etc. A judicial officer is also expected to minimize his extra-judicial activities in order to minimize risk of conflict with his judicial duties.

5. FAIRNESS:

This is a fundamental rule of natural justice which is also embodied in our Constitution. [See Section 36(1) – (12)]. It is essentially based on the latin maxim: audi alteram partem, meaning hear the two parties to a dispute. In **INEC v MUSA (2003) LPELR-1515(SC),** Tobi, JSC held that "fair hearing, in essence, means giving equal opportunity to the parties to be heard in the litigation before the court. Where parties are given opportunity to be heard, they cannot complain of breach

of the fair hearing principles." [P.94, Paras.A-B]. It a nutshell, it means hearing all the sides to a dispute or granting them the opportunity to present their cases. In **UBA LTD & ANOR v ACHORU (1990) LPELR-3403(SC),** Karibi-Whyte, JSC espoused this imperative principle thus:

> One of the cardinal principles of our administration of justice is the observance of the rules of natural justice, by hearing the party aggrieved and the untrammeled opportunity afforded him to present his case and argue the issues involved. The fact that the issue raised might have been poorly presented by counsel, or misunderstood by the court cannot and does not in my view affect the fact that the hearing was otherwise fair. Fair hearing does not in my view lie on the correctness of the decision handed down by the court. It lies entirely in the procedure followed in the determination of the case. Hence the true test of fair hearing is..." the impression of a reasonable person who was present at the trial whether, from his observation, justice has been done in the case ..." [Pages 19-20, paras. D-G].

The effect of lack of fair hearing fundamentally affects the integrity of the entire proceedings and makes it a nullity. Fairness is therefore a necessary requirement to the integrity and transparency of justice administration. See: **ROBERT C. OKAFOR & ORS. v AG & COMMISSIONER FOR JUSTICE & ORS. (1991) LPELR-2414(SC), per Karibi-Whyte, JSC at page 27, paras. C – D; 7-UP BOTTLING COMPANY LTD. & ORS v ABIOLA AND SONS NIGERIA LTD. (1995) LPELR-2(SC), per Uwais, JSC (as he then was) at page 23, paras. F-G; DR. TUNDE BAMGBOYE v**

UNIVERSITY OF ILORIN & ANOR. (1999) LPELR-737(SC), per Onu, JSC at pages 44 – 45, paras. E – G; and EZENWAJI v UNIVERSITY OF NIGERIA (2007) All FWLR (Pt. 348) 954, per Adekeye, JCA (as he then was) at page 965 para. F.

6. EQUALITY:

Ensuring equality of treatment to all parties involved in a case is an essential value in the performance of judicial duties. Section 17(2)(a) of the 1999 Constitution provides that every citizen shall have equality of rights, obligations and opportunities before the law. See also: **UKWENI v GOV. CROSS RIVER STATE (2008) 3 NWLR (Pt. 1073) 33 at page 49, paras. E – F.** In essence, this means all litigants be they private persons or government institutions or functionaries stand equal before the court and under no circumstance should the judicial officer favour one over the other.

7. COMPETENCE AND DILIGENCE:

Competence is an essential requirement of adjudication. Judicial officers are required to uphold and interpret the law, to do so efficiently, the judicial officer must have a good knowledge of the law. Thus, judicial officers should strive to pursue self-development in order to constantly improve their competence and keep abreast of developments in the law. A competent judicial officer elicits confidence from court users and helps in building a positive public view of the integrity in justice administration.

Diligence on the other hand requires the judicial officer to be committed to the discharge of his functions. He should be punctual and thorough in the

performance of his functions. He should also avoid anything that will delay unnecessarily the dispensation of cases before him. In this regard judicial officers must adopt modern case management techniques in order to ensure expeditious dispensation of cases before them.

E: CORRUPTION IN ADMINISTRATION OF JUSTICE:

Users of the justice system expect a fair resolution of their matters. Apart from the accessible procedures which I have earlier enumerated, a fair resolution of cases can only be achieved if the police officer, the prosecutor, the judge and other justice sector personnel are professional, objective and neutral in the discharge of their duties. All these pertain to impartiality as a moral value, which in turn is built upon independence and derived from integrity. Corruption erodes these three values and undermines public confidence in the integrity and transparency the administration of justice.

It is beyond doubt that justice sector which is affected by systemic corrupt practices is ill prepared to foster social development. In such situation the justice system loses the basic elements that should ensure its effectiveness. These include: (1) access to courts by population in general regardless of their status or income level; (2) predictability of judicial discretion applied to court rulings and judgments; (3) reasonable and (4) adequacy of judicial remedies. In other words corruption hampers access to justice by those who lack the financial resources to pay the licit and illicit litigation costs; it fuels delays; and causes uncertainty associated with court outcomes.

A judicial officer is therefore mandated to establish, maintain, enforce and observe the highest standard of conduct so that public confidence in the independence, integrity and transparency of the judiciary will be preserved. [See the Preamble to the Code of Conduct for Judicial Officers]. In this respect, the judicial officer must adhere to the values of the three 'I's; namely – independence, impartiality and integrity which I have enumerated above.

F: ADMINSTRATION OF JUSTICE & PERFORMANCE ACCOUNTABILITY:

It is beyond doubt that people who approach the courts or are brought to court expect that the causes of action or issues which brought them to court will be resolved not only fairly and justly, but also timeously. Even before corruption in the judiciary became so prominent, the problem of interminable delays in the dispensation of justice has remained a major reason for loss public confidence in the system of administration of justice.

It is a truism to state that the integrity and transparency of the system of justice administration is as much a function of the fairness and accountability which exists in the laws and procedures governing its institutions, as with the attitudes of justice sector personnel to the delivery of its services. The bottom line is that it is the human beings who run these institutions. Therefore, the ability of these institutions to meet public expectations invariably depends on the diligent attitudes of justice sector personnel. For this reason, apart from the legal and procedural safeguards which guide the workings of these institutions, and the codes of conduct for its personnel, performance accountability measures have

been introduced for judicial officers in order to address the problem of delay and lack of diligence in justice delivery.

It is beyond doubt that the Performance Evaluation of Judicial Officers of Superior Courts of Record introduced by the National Judicial Council has succeeded to a large extent in controlling the attitudes of Judges and in curbing laziness and indolence on the Bench. The measure has been able to elicit higher performance accountability on the part of judicial officers and improve upon the adjudicatory outputs of the various jurisdictions. Indeed, some States, including the FCT have introduced similar performance evaluation systems for Magistrates.

But whilst this measure had tightened the noose over judges and continued to demand higher performance from them, the adjudicatory process still continues to suffer from delays and increasing loss of public confidence, as a result of the public perception of failure on the part of the judicial system to expeditiously dispense justice, especially in high public interest cases (high profile cases). Undoubtedly, delay constitutes one of the most, if not the most protracted problem, that has occasioned loss of public confidence in the integrity and transparency of the Court system. Indeed it is delay which the public have always used to justify the perception of massive corruption in the judicial system.

This problem has necessitated a continued search for measures that will obviate delay and ensure more expeditious, effective and accountable performance in justice delivery by our Courts.

Whilst the judicial authorities continue to fine tune the performance parameters to elicit a better outcome, permit me to respectfully observe that adjudication is by nature a highly interdependent exercise which requires an equal amount of diligence and harmonious performance of roles by all the concerned stakeholders. Hence, like all multi-dimensional and interdependent public policies (which require the inputs of various stakeholders, a balanced level of performance accountability must be demanded of all the stakeholders in the implementation of justice administration in order for the policy objectives to be achieved.

Whilst performance accountability measures adopted over the years have concentrated attention on pushing judicial officers to take higher control of the adjudicatory process, by demanding of them an increased performance output, the other stakeholders, particularly counsel (officers of court) who represent parties to the adjudicatory process, have not been held to the same higher level of performance accountability. Hence, they have continued to exhibit antics and attitudes which clog the speedy dispensation of justice and frustrate the trial of cases.

It is respectfully observed that since the extant performance evaluation of judicial officers, no judge comes to court daily unprepared to continue with the cases before him. But it has most times been the attitudes of the counsel representing the parties (who by their professional calling are primarily officers of court) that cause delay and frustrate or truncate the justice process. Prosecutors continue to seek adjournments for various reasons, least of which are shoddy investigations which has made prosecution difficult, unpreparedness, unavailability of the IPOs

or witnesses, unavailability of defendants, etc. In most cases prosecutors lack the courage to take the appropriate prosecutorial decisions especially in cases of high public interest. They prefer to mask their deficiencies and inadequacies by passing the buck to the courts before whom these cases are pending. Similarly, defence counsel who perceive weak cases for their clients, continue to delay or truncate the system through unnecessary applications and appeals using all available loopholes in the process.

These attitudes have often times rendered judges helpless even where they may want to show better performance by imposing their judicial will to railroad the process. Judges are caged from doing so by the very constitutional, legal, procedural and even occupational imperatives which guide their calling. Some of these imperatives which I have examined above, include those of fair hearing, impartiality, neutrality, passivity, equality of treatment and the need to avoid being seen as taking sides or descending into the arena.

Because it is in the courts that the adjudicatory drama takes place, public attention and blame is heaped on the judiciary, while the other stakeholders continue to mask their faults and conveniently heap the blame and pass the buck on to the judiciary. Being an inherently silent and passive institution, the Judiciary had continued to take the public bashing and the obviously unfair assault on it by the other stakeholders. To make matters worse, the response to these problems by the authorities had encouraged a culture of petitions (even frivolous petitions) by the same stakeholders against the adjudicatory conduct of judges, most of which should be settled through the appellate process.

Whilst public complaints against judicial officers must, like all public servants, be entertained and treated, it needs to be balanced in such a way as to protect and safeguard the independence and pivotal position of the judicial officer in the justice process. The current scenario appears has made judges unable to push the parties in an attempt to avoid petitions. As it is, the judges appear to have been placed at the mercy of parties and their counsel, as frivolous petitioners are hardly sanctioned where the petitions are found to be frivolous.

As one of the constant efforts to address the problems of adjudication, the current measure which seeks for accountability of judicial performance is undoubtedly needed. But there is need to demand performance accountability of other officers of court who are primarily engaged to assist the process. It is time for the Judiciary to turn the tide by introducing examining measures which will equally hold the other officers of court (Counsel) to an equal performance accountability within the adjudicatory process. In my respectful view, this is the only way the Judiciary could transparently and truly show to the general public on whose confidence it thrives, from where the failings of the justice process emanate.

It is in the light of the above that I respectfully propose the following solutions, radical as some of them may seem:

1. POST-TRIAL REPORTING BY JUDGES:

As shown in **MEEK v FLEMING (supra),** Counsel's primarily duty as an officer of court is to serve justice, even if it is against his client. But the attitude of the counsel to the parties, who are primarily officers of court, has constituted a drawback to all initiatives aimed at ensuring speedy dispensation of justice. In his 2013 Fellowship Lecture of the National Judicial Institute, the former Chief Justice of Nigeria, The Hon. Justice M. L. Uwais, highlighted this problem when he said:

> The judiciary must not allow deliberate and improper use of rules of procedure by counsel to undermine speedy administration of justice. Lawyers, both prosecutors and defence, must not be allowed to engage in gimmicks of manipulating the rules of court to attain narrow selfish objectives that do not promote the cause of justice.

To ensure a balanced demand for diligence and performance in the adjudicatory process, the learned and erudite jurist had then posed the question of whether our judges should at the end of every criminal trial be saddled with the responsibility of reporting on trial delays and identifying what and who is responsible.

As a former public policy adviser and manager, I wish to respectfully state that the learned former CJN had with that poser "hit the nail on the head". For diligent and expeditious trial to be achieved it is not only the judges that should be held to account for performance in the adjudicatory process. Although they superintend over the interdependent process, the other officers of court must be equally held

to account. The performance attitude of counsel, just like that of judicial officers, should be assessed at the point of convergence in the adjudicatory process.

To ensure this therefore, there is the need to give vent to that suggestion by introducing a post-trial reporting system, where the judge accompanies every judgment with a simple post trial report on the conduct of the counsel during the proceedings and any other reason(s) which may have affected the speedy dispensation of the cases.

The post-trial report would then be used in the elevation of counsel to the inner Bar, or in appointments to the bench or even promotions of those in the public service. The criteria for appointment to the bench or conferment of silk or any form of elevation in the legal profession should no more be the production of mere number of judgments obtained from the courts. Such judgments should be accompanied with the post-trial reports on the conduct of counsel leading to those judgments. A counsel reported to have taken fifteen or ten years to conclude a matter and in the process had also misbehaved or exhibited gross lack of diligence in the proceedings by filing frivolous applications should have no business being a judge, a silk or any other high functionary in the profession, since he has achieved no distinction which makes him worthy of such appointment or privilege. Because this proposed measure targets the future aspirations of counsel, a change of attitude by counsel as officers of court is likely to be elicited. This will also restore the prime place of the judicial officer in the adjudicatory process and transparently put in the public domain the true picture usually buried in the record of proceedings of the courts. With this the public confidence in the

judicial system will be restored and any delays in dispensation of justice will rightfully be ascribed where it belongs.

2. PRIVILEGE OF SENIOR COUNSEL:

It is beyond doubt that the attitudes of some senior counsel has been less than what is required of the privilege conferred on them as SANs, senior officers of the courts, who should serve justice, even if same is against their clients. It is recommended that the post-trial report should be considered along with number of judgments obtained from the courts as a condition to elevation to the inner Bar. Additionally, there is the need to amend the Guidelines for the Conferment of Senior Advocate of Nigeria made pursuant to Section 5(7) of the Legal Practitioners Act, as well as the Senior Advocates of Nigeria (Privileges and Function) Rules, Cap. 207, LFN 1990, to introduce a periodic review of the use or misuse of the privilege conferred on SANs. Those of them found not to have performed up to the set standards within the period of review or otherwise unworthy of the rank should be either suspended or stripped of the rank where appropriate. Presently, there is no such monitoring mechanism and once conferred with the privilege the Senior Advocates are released unto the legal world to go and do as they please.

3. LICENSING OF LAWYERS TO PRACTICE BASED ON PERFORMANCE:

Radical as it may seem, one would also advocate that this country should consider a system of licensing in addition to qualification for legal practitioners. Apart from qualification as a lawyer, several countries including some African countries like Kenya, have introduced a periodic licensing of lawyers based on verifiable

performance and character indicators. This system of periodic review of the conduct and performance of lawyers will greatly help in ensuring professional accountability in the legal field.

In this regard, Section 8 of the Legal Practitioners Act which grants legal practitioner right of audience in all courts in Nigeria needs to be re-examined and reappraised. Though appearing to be a radical view, it is one sure way in which lawyers can be held accountable for their primary roles as officers of court within the adjudicatory process.

As for the other stakeholders like the investigators, their personnel must equally be held to account for shoddy investigations or even for adjudged cases of human right abuses. Most criminal cases fail because the investigative officers or the witnesses have failed to attend court to testify. No sure method has been put in place to ensure that they do so. It is suggested that the post-trial report should where cases are dismissed or struck out, indicate the reasons for the decision, which should be used to sanction the relevant officers.

G: CONCLUSION:

As stated earlier, administration of justice is a highly interdependent exercise. Although several reform measures aimed at ensuring its integrity and transparency have been put in place, such measures have only been effective to an extent, primarily because the performance evaluation put in place for judicial officers has not demanded an equal measure of performance accountability from the other stakeholders. The solutions proposed in this presentation, especially the

post-trial reporting mechanism, will enable judges to be better placed to effectively take control of the adjudicatory process within the confines the adjudicatory imperatives which they must observe. Such will ensure a balanced demand of performance accountability from all stakeholders, especially if such reports are effectively put to use as suggested above. This will also afford the Judiciary the opportunity to roll the buck back to where it rightly belongs. The negative public perception as to the failings in the system and loss of public confidence will then be more rightly and appropriately directed.

Whilst the Federal and State Governments must invest more in the administration of justice, it is hoped that some, if not all of the solutions respectfully proposed in this presentation will be useful tools for promoting the integrity and transparency in administration of justice in the Country.

Once again, I thank the National Judicial Institute for the opportunity to participate, and the august audience for listening.

HON. JUSTICE A. B. MOHAMMED
HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
ABUJA, NIGERIA
26TH APRIL, 2017.