

COMMITMENT TO EXCEL AS A JUDICIAL OFFICER: TRANSPARENCY, ETHICS AND CODE OF CONDUCT

BY

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PROTOCOLS

INTRODUCTORY REMARKS:

On the 26th of February, I received a call from a staff of the NJI that they had not received my paper. I was confused. He explained that I was asked to write a paper on this topic for the Refresher Course coming up in the week of the 14th of March. This was a day before I was to leave Philadelphia where I had gone to do "wankan jego" for my daughter who gave my husband and me our first grandchild. The joy of a granddaughter and the honour of presenting a paper at such an august gathering overshadowed any irritation of the short notice given to me to write the paper. I got to Abuja on the 2nd of March and Kano on the 6th of March. And so as jetlagged as I was, I could not allow this opportunity to slip by. For I consider it a rare opportunity to be asked to address my colleagues, especially on

this topic. Luckily, this is not an academic presentation. It is only a platform for us to rub minds as judicial officers. There is no potential of an evaluation of the paper by the NJC Evaluation Committee!

The large increase in the number of judicial officers across the country in the last decade, though a welcome development must increase the possibility of more ethical issues for the judiciary. In this political period where lobbying and patronage constitute a major problem even in judicial appointments, it is not a surprise that some undesirable elements may have found their way into the system.

Whether we like it or not as judicial officers, we live in an era when the judiciary has come under increasing public scrutiny. We cannot deceive ourselves that as judges we are beyond reproach. We admit that the administration of justice is one of the cardinal functions of civil society and it is for this purpose that judges are entrusted with wide powers. The exercise of these powers has dramatic effects upon lives and fortunes of citizens who appear before us. Such citizens would not wish that such power is reposed in anyone whose honesty, ability or personal standards are questionable. It is important therefore that we use every opportunity at our disposal to discuss the principles of conduct by which we consider ourselves bound. This is why I think the effort of the NJI to include the problems of ethics in every conference is commendable.

Before the evolution of a formal code of conduct for judicial officers in Nigeria, not surprisingly, we followed the British example of unwritten rules of ethics. In the light of growing breaches and the effect of such breaches on the image of the

judiciary, judges at the 1993 ALL NIGERIA JUDGES CONFERENCE in Port Harcourt adopted a resolution for a written code of conduct. This gave birth to the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria which was adopted at the 1997 ALL NIGERIA JUDGES CONFERENCE and now in force.

We have had the written Code of conduct since 1997/1998. It is worth reflecting why the existence of the code has not eliminated incidents of misconduct and corruption on the bench or even reduced its occurrence. On the contrary there is not only an apparent increase of these incidents but also a current heightened public discontent with the judiciary. What then is the problem? One possible and ready answer can be found in the maxim that a society deserves the judiciary it gets. In other words, since the society is corrupt and the judiciary is part of the society, it cannot escape from what obtains in the larger society. This standpoint is not only defeatist but loses sight of the role of law as an instrument for social change. What this means is that lawyers, including judges must always strive to be above board. They must act as the vanguard for change in society. The indispensable attributes of a judge include integrity, impartiality, honesty, transparency and the fear of God.

The absence of the fear of God may be another major reason why the existence of the code has not done much to change the attitude of judicial officers. The two Holy books: the Quran and the Bible emphasize this attribute of the fear of God in a judge:

“O ye who believe, stand out firmly for justice as witnesses to God, even as against yourselves, or your parents or your kin, and whether if be (against) rich and poor; for God best protect both. Follow not the lusts (of your hearts) lest, ye swerve, and if ye distort (Justice) or decline to do justice, verily God is well acquainted with all that you do”. (The Holy Quran Chapter 4 V 16 and Yusuf Ali, The Holy Quran Text Translation and Commentary surah IV Vs 135)

And

“Appoint judges.....these men are to judge the people impartially. They are not to accept bribes, for gifts blind the eyes even of wise and honest men, and cause them to give wrong decision”. (Deut 16: 18-19)

The two major religions in Nigeria are therefore agreed on what the quality of a judge should be. In other words from time immemorial it was recognized that judges need to have special qualities different from other members of society. This is necessary in view of the powers they wield, including the power of life and death.

The theme of this conference: “Promoting Judicial Performance through Innovations and Reforms” recognizes the need for innovation and reforms. The old ways have not proved effective.

I intend to approach this presentation in the following format:

1. Ethics and Transparency;
2. The Code of Conduct for Judicial Officers;
3. International Development on Judicial Ethics with particular reference on the Bangalore Principles;
4. Constraints on efficacy of the code and
5. Commitment to excel by judicial officers.

ETHICS AND TRANSPARENCY:

Lamont in his book "The Principles of Moral Judgement and Analysis of Moral ideal" defines ethics as.

"Facts on which we base any theory of the principles implied in moral judgement must be those judgments themselves. We shall be concerned not so much with the right and wrong behavior of men as with judgements passed upon that behavior with respect to its right".

The Black's Law Dictionary 6th Edition page 553 defines ethics as:

"Professionally right or befitting; conforming to professional standards of conduct".

In simple language, good ethical behavior means doing the right things and avoiding the wrong things or avoiding the appearance of doing the wrong things.

Judicial ethics is almost as old as civilization itself. In Exodus 18:21-22, we read what Moses' father in law Jethro had to say when he advised the former to reduce his workload by appointing judges:

"..... Moreover, choose able men from all the people such as fear God, men who are trustworthy and who hate a bribe and place such men over the people as rulers of thousands, of hundreds, of fifties and tens. And let them judge the people at all times...."

These four attributes: 'to be able', 'fear God', 'trustworthy' and 'hate a bribe' have no doubt formed the bed rock of the notion of judicial ethics. Judicial ethics therefore represent the minimum standards of behavior expected of a judicial officer in and out of the Court room.

Judicial ethics has a direct bearing on transparency. Both impact directly on the rule of law and administration of justice. This is the significant function of the judiciary. People's faith and confidence in the judiciary is anchored on the expectation that it will administer justice in strict compliance with judicial ethics and code of conduct.

CODE OF CONDUCT

As pointed out earlier this code has been in existence for almost two decades. It consists of three main rules. Rules 1 and 3 cover the 'off the bench activities' while Rule 2 covers the 'on the bench activities'. I do not intend to discuss the rules in detail. The code has been thoroughly discussed in previous conferences of NJI especially the All Nigerian Judges' Conferences. For those of you who want a fuller understanding of the code I advise that you liaise with the NJI to buy (if you cannot get it free) past publications of the conference proceedings

I would however like to speak to one or two of the issues covered in the rules that are a bit fluid and some that are not there which perhaps ought to be.

ACCEPTANCE OF GIFTS:

The rule about gifts has been criticized for lack of clarity. It prohibits judges from 'asking or accepting gifts for things done or omitted to be done in the discharge of their duties.' This would appear to leave the question open that judges may accept gifts from anyone provided it is not related to the 'discharge of their duties'. Secondly, the rule also allows judges to accept gifts or personal benefits from 'relatives or personal friends to such extent and on such occasions as are recognized by custom'. Again this seems far from satisfactory. This leaves it exceedingly difficult to hold any judge to any level of accountability in relation to any abuse of such a rule. I think the rule relating to gifts

should be given closer scrutiny and made more explicit for the avoidance of doubt.

It has also become the practice of some of our learned brothers (this includes sisters) to use their official letter headed papers to send invitations senior lawyers and other persons for purely personal events such as weddings of their children or wards. This in my view is wrong. It is an invitation to treat. It should not be permitted.

A major issue of concern is the practice of judicial officers whether serving or retiring engaging in book lunches. The practice in my view has become fraudulent. People with no credible academic or writing credentials suddenly become authors and claim to author books about judges. These are launched in ceremonies to which senior lawyers and their clients or politicians are invited as lunchers or donors. The practice is unethical and should be condemned. The NJC should sanction any judicial officer found to engage in this. Any book written on any person should be offered to the public through normal channels.

CHIEFTANCY TITLE:

The Rule prohibits a Judicial Officer from accepting a chieftancy title while in office. My only concern on this is that the NJC seems to operate double standards. There has been occasions where serving Judicial officer received chieftancy titles witnessed by senior members of the bench. Such double standards do not augur well for the efficacy of the code.

JUDGES' WIVES ASSOCIATION:

This is not in the code but may be it should. I adopt the views of The Chief Judge of Enugu State on this but I abandon his rather harsh language in condemning it. It was in 2007 when I was part of the Election Petition Tribunal in Uyo, Akwa Ibom State that I discovered the existence of such an association. Judges are not Police or military officers. I agree with the learned Chief Judge that such an association is demeaning of the exalted office of a judge. But if such wives itch to socialize because their husbands don't bring them to conferences, I may recommend what we do in our Jurisdiction to them. Every month an agreed amount is deducted from the account of each judge and paid into a central account, 'Judges Welfare Account'. When a judge's child is getting married a fixed amount is given to him/her. At the end of the year, whatever amount is left is distributed among us in January to cushion the effects of late January salary! In some jurisdictions they invest the left over. In others they use it to organize end of year party where their families can meet and socialize.

MEMBERSHIP OF CLUBS, ESPECIALLY GOLF CLUB:

Hon. Justice R.N. Ukeje, Chief Judge FHC (RTD) in a paper she wrote raised the issue of the propriety of Federal High Court Judges playing golf daily at the club house. Her concern is based

on the ground that the personalities who play golf are those whose cases go before the Federal High Court either in their individual or corporate capacities. I throw this up for discussion but only wish to observe that golf clubs operate almost like a cult. It may therefore be difficult to impartially decide cases involving club members.

Maybe the Research Department of the NJI can be mandated to do research for the NJC to come up with periodic activities that should be added to the code of conduct.

THE BANGLORE PRINCIPLES ON JUDICIAL CONDUCT 2002:

Judicial corruption is not exclusive to Nigeria. It is a worldwide phenomenon even though more widespread in developing countries. In order to set international standards, the United Nations Centre for International Crime Prevention in conjunction with the 10th UN Congress on the Prevention of Crime and Treatment of Offence and the Judicial Group on Strengthening Judicial Integrity organized a first meeting in Vienna in 2000. This Judicial Group on Strengthening Judicial integrity comprised of Chief Justices of different countries including our former CJN Hon. Justice M.L. Uwais. Our Code of Conduct was among the codes considered in preparing the draft principles. There was a second meeting of the group in Bangalore in 2001 in which the former CJN also attended. The Bangalore principles are a product of these meetings and a round table meeting of Chief Justices of

some Civil Law Countries. These principles are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the Executive and Legislature, lawyers and the general public in general to better understand and support the judiciary.

These Principles have been accepted by different sectors of the global judiciary and by international agencies. They have also been recognized by bodies such as the International Commission of Jurists and American Bar Association. Countries like England and Wales have incorporated the principles as guides to enhance their terms and conditions for the appointment of judges. The UNHRC endorsed the Principles in 2003. The UNSEC in 2006 in its Resolution invited Member states to encourage their judiciaries to take the Bangalore Principles into consideration when reviewing or developing rules with respect to the professional and ethical conduct of its members.

Hon Justice Uwais, CJN (rtd) in his keynote address at the All Nigerian Judges Conference, 2011 informed the gathering that the Code of Conduct which was due for revision will be revised to accommodate the Bangalore Principles. This is almost six years now. Nothing has been done and I am not sure who has the mandate to do this. It is however important in keeping with international best practices to incorporate the Principles in our Code of Conduct. A review at this time will also give the judiciary an opportunity to include some new issues that are peculiar to Nigeria which have come up since the Principles were adopted.

The sooner this is done, the better as it shows the proper goodwill not only to secure the independence of the judiciary but to foster her integrity.

The six principles enunciated by the Bangalore Principles of Judicial conduct are:

1. Judicial Independence, which is a pre-requisite to the Rule of Law and fundamental guarantee for fair trial.
2. Impartiality, which is essential to the proper discharge of the judicial office.
3. Integrity, which is essential to the proper discharge of the judicial office.
4. Propriety and the appearance of propriety, which are essential to the performance of all of the activities of the judge.
5. Ensuring equality of treatment to all before the courts, which is essential to the due performance of the judicial office.
6. Competence and diligence, which are pre-requisites to the due performance of judicial office

CONSTRAINTS ON THE EFFICACY OF THE CODE

It is imperative that a Judicial Officer given responsibilities to sit in judgement over others must be seen as one who can be trusted to be fair, just and upright in the performance of his

duties. In order to maintain this integrity, the Judicial Officer needs to be guided by certain ethical rules and code of conduct. This is what the NJC provides in the form of Code of Conduct. The question is, is this enough? In pondering on this question the former Interim President, Chief (DR) Ernest Shonekan in his presentation at the 2005 All Nigeria Judges Conference on 'Judging the Judges : Judicial Ethics, Code of Conduct for Judicial Officers', listed about four issues that could inhibit adherence to the enforcement of the Code:-

LACK OF ENABLING ENVIRONMENT

The opinion of the former National Interim President is that there are no institutional mechanisms in place to monitor and enforce compliance with the code. That the cultural attitude of Nigerians which make it difficult for people to come forward with information that could lead to the downfall of a wrongdoer constitutes a major impediment. I cannot agree more. We would all remember that during the tenure of Hon. Justice Aloma Mariam Mukhtar as CJN when confronted with issues of corruption of judicial officers she always responded that such complainant never made a report so as to set in motion the process. This should not be the position. There should be some internal mechanism to originate this process. We cannot play the ostrich on this one. Even in the Civil Service when a civil servant commits any act of misconduct there are internal processes to deal with it. We cannot pretend to take the issue of sanctions against Judicial officers seriously, without any internal mechanisms to monitor and enforce compliance with the Code.

LACK OF STRICT ADHERENCE TO ESTABLISHED CRITERIA FOR APPOINTMENT OF JUDICIAL OFFICERS

This is another reason the former Interim President advanced for noncompliance with the Code. He reasoned that if the process ensures that only people of proven character are appointed, cases of violation will be minimized. To fully appreciate the import of the concern of our elder statesman, we only need to look at the criteria for appointment to the bench. The guidelines for appointment of Judicial Officers have been recently reviewed. I am not sure if they have not compounded the problems they require the candidates to indicate interest and go through certain processes. I do not want to bore you with the new guidelines for appointment of Judges. The point must be made however that any process that does not require that the best who always stand out be picked cannot be lauded. In the good old days, if you heard that a person had been appointed a Judge or elevated to the Court of Appeal or Supreme Court, you will nod your head because their antecedents will stand them out. We were made to understand how recently a number of candidates for appointment to the High Court bench were turned away by the NJC selection committee for performing below standard. I do not believe that they were the best candidates from that jurisdiction. They must have emerged as a result of a faulty process. The NBA which has a significant role in this process does not always live up to its expectation because the integrity of the process is not safeguarded. A situation in which a candidate is required to collect recommendations is clearly faulty. In view of the cultural issues raised earlier on when you know that the person upon

whom you are writing will have access to your opinion, it will hardly be truthful.

There is the need to review the 'turn by turn' policy of the NJC in respect of elevation to the Court of Appeal and Supreme Court. I must pause to commend the NJC for the introduction of the recent interview policy of the NJC. Beyond that however their dogmatic application of the Federal Character Commission Policy is troubling. I should not be mistaken as being opposed to the policy. As a woman, coming from a position of discrimination I am in support of any form of quota that will ensure equitable balance between unequal groups. However the NJC has transformed the policy. The policy is concerned with the equitable and not equal representation that the NJC seems to have turned it into. For instance, where is the equity between Lagos State which has over sixty judges and some states with twelve or less judges being given two slots each for the court of Appeal? My view is that once each State has a representation, the remaining slots should be distributed based on other more equitable considerations, like character, hard work/industry, gender balance etc. to ensure that only the best are drawn to our appellate courts.

PERVASIVENESS OF CORRUPTION AND INDISCIPLINE IN NIGERIA

The opinion of Chief Shonekan on this is that where corruption and unethical practices are widespread in a society the reputation of all actors operating therein tend to become tainted whether

they deserve it or not. That the bandwagon effect may take sway and sweep off the weak hearted along. This assertion may be true philosophically. It must however be pointed out that the saying that the judiciary is the last hope of the common man is not baseless. The expectation is that the judiciary represents a higher ideal to which other members of the society should aspire to. This places on them a higher duty to be above board. After all it is axiomatic that to whom much is given, much is expected.

POVERTY AND DETERIORATION OF PUBLIC INSTITUTION

My major concern here is the deterioration of court buildings. As generally known the maintenance culture in this country is very poor. Some of our court facilities in some jurisdictions are dismal. For many of the state governments not only is the judiciary treated less than a government ministry or parastatal but it is not regarded as an institution for which the government feels the need to invest in its structural development.

Chief Shonekan empathized with judicial officers on the inadequacy of their emoluments. This is not an aspect I want to take up in this presentation. This is not because I do not appreciate its importance. My reluctance is borne out of the fact that this is not the focus of my presentation. Secondly, I am not persuaded that a higher wage or remuneration is directly linked to high productivity or commitment. Don't get me wrong. It is important but not with the emphasis that is placed on it. Taking

the wage packages of Judicial Officers across the country Lagos State stands out as the best remunerated. Has research proved that Lagos State Judges are all committed with no ethical issues. The point being made is that in the Late 80s to early 90s the remuneration package for judges was pitiable. By then people had to be cajoled to join the bench. But the judges in that era were upright, God fearing and dedicated. The moment salaries were raised people started clamoring to join the bench. If the primary attraction is remuneration then I suggest that you find a new calling.

The list of impediments is not exhaustive. I hope what is provided can provoke appropriate discussion on the subject.

COMMITMENT TO EXCEL:

There can be code of conduct, judicial ethics et la but except the judicial officer has a commitment they will remain useless tools

A good judicial officer will not be intimidated by a senior counsel. One way to do this will be to be on top of your law, rules of practice and the facts of the case being heard. And to be above board in your personal conduct so much so that people know that they cannot approach you with anything unethical, an upright judge. I am reminded of Hon. Justice C. N. Ubaonu (Rtd) formerly of the Kano High Court. He was a fine example of quintessential judge. He sat promptly. He was forthright and upright. Some of us were lucky to have met the likes of him on the bench and worked with them. It may not be out of place to

suggest that the NJC sets up a kind of award to be given to these rear breed of judges, serving or retired to motivate others.

Judicial Ethics and code of conduct are necessary tools to regulate minimum standards of behavior of judicial officers. In other words they provide a blue print for judicial conduct. This is necessary to maintain an independent strong and respected judiciary. But the judiciary is not island unto itself. It operates within the society it therefore becomes challenging for judicial code of conduct to be effective in the face of eroding general societal code of ethics and standards. This was what obtained in Kenya. There the corruption went so deep into the judiciary that the judges were not different from other corrupt members of the society. We have a duty as judicial officers to prevent the general high level of corruption in the society from taking the judiciary hostage. We must not allow the few bad eggs amongst us to destroy the image of the judiciary. A commitment of each of us to reinvent the honor and lost glory associated with judicial office will have a multiple effect on the battered image of the judiciary. This is a commitment that has become urgent to save the judiciary. You cannot be a judge and still “live like the Jones”. The legacy of uprightness and moral probity on the bench can be only be restored by this commitment at the individual level to excel. This commitment is reinforced in the judicial oath which we all ascribed to on our appointment as contained in the 7th schedule of the 1999 Constitution:

“ I will be faithful and bear true allegiance to the Federal Republic of Nigeria..... I will discharge my

duties, and perform my functions honestly, to the best of my ability and faithfully in accordance with the Constitution of the Federal Republic of Nigeria and the law, that I will abide by the code of conduct contained in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria; that I will not allow my personal interest to influence my official conduct or my official decisions; that I will preserve, protect and defend the Constitution of the FEDERAL Republic of Nigeria. So help me God.”

An adherence to this oath of office will go a long way in strengthening our resolve to excel as judicial officers. It will propel us to act according to the highest dictates of our conscience. For we must as judicial officers be guided by the fundamental values of constitutional democracy and values of ordinary decency. Our integrity and that of the judiciary depend on it.

This is not easy but it is achievable. You will have your true independence and be free from intimidation in doing your work. Let us be guided by the instruction of Lord Mansfield G.J in the case of R V Wilkes (1770) 4 bus 2527 at 2562-2563 as follows:-

“I will not do that which my conscience tells me is wrong, upon this occasion to gain the huzzahs of thousands or the daily praise of the papers which come from the press, I will not avoid doing what I think is right though it should draw

on me the whole artillery of libels, all that falsehood and malice on invent or the credulity of a deluded populace can swallow..... once and for all let it be understood, that no endeavors of this kind will influence any man who at present sit here (on the bench).

To succeed in this commitment to excel as judges we must be guided always by the rule of law not by our personal greed. We must see our office as a mission and not a job. We must adhere to the ethics and code of conduct of judicial officers as ideals which will enable us make positive changes in our society. We must have the commitment to revive the good old traditions of the bench of strict adherence to judicial ethics and of honour and uprightness which created great public confidence in the judiciary. We should aim to reinvent the wheel as it were so that we can restore the Judiciary to its pride of place in our society. Above all I enjoin us to work with the fear of God, remembering always that as we sit at trial so shall we stand at trial.

I leave you with the warning from the Holy Quran Chapter 72 verse 15 quoted in the keynote address of my learned brother, the former Chief Judge of the Gambia, now a justice of the court of Appeal, Hon. Justice E.A Agim at the 2011 All Nigeria Judges Conference that "corrupt judges will not only go to hell will but will also be the firewood of hell fire".

I thank you for your patience.

References:

- 1) The Business of judging, Selected Essays and Speeches by Tom Bingham
- 2) Proceedings of All Nigeria Judges' Conferences, 1999, 2005 and 2007
- 3) UNODC & NJI Judicial Ethics Training Manual For the Nigerian Judiciary
- 4) The Code of Conduct For Judicial Officers of The Federal Republic of Nigeria
- 5) The 1999 Constitution of the Federal Republic of Nigeria