

**INSPECTORATE DIVISION IN AREA/SHARIA/CUSTOMARY
COURTS: HISTORY AND DEVELOPMENT**

BY

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**AT THE WORKSHOP FOR DIRECTORS AND
INSPECTORS OF AREA/SHARIA/CUSTOMARY COURTS,
HELD ON MARCH 25TH - 27TH, 2019.
ORGANISED BY THE
NATIONAL JUDICIAL INSTITUTE, ABUJA.**

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**A PAPER PRESENTED BY MR. NDUCHIBE, IKECHUKWU MICHAEL,¹
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PREFACE

It is a great honour and privilege to be called upon to be part of this intellectual gathering of judicial staff. A great debt of gratitude is owed the Management team of the National Judicial Institute which is presently organized under a highly resourceful jurist and dedicated Administrator² – Hon. Justice R.P.I Bozimo (OFR), for finding me worthy to make this presentation.

In all sense of humility, I wish to state that the content of this paper has by no means covered all the areas under review, it is only aimed at stimulating your minds for further discourse; as this forum seeks to give participants the opportunity to develop professional competence and fresh perspectives on their schedule of duties.

I therefore look forward to your contributions to further enrich the paper after this presentation; I thank you for your attention.

INTRODUCTION

The Judiciary is and has always been the fulcrum of good governance in any country. It is the impartial arbiter of disputes between the citizens inter se, and between citizens and the Government.³ The Directors/Inspectors of Area/Sharia/ Customary Court are by designation one of the major functionaries in the justice delivery system. Therefore, it's pertinent to note that their performance and anticipated contribution to the smooth running of the court cannot be over emphasized.

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² Nduchebe M.I, 'The Imperative of Attitudinal Change By Judicial Workers in the Performance of work', being a paper delivered at the Workshop organised by Enugu State Judiciary, for Secretaries, Court Registrars, Process Clerks and Bailiffs, May 22nd - 23rd, 2017. P.1

³ Uwais, L. Muhammadu., The Future of The Judiciary in Nigeria: Challenges and Responses, UN Production Nigeria Ltd. 2013. P. 4.

Directors/Inspectors exercise supervisory roles and powers over these classes of Courts and the volume of cases that are presided over by these Courts nationwide often make their schedule of duties more tasking. The choice of the topic under consideration cannot be more apt in view of the Institute and the entire judiciary desire to achieve efficiency in all areas of justice administration, where justice shall not only be done, but manifestly seen to be done. This is the new image of the Nigerian judiciary; and for this new image to be sustained and impact on all Nigerians, Judges at the lower strata of the judicial hierarchy whose decisions have direct bearing on the common man must live up to the challenges of the time. They must dispense justice that is devoid of corruption, favouritism, bias and sentiment among others. This therefore underscores the appointment of Directors/Inspectors for these Courts, to ensure that the desire for justice to all is properly served without compromise.

HISTORY AND DEVELOPMENT OF INSPECTORATE DIVISION IN AREA/SHARIA /CUSTOMARY COURTS

“The more you know about the past, the better prepared you are for the future” Theodore Roosevelt.

Before the advent of Colonial administration in to the political entities that constitute the present day Nigeria, these entities had in existence various Court systems for the resolution of disputes. In the Northern States, for instance, there where the Emir’s Court which applied the Sharia Law. With the declaration of the territories north of River Niger as the protectorate of Northern Nigeria by the Colonial Administration in 1900, the Alkali and Native Courts were established for the region. These Courts were brought under the supervision and control of a Colonial Administration officer by virtue of the Commissioner Proclamation of 1900, which conferred on him the supervisory powers of review and appeals over the decisions of the Alkali and Native Courts. The Native Courts proclamation No. 9 of 1900⁴ also established the Native Courts for the Southern States. It was the Native Courts that later transformed into Area/Sharia/Customary Courts as known today. It suffices to say that the need for closer monitoring and supervision of these Courts were even appreciated by the Military dispensation, as it subsequently got the blessings and backing of the military regime.

To this end, the first acts of Nigeria’s new military Government following the coup d’état that disposed of the previous Government on January 15, 1966, was to announce that its ultimate goal with regard to judicial reform was to integrate the locally administered native courts into the Regional Government Court structure. As a

⁴ Sirajo, M.I., ‘ The Role & Powers of Directors and Inspectors in Ensuring Excellence in the Dispensation of Justice in Area/Sharia/Customary Courts’, being a paper presented at NJI, Abuja. 2008. P. 2

first step, the more than 750 native courts of Northern Nigeria,⁵ previously supervised by the Ministry of Justice, were placed under the supervision of politically independent Judicial Department. As events evolved, the native courts became independent of the native authorities; the local government units and the judicial power of the Emirs⁶ courts were withdrawn. It is not surprising that the attention of the new Government was focused immediately on the native courts, for their role has been an important political and social issue in Nigeria for some time.

There were however criticism on the pace of development of the native courts within the Northern region by the Southern region.⁷ Without question, much of the Southern concern about the native courts of the North was based on a failure to recognize the cultural, historical and geographical differences between the two regions.⁸ The fact does remain however; that the native courts in Nigeria have under recent years come under increased pressure generated by societal development; where once these courts functioned within primarily rural, non – commercial societies, they are now being called upon to settle disputes involving the growing class of indigenous traders.⁹ Today they are found in the urban areas serving high judicial purpose to the populace.

In view of the foregoing, central to the Government policy of accommodating the native court system to a developing society has been the creation of a number of transitional devices aimed at ensuring effective administration of justice. These transitional devices are not limited to procedures of resolving disputes. As such, the main focus of this paper is of particular significance to Director/Inspectors in the Area/Sharia/Customary Court concerned with the development of the division.

⁵ Smith, N.D., 'Native Courts of Northern Nigeria: Techniques for Institutional Development' 48 B.U.L. Rev. 49 1968., p. 49

⁶ See West Africa, April 15, 1976, at 485; letter from Commissioner for Native Courts, High Court of Justice, Kaduna, to author, Feb. 5, 1968. The first courts to be placed under Government control were those in regional capital territory Native Courts Law, 1956 (Amendment) Edict No. 1/67 (Kaduna Capital Territory). "In Northern Nigeria this is a real revolution since.....it has always been thought, control of [the native] courts was of highest political importance to Emirs and Chiefs."

Effective April 1, 1968, control of native courts will vest in the six states of the former Northern region, subject to the continued supervision of the Chief Justice. Each state has enacted governing legislation modeled on the Native Courts Law, 1956 (ch. 78 of Laws of Northern Nigeria, 1963) [hereinafter as N.C.L.] and has renamed the courts "area courts" see e.g., Northern – Western State Edict No. 1 of 1967 (the Area Courts Edict, 1967). The structure of the area courts system will largely imitate the regional system existing under the N.C.L. for ease of citation, reference hereinafter will be made to the structure existing under the law, rather than to the six – fold duplication structure. For the present there will be only one Chief Justice who will constitutionally be the Chief Justice of each of the six new states.

⁷ Op cit., p.50

⁸ Ibid

⁹ Ibid

It seems fair at this juncture to state that after the initial 1900 [requirement of four – member courts], the native courts established in Northern Nigeria more or less reproduced the pre-existing traditional native courts; the 1906 legislation,¹⁰ however, was significant in that it super – imposed on the existing system two elements of British control. It was provided that Resident would at all time have access to the native courts and could either on their own motion or on application of the aggrieved party; (a) suspend, reduce or otherwise modify any sentence or decision of a native court; (b) order a re-hearing before a native court; or (c) transfer any cause or matter, either before a trial court or at any stage of the proceedings, to the Provincial Court, which was presided over by the Resident.

In addition, provision was made for the appointment by the Resident of certain native to supervise the courts. Any person dissatisfied with a decision of a native court could appeal to the court appointed by the Resident. Thus, in the same way that the pre – British Northern Moslem legal system centered on the Emirs; after 1906¹¹ the native court structure was centered on the Resident. It was through them that courts were created, membership was appointed and cases reviewed.

The rationale for investing control of native courts in the hands of the Resident rather than in a superior British court was that political officers would be closer to “natives” and that in the context of a developing political system “occasion may arise when the strictly legal aspect must give way to expediency.”¹² The pre-eminent position of the Resident was retained until 1962 when it was considered that more judicial and less administrative control still exists and that present patterns of supervision have been influenced in part by the practice of control by Residents.

By the 1950’s, five problems seemed central to the future development of native courts:

- The law to be applied in civil cases,
- The law to be applied in criminal cases,
- The appellate structure,

¹⁰ At the time this legislation was being developed for the native courts, a parallel system of British courts was being established. These courts were given jurisdiction over persons with whom the native courts could not deal; non-natives, natives in the service of the government and persons living within certain townships. In addition, British courts had concurrent jurisdiction with the native courts over members of the native population, and a separate appellate system was to be administered. See The Protectorate Courts Proclamation No. 4 of 1900 authorized three types of British Courts; a Supreme Court, Provincial Courts and Cantonment Courts. In 1914, upon the amalgamation of the two separate Governments of Southern and Northern Nigeria, a single Supreme Court was created for the country and Cantonment Courts were replaced by Magistrates’ Courts. See the Protectorate Courts Ordinance No. 45, 1933.

¹¹ Op cit., p. 51

¹² See Lugard, *The Dual Mandate in British Tropical Africa*, 540 – 41 (5th ed. 1965)

- The courts of Islamic law and
- The mode of *control and supervision* of the courts.

These were problems which did not readily lend themselves to ad hoc judicial or legislative pronouncements and it was felt that a general review¹³ of the purpose and direction of development of the native courts was needed.

Consequently, through review and revision of court decisions, the power previously exercised by Residents and other administrative officers had been withdrawn and placed in the hands of specialized corps of inspectors under the Ministry of Justice.¹⁴ In its second meeting, the Panel of Jurist assigned to proffer solutions considered that the system of review by administrative officers was, by general consensus of *opinion, out of date and that the actual function of amending and revising native court judgment should be performed by court of Appeal*. It was recognized, however, that while native courts were adjusting to the new Penal and Criminal Procedure Codes and to new appellate procedures, administrative guidance would still be necessary, and the Inspectorate was established for this purpose.

In view of the foregoing, the rate of progress in modernizing the courts was occasioned by effective transitional techniques developed to bridge the old system and the new. These techniques encompass four basic areas: the guidance principle affecting criminal and evidentiary procedure; the supervisory powers of inspectors of native courts; the special role of the court of appeal; and the development of new concepts in native tribunals. I will however, concern myself with the inspectorate division, which is the crux of this presentation.

On the development of the Courts, the Government White Paper issued after the second meeting of the Panel of Jurist indicated that the function of amending or revising a native court judgment or sentence should now be performed by a court of appeal rather than Residents and other administrative officers. It was further indicated that a newly created corps of inspectors of native courts, acting in supervisory capacities, would have access to court records within the area of their individual jurisdiction; they would be empowered whenever they came across a case in which they considered had a miscarriage of justice, to refer that case to the court to which appeal would have lain.

However, while primary emphasis was given to review by way of the normal appeal process, inspectors are given powers of revision and review similar to those previously

¹³ This review was undertaken by a Commission of Inquiry in 1951 and resulted in the present basic native court legislation, the Native Courts Law, 1956.

¹⁴ N.C.L., Part VIII. Inspectors now come under the Judicial Department.

held by Residents. The reason for this is that under the present system whereby native courts must apply the Penal and Criminal Procedure Codes and must attempt to update their procedures generally, errors which occurred could, in many instances, be dealt with more expeditiously by *inspectors* than by a formal court of appeal. It was recognized by the Government at the time, that during the phase of adjustment of the native courts to new laws and procedures, instances would arise where review, revision or other action by an inspector would be more practical and efficient than referral of the case to a court of appeal. The exercise of quasi-judicial as well as administrative powers by inspectors was seen to have the advantage of avoiding delay and unnecessary expense to litigants in situations where appellate scrutiny was not essential. Moreover, the review or revision of certain cases by an inspector who is in frequent contact with the court will often have a greater educational impact on the court since inspector will be available to explain to the court where an error was made or how a particular procedure could be improved.

It is worthy of note, that before the 1966 Edict, the native court were under the supervision of High Court Judges but their inability to speak the local languages which caused a serious handicap to the efficient control of the court as most of its proceeding were not conducted in English; this was addressed in the 1966 Edict. The Government Native Courts Edict of February, 1966 recognized these facts; so it placed the native courts under the supervision of the Judicial Department; the Government at the same time retained the inspectorate system headed by the Commissioner for Native Courts, as a unit within that Department. The combined effect of immediate supervision by a corps of inspectors and ultimate control by the High Court marks a significant move toward an increased sense of professionalism and judicial independence within the native court system.

POWERS OF DIRECTORS/INSPECTORS

By section 43 of the Area Courts Law, 1968, applicable to Plateau State; it is clearly stated that all Area Courts shall be subject to the general supervision of the State Chief Judge. Similarly, the Chief Registrar of the High Court has supervisory control over Area Court. Section 45 of the law provides for the appointment of Inspectors of Area Courts¹⁵ the law did not provide for the appointment of Directors in charge of Area Courts, but since the definition section of the law, that is, Section 2, defines an Inspector of Area Courts to include a Chief Registrar, a Director will also come under that definition for three reasons:

¹⁵ Hon. Justice Sirajo, M.I., "The Role And Powers of Director And Inspectors In Ensuring Excellence in the Dispensation of Justice in Area/Sharia/Customary Courts" Being a Paper Presented at the National Judicial Institute Workshop, for Judges And Directors/Inspectors of these Courts., 2008, p. 3

- i. A Director is a staff subordinate to the Chief Registrar and takes direction from him/her
- ii. A Director has been equated with a Deputy Chief Registrar, as a matter of fact, Deputy Chief Registrars were re-designated Directors under the Civil Service reforms of the General Babangida's administration and some states still retain that designation
- iii. The state Judicial Service Commission which is empowered to employ Inspectors of Area Courts also reserves the power to employ/appoint Directors of Area Courts with powers to supervise the Inspectors and also perform the functions of Inspectors.¹⁶

It suffices to say at this point that an Inspector includes a Director and a Chief registrar includes Deputy Chief Registrars for purposes of exercising supervisory control over the Area/Sharia/Customary Courts. Consequently, any reference to Inspector in this paper is a reference to Director/Deputy Chief registrars in charge of Area/Sharia/Customary Courts.

Therefore, Inspectors as officers within the Judicial Department can be more readily regarded as an integral component of the native court system. They are trained on the native court law and procedure and several of the inspectors have themselves had considerable judicial experience in the native courts. An inspector may examine court records as a matter of routine or on the application of a litigant. If during the course of such an examination an error in law or procedure was detected, the inspector has a choice of alternatives:

- I. If the case is still pending, he may stay proceedings and transfer or report the case to another court with jurisdiction,
- II. If the case is completed, he may report the case to an appropriate court of appeal or review the case himself.

It is gratifying to note that if an inspector stays a case, it afford him sufficient time to examine the records; a stay of this sort would be used, for example, where the inspector has reason to believe that the court may be without jurisdiction over the person or subject matter. If an inspector determines that the court should not continue with the case for lack of jurisdiction or other reason, he may transfer the case to another native court, a District Court or a Magistrate Court, depending on which court has jurisdiction, or he may report the case to the High Court. The High Court may either hear the case itself or direct that some other court hear the case.

¹⁶ Ibid

Since the introduction of the Inspectorate system in 1963, the right to review for inspectors assigned to the provinces has been limited to courts of grades B,C and D¹⁷; this power of review was to be used by an inspector when appellate review did not appear necessary, as in the case of a clear lack of jurisdiction or a clear error of law; and review by an inspector provides a quick and efficient method of correcting errors without causing undue expense to the litigant or state. When the power of review is conferred, an inspector has four alternatives in disposing of the case:

- a) He may reverse, vary or confirm the decision,
- b) He may make such order or pass such sentence as the lower court could have made or passed,
- c) He may make some further order such as an order that a person imprisoned be released on bail,
- d) He may set aside the conviction, sentence or judgment or other order

In view of the powers of the inspectors to ensure access to justice by dispensing with miscarriage of justice, they function as an integral part of justice administration in the present day Area/Sharia/Customary court. The inspectorate is organized to perform an educative and guiding function as well as to see to the proper dispensation of justice.

It is gratifying to note that Section 51¹⁸ of the Kogi State Area Court Law provides that:

No inspector shall exercise the powers conferred upon him by this part, in any case where a party aggrieved¹⁹ by the decision of the Area Court has appealed there from or otherwise instituted any appeal proceedings in respect thereof.

It therefore suffices to say that where an appeal is instituted, the powers of the inspector over such matter are put on hold pending the outcome of the appeal.

Considering the enormous role the Inspector plays in ensuring that miscarriage of justice has no place in Area/Sharia/Customary Courts in Nigeria. They were adequately provided for in our laws.

¹⁷ Op cit., p. 51

¹⁸ 1991 Area Court Law

¹⁹ A person aggrieved must therefore be a person who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something. See p. 65 of Eri. U., "Law and Procedure in the Area Court" Tamaza Publishing Company Ltd., 2004

In Kogi State, the High Court Law provides for the appointment of inspectors in Section 44. Thus, section 45 (1) provides thus:

An inspector or any senior inspector may require an Area Court, of the first or second instance to submit a report to him of any case tried by the court.

While on the powers of inspector to have access to court, Section 46 provides that:

An inspector shall at all times have access to all area courts within the State and to the records and proceedings of such court.

In the FCT, the Inspectorate is a Unit under the Department of Area Court and the Sharia Court of Appeal. It is established pursuant to section 32 and 33 of the Area Court Repeal and Enactment Act, 2010; while Section 34, 35 and 36 give the Inspectors additional powers to wit:

- I. Section 34 provides that “An inspector may require an Area Court to submit a report to him of any case tried in that court”
- II. Section 35 provides that “An inspector shall at all times have access to all Area Courts within the Federal Capital Territory, Abuja and to the records and proceedings of those courts”.

Furthermore, Enugu State adequately provided for the Inspectorate division in Section 43(1)²⁰ to wit:

There is hereby established an Inspectorate of Customary Courts which shall consist of:

- (a) A Chief Inspector of Customary Courts who shall be a Legal Practitioner of not less than seven years post call experience; and
- (b) Five or more other Inspectors of Customary Courts each of whom shall not be lower in rank than a Principal Registrar or any other person as may be appointed by the president from time to time.
- (c) Without prejudice to the functions of the Inspectorate, each court shall, at such times and in such forms as may be prescribed by the President, submit to him a list of all causes and matters decided, or disposed of, by or brought before it, during any prescribed period; and a report on any case or class of cases tried.

²⁰ See Sections 43 & 44 of Customary Courts Law, Cap 32, Laws of Enugu State, 2004 (as amended in 2011)

In accordance with Sections 43 and 44 of the Customary Court Law (2010), every Customary Court in Enugu State will be inspected to determine how well each Customary Court is resolving disputes fairly, effectively, as quickly as possible, and at the lowest cost and to assist each Customary Court to improve on how it provides justice, serves the people, and operates.

From the foregoing, inspectors of Area Court can either of his own volition or at the request of any party to a cause or matter before an Area Court, order the stay of hearing or further hearing of such cause or matter, a power which he can exercise “at any stage of the proceedings before the final judgment” of the Area Court.²¹ In *Jeremiah Ako, v. Ameh Abuh*²², an inspector of Area Court was held to have validly exercised his power of staying hearing in Ogugu Area Court and transferred it to another court though the judgment of that court had already been written but not delivered and thus, the hearing of the case or matter deemed continuing.²³ The court further held that delivery of judgment in the case or matter was part of the hearing of that case or matter. The hearing of a case is the subject matter on which the power of the court to stay further proceedings may be exercised and hearing does not cease with the conclusion of the hearing of testimony of witnesses of the parties and the writing of judgment until the judgment is delivered. Therefore, as long as there is anything that remains to be done, the inspector can exercise the power if the justice of the case so demands.

In *S.O.N. Okafor v. Ikeanyi*²⁴ the court stated that the addition of the word before final judgment to the phrase “at any stage of proceedings” puts statutory emphasis on the meaning of the phrase and it means that the power of the court to do anything may be exercised at any time before delivery of final judgment but not thereafter. Where an inspector²⁵ has ordered a stay under subsection (1) of Section 47, he may, if the cause or matter appears to be within the jurisdiction of an Area Court, order that the matter be enquired into, tried or determined by such Area Court as shall be inquired into, determined or tried by a Magistrate or District Court; or if the cause is

²¹ *Jeremiah Ako, v. Ameh Abuh* (1983 – 88 BSLR 310)

²² *Op cit.*

²³ *Op cit.*, Eri. U., “Law and Procedure in the Area Court” Tamaza Publishing Company Ltd., 2004., p. 58

²⁴ (1979) 3- 4 Sc p. 99, 107

²⁵ He is only to report and not effect transfer to the High Court; but the court to which a matter is transferred is to be informed in writing, the reasons for making the order of transfer. When a matter is reported to the High court, the High Court then decides in what mode and in what court the matter is to be heard. Where a high Court feels that it is necessary for the purpose of securing a fair and impartial trial or that a cause or matter within the jurisdiction of an Upper Area Court should not be tried at first instance by any other Area Court having jurisdiction to do so, the High Court, may order that the cause or matter be tried by such Upper Area Court. The power conferred on the High Court could be exercised by it either on its own motion or on the application of any of the parties to the cause or matter: See *Jeremiah Akoh v. Ameh Abuh*, (*supra*) where the supervisory powers of Inspector of Area Courts and Chief Judge in regard to suits before Area Courts, have been discussed. Therein, it was held that the Chief judge could validly overturn an order of an inspector.

one which in his opinion ought to be transferred to a High court, he may report the case to the High Court.

INSPECTORATE DIVISION IN THE COURTS

Over time, the development of this strategic unit in the court has experienced different forms of evolution backed by legislation. By section 43 of the Area Courts Law, 1968, applicable to Plateau State, all Area Courts shall be subject to the general supervision of the State Chief Judge. Similarly, the Chief Registrar of the High Court has supervisory control over Area Courts. Section 45 of the law provides for the appointment of Inspectors of Area Courts.²⁶ By these provisions, an Inspector of Area Courts has power to stay proceedings and transfer a cause or matter from one Area Court to another or to the Magistrate or District Court, or report the matter to the High Court, depending on which Court, in his opinion, has jurisdiction to entertain the matter.

In addition, he has powers to report a case to the High Court, Sharia Court of Appeal or the Customary Court of Appeal or review if in his opinion there has been a miscarriage of justice by the trial Area Court. In reporting a case for review, an Inspector shall do so within the time allowed for filing an appeal in the case otherwise he should advise the party on whose behalf the report is to be made to apply for extension of time within which to appeal.

In *Umaru Baba v Galadima Yada and others*, the Court of Appeal, per Uthman Mohammed, JCA (as he then was) while commenting on the provision of section 50 (3) of the Area Courts Law, 1968 applicable to Plateau State, opined thus:

‘From the above provisions, it is quite clear that the High Court or the Sharia Court of Appeal when hearing an appeal or reviewing a case are the same. That being the case, both the review and the appeal must be within 30 days of the decision. The only difference is that an appellant who wants to appeal and is out of time can be granted an extension of time within which to appeal if the court is satisfied with his reasons for not appealing within time.’²⁷

²⁶ The Area Court (Amendment) Edict, 1984, amended section 45 of the Area Courts Law, 1968, by providing four classes of Inspectors; Chief Inspector, Principal Inspectors, Senior Inspectors and Inspectors.

²⁷ (1989) 1 Sh. L.R.N. 168 at 170; Op cit, Hon. Justice Sirajo, M.I., p. 9

It is worthy of note that upon reporting a case for review, an Inspector also has powers to make interim orders suspending the operation of any order imposed by the trial Court pending the outcome of the review by the Appeal Court; while the review in a criminal case is pending, the power of the Inspector extends to admitting to bail a person sentenced to imprisonment by such an Area Court. The essence of the power of review is to guard against a situation where injustice or miscarriage of justice has occurred but the affected party does not know what step to take or does not have the where withal to have the injustice remedied by way of an appeal.

Before now, in the South – Eastern states of Imo, Abia and Ebonyi, the provision for Inspection of Customary Court could be found in the Imo State Customary Courts Edict, 1984, applicable to the three States.²⁸ Section 45 of that Edict established the Inspectorate division of the Customary Courts consisting of a Chief Inspector of the Customary Courts and five or more Inspectors. The Inspectors were empowered to monitor the activities of members of the Courts, inspect the records of the Courts, report irregularities or excesses of members of the Courts to the President of the Customary Court of Appeal and perform other duties that may be assigned to them by the President of the Customary Court of Appeal²⁹. Upon receiving the report of the Inspectors, the President of the Customary Court of Appeal may either direct further investigation or take any action he deemed appropriate in the circumstances, which may include sending the report to the Judicial Service Commission for appropriate action. This was particularly so where the President of the Customary Court of Appeal felt that disciplinary action ought to be taken on an erring member of the Customary Court. The Customary Courts were also required to send periodic returns of all cases handled by them to the President of the Customary Court of Appeal³⁰.

In addition Order xix of the defunct Bendel State Customary Courts Rules, 1978 (applicable in Edo and Delta States),³¹ required Customary Courts to send return of all criminal cases disposed off every month to the Chief Judge or a Judge having jurisdiction in the area, who could on receipt, if he thinks fit review any of the cases. In reviewing a case the Chief Judge or the Judge may modify a sentence as he thinks fit, he may also annul the conviction and set free a person under detention or annul the conviction and convict and sentence the accused person for any offence disclosed by the evidence. He had powers to also order a new trial before the Court that passed the sentence or before any other court. The Edict also made provisions for inspection

²⁸ Ibid p. 10

²⁹ Section 46 (1), Imo State Customary Courts Edict, 1984.

³⁰ Section 47 *ibid*

³¹ *Op cit.*, ³¹ Sirajo, M.I. p. 11

of Customary Courts by the President of the Customary Court of Appeal or officers appointed by him.

From the above, it is clear that the powers of Directors and Inspectors in Plateau State and in all the Northern states appears to be far reaching than the powers of their colleagues in the South – Eastern States of Enugu, Imo, Abia and Ebonyi. While the Inspectors of the Area Courts in Plateau State retain the power to make interim orders of stay of proceedings or enforcement of orders of the inspected trial Court, the power of the Inspector in Imo State, for instance is limited to information gathering and transmission of same to the President of the Customary Court of Appeal for necessary action, he does not on his own have the power over the Customary Courts other than inspecting their records and sending report to the President of the Customary Court of Appeal.

In addition, the Inspector cannot stay proceedings of the Customary Court of Appeal. This development may lead to miscarriage of justice as the Court under inspection may proceed to determine the matter before the President of the Customary Court of Appeal had time to act on the report.

INSIGHT ON THE ROLES OF DIRECTORS/INSPECTORS IN SOME STATES

The Enugu state Customary Court of Appeal Inspection Policy and Complaints Procedure made some copious provisions to wit: Section 3(1) provides that Inspections shall occur after the 10th day of each quarter and before the last day of the quarter. Section 3(2) provides that two inspections each year shall be scheduled in advance; two shall occur without advance notice to the inspected Customary Court.

Section 4 provides that each Customary Court shall submit a completed Court Case Log form to the Inspectorate unit by the 5th day of each month. On inspection procedures, Section 5(1) provides that the *Inspector shall get the information needed to conduct an inspection of a Customary Court from:*

- Reviewing the Case data report from the Case Management System
- Reading previous inspection reports;
- Observing Court proceedings and practices;
- Talking to Court Chairmen, Member, Registrar and Staff;
- Examining complaints filed by court users; conducting surveys of court user satisfaction by talking to court users;
- Reviewing the Court records.

Upon completion of the inspection, Section 6(1) provides that *The Inspector shall submit the completed Court Inspection Form to the Chief Inspector through the ICT department*, which would be subsequently reviewed by the Chief Inspector through the ICT department³² to ensure they are properly completed. There are provisions of form for various purposes.

It is worthy of note here that on Disclosure of Information, Section 7(1) provides that the contents of the Case Log Form are public information and shall be disclosed upon request; while Section 7(2) provides that *The contents of the Court Inspection Forms, the substance of the discussions between an Inspector and the judicial officers and non – judicial officers of an inspected court, and discussions between the Chief Inspector and the Inspector, judicial officers and non-judicial officers of inspected Customary Court are confidential in order to encourage an open exchange, and shall not be disclosed except to the principal officers*³³ in the administration of justice.

More so, to keep the complainants informed on the appropriate action to be taken, the Customary Court of Appeal proposed to establish a designated Complaint telephone and Text Number (called the Hotline³⁴); information shall also be made available to court users (through supply of posters/handbills or brightly colored cards to each Customary Court) that inform court users of their rights and to make a complaint on how they were treated. The purpose of which is to establish a clear, user friendly process for court users to present concerns about the Customary Courts in Enugu State.

It is worrisome to note that in some Eastern States, instead of having an Inspectorate division of the Customary Courts to carry out their duties; Court inspection in these states are carried out periodically on complaints of parties by the Chief Registrar or another subordinate staff of the Customary Court of Appeal on the directive of the President. This means that unless a complaint is made, members of the Customary Courts can do whatever they want because the checks anticipated are not being adhered to. To this end, the absence of periodic supervision by designated Inspectors may lead to miscarriage of justice and abuse of Court process.

³² Section 6(2) Customary Court of Appeal Enugu State Inspection Policy and Complaints Procedure.

³³ The President of the Customary Court; The Judicial Service Commission by or with the approval of the President of the Customary Court of Appeal; As necessary, other members or staff of the Customary Court of Appeal, and the Director of Public Prosecution or the appropriate police official by or with the approval of the President of the Customary Court of Appeal, if the inspection reveals possible criminal conduct. Section 7(2) Ibid

³⁴ The Hotline Monitor will prepare a report for every complaint based on the information received and give the report to the Chief Inspector within two-days. The report should provide all the information received from the complainant. The Hotline Monitor will prepare and deliver a report whether or not complaints provide their name or consent to be called. After the review by relevant authority and any further investigation conducted; It was further provided that within 4 days, a communication will be sent to the complainant stating the complaint has been reviewed and advising which course of action is being taken.

In Kogi State, the effect of order and transfer is provided for in Section 48 (1) to wit:

“Every order of transfer shall operate as a stay of proceedings before the Area Court from which the proceedings are ordered to be transferred in any cause or matter to which the order extends or is applicable, and the process and proceeding in every such cause or matter, and a certified copy of the record shall be transmitted to the proceedings in the cause or matter shall be taken in such court as if the cause or matter had been commenced therein”³⁵

Consequently, on some initiatives that are opened to the inspector is further provided for in subsection (3) of Section 48 thus:

“The inspector may, if it appears expedient, in the first instance, transmit by telegram the contents of any order made by him under subsection (1) and such telegram shall, until receipt of the said order have the same validity and effect as if it were the said order.”

According to *Idoko C.J. in Olotu Ogbole v. Ngede Olotu*,³⁶

“The power conferred on an Inspector under this section is quasi judicial and not administrative. It is granted to an Inspector no matter what his grade may be. There is nothing in Section 48 to suggest that if an Inspector is higher in hierarchy he can countermand the power exercised by an inspector of a lower grade. To input that the higher inspector can nullify the power of the lower inspector is to misread that section of the law.... Being a quasi judicial power, the only body that can nullify the power of the inspector is the High Court on complaint of any aggrieved party.”³⁷

Pursuant to Section 49 (3) It is only left for the court to which the case has been reported for review, to either reverse, vary or confirm the decision given.

³⁵ Op cit, Eri. U., p. 60

³⁶ (1983 - 1988) BNL R 37

³⁷ Op cit, Eri. U., p. 60

The Lagos State Judiciary is the oldest Judiciary in Nigeria. It's existence dates back to the period of the cession of Lagos to the British Government and it will be worthy to see how Inspectorate division is accommodated. Section 39 of the Lagos State Customary Court 2018 (amended) provides for the supervision and control of the Customary Court to wit:

- 1) Customary Courts shall be under the general supervision and control of the Chief Judge,
- 2) The State Judicial Service Committee shall appoint a Customary Court Inspector for each administrative division of the State, who shall be a legal practitioner of not less than seven year's post call experience, or retired Chief Magistrate, or a person of equal rank,
- 3) A Customary Court Inspector shall be empowered to exercise and perform the functions of a supervising authority in relation to a Customary Court in the area of his jurisdiction as the Chief Judge may from time to time direct and he shall at all times have access to the Customary Courts as well as the records and proceedings of such Courts.
- 4) The Chief Judge may transfer any cause or matter before a Customary Court to another Customary Court or Magistrate's Court or to a High Court by means of order given under his hand at the instance of the said Customary Court or on the advice of a Customary Court Inspector or on the application of any party to the cause or matter.

From the foregoing, it can be gleaned that most of the State's have made significant progress in recognizing the important roles of the Directors/Inspector, by providing for their appointment in there laws; there is however room for improvement.

CONTRIBUTIONS OF THE INSPECTORATE DIVISION TO EFFECTIVE ADMINISTRATION OF JUSTICE

The judiciary as the bastion for the protection of the rights of the members of the society is poised to deliver justice to all, without entertaining any form of compromise, which will occasion miscarriage of justice. As such, excellence in the administration of justice delivery connotes dispensing justice by judges without fear or favour, devoid of corruption in all its ramifications, free from unnecessary and avoidable delays that often occasion miscarriage of justice.

For excellence to be achieved in justice administration, the judges must ensure that their orders and judgment are based on laws and established facts. Their decision

must be devoid of any external consideration and influence; *C.P.C v INEC*³⁸ and *Orji v Orji*³⁹ are very instructive in this regard.

Accordingly, those charged with the responsibility of supervising the judges must also be aware of their sacred role and the implication when they compromise. The improper exercise of one's Inspectorate power could lead to miscarriage of justice.

As corruption does not only destroys the fabric of any society, it also lower the reputation of the Judges and the Judiciary, therefore, to ensure excellence in the administration of justice, Directors/Inspectors and all those charged with the responsibility of supervising proceedings and inspect court records must eschew corruption in any form.

CHALLENGES

Addressing the issues of challenges impeding on the output of the Directors/Inspector, we must bear in mind that more than 70% of our Area/Sharia/Customary Courts are located in the rural areas. When complaints are lodged, which may be predicated on bias, lack of quorum, want of jurisdiction, corruption or miscarriage of justice; the Inspector is expected to embark on a visit to the Court to inspect the record and if need be, order a stay of proceedings pending investigation. Considering the topography of the area and distance the Inspector may not be able to act fast and this may eventually occasion miscarriage of justice which he is meant to prevent. This may not be unconnected to inadequate logistics.

Disparity in ranks – considering our unfortunate cultural values, where one's income or position determines the respect he gets at work place, there is bound to be some degree of insubordination where an Inspector on GL 10 is required to inspect and order a Judge on GL 12 to submit his record and order stay proceedings in a case. To this end, excellent justice delivery cannot be achieved under such situation. There is need to deploy a more suitable approach that will ensure an Inspector is not intimidated from carrying out his functions without compromise.

RECOMMENDATIONS

1. Accumulating and providing information on the stages of cases in the courts is key to administration of justice. There are a number of software applications that collect the information available relating to judicial bodies and the professional details of members of the judiciary. The Inspection Department

³⁸ (2011) 18 NWLR (pt 1297) 493 S.C

³⁹ (2011) 17 NWLR (pt 1275) p. 133 C.A

uses the collected data to compile information on the cases, as well as on the management practices and performance. It's recommended that the use ICT be strengthened in this department to aid the process.

2. Consistent Monitoring of the activity of the courts is intended to ascertain the degree of compliance with predetermined standards in the operation of jurisdiction, as well as the actual situation of the case before the judges; this process will help nip in any eventual anomalies in the bud on time and ensure that justice is constantly served.
3. Making proposals to the judiciary, as well as public entities and other judicial operators, on the implementation of measures and introduction of guidelines and adjustments in relation to the management and improvement of the quality of public service offered by the category of Courts under your supervision.
4. Just like constant training is required for the Judges of the Area/Sharia/Customary Court, the Inspectors/Directors also needs continuous training to update their knowledge, broaden their horizon and discharge their duties efficiently and effectively.
5. Insufficient working tools and inadequate funding are additional constraint to the efficient performance. As observed in this paper, most of the courts are situated in rural areas.

CONCLUSION

The Evolution of the Area, Customary and Sharia Courts system in Nigeria came with the hope and expectation of the public that the courts are created as the last hope for the common man. These assertion by the society and what ought to be the functions or duties of our courts to the society makes it mandatory on the part of the courts to carry out their duties diligently with a view to seeing that justice prevails in our society

Although, lower courts hear the majority of cases and are often the first point of contact to respective natives; they are widely believed to be the most inefficient and inequitable in their delivery of justice, hence the introduction of court inspection system to build user confidence and improve satisfaction in courts; as such Directors and Inspectors must be exemplary in their action. They must be ready to oversee the activities of these courts on a regular periodical basis; above all, without tracking developments in the inspectorate divisions of the court towards effective justice delivery, no matter the elegant phraseology, our designation as staff in the temple of justice will only remain a mere platitudes. I therefore urge us to remain resolute in ensuring that justice is served even in the face of daunting challenges.

In conclusion, I wish to thank all present here, but more especially the Administrator of National Judicial Institute for this wonderful opportunity given to me to present

this paper. I hope that the recommendations would be given attention, as it would aid in the effective discharge of justice to all those who come before the court.

Once more, many thanks for your attention.