

**BEING A PRESENTATION MADE BY MALACHY
UGWUMMADU AT THE PRESIDENTIAL ADVISORY
COMMITTEE AGAINST CORRUPTION (PACAC)'S
SPECIAL DIALOGUE ON REPOSITIONING THE
JUDICIARY AS A MAJOR TOOL
IN THE FIGHT AGAINST CORRUPTION**

**THEME: PROMOTING INTEGRITY AND
ACCOUNTABILITY IN NIGERIAN
JUDICIARY, A PANACEA FOR
COMBATING CORRUPTION IN NIGERIA**

**TOPIC: APPOINTMENT AND PROMOTION OF
JUDGES**

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Abstract

This presentation examines the importance of thorough appointment and promotion processes in the entire value chain of the Nigerian justice sector. It considers the extant statutory and constitutional provisions on appointments of Judges in relation to their adequacies, effectiveness or otherwise towards promoting or depleting the integrity and accountability rating of the Nigerian Judiciary system. The presentation highlights some of the flaws of a dysfunctional federal arrangement inherent in our system and argues that sustaining the prevailing practices of nepotism, political class interference and influences, patronage in the appointment and promotion of Judges will further alienate the Nigerian Judiciary from recruiting its officers from amongst deserving Nigerians, thoroughly trained and motivated professionals, patriots driven by high sense of justice, men and women of integrity who are consciously guided by the principles of fairness, objectivity and sound knowledge of the law. It further contends that such scenario accentuated by opaque procedure is deleterious and must be avoided. In establishing the centrality of the Judiciary as the best guarantee for citizen welfare and security, the paper briefly appraised the stage by stage progression of appointment processes of Judicial Officers in some Commonwealth Countries and came to the conclusion that nothing more than the knowledge that a certain, ascertainable, determinable, prompt, transparent and impartial administration of Justice promotes greater peace, social harmony and cordial human co-existence. It revalidates the notion that everybody is equal before the law and rekindles the hope of the people that the society they live in can deal with every social vice including corruption through a carefully selected adjudicature comprising people of proven integrity, honesty, impartiality, independence and sound knowledge of the law. The presentation concludes by offering pragmatic proposals for effective reviews, reversals and or improvements taken together with the views expressed.

Introduction

When considered against the backdrop of the wider theme of this dialogue, my assignment limited to discussing appointments and promotions of judges pales into irrelevance but when appreciated as a critical entry point and gateway to a crucial arm of government and institution, it then will be apprehended as an extremely important topic upon which every other effort towards repositioning the Nigerian Judiciary rests. The notion that the processes of appointments and promotion of Judges are now tainted with irregularities and in worse cases corruption, immediately invokes the picture of a government power house in which the sustaining oxygen has been diluted and left with a singular gas channel that has been polluted from its source such that whatever flows therefrom is already contaminated with huge consequences. This is dangerous and must be arrested. Interestingly however, very serious interventions had already been made and documented on this subject in the past. Recall that only on Tuesday the 25th of January, 2022, less than a fortnight ago, the Nigeria Bar Association, the Justice Research Institute in collaboration with the Konrad Adenauer Foundation, the United Nations Office on Drugs and Crime (UNODC) and The Justice Reform Project held a Justice Sector Summit¹. The theme of the Summit is relevant and related to the present initiative. It dealt with ***"Devising Practical Solutions Towards improved Performance, Enhanced Accountability and Independence in the Justice Sector"***. Our present preoccupation in this Dialogue therefore is to focus on providing pragmatic solutions to identified flaws and challenges beyond the theoretical evaluations of the problems already identified in the past.

Appointments And Promotion of Judges And The Relevant Courts Under Review.

By "Judges" and in this presentation, I also reference Justices of the superior courts and in particular, the two appellate courts, Supreme Court and Court of Appeal. To understand the processes of appointments into all categories of courts, the appropriate document to turn to is the grundnorm of the Federal Republic of Nigeria². The entire **Chapter VII** thereof is dedicated to the Judicature starting from **Section 230 to 296** dealing with Federal Courts including the Supreme Court and Court of Appeal, Federal High Court, National Industrial Court, the High Court of the Federal Capital Territory Abuja, the Sharia and Customary Courts of Appeal of the Federal

Capital Territory, Abuja and the State Courts comprising High Court of States of the Federation, Sharia and Customary Courts of Appeal of States, as well as Election Tribunals. These courts and powers exercisable by them are as provided for under **S.6(1)** and **(3)** of the 1999 Constitution and as enumerated in **subsection (5)**³.

As a fundamental objective and directive principle of state policy, the Nigerian State has committed itself to a political objective namely to **abolish all corrupt practices and abuse of power**⁴. This is the constitutional provenance of our discourse in this address and from where the compass is focused and projected to other relevant areas of the present exercise.

Appointments

At the level of the Federal Courts already identified and by virtue of Sections **231(1)(2)^{SC}**, **238(1)(2)^{CA}**, **250(1)(2)^{FHC}**, **254B(1)(2)^{NIC}**, **256(1)(2)^{HCFCT}**, **261(1)(2)^{GK SCAFCT}**, **266(1)(2)^{PJ CCAFCT}** respectively, you will observe a uniform tripod pattern in the appointments of the respective heads of the Federal Courts indicating that **ALL appointments** are made by the **President** of the Federal Republic of Nigeria including the Grand Kadi of the Sharia Court of Appeal of the FCT and the President of the Customary Court of Appeal of the FCT on the **recommendation** of the **National Judicial Council** and subject to the **confirmation of the Senate** in respect of the Chief Justice of Nigeria, Justices of the Supreme Court and President of the Court of Appeal. The other Justices of the Courts of Appeal and Judges of the other courts including the Kadi of the Sharia Court of Appeal of the FCT, Abuja and Judges of the Customary Court of Appeal FCT are also made by the President but on the recommendation of the NJC only. The additional requirement for the confirmation of Justices of the Supreme Court and the President of the Court of Appeal by the Senate is understandable given the pre eminence and sensitivity of the offices relating to all the Justices of the Supreme Court as well as the headship of the Court of Appeal. In the past, referencing the 1960 Independent and 1963 Republican Constitutions, but more importantly, the Constitution of the Federal Republic of Nigeria 1979, the process of appointments of judicial officers was simpler, less cumbersome and less prone to political interference. In particular, they were all more consistent and aligned with the principles of federalism as proclaimed.

Historical Backgrounds and Progression in the Appointment of Judicial Officers

At independence in 1960, the Chief Justice of the federation was appointed by the Governor General acting in accordance with the advice of the Prime Minister⁵ while the Federal Justices were appointed by the Governor General, acting in accordance with the advice of the Judicial Service Commission of the Federation⁶. It was that simple between the Governor-General and the Prime Minister notwithstanding that Her Majesty, the Queen of England-in-Council participated in the removal of the Chief Justice of the Federation and Federal Justices of the Supreme Court. Similarly, an appeal could lie from the decision of the Federal Supreme Court to Her Majesty in Council as of right⁷. Thus, appointments into and removal from the apex court have always been captured the imagination of the appointing authorities in the general strategy for power control and influence. Yet, in terms of processes and mechanism, it was relatively less amenable to manipulation and control then as it has become structurally today.

By 1963, Nigeria became a republican state and appointment of the Chief Justice of Nigeria and the Justices of the Supreme Court became the prerogative of the President acting in accordance with the advice of the Prime Minister, provided that four of the Justices of the Supreme Court were appointed by the President acting on the advice of the Premier of the different Regions⁸. You would recall that each of the regions under that Constitution was at liberty pursuant to **S.126 of the Constitution of the Federal Republic of Nigeria 1963** to establish a regional Courts of Appeal if the Legislature of the relevant Region made provision for their establishment⁹. The determination of the Supreme Courts under this Republican Constitutional became the final decision with no further right of appeal which was why appeals lay straight from High Courts of the Regions to the Supreme Court¹⁰. Increasingly, it became apparent that appointments into the Nigerian Judiciary provided a peculiar context for some power relations and geo-political contest then as it has remained today. The difference however, is that then the focus remained fixed at the integrity and capacity of the Judicial institution to deliver on its philosophical essence of dispensing Justice and adjudicating disputes amongst persons and between persons and governments.

The Constitution of the Federal Republic of Nigeria 1979 presented a more fascinating scenario as far as this issue of appointment is concerned. With respect to the Chief Justice of Nigeria, the President made the appointment solely **in his discretion** subject to confirmation by a simple majority of the Senate¹¹. For the Justices of the Supreme Court, the President made the appointment on the advice of the Federal Judicial Service Commission and subject to the approval by a simple majority of the Senate¹². In that instance, the tripod pattern existed just as it does in the case of the appointment of the President of the Federal Court of Appeal¹³. But with respect to the other justices of the Federal Court of Appeal and the leadership ie Chief Judge and Judges of the Federal High Court, it is merely the business of the President on the recommendation of the Federal Judicial Service Commission¹⁴.

Similarly, you would find that the appointment of the Chief Judge and Judges of the State High Court were made by the GOVERNOR on the advice of the STATE JUDICIAL SERVICE COMMISSION and subject to the approval of the State House of Assembly by simply majority. This is equally applicable to the appointment of Grand Kadi and Kadi of the Sharia Court of Appeal of the State as well as the President and Judges of the Customary Court of Appeal of a State whose appointment shall be by the GOVERNOR on the recommendation and advice of the **State Judicial Service Commission** as against the 1999 Constitutional provisions by which those appointments are on the recommendation of the National Judicial Service Commission. Thus, how has the involvement of the NJC in the appointment of judicial officers at state levels constituted a challenge? I will now proceed to give two practical examples in Cross River and Rivers States respectively under the following sub title.

Dysfunctional Federal Arrangement In Appointment Processes

For those who may be wondering how the foregoing observations amount to any fundamental challenge in our federal structure arrangement, let us examine just two practical instances of such flawed federal arrangement that became huge problems in our country.

Cross River State Impasse

For approximately one full year, the Cross River State Judiciary had no substantive Chief Judge following the retirement of the former Chief Judge, Hon. Justice Michael Edem. Hon. Justice Akon Bassey Ikpeme stepped in, in an acting capacity with a request from Gov. Ben Ayade to the then Cross River State House Assembly to confirm her appointment as the substantive Chief Judge of the State. The House refused her nomination both in March and June, 2020 on account of the fact that she is from Akwa Ibom State even though married to a Cross River State man. The House consequently refused to confirm her appointment which action is clearly against her fundamental right against discrimination under S. 42(1) of the 1999 Constitution. In the circumstance, Gov. Ben Ayade inaugurated a separate State Judicial Service Commission which nominated Justice Maurice Eneji to the NJC as Acting CJ. The same NJC which initially recommended Justice Ikpeme for appointment as CJ also approved the extension of Justice Eneji's tenure in an acting capacity contrary to **S. 271(5) of the 1999 Constitution**. Thereafter, Justice Effiom Eyo-Ita was also appointed and acted for another three months from October, 2020. It was not until January, 25th 2021 that the Cross River State House of Assembly confirmed Hon. Justice Ikpeme's nomination as the substantive Chief Judge of Cross River State. In the wake of the foregoing political intrigues, the following challenges became inevitable:

- Crucial and precious legal year (Jan 2020 – Jan 2021) lapsed without a substantive "head" of Cross River State Judiciary owing to the indiscretion of the State House of Assembly.
- Given the intrigues and huge political interferences and influence that characterized Her Lordship's appointment, chances are that a lot of bad blood and animosity must have been created in the system.
- Considering also that there were no repercussions either against the legislators or even the Governor, as some argued, the same culture of impunity is likely going to manifest and repeat itself in the future.
- To what extent can His Lordship, the victim of this clear case of discrimination and intimidation superintend the affairs of the Cross River State Judiciary and dispense justice without fear or let?
- What manner of compensation or recompense came her way when eventually she was confirmed as the substantive CJ of Cross River

State presupposing that she was qualified *ab initio* to be appointed into that position?.

- It is hoped that the appeal lodged against the ruling of the Federal High Court, Calabar Division in respect of the matter will be determined on its merit and not further dismissed as a mere academic pursuit.

Rivers State Crisis

The case of Rivers State conundrum between August, 2013 and May, 2015 threw up more disturbing concerns regarding the role of a federal institutions in the appointment of Judges at sub national levels. Again, Rivers State operated without a substantive Chief Judge between August, 2013 after the retirement of the former Chief Judge Hon. Justice Iche N. Ndu till May 31st, 2015 approximately two years later within which period valuable time was lost, litigants including those whose liberty were abridged continued to suffer, investors' confidence waned and society itself became vulnerable to the violence of self help without a functional court systems. On the 1st of June, 2015, the Acting Chief Judge of Rivers State Hon. Justice Daisy W. Okocha was sworn into office by the current Governor Nyesom Wike. His predecessor, Rt. Hon. Chibuike Amaechi had declined her appointment despite her recommendation by the NJC for appointment as the CJ of Rivers State. He believed that her recommendation by the NJC was merely directory and consequently instituted an action in **Gov. of Rivers State & Ors vs. National Judicial Council & Anor**¹⁶ by which he successfully set aside the recommendation of the NJC. Consequently, he appointed Hon. Justice P.N.C Agumagu as the CJ of the Rivers State Judiciary purporting to have acted on the advice of the Rivers State Judicial Service Commission. Expectedly, the NJC neither recognized him nor cooperated with him for accepting his appointment and performing the functions of that office of the CJ as a judicial officer without a prior recommendation by the NJC. On the 3rd of June, 2014, the NJC appointed Hon. Justice Daisy Okocha as the Administrative Judge of the State with mandate to assign pending cases to Judges in the State. In response, the Rivers State Government issued a circular directing all staff of the judiciary in the State to refrain from taking any instruction from Her Lordship Daisy Okocha and threatened outright dismissal for anyone who flouted the directive. In that convoluted circumstance, the Judicial Staff Union of

Nigeria (JUSUN) embarked on an industrial strike completely crippling the administration of Justice in the entire Rivers State¹⁷.

Such confrontational posture between a State Government and the National Judicial Council has never been witnessed in this manner in the Justice sector. The implications are far reaching with colossal consequences. The conclusion drawn by the Learned Author to the effect that S. 271(4) be amended to reflect that only the most senior Judge be sent to the NJC for recommendation is a half measure solution to the prevailing structural crisis in Nigeria. It is doubtful whether the NJC, in other circumstances, will not find other reasons to reject a name sent to them by the State Judicial Service Commission even if such a Judge is the most senior Judge.

In the event, I propose a complete severance of the NJC from the appointment processes of Judges at the state level as it is equally advised for other agencies of government at sub-national levels. If we achieved this as demonstrated in the previous constitutional arrangements particularly under the 1979 Constitution, why has it become impracticable over four decades after. The further argument that Governors of their respective states will completely hijack the institutions and processes as a fiefdom throws the challenges back to all of us to intensify the efforts we are making presently in supporting and strengthening the corresponding arms and agencies of government particularly the Legislatures to optimize their check and oversight roles against the excesses of the Executive. But that is not all that is amiss in this matter. Indeed, by the present Constitutional arrangement, the NJC is heavily burdened and poorly constituted to add any meaningful value to the process of appointment of Judges particularly into the state courts. Even at the Federal Courts, the composition of the NJC renders it completely untenable to engender any serious accountability in that endeavour. It is simply skewed in favour of incumbent Chief Justices of Nigeria however incompetent such a person maybe or become.

Accordingly, a further proposal for a more transparent and participatory process in the appointment of Judges become imperative. Judges, whether from the bench or judicial institutions are drawn primarily from the pool of legal practitioners. In this regard, it becomes practically problematic to rationalize a process that accords the body of legal practitioners only a nominal role, if any, in the appointment process. **Para 20(i) in the 3rd Schedule to the Constitution of the Federal Republic of Nigeria** is the only section of our Constitution that recognizes the importance of the

body of lawyers in the appointment of Judges and to very limited extent. To be sure, it provides as follows:

20(i) "Five members of the Nigerian Bar Association who have been qualified to practice for a period of not less than fifteen years at least one of whom shall be as Senior Advocate of Nigeria appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment".

It has been rigorously argued, and rightly too in any view, that as lawyers, the most effective means of ascertaining the credibility, competence, integrity of persons eligible for appointment into the Judiciary is through their colleagues and members. Peer assessment, peer interactions peer reviews and even peer competition through advocacy of the law are some of the easiest ways of identifying and recruiting the best amongst legal practitioners to occupy judicial offices as judges and justices with the requisite skills and knowledge. Two factors however render this approach difficult. First is the career factor. It presupposes that the only promotion available to the Judex is in elevation of Judges to higher courts even from the magistracy.

It envisages that the most Senior Judicial Officers in both State and Federal Judiciary automatically become eligible for appointments into the headship of those institutions in the event of retirements, death or other considerations rendering them incapable of performing the functions of their offices. To this extent, the Constitution of the Federal Republic of Nigeria in its relevant sections dealing with vacancies in the offices of the Chief Justice of Nigeria¹⁸, President of the Court of Appeal¹⁹, Chief Judge of the Federal High Court²⁰, President of the National Industrial Court²¹, Chief Judge of the High Court of the Federal Capital Territory²², Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory²³ and President of the Customary Court of Appeal of the Federal Capital Territory²⁴ deplored or adopted similar expressions in emphasizing the importance of seniority in the appointments of heads of our respective courts at the National levels as it did for the States. Using the Chief Justice of Nigeria as an example, it provides thus:

231(4) If the office of Chief Justice of Nigeria is vacant or if the person holding the office is for any reason unable to perform the functions of the office, then until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the President shall appoint the most Senior Justice of the Supreme Court to perform those functions.

This constitutional provision which is *in pari materia* with the foregoing sections provided reinforces the argument that seniority and career consideration in appointment of Judges in Nigeria is almost indispensable. Accordingly, appointments from outside the Bench is considered an anathema and disruptive. This is not limited to appointment to the headship of Federal Courts but also at State Courts²⁵. It is precisely for this reason that the well thought out idea of appointing Judges from outside the Bench including from amongst the academia, accomplished legal practitioners has not seen the light of the day besides the twin cases that we had in the second republic. It is clearly seen as an aberration and seriously discouraged.

Secondly, it is generally believed that the knowledge of the law as practiced in our law courts according to the rules of the respective courts are better appreciated by practicing legal practitioners and “sitting Judges” and not academics or law teachers and authors. In some extreme cases, it is equally believed, albeit extraneously, that the surest way to establish the integrity of a Judge is if he had moved from the ranks in the Judicial career up to the Supreme Court. In this regard, the idea of appointing persons from the Bar or Academia straight to the Supreme Court without dealing with the challenges associated with Judicial offices and functions deny the candidate and observers the opportunity of practical assessment before appointment.

Further Exploring The Prospects and Proprieties of Appointing Judges from Legal Practitioners

The unfortunate fact that previous efforts have not paid off in the past does not foreclose the wisdom or benefits of the idea. It is believed that for this reason, there is a renewed effort between the office of the Chief Justice of Nigeria and the current leadership of the Nigerian Bar Association to appoint

eminent legal practitioners directly from the Bar to the Supreme Court. To this end, the Honourable Chief Justice of Nigeria (CJN) on January 19th 2022 officially communicated the Nigerian Bar Association seeking to appoint six (6) suitably qualified lawyers from its ranks to fill the present or future vacancies on the bench of the Apex Court²⁶.

In furtherance of this, the Chairman of the NBA Judicial Committee, Dr. Babatunde Ajibade, SAN, FCIARB caused a public Notice to be issued on behalf of the Association in which the identities of the twenty four (24) of its members who had expressed interests to be so appointed were published. In the same publication, members of the Bar and the general public were invited to petition the organization if there was or were reason(s) why any of them stood disqualified to be so appointed²⁷.

Clearly, this will enhance the transparency and participatory nature of this process in recruiting the best into the Apex Court thereby enhancing the credibility of the process and restoring public confidence and integrity in the Judiciary. It will be recalled that apart from Hon. Justice Teslim Elias who was an academic and a Federal Commissioner for Justice, appointed to the Supreme Court by the Yakubu Gowon administration in 1972 till 1975 as well as Hon. Justice Augustine Nnamani (SAN) who was a practicing lawyer, no other person since independence has ever been so appointed to the Supreme Court either from the Bar or academia. Efforts made in the past during the tenure of A.B. Mahmood in which nine senior advocates were shortlisted from amongst the 89 persons that expressed interest could not see the light of the day. Those shortlisted then included Olise Agbakoba, (SAN), Anthony Idigbe (SAN), Yunus Usman (SAN), Babatunde Fagbohunlu (SAN), Miannayaaja Essien (SAN), Prof. Awa Kalu (SAN), Prof. Awalu Yadudu (SAN), Tajudeen Oladoja (SAN) and Ayuba Giwa (SAN).

Appointments, Tenure and Removal of Judges under Commonwealth Principles

The requirement of the Commonwealth Latimer House Principles that Judges should be appointed on the basis of clearly defined criteria and by a publicly declared process conveys a fundamental commitment to transparency. It survives on the logic that the public must be informed of the conditions that qualify persons for Judicial office and procedures that are followed when an individual applies or is considered for appointment.

The aim of judicial appointment process should be to provide a reliable means of identifying persons who possess these qualities and to do so in a manner that is legitimate, in order to sustain public confidence in the judiciary. Global and regional documents have emerged on this subject matter. At global level, the International Convention on Civil and Political Rights recognizes a right to fair hearing and trial which must take place by a competent, independent and impartial tribunal established by law. It's understandable that no single jurisdiction or judicial appointment commissions can provide all the needed standards and parameters for appointment of Judicial officers.

However, the current approach generally adopted by the Commonwealth States regardless of the selection bodies that are established focuses on candidates' **intellectual ability, moral qualities and practical skills** which are all relevant for the determination of merit. It is also observed that the experiences and needs of a particular jurisdiction may determine how it approaches such consideration. In South Africa, for instance, the constitution expressly provides that the appointment of Judges and Justices of the Superior Court must deliberately reflect the racial and gender composition of the society²⁸. Essentially, the progress made in relation to appointment of Judges across the globe could be measured from the stage of obscurity, opaqueness and secrecy to relative participation, and then, to the point of considerable transparency. Thus, at first and in England and Wales in the United Kingdom, the appointment process was largely what His Lordship, Lord Chancellor opined was most appropriate.

In the old West Minister system, Lord Chancellor was both a member of the British Cabinet and House of Lords and served as the head of the Judiciary. In that capacity, he was responsible for selecting candidates from amongst experienced and accomplished legal practitioners for appointments by the Queen. He achieved this via interfacing with senior members of the Judiciary and legal profession by identifying suitable candidates for appointments. Besides, this was done privately and in secret without the knowledge of the prospective candidates in a process known as "**secret sounding**". He, the Chancellor then formed his opinion about each of the candidates after the consultations and thereafter made direct offers to the eligible candidate in what was known as "**the tab on the shoulder**" because it was more or less the private secret enquiry of a public official. Besides the consultations, you could see that this process was neither

transparent nor participatory. It was the major bane of this process and as society progressed, it particularly became necessary that an Independent Commission for Judicial Appointment was established to review Lord Chancellor's exercises with a published criteria and standards for appointment. This promoted some measure of accountability and reduced arbitrariness in the process. Unlike in the United Kingdom without a written constitution but largely guided by customs and long standards of practice, the Canadian system is codified and relies on an **Advisory Committee** which assesses candidates for appointments into Federal Courts. It is known as **the Federal Office of Commissioners for Judicial Affairs**. It has an additional responsibility to advise the executive on Judicial appointments²⁹. This is not radically different from the Judicial Appointments Commissions but exposes the vulnerability of such executive bodies without solid legal frameworks because it can be discontinued or abolished by the same executive like it happened in Australia. In New Zealand, the Attorney-General being a cabinet member is in charge of appointments. He effects the appointments through established protocols which specify the criteria for judicial engagements as opposed to clearly codified procedures that are less susceptible to abuses. Indeed, the Executive could circumvent the procedures laid down in the protocols to appoint Judges without any challenge clearly because the basis to launch such legal challenge does not exist in any binding legal instrument that is enforceable.

The above description provides an insightful overview into what was obtainable with the old West Minister model comprising United Kingdom and Wales but hardly captures the approach in other Commonwealth Countries. The dominant approach is the template provided by the Commonwealth Latimer House Principles. It made no elaborate provision for appointment processes but focused on the three cardinal objectives of equality of opportunities, appointment on merit and consideration of the need to address gender inequality and other historical factors of discrimination. It was not radically different from the IBA (ie International Bar Association) Minimum Standard for Judicial Independence adopted in 1982 by which it was recommended that appointments of Judicial officers should be vested in a Judicial body, the composition of which should be dominated by Judges and Lawyers³⁰.

Given the foregoing concerns and the challenges of transparency and interference, the need for a totally neutral independent Judicial Commission for appointment was created. It is very consistent with the recommendations of the UN Special Rapporteur to guard against the risk of political manipulation. Much in the same prescription with the UN Basic Principles on the Independence of the Judiciary. It is generally believed that such separation and delegation to an independent, distinct entity provides a greater guarantee to the credibility and certainty of the outcome.

The Guidelines and Procedural Rules for the Appointment of Judges by the National Judicial Council

There are, in all, seven (7) procedural rules and guidelines developed by the NJC for the appointment and promotion of Judges in Nigeria.

➤ **Rule One**

Simply emphasizes that the Federal Judicial Service Commission, the State Judicial Service Commission and the Judicial Service Committee of the Federal Capital Territory shall comply with the terms of the rules and guidelines in their advice to the National Judicial Council for nominations or recommendation of candidates for appointment of Judicial offices for the superior courts of record under the 1999 constitution of the F.R.N. (as amended).

➤ **Rule Two**

Under this rule, it shall be the responsibility of the Chairman of the State Judicial Service Commission, the Head of the Federal Courts and Chairman of the Judicial Service Committee of the Federal Capital Territory respectively to notify in the case of the State JSC, the Governor of the State, the Chief Justice of Nigeria/Chairman of the Federal Judicial Service Commission of proposed appointments into the Federal Courts within the Federal Capital Territory that they intend to embark on the process of appointments into the Judiciary within their jurisdictions and the member of the Judicial officers they propose to so recommend for appointment.

The NOTICES so given shall be sent to the Secretary of the Council who shall upon receipt ADVISE the **referees** ie Chief Justice of Nigeria/Chairman FJSC and Chairman JSC of the FCT on the appropriate number of Judges that can be appointed based on the relevant budgetary

provision in the budget of the Council and other considerations. Once the CJN/Chairman of NJC is armed with the advice of the Secretary of Council, he reaches out to the Heads of the Federal Courts that had made requests or Chairman of the Judicial Service Committee of the FCT to either proceed with the process as proposed or with specific reduction in the number of Judicial officers proposed to be appointed or completely rescind the idea in deserving cases or circumstances.

The decisions once taken by the CJN/Chairman NJC must be committed in writing to the Chairman of the JSC, or as the case may be, to the Heads of Court and such communication shall be final unless the Head of the particular Court concerned is able to show grounds to the satisfaction of the Chief Justice/Chairman of the National Judicial Councils why it should be reviewed.

➤ **Rule Three**

Upon receipt by either the Judicial Service Commission or Committee at the FCT of the formal decision (in writing) of the Chief Justice/Chairman of the National Judicial Council, the relevant JSC/Committee shall:

- i. Call for expression of interest from suitable candidates by way of public notice placed on their websites, notice boards of Courts and the NBA branches;
- ii. Write to every other Head of Superior Courts of Record in Nigeria and to every Judicial officer of the Court concerned asking for nomination of suitable candidates for the proposed Judicial appointments;
- iii. In the case of appointments into the Federal Courts to the President of the NBA and in the case of appointments with State Courts, to the Chairman of the NBA in the branch concerned specifically asking for nomination of suitable candidate for the proposed Judicial appointment. Please note as argued in the preceding chapters and paragraphs the author's concern as to the impropriety of having NJC dabble directly into the appointment processes in the States. We saw the convoluted situations it created to both Rivers and Cross River States.

Where the appointment sought to be made is in respect of Judicial officers for the Court of Appeal and Supreme Court, the President of the Court of Appeal and the Chief Justice of Nigeria shall in each case write to Heads of Courts, serving Justices of the C/A and SC and President of the NBA requesting for nomination of suitable Judicial officers for appointments into the two Superior Courts.

- ❖ Any person who makes the foregoing nomination is expected to have sufficient knowledge of the person he so nominates which knowledge must be within a reasonable time enough to be able to attest to his/her suitability for the appointment.
- ❖ It is either the Judicial Service Commission or Committee that will specify a deadline or closing date for the receipt of the application for expression of interest.
- ❖ At the end of the exercise that is the collation of expression of interest, the Chairman of the Judicial Service Commission/Committee draws up a provisional shortlist of nominees on the scale of their merit and of a number twice the required number. The list shall be circulated together with another request for comments on the suitability of any of the shortlisted candidates to:
 - i. All serving and retired Judicial officers of the Court to which the appointment is sought to be made but not the heads of the Courts.
 - ii. All serving and retired Heads of the relevant State or Federal Courts, retired Chief Justices of Nigeria and retired President of the Court of Appeal in the case of appointment of a Head of Court.
 - iii. All the branches of the Nigerian Bar Association in the State where the appointment is sought to be made except that where the appointment concerns Federal Court, it shall be sent to the President of the NBA alone.
 - iv. Every member of the Judicial Service Commission/Committee.

- v. Thereafter, the Judicial Service Commission/Committee will (shall) place the provisional shortlist before the Judicial Service Commission/Committee for approval which approval shall be final with or without modification.
- vi. By this subrule (4) Chairmen of Judicial Service Commission/Committee are enjoined, in producing the provisional shortlist to take into account: (i) professional expertise and competence; the quality of judgments, performance and demonstration of judicial skills of the Judge in the case of appointments from High Court to the Court of Appeal/Chief Judges/Legal Practitioners/academicians; six (6) contested cases in the last 5years; (ii) sound knowledge of the law, seniority in the Bar and bench, Federal Character or geographical spread in the case of appointment from the Bar.
- vii. The Chairman Judicial Service Commission/Committee reserves the prerogative to remove even from the provisional shortlist, persons whose reputation in the locality is low or had been tarnished; or any such Judicial Officer whose performance has been consistently rated low in the Performance Evaluation Report.

➤ **Rule Four**

- 1. The Chairman of both the Commission and Committee direct the secretaries of both bodies to issue to every shortlisted candidate an **NJC FORM "A"** which shall be completed, executed and returned to the Chairman by the candidates together with other required attachments.
- 2. Thereafter, the Chairman tables before the Commission/Committee for their consideration a memorandum on each of the shortlisted candidates with:
 - (a) The completed NJC Form "A" and the necessary attachments;
 - (b) Comments of persons specified under Rule 3(2);

- (c) Any petition or protest against a shortlisted candidate together with the response of the candidate, if any;
 - (d) Detailed Medical Certificate of fitness from Government Hospital;
 - (e) Report by the Department of State Security on the suitability of the candidate for appointment to a Judicial office supported by verifiable facts on which the report is based.
3. The inquiry as to the suitability of the shortlisted candidate can be extended to other reputable sources beyond the DSS in determining the suitability of the candidate.
 4. The Commission/Committee remain permanently conscious of the fact that Judicial officers hold high office of State and occupy offices carrying enormous powers and authority. In this regard, the National Judicial Council shall always and:

In all cases

- a) view good character and reputation, diligence and industry, honest, integrity and sound knowledge of law and adherence to rules of professional ethics as extremely important.

As may be applicable

- b) consider active successful practice at the Bar, including satisfactory presentation of cases in court as a legal practitioner either in private practice or as a legal officer in any public service;
- c) pay attention to satisfactory and consistent display of sound and mature judgment in the office as a Chief Registrar or Chief Magistrate;
- d) ascertain credible record of teaching the law, legal research in reputable university and publications of legal works;
- e) sound knowledge of Arabic language and grammar in the case of appointment of candidates into the office of Kadis of Sharia Court of Appeal

- Shortlisted candidates stand disqualified for appointment into the Superior Courts of record if found to have been involved in:
 - (a) Canvassing or lobbying for the appointment directly or indirectly at any level and from any source including politicians.
 - (b) Bad behaviour, whether in or out of court.
 - (c) Activities suggesting impecuniosities and/or displace of lifestyle above his/her means.
 - (d) Influence peddling and name dropping.
 - (e) Any act of dishonesty or corruption or corrupt practices.
 - (f) Rendering dishonest or questionable legal opinion or advice.
 - (g) Deliberate, improper or wrong completion of NJC Form "A" with intent to deceive or mislead.
 - (h) Submission of false credentials or fraudulent curriculum vitae.
 - (i) Very little or limited exposure to practice at the Bar and conduct of cases in the Superior Courts of Records.
 - (j) Decision of the Commission/Committee in respect of the nomination and advice for appointment of a Judicial officer shall be authenticated by the minutes of the Commission/Committee meeting duly adopted and signed by the Chairman and Secretary of the Commission/Committee.

➤ **Rule Five**

1. Once the procedures outlined in Rules 1-4 above are duly complied with, the Chairmen of both the Judicial Service Commission and Committee of the FCT as the case may be, recommend to the National Judicial Council by a memorandum

which shall conclude by specifically declaring that the NJC Guidelines and Rules have been strictly and fully complied with.

2. The memorandum must indicate whether the shortlisted candidate had earlier been nominated or recommended in previous exercises for appointment as Judicial officer and if (s)he has then, the details and particulars of the previous exercise including the decision of the Council.
3. The memorandum referred to above will be addressed to the Chief Justice of Nigeria/Chairman of NJC or to the Secretary of Council but may not be presented to Council for consideration unless it is received at the Headquarters of the Council not less than 30 days before a scheduled meeting of the Council.
4. The same memorandum as articulated by the Secretary of Council must contain justification for the member of Judicial officers sought to be appointed; it shall include:
 - a. Minutes of meeting of the JSC or Committee where the nomination of candidates was considered and decision taken;
 - b. All the materials and documents made available and considered by the JSC/Committee.
 - c. Proof of the legislation establishing the particular court concern.
 - d. Proof of adequate capital vote provision in the approved budget for the Superior Court of Record concerned.
 - e. Real and verifiable proof of availability of suitable court halls, Judges' residence, cars and libraries among others.
5. The National Judicial Council shall pay attention to the workload of the courts, performance of the current Judicial officers of the court in considering the number of Judicial officer to be recommended for appointment. The Council may reduce the number of Judicial officers to be recommended for appointment based on prevailing factors of need.

➤ **Rule Six**

1. makes provision for the interview of every candidate who was shortlisted. The interview is by the National Judicial Council to ascertain his or her suitability or otherwise into that Judicial office sought.
2. the mode of the interview shall also be determined by the Council.
3. the result of the interview shall constitute an integral part of Council's decision on the suitability for the Judicial office.
- 4a. once a candidate is unsuccessful at the interview, he shall not be recommended for appointment by Council. This certainly limits or forecloses unnecessary lobbying and influence.
- 5a. similarly, a candidates once rejected on the grounds stated in Rule 4(4)(II) shall not be re-presented by the Council for a period of at least 2 years or any such period as the Council may direct.

➤ **Rule Seven**

Dealt comprehensively with the interpretation of key words used in the entire rule including Chairman, Chief Justice/Chairman, the Constitution, Council, Federal Court, Head of Court, Judicial Officer, Judicial Service Commission or Committee which include the Judicial Service Committee of the Federal Capital Territory.

Notice, Secretary, State Courts and Superior Court of Record

I have dealt extensively with the sub-topic on NJC Guidelines and Rules for the appointment of Judicial officers in a way that underscores the focus of this presentation. An indisputable fact is that Nigeria, like most Commonwealth Countries, through the National Judicial Council developed one of the most elaborate guidelines for Judicial appointment aimed at (a) certainty of process and procedure, (b) participation and inclusiveness, (c) accountability and transparency, (d) sound knowledge of law and the special skills for Judicial engagements. The findings are diverse and encouraging as far as the international best standards for appointments of Judges are concerned. However, it is instructive to observe the safety nets and deliberate mechanisms integrated in the processes to deal with identified fault lines of arbitrariness, uncertainty and whimsical and capricious interferences.

In the event, Rule II (4) predicates appointments on available budgetary allocation of the Council for the year on the basis of which the Council can also advise the appointing authorities both the CJN/Chairman of JSC and Chairman of JS Committee on the appropriate number of judicial officers to be appointed or none at all. Rule III sets the parameter for the expression of interests by prospective candidates and provides that it is the same Chief Justice of Nigeria/Chairman of the National Judicial Council that also determine whether the process of appointment should proceed or be terminated. The option whether to proceed with the process or stop or adjust the number of Judges sought to be appointed will be based on the advice that the CJN/Chairman NJC get from the Secretary to Council but he exercises the last discretion which he passes on to the Chairman of the State JSC and Chairman of Judicial Service Committee of the FCT.

It is equally important to note that Rule III(6) requires, amongst other considerations that the Chairman of JSC/Committee are enjoined to take into account the principles of federal character as well as geographical spread in the appointment of prospective (eligible) Judges from the Bar. The requirement of Rule V(4) vests in the Chairman of Commission/Committee the responsibility to advise the National Judicial Council through a memorandum drawn up by the Secretary of Council indicating that: (a) the minute where the resolution for appointment of Judges took place does exist, (b) proof of the qualifying materials placed before the Commission/Committee, (c) proof of the legislation approving the establishment of the Court into which the prospective Judges will operate, (d) adequate capital votes and funding in the relevant budgetary approvals, (e) real and verifiable proof of availability of suitable Court halls, Judges residence, cars and libraries among others.

This particular requirement need further clarifications. On paper, it generates enough confidence in the public but, in practice, it is another source of worry and concern. Our investigations, as we researched into this presentation, led us to some Judicial officers in several jurisdictions who disclosed their bitter experiences to include that before the visit for inspection by the NJC to ascertain the availability of the infrastructure mentioned above, the State Governments in the affected States hurriedly “arranged” if you like, hired all the needed facilities from Court Halls, to Judges’ residence and, in particular, vehicles to satisfy the scheduled

inspectors. Once the exercise was done and over, all the infrastructure were returned to the actual owners and departments. The implication of this is that newly appointed Judges found out, contrary to what they were told and assured of, that there were neither Judges' residence nor Court Halls to be assigned to. In short, in a particular State in the Eastern part of the country, an unfortunate Judge was accommodated in an apartment which was recently vacated by another Judge but didn't immediately realize why his predecessor hurriedly left until the landlord arrived the premises with a number of thugs who accompanied him (the landlord) to throw out the belongings of whoever was still occupying the apartment. According to the angry landlord, it was the only option left for him after numerous requests on the government to pay their outstanding rents failed. It took the immediate intervention and cooperation of colleague Judges, according to his account, to rally round their embattled colleague under siege to avoid the embarrassment that was occasioned by the failure of the government, in question, to pay the outstanding rents of the same accommodation that was inspected and documented as available State residence for Judges. Several months after appointment, many Judges cannot access their official vehicles because they actually never had one. Thus, the ritual of NJC visitation, without more, further exposes the inadequacies of the system that imposes so much on the same National Judicial Council.

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