INTRODUCTION

Legal scholars have propounded numerous aphorisms to cloak the “judiciary as the most critical leg of the tripod on which democracy rests.” For example, the judiciary has been described as “the last hope of the Common man;” “the temple of justice with the judge as high priest;” “the institution vested with power to play God;” “the sentinel of justice”; indeed as Prof. Oyebode postulates, it is almost axiomatic that the judiciary play a pre-eminent role in any democratic dispensation.

The Nigerian judiciary has had a chequered experience, of its 47 years of independence; Nigeria has had to groan under various military dictatorships for 30 years. Admittedly, during this period many judicial officers cowered out of fear of sudden removal and subsequent banishment to penury and obscurity. Fortunately some courageous judicial officers few and far between have stood up to uphold their sacred oath to dispense justice without fear or favour.

Accordingly, the analysis of the policy trend in the judiciary since independence that follow is informed by the specificities of our past experience under the bestiality of the native forces ... that has strengthened the hope of the common man in the judiciary and guaranteed its independence will be espoused.

It is contended in this work that if the much touted adherence to the rule of law and the rebranding project is anything to go by, then the Nigerian judiciary must formulate the necessary strategy and tactics of ensuring that it live up to its historical role as both a citadel and sentinel of justice. It is germane to first examine how the judiciary functions in contemporary Nigeria.

HOW THE JUDICIARY OPERATES

In the tripod characterisation of government powers into legislative executive and judicial, the judiciary is:

The branch of government responsible for interpreting the laws and administering justice; a system of courts, a body of judges.¹

The primary duty of the judiciary, therefore is to exercise judicial power in the adjudication of disputes between persons inter se, between persons and government or authority, between the Federation and the state and between states inter se in all actions and proceedings for the determination of any question as to the rights and obligations of any person or government or authority.²

The judiciary is a creation of the constitution and hence derives its power from the enabling constitution. Section 6 of the 1999 Constitution vests judicial powers in the courts established under Section 6(5) which includes the Supreme Court of Nigeria as the highest and final appellate body, the Court of Appeal which is subordinate to the Supreme Court, but hears appeals from lower courts, the Federal High Court and State High Court (including the High Court of the Federal Capital Territory, Abuja) which have coordinate jurisdiction in their different spheres of authority. Also established is the Sharia Court of Appeal and the Customary Court of Appeal which exercises such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law, and such appellate and supervisory jurisdiction in civil proceedings involving questions of customary law respectively.³

Nevertheless, Section 6(4) of the constitution empowers the National Assembly or any House of Assembly to establish courts other than those aforementioned, with subordinate jurisdiction to that of a High Court. To that end one would notice the existence of Magistrate courts, District Courts, Area Courts and customary courts in the various states where applicable.

The judiciary does not operate in vacuum, but within the framework of a legal system. The Nigerian legal system in this sense, consists of “the totality of the laws or legal rules and the legal machinery which obtain

within Nigeria as a sovereign and independent African country. As a result of its historical antecedents, Nigeria is classified under the common law system. The implication of this system to the judiciary is that it has imbibed the tradition of stare decisis, which enjoins that earlier decisions should be binding authorities for subsequent cases. It is that principle of law that decisions of higher courts are binding on the lower court and also, decisions of courts of coordinate jurisdiction are also binding on those court. The court in which the decision is given may depart from it only in special cases while the courts be low it are strictly bound by that decision. Such lower courts may not veer from the path of that precedent even where they are inclined by good reason to do so.

Furthermore, as a prerequisite for the smooth operation of the doctrine of precedent, Nigeria has a well-structured hierarchy of courts as earlier adumbrated. With the Supreme Court of Nigeria being the final court of the land, as Mr. Justice Robert Jackson of the U.S. Supreme Court once observed, “we (the Supreme Court) are not final because we are infallible, but we are infallible because we are final”.

Moreover, the Nigerian legal process is accusatorial or adversary in nature. Here courts, that is the judges, are advised to be detached from the disputants and to maintain a neutral stand as uninterested umpires relying on the arguments from both sides for their final decisions. For example under Nigerian law an accused is presumed innocent and the prosecution is required to prove his case beyond all reasonable doubt. A judge will offer little or no assistance to the prosecution in securing the conviction of an accused person. In the candid opinion of the Supreme Court, it is contrary to the expected role of a judge as an impartial umpire and against the Spirit of fair hearing for him to descend into the arena of conflict or act for any of the parties. According to Nnaemeka-Agu, J.S.C.

There are certain fundamental norms in the system of administration of justice we operate. That system is the adversary system, in contradistinction to the inquisitorial system…. Basically, it is the role of the judge to hold the balance between the contending parties and to decide the case on the evidence brought by both sides and in accordance with those rules. Under no circumstances must the judge under the system do anything which can give the impression that he has descended into the arena as obviously, his sense of justice will be obscured.

A viable legal system within a defined area must contain in the words of Ojo A., “certain ultimate principles from which all others are derived but which are themselves self-existent”. That foundation for all the rules in a normative system has been variously described as the “grundnorm”, the ultimate rule of recognition or the basic norm. This ultimate norm, is the highest norm in a hierarchy of norms beyond which there must be no further inquiry.

It is not in doubt that the constitution remains the basic law for Nigeria. In fact section 1 of the 1999 Constitution contains the following declaration:

**This constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. If any other law is inconsistent with the provisions of this constitution this constitution shall prevail, and that other law shall to the extent of the inconsistency be void.**

While it is a trite principle of law that judges do not make laws but only interprets the law, the reality is that according to Salmond, judges do and at times apply existing rules and sometimes do create entirely new principles.

**A BRIEF PERSPECTIVE OF THE NIGERIAN JUDICIARY FROM THE CRADLE.**

Hitherto the adventure of the European- African encounter, it is arguable that there was no formal institution for judicial review of government acts as we know it today. However, in some of the communities for example the Yoruba's of southwestern Nigeria, a pattern

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8. Eholor V. Osayande (1992) 6 N.W.L.R. 524 at 541-542
12. Constitution of the federal republic of Nigeria 1999
of traditional constitutionalism was nonetheless, discernible. This furnished a system of checks and balance and in some important respects, restraining influence on the tendencies of traditional rulers to excesses. With the scramble and eventual demarcation of African at the Berlin conference, English type legal system was imported into the territory now known as Nigeria as a potent instrument of consolidating and legitimising colonial rule. Back then the judiciary was not separate from the executive but was in fact a department of and controlled by the executive branch of the government. The exercise of its jurisdiction was also controlled by the supervisory courts outside the country. Appeals from our court lay to the judicial committee of the Privy Council which was the court of last resort.

That was basically the setting until Nigeria attained independence in 1960 with a constitution crafted after the Westminster model of written constitution which recognized the Nigerian Judiciary as an independent arm of government. Nevertheless the Judicial committee of the Privy Council, still remained the highest appellate court until the Republican constitution of 1963 which severed all traces of the umbilical cord with Britain.

Unfortunately in January 1966, Nigeria witnessed the insurgence of praetorian ‘philistines’ and their self-seeking acolytes when the army took over governance, the army suspended most of the provisions of the 1963 constitution, while the surviving provisions derived their efficacy from the Decree, thereby establishing the supremacy of Decree over the constitution.

That was the position for about thirteen years (13) before the emergence of the Second Republic, which lasted from October 1st 1979 to December 31st 1983 when the Army came back again and remained in power till May 29, 1999 when the present democratic dispensation began.

Without necessarily delving into the tortuous and chequered history of the Nigerian judiciary, no doubt this section provided an adequate synopsis of the history of the Nigerian judiciary. Let us now appraise the function and performance of the judiciary under military dispensation.

As earlier noted with the inception of successive rule, the constitution was partly suspended and its supremacy supplanted by Decrees. The fusion of the legislative and executive powers in the supreme military Authorities curtailed the scope of judicial independence, giving rise to what generally came to be known as ‘executive lawlessness’ ouster clauses, disobedience to court orders by the executive, acting with impunity and all the other manifestations of fascist or police state.

Even after a government of laws has been trampled over by the military, Professor Oyebode observes that, the world is yet to witness a junta that has thought it necessary or desirable to abolish the courts. Rather, suppliant judges are sought after and invited by the transient military usurpers to collaborate and serve as accomplices in the rape of democratic process and the rule of law. He goes further to assert that “the judicial process is located in a continuum”. In other words, irrespective of whether a legal order operates under the notion of rule of law or that of force, the survival of the judiciary in the scheme of things is assured, albeit with varying degrees of independence and efficacy. “Humankind is yet to invent a substitute for an institution specifically charged with the task of interpreting and applying the law”.

The position of the judiciary viz-a-viz suspension of the constitution was captured by Eso J.S.C. when he declared.

...when the Executive is the military Government which blends both the Executive and the Legislative together and which permits the judiciary to co-exist with it in the administration of the country, then it is more serious than imagined. Indeed what was left was what had been permitted by the Federal Military Government to exist. All the provisions relating to the judiciary were saved. Section 6 of the constitution, the most important provision, in so far as the

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15 Karibi Whyte, A.G., the Relevance of the judiciary in the polity in historical perspective, 1987, P.53.

16 See Section 1(1) and (2) of the Constitution (Suspension and Modification) Decree No.1 1966.


institution known as the judiciary is concerned which vests in the courts the judicial powers of the Federation was left extant.19

However, the extent and potency of the separated judicial powers permitted to exist by the military remained worrisome. This is so because under an undemocratic government it is unrealistic to expect to have a judiciary that can exercise its uninhibited judicial powers. The succeeding paragraphs that follows seeks to x-ray some of the vices which characterised the judiciary under the successive military regimes.

**DISCORDANT TUNES IN THE JUDICIARY UNDER MILITARY RULE**

Nigeria has been treated, time and again, to the odious spectacle of heads of the nations judiciary collaborating in the legitimising of military juntas, which came about through the desecration of the very fundamental law of the land which the same Chief Justices had once sworn to preserve protect and defend.20

Sequel to the demise of the Second Republic, Chief Awolowo in his refusal to go to court over the result of the presidential elections, alleged that “the judiciary had been terribly corrupted”21. Electoral tribunals established to hear election petitions rejected application after application on grounds of ripeness, wrong forms and similar technicalities.22

Under the Buhari Regime, the judiciary was further humiliated when members of the judiciary were drawn and made to serve in inquisitorial tribunals under military officers with little or no knowledge of the law. While the travesty of justice was being enacted in these tribunals, the judges sat silently, apparently out of fear of their removal.23 The complicity of the judges reached its zenith when Ademola, JCA declared that “in matters of civil liberties in Nigeria, the courts must blow muted trumpets”.24

Babangida’s Palace coup on August 26, 1985 sought to mitigate the hardship imposed on the nation by the Buhari dictatorship by repealing some of the more oppressive decrees, while the Recovery of public property (Special Military Tribunals) Decree was amended such that judges became chairmen of the military tribunals.25 However, the acid test for the judiciary came during the events that led up to the presidential election of June 12, 1993 and its aftermath. Reportedly, there was widespread belief that Babangida had the judges eating out of his palms, rumours of gifts of Mercedes Benz cars by the Babangida regime to judges of the Supreme Court and some judges of the Court of Appeal broke out26. The straw that broke the Camel’s back was the bravado of the Association for a Better Nigeria, which successfully utilised the judiciary for its nefarious end of scuttling the elaborate transition programme. If there was any doubt concerning the partisan attitude of the courts, their refusal to entertain the applications filed by supporters of the putative winner of the polls, aimed at compelling the National Electoral Commission to formally release all outstanding results was enough to convince all and sundry of the corruption of the judicial process.27

It is also noteworthy that contrary to the concept of independence of the judiciary, the military showed great interest in ensuring that they controlled the judiciary Decree No.5 of 197228 provided that the chief justice of Nigeria would henceforth be appointed and dismissed by the Head of the Federal Military Government at his discretion. Subsequently, the military proceeded to compulsorily retire the incumbent Chief Justice Hon. T.O. Elias by radio upon rumours, without even giving him a fair hearing.

The upshot of this sordid state of affairs was the constant fear of removal which ipso facto, constitutes a corruptive influence on judicial officers, more so when it is remembered that a judicial officer who loses for any reason whatsoever to be one, is disabled from appearing or acting as a legal practitioner before any court of law or tribunal in Nigeria.

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22 Ibid.
23 Ibid, p.152.
24 See Wa Ching Yao V Chief of Staff Suit No. CA/L/25/85 of 1 April, 1985 (Unreported).
26 Ibid at P.154.
27 Ibid.
28 Constitution (Amendment) Decree No.5 of 1972
THE VOICE OF HOPE AND COURAGE UNDER MILITARY RULE

In the Nigerian experience, courageous judges ready, willing and able to stand up to the wiles of military usurpers and enemies of democracy have emerged at one point or the other. In this connection, it is apposite to pay homage to our courts which despite all odds have done their utmost to prevent the roof of the temple of justice from caving in. History is already taking note of their exploits through the law reports.

The celebrated case of Lakanmi is an illustrative starting point, in summary a commission of inquiry set up by the then western state Military Government to investigate the assets of public officers of the state made an order forfeiting the assets of the appellants. At the Ibadan High Court appellants contended that the state Edict was inconsistent with the Public Officers (Investigation of Assets) Decree of 1966, the court declined jurisdiction since the Edict ousted its jurisdiction. An appeal to the Court of Appeal was equally dismissed. Between the decisions of the High Court and the Court of Appeal the Federal Military Government promulgated three Decrees obviously in favour of the respondent, which validated all orders made under any enactment, ousted the jurisdiction of the courts from questioning the validity of any Decree, and abated all pending proceedings in respect of any Decree.

Despite these impregnable barriers, the Supreme Court gallantly rose to their sworn oath as defender and protector of the truth, held the Edict inconsistent with the Decree and hence ultra vires and void under the Doctrine of covering the field. It also held that the Federal Military Government was not a revolutionary government but an interim government of necessity governed by the constitution and decrees.

The Gowon regime, rattled to its bones, for the avoidance of doubt and to remind all and sundry who was boss, it promulgated Decree No.28 of 1970 which had the effect of nullifying the decision of any court in any part of the Federation whether given before or after the passing of the Decree.

The forthright stance adopted by the Supreme Court was poignantly captured in the celebrated case of Governor of Lagos State V. Ojukwu where Eso JSC in his lead judgment had observed:

30 (1986) 1 NWLR 621.

...It is a very serious matter for anyone to flout a positive order of a court and proceed to taunt the court further by seeking a remedy in higher court while still in contempt of the lower court. It is more serious when the act of flouting the order of the court... is by the Executive... Executive lawlessness is tantamount to a deliberate violation of the constitution... the essence of the rule of law is that it should never operate under the rule of force or fear. To use force to effect an act and while under the marshal of that force, seek the court's equity is an attempt to infuse timidity into court and operate a sabotage of the cherished rule of law. It must never be.

Justice Oputa's condemnation of executive lawlessness was perhaps the most colourful, according to him:

I can safely say that here in Nigeria even under a Military Government, the law is no respecter of persons, principalities government, or powers and that the courts stand between citizens and the government alert to see that the state or government is bound by the law and respects the law... The court system cannot be maintained without the willingness of parties to abide by the findings and orders of a competent court until reversed on appeal. This presupposes that no party and no court of subordinate or even co-ordinate jurisdiction can say: "I do not like the order made and I will not obey it". And that is exactly what the Lagos State Government is doing in this case. And that posture has to be condemned in the strongest of terms if we are not to say goodbye to the rule of law.

Similarly, in the Obeya Memorial Hospital V. Attorney General of the Federation another instance of executive lawlessness, the Supreme Court was ad idem in tutoring the executive on propriety in relation to extant judicial decisions.

Decided cases also show conclusively that whenever the need arose for them to use their powers to protect people's right to their liberty, even under a military regime, Nigerian courts have usually risen to the occasion. One can only refer to a few of such numerous cases in a paper like this. In the case of Saidu Garba V. Federal Civil Service Commission and Anor the supreme court did not mince words when it

31 (1987) 7 SC 152  
said:

The rule of law knows no fear; it is never cowed down, it can only be silenced. But once it is not silenced by the only arm that can silence it, it must be accepted in full confidence to be able to justify its existence.

Also in Minere Amakiri V.R.M. Iwowari where a journalist who had been brutalized and imprisoned by the A.D.C. to a military governor sued for substantial damages for false imprisonment, assault and battery. Allagoa, C.J. Rivers State stated:

"The courts are the watch-dogs of these rights and the sanctuary of the oppressed, and will spare no parus in tracking down the arbitrary use of power where such cases are brought before the court".

In spite of the psychological situation inherent in a military regime, history cannot forget easily judges who did not exhibit any signs of timidity in the interpretations of the law. Reportedly, even after the state council had sprung a surprise by presenting a fresh decree in court terminating the proceedings before her, Omotosho J. observed ruefully her doubts on whether a draftsman however ingenious could indeed effectively and completely oust the jurisdiction of the courts. Mention must also be made of Jinadu J. who was prepared to resign rather than see the judiciary desecrated. Also in the league of courageous libertarian judges are Segun, S., Aguda, A., Agabakoba etc.

Although, the judiciary under military despotism remained the defenseless scapegoat, they still endeavoured to see that, whenever possible, human rights are protected and justice done to all.

THE JUDICIARY UNDER A CONSTITUTIONAL DEMOCRACY

The Hon. Justice Chukwudifu Oputa once candidly observed that:

Democracy and justice are twin bedfellows,

man's capacity for justice makes democracy possible, but man's inclination to injustice makes democracy very necessary... Justice thus seems to be the most acceptable credential of democracy. There seems to be an umbilical cord linking democracy and justice. If that cord snaps the result will be injustice. It will all so be failure of democracy.38

The truisms of the above dictum lie in the fact that there can be no viable democracy without justice, which is usually the finished product of an efficient, courageous and independent judiciary.

Furthermore, unlike autocratic, aristocratic or oligarchical forms of government, democracy prides itself in the words of Professor Oyebode, "as a law-based government under which all organs of state operate in accordance with their competence as defined by the constitution or some other law".39 Although, in most democracies the constitutions is the grundnorm of the land which is binding on all, yet it does not operate by itself, it has to be applied or interpreted. Accordingly, it is in the application or interpretation of the constitution and other laws that the preeminent role of the judiciary becomes discernible.

In every democratic government some separation among the three tiers of governmental powers is essential to obviate the arbitrariness that could result in the concentration of power in one arm of government. French Jurist Montesquieu propounded a solution; "to prevent this abuse, it is necessary from the nature of things that one power should be a check on another". The system of checks and balances ensuring from that of separation of powers, in effect, enables the judiciary to review the actions of the actions of the other arms as the arbiter of any conflicts that may arise within the democratic process. Thus, the power of judicial review places the judiciary on a higher pedestal than the other arms of government. Also Aka-Basorun observed:

39 Oyebode, A., Supra Note 33.
40 The Spirit of Law, Chapter XI

A.M. Sani ESQ
The role of the judiciary is that of guardian of the constitution. This role... put the judiciary in a taller and stronger position than the executive and, or legislature. For an organ which alone can pronounce the acts and deeds of the legislature and executive unconstitutional, illegal, null and void and of no effect, must by implication be the supervisor of the other arms of state and must of necessity be the supervisor to the supervised.  

This explains it seems, why a proper awareness of the pre-eminence of the judiciary within the context of the system of checks and balances should constitute the starting point for any analysis of the democratic process. For, if the judiciary is unable to limit the powers of the other two branches, then regularity of norms, peace order and good government would much sooner than later yield to arbitrariness, anarchy and disorder with dire consequences for the polity.

AN APPRAISAL OF THE JUDICIARY UNDER CONSTITUTIONAL DEMOCRACY

The Second Republic and the 1979 Constitution heralded an epoch making system of government, which was a movement from the Westminster model to the white house system of presidential democracy. However, the Khaki boys did not allow democracy to grow and mature, they struck again in 1983 and remained in power until May 2009, although intersected by the inchoate third republic.

The present democratic order, the Fourth Republic, is founded on the 1999 Constitution, which came into force on 29th May 1999. This constitution does not have much remarkable departures from the 1979 Constitution in respect of the judiciary. It broke a new ground by establishing the National Judicial Council who recommends appointment of justices and judges, recommend removal from office of this judicial officers and exercise disciplinary control over such officers. It also collects, control and disburse all moneys, capital and recurrent for the judiciary. In addition to the National Judicial Council is the Federal Judicial Service Commission and the State Judicial Service Commission. Basically they advise the National Judicial Council in nominating judicial officers and recommended the removal from office of this judicial officers. It also appoints, dismiss and exercise disciplinary control over the Chief Registrars and Deputy Chief Registrars of the Supreme Court, Court of Appeal and the Federal High Court. All these measures are to secure the independence of the judiciary from external control and influence.

How has the judiciary faired in driving Nigeria along the part of rule of law under democratic dispensation? The ensuring chronicle demonstrates the uncommon zeal of the judiciary in leading the charge against every form of arbitrariness and particularly the Supreme Court which has lately been acting with so much spine, quite unlike the military days when the judiciary was treated with contempt.

A case in point is the Supreme Court judgment of 25 October 2007 which led to the emergence of Rotimi Amaechi as the new Governor of Rivers State. The well known facts are that Rotimi won the Peoples Democratic Party (PDP) gubernatorial primaries of the state and his name subsequently sent to INEC. But typical of the manipulation process of enemies of democracy, Rotimi’s name was replaced with the name of Celestine Omehia who never participated in the primaries. Pending the determination of successive suits and counter suits, coupled with the judicial bottlenecks and clogs in the wheel, the elections were held and Celestine Omehia returned as Governor.

The most cogent point of law, according to the legal pundits was that the PDP acted in contravention of Section 34(1) and (2) of the Electoral Act 2006, which requires a political party seeking to change a candidate to give cogent and verifiable reasons to INEC. The only reason giving by PDP was “error”. The Supreme Court of seven justices in its omnipotent reasoning presided over by Justice Aloysius Katsina-Alu who read the judgment held inter alia:

The court has the right to grant reliefs to do substantial justice without regard to technicalities. The only way to ensure that his rights are restored is to declare that he (Amaechi), not the 2nd respondent (Omehia) must be deemed to have won the election.

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42 See Sections 153(1) (l) and 162 (a) and Third Schedule Part 1 Paragraph 20 of the Constitution of the Federal Republic of Nigeria, 1999.

A.M. Sani ESQ
This was not the first time a similar case would be coming to court, in a similar case of Uguru V. Ararume in Imo State, it was held that Ifeanyi Ararume was the legal candidate of the PDP in Imo State gubernatorial election of April 14, 2007.

Also noteworthy is the Supreme Court judgment in the ATIKU ABUBAKAR and ACTION ONGRESS V. INEC case. The apex court had ruled to the effect that neither INEC nor any other government agency has the power to disqualify or stop any person from contesting an election except where the alleged indictment is confirmed by a competent court of law. The Supreme Court not only defined INEC's powers on disqualification of candidates, but has also shown that manipulation of the electoral process by incumbent office holders will eventually backfire.

Apart from electoral matters accolades have been showered on the Supreme Court for its stand on due process and constitutional provisions in the matter of impeachment of state chief executives. No less than three state governors were booted out of office by less than the constitutionally recognised two-thirds of members of their State House of Assembly, notably Rashidi Ladoja of Oyo State, Peter Obi of Anambra State and Joshua Dariye of Plateau State. The Court observed that courts had jurisdiction to examine a claim if it was not satisfied that impeachment proceedings were instituted in compliance with the provisions of the 1999 Constitution. If on the other hand there was compliance with the pre-impeachment process, then what happened thereafter were the internal affairs of the House of Assembly and a Court of Law would have no jurisdiction to intervene.

There was also the celebrated suit instituted by Governor Peter Obi of Anambra State to determine when his tenure of office would end. Obi who had been engaged in a long-drawn legal battle with Chris Ngige of PDP was declared winner by the Election Tribunal in 2006 when his colleagues in other states had spent roughly three years in office. The Supreme Court directed that the governor be allowed to complete his four-years term which will now end on 17 March 2010, having taken oath of office on 17 March 2006.

On Friday 8 November 2002, the Supreme Court helped to throw the gates to the Nigerian political space open to many Nigerians when it declared unconstitutional the guidelines used by INEC for the registration of political parties.

Another area in which the Supreme Court has fared very well has been in helping to preserve the sanctity of the Nigerian Federation and Fiscal Federalism, especially with a domineering president in the driving seat. Such decisions that resolved constitutional issues included the cases of Attorney-General of the Federation V. Attorney General of Abia State and 35 others in which the court defined the boundaries of the Littoral states and dealt with other principles of derivation and revenue allocation. There was also the Attorney-General of Lagos State V Attorney-General of the Federation and others, in which the court held that urban and regional planning matters are within the competence of the states and not the federal government.

ware that one of the impediments to justice is the long process it takes to conclude a case, the Supreme Court justices have been marvelous as they have introduced measures to cut down the time, especially when the case is political.

**CHALLENGES FACING THE NIGERIAN JUDICIARY AND THE WAY FORWARD**

In spite of the euphoria which has greeted the recent judgments of the apex court, thereby once again fostering confidence in the judiciary as the last hope of the common man, there are some constraints which were inherited from the long period of military rule. Some of these constraints are inherent in the system which we operate.

Corruption for example, is the most devastating and reprehensible malady of the judiciary. By virtue of their professional training and culture they are supposed to be men and women of integrity and probity. Justice Oputa identified some of the samples of decay in the judiciary to include: paying tips at the police charge office and court Registries before anything can be done, lawyers charging clients extra fees in the pretext that they are going to settle the judge, some dishonest judges employing agents to collect bribes for them while some courageous ones collect by themselves.  

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45 (2003) 12 NWLR (Pt 833) 10
46 Oputa, C. Supra note 38
Next to corruption is the delay in our justice delivery system. Aguda\textsuperscript{47} describes our slow judicial system as bankrupt. In fact to Prof. Itse Sagay, our judicial process is, bluntly put, an elaborate charade, deliberately enacted to ensure permanent adjournment of justice and the rule of law.\textsuperscript{28} Some of the factors responsible includes: under staffing, under funding, lack of necessary equipment and machinery, slow pace of investigation, taking evidence in long hand; cumbrous and outdated rules of procedure, laziness and inexperience on the part of some judges and lawyers; incessant power outages to mention but a few.

Another Cankerworm that has crept into the democratic fabric is the spate of disobedience of court orders by the executive arm of the government, perhaps of equal if not greater significance is the attitude of the generality of the population to the judiciary. People often resort to self help and mob justice, alternative but socially costly methods of dispute resolution.

Accordingly, the Nigerian State has to embark on a re-thinking of the judiciary and the judicial system. The starting point, it seems should be the appointment of capable and competent hands to the bench. The quota system should be avoided if it would entrench mediocrity unless the equities and equal. Training of judicial officers to keep up to date with developments in the law. The appointment and removal of judges should not be at the pleasure of the executive but in the due process of law which guarantees the independence of the judiciary.

Any expectation of better performance from our judges without an effort to improve the lot and working condition of our judges can only amount to wishful thinking. It is suggested that the judiciary be allowed to prepare its budget, present and defend it in the National Assembly have the approved budget paid into a judicial account and accountable to the Auditor-General, for the disbursement and management of such account\textsuperscript{49}. In addition, computerisation and the use of modern information technology in line with global trends. Computerisation is not merely the provision of computers for our offices for word processing functions. It is the actual deployment of the capacities of information technology to solve problems and aid the general performance of our duties.\textsuperscript{50} This requires computers, internet, functional telephones etc.

Furthermore, it is suggested that our outdated and cumbrous rules of procedures be reviewed to redress the perennial problem of long delay in trial process. The practice of judges in unnecessary adjournment of cases should be discouraged and erring counsel disciplined.

Most importantly, access to court should be guaranteed to the common man by mitigating some of the technicalities and paraphernalia of our court system.\textsuperscript{51}

**CONCLUSION**

It is no exaggeration that the judiciary remains a vital institution of societies whether in despotic or democratic systems. Human evolution has not been able to create an institution to replace that of the judiciary. Our romance with our uniformed brothers and sisters has re-echoed the timeless statement that power corrupts and absolute power corrupts absolutely. True democracy it has been canvassed, is foundation for the rule of law or as Prof. Oyebode opines, the rule of just law and separation of powers. Indeed a political system can be considered as democratic on the basis of the extent to which the judicial arm is permitted to hold the scales of justice over and above the other arms of government. Consequently, the independence of the judiciary becomes an essential democratic ingredient, but perhaps of greater import is the integrity of the judges, while that is important, emphasis must be placed on remuneration as well as the conduciveness of the court room, the pathetic pauperisation of the Nigerian populace have had a traumatic effect on our national psyche, democratic process and makes the realisation of true justice a mirage. All hands must be on deck to bring the benefits of democracy to the door steps of the common man otherwise society may soon degenerate to the Hobbesian state of normlessness.

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\textsuperscript{48} Quoted in the Guardian on Sunday, June 23, 1991 at p.8.
\textsuperscript{49} “The Judiciary under the Present Democratic Dispensation”, a Paper Presented at the Proceedings of the 37th Annual Conference of the Nigerian Association of Law Teachers, held at J.S. Tarka Foundation, Makurdi, on 3\textsuperscript{rd} 7\textsuperscript{th} December, 2000.

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\textsuperscript{50} Keynote address of the Attorney-General of the Federation, Chief Bola Ige at the Administration of Justice in the 21\textsuperscript{st} Century “Summit of stakeholders: held at Muson Centre, Lagos on the 16\textsuperscript{th} of October 2000, p.10-11.

\textsuperscript{51} See generally for an indepth analysis “is the judiciary still the last hope of the common man?” In Oyebde, A., Op.cit.128.