# [1]TOWARDS A BETTER ADMINISTRATION OF JUSTICE: ISSUES AND CHALLENGES

I accepted your kind invitation to speak at this conference with great trepidation and must have gone through a number of emotions in quick succession. Not being an official member of the learned profession, I felt on the one hand that I was taking my life in my hands, and actually thought I may barely have a chance of escape after sharing my thoughts, before your Lordships and Ladyships put on your wigs and gowns, attire that intimidates mere mortals like me. On the other hand I felt better and indeed truly privileged when it dawned on me that this may well be an induction of sorts for me, seeing I have an unusual chance to interact with an elite group as this. But my acceptance was really determined by the opportunity to share and to learn about a subject that is also at the heart of the day-to-day business of making candies like Tom Tom, Éclairs, and other great brands from Cadbury that people love. Well, I said the subject of effective administration of justice is integral to making chocolates because dispute is a natural occurrence in the course of every commercial undertaking, and, for me, the resolution of those disputes must always be achieved in a manner that ensures that the normal business cycle of making, selling and eating candies can continue without further hindrance. It is the sustenance of commerce that draws investment, which drives economic growth, creates employment and raises quality of life. I do not have a fact base for this assertion, but I believe that a greater proportion of disputes have a foundation in preserving commercial interests, even tangential matters like family feuds.

Having spent virtually all my working life in the harsh world of business, a world that only recognizes winners and hardly remembers who came second, I also know that if you left two complete strangers who do not understand each other's language in a room and placed the dollar bill on the table, the two will negotiate in a matter of minutes. Somehow they will find the way to communicate and come to a win-win agreement on who would offer what service to the other and for what fee. The point I'm making is that people possess an inherent capacity to resolve disputes, disagreements or misunderstandings, provided they can find the win-win ground, and provided the dispute can be apprehended in good time – well before lawyers get involved. Oliver Wendell Holmes, author and professor of anatomy and physiology (1809 – 1894) said, 'what lies behind us and what lies before us are tiny matters compared to what lies within us'. There is not much without that cannot be tackled if we come with the right attitude. Because people do not take advantage of that inner resourcefulness and capacity to resolve issues, lawyers will

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of course always be involved. I personally believe that people find it hard to draw on this capacity because as humans we tend to be consumed by the desire for territory and supremacy, which makes one person seek to take advantage of another, for self-preservation or other selfish reason. My validation for this hypothesis is that most of the major disputes around the world, down through the ages and into contemporary times, is about land and territory. Wars have been fought and wealth destroyed because of the desire of man to dominate another, when it is clear that we were made to have dominion over the rest of God's creation not man. We have now seen 50 years of uninterrupted wealth accumulation, (the last time wealth was destroyed on a massive scale was the Second World War), and the platform for dominance has shifted to economic power. In the process relatively simple matters get complicated by cover-ups, dissembling and half-truths and distortions; compounded by ego, greed and sloth. This is perhaps what informed the early Irish settlers to first build Churches and Prisons as basic institutions of their society.

You will notice from my opening that I have no intention of getting into legal jargon in this discussion. Those of us who look to the third arm of government for succor actually have little capacity for 'legalese' and would rather leave that to the luminaries. The truth also is that the more we try to understand those jargons the more confused we get. We prefer the simpler, but not necessarily simplistic, path where we restore our relationships after a dispute and get life on the move again without diminution in our humanity. You would also have noticed that I have assumed that there is a fundamental desire for disputants to have their relationship restored at least to their original status, if not better, after the dispute has been resolved. In that sense disputes are an interference that diminishes the realization of potential, and most people want to get rid of such irritant as painlessly as possible. We may have inadvertently hampered the realization of this potential in that the Law School curriculum focuses on how to marshal evidence and the fine points of law, but not on restoring relationships. I believe these two factors – simplicity and a desire to restore relationships – constitute the cardinal objectives of the administration of justice. Of course these are generalizations in reality, and I don't particularly like sweeping statements, but I believe it is broadly true. This assertion brings me to the real point I want to make, that the superior delivery of justice administration must fully integrate Alternative Dispute Resolution mechanisms, which are less adversarial and does not necessarily give one party a sense of loss when the other jubilates triumphantly. The beauty of an effective ADR system is that the disputants actually arrive at the solution to their issues themselves, with the help and guidance of a mediator or conciliator, and they therefore own the outcome. Not only is it also a much cheaper way to settle

disputes, it allows difficulties to be resolved fairly quickly so the parties can get on with their lives. Integrating ADR more deeply into our justice delivery system will free the courts of considerable amount of time and energy, and as the large part of disputes are probably commercial in nature, will be good for economic growth too. I am aware of course, of the initiatives that have been taken in this direction, including the roll out of the Lagos Multi-Door Courthouse initiative, which has been successfully synchronized with the Judiciary in Lagos and elsewhere, and which many Judges have used effectively by offering it to would-be litigants – even if only as a first step. My advocating ADR so strongly is precisely because of the success it has accomplished where parties to disputes have found it as elating as it is rewarding to devise the solution to their disputes themselves. It often makes them wonder what the dispute was about in the first place. I believe that more aggressive training of mediators and conciliators will raise the patronage level, and a greater use of this window by the Bench will relieve some of the pressure on Judges. We in our company have stipulated ADR as a mandatory first step for dispute resolution in crafting contracts and agreements, and I know many other companies are doing the same. One more advantage of ADR is that it educates the parties much better about the virtues of seeking first to understand before seeking to be understood. This virtue has phenomenal potential in building relationships.

However we know that moral persuasion will not always work and litigation will still go on, so the rest of this brief discussion will be based on that premise. I will be preaching to the choir if I attempt to extol the virtues of high standards in the administration of justice, seeing that we have a room full of legal luminaries. I am the least competent here to undertake such, so I wont. My observations will focus first on systemic issues, in accordance with my personal belief that form follows the principles. I will, of course, also raise a few specifics as challenges we might face in achieving the high standards we desire to see in our justice administration system.

At the level of society, the cardinal objective of the justice system is to promote and preserve good governance and orderly co-existence. Good governance is the foundation of a progressive society, and in its broadest sense governance is about holding the balance between economic and social interests, and between individual and communal goals. The cardinal objective is to promote the efficient and equitable use of resources, as well as share accountability for the stewardship of resources in a manner that aligns the interests of individuals, the state and society at large. Governance is not just about the public sector, and as James Wolfensohn observed, the governance of corporations is now as important to the world economy as the government of nations. The import of this statement is clearer

when one understands that the market capitalization of many Stock Exchanges exceeds the GDP of the country. Corporations create jobs, generate tax income, produce a wide array of goods and services, and increasingly manage our savings and secure our retirement income. Amid growing reliance world wide on the private sector, the issue of corporate governance has similarly risen in importance. Corporate Governance has now become a mainstream concern, even though this phrase meant precious little to all but a handful of scholars and shareholders not too long ago.

Two events helped to heighten this interest in corporate governance. During the wave of financial crises in 1998 in Russia, Asia and Brazil, the behaviour of the corporate sector affected entire economies, and deficiencies in corporate governance endangered the stability of the global financial system. Barely three years later, confidence in the corporate sector was sapped by scandals in the US and Europe that triggered some of the largest insolvencies in history. The misdeeds of a few sent ripples across boundaries like a domino. One after the other we saw Enron, WorldCom, Pamalat and a host of other major firms collapse and some CEOs hauled into jail. Shell came under tremendous pressure first when an NGO protested the oil spillage in some of their installations, and more when it came to light that the company had overstated its reserves. Suddenly the top blew open for business leaders who must now balance this additional scrutiny with the shareholders' pressure for higher performance quarter after quarter, and their own craving for bonuses. We have also seen auditors who sell tax shelters, which in reality is a product that blurs the lines between tax evasion and tax avoidance. In the aftermath, not only has the phrase corporate governance become nearly a household term, economists, the corporate world, and policy makers everywhere began to recognize the potential macroeconomic consequences of weak corporate governance systems. In the developing world especially, macro-economic difficulties can be worsened by systemic failure of corporate governance stemming from:

a) Weak legal and regulatory environment
b) Ineffective administration of justice
c) Poor banking regulation and practices
d) Inconsistent accounting and auditing standards
e) Improperly regulated capital markets
f) Ineffective oversight by corporate boards
g) Scant recognition of rights of minority stakeholders

The strength of the legal environment is one of the dominant factors that determine the health of the macroeconomic climate in the country.

Democracy stands no chance unless the checks and balances are systematized and made operational. The judiciary is, or should be, the safe haven and shelter from the shenanigans of politicians, some of whom we know have doubtful antecedents and therefore little scruples. An incredible number have a failed past, and in some cases there is hardly a visible means of livelihood before venturing into politics as a last resort; while for not a few, there is no known track record of managing anything apart from themselves – which, I think, is why we hear a lot of phrases like "my administration" or "when we came to power". Leadership comes with a lot of responsibilities, and leaders need authority to discharge those responsibilities (on which they can be called to account) and deliver their accountabilities (on which they are liable to render account). What we often see is a brazen use or misuse of the authority that incidentally derives from the rest of us. Perhaps because we were for too long in the clutches of military misadventure in governance, we struggle with accountability and experience great difficulty in restoring and keeping faith with those values that once shaped our society. One misdemeanour leads to another, the lure of money becomes too hard to resist until we begin to blur the edges of reason. I am sure you see this in your day job and interaction more than most of us can or have access to. This is why the proposed Fiscal Responsibility Act is so crucial to the advancement of governance and accountability in our country. The Fiscal Responsibility Act as proposed simply seeks to provide guidance in aligning resource allocation by the three tiers of government in a manner that promotes efficiency, fiscal discipline, and accountability. For example it also seeks to achieve a balance between capital expenditure and recurrent expenditure to make for sustainability. We will be well served if the principle of fiscal responsibility is entrenched in the constitution once and for all, to take it further away from the peering eyes of politicians.

Speaking about the Constitution, perhaps we should also consider exempting elements of criminal immunity from the document, seeing some of our leaders have chosen to conduct themselves irresponsibly under the guise of immunity – a privilege that was granted on the assumption that high office holders are honorable men and women. Effective leadership must be principle-centred, and not one that leans on the position. Principles are tightly interwoven threads running with exactness, consistency, beauty, and strength through the fabric of life. In essence, principles are the territory. Values are maps. When we value correct principles, we have truth – and knowledge of things as they are. This raises the primary issue in my mind of how we prepare, or fail to prepare, people for leadership in each of the

three arms of government, and indeed in the private sector. We do need an acceptable and systematic preparation for leadership, and each person who aspires to leadership carries a significant responsibility for self-development. We have left too much to chance or a cursory passage through prison and that is clearly not adequate. I believe that good governance is imperative to the entire process of justice administration. Leaders must be willing to be challenged, engage in intellectual debates on matters that affect the lives and livelihood of others, and create equal opportunity for everyone on a level playing field. The civil service needs to be equipped with new lenses to see its job as facilitating rather than to control, as a critical step to minimizing the scope for discretion in the design and execution of policy. Discretion fires the same power syndrome we discussed before, and creates tollgates. We already noted the central role of commerce in driving economic growth. Commerce thrives on competition because competition is what stimulates the creative juices in us. Innovation is borne out of competition, and if discretionary allocation of resources on the basis of patronage distorts the playing field, it also kills innovation, hampers economic growth and diminishes quality of life of the Nigerian people. Similarly the private sector needs to conduct itself with dignity and compliance with ethics and the codes it professes. My second point in this discussion is therefore the whole issue of governance and how we prepare people for leadership. Effective leadership delivers good governance systems, fair and equitable allocation of resources, entrepreneurship and investment, which creates jobs and prosperity. I am not naïve to presume that prosperity itself reduces disputes, otherwise the rich countries of the world would have shown example. My premise is that it makes for orderliness, and derives from good governance.

But a discussion about the pursuit of better administration of justice must begin with the judiciary turning a searchlight on itself, and if we stay with the subject of succession into leadership for a minute, we need to re-assure ourselves that the process of succession into leadership of the judiciary is sufficiently robust to provide opportunity to all qualified persons, whether within or outside the established lineage. Seniority on the bench is obviously a dominant criterion that cannot be jettisoned, but complementing this with other clear measurable performance criteria will enhance quality in the selection process and higher standards in the institution. This is critical for the execution of meaningful reform over time. The bigger challenge is the risk of politicization of the bench through the succession process, and the Judiciary, as an institution, must preserve its own sacredness whatever the circumstances. The preservation of its sanctity enables it to influence change in other spheres. Gandhi said ‘we must be the change we wish to see in the world’, and change happens when we are first willing to submit to the

inevitable process of reform. But at the end of the day reforms are about reaffirming the guiding principles and values that will govern our processes, including selection and appointment processes. We need humility to submit to the higher powers of these principles, since principles by definition don't change. We need courage to live by the values we subscribe to, even if it makes us seemingly disadvantaged in the short term. This thought accords with the trend in business for Boards of directors to devise performance measurement criteria for the Board to assess their own performance as a Board. It also provides a mechanism for providing a feedback to the Chairman on his or her own performance as chair of the Board.

One such reform is the imperative to better insulate the office of Chief Justices from the machinations of politicians, especially as it relates to the removal of CJs, Grand Kadis and President of Customary Courts of Appeal. Perhaps the role of the National Judicial Council specified in the 3rd Schedule, Part 1 Section 21 © and (d) should be better aligned with Section 292 (1) (a) and (b) of the Constitution. As things are, the Governor of a State can remove a CJ by a simple two-thirds majority of the House of Assembly, which have not been always independent of the Executive, and regardless of the view of the NJC. It is not unheard of for the Executive branch to act in concert with the State Assembly to remove a Judge for reasons other than professional conduct of the office, thus making the justice institution vulnerable, and could compromise the philosophy of Themis, the blind-folded goddess of justice holding a set of scales. This well-known symbol of justice deriving from ancient Greek mythology was known as the organizer of the communal affairs of humans, particularly assemblies, and remains a powerful icon depicting the absolute neutrality of the institution. The NJC is perhaps better shielded from politics, and it should not be so easy for politicians to sidetrack its recommendations in matters of discipline of CJs. It will mean that sooner than later we must revisit Section 292 of the Constitution.

The fourth dimension I wish to discuss in improving the administration of justice is training and capacity building in the Judiciary. The world today is so dynamic and changes in many areas of commerce are profound. For example technology has blurred the lines in intellectual property rights to an extent that what constitutes infringement may have to be redefined, and to this extent the application of law is evolving. The Oil and Gas sector has many emerging issues and trading terms are being refined in fundamental ways that makes it mandatory for the Judiciary to proactively inform itself, to avoid a steep learning curve. New concerns of civil society around the world impose new disclosure requirements on business. Companies are increasingly required to report not just financial performance but

also their performance on the environment and corporate social responsibility. We have seen class action suits from groups against individual companies or industry groups over environmental pollution or perceived or potential injury to health. Concerns around Human Rights and Ethical Trading have forced businesses to take a greater degree of care in sourcing raw materials. For example today I have to declare that we have made our best endeavour to ensure we do not buy cocoa from farmers who use forced child labour. The capital market operations are getting more sophisticated and will require those who administer justice to be completely familiar with these trends, including the interpretation of financial reports of companies. Many countries are taking steps to prevent the potential damage from corporate misdeeds, especially because such misdeeds in another jurisdiction can impact economies elsewhere. For example, the Sarbanes-Oxley Act of 2002 came into effect in the US in the wake of the corporate collapses we discussed earlier, and has had reverberating ripples in an increasingly borderless world. You will notice that most of the examples I have raised are commercial in nature. I know that those changes will be even more profound in the years ahead, driven by the power of technology. For example, we know the pressure to win the market share game is real, but in Nigeria we don't have an updated Competition and Anti-trust legislation. As privatization proceeds, new industry segments will open up, and in time the big players may not only hold near monopoly, but may use such market power for undue advantage. I was privileged to chair the Steering Committee that produced draft Competition and Anti-trust legislation nearly three years ago, and I hope it comes through the National Assembly soon. The training and education dimension includes training in ADR mechanisms, and has to be extended to the support staff in the Judiciary as well.

The point I make is that the pace of change in many spheres that impact our everyday lives creates new horizons for the Bench as much as for most other disciplines, and the challenge we all face is to keep pace with the change and preferably create institutions that are proactive in anticipating change. This means we cannot make light of training and re-training as the only way to build enduring institutions. For an individual, death is not just the cessation of life; death comes when a person stops learning. It is the same for an institution.

The fifth and final dimension I will discuss is the impediments that hamper the speedy administration of justice, and they generally relate to matters of speed, reliability and efficiency of service delivery. I will discuss them as a group, even though they manifest in different ways. First, I think it is time we complete the deployment of equipment to record Court proceedings at all levels so we can

banish hand writing to the archives. Second, the increasing adoption of civil procedure codes will facilitate speedy dispensation of justice, and one hopes this will be more aggressively pursued. The case management model initiated I believe in Lagos is worthy of mention, where expected conclusion period of matters is flagged from the commencement. It also introduces a good element of visibility and accountability. Third, I also believe the Bench must keenly track and disallow lawyers who delay the course of justice for lack of diligence or content or just to frustrate the other party to the dispute. Such actions have the semblance of being deliberate, or just a share abuse of the court processes, though one recognizes that the challenge is to ensure that no party suffers unnecessarily by insisting on keeping up the pace of the proceedings. The Bench will always have to make a call on this issue, but many legal practitioners suggest that a more determined effort is required from the Bench to enforce discipline among erring lawyers. Fourth, it will not be appropriate not to mention the damage that corruption could inflict on the justice delivery system, more visible at certain levels of society than others. The huge task of cleaning up such cesspool of iniquity in our society must engage every major institution, and the visible effort of the Judiciary in investigating and sanctioning its erring members is commendable. Corruption desecrates the judicial process, and there is bound to be concern if lawyers loose faith in the system they lead their clients to for fair hearing. The point about corruption though is that there are always two parties, and there is a receiver only because there is a giver. As in consumer markets, with which I am copiously familiar, the law of supply and demand also works. Where there is a supply and there is no demand, the supply soon dries up. We can also significantly weaken demand in the corruption game if the supply is denied, but we need to persuade those whose influence can be moderated by material gain that such act does incalculable damage.

In all the swift and competent dispensation of justice is a prerequisite for the much desired investment flows, whether from local investors or foreign. Investment accelerates free enterprise, which drives growth, creates jobs and raises quality of life. Our ability to attract the right levels of investment to power the growth our economy is capable of derives directly from our demonstrated capacity to run a functional society, where no one is oppressed. The integrity of justice administration is one of the first criteria that determine investment destinations, and as we said at the beginning, there is so much accumulated wealth in the world today seeking a place to nest. Countries that succeed in the long run are the investors' haven. The opportunity for us to attract this investment is so huge because of the absorptive capacity of the Nigerian economy. The linkage between effective administration of justice and economic prosperity is what this discussion

has been more about, and I hope emphasizes the imperative for the judiciary to pro-actively position itself to facilitate economic growth.

I have raised five broad challenges and issues we face in our bid to achieve a better dispensation in the temple of justice, and in furtherance of the philosophy of Themis the goddess of justice. The first issue is the imperative for a more aggressive adoption of ADR and cascade of the Multi-Door Courthouse mechanism. Others are governance and the question of succession into leadership, judicial reforms especially those reforms aimed at preserving the sanctity of the judiciary, and capacity building especially in the light of the rapid changes in our world. The fifth challenge is the combination of discipline and the provision of those tools that will facilitate the speedy administration in the third arm of government. The interesting thing is that challenges also represent great opportunities for growth and improvement, and I believe we have tremendous scope in these areas to raise the effectiveness of the judicial process.

I sincerely appreciate this opportunity to share and learn, and I thank you for your patient attention

Bunmi Oni
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