



OF A RENEWED JUSTICE SECTOR, LAW, ORDER AND THE RULE OF LAW

Olasupo Shasore, SAN
Bello Salihu

January 2018

An SGRB firm

ALP LEGAL

WWW.ALP.COMPANY

A high performing justice sector is an asset for national wealth. It guarantees an orderly society. The quest for justice may be farfetched without the proper functioning of all the compartments that make up the justice sector. Our justice sector will continue to fall short until we can restore the indices of accountability, accessibility, transparency and respectability.

It starts with the “justice ecosystem”. The role of lawyers is often recalled as being essential to the means of safeguarding an orderly society in the face of the power of the State and the caprice of kings but not properly provided for in budding democracies.

Recall the capture and extra-judicial killing of Revolutionary Chairman of the Libyan Arab Republic, Muammar Gadhafi along with 66 others, including one of his sons, during Libya civil war of 2011. It vividly depicts a reminder of the damaging effect of the absence of rule of law and disregard for the institution that lawyers represent. Gadhafi was captured, beaten and killed in plain view without recourse to the thought of a trial. Evidence that the public in Libya at the time had little or no confidence in law and order.

Contrast this with the former first lady of Ivory Coast Simone Gbagbo who was recently acquitted in an Ivorian court of crimes against humanity and war crimes linked to her role in a 2011 civil war that killed about 3,000 people. The fair trial enjoyed by Mrs. Gbagbo stems from an observable belief in the justice sector, the rule of law and due process in Ivory Coast.

In Nigeria, we must be extremely alert to cases of violation of the rule of law and due process. Regrettably, some of the culprits remain the law enforcement agencies. The people have

continued to endure. The endurance was tested only recently by the clamour for the abolition of a department of the Nigeria Police – the Special Anti-Robbery Squad (“SARS”).

Over the years, SARS has grown to become a terrifying arm of the police leaving the unenlightened to believe that men and women of SARS have an unquestionable licence to arbitrarily infringe on peoples’ rights. One of the incidents that provoked the recent #ENDSARS campaign began when footage was circulated showing the aftermath of the actions of the police unit killing a young man. This sparked a nationwide outrage. Nigerians have previously complained about police brutality. Numerous accounts emerged with videos of ordeals of brazen disregard for the rule of law. This without a doubt has been a further dent to the utter wane in confidence in the justice sector.

Amongst the citizenry, extra judicial killings and brazen conduct are usually triggered by lack of trust in institutions - evidence of a gradual systemic breakdown of an already fragile order in the society. Citizens in some parts of this country are being killed in purported defence of livestock. Reported cases of plain murder in the name of politics and cultism have gone unaddressed by the relevant arm of government leaving the public to perhaps contemplate that government itself is beginning to lose faith in the justice sector.

This is compounded when law enforcement officers employed to defend and maintain peace in the society turn their instruments of authority against the innocent public, the very people they are paid to protect. That popular paradox, “*police is your friend*” caught the attention of the Supreme Court in ***Ochiba v. State [2011] 17 NWLR (Pt. 1277) 663*** where

the court in condemning the action of the police observed that despite the traditional and constitutional role of the police of fighting crime, some police officers appear to compete with criminals in the commission of crimes they are trained to fight. This was another case where a citizen of this country was killed with a weapon bought with tax payers money for his protection. Of course, the Supreme Court found that it was a senseless killing by a key component of the justice sector.

For clarity, the justice sector is made up of the police, the state prosecution, the courts, the prisons and correctional centers and the people (citizens). Together, we are the body of people that must dig deep and find an abiding philosophy or the society that will not fall any further. The justice sector and indeed the legal profession is in need of an urgent but deliberate redefinition; a directional compass that reassures the public and restores public confidence. There is an urgent need to conduct an audit of the causes and effects of public approval (or lack thereof) for our justice sector institutions. Approval stems from the public's perception of confidence and its satisfaction with total value assurance the legal profession portrays. Simple as that might sound, the confidence of the public is crucial to the continued existence and survival of the legal profession and the justice sector as a whole – it is central to very existence of law and order in our society.

What we must urgently do to install a high performing justice sector

Leadership

Like every other sector, clear and visionary leadership is essential to the optimal performance of the justice sector.

Administration of justice must as a matter of urgency be properly resourced at leadership level, either by appointing a dedicated executive in charge of this function or designating a cabinet level member for that purpose. Due to the absence of an acknowledged and identifiable leadership, it is presently performed as an adjunct service at best, being combined with other functions that now lie in priority.

For instance, the administration of the machinery of justice, whereby the legal system is maintained is an executive and not a judicial function. Judges do not administer justice; they adjudicate by way of interpreting the law. In the same vein, it is not for heads of the executive branch of government to “*direct the Attorney General to prosecute*” nor for the Inspector General of Police to “*deal ruthlessly with people found guilty of breaking the law*”. Each branch of government should comport itself within its constitutional space.

The following matters relate to the administration of justice which do not concern the office of a judge: the organisation of the courts; the prerogative of justice, the prerogative of mercy and any prerogative power to create new courts; *nolle prosequi*; the appointment, tenure and immunity of judges; the immunity of other participants in legal proceedings, contempt of court; the composition and availability of juries, any requirement that their verdict be unanimous, and the allowances they receive; the branches of the legal profession; and the provision of legal aid and advice.

Respect and insulation of Judges

The office of the judge today is under assault. Judges must be allowed to perform their constitutional role of “*judging*”. The office of a Chief Judge or Chief Justice should not be demonized by compelling it to be the administrator of the courts or superintendent of awards of contracts all in the name of independence of the judiciary. The chief executive of courts who reports to the Minister of Justice, in the United Kingdom is not the Judge (President) of the court; he is an employee of the legal system; this is as it should be.

As long as the justice sector diminishes in respect and dignity, it would lead to a downward spiral of public confidence not only in the law generally but in the economy. An inevitable consequence would be a side-stepping of legal services, resulting in a breakdown of law and order. We need to constantly remind ourselves that a lawless and lawyer-less system is a recipe for anarchy and poverty.

The office of the judge should not be dragged into political battles through election petitions and impeachment proceedings embarked upon by career politicians. A judge must be allowed to keep his oath; decide cases involving ‘*all manner of people without fear or favour affection or ill will*’. As Olajide Olatawura JSC once noted “when you are tempted to tilt the scale of justice on grounds not based on the evidence before you, please return to the oath”. Olatawura JSC’s stand resonates with the actions of Sir Edward Coke over 400 years ago. Coke was a great English judge who served at a time when judges in England held their offices as it pleased the King. Coke was renowned for his assertion of the independence of the judiciary. In this, he clashed with the King. It was in a case in which

the King had an interest. The King attempted to interfere in the court’s decision. The King asked the court to stay proceedings until he (the King) was consulted. Coke did not agree. According to Coke, “Obedience to His Majesty’s command to stay proceedings would have been a delay of justice, contrary to the law, and contrary to oaths of the judges”. When all other judges affirmed the right of the King to be consulted when his interest is involved in a case, Coke was reported to have responded that “When that happens, I will do that which it shall be fit for a judge to do”.

In the duty to preserve law and order, the legal profession must be seen as the guardian. This is to promote national development and prevent the descent of society into anarchy. Because public confidence can only be preserved by the standards that we keep, legal practitioners must live up to their role as custodians of our professional ideals. We must restore our judges to their revered position of dignity. They must be protected from all known administrative tension, political pressure or financial anxiety.

Obedience of court orders by the high and the mighty –

Governments, State and Federal are under a constitutional duty to uphold the rule of law and obey court orders whether it is for the payment of court ordered judgment or for the release of politicians charged with bailable offences after bail has been granted by three national courts and a sub-regional court; the Economic Community of West African States Court. Public prosecution must be re-focused. It must be aimed at seeking justice and nothing else. Government must endeavor to refrain from appealing decisions on purely technical

points. It is a waste of tax payers' money – it does not meet the ends of justice. The conduct of public cases should not be equated to what obtains in private dispute resolutions where some lawyers have been observed to care too much for law and too little for justice. Such lawyers have turned themselves into technicians spelling out the meaning of words, instead of being, as they should be, men and women of spirit and of vision leading people in the way they should go, making the law fit for the times in which we live in.

The belief that a big corporation can disobey court orders in the same manner as government is a result of observable impunity. The reign of impunity is identified with low performing economies; it is the precursor of a breakdown of law and order. Even if justice is perceived as a commodity, it is not subject to “load shedding” like electricity. If justice must be for all, it cannot be rationed.

Refrain from denigrating decisions of the courts in public

Punditry in the law has now become a lead pastime for some senior lawyers seeking to subtly advertise expertise and relevance. Lawyers can and should air their views when sought after. But reducing potential or ongoing legal disputes to debates on television for public entertainment does violence to our dignity and huge disservice to the institutions that we serve.

In truth we have had several document driven reforms. We now have a new judicial or justice sector policy made by the judicature and a Legal Practitioners Professional Regulation Bill. Although the Bill is expected to address the inadequacies in the legal profession and such other related matters, its fitness for that

purpose is already being questioned in the legal community.

Nigeria consistently ranks low in the rule of law index of the World Justice Project. Over the years, the country has been unable to convert this intangible capital, the rule of law, to wealth. The time has come to uphold and promote the rule of law and thereby defend national performance from further decline.

After several years of indecision resulting in policy fluctuation, we have found ourselves in a critical situation that now requires urgent intervention. If we must return the justice sector to its befitting state, credible, purposeful and coordinated leadership in all the institutions of the justice sector must be top priority. This can only be complemented by clearly defined, broad and articulated policy direction capable of inspiring a justice sector that is accessible and accountable while at the same time transparent and respectable.