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The Judiciary and Justice Delivery in Nigeria

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Abstract

Democracies all over the world have various arms of government with different roles to play in order to ensure the growth and development of such country. The judiciary arm of government is saddled with some peculiar responsibilities which is mainly to interpret the law. Within the confinement of the law, the judiciary in its various hierarchies is expected to deliver certain services to the general public in Nigeria. These services are delivered mainly through the court processes among others. Therefore, has the judiciary in Nigeria live up to its constitutional responsibilities to the satisfaction of the greatest number of Nigerians? To this extent, the research objective driving this study is to assess the role of the judiciary in justice delivery in Nigeria. The System theory framework is adopted to explain the importance of balancing the input and the output of the judiciary arm of government so as to be able to deliver justice to all Nigerians. Qualitative research method is adopted. This study concludes that the judiciary's role in justice delivery is crucial to the sustenance of democracy in Nigeria and it must not be impeded.

Keywords: Democracy, Judiciary, Justice Delivery, Rule of law; System Theory

Introduction

The judiciary like any other arm of government in all countries is saddled with some peculiar responsibilities. Within the confinement of the law, the judiciary is expected to deliver certain services to the general public in Nigeria. If these peculiar responsibilities and essential services are delimited then the entire country will be in jeopardy of limited freedom, jungle survival strategies, no equity and compromised national security. This is due to the nature of human society which is made up of both the strong and the weak. The strong might be exceedingly strong while the weak might be out rightly weak. Then the notion of the Thomas Hobbes' state of nature as described in 'the Leviathan' will come to play which is short and nasty, solitary, poor and brutal.

The leviathan as the ruler needs to bring equity to the table and all the party to it must ensure freeness and fairness of actions and behaviour. The judiciary in this case is the 'Leviathan' who has been mediating between all the levels and tiers of government; the federal, state and local government and the arms of government; the executive, the legislature and the judiciary. Most importantly, the mediation between individual and groups within the community has been a novel judicial justice delivered to the entire country. This has prevented numerous jungle justices which individuals would have embarked upon (Obiyan, and Olutola, 2012). Also communal

clashes which could have degenerated into civil war, state of anarchy and lawlessness in the country had been averted.

Therefore, it is customary for the judiciary to adjudicate the law, but is that the only judiciary's role to play or service to render to the community and country? Even with that, has the judiciary in Nigeria live up to its constitutional responsibilities to the satisfactory happiness of the greatest number of Nigerians? To this extent, the research objective driving this paper is to assess the role of the judiciary in justice delivery in Nigeria.

Justice delivery is a function of some expected inputs supported by the law and the corresponding outcome which in most cases is expected to be more than the inputs. The legal framework of Nigeria allows the judiciary to investigate, adjudicate, litigate and mitigate grievances, agitation and acrimonious cases. This is expected to lead to community peace, development and democratic sustenance. These are some of the inputs and the expected outputs in the justice delivery of the judiciary in Nigeria. The System theoretical framework is adopted to explain why the input and the output of the judiciary need to complement each other for the public to be happily satisfied with justice delivered of the judiciary arm of government. In other for the focus of paper to be achieved, which is to assess the role of the judiciary in justice delivery in Nigeria, qualitative data will be collected from secondary materials such as journals, text books and other relevant online sources.

Conceptual Clarification

Justice and Justice Delivery

Justice is a ubiquitous term; it is discussed as it shows its tremendous appeal as a value to citizens. Depending on the particular context or perspective, justice signifies different things for different people. By the Pythagoreans, and also by Plato, justice is regarded as including all human virtue or duty. It also means doing what is fair and right in the circumstances of every particular case (Pásara, 2014). Justice is not founded in law, as Hobbes and others hold, but in our idea of what is right. Laws are just or unjust in so far as they do or do not conform to egocentric and prejudiced ideas (Venderbit, 2010; Encyclopaedia Britannica, 2019). Justice may be distinguished as ethical, economical, and political. The ethical justice is constituted in doing justice between individuals; economical justice in doing justice between the members of a family or household who are in economic mutual contacts; and the political justice is between the members of a community or commonwealth.

In philosophy, the concept of justice implies a proper proportion between a person's deserts (what is merited) and the good or bad things that befall or are allotted to him or her (Encyclopaedia Britannica, 2019). Aristotle's discussion of the virtue of justice has been the starting point for almost all Western accounts. For him, the key element of justice is treating like cases alike. Aristotle distinguishes between justice in the distribution of wealth or other goods (distributive justice) and justice in reparation, as, for example, in punishing someone for a wrong he has done (retributive justice) (Bell, 2019). From the perspective of another political philosopher, John Rawls' in his famous work, *A Theory of Justice* literally argues for a stance of 'justice as fairness.'

Fairness to Rawls is having equal rights to basic liberties and ensuring that inequalities benefit the least advantaged members of society. Also, there must be fair equality of opportunity in terms of offices and positions (Watts and Hodgson, 2019).

In a civilised society's justice system, justice is a concept that means the mechanism that determines guilt in criminal cases, adjudicates on disputes between individuals, families and businesses, protects vulnerable children and allows the public to hold the Government to account (United Kingdom Ministry of Justice, 2016). A bottom-up perspective towards justice perceived justice to be assessed through the fairness perceptions of people who have had to deal with various types of disputes and grievances. Bottom-up justice is the extent to which people who need justice can access, fair dispute resolution processes and obtain fair outcomes to their problems (Thaler and Seebauer, 2019). In other words, Pásara (2014) Oni, Chidozie and Agbude (2013) noted that the users of justice can tell justice from injustice, fairness from unfairness. Therefore, the three indicators of justice are quality of the procedure, quality of the outcome and the cost implication. A well functioning legal system is supposed to provide people with processes and outcomes which are considered as fair and accessible.

In the same vein, justice delivery is the actual practice of justice by the government or an organization. It focuses on the principles of good governance, fairness, equity, equality and separation of power. Whenever these principles are disseminated in the day to day activities of the government or an organization, justice is said to be delivered. This implies that justice delivery is an activity which the government is expected to exhibit in dealing with the citizenry and not inequality, partiality or partisanship.

Justice delivery according to Folke Bernadotte Academy and Office for Democratic Institutions and Human Rights (2013) covers a very wide range of issues, including expropriations, urban planning, civil registration, issuance of business licenses, protection of the environment, operation of public utilities and access to information. In the opinion of the Chief Justice of India, Justice Sabharwal (2007), justice delivery means a constant and perpetual desire to render everyone, his or her due. This, in turn, means that the court must in every way find legal techniques to provide relief to anyone who has been deprived of what was due to him or her which is the ultimate objective of law.

Singh, (2018) and Karp and Clear, (2000) as well opined that justice delivery is broadly referred to as all variants of crime prevention and justice activities that explicitly include the community in their processes and set the enhancement of good quality of life as a goal for the community. Justice delivery activities in such case include; community crime prevention, community policing, community defence, community prosecution, community courts, and restorative justice sanctioning systems. Community justice as Karp and Clear (2000) also posited that justice delivery explicitly focuses on neighbourhoods, problem solving, decentralization of authority and accountability, community quality of life, and citizen participation.

The Hiil Innovative Justice and The Hague Institute for Global Justice (2012) opined that justice delivery and the rule of law are multidimensional concepts

consisting of eight facets which are; accountability to the law; access to information; independent judiciary; effective judicial system; respect for fundamental rights; effective implementation of laws; access to justice and absence of corruption. Therefore, justice delivery has been understood as the amount of fairness that people experience and perceive when they take steps to solve disputes and grievances. On each path to justice, people assess and derive fairness from three particular dimensions: the costs of justice, the quality of the procedure and the quality of the outcome.

The System Theory Policy Making

A political system provides a platform for mutual inflow and outflow of policy and decision making. Systems theory provides an analytical framework for viewing an organization which may be a country general description and explanations of its input to the political system and its output. It introduces system mechanism as a new scientific paradigm contrasting the analytical, mechanical paradigm, characterizing classical science. Von Bertalanffy (1956) defines a system as a complex of interacting elements.

Von Bertalanffy (1962) fosters systems thinking in all disciplines in order to find a general principle which is valid to all systems. Rapoport (1966; 1968) perceived system to be a set of interrelated entities connected by behaviour and history. Easton (1966) attempted to define political system in a broader sense than Rapoport. He defined a system as "any set of variables regardless of the degree, of interrelationship among them". This definition provides and freed the researcher from the need to prove that a political system is really a system.

A system is a complex and organized whole; it is an assemblage or combination of things or parts forming a complex or unitary whole. The major components of a system include the following; Inputs, Transformation process, the external variable, and The Outputs. Inputs - The composition of inputs include the executive, judiciary, legislative inputs. The arms of government form the source of their inputs from the people. The people are the various claimants – groups of people making demands on the organization; such as employees, consumers, suppliers, stockholders at the various levels of government such as the federal, state and local governments. The transformation process in a system or in an organization consists of the process whereby inputs are transformed in an effective and efficient manner into outputs. It involves capital, managerial skills as well as technical knowledge of skills. The transformation process can be viewed from different perspectives. Focus can be on such administrative functions such as finance, production, regulations, personnel and or marketing processes.

The external variable as a component of the systems model plays a key role in the transformation of inputs into outputs. Organizations have little or no power to change the external environment, but only respond to it so as to suit their objectives. These external environment include the political, economic and the social prevailing circumstances within and around the system. However, a particular output can be

secured through the securing a specific input which will be transformed through the managerial functions.

For instance, a judicial input will give a judicial internal transformation process for a justice delivery output to be achieved. Inputs on judicial reforms will give an output of virile judiciary sector. Therefore, outputs of different kinds vary with the organization or the political system. They usually include many of the following; products, services, profits, satisfaction and integration of the goals of various claimants to the system. Finally, the feedback mechanism in a system reenergizes the system. It gives the system another opportunity to do the right thing, re-strategize, seek public opinions and acceptability or enforces the previous ideals. In the systems model of judicial justice delivery process, some of the outputs become inputs again for contentious action until the judicial sector is perfected in their justice delivery roles to the community.

Easton (1957 and 1966) in answering the question whether the system was interesting and thus worth studying recommends focusing on two major inputs: demands and support. Through them, a wide range of activities in the environment can be channelled, summarized, and brought to bear upon political life. Outputs help interpret the consequences flowing from the behaviour of the member of the system rather than from actions in the environment. Outputs are as the decisions and actions of the authorities. A government's decision to have a certain justice policy would be a political input; the actual implementation of the policy would be the actual output.

Due to the fact that the system is coupled together, all behaviour in society is mutually dependent. To trace the complex exchanges and reduce them to manageable proportions, Easton condensed the main environmental influences into a few inputs serve as a powerful analytic tool because they summarize variables that concentrate and minor everything in the environment that is relevant to political stress (Easton, 1966). Looking at political systems as equilibrium seeking, self-balancing entity, input such as request for justice is balanced with the outputs of justice satisfaction so as to enhance effective feedback (Susser, 1992).

The figure I below shows the input environment in terms of demands from the various arms of government such as the judiciary, executive and legislature and support into the political system. The outputs are in terms of the decisions, services, policy and justice delivery made to the political system. The feedback mechanism from the policy environment is mostly used to crosscheck the extent of effectiveness of the inputs. Judiciary justice process is an example of input on the political system which have to be integrated and processed out as Justice delivery policy for the country and at the same time, the output environment which include the recipient of the justice policy will give the input environment which include the policy actors the necessary feedbacks of the effect of implementing the policy.

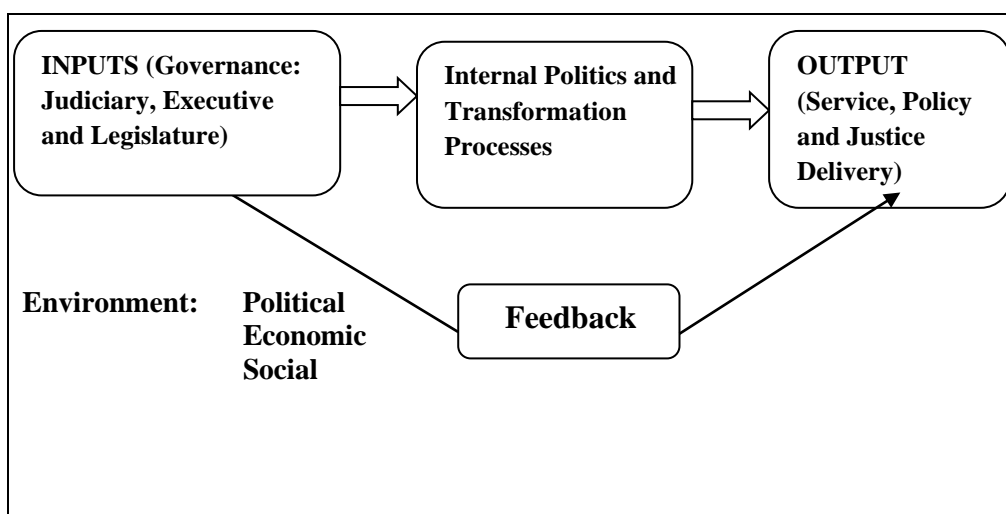


Figure I: Systemic Flow in an Environment

Source: Researcher 2019

Functions of the Judiciary in Justice Delivery in Nigeria

The judiciary in Nigeria has witnessed ups and downs, high points and low points in the resolution of disputes in the twenty years of democratic experience in Nigeria. The primary role of the judiciary is to hear, adjudicate on disputes between parties by applying the law and interpreting the law within the confinement of a court of competent jurisdictions (Akin, 2016). The judiciary should at any point in time interpret the law as it is without fear or favour. These roles can be effectively carried out when each case is handled by the relevant levels of court with the application of the relevant codes of law (Ibrahim, 2014).

The Nigerian legal and judicial system contains three codes of law: the customary law, Nigerian statute law (following English law), and Shari'ah (Islamic law). Customary laws, administered by native, or customary, courts, are usually presided over by traditional rulers, who generally hear cases about family problems such as divorce. Kadis (judges) apply Shari'ah based on the Maliki Islamic code. Nigerian statute law includes much of the British colonial legislation, most of which has been revised (Fagbemi and Akpanke, 2019; Olayinka, 2018). In addition to Nigerian statutes, English law is used in the magistrates' and all higher courts. Each state has a High Court, which is presided over by a chief judge while the Supreme Court which is the highest court in Nigeria is headed by the chief justice of Nigeria.

The roles of the judiciary in justice delivery in Nigeria are primarily prescribed by the 1999 constitution as amended. Chapter VII parts I to IV of the 1999 constitution as amended divided the various judiciary roles into courts of competent jurisdictions (Oyebode, 2005; Egbewole, 2013). The Supreme Court according to section 232 is saddled with the role in its original jurisdiction to resolve any dispute between the Federation and a state or between states if and in so far as that dispute involves any question on which the existence or extent of a legal right depends and as may be conferred upon it by any Act of the National Assembly. Its appellate role

includes to hear and determine appeals from the Court of Appeal on the ground of appeal involves any civil or criminal case. Section 236 confers the law making role on the Chief Justice of Nigeria for regulating the practice and procedure of the Supreme Court subject to the provisions of any Act of the National Assembly.

The section 239 and 240 respectively of the 1999 constitution (as amended) empowers the Court of Appeal to the exclusion of any other court of Law in Nigeria, to have original jurisdiction to hear and determine any question as to whether—any person has been validity elected to the office of President or Vice-President under this Constitution; or the term of office of the President or Vice-President has ceased; or the office of President or Vice-President has become vacant. the appellate role of the Court of Appeal to the exclusion of any other court of law in Nigeria include; to hear and determine appeals from the Federal High Court, the High Court of the Federation Capital Territory, Abuja, High Court of a state, Sharia Court of Appeal of the Federal Capital Territory, Abuja, Sharia Court of Appeal of a state, Customary Court of Appeal of a state and from decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly. The Section 248 as amended enables the president of the Court of Appeal to make rules for regulating the practice and procedure of the Court of Appeal subject to the provisions of any Act of the National Assembly (Nigeria Constitution, 1999).

The Federal High Court as well has enormous role as stipulated by the sections 251 and 252 respectively of the Federal Republic of Nigeria's 1999 constitution (as amended) to include the exclusive jurisdiction to ensure justice in relating to revenue of the Government of the Federation, the taxation of companies, customs and excise duties and export duties, banking, banks, other financial institutions, Companies and Allied Matters Act, to copyright, patent, designs, trademarks and passing-off, industrial designs and merchandise marks, business names, commercial and industrial monopolies, combines and trusts, standards of goods and commodities and industrial standards, shipping and navigation on inland waterways.

The 1999 constitution as amended further tasked the Federal High Court on ensuring justice to be delivered on matters relating to diplomatic, consular and trade representation, citizenship, naturalisation and aliens immigration into and emigration from Nigeria, passports and visas, bankruptcy and insolvency, aviation safety, arms, ammunition and explosives, drugs and poisons, mines and minerals (including oil fields, oil mining, geological surveys and natural gas) weights and measures, the administration or the management and control of the Federal Government or any of it agencies, treason, treasonable felony and allied offences and other jurisdiction civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly.

However, the roles of the State High Courts are the same as the Federal High Courts but at a subsidiary level. The federal High Court acts in supervisory role for the state High Court because it owns the original jurisdictions in the civil and criminal justice delivery roles (Obiyan, and Olutola, 2012). The section 277 of the Nigeria's 1999 constitution (as amended) as well conferred the role of adjudications

between Muslims on the sharia Court of Appeal of a State to exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic Personal Law. Also, the Customary Court of Appeal of a State shall exercise appellate and supervisory jurisdictions in civil proceedings involve questions of customary law.

Finally, the section 285 of the Nigeria's 1999 constitution (as amended) spells out the role of the judiciary on election matters. They resolve election disputes through the election tribunals. The Election Tribunals include the National Assembly Election Tribunals, Governorship and Legislative Houses Election Tribunals. It has original jurisdiction to hear and determine petitions as to whether –any person has been validly elected or not, the term of office of any person under the Constitution, the seat of a member of the Senate or a member of the House of Representatives is vacant and any office holder including the president of the federal republic of Nigeria.

Role of the Judiciary in Dispute Resolution Delivery in Nigeria

A great deal of precarious and sensitive cases which has the capability of breaking down the entire country has been mitigated through by the judiciary in the past in Nigeria. No doubt the judiciary is a very vital arrangement in any country that wishes to progress. In fact, during the military interregnums, the judiciary is always allowed to exist whereas the other arms of government such as the executive presidency and the legislatures' parliament is scraped off and replaced with supreme military council which has a form of internal court system for military officers and generally operate by decree and edicts. Although the constitution has been suspended from operation, the judiciary is still allowed to operate to some extent.

Several landmarks had been achieved by the judiciary in the cause of their justice delivery in Nigeria. The services have formed a precedent on the country's form of behaviour and at the same time restore more decorum in the polity since Nigeria returned to democratic rule in 1999 (Hope 2017). The service delivery ranges from resolving electoral disputes, violence resolution, and domestic, ethnic and religious dispute resolution (Gauri 2013). This section assessed some roles and some randomly selected landmark justice delivered by the judiciary in the contemporary fourth republic Nigeria.

The intra party crises of the Peoples Democratic Party (PDP) a major opposition party which have a magnitude of igniting political crises in the country was meddled down by the Supreme Court by permitting a free and fair audience to the warring factions at Supreme Court. This action had sustained Nigeria's democracy from becoming a one-party state without viable opposition. The appeal suit filed by Makarfi (the PDP caretaker committee Chairman) at the Supreme Court to challenge the judgement of the Port Harcourt division of the appeal court that sacked his caretaker committee and affirmed Sheriff as chairman of the party. Ali Modu Sheriff, (a fractional) national chairman of the Peoples Democratic Party (PDP) had filed a court injunction asking the court not to hear the appeal of Ahmed Makarfi, national caretaker of the party. The five-man panel of justices led by Walter

Onnoghen, chief justice of Nigeria (CJN), allowed the appeal. This action had shown a justice delivery to all parties regardless of the status or affiliation in the country.

Another justice rendered by the Supreme Court to Nigeria political system was gubernatorial tussle between Okezie Ikpeazu as the Governor of Abia State and Uche Ogah. Ikpeazu defeated Ogah in the Peoples' Democratic Party, PDP, primaries ahead of the 2015 gubernatorial election in the state. Uche Ogah accused Ikpeazu of submitting false tax information to the Independent National Electoral Commission (INEC). Justice Okon Abang of a Federal High Court in Abuja had on June 27, 2016 sacked Ikpeazu from office as governor of Abia State, after the court found him guilty of the tax offences (Ejike, Nwaoko and Ihejirika, 2017). The Independent National Electoral Commission, INEC, issued Ogah as Abia governor and the Certificate of Return.

In another judgement in August, 2016, the Court of Appeal described the ruling by Justice Abang as a rape of democracy and affirmed the election of Ikpeazu. Subsequently, Uzodinma (2017) noted that Ogah's appeal in the Supreme Court to uphold the High Court judgement, two out of the three-man panel of the Supreme Court struck out the appeal, thereby affirming the judgment of the appeal court. The Chief Justice of Nigeria described the case as a 'storm in a teacup' and warned politicians against trying to influence the judiciary by attempting to bribe court employees to know who is writing the judgment or what the judgment will be.

The Supreme Court also offers justices to nongovernmental organizations such as the church and corporate organizations. The leadership crisis within the Assemblies of God Nigeria (AGN) between Rev. Chidi Okorafor and Rev. Paul Emeka was amicably settled by the Supreme Court. Rev. Paul Emeka was suspended by the General Council of the church but the Enugu State High Court judgement restored him to the office. Rev. Chidi Okorafor proceeded to the Appeal Court where the judgement of the lower court was reversed (Isiguzo 2017). However, Rev. Paul Emeka headed to the Supreme Court appealing that his fundamental rights were trampled upon. The Supreme Court ruled that fundamental right enforcement could not fly over the Assemblies of God leadership and upheld the suspension and dismissal of Rev. Paul Emeka by the church.

Also another instance of justice delivered by the Supreme Court is a reversal of a purported injustice in the Adamawa State House of Assembly impeachment of the executive Governor. Ex-governor of Adamawa State, Admiral Murtala Nyako, was alleged to have committed impeachable offences. The Supreme Court judgement vindicated him by the clearance of allegations. A similar justice delivery was a case between the Federal Government and Lagos State Government over land dispute in Ikoyi, Lagos. The Supreme Court struck out the law suit filed by the Lagos State Government against the Federal Government affirming that the plaintiff lacked the right standing to sue. All of these services ensure that peace is restored among the fractions that are not in good terms and rights and remedies were affirmed.

Another major justice rendered by the Supreme Court to the entire country was the decision nullifying the free will dissolution of elected local government chairmen and other staffs of the councils before the end of their tenure by the executive

governors. This justice delivery offers a significant promise for Nigeria's democracy. A five-man panel Supreme Court judges faulted the law passed by the Ekiti state's House of Assembly in 2010 which the former state governor Dr Kayode Fayemi's acted upon by dissolving the local governments in the state when the statutory tenure of the elected councils had not expired. The Supreme Court also noted that the Section 7(1) of the Constitution seeks to guarantee the constitutional force that the elected councils possessed. The local government system that democratically elected its local government councils conferred legality on such officials whose electoral mandates derived from the will of the people to be freely exercised through the democratic process.

Conclusion

Judiciary in Nigeria is a major fulcrum that upholds the democratic and the political structure of the country. It prevents it from descending into state of anarchy. As the third arm of government, the judiciary in Nigeria has been able to mediate and deliver justice between the legislative and the executive arm of government. It has also administered intra justice within the judiciary system. The services rendered to the individuals in Nigeria have been able to promote and sustain peaceful living among states, individuals and organizations within the country. Litigations that has the capability of causing internal insurrection and external aggressions are been handle in a methodical manner to a logical and systematic conclusion.

The system theory as used in this paper shows that the inputs from the political, economic and social environments of the country are been processed by the judiciary adjudication processes and then sent out as output to the society as a measure of justice delivery. The measure of feedback from the political, economic and social environments of the country becomes a new form of inputs for the judiciary to look into so as to ensure the greatest happiness of the greatest number of the people within the country.

The expected roles of the judiciary as the third arm of government is spelt out in the 1999 constitution of the federal republic of Nigeria as amended. The judiciary mechanism of operation is embedded in the various courts of law with the competent jurisdictions. The inputs and outputs of the various courts of law are the substance embedded in the roles of the judiciary. Therefore, the effectiveness and efficiency of the judiciary is measured by the quality and quantity of services they rendered in their quest to justice delivery.

There is no doubt in the fact that there are problems in the judiciary justice delivery in Nigeria. The most obvious problems are corruption in justice delivery due to undue political interference and the timeliness of litigations in the process of dispensing justice. A lot of litigation spent enormous time for justice to be delivered. This therefore gives the litigants the chance to influence the judgement against the judicial ethics. This occurs in any form such as undue considerations and manipulations from ethnic or religious front or bribery and truth falsification politics. The persistence of such problems has made the justice delivery of the judiciary to be shrouded in obscurity and less popular among Nigeria populace.

A prominent way forward of making the judiciary viable is by reducing the direct political influence on judiciary appointments, financing, and promotion. Also in the determination of who becomes the judge in a case. The time schedule in the adjudication processes in any litigation must be reduced professionally because justice delay is justice denial. Whenever the time to deliver justice on a case is lessened then the rate of external influence on the system will be reduced.

Also, the system inputs of litigations can be reduced if the judiciary clears off the backlog of 'little' cases which outcome and investigations had been completed. Online investigation and 'small claim courts' are other measures and outlets which can fast track judicial justice delivery. This will decongest the number of the awaiting trial cases be it in the prison yards, the police custodies or elsewhere. Invariably, this will enhance the security units' commitments to fact findings due to the prompt demand from the judiciary for investigations.

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