

TOWARDS A MORE TRANSPARENT AND MERIT-BASED JUDICIAL RECRUITMENT SYSTEM IN STATES JUDICIAL SERVICE COMMISSIONS

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WHY A MERIT BASED AND TRANSPARENT SYSTEM?

- Judges have power over life or death
- Justice is the cornerstone of stable society and once perceived as compromised, results in self-help etc.
- Local/International confidence in the Judiciary is good for the economy.
- *“The quality of justice depends more on the quality of the men who administer the law than on the context of the law they administer. Unless those appointed to the bench are competent and upright and free to judge without fear or favor, a judicial system, however sound its structure may be on paper, is bound to perform poorly in practice”. Schwartz*

MERIT BASED

Vs OTHER CONSIDERATIONS

Character

Spread

Reputation

Faith

Competence

Connections


**Capacity for Hard
work**


Erudition


CONSTITUTIONAL REQUIRMENTS FOR THE APPOINTMENT OF JUDGES TO STATE HIGH COURTS


- Sections 271, 276 & 281 of the Nigerian Constitution, appointments of judges made by Governor on recommendation of NJC
- For Chief Judge, appointment by Governor is subject to confirmation of State House of Assembly
- Applicants must have been qualified legal practitioners for at least 10 years -*sections 271(3); 276(3)(a); 281(3)(a)*
- State Judicial Service Commission (comprised of Chief Judge; Attorney General; Grand Kadi of the Sharia Court of Appeal; President of Customary Court of Appeal; two legal practitioners with 10 years post call experience; and two others who are not legal practitioners and considered by the Governor to be of unquestionable integrity) - *advices/recommends names of qualified candidates to NJC - Para. C, Part II of the Third Schedule to the Constitution*)


APPOINTMENT: CONSTITUTIONAL PROCESS (State High Courts)

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- House of Assembly Confirmation (for CJ only)
 - (Section 271 (1))

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- Governor Appoints
 - Section 271 (1) & (2)

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- NJC recommends successful candidates to Governor for appointment
 - section 271 (1) & (2)

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- JSC receives applications – shortlists – recommends (advices) NJC -proposes candidates

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- JSC confirms availability of accommodation, offices, cars for number of slots available from State Courts

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- JSC confirms availability of slots from NJC

HOW ARE JUDGES SHORTLISTED?

NJC Guidelines and Procedural Rules, 2003

- JSC Chairman gives notice of intention to appoint to the Governor of the State
- Judicial officers recommend candidates
- Other nominations- Ministry of Justice, Magistracy, Private Bar
- Shortlist not less than double the number to be appointed
- Circulate shortlist to all judges in State and NBA branches for comments on suitability

HEAD OF COURT TO CONSIDER THE FOLLOWING IN SHORTLISTING:

RULE 3 NJC GUIDELINES

- Professional expertise
- Seniority at Bar and Bench
- Federal Character or geographical spread
“without compromising the cherished independence of the judiciary or allowing politics to permeate or influence the appointment”

THE LAGOS PROCESS

- The NJC makes known to the Chief Judge, the number of available vacancies in the State High Court.
- The Chief Judge invites judges to recommend practicing lawyers with whom they are familiar.
- Judges will then request resumes from lawyers whom they wish to recommend and forward their lists to the CJ, who will then forward same to the JSC.
- JSC conducts written exams to shortlist candidates for interview sessions.
- The interview sessions are interactive and are aimed at testing the character and skills of candidates.
- The NBA branches in the state must comment on each nominee.
- The JSC nominates the successful candidates to the NJC which is chaired by the CJN and made up of a number of serving members of the judiciary and other eminent persons, including five members of the Nigerian Bar Association who have been qualified to practice for at least 15 years.
- The NJC decides which candidates to recommend to the Governor for appointment, the latter will then formally execute the instruments of appointment to the successful candidates.

UNWRITTEN REQUIREMENTS FOR JUDICIAL SELECTION IN NIGERIA

- Applications from the Private Bar may come through any source:
 - Nominees from the Magistracy – (the Chief Registrar-mandatory)
 - Nominees from the Ministry of Justice
 - Judges' Nominees
 - No provision for Academic Bar?
- Indigeneship – who is an indigene?
- Local Government (if qualifies as an indigene)
- Gender? Religion?

Once the constitutional requirements are met by a candidate, these unwritten requirements appear to carry more weight than merit –based considerations.

NOT MERIT-BASED

- Generally, our systems of appointment locally and nationally focus more on other considerations, merit comes very low in order of considerations.
- E.g. Justice Ifeoma Jombo-Ofo- from Anambra State married to Abia State indigene and served meritoriously as High Court judge for 14 years – Her swearing in for the Court of Appeal was stopped on the basis that she was from Anambra State but wanted to use up an Abia State slot.

{Guiding Principles and Formulae for the Distribution of all Cadres of Posts Created in Pursuance to the Federal Character Commission (Establishment etc) Act 1996 Part 2 Clause 2

“a married woman shall continue to lay claim to her state of origin for the purpose of implementation of federal character.”

- When Judges are appointed on the basis of ethnicity/religion or other parochial considerations, they will almost invariably see themselves as champions of the platform which gave them the position rather than 'justice' or a national platform.

NBA STATEMENT ON COURT OF APPEAL APPOINTMENTS

- *“ The current exercise has been flawed by political interference and lack of consistent and clear cut criteria that could lead to the emergence of Independent minded, courageous, ethnically sound, and erudite jurists which would do the legal profession, the judicial process and of course the nation proud at this critical moment of our national evolution.*
- *The bar is aware that previously set out rules to guide the emergence of candidates based on merit were severally amended to accommodate the emergence of candidates nominated by (1) Political office holders who ordinarily have no constitutional role to play in the exercise and (2) serving and retired justices of our appellate courts with overbearing status and influence.*
- *We have, in fact, received complaints from some State Chief Judges to the effect that Judges recommended from their states for appointment to the Court of Appeal based on merit were being substituted for Judges not recommended by them and in fact far too junior and lacking in knowledge and experience in comparison to those recommended by them.*
- *Anything short of a merit based system of appointment is unacceptable to the NBA and we are, therefore, compelled in the public interest to reject the ongoing exercise and call on the National Judicial Council to equally do so”.*

Justice Uwaifo, CON equally gave this admonition on the occasion of his valedictory on 15th April 2010:

“The dynamics for improvement in any endeavour is the willingness to try novel methods. As this idea may have been applied to appointment to the higher bench in this country, I cannot say there is much evidence. Let me be specific in my probe. Take for instance, appointment to the Court of Appeal. Names are submitted for consideration for appointment. These names are considered by those actively concerned with appointment and eventually successful candidates emerge. It is not at all clear what verifiable criteria are used to ensure the suitability and capability of those appointed. But whenever any of those appointed prove indeed to be suitable and capable it is rather a matter of good fortune or chance. It could thus happen that even those about whom there is common knowledge of corruption pass through; those with skewed appreciation of legal principles and the lazy ones may similarly benefit. I think those responsible for such appointments have an uphill task because of lack of sufficient data available to them. In my view, there are certain imperatives which must not be compromised or overlooked if a particular appointment can be truly justified. I wish to suggest some rather pro-active ways that may help to some extent in addressing the situation...to improve and maintain standard of integrity and performance, and eliminate mediocrity. Mediocrity is a form of socio-cultural miasma of degradation which has the imperceptible but strong effect of depriving the people of their just and legitimate expectations. Again, mediocrity tends to create an atmosphere of hostility towards meritocracy and tries to put it under suffering or slavery. The effect may take some time to mature, but eventually there is bound to be an awful rebound. A society or institution which tolerates mediocrity is inevitably left behind. When it is installed in the Judiciary it breeds a whirlwind of injustices.”

PROCEDURE FOR JUDICIAL RECRUITMENT IN THE UK

- **11 sequential steps** - Vacancy Request; Advertising and Applications; Short-listing; References; Candidate selection day; Panel decision; Statutory consultation; Checks; Selection decisions; Report to Lord Chancellor; and Quality Assurance.

UK PROCESS

- **Vacancy Request:**
 - JAC receives vacancy request from Her Majesty's Courts or the Ministry of Justice - includes the number of vacancies, job description and eligibility requirements and additional selection criteria set by the business area.
- **Advertising and Applications**
 - Vacancies are published on the Judicial Appointment Commission website; the Department of Constitutional Affairs (DCA) website; national dailies; newsletters; legal journals and other relevant media.
 - potential candidates can sign-up to receive alerts, and will be informed when the exercise launches.
 - Interested applicants submit written applications for consideration.
 - Applications The JAC tailors the application form for each selection exercise and prepares an information pack.
- **Short-listing**
 - undertaken on the basis of a test or by a paper sift.
 - online tests designed to assess candidates' ability to perform in a judicial role, by analysing case studies, identifying issues and applying the law. They are usually prepared by judges from the relevant jurisdiction. Paper sifts are undertaken by the selection panel which consists of a lay panel chair, judicial member and independent member - and based on written evidence, including the candidate's self-assessment and references.
- **References**
 - References are required either before a paper sift or after the qualifying test.

UK PROCESS

- **Candidate Selection Day:**
 - Shortlisted, candidates are invited to a selection day- panel interview, interview and role play
- **Panel Decision**
 - The panel members assess while chair completes a report providing an overall panel assessment.
- **Statutory Consultations**
 - JAC will carry out consultation as part of each selection
- **Checks**
 - Checks In accordance with the JAC's statutory duty the good character of the candidates is also assessed
- **Selection decisions**
 - Selection decisions Commissioners make the final decision on which candidates to recommend to the Appropriate Authority
- **Report to the Lord Chancellor**
 - When reporting its final selections to the Lord Chancellor, the Commission must reflect the comments of the statutory consultees and discuss any divergence of opinion.
- **Quality assurance**
 - Quality assurance measures are applied throughout the process to ensure that the proper procedures are applied and the highest standards are maintained.

SOUTH AFRICA

- Judicial Service Commission invites nominations for specific court vacancies. Nominations are submitted.
- Awareness of the vacancies to be filled is known within the legal profession with or without the JSC postings.
- Those nominated who want to be considered submit their responses to a three-section questionnaire containing 20 questions.
- The written responses to the questionnaire are supplemented by letters of support.
- Following the submissions, the JSC reduces the number of possible candidates to a short list and then interviews them. With the inclusion of High Court Judge Presidents and provincial Premiers, there may be about 21 members on the interview panel.
- The interview sessions are open to the public, and transcripts of interviews are published via the Internet.

CONCLUSION: ENSURING A MERIT-BASED SYSTEM

- CLARITY ON CRITERIA, SELECTION PROCESS AND INFORMATION FOR INTENDING APPLICANTS
- OPENESS AND TRANSPARENCY IN SHORTLISTING AND SELECTION
- WIDE RANGE OF ELIGIBLE CANDIDATES
- RIGOROUS STANDARD TESTING OF COMPETENCIES
- QUALITY ASSURANCE