



REPORT ON THE STATE OF JUDICIAL INDEPENDENCE IN WEST AFRICA: CONTEMPORARY THREATS, CHALLENGES AND MITIGATION STRATEGIES WEBINAR 25 APRIL 2024

Introduction

1. The Africa Judges and Jurists Forum (AJJF) in collaboration with Gambia Bar Association, Ghana Bar Association, West African Bar Association (WABA) and West African Law Students' Association (WALSA) held a webinar on 25th April 2024 to discuss the state of judicial independence in West Africa: contemporary threats, challenges and mitigation strategies.
2. The webinar was moderated by Ms. Elizabeth Oriakhogba (Legal Advisor, AJJF), Mr. Chidi Udekwe (Programs Officer, WABA) and Mr. Nazir Sanusi (President, WALSA). Mr. Martin Masiga (Secretary General, AJJF) made the opening remarks.
3. The panelists were as follows:
 - Justice Joe Acha: Former Chief Judge, Edo state, Nigeria;
 - Justice Zainab Jawara Alami: Judge of the High Court of The Gambia;
 - Ms Victoria Barth: Member, Ghana Bar Association; Partner, Okudzeto & Associates; Head of Faculty for Advocacy and Legal Ethics, Ghana School of Law;
 - Professor Gabriel Arishe: Professor of Constitutional Law, University of Benin Nigeria;
 - Ms. Louba Farage: Former President, Gambia Bar Association; Board Member, Gambia Technical Institute (GTI) and the University of The Gambia;

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4. A total of 88 participants attended the webinar and these included judges, lawyers, representatives of civil society organisations, academia and members of the general public
5. It was noted that threats to judicial independence is not only peculiar to Africa; it is a worldwide problem and these threats are multi-faceted and require complete analysis for it to be resolved.
6. National governments stand on a tripod which is the executive, legislature and the judiciary. Unfortunately, the judiciary is the weakest link upon which national governments stand.
7. It was also noted that despite various provisions in international and regional instruments made to protect the judiciary, judges are still faced with threats that impede judicial independence.
8. It was further noted that a judge should be subject to his conscience and the law, and not to the whims of any political official or their cohorts. The decisions made by a judge should be respected and accepted by all.
9. However, the national constitutions of the countries in West Africa have not helped the judiciary especially in the mode of appointment, disciplining and removal of judicial officers.
10. Liberty and freedom of the citizenry cannot be guaranteed when the judicial branch of government cannot be separated from the executive or legislative branch.

The following were identified as the key emerging threats against judicial independence in West Africa:

1. Undue political interference by government officials especially in the mode of appointment, disciplining and removal of judicial officers.
2. Lack of financial autonomy of the judiciary, resource constraints, inadequate funding, inadequate staffing and poor remuneration of judicial officers.
3. Lack of training and capacity building of the judiciary which impede the availability of judicial officers.
4. Corruption in form of bribery, nepotism and favouritism.
5. Harassment, bullying and intimidation of members of the judiciary by government officials and politicians especially where a judicial officer is handling a sensitive case or a case that challenges powerful interests.

6. Authoritarian display by politicians against the judiciary to ensure a dominant party system.
7. Lack of digitalization of court processes which slows court processes and leads to backlog of cases.
8. Lack of transparency in the judicial regulatory authorities especially in the mode of appointment, disciplining and removal of judges

The following mitigation measures were proposed to address the threats against judicial independence in West Africa:

1. National governments were encouraged to strengthen legal reforms through constitutional amendment especially in the process of appointment, disciplining and removal of judicial officers. Judicial appointment and removal should be made on clearly identified criteria and a publicly deposed process as it stands in Kenya and South Africa. Equal opportunity should be given to all that are eligible for appointment on merit and appropriate consideration should be given to gender equality.
2. National governments were called upon to strengthen institutional frameworks such as the judicial regulatory authorities established by the constitution or the statutes or as an independent commission. This can be achieved by measures including capacity building for judicial officers and the inclusion non-judicial members in the judicial regulatory authorities.
3. National governments were persuaded to enact special laws that will enhance the tenure of judges. The tenure of judges should run for life or at retirement and if there is need for the removal of a judge, the process of removal should be done transparently by an independent tribunal.
4. National governments were called upon to provide adequate financial autonomy to the judiciary, provide adequate funding, adequate staffing and remuneration of judicial officers. To this end, national governments were encouraged to establish legal mechanism to ensure that allocation of adequate funds to the judiciary is mandatory for the executive and legislature.
5. National governments were implored to put in place anti-corruption measures as this will encourage judicial officers to be more forthright and diligent in their duties.
6. Judiciaries were encouraged to undertake capacity building by investing in ongoing training programs for judges and registry staff to enhance skills, knowledge and professionalism in the judiciary.

7. National governments were called upon to provide adequate security measures for judges and judicial officers from threats, intimidation, bullying and violence.
8. Judiciaries were encouraged to exploit the Electronic Justice System of allocation of cases. Allocation of case should not be left in the discretion of the Chief Justices especially in the superior courts as this will ensure transparency in court processes and reduce the backlog of cases.
9. Judiciaries, bar associations and civil society organisations were called upon to educate the executive, the legislative arm of governments and the public on the role of an impartial judiciary.
10. National governments were encouraged to strictly adhere to provisions laid out in international and regional instruments on the independence of the judiciary as this will lead to promoting democracy, safeguarding of human rights, and ensuring judicial independence.
11. National governments were called up to collaborate with regional and international organisations to share best practices and exchange expertise to provide technical assistance to strengthen judicial independence.
12. International communities, national governments, judiciaries, and civil society organisations were encouraged to address the underlining political, socio-economic and cultural factors concerning judicial independence through sustained efforts and a multi-stakeholder's approach.
13. The public and judicial regulatory authorities were called upon to ensure that only individuals of high personal and professional integrity are appointed into the judiciary as judicial officers who lack integrity are most vulnerable to interference.
14. The judiciary must be courageous. Judicial officers must show that they are courageous by being bold and not succumbing to intimidation. The judges that diligent and courageous in their duties should be commended by judges' associations.

In conclusion, this webinar illuminated the urgent need to strengthen judicial independence as a cornerstone of democratic governance. By fortifying legal safeguards against executive overreach and ensuring non-interference in the justice system, we can uphold the rule of law and protect the integrity of judicial institutions. Let us work together to create an environment where judges can adjudicate freely, without fear or favour, and where the judiciary remains a steadfast guardian of justice and accountability in our societies.



For more information:

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