



## IMPLEMENTING JUSTICE SECTOR REFORMS IN NIGERIA: CONNECTING THE DISCONNECT

BY

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### 1. INTRODUCTION

When I received the summons couched in the tone of an invitation to deliver the Keynote Address at the Wole Olanipekun & Co (WOC) Justice Summit 2021 on the topic: **“Implementing Justice Sector Reforms in Nigeria: Connecting the Disconnect”**, I saw it as a call to duty. When the Managing Partner, Bode Olanipekun, SAN, further mentioned to me that one of the grounds for the summons is to commemorate the 70th birthday of a great Statesman in the person of the Founder of WOC, Chief Wole Olanipekun, OFR, SAN, LLD, it became all the more exciting for me. I am deeply honoured to appear here in answer to the summons.

Chief Wole Olanipekun without doubt is a truly outstanding Nigerian. The characteristics that have defined your fame and spread your reputation over the years are carved in personal courage, hard work, determination, confidence, straight and forthright approach to issues, quick wit, matchless grit, lucidity of thought and expression, practical wisdom and a love for humanity. As an intellectual powerhouse, you have put your life and soul into almost all that you have done and continue to do. You have made many marks both within and outside the legal profession and have become an inspiration to so many. You are not just a thoroughbred pre-eminent practitioner; you are indeed a man of outstanding eminence. You are the embodiment of the latin maxim “mens sana in corpore sano”, a sound mind in a sound body. Our prayer is that your legacy will continue to endure.

**I must again emphasize that if justice sector reforms are to deliver the intended dividends that we much hope for, holding functionaries accountable for their acts and omission is non-negotiable.**

In dealing with the topic of this year's summit, I asked myself what exactly is the intent of the organizers? The first edition of the WOC Summit at which Professor Fidelis Oditah, QC SAN delivered the keynote on **"Developing An Institutional Concept of Justice in Nigeria"** focused on how to build institutional models that would endure and deliver value. Other great minds led by the Vice – President of the Federal Republic of Nigeria, His Excellency, Prof Yemi Osinbajo GCON, SAN have equally given serious analytical considerations to critical issues such as: the need for structural and philosophical changes in the administration of justice; responsiveness of our justice system to the ends of social justice; judicial models that assure meritorious appointment of judicial officers; improper considerations and influences that subvert justice and the role of the Bar in enabling these considerations; right structures that would ensure appropriate judicial outcomes; and insights on institutional building applicable to the justice delivery sector.

The much guidance I picked from my invitation is that; "Discussions at this year's Summit will cover a mix range of issues such as integrity, diversity, inclusion, merit in judicial appointments and justice delivery". Then, it also hinted, **"we take due cognizance of your experience in implementing reforms, especially your recently concluded assignment as Chief Executive Officer and Vice – Chancellor of the Lagos State University. We would appreciate examples of building enduring structures from that experience ..."** From this perspective, I surmised that the compelling conversation that the organizers envisage today is how well the several justice sector reforms that Nigeria has undertaken has served her, particularly since 1999 when democratic governance returned to Nigeria. How well have the reforms advanced the delivery and quality of justice?

The importance of today's occasion is reinforced by the array of eminent jurists and scholars that have been put together to discuss the theme of this event. It is generally accepted that the essence of reforms is to focus on problems with the aim of rooting them out. The importance of stocktaking the reforms, on the other hand, is to identify where progress has been made and where much still remains to be done with a view to improving on both relevant rules and processes; as well as the capacity to follow through.

Consequently, taking 1999 as our benchmark year, the question of what Nigeria has achieved in the last 22 years of implementing justice sector reform becomes unavoidable. My presentation will be a highly condensed account of the reality confronting Nigeria's justice sector reforms drawing only briefly from a diversity of indicators. In the course of it, I will touch upon, superficially, I am afraid, on what I think we may find useful going forward. I do all these safe in the knowledge that the format of the Summit is such that the rich perspective of other discussants will fill whatever gaps that may be in my presentation.

## **II. Cocktail of Reforms: Promise Kept or Betrayed**

On its path to development, the drivers of Nigeria's justice sector have not been short of vision and ideas of how to move forward to achieve incremental transformation. Like countries with trusted justice systems, Nigeria wanted a system that would expedite and make affordable access to justice. A system that will boast of swift service for all irrespective of status; a system where the law will be administered and served by an incorruptible, honest, efficient and intellectually sound judiciary and the Bar.

The thrust of the reforms which was aimed at improving governance, accountability, transparency of justice sector institutions, and the promotion of access to justice to all covered different areas. It specifically included improving physical infrastructure; supporting legal and judicial training; revision of court rules; computerization of administrative procedure; establishment of citizen mediation centre; provision of pro-bono services; automation of court system; making legal information accessible; supporting human rights; reforming police departments; prosecutorial reform; protecting the rights of prisoners, victims and the general public among others.

Championing the reform agenda were many enlightened judicial officers, seasoned administrators, legal practitioners of note, academics, committed donors, passionate civil society organisations, national and international consultants and the interested public. The initiatives which also had the support of concerned levels of government birthed programmes such as DFID's Security and the Justice and Growth initiative. These programmes facilitated the establishment of sector-wide reform bodies called Justice Sector Reform Teams (JSRT) to improve cooperation and coordination in the planning and implementation of justice sector reforms. All of these laudable efforts both at the Federal and State levels were aimed at putting in place functional reform teams that can drive strategic reform plans.

Despite these meritorious efforts, it is undeniable that not much progress has been recorded in achieving the goals of the different reforms. For instance, much of Nigeria's justice sector work remains paper-based and cumbersome; inefficiencies have continued to multiply in the working environment just as more outdated working practices are coming to the fore. It is equally paradoxical that while the cost of accessing justice is increasing, delays in the trial of cases are deepening; and more worrisome is the fact that technical justice is becoming rife. The incidences of unreasonable delays in the civil justice system and the increasing epidemic of pre-trial detention have left more than two-thirds of people detained yet to receive a trial in the criminal justice track.

At the 2020 WOC Summit, Fidelis Oditah QC, SAN referred to the delay in Nigeria's court system as not "just a problem of access to justice", but, a situation of "exit from justice". For members of the Justice Reform Project, they perceive clearly that the public's trust in the justice delivery service system is all but completely eroded. Judges are now being regarded with disdain, while lawyers are fast becoming a laughingstock or an endangered specie. At present, Nigeria ranks 108 of 128 countries measured by World Justice Project (WJP) Rule of Law Index:

A Recent summation of the United Nations Office on Drugs and Crime (2021) captures it in a way that calls for sober reflection:

**The justice system in Nigeria, despite laudable reform efforts at Federal and State levels, continues to face multiple challenges... Coordination across the Police, the Attorney-General offices at Federal and State levels, the multiple specialised law enforcement agencies, the Judiciary, Legal Aid, the Nigerian Prison Service as well as a large number of civil society organizations active in the justice sector remains complex. Moreover, all efforts extended by the Government including with the assistance of UNODC, to strengthen integrity within the justice sector, while promising, have yet to achieve full sustainability.**

Significant hardship and anxiety is still the order of the day in Nigeria's justice sector. What is glaring is that we are running a sector that is well connected on paper, but, disconnected in reality. While we can tick the boxes on several critical justice sector reforms, what ought to be the dividends in terms of the desired outcomes have remained elusive. The situation at hand is one where members of the public are wailing loudly at the demise of justice, while we, the "Ministers in the Temple of Justice" simply assume the positive impact and dynamics of reform efforts, as we wine and dine in our dinner suits and other accoutrements of our profession. In the absence of any rigorous and systematic evaluation, the assumption, particularly at the level of the State, is that we are already delivering the dividends of justice. Justice system reform is no doubt challenging. However, we can be defensive that we are doing the best we can or that changes will come incrementally in the foreseeable future. We may fall back on the argument that outcomes are difficult to measure not only for the reason of paucity of information at the onset of reforms, but also that we cannot ignore the political economy of a reform exercise and the associated risks. All of these can only nurture indifference or the idea of a good enough approach. The fact remains that we have somehow become attached to a form of judicial process that is consistently failing to address substantive issues of justice – a model that has become antithetical to implementing justice reform.

### III. UNDERSTANDING THE GAPS IN IMPLEMENTATION

#### 1. Administrative Disconnect

For a moment, we must within the framework of a justice reform agenda distinguish, on the one hand, between outcomes that are dependent on such issues like passage of new legislation, improvements in systems for case management, training of judges and the construction of court infrastructure, (the right institutions, infrastructure and rules); and on the other hand, outcomes that are dependent on the accountability of existing administrative justice institutions (administrative executives), many of which play fundamental roles not only in promoting effective delivery of basic justice sector services, but, also in enforcing regulatory frameworks.

The focus of justice sector reforms has been more on the former than on the latter. Take Registrars of court for instance, they are on daily basis faced with a large amount of judicial work. They initiate administrative actions that have a continuing responsibility for results, yet, most of them do not fully understand the functioning of the justice sector and how crucial their role is in it. The system relies for success on their consistency, equality of treatment and of the service they render, and the certainty of rules and principles on which their respective administrative departments rely in their daily use. Where they misact and exhibit administrative lawlessness, the court system is brought into disrepute and ridicule. A few examples are worth highlighting:

- a) Registrars who receive applications from litigants' counsel and other members of the public, but fail to lodge same in the court's file, thereby frustrating scheduled court proceedings;
- b) Registrars who fail to communicate changes in the schedule of court despite having the email and phone numbers of counsel on file;
- c) Registrars who engage in manipulation of litigants and other members of the public with a view to extorting them;
- d) Registrars who fail to properly keep and arrange the record of the court resulting in adjournment of scheduled proceedings;
- e) Court Bailiffs and Sheriffs who in breach of their mandatory duty and despite being "mobilised" failed to serve or fail to place in the court's file relevant proof of service of court process thereby, frustrating cases from going on as scheduled;
- f) At the Appellate Court, Counsel submits several copies of court processes only to discover that the processes are not in the court's file;
- g) A non-contentious application is filed for extension of time yet, the Registrar routinely gives a return date of 6 to 12 months, thereby contributing to the backlog of cases.

The above and many more of such situations (which can make the difference between winning or losing a case, life and death, or impact successive generation) are daily occurrences in our courts. No one is held accountable for these seemingly minor infractions that have significant impact on the attainment of justice and business goes on as usual. Complaints against these forms of maladministration are not robustly addressed so much that persistent infraction of rules have become a culture. So, the question I ask is, could we not have a Deputy Chief Registrar Process Monitoring who can be held accountable for the failure of his unit? Could we not have a directive that all processes served must be in the record of the court within 48 hours?

Achieving effectiveness in the Court Registry is realizable. A good example is the situation at the National Industrial Court of Nigeria. Its different divisions reflect excellence in the way court processes are managed, and judgment delivered electronically among others. This great model, which is worthy of study, underscores the point that a functionary's positive attitude towards their role in the scheme of affairs is not a product of genetics and heredity. Again, I ask, could we not train Deputy Chief Registrars in the proper identification of reliefs on motion papers as to be able to deal with non-contentious issues? With proper training, appropriate monitoring and sanctions, we can get our court registries to effectively play their role in the implementation of justice sector reforms.

## **2. Other Functionaries in the Ecosystem of Justice**

The ecosystem of justice is an interconnectivity of all actors within the justice sector. Beyond lawyers, paralegals, and the courts, other functionaries such as the police, correctional centres, legal aid providers and office of the public defender among others play significant roles that should not be compromised. Justice sector capacity training needs to do more for the police and correctional officers in exactly the same way as it has done for judicial officers, ministries of justice and anti-corruption agencies. It also must seek to provide more access to justice for citizens through such bodies as the legal aid providers and office of the public defenders. Correctional Centres and the Police are not functioning optimally as a result of the twin problems of governance and funding, with the result that they, at times, function at cross purposes.

I must again emphasize that if justice sector reforms are to deliver the intended dividends that we much hope for, holding functionaries accountable for their acts and omission is non-negotiable. A system that overlooks prosecutorial misconduct at pretrial proceedings, during trial and sentencing hearings will not go far. In the same way, a system that gives "soft landing" in the way it inconsistently exercises prosecutorial discretion in decisions to file charges (whether or not to charge and what criminal charges to file), and encourages unguided abuse of plea bargaining will continue to incur serious negative consequences for victims of fraud and corruption, and the larger societal interest.

## **3. A Patchwork of ICT – The E-Filing System**

As a rhetoric, our courts daily reiterate their recognition of the role of Information and Communication Technology (ICT) and that there is no going back on the digital revolution that will guarantee electronic filing and ultimately virtual proceedings in our court system. There is no gain saying the value addition that electronic case management and filing systems can bring to the justice sector. Deployed appropriately, it will bring high standard and overall good reputation to the judiciary. Regrettably, bringing technology to bear on Nigeria's justice sector is fast becoming rocket science. Counsel and litigants spend days going through the process of e-filing. It has become another avenue for extortion with the promise of a speedy service that circumvents the e-filing queues that may stretch for days on end. The lack of quality control and monitoring, I dare say, are the twin factors that have given the use of technology a "bad name" in Nigeria's justice sector. Consistent failures and instances of poor service in the use of technology are corrupting ICT adaptation and inverting its purpose in our justice sector.

## **4. Mortal Coil in Enforcement of Judgment**

Another area where the Chief Registrar and the administrative staff play significant role is in relation to enforcement of judgment and orders. Many a time, neither the judgment creditor nor the judgment debtor gets justice. Potential fruits of judgment perish where they are stacked within the court premises. Yet, there are rules guiding the sale of seized assets. What is perplexing is why we fail to utilize these rules or innovate new rules in order to protect the assets or their money's worth.

Current trends in enforcement of judgment clearly besmirches the very fabric of the justice sector and calls for both reform of the law and implementation strategies.

## **5. Lawyers Conflict and Chain Reactions**

Beyond promoting the interest of his client, lawyers also have special responsibility for the purpose of justice in any given society. This admirable role is the reason we often pride ourselves as being Ministers in the Temple of Justice. What this pre-supposes is that we will uphold the fundamental principles of justice when it comes in conflict with victories in the cases we handle or the material gains we receive. This is the idea of “Let Justice be done even if the heavens will fall”. The failure of many practitioners to keep to the idea of achieving real justice in the society is what leads to the chain reaction of undue delays, and ultimately general lawlessness in the society. Again, a few examples of how this has consistently undermined justice sector reforms will suffice:

**a)** When lawyers under the cloak of fair hearing among others file frivolous cases and applications just because the client is willing to pay the bill; it not only offends the ethic of professionalism, it undermines the justice sector. In the United States, sanctions are imposed directly against the attorney as a means of deterring such conduct and encouraging greater competence. Regrettably, in Nigeria, the agony of defending frivolous petitions is the reason why judicial officers tolerate glaring impunity and indiscipline. Writers of frivolous petitions must mandatorily face disciplinary action for misconduct.

**b)** It has become routine practice for some lawyers to file application for injunction in land matters, even when they know the full import of the doctrine of *lis pendens* to the effect that nothing relating to the subject matter of a suit can be changed while the suit is pending.

**c)** Lawyers who are involved in drafting laws or amendment to laws without relevant consideration of justice in the content of the law creates problems of legitimacy for such laws, and invariably for the efficiency and fairness of justice delivery. An instance of this is the recently issued new Tax Appeal Tribunal (Procedure) Rule 2021 which mandates that a taxpayer who intends to appeal must first pay 50% of the disputed tax into an account designated by the TAT as security for the appeal. In the context of Best of Judgement Assessment which tax authorities sometimes issue, this amendment is an obstacle to accessing justice.

Lawyers are responsible for perpetuating a number of inefficiencies in the justice sector. We adopted best practices from other jurisdictions, but, lack the requisite individual and collective character to back it up. Our “win at all costs” attitude is such that practices and tactics that will incur reproach and outright sanction in effective justice systems have become the order of the day. The situation calls for serious soul-searching. For as long as this persists, justice sector reforms will not be meaningful.

## **6. Judicial Officers and the Burden of Justice**

Justice inside our court room is deeply connected to a Judge who is trained as a lawyer, and not as a Judge. Underlying the conception of judicial function is a mental and psychological attitude that Judges are expected to reflect, but, for which their legal training has not directly prepared him. Within a short period of time, judges are expected to take on the “judicial instinct” and dispense “justice”. On the assumption that every stakeholder in the justice sector understands the burden of justice, we similarly conclude for judicial officers too that the moment rules are in place on how to decide a controversy, implementation of justice will automatically follow.

At best, a new judge is exposed to ad-hoc on-the-job training that is anchored on a curriculum that is expected to teach, within few days to few weeks, judicial practice, judicial spirit, ethics and discipline. This clearly is not an approach that gives confidence when compared with a training rested on the Clinical Legal Education (CLE) methodology. The implication of this is that where a judicial officer's sense of purpose has not found expression in the functional elements of the judicial process, the system will continue to overwhelm them irrespective of whatever reforms that are in place. Their judicial mind would neither produce justice nor go beyond merely identifying with the organs of justice.

How well do judicial officers, particularly at the lower court, exercise their express and inherent powers in order to maintain supervision and control of cases before them? How well do they appreciate that the court is not only there to give remedy for wrong or injury suffered, but also to pre-empt injury and prevent it by preserving the res of a case? How well do they stave-off needless red herring thrown at them by counsel simply to cause a delay? We have had a situation of a judicial officer who unduly perverted the course of justice, and when nemesis was about to catch-up with him, he resigned to take up a chieftaincy. He told the long arm of the law that he was no longer a judicial officer. Sadly, he had his way. This combination of both legal and practical impunity is what breeds contempt for the law, and makes a mockery of justice.

Just as monitoring and evaluation is key for other critical stakeholders in the justice sector, it is also crucial for better accountability of the justice machine. For instance, a judicial officer with great work ethic who sits regularly at 9am to deal with their case load in a firm but congenial way will earn public trust and legitimacy. In countries like Netherlands and Finland, court statistics and clients audit/survey which are components of the judicial quality measurement systems focus on: Independence and impartiality; Timeliness of proceedings; Expertise of the judges; Treatment of the parties at court sessions; and Judicial quality. Reporting requirements of motions and trials pending more than 6 months are also in use in other jurisdictions to evaluate statistics of those seeking court services, and ultimately use it to determine what resources (human and material) should be in place. These are the steps that can pave the way for sustainable growth of the judiciary and the justice sector.

In the early 2000s a magazine, The SQUIB, edited by Adesina Ogunlana was published in Lagos, on a weekly basis, to document and publicise cases of violation of justice both in the court room and at the Registry of the High Court of Lagos State. Not many will deny that The SQUIB kept both judicial officers, court administrators and lawyers on their toes before it was tragically shut down. The SQUIB was a direct contribution to the struggle for implementation of justice reform and justice delivery.

## **7. Complexity of Appellate Court Rules**

How does it resonate with justice to read "the Supreme Court strikes out man's appeal against death sentence on the ground that the Notice of Appeal was defective and incompetent, same having been signed by Counsel to the Appellant instead of the Appellant himself"? For many, it will be frustration, anger, and bewilderment. In the same vein, our Appellate courts acknowledge that it is not easy to distinguish between ground of law, ground of mixed law and fact, and ground of fact; yet, on daily basis, this distinction serves as the premise upon which appeals that have been pending before the court for as long as 11 years end up being struck-out. It may take years for the case to come back before the court if it ever does.

I ask, can we not simplify our Appellate Rules of Court to provide a just, inexpensive and more expeditious resolution of applications and appeals? Rules of Court do not constitute an end in themselves. They should never be the stumbling block to real justice. Perceived injustice will not only culminate in dissatisfaction; it will breed rebellion. There is an urgent need, therefore, to scrutinise and simplify existing provisions of our Appellate Court Rules to better promote access to justice. The primary focus of our rule should shift from those who deliver justice and work within it to those who use the system (the Consumers). This will ensure that best practice in service delivery becomes entrenched in the justice system. Justice must be conceived of and rendered as service.

## 8. The Supreme Court – A Significant Shift Needed

The goal of justice sector reforms is to enable the law achieve substantial justice. Justice is the goal and the spirit of law; consequently, there is no reason why a court should not administer justice in every situation, and according to law. There is a growing cynicism that the Supreme Court is leaning more in favour of technical justice than doing substantive justice. Some of the recent decisions of the court such as **FRN v. Orji Kalu & 2 Ors**; **Lucky v. State** (2016) LPELR – 40541; **Odey v. Alaga** (2021) 13 NWLR (pt. 1792)1; **Adegbanke v. Ojelabi & Ors** (2021) LPELR – 54992 indicate that despite the mantra of the court not to sacrifice justice on the altar of technicalities, the Supreme Court (with great respect to their Lordships) has continued to show a rigorous adherence to inordinate legalism as against determination of cases on their merit.

Historically, the Supreme Court in the exercise of its interpretative jurisdiction has always walked the talk of pushing mechanism in law to the back, while pushing substance over form. Cases like **Ariori & Ors v. Elemo & Ors** (SC 80/1981) [1983] 1; **Ohuka v. The State** (1988) 1 NWLR 539; **Nosiru Bello v. Attorney – General of Oyo State** (1986) 5 NWLR 828 were landmark judgments where the court made clear its intent to go to any length to ensure that “the ghosts of the past (meaning forms of action) will not stand in the path of justice clanking their medieval chains. The proper cause for the judge is to pass through them undeterred” – **United Australia Ltd v. Barclay Bank Ltd** (1941) AC 1 at 29.

The posture of the Supreme Court in always looking for the spirit of justice was what emboldened the aggressive judicial outlook at some point in the history of our jurisprudence against the monster of “ouster of jurisdiction clauses”. That, at the time, was judicial leadership. In the words of the great sage, Kayode Eso, JSC; “A judge poised to obey decrees simpliciter, is ill-equipped for this sacred duty”. It is a challenge for justice when judicial power is solely focused on application of legal principles to the exclusion of adjudication based on policy. When the attainment of the “good to be” is obstructed by the preservation of the “good that is”, the man on the street becomes distrustful of the judicial process.

The Supreme Court has a significant role to play in shaping the society, shaping history, and shaping attitudes towards the judiciary and the justice sector. The Apex Court should never be seen or be perceived to sabotage “justice” or take decision that will undermine public confidence in the judiciary. Whether it is to fill in gaps left open by indeterminate law or overrule precedents or legal positions that will have the effect of citizens suffering injustice at the hands of the law; or even to rebuke counsel’s unethical inclinations to sabotage justice, the Supreme Court has a duty to ameliorate the simplistic rigor of rules in the context of fact situations as they develop, and bring about a culture shift to accountability at all levels of our justice sector.

## **9. Political Leadership and Passive Implementation of Reforms**

Political leadership is key to the success of reforms because implementation of reform is dependent on the State. There are a number of justice sector reforms that have been introduced, but which are yet to be implemented. A case in point is the Nigerian Correctional Service Act, 2019, which replaced the Prison Act. Although the Act has been acknowledged by many as an important step towards reform, a number of its provisions are yet to be implemented. Such provisions include those of section 12 of the Act which allows Correctional Service Supervisors to reject additional prisoners when the prison in question is already full; section 34 which emphasises female inmates and their needs; section 35 which focuses on juvenile offenders and their needs; section 37 which highlights the Nigerian Non-Custodial Service System (reformatory justice); and section 40 which provides for the administration of a parole process to be overseen by the Comptroller-General. The truth is that people are profiting from the current chaos and are not desirous of allowing reforms to work.

There are reforms in other areas relating to the justice sector that are still pending several years after their success on paper as laudable initiatives were celebrated. To overcome implementation challenges, there may be need for the different constituents of the justice sector to:

- (a)** examine what legal barriers are constituting obstacles to effective implementation;
- (b)** establish an arrangement for effective sharing of information on gaps in implementation;
- (c)** promote cooperation to address duplication or overlapping requirements; and
- (d)** ensure that adequate resources are made available to relevant authorities to achieve timely implementation of reforms.

## **IV. CONCLUSION**

The burden of justice is beyond the attributes of impartiality, equity or fairness of the judge which we most times try to generalize as justice. It extends to the multitude of state and civil society institutions in the justice sector with varied vested interests, who must equally play their roles with a clear understanding of the importance of their contributions. In implementing justice sector reforms, there were three key assumptions whose self-evident truths we concluded were clear to all. The first is that the moment we bring in best practice, we will achieve the desired goals. The second is that all critical stakeholders have an understanding of what is at stake, and at worst, what will be required is the upscale of their skill set and knowledge. The third is that all critical stakeholders will exude the right discipline and commitment.

Day to day unfolding events have fiercely challenged these assumptions. The threat to reforms and the dividends of reforms are steeped more in our individual contributions as stakeholders. The reality confronting Nigeria at the moment is that lack of enthusiasm for justice within the justice sector has outpaced holistic justice. To give legitimacy to justice, accountability for the action of every role actor within the sector is critical. Indeed, it is fundamental. In the final analysis, for as long as the justice sector fails to implement reforms that translates to real justice, the force of equity and fairness will itself incite changes in ways that are radical and beyond what we can generally anticipate.