

INTERACTIVE COMPARATIVE REFLECTIONS ON THE JUDICIARY AS A CATALYST FOR SOCIAL CHANGE: EMPHASIS ON VULNERABLE GROUPS

Introduction

The judiciary plays a fundamental role in maintaining justice, protecting rights, and preserving the rule of law within society. Beyond its traditional duty of interpreting laws, modern courts have increasingly become instruments of social transformation through the protection of vulnerable groups such as women, children, minorities, prisoners, and economically disadvantaged persons.

Through judicial interpretation, activism, and enforcement of constitutional rights, courts have influenced societal attitudes, challenged discriminatory practices, and promoted equality and human dignity. Comparative judicial experiences across different jurisdictions further reveal how landmark decisions have shaped social reform and strengthened the protection of vulnerable individuals.

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1. Judiciary as Protector of Women and Vulnerable Groups

The representation of women within the judiciary has become an important factor in promoting social change and protecting vulnerable groups. Research by UN Women and UNDP across selected African countries shows that women judges strengthen public trust in the justice system, promote gender-sensitive decision-making, and help reduce patriarchal bias within judicial processes.

The study further revealed that women remain underrepresented in many African judiciaries, particularly in higher Courts, due to challenges such as harassment, insecurity, negative social norms, and difficulties balancing family responsibilities with judicial duties.

These findings suggest that the judiciary promotes social change not only through progressive judgments but also through inclusive representation and institutional reform. A judiciary that reflects the diversity of society is more likely to deliver fair, equitable, and people-centred justice. Women's meaningful representation in the Nigerian justice sector is not just a diversity metric; it is foundational to ensuring that vulnerable groups—especially women and children—can access legal remedies. Without it, the justice system often fails to adequately protect those who need it the most.

Despite milestones like the confirmation of Justice Kudirat Kekere-Ekun as Chief Justice of Nigeria, structural and socio-cultural disparities persist at both state and federal levels. The following overview highlights the current realities of women's representation in Nigeria's justice sector.

The Numbers at a Glance

- **Supreme Court:** Women make up about (31%) to (33%) of the justices.
- **Appellate & Federal Benches:** Women account for roughly (23%) to (36%) of judges at the Court of Appeal and Federal High Court levels.
- **State Courts:** Female judges comprise approximately (33%) of state court judicial officers.
- **Senior Advocates of Nigeria (SAN):** Only about (4%) of SANs are women, illustrating a massive disparity at the pinnacle of legal practice.

Why Representation Drives Real Change: Women judges also play a key role in mentoring the next generation of legal professionals, and champion reforms making justice more responsive to marginalized communities.

Barriers to Meaningful Representation

- **Socio-Cultural & Religious Biases:** In certain northern regions, rigid cultural norms and interpretations of customary or religious laws delay the appointment and advancement of female judges, particularly when women are required to preside over men.
- **The "Federal Character" Principle:** State-of-origin requirements and rigid indigeneity policies frequently disadvantage qualified female legal professionals who may be practicing outside their states of origin.
- **Lack of Mentorship:** Entrenched networks are predominantly male, making it challenging for younger female lawyers and magistrates to find sponsors who can facilitate elevation to appellate courts.

In recent times, the Courts have shaped the dynamism of the Law by shaping public policy, and ensuring accountability

in Nigeria's multifaceted political and socio-economic landscape.

Landmark Cases Transforming Gender Justice

The judiciary relies on the 1999 Constitution (particularly Section 42, which bans discrimination based on sex) to dismantle systemic injustice through several key rulings.

- ***RJIF & CRR VS Attorney-General of the Federation FHC/LAG/975/2025(2025)***: In a historic decision, the Federal High Court in Abuja ruled that forced, unplanned pregnancies resulting from rape, incest, or sexual assault directly violate a woman's right to physical and mental health. This established a major legal precedent by recognizing access to safe abortion care as a fundamental human right for survivors of sexual violence.
- In ***UKEJE VS UKEJE*** SC. 224/2004 delivered on April 11, 2014 and *Anekwe v. Nweke, SC. 129/2013 (unreported) delivered on April 11, 2014.*), the Supreme Court voided traditional inheritance practices that favor male children (such as male primogeniture), declaring them unconstitutional and "repugnant to natural justice, equity and good conscience". **State & Appellate Rulings:** Regional Courts across Nigeria—including Judgments in the southeast, Akwa Ibom State, and the Southwest—continue to penalize families and annul native laws that exclude women from inheritance.
- In ***ODAFE VS ATTORNEY-GENERAL OF THE FEDERATION (2004) AHRLR 205 (NGHC 2004)***, the Court protected prisoners living with HIV/AIDS by affirming their right to dignity and medical care.

- The Nigerian judiciary increasingly treats gender-based violence (GBV) and structural discrimination not merely as domestic matters, but as fundamental breaches of constitutional rights and the rule of law. By striking down archaic customs, enforcing legislative protections like the Violence Against Persons (Prohibition) Act (VAPP), and mandating State accountability, Courts serve as vital mechanisms for systemic reform.
- **OLAJIDE VS NIGERIA POLICE FORCE (2023) NICN/AK/14/2021:** The Court of Appeal upheld a National Industrial Court ruling that nullified Police Regulation 127 which mandated the dismissal of unmarried female officers who became pregnant. The Court declared the practice unconstitutional and a severe form of institutionalized gender discrimination. The court awarded Olajide Five Million (N5,000,000,000) in aggravated damages for fundamental rights violations. However, reinstatement was initially rejected as she was still on probation when dismissed.

Reflection: These cases demonstrate that courts do not merely apply laws mechanically; they actively challenge injustice and protect vulnerable groups where social, cultural, or governmental systems fail.

2. Judiciary and Child Protection

The intersection of the judiciary and child rights is experiencing a major global push to create more "child-friendly" justice systems. The primary focus is on advancing legal protection, improving

direct communication between judges and children in family law, and expanding diversion programs over formal detention. In Nigeria, advocates are pushing to shift child justice from merely recognizing rights to practically implementing them.

Advocacy: Child Protection Networks in States like Plateau are actively engaging with the judiciary to ensure that vulnerable or street children receive rehabilitation rather than punitive detention. Legal and child advocacy groups are hosting , to train judges and magistrates on child-friendly justice administration. In **ALABI V ALABI (2007) JELR 47144 (CA)**, the Nigerian court emphasized that the welfare and best interest of the child must remain the paramount consideration in custody matters.

Reflection: These decisions reveal the judiciary's evolving child-centered approach, emphasizing welfare, dignity, healthcare, and protection for children within society.

3. Judiciary as an Instrument of Equality and Social Reform

The judiciary serves as the ultimate equalizer by enforcing constitutional rights and balancing the scales between the state and citizens, and the vulnerable and powerful. Operating in a system heavily influenced by the Nigerian Bar Association, it relies on judges and legal professionals to protect fundamental rights and correct systemic inequalities, while operating under the National Judicial Council guidelines.

- In **GBEMRE VS SHELL PETROLEUM DEVELOPMENT COMPANY (2005) AHRLR 151**: The Federal High Court ruled that gas flaring in the Niger Delta violated citizens' fundamental rights to life and a healthy environment. This landmark case

set a precedent for environmental justice and corporate accountability.

An efficient, independent judiciary bolsters investor confidence. By enforcing contracts, resolving commercial disputes, and stabilizing the financial system, courts facilitate sustainable socio-economic development and local business growth.

Reflection: These landmark decisions illustrate how judicial interpretation can influence public policy, reshape societal attitudes, and promote inclusive democratic values.

4. Judicial Activism and Constitutional Transformation

Judicial activism occurs when judges interpret the constitution dynamically, using their authority to correct legal injustices, protect civil liberties, and adapt laws to modern values rather than relying solely on strict precedent or legislative intent.

The Engine of Constitutional Transformation

- **Evolving Rights:** Activist courts interpret foundational texts to recognize new fundamental rights (e.g., privacy, clean environment, or dignity) that were not explicitly written by the original framers.
- **Corrective Mechanism:** Courts often intervene to protect marginalized groups when the legislature or executive fails to act, effectively driving social and political change.
- **Public Interest Litigation (PIL):** Courts have proactively relaxed strict procedural rules, allowing citizens or public-minded individuals to bring issues of systemic injustice directly to the

Supreme Court. In Nigeria, courts have increasingly intervened against discriminatory customs and violations of fundamental rights.

- **Electoral Integrity:** Nigerian Courts are the ultimate arbiters of electoral disputes. By nullifying flawed elections and reinstating rightfully elected candidates, courts have helped safeguard democratic processes and reduce impunity.
- The judiciary has clarified ambiguous constitutional provisions, shaping Nigeria's governance. Example: Supreme Court rulings on **federalism and resource control** have influenced debates on state autonomy and revenue allocation. The Court's federalism decisions were remarkably independent and reasonably balanced, upholding the constitutional supremacy of the Federal Government in several findings, tilting towards the states in some declarations, and simultaneously underwriting federal authority and state autonomy in other rulings.

4. The Judiciary and Social Change

Landmark judicial interventions such as Rulings affirming local government autonomy and defining emergency powers have actively preserved constitutional stability and checked

Executive excesses. Courts continually clarify the boundaries of power between federal, state, and local governments.

In **IGP VS ANPP (2007) AHRLR 179 (NGCA 2007)**: The Court ruled that police permits are not required for public rallies, supporting freedom of assembly. See **PETER NEMI VS ATTORNEY GENERAL OF LAGOS STATE (1994) All NLR 342**. The Court affirmed that death row prisoners retain fundamental rights.

Various Digital Rights Cases (e.g., against social media bans): Civil society organizations have used litigation to challenge government actions, such as Twitter bans, as violations of free speech

The most cited case of judicial activism in Nigeria is **FAWEHINMI VS ABACHA (2000) 6 NWLE (PART 600) 228, LPELR-1254(SC)**

Chief Gani Fawehinmi, a human rights lawyer, sought to rely on the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act to challenge violations of fundamental rights during the military regime of General Sani Abacha. The issue before the Supreme Court was whether the African Charter, being an international treaty domesticated into Nigerian law, could be invoked by citizens to claim rights that extended beyond the provisions of Chapter IV of the 1979 Constitution (then in force). The Supreme Court held that the African Charter, once domesticated under Nigerian law, formed part of the corpus juris and was enforceable in Nigerian courts. Furthermore, where its provisions conferred wider rights than those guaranteed by the Constitution, they remained valid unless inconsistent with explicit constitutional provisions. In analysis, this decision was seen as activist nature in two respects. First, the Court gave a broad, purposive reading to Nigeria's obligations under international law, enlarging the scope of

enforceable human rights beyond domestic constitutional guarantees. Second, it signaled judicial willingness to protect rights even under a military regime notorious for repression. By prioritizing human rights over narrow statutory interpretation, the Court demonstrated a commitment to constitutionalism as a higher value.

In ATTORNEY-GENERAL OF LAGOS STATE VS ATTORNEY-GENERAL OF THE FEDERATION (2003) 12 NWLR (PART 833)

Similarly, the case tested the boundaries of federalism in Nigeria. The Federal Government had enacted legislation purporting to regulate urban and regional planning throughout the country. Lagos State challenged the validity of the law, arguing that “town planning” fell within the legislative competence of states under the Constitution. The Supreme Court upheld Lagos State’s position, ruling that town and regional planning were residual matters under the 1999 Constitution and, therefore, within the legislative competence of states. The Court invalidated the federal law, reaffirming the autonomy of state governments. This was an activist decision because the Court rejected the expansive claims of the federal executive and legislature. Rather than defer to federal dominance a pattern common under military regimes the Court insisted on preserving the delicate balance of Nigeria’s federal system. This decision reinforced the doctrine of separation of powers between levels of government and gave practical effect to constitutional federalism.

In the same vein, the case of **MARWA VS NYAKO (2012) 6 NWLR (PART 1296) 199** , arose when several state governors who had won re-run elections argued that their new tenures should begin from the date of the re-run rather than their original election. This interpretation, if accepted, would have extended their tenures

beyond the constitutionally prescribed four years. The Supreme Court rejected this argument, holding that governors could not exceed the four-year tenure provided by the Constitution. The Court emphasized that the will of the people must be periodically tested through elections and that any attempt to elongate tenure undermined democratic principles.

Reflection: Judicial activism enables courts to become instruments of social transformation, especially where legislative or executive institutions fail to adequately protect citizens. Courts have adopted activist approaches, they act as the ultimate safeguard of these values, ensuring that constitutional provisions remain living principles rather than dead letters.

Reflection: Even progressive judicial decisions may produce limited impact where enforcement mechanisms are weak or vulnerable persons cannot effectively access justice.

6. Challenges Limiting the Judiciary

- Delay in justice administration
- Corruption
- Political interference
- Poverty and illiteracy
- Cultural and religious resistance

7. Conclusion

The judiciary remains one of the most important institutions for advancing social justice and protecting vulnerable groups within society. Through constitutional interpretation, judicial activism, and human rights enforcement, courts continue to challenge discrimination, protect dignity, and promote equality.

Comparative experiences across jurisdictions show that where courts remain independent and proactive, meaningful social transformation becomes more achievable for women, children, minorities, and other vulnerable persons.

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