



## CONCEPT NOTE

### COURTS AND SOCIETY WEBINAR SERIES (CSWS) 7, 2023 Special Series 3<sup>1</sup>

#### Judicial Ethics, and Social Impact on Judges: The 'Buga' Controversy<sup>2</sup>

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## INTRODUCTION

*"The job of a judge is a very difficult one. The performance of his job affects the entire community, and this makes the job more difficult and demanding. While his main duty is to interpret the law in the context of the facts presented by the parties before him, he has to resort to his senses and conscience all the time.... He has to watch his own conduct, particularly as it relates to the immediate community of his jurisdiction. He cannot do things merely to please himself. He cannot also do things merely to please his immediate community. On the contrary, he should perform his duty within the confines of the law and the immediate dictates of his conscience."*<sup>3</sup>

*"A Judge, like any other citizen, is entitled to freedom of expression, belief, association, and assembly; but in exercising such rights, a Judge shall always conduct himself in such manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary. Accordingly, a Judge shall act with such restraint as is necessary to:*

- a. maintain public confidence in the impartiality and independence of the judiciary;*
- b. avoid involvement in public discussion or discourse if his or her involvement could reasonably undermine confidence in his or her impartiality;*
- c. avoid such occasions and circumstances where such involvement may unnecessarily expose the Judge to political attacks or be inconsistent with the dignity of a Judicial officer; and/or*
- d. adhere strictly to political silence."*<sup>4</sup>

*"The Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (COC), which applies to all Nigerian judges/judicial officers, stipulates specific judicial expectations, and ethical conduct. Some of these expectations are unrealistic because judges are humans that are part of a larger society, so expecting them to live as islands and superhumans is impracticable and dilemmatic."*<sup>5</sup>

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<sup>1</sup> This special series is dedicated to Nigerian judges who work so hard but are not appreciated. When they exercise their right, the society criticizes them for being human.

<sup>2</sup> Buga (Lo Lo Lo) song by a Nigerian artist Kizz Daniel and Tekno. See the original video available at <https://youtu.be/bLF90M96m2Q>. The dance video is available at <https://youtu.be/sFJWotW5NIE>.

<sup>3</sup> Niki Tobi, *The Nigerian Judge*, at p. 234)

<sup>4</sup> Revised Code of Conduct for Judicial Officers in the Federal Republic of Nigeria. RULE 5  
Right to freedom of expression

<sup>5</sup> Ari Tobi-Aiyemo, *The Role of the Nigerian Judiciary in a Democracy: A Judges Dilemma*, p. 175

*“...The judiciary's role in upholding democracy and benefiting from democratic tenets at the same time constitutes a dilemma for judges because judges enforce the rights of citizens, yet the law or ethics often disregard their personal and cooperative rights/independence. For instance, judges often ignore their right to privacy, association, and freedom of expression....”<sup>6</sup>*

*“A judicial appointment is a unique one which carries great and grave responsibilities. Of course, Judges are humans yet by dint of their appointments they play God and decide the fate of fellow men in consonance with the powers donated to the courts by Section 6 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) as amended.... In election petition cases they are empowered to decide who becomes President of the Republic or the Governor of a State etc. Infact Judges decide virtually everything under the sun, yet they are mere mortals just like those whose fate they decide. Because they exercise these enormous and far-reaching judicial powers, Judges stand out as the pivot around which the entire judicial system and the administration of justice in our country revolves. To whom much is given, therefore, much is expected.”<sup>7</sup>*

*“To operate efficiently an individual must follow what society has said are the facts of social life, and he finally must be able to accept this socialization to the point that he knows what proper behavior is. In this way, the facts of life and the way to react to those facts are largely predetermined and inculcated in people within society... Obviously, judges are not immune to this process. It is difficult for them, as for any individual, to look beyond what appears to them to be objective reality. It is difficult because the knowledge which a judge gains through his socialization and the law's institutionalization is often taken to be coextensive with the knowable or at least the rational knowledge available.” It is very difficult to argue that a judge does not understand what present reality is, either in everyday life or in the law.” To do so to some extent questions part of his basic knowledge which guides his professional activities.”<sup>8</sup>*

The above quotes emphasize one message—that judges are human beings who equally deserve the protection of the Constitution that they defend and uphold. Accordingly, this CSWS 7<sup>th</sup> edition is dedicated to honoring Nigerian judges, while discussing the clash between judicial ethics and judges’ constitutional rights of freedom of expression and personal independence. Judges are part of the same society, and they experience what every normal person experiences. They visit the same malls/markets, and the same public places, and attend the same places of worship and relaxation as everyone else. Judges are as human as the people that appear in their

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<sup>6</sup> Ibid:

<sup>7</sup> Hon. Justice S. D. Kawu, (2021) Judicial Ethics and the Code of Conduct” A Virtual Refreshers Course for Judges and Khadis. National Judicial Institute, Nigeria. 22 March 2021 Also available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiN-MuStfWAaxW0fzABHTaxAEMQFnoECCAQAQ&url=https%3A%2F%2Fnji.gov.ng%2Fwp-content%2Fuploads%2F2021%2F12%2FJUDICIAL-ETHICS-AND-CODE-OF-CONDUCT-BY-S.-D.-KAWU-THE-CHIEF-JUDGE-OF-KWARA-STATE.pdf&usq=AOvVaw0TTV2rjkmGQYuA1sE399TE&opi=89978449>

<sup>8</sup> David Dittfurth (1975) "Judicial Reasoning and Social Change," Indiana Law Journal: Vol. 50: Iss. 2, Article 4.at PP.263,266 Available at: <https://www.repository.law.indiana.edu/ilj/vol50/iss2/4>

courtrooms, but it appears that ethical requirements restrict them from enjoying and expressing their freedom as everyone else. Through reinforcing the fundamentals of socio-judicial empathy,<sup>9</sup> this webinar admonishes the need for the public, especially litigants and lawyers to apply socio-judicial empathy when assessing judges. Life can be short, every judge as a human being needs to make the best of their humanity and may ‘buga’ when and if necessary, without intimidation from the bar, the media, or the public of unethical conduct.

### **BRIEF HISTORY OF COURTS AND SOCIETY WEBINAR SERIES (CSWS)**

The CSWS is an outcome of over nineteen years of research on courts and society, and a product of the 1st Honorable Justice Niki Tobi<sup>10</sup> Biennial International Symposium titled “**The Nigerian Judge and Society: Justice Niki Tobi’s Impact on the Development of Law and Society.**”<sup>11</sup> This is the second year of the CSWS. Through these webinar series, we aim to celebrate and advance judicial jurisprudence, especially Africa’s jurisprudence, which is being subdued by underdevelopment, corruption, slow technological advancements, plagiarism etc. Thus, through connecting judges of developed democracies like the U.S.A. and developing democracies like Nigeria, the CSWS creates platforms for judges, lawyers, students, researchers, and the domestic/international communities to celebrate judges, interact, learn other cultures, and discuss the courts’ roles in society and democratic governance, to bridge the widening gap between courts and society.

The first CSWS edition was “**The Impact of Judicial Precedent on Developing Law and Society.**”<sup>12</sup> The second edition was “**Courts as Agents of Social Change.**”<sup>13</sup> The title of the third edition was “**The Impact of Judicial Education on Developing Law and Society.**”<sup>14</sup> The fourth edition was “**The Court’s Role in Advancing Human Rights in a Diversified**

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<sup>9</sup> This is a concept that the convener of this CSWS created from her over two decades of research on Courts and society. This concept established her theory socio-judicialism.

<sup>10</sup> The irreplaceable and unforgettable Honorable Justice Niki Tobi (1940-2016), retired as a justice of the Supreme Court of Nigeria. He was an erudite, renowned professor of law who developed and advanced judicial jurisprudence through iconic judgments from the High Court, Court of Appeal, and the Supreme Court of Nigeria, his use of language and words, several impactful presentations, over ten books on law and justice, book chapters and articles. His meritorious and selflessly dedicated service to Nigeria remains in our minds, courts, society.

<sup>11</sup> <https://atsjconsulting.com/csws/>

<sup>12</sup> The presenters were: a Justice of the Supreme Court of Nigeria, a distinguished professor of law, an American trial court judge, and a South African Attorney. Available at <https://atsjconsulting.com/csws/>

<sup>13</sup> The speakers were: a Supreme Court Justice of the Republic of Sierra Leone, a former Nigerian Presidential aspirant/professor of economics, a Ugandan professor of sociology, and an American trial Judge from Pennsylvania. Available at <https://atsjconsulting.com/csws/>

<sup>14</sup> The Honorable Chief Justice of the Republic of Sierra Leone opened the presentations. Other presenters were a Nigerian Court of Appeal justice, the director of the Judicial Studies program, University of Nevada, Reno, the Provost of the National Judicial College, Reno, Nevada, and a representative of the National Judicial Institute of Nigeria. Available at <https://atsjconsulting.com/csws/>

World.”<sup>15</sup> The fifth edition, titled “**The Courts’ Role in Nigeria’s Electoral Process**,”<sup>16</sup> commenced the 2023 special edition series. The sixth edition—Special Series 2, titled “**Women Judges’ Impact on Society: Celebrating a Justice Icon, Hon. Justice Amina Augie, JSC, CFR.**,” celebrates female judges worldwide. This seventh edition—Special Series 3, ends the special series. It is dedicated to Nigerian judges— how society or culture impacts/should impact their judgments amidst ethical requirements and the role of performing substantial justice.

According to Justice Niki Tobi, “*Substantial justice, which is actual and concrete justice is justice personified. It is secreted in the elbows of cordial and fair jurisprudence with a human face and understanding. It is excellent to follow it in our law. It pays to follow it as it brings invaluable dividends in any legal system anchored or predicted on the rule of law, the lifeblood of democracy.*”<sup>17</sup>

### **THEME OF THE CSWS 2023, Special Edition**

*The Court's Role in Upholding Democracy in Africa: The Nigerian Experience*

### **CSWS 2023, SPECIAL EDITION 2 GOALS**

1. To emphasize the importance of judges’ constitutional rights
2. To reiterate judges’ humanity.
3. To establish socio-judicial empathy
4. To explain judges’ social and judicial lives.
5. To build public confidence in our courts by explaining the courts’ role in society.
6. To facilitate and foster judicial, intellectual, and scholastic relationships.
7. To theorize and advance judicial jurisprudence.
8. To inspire further research

### **TARGET AUDIENCE**

1. Judges and Lawyers from all countries
2. Judges' disciplinary organizations
3. Interdisciplinary academics
4. All levels of students
5. Domestic and international communities/ civil society organizations
6. Government institutions

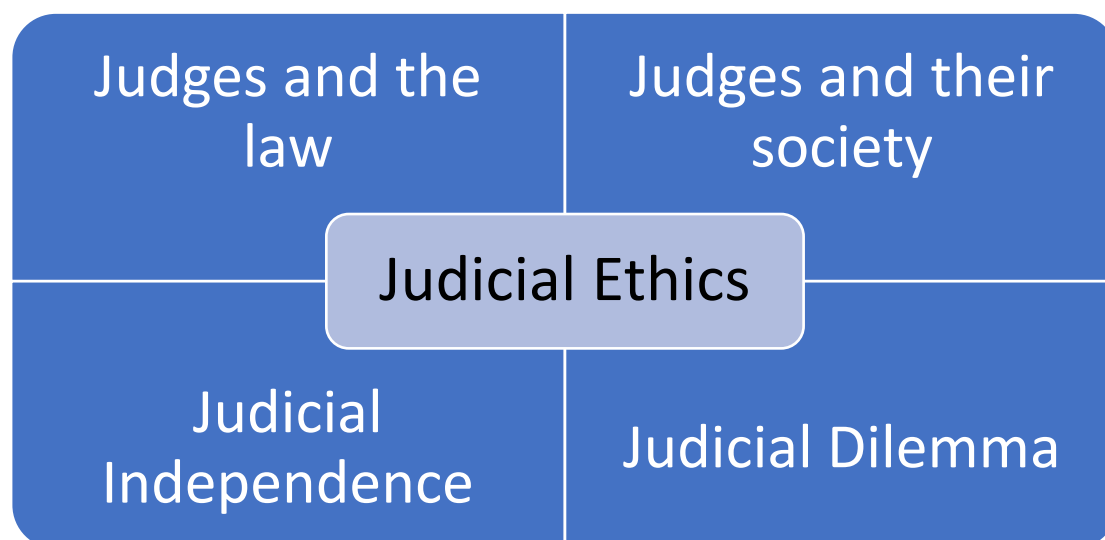
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<sup>15</sup> The presenters were: A Nigerian Supreme Court justice, An Irish judge, an advocate and former head of South African Human Rights Commission and a Nigerian Magistrate-judge. Available at <https://atsjconsulting.com/csws/>

<sup>16</sup> The presenters include a retired justice of the Supreme Court of Nigeria, a distinguished advocate and expert on electoral law, a senior Advocate of Nigeria/former gubernatorial candidate, the executive Director of the electoral College of Nigeria. Available at <https://atsjconsulting.com/csws/>

<sup>17</sup> See *Samuel Ayo Omoju v. The Federal Republic of Nigeria (2008) LPELR-2647(SC)*

## CONCEPTUAL MODEL<sup>18</sup>



## SCHEDULE FOR CSWS 2023

Title	Topic	Dates
5 <sup>th</sup> Edition	The Court's Role in Nigeria's Electoral Process	March 30, 2023
6 <sup>th</sup> Edition	Women Judges' Impact on Society, and Democratic Development: Celebrating an Icon of Justice, Hon. Justice Amina Augie, JSC, CFR	July 27 2023
7 <sup>th</sup> Edition	Judicial Ethics, and Social Impacts on Judges: 'The Buga' <sup>19</sup> Issue	September 28 2023

**Dress Code: T-shirt or any casual sporty outfit. Judges are encouraged to please attend this webinar in their most relaxed unofficial outfits.**

**THANK YOU!**

Respectfully,  
Yours in socio-judicial development,  
Ari Niki-Tobi, Ph.D.  
Founder/ Convener

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<sup>19</sup> A controversy from an Election Tribunal Judge's reference to a popular Nigerian song titled "Buga Won." In his judgment, the Honorable Judge referenced the song as an analogy. The media and senior lawyers criticized the judge for being unethical and unprofessional in his analogy. Read story here: <https://barristerng.com/x-raying-the-buga-controversy-and-the-indecent-attack-on-supreme-court/>