Let me thank the NBA and its President and Organizers of the 2015 NBA National Conference for inviting me to this podium. I am also honoured to be among a very distinguished panel of eminent persons, from the Bench and Bar.

There is we can discuss on the subject, and since we have quite a number of distinguished speakers in this session, I think we can take a little piece of the pie. That’s why I thought I could look at two areas: judicial appointments and the National Judicial Council’s National Judicial Policy as it affects delays and costs in the administration of justice.

1. NJC’s New Guidelines on Judicial Appointments

The National Judicial Council (NJC) in 2014 issued new “Guidelines and Procedural Rules” for all judicial appointments into superior court positions in Nigeria. First we must commend the NJC for reviewing and reforming its guidelines of judicial appointments. The former guidelines did not, and could not safeguard judicial appointments from being politicised or lobbied, or even from “institutional nepotism”. Under those guidelines, judicial appointments were undertaken through processes that were undemocratic, cloistered, elitist, and that lacked openness or transparency. This effectively led to the exclusion of otherwise eligible people from consideration for judicial office. The former guidelines could not ensure that those appointed to judicial office represented the strongest stock of talent that the legal profession could offer.

The reforms seek to plug serious lapses in the former judicial appointments/elevation guidelines that made those guidelines too feeble and ineffective in achieving its aims.

An Overview of the Changes Made

Openness and Transparency: The new guidelines require greater openness and transparency in judicial appointment processes beginning with the announcements of judicial vacancies, which
must now be done openly, through websites of Judicial Service Commission/Committee (JSCs), notice boards of courts and the Bar, (Rule 3:1).

**Merit and Competence:** The guidelines require that the JSC heads make, from among the applications/nominations, “a provisional shortlist on the merits”. In determining this shortlist, the Chair of the JSC shall take into consideration “professional expertise and competence” “sound knowledge of the law”, “seniority at the Bar or Bench” and “Federal Character” or “Geographical Spread”. When the shortlist is sent to the NJC, the Council is also required to conduct an interview of each candidate, Judge or Justice whose names have been submitted, although the Council retains the discretion of determining the mode of the interview. (Rules 3:4 and 6)

**Strengthening of Safeguards:** A number of measures are included for safeguarding against the consideration or appointment of otherwise unsuitable persons, such as: 1. Shortlists of candidates made by the heads of the JSCs are expected to be widely circulated to the Bar, retired and current Judges and members of the JSCs who are expected to give their opinions of the candidates’ suitability; (2) persons whose reputations have been tarnished or are low are not expected to be on the list. The list is also forwarded to the NJC with other reports, such as medical reports and reports of security agencies. The JSCs may also make further inquiries about the candidates from “reputable sources”. The Guidelines disqualify candidates who “lobby” or “canvass” for appointments, whether directly or indirectly, or who peddle influence or engage in bad or corrupt behaviour whether in or out of court. (Rules 3:4 and 7, Rule 4:2)

**New Guidelines Don’t Plug the Gaps, and Possibly Entrenches Individual Control of Appointments**

Yet, the new guidelines do not cover all the bases and some new procedures suffer from some of the weaknesses of the past. For example, the power given to the head of a JSC to create a shortlist from the full list of candidates who have been nominated or have applied for judicial vacancies negates the openness and transparency of the process. Such a power can be exercised with some arbitrariness or in less-than-objective or transparent ways, and the Guidelines do not make the JSC chair accountable for how that selection was done. That power, exercised at a crucial phase in the recruitment process, and like all powers, can be used subjectively, or subversively to defeat the goals of the new system.

Furthermore, the Guidelines limit public participation in the candidate scrutiny process. When shortlists are drawn up, they are sent to a limited set of persons for their opinions about the suitability of those shortlisted. The scope of these consultations do not represent the scope of the
wider community of stakeholders who can offer credible feedback on a shortlisted candidate; persons and institutions specifically referenced in the Guidelines may, sometimes, only have limited or parochial knowledge of the character of a shortlisted candidate. It should have been better for this shortlist to be made more public; for example, by publishing them in the JSCs websites, if not through a broader media platform, so that members of the public who know those shortlisted in unique ways can support the process and weigh in on it if they want to.

The NJC needs to take a second look at these reforms and plug the gaps. A key goal of the new guidelines is to end the “culture of patronage” associated with the appointment process and to make appointment procedures more competitive, transparent and merit-based. Giving the Head of the Judicial Service Commission the sole power to decide the shortlist gives back power to the discredited system.

Secondly, we want to see similar reforms in the appointment of lower courts judges: let the States be bold to replicate the changes made in the appointment of higher courts, to the lower courts of the States in order to strengthen the lower court bench as well.

2. The National Judicial Policy

The next other Instrument I will like to discuss is the NATIONAL JUDICIAL POLICY PUBLIC NOTICE No.1. This document emanates from the NATIONAL JUDICIAL INSTITUTE, pursuant to the NATIONAL JUDICIAL INSTITUTE ACT, CAP. 55, LFN 2004 and has a commencement Date of 30th September, 2013. It was made under the leadership of the Chief Justice of Nigeria and Chairman, Board of Governors of the NJI at that time, Hon. Justice Aloma Maryam Mukhtar, GCON, who had “resolved that a new National Judicial Policy be introduced to establish guidelines for the operation of the affairs of the Nigerian Judiciary, both at the Federal and State levels”. It does not appear many people are quite conversant with the Policy, but it announces very important principles and policies for the administration of justice. I will like to discuss those that relate to costs and delays in the administration of justice.

The National Judicial Policy is stated to be “applicable to all Judicial Officers and Employees of the Judiciary for the maintenance of a high standard of adjudication and administration in the dispensation of justice in Nigeria.”

7. CASE FLOW MANAGEMENT
Policy

a. The Judiciary should adopt measures designed to promote flexibility in the handling of cases, **while reducing cost, delay and other unnecessary burdens to litigants in the adjudication of cases**.

b. It will be essential to also **fix time frames for the disposal of civil and criminal cases**. The criminal cases should be given priority because of the sub-human conditions in which persons awaiting trial or undergoing trial are kept. Fundamental Rights cases should also be on the fast track.

c. **Courts in Nigeria should therefore develop a Caseflow Matrix as well as maintain a Case Tracking Register (where such do not exist) to ensure effective management of the flow of cases within their respective jurisdictions.** The Caseflow Matrix and Case Tracking Register could be manual, electronic or both. (Emphasis supplied).

In summary, the policy talks about the responsibility of the Judiciary to reduce costs, delays and unnecessary burdens on litigants; it also urges courts to adopt case management measures of Time framing periods for the conclusion of cases, i.e. **Time Standards**; additionally, it says courts should track the progress of cases. I would like to discuss these a little.

**Reducing Delays and Costs and Unnecessary Burdens**

Delays and costs (as well as other unnecessary burdens) will often occur together most times. Long trial delays bring more costs. Delays are caused by a variety of factors – these include delays caused by lawyers, litigants and the courts.¹

¹ The World Justice Project has been conducting an annual survey of the situation of the rule of law worldwide. Its Rule of Law Index measures adherence to Rule of Law Principles through a comprehensive and multidimensional set of outcome indicators (nine of them) that reveal the extent to which these principles are observed in practice. In the last report issued for 2012-2013, about 97 countries were measured, amongst which was Nigeria. Among the nine indicators are two relevant for our purpose. These are indicators 7(Civil Justice) and 8(Criminal Justice). They used a scale of 0.0-1.0 to represent the lowest and highest scores for each country. The survey they conducted presents interesting results. In the area of criminal justice, Nigeria scored 0.28 which is the lowest score for all the African Countries surveyed, including Ghana, Sierra Leone, Liberia, Uganda Egypt, Botswana, Senegal, etc. In the Civil Justice Indicator, Nigeria scored 0.58 which is marginally an improvement but below African Countries like Ghana, Botswana, Senegal (0.58), Sierra Leone (0.54).

What this survey tells us is that the state of our civil and criminal justice systems are not, comparatively and substantively speaking, very strong as indices for demonstrating Nigeria’s adherence to the rule of law.
To implement this policy, the Judiciary must review and reform at least three facets of its current methods of administration that are compounding and exacerbating the problems of costs, burdens and delays.

A. **Transfers of Judges without an assessment of its Impact of such transfers on pending trials**

The Judiciary must end the practice of transferring Judges without adequate consideration of the impact of the transfers on pending trials conducted by those judges factored into consideration. We realize that heads of court have statutory powers to transfer judges for various reasons, but transfers can wreak considerable havoc on pending matters. In some cases, when Judges are transferred, it can set a case 2, 3 or even 5 years back depending on the point during the trial when the transfers take place. Some cases may be nearing conclusion when the transfers take place and most witnesses have given evidence. In the cases where the case has to begin de novo, many situations connected with the case may have altered considerably – the litigants or their witnesses may have died or become incapacitated and the litigants may then be compelled to look for other witnesses or make substitution of party applications. This is a direct contravention of their rights to fair trial being occasioned as a direct result of the policy of the court. (I will give examples with a pending case we are handling)

We advocate, therefore, that before a Judge is transferred from a court, there must first be an impact assessment of the effect that such transfers will have on the docket of the court. If a Chief Judge or head of court is not sure of what impact a transfer will have, the derivative principle from the policy should be: don't take that action. Don't do it unless there is a compelling urgency. By way of suggestion, there could also be an approach to transfers that can minimize its impact on pending cases. One way is for heads of court to give adequate time and notice to Judges who would be transferred well in advance so that they have enough time to finish part-heard matters and not begin those they would not likely finish. This is what some heads of court - like the President of the Customary Court of Appeal, Kaduna - has done where he adopted a policy of informing Judges of their transfers 3 months before the transfers take effect. Within that period, the Judge will not be assigned any new cases, and is expected to take more energetic steps to conclude the trials that are pending in his or her court.
Some people can say: but an application can be made to a head of court to enable the transferred Judge continue hearing and conclude the matter either in the new jurisdiction or in the old one. Our answer will be: this is a very poor substitute and the basis of the argument is faulty. First, it should not be the litigants’ responsibility to take remedial measures to minimize the impact of a transfer on his or her case. That responsibility and burden is that of the courts to the litigant; once a litigant has come to court, s/he should expect that the court exercises its public duty to him/her in a timely, efficient manner. He has that right, and, of course, a constitutional right to fair and speedy trial. Second, our experience is that even where such an applicant makes that kind of application, it can in fact take many months and sometimes years for a simple process like that to be concluded. In any event, as we said, the National Judicial Policy gets it right when it says that it is for the Judiciary to “adopt measures designed to ... reducing cost, delay”

B. Fixing Time Frames for the Disposal of Cases (Time Standards).

The policy also says the Judiciary should fix time frames for the disposal of civil and criminal cases. Fixing time frames can help fasten trials by providing guidance to everyone of what the court expects to everyone to do to complete the trial within the fixed period. This is also called Time Standards.

There are a number of court rules that have made reforms that incorporate Time Standards either even before the Policy was issued, and a number too, after the issuance of the Policy. Some States like Lagos, and I believe the FCT High Court have fast track court procedures that have incorporate time standards. There are also time limits set by the Constitution for electoral cases. Enugu and Kaduna Judiciaries have also adopted Time Standards, particularly for the lower courts.

Yet, many judiciaries have not set these time standards, not in the high courts or the lower courts. The fast track procedure is fine, but the problem is that while a few cases get fast-tracked, others are not. In Lagos State for example, the Rules provide that fast track courts should aim to conclude fast tracked cases in nine months. But the National Judicial Policy sets the targets even higher, and wants cases to be concluded within time-bound calendars. It says that the Judiciary should fix time frames for the disposal of civil and criminal cases. This is what has not generally been done. Time standards are a little different from fast track courts. Using time standards mean that every case gets can actually go on a fast track
course because judges, litigants and their counsel know what time limits are set for each
type of case and strive to keep to these standards. It sorts of makes every court a fast track,
from the customary and Sharia courts through the high courts and the court of appeal to the
Supreme Court. There are a few jurisdictions that are making significant efforts to
comply with this policy, and I can mention Kaduna State and Enugu State lower courts
where there are case management and performance tracking measures that help ensure
that lower courts are working speedily to deliver justice.

Besides using Time Standards, the Policy also says that the judiciary must also track cases:
It says the Judiciary should maintain “a Case Tracking Register (where such do not exist) to
ensure effective management of the flow of cases within their respective jurisdictions.”
Maintaining a case tracking register can supply the court with a lot of performance
information. How well is each court doing? Which courts are meeting time standards and
which courts are not? How many cases are courts completing per quarter? When the case
assigned after it was filed? Keeping these registers can supply the court the tools it needs to
monitor performance of court staff and judges as well as know how the judiciary is holding
up and whether more judges, for example, are needed or not.

It will also help the court understand where delays come from. Our learned judges are often
in the habit of blaming lawyers for delays and in doing so, they often rely, on personal
experience that is rather selective. The data often tells us that courts are systematically
cultured to accept delays coming from whoever, and for whatever reasons, whether it is
from lawyers or from the courts themselves. Whichever is the reason for the delay is
largely acceptable. Let us cite one example. Service of processes by court bailiffs after they
have been paid for! After litigants pay for filing and service of processes, they go to court
expecting that, after much effort on their part, the relevant processes would have been
served and a proof of service entered. This is at the stage where actions are just being
commenced, and so, it is expected to be swift.

But no! Those processes are not served by the court’s bailiff. When the presiding Judge
hears this, his Lordship does not inquire to find out why services which have been paid for
were not delivered. The Judge many times blames the counsel for not “following up” with
the bailiff and “doing the needful”.
Actions like this encourage impunity in the court system. Rather than rebuking court staff for failure to perform their duties, the learned Judge rebukes counsel for failing to liaise properly with court bailiff, which is just another euphemism for saying literally “engage in acts of corruption and extortion” by court bailiffs. This way, the court transfers its responsibility for providing efficient, diligent services to court users who should be beneficiaries of those services to the users themselves, thereby facilitating a culture of corruption and impunity amongst court staff. We think the NJP makes it clear that the responsibility of ensuring that the court’s bureaucracy works, and that services rendered by court departments are ethically and promptly delivered is that of the Court not the litigants or their counsel.

We need to see court administrators make stronger efforts to deliver adequate services to court users, supervise court staff or employees more effectively to achieve that result, and strengthen the ethical delivery of services in the various departments of court. In Lagos state at one time, things got so bad in the Sheriffs department that I think one Chief took the extraordinary step of sacking or transferring out most of the officers of that department and recruiting a new set of Sheriffs. That is effective leadership.

1. How can we make these Guidelines Work: Accountability of Court Administrators and Judges

Policies will not produce much change unless there is some way to enforce its provisions and make those bound by it accountable for failing to implement them. In fact, this is one major flaw of the National Judicial Policy. It is couched and articulated as a policy and not as enforceable Rules. But the question then is, how do we get Judges and heads of court to implement them? It is actually possible that, as of this time, many heads of court and Judges have not even read the Guidelines or applied them in any way. We urge the Board of the NJI, or the National Judicial Council to consider ways to translate the principles of the policy into enforceable responsibilities or obligations that yield positive results for court users and can be monitored too by those bodies; and then used as performance indicators or measures for heads of court. In other words, let the performance evaluations of heads of courts extend to monitoring how much they make progress in achieve the
objectives of the policy and reforming their courts to ensure that delays, costs and burdens are reduced.

By doing so, the NJC can broaden its performance management focus and tools, and extend its parameters to strategic extra-judicial functions performed by judges and heads of court. But let us be clear on this: the performance evaluation work of the NJC is filling such a vital gap, and keeping the pressure up on Judges for performance, so that the NJC must be applauded for this important job it is doing. However, the NJC’s performance indicators are quite limited in range and mainly focus only on the judicial aspects of judges work, while overlooking the administrative or processual dimensions of the work of judges or chief judges, such as the administrative functions we have been discussing with respect to eliminating delays and costs above.

Those evaluations should be broadened to monitor how judges, and particularly heads of court, are performing with respect to ensuring that services delivered by their courts are done in ways that eliminate unnecessary burdens, costs and delays to litigants. (I will discuss delays which many lawyers experience with filing cases, getting dates for hearing, getting processes applied for, such as rulings or judgments delivered by courts.)

2. **Funding Necessary, But Often Not the Main Obstacle**

Let us speak a little quickly about funding. The lack of funding is often always cited as the reason for the lack of progress with reforming the administration of our courts. Funding is important and there are many leaps we can make with more funding.

However, it is important to point this out: it has not, it appears, been a lack of funding that has been chiefly responsible for the huge delays and costs that we see in the administration of justice but a lack of commitment, vision and imagination. (We will give examples to show that even where there has been some funding to strengthen some aspects of judicial services delivery, particularly with support of
development agencies, some of infrastructure provided in the support remain mostly unutilized and dormant in our courts after those projects end, citing the Justice Research Centres supported by the UNODC, the case management tracking system in Lagos and other States supported by the Justice Security and Growth Programme of the British Council, and others, as well as the lack of use of digital recorders in some of the courts after the equipment was purchased and installed. We can also speak of courts that have some infrastructure such as digital recorders but whose judges are still taking proceedings in long hand.

The evidence that we have at the moment is that there are still many flaws seen in basic procedures of the justice delivery process that are not quite tied to the lacking of funding. (Examples are: Delays in assigning filed cases to judges and putting these cases before the courts speedily; delays in serving court processes; delays in obtaining judgments or rulings from courts when they have been delivered; indiscriminate transfers of judges from one jurisdiction to another, without adequate provisions made for the cases pending before these judges to go on smoothly).

There are a number of ways to ameliorate the difficulties that people face even using manual procedures that are not being explored. So funding is not the be-all and end-all to improving the delivery of justice services. There are also some judiciaries that are making significant progress on their own. I know that Ogun State Judiciary has developed a case management system of its own. Ogun State is not an oil-producing State.

**Conclusion: the Role of the Bar**

The relatively recent reforms or policies above are not the only developments that have come of late. There are one or two others that time will not allow us look at. We can conclude this by looking at the role of the Bar in inspiring or triggering judicial reform developments. There is a lot more that the Bar can do, locally and nationally, to inspire change and reform in the administration of justice. From what we have observed, there has only been very little that the Bar has achieved overall in
this aspect. We need a stronger Bar voice for change, and to hold judiciaries accountable for delivering court services efficiently and competently. The Bar needs to re-think its role and perspective in this regard, and see itself as uniquely empowered to ask for, and mobilize change in the administration of justice. It should not see itself as only a consumer or beneficiary of change programmes, but as a strategic partner and stakeholder in producing the change. We sometimes think the Judiciary would be more comfortable seeing the Bar playing a subdued role, and with a more complacent attitude so that no one puts additional pressure on it for change initiative. But this may not be so. Some judiciaries may indeed welcome the Bar’s input and authority on reform. So the Bar and Bench must explore stronger partnerships in bringing about reform. The idea, for example, of having a Chief Judge empanel only Judges to review Court Rules in a jurisdiction must be opposed by the Bar. Those who will apply the Rules must be involved in crafting those Rules so that whatever emerges from that process represents a fair balance of responsibilities that is needed to make the justice system a more functional, efficient and accountable system. The Bar needs to do more to make the Judiciary accountable. They should identify priorities that the Judiciary should pursue, and support efforts to fund any developments that are needed to make the Judiciary function better. The Bar has access to the Attorneys General, and leverages with governments. The Bar can go to government and say, we need so, so and so as this will improve the administration of justice. And where the government appropriates funding for the Judiciary to undertake specific projects, the Bar must remain engaged to see that those projects are implemented and return value to court users and society. It must see that the Judiciary is accountable for delivering those projects, and if the judiciary does not do so, the Bar must take it to task. Thank you all for listening.