

# ATTACKS ON JUSTICE - FEDERAL REPUBLIC OF NIGERIA

## *Highlights*

Nigeria's justice system is making a slow recovery from the effects of about fifteen years of military rule, and many problems remain. The pace of civil and criminal justice reforms across the Country is slow, although important efforts have been made by some States to expand access to justice by establishing alternative dispute resolution and legal assistance centres. Judicial corruption remains a major concern, and between 2002 and 2005, no fewer than 6 superior court Judges, including 2 Justices of the Court of Appeal were removed from their posts on charges of corruption, while a number of other Judges are under investigation. While the 1999 Constitution has established a central body responsible for the appointment and discipline of superior court Judges, political office holders continue to wield considerable influence over judicial appointments and removals. The Nigerian government is growing a culture of disobeying court decisions, even decisions of the Supreme Court and that culture is spreading, carrying with it, grave consequences for the rule of law in a nascent democracy. Measures taken to curtail excessive arbitrariness in the way Judges grant discretionary orders are succeeding, but also are stifling the independence of Judges to make decisions without fear of being questioned or punished as a consequence of those decisions. A number of States in Nigeria have introduced Shari'a laws into the legal system, but some punishments prescribed by these laws violate human rights, and there are concerns that Shari'a courts deny defendants' due process rights.

## BACKGROUND

Nigeria is a federation consisting of 36 States, and a Federal Capital Territory (Abuja), which serves as Nigeria's capital. The Country transitioned to a democracy in 1999, after fifteen unbroken years of military rule, and has a written Constitution, the [1999 Constitution](#). The Constitution establishes a presidential and republican system of government, enshrines basic civil liberties and divides power among three branches of government: the executive, the legislature and the judiciary. The legislature is bicameral at the federal level (made up of the House of Representatives and the Senate) and unicameral in the constituent 36 States. The Judiciary consists of federal and state courts, welded together in a hierarchical structure. The Supreme Court sits as the highest and final court of Appeal (although it has original, i.e. first instance, jurisdiction over suits by federal or state governments *inter se*, i.e. against each other), followed by the Court of Appeal, and then the High Court. The High Courts have coordinate (i.e. of equal hierarchy) status with the Customary and Shari'a Courts of Appeal, which sit on appeal over decisions of Customary and Shari'a Courts, (the latter being lower courts, alongside Magistrate Courts). Nigeria's legal system is based on the common law.

Elections into political offices were conducted in 1999, and on May 29, General Olusegun Obasanjo, erstwhile Nigerian military ruler (1977-79), was sworn in as President after widely disputed elections. President Olusegun Obasanjo re-contested elections in 2003, and was again declared winner after highly controversial elections marred by widespread electoral malpractices. The Constitution prescribes a maximum of two terms for elected political leaders, and in May 2007, a new President as well as other elected office holders are expected to assume office.

However, despite the transition, Nigeria's political climate has remained volatile, with ethnic and religious relations potentially implosive, sidelined political divisions, and streaming economic challenges. Some of these have led to large-scale violence, resulting in extensive loss of lives and property. In 2004, a six-month state of emergency was enforced in Plateau State after clashes between indigenous ethnic groups led to thousands of deaths (<http://hrw.org/reports/2005/nigeria0505/>). Deep political problems - like those underlying ethnic conflicts - made the government grudgingly concede to longstanding popular demands for a Sovereign National Conference in March 2005, despite earlier objections that such a Conference was unnecessary. The Conference was mandated to discuss national problems and make recommendations to government. The Conference, which did not have any "sovereign" status, or legal powers, concluded its deliberation in July 2005. The federal government is expected to submit and push [proposals for amending the 1999 Constitution](#) to federal and state legislatures based on the recommendations of the Conference.

Notwithstanding the return to democratic rule, since 2002, civil freedoms have remained in a mixed and contrasting state of enjoyment. While the atmosphere is certainly freer than under military rule on the exercise of some civil rights, repression and other forms of human rights violations continue to take place. Journalists have been frequently harassed and arbitrarily detained, and security agencies have occasionally invaded media houses and confiscated publishing property on grounds that malicious information was being fed to the public. Government has used the police to prevent or break up protest gatherings, by using teargas, firearms and physical violence, often targeting human rights or opposition activists. In June 2005, a high court ruled that the police was using unconstitutional legislation to repress public meetings. The police force is in the control of the federal government.

Economic reforms, aimed at liberalizing the economy and deregulating vital economic sectors, have had significant effects, and in July 2005, won support of creditor nations by huge debt cancellations of 18 billion USD, but the effect of reforms on ordinary people has been blistering, scaling up widespread impoverishment. The [2003 UNDP Human Development Report](#) estimated that over 70% of Nigerians live below \$1 a day. According to the report, many people live in worsening situations of squalor and poverty continues to be a major factor inhibiting access to justice. While government has increased funding for the social sectors of education, health and power supply, institutions delivering these services remain in parlous and dysfunctional conditions, leading to widespread discontent.

Nigeria is a State Party to major international human rights treaties. Although Nigeria is a State Party to the *African Charter on Human and People's Rights*, the Country

has yet to ratify the *Optional Protocol to the African Charter establishing the African Human Rights Court*.

## THE JUDICIARY

### Judicial Reforms

There has not been much progress towards judicial reforms across Nigeria, although one State, Lagos State, has posted important results in reforming the State's justice sector. The State has expanded dispute resolution windows in order to reduce delays and costs of litigation by introducing alternative dispute resolution centres in 2001/2. In 2004, the High Court of the Federal Capital Territory Abuja adopted an identical programme, when it established the Abuja Multi-Door Courthouse (AMDC). The AMDC concept makes three alternative dispute resolution "doors" - mediation, early neutral evaluation, and arbitration -available to litigants, and helps litigants, or potential litigants, use any of the options available for resolving their disputes.

The National Political Reforms Conference has made recommendations for establishing a Constitutional Court that will act as a final court in election petition matters. Furthermore, the conference made recommendations to separate the office of Attorney-General from that of the Minister of Justice and for the establishment of State Constitutions.

Reforms of civil procedure have commenced, albeit slowly. In [Lagos State](#), as well as in the [High Court of the Federal Capital Territory Abuja](#), new civil procedure rules aimed at reducing delays, costs, and time taken to adjudicate over cases were adopted in 2004. At least one other State, Delta State, has engaged in similar efforts to reform its civil procedure rules.

The completion of major reforms to the criminal justice system is still being awaited, although the process leading to it - which was late and slow in coming- has made significant progress. In June 2004, the former federal Attorney-General Chief Akinolu Olujinmi, established a National Working Group on the Reform of Criminal Justice Administration. In August 2005, the Committee produced a *Draft Administration of Criminal Justice Bill* for public discussion and debate. The new Bill incorporates provisions strengthening judicial oversight over police detention, introduces alternatives to custodial punishment (like suspended sentences, community service and parole), and further introduces the use of professional bondsmen in the bail system. Alongside this, the federal government is expecting to reform the existing legal aid system in the Country. A draft bill to expand and increase legal aid financing has been completed (see section on [Access to Justice](#)).

At least one State Judiciary (Lagos) and one Court in the federal Judiciary (Federal High Court) have introduced electronic recording equipment in courts to replace manual recording of court proceedings by Judges. However, the new equipment has yet to become fully operational and Judges continue to take notes in long hand. It is not certain when the machines will become fully functional.

Overall, justice sector reforms have proceeded very slowly and reform efforts at federal and state levels have lacked connection, coordination and synergy. A meeting of the Chief Judges of all the States is being planned sometime in 2005 to encourage individual States to adopt the civil justice reforms initiated by Lagos State. Recently appointed Federal Justice Minister, Chief Bayo Ojo, has also said the government will advise the various states to adopt the federal government's nearly completed criminal justice reform laws. Significant reverses have also been suffered. The introduction of Shari'a law in 12 northern states has created new criminal laws and punishments, which violate basic human rights (see more on Shari'a in [Fair Trial](#) section, below).

## **Judicial Independence**

The 1999 Constitution strengthened judicial independence in important aspects. It increased the Judiciary's control of judicial appointment and disciplinary procedures and restricted the ease with which political office holders interfered with the recruitment and discipline of Judges. Section 153 established the National Judicial Council (NJC), composed of 23 members (the majority of whom are Judicial officers) and is headed by the Chief Justice of Nigeria. The NJC has powers to recommend the appointment, discipline and removal of Judges of the State High Courts, the Court of Appeal, and the Supreme Court. In relation to States, however, the NJC acts in consultation with the Judicial Service Commission (JSC) of each State. A JSC (composed of 7 or 8 persons depending on whether there is both a Shari'a and/or Customary Court of Appeal in a state) is established for each State, headed by a State's Chief Judge, but with a majority of its members appointed by the State government. The JSC recommends candidates for appointment to judicial office and makes recommendations to the NJC regarding the discipline of State Judges. The NJC, after consideration of the JSC's recommendations, makes a further recommendation to the relevant Chief Executive (i.e. State Governor, for a State, and President, for the federal government) concerning the appointment or discipline of Judges.

Ambiguities in the Constitutional texts continue to generate controversy on whether the 1999 Constitution undermined protection for Chief Judges of States' Judiciaries. This is because of the conflicting overlap of two separate constitutional provisions: while one provides that the NJC must recommend the removal of all Judges (Section 21(d) of Part 1 of 3<sup>rd</sup> Schedule), another stipulates that the State Governor can remove a Chief Judge after a resolution to that effect passed by two-thirds majority of the State legislature (Section 292(1)(ii)). There are at least two litigations premised on the interpretation of these clauses currently being pressed in court.

The NJC has prescribed guidelines which States' JSCs must follow in recruiting candidates for superior court vacancies and there is some indication that this has helped to block the appointment of unsuitable persons (i.e. persons lacking in forensic experience and good moral standing). However, in spite of these guidelines, judicial appointment processes are still subject to overreaching political influence across the states. State JSCs nominate those they favour for appointment to the NJC and are under no obligation to provide reasons for selecting one nominee over another. The NJC invariably makes a selection from the recommended list. Generally, therefore, judicial positions are not filled following an open, participatory, merit-based and transparent process, and those individuals in possession of sufficiently strong

political, filial or social leverages are far more likely to secure a position than those without.

Judges enjoy constitutional independence, but, in practice, encounter wide social and political pressures in decision-making. Although the evidence is anecdotal and publicized cases are few, there is a perception that governmental agencies, litigants (or their legal representatives and proxies) and politicians still seek to influence Judges in order to ensure favourable outcomes in legal cases. In July 2003 for example, Justice Abass of the Oyo State Judiciary excused himself from further hearing of a murder trial against a prominent politician and Senator. Justice Abass explained that, since making a remand order against the accused Senator, he had been “under untold pressure and threats from many quarters urging me to arrive at a particular decision even before I listen to accused”. He said he was further worried that the untold pressure was coming from “unexpected quarters” which he did not name. Political influence exercised with regard to the appointment of States’ Chief Judges is of even greater concern, given the important role and significant powers granted to them. Indeed, Chief Judges exercise important administrative powers, like assigning case files to individual Judges. The NJC has also often capitulated to appointing “candidates” endorsed by political branches in this regard.

#### *Cases of Executive Interference in the Judiciary*

In October 2004, the Oyo State Government said it had removed Oyo State Chief Judge, Isaiah Olakanmi, following a resolution passed by the State legislature to that effect. The legislative house based its action on a petition signed by judges of the Oyo State Judiciary, accusing the Chief Judge of maladministration. While the Oyo State legislature was considering the petition, the NJC sent a letter to the State government saying that the power to recommend the removal of any Judge, including the Chief Judge, properly belongs to the NJC, and urged the government to await its consideration of the petition against Justice Olakanmi. The government replied that the Constitution gave it the right to act independently. The government afterwards purported to remove the Chief Judge, following the legislature’s resolution to that effect. The Chief Judge sued the government in the Federal High Court in 2004, but that court struck out the claim saying it had no jurisdiction over the matter in a February 2005 ruling. Nevertheless, Justice Olakanmi has appealed the decision to the Court of Appeal.

In December 2004, when Justice J.C.N. Ugwu was retiring as Enugu State Chief Judge, it was clear that Enugu State Governor, Chimaroke Nnamani, favoured the appointment of a particular Judge, Justice I. Umezulike, as a successor Chief Judge, but Justice Umezulike was not next in the line of succession and by respected tradition he could not yet be appointed to that office.

The NJC had, at first, insisted on following the tradition, and recommended Justice R. Agbo, the next most senior Judge, to fill the position. Vowing that Justice Agbo would not succeed the outgoing Chief Judge over what is generally believed to be Justice Agbo’s stoutness, Governor Nnamani worked through the political party machinery to ensure that the legislature did not confirm Justice Agbo for the office. The House of Assembly subsequently declined to confirm Justice Agbo’s selection and requested the NJC to present another candidate. No reasons were adduced to

justify the decision. The NJC capitulated and recommended the Governor's "candidate" for the office.

### *Judicial budget and salaries, and other Privileges*

Funding for the Judiciary has significantly increased since 2002, although there have been concerns amongst Judges over how budgets are administered. However, despite increased funding, there are wide differences amongst salaries of Judges across the Country. This is because, while the federal government pays uniform wages to Judges (this term is used in the narrow sense to include only Judges of "superior" courts) of coordinate status, State governments often supplement these wages by additional allowances, which vary from state to state. In June 2005, Judges of Abia State collectively approached the Abia State Governor, Uzor Kalu, saying they were worried about their poor salaries and needed wage increments. On its part, Lagos State has commenced a programme to donate completed residential houses in choice areas to Judges upon retirement. These benefits - and the extra allowances - however, are gratuitous: State governments are not obligated to provide them by the Constitution and there are fears it could undermine judicial independence because Judges may not wish to risk losing such privileges by rendering important political decisions against the government.

Judges enjoy other amenities, like police protection, but these are unsecured privileges as well. In August 2003, the police announced it was withdrawing police orderlies from a class of beneficiaries that included Judges. Later that month, it promised to restore Judges' police protection after people widely condemned the policy. In 2005, the federal government announced it was going to dispose of the residential accommodation of federal judges – excluding appellate judges -, in line with its privatization and monetization policy. It later reversed the policy to exclude the residences of federal high court judges.

### *Disobedience to Court Orders*

The federal government has frequently disobeyed court orders. Since December 2004, the federal government has refused to obey a clear ruling of the Supreme Court to release statutory financial allocations due to the government of Lagos State for its local government councils. President Olusegun Obasanjo had, unilaterally, ordered the withholding of the monies on grounds that the Lagos State Government unconstitutionally created additional local councils and was going to fund these new councils from funds intended solely for the pre-existing councils. The Supreme Court ruled that the federal government had no power to withhold federal revenue entitlements from Lagos State and ordered immediate release of the money. President Obasanjo refused to comply with this ruling from December 2004, when it was issued, up till August 2005, when the Lagos State government, in frustration, abrogated the new councils, in compliance with the President's wishes, and received some arrears of its entitlements. Towards the end of August 2005, it was reported that the President had, once again, ordered that further payment of the arrears be withheld, insisting that new elections be conducted in current council areas as a condition for further release of the money.

The ruling party, the People's Democratic Party (PDP) is also disobeying a court's order to reinstate the the Governor of Anambra State, Chris Ngige, who the court ruled, in May 2005, the party had illegally expelled. The party said it could not readmit him unless its National Executive Council met to rescind the expulsion. As at August 2005, the court's ruling had not been obeyed. Other institutions have also disobeyed court orders or only obeyed them following prolonged periods of disobedience. Nigeria's electoral body, the Independent National Electoral Commission (INEC), is one such body: it has flouted court orders in the past to withdraw certificates endorsing the election of particular candidates. Also, as at August 2005, Nigeria's Chief of Naval Staff, who reports to the President, is being held in contempt of court for failure to obey orders to release an impounded shipping vessel.

### *Internal Independence*

An early but crucial intervention that the NJC needed to make when it began its work was to curb the widespread abuse of judicial discretionary powers, which had resulted in many "vexatious" *ex-parte* orders made by courts over time. *Ex-parte* orders are judicial orders made without the appearance of a necessary party, requiring that party to do, or refrain from doing something for some specified length of time. While court rules permit using *ex-parte* procedures in exceptional and deserving cases, particularly in urgent and compelling circumstances, many Judges used these exceptional powers routinely and frivolously. The NJC said it would recommend disciplinary action against Judges who made these orders indiscreetly. At a Judges' Conference in December 2003, Nigerian Judges resolved to support the NJC's effort to redress the situation.

### *Cases on Internal Independence*

In January and September 2004 respectively, Federal High Court Judge, Justice W. Egbo-Egbo, and Enugu State High Court Judge, Justice S. Nnaji, were removed for abuse of office, following *ex-parte* orders they had made. Justice Egbo-Egbo had ordered that Anambra State Governor, Chris Ngige, be removed from office on grounds that the Governor had duly resigned from office. Justice Nnaji gave a similar order in another case. In recommending Justice Nnaji's removal, the NJC said: "the Judge's order was contrary to the code of conduct for judicial officers and contravenes his jurisdictional powers."

For fear of being sanctioned by the NJC, many Judges have now become frigid when asked to use their *ex-parte* jurisdictions in appropriate and deserving cases and have often declined their use. In the Federal High Court, for example, Judges would speak openly of an extant collegial policy of not granting injunctions on *ex-parte* applications any more. Therefore, while the overall effect of measures taken to curtail the arbitrary use of *ex-parte* orders helped to achieve that purpose, those measures also over-reached the purpose and became counter-productive, because they denied to many deserving cases the urgent and expedient judicial interventions (i.e. orders) they required and that could have been met mostly by *ex-parte* orders. Many wrongfully detained people and those facing serious risks of physical danger from security forces, for example, would not receive urgent judicial relief concerning, for instance, torture or dehumanizing treatment until they served notice of proceedings to the affected

parties. Serving this notice can take many days, and involve cumbersome bureaucratic procedures.

### *Judicial Corruption*

Given the tenacity and breadth of reports of judicial corruption, there are strong concerns about the ethical stature of the Nigerian Judiciary. While many individual judges remain focused and forthright, an increasing number of Judges have been found or accused of corruption or other delinquent behaviour. Between 2002 and June 2005, not less than six high court and appellate court Judges (see below) were removed for corruption. Some other Judges are currently being investigated for corruption.

State JSCs and the NJC have oversight powers over Judges' conduct, although complaints against Judges are more frequently sent to the sole NJC. The NJC investigates the complaint and, where it sustains it, makes recommendations to the President or State Governor (depending on whether the Judge belongs to the State or Federal Judiciary). The President, or Governors as the case may be, thereafter implements the recommended disciplinary action. Complaints against lower court judges ("judges" is used broadly to cover lower courts' judicial officers, below the rank or position of High Court) are sent to the State JSCs, or, in the case of the federal capital territory, to the Federal Judicial Service Commission (a similar body to the JSC, responsible for federal courts).

### *Cases of Judicial Corruption*

In May 2004, State Chief Judge Justice David Idiong, was asked to make statements concerning allegations that he had bribed, at the behest of the Akwa Ibom State Governor, members of an election tribunal adjudicating a petition questioning the Governor's election in 2003, by the Independent Corrupt Practices and Other Offences Commission (ICPC). The ICPC subsequently began preparing a formal indictment against Justice Idiong. Worried of facing criminal charges, Justice Idiong filed a lawsuit to stop his impending prosecution on the grounds that the NJC had investigated and cleared him of the allegations. On the 25<sup>th</sup> of January 2005, the Federal Capital Territory High Court dismissed Justice Idiong's suit, saying it could not prevent a crime agency from carrying on its work. It is not clear whether Justice Idiong has appealed as he said he would.

Before Justice Idiong's case started, the NJC had recommended the dismissal of all the Judges who sat on the Akwa Ibom election tribunal and they were accordingly dismissed. Those affected were Justice M.M. Adamu, Tribunal chairperson, Justice T. Ahura, Mr. James Isede (Chief Magistrate, but a member of the Tribunal) and A.M. Elelegwu. A fifth person dismissed was Justice C. Senlong, a Federal High Court Judge who, though not a member of the Tribunal, was found by the NJC to have also attempted bribing the tribunal members, on behalf of the petitioner.

In May 2005, two appeal court Justices, Justices O. Opene and A. Adeniji, were dismissed. The NJC found they had collected bribes to award victory to a party in an appeal over a decision concerning an election dispute in Anambra State. The actual trial of the election petition itself was marked with drama and intrigue and the case



took a spectacularly chequered trajectory. The Appeal Court Justices were sitting as the final decision making court, as Electoral Appeal Tribunal, for the elective office in question. The appeal court justices have sought judicial review of the constitutionality of their dismissal before a high court, citing denial of fair hearing to them.

In Abia State, 5 court staff, who brought corruption allegations against incumbent Chief Judge, Justice K.O. Amah, in 2002, were, in May 2005, compulsorily retired, after remaining on indefinite suspension since November 2002. They were suspended by the State's JSC chaired by Justice Amah, basically for filing complaints against the Chief Judge to the NJC alleging that the Chief Judge was corrupt and fraudulent. Acting on those complaints, the NJC had reprimanded Justice Amah, in a letter, for financial misdemeanour, but did nothing more. Not satisfied with the outcome, the petitioners went to the Abia State House of Assembly. The House conducted a public hearing on the allegations, at the conclusion of which it indicted Justice Amah for being "over-bloated with corruption, fraud, scandal and sacrilege".

After the indictment by the House, Justice K.O. Amah sought judicial review from the State's High Court asking that proceedings before the House be quashed on grounds that the House could not validly reinvestigate what the NJC had hitherto investigated. The High Court agreed and ruled accordingly. The five activists appealed, but the High Court blocked the appeal administratively, by refusing to transmit the records of the proceedings to the Court of Appeal, an essential procedural step before the Appeal court can hear the appeal. Following their subsequent compulsory retirements in May 2005, the 5 activists have filed fresh lawsuits challenging their premature retirements.

Some corruption allegations are still being investigated. In June 2005, a Supreme Court Justice's son was reportedly arrested while going to cash cheques issued by a controversial politician, Chris Uba. Mr. Uba claimed the cheques were to influence how Supreme Court Justices decided a political case in which he was interested. Other reports say the money was a loan to the Justice's son to finance a business and not to influence Supreme Court Justices. The Supreme Court decided the case in May 2005 reaching a unanimous verdict that did not suggest they were under any influence.

### *Attacks on Judges*

In March 2005, the office of the Chief Justice of Nigeria, Hon. Justice M.L. Uwais, was burgled in a clinically executed operation that police said appeared to have been masterminded by an insider. Those responsible have not been apprehended. It is not clear what the motive behind the burglary was, but there is no indication it was a robbery. There are fears that the burglary was politically motivated and was targeted at achieving some particular objective.

Some Supreme Court Justices have also been attacked with allegations of corruption, but much of this has been unsubstantiated and, perhaps, also politically motivated. In 2004, police investigated allegations made by a political group, Derivation Front, alleging that a serving Governor had bribed some Supreme Court Justices to return a favourable verdict shortly before the Supreme Court decided an appeal over whether that Governor was eligible. Police said they found nothing against the Justices, but

said the petitioners did not provide cogent information that may have helped the investigation.

## **LEGAL PROFESSION**

To qualify as lawyers, persons have to undergo legal training at a University accredited to teach law using curricula approved by the Council of Legal Education (a statutory body made up of representatives of the Bar Association, the Ministry of Justice, Heads of Law Departments, and legal scholars). Upon graduation from University, they will further attend another compulsory year of legal training at the Nigerian law school before they are called to the Bar (i.e. admitted to the profession). After the call to the Bar, lawyers can begin to practice law immediately, either alone or in the company of others, and can seek employment elsewhere. There is a national association of lawyers, called the Nigerian Bar Association (NBA) with affiliated local branches of the Association nationwide. Elections into offices of the NBA take place bi-annually. The legal profession operates as an independent institution in Nigeria. Lawyers, after enrolment in the lawyers' register in the Supreme Court (a formal name enlistment done shortly after the call to Bar), become automatic members of the NBA and are regulated by the Code of Conduct for Legal Practitioners. Lawyers are encouraged to undertake continuing training, but this is not compulsory.

Until recently, mechanisms to enforce professional standards in the law profession were inactive, due mostly to an extended period (1992 - 1998) when the NBA was paralyzed following a leadership succession crisis from 1992. The NBA is responsible for the discipline of members of the legal profession, excluding Judges through its Legal Practitioners Disciplinary Committee. The committee is composed of a Chairman, two Appeal Court Justices, two Chief Judges, two Attorneys-General and four legal practitioners. After its resuscitation in 1998, the NBA indicated its preparedness to deal with professional misconduct within the legal profession.

### *Cases*

In August 2005, it was reported that the Supreme Court struck off the name of a legal practitioner, Charles Okike, from the Roll Call of Legal Practitioners (enrolment list of legal practitioners), following a recommendation to that effect by the Legal Practitioners Disciplinary Committee. This originated from complaints that Mr. Okike had engaged in unethical professional practices and misappropriated clients' funds. Following this, Mr. Okike can no longer practice law in Nigeria.

In July 2005, the new Federal Attorney-General, Chief Bayo Ojo, said disciplinary proceedings would be taken against Ephraim Duru, a lawyer who made allegations of bias and corruption in the Supreme Court in June 2005 against Nigeria's Chief Justice, Justice M.L. Uwais. A formal complaint has reportedly been filed against Mr. Duru to the Disciplinary Committee. A complaint has also been filed against another lawyer, Moses Oddiri, who is a member of a political group, Derivation Front, which has been accusing some Supreme Court Justices of corruption since 2004.

## *Attacks on Lawyers*

### **Cases**

On 1<sup>st</sup> September 2002, the Chairperson of the Onitsha branch of the NBA, Chief Barnabas Igwe, was brutally murdered in his house, along with his wife, Amaka Igwe. Chief Igwe had been, as Bar Chairman, a vocal opponent of the Anambra State government and the Onitsha Bar Association which he led, had frequently and publicly denounced the government's policies and failure to pay salaries of public servants for several months. A former government Commissioner has been charged with his murder, alongside other persons at the Anambra State High Court, and the trial was still ongoing as at August 2005.

In July 2003, a prominent lawyer, Chief Ajibola Olanipekun, was murdered by unknown assassins after escaping two earlier assassination attempts. No one has been charged with the murders, believed to have been politically motivated, but it is not clear whether this is related to his role as a legal practitioner.

The prosecution of suspected assassins of the late Federal Attorney-General, Chief Bola Ige, (killed in December 2001), including a serving Senator, Iyiola Omisore, resulted in an acquittal in June 2004 and November 2004 respectively for the two different sets of accused persons. Until today, no suspect has been apprehended for the murder.

On June 14<sup>th</sup> 2005, suspected assassins unsuccessfully attempted to break into the house of Lagos-based lawyer, Festus Keyamo. Mr. Keyamo has been a vocal critic of the government and has often litigated for social justice causes.

## **PROSECUTORS**

The Nigerian Constitution grants the Federal and States' Attorneys-General power to initiate, undertake or terminate criminal prosecutions (sections 174 and 211) for federal and state offences respectively. In practice, the Federal and State governments have a Directorate of Public Prosecutions, headed by a Director of Public Prosecutions (DPP), undertaking prosecutions on behalf of the Attorney-General. Prosecutors are, therefore, institutionally part of the Attorney-General's office and prosecute cases on behalf of the Attorney-General. The Attorney-General's office is a political office and the Attorney-General is a cabinet member of the executive branch of the Federal or State government. To this extent, prosecutors are not independent. In practice however, prosecutors have largely exercised professional autonomy in deciding if and when to undertake a prosecution.

Police officers also undertake criminal prosecutions, mostly at lower courts, involving relatively "minor" offences like stealing, non-sexual assaults, affray, etc. In more serious cases, police officers prepare a case-file after investigation and pass it on to the DPP's office for legal review and possible prosecution. Where, after a legal review or assessment, the DPP does not consider that the evidence sufficiently meets the proof required by the definition of the crime, it advises the police to strengthen the evidence or declares that there will be no prosecution given its assessment of the case

and closes it. The police argue that the power to prosecute cases is derived from the Constitution and there is a pending appeal at the Supreme Court to determine whether the police can lawfully prosecute cases.

## ACCESS TO JUSTICE

### Legal Aid

The federal government and a number of States operate programmes offering legal aid to indigent persons. The federal legal aid programme is operated by the [Legal Aid Council](#) (LAC). LAC has an office in the federal capital and branches in 33 of the 36 States. LAC provides free criminal defence services, limited to charges for offences specified in the *Legal Aid Council Act 1990* (as subsequently modified), and related to serious offences like murder, rape, etc. It also offers legal assistance for civil claims relating to accidents and damages for the violation of fundamental rights guaranteed by the Constitution. However, services offered by LAC are enjoyed only by persons whose income does not exceed the minimum wage (i.e. N7,500 p/month, approximately \$60). Given this criterion, only a very limited number of people can access LAC's services and many who desperately need it cannot get it. In addition, LAC is grossly under-funded and this severely affects the quality of the services it offers.

In 2005, LAC, in collaboration with governmental and non-governmental groups, prepared a draft *Legal Aid and Free Access to Justice Bill*. The draft Bill seeks to establish a Legal Aid and Access to Justice fund from which an expanded free legal assistance programme will be funded. It broadens the currently narrow eligibility criteria governing access to federally funded legal aid, as well as increases sources of legal aid financing by establishing a contributory reimbursement of the legal aid scheme.

A few States, including Lagos, Ogun, Plateau, Rivers, and Delta, are ameliorating some of the effects of inadequate federal legal aid by establishing free, publicly accessible, redress, mediatory and legal assistance services of their own. In Lagos, Ogun and Rivers States, centres called "Office of Public Defender" provide such services without income restrictions and at no cost to beneficiaries, using state-paid justice department attorneys. These three states, and another one, Plateau State, have also established departments called "Directorate of Citizens Rights" (DCR) (Citizens Rights Department in Ogun State). DCR centres operate like Public Ombudsmen: they receive complaints from citizens and explore administrative or other types of settlements for the complaints. A similar body was established in Delta State, called People's Rights Department, in 2001/2.

### Confronting Impunity: The Human Rights Violation Investigation Commission

On May 28, 2002, the body commissioned by President Obasanjo to investigate past abuses of human rights in Nigeria from 1966 - 1999 and headed by retired Supreme Court Justice, Hon. Justice C. Oputa, the Human Rights Violation Investigation Commission - otherwise known as the Oputa Panel) - submitted its [report](#) after a lengthy, intense hearing and fact-finding mission. However, former military head of

state, Gen. Ibrahim Babangida, who refused to honour the Panel's summons to appear, filed a lawsuit challenging the constitutionality of the law under which the Panel was established, and the Panel's authority to issue summons on him. On appeal to the Supreme Court, the Court ruled that the Panel was not validly established and could not, therefore, validly issue any summons. By the time the Supreme Court's judgment was issued, the Panel had concluded its work. The government did not subsequently release the report or a white paper on it, but a non-governmental organization subsequently published the report.

Threats to human life by State security agencies and vigilante groups have remained remarkably high. Nigeria's security forces have not only been unable to provide safety, but have been responsible for massive violations of human rights and implicated in the extrajudicial killing of thousands of people. The failure of security agencies to guarantee safety and security in the face of rising crime has itself, inspired the emergence of community vigilante groups whose unorthodox crime fighting tactics have mounted an unprecedented wave of extra-judicial killings and exacerbated an already troubling level of violence across the Country. Perpetrators of extrajudicial executions blame the criminal justice system for the practice; vigilantes say the police, known for its deep-rooted corruption, will often let alleged criminals escape punishment when corruptly induced; and the police say courts frustrate efforts to stem crime, by granting freedom to known felons.

### **Fair Trial**

Since 2000, about 12 Northern States have incorporated Islamic criminal laws or the Shari'a system into their legal system, extending the influence of Islamic law beyond the civil law sphere - matters like succession, inheritance, marriages - to criminal law domains. These States have also established Shari'a courts to try offenders. Nevertheless, concerns over the fairness of trials conducted by Shari'a courts continue to mount. Trials in Shari'a courts mostly fail to conform to international fair trial standards and deprive defendants of due process rights. Many defendants are not represented or informed of their rights to representation, and, in some instances, defence attorneys have been disallowed from defending accused persons based on what Shari'a Judges believe is its incongruity with Islamic tenets. Shari'a Judges can impose the capital punishment and at least 10 death sentences have been passed up to now, although no executions have taken place because convictions are mostly reversed on appeal. However, Shari'a Judges have no professional training in law and lack education on fair trial guarantees. Amputations, and flogging however, continue to take place (<http://www.hrw.org/reports/2004/nigeria0904/>).

## **LEGAL REFORMS DURING THE PERIOD**

- 28 May 2002:** Release of the report of the Oputa Panel.
- 2004:** New Civil Justice Procedural Rules in Lagos State called the "*High Court of Lagos State (Civil Procedure) Rules*", as well as in the High Court of the Federal Capital Territory of Abuja.
- 2004:** Establishment of court-connected Alternative Dispute Resolution system in the Federal Capital Territory, Abuja.

**2005:** Presentation of a *Draft Administration of Criminal Justice Bill*.

**2005:** Presentation of a *Legal Aid and Free Access to Justice Bill*.