

## Nigeria

**Human rights concerns and problems with the administration of justice still exist, as Nigeria remains a country in transition. However, a new Constitution provided appropriate safeguards for the independence of the judiciary and they were respected in practice. Military courts and special tribunals were disbanded and there was more respect for due process and the Rule of Law. The human rights situation improved substantially with the democratic election of a civilian government.**

Nigeria underwent a radical change in 1999, moving to a popularly elected civilian government for the first time in sixteen years. Nigeria had been led by General Abdusalam Abubakar in an transitional military government formed after General Sani Abacha's death in June 1998. In presidential elections held in February 1999, retired General Olesgun Obasanjo won 62.8% of the vote and was inaugurated as President on 29 May 1999.

The 1999 Constitution of the Federal Republic of Nigeria created a federal system of government consisting of 36 states and established a separation of powers between the arms of government. Section 4 vested the legislative powers of the federation in a National Assembly consisting of a Senate and a House of Representatives. The Senate consists of three popularly elected senators from each state and one from the Federal Capital Territory of Abuja. The House of Representatives contains 360 popularly elected members. The National Assembly sits for a period of four years.

The executive power of the Federation is vested in the President, who is assisted by the Vice President and the other Ministers of Government. The President is directly elected by the populace at the same time as the elections for the National Assembly. Each state is represented by its own assembly and executive, which have the limited powers set out in the federal Constitution.

### Transition to Civilian Rule

#### *Elections*

Elections were conducted at the local, state and national levels in December, January and February respectively. After the local elections three parties, the Peoples Democratic Party (PDP), All Peoples Party (APP) and the Alliance for Democracy (AD), qualified to contest the elections at the state and national level. In the state and national elections the centrist PDP registered the majority of the vote, obtaining 57% in the House of Representatives and 54% in the Senate.

There was some regional violence during the elections, and widespread allegations of vote buying by all parties, as well as other electoral irregularities. However, despite these irregularities reports from the election stated that the vote represented the popular wishes.

#### *Constitution*

The responsibility for the development of a new constitution was placed under the control of the Constitutional Debate Co-ordinating Committee(CDCC). This committee, consisting of members appointed by General Abubakar and chaired by Justice Tobi, was responsible for piloting the debate and co-ordinating and collating the receipt of views and recommendations

of members of the Nigerian public. The CDCC did not make any recommendations of its own. The debate generally agreed that the new constitution should be based primarily on the 1979 Constitution, subject to certain amendments.

The draft 1999 Constitution was then finalised by a panel appointed by General Abubakar and adopted by the military Provisional Ruling Council on 5 May 1999. This final drafting process was largely unconsultative and untransparent, the panel not having any obligation to incorporate the views of the public expressed in the CDCC report.

In September 1999 the Senate announced that its Judicial Committee was to undertake a review of the 1999 Constitution. The President also created an inter party committee to conduct a review of the 1999 Constitution. This inter party committee consists of seven members from each political party chaired by a representative of the executive. This committee has widely consulted with members of the public, judiciary, politicians and other concerned groups with the view to drafting a bill recommending amendments to be made to the Constitution.

### *Revocation of Military Decrees and Release of Political Prisoners*

Prior to the departure of the military government, it announced that all military decrees that were inconsistent with the new Constitution were revoked. The Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No 63 of 1999 revoked numerous decrees violating fundamental human rights, including the State Security (Detention of Persons) Decree No. 2 of 1984, Treason and Other Offences (Special Military Tribunal) Decree No. 2 of 1987, Civil Disturbances (Special Tribunal) Decree No. 2 of 1987, Treasonable Offences Decree No. 29 of 1993, Robbery and Firearms (Special Provisions) Decree No. 5 of 1984 and the Legal Practitioners (Amendment Decree) No. 21 of 1994.

During this period the military government released many political prisoners including those that had been detained in various treason trials in 1990, 1995 and 1998. These prisoners had all been tried in specially established tribunals appointed by the military government and not accorded the due process of law.

### **Human Rights Background**

During the years of military rule, human rights were systematically violated. The military government promulgated many decrees which deprived Nigerians of the enjoyment of their human rights and acted in contravention of Nigeria's regional and international obligations. These included decrees that allowed indefinite detention in the interests of security; created special military tribunals that tried civilians and did not guarantee due process or allow judicial review; and decrees that limited the freedom of the press, association, expression and movement. Political prosecutions, torture, extra judicial executions and widespread violations of economic, cultural and social rights also occurred.

Under the transition regime, human rights violations decreased. Many of the decrees violating human rights ceased to be used and were repealed before the handing over to civilian control. General Abubakar's government also released all political prisoners, and arrested members of the previous regime suspected of crimes. However, human rights violations continued. Security forces continued to operate utilising excessive force and torture. These violations of

human rights were also committed by the regular police forces. Prison conditions also remain life threatening. Unrest in Delta State has resulted in many extra judicial killings.

With the assumption of power by the Obasanjo government, the human rights situation continued to improve. The revocation of certain military decrees and the removal of restrictions on the freedom of movement and association constituted steps towards an improvement in conditions. The government appointed a national prison reform committee to investigate the conditions in prisons and also released 1400 prisoners. In July the Court of Appeal held, in *Chima Ubani v Inspector General of Police*, retrospectively that the State Security (Detention of Persons) Decree of 1984 No. 2 violated the African Charter on Human and Peoples' Rights.

However, excessive use of force and arbitrary detention by police continued and prison conditions remained life threatening. It has also been stated that between 60 and 74% of the estimated 41,000 persons held in Nigerian jails are awaiting trial. Many of these have been held for longer periods than they would have been subject to if convicted.

Also ethnic violence continued, particularly in Delta State, and towards the end of 1999 religious and ethnic violence increased in northern states due to attempts by state governments to implement Islamic law. Women suffer physical abuse and discrimination. Marital abuse is common and is not an offence if permitted by customary law, and marital rape is not a crime.

The 1999 Constitution, in Chapter IV, contains certain fundamental rights. These include the right to life, the prohibition of torture and discrimination, and the freedoms of expression, association and movement. These rights can be enforced through the High Court of a state. However, Section 45 of the Constitution provides an exception to some of these rights by providing that they shall not invalidate any law that is reasonably justifiable in a democratic society in the interests of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights and freedoms of other persons. Chapter IV of the Constitution can only be amended by a four fifths majority of the parliament and approved by a resolution of the Houses of Assembly of two thirds of all the states.

The government also inaugurated, on 14 June 1999, the Human Rights Violation Investigation Panel of Nigeria, headed by Justice Oputa, a retired Supreme Court judge, to investigate cases of mysterious deaths and other human rights violations perpetrated by anyone that have occurred since 1963 and to make recommendations to the government.

Nigeria is a party to the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It has also signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Regionally, it is a party to the African Charter on Human and Peoples Rights.

#### *National Human Rights Commission*

The National Human Rights Commission (NHRC), established by Decree 22 in 1995, continued to operate but no provision was made for it in the 1999 Constitution. The NHRC is

governed by a council chaired by a retired justice of the Supreme Court, Court of Appeal or state High Court and fourteen other members representing government, NGO's, the legal profession and the public. The members are appointed by the President on the recommendation of the Attorney General. Members of the council can be removed by the President if s/he is satisfied that it is not in the interest of the public that the member remain in office. The NHRC is responsible for monitoring and investigating alleged cases of human rights violations, promoting and undertaking studies on human rights and assisting the government in the formulation of human rights policy.

Although the NHRC operated relatively independently during the military regime of General Abacha and has continued to do so under the current government, its independence could be strengthened. The NHRC should be completely separated from the government, in particular members should be appointed for a specific period and not subject to arbitrary removal by the President. The institution could also be strengthened through a redrafting of its enabling law improving its investigatory powers, making it accountable to the National Assembly and entrenching its powers and functions in the Constitution. This would recognise the fundamental importance that such an institution plays in maintaining respect for human rights in society.

### **The Judiciary**

The legal system in Nigeria is primarily based on English common law, with customary law and sharia law applied in particular disputes. Section 6 of the Constitution of the Federal Republic of Nigeria 1999 vests the judicial power in the courts created by the Constitution. This section also provides that the National Assembly or State Assembly can establish courts with a subordinate jurisdiction to that of a High Court. The federal government has exclusive competence to legislate for the criminal justice system and all authorities, persons and subordinate courts are obliged to enforce the decisions of the superior courts contained in the Constitution. Section 150 of the Constitution creates the position of Attorney General as chief legal officer of the Federation.

The judicial system, under the previous regimes, had suffered extensively from delays, insufficient funding and some elements of corruption. The situation was improved somewhat by the appointment of six justices to the Supreme Court and 24 justices to the Court of Appeal by the Provisional Ruling Council during the transition to civilian rule. Since the inauguration of the new democratic government, funding for the judicial system has improved markedly, although delays remain a problem.

The Supreme Court of Nigeria sits at the head of the court structure. It has original jurisdiction in any dispute between the Federation and a state or between states if that dispute involves any question on which the existence or extent of a legal right depends, and any other jurisdiction that the National Assembly may confer on it. The Supreme Court has exclusive competence to hear appeals, as of right or with leave, from the Court of Appeal.

The Supreme Court consists of the Chief Justice and fifteen other judges and cases are usually heard by a bench of five justices. However, in appellate cases regarding the interpretation of the Constitution or a question as to whether any of the fundamental rights contained in Chapter IV of the Constitution are, or are likely to be, violated the court shall be constituted by seven justices.

The Court of Appeal, created by Section 237 of the Constitution, has exclusive jurisdiction to hear appeals from State and Federal High Courts and Sharia and Customary Courts of Appeal. The court has original jurisdiction to determine questions regarding the validity of the appointment or term of office of the President or Vice-President. Appeal is available as of right in the matters outlined in Section 241 of the Constitution which include, *inter alia*, appeals involving a question of law, the interpretation of the Constitution or where a sentence of death has been imposed. The Court of Appeal consists of a President of the court and at least 49 other justices. Cases are usually heard by a bench of three judges.

The Constitution also creates State and Federal High Courts. The Federal High Court has wide jurisdiction in civil cases and matters outlined in Section 251 of the Constitution. These include matters relating to, *inter alia*, government revenue, taxation, intellectual property, immigration, and mines and minerals. The court also has such civil and criminal jurisdiction as may be conferred upon it. The Federal Capital Territory of Abuja and each state has a High Court which has criminal and civil jurisdiction to determine cases that arise in its territory or those that are referred to it under its appellate jurisdiction. The Chief Judge of each federal or state superior court can, subject to any act of a National or State Assembly respectively, make rules regulating the practice and procedure of their court.

Sharia and Customary Courts of Appeal exist in each state and in Abuja. The Sharia Court of Appeal has jurisdiction to determine cases and appeals involving any question of Islamic personal law regarding marriage, guardianship or probate, and where all parties to the proceedings request that the case be decided in the first instance in accordance with Islamic law. Cases are heard by three judges (Kadi's) who have considerable experience in Islamic law.

Customary Courts of Appeal have jurisdiction to hear appeals in civil proceedings involving questions of customary law, and any other jurisdiction that may be conferred upon it by the National Assembly. Cases are heard by a bench of three judges who have considerable experience in Customary law.

Several subordinate courts have been created in each state. These include Magistrate Courts, Area and Upper Courts and Customary Courts.

### *Judges*

The provisions regarding the selection, removal and conditions of service of judges are contained in Chapter VII and the Third Schedule of the Constitution. The procedures generally provide for the independence of judges. All federal judges are appointed by the President upon the recommendation of the National Judicial Council. State superior court judges are appointed by the Governor on the recommendation of the National Judicial Council. In the case of the justices of the Supreme Court, and the heads of all other superior courts, *i.e.* the Presidents of the Courts of Appeal, the Chief Judges of the High Courts, and the Grand Kadi's of the Sharia Courts, the appointment process is subject to confirmation by the Senate or the House of Assembly of the State.

Supreme Court judges and justices of the Court of Appeal are required to retire at 70 years of age and all other justices at the age of 65. Section 84(3) and (4) guarantee that a judge's salary and conditions of service, other than allowances, will not be altered to their disadvantage

after their appointment. Section 291(3) of the federal Constitution also guarantees that judges will be paid a pension upon retirement.

The Chief Judges of the federal or state superior courts can only be removed by the President or Governor acting on an address supported by a two thirds majority of the Senate or House of Assembly of the state respectively. In the case of any other judicial officer, they can only be removed by the President or Governor acting on the recommendation of the National Judicial Council. Grounds for removal consist of inability to discharge the functions of office or appointment, whether arising from infirmity of mind or of body, for misconduct or for contravention of the Code of Conduct. The Code of Conduct is contained in the Fifth Schedule to the Constitution.

#### *National Judicial Council*

The National Judicial Council (NJC) consists of 23 current or retired members of the judiciary and public representation. This includes, inter alia:

- ▶ five retired justices from the Supreme Court or Court of Appeal selected by the Chief Justice;
- ▶ five Chief Judges of states, appointed by the Chief Justice, who serve on a rotational basis;
- ▶ five members of the Nigerian Bar Association appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association;
- ▶ two non-legal practitioners who, in the opinion of the Chief Justice, are of unquestionable integrity.

The NJC, in exercising its recommendatory appointment power, can act upon the recommendation of the Federal or State Judicial Service Commission, where applicable, or the Judicial Service Committee of the Federal Capital Territory, Abuja.

The NJC also has the power to:

- ▶ recommend to the President or the Governor of a state the removal of a judge and to exercise disciplinary control over them;
- ▶ collect, control and disburse all money for the judiciary;
- ▶ advise the President or Governor on any matter referred to them by such parties, pertaining to the judiciary;
- ▶ appoint, dismiss and exercise disciplinary control over members and staff of the Council, and disburse all moneys of the Council;
- ▶ deal with all other matters relating to broad issues of policy and administration.

#### *Judicial Service Commission*

The Federal and State Judicial Service Commissions consist of the Chief Judges of their respective courts, the federal or state Attorney General, two legal practitioners and two other non-legal practitioners recommended by the President or Governor who are of unquestionable integrity. These bodies advise the National Judicial Council in nominating persons for federal and state superior judicial office and can also recommend the removal of judicial officers.

The Federal Judicial Service Commission also can appoint, dismiss and exercise disciplinary control over Chief and Deputy Chief Registrars of the federal courts and all other members of staff of the judicial service of the Federation. The State Judicial Service Commission can

appoint, dismiss and exercise disciplinary control over the Chief and Deputy Chief Registrars of the state courts, magistrates, judges and members of Area Courts and Customary Courts, and all other members in the judicial service of a state.