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SEEKING JUSTICE IN TRANSITIONAL SOCIETIES: AN ANALYSIS OF THE PROBLEMS AND FAILURES OF THE JUDICIARY IN NIGERIA

*Okechukwu Oko**

ABSTRACT

The attainment of justice represents one of the enduring promises of constitutional democracy. Democracy offers opportunities for citizens to reclaim and enjoy the rights and liberties denied them by military dictatorships that have dominated Africa's political landscape for the better part of the last century.

Despite the establishment of constitutional democracy, however, the path to justice is strewn with social, cultural and institutional problems that make it exceedingly difficult, if not impossible, for citizens to realize the promises of justice contained in their country's constitution. More problematic for citizens who seek justice is the fact that judges, driven by lust for power and wealth, often align themselves with the rich and the powerful in society to frustrate the search for justice. These faithless judges defer to and are often controlled by government officials, party stalwarts, and influential private citizens who have strong incentives to manipulate the judicial process to suit their preferences. The few upright judges who have the integrity to resist attempts of undue influence by the government and other private citizens are disabled from efficiently dispensing justice by prevailing environmental factors, including inadequate facilities, intimidation, and harassment.

This Article examines the problems that disable the judiciary from effectively discharging a Nation's eminently important tasks of fairly and impartially adjudicating disputes, protecting citizens' rights and constraining the excesses of both the executive and the legislature. It offers suggestions for addressing the problems and inadequacies of the judiciary. Ultimately, the Article argues that establishing an efficient judiciary

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requires the appointment and retention of competent and upright judges who will be challenged and encouraged by the proper balance of education and disciplinary regimes to remain faithful to the ideals of justice. It will also require the political elites to change their attitude toward the judiciary. Their commitment to the independence of the judiciary must go beyond mere symbolism. The judiciary cannot fairly and efficiently dispense justice if political elites continue the charade of masquerading as champions of liberty and defenders of judicial independence while striving to interfere with, intimidate and manipulate the judiciary.

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I. INTRODUCTION

The mood of Nigerian society at the end of military dictatorship was understandably ecstatic.¹ Nigerians based their optimism on the premise that democracy offers opportunities, liberties and freedoms unimaginable in a dictatorship.² Citizens hoped that democracy would read-

1. Nigeria returned to constitutional democracy after fifteen years of military interregnum in 1999. See generally Rotimi T. Suberu & Larry Diamond, *Institutional Design, Ethnic Conflict Management, and Democracy in Nigeria*, in *THE ARCHITECTURE OF DEMOCRACY* 400 (Andrew Reynolds ed., 2002) (discussing Nigerian political history since 1960). Nigeria has been ruled by brutal, repressive and often visionless military despots for all but fourteen years of its forty-four years as an independent nation. *Id.*

2. The enjoyment of these rights and privileges distinguishes a democracy from dictatorial and tyrannical regimes. See Robert A. Dahl, *Democracy and Human Rights Under Different Conditions of Development*, in *HUMAN RIGHTS IN PERSPECTIVE: A GLOBAL ASSESSMENT* 235, 235 (Asbjørn Eide & Bernt Hagtvet eds., 1992). Justice Olajide Ola-tawura, retired Supreme Court Justice and former Administrator of the National Judicial Institute, described the state of the law and the attitude of the government to civil rights under the military:

During the Military regime the law became weak as a result of ouster clauses and suspensions of our Constitution and existing laws which gave us liberty and freedom. The Constitutional duty to protect the liberty and freedom of the citizens by the state was regularly breached by those entrusted with that sacred duty The rights of citizens were not only ignored but trampled on.

J. Olajide Olatawura, Administrator, National Judicial Institute, Welcome Address at 1999 All Nigeria Judges' Conference (Nov. 1, 1999), in *NAT'L JUD. INST., 1999 ALL NIGERIA JUDGES' CONFERENCE* xxv (2000). General Olusegun Obasanjo, Nigeria's current President, in a welcome address to the Seminar on Corruption, Democracy and Human Rights in East and Central Africa, organized by the Africa Leadership Forum in Entebbe, Uganda, eloquently captured African peoples' desire for democratic government:

The clamour today for democracy and good governance in Africa stems from two broad reasons. First, the denial of fundamental human rights, the presence of arbitrariness and the absence of basic freedoms for the individual have in the main remained familiar traits of a majority of governments in Africa. The strain of these styles of governance has prompted a demand and a clamour for new approaches to the resolution of various national questions. In consequence, Africans are clamouring for greater responsiveness on the part of their political leadership, respect for human rights, accountability and a two way flow of information between the people and their leadership. They are also clamouring for an adequate legal system and for the laws and the independence of the Judiciary and a free press, which together can serve as a bulwark against the oppression of government, and especially a corrupt or unpopular government.

ily translate into respect for rights and liberties³ and that they would be able to seek justice unburdened by the restraints and limitations imposed by military dictators.⁴

The right to a fair trial is perhaps the most fundamental tenet of constitutional democracy⁵ and has been recognized as a universal human right.⁶ It is central to a Nation's search for social equilibrium and justice because all of the rights guaranteed by a constitution mean nothing if citizens do not have the right to a fair trial.⁷ Without securing the right to a fair trial, citizens might resort to extra legal means to secure their interests and protect their rights.⁸ Moreover, economic growth and social development will be impeded if foreign and local investors lack confidence

Gen. Olusegun Obasanjo, Chairman, Africa Leadership Forum, Welcome Address at the Seminar: Corruption, Democracy and Human Rights in East and Central Africa (Dec. 12, 1994), *quoted in* Justice Amina Augie, Human Rights and Good Governance in Africa: A Critical Nexus Expanding Human Rights (Oct. 11–15, 2004), http://www.uneca.org/adf/documents/speeches_and_presentations/amina.htm.

3. Citizens who endured tremendous hardship and brutality under the military are demanding respect for their rights and liberties with relentless vigor. *See, e.g.*, Joseph Ogunsemi & Sulaymon Abdulkareem, *Mass Rally, Rights and Limits of Rights*, DAILY TIMES (Nig.), May 3, 2004, 2004 WLNR 6927224. The Chief Justice of Nigeria, Mohammed Uwais, expressed the view widely held by Nigerians: "Nigerians now agree that democracy is the best form of government and that real democracy will offer a ready solution to all the political and social ills of the country." Chief Justice M.L. Uwais, Address to the All Nigeria Judges' Conference (Nov. 5–9, 2001), *in* NAT'L JUD. INST., ALL NIGERIA JUDGES' CONFERENCE 2001 at xxix, xxx (2003).

4. Military rulers enacted several laws as well as regulations and practices that severely curtailed civil rights and liberties. Okechukwu Oko, *Lawyers in Chains: Restrictions on Human Rights Advocacy Under Nigeria's Military Regimes*, 10 HARV. HUM. RTS. J. 257 (1997); *see generally* B.O. NWABUEZE, MILITARY RULE AND CONSTITUTIONALISM IN NIGERIA (1992).

5. The right to a fair trial has been described as "the most fundamental of all freedoms." *Estes v. Texas*, 381 U.S. 532, 540 (1965). In England, the right to a fair trial has always been viewed as a vital element of the justice system. As one English court stated, "the right to a fair trial . . . is as near to an absolute right as any which I can envisage." *Regina v. Lord Chancellor, Ex parte Witham*, (1997) Q.B. 575, 585.

6. Universal Declaration of Human Rights, G.A. Res. 217A, at 73, U.N. GAOR, 3d sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 10, 1948) ("Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal.").

7. *See Dahl, supra* note 2, at 235 (arguing that in order for a country to be classified as a democracy certain rights must realistically exist).

8. Justice Oyeyipo, Chief Judge of Kwara State, observed that, "the administration of justice is at the core of any successful democracy in the world. If the Legal profession fails, anarchy will be the only beneficiary." Chief Judge T.A. Oyeyipo, Professional Misconduct: Problems and Solutions, Paper presented at the 2003 Annual General Conference of the Nigerian Bar Association 20 (Aug. 24–29, 2003).

in the ability of the legal process to fairly and impartially resolve disputes.⁹

The Nigerian Constitution and other laws¹⁰ contain substantive and procedural safeguards designed to assure a fair trial.¹¹ These safeguards cover all stages of judicial proceedings, from pre-trial through appeal.¹² Some of the pre-trial safeguards include prohibitions against arbitrary arrest,¹³ the right to be brought before a judge within a reasonable time

9. Osita Okoro, *The Judiciary and the New Development Agenda*, THIS DAY (Nig.), Dec. 23, 2003, 2003 WLNR 7736033 (discussing the impediment to economic development caused by a troubled judiciary). Professor Fidelis Oditah, a visiting Professor of Law at Oxford University stated, "If foreign and domestic investors lose faith in the ability of our law and the judicial system to protect their investments and property rights or to adjudicate disputes in a timely and fair manner without undue or improper influences, they will be reluctant to invest." Chika Amanze-Nwachuku, *How Justice System Affects Foreign Investment*, THIS DAY (Nig.), May 7, 2004, 2004 WLNR 7185777. Alassane D. Ouattara stated that, "[t]he perceived risk of investment [in Africa] is reduced by . . . legal reforms to simplify commercial jurisprudence and improve the functioning of courts, enforce contracts fairly and impartially, and protect property rights . . ." Alassane D. Ouattara, former IMF Deputy Managing Dir., to a Meeting of the Africa Studies Program of the Council on Foreign Relations, *Fostering Trade and Investment—A Vehicle to Accelerating Africa's Integration into the Global Economy* (Mar. 25, 1999), <http://www.imf.org/external/np/speeches/1999/032599.htm>.

10. See, e.g., Criminal Procedure Act, (1990) Cap. 80, § 287 (Nigeria).

11. Specifically, the Constitution provides:

In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality.

CONSTITUTION, art. 36 (1999) (Nigeria). For a general discussion of the concept of fair hearing in Nigeria, see Akin Olujinmi, *Fair Hearing in Nigeria: The Current State of the Law*, in ADMINISTRATION OF JUSTICE IN NIGERIA: ESSAYS IN HONOUR OF HON. JUSTICE MOHAMMED LAWAL UNIS, CON, GCON, THE CHIEF JUSTICE OF NIGERIA 1 (John Ademola Yakubu ed., 2000).

12. Fair trial rights do not necessarily begin and end with court proceedings. They attach whenever the legal process is set in motion. For example, in criminal trials, fair trial rights start with arrest, and continue until the final disposition of the case either at the court of first instance or by courts of appeal. See Criminal Procedure Act, (1990) Cap. 80 (Nigeria); Oluyemisi Bamgbose, *Women's Rights and the Nigerian Criminal Justice System: A Sorry Tale*, Paper presented at the 7th International Interdisciplinary Congress on Women, Tromsø, Norway (June 20–26, 1999), http://www.skk.uit.no/WW99/papers/Bamgbose_Oluyemisi.pdf.

13. Before arresting a person, the police must adhere to a minimal set of procedural standards. See CONSTITUTION, arts. 33–36 (1999) (Nigeria).

and a prohibition against *ex post facto* laws.¹⁴ The safeguards applicable during trials include the presumption of innocence,¹⁵ the right to confront and cross-examine witnesses,¹⁶ proof of guilt beyond a reasonable doubt,¹⁷ protection against self-incrimination,¹⁸ the right to counsel,¹⁹ the right to a public trial before an impartial and independent court²⁰ and the suppression of illegally obtained evidence.²¹ Post-trial safeguards grant an aggrieved party the right of appeal to a higher court²² and protection against double jeopardy.²³ Despite these lofty safeguards, the path to justice is strewn with social, cultural and institutional problems that make it exceedingly difficult, if not impossible, for citizens to realize the ideals of a fair trial.²⁴ In Nigeria, the troubling legacies of military rule, especially corruption, executive control and manipulation of the judiciary, continue to undermine the ability of courts to effectively secure fair trial rights.²⁵ These legacies create three major obstacles to a fair trial in Nigeria.

14. CONSTITUTION, art. 36(8) (1999) (Nigeria).

15. The Constitution provides, "Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty." *Id.* art. 36(5).

16. *Id.* art. 36(6)(d).

17. Section 138(1) of the Evidence Act provides that "if the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt." Evidence Act, (1990) Cap. 112, § 138(1) (Nigeria).

18. CONSTITUTION, art. 36(11) (1999) (Nigeria).

19. *Id.* art. 36(6)(c).

20. *Id.* art. 36(1), (3).

21. For example, confessions obtained by inducement, threat or promise are generally excluded. *See* Evidence Act, (1990) Cap. 112, § 28 (Nigeria).

22. The Constitution established a Court of Appeal as an intermediate court between the high court and the Supreme Court. In its appellate role, it ensures a fair trial by correcting errors of courts and tribunals below it. CONSTITUTION, arts. 237, 240 (1999) (Nigeria).

23. *Id.* art. 36(9).

24. Professor Adedokun Adeyemi identifies the following as the major obstacles to the administration of justice: inadequate funding for judicial institutions; poor and inadequate physical facilities; shortage of and obsolescence in equipment; shortage of and inadequate utilization of staff; inadequate or total lack of training; poor conditions of service; delay and congestion in courts; dishonest practices and corruption; culturally incompatible laws and procedures and lack of adequate information systems. Adedokun A. Adeyemi, *The Challenges of Administration of Justice in Nigeria For The Twenty-First Century*, in PERSPECTIVES IN LAW AND JUSTICE: ESSAYS IN HONOUR OF JUSTICE EZE OZOBUR 195, 196–204 (I.A. Umezulike & C.C. Nweze eds., 1996).

25. Late dictator Abacha's scathing indictment of the judiciary fairly reflected prevailing public sentiments about the judiciary. He stated while inaugurating a panel to investigate the judiciary:

The first, and by far the most debilitating, is corruption. Honest and impartial decision making, so vital to the credibility and effectiveness of the judiciary, is palpably absent in Nigeria.²⁶ The judiciary, which should “exemplify the nation’s best and most just virtues,”²⁷ now reflects the worst aspects of moral decadence in Nigeria. Some judges have succumbed to the despicable belief that amassing wealth matters more than anything else, including honor and integrity.²⁸ These dishonest judges subordinate their commitment to justice to the desire to amass wealth. Anyone who can pay or influence a judge’s judicial career can dictate the

The political crises which necessitated the re-entry of the Military do not absolve the Nigerian Judiciary. In the public eye, the Judiciary was neck-deep in the cross-current which sounded the death knell of the emerging Third Republic. The perception was unmistakable that the Judiciary do not [sic] rise above the conflicting partisan conflict, the Judiciary seemed to have embarked on an odyssey of self-ridicule which abridged its integrity and cast aspersion on its credibility.

Philip Nnaemeka-Agu, Retired Justice, Supreme Court of Nigeria, The Role of the National Judicial Council in the Administration of Justice Under the 1999 Constitution, Paper presented to All Nigeria Judges’ Conference 6 (Dec. 8–13, 2003) (on file with the *Brooklyn Journal of International Law*).

26. The Nigerian judiciary that admirably discharged its duties during the early post-independence years now shows signs of weakness, inadequacy and corruption. Because of the mutual benefits of corruption, the corrupt judge and the bribe giver have no interest in reporting the crime. Corruption only gets to the surface when one of the parties feels cheated or chooses to display an uncommon sense of duty and comes forward to report on corruption. It is therefore difficult to estimate the actual extent of judicial corruption. My familiarity with the Nigerian scene, discussions with my colleagues, and newspaper accounts all indicate that judicial corruption is endemic and pervasive.

27. A. Leon Higginbotham, Jr., *Racism in American and South African Courts: Similarities and Differences*, 65 N.Y.U. L. REV. 479, 483 (1990).

28. Dr. Maduagwu attributes the prevalence of corruption in Nigeria to the prevailing culture that condones and even encourages corruption:

Corruption thrives in Nigeria because the society sanctions it. No Nigerian official would be ashamed, let alone condemned by his people, because he or she is accused of being corrupt. The same applies to outright stealing of government or public money or property. On the contrary, the official will be hailed as being smart. He would be adored as having ‘made it’; he is ‘a successful man’. And any government official or politician who is in a position to enrich himself corruptly but failed to do so will, in fact, be ostracised by his people upon leaving office. He would be regarded as a fool, or selfish, or both.

M.O. Maduagwu, *Nigeria in Search of Political Culture: The Political Class, Corruption and Democratization*, in *CORRUPTION AND DEMOCRATIZATION IN NIGERIA* 13, 18–19 (Alex Gboyega ed., 1996).

court's decision.²⁹ Trials often turn into charades where powerful litigants, aided by unethical lawyers and faithless judges, manipulate the judicial process to achieve preordained outcomes.³⁰ Citizens, lawyers and even eminent jurists now openly acknowledge that the judicial system is no longer a realistic forum for obtaining justice, especially for citizens who lack the resources and social connections to influence the outcome of judicial proceedings.³¹

29. In a system festooned with corruption, justice is often determined by the depth of a party's willingness to take advantage of his or her status in the society. A corrupt judge is driven by the desire to amass wealth and is willing to bend the law to accommodate complaining parties who grease his palm. Nigerian Supreme Court Justice Niki Tobi aptly described the mindset and modus operandi of a corrupt judge:

[A] judge who is corrupt is the greatest enemy of the judicial process. A corrupt judge is blind to the truth. He is incapable of searching for the truth in the judicial process. His mind is diseased and he is incapable of doing justice in the matter before him. He likes the party who has given him the bribe. He hates the party who has not given him the bribe. He therefore, gives judgment to the party he likes and gives judgment against the party he hates.

Niki Tobi, *Code of Conduct and Professional Ethics for Judicial Officers in Nigeria*, in *JUDICIAL EXCELLENCE: ESSAYS IN HONOR OF HON. JUSTICE ANTHONY I. IGUH* 37, 82–83 (J. O. Irukwu & I. A. Umezulike eds., 2004).

30. Alhaji Nahu Ribadu, the Chairman of the Economic and Financial Crimes Commission, a body charged with investigating and prosecuting economic and financial crimes in Nigeria, recently directed his ire at judges and lawyers who help the rich to escape accountability. He stated:

[A]ny time we commence full prosecution, lawyers to these 419 kingpins will use the court to stall prosecution It is only the poor that go to prison. It is high time we brought the rich who are criminals to justice. They have money and use their money to buy their way out. Today, there is no rich man in Nigerian prisons.

Josephine Lohor & Victor Efeizomor, *419: Judiciary Used to Frustrate Trial, Says Ribadu*, *THIS DAY* (Nig.), Oct. 29, 2003.

31. Several organizations, including Human Rights Watch, Amnesty International and the U.S. State Department have documented problems of fair trial rights in Nigeria. The U.S. State Department Country Report on Human Rights Practices 2003 found:

[T]he judicial branch remained susceptible to executive and legislative branch pressure The judiciary was influenced by political leaders particularly at the state and local levels. Understaffing, underfunding, inefficiency, and corruption continued to prevent the judiciary from functioning adequately. Citizens encountered long delays and frequent requests from judicial officials for small bribes to expedite cases.

U.S. DEP'T OF STATE, NIGERIA: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (2003); FREEDOM HOUSE, *Nigeria*, in *FREEDOM IN THE WORLD 2004: THE ANNUAL SURVEY OF*

While corruption is the first major obstacle to a fair trial, the second is the attitude of the government toward the judiciary.³² Hubristic politicians who cavil at the notion of judicial independence continue to display the capacity and the inclination to manipulate and control the judiciary.³³ Most politicians are neither committed to the establishment of a strong, virile and independent judiciary, nor do they believe that the judiciary should have the power to review legislative and executive decisions.³⁴ Some elected officials have a distorted view of the judiciary as an exten-

POLITICAL RIGHTS AND CIVIL LIBERTIES 415, 417 (2004), available at <http://www.freedomhouse.org/research/freeworld/2004/countryratings/Nigeria.htm> (“The judiciary is subject to political interference and is hampered by corruption and inefficiency.”).

32. The judiciary in post-independent states has had a troubled relationship with the government. See, e.g., Comment, *The Judiciary: The Pain of Transition*, SUNDAY MIRROR (Zimb.), July 23, 2002. African governments, whether military or civilian, have been ambivalent toward the judiciary. They need the judiciary to act as a stabilizing force in enforcing law and order and yet at the same time resent the judiciary for checking executive excesses. See, e.g., Philip Ogunmade, *Democracy: Rule of Law Still a Mirage*, THIS DAY (Nig.), Aug. 25, 2005, 2005 WLNR 13465952. Ghanaian Professor Amissah’s characterization of the relationship between the government and the judiciary in most African states is still relevant today:

It would seem that on the whole governments in the newly independent countries hanker after the simplicity of the colonial arrangement, with the primary aim of the courts being to uphold the power of the state, enforce its laws and provide stability. The courts’ function of protection of the individual from the abuse of power is relatively new and less well appreciated In any event until the people develop values to guide their court, other than that of upholding state power, the constitutional enactment of the separation of powers is bound to remain largely a declaration of intent.

A.N.E. Amissah, *The Role of the Judiciary in the Governmental Process: Ghana’s Experience*, 13 AFR. L. STUD. 4, 21 (1976).

33. See *infra* Part II.C.

34. CENT. AND EAST EUR. LAW INITIATIVE (CEELI), JUDICIAL INDEPENDENCE: A CONCEPT PAPER (1999). This attitude is not unique to Nigeria. The concept of judicial independence is often a controversial issue in most democracies. See generally JUDICIAL INDEPENDENCE IN THE AGE OF DEMOCRACY: CRITICAL PERSPECTIVES FROM AROUND THE WORLD (Peter Russell & David O’Brien eds., 1999); for an examination of judicial independence in England, see Robert Stevens, *The Independence of the Judiciary: The Case of England*, 72 S. CAL. L. REV. 597 (1999); for a discussion of the concept of judicial independence in South Africa, see J. Nnamdi Aduba, *Independence of the Judiciary under the 1999 Constitution: A Critique*, in JUSTICE IN THE JUDICIAL PROCESS: ESSAYS IN HONOR OF JUSTICE EUGENE UBAEZONU 390 (C.C. Nweze ed., 2002); Lovemore Madhuku, *Constitutional Protection of the Independence of the Judiciary: A Survey of the Position in South Africa*, 46 J. AFR. L. 232 (2002).

sion of the executive branch of government.³⁵ This mindset encourages attempts to control and manipulate the judiciary and to turn judges into “pliable instruments of state power.”³⁶ The pervasive influence of the executive, its powers of retaliation and ability to advance or hamper a judge’s career³⁷ make it difficult for judges to adjudicate disputes without fear or favor as required by their oath.³⁸ Judges concerned about their careers and even their personal safety “temper justice with self preservation.”³⁹

The third impediment to a fair trial right is the attitude of the public toward the judiciary.⁴⁰ In Nigeria, there exists a perceptible popular distrust of the judiciary’s integrity and its ability to protect civil rights and constrain the excesses of elected officials.⁴¹ For most Nigerians, the judicial process is nothing more than an auction in which justice goes to the highest bidder.⁴² Convinced that judges decide cases on the basis of con-

35. CEELI, *supra* note 34, at § II.H (“In many countries undergoing legal reform, a legacy of subordination of the judiciary to state interests and to the party apparatus, and exploitation of the judiciary by the state as an official device to validate prerogatives, continues to cloud how judges and court systems are perceived.”).

36. Okechukwu Oko, *Consolidating Democracy on a Troubled Continent: A Challenge for Lawyers in Africa*, 33 VAND. J. TRANSNAT’L L. 573, 637 (2000). The idea of using the judiciary as a tool of the government, developed during the military rule, is still deeply embedded in the culture of politicians. *Id.*

37. See Madhuku, *supra* note 34, at 234.

38. Upon appointment, a judicial oath is administered, wherein the new judge swears *inter alia* to “discharge his duties, and perform his functions honestly, to the best of his ability . . . and not allow his personal interest to influence his official conduct . . . or decisions.” CONSTITUTION, 7th sched. (1999) (Nigeria).

39. Pamela S. Karlan, *Two Concepts of Judicial Independence*, 72 S. CAL. L. REV. 535, 540 (1999).

40. President Obasanjo correctly captured the public disdain for the judiciary in an address to the 1999 All Nigeria Judges’ Conference: “[T]here is prevailing disenchantment of the populace with the judiciary—an attitude which has arisen out of the lapses or failings of the judiciary.” Chief Olusegun Obasanjo, President, Nigeria, Address at 1999 All Nigeria Judges’ Conference (Nov. 1, 1999), in 1999 ALL NIGERIA JUDGES’ CONFERENCE, *supra* note 2, at xxxviii.

41. President Obasanjo, in a paper delivered at Berlin to mark the 10th Anniversary Celebration of Transparency International, correctly identified the public attitude towards the judiciary. He stated, “[T]he persisting perception of the public is that it is still battling with the widespread corruption that made prosecution and the judicial process less than effective under the military.” Olusegun Obasanjo, President, Republic of Nigeria, Nigeria: From Pond of Corruption to Island of Integrity, Address at the 10th Anniversary Celebration of Transparency International, Berlin 7 (Nov. 7, 2003) (transcript available at <http://www.dawodu.com/obas35.htm>).

42. A. J. Owonikoko, *Law and Human Rights: Tackling Corruption in the Administration of Justice*, VANGUARD (Nig.), Apr. 3, 2003, available at Westlaw: Africa News

nections and gratification without regard to the legal merits of the case, citizens seek to influence the outcome of cases either by “settling the judge,”⁴³ or intimidating judicial officers.⁴⁴ Far worse, negative perceptions about the justice system encourage citizens to resort to violent, extralegal and possibly criminal practices to secure their rights.⁴⁵ Popular distrust of the judiciary has fueled needless attacks on the integrity and the institution of the judiciary.⁴⁶

Rights guaranteed by the constitution mean nothing unless they are enforced by fair, impartial, independent and good judges.⁴⁷ The Nigerian

database (“Such perception makes the average Nigerian believe that the judiciary is corrupt, and so they expect that corruption is part of the pricing component of our justice system.”).

43. Settlement is a euphemism for bribery. In most parts of the country, for example, citizens do not have faith in the justice system and are less inclined to resolve conflicts through the courts. Those who go to court feel the need to engage in corrupt practices like bribery or intimidation to level the playing field. *See generally* Francis A. Okongwu, *Nigeria’s Judiciary Requires Sanitation*, DAILY CHAMPION (Nig.), July 13, 2004, *available at* Westlaw: Africa News database.

44. *See infra* Part II.B.

45. Mary Ellen Keith, *Judicial Discipline: Drawing the Line Between Confidentiality and Public Information*, 41 S. TEX. L. REV. 1399, 1399 (2000) (“Lack of confidence in the judiciary can grow into a critical mass meltdown, shifting societal stability into anarchy.”).

46. *See, for example,* a concerned layman’s appreciation of the problems of justice in Nigeria as stated by Francis Okongwu, a Lagos-based pharmacist:

[T]he judiciary allowed itself to be adulterated by the politics of past military democracy with the mentality of settlement, corruption, nepotism, man-know-man, and thus lost the freedom to dispense justice. Today justice is so expensive beyond the reach of the common man. In fact, it is a cash and carry affair. Interlocutory injunctions are issued with reckless abandon, black market judgements dispensed with ease, kangaroo courts sit and deliver kangaroo judgements, even at night. The Judiciary has lost the will power to resist pressure from [the] political class

Okongwu, *supra* note 43.

47. I adopt retired Nigerian Supreme Court Justice Nnaemeka-Agu’s definition of a good judge:

“[A] judge” means “a good, Judge”, that is a Judge who, by good general and professional education, experience and expertise exhibits on continuing bases, a *sound* exposition of the law; who has such a high index of good character that he is capable of, and seen as, resolving the issues in controversy coming before him with absolute sense of justice—impartially and uninfluenced by bias or prejudice or any extraneous considerations.

judiciary must be fundamentally reformed both to better protect citizens' rights and to preserve itself against institutional contempt in the eyes of an increasingly cynical Nigerian public. Public contempt for the justice system can be overcome only by providing fair and efficient machinery for the administration of justice.⁴⁸ A fair, efficient and accessible judicial system is necessary not just to protect citizens' rights but also to consolidate and deepen the democratic process.⁴⁹ The judiciary must therefore be staffed by competent and honest judges who have the resources and sufficient independence to carry out the Nation's important tasks of adjudicating disputes, protecting legal rights, and reviewing executive and legislative decisions.⁵⁰

This paper examines the institutional and personal problems that disable the judiciary from meaningfully assisting citizens to secure the right

P. Nnaemeka-Agu, *The Position and Role of A Judge in A Democratic State*, in JUSTICE IN THE JUDICIAL PROCESS, *supra* note 34, at 230.

48. The Attorney General of the Federation, Chief Akinlolu Olujinmi, SAN, underscored the relationship between justice and democracy:

Justice is the ligament, which holds civilized society together. Any threat to the administration of justice is a threat to the corporate existence of the society. The essence of democracy is justice. Every democracy ought therefore to strive to provide access to justice for all and protect the rights of the citizenry. The destiny of our country lies in making the system of justice work smoothly and efficiently.

Akinlolu Olujinmi, *Agenda for Justice Sector Reform*, THIS DAY (Nig.), June 8, 2004, <http://www.thisdayonline.com/archive/2003/08/26/20030826law07.html>.

49. See E.O. Ayoola, *The Importance of the Rule of Law in Sustaining Democracy and Ensuring Good Governance*, in ALL NIGERIA JUDGES' CONFERENCE 2001, *supra* note 3, at 47, 58. Justice Ayoola, retired Justice of the Nigerian Supreme Court, succinctly described the values of a well-functioning judiciary to the democratic process:

Fundamental to strengthening the cause of democracy and good governance is an efficient judicial system. Democracy will be a sham; (i) if the implication of the fundamental principles indicated in the constitution cannot readily be determined in the contemporary or practical of constitutional adjudication; (ii) if the power of judicial review of exercise of powers cannot readily be invoked either because of the inherent weakness of the system or because of the procedural obstacles to access of justice; or (iii) if there is widespread societal distrust of the judicial process because of delay, inefficiency of the process, lack of transparency of the operators of the system and other like reasons.

Id.

50. See CONSTITUTION, art. 6 (1999) (Nigeria).

to a fair trial.⁵¹ This paper is divided into two parts. Part II examines the problems that disable the judiciary from fairly and efficiently dispensing justice. These problems require urgent attention and include judicial corruption, intimidation and manipulation of judges, delays, and inadequate infrastructure.⁵² Part III examines the changes necessary to make the judiciary virile, efficient and independent. It demonstrates that the culture and conditions that make the judiciary efficient, namely judicial independence, honesty and public confidence,⁵³ are at best extremely tenuous.⁵⁴ To give meaning to the constitutional requirements of a fair trial and regain public confidence in the justice system, Nigeria must cultivate and entrench the practices that undergird public confidence in the judiciary.⁵⁵ The problems with the judiciary are systemic, deeply rooted and

51. In writing this paper, I have drawn on my background and experience as a law teacher, a practicing lawyer in Nigeria and as a human rights activist on the front lines of the struggle for justice in Nigeria.

52. See Ebun-Olu Adegboruwa, *The State of Law and Legal Practice in Nigeria 2*, VANGUARD (Nig.), Sept. 19, 2003, available at Westlaw: Africa News database.

53. Aharon Barak, *Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy*, 116 HARV. L. REV. 16, 53 (2002) (stating that while the preconditions that must exist in a legal system to realize the proper judicial role vary from system to system, independence of the judiciary, judicial objectivity, and public confidence in the judiciary are among the preconditions common to all democratic systems of law).

54. Joseph Otteh, Executive Director of Access to Justice, a non-governmental organization, stated:

We understand that for meaningful reform to take place, the judiciary needed a full turn around maintenance. As it were, at the time of transition from military rule, every independent report on the Nigerian judiciary spoke eloquently and uniformly of the inundating prevalence within the justice system of corruption, unethical and unprofessional behavior, mediocrity, nepotism, incompetence, abuse of office, perversion of justice and a host of other weaknesses that clearly eroded the moral authority and functional integrity of Nigeria's justice delivery system.

Andrew Ahiente, *Government Urged to Reform Judiciary*, THIS DAY (Nig.), Nov. 7, 2003.

55. The meaning of public confidence in the justice system was eloquently described by Chief Justice Murray Gleeson of Australia:

Confidence in the judiciary does not require a belief that all judicial decisions are wise, or all judicial behavior impeccable, any more than confidence in representative democracy requires a belief that all politicians are enlightened and concerned for the public welfare. What it requires, however, is a satisfaction that the justice system is based upon values of independence, impartiality, integrity, and professionalism and that, within the limits of ordinary human frailty, the system pursues those values faithfully.

intertwined; cosmetic and superficial changes will not work.⁵⁶ There must be a wholesale restructuring of the justice system to cleanse the judiciary of corruption and free the judiciary from the overweening grip of the executive and other powerful Nigerians.⁵⁷ Secondly, I argue that constitutional provisions designed to guarantee judicial independence are

Murray Gleeson, Chief Justice of Australia, Public Confidence in the Judiciary, Judicial Conference of Australia, Launceston (Apr. 27, 2002) (transcript available at http://www.hcourt.gov.au/speeches/cj/cj_ica.htm).

56. The African Governors of the World Bank urged African countries to embark upon a comprehensive reform of their legal system, noting:

It is clear that "piecemeal" reform of the legal system often does not yield the desired result. When an entire legal system has broken down, it is not enough to reform only a limited area of the law, such as banking laws, for example, without confronting the weaknesses in law enforcement in general. Modern banking laws are of little use when the lawyers, courts, and other legal institutions responsible for implementing them lack the capacity to do so effectively. What is required is a broader strategy of reform which addresses the legal system as a whole.

Douglas Webb, *Legal and Institutional Reform Strategy and Implementation: A World Bank Perspective*, 30 LAW & POL'Y INT'L BUS. 161, 161–62 (1999).

57. See, e.g., Thompson Ayodele, *Right is Might or Might is Right*, IPPA NIGERIA NEWSLETTER (Inst. of Pub. Policy Analysis, Lagos, Nig.), Jan. 27–Feb. 10, 2004. The ultimate goal should be to meet the standards of judicial independence stated by the International Bar Association:

- (a) Individual judges should enjoy personal independence and substantive independence.
- (b) Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control.
- (c) Substantive independence means that in the discharge of his/her judicial function a judge is subject to nothing but the law and the commands of his/her conscience.

IBA MINIMUM STANDARDS OF JUDICIAL INDEPENDENCE § A(1) (Int'l Bar Ass'n 1982), reprinted in JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE 388 (Shetreet & Deschênes eds., 1985). The First Federal Integrity Meeting for Chief Judges, held by Chief Justice of Nigeria and UNODC in 2001, recommended that judicial reform efforts focus primarily on: (1) access to justice, (2) timeliness and quality of justice, including strengthening coordination and cooperation across the criminal justice system, (3) public trust, and (4) the effectiveness and credibility of the complaints system. U.N. Office on Drugs and Crime [UNODC], Global Programme Against Corruption, *Assessment of Justice System Integrity and Capacity in Three Nigerian States* § V.D. (May 2004), available at http://www.unodc.org/pdf/crime/corruption/corruption_nigeria_justice_sector_assessment_2004-05.pdf.

in and of themselves ultimately inadequate to ensure both personal and institutional independence of the judiciary.⁵⁸ More needs to be done to shield and protect judges from the imperious grip of politicians and elected officials.⁵⁹

These necessary changes will help secure the right to a fair trial and bolster public confidence in the justice system.⁶⁰ They will also give new hope to citizens who have become despondent and hence corrupt because of the failures of the judiciary.⁶¹ The appropriate reform measures may also help the judiciary to regain its prestige and ultimately build a strong foundation for the rule of law.⁶²

58. M.A. Ikhariale, *The Independence of the Judiciary Under the Third Republican Constitution of Nigeria*, 34 J. AFR. L. 145, 147 (1990) (“[E]ven with the tight constitutional guarantee given the judiciary the political arm of the government still occasionally manages to exercise influence . . . making it doubtful if indeed Nigeria really possesses a constitutional system that ensures the insulation and independence of the judiciary from negative manipulation . . .”).

59. See Berry F.C. Hsu, *Judicial Independence Under the Basic Law*, 34 H.K. L.J. 279, 282 (2004) (arguing that the judiciary should be given power to sustain its own existence and repel interference from other branches of government).

60. The effectiveness of the judiciary depends to a large extent on the public’s confidence in the ability of judges to fairly and impartially administer justice. See Alex B. Long, “*Stop Me Before I Vote For This Judge Again*”: *Judicial Conduct Organizations, Judicial Accountability, and the Disciplining of Elected Judges*, 106 W. VA. L. REV. 1, 8–9 (2003) (“The continued vitality of the judiciary depends in no small measure on the public’s confidence that judges are ethical and that justice is being dispensed fairly and impartially.”); *Baker v. Carr*, 369 U.S. 186, 267 (1962) (Frankfurter, J., dissenting) (“The Court’s authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction.”).

61. T. Leigh Anenson, *For Whom the Bell Tolls . . . Judicial Selection by Election in Latin America*, 4 SW. J. L. & TRADE AM. 261, 262 (1997) (arguing that a well-functioning and honest judiciary will not only reinforce the rule of law, but will become the very centerpiece for democracy).

62. Swithin Munyantwali, the Executive Director, International Law Institute Uganda stated:

A country may have the best roads, hospitals, a high level of environmental awareness and implementation of related policies as well as the best utilities network. If her judges are dishonest, court registries clogged with cases with no ADR mechanisms or commercial courts; if her lawyers are unethical and the Bench and the Bar are not up-to-date with the latest legal developments; if her private sector is driven by out-dated commercial laws, there will be no rule of law.

SWITHIN J. MUNYANTWALI, *THE ROLE OF LEGAL AND JUDICIAL REFORM IN PROMOTING THE RULE OF LAW AND GOOD GOVERNANCE IN AFRICA* 9 (2003).

II. PROBLEMS OF THE JUDICIARY

A. *Judicial Corruption*

Nigeria is by all accounts a corrupt country.⁶³ Recent surveys of nations by Transparency International, a Berlin-based nonprofit organization, rank Nigeria among the most corrupt countries in the world.⁶⁴ The alarming levels of corruption in Nigerian society apparently moved the framers of the 1999 Constitution to declare that “the state shall abolish all corrupt practices and abuse of office.”⁶⁵ Unfortunately, the numerous incidents of corruption are not restricted to politicians and government officials, but extend to the judiciary as well.⁶⁶ Nigerian judges and members of its society have not been able to rise above the corrupt environ-

63. “Corruption in Nigeria has *passed* the alarming and *entered* the fatal stage and Nigeria will die if we keep pretending that she is only slightly indisposed.” CHINUA ACHEBE, *THE TROUBLE WITH NIGERIA* 38 (1984) (emphasis in original). For a detailed study of corruption in Nigeria, see Okechukwu Oko, *Subverting the Scourge of Corruption in Nigeria: A Reform Prospectus*, 34 N.Y.U. J. INT’L L. & POL. 397 (2002); JULIUS O. IHONVBERE & TIMOTHY SHAW, *ILLUSIONS OF POWER: NIGERIA IN TRANSITION* 151 (1998) (“Corruption has today permeated all aspects of Nigerian society and public affairs; and private business can hardly make progress without indulging in some corrupt practices. In government, the judiciary, the universities and other educational institutions, the police and the army . . . corruption has become the main engine of activity.”).

64. In the world corruption ranking prepared annually by Transparency International, Nigeria has ranked among the most corrupt countries in the world. In 1999, Nigeria was ranked the second most corrupt country in the world, edged out by Cameroon. Transparency International Corruption Perceptions Index (1999), <http://www.transparency.org/cpi/1999/cpi1999.html>. In 2000, it was ranked the most corrupt country in the world. Transparency International Corruption Perceptions Index (2000), <http://www.transparency.org/cpi/2000/cpi2000.html>. In 2001, it fell again to the second most corrupt country in the world. Transparency International Corruption Perceptions Index (2001), <http://www.transparency.org/cpi/2001/cpi2001.html>. Recently, the executive director of the UN Office on Drugs and Crime, Antonio Maria Costa, speaking at the United Nations Anti-Corruption Conference in Mexico, revealed that Nigeria had lost more than five billion dollars in the last few years to corrupt practices. Iyefu Adoba, *Nigeria Loses \$5bn to Corruption*, *THIS DAY* (Nig.), Dec. 12, 2003.

65. CONSTITUTION, art. 15(5) (1999) (Nigeria).

66. Nigeria does not keep accurate data on judicial corruption. See Maduagwu, *supra* note 28, at 13, 18–19 (discussing the prevailing culture of corruption). See also UNODC, Field Project, *Strengthening Judicial Integrity and Capacity*, (Aug. 29, 2005), <http://www.unodc.org/nigeria/en/judicialintegrity.html>. My views, therefore, are based on reports of studies, research, and newspaper accounts of judicial corruption in Nigeria. Several studies have documented in detail corruption within the judiciary and the impact of corruption on the administration of justice. See, e.g., UNODC, *supra* note 57.

ment in which they live and operate.⁶⁷ Though democracies all over the world deal with judicial corruption,⁶⁸ slacking moral values, mounting economic hardships and ineffective detection and enforcement mechanisms have turned this aberrant conduct into a full-blown national plague.⁶⁹ Judicial corruption—abuse of judicial power for private gain—is no longer an aberration or isolated conduct.⁷⁰ It is disturbingly a dominant and recurrent feature of the Nigerian judicial system.⁷¹ Judicial corruption often involves a vicious dynamic in which judges trade in justice for favors and personal gains.⁷² Judges tend to do what most Nigerian public servants do, use their official positions to enhance their incomes and power in society.⁷³ Every aspect of the judicial process has succumbed to the scourge of corruption despite the provisions of the *Code of Conduct for Judicial Officers*,⁷⁴ and criminal laws which demand that judicial officers refrain from engaging in unethical and corrupt behavior.⁷⁵

Corruption seems to be the systemic disease of the Nigerian judiciary, and has generated complaints from all segments of the society, including

67. Judges are trapped in a culture that ranks wealth over honor and integrity. *See* Maduagwu, *supra* note 28, at 18–19. It is, therefore, not surprising that most of them seem unable to resist the urge to amass wealth even if it means engaging in corrupt and unethical practices.

68. *See, e.g.*, MAX BOOT, *OUT OF ORDER: ARROGANCE, CORRUPTION, AND INCOMPETENCE ON THE BENCH* (Basic Books 1998) (1969) (detailing instances of corruption and abuse of judicial powers in the United States).

69. U.S. DEP'T OF STATE, *supra* note 31, § 1(e) (reporting that “there was a widespread perception that judges easily were bribed or ‘settled,’ and that litigants could not rely on the courts to render impartial judgments Judges frequently failed to appear for trials, often because they were pursuing other means of income.”).

70. Petter Langseth, *Judicial Integrity and its Capacity to Enhance the Public Interest* 20 (2002), <http://www.unodc.org/pdf/crime/gpacpublications/cicp8.pdf> (describing judicial corruption as the use of adjudicational authority for the private benefit of court personnel in particular and/or public officials in general). Judicial corruption is not limited to giving and receiving bribes. It includes the use of official position to gain an advantage or to secure a benefit. *See* U.S. DEP'T OF STATE, *supra* note 31, § 1(e) (discussing the scope of judicial corruption).

71. P.O.E. BASSEY, *THE NIGERIAN JUDICIARY: THE DEPARTING GLORY* 38 (2000).

72. Tobi, *supra* note 29, at 82.

73. *See* Oko, *supra* note 63 (describing how every aspect of Nigerian society has succumbed to the Scourge of Corruption).

74. Concerned about the prevalence of unethical practices within the judiciary, the National Judicial Institute led by the Chief Justice of Nigeria introduced a Code of Conduct for Judicial Officers in 1998. Tobi, *supra* note 29.

75. *See* Criminal Code Act, (1990) Cap. 77, § 98 (Nigeria); Corrupt Practices and Other Related Offenses Act, (2000) §§ 8–9 (Nigeria).

social commentators,⁷⁶ lawyers,⁷⁷ judges,⁷⁸ and even the President.⁷⁹ A study conducted in 2002 by A.J. Owonikoko reported that since 1999, more than fifty-five cases of corrupt practices⁸⁰ have been processed by the National Judicial Council, the body charged with enforcing discipline in the judiciary.⁸¹ Many more allegations of judicial corruption are currently working their way through the National Judicial Council.⁸²

76. Owonikoko, *supra* note 42; Okongwu, *supra* note 43.

77. Joseph Chu'ma Otteh, *Restoring the Nigerian Judiciary to its Pride of Place*, THIS DAY (Nig.), Apr. 13, 2004.

78. See Lillian Okenwa, *Corruption in the Judiciary Threatens Democracy*, THIS DAY (Nig.), Jan. 25, 2003.

79. President Obasanjo recently stated: "The process [of corruption] was accompanied . . . by the intimidation of the judiciary, the subversion of due process, the manipulation of existing laws and regulations, the suffocation of civil society, and the containment of democratic values and institutions." Obasanjo, *supra* note 41, at 1.

80. Owonikoko, *supra* note 42.

81. The National Judicial Council is a body established under the Constitution of the Federal Republic of Nigeria to advise on the appointment and removal of judicial officers. CONSTITUTION, 3d sched., pt. 1, § 20 (1999) (Nigeria). It consists of the Chief Justice of Nigeria who serves as the Chairman; the next most senior Justice of the Supreme Court who is the Deputy Chairman; the President of the Court of Appeal, five retired Justices of the Supreme Court or the Court of Appeal selected by the Chief Justice of Nigeria; the Chief Judge of the Federal High Court; five Chief Judges appointed by the Chief Justice from among the Chief Judges of the States and of the High Court of the Federal Capital Territory Abuja serving for terms of two years; one Grand Kadi appointed by the Chief Justice of Nigeria from among the Grand Kadis of the Sharia Courts of Appeal for terms of two years; one President of the Customary Court of Appeal appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal for terms of two years; five members of the Nigerian Bar Association who have practiced for at least fifteen years, with at least one being a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association for terms of two years and subject to reappointment; and two non-lawyers, who in the opinion of the Chief Justice are of unquestionable integrity. *Id.* The National Judicial Council exercises disciplinary control over both federal and state judicial officers. CONSTITUTION, 3d sched., pt. 1, § 21(b), (d) (1999) (Nigeria). The individual states' Judicial Service Committees exercise disciplinary control of the magistrates and other officials of inferior courts of record. See, e.g., CONSTITUTION, 3d sched., pt. 2, § 6(c), (d) (1999) (Nigeria). For a detailed analysis of the structure and functions of the National Judicial Council, see generally Nnaemeka-Agu, *supra* note 25.

82. Lillian Okenwa, *Election Petition: NJC Probes Appeal Court Judges*, THIS DAY (Nig.), June 7, 2004, <http://www.thisdayonline.com/archive/2004/06/07/20040607news02.html> ("The National Judicial Council has commenced investigation into the allegation of perversion of justice and unethical conduct levelled [sic] against the President of the Court of Appeal, Justice Umaru Abdullahi, seven other Justices of the court, and the Registrar, Enugu Court of Appeal."); Kola & Oladunjoye Aramide, *Anambra: Judicial Body*

Recently, the president of Nigeria, acting on the recommendations of the National Judicial Council, confirmed the compulsory retirement and dismissal of two judges of the Federal High Court, Justices Samuel Wilson Egbo-Egbo⁸³ and C.P.N. Senlong.⁸⁴ Justice Egbo-Egbo of the Federal High Court, Abuja, issued a string of *ex parte* orders under questionable circumstances and clearly without jurisdiction.⁸⁵ Each manifestly illegal order made without jurisdiction reinforced the public's already abrasive contempt for the judiciary.⁸⁶ Disturbingly, Justice Senlong, one of the most senior judges of the Federal High Court, was implicated in a bribery scandal that involved the unlawful influencing of other judges carrying out judicial functions.⁸⁷ Judge Senlong was quickly suspended and ultimately dismissed from the bench for what the National Judicial Council described as "the despicable role he played in attempting to influence the decision of an election tribunal."⁸⁸ Judge M.M. Adamu, chairman of the tribunal and a judge of the Plateau State High Court, was also dismissed for receiving a bribe.⁸⁹

Probes Enugu Judge, THIS DAY (Nig.), Jan. 20, 2004, <http://www.thisdayonline.com/archive/2004/01/20/20040120news03.html> (reporting that the Vice Chair-man of the National Judicial Council, Supreme Court Justice Belgore, informed the press that "the council has initiated [an] investigation into the complaint against Justice Stanley Nnaji . . ."); Lillian Okenwa, *Supreme Court Justices, Tribunal Members Under Probe*, THIS DAY (Nig.), Apr. 21, 2004, <http://www.thisdayonline.com/archive/2004/04/21/20040421news01.html> (reporting that the Supreme Court invited Interpol to investigate allegations by Derivation Front, a non-governmental organization, that some Justices of the Supreme Court collected a five billion Naira bribe from one of the parties in a case involving the governor of Delta State).

83. Lillian Okenwa, *Justice Egbo-Egbo Retired*, THIS DAY (Nig.), Jan. 23, 2004, <http://www.thisdayonline.com/archive/2004/01/23/20040123news02.html>.

84. Lemmy Ughogbe, Chinyere Amalu & Ise-Oluwa Ige, *Obasanjo Okays Dismissal of Federal High Court Judge*, VANGUARD (Nig.), Feb. 26, 2004, <http://www.news.biafranigeria.com/archive/2004/feb/26/0053.html>.

85. Judge Egbo-Egbo issued an *ex parte* order restraining the governor of Anambra State from exercising his official duties. Okenwa, *supra* note 83. Judge Egbo-Egbo had earlier issued an order compelling the Independent Electoral Commission to declare the election result in favor of the petitioner. The judge issued the order fully aware of section 285(1) of the Constitution which vests jurisdiction in election related matters in the Election Tribunal. *Id.* Also, the judge issued an order barring the Senate President Anyim Pius Anyim and the Speaker of the House of Representatives Ghali Umar Na' Abba from considering a bill currently before the National Assembly. *Id.*

86. See Otteh, *supra* note 77 (describing the lack of public trust in the judiciary).

87. Ughogbe, et al., *supra* note 84.

88. *Nigerian Government Dismisses Three Judges Over Corruption*, AGENCE FRANCE PRESSE, Mar. 15, 2004, available at Westlaw: Africa News database.

89. *Id.*

At the state high courts where most of the cases are adjudicated, judicial corruption is often far worse.⁹⁰ Judicial corruption has devalued and debased society's most fundamental mechanism for conflict resolution.⁹¹ That so many judges are willing to ignore their oath of office and distort the legal process for personal and monetary gain remains one of the most pernicious impediments to a fair trial in Nigeria.⁹² Far too often, the outcome of a case depends not on the merits and strength of the case but on

90. See U.S. DEP'T OF STATE, *supra* note 31, § 1(e). For an account of corruption in state courts, see, for example, *Nigeria; Rotten Judges*, TEMPO (Nig.), Aug. 23, 2000, available at Westlaw: Africa News database. For example, the National Judicial Council suspended Judge Stanley Nnaji of the Enugu State High Court on charges of abuse of office for issuing an order that exceeded his jurisdiction and in violation of the Constitution. Lillian Okenwa, *NJC Suspends Enugu Court Judge Over Ngige*, THIS DAY (Nig.), Mar. 24, 2004, <http://www.thisdayonline.com/archive/2004/03/24/20040324news02.html>. Additionally, the Chief Judge of Plateau State was removed following allegations of impropriety leveled against him by the state branch of the Nigerian Bar Association. Funmi Peter-Omale, *Plateau Chief Judge Fired*, THIS DAY (Nig.), May 5, 2004, <http://www.thisdayonline.com/archive/2004/05/05/20040505news24.html>. The Chief Judge of Ebonyi state, Justice Edward Isuama, was removed in 2000 for corruption. The suit he filed at the Federal High Court, challenging his removal was dismissed for lack of jurisdiction. Chinedu Eze, *Court Confirms Ebonyi Chief Judge's Dismissal*, THIS DAY (Nig.), July 26, 2004, 2004 WLNR 7484036. The Abia State House of Assembly investigated allegations of corruption leveled against Justice K.O. Amah and recently passed a resolution calling for his immediate removal. *Law and Human Rights: Why Abia Chief Judge Should Be Removed—Abia State House of Assembly (5)*, VANGUARD (Nig.), Apr. 30, 2004, 2004 WLNR 7125634.

91. A United Nations study found that "corruption in the judiciary may turn out to be more harmful [than in other branches of government] because it could undermine the credibility, efficiency, productivity, trust and confidence of the public in the judiciary as the epitome of integrity." UNODC, *supra* note 57, at 57.

92. The adverse impact of a compromised judge on the search for justice is well documented by legal scholars all over the world. See, e.g., Zou Keyuan, *Judicial Reform in China: Recent Developments and Future Prospects*, 36 INT'L LAW. 1039, 1057 (2002) ("Judicial corruption could turn the rule of law to a rule of individuals pursuing their private interests. It undermines public confidence in judicial organs' ability to implement laws and regulations, weakens the viability and effectiveness of the legal system and finally destabilizes the social order."). Kyle W. Davis states:

A judge who has been bribed, is under undue influence by government officials, or is acting in his or her own interests will not issue decisions grounded in law. The result of such decisions is that those with lawful rights and interests, rather than finding protection in the courts, see their rights being violated and their interests given to other people in an officially sanctioned proceeding.

Kyle W. Davis, *Purging the System: Recent Judicial Reforms in Kazakhstan*, 8 U.C. DAVIS J. INT'L L. & POL'Y 255, 268 (2002).

the whims and caprices of the presiding judge.⁹³ Justice Akanbi, retired President of the Court of Appeal, provided an insightful and useful analysis of judicial corruption and its effect on judges. He stated:

First is the problem of the corrupt judge. He is an afflicted person—just like the carrier of the AIDS virus or kleptomania. He suffers from a deadly disease. To him, justice is not his primary concern. No. What matters to him is the corrupt money that is turned over to him by his partners in crime. His conscience is warped. His judicial Oath means nothing, and so he hardly realises that he is an obstacle to justice according to law. In any case, by his nature, he is a stranger to justice, and if he is not caught in the act, he remains a perpetual obstacle in the way of justice until perhaps Nemesis catches up with him. Otherwise, he is unable to appreciate, let alone administer justice according to law.

Second is the dangerous and mischievous Judge who knows the law but prefers not to follow the law. He acts on whims and caprices. He assumes jurisdiction where there is none. He declines jurisdiction where there is. To him, judicial precedence means nothing. His motive is dangerous. His wig and gown are mere symbols of his ego. Again to this class of Judges, the judicial Oath is a mere cosmetic. Such a Judge is not only an obstacle to justice according to law, he is a danger to the entire Judiciary as an institution.⁹⁴

It is important to note that jury trials do not exist in Nigeria.⁹⁵ Judges therefore play far larger roles and exercise significant discretion over questions of law and fact.⁹⁶ For example, they make credibility assess-

93. See Malachy Uzend, *Casualties of Election Tribunals*, DAILY CHAMPION (Nig.), Mar. 5, 2004, 2004 WLNR 6915262. The Daily Champion reported:

[T]he NJC [National Judicial Council] . . . slammed its hammers on 104 judges for various offences, including misappropriation of court funds/maladministration; polarisation and politicisation of the judiciary; unproductive/ineptitude/low court work; abuse of office/misuse of ex parte orders; general and persistent reputation for corruption and unethical behavior embarrassing to the judiciary.

Id.

94. Muhammed Mustapha Akanbi, Retired President of the Court of Appeal, *The Many Obstacles of Justice According to Law*, Paper presented at the 1995 All Nigeria Judges' Conference, in *THE JUDICIARY AND THE CHALLENGES OF JUSTICE* 33, 42–43 (1996).

95. Though Nigeria inherited the British legal system, it did not inherit the jury trials. For a discussion of the legacy of English Law in Nigeria see JOHN OHIREIME ASEIN, *INTRODUCTION TO NIGERIAN LEGAL SYSTEM* 92–99 (1998).

96. See Nnaemeka-Agu, *supra* note 47, at 230–36 (“In a case involving protection of rights, [the judge] is the ultimate protector of rights; and in a case which raises issues of

ments of witnesses and determine the relevance or weight to be attached to the testimony of witnesses.⁹⁷ Given the enormity of powers enjoyed by judges, it is very easy for Nigerian judges to influence the outcome of cases.

Judicial corruption has forced citizens to view with caution the role of the courts as impartial dispensers of justice. Nigerians are increasingly moving away from the notion of courts as impartial dispensers of justice, to the model of “cash and carry” justice where judges ignore precedents and even the law to subvert justice.⁹⁸ Anyone who pays money or has the power to advance a judge’s career can dictate the judgment and sway court rulings and orders in his favor.⁹⁹ Citizens are instinctively suspicious of judges, and perhaps for good reasons.¹⁰⁰ Despite mounting public criticisms, the judiciary repeatedly demonstrates a tendency, espe-

conflicting rights of citizens, he can preserve or mar the stability of society by his decision.”).

97. These are normally powers exercised by jurors. *See, e.g.*, EDWARD J. DEVITT ET AL., FED. JURY PRACTICE AND INSTRUCTIONS: CIVIL AND CRIMINAL § 15.01 (4th ed. 1992) (“You, as jurors, are the sole and exclusive judges of the credibility of each of the witnesses called to testify in this case and only you determine the importance or the weight that their testimony deserves.”).

98. Okongwu, *supra* note 43 (describing justice in Nigeria as a “cash and carry” affair). *See* Owonikoko, *supra* note 42.

99. *See* U.S. DEP’T OF STATE, *supra* note 31, § 1(e). Motivations for deviating from judicial standards vary from judge to judge, but may generally involve any one or more of the following: “prospects of quick but unmerited career advancement; political appointment of a nominee of the judge; immediate financial gains; fear of job insecurity; or even membership of the same secret society with one of the parties to the dispute.” Deson Abali, Opinion, *Nigeria: Corruption in the Judiciary*, THIS DAY (Nig.), June 23, 2003, http://support.casals.com/aaaf1/new_busca.asp?ID_AAACControl=9579.

100. Retired Supreme Court Justice Chukwudifu Oputa eloquently states what the judiciary must do to regain public confidence:

To inspire public confidence in the judicial process, judges should not only be transparently impartial but also should be seen to be accentuated only by the principles of justice and fair play. The judge should therefore scrupulously eschew bias in any shape or form. It is not merely of some importance, but is of fundamental importance, that justice should not only be done but should manifestly and undoubtedly be seen to be done. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking—“the judge was biased.”

Chukwudifu Oputa, *Judicial Ethics and Canons of Judicial Conduct*, in JUSTICE IN THE JUDICIAL PROCESS, *supra* note 34, at 201.

cially in high profile and election cases, to lend its process to the service of the powerful, well-connected and wealthy citizens.¹⁰¹

The public perception of judicial corruption is so deeply embedded that citizens ascribe corrupt motives to honest judges who render decisions they find objectionable. In an atmosphere rendered already paranoid by stories of corruption, citizens believe every allegation of judicial corruption, however baseless or unfounded.¹⁰² Court decisions are often viewed by many as motivated by corrupt motives. When, for example, the Supreme Court ruled that the son of the former dictator Abacha was not a party to the murder of the late Alhaja Kudirat Abiola, rumor mills all over the country were agog that corrupt motives dictated the outcome of the case.¹⁰³ Similarly, the assertion that the acquittal of those accused of killing the late justice minister Bola Ige was motivated by corruption continues to gain currency despite the absence of credible evidence to substantiate allegations of judicial corruption.¹⁰⁴

Public suspicion about the impartiality of the judiciary is reinforced by judges who render ostensibly bizarre and incoherent, if not illegal, *ex parte* orders.¹⁰⁵ Former Chief Justice of Nigeria, Justice Bello, took judges to task for indiscriminately granting *ex parte* injunctions. He stated:

I had the occasion to point out early this year that it was only in Nigeria that a court of law would restrain a university by order on an *ex parte* injunction from holding a convocation to award degrees to over a thousand students who had passed their examinations. A court of law de-

101. Ordinary citizens whose rights and interests have been affected by either the government or other citizens are disinclined to go to court because they feel that it is futile. Conversely, the powerful and well-connected citizens rush to court secure in the knowledge that the court can be used to validate their positions. *See* U.S. DEP'T OF STATE, *supra* note 31, § 1(e).

102. Obasanjo, *supra* note 41, at 7.

103. *See* Louis Odion, *Beatification of Corruption*, THIS DAY (Nig.), Oct. 4, 2002, <http://www.thisdayonline.com/archive/2002/10/04/20021004ext01.html> (“[T]he Supreme Court which, against all logics of common-sense, acquitted Mohammed on the charge of the gruesome murder of an innocent and defenceless [sic] woman, Alhaja Kudirat Abiola . . .”).

104. Fred Agbaje, *Omisore's Acquittal & Police Investigation*, THIS DAY (Nig.), Nov. 16, 2004 (discussing the negative public reactions to the acquittal of those accused of killing the former Attorney General Bola Ige).

105. SONIA AKINBIYI, *ETHICS OF THE LEGAL PROFESSION IN NIGERIA* 225 (2003) (arguing that “[t]hese detestable abuse [sic] of preservative injunctive orders via *exparte* [sic] application denigrate the legal profession and it is interpreted by the citizenry as a strong tool of corruption.”).

nied the deserving students who had passed their examination their degrees, because two students, who had failed the examinations had applied to the court for a declaration that they too were entitled to be awarded degrees. The National Electric Power Authority was restrained by an *ex parte* injunction from commissioning a power house to supply electricity to a town because there was a dispute between two contractors as to whom the Authority should pay the cost of a minor work done in the construction of the power house. A court of law denied electricity to the town simply because of the dispute between two contractors. Indeed, there is an urgent need among some of us, the judges, to appreciate that *ex parte* injunction which was devised as a vehicle for the carriage of instant justice in proper cases should not be converted into a bulldozer for the demolition of substantial justice.¹⁰⁶

A particularly egregious illustration is the relatively recent ruling by an Enugu State High Court judge ordering the governor of a neighboring state to vacate his office.¹⁰⁷ This is analogous to a judge in the state of Louisiana ordering the governor of Mississippi to vacate his office. Even more troubling, the trial judge made such a sweeping *ex parte* order in clear violation of both the law governing *ex parte* orders¹⁰⁸ and the *Code*

106. *Id.* at 221–22 (quoting Mohammed Bello, C.J., address to the 1995 All Nigeria Judges' Conference).

107. This ruling generated considerable public furor. The National Judicial Council promptly suspended the judge pending the outcome of a detailed investigation. After a detailed investigation and a formal hearing in which the judge was afforded the opportunity to explain his conduct, the National Judicial Council recommended the dismissal of the judge. The recommendation has since been implemented by the Governor of Enugu State. See Tony Edike, *Enugu Government Sacks Justice Nnaji*, VANGUARD (Nig.), Sept. 24, 2004.

108. The rule governing *ex parte* orders has been adumbrated by the courts in a number of cases. The tenor of the cases is that *ex parte* orders should only be made in cases of real urgency where such an order is necessary to preserve the rights of the parties pending the hearing of the case. See Tobi, *supra* note 29, at 40–42, discussing Chief Ojukwu v. Military Governor of Lagos State, (1986) 3 N.W.L.R. (Pt. 26) 39; Eguamwense v. Amaghizemiren, (1986) 5 N.W.L.R. (Pt. 41) 282; Okechukwu v. Okechukwu, (1989) 3 N.W.L.R. (Pt. 108) 234. In *Kotoye v. Central Bank of Nigeria*, (1989) 1 N.W.L.R. (Pt. 98) 419, the Supreme Court dealt with an interim injunction, *ex parte*, and held that the main features of an interim injunction are:

- (a) It is made to preserve the *status quo* until a named date or until further order or until an application on notice for an interlocutory injunction is heard.
- (b) It is for a situation of real urgency to preserve and protect the rights of the parties before it from destruction by either of the parties.

of Conduct for Judicial Officers.¹⁰⁹ Even if the public was inclined to believe that these questionable decisions are the product of an honest misreading of the law, some of the judgments and court orders involve a level of naiveté that calls into question the fitness of the judge to occupy a high judicial office.¹¹⁰ The Chief Justice of Nigeria, Mohammed Uwais, expressed the view widely held by Nigerians regarding the motive behind such abuse of powers, stating, “The only inference to be drawn from such behaviors is that the judicial officers so involved cannot feign ignorance but are acting or acted deliberately in bad faith for improper motives.”¹¹¹

B. Intimidation of Judges

Available evidence indicates that rich and powerful Nigerians are instinctively resistant to attempts to mediate conflicts and disputes through the judicial process.¹¹² Their preferred mode of operation is to blunt demands for justice by engaging in a dual strategy of intimidation and manipulation. The prevailing mindset is to bribe those who can be bribed

(c) It can be made to avoid such an irretrievable mischief of damage when due to the pressure of business of the court or through no fault of the applicant to hear and determine the application on notice for interlocutory injunction.

(d) What the court does in making an order of interim injunction is not to hear the application for interim injunction, *ex parte*, behind the back of the respondent, but to make an order which has the effect of preserving the *status quo* until the application for interlocutory injunction can be heard and determined.

Tobi, *supra* note 29, at 42–43.

109. CODE OF CONDUCT FOR JUDICIAL OFFICERS R. 2A(2) (1998) (Nigeria), <http://www.nigeria-law.org/CodeOfConductForJudicialOfficers.htm> (“A judicial officer must avoid the abuse of the power of issuing interim injunctions, *ex parte*.”).

110. Judges fuel speculations by making feeble and often implausible explanations about their clearly erroneous decisions. For example, when the National Judicial Council summoned the late Justice Kuserki of the High Court of the Federal Capital Territory to explain why he issued an *ex parte* order barring one of the registered political parties from holding its annual convention, the judge claimed that he was sick when he signed the order and did not realize what he did. The Council was unimpressed by his explanation and recommended his removal from the bench. See Okenwa, *supra* note 83. Similarly, Judge Egbo-Egbo offered an equally laughable explanation for issuing an *ex parte* order. He claimed that he did not read the order drawn up by his registrar before appending his signature. *Id.*

111. M.L. Uwais, Chief Justice, Nigeria, Keynote Address at the Bar and Bench Conference on Transparency and Integrity in the Administration of Justice at Abuja 4 (Jul. 24, 2002) (on file with the *Brooklyn Journal of International Law*).

112. See *infra* Part II.C.

and intimidate those who refuse to be bribed.¹¹³ Bribery usually involves money, but may also include promises of elevation to the higher bench, typically to the Court of Appeal.¹¹⁴ Intimidation of judicial officers extends to all branches of the judiciary from trial courts up to the Supreme Court.¹¹⁵ Nigerian newspapers are replete with reports of harassment and intimidation of judicial officers.¹¹⁶ The murder trial of those accused of killing the late Attorney General of the Federation, Bola Age, was delayed for a long time because three judges separately refused to continue hearing the case, citing pressure from unnamed highly placed persons.¹¹⁷ Judge Moshod Abaas recused himself, citing pressures from unusual quarters.¹¹⁸ This situation accurately portrays the unfortunate and uncomfortable situation in which judges find themselves once they assume jurisdiction in high profile cases.¹¹⁹

The intimidation of judges assumed a disturbing dimension at a recent Court of Appeal hearing in Enugu.¹²⁰ The presiding judge of the Court of Appeal, Justice Okechukwu Opene, publicly declared that he received threats from persons interested in the case.¹²¹ He stated, "Before I go on, I want to say my mind and that is my personal opinion. I am under pres-

113. See U.S. DEP'T OF STATE, *supra* note 31, § e.

114. See Ahiane, *supra* note 54.

115. An example is a letter addressed to the Chief Justice of Nigeria by a group, the Derivation Front, uncomfortable with the way the case against the Governor of Delta State was being handled. See Chioma Anyagafu, *We Can't be Intimidated Says Uwais*, VANGUARD (Nig.), Feb. 7, 2004, available at Westlaw: Africa News database. Incidentally, this was not the first time a Chief Justice of Nigeria publicly complained about attempts to influence the Supreme Court. In 1983, Chief Justice Fatayi Williams "accused influential people of attempting to influence the Supreme Court." See BASSEY, *supra* note 71, at 39. He stated, "In the last few days all sort of persons, some eminent, others not so eminent, from a particular state in the country have tried to [sic] dictate to me as to who and who should sit on the appeals against the decisions of the election petition tribunals which are before this court." *Id.* at 40.

116. The Chief Judge of Abia State was attacked by an unidentified assailant on his way to Umuahia. People familiar with the case believed that the attack was connected to a land dispute. See Joseph Ushigiale, *Abia CJ Attacked, Escapes Unhurt*, THIS DAY (Nig.), June 9, 2004, 2004 WLNR 7279441.

117. See Samson Ojo, *Third Judge Abandons Omisore's Case*, DAILY TRUST (Nig.), July 31, 2003.

118. *Id.*

119. *Id.* See also Lohor & Efeizomor, *supra* note 30 (discussing the reluctance of judges to convict in high profile financial cases).

120. Ojo, *supra* note 117.

121. See Chuks Ihoegbunam, *Perspectives: Justice Nigeria*, VANGUARD (Nig.), Mar. 2, 2004, 2004 WLNR 7089011.

sure: there are calls and threats. But I have to go on with this matter.”¹²² Soon after one of the justices delivered his minority opinion in the case, supporters of one of the parties to the case stormed the court premises and threatened to physically harm the judges.¹²³ According to the newspaper report, “The judges had to quickly flee through the back door midway into their judgments.”¹²⁴

The recent attempt to assault Appeals Court Justices in Enugu serves as a distressingly poignant reminder of the dangers involved in judging in a developing and corrupt environment where citizens believe that their intervention is necessary to influence the outcome of a case.¹²⁵ Despite the fact that it is clearly a crime in Nigeria for anyone to interfere with the administration of justice through threats, intimidation or offering gratification,¹²⁶ the fact that law enforcement authorities did not act decisively to protect the judges reveals a troubling absence of adequate protection for the judges.¹²⁷ The reactions of judges who publicly complained of threats demonstrate the pervasive sense of unease engendered by the lack of adequate protection for judges. It is both curious and instructive that judges who notified the public of threats and pressures on them failed to name the culprits. Failure to name the culprits not only reflects the awe in which even judges hold powerful Nigerians, but it also displays a lack of faith in the ability of the system to protect judicial officers.¹²⁸

Threatening to physically harm judges is fast becoming a strategy of choice for citizens frustrated by the judiciary’s apparent inability to fol-

122. *Id.*

123. See Charles Onyekamuo, *Uproar! As Judges Flee Enugu Court*, THIS DAY (Nig.), Feb. 27, 2004, 2004 WLNR 7040034.

124. *Id.*

125. See BASSEY, *supra* note 71, at 31–37.

126. Corrupt Practices and Other Related Offences Act, (2000) Cap. 5, §§ 9, 18 (Nigeria).

127. Policemen are typically assigned to guard judges in Nigeria. An armed police orderly also accompanies the judge wherever he goes. Chief Justice Uwais has stated that judges can request extra protection if they feel threatened. Funke Aboyade, *Law Personality: State Judge Has No Jurisdiction Outside His State—Uwais*, THIS DAY (Nig.), Jan. 13, 2004, 2004 WLNR 7052956; see also Duke Solicits Legislature, *Judiciary’s Assistance to Combat Crime*, THIS DAY (Nig.), June 22, 2002, 2002 WLNR 3383534 (reporting that magistrate judges threatened to go on strike if they were not provided adequate police protection).

128. Judges concerned about personal safety and skeptical of the ability of the state to protect them from disgruntled litigants tend to sacrifice the ideals of justice at the altars of personal safety. See, e.g., Ojo, *supra* note 117 (reporting that after receiving threats to his life, Justice Abbas could no longer hear the Omisore case because he would be unable to “administer justice without bias, fear or favour.”).

low the law. Threats are intended to and often do have a chilling effect on judges.¹²⁹ Unchecked, threats on judges will fundamentally affect the way judges approach their functions. Feelings of insecurity engendered by threats on judicial officers seriously undermine the security, tranquility and independence judges need to fairly and impartially dispense justice.¹³⁰

C. Manipulation

Besides displays of brute force, Nigerians, especially the executive branch and well-connected private citizens, impede the search for a fair trial by manipulating the judiciary.¹³¹ Often physical intimidation of judicial officers is preceded or even accompanied by subtle but no less pernicious efforts to manipulate judges.¹³² Top government officials have little or no respect for the concept of separation of powers and unabashedly use their enormous powers to manipulate the judiciary.¹³³ Interference with the judicial process is so deeply ingrained in the Nigerian culture that politicians continue to influence court proceedings despite reassurances from the President.¹³⁴ Governments, especially state governments,

129. The typical reaction of judges who receive threats has been to withdraw from the case. *Id.* No judge has had the courage to name the culprits or report them to the authorities for appropriate disciplinary actions. *Id.* An environment in which judges publicly acknowledge attempts to influence them without disclosing the names of those who threatened them can hardly lead to an enhanced public confidence in the judicial process.

130. Karlan, *supra* note 39, at 537.

131. A U.S. Department of State study found that the Nigerian judiciary is “subject to considerable influence from the executive branch” and rated its independence lower than Ghana, Zambia and Namibia. UNODC, *supra* note 57, pt. II.A.

132. See, e.g., Ojo, *supra* note 117; Ushigiale, *supra* note 116.

133. See A. Akintunde & G. Akinsanmi, *Only True Federalism Can Save Nigeria*, THIS DAY (Nig.), Aug. 15, 2005, available at Westlaw: Africa News database. Top government officials view the court, not as independent institutions set up to resolve conflicts by impartially applying the law, but as extensions of the government. This mindset encourages them to engage in maneuvers aimed at making the courts more compliant to their wishes. Professor B.O. Nwabueze’s assessment of the attitude of politicians towards the judiciary still retains currency in contemporary Nigeria. He stated that “[b]ecause success in an election carries such high stakes, politicians in this country are strongly inclined and prepared to use pressure of various kinds to try to influence in their favour the judge’s decision—from lobbying to intimidation to outright bribery.” B.O. NWABUEZE, NIGERIA’S PRESIDENTIAL CONSTITUTION 1979–83: THE SECOND EXPERIMENT IN CONSTITUTIONAL DEMOCRACY 443 (1985).

134. President Obasanjo, in an address to the 1999 All Nigeria Judges’ Conference, reiterated his administration’s commitment to allow the judiciary to function without interference from the executive: “It is necessary to assure you that you will not come

use various techniques to manipulate the judiciary including the extreme case of offering gratification to judges.¹³⁵

The relationship between the government and the judiciary makes it much easier for government officials to manipulate judges. Though judges are appointed by the executive on the recommendations of the National Judicial Council,¹³⁶ judges depend on the good relations with the government for many of their benefits like housing and transportation.¹³⁷ Judges live with the anxiety that government officials, unhappy with their decisions, could make life difficult by denying them decent housing and transportation.¹³⁸ Former High Court Judge P.O.E. Bassey, who experienced, firsthand, efforts by the government to diminish the authority and independence of judges stated:

One of the whips used by civil servants to force Judges to “behave” is in the allocation of residential quarters . . . the mere fact of making Judges rely on the bureaucratic civil servants as to where to put their heads, with their families, is bad enough. And to hope that judges sub-

under the influence of the Executive and that your judgements and orders shall be obeyed.” Obasanjo, *supra* note 41, at xxxviii.

135. NWABUEZE, *supra* note 133, at 443–45.

136. See CONSTITUTION, arts. 231, 281 (1999) (Nigeria).

137. Professor Musa Yakubu stated:

It has been argued in recent years that the reason why the judiciary is not independent as expected is that it is not completely independent of government control and influences. The judiciary has to look towards the government for staff accommodation, salary allowance, transport, stationery and other needs. It is further argued that if the judiciary is made self-accounting, it will be completely independent from the government and can perform freely without fear or favor.

Aduba, *supra* note 34, at 406.

138. A.G. Karibi-Whyte, *The Place of the Judiciary in the 1999 Constitution, in 1999 ALL NIGERIA JUDGES’ CONFERENCE*, *supra* note 2, at 101. Karibi-Whyte stated:

When the Executive controls what the Judiciary requires for discharging its constitutional functions, when the maintenance of the health and comfort of members of the Judiciary lies at the whims of the Executive; when the facilities for interaction with other judicial colleagues all the world over is controlled by the Executive, the only value left is that of impartiality which is maintained by the human spirit, and the sacred resolve to uphold the judicial oath. To what extent the vagaries of the executive oppression affects impartiality depends upon the pain threshold of the individual Judges and resistance of the injustice inflicted by the executive misdemeanours.

Id. at 149.

jected to such pressures could still be generally independent of their officialdom is an illusion.¹³⁹

Pressures exerted on judges by the executive profoundly inhibit their ability to approach their duties with the level of objectivity and independence necessary to secure a fair trial.¹⁴⁰ It is therefore not surprising that some judges go out of their way to demonstrate their fealty to the executive.¹⁴¹ Similarly, due to the pervasive influence of local politicians in the judicial selection and promotion process, judges who contemplate a higher judicial office often show restraint in cases that involve party stalwarts.¹⁴²

The dual strategy of intimidation and manipulation has throttled the judicial process and made it difficult for citizens to obtain a fair trial.¹⁴³ Judges, fearful of reprisals from government functionaries, seem eager to do whatever is necessary to remain in the government's good graces, sacrificing in the process the citizens' fair trial rights.¹⁴⁴ Watching the ease with which the executive manipulates the judiciary and observing the advantages gained by judges who pander to the wishes of the executive, most judges submit to the cultural orthodoxy of judicial subservi-

139. BASSEY, *supra* note 71, at 20.

140. See Susan Webber Wright, *In Defense of Judicial Independence*, 25 OKLA. CITY U. L. REV. 633, 635 (2000) ("A judge who is concerned that his or her rulings might affect his or her career is a judge who might lose focus on the most important of judicial duties: to maintain the rule of law.").

141. Some judges have the courage to stand up to overbearing public officials, but accounts of those who do are rarely reported. See NWABUEZE, *supra* note 133, at 444 ("Exposed to such pressures, especially when they come from highly placed politicians, friends and relations, some judges may have found themselves unable to resist them. Lobbying is indeed a powerful instrument of persuasion and perhaps of coercion too.").

142. Elevation to the higher bench often does not depend on competence and integrity of the judge as evidenced by their judicial track record. Rather, a judge's contacts with the powerful have become major determinants of career advancement in the judiciary. See Abali, *supra* note 99.

143. Fair trial demands that courts and tribunals "decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference." See U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm. on Prevention of Discrimination & Protection of Minorities, *The Right to a Fair Trial: Current Recognition and Measures Necessary for its Strengthening: Final Report*, at 68, U.N. Doc. E/CN.4/Sub.2/1994/24 (June 3, 1994) (prepared by Stanislav Chernichenko & William Treat).

144. According to Murray Gleeson, the Chief Justice of Australia: "The right of citizens to be assured that disputes, including disputes to which governments are parties, will be decided independently and impartially, demands that judges go about their duties uninfluenced by the threat of reprisals or the possibility of rewards." Gleeson, *supra* note 55.

ence to the political elites. That judges depend on the executive to provide them with amenities like housing and transportation seems to be at odds with the dictates of judicial independence.¹⁴⁵ The sad reality remains that judges who function under precarious circumstances tend to succumb to pressures and compromise ethical standards to appease the powers that be.¹⁴⁶ Trials conducted by intimidated judges lead to miscarriages of justice and make a mockery of the constitutional requirement of a fair trial.¹⁴⁷

D. Institutional Problems

1. Delay

The right to a fair trial in Nigeria is guaranteed by the Constitution, which provides in Section 36(1), “In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law.”¹⁴⁸ Unfortunately, trials in Nigeria are never speedy or heard within a reasonable time.¹⁴⁹ Studies conducted by human rights organizations and scholars identify delay as one of the major obstacles to the search for justice through the courts.¹⁵⁰ For example, Hurilaw, a Nigerian non-governmental organization found that, “[e]xtreme delay in litigation in the courts is routine. On the average, hearing in a case at first instance in a Nigerian superior court can take as long as 5–6 years with another 3–4 years consumed in appellate proceedings.”¹⁵¹ A study conducted by Hu-

145. Karibi-Whyte, *supra* note 138, at 163 (“As long as the Judges are beholden to the Executive for the important facilities, such as health, transport, housing and indeed material for the performance of their duties, the principle of judicial independence envisaged in the Constitution will remain theoretical and a sham.”).

146. I.O. Agbede, *The Rule of Law: Fact or Fiction*, in ADMINISTRATION OF JUSTICE IN NIGERIA: ESSAYS IN HONOUR OF HON. JUSTICE MOHAMMED LAWAL UWAI 137, 143 (Ademola Yakubu ed., 2000) (“The more ambitious judges may wish to curry the favour of the Executive by deliberately going out of their way to pervert the course of justice in order to please the executive organ and gain its favour.”).

147. *See supra* note 128.

148. CONSTITUTION, art. 36 (1999) (Nigeria).

149. *See generally* Niki Tobi, *Delay in the Administration of Justice*, in JUSTICE IN THE JUDICIAL PROCESS, *supra* note 34 (discussing the personal and institutional problems that affect the speedy administration of justice).

150. *See infra* notes 151–55.

151. HURI-LAWS, LEGISLATIVE AGENDA FOR GOOD GOVERNANCE IN NIGERIA 1999–2004, at 9 (1999).

man Rights Watch found that “[d]elays plague the course of litigation against oil companies.”¹⁵² A survey of the problems of access to courts in Nigeria, conducted by Dr. Jędrzej George Frynas, a Professor at Coventry University, lists delay as one of the impediments frustrating access to the courts. He stated:

Delay in the disposal of cases is perceived as the fourth most important problem of access to courts in Nigeria. This appears to be due primarily to the congestion in the courts, which manifests itself through the high number of pending cases. Cases in Nigerian courts including appeals may take over 10 years before reaching a final verdict. Sometimes the original litigants will have died by the time the judgment is made.¹⁵³

The survey conducted by Dr. Frynas, which consisted of field study, interviews and analytical examinations of cases and legal documents, empirically confirmed the prevailing views in Nigeria about the slow pace of litigation.¹⁵⁴ In fact, there is hardly any case which is heard with any real degree of urgency or desire to comply with the provisions of the Constitution.¹⁵⁵ Even the election petition of Mohammadu Buhari against the election of Nigeria’s current president, Olusegun Obasanjo, who was declared the winner of a general election in May 2003, was pathetically

152. HUMAN RIGHTS WATCH, *THE PRICE OF OIL: CORPORATE RESPONSIBILITY AND HUMAN RIGHTS VIOLATIONS IN NIGERIA’S OIL PRODUCING COMMUNITIES* 157 (1999) [hereinafter *PRICE OF OIL*].

153. Jędrzej George Frynas, *Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners*, 10 *SOC. & LEGAL STUD.* 397, 410 (2001).

154. Late Justice Aguda’s assessment of the inadequacy of the Nigerian judiciary in 1986 is still relevant, perhaps more so in contemporary Nigeria. He stated:

The present incredibly slow process of judicial administration is frightening and oppressive A judicial system which can permit a simple case, for example, of wrongful termination of employment, to remain in the courts for over five years cannot be said to be running smoothly. Whatever happens at the end of such an aberration of court trial can hardly be said to be justice Our present system of judicial administration is a bankrupt system, and it is very sad indeed that no government from independence in 1960 to this moment has ever made any conscious effort to re-organise or modernise this bankrupt system. It is an inexplicable irony that whilst some of our other smaller sister-countries in the so-called Third World are taking giant steps in the technological age of the 21st century, we are satisfied to continue to wallow in the stinking stench of the 19th.

T. AKINOLA AGUDA, *THE CRISIS OF JUSTICE* 14–15 (1986).

155. See generally Frynas, *supra* note 153.

and ridiculously still pending before the Court eighteen months later.¹⁵⁶ If such a case cannot be heard within a reasonable time (which should have been before inauguration), then one wonders what case can. In fact, eight months after Nigeria's last elections, several petitions filed in various states were yet undetermined, and some had not been heard at all.¹⁵⁷

To curb the delays in court proceedings, the 1999 Constitution imposed a time limit for judgments to be delivered after hearing and addresses of counsel.¹⁵⁸ Judges are now required to deliver judgment not later than ninety days after the conclusion of evidence and final address by counsel.¹⁵⁹ Even this laudable provision seems to have been drained of relevance by the Supreme Court in *Egbo v. Agbara*.¹⁶⁰ The Supreme Court ruled that failure to deliver a judgment within the ninety-day period specified by the Constitution is not fatal where the case is entirely documentary or rests mainly on interpretation of some document where the credibility or demeanor of witnesses is not involved.¹⁶¹

156. See Charles Coffie Gyamfi, *Guobadia Chides Tribunals Over Delayed Results of Polls Petitions*, GUARDIAN (Nig.), Aug. 23, 2004, <http://news.biafranigeriaworld.com/archive/2004/aug/23/009.html> ("Chairman of the Independent National Electoral Commission (INEC) Dr. Israel Abel Guobadia said . . . that he was disappointed . . . where 18 months after the general elections, litigations arising from them had not been brought to a conclusive end. [He] was particularly displeased that hearing[s] . . . including one on the presidential election had not commenced."); Ise-Oluwa Ige, *Court Dismisses Buhari's Petition, Voids Polls in Ogun*, VANGUARD (Nig.), Dec. 21, 2004, <http://www.vanguardngr.com/articles/2002/headline/fl21122004.html>.

157. Olawale Olaleye, *Unresolved Election Petitions Heighten Tension in States*, THIS DAY (Nig.), Jan. 27, 2004, 2004 WLNR 6995175.

158. CONSTITUTION, art. 294(1) (1999) (Nigeria) ("Every court established under this Constitution shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final addresses and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof.")

159. *Id.*

160. *Egbo v. Agbara*, [1997] 1 N.W.L.R. 293 (Nigeria).

161. Justice Iguh, delivering the lead judgment stated:

In a case for instance, which is entirely documentary or rests mainly on the interpretation of some documents without the demeanour or credibility of witnesses coming into play, delay cannot be any matter of great moment. So, too, where credibility of witnesses is not involved, delay may not be material. It therefore seems to me that delay, *per se* is not sufficient reason for the interference with the judgment of a trial court. For the complaint to succeed, it has to be further established that the delay occasioned a miscarriage of justice in that the trial judge did not take a proper advantage of having seen or heard the witnesses testify or that he had lost his impressions of the trial due to such inordinate delay.

2. Inadequate Infrastructure

Infrastructural deficiencies such as aging, deteriorating and ill-equipped physical facilities severely undermine the fair and speedy administration of justice.¹⁶² Justice can hardly be speedy when judges lack adequate facilities to enable them to function effectively and efficiently.¹⁶³ A study conducted by Human Rights Watch found:

Court facilities are hopelessly overcrowded, badly equipped, and underfunded. Interpreters may be nonexistent or badly trained. Court libraries are inadequate. There are no computers, photocopiers, or other modern equipment; and judges may even have to supply their own paper and pen to record their judgment in longhand. If litigants need a transcript of a judgment for the purposes of an appeal, they have to pay for the transcript themselves.¹⁶⁴

Infrastructural deficiencies in Nigeria undermine the search for a fair trial in several ways. First, poor infrastructure permits, if not encourages, corruption.¹⁶⁵ Records of court proceedings and judgments are stored in

Id. at 316.

162. See Akanbi, *supra* note 94, at 46 (“The old and archaic equipment used in most courts have the effect of slowing the work of the court; they contribute in no small way to the congestion of cases in courts; they cause delay and incidentally delay leads to a denial of justice.”).

163. President Olusegun Obasanjo accurately captured the deplorable state of the judiciary in his address to the 1999 All Nigeria Judges’ Conference:

We are in sympathy with the judiciary. The conditions under which you have had to work over the years are appalling, deplorable and intolerable. Courtrooms are old and dilapidated. There are no good libraries, and court proceedings, including judgements and rulings are taken in long hand. Basic facilities like stationery, file jackets are not available. Litigants are compelled to purchase files for their cases. In most cases, your residential accommodations are poor and poorly furnished. Some of you have no serviceable vehicles. Some are obliged to commute to and from your offices by public transport. You are frustrated by these unsavory conditions under which you perform your duties.

Obasanjo, *supra* note 41, at xxxvii.

164. See PRICE OF OIL, *supra* note 152, at 156.

165. Chief Gani Fawehinmi, one of Nigeria’s leading lawyers and foremost human rights activist, during his investiture with the rank of Senior Advocate of Nigeria, pointed out the problems of inadequate facilities in the judiciary:

As a result of long-hand notes, there is little or no access to record of proceedings to court users, which in turn promotes corruption and other forms of manipulations. The judicial officers control their records and can therefore control outcomes to larger extents Mechanising judicial record taking and record

less than satisfactory conditions, thus making them susceptible to damage or intentional destruction by unscrupulous citizens.¹⁶⁶ Absence of modern facilities provides an enabling environment for corrupt and unethical court officials to tamper with evidence and even court records.¹⁶⁷ Allegations of tampering with court records forced the Court of Appeal to order that a “handwritten judgment it delivered on the matter” must be tendered for scrutiny.¹⁶⁸

Second, a far more debilitating effect of inadequate infrastructure, parties are limited in the kinds of technological and visual aids available throughout litigation. The courtrooms are not equipped to handle audio, slide and other visual presentations that assist fact-finders in understanding the case and reaching a just decision.¹⁶⁹ Lamenting the infrastructural deficiencies in Nigerian courts, Osita Okoro, a lawyer, stated:

The hardware and software of the court system is moribund Record keeping and document management facilities and procedures are rudimentary. Court libraries are outdated, compelling judges to borrow books from lawyers appearing before them. Time saving court procedures such as discovery and interrogatories are largely regarded by the Bench and the Bar alike as novelties. Modern information technology and office equipment are virtually unknown. Verbatim recording of tri-

keeping will not only address delays in court proceedings but also promote transparency and integrity in the judicial process.

Chino Obiagwu, *Anniversary Special: Judiciary Score Card 1999–2003*, VANGUARD (Nig.), May 30, 2003.

166. *Id.* The ongoing controversy as to whether a state governor was the same James Ibori who was convicted in the mid-nineties by the Bwari Upper Area Court would not have arisen if Nigeria had a reliable document archival and retrieval system. Some citizens of Delta State filed an action seeking to disqualify the state governor, James Ibori, contending that as an ex-convict, he was constitutionally barred from holding office. They alleged that he was the person, James Onanefe Ibori, convicted in 1995 by the Bwari Upper Area Court. The Governor countered that he was not the same James Ibori. The absence of a modern and credible archival system has made it difficult for the police to positively identify the person who was convicted in 1995. *See generally* Stephen Kola-Balogun, *Ibori: Victim or Villain?*, THIS DAY (Nig.), Aug. 21, 2004, 2004 WLNR 7408798 (discussing alleged tampering with certain court records, the removal of certain documents, the police department’s failure to provide important reports, and its failure to collect fingerprints and passport photos of the man convicted in 1995).

167. *See* Obiagwu, *supra* note 165.

168. Charles Onyekamuo, *Anambra: Appeal Court Requests Handwritten Judgment*, THIS DAY (Nig.), Feb. 11, 2004, 2004 WLNR 7006828.

169. *See* PRICE OF OIL, *supra* note 152, at 156.

als is not available; judges are compelled to manually record proceedings in long hand.¹⁷⁰

Unable to mount technical evidence because of inadequate infrastructure, the plaintiff who bears the burden of proof is significantly disadvantaged and must suffer his or her fate without any other avenue for redress or meaningful assistance from the system.

Furthermore, judges in Nigeria decide all issues of fact as well as law.¹⁷¹ The task is painfully cumbersome due to the lack of stenographers. Judges struggle with recording all the evidence in long hand, while trying to get impressions on the demeanor of the witnesses and fielding legal arguments, objections and interjections from lively Nigerian lawyers.¹⁷² It is little wonder that most cases take years to hear.¹⁷³ The absence of stenographers in Nigerian courts has two undesirable effects. It leads to inordinate delays since a judge can only write so fast, and it often leads to corruption as handwritten judgments can be easily altered by judges who are so inclined.¹⁷⁴

Lastly, inadequate facilities, especially erratic power supply, contribute to delays as court proceedings are often interrupted or adjourned due to power outages.¹⁷⁵ Discussing the effect of power outages on Nigeria,

170. Osita Okoro, *The Judiciary and the New Development Agenda*, THIS DAY (Nig.), Dec. 22, 2003.

171. See *supra* note 95.

172. See Mobolaji Sanusi, *Why We Oppose Anti-Graft Commission—Senator Udo Odoma*, VANGUARD (Nig.), Jan. 7, 2003, available at Westlaw: Africa News database; Chidi A. Odiankalu, *Judicial Boredom No Respect of Eminence*, THIS DAY (Nig.), Mar. 19, 2002, available at Westlaw: Africa News database; Ahamefula Ogbu & Ikenna Emewu, *The Nigerian Judiciary: 40 Years After*, THIS DAY (Nig.), Oct. 3, 2000, available at Westlaw: Africa News database.

173. Egun-Olu Adegboruwa, a lawyer and a social commentator, observed that “[t]he very idea of judicial officers taking evidence and submissions in long hand 43 years after independence is abhorring if not shameful This is one of the major causes of delay in the administration of justice in Nigeria.” Adegboruwa, *supra* note 52.

174. Chino Obiagwu, a lawyer and national coordinator of the Legal Defense and Assistance Project, a non-governmental organization, stated that “as a result of long hand notes, there is little or no access to record of proceedings to court users, which in turn promotes corruption and other forms of manipulations.” Chino Obiagwu, *Anniversary Special: Judiciary Score Card 1999–2003*, VANGUARD (Nig.), May 30, 2003.

175. Egun-Olu Adegboruwa, *The Judiciary Must Guard Against Corruption*, GUARDIAN (Nig.), June 3, 2003, at 8 (“sittings are adjourned for lack of electricity. . . . Judicial officers cannot dream of generators at home or even a functional telephone line, either for domestic or official use. These appalling conditions only serve to discourage judges . . . moreso [sic] when it seems to be a deliberate policy of the executive to starve the judiciary of funds.”).

Professor Olukoju stated that “[i]ndividual[s] and corporate citizens of Nigeria have suffered enormous economic and social losses and inconveniences from the inefficiency and corruption of [the National Electric Power Authority]. Constant outages have damaged electrical and electronic equipment and disrupted and bankrupted fledgling or otherwise thriving commercial and industrial enterprises.”¹⁷⁶

III. DEALING WITH THE PROBLEMS OF THE JUDICIARY

I have attempted to show in Part I of this Article how corruption, manipulation and intimidation of judges and the lack of adequate facilities undermine the courts’ ability to adjudicate disputes fairly and efficiently. The problems discussed above, especially corruption, executive manipulation and intimidation of the judiciary, are not unique to Nigeria.¹⁷⁷ Mature democracies, notably the United States of America and Britain, dealt with these problems by introducing reform measures that significantly minimized, if not contained the problems discussed above.¹⁷⁸ In Nigeria, however, the problems of the judiciary have been exacerbated and rendered more intractable because of the nature of the society and the inability, or perhaps unwillingness, of elected officials and the judiciary to tackle the problems and initiate measures that will enable the judiciary to function more effectively.¹⁷⁹ As discussed in Part II, judicial corruption and executive interference with the judiciary are both pervasive and endemic.¹⁸⁰ Unchecked, these problems cripple the judiciary and may ultimately lead to a reversal of democratic gains.¹⁸¹ This portion of the paper

176. Ayodeji Olukoju, *‘Never Expect Power Always’: Electricity Consumers’ Response to Monopoly, Corruption and Inefficient Services in Nigeria*, 103 *AFF. AFR.* 51, 66 (2004).

177. Judiciaries all over the world have faced, and continue to deal with similar problems. *See generally* MARY L. VOLCANSEK ET AL., *JUDICIAL MISCONDUCT: A CROSS NATIONAL COMPARISON* (1996) (reviewing how judicial misconduct is addressed in France, Italy, England and the United States).

178. *Id.*

179. *See supra* Part II.C.

180. *See supra* Part II.

181. Nigeria returned to democratically elected civilian government after fifteen years of military rule. Supreme Court Justice Uwaifo recently described the negative impact of corruption on the democratic process:

Some recent events seem to sound an alarm bell . . . what omen does this trend of falling standards portend for the country? First, a culture of compromise will take root in the dispensation of justice. Second, public confidence will be badly and broadly eroded. Third, democracy will suffer or even collapse.

will examine how Nigeria can contain and possibly eliminate the problems that disable the judiciary from responding to the needs and challenges of a democratizing and developing Nigerian society. My aim, here, is to offer suggestions that will help make the judiciary fairer, transparent and more efficient.

The Nigerian judicial structure is still in disarray, crippled by a constellation of institutional and personal problems.¹⁸² Judicial corruption is just the capstone of a decaying and dilapidated infrastructure. Judicial officers lack the necessary resources, independence and integrity needed to judge fairly and impartially.¹⁸³ As a result of these problems, government officials, party stalwarts and private citizens with enough resources to either bribe or intimidate judicial officers continue to influence judicial proceedings.¹⁸⁴ It is therefore not surprising that a widespread perception exists among the citizens that the judiciary is unable to constrain abuse of power and administer justice fairly and impartially.¹⁸⁵

Okenwa, *supra* note 78.

182. The desecration of the judiciary that became more pronounced during the military interregnum remains with us. J.A. Ajakaiye, *The Constitutional Role of the National Judicial Council with Regard to Collection and Disbursement of Funds to the Judiciaries: Problems and Prospects*, in 2001 ALL NIGERIA JUDGES' CONFERENCE 127, 132-33 (2003). One had hoped that the end of military rule would also mark the end of the woes of the judiciary. Chief Judge J.A. Ajakaiye, of Ekiti State, described the tactics adopted by the military to emasculate the judiciary:

It paid the military regimes not to grant financial autonomy to the judiciary. This indirectly helped in crippling the judiciary. There were numerous instances of victimization. Police orderlies were withdrawn at the pleasure of the commissioners of police. Subvention to a state judiciary was reduced and the chief judge was denied the opportunity to attend an international conference like his counterparts because he gave judgment, which was distasteful to the state government. Judges were forced out of their [official] quarters or had the light and water and telephone cut off for giving judgments against the government. Orders of court against the government were treated with disrespect and disdain.

Id.

183. See PRICE OF OIL, *supra* note 152, at 156 ("Judges, magistrates and other court officers . . . are very poorly paid. Court facilities are hopelessly overcrowded, badly equipped, and underfunded Court libraries are inadequate. There are no computers, photocopiers, or ether modern equipment; and judges may even supply their own paper and pens to record their judgment in longhand This financial crisis encourages the acceptance of bribes").

184. See *supra* Part II.B.

185. See Otteh, *supra* note 77.

The problems of the judiciary, especially corruption and manipulation, exact substantial and enduring costs on the citizens, the legal profession, the judiciary and the Nation. Calls for reform come from different sources. The international community, concerned about the survival of the rule of law and consolidating the country's fledgling democracy,¹⁸⁶ the Nigerian public, outraged by improper exercise of judicial powers, a government battling to regain the confidence of foreign investors and a profession eager to recapture its dignity, all seem to agree that something must be done to remodel the judicial architecture disassembled by years of rapacious military rule.¹⁸⁷ An honest, competent and efficient judiciary will benefit all.¹⁸⁸ More importantly, an honest judiciary will help Nigeria consolidate and deepen its fragile democracy and check the tyrannical instincts of elected officials.¹⁸⁹ This part of the paper examines four ways

186. The Chief Justice of Nigeria, M.L. Uwais, in his welcome address to the 2001 All Nigeria Judges' Conference acknowledged the support of international agencies in "helping the [Nigerian] Judiciary to strengthen its integrity and capacity, fight corruption and improve access for litigants to justice." See Uwais, *supra* note 3, at xxxv–xxxvi. The international agencies mentioned by the Chief Justice include the United States Agency for International Development (USAID), the British Department for International Development (DFID), the World Bank, the United Nations Development Program (UNDP) and the United Nations Office for Drug Control and Crime Prevention (UNODC). *Id.* For an account of efforts by the United Nations to strengthen the capacity and integrity of the judiciary in Nigeria, see Nicholas A. Goodling, *Nigerian's Crisis of Corruption—Can the U.N. Global Program Hope to Resolve This Dilemma?*, 36 VAND. J. TRANSNAT'L L. 997 (2003).

187. For the state of the judiciary under the military regime, see D.A. Ijalaye, Professor Emeritus, Obafemi Awolowo University, The Bench, the Bar and the Rule of Law Under the Military Regime in Nigeria, lecture at the Law Week of the Nigerian Bar Association, Ilorin Branch (Feb. 6, 1991) (on file with the *Brooklyn Journal of International Law*).

188. A group of Chief Justices and high level judges invited by the United Nations Center for International Crime Prevention and Transparency International to help formulate a program to strengthen judicial integrity identified a set of preconditions necessary to curb judicial corruption. Langseth, *supra* note 70, at 9. The group identified the following conditions: fair remuneration, transparent procedures for judicial appointment, adopting and monitoring of the judicial code of conduct, declaration of assets and computerization of court files. *Id.* at 11–13.

189. According to Retired Supreme Court Justice Chukwudifu Oputa:

The judiciary is the mighty fortress against tyrannous and oppressive laws. It is the judiciary that has to ensure that the State is subject to law, that the government respects the right of the individual under the law. The courts adjudicate between the citizens *inter se* and also between the citizens and the State. The courts therefore have to ensure that the administration conforms with the law; they have to adjudicate upon the legality of the exercise of executive power.

Nnaemeka-Agu, *supra* note 47, at 228–29.

of improving the quality and integrity of the judiciary: appointing the right caliber of judges, punishing corrupt judges, providing continuing judicial education and bolstering judicial independence.

A. Background of the Judges

Securing fair trial rights is inextricably tied to the quality of judges who adjudicate disputes.¹⁹⁰ One of the most effective ways to deal with judicial corruption is to ensure that only competent and honest judges get to the bench.¹⁹¹ It is unrealistic, perhaps preposterous, to simultaneously push for reforms that preserve fair trial rights while at the same time staffing the judiciary with incompetent and corrupt judges. Nowhere is the need for high caliber judges more pressing than in a transitional society like Nigeria where prolonged military dictatorship has taken its toll on the judiciary.¹⁹² Military rule set in motion a process of appointing judges without due regard to the integrity and competence necessary to ensure a fair trial.¹⁹³ The same pattern of appointing ill-qualified judges

190. Professor Osipitan has stated, "The quality of justice depends more on the quality of men who administer the law than on the content of the law they administer. Unless those appointed to the bench are competent and upright and free to judge without fear or favour, a judicial system however sound its structure may be on paper is bound to function poorly in practice." Taiwo Osipitan, Professor, Faculty of Law, Univ. of Lagos, Thoughts on the Independence and Integrity of the Judiciary in Nigeria, Paper delivered at Judicial Independence Workshop (Dec. 2002), available at http://nigerianewsnow.com/News/December02/530103_lawlecture.htm. See also Maria Dakolias, *A Strategy for Judicial Reform: The Experience in Latin America*, 36 VA. J. INT'L L. 167, 172 (1995) ("[T]he quality and integrity of a judicial system can be measured best by the quality and integrity of its judges.").

191. The Honorable Murray Gleeson, Chief Justice of Australia, describes the right background for judges. "The capacity of an individual to make an impartial determination of the facts, and to understand and conscientiously apply the law, is the primary requirement of fitness for judicial office." C.J. Murray Gleeson, Austl., Judicial Legitimacy, Speech Before the Australian Bar Association Conference (July 2, 2000), http://www.hcourt.gov.au/speeches/cj/cj_aba_conf.htm.

192. See Okechukwu Oko, *The Problems and Challenges of Lawyering in Developing Societies*, 35 RUTGERS L.J. 569, 573 (2004).

193. Dr. Olu Onagoruwa, former Attorney General of the Federation stated:

Under the military, a great deal of arbitrariness in judicial appointments have been made in utter disregard for the institutional mechanisms set up for that purpose. In some cases judges have been appointed in utter contempt for public opinion. This military interference in judicial appointment has led to the appointment of mediocrities to the bench. The situation is pathetic in the new states and in the federally controlled judiciaries where civil servants, mostly, are appointed. In many cases these new judges neither have the practicing ex-

threatens to undermine the integrity and competence of the judiciary under the current democratic administration.¹⁹⁴

Under the 1999 Constitution, judges are appointed by the President¹⁹⁵ or Governor¹⁹⁶ on the recommendation of the National Judicial Council.¹⁹⁷ The appointment process, especially the screening of judges by the National Judicial Council, was designed to ensure the appointment of judges with the requisite competence and integrity.¹⁹⁸ The goal of screening out unsuitable judicial nominees will only be achieved if the National Judicial Council approaches its functions with a genuine sense of detachment and objectivity and confines itself to issues relating to integrity, character and competence as evidenced by the nominee's professional track record and academic achievements.¹⁹⁹ Regrettably, the appointing authorities have allowed personal prejudice and ethnic and political con-

perience that has accrued to the practicing lawyers nor the grit to withstand executive pressure. Many of them still manifest that executive hangover.

Olu Onagoruwa, *Challenge to the Independence of the Bar—Decree 21 of 1993 Considered*, in *CONTEMPORARY ISSUES IN NIGERIAN LEGAL SYSTEM* 127, 133 (E. Smaranda Olarinde et al. eds., 1995).

194. Retired Nigerian Supreme Court Justice Anthony Aniagolu's scathing indictment of the appointment procedure for judges deserves the attention of everyone involved in the appointment of judges in Nigeria:

Nowadays, the appointment of bad judges, in different parts of the country, is now taking centre stage among the constraints of the Judiciary. No more special scrutiny is exercised in the appointment of some Judges. In earlier days people frowned at the appointment of candidates regarded as not sufficiently knowledgeable in Law, or weak, generally in their commitment to the Law. Nowadays candidates who are known to be openly corrupt manage to secure appointments as Judges.

Anthony Aniagolu, *Constraints in the Administration of Justice*, in 1999 ALL NIGERIA JUDGES' CONFERENCE, *supra* note 2, at 86.

195. Federal judges are appointed by the President. The appointment process is somewhat different for the Chief Justice of Nigeria and the Justices of the Supreme Court. Their appointments require further confirmation by the Senate. *See* CONSTITUTION, arts. 230–39 (1999) (Nigeria).

196. State judges are appointed by the Governor on the recommendation of the National Judicial Council. *Id.* art. 271.

197. *See* CONSTITUTION, ch. 7 (1999) (Nigeria).

198. *See* Nnaemeka-Agu, *supra* note 25, at 10.

199. President Obasanjo urged the appointing authority for judges "to ensure through rigorous screening and painstaking appointment procedures, that the best materials, in terms of learning and character get appointed to the bench." *Obasanjo, Uwais Cautioned Judges of Ex Parte Injunction*, DAILY TRUST, Dec. 10, 2003.

siderations to preponderate over competence.²⁰⁰ The appointment procedure lends itself to abuse and often produces results that are inconsistent with the goals of an honest and competent judiciary.²⁰¹ Ethnic loyalties, corruption and political favoritism have so infused the selection process that some people who are demonstrably ill-qualified to serve as judges have been appointed.²⁰² Chief Richard Akinjide, a Senior Advocate of Nigeria and former Attorney General of Nigeria, implicitly acknowledged the problems with the appointment of judges in Nigeria. Responding to a question dealing with corruption within the judiciary, he stated:

First of all, the process of appointing judges into the judiciary is very bad and why should you base appointment into the judiciary on the area where somebody comes from. Supposing that area does not have the right quality, you turn appointment to the judiciary as if it is political appointment or board appointment. They do that at the federal level, they do that at the state level. I mean in some local governments, they will say they have no judge and you must appoint a judge from that local government, so they bring a fourth grade lawyer to be a judge. Whereas in other local governments, there are first class and better materials. So that is affecting the quality at all levels, which is very unfortunate, it should not happen This ethnic mentality has been carried

200. Professor Taiwo Osipitan expressed dissatisfaction with the procedure for the appointment of judges. He stated:

The procedure and criteria for the appointment and promotion of judicial officers are not transparent [E]xcept for the requirement of post-call experience, the factors which influence the members of the commission in their decision whether to nominate or not to nominate a person for appointment or promotion are known to members alone. This has resulted in intensive lobbying by those who aspire to become judges. In some cases, appointments and promotions are not based on merit but the strength or the connection of the appointee. A judicial officer whose appointment or promotion is the product of lobbying is unlikely to be independent, in cases involving his benefactors.

Osipitan, *supra* note 190.

201. *See id.*

202. Supreme Court Justice, Niki Tobi observed:

Although the Constitution makes clear provisions on the appointment of judicial officers, the application of the provisions at times bring [sic] some problems. There are known instances where recommendations are made not on the merits but on grounds of favouritism and nepotism The position is fairly ugly these days. Some candidates go about campaigning for appointment as Judges and they do so shamelessly.

Otteh, *supra* note 77.

so far and it has affected the quality of the appointment we are making.²⁰³

Nigeria has degenerated to a position where ethnic origin, social background and connections have become far more important than competence and integrity.²⁰⁴ Judicial appointment based on patronage increases the likelihood of appointing judges who pander to the wishes of their benefactors.²⁰⁵ Problems resulting from the appointment of ill-qualified judges will be less severe or perhaps completely eliminated if the appointing authorities screen out incompetent and unqualified candidates.²⁰⁶ Appointment should be limited to lawyers who have sufficiently demonstrated their integrity, both personally and professionally.²⁰⁷ Pro-

203. LagosForum.com, Interviews, We're in Elected Dictatorship—Akinjide, <http://www.lagosforum.com/interv.php?NR=114> (last visited Aug. 15, 2005).

204. Otteh faults the present mode of appointing judges:

[T]he recommendation of the candidates have been sourced from among a very exclusive, privileged but tiny group whose predilections will spring from a broad mix of peculiar affinities: thus while one person might prefer a candidate because his or her state of origin is Lagos State, another might make a recommendation because a candidate is the son of a political benefactor; yet, another judge would recommend a candidate because that candidate was particularly obsequious while he or she acted as Chief Registrar. Who loses the chance to get recommended? Mr. Eligible, who did not, or will not plug into the circuit of that privileged class.

Otteh, *supra* note 77.

205. KAYODE ESO, *FURTHER THOUGHTS ON LAW AND JURISPRUDENCE* 264 (2003) (“A judge, whose appointment has been so influenced by the Governor, might consider himself, or, at the least, be so considered, by the public, to whom he should appear independent, (and this is worse) to be answerable to his benefactor, the Governor.”).

206. The United Nations’ Office on Drugs and Crime recommended:

[T]here is a need to institute more transparent procedures for judicial appointments to combat the actuality or perception of corruption in judicial appointments (including nepotism and politicization) and in order to expose candidates for appointment, in an appropriate way, to examination concerning allegations or suspicion of past involvement in corruption.

UNODC, *supra* note 57, at 50.

207. The Attorney-General of the Federation and Minister of Justice, Chief Akinlolu Olujinmi, recently called for the appointment of judges with the right training and background. He stated: “Aware that the administration of justice is bound to suffer delay if judges are not adequately trained or equipped, we will discourage the appointing of ill qualified persons to the bench on account of political patronage and other extra legal considerations.” Akinlolu Olujinmi, *Agenda for Justice Sector Reform*, *THIS DAY* (Nig.), Nov. 16, 2004, <http://www.thisdayonline.com/archive/2003/08/26/20030826law07.html>.

fessor Musa Yakubu urges that judges “should be men of unimpeachable antecedent, men of high probity. Men of unassailable intellect, men who could not balk under pressure.”²⁰⁸ Limiting judicial appointments to lawyers of proven competence and integrity will numb public fears that judges are beholden to the appointing authorities and will also enhance the independence of the judiciary.²⁰⁹ As the Chief Justice of South Africa stated in an address to the International Commission of Jurists, “The culture of judicial independence must be sustained by procedures for appointment to the bench which are fair, transparent, and reasonable and in which the judicial input is substantial and manifest.”²¹⁰ Judges appointed on the basis of competence and integrity can easily approach their duties without fear or favor and inspire confidence both from the public and the profession.²¹¹

A major problem, however, with recruiting high quality judges is that few good and successful lawyers are interested in taking up judicial appointments.²¹² For a long time, appointment to the higher bench was

208. Aduba, *supra* note 34, at 406–07.

209. The former Chief Justice, Hon. Justice Mohammed Bello, once stated that “in order to ensure the perfection of the independence of the judiciary, the criteria for and mode of appointment of Judges should be based on no other consideration than the suitability, competence, integrity, learning and incorruptibility of the appointees.” Niki Tobi, *The Legal Profession and the Quest for Genuine National Integration and Development*, in *THE LEGAL PROFESSION AND THE NIGERIAN NATION: ESSAYS IN HONOR OF CHIEF AFE BABALOLA* 27, 41 (Yemi Akinseye-George ed., 2000).

210. CEELI, *supra* note 34, § II.B.

211. Marvin E. Aspen, *The Search for Renewed Civility in Litigation*, 28 VAL. U. L. REV. 513, 519 (1994) (“Judges cannot ask lawyers to accept a standard of professional conduct to which they do not abide.”). The quality and integrity of the judiciary will be significantly enhanced if the appointing authorities adopt the standards formulated by Nigeria’s preeminent jurist, retired Supreme Court Justice Oputa:

The qualities of courage, honesty and integrity required of judges are meant to ensure that they do not either under pressure or of their own volition yield their moral authority and that they do not in the process of decision making allow themselves to be swayed from the path of truth and justice. The qualities of firmness and impartiality will allow the judge to turn the wheels of justice objectively and not subjectively [I]n the halls of justice the battle is for the truth and against expediency. It is a battle for protection from power or its abuse It needs a man of commensurate moral fibre and moral courage to stand up to this assault from power, to maintain his balance and deliver justice.

AKINBIYI, *supra* note 105, at 110 (quoting Oputa, J., from a lecture at Obafemi Awolowo University).

212. A study conducted by the Constitutional Rights Project, a Nigerian non-governmental organization, found that “[t]he low wages attributed to judicial officers has

viewed as the hallmark of a successful legal career.²¹³ Judges enjoyed such preeminent positions both within and without the legal profession that a career in the judiciary proved attractive to most lawyers.²¹⁴ All of that has changed. Lawyers prefer, instead, to become Senior Advocates of Nigeria.²¹⁵ Consequently, lawyers seeking judicial appointments and some who eventually get appointed may not be the finest legal minds.²¹⁶ Some of them may even lack the right moral fiber to serve as judges.

Reluctance to accept judicial appointments results from a constellation of factors including inadequate pay, poor working conditions and more importantly, the diminished status of judges in Nigerian society.²¹⁷ To

discouraged independent-minded lawyers in private legal practice from taking up positions in the bench, as such lawyers are reluctant to give up relatively lucrative private practices for poor judicial positions.” NWANKWO ET AL., CONST. RIGHTS PROJECT, NIGERIA HUMAN RIGHTS REPORT 2000, at 28 (2000).

213. See generally AKINBIYI, *supra* note 105.

214. ESO, *supra* note 205, at 282 (“It must be recognized . . . that an appointment to the Bench carries . . . with it, enormous prestige and honour [S]ome of those who are now on the Bench and also those who have retired from it, joined the system mainly on account of this honour and prestige . . .”).

215. Nigeria has a special class of lawyers analogous to the Queens Counsel in England, known as Senior Advocates of Nigeria. ASEIN, *supra* note 95, at 237. The title of Senior Advocate of Nigeria (SAN) is conferred on lawyers who distinguish themselves in the field of advocacy. See Legal Practitioners Act, (1990) Cap. 207, § 5 (Nigeria). For a discussion of the criteria for conferring the title of Senior Advocate of Nigeria on lawyers, see ASEIN, *supra* note 95, at 237–44.

216. See A.A.M. Ekundayo, *The Legal Profession and the Nigerian Nation in the 21st Century*, in THE LEGAL PROFESSION AND THE NIGERIAN NATION: ESSAYS IN HONOUR OF CHIEF AFE BABALOLA 117, 125 (Yemi Akinseye-George ed., 2000) (“The 20th century Nigerian nation has seen many erudite, courageous, honest and brilliant judges. Unfortunately, the close of the century is also witnessing the arrival of an increasing number who are by no means as erudite, courageous, honest and brilliant.”).

217. See Muhammed Mustapha Akanbi, Retired President of the Court of Appeal, The Need for Proper Funding of the Judiciary, Speech given at the Special Sitting of the Court of Appeal, Kaduna Division (July 4, 1994), in THE JUDICIARY AND THE CHALLENGES OF JUSTICE, *supra* note 94, at 95, 99 (1996). Akanbi succinctly captured the depressing plight of the judiciary in Nigeria:

Some of the problems facing the Judiciary are only known to insiders. It is common knowledge for those who care to know, that the salary is poor, the conditions of service unattractive and the glories of the past no more. And it is a truism to say that the Judiciary is the worst hit by the pervading atmosphere of political instability and insensitivity. It has not been possible for the Judiciary to develop or fulfill itself because more often than not it is financially hamstrung.

Id.

encourage lawyers to take up appointment, Nigeria must find ways to burnish the image of the judiciary. The judiciary must be reestablished as an honorable and respectable branch of the legal profession.²¹⁸ Salary and working conditions must be reviewed to provide better conditions of service.²¹⁹ Improved working conditions, especially enhanced salary structure, will enable the judiciary to recruit and retain high quality judges with the requisite integrity, competence and judicial temperament. Increasing remuneration of judges may also reduce the temptation for them to engage in corrupt activities to augment their meager salaries.²²⁰

B. Sanctions

Despite Nigeria's transition to democracy, judges who have been appointed more for their contacts than competence and who have internalized the corruption developed during years of military interregnum have not shaken off those values.²²¹ The most dramatic way to promote probity in the judiciary is to punish erring judges.²²² Nothing undermines the

218. Eso, *supra* note 205, at 282 ("There must be honour attached to the post, for the honour of being on the Bench is not altogether, nor always, a matter of CASH. It is more a matter of honour.").

219. Retired Supreme Court Justice Kayode Eso stated:

The judiciary must be so reformed and the conditions of service made so attractive as to attract the best brains from all sectors of the law. The reformation could not be complete until the institution is able to attract seasoned legal practitioners, of the Senior Advocate [of Nigeria] class, to its fold. Indeed, what should be aimed at is that appointees, other than such advocates should also be top lawyers and well-established advocates in their spheres of life, that the Senior Advocates, who have been invited for appointment, would be made proud of the peers that would be appointed with them.

Id.

220. Some scholars find a nexus between poor salary structure and judicial corruption. See, e.g., CEELI, *supra* note 34, § IV.G ("A more sensitive issue is whether the failure to fairly compensate judges inadvertently promotes corruption. Otherwise honest and dependable individuals may be more likely to succumb to offers of gifts and bribes by unscrupulous attorneys or wealthy litigants when they need to supplement their meager incomes."); Langseth, *supra* note 70, at 6 (reporting that studies list low remuneration among the causes of judicial corruption).

221. See Onagoruwa, *supra* note 193.

222. As described in *In re Schenck*:

[J]udges are disciplined primarily to preserve public confidence in the integrity and impartiality of the judiciary. Thus, disciplining judges serves to educate and inform the judiciary and the public that certain types of conduct are improper and will not be tolerated. Discipline of a judge also serves to deter the

integrity and public confidence in the justice system more than well-founded allegations of impropriety by judges.²²³ Swift and fair disposition of allegations of misconduct not only restores public confidence but also induces attitudinal and behavioral changes among judicial officers.²²⁴ For a society yearning for accountability, a nation eager to see judicial corruption rooted out, punishing corrupt judges is key.²²⁵ A contrary measure, one that glosses over corruption, will destroy public confidence and encourage citizens to resort to corrupt practices in an attempt to level the playing field.²²⁶

Punishment, or threat of it, will pressure judges to respond or adapt to acceptable judicial behavior. It forces judges to reevaluate the choices they make. Sanctions convey to judges in a very powerful way that abuse attracts unpleasant consequences. Sanctions also have the potential to influence the conduct of other judges and may assuage the injured feelings of the public, who feel justifiably outraged by judicial misconduct.²²⁷

The National Judicial Council administers the disciplinary regime for judges in Nigeria.²²⁸ In addition to screening and recommending judicial nominees, it also investigates allegations of judicial misconduct and recommends punishment to the appropriate authorities.²²⁹ It has played a more aggressive role in articulating and enforcing standards of judicial conduct.²³⁰ Following complaints that raise sufficiently serious or appar-

disciplined judge as well as other judges from repeating the type of conduct sanctioned.

In re Schenck, 870 P.2d 185, 207 (Or. 1994).

223. Justice Mohammed Uwais admonished judges by stating, “The slightest suspicion of corruption of a Judge tarnishes the reputation of other judicial officers and brings the entire institution into disrepute.” Uwais, *supra* note 3, at xxxiii.

224. See *In re Schenck*, 870 P.2d at 190.

225. See *In re Gallagher*, 951 P.2d 705, 715 (Or. 1998) (stating that judicial discipline serves not only to protect the public by deterring misconduct, it also serves to preserve the public’s trust by informing the judiciary and the public that judicial misconduct will not be tolerated).

226. See *supra* Part II.A (for an account of how judicial corruption undermined public confidence in the judiciary).

227. See *In re Gallagher*, 951 P.2d at 715.

228. CONSTITUTION, 3d sched., § 21(b) (1999) (Nigeria).

229. The National Judicial Council consists of experienced jurists who understand the intricacies of judging and are deeply concerned about the integrity of the judiciary. See Nnaemeka-Agu, *supra* note 25, at 7.

230. For an assessment of the role of the National Judicial Council, see generally Nnaemeka-Agu, *supra* note 25.

ently well-founded allegations of impropriety, the National Judicial Council typically suspends the erring judge pending the outcome of a detailed investigation and a full-blown hearing in which the complainants and the judge have the opportunity to state their positions and explain their conduct.²³¹ Sanctions that the National Judicial Council could recommend²³² against judges found guilty of impropriety include admonitions,²³³ suspension,²³⁴ retirement²³⁵ and in some cases outright dismissal.²³⁶

Judicial impropriety falls into two broad categories: violations of the *Code of Conduct for Judicial Officers*²³⁷ and criminal conduct. In cases of non-criminal conduct that violate the Code, the National Judicial Council should be the final authority to investigate and recommend punishment.²³⁸ If, however, the misconduct amounts to a crime, the National Judicial Council should, in addition to recommending sanctions, refer the matter to the appropriate authorities for further investigation and possible

231. Akinwale Akintude, *NJC Commended For Suspending Erring Judges*, THIS DAY (Nig.), Feb. 3, 2004 (reporting that NJC recently suspended four judges for allegedly receiving bribes, and another judge, Justice Senlong, was suspended for allegedly influencing the judgment of a tribunal).

232. In choosing the appropriate sanction, the National Judicial Council should always take into account the purposes of disciplining judges so eloquently stated by the Oregon Supreme Court in *In re Schenck*, 870 P.2d 190, 207 (Or. 1994).

233. Minor ethical violations are normally addressed by admonishing the offending judicial officer. As suggested by the Oregon Supreme Court, "Censure may be appropriate in a particular case for extra-judicial conduct that violates the Code, but which is not directly related to a judge's performance in office." *In re Schenck*, 870 P.2d at 209. This reasoning apparently motivated the National Judicial Council to recommend reprimanding the Chief Judge of Abia State for paying monies belonging to the state judiciary into a private fixed account. See Leonard Dibia, *Nigeria: Abia State Judicial Crisis*, DAILY CHAMPION (Nig.), Dec. 7, 2004.

234. In most cases, the National Judicial Council suspends judges accused of misconduct while it conducts a full scale investigation. See *Immunity and the Long Arm of the Law*, VANGUARD (Nig.), Feb. 21, 2003, available at Westlaw: Africa News database.

235. Okenwa, *supra* note 83 (reporting that the Federal Government retired Justice Egbo-Egbo following the recommendations of the National Judicial Council).

236. Justices Senlong and Adamu, accused of receiving bribes, were dismissed outright from the bench. See *Nigerian Government Dismisses Three Judges*, *supra* note 88.

237. The code of conduct for judicial officers typically "serves as a template for disciplinary norms for judges." Judith A. McMorrow et al., *Judicial Attitudes Toward Confronting Attorney Misconduct: A View From the Reported Decisions*, 32 HOFSTRA L. REV. 1425, 1430 (2004).

238. CONSTITUTION, 3d sched., § 21(b) (1999) (Nigeria).

criminal prosecution.²³⁹ For example, bribery is both a violation of the Code²⁴⁰ and a crime.²⁴¹ Therefore, a judge accused of bribery may be sanctioned by the National Judicial Council and prosecuted for the same offense.

Disciplinary proceedings initiated by the National Judicial Council should not preempt or preclude further criminal prosecution of the offending judge, if the facts so demand. Criminal prosecutions and disciplinary proceedings serve entirely different purposes. Disciplinary proceedings initiated by the National Judicial Council essentially serve to ensure compliance with the ethical standards of the judiciary²⁴² while criminal sanctions serve to reaffirm society's disdain for conduct designated as a crime.²⁴³

Depending on the nature of the crime and the outcome of the criminal prosecution, the Nigerian Bar Association should also look further into the matter to see if it merits disbarment.²⁴⁴ Judges, after all, are lawyers

239. The Independent Corrupt Practices Commission can prosecute judges accused of corruption without waiting for a referral from the National Judicial Council. *See* Corrupt Practices and Other Related Offenses Act, (2000) § 6 (Nigeria) (stating that it is the duty of the Commission to, among other things, prosecute persons suspected of violating the Act or other laws prohibiting corruption and that “[e]very prosecution for an offence under [the] Act or any other law prohibiting bribery, corruption and other related offences shall be deemed to be done with the consent of the Attorney General.”). For example, the Commission is currently prosecuting the Chief Judge of Akwa Ibom, Justice Effiong David Idiong for allegedly receiving a bribe. The National Judicial Council had earlier investigated Justice Idiong and cleared him of the charges that form the basis of the indictment by the Independent Corrupt Practices Commission. *See* Lillian Okenwa, *ICPC can Prosecute Akwa Ibom CJ, THIS DAY* (Nig.), Jan. 26, 2005, 2005 WLNR 1100034.

240. The Code of Conduct for Judicial Officers provides, “A Judicial Officer and members of his family shall neither ask for nor accept any gift, bequest, favour, or loan on account of anything done or omitted to be done by him in the discharge of his duties.” CODE OF CONDUCT FOR JUDICIAL OFFICERS R. 3F(1) (1998) (Nigeria).

241. Bribery is prohibited by the Criminal Code. *See* Criminal Code Act, (1990) Cap. 77, §§ 98–99 (Nigeria); *see also* Corrupt Practices and Other Related Offenses Act, (2000) § 8 (Nigeria).

242. *In re Schenck*, 870 P.2d 185, 210 (Or. 1994) (“[Discipline] is necessary to maintain public confidence in the integrity and impartiality of the judiciary that demands adherence to standards of conduct it has set for itself and for the fair administration of justice.”).

243. *See generally* MICHAEL TONRY, HANDBOOK OF CRIME AND PUNISHMENT 345–66 (1998) (discussing the theories and purposes of punishment).

244. Automatic disbarment should follow convictions for designated crimes. Criminal conviction is a valid ground for imposing disciplinary sanctions on lawyers. *See* Legal Practitioners Act, (1990) Cap. 207, § 11(1)(b) (Nigeria) (defining unprofessional conduct

and as such are still subject to the disciplinary control of the bar association. A lawyer convicted of a crime is typically disciplined by the bar. It would be anomalous, indeed preposterous, if a judge guilty of a crime were merely dismissed from the bench and allowed to retain the privilege to practice law.²⁴⁵

The legal profession should clearly articulate the kinds of judicial impropriety that warrant taking further disciplinary action against a judge who has been sanctioned by the National Judicial Council. Serious crimes such as fraud, theft and accepting or receiving bribes are sufficiently injurious to the integrity of the legal profession to justify further actions by the bar.²⁴⁶ Instances where the judge has not been criminally prosecuted or has engaged in minor impropriety are far more problematic. In such cases, the bar should have the discretion to decide whether the sanction recommended by the National Judicial Council is enough both to convey to the judge the futility of violating the law and to reassure the public, or whether further action is needed to preserve the honor of the legal profession.²⁴⁷

The National Judicial Council has been greeted with great public enthusiasm because of its well-publicized efforts to promote accountability

to include conviction for a criminal offense which is incompatible with the status of a legal practitioner).

245. Some jurisdictions allow the lawyers' disciplinary mechanism to sanction a lawyer for acts committed while acting in a judicial capacity. See, for example, *In re McGarry*, 44 N.E.2d 7, 12 (Ill. 1942), where the Illinois Supreme Court stated, "An attorney at law while holding the office of judge may be disciplined for acts of immorality, dishonesty, fraud or crime and his licence taken away, and the fact of his holding a judicial office at the time does not render him immune from punishment." See also *State ex rel. Okla. Bar Ass'n v. Sullivan*, 596 P.2d 864, 869 (Okla. 1979) (finding that a lawyer can be disciplined for acts committed in his official capacity only if "such acts involve moral turpitude, of a fraudulent, criminal or dishonest character").

246. *In re Abuah*, [1962] 1 ALL N.L.R. 279, 283 (Nigeria). The Nigerian Supreme Court held that conviction for a criminal offense *prima facie* makes a person unfit to continue to practice law. *Id.* See also *In re Seaman*, 627 A.2d 106, 121 (N.J. 1993) (citations omitted) (describing the role of sanctions in maintaining judicial independence).

247. The standard articulated by the Nigerian Supreme Court in *In re Abuah* may provide some guidance in such cases: "We think it is plain and it is commonsense that the Court is not bound to strike a man off the rolls unless it is satisfied that the criminal offence of which he has been convicted is of such a nature as to make him unfit to practice without loss of self-respect, or whether one can still consider him a fit and proper person to be entrusted with the grave responsibilities which are demanded of a member of the profession." *In re Abuah*, [1962] 1 ALL N.L.R. 279, 283 (Nigeria).

within the judiciary.²⁴⁸ In recent times, the National Judicial Council has aggressively investigated instances of judicial impropriety and has not hesitated to recommend sanctions against erring judges in appropriate cases.²⁴⁹ Sanctioning judges is commendable in light of the social acceptance of corruption in Nigeria and the frequency of allegations of judicial corruption.²⁵⁰ The National Judicial Council's insistence on probity and accountability has made a lasting impression on judges who now operate with a heightened awareness of their limitations.²⁵¹

Even for a society eager and perhaps desperate to tackle judicial corruption, sanctions should be handled with the utmost care. Sanctioning judges, even a mere reprimand generally considered to be the mildest sanction, significantly undermines the integrity and the moral standing of the affected judges.²⁵² Citizens, lawyers and judges agree that judicial corruption should be aggressively tackled. At the same time, however,

248. A non-governmental organization, Igbo Integrity Foundation, commending the efforts of the National Judicial Council stated:

[T]hese sanctions meted by [the National Judicial Council] to judges who are bent on dragging the name of the judiciary to the mud, has demonstrated once again that, after all there is somebody out there who can still stand and defend the battered image of the judiciary in this country.

Chimaobi Nwaiwu, *Group Lauds National Judicial Council's Decision on Erring Judges*, VANGUARD (Nig.), Apr. 7, 2004, available at Westlaw: Africa News database. Similarly, the Lawyers League for Human Rights commended the National Judicial Council for taking disciplinary actions against corrupt judges. In a press release, the group stated:

[T]he National Judicial Council's decision was a step in the right direction which demonstrated that the judiciary has the capacity to deal with cases of allegations of misconduct against judicial officers with dispatch and that the judiciary is alive to its duty of self discipline to wield inherent powers to show the public that it is on top of any situation.

Akintude, *supra* note 231.

249. See Ughegbe, et al., *supra* note 84, at 1 ("Between 1999, when the National Judicial Council (NJC) came into being, and now, it has considered hundreds of petitions from litigants across the federation against judicial officers bordering on professional misconduct. The Council, to date, has disposed off [sic] at least 105 of the cases, recommending punishment where necessary.").

250. See *supra* Part II.B.

251. See Nnaemeka-Agu, *supra* note 25.

252. See *Ruffo v. Conseil de la Magistrature*, [1995] S.C.R. 267, 341 (Can.) (Sopinka, J., dissenting) ("[A] reprimand is an extremely serious punishment for a judge. A reprimanded judge is a weakened judge: such a judge will find it difficult to perform judicial duties and will be faced with a loss of confidence on the part of the public and litigants.").

they wish and expect that investigations of alleged judicial impropriety be conducted in a fair and respectful manner and take account of the need to maintain the independence of the judiciary.²⁵³

A tension will always exist in the judiciary between accountability and independence.²⁵⁴ The challenge for Nigeria and indeed all constitutional democracies is “how to detect judicial corruption accurately, to investigate it fairly, and to eradicate it effectively without eroding an independent judiciary.”²⁵⁵ The National Judicial Council must proceed with consummate care to maintain the delicate balance between independence and accountability. The concept of judicial independence will be drained of meaning and relevance if judges are corrupt.²⁵⁶ On no account should judicial independence operate to bar the National Judicial Council from investigating genuine and credible allegations of impropriety.²⁵⁷ Aggressive enforcement of judicial standards is necessary not only to ensure probity, but also to promote public confidence in the judicial process.²⁵⁸ On the other hand, the need for accountability should not be allowed to denigrate judicial independence and the capacity of judges to discharge their functions without fear or favor. The National Judicial Council must maintain a delicate balance between enforcing disciplinary standards so

253. Long, *supra* note 60, at 5 (“Judicial independence and judicial accountability are the twin goals of the judiciary.”).

254. For a discussion of the tension between accountability and judicial independence, see Judge J. Clifford Wallace, *Resolving Judicial Corruption While Preserving Judicial Independence: Comparative Perspectives*, 28 CAL. W. INT'L L.J. 341, 344–45 (1998); see also Barry Friedman, *The Birth of an Academic Obsession: The History of the Counter-majoritarian Difficulty, Part Five*, 112 YALE L.J. 153, 215–56 (2002) (examining the tensions between judicial independence and accountability).

255. Wallace, *supra* note 254, at 344.

256. See *id.* at 345 (noting that independence will be weak if corrupt behavior is prevalent); see also Jon Mills, *Principles for Constitutions and Institutions in Promoting the Rule of Law*, 16 FLA. J. INT'L L. 115, 127 (2003) (“[C]orruption is a threat to judicial independence because it creates a suspect relationship between the litigant’s court and the litigant, which results in final decisions based on considerations other than proper application of legal principles.”).

257. Wallace, *supra* note 254, at 344–45; see Steven Lubet, *Judicial Discipline and Judicial Independence*, 61 LAW & CONTEMP. PROBS. 59, 60 (1998) (“[T]o be sure, judicial independence does not require absolute immunity, so it is hardly threatened when judges are called to account for personal transgressions.”); see also Emily Fied Van Tassel, *Resignations and Removals: A History of Federal Judicial Service—and Disservice 1789–1992*, 142 U. PA. L. REV. 333, 334 (1993) (“[J]udicial independence was probably not intended to trump judicial accountability for misbehavior.”).

258. See *In re Schenck*, 870 P.2d 185, 207 (Or. 1994).

that judges do not violate their judicial oath and allowing judges sufficient autonomy and independence.

Walking the tight rope between accountability and independence demands that the National Judicial Council refrain from second-guessing judges and reading unnecessary meaning into wrong decisions. There exists, however, the fear in some quarters that the National Judicial Council, in its enthusiasm to respond to public demands for judicial probity, may act in ways that compromise judicial independence and stifle creativity.²⁵⁹ Some judges worry that the Council may mistake misunderstanding of the law for corruption.²⁶⁰ The National Judicial Council must be careful not to equate misreading of the law with corruption.²⁶¹ The nature of the adjudication process is that judges sometimes reach wrong conclusions or misinterpret the law. Erroneous or incorrect decisions are not necessarily the result of corruption and should not form the basis for sanctions by the Council.²⁶² Judges should always be free to state their good faith understanding of the law without fear of sanctions or reper-

259. As part of the research for this project, I interviewed some judges across Nigeria who for understandable reasons did not want their identities to be revealed.

260. According to one of the judges I interviewed “that is why we have appeal courts. The National Judicial Council should not involve itself in matters that are best left to the appeal courts to resolve. The fact that a judge made a decision other judges would have made differently should not be prima facie evidence of corruption or abuse of office.” Some of the judges I interviewed cite the case of Justice Solomon Hun Ponu who was dragged before the National Judicial Council for prematurely signing a warrant of possession before the expiration of the three day statutory period. No allegation of impropriety was leveled against the judge but the complainants preferred to report the judge to the National Judicial Council. The judge ultimately resigned from the bench after a protracted investigation by the National Judicial Council, apparently to save himself from further embarrassment.

261. Cynthia Gray, *The Line Between Legal Errors and Judicial Misconduct: Balancing Judicial Independence and Accountability*, 32 *HOFSTRA L. REV.* 1245, 1246–47 (2004) (“[I]t is not unethical to be imperfect, and it would be unfair to sanction a judge for not being infallible while making hundreds of decisions often under pressure.”).

262. I do not argue that errors of judgment should never be the basis for sanctions against judges. Persistent errors and errors motivated by bad faith may very well be a violation of the Code of Conduct, which enjoins judicial officers to “respect and comply with the laws of the land” See *CODE OF CONDUCT FOR JUDICIAL OFFICERS R. 1* (1998) (Nigeria), <http://www.nigeria-law.org/CodeOfConductForJudicialOfficers.htm>. See also *In Re Quirk*, 705 So. 2d 172, 180–81 (La. 1997) (“[A] judge may be found to have violated the Code of Judicial Conduct by a legal ruling or action made contrary to clear and determined law about which there is no confusion or question as to its interpretation and where this legal error was egregious, made in bad faith, or made as part of a pattern or practice of legal error.”). For an examination of cases where decisional errors were held to constitute judicial misconduct, see generally Gray, *supra* note 261.

cussions. The prospect of dragging judges before the National Judicial Council for decisional errors will undermine judicial independence and drive judges to become timid and less creative in their reasoning.²⁶³ Erroneous or incorrect decisions are typically corrected by appeals.²⁶⁴ Disciplinary mechanisms should be limited to violations of the *Code of Conduct for Judicial Officers* and criminal offenses.²⁶⁵ The “judicial disciplinary process should not be used as a substitute for appeal.”²⁶⁶ The National Judicial Council must be careful not to allow unsatisfied litigants and mischievous lawyers to use the judicial disciplinary process to harass and intimidate judges. Judges may be loathe to engage in creative judging for fear of being accused of corruption and hence susceptible to career ending sanctions and the accompanying public disgrace and humiliation.²⁶⁷

263. Lubet, *supra* note 257, at 59 (arguing that “judicial independence is most gravely threatened when judges face sanctions . . . based on the merits of a ruling”).

264. KATE MALLESON, *THE NEW JUDICIARY: THE EFFECTS OF EXPANSION AND ACTIVISM* 39 (1999) (“The appeal process is an internal mechanism by which judges review the decisions of other judges. Its purpose is to maintain consistency and accuracy in the law, both substantive and procedural. It does not incorporate any element of external accountability which could link the judiciary to the electoral process and applies only to errors which are determined by the courts themselves to be appealable.”).

265. See Nnaemeka-Agu, *supra* note 25 (discussing the disciplinary activities of the Judicial Council).

266. JEFFREY M. SHARMAN, INTER-AMERICAN DEVELOPMENT BANK, SUSTAINABLE DEVELOPMENT DEPARTMENT STATE, GOVERNANCE AND CIVIL SOCIETY DIVISION JUDICIAL REFORM ROUNDTABLE II, JUDICIAL ETHICS: INDEPENDENCE, IMPARTIALITY, AND INTEGRITY 8–9 (May 19–22, 1996), <http://www.idlo.int/texts/IDLO/mis6379.pdf> (“The preservation of judicial independence requires that a judge not be subject to disciplinary action under the Code merely because the judge may have made an incorrect ruling. An independent judge is one who is able to rule according to his or her conscience without fear of jeopardy or sanction. So long as judicial rulings are made in good faith and in an effort to follow the law, as the judge understands it, the usual safeguard against legal error is appellate review.”). See also Randy J. Holland & Cynthia Gray, *Judicial Discipline: Independence with Accountability*, 5 WIDENER L. SYMP. J. 117, 129 (2000) (“an erroneous legal ruling that is made in good faith is not unethical judicial conduct; correcting legal errors is the role of the appellate court, not the state judicial conduct organizations.”). The admonition of the United States Supreme Court in *Pierson v. Ray*, should find support in Nigeria: “[A judge’s] errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision making, but to intimidation.” *Pierson v. Ray*, 386 U.S. 547, 554 (1967).

267. See Lubet, *supra* note 257 (arguing that judicial independence may be compromised by fear of decisional sanctions).

The best way to shield judges from baseless allegations and the attendant obloquy and social stigma is for the National Judicial Council to conduct initial investigations into allegations of impropriety without publicly disclosing either the target of the investigation or the allegations.²⁶⁸ The need for confidentiality during the investigatory stages is especially important to protect all the participants including judges and complainants, as well as the judicial system as a whole, from unnecessary obloquy should the allegations turn out to be without merit.²⁶⁹ The publicity that typically accompanies accusations of judicial impropriety makes it difficult for a judge who goes through the disciplinary process to regain his integrity and respect in society.

Discussions with some judges and senior members of the bar reveal that some of the allegations against judges are baseless, filed in most

268. Disciplinary proceedings against judicial officers in most states in the United States remain confidential during the initial stages, especially during the screening and investigatory stages. *See* Keith, *supra* note 45, at 1401 (“[M]ost states recognize that some level of confidentiality in the process of investigating judicial misconduct protects not only the participants—complainants and judges alike—but the judicial system as well.”).

269. Bryan E. Keyt, *Reconciling the Need for Confidentiality in Judicial Disciplinary Proceedings with the First Amendment: A Justification Based Analysis*, 7 *GEO. J. LEGAL ETHICS* 959, 966 (1994) (“[T]he primary argument asserted in support of confidentiality protection, at least through stage one of the proceedings, is the desire to protect the judiciary from frivolous and unfounded complaints that may damage the reputation and independence of the judicial branch.”); Brian R. Pitney, Note, *Unlocking the Chamber Door: Limiting Confidentiality in Proceedings Before the Virginia Judicial Inquiry and Review Commission*, *U. RICH. L. REV.* 367, 373 (1992) (suggesting that confidentiality is necessary “to prevent self-serving complaints from harassing judges with unfounded or vexatious complaints”). The rationale for maintaining confidentiality in judicial disciplinary proceedings articulated by the United States Supreme Court will find support in Nigeria:

The substantial uniformity of the existing state plans suggests that confidentiality is perceived as tending to insure the ultimate effectiveness of the judicial review commissions. First, confidentiality is thought to encourage the filing of complaints and the willing participation of relevant witnesses by providing protection against possible retaliation or recrimination. Second, at least until the time when the meritorious can be separated from the frivolous complaints, the confidentiality of the proceedings protects judges from the injury which might result from publication of unexamined and unwarranted complaints. And finally, it is argued, confidence in the judiciary as an institution is maintained by avoiding premature announcement of groundless claims of judicial misconduct or disability since it can be assumed that some frivolous complaints will be made against judicial officers who rarely can satisfy all contending litigants.

Landmark *Comme’n, Inc. v. Virginia*, 435 U.S. 829, 835 (1979) (citations omitted).

cases to harass, discredit and intimidate judicial officers.²⁷⁰ The National Judicial Council must make conscious efforts to screen out baseless allegations and spare judges the anxiety and humiliation of defending themselves against unfounded allegations. Maintaining privacy and confidentiality at the initial stages will ensure that judges are not smeared by baseless and false allegations. If the National Judicial Council finds a complaint against a judicial officer to be baseless and decides to dismiss the case, it should only communicate its findings to the interested parties, i.e., the complainants and the target of the investigation. The complaint, including all the allegations and the correspondence between the Council and the parties, should remain confidential and must not be disclosed to the public. Allegations and the identity of the target of investigation should only be made public if the National Judicial Council finds that a *prima facie* case exists to warrant launching a full-scale inquiry.²⁷¹

C. Continuing Judicial Education

For a fairly long time, continuing judicial education was not considered a priority for judges in Nigeria.²⁷² New judges did not have orientation or training programs and older judges embarked on educational activities without any meaningful assistance from the state.²⁷³ It was assumed that their background either as practicing lawyers or magistrates adequately prepared them to serve as judges.²⁷⁴ This assumption over the years has

270. This was disclosed to me during a private interview with a retired Justice of the Court of Appeal and a retired Justice of the Supreme Court who also served as a member of the National Judicial Council.

271. In most states in America, judicial proceedings are made public after the filing of a formal charge. See CYNTHIA GRAY, HANDBOOK FOR MEMBERS OF STATE JUDICIAL CONDUCT COMMISSION 71 (1999).

272. For a discussion of the events that culminated in the establishment of the National Judicial Institute, see NAT'L JUD. INST., FROM CONTINUING EDUCATION TO A NATIONAL JUDICIAL INSTITUTE (1993).

273. Justice Mohammed Bello, then Chief Justice of Nigeria, stated:

While in the past, members of the Judiciary, particularly judicial officers have pursued their self-development unaided by government, it is time, in our view, in the interest of the Judiciary . . . [to] provide proper forum for the intellectual development necessary for the proper administration of justice in this country.

Mohammed Bello, Chief Justice of Nigeria, Opening Address at the Continuing Education Induction Program for the Judiciary (May 15, 1989), in NAT'L JUD. INST., *supra* note 272, at 37.

274. See MALLESON, *supra* note 264, at 180 n.3 (quoting Professor Zander: "[T]he assumption is that by the time a person is appointed as a judge he has knocked around the

proven unrealistic, and even fallacious. New and even experienced judges often find themselves resolving issues and matters that are completely new and foreign to their areas of expertise.²⁷⁵ The complexity of legal controversies and the passage of new laws present challenges that judges may not be well equipped to handle without the benefit of education programs.²⁷⁶ Moreover, judges recruited from the legal academy without significant experience in legal practice need continuing judicial education to familiarize themselves with the practice and procedure of the judiciary.²⁷⁷

system for so long that he can be expected to know enough about it to function effectively.”).

275. Making a case for the need for continuing judicial education, Jeffery Sharman stated:

It is necessary for both new and experienced judges to study substantive legal topics First, it is important to keep abreast of recent developments in the law, and secondly, it is needed to master areas of the law in which they have little or no experience. The judge who has spent most of his or her previous career as a lawyer may have little or virtually no knowledge of many legal matters which will have to be faced as a judge Thus, there is a need—and a continuing one at that—on the part of judges to learn about substantive legal topics [W]hile judges can be expected to have studied the rules of evidence, civil procedure and criminal procedure as students in law school, they may have had little practical experience with those matters in their years as attorneys. And the vast majority of persons appointed or elected to be judges have not previously studied judicial administration or judicial ethics. So, there is a strong need to teach these subjects as part of judicial education programs.

SHARMAN, *supra* note 266, at 14–15.

276. Retired Supreme Court Justice Oputa stated:

[T]he judge has an obligation to improve his competence in the performance of his duties by improving his intellectual ability and widening his knowledge, ability and experience of people and of the law. He should know the principles of the law which he applies and should know the Rules of Procedure in criminal and civil causes and matters. A virile and learned Bar has nothing but concealed contempt for an incompetent judge, so also the public at large. Our judges should, therefore, keep themselves up to date by continuous reading and be kept up to date by a well scheduled program of Continuing Legal Education.

Oputa, *supra* note 100, at 203.

277. Judges in Nigeria are recruited mostly from the practicing bar and the magistracy. See ALL NIGERIA JUDGES’ CONFERENCE 2001, *supra* note 3, at xlii. Justice M.A. Ope Agbe, the then Administrator of the National Judicial Institute explained the rationale behind continuing education program for judges: “[T]hese judicial officers are usually appointed from private legal practitioners, lawyers in the ministries of justice, academi-

It is widely accepted by scholars and jurists that continuing judicial education is vital to the development of a professional, honest and independent judiciary.²⁷⁸ In 1991, Nigeria joined the ranks of countries that provide formal continuing legal education tailored specifically to address the educational needs of the judiciary by establishing the National Judicial Institute.²⁷⁹ The National Judicial Institute consists of members drawn mainly from retired judges, mostly of the Supreme Court and the Court of Appeal.²⁸⁰ The functions and objectives of the National Judicial Institute are to:

[C]onduct courses for all categories of judicial officers and their supporting staff with a view to expanding and improving their overall knowledge and performance in their different sections of service;

[P]rovide continuing education for all categories of judicial officers by undertaking, organizing, conducting and facilitating study courses, lectures, seminars, workshops, conferences, and other programs related to judicial education.²⁸¹

The National Judicial Institute organizes orientation programs for newly appointed judges and provides periodic seminars, workshops and conferences throughout the country.²⁸² The educational programs cover a wide range of issues considered important for judges.²⁸³ The proceed-

cians and lower courts. On appointment to the higher bench, they need new orientation to fit into their new roles as judges of the higher bench." *Id.*

278. J. Clifford Wallace, *Globalization of Judicial Education*, 28 *YALE J. INT'L L.* 355, 356 (2003) ("[J]udicial education and training programs are of vital importance in making judiciaries effective and in providing the structures for achieving the rule of law."). In some states in the United States of America, continuing education for judges is mandatory. For example, in Colorado, state judges must complete a required number of continuing legal education hours within a three year period. *COLO. R. CIV. P.* 260.2(1) (requiring all states judges to complete 45 units of CLE during each three year period).

279. National Judicial Institute Decree No. 28 (1991) 32:78 O.G., A163 (Nigeria), reprinted in *NAT'L JUD. INST.*, *supra* note 272, at 51.

280. *Id.* § 2(3).

281. *Id.* § 3(2)(a), (b).

282. *NAT'L JUD. INST.*, *supra* note 272, at 10–12; see National Judicial Institute Decree No. 28 (1991) 32:78 O.G., A163 § 2(2)(b) (Nigeria).

283. For example, topics presented at orientation courses for newly appointed judges include constitutional and administrative law, civil and criminal procedure, approach to and style of judgment writing, evidence, judicial ethics and concepts of justice. *NAT'L JUD. INST.*, *supra* note 272, at 32.

ings, including papers and lectures, are published and widely circulated in Nigeria.²⁸⁴

Thus, the National Judicial Institute has significantly and positively affected the overall performance of the judiciary.²⁸⁵ By organizing seminars, conferences, and workshops, judges have been provided with an enhanced understanding and greater appreciation of the ethical and intellectual underpinnings of their positions.²⁸⁶ Scholarships and lectures produced under the aegis of the National Judicial Institute help judges to ponder and reflect on their position and the best way to approach their role as adjudicators.²⁸⁷

Another major focus of continuing legal education is judicial ethics.²⁸⁸ Prior to 1993, there was no formal code of ethics for judges.²⁸⁹ Judicial officers relied on their friends or their intuitive sense of right and wrong to resolve ethical dilemmas. Reliance on one's intuitive sense of right and wrong can prove unsatisfactory. As lawyers assume new roles as judges, "it is even more important that the judge be guided by express standards of ethical conduct rather than rely upon his or her innate common sense."²⁹⁰ The demand for express standards of ethical conduct for judges culminated in the adoption of a formal *Code of Conduct for Judicial Officers* in 1998.²⁹¹ The Code emphatically states, "Violation of any of the rules contained in this Code shall constitute judicial misconduct or

284. See, e.g., ALL NIGERIA JUDGES' CONFERENCE 2001, *supra* note 3; 1999 ALL NIGERIA JUDGES' CONFERENCE, *supra* note 2.

285. For the achievements of the National Judicial Institute, see Tobi, *supra* note 209, at 33–34.

286. The National Judicial Institute also collaborates with other bodies and non-governmental organizations to organize workshops and seminars for judicial officers. For example, the National Judicial Institute and the Nigerian Communications Commission recently organized a training on legal issues relating to telecommunications for judges. *Commission Holds Workshop for Judges*, NEWSLETTER (Nig. Commc'ns Comm'n, Abuja, Nigeria), Jan./Feb. 2005, http://www.ncc.gov.ng/newsletter/2005/JanuaryFebruary_Edition.pdf.

287. C.O. Okonkwo, *A Historical Overview of Legal Education in Nigeria*, in LEGAL EDUCATION FOR TWENTY-FIRST CENTURY NIGERIA 26 (I.A. Ayua & D.A. Guobadia eds., 2000) ("Already members of the Bench, especially newly appointed judges, seem to be deriving immense benefit from the activities of the Institute.").

288. For a discussion on judicial ethics in Nigeria, see Oputa, *supra* note 276, at 193.

289. See AKINBIYI, *supra* note 105, at 202.

290. Wayne Mackay, *Judicial Ethics: Exploring Misconduct and Accountability for Judges 4* (June 1995), available at <http://www.dal.ca/~cjei/mackay.html> (unpublished manuscript).

291. CODE OF CONDUCT FOR JUDICIAL OFFICERS (1998) (Nigeria), <http://www.nigeria-law.org/CodeOfConductForJudicialOfficers.htm>.

misbehavior and may entail disciplinary action.”²⁹² The Code serves as a useful source of information and guidance on the scope and limits of permissible judicial behavior.²⁹³ It provides definite instructions on what constitutes judicial impropriety.²⁹⁴ A judge’s conduct, whether in or outside the courtroom, affects the integrity of the judicial process as well as public confidence in the system of justice. The Code, therefore, admonishes a judicial officer to “avoid impropriety and the appearance of impropriety in all his activities.”²⁹⁵ It further states that a judicial officer “should respect and comply with the laws of the land and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.”²⁹⁶ The Code covers off-the-bench as well as on-the-bench conduct of judicial officers. It offers guidance and suggestions to judicial officers on how to handle their adjudicative duties,²⁹⁷ administrative duties,²⁹⁸ avocational activities,²⁹⁹ civil and charitable activities³⁰⁰ and business and financial activities.³⁰¹

The moral fervor of the Code of judicial ethics can be reinforced by continuing judicial education programs.³⁰² Through lectures, seminars

292. *Id.* Explanations (iii).

293. *Recent Developments: Developing Judicial Code of Ethics*, 46 J. AFR. L. 103, 111 (2002). Extolling the adoption of judicial codes of ethics, the journal stated, “To help retain the sensitive balance between independence and accountability, it is becoming increasingly common for states to develop a code of judicial ethics. Such a document is extremely desirable as a means of establishing the parameters for public expectations and criticisms of judicial conduct.” *Id.*

294. Mackay, *supra* note 290, at 10 (“[A] code of judicial ethics can provide a base for judges to assess their behavior. It can provide a map (be it ever so general) in a largely uncharted sea.”).

295. CODE OF CONDUCT FOR JUDICIAL OFFICERS R. 1(1) (1998) (Nigeria), <http://www.nigerianlaw.org/CodeOfConductForJudicialOfficers.htm>.

296. *Id.* R. 1(1).

297. *Id.* R. 2.

298. *Id.* R. 2(b).

299. *Id.* R. 3(a).

300. *Id.* R. 3(b).

301. *Id.* R. 3(e).

302. The benefits of continuing judicial education were stated by Professor Markey, former Chief Judge of the Court of Appeals, Federal Circuit, and former Chair of the Advisory Committee of Code of Conduct of the Judicial Conference of the United States as follows:

[S]eminars in judicial ethics would benefit judges in two ways. First, seminars would educate judges in the rules of judicial ethics and their application. Second, seminars would allow judges to exchange their thoughts on and experience with ethical issues. Education in the rules and their application would arm the

and publications, the National Judicial Institute seeks to educate, motivate and challenge judges to observe the ethical standards contained in the *Code of Conduct for Judicial Officers*.³⁰³ Without educational programs that continually stress judicial ethics, even the most aggressive disciplinary regime will not be enough to address judicial improprieties.³⁰⁴ For newly appointed judges, the rigors of adjusting to their new roles as judges will be significantly reduced by educational programs that sensitize judges to the ethical standards of the judiciary.³⁰⁵ Judges often need guidance to overcome the challenges posed by judging in a corrupt environment. The guidance needed to overcome the temptations faced by judges can come from training and education.

The activities of the National Judicial Institute, especially programs and seminars on judicial ethics, reflect a commendable appreciation of the need to focus on preventive and prophylactic measures that reduce incidents of judicial impropriety as opposed to the after-the-fact reactive responses that underlie the efforts of the National Judicial Council.³⁰⁶ Only by supplementing sanctions with educational programs that address the underlying causes of corruption will Nigeria achieve the desired goal of eliminating judicial corruption.³⁰⁷ It is therefore very important that the National Judicial Institute, acting in conjunction with the National Judicial Council, continue to provide guidance to judges on the scope and limits of acceptable judicial behavior and offer suggestions that will

judges with knowledge of the rules and would make colleagues available as resources for judges who are faced with ethical issues.

Howard T. Markey, *A Need for Continuing Education in Judicial Ethics*, 28 VAL. U. L. REV. 647, 649 (1994).

303. *Id.*

304. Sanctions are often inadequate to deal with the underlying factors that lead to corruption. See Michael Kirby, Justice of the High Court of Australia, The St. James Ethics Centre, Living Ethics, Tackling Judicial Corruption—Globally, http://www.hcourt.gov.au/speeches/kirbyj/kirbyj_stjames.htm (“[I]nternational treaties, supported by local laws, increasingly impose sanctions on those who set out to corrupt the vulnerable. [Transparency International] teaches that putting corrupt officials behind bars is not enough. The solutions must be systemic. The basic causes must be addressed.”).

305. See Cynthia Gray & Frances Kahn Zemans, *Instructing Judges: Ethical Experience and Educational Technique*, 58 LAW & CONTEMP. PROBS. 305, 305–06 (1995) (arguing for ethics training for judges).

306. The National Judicial Council only steps in after a judicial officer allegedly engages in judicial misconduct. See Nnaemeka-Agu, *supra* note 25.

307. See Gray & Zemans, *supra* note 305.

help judges resolve ethical dilemmas involved in presiding over trials in a developing society with slacking moral values.³⁰⁸

Besides instruction in ethics, the National Judicial Institute will help in equipping judges with the tools and education they need to effectively cope with judging in a rapidly developing and politically unstable country.³⁰⁹ New laws are frequently passed to assist in the transformation of the country. It will be very helpful if the judges who interpret these laws are exposed to continuing judicial education that will better equip them to handle the task.³¹⁰ In addition, as litigation becomes increasingly complex and lawyers attain greater proficiency and sophistication as a result of technological advancements in society, it is essential that judges be trained to cope with or match the expertise of lawyers.³¹¹

D. Independence of the Judiciary

The Nigerian judiciary continues to face problems due in large measure to the legacy of military rule. The military's disdain for due process led to attempts to manipulate the judiciary and turn judges into pliable agents of state power.³¹² Years of manipulation of the judiciary culminated in a compromised judiciary that is unable to engage in dispassionate and impartial adjudication of disputes.³¹³ Despite democratic transition, the damnable legacy of military rule still thwarts efforts to create a virile and independent judiciary. Though flagrant and brazen control of the judiciary reminiscent of the military era seems unlikely, the Nigerian

308. See Markey, *supra* note 302 (discussing the benefits of continuing judicial education to judges).

309. For a discussion of the role of judges in developing societies, see Oko, *supra* note 192, at 625–29.

310. SHARMAN, *supra* note 266, § III.E.

311. Thomas M. Nickel, *Judges Deserve Access to Educational Opportunities*, 49 FED. LAWYER, Nov.–Dec. 2002, at 56 (arguing that seminars that expose judges to cutting edge issues make for a robust and healthy judiciary).

312. Agbede, *supra* note 146, at 144.

313. Agbede describes the effect the military regime has had on the judiciary:

Of all the excesses of the military regime the most intolerable is the undeclared control they exercise over the judiciary The sheer intimidating posture of the military regime (with unrestrained power) towards the judges who have to depend on the same regime for the enforcement of their judgment is itself disarming. Their behind-the-scene overtures can hardly be resisted by the average judge let alone their overt acts of intimidation.

Id.

judiciary continues to confront government functionaries who are inevitably uneasy about the notion of an independent judiciary.³¹⁴

A legal framework exists for the independence of the judiciary in Nigeria.³¹⁵ Judges enjoy security of tenure and once appointed serve until they attain the retirement age.³¹⁶ They are appointed through a process that is relatively immune from politics.³¹⁷ The executive cannot initiate removal or disciplinary proceedings against judges.³¹⁸ Also, the Constitution pro-

314. Government officials view the judiciary as vital to their power base and therefore engage in all kinds of machinations to turn the judiciary into malleable instruments of state power. The dominant government attitude towards the judiciary was eloquently stated by Petter Langseth, a crime prevention officer with the United Nations Center for International Crime Prevention, "One has to understand the political resistance to judicial independence as the result of the unwillingness of the executive and legislature to let go of a court system frequently used as a tool to settle political scores or to consolidate political bases." Petter Langseth, *Empowering the Victims of Corruption Through Social Control Mechanisms* 21, paper presented at IACC's Meeting in Prague (Oct. 9, 2001), <http://www.unodc.org/pdf/crime/gpacpublications/cicp17.pdf>.

315. Several international bodies and organizations have articulated and defined the principles that undergird the independence of the judiciary. See, e.g., IBA MINIMUM STANDARDS OF JUDICIAL INDEPENDENCE (Int'l Bar Ass'n 1982), reprinted in JUDICIAL INDEPENDENCE: THE CONTEMPORARY DEBATE, *supra* note 57; High Commissioner for Human Rights, *Basic Principles on the Independence of the Judiciary* ¶ 2, welcomed by the General Assembly, U.N. Doc. A/RES/40/146 (Dec. 13, 1985), available at <http://www.ohchr.org/english/law/indjudiciary.htm>; First World Conference on the Independence of Justice, Montreal, June 10, 1983, *Universal Declaration on the Independence of Justice* (1983), reprinted in JUDICIAL INDEPENDENCE 447 (Shetreet & Deschênes eds., 1985).

316. Justices of the Supreme Court and the Court of Appeal may retire at the age of sixty-five and shall cease to hold office when they attain the age of seventy. CONSTITUTION, art. 291(1) (1999) (Nigeria). Other judges may retire at sixty but must cease to hold office at sixty-five. *Id.* art. 291(2).

317. The Chief Justice of Nigeria and the Justices of the Supreme Court are appointed by the President on the recommendation of the National Judicial Council subject to confirmation by the Senate. *Id.* art. 231(1), (2). The President of the Court of Appeal is appointed by the President on the recommendation of the National Judicial Council subject to confirmation by the Senate. *Id.* art. 238(1). Other justices of the Court of Appeal are appointed by the President on the recommendation of the National Judicial Council. *Id.* art. 238(2). The Chief Judge of the Federal High Court is appointed by the President on the recommendation of the National Judicial Council subject to confirmation by the Senate. *Id.* art. 250(1). At the state level, the Chief Judge is appointed by the Governor on the recommendation of the National Judicial Council subject to confirmation by the House of Assembly of the State. *Id.* art. 271(1). Other state high court judges are appointed by the state governors on the recommendation of the National Judicial Council. *Id.* art. 271(2).

318. Under the Constitution of Nigeria:

vides that remuneration and salaries payable to judges and their conditions of service shall not be altered to their disadvantage.³¹⁹

In practice, however, judicial independence remains extremely fragile, implacably assaulted by politicians and corrupt judges. Though the Nigerian Constitution maintains a clear separation of powers between the executive and the judiciary, it is illusory to assume that politicians will refrain from interfering with the judiciary simply because of the Constitution. The experience in Nigeria reveals that intolerance, contempt for the judiciary and the desire to control and manipulate the judiciary continually swirl within the executive.³²⁰ Elected officials and politicians often push or prod judges to forfeit their impartiality and independence.³²¹ The judiciary, on its part, has some judges who either lack or fail to demon-

A judicial officer shall not be removed from his office or appointment before his age of retirement except in the following circumstances—

(a) in the case of—

(i) Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal High Court, Chief Judge of the High Court of the Federal Capital Territory, Abuja, Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and President, Customary Court of Appeal of the Federal Capital Territory, Abuja, by the President acting on an address supported by two-thirds majority of the Senate.

(ii) Chief Judge of a State, Grand Kadi of a Sharia Court of Appeal or President of a Customary Court of Appeal of a State, by the Governor acting on an address supported by two-thirds majority of the House of Assembly of the State, [sic] praying that he be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct;

(b) in any case, other than those to which paragraph (a) of this subsection applies, by the President or, as the case may be, the Governor acting on the recommendation of the National Judicial Council that the judicial officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or of body) or for misconduct or contravention of the Code of Conduct.

Id. art. 292(1).

319. CONSTITUTION, art. 84(3)–(4) (1999) (Nigeria). In addition, judges are guaranteed a pension upon retirement. *Id.* art. 291(3)(c).

320. Government officials exploit the appointive powers and control over the funds allocated to the judiciary to prod judges to bow to their wishes. See NWABUEZE, *supra* note 133.

321. *Id.*

strate the integrity needed to resist pressures and overtures on them to deviate from acceptable judicial behavior.³²²

Nigerians have come to realize that it is the attitude of the executive and its willingness to respect the integrity of the judicial process and refrain from interfering with the judiciary that nurtures the independence of the judiciary rather than constitutional provisions and self-serving declarations by politicians.³²³ In a system where judges are fearful of the executive, it is futile to expect them to exercise the level of independence needed for them to engage in impartial and dispassionate resolution of conflicts.³²⁴ The climate of intimidation, manipulation and control of the judiciary by the executive often forces judges to engage in a cost-benefit analysis with potentially disastrous consequences for the integrity and independence of the judiciary.³²⁵ Judges have to choose between commitment to justice and risking the ire of the executive or demonstrating their fealty to the executive. Most judges have succumbed to the notion

322. See J.A. Ajakaiye, *The Constitutional Role of the National Judicial Council With Regard to Collection and Disbursement of Funds to the Judiciaries: Problems and Prospects*, in ALL NIGERIA JUDGES' CONFERENCE 2001, *supra* note 3, at 127, 136. A report produced by the Constitutional Conference of 1994-95 painted a picture of the relationship between the executive and the judiciary that remains true in contemporary Nigeria. *Id.* The report concluded:

The universal principle of separation of powers between the three arms of government, namely: the executive, legislature and the judiciary, appears not to be in operation in Nigeria at the federal and state levels, particularly with reference to the judiciary. The judiciary in Nigeria is tied to the apron string of the executive, both at the federal and state levels and this erodes the independence of the judiciary. In other words, the judiciary in Nigeria is so dependent on the executive that it is regarded as an extension of the executive.

Id. (quoting the Report of the Constitutional Conference of 1994-95). As rightly pointed out by Professor Yakubu, "What is missing to make the independence of the judiciary complete under our constitution is the maturity, confidence, personal integrity, will of power and mind, and the ability to resist taking sides." A. A. Olowofoyeku, *The Beleaguered Fortress: Reflections of the Independence of Nigeria's Judiciary*, 33 J. AFR. L. 55, 67 (1989).

323. Independence of the judiciary thrives in established democracies principally because of the democratic culture and temperament of elected officials who encourage the judiciary to function as intended without interference or manipulation. See Hsu, *supra* note 59, at 282.

324. See Karibi-Whyte, *supra* note 138, at 148-52.

325. Geoffrey P. Miller, *Bad Judges*, 83 TEX. L. REV. 431, 457 (2004) ("If judges are not independent, they will be subject to influence that could distort the outcome of cases, skew the development of substantive law, and detract from public confidence in the judicial system.").

that career development depends on how they rule, especially in high profile cases involving the government.³²⁶ Judges cast in this mold prefer to demonstrate their loyalty to the executive, sacrificing the dictates of justice in an attempt to appease the executive, and thus, maintain their viability in the system.³²⁷ This explains the lack of independence despite the constitutional provisions designed to secure the independence of the judiciary.³²⁸

Until Nigeria produces an independent, competent and honest judiciary, securing fair trial rights will remain largely unattainable, perhaps illusory.³²⁹ The imperatives of judicial independence dictate that judges be “protected in their decision-making from interference by the state and all other influences that may affect their impartiality.”³³⁰ Judicial independence does not exist solely for the protection of judges; it is necessary for the good of the public and the system of government.³³¹ The public

326. This was disclosed to me during an interview with a retired Justice of the Court of Appeal.

327. See Agbede, *supra* note 146, at 143.

328. In 1989, Justice Mohammed Uwais, then Chief Justice of Nigeria, in a paper entitled *The Structure and Position of the Judiciary*, admonished judges to assert their independence and refrain from kowtowing to the executive. He stated:

. . . the heads of the Judiciary and the Judges themselves are too timid to exercise their new found independence. They sheepishly follow whatever the Executive decide for the Civil Service as if the Judiciary is still part of the Civil Service. There is no doubt that the time has come when the Judiciary should be seen to exert its administrative independence The burden is on the shoulders of the Executive heads of the Judiciary and indeed the Judges collectively.

Olayiwola Aderemi, *The Role of a Judge in the Administration of Justice in Nigeria*, in *ADMINISTRATION OF JUSTICE IN NIGERIA* 97 (Ademola Yakubu ed., 2000).

329. See Jerome J. Shestack, Commentary, *The Risks to Judicial Independence*, 84 A.B.A. J. 8 (1998) (“[A]n independent judiciary is the measure of an effective separation of powers in our democracy. It stands as the ultimate protector of our constitutional rights and liberties against the power of the executive or the will of the legislature. It is the foundation that underlies a rule of law.”); Michael G. Collins, *Judicial Independence and Scope of Article III—A View From the Federalist*, 38 U. RICH. L. REV. 675, 687 (2004) (“The dual functions of judicial independence as an aid in securing enforcement of the Constitution on the one hand, and the impartial enforcement of ordinary rights on the other, is a frequent theme of The Federalist No. 78.”).

330. MALLESON, *supra* note 264, at 64 (quoting Sir Ninian Stephen).

331. There exists a broad consensus among jurists and scholars that judicial independence is vital to the efficiency and effectiveness of the judiciary. Janet Stidman Eveleth has written:

Judicial independence is the cornerstone of our rule of law and it is also significant for citizens. It means that when any citizen appears before a court of law,

will never have confidence in a judiciary that is either manipulated by or afraid of the executive.³³²

Judicial independence insulates judges from external pressures and allows “a judicial officer in exercising the authority vested in him . . . to act upon his own convictions, without apprehension of personal consequences to himself.”³³³ For judicial independence to deepen, more efforts should be expended in helping elected officials and the general public to understand that judicial independence is not just for the benefit of individual judges.³³⁴ The judiciary will never be truly independent if elected

his or her case will be decided on its merits. Impartial judges, governed only by our rule of law, apply the law fairly to all citizens and shield them from politicians, government, businesses and each other. They protect the individual rights of all Americans and ensure they are treated equally and fairly. An independent judiciary enables citizens to enjoy liberties and freedoms guaranteed under the Constitution.

Janet Stidman Eveleth, *Preserving Our Judicial Independence*, 37 MD. B.J. 58, 62 (2004). The Chief Justice of Canada, extolling the values of judicial independence, stated:

Judicial independence is valued because it serves important societal goals—it is a means to secure those goals. One of these goals is the maintenance of public confidence in the impartiality of the judiciary, which is essential to the effectiveness of the court system. Independence contributes to the perception that justice will be done in individual cases. Another social goal served by judicial independence is the maintenance of the rule of law, one aspect of which is the constitutional principle that the exercise of all public power must find its ultimate source in a legal rule.

Re Provincial Court Judges, [1997] 3 S.C.R. 3.

332. Gleeson, *supra* note 55. Stressing the need for an independent judiciary, U.S. Supreme Court Justice Stephen Breyer stated:

The good that proper adjudication can do for the justice and stability of a country is only attainable, however, if judges actually decide according to law, and are perceived by everyone around them to be deciding according to law, rather than according to their own whim or caprice or in compliance with the will of powerful political actors. Judicial independence provides the organizing concept within which we think about and develop those institutional assurances that allow judges to fulfill this important social role.

Stephen G. Breyer, *Judicial Independence in the United States*, 40 ST. LOUIS U. L.J. 989, 996 (1996); Chief Justice Rehnquist also described an independent judiciary as “one of the crown jewels of our system of government today.” Symposium, *The Future of the Federal Courts*, 46 AM. UNIV. L. REV. 263, 274 (1996).

333. *Bradley v. Fisher*, 80 U.S. 335, 347 (1871).

334. In the final analysis, judicial independence inures to the benefit of the society, especially those who lack the resources to protect their rights. See W.F. Rylaarsdam,

officials do not check the impulse to manipulate and intimidate judges.³³⁵ Elected officials' commitment to the independence of the judiciary must go beyond mere symbolism. Political elites cannot continue to masquerade as defenders of judicial independence while striving fervently to interfere with, intimidate and manipulate the judiciary. Lawyers must convince the often antagonistic executives that hopes of deepening democracy cannot be realized without a strong and independent judiciary. Once elected officials are persuaded to appreciate the role and place of the judiciary and how the judiciary can bring about stability, they will be more likely to allow the judiciary to function without interference. Also, the public will join the struggle for judicial independence once they are reassured that the prospects of securing fair trial rights lies in the quality of the judiciary.³³⁶

E. Funding

Prospects of establishing an independent judiciary will be further endangered if judges depend on the goodwill of the executive branch for their funding.³³⁷ It is a continuing source of frustration to judges that money allocated to the judiciary is controlled by the executive.³³⁸ Ex-

Judicial Independence—A Value Worth Protecting, 66 S. CAL. L. REV. 1653, 1655 (1993) (“Judicial independence is hardly needed to protect the interest of the powerful, the politically well-connected, or the interests of the majority. Like free speech, its only value lies in protecting the unpopular, the disliked, and the others outside the mainstream.”).

335. No one could seriously argue with the Chief Justice of Nigeria who stated that “[t]he independence of the judiciary can only be sustained and guaranteed when there is no interference by the other arms of the government or their agencies in the discharge of its duties.” Uwais, *supra* note 3, at xxxi.

336. Shirley S. Abrahamson, *Courtroom With a View: Building Judicial Independence With Public Participation*, 8 WILLAMETTE J. INT'L L. & DISP. RESOL. 13, 24 (2000) (“The public’s willingness to support and fight for judicial independence depends on the public’s understanding of, and trust and confidence in, the judicial system. A public that does not trust its judges to exercise even-handed judgment will look upon judicial independence as a problem to be eradicated.”).

337. See Aduba, *supra* note 34, at 404 (noting that funding has been one of the most difficult problems for the judiciary).

338. Chief Justice Uwais, in an address to the All Nigeria Judges’ Conference, emphasized the need to grant financial autonomy to the judiciary. He stated:

The funding of the judiciary is crucial and is a most important index for assessing the independence of the judiciary. Although the 1999 Constitution of the Federal Republic of Nigeria has made special provisions towards funding the Nigerian judiciary, those provisions are not free from ambiguity; consequently, the application of those provisions by various State Executives is reportedly half-hearted.

pressing the frustration widely shared by most judges in Nigeria, retired President of the Court of Appeal, Justice Akanbi stated, “It is certainly no use speaking of the judiciary as the third arm of government if that arm has wittingly or unwittingly been consigned to the role of beggar, living at the mercy of the other two powerful arms.”³³⁹ Premised on the need to liberate the judiciary from the clutches of the executive, the calls for granting the judiciary control over its statutorily allocated funds have become louder and more persistent over the years.³⁴⁰

The Constitution conferred on the judiciary the task of acting as a check upon abuse of power and protecting citizens’ rights against governmental encroachment.³⁴¹ It is nonsensical for judges to depend on the goodwill of the executive for the funds needed to effectively discharge their functions.³⁴² A funding procedure that leaves the judiciary at the mercy of the executive hinders the judiciary’s effectiveness and capacity to resist executive pressures.³⁴³ Potential for interference is great whenever the executive controls the funds statutorily allocated to the judiciary.³⁴⁴ Both the appearance and reality of independence demand that the judiciary should have complete control over its funds.³⁴⁵

The Constitution Drafting Committee that produced the 1979 Constitution included a provision in the draft constitution that lessened the judiciary’s dependence on the executive for its funding. Section 74(4) of the draft constitution provided that:

Uwais, *supra* note 3, at xxxi.

339. Aduba, *supra* note 34, at 405.

340. I.E. SAGAY, *LEGACY FOR POSTERITY: THE WORK OF THE SUPREME COURT (1980–1988)* 55 (1998) (“Many factors contribute to or detract from the achievement of judicial independence. Very frequently, various State Chief Judges appeal to the Executive to make sufficient funds available in order to make the judiciary a viable arm of Government. Connected with this is the call that the funding of the judiciary should be separately provided for in the Constitution, in order to enhance their independence. In other words, Executive control of judicial purse strings inhibits the independence of the latter.”).

341. CONSTITUTION, art. 6 (1999) (Nigeria).

342. CEELI, *supra* note 34, § 4, pt. F (“Constitutional or legislative provisions that the judiciary is independent become suspect when the control of the resources essential to operation of the judiciary are vested in the executive arm of the government.”).

343. SAGAY, *supra* note 340, at 55.

344. *See* Aduba, *supra* note 34, at 404.

345. Chief Justice Uwais, in an address to the All Nigeria Judges of the Lower Court Conference stated that “[j]udicial independence entails not only lack of external interference with the judicial function, but also financial autonomy.” Okon Bassey, *Judicial Independence, Key to Good Governance, Says Uwais*, *THIS DAY* (Nig.), Nov. 22, 2004.

No money shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation except in the manner prescribed by the National Assembly.

Provided that moneys in respect of the Capital and Recurrent Expenditure of the Judicial Service of the Federation charged upon the Consolidated Revenue Fund of the Federation shall be withdrawn from the Fund and paid into a special account of the Federation under the control of the judiciary of the Federation.³⁴⁶

This provision was, however, deleted by the then Supreme Military Council before signing the Constitution into law.³⁴⁷ Deleting this provision served and still serves as a further indication of the attitude of the executive and elected politicians toward the judiciary.³⁴⁸ It may well be time for Nigeria to consider a constitutional amendment to incorporate the recommendations of the Constitution Drafting Committee. Several scholars and commentators have called for granting the judiciary control over its funds.³⁴⁹ History and logic support a constitutional amendment that will liberate the judiciary from executives who in the past have shown deliberate indifference to or lack of concern for the plight of the judiciary.³⁵⁰ It is both appropriate and desirable to allow the judiciary to

346. Muhammed Mustapha Akanbi, Retired President of the Court of Appeal, Funding of the Judiciary, Paper Presented at the 21st Annual Conference of the Magistrates Ass'n of Nigeria, in *THE JUDICIARY AND THE CHALLENGES OF JUSTICE*, *supra* note 94, at 22, 25.

347. *Id.*

348. The 1979 Constitution has been revised two times, in 1989 and 1999. Ema Orji, *Issues on Ethnicity and Governance in Nigeria: A Universal Human Rights Perspective*, 25 *FORDHAM INT'L L.J.* 431, 438 (2001).

349. Agbede, *supra* note 146, at 143 ("In order to be able to perform its role as an unbiased umpire in cases involving the interest of the government, the judiciary should in no way be subordinate to any of the other two organs. It is therefore necessary that the judiciary should be made financially independent of the executive."); SAGAY, *supra* note 340, at 55; Ajakaiye, *supra* note 182, at 136.

350. See Constance A.R. Momoh, *Commentary*, in *ALL NIGERIA JUDGES' CONFERENCE 2001*, *supra* note 3, at 84. Justice Constance A.R. Momoh, Chief Judge of Edo State, aptly described the effect of judiciary's dependence on the other arms of government for its funding:

Over the years it has become evidently clear that the power of control of the nation's purse jointly exercised by the other two arms of government has continued to be used to the detriment of the judiciary.

The poor funding of the judiciary, both in respect of capital and recurrent expenditure year in year out, bears eloquent testimony to this. The result is that unlike what generally operates in the other two arms of government, the work

control its funds. Judges will be in a better position to resist attempts by the executive to influence them if they control their own funds.

The dictates of judicial independence and the need to protect judges from executive pressures demand that the judiciary have control over its funds.³⁵¹ Granting the judiciary control over its funds will have enormous implications both for the independence and the operational efficiency of the judiciary.³⁵² Proper funding will enable the judiciary to address structural and institutional problems that cause delay.³⁵³ Infrastructural problems, including the absence of stenographers and modern tools like computers can all be addressed with adequate funding.³⁵⁴ Control over funds will make it possible for the judiciary to channel funds where they are most needed, especially in the areas of salaries and working conditions. Funding is especially needed to improve the salaries of judges to avoid the urge to augment their incomes through corrupt means.³⁵⁵ Poor sala-

environment of judicial personnel, especially the judges, their living environments and remunerations remain very poor.

Id. at 88.

351. It may well be time for the policy makers in Nigeria to give sincere attention to the recommendations of the Constitutional Conference empanelled in 1994 by the late Dictator Abacha. On the funding of the judiciary, the Conference stated:

If the Judiciary is to be truly independent, it must have absolute control of its finances. Funding of the court system must be made independent of the Executive. The Judiciary should prepare its own annual budget and defend same. The approved budgetary allocation of the judiciary should be disbursed directly to the Judiciary as in the case of Local Governments. The Judiciary should have its own accounting administration with the Director-General as the Chief Accounting Officer who should be responsible directly to the Chief Justice or Head of Superior Courts of Record as the case may be.

Report of the Constitutional Conference of 1994–95, *quoted in* Ajakaiye, *supra* note 182, at 136.

352. Justice M.A. Ope Agbe, then Administrator of the National Judicial Institute, highlighted the deplorable state of the judiciary and the need to adequately fund the judiciary. Welcome Address by the Honourable Administrator, National Judicial Institute, *in* ALL NIGERIA JUDGES' CONFERENCE 2001, *supra* note 3, at xli, xlii–xliii (“In the course of our going around organizing workshops, we came across a total lack of the tools to enable judicial officers do their work [i]t must however be stated loud and clear that without adequate funding, this arm of government would be handicapped in the quest to attain good government in the country.”).

353. See *supra* Part II.D for a discussion of the institutional problems that prevent the judiciary from efficiently adjudicating disputes.

354. See *id.*

355. Wallace, *supra* note 254, at 350 (remarking that the likelihood of corruption is increased when judges are not adequately compensated by the state).

ries make it difficult for judges to function efficiently. Some judges, become susceptible to corruption as they seek other means to augment their meager incomes.³⁵⁶ Upright judges are often preoccupied with balancing financial needs, thus compromising the clarity of mind necessary to make for effective legal reasoning.³⁵⁷

IV. CONCLUSION

Judicial corruption is a damnable blight on Nigeria's justice system. A judiciary that cannot fairly, efficiently and transparently administer justice and that allows money and influence to determine the outcome of a judicial proceeding is atrocious and offensive to Nigeria's values and democratic order. More importantly, judicial corruption has the obvious consequence of alienating the public from, and reducing their confidence in, the justice system, and indeed, the democratic process. I have shown in this paper that the judiciary must purge itself of corruption and reform its practices so that it can better discharge the eminently important task of administering justice. I have also shown that the right mix of education and sanctions is necessary to recapture the judiciary's institutional commitment to justice, integrity and professionalism. I suggested the transformation of existing programs and institutions to enable Nigeria to meet the demands and challenges of fair trial.³⁵⁸

To preserve the right to a fair trial, Nigeria must respond progressively and creatively to the problems of the judiciary, especially corruption and

356. See Olowofoyeku, *supra* note 322, at 63 ("It is of utmost importance for judicial independence that judges should be free from financial anxieties. This is because a judge who is subjected to financial anxieties through inadequate or insecure pay might be reduced into a state of servility to the authority responsible for his financial fortunes, or might succumb to pressures because of financial worries.").

357. See Akanbi, *supra* note 94, at 46 ("The mind that administers justice must be free from financial embarrassment. He must be able to think straight, talk straight, walk straight to be able to deliver good judgment. All things being equal, a good judgment flows from a mind that is not bogged by the thought of where do I get my next meal or where do I get the money to pay my son's school fees. Poor condition of service disturbs the mind. It is an obstacle to clear and positive thinking and consequently, an obstacle to justice according to law.").

358. Fair trial rights will truly mean something if the judiciary recaptures its standing as fair and impartial umpires. Everyone who goes to court should, according to U.S. Supreme Court Justice Sandra Day O'Connor, "leave secure in the knowledge that justice is open, illuminated, and makes room for everyone, and that in this place facts are determined correctly, legal issues resolved fairly and wisely, and equal justice under law is rendered to all." Sandra Day O'Connor, *Courthouse Dedication: Justice O'Connor Reflects on Arizona's Judiciary*, 43 ARIZ. L. REV. 1, 7 (2001).

inadequate funding. The National Judicial Council is trying, with some success, to sanitize the judiciary and discipline erring judges.³⁵⁹ Because judicial corruption is deep-seated and pervasive, it cannot be eradicated immediately and easily. Too many Nigerians are immersed in the culture of corruption to allow quick and easy solutions. Combating judicial corruption requires the sustained efforts of all. Nigerians must find the resolve to confront an entrenched culture that encourages corruption and interference with the judicial process. Citizens, the ultimate victims of judicial corruption, who complain incessantly about judicial corruption, have a large stake in reforming the judiciary. Citizens can significantly aid the fight against judicial corruption if they refuse to participate in corrupt activities and report corrupt judges to the appropriate authorities.³⁶⁰ Efforts to reform the judiciary will not succeed unless the public and lawyers with relevant information report it.³⁶¹ The National Judicial Council must redouble its efforts to educate the public on the scope and limits of acceptable judicial behavior. Promoting awareness of judicial conduct issues “will result in an increased level of integrity among the judiciary as well as an enhanced public appreciation of that integrity.”³⁶² Lawyers should also explain to the public, and especially their clients, the rules and procedure for filing complaints against judicial officers.³⁶³ The legal profession’s role in combating judicial corruption will be significantly enhanced if the legal profession sanctions its members who engage in judicial corruption.³⁶⁴

359. The National Judicial Council has conducted credible and transparent investigation in cases where the facts warrant an inquiry into the conduct of a judicial officer. Nnaemeka-Agu, *supra* note 25, at 18.

360. See ArabicNews.com, *The Costs of Corruption to Citizens is Very High*, <http://www.arabicnews.com/ansub/Daily/Day/050806/2005080625.html> (last visited Aug. 26, 2005); Josephine Lohor, *Obasanjo Ups the Ante Against Corruption*, THIS DAY (Nig.), Aug. 7, 2005.

361. The National Judicial Council only acts upon credible evidence of wrongdoing against a judge. See Nnaemeka-Agu, *supra* note 25, at 18 (“The National Judicial Council does not go about fishing for offending Judicial officers. It must first receive a report of wrongdoing.”).

362. Keith, *supra* note 45, at 1405.

363. Similar recommendations were made by the group of Chief Justices and other high ranking judges convened by the United Nations Center for International Crime Prevention and Transparency International. See Langseth, *supra* note 70, at 13.

364. This is very important because lawyers are often accused of enabling judicial corruption. Justice Oyeyipo stated:

It is sad to observe that lawyers are invariably involved in cases of Judicial Corruption. Judicial corruption can hardly take place without the active partici-

Another problem highlighted in this paper is judicial independence and how best to preserve it. Regrettably, politicians exert considerable influence over the judiciary and often use their powers to prod judges to consent to their wishes. Honest judges find themselves hobbled by pressures from elected officials and party stalwarts and are thus prevented from engaging in dispassionate and impartial adjudication. Until judges are allowed to function without interference, the judicial process will remain an eminently unfair forum for conflict resolution. Politicians and elected officials must be encouraged, and if need be, challenged to repress the instinct to interfere with the judicial process. Here, I suggested the crafting of new policies and regulations that will grant financial autonomy to the judiciary and deprive the executive of the strong leverage it uses to manipulate judges.

Fair trial rights and indeed justice will be secured in the country if Nigeria aggressively attacks judicial corruption, appoints only competent and upright judges, refrains from interfering with the judiciary and provides the funds necessary to enable the judiciary to function effectively and efficiently. The reform proposals suggested in this paper, if honestly and properly implemented, will enable the Nigerian judiciary to recapture its integrity, professionalism and independence. Only then will Nigeria have a judiciary that can help citizens realize the true meaning and promises of fair trial rights guaranteed by the Constitution.³⁶⁵

pant [sic] of a lawyer in one way or the other. A bad lawyer is always too ready to serve as a conduit pipe through which money gets to a corrupt judge.

Oyeyipo, *supra* note 8, at 17–18.

365. Nigerians share President Obasanjo's characterization of a dream judiciary in his speech to the 1999 All Nigeria Judges' Conference: "The judiciary of our dream [sic] is that which is independent and free from all political, legislative, ethnic or religious pressures and manipulation." Obasanjo, *supra* note 2, at xxxvii.