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Countries at the Crossroads 2012 - Nigeria

2012 Scores

Accountability and Public Voice Score: 3.67

Civil Liberties Score: 3.53

Rule of Law Score: 2.92

Anti-Corruption and Transparency Score: 2.71

Introduction

Nigeria is enjoying the longest stretch of civilian rule since its independence from Britain in 1960. The economy is expanding rapidly with a growth rate of 6 percent in 2008 and nearly 8 percent in 2010. The country peacefully resolved a contentious succession question over President Umaru Musa Yar'Adua's disappearance from public life in 2009 due to ill health when Vice President Goodluck Jonathan, who served as acting president in Yar'Adua's absence, assumed the presidency upon Yar'Adua's death in May 2010. This stable transition was further cemented in the April 2011 presidential election of Jonathan, which demonstrated marked improvements over the three other electoral contests since the transition to democracy in 1999.

Despite these successes, various gauges of civil and political freedoms in Nigeria remain troubling. Ethnic and religious violence is common in several states, and hundreds of people were killed after the 2011 elections. Militants from the Niger Delta and Islamic groups from the northeast attacked symbols of government authority in the capital. Security agencies responded with blunt force and enjoy impunity for violent tactics, which raises serious concerns about the government's commitment to rule of law.

During his two terms in office, President Olusegun Obasanjo (1999-2007) shepherded the country through an era of economic growth, political reform, and transition to a new constitutional regime. The government paid off virtually all of its foreign debts, contributing to a sense in the country that Nigeria belongs among the world's great powers. Already Africa's most populous country with over 162 million people, however, Nigeria faces an annual 3 percent increase in its population, placing huge strains on social services. There have been some strides towards economic diversification, but oil exports continue to account for the vast majority of federal revenue and comprise nearly 95 percent of export earnings. This raises the stakes for control of the federal government and enables corruption, as oil earnings put huge patronage resources at the disposal of politicians.

Democratic consolidation and political freedom face serious ongoing challenges. A radical Islamic group exploded a bomb just a few hundred meters away from Goodluck

Jonathan's inauguration. The ruling People's Democratic Party (PDP) maintains a firm grip on political competition, though opposition parties have made some gains in the House of Representatives and in a dozen states. Despite a nominally open primary process, and improvements to the electoral law, the public has virtually no input on how parties select candidates. However, the role of political "godfathers" in controlling the selection process of candidates in many states has diminished.

The problem of ethnic discrimination threatens to keep many qualified Nigerians from running for public office or seeking employment, and contributes to tensions between internal migrants and local indigenes. While women enjoy improved opportunities to participate in public life, Sharia (Islamic law) statutes in a dozen states restrict their rights in relation to property, marriage, and other areas of civil law. Other pressing human rights issues include police abuse and poor prison conditions, some restrictions on public meetings, and harassment of the media.

Overall, President Jonathan appears committed to many of his predecessor's moderate policies. Civil-military relations hang in a delicate balance as federal forces respond to attacks with communal punishment, extrajudicial killings, and arbitrary violence. Moreover, civil society organizations, seeing slow progress on electoral reform and anticorruption investigations, question the administration's dedication to deepening democracy.

Accountability and Public Voice

Elections in April 2011 opened new channels for public participation, improved the environment for political competition, and demonstrated progress towards electoral fairness. Significant leadership changes within the Independent National Electoral Commission (INEC), biometric technologies used to identify votes, and a new voter registration list also reduced the opportunities for fraud and contributed to public confidence about the electoral process. The use of social media, starting with Goodluck Jonathan's declaration of his candidacy on Facebook, dramatically increased access to independent information and alternative analyses.^[1] Many independent observers described the elections as the fairest since Nigeria's independence. However, voting irregularities were a serious problem in several states and electoral violence reached new heights. An INEC office was bombed shortly before the election, and violence erupted in the north after the official results declared Jonathan, a southerner, the winner by a wide margin. The ruling People's Democratic Party (PDP) retained its firm grip on the presidency, though it faces serious challenges for governorships and for seats in the House of Representatives.

Most electoral observers and domestic civil society monitors hailed 2011 as an improvement over the previous elections organized under the various democratic regimes since independence. The National Democratic Institute (NDI) described the elections as "a step forward from seriously flawed elections in the past."^[2] The European Union mission said the elections guaranteed "overall effective exercise of voting rights to Nigerian citizens."^[3] In response to some skeptics, Nigeria's Election Monitor Online recalculated and weighted votes in areas with high levels of fraud and found that even then "the elections can be generally said to be credible," concluding that "irregularities alleged would not significantly alter the results at least not to the extent of causing a run-off victory."^[4]

In spite of this progress, there is no denying the significant scope and scale of violence, both before and after the election. Human Rights Watch estimates that 800 people were killed and 65,000 people were displaced due to post-election violence and rioting among rivals. During several days of rioting the police and the military were implicated in "excessive use of force and other serious abuses while responding."^[5] Some analysis posits that the post-election violence was due to northern frustration with Jonathan's election since Yar'Adua served barely two years of his term, when according to an informal agreement within the PDP it was the north's "turn" to rule.^[6] There was also some brief debate in Nigeria about whether opposition candidate Muhammadu Buhari created a permissive atmosphere for the violence when he rejected the use of legal appeals to petition the electoral results as he had previously done.^[7] In both instances the election results were upheld, and Buhari had to fight to even allow the courts to admit evidence of fraud. His party, the Congress for Progressive Change, unsuccessfully called for the

cancellation of results in 22 states due to fraud, especially in the Niger Delta and the east.^[8]

Widespread corruption and fraud during the 2007 elections marred INEC's reputation. A prolonged electoral reform process, resulting in a new Electoral Act in 2010, led to important changes. The new regulations require political parties to submit their list of candidates far in advance, facilitating INEC verification and thus remedying a problem whereby party leadership sometimes advances the names of candidates who did not win party primaries. Parties are also required to hold primaries. Because individual candidates have historically been subjected to arbitrary administrative disqualifications, additional safeguards against the abuse of INEC's authority to "de-register" parties may be warranted. The Electoral Act improved oversight of spending, but the soaring costs of the 2011 elections (over one billion USD by some estimates) suggest that they did not reduce the level of spending. To decrease the proliferation of numerous electoral challenges, as seen in 2007, the act shifted more of the burden of proof to plaintiffs. This measure has curtailed frivolous complaints, streamlined the appeals process, and prevented the need for many re-runs. Election tribunals have the authority to declare a winner, and in some cases, such as Ekiti State's gubernatorial contest, enable opposition victories. Despite these improvements, only 26 of Nigeria's 36 states had gubernatorial elections in April 2011 due to challenges working their way through the courts or which changed the effective dates of tenure.^[9]

INEC's federal and state-level commissioners are appointed by the president, with Senate confirmation for the federal members. Experts attributed many of the electoral improvements discussed above to President Jonathan's decision to replace the former INEC commissioner with Attahiru Jega, a prominent political scientist with deep ties to civil society. Delivering on a promise made early in Jonathan's administration, the Electoral Act required results to be declared at each individual polling unit. Other changes included serial numbering of ballots, improved ballot box identification, better screening of electoral officers at polling stations, and a generally transparent relationship with the media. A "modified open ballot" system, requiring voters to line up once to have their registration credentials certified in the morning and again in the afternoon to vote, generally received praise. Election observers also praised INEC's decision to recruit recent college graduates from the government's National Youth Service Corps as polling station staff, though the murder of several of them highlighted ongoing problems related to security. Security services met with civil society groups and took some steps to coordinate prior to the elections.

Other important improvements include the use of new technologies. For example the Transition Monitoring Group, the Nigerian Bar Association, the Federation of Muslim Women, and a Catholic civil society group carried out a "parallel vote count" with technical assistance from the National Democratic Institute for International Affairs. "Project Swiftcount" used statistical sampling techniques to deploy over 8,000 stationary and mobile observers, including at least one in each of the 774 Local Government Areas. It documented logistical improvements as the elections proceeded over three weeks, the use of the required voter registration cards at 94 percent of polling stations, and the failure of electoral officials in posting results at only 7 percent of the polling units.^[10] Another innovation involved the use of text messaging, Facebook posts, and Twitter feeds to report fraud and harassment. A Social Media Tracking Centre collated information from over 455,000 messages, and a Civil Society Election Situation Room in Abuja relayed information to the police and electoral officials. Activists from the group "Enough" were embedded within the INEC, and facilitated swift responses to many abuses.^[11] This transparency and collaboration constitutes significant improvement over the 2007 elections, when observers had trouble even obtaining accreditation.^[12]

As in the past though, public resources have often been diverted for use in political campaigns, giving incumbents huge advantages. Existing rules on campaign finance were poorly enforced. Small parties complained that annual public funds were not distributed according to the rules laid out in the Electoral Act, and parties were suspected of exceeding spending limits. Campaigning opportunities for candidates, particularly those in the opposition, were further restricted by the deployment of partisan thugs during campaigning. State-owned media tended to favor the ruling party in their coverage, but social media has made traditional forms of communication less important.^[13]

A dramatic political struggle occurred during a succession crisis triggered by President Yar'Adua's extended absence due to illness, beginning in November 2009. The federal cabinet, which has the constitutional authority to assess the president's condition, declined to do so, even after the Supreme Court ordered the ministers to collectively resolve the issue. When they failed to take action, the Senate passed a resolution in February 2010 declaring Jonathan "Acting President." Yar'Adua loyalists and some scholars criticized the measure because the house never acted on it, the constitution does not explicitly provide for such a process, and it was technically a non-binding resolution rather than a bill. Most importantly, it controversially invoked the "doctrine of necessity," which rationalized an extra-constitutional resolution. However an outpouring of civil society support for the transfer of power, reminiscent of the opposition to Obasanjo's third term bid in 2006, indicated the ad hoc solution's viability. Human rights activists, "Nollywood" actors, and political reform groups joined together under the aegis of the Save Nigeria Group and other coalitions. Street protests called for an end to the "invisible presidency" of Yar'Adua, a transfer of authority to then-Vice President Jonathan, and the firing of the electoral commissioner who oversaw the corrupt 2007 elections.^[14] The crisis was not fully resolved until after Yar'Adua died in May 2010 and Jonathan was formally sworn in as president, consistent with the constitution's succession provisions.

The PDP retained a strong hold on the government in 2011, but it lost much of the ground that it had gained in 2007. Out of 36 governorships, the PDP's share declined from 28 to 23 states. It lost its two-thirds majority in the Senate, but retained a large majority of the 360 seats in the House of Representatives. Among the opposition, the Action Congress made gains at the expense of the All Nigeria People's Party (ANPP). For example, the ANPP went from holding 16 to four Senate seats and from 62 to 23 House seats. By contrast, the Action Congress of Nigeria (formerly the Action Congress) went from holding 6 to 18 Senate seats and from 32 to 53 House seats. A few other minor parties also hold seats. While in many countries this would raise concerns about incumbency advantages, in Nigeria this may speak to a declining influence of "godfathers" who control candidate nominations in the state-level party organizations. At the presidential level, the PDP's 2010 primaries "threatened to tear the party apart" because the selection of Jonathan jeopardized the informal "power shift" pact stating that it was the north's "turn" to rule since southerner Olusegun Obasanjo governed from 1999 through 2007.^[15]

The return of nearly one hundred experienced legislators could also alter the balance of power with the executive branch. Tense legislative-executive relations during Yar'Adua's administration, concerning the president's authority over the EFCC and electoral reform, have continued into Jonathan's term. Failure on the part of the administration to implement the federal budget as passed by the National Assembly has been a recurring problem since the 1999 transition, and legislators have previously lacked the experience and expertise to press their position. Legislative leaders struggle to maintain party discipline due to the first-past-the-post electoral system and the presidency's influence over the party's candidate selection process.

The civil service is prone to patronage and political interference. Civil service reforms emphasizing merit-based criteria for hiring and professional advancement have received increased attention. In 2009 the government implemented a policy setting the tenure of permanent secretaries in the civil service at eight years in order to allow for the promotion of highly-qualified lower officers who had previously been excluded from the upper levels of the Federal Civil Service.^[16] In 2011 President Jonathan launched a Presidential Committee on civil service reform, which led to the retirement of several hundred bureaucrats later that year.^[17] Although Nigeria's constitution requires that the "federal character" of the country be represented in civil service appointments and a quota system exists to ensure that Nigeria's myriad ethnic groups are represented in these appointments, reports of ethnic bias and discrimination remain common (see civil liberties).

Nigeria's civil society is vibrant, and its capacity for independently engaging the government has improved over the last several years. This is evident with the increasing sophistication and large scale of election monitoring efforts. Policy-monitoring and watchdog groups have a public profile, and the National Assembly draws on their

expertise more frequently. A broad advocacy coalition spearheaded by groups such as the Media Rights Agenda and the Nigerian Union of Journalists successfully campaigned for a freedom of information act, which President Jonathan signed into law in May 2011.^[18] Though the law is major step forward, it is unclear whether the government is establishing the bureaucratic infrastructure necessary to effectively implement it.

Civic associations are generally allowed to form and operate, though federal regulations in place since 2005 present barriers to independent political activity. When NGOs cannot register, this prevents them from opening bank accounts or soliciting donor funding. INEC's open partnerships with civil society during the 2011 elections discussed above stands in stark contrast to the barriers to participation erected in 2007, and may be an encouraging sign of an opening for civic organizing.

The media remain lively and media coverage has continued to evolve since the transition to democracy. Section 29 of the 1999 constitution protects freedom of expression. The constitution also imposes strict limitations on public ownership of media outlets. The federal government owns one national daily newspaper, one radio network (with 34 stations), and one television network (with 96 affiliate stations). The few media outlets owned by state governments lack widespread readership. By contrast, there are 14 privately owned daily newspapers, at least six weekly news magazines, several independent television stations, and 19 independent radio stations.^[19] Due to low literacy levels and the unusually high cost of newspapers, radio remains the most important source of information. The World Bank reports that only 5.5 percent of the population has internet access, but web cafes are very common.

Several laws including the Official Secrets Act, the Defamation Act, and criminal libel laws deter investigative reporting and undermine press freedom. There is increasing concern that these laws apply broadly to any kind of communication, including postings on the internet.^[20] Harassment of the media remains a common problem. In October 2011 *The Nation* newspaper reported that former president Obasanjo wrote to the current president asking him to fire top officials of the Petroleum Technology Development Fund. Several days later the Inspector General of Police, on the request of Obasanjo, raided the office without a search warrant and detained and charged several editors and journalists. Human rights groups called it an attack on free speech and a violation of international law.^[21] Other cases involved the arrest of a journalist at an ECOWAS summit in 2010, and the harassment of a Lagos-based newspaper after it reported on alleged corruption within the EFCC.^[22] Investigations produced few convictions. Even where government harassment is absent, Nigerian journalists face tremendous risks; in 2010 three were killed in a single weekend while covering riots and other dangerous events.^[23] In October 2011, Islamist militants Boko Haram killed a television reporter in Maiduguri, claiming he was a spy; since then, they have attacked newspapers they deem un-Islamic. The Committee to Protect Journalists said the government's failure to investigate this and similar incidents has contributed to a climate of impunity.^[24]

While there is little direct censorship by the federal government, other attempts to control content have increased. The National Broadcasting Commission announced prohibitions against the use of foreign material in prime-time news broadcasts by local television stations beginning in 2009 (adding to a 2004 ban on live broadcasts of foreign news). A bill introduced in the House of Representatives in 2009 unsuccessfully sought to legislate national standards for registration of journalists, a regulation widely condemned by journalists and civil society groups such as Media Rights Agenda.

Civil Liberties

The police and security services routinely use torture, rape, mistreatment, and extortion as investigation tactics, and engage in extrajudicial killings against criminal suspects.^[25] These practices are, in part, the legacy of military rule, but are also related to poor training, underfunding, and lack of criminal investigation capacity. There are no effective accountability measures in place to sanction or deter violations on the part of police officers. Attempted reforms by the Nigerian Police Commission, the statutory body charged with overseeing the police force, have stalled due mainly to the huge sums needed for effective implementation. Further, criminal investigations often amount to public requests for information, including the names of suspects, followed by the arrest and brutalization of those suspects with the aim of extracting a confession. Once the

suspect confesses, they are made to write up a statement and then charged in court.^[26] Once in court, such statements are admitted into evidence as facts of the case and judgments are therefore given based on those statements.

Police and military officials also periodically respond to unrest with indiscriminate violence, instead of prosecuting individual perpetrators. Collective punishment is particularly common in northeastern Nigeria where the security forces are battling the militant Islamist group Boko Haram. Boko Haram members have attacked police stations, banks, and churches throughout northern Nigeria. The violence began in July 2009 when members of the group clashed with security forces over five days in Borno, Bauchi, Kano, and Yobe states. More than 800 people died in those clashes, including at least 30 police officers. The majority of these attacks have occurred in Maiduguri, Borno state, but there have also been incidents in other northern states such as Gombe, Adamawa, Katsina, Kano, Kaduna, and Sokoto. In response, security forces have mounted a series of operations in parts of northern Nigeria, which has led to restricted movement in entire neighborhoods and subjected the public to indiscriminate searches at security checkpoints. These operations have also included the detention of hundreds of suspected Boko Haram members and the extrajudicial executions of members, including the public execution of several dozen people.^[27] Among those summarily executed on July 30, 2009 was Mohammed Yusuf, the leader of the Boko Haram movement. Baba Fugu Mohammed, his 72 year old father-in-law was executed the following day.^[28] In April 2010 the Borno State High Court found that Baba Fugu Mohammed's killing was illegal and unconstitutional, and ordered federal and state authorities to pay his family \$65,000 in damages.^[29] Those damages have since been paid.

Prison conditions are deplorable throughout Nigeria. Many prison facilities lack electricity, water, and modern drainage systems. Four of every five prisons were built before 1950, and many have never been renovated. Most prisons are severely overcrowded, partly due to the number of prisoners awaiting trial – 38,000 of 49,000 total detainees in October 2011 were pre-trial^[30] and most of these pre-trial detainees have already been in prison for many years.^[31] Pre-trial detainees are commonly neglected amid disputes between the police and prison officials over which agency is responsible for their care. They are often kept separate from the sentenced prisoners, who receive prison uniforms and three meals a day.

There have been recurring episodes of communal violence throughout the country in recent years.^[32] In October 2010 at least 30 people died in a series of violent communal clashes between two communities in Boki Local Government Area of Cross River State.^[33] Those communal clashes were precipitated by disputes over land between neighboring communities. The most serious of these violent attacks have taken place in Plateau State, where more than 3,800 people have been killed in inter-communal and sectarian clashes since 2001, including at least 1,000 in 2010.^[34] Communal conflicts originate in part from state and local government policies that discriminate against members of ethnic groups classified as "non-indigenes," referring to those groups that readily trace their ancestry to the original inhabitants of an area. Those policies have essentially relegated such groups to second-class status while also fuelling tensions and violence amongst different groups.^[35]

Ethnic discrimination is pervasive. Though Nigerians are free to reside in any part of the country, those who live in an area dominated by another ethnic group frequently suffer discrimination. State and local governments classify such persons as foreigners or "non-indigenes" to exclude them from material benefits to which they are entitled as Nigerian citizens. Non-indigenes are charged higher school fees and have limited ability to compete for government contracts, obtain civil service positions, or secure pensions. Non-indigenes who are hired by state or local governments are often unable to contest unfair layoffs.^[36] Such discrimination reflects a widespread belief that the state and local governments exist to serve only the interests of the indigenous population. In October 2011 the government of Abia State approved the dismissal of all non-indigenes working in both the state and local government public service.^[37] Non-indigenes are also very likely to face discrimination when competing for federal-level positions on the grounds that they are reserved for the indigenes. The 1999 constitution calls for the federal government, its agencies, and its policies to reflect the "federal character" of Nigeria in order to promote national unity and prevent the dominance of particular ethnic or other

groups. This balancing effort is monitored and enforced by the Federal Character Commission. However, despite its intentions, the "federal character" system often has the actual effect of subordinating national citizenship to ethnic identity, and even spurring ethnic tensions as different groups compete for resources at the national level.

Nigerian women and children are trafficked domestically and abroad for forced labor and sexual exploitation, and citizens of neighboring countries are brought into Nigeria for similar reasons.^[38] Nigerian women and girls comprise approximately 70 percent of the estimated 70,000 African women victims of trafficking.^[39] The authorities, particularly under the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), have apparently increased prosecution of offenders, and the government sponsors awareness-raising programs and a number of shelters for victims.

Women's rights are enshrined in the constitution, but women face violence and substantial barriers to political participation. Many states have criminalized domestic violence, yet spousal abuse is still relatively common in rural areas. Female genital mutilation is widespread, occurring in nearly every state, according to statistics.^[40] However, very recent data on this issue is difficult to get. The use of sharia, in place in a dozen northern states, often results in discrimination against women, especially in cases of adultery, where the rules of evidence differ depending on the sex of the accused. Sharia-based statutes and customary law favor men over women with respect to property rights. Under customary law, all marital property belongs to the man as the head of the household. Therefore, in cases of divorce, the customary court normally awards all the marital property to the husband, leaving the wife with nothing. Women's political representation has improved somewhat. As of the end of 2011, women accounted for 13 out of 42 federal ministers, about 35 percent of the total number of federal ministers.^[41]

Nigeria signed the UN Convention on the Rights of Persons with Disabilities in 2007 and ratified it on September 24, 2010, but disabled people continue to face stigmatization in society, and social and economic barriers force many to resort to begging.^[42] While state governments, such as that in Lagos, have made a concerted effort to empower the disabled by allocating funds to organizations devoted to disabled advocacy and assistance, the challenges facing disabled people remain substantial.^[43] In 2010 both chambers of the National Assembly passed the Discrimination against Persons with Disabilities (Prohibition) Bill, which bans discrimination against the disabled, establishes an accessibility requirement for public buildings, and imposes fines for violations of the law. It has since been signed into law by the president.

Nigeria is almost evenly split between Muslims and Christians. Religious freedom is protected, conversion is not penalized, and state and local governments are prohibited from adopting or giving preference to a particular religion. Sharia-based statutes adopted by northern states do not apply to non-Muslim residents. However, state governments routinely favor the faith practiced by the majority of their residents, whether Christian or Muslim. For example, governments may provide subsidies for a pilgrimage either to Mecca for Muslims or to Jerusalem for Christians. Such preferences also extend to the provision of funds and permits for the building of either mosques or churches, and accommodation of social practices like sex segregation in public places. As noted above, Nigeria's frequent outbreaks of ethnic and communal violence sometimes take on a religious dimension.

During President Obasanjo's tenure from 1999 to 2007, the government engaged in strong-arm tactics on labor issues and threatened to break up the leading unions. The Yar'Adua administration adopted a less confrontational approach to resolve conflicts with the unions through amicable dialogue.^[44] The Jonathan administration has continued this less confrontational approach towards labor, opting in most cases for dialogue. Unions are typically allowed to organize, but 50 workers are required to form a union in a given enterprise. Wage agreements with private employers require government approval, and the 2005 Trade Union Amendment Act sharply restricts unions' ability to mount strikes. Workers in "essential services," by law a broadly defined term, are barred from forming unions or striking. Tight constraints on workers in special export-processing zones inhibit their ability to organize and strike. Antiunion practices are common among employers, contracts are regularly disregarded, and security forces are used to harass or arrest strikers. In November 2010 the EFCC apparently used excessive force during the arrest of

10 union workers in connection with an investigation of Halliburton. The government also arrested union leaders from the health sector who launched a strike in Jos after the state government refused to implement key provisions of a collective bargaining agreement.^[45]

Protests are governed by the 1990 Public Order Act, passed during a brutal dictatorship, which requires organizers to obtain a permit. In practice, pro-government rallies of all kinds are often approved, and opposition groups are routinely denied permits to demonstrate. Civil society and union leaders who attempted to organize protests following the 2007 elections were arrested, and the demonstrations were suppressed. The police justified their actions by citing the lack of a permit. In October 2010 the police in Kaduna state stopped the official launch of the presidential campaign of former military president, General Ibrahim Babangida, for security reasons because the organizers did not adhere to a provision in the Public Order Act requiring that the police be informed at least 48 hours before such an event.^[46] In 2005 an Abuja court ruled the Public Order Act unconstitutional, and the Court of Appeal affirmed this decision in 2007. Both the attorney general and the national police appealed the case to the Supreme Court, which has yet to rule on the matter. Until it does, the police have said they will continue to enforce the act.

Rule of Law

The judiciary is one of three independent branches of government, along with the executive and the legislature, under the Nigerian constitution. The federal courts, particularly the Supreme Court, have historically shown a high degree of probity and independence. However, as has occurred in the state courts, the federal courts have recently come under some attack for corruption and issuing of frivolous interim injunctions.^[47] In September 2011, the then acting but now current Chief Justice of Nigeria, Justice Dahiru Musdapher, made a startling revelation that the National Judicial Council (NJC), an independent body with exclusive supervisory authority over all federal courts and the responsibility for formulating broad policy guidelines for the judiciary, was receiving an average of about 40 complaints and petitions of corruption and misconduct against sitting judges at each of its meetings.^[48] Justice Musdapher went on to say that "there shall be zero-tolerance for judicial corruption or misconduct."^[49] Following these developments, a judicial reform committee was set up, headed by former chief justice Muhammad Uwais, to carefully study the judiciary and to make recommendations for reform. Among the issues the committee was asked to look into were "the trial process, procedural inefficiencies, poor infrastructure, poor conditions of service for judicial and non-judicial officers, declining intellectual quality and reasoning content of delivered judgments, and corruption."^[50] The judicial reform committee submitted its report in December 2011. Some of the suggested reform measures would require constitutional and legislative amendments.^[51] It is expected that these recommendations will form the basis for a wide-range of reforms of the federal court system to be conducted by the NJC.

State courts are vulnerable to political pressure. State courts are partly under the supervision of the state executive branch in matters of appointments and capital budgetary allocations, which exposes them to gubernatorial manipulation. Funds for state courts are usually allocated through each state's justice ministry, which has allowed governors to reward their judicial branches for favorable rulings and deprive them of funds if they show defiance. As a result, state courts tend to bend to political pressure from the executive branch. Governors have also been known to offer inducements, such as purchasing new cars for state judges, in the hope of receiving favorable judgments in exchange.

Although the federal courts also depend on the other branches for budgetary allocations, the NJC has helped to protect federal judges from political pressure. As such, judges have consistently issued neutral verdicts without fear or favor. The federal executive, particularly under Jonathan, has signaled its interest in respecting the rule of law. President Jonathan has also signaled support of a judicial reform bill that would increase the judiciary's independence and efficacy.^[52]

Judges are generally appointed and promoted in a fair and unbiased manner. The NJC has been very effective in scrutinizing prospective candidates. The promotion of judges is normally done on the basis of seniority. The NJC has also exercised effective oversight

of judicial conduct. The council has been quick to investigate complaints against particular judges in a fair manner and to recommend the dismissal of those found to have abused their powers. The one recent exception to this has been the ongoing controversy surrounding the suspension of the president of the Court of Appeal, Justice Ayo Isa Salami. Justice Salami was suspended after he publicly accused the then Chief Justice of Nigeria, Justice Aloysius Katsina-Alu, of interfering with the Sokoto election tribunal to favor the incumbent governor, Aliyu Wamakko.^[53] The NJC investigated the issue and found that Justice Salami had no evidence to prove his allegation and asked him to apologize. He refused to do and was therefore suspended.^[54] Justice Salami has since gone to court to challenge his suspension. The Justice Uwa's judicial reform committee is said to have called for Justice Salami's reinstatement in its report submitted in December 2011.^[55] However, as of May 2012, there has been no further development on the issue of Justice Salami's suspension owing to the NJC's refusal to meet on the matter.

Nigerian law presumes innocence until guilt is proven. However, as mentioned above, the police rarely follow this standard during arrests and interrogations. The threat from Boko Haram has led to an increase in incidents of extrajudicial violence, in which the presumption of innocence is ignored. Although the constitution provides for the right to a fair, public, and expeditious trial, these rights depend in large part on the defendant's wealth. This is due to the lack of institutional capacity in the judiciary, coupled with associated informal costs, including transportation to the courthouse and bribes. Defendants are entitled to counsel of their choice, but there is also no law preventing a trial from proceeding without representation, except in capital cases. Therefore, indigent defendants often appear in court without counsel. Those who are convicted typically begin serving their sentences immediately, even though all convicted persons have a right to appeal.

Civilian control of the police and military since the transition to democracy in May 1999 was a welcome change, particularly in light of Nigeria's authoritarian history. Under the Nigerian constitution, the executive branch oversees the affairs of the security forces through the Ministry of Police Affairs and Ministry of Defense. The police force is entirely national, meaning that states and local governments do not possess their own forces. The heads of both the police and military are appointed by the president and confirmed by the senate. Each chamber of the National Assembly has established legislative oversight committees to fulfill constitutionally mandated oversight functions over the police and the military, although they possess limited capacity due to inadequate expertise and scarce resources. The most dramatic test of this authority since 1999 occurred in 2010, when the uncertainty surrounding President Yar'Adua's extended absence started to resemble a worthy pretext for military intervention. While Goodluck Jonathan was serving as "Acting President," the State Security Service physically blocked him from Yar'Adua's chair during a meeting of the federal executive council, which Jonathan was chairing.^[56] Even more dramatically, a brigadier general from the north led 300 troops to meet Yar'Adua's plane when it returned from a medical-related trip abroad, without the knowledge of Jonathan or the Chief of Defense staff.^[57] In response, politicians demanded clarifications and top military officials offered firm assurances about civilian authority; international pressure likely played a role too, as western countries urged a peaceful, civilian resolution to the presidential succession crisis.

All Nigerians have the right to own property under the constitution. However, under the 1978 Land Use Act, state governments have the power to license all land within their jurisdiction and make it available to individuals through an elaborate land-use application process. This normally culminates with the governor of the state issuing the applicant a certificate of occupancy, and only after the granting of such a certificate can an individual legally make use of landed property. The application process can take many years, which causes individuals living on land without a certificate to be subjected to undue hardship because they cannot legally sell or develop it. Citizens can also be denied the right to own land if they are a 'foreigner' living in a region that is not their area of origin. This policy also allows the government, whether at the federal or state level, to arbitrarily seize land or revoke property rights without regard to due process.

Anti-Corruption and Transparency

During President Obasanjo's eight years in office, Nigeria instituted important reforms to improve public integrity and accountability. The government created new agencies to investigate corruption, published information on public finances, and successfully convicted several high-level officials. In 2008 Transparency International ranked Nigeria 121st out of 183 countries on its Corruption Perceptions Index, and in 2011 it slipped on the ranking to 143th, reflecting the fact that some of the momentum in the fight against corruption has waned. Soon after Yar'Adua's administration took office in 2007, the attorney general revoked \$245 million in contracts for health care centers, saying the former president had tried to arrange for a direct deduction from the Federation Account rather than following proper contracting procedures.^[58] A new inter-agency task force, which includes several government ministries, law enforcement agencies, and civil society groups, began meeting in 2010. It is unclear how much progress their efforts to improve coordination on anti-corruption are making a difference, though it does signal a willingness by President Jonathan to confront the issue. Oil earnings account for the vast majority of federal revenues, providing politicians with resources for patronage and stunting other sectors of the economy.

The media regularly exposes corruption, and civil society watchdog organizations have multiplied. Groups such as the Zero Corruption Coalition have organized effective campaigns with domestic civil society groups to resist efforts to roll back the anti-corruption regime and to educate the public.

The Independent Corrupt Practices Commission (ICPC), established in 2000, and the Economic and Financial Crimes Commission (EFCC), created in 2003 to focus on financial fraud, have won praise for pursuing governors and former politicians. The EFCC has helped recover billions of dollars of embezzled funds. In doing so, it has eroded the impunity long enjoyed by political elite, and it claims credit for over 400 convictions since its establishment.^[59] The popular former head of the EFCC, Nuhu Ribadu (who was demoted and lost his job under dubious circumstances in 2008), ran for president on the Action Congress Nigeria Ticket in 2011. Though he received barely 5 percent of the vote, his campaign advanced the debate on corruption; young voters were particularly enthusiastic about his candidacy.

Nevertheless, anticorruption agencies face ongoing challenges. First, neither the EFCC nor the ICPC has produced many convictions. Only one of the 55 cases the EFCC designated "high profile" has produced a conviction since 2007 and many of the charged individuals are at-large.^[60] Human Rights Watch noted that 30 nationally prominent political figures have been arraigned on corruption charges, including 15 former state governors. But, like most cases, they stalled in the courts. Perhaps the most successful corruption prosecution occurred in Britain with the 2012 conviction of former governor James Ibori. Other politicians openly implicated in corruption have not been indicted.^[61] Second, the EFCC also faces challenges to its independence and authority. Under existing law, the ICPC can only refer cases for investigation, while the EFCC can prosecute. Previous attorneys general insisted that all prosecutions need prior approval from the Ministry of Justice office.

Immunity clauses for incumbent politicians, in place to enhance the separation of powers intended by Nigeria's presidential system, remain controversial. Reformers argue for their removal so that the politicians can be prosecuted. Several governors have been indicted immediately after their terms expired. These governors established vast patronage networks, enhanced by the oil boom. Under an elaborate statutory revenue sharing arrangement, the states are entitled to federal grants. Impeachment bids at the state level are frequent but rarely successful due to the weak legislative capacity of state assemblies. Political "godfathers" who furtively dominated in states such as Anambra and Oyo often interfered, though there is some evidence from the 2011 elections that their influence has declined.

The National Assembly has suffered from a spate of corruption scandals. Since 2000, several top officers have been removed due to corruption. Speaker Dimeji Bankole failed to win re-election and is now under investigation by the EFCC for inflating contract prices and accepting kickbacks from the Nigerian National Petroleum Corporation.^[62] Officeholders must declare their assets to the Code of Conduct Bureau, but the declarations are rarely made public. Conflict of interest rules are generally weak, and

public officials are usually permitted to retain managerial interests in private businesses after taking office.

The government procurement process is prone to scandals and corruption. The Open Budget Initiative ranks Nigeria in its lowest tier of countries with a score of 18 out of 100.^[63] Nigeria is among several African countries that have made progress implementing the Extractive Industries Transparency Initiative, which requires disclosure of oil companies' payments to the government. Advocacy groups such as Oxfam maintain that the voluntary compliance regime slows the pace of reform. The passage of the Freedom of Information Act, as noted earlier, may be a promising improvement by increasing public access to spending data.

The transnational character of corruption presents ongoing challenges. After a long investigation, Halliburton paid \$35 million in a settlement with the U.S. Department of Justice in 2010 for improper payments to Nigerian officials.^[64] In February 2012, the U.S. Supreme Court began hearing arguments in *Kiobel et al v. Shell Petroleum, N.V.*, et al, a civil suit filed under the Alien Tort Claims Act and the Torture Victim Protection Act, which seeks redress for environmental and other damages inflicted by oil companies in the Niger Delta. The EFCC has pursued criminals such as Filipino and Ghanaian oil "bunkerers" for stealing oil at the pipeline source. At the same time, it has expended fewer resources on larger charges of corruption against British Rural Radio Systems or the American Armor Holdings Incorporated (which pleaded guilty in the United States). Nevertheless, a recent study of these cases concluded that, overall, President Jonathan appears more committed to pursuing high profile international corruption cases compared to his predecessor.^[65]

Whistleblowers have virtually no legal protection, though they may gain some recourse with the passing of the freedom of information bill. Due to its substantial oil revenues, Nigeria receives less foreign aid per capita than many other African countries. Donors consider its systems for recording, monitoring, and evaluating aid in desperate need of reform.^[66]

Recommendations

- Despite progress on electoral reform and significant improvements in electoral administration, additional steps are required for peaceful and fair elections in 2015. None of the innovations presented in 2011 – biometric voter identification, social media, or the use of the National Youth Service Corps members – should be seen as a panacea for future contests. Indeed opportunities for corruption remain plentiful, and primaries are still vulnerable to corruption due to the INEC's limited legal authority over internal party matters.
- Public officials who are constitutionally required to report their income and assets should not be allowed to take office until presenting an assets declaration to the Code of Conduct Bureau, which should also take additional steps to make such reports publicly available.
- The police need better training and enhanced capacity for criminal investigations, which should eliminate the use of torture as a means of investigation and interrogation. Training should also educate police about laws relating to the freedoms of speech and association. Security forces that use extrajudicial force against Boko Haram and other groups must be prosecuted, and human rights organizations must be guaranteed access to detention facilities in order ensure that suspects are not being mistreated.
- The 1978 Land Use Act, which lies at the core of growing tensions between migrants and "indigenes," should be passed via constitutional amendment if necessary. This would also reduce opportunities for favoritism and increase private property rights protections.

Author

Carl LeVan and Patrick Ukata

Carl LeVan and Patrick Ukata both teach in the School of International Service at American University in Washington, D.C. LeVan is the author of recent articles in the journals *Democratization* and *Governance*. Patrick Ukata is also the former director of the Washington Office of the American University of Nigeria.

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