



## **NIGERIA**

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### **INTRODUCTION**

Nigeria marked its 10th year of uninterrupted civilian rule in 2009, the longest such period since the country's independence from Britain in 1960. 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. Between 2003 and 2007, real gross domestic product grew at an average rate of 7 percent, though inflation averaged about 12 percent. 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 144 million people, Nigeria faces an annual 3 percent increase in its population, placing huge strains on social services. Oil sales account for the vast majority of federal revenue and comprise 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.

The 2007 inauguration of President Umaru Yar'Adua, a historic transfer of power from one civilian leader to another, also reinforced the informal agreement whereby executive authority is expected to alternate between southern Christians and northern Muslims. Yet democratic consolidation and political freedom face serious ongoing challenges. The 2007 elections were marred by massive fraud, vote rigging, and widespread violence. The ruling People's Democratic Party (PDP) maintains a firm grip on political competition. A badly compromised electoral commission disqualified many candidates and then used administrative delays to block the addition of others. Despite a nominally open primary process, the public had virtually no input on how parties selected candidates. Political "godfathers" controlled the selection process in many states, employing violence or intimidation against opponents, and clashes between the local bosses and national PDP officials often degenerated into serious confrontations.<sup>1</sup>

The selection in 2007 of a vice president from the impoverished Niger Delta region, Goodluck Jonathan, did little to address the grievances of minorities among Nigeria's roughly 300 ethnic groups. 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

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include police abuse and poor prison conditions, restrictions on public meetings, and increased harassment of the media.

The rise of militant groups such as Movement for the Emancipation of the Niger Delta (MEND) highlights ongoing underdevelopment, ecological destruction, and popular frustration throughout the oil-producing region. Attacks on the oil infrastructure strain the country's integrity, as state and local governments depend heavily on federal grants from oil revenue. The attacks have reduced oil output by as much as a million barrels per day from previous levels of about 2.5 million. Militants divert and sell some 300,000 barrels per day.

Overall, President Yar'Adua appears committed to many of his predecessor's moderate policies. However, human rights groups widely criticize his heavy-handed approach to Muslim militants in the north and his handling of Niger Delta unrest. 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**

The 2007 elections heralded the first time in Nigeria's history that one civilian government peacefully transferred power to another. The choice of Yar'Adua as the new president symbolized the shift of power from the south to the north, entrenching a popular expectation that power will alternate between these two regions. Prior to the election, civil society and the National Assembly effectively blocked a tentative bid by Obasanjo to modify the constitution to allow a third term in office. Now a decade old, the PDP regime shows some signs that the country is breaking with its authoritarian past.

No such signs, however, can be found in Nigeria's electoral processes. PDP candidate Yar'Adua's lopsided victory in the April 2007 presidential contest, with 69.8 percent of the vote, was partly a result of the opposition's fragmentation. Former head of state Muhammadu Buhari of the All Nigeria People's Party received 18.7 percent, and Obasanjo's disaffected vice president, Atiku Abubakar of the Action Congress, garnered 7.5 percent. None of the other parties' candidates received more than 2 percent of the vote, and unofficial estimates put voter turnout at between 57 and 62 percent. Violence, corruption, and willful administrative failures also undermined competition. Domestic and international observers concluded that the scope of the fraud and intimidation made it impossible to ascertain the electorate's actual intent.<sup>2</sup>

The Domestic Election Observation Group, a coalition of civil society organizations, demanded that the official results be annulled. Like the international observers, they noted that in many states there were effectively no elections, citing candidates' omission from ballots, the hoarding of voting materials, and other tactics designed to prevent polling stations from opening. These problems were particularly acute in elections for the National Assembly in states across the country.<sup>3</sup> Moreover, at least 200 people were killed in election-related violence, much of which continued after the balloting had ended. The police, who are all under federal control, were often complicit in the theft of ballot boxes or rigging.<sup>4</sup>

By 2009, 9 out of 109 Senate elections had been thrown out by election tribunals and courts, as had 11 of 36 gubernatorial contests and at least 9 local elections. While these decisions raised the prospects of viable judicial arbitration, they also underlined a deep skepticism about

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democracy. Only 31 percent of over 2,300 Nigerians surveyed in March 2008 characterized themselves as either “fairly satisfied” or “very satisfied with the way democracy works in Nigeria.” Such attitudes are reflected in declining voter participation between 2003 and 2007. Nearly two-thirds of Nigerians believe the 2007 elections were either not fair or had “major problems.”<sup>5</sup>

Opposition presidential candidates Abubakar and Buhari took to the courts immediately after the election to contest the results. Preelection Supreme Court decisions had raised the opposition’s expectations, upholding Abubakar’s rights as a candidate and as the incumbent vice president. Government lawyers had argued that Abubakar no longer held the office once he quit the PDP to run as the Action Congress candidate, but an appellate court unanimously held that the vice president could exercise his freedom of association by switching parties and could only be removed through existing constitutional procedures.<sup>6</sup>

However, the Supreme Court ultimately threw out Abubakar and Buhari’s challenges of the election results. The court prohibited documentation of fraud by electoral observers from being presented as evidence. Then, in December 2008, nearly 20 months after the election, it ruled 4–3 against the plaintiffs, finding that they had failed to prove that the poll was too flawed to be credible.<sup>7</sup> The three justices in the minority authored a scathing dissent. The court, which typically commands public respect, was alternately accused of corruption and of deciding the case out of fear of public violence. Four months later, the court cast new doubt on its own decision when it unanimously ruled that a new election tribunal should hear a challenge to the presidential election results being sought by the virtually unknown Hope Democratic Party.<sup>8</sup>

The Independent National Electoral Commission (INEC), which bore much of the blame for the failed elections, remains beholden to the executive branch. Its federal- and state-level commissioners are appointed by the president, with Senate confirmation for the federal members, and while the Electoral Act of 2006 called for the creation of a fund to ensure the INEC’s financial independence from the government, no such fund was established for the 2007 polls.<sup>9</sup>

For a year before the vote, the INEC ignored advice from experts who expressed concerns about plans for a costly, high-technology voter registration system. The INEC gave the public conflicting accounts about how and where to register, and registration rolls were frequently unavailable. Exacerbating widespread doubts about its independence, the INEC attempted to administratively disqualify candidates. Its commissioner also maintained suspiciously close ties to a key presidential aide, Nnamdi “Andy” Uba, who wielded vast power within the PDP.<sup>10</sup> Even after the Supreme Court decision on Abubakar’s qualifications, the INEC did not print ballots displaying his name.

Public resources were often illegally diverted for use in political campaigns, giving incumbents huge advantages. Moreover, neither Obasanjo nor the INEC seemed willing or able to rein in the so-called godfathers who dominated state-level politics by furtively financing elections. 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 2006 Electoral Act, and most 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 and arbitrary arrests during the campaign period. State-owned broadcasters favored the ruling party in their coverage, while private broadcasters and newspapers focused on the three largest parties with varying degrees of equity.<sup>11</sup>

Despite the PDP’s large majorities in both chambers, the National Assembly had clashed with the Obasanjo administration on key issues including electoral reform, the annual budgets,

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and a constitutional amendment to allow the president to seek a third term. The Senate thwarted Obasanjo's bid for another term, which would have required support from a two-thirds majority, in May 2006. National polls have consistently confirmed widespread support in each of the country's six geographical "zones" for limiting the president to two terms.<sup>12</sup> The National Assembly had also threatened Obasanjo with impeachment on three occasions, citing various corruption charges and failure to implement legislation. The Senate, for its part, clashed with the executive branch over amendments that would strip the president of his ability to hire and fire the head of the Economic and Financial Crimes Commission (EFCC). This mirrored similar confrontations at the state level, where legislatures in Oyo and elsewhere launched proceedings to remove governors.

The PDP made significant gains in the 2007 elections, increasing its share of governorships from 27 to 28 out of 36 states. It also increased its hold on the National Assembly, taking 85 out of 109 Senate seats and 262 out of 360 seats in the House of Representatives. The opposition remains fragmented, with the All Nigeria People's Party holding 16 Senate and 62 House seats, the Action Congress holding 6 Senate and 32 House seats, and the remainder distributed among minor parties. However, tense relations between the legislative and executive branches continued into Yar'Adua's administration. Many clashes touched on the same issues, including the president's authority over the EFCC, a stalled electoral reform, and failure to implement the federal budget. In July 2009, some legislators went so far as to threaten impeachment when the president complained about legislative changes to the budget he submitted.<sup>13</sup> Legislative leaders struggle to maintain party discipline due to the first-past-the-post electoral system and the powerful presidency's influence over state-level parties.

While the civil service remains prone to patronage, civil service reform geared towards adhering to merit-based criteria for hiring and advancement has received some attention during the Yar'Adua administration. The government has 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.<sup>14</sup> 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 widespread (see civil liberties).<sup>15</sup>

Nigeria's civil society remains vibrant, and its capacity for independently engaging the government has improved. The Domestic Election Observation Group trained and deployed over 50,000 observers, while the Justice, Development, and Peace Commission reportedly deployed another 30,000. Policy-monitoring and watchdog groups have a public profile, and the National Assembly draws on their expertise more frequently than in the early years of the democratic transition. A broad advocacy campaign has emerged in favor of a freedom of information act. A bill on this issue was passed during Obasanjo's tenure but never signed into law, and the House brushed the measure aside in August 2008. President Yar'Adua has repeatedly expressed his willingness to sign the bill, and his information minister even asked civil society to provide more input on legislative proposals.<sup>16</sup> Civil society groups also allied with legislators to help defeat Obasanjo's third-term bid.

Civic associations are generally allowed to form and operate, though the federal government has undermined independent political activity since 2005. Nongovernmental organizations (NGOs) face regulatory difficulty in registering with the government. For instance, only political parties are allowed to include the word "democracy" in their names, and NGOs

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whose names include the word are routinely denied registration. A lack of registration prevents NGOs from opening bank accounts or soliciting donor funding, among other activities. International NGOs have always faced registration requirements, but in 2007 the National Planning Commission asked them to provide documents to “justify your presence in Nigeria.”<sup>17</sup> These various restrictions may help to explain why the AfroBarometer survey found that nearly a third of Nigerians in 2008 said they were either “not free at all” or “not very free” to join a political organization of their choice.

In the run-up to the 2007 elections, the INEC delayed the establishment of a registration process for domestic NGOs seeking to serve as election observers, then created onerous conditions for registration and limited access to official materials. According to the European Union (EU) observation mission, only 53 out of 175 organizations that applied were accredited. Many NGOs faced harassment by security forces during this period, including questioning by the State Security Service (SSS) on their membership and interest in the elections. The authorities have repeatedly intimidated members of civil society for other reasons as well, targeting advocates of ethno-regional rights in particular. For example, in July 2006, police shut down a meeting organized by human rights NGOs to protest the removal of Bukhari Bello as the head of the country’s National Human Rights Commission.<sup>18</sup> In addition, in August 2006 over 100 military personnel arrested two university professors who were scheduled to discuss the Igbo language. The government claimed that organizers of the event were linked to violent youth groups.<sup>19</sup>

The media remain lively and have continued to evolve since the transition to democracy. Section 29 of the 1999 constitution protects freedom of expression, “including freedom to hold opinions and to receive and impart ideas and information without interference.” 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 36 affiliate stations). The few newspapers owned by state governments lack widespread readership. By contrast, there are 14 privately owned daily newspapers, six weekly news magazines, several independent television stations, and several dozen independent radio stations.<sup>20</sup> 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.

Strict libel laws deter investigative reporting, and journalists in 2008 faced legal harassment and even violence.<sup>21</sup> In March 2009, agents of the Bayelsa state government abducted a bureau chief for *National Life* newspaper after he reported on a brawl in an Abuja hotel between a PDP official and the governor. Officials then threatened him with a libel suit. Journalists with the *Leadership* newspaper faced a similar criminal defamation suit.<sup>22</sup> Reports of “brown envelope” journalism, in which patrons or politicians pay for favorable articles, remain common.

Harassment of the media has increased, and investigations produced few convictions, even in the most serious cases. The press environment deteriorated significantly during the run-up to the 2007 elections, during which the SSS harassed and arrested journalists who criticized former president Obasanjo.<sup>23</sup> For several weeks in September 2007, the SSS detained two German filmmakers and the American head of an NGO in the Niger Delta. Another group of filmmakers experienced similar harassment in the region in 2008 when they were accosted by a joint military team and held for seven days by the SSS without charge. In each incident the individuals were released under international pressure. The watchdog group Media Rights

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Agenda reported harassment of *National Standard* after it published an expose on the first lady, and of a reporter from *Punch* who refused to disclose a source, among other cases. In some of the more serious incidents in recent years, the chairman of *This Day*'s editorial board was murdered in December 2006, another member of the board was killed in August 2008, and a radio journalist for the Nasarawa state broadcaster was slain in October of that year.<sup>24</sup> Official investigations have produced little information about these deaths, which were suspicious in part because no valuables were taken by the gunmen, and human rights groups expressed concern about their effects on free expression. Some journalists were granted political asylum overseas when their reporting on corruption triggered credible threats against their lives.

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), and in 2008 the Kano state government convicted a filmmaker of releasing a Hausa-language adaptation of the play *West Side Story* without vetting it through government censors. The government also revoked a license for Channels Television, which had drawn official ire for its reporting on President Yar'Adua's health. Numerous journalists were harassed for reporting on that topic in 2008, including at least three bloggers based overseas who were arrested upon entering the Nigeria and held without charge.<sup>25</sup>

## **CIVIL LIBERTIES**

The use of torture and mistreatment of criminal suspects by the police and security services remains rampant. These practices, carried over from the era of military rule, have continued due to poor training and lack of capacity to conduct criminal investigations. Attempted reforms by the Nigerian Police Commission have stalled, due mainly to the huge sums needed for effective implementation. 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. According to Human Rights Watch, the acts of torture include "the tying of arms and legs behind the body, suspension by hands and legs from the ceiling, severe beatings with metal or wooden objects, spraying of tear gas in the eyes, shooting in the foot or leg, raping female detainees, and using pliers or electric shocks on the penis."<sup>26</sup> This treatment sometimes results in death. Once the suspect confesses, they are made to write up a statement and then charged in court.<sup>27</sup> Most such cases are not subject to judicial review.

The police share a common perception that the courts are too lenient on suspects, particularly those charged with armed robbery, because cases are at times thrown out for lack of evidence. Rather than improving investigatory capacity, police reportedly engage in extrajudicial killings.<sup>28</sup> Police and military officials also periodically use indiscriminate violence in response to unrest in certain communities, instead of seeking to identify and prosecute individual perpetrators. Such collective punishment is particularly common in the Niger Delta, where militant groups such as MEND use violence to voice complaints about environmental damage and lack of resource control.

Prison conditions are deplorable throughout Nigeria. The facilities suffer from a lack of electricity, water, and modern drainage systems. Four of every five prisons were built before 1950, and many have never been renovated. According to Amnesty International, most prisons

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are severely overcrowded because of the number of prisoners awaiting trial; one report found that at least 65 percent of inmates have never been convicted, and some wait for 10 years before being tried.<sup>29</sup> Pretrial 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. Before leaving office in May 2007, Obasanjo implemented a prisoner release and amnesty program that benefited 25,000 inmates. However, the program had little impact on overcrowding.<sup>30</sup>

Attacks on political opponents and peaceful activists have mainly been localized and have largely occurred in states where the courts invalidated 2007 election results. In early 2009, the Court of Appeal invalidated the gubernatorial election in Ekiti and called for fresh elections. It also ruled against the sitting governor in Ondo and in favor of the opposition candidate. These rulings triggered politically motivated attacks against members of opposing political parties, sometimes involving the Nigerian police.<sup>31</sup>

There have been recurring episodes of communal violence throughout the country in recent years.<sup>32</sup> The most serious of these took place in Jos, Plateau State, on November 28 and 29, 2008. The conflict originated in a disputed local government election, and pitted Christian communities who considered themselves the indigenes of the area against members of the Muslim Hausa-Fulani ethnic group. By most accounts, several hundred people were killed, and many churches and mosques were burnt down. Police and military officials called in to restore order were alleged to have arbitrarily killed more than 90 people.<sup>33</sup> There are also reports that the Plateau governor ignored intelligence reports warning him about the danger of going ahead with the local government elections.<sup>34</sup> Separately, in Bauchi state, a conflict between Christians and Muslims over five days in February 2009 resulted in 11 reported deaths and 19 destroyed churches.<sup>35</sup> In July, at least 700 people were killed after government forces in Bauchi and two other northern states cracked down on an Islamist group that was opposed to “Western education” and had attacked police stations. The police apparently shot the group’s leader after apprehending him.<sup>36</sup>

Attacks by ethnic and religious militias, sometimes supported by state actors, remain common. Since early 2008, a rash of kidnappings has occurred, mainly in the southeast and the Niger Delta. MEND started kidnapping foreign oil workers in 2006 as part of its ongoing rebellion tied to underdevelopment and ecological destruction in the Niger Delta. Some militants and criminal gangs have since targeted politicians, children, and religious figures. Though most of the hostages have been released unharmed after a ransom payment, the phenomenon has created a sense of insecurity in the affected area.

General crime statistics are equally alarming. In 2006, 72.6 percent of Nigerians surveyed by the CLEEN Foundation reported that they were fearful of crime, while 23.1 percent reported having been the victims of crime.<sup>37</sup> In addition, the police affairs minister reported 353 kidnappings in 2008, while an estimated 512 people were kidnapped between January and June of 2009.<sup>38</sup> In July 2009, the Senate summoned the country’s security chiefs to ascertain their preparedness in tackling the kidnappings.<sup>39</sup> The recent appointment of Ogbonnaya Onovo as inspector general of police, however, is expected to renew law enforcement efforts to address the problem.<sup>40</sup>

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. However, the U.S. State Department places Nigeria in the Tier 1 category, the best of four possible rankings, in its 2009 Trafficking in Persons Report. The authorities, particularly

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through the work of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), have apparently stepped up the prosecution of offenders, and the government sponsors awareness-raising programs and a number of shelters for victims.<sup>41</sup>

While women's rights are enshrined in the constitution, women continue to face violence and substantial barriers to gaining political power. Although many states have passed laws against domestic violence, spousal abuse is still relatively common in rural areas. Female genital mutilation remains widespread, occurring in nearly every state, according to recent statistics.<sup>42</sup> Sharia, in place in a dozen northern states, is often used to discriminate against women, especially in cases of adultery, where the rules of evidence differ depending on the sex of the accused. Both 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 access to direct political power has improved but remains limited. According to the U.S. State Department's count, men hold more than 90 percent of the country's elected and appointed positions. As of the end of 2008, women accounted for just 6 out of 42 federal ministers, 9 out of 109 senators, and 30 out of 360 House members.

Nigeria signed the UN Convention on the Rights of Persons with Disabilities in 2007 but has not yet ratified it.<sup>43</sup> Disabled people continue to face stigmatization in society, with social and economic barriers forcing many to resort to begging. While state governments such as the Lagos State Government 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.<sup>44</sup> In March 2009, the Senate passed the Discrimination against Persons with Disabilities (Prohibition) Bill, which bans discrimination against the disabled, establishes a requirement that public organizations provide access into their buildings, and imposes fines for violations of the law. It is currently awaiting approval by the House.<sup>45</sup>

Ethnic discrimination remains 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 a host of material benefits to which they are entitled as Nigerian citizens. Such discrimination reflects a widespread belief that the state and local governments exist to serve only the interests of the indigenous population. Non-indigenes are charged higher school fees and have limited ability to compete for government contracts, obtain civil service positions, or secure pensions. Those non-indigenes who are hired by state or local governments are often unable to contest unfair layoffs.<sup>46</sup> Non-indigenes are also likely to face discrimination when competing for federal-level positions on the grounds that they are reserved for the local indigenes. The 1999 constitution calls for the federal government, its agencies, and its policies to reflect the "federal character" of Nigeria so as 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, also provided for in the constitution. Despite its intentions, the "federal character" system often has the effect of subordinating national citizenship to ethnic identity, and spurring ethnic tensions as different groups compete for resources.<sup>47</sup>

Historically, relations between the various religious groups in Nigeria have been relatively cordial. 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-

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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 provide subsidies for a pilgrimage 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, by contrast, has adopted a decidedly nonconfrontational approach and sought to resolve conflicts with the unions through amicable dialogue.<sup>48</sup> 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, a term that is broadly defined by law, are barred from forming unions or striking. Tight constraints on workers in special export-processing zones inhibit their ability to organize and strike as well. Antiunion practices by employers remain common, contracts are regularly disregarded, and security forces are used to harass or arrest strikers. Among the most serious incidents in recent years was the 2007 firing of 34,000 striking public employees by the newly elected Oyo state governor, who refused to honor a wage agreement reached with his predecessor; the move was soon overturned in court, and the pay increase was approved. In January 2008, a transport union leader was assassinated in Lagos.<sup>49</sup>

Protests of any kind are governed by the 1990 Public Order Act, passed during a brutal dictatorship, which requires organizers to obtain a permit. In practice, while progovernment rallies of all kinds are often approved, 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. However, labor leaders were able to mount a general strike in June 2007 to protest government economic policies. 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**

Under the constitution, the judiciary is one of three independent branches of government, along with the executive and the legislature. The federal courts, particularly the Supreme Court, have shown a high degree of probity and independence, but state courts remain vulnerable to political pressure. Whereas the federal courts are under the exclusive supervision of the independent National Judicial Council (NJC), state courts are partly under the supervision of the state executive branch in matters of appointments and capital budgetary allocations. This exposes them to gubernatorial manipulation.

Funds for state courts are usually allocated through each state's justice ministry, allowing governors to reward their judicial branches for favorable rulings and starve them of funds if they show defiance. As a result, state courts tend to bend to political pressure from the executive

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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 role of the NJC has helped to protect federal judges from political pressure. They have consistently issued dispassionate verdicts without fear or favor. The federal executive, particularly under Yar'Adua, has signaled its interest in respecting the rule of law. Unlike his predecessor, who consistently ignored court judgments, Yar'Adua has specifically asked executive agencies to respect all court verdicts, including those which go against the government.<sup>50</sup>

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 by seniority. The NJC has also exercised effective oversight of judicial conduct. When complaints have been leveled against particular judges, the council has been quick to investigate in a fair manner and to recommend the dismissal of those found to have abused their powers. For example, a federal judge in Katsina state was suspended by the NJC in February 2009 and subsequently dismissed after he attempted to countermand an appellate court ruling on an Imo state assembly election.<sup>51</sup>

Nigerian law presumes innocence until guilt is proven. However, as mentioned above, the police rarely follow this standard during arrests and interrogations. Although the constitution provides for the right to a fair, public, and expeditious trial, enjoyment of these rights is significantly affected by 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 signals 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 limited expertise and scarce resources.

Since 1999, the police and military have generally refrained from interference or involvement in the political process. However, use of the police and the military by the executive branch has on several occasions generated political conflict. For example, during the 2007 elections opposition parties viewed the police and the military presence—ostensibly intended to keep the peace—in polling areas and collation centers as part of the PDP's efforts to intimidate opposition party supporters. Even in locations where military personnel were accused of taking part in election fraud, no investigation was ever conducted. Another example occurred in May 2009, when a Joint Task Force (JTF) made up of members of the armed forces was sent to the Gbaramatu district of Delta State to confront militants allegedly attacking oil installations in the area. The JTF was accused of indiscriminately attacking civilians and destroying property.

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Despite public outcry, no formal investigations have been conducted and the JTF restricted access to the area to prevent information gathering by journalists and human rights groups. Moreover, no effort has been made to resettle displaced persons or reconstruct the communities and property destroyed. In sum, control of the security forces by the civilian leadership has yet to translate into the ability to hold government security forces responsible for abuses. Over time, this threatens to generate a climate of impunity that could lead to further violations and reduced public confidence in democratic institutions.

All Nigerians have the right to own property under the constitution. However, under the 1978 Land Use Act, all land ownership is effectively vested in the state governments, which 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. Given that the application process can take many years, individuals living on land without a certificate are often subjected to undue hardship because they cannot legally sell or develop it. 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. According to a Joint Senate Committee on the Federal Capital Territory (FCT) and Housing, this policy was invoked arbitrarily and with impunity by then minister of the FCT Mallam Ahmad Nasir el-Rufai, who served from July 2003 through May 2007. Most revocations were done under the guise of clearing illegal structures from around Abuja. The committee also reported the allocation of 3,645 plots of land in the final two weeks of the Obasanjo administration under questionable circumstances.<sup>52</sup> Even after el-Rufai's departure, widespread destruction of community housing in Abuja continued into 2009.<sup>53</sup> In early May 2009, Yar'Adua sent draft legislation to the National Assembly to reform the Land Use Act.<sup>54</sup> The legislature has not yet acted on this bill.

#### **ANTICORRUPTION 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, while the independent media continued their Sisyphean struggle to expose graft. The perceived level of corruption has since improved notably, with Nigeria's score in Transparency International's Corruption Perceptions Index increasing from 2.2 in 2007 to 2.7 in 2008. Nevertheless, scandals tainted Obasanjo's exit. Soon after the new administration took office in 2007, the attorney general revoked N37 billion (US\$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 budgeting and contracting procedures. The outgoing cabinet also hurriedly approved as much as N2 trillion (US\$13.5 billion) in contracts in the administration's final weeks.<sup>55</sup>

Corruption remains a persistent and systemic problem in Nigeria. Oil earnings account for the vast majority of federal revenues, providing politicians with resources for patronage and stunting other sectors of the economy. In addition, because the major political parties generally limit the number of terms that state and federal lawmakers serve, legislators are less able to

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accumulate the experience necessary to question the executive branch or to develop an institutional culture of integrity.

Where progress has been made against corruption, it is attributable to vigilant media that regularly expose public wrongdoing, and to the growth of civil society watchdog organizations. The National Assembly also plays a constructive role at times. In 2006–07 it investigated corruption in the Petroleum Technology Development Fund, at first accusing the vice president of illegally authorizing US\$20 million in contracts. The Senate reported that the president signed off on the contracts and recommended that the case be referred to the Code of Conduct Bureau (these claims were disputed in subsequent investigations).<sup>56</sup>

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, and in 2008 it alleged that local governments had failed to spend their allocated N3 trillion (US\$20 billion) between 1999 and 2007 on development due to corruption.<sup>57</sup>

However, despite dozens of high-level charges and several resignations, neither the EFCC nor the ICPC has produced many convictions. None of the charges filed against 10 former governors during President Yar'Adua's tenure have resulted in a conviction, adding to speculation that the cases were politically motivated and reducing public confidence in the new agencies. Pending trials include those of the former head of the port authority, a former aviation minister, and the former governors of Adamawa, Abia, Jigawa, Taraba, and Plateau. A plea agreement in the case of the Edo governor produced a fine on a single charge, which EFCC prosecutors are appealing. When the governor of Ondo faced a credible challenge to his 2007 election, he hurriedly awarded contracts worth billions of naira, according to charges filed in March 2009. The alleged graft took place between the annulment of his election by a tribunal in July 2008 and his final removal following an appeals court ruling in February 2009.<sup>58</sup> To avoid such scenarios, the Electoral Reform Commission has proposed holding elections at least six months before terms expire, time limits on judicial appeals, and a prohibition on taking office while appeals are pending.

Nigeria's anticorruption agencies have faced accusations of political bias. Shortly before the 2007 elections, Human Rights Watch found that a majority of the 135 candidates accused of corruption by the EFCC either belonged to the opposition or had close ties to Vice President Abubakar, who was engaged in an acrimonious battle for power within the ruling party. The federal government set up an ad hoc panel and indicted 37 candidates after a two-day investigation without any due process.<sup>59</sup> During the 2007 elections, it announced that it had evidence of corruption against 31 sitting governors, whom it did not name. The disclosure of accusations followed by so few formal charges raised concerns that the claims were designed only to influence political competition.

The EFCC also faces ongoing challenges to its independence and authority. Whereas the ICPC can only refer cases for investigation, the law allows the EFCC to prosecute. However, the attorney general insists that all prosecutions need prior approval from his office. In 2009, the House and Senate planned to amend the EFCC's enabling legislation to insulate it from interference by the attorney general,<sup>60</sup> though previous efforts to remove the president's authority to hire and fire the commissioner have failed. The Senate president explained that this power "completely destroys the independence of the EFCC."<sup>61</sup> Indeed, EFCC head Nuhu Ribadu was removed in dubious circumstances in 2008 and subsequently demoted, and the head of the

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EFCC's financial investigations unit quit after his bank accounts received mysterious money transfers. The transfers were seen as part of the broader effort to undermine Ribadu's work. Transparency International urged the government to "stop the harassment, intimidation, ridiculing and persecution" of Ribadu.<sup>62</sup> Meanwhile, immunity for incumbent politicians remains a contentious issue. Impeachment bids are frequent but rarely successful due to weak legislative capacity and the extensive patronage networks controlled by governors, whose coffers grew with an oil boom after 2003.

The transnational character of corruption is presenting new challenges. Among other cases, the U.S. Justice Department is currently considering an offer from the U.S. oilfield services firm Halliburton to pay US\$559 million to settle charges that its employees bribed Nigerian officials to obtain contracts, while the Nigerian government has brought a civil suit against Shell Oil and a German firm for damaging its reputation through bribery.<sup>63</sup>

The National Assembly has suffered from a spate of corruption scandals. The Senate president was forced to resign in 2005 following accusations of corruption. The first female House speaker, Patricia Ettah, was accused of using government money for home renovations and was impeached in 2007. Her prosecution has stalled, however, as ICPC staff apparently cannot agree on how to proceed. Conflict of interest rules are generally weak, and public officials are usually permitted to retain managerial interests in private businesses after taking office. Officeholders must declare their assets to the Code of Conduct Bureau,<sup>64</sup> but the declarations are rarely made public. Scandals concerning government contracts—such as the aforementioned incidents with the House speaker, the Ondo state governor, and Obasanjo's health centers—point to a flawed and uncompetitive procurement process.

Graft is also widespread within the education sector. The Independent Advocacy Project's 2007 Nigeria Corruption Index ranked the Ministry of Education as the third most corrupt institution in Nigeria and emphasized widespread corruption in higher education institutions and examination bodies.<sup>65</sup>

As noted above, the failure to enact a freedom of information bill means that Nigeria has no comprehensive legal framework to promote transparency. The federal budget process remains relatively opaque, as year-end reports and audits are not made public, and the annual budget proposal by the government contains minimal public information.<sup>66</sup> Nonetheless, the release of financial information from the accountant general and the Ministry of Finance, and the publication of financial transfers from the Federation Account to states, have increased openness. Nigeria is a signatory to the Extractive Industries Transparency Initiative (EITI), whereby oil companies' payments to the government are audited and published. Still, transparency by itself has so far had little dissuasive effect on the willingness of high officials to engage in corruption. Whistleblowers have virtually no legal protection, though they would gain some recourse if the freedom of information bill were passed. 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.<sup>67</sup>

## **RECOMMENDATIONS**

- Electoral reform is essential for peaceful and fair elections in 2011. The Electoral Reform Commission's report should take account of proposals presented by civil society and be fully released for public discussion. The National Assembly and the president must ensure that the

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next INEC commissioner is more accountable to citizens and better insulated from PDP interference, and that transparency is increased in party primaries.

- 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 make such reports available on the internet.
- The police need better training and enhanced capacity for criminal investigations, which should aim to 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.
- President Yar'Adua's proposed legislation to reform the 1978 Land Use Act should be passed—via constitutional amendment if necessary—and implemented to reduce opportunities for favoritism and corruption and eliminate practices that reduce property rights protections.

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