

Input on the Special Rapporteur on the Independence of Judges and Lawyers for the Next Thematic Report on Safeguarding the Independence of Judicial Systems in the Face of Contemporary Challenges to Democracy

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Nigeria, the most populous country in Africa, is a federal republic composed of 36 states and the Federal Capital Territory. Its judicial system, rooted in the Constitution of the Federal Republic of Nigeria 1999, is a complex structure that reflects the country's diversity and federalism. The system is made up of superior and inferior courts, with the Supreme Court at the apex, followed by the Court of Appeal, the Federal High Court, the High Court of a State, the Sharia Court of Appeal, the Customary Court of Appeal, and other courts allowed by the constitution.

However, Nigeria's judicial system faces significant democratic challenges. Despite the constitutional guarantee of judicial independence, the judiciary in Nigeria has been plagued by issues such as [corruption, lack of adequate funding, and political interference](#). These issues undermine the judiciary's ability to effectively check the other branches of government and safeguard democratic principles.

Moreover, the country's [colonial past](#) and the ongoing influence of colonial-era laws and legal institutions present additional challenges. These colonial legacies often conflict with indigenous legal traditions and can exacerbate social inequalities. Examining and addressing these challenges necessitates an intersectional and decolonial perspective.

This submission aims to explore the roles of judges, prosecutors, lawyers, and community justice workers in maintaining democracy in Nigeria, discussing their challenges and potential strategies for safeguarding, with a particular emphasis on intersectionality and decolonisation, thereby contributing to the broader conversation on strengthening judicial independence and democratic governance.

Judges

The judiciary system in Nigeria plays a crucial role in protecting democracy and fundamental democratic rights. It serves as a critical part of the country's developing

democratic framework. The Nigerian society is led by the people who exercise their authority through elected representatives. In this structure, the judiciary acts as an essential component by resolving disputes and maintaining a balance between different branches of government and the citizens. Their role goes beyond just legal interpretation; they uphold the rule of law and protect constitutional rights.

This is particularly significant in a democratic setting where the judiciary checks executive recklessness and legislative actions. The Nigerian judiciary has consistently upheld justice, even during military rule and political turmoil, exemplifying its commitment to democratic principles. For instance, in landmark cases such as [Fawehinmi v. Abacha](#), where the court was seen to protect the citizens against executive overreach, and more recently, cases like [Federal Government v. A.G of Kaduna State & Ors](#). demonstrate the judiciary's willingness to challenge executive policies that conflict with the law and the public interest. These instances reinforce the judiciary's crucial role in a democratic society, ensuring that justice is not only served but is also perceived to be served.

However, the judiciary's role in upholding societal justice faces significant challenges. These include threats to its independence and impartiality, often influenced by political pressures and corruption. Judges who make unpopular rulings or stand against corruption can face intimidation and harassment from various quarters, including political figures, interest groups, or organised crime.

Furthermore, [the judiciary plays a vital role in democratic elections in Nigeria](#). This body's primary duty is to handle disagreements arising from elections and ensure that all election-related laws are correctly understood and enforced.

Despite their essential role, legislative and institutional arrangements concerns might limit the judiciary's effectiveness in safeguarding democracy. Issues related to [judicial appointments and promotions](#), which political considerations and budgetary constraints may influence, can hamper the judiciary's ability to function independently and effectively. Additionally, laws that restrict freedom of expression or [give extensive powers to law enforcement agencies without adequate judicial oversight](#) can impede the role of judges in upholding democratic principles and protecting human rights, so there is an urgent need for the [independence of the judiciary](#).

In summary, the Nigerian judiciary has played a vital role in the country's democratic development and helped establish the necessary checks and balances for a democratic state. However, it faces several challenges that can hinder its effectiveness. Addressing these challenges requires joint efforts to strengthen their independence, provide sufficient resources, and protect them from undue influence and threats.

Prosecutors

Prosecutors in Nigeria are important in protecting democracy and ensuring people's rights. They work within a complex legal and political system. Their job is to charge people who commit crimes that harm democracy, such as corruption, election fraud, and abuse of power. These crimes should be prosecuted to keep public institutions honest and protect democracy.

In Nigeria, where corruption has been a long-standing issue, prosecutors have a significant role in fighting corruption, especially among public officials. This effort is critical in ensuring fair and transparent governance. Initiatives like the [Economic and Financial Crimes Commission](#) (EFCC) and the [Independent Corrupt Practices and Other Related Offences Commission](#) (ICPC) involve prosecutors in key anti-corruption endeavours.

However, these prosecutors face various challenges. Political pressure, especially in high-profile cases involving government officials or influential individuals, can impede their independence and decision-making. Resource constraints and sometimes inadequate legal frameworks hinder their effectiveness in upholding democracy. The prosecutorial decision-making process's independence is crucial, but external influences can compromise this, impacting their ability to safeguard democratic principles objectively.

[The prosecutor's office in Nigeria plays a crucial role in ensuring integrity in the electoral process.](#) They investigate and prosecute electoral fraud and voter intimidation, maintaining a fair electoral process and upholding free and fair election principles. However, their effectiveness can be limited by specific policies or institutional arrangements. Political influences in appointments and a lack of prosecutorial discretion due to undue political oversight can hamper their operational effectiveness.

Addressing these issues involves maintaining the independence of the prosecutor's office, ensuring it is free from political pressure and influence. Legislative reforms that guarantee operational independence and security are crucial. These reforms include laws protecting against unjust dismissal or demotion, ensuring tenure, and establishing strict protocols to prevent interference in prosecutorial decisions.

[Providing adequate resources](#) and training for handling complex cases, especially those involving high-level corruption or election-related crimes, is essential. Support systems and networks should be established for legal support and counselling, particularly where prosecutors face threats or harassment.

In summary, while prosecutors in Nigeria are instrumental in supporting the democratic process and enforcing the law, their effectiveness often depends on the broader political and judicial environment. Their ability to function independently and without undue influence is key to their role in safeguarding democracy and upholding democratic rights. Concerted efforts to strengthen their independence, provide adequate resources, and protect them from undue influence and threats are necessary to enhance their effectiveness and ensure justice's fair and impartial administration.

Lawyers

Lawyers in Nigeria have played a crucial role in safeguarding democracy and upholding fundamental democratic rights. Their involvement spans several facets of the legal and democratic processes. This role is multifaceted, extends from legal advocacy to policy advocacy and education, and contributes significantly to the functioning of democratic institutions.

1. Legal Advocacy and Representation: Nigerian lawyers have been at the forefront of legal advocacy, representing individuals and groups in cases involving electoral disputes, [human rights violations](#), and challenges to unconstitutional governmental actions. They have been instrumental in challenging laws and policies that undermine democratic principles and have stood as defenders of the Constitution, as seen in landmark cases like [Atiku Abubakar vs Umaru Yar'Adua](#) and Gani Fawehinmi vs Inspector-General of Police.

2. Promoting the Rule of Law and Defending Human Rights: Upholding the rule of law is essential for democracy, and lawyers ensure that legal procedures are followed, contributing to public trust in the legal system. They have been active in defending and promoting human rights, taking on pro bono cases and being involved in landmark decisions that expand human rights protection in Nigeria. For instance, the [NBA-HRI, an initiative of the NBA](#), is committed to promoting the rule of law, safeguarding human rights, ensuring access to justice, enhancing capacity building and skills development on human rights issues, advocating for social, economic, and political rights, amongst others. Also, The Nigerian Bar Association (NBA) and the National Human Rights Commission (NHRC) [signed a Memorandum of Partnership \(MOP\)](#) in October 2020. This partnership is in line with their motto of promoting the rule of law and respect for the fundamental rights of citizens.

3. Public Interest Litigation and Policy Advocacy: In public interest litigation, lawyers have represented broader societal interests, addressing systemic issues and bringing about social change. Beyond the courtroom, their role in policy advocacy has influenced legislative and policy decisions, advocating for laws that strengthen democratic governance and protect individual liberties.

4. Education and Awareness: Lawyers contribute to educating the public about their rights and the importance of democracy through public forums, articles, and community outreach programs. For instance, a lawyer named Ngare Bukar [became a teacher](#) to support vulnerable children in Borno, northeast Nigeria. He uses his legal background to enhance his teaching career and shape the lives of children affected by conflict. Also, community outreach programs like the [Community and Social Development Project](#) (CSDP) in Nigeria aim to increase access to improved social services and infrastructure sustainably by the poor. This bottom-up approach encourages joint decision-making between communities and sectoral agencies

However, fulfilling these roles comes with challenges. [Lawyers often face risks like threats, intimidation, and harassment, especially when handling politically sensitive cases.](#) Female lawyers and those from minority groups may face additional challenges like gender-based discrimination or racial prejudices.

The [NBA's](#) involvement in monitoring elections and providing legal assistance ensures electoral laws are adhered to, and it advocates for transparent and fair electoral processes. However, institutional arrangements or policies sometimes limit the effectiveness of lawyers or the Bar Association in safeguarding democracy, such as laws that restrict freedom of expression or limit the ability of lawyers to challenge government actions.

Several approaches are necessary to address these challenges and protect lawyers, including implementing laws that specifically protect lawyers from threats, harassment and intimidation and institutional support from bodies such as the Bar Association—leveraging international legal communities and human rights organisations to support targeted lawyers, providing lawyers with training on dealing with threats and raising public awareness about the importance of lawyers in a democratic society.

Community Justice Workers

Community justice workers in Nigeria, including informal community safety organisations, vigilante groups, NGOs, civil society organisations, and social workers, have played an instrumental role in safeguarding democracy and upholding fundamental democratic rights. Their contributions, while diverse, form a critical part of the country's justice and democratic processes.

These workers engage in promoting community-based [justice and safety](#), stepping in to fill the gaps in law enforcement and justice delivery in areas where formal systems are inefficient or inaccessible. They maintain order and justice in the community by providing locally understood forms of dispute resolution and safety measures. NGOs and civil society organisations also [actively campaign for human rights, good governance, and transparency](#). They serve as watchdogs against government excesses and advocate for policy changes, playing a critical role in educating citizens about their rights and responsibilities within a democratic framework.

Legal aid and support are another significant contribution, as many of these groups assist individuals in [navigating the complex legal system](#), which is crucial for ensuring access to justice for all. They also [monitor elections](#), political processes, and government activities, producing reports contributing to transparency and accountability. These groups empower communities through grassroots work by encouraging active participation in democratic processes like voting and civic discussions.

However, the role of community justice workers is fraught with challenges. They often operate in resource-limited environments and face [political and social pressures](#), which can be significant for NGOs and civil society organisations, especially those perceived as critical of the government. There are risks of threats or violence, particularly for members of informal safety organisations and vigilantes addressing sensitive issues or challenging local power structures.

A combination of legal and practical measures is necessary to protect these workers. This includes enacting [laws and policies](#) that safeguard them from harassment, intimidation, and violence. Safety protocols and security training, especially for those in high-risk areas or dealing with sensitive issues, are crucial. Support from national and [international human rights](#) organisations can provide protection and visibility. Building networks and alliances among community justice groups offers collective protection and support.

In conclusion, community justice workers in Nigeria are vital in safeguarding democracy and upholding rights but face significant challenges. Addressing these challenges requires concerted efforts from legal institutions, the government, and the international community to ensure their safety and effectiveness. Their work is crucial for maintaining a just, inclusive, and democratic society in Nigeria.

Recommendations:

1. **Strengthening Judicial Independence:** To improve the justice system in Nigeria, it is essential to strengthen the independence of the judiciary and prosecutors. This can be

achieved by ensuring that appointments and promotions are based on merit rather than political affiliations. Adequate funding and resources should also be provided to the judiciary to minimise external pressures and influences.

2. Enhancing Prosecutorial Independence: Prosecutors should be protected from political interference, especially in high-level corruption or electoral disputes. Legislative reforms should be implemented to ensure their operational independence. This will help to maintain fair and impartial law enforcement.

3. Protecting and Supporting Lawyers: Lawyers require more robust legal protections against harassment, intimidation, and violence. Professional bodies like the [Nigerian Bar Association](#) should advocate for and support lawyers facing threats. Additionally, international solidarity and support can be crucial in safeguarding lawyers involved in politically sensitive cases.

4. Empowering Community Justice Workers: Community justice workers require recognition, support, and integration with the formal justice system. Policies should be developed to safeguard them from political and social pressures and to ensure their activities align with human rights norms. Training and resources should be provided to enable them to effectively and safely carry out their roles.

5. Addressing Colonial Legacies: It is important to address the influence of colonial-era laws and institutions with a decolonial approach. This can be done by harmonising indigenous legal traditions with the formal legal system to ensure inclusivity and reflect Nigeria's diverse society.

6. Encouraging Public Participation: To strengthen the democratic fabric of society, greater public education and awareness about legal rights and the importance of democracy is crucial. Encouraging civic participation in democratic processes and community development projects can also help achieve this goal.

In conclusion, Judges, prosecutors, lawyers, and community justice workers all play integral roles in maintaining democracy in Nigeria. Each group faces unique challenges, including threats to independence, political pressures, and resource constraints. Therefore, concerted efforts must strengthen judicial independence, protect legal practitioners, and empower community justice workers. It is also crucial to address the remnants of colonial influence in the legal system to create a more equitable and representative justice system. By implementing these recommendations, Nigeria can move towards a more robust and resilient democratic governance structure.