2018

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LEGAL ACTIVISM IN THE FACE OF POLITICAL CHALLENGES:

THE NIGERIAN CASE

Jayanth K. Krishnan*
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ABSTRACT

Countries that move from authoritarianism to democracy often see increased rights-based, social justice lawyering after the transition. Given the new freedoms and opportunities present, this outcome is hardly surprising. However, relying on a literature and theoretical frame developed over the past two decades, this study argues that, in fact, such lawyering can have its historical roots in the legal activism that occurred during previous authoritarian periods. Consider Africa’s most populous country – Nigeria. Since gaining independence in 1960, Nigeria has witnessed, in total, nearly 30 years of military dictatorship. In 1999, the country adopted a democratic system of government, which continues to this day – albeit shakily. During this time, rights-lawyering has been an important access-to-justice vehicle for the poor and socially disadvantaged. Yet, as this study shows, this activity builds upon the brave efforts of lawyers who aided those unable to represent themselves during past moments of military rule. Despite being atomized and ad hoc, these pockets of legal advocacy nevertheless posed challenges to the different authoritarian regimes, and, importantly, they serve as the foundation for the right-activism seen today.

INTRODUCTION

Since becoming free from British colonialism in 1960, Nigeria has experienced, in total, nearly 30 years of military rule: 1966-1979 and then
again from 1983-1999.1 While the years from 1960-1966 and 1979-1983 might be seen as periods of Nigerian democracy, they were nonetheless fractured times. Only since 1999 has democracy in Nigeria sustainably taken hold, and even then, the last 18 years have not been easy. There is an insurgency on-going in the northeast against the Boko Haram network, and the Delta region of the country also continues to witness instability.2 Given these conditions, it is not surprising that the current government has faced enormous challenges. A lack of resources and perpetual bureaucratic inefficiency have impaired state institutions,3 as has corruption – which the current President, Muhummadu Buhari (himself the head of state of a military regime during the 1980s), has identified as Nigeria’s most pressing problem.4

The core issue of this study is to understand the extent to which everyday Nigerians, since 1960, have been able to use the law and lawyers to access their legal rights. This research falls within the larger theoretical frame of the role legal institutions and legal professionals play in non-democratic and transitioning societies. As Tamir Moustafa has noted, this literature has grown tremendously over the past two decades.5 Scholars focusing on countries such as China, Egypt, Russia, Sudan – and regions such as Latin America and other parts of Africa and Asia – have

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2. See SIOLLUN, supra note 1; ADUNBI, supra note 1; MIKE SMITH, BOKO HARAM: INSIDE NIGERIA’S UNHOLY WAR (2015). For an excellent analysis on Boko Haram and the government’s efforts to deal with it, see the comments from lawyer, academic, and widely respected intellectual, Dr. Aminu Gamawa: Aminu Gamawa on Boko Haram and Bring Back Our Girls Campaign, ALJAZEERA (June 18, 2014) https://www.youtube.com/watch?v=I_7n1SRU7fk&t=63s; Should Nigeria Negotiate with Boko Haram? Aminu Gamawa’s Interview with ALJAZEERA, ALJAZEERA (Aug 6, 2015), https://www.youtube.com/watch?v=Tz6WSNif_S0.
3. See SIOLLUN, supra note 1; ADUNBI, supra note 1; SMITH, supra note 2.
demonstrated the ways in which governments use judicial institutions to maintain control, to govern, and to enhance political capital. Simultaneously, these studies show that judiciaries can, at times, also serve as institutional outlets for those aggrieved by their respective authoritarian regimes.

There is then a wave of scholarship on the actions of lawyers in these systems. Dezalay and Garth’s work on human rights lawyering during repressive and transitional times in Latin America argues that such legal activity shaped, and was shaped by, state policy. Meili’s research, also on Latin America, shows that social justice lawyering ironically was able to thrive in authoritarian periods and declined during transitions. Michelson’s studies on civil and criminal lawyers in China, however, are more cautious — demonstrating that occasionally these lawyers are able to make modest social justice strides, but that more frequently, success at navigating the legal system depends upon the following: how embedded the lawyers are within the state apparatus, the political nature of the issue, and guanxi, or the networks and connections of the lawyers themselves.


7. See GINSBURG & MOUSTAFA, supra note 6; MASSOUD, supra note 6; MOUSTAFA, supra note 6; CHINA’S LONG MARCH TOWARD RULE OF LAW, supra note 6; JUDICIAL INDEPENDENCE IN CHINA, supra note 6; PEREIRA, supra note 6; RAJAH, supra note 6; Hendley, supra note 6; HILBINK, supra note 6; See also Peter Solomon, Law and Courts in Authoritarian States, in the INT’L ENCYCLOPEDIA OF SOC. & BEHAV. SCI. (2d. ed., James Wright ed. 2015); Kathryn Hendley, ‘Telephone Law’ and the ‘Rule of Law:’ The Russian Case, 1 HAGUE J. ON THE RULE OF L., 241 (2009).


And most relevant for this study is Okechukwo Oko’s research on “lawyers [living] under the military regimes of Nigeria,” where he finds that the legal profession “face[d] an intractable dilemma.” Lawyers were seen as a threat because of their promotion of democracy; at the same time, military leaders saw them as coercible and a possible legitimizing force for their authoritarian hold on power. Additionally, lawyers were viewed as potential saviors by the persecuted; yet if they veered too far in the human rights direction, they risked their careers and personal safety. But to not do enough was also a betrayal to their dignity and professional oath to uphold the rule of law.

The analysis here builds upon this important literature. Over half the population in Nigeria today lives below the poverty line, and there are great disparities in wealth. Moreover, the difficulties that ordinary people have in redressing their claims or defending their interests only continues to grow. A meaningful ‘safety net’ to assist those who have legitimate legal needs does not exist, resulting in millions of Nigerians’ rights simply going unprotected. The current situation, where access-to-justice is regularly

13. OKO supra note 11 at 217-222.
being denied, cannot stay unaddressed if the Nigerian state hopes to strengthen and consolidate the rule of law.

Yet, the story is not entirely bleak. There have been attempts over the years – dating back to 1960 and even during the darkest periods of military rule – to establish a rights-oriented, legal aid system to assist the needy, with some occasional success. Section II focuses on the early independence period of Nigeria, where there was hope that substantive legal aid programs would emerge. On paper, through different iterative constitutions, the foundation was set in place. But unfortunately these plans did not ripen into tangible results because of the military takeover in 1966. Section III then explains how over the next 13 years Nigeria faced coups and counter-coups. But interestingly during this period, the promotion and implementation of certain limited access-to-justice programs did occur.

Section IV then examines the period between 1979 and 1983, when Nigeria returned to democracy. During this time, important measures were taken to construct meaningful legal aid initiatives. Section V describes how in 1983 the country reverted to military rule, which lasted until 1999, with the latter part of this period being especially harsh. Nevertheless, even during this time, grassroots activism did not completely disappear and attempts to help persecuted communities continued in spurts, in spite of the great risks that existed. Finally, Section VI provides an overview of where the situation stands today, since the country has once again embraced democracy. This latest moment in Nigeria’s post-independence history offers the best opportunity to go beyond episodic instances of assistance and towards a longer-term, sustained movement of aid for those most in need. As this study will argue, the efforts of today build upon the struggles, and at times, achievements, of past rights-activists – many of whom worked under arduous, and often authoritarian, circumstances.

17. See infra, Section II.
18. See infra, Section III. See also, SIOLLUN, supra note 1; See generally, BEN O. NWABUEZE, MILITARY RULE AND CONSTITUTIONALISM IN NIGERIA (1992); BEN O. NWABUEZE, MILITARY RULE AND SOCIAL JUSTICE IN NIGERIA (1993).
19. See infra, Section IV. See also Ehimika A. Ifidon, Transitions from Democracy in Africa: Toward a Pre-Emptive Analysis, 7 AFR. J. POL. SCI. 109-128 (2002).
20. See infra, Section V. In fact, in recent years, scholars have revisited the efforts of rights-based non-governmental organizations during this period and have levelled critiques, which Section V discusses. See also ADUNBI, supra note 1; See generally, OLAYIWOLA ABEGUNRIN, NIGERIAN FOREIGN POLICY UNDER MILITARY RULE, 1983-1999 (2003).
21. See infra, Section VI.
II. THE EARLY INDEPENDENCE PERIOD: 1960-1966

Although Nigeria officially gained independence from Britain on October 1, 1960, it had begun to assume certain elements of autonomy during the late 1950s. During the colonial era, the British passed into law several constitutions, with the three most important emerging after the Second World War, in 1946, 1951, and 1954, respectively. Enacted under Governor-General Arthur Richards, the 1946 Constitution granted enhanced powers to Nigeria's different regional territories. The 1951 Constitution (which came into effect after the '46 Constitution was suspended) further increased powers at the regional and local levels, but it also placed at the forefront the importance of having a strong federal House of Representatives, which would control national policy. The 1954 Constitution strengthened principles of federalism, such as prohibiting the House from vetoing measures taken by the regional governments in the administration of their own affairs.

Each of these three documents paid verbal acknowledgment to individual autonomy, dignity, and the ability of communities to be self-governed. Broadly speaking, the 1946, 1951, and 1954 constitutions recognized the extensive diversity within Nigeria, and as such, they each emphasized that the regions ought to oversee many of their own affairs—including ensuring that local communities had access to the legal process. Yet, in reality these pre-independence constitutions did not detail how this specific goal was to be accomplished, nor did the British or the respective regional governments do much in the way of facilitating the provision of legal services to ordinary Nigerians.

Even the first “Independence Constitution” of 1960 did not serve as the “[c]ornerstone” of the new Nigerian nation-state. For one thing, this 1960 document was passed into law by an order of the British crown, and Queen

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23. See e.g., Sessional paper No. 4 of 1945 Proceedings of the Nigerian Legislative Council and the Constitution order-in-council, 1946, which established what is widely known as the Richards Constitution, so named after Sir Arthur Richards, the then colonial Governor of Nigeria.
24. See UDIMA, supra note 22; See also TOYIN FALOLA & MATTHEW M. HEATON, A HISTORY OF NIGERIA 152-154 (2008).
26. Id; See also YAKUBU, supra note 22; Sessional Paper No. 4, supra note 23; UDIMA supra note 22; FALOLA & HEATON, supra note 24.
27. This is a term coined by Granville Austin in his classic work on the Indian Constitution, which Nigerian scholars often look to today in reflecting on constitutional jurisprudence. See GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (1966). But see OKO, supra note 11 at 95 (noting that many “delegates that attended the 1959 Constitutional Conference that led to independence were lawyers.”).
Elizabeth II remained as the official head of Nigeria. In addition, the court of last resort for judicial matters stayed in London with the Privy Council. Although this Independence document enumerated principles such as federalism, separation of powers, the rights of citizenship, and the doctrine of preemption, because it was not organically created it never could shake its status as a temporary or incomplete constitution.

However, the 1963 “Republican Constitution” forever changed democratic constitutionalism in Nigeria. To begin, this document was enacted by a federal legislative body and came after a landmark “constitutional conference [was] held in Lagos on July 25 and 26 1963 where issues bordering on the real independence of Nigeria were resolved.” The decision to remove the Queen of England as the Nigerian head of state occurred as one of the first orders of business. But other important matters were addressed, such as making the Supreme Court of Nigeria the apex judicial body in the country; vesting the courts with the power of judicial review; and broadening the representative nature of elected political institutions at the national level, including formally reconstituting Nigeria as a federal republic. Indeed, former Attorney General and legal commentator Uwemedimo Nwoko has argued that the 1963 constitution has been Nigeria’s most significant document since independence, because it carefully provided the parameters of a fair, functioning system of federalism.

Unfortunately, as Nwoko and others have noted, the politics of the time displaced this constitution. Just three years into its tenure, in 1966, it was superseded by a military coup, which itself was followed by a series of military governments that lasted for the next 13 years. Constitutional democracy went dark. Yet before it was dismantled, the 1963 constitution, on paper, did provide certain legal aid protections for the needy.

32. See BAKARR BAH, supra note 30 at 101-102; MWALIMU, supra note 29; Olamide, supra note 31.
33. See BAKARR BAH, supra note 30 at 101-102; MWALIMU, supra note 29; Olamide, supra note 31.
35. Id.
36. Id. See also, FALOLA & HEATON, supra note 24, at 158-209.
For example, it guaranteed all people charged with criminal offenses the right to have legal representation, to be presumed innocent, and to be protected against double jeopardy and self-incrimination. In addition, "[a supplemental] legal aid bill was introduced by T.O. Elias, the Attorney-General in the civilian government immediately prior to the 1966 military coup." Due process for defendants was a priority for these Nigerian democrats. But the constitution and the bill remained silent on how defendants were to actualize these entitlements—and for non-criminal matters, no reference was made on how to access legal aid. In sum, the 1963 legal framework offered initial steps for promoting a culture of rights-based activism, but given the ensuing set of military governments that followed, it never had a chance to fulfill these promises.

III. LEGAL AID IN THE ERA OF MILITARY RULE: 1966-1979

During the first period of authoritarian rule in post-colonial Nigeria, there were four military leaders, three leadership-assassinations, and ongoing violence that contributed to great disorder within the country. Issues relating to access-to-justice and legal entitlements were not priorities of the military. If anything, political dissent was seen as treasonous and punishable by imprisonment or even death. In his well-respected treatise on Nigerian politics, Eghosa E. Osagha has argued that this era of “military intervention and [military] rule are regarded even by military leaders themselves—as...[a] key indicator of political instability.”

The sheer lack of respect for the rule of law was characteristic of this era. Consider the famous 1971 E.O. Lakanmi case, where the petitioners sued the government for unlawfully seizing their private property after they

38. See Adrian Collett, Legal Care in Nigeria: Beginnings II: Remaking Land Law and Local Administration, 24 J. AFRICAN L. 220, 223 (1980) (noting that once the coup occurred, the bill was tabled until the mid 1970s).
39. Id.
40. The first prime minister of Nigeria, Abubakar Tafewa Balewa, was overthrown by the military leader Johnson Aguiyi-Ironsi. Balewa was found murdered after being deposed, and Aguiyi-Ironsi too was killed in mid-1966 and then was followed by General Yakubu Gabon who stayed in power for nine years. In 1975, Gabon was overthrown and the country was led then by General Murtala Mohammad, but in early 1976 Mohammad was killed by coup plotters, led by Buka Suka Dimka. However, Mohammad’s colleague-in-arms, Olusegun Obasanjo, was not assassinated by the coup rebels, and he thereafter he succeeded his predecessor and led Nigeria until 1979. For a set of readings on this first era of military rule in independent Nigeria, see Falola & Heaton, supra note 24, at 158-209; Falola & Oyeniyi, supra note 28, at 41-63.
41. For a discussion of how the opposition was treated during this period, See BENJAMIN OBI NWABUEZE, MILITARY RULE AND CONSTITUTIONALISM IN NIGERIA (1992); See also Falola & Heaton, supra note 24, at 158-209; Falola & Oyeniyi, supra note 28, at 41-63.
were prosecuted on charges of corruption. The government argued that it had the authority to undertake such measures and that this issue was non-justiciable. The Supreme Court of Nigeria ultimately heard the matter and sided with the petitioners, stating that the government was bound by the principles of due process enumerated within the 1963 constitution. Yet, rather than adhering to the Court’s ruling, the military regime voided the judgment through a subsequent decree, proclaiming that it was the final arbiter of the rule of law.

The Lakanmi episode laid the foundation for how rights would be interpreted and enforced. Thereafter, the military routinely curtailed the ability of everyday Nigerians to access justice. “Pre-action notices”—or the requirement of litigants to submit documentation of their grievances to a state agency before being allowed to commence their lawsuit—became a regular feature of the legal system. While this procedure is not uncommon within various democratic countries, the military’s use of it had the effect of chilling individuals from filing lawsuits. Relatedly, military orders known as “public officers protection decrees” insulated state officials from civil or criminal liability and defamation. And overall, as Max Siollun has noted, a pervasive “[c]oup [c]ulture” enmeshed Nigerian society, whereby the military authoritatively adhered to the maxim that it “could do no wrong.”

Interestingly though, as Osagha argues, a converse phenomenon simultaneously existed—precisely because it held power, the military also could not only be one-dimensional autocrats. The military saw itself as both the “saviour and guardian of the nation . . . invited to play this role by various sections of the aggrieved public . . . .” Whether real or imagined, this was the rhetorical garb military rulers employed, and as a result there

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43. See E.O. LAKANMI & ORS v. The Attorney-General (West) & ORS, (1970) LPELR-SC.58/69; For an excellent discussion of this case, see OKO, supra note 11, at 240-243.
44. Id. OKO, supra note 11, at 240-243.
45. Id. OKO, supra note 11, at 240-243.
46. See OKO, supra note 11, at 240-243; See also Faculty of Law, Analysis of Lakanmi v AG Western States, UNIVERSITY OF UYO (Dec. 27, 2016), https://magnajurisuyo.wordpress.com/2016/12/27/analysis-of-lakanmi-v-ag-western-states/ (noting that this decree of the federal military government was known as the Federal Military Government’s Supreme and Enforcement of Powers Degree, No. 28 of 1970.)
49. See SIOLLUN, supra note 1.
50. See G. Omo Arise, Reconsidering Executive Immunity under the Nigeria Constitution, NIGERIAN CURRENT L. REV. 274, 275 (2007-2010) (drawing upon the classic English feudalistic notion of the king not being able to do anything wrong.).
51. See OSAGHE, supra note 42, at 54-90.
52. Id at 54.
were policy spaces that the respective regimes believed they needed to address (or be seen to address). 53

Enter the formation of the Legal Aid Council. This body came into existence as a result of the passage of the Legal Aid Act (1976), which was pushed for by a group of civically minded lawyers, many of whom worked as public defenders. 54 Drawing on the work of their predecessors in the 1960s, 55 these activists carefully, but forcefully, agitated for a statute that empowered the Council to provide representation and assistance to certain classes of criminal defendants. 56 Furthermore, to safeguard against the potential for abuse by patrons of the state (who did not need the assistance), the process provided such legal aid only to those who lived below a prescribed income. 57 And more comprehensively, the spirit of the Act, and those within civil society who vigorously promoted it, helped shape the meaning of legal aid to include the “rendering [of] legal services through consultation, advice, or [italics added] representation in court.” 58 In other words, legal aid did not simply mean litigation, but it included the range of non-litigation activities in which lawyers regularly engage. In fact, aspects of the Act permeated the subsequent 1979 and 1999 constitutions, as will be discussed below.

Nevertheless, the presence of the military dictatorship hobbled the Act in different ways. Members of the Council who were in charge of enforcing the Act were understandably wary of how far they could challenge the government. Additionally, there was always the issue of

53. Id at 54-58.
55. See Akor, supra note 54 (noting that under this theory, Nigerian constitutionalism was seen as “mandating a legal scheme in Nigeria”).
56. See Latham & Watkins, Pro Bono Practices and Opportunities in Nigeria Excerpt from: A Survey of Pro Bono Practices and Opportunities in Selected Jurisdictions, PRO BONO INSTITUTE, (Sept. 2010) http://www.probonoinst.org/wp-content/uploads/nigeria.pdf; David McQuoid-Mason, Legal Aid in Nigeria: Using National Youth Services Corps Public Defenders to Expand the Services of the Legal Aid Council, 47 J. AFR. L. 107, 111 (2003); As McQuoid-Mason writes, in citing Schedule 2 of the Act, the “Legal Aid Council may provide legal aid for the following offences under the Criminal Code: (i) murder of any degree; (ii) manslaughter; (iii) maliciously or willfully wounding or inflicting grievous bodily harm; (iv) assault occasioning actual bodily harm; (v) common assault; (vi) affray; (vii) stealing; and (viii) rape.” Id at 111-112.
57. See McQuoid-Mason, supra note 56, at 110-111; Latham & Watkins, supra note 56, at 3 (both sources noting that, in fact, a “means test” component existed, whereby applicants had to complete paperwork in order to qualify. [Latham cites the McQuoid-Mason piece on this point.] Of course, this posed a problem, because many of those most desperately in need of legal aid were illiterate and did not have the ability to fulfill these paperwork requirements on their own.).
funding—there was never enough money provided by the government to assist all those with legal needs.\textsuperscript{59} There was also discontent among many within civil society who disdained how, in exchange for the passage of the Act, military leaders were promised immunity upon their eventual relinquishing of power to civilian control.\textsuperscript{60}

Finally, it was difficult to populate the Council with sufficient numbers of skilled, passionate lawyer-administrators who were needed to ensure that the Act would be properly executed.\textsuperscript{61} In his work, David McQuoid-Mason found that the Council relied upon four different groups to provide legal aid: lawyers doing work on a pro bono basis, private lawyers who worked “for a nominal fee,”\textsuperscript{62} lawyers staffed by the Council itself, and young lawyers who were part of the National Youth Service Corps.\textsuperscript{63} Still, the efforts of all of these groups combined could not provide structured, continuous, or systematic legal assistance,\textsuperscript{64} proving that such aid was atomistic and \textit{ad hoc} at best.\textsuperscript{65}

\section*{IV. DEMOCRACY IN NIGERIA: 1979-1983}

In 1979, the military, under General Olusegun Obasanjo, relinquished power and ceded control of the government to civilian rule.\textsuperscript{66} Elections were held that year, and Shehu Shagari was elected president of the Second Republic of Nigeria.\textsuperscript{67} Shagari’s victory brought great hope that human rights and access-to-justice for all Nigerians would be on the forefront of

\begin{footnotesize}
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\item See Oko, supra note 11, at 207 (noting even further that historically: “The Council has been unsuccessful in recruiting competent lawyers to help run the program a result of its poor financial position.”).
\item For this point on how military officials were granted immunity from prosecution upon leaving office, see Arishe, supra note 50, at 280-283.
\item See Oko, supra note 11, at 207.
\item See McQuoid-Mason, supra note 56, at 112-114. The National Youth Service Corps (NYSC) has been seen by some as one of the only other positive aspects that came out of the military period. Started in 1973, the NYSC is a program that requires university graduates to spend time working on cultural and social service projects to benefit the needy. Young lawyers who participate in the NYSC also can engage in legal aid services under the Act, but scholars such as McQuoid-Martin argue that they are underutilized. (\textit{Id} at 113-114). There has also been criticism that the program does not protect its service workers adequately, exploits them, and that NYSC leaders (dating back to the time of the military) have not as meticulously overseen the program as necessary. (See e.g, Hannah Onifade, NYSC Tragedies: The Nigerian Government is Taking Advantage of Its Youth and this Has to Stop, VENTURESAFRICA.COM (Mar. 31, 2016) http://venturesafrica.com/features/ripsamuelokonta-the-nigerian-government-is-taking-advantage-of-its-youths-and-it-must-stop/; Festus Owete, NYSC to Extort N800 Million from Corps Members, PREMIUM TIMES (Sept. 15, 2014) http://www.premiumtimesng.com/news/top-news/168175-nysc-to-extort-n800-million-from-corps-members.html).
\item Id. For a discussion of this point more broadly in Africa, see Oko, supra note 11, at 408-410.
\item See Falola & Heaton, supra note 24, at xvii, 201.
\item Id.
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the new president's agenda. Shagari had campaigned vigorously on the platform of inclusiveness and embracing Nigeria's diversity and multiculturalism. In his inaugural address, Shagari proclaimed "that the slogan of "One Nation, One Destiny" shall be translated into reality." To the delight of many rights-activists, a new Constitution of 1979 emerged. American-style in nature, the constitution did away with the British parliamentary system of government, adopting instead a U.S.-based presidential model. Direct elections of the president were established, as were separation of powers between the executive, legislative, and judicial branches. Federalism also continued to be enshrined, as was an affirmative set of principles mandating that the government secure and promote the general welfare of its citizens.

On this last point, legal aid, in particular, was formally incorporated within the Fundamental Rights section of the constitution. Influenced by


69. See Inaugural Speech, supra note 68.


"Special jurisdiction of High Court and legal aid. (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress. (2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter. (3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section. (4) The National Assembly - (a) may confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and (b) shall make provisions- (i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and (ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real."
the Legal Aid Act of 1976, subsection 42 of the '79 document required that the federal legislature ensure that "indigent"74 Nigerians be entitled to receive legal aid whenever claiming a violation or needing protection of their fundamental rights.75 Administratively, this provision delegated each state’s High Court to be in charge of handling the distribution of legal aid to the needy.76

Additionally, rights-advocates believed that improving legal aid involved reforming legal education within the country. If Nigeria was to become a respected power, it needed to develop a strong cohort of lawyers who believed in the rule of law. Legal education had suffered significantly during the military era, so in order to train the next generation of lawyers skilled in a range of legal services—including representing the needy—law schools in the country had to be revamped.

This argument harkened back to a project that had operated immediately in the years following independence. Between 1962 and 1967, the government had invited the American-based philanthropic organization, the Ford Foundation, to come to Nigeria to work with local academics to strengthen the quality of legal training for students.77 Ford labelled this program “SAILER”—Staffing of African Institutions of Legal Education and Research78—and it focused on three key educational institutions: the Lagos Law Faculty, the Ife Law Faculty, and Zaria-Ahmadu Bello University’s Institute of Administration.79 In short, the SAILER project involved hiring mainly recent American law school graduates who, upon invitation by different Anglo-phonic African governments (including Nigeria), travelled to these respective countries’ law schools. Upon arriving, they helped create legal courses, prepare treatises, teach research and writing classes, and establish clinics and access-to-justice programs—all with the purpose of developing well-rounded lawyers sensitive to grassroots causes.80 However, with the military coup in 1966, the SAILER project came to an end shortly thereafter.81

74.   Id at (4)(b)(i-ii).
75.   Id.
76.   Id at § 42.
78.   Id.
79.   See Krishnan, supra note 77, at 284-285.
80.   See Krishnan, supra note 77 (noting how the SAILER project involved the following countries: Congo, Ethiopia, Ghana, Kenya, Lesotho, Liberia, Malawi, Nigeria, Sudan, Tanzania, and Zambia, and how at law faculties within each of these states, the foreign lawyers who came were mainly from the U.S. and were welcomed warmly by their respective African hosts. As time passed though, the SAILER program had to scale itself back due to political instability within each of these countries, but some forty years later, it remains a positively viewed program by those who participated in it).
81.   Id. at 284-285, 306-312.
Optimists hoped that Shagari would support a state-led initiative reinstituting certain objectives Ford had with SAILER. F. Olisa Awogu’s contemporaneous treatment of how law, politics, and society interacted during this Second Republic shows that a different approach instead was taken. Rather than focusing on legal education and building a cohort of “bottom-up” lawyers, the government believed that the best way Nigerians could enjoy the fundamental rights guaranteed to them was if legal aid came from the top-down—mainly from the courts. Civil society activism remained fractured and under-funded. In order for substantive relief to occur on a wider basis, the Nigerian judiciary had to take the lead, which is what in fact occurred, and which also included going against the government itself.

For example, in Shugaba Abdurraham Darman v. The Federal Minister of Internal Affairs & Ors, the government had ordered the petitioner in this case to be deported to the country of Chad for being a non-citizen who was threatening Nigeria’s national security. In reality, Darman was a popular politician from the northeast of Nigeria who had been an opponent to President Shagari, and the deportation order was widely seen as politically motivated. A state High Court, an intermediate Court of Appeal, and then the Nigerian Supreme Court all ruled that Darman’s due process rights had been violated and that the deportation should be stayed. According to the Supreme Court, the government’s case was a sham, with the prosecution failing to provide Darman with the most basic means to defend himself.

It is worthwhile noting that Darman brought his claim forward by relying on a crucial set of “Fundamental Rights (Enforcement Procedure) Rules” that were devised by then Chief Justice of the Nigerian Supreme Court, Atanda Fatayi-Williams. These rules operationalized and

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83. Id. at 117-118 (discussing how the Constitution of 1979 empowered the federal National Assembly to take the lead in formulating the country’s legal aid policy. At the time Awogu was writing his book, the Assembly had not yet acted.).
84. See Shugaba Abdurraham Darman v. The Federal Minister of Internal Affairs & Ors (1981) 1 N.C.L.R. (Nigeria) 1; See also discussion cited in AWOGU, supra note 82, at 111.
85. See Shugaba Abdurraham Darman v. The Federal Minister of Internal Affairs & Ors (1981) 1 N.C.L.R. (Nigeria) 1; See also discussion cited in AWOGU, supra note 82, at 111.
86. See Shugaba Abdurraham Darman v. The Federal Minister of Internal Affairs & Ors (1981) 1 N.C.L.R. (Nigeria) 1; See also discussion cited in AWOGU, supra note 82, at 111.
87. See Shugaba Abdurraham Darman v. The Federal Minister of Internal Affairs & Ors (1981) 1 N.C.L.R. (Nigeria) 1; See also discussion cited in AWOGU, supra note 82, at 111.
88. See Shugaba Abdurraham Darman v. The Federal Minister of Internal Affairs & Ors (1981) 1 N.C.L.R. (Nigeria) 1; See also discussion cited in AWOGU, supra note 82, at 111.
89. See Shugaba Abdurraham Darman v. The Federal Minister of Internal Affairs & Ors (1981) 1 N.C.L.R. (Nigeria) 1; See also discussion cited in AWOGU, supra note 82, at 111.
90. See AWOGU, supra note 82, at 111.
91. Id.
facilitated the way claimants could apply for relief from a court. With these procedural rules, the Chief Justice’s goal was to provide immediate legal aid for claimants.

In another landmark judgment—Major Ladejobi v. Attorney General of the Federation—the Court reaffirmed the presence of the Rules as an entitlement-facilitation device. It then went a step further by stating that the Rules were not “the only mode of procedure available under the Constitution of 1979 for the enforcement of fundamental rights.” Petitioners could seek legal protection by simply pointing to the language of the fundamental rights itself, without needing to worry about strictly following the procedural rules at all. In other words, the Major Ladejobi Court was primarily concerned with how best to ensure that needy claimants could access their constitutional rights, regardless of the formal procedures present.

Unfortunately, this period of judicial-led, rights-based protection came to an end in December of 1983. Toyin Falola and Matthew Heaton describe the events that marked the culmination of the Shagari presidency. As they detail, because of his weak leadership style and insecurity, Shagari succumbed to patronizing “prominent businessmen and old-guard career 92. It.

93. A likely question to emerge is: what did these procedural rules entail? Awogu describes them as encompassing: “no application for an order enforcing or securing the enforcement of a guaranteed right was to be made unless leave for same had been granted by a court or judge[,] . . . and the application for leave must be made ex-parte, supported by a Statement setting out the name and description of the Applicant, the relief sought, and the grounds on which the relief was sought . . . . A[n] affidavit must verify the facts relied on. In granting the leave, the court or judge may impose terms as to security for costs.” AWOGU, supra note 82 at 111. Yet, it is important to note that an early court decision did not adhere to this intention. In John Folade v. Attorney General of Lagos, the Court refused to allow the petitioner to use the Enforcement Rules to trigger a fundamental rights claim. The Court ruled instead that the invocation of a more traditional (harder-to-meet) procedural doctrine had to be followed. See John Folade v. Attorney General of Lagos State & Ors (1981) 2 N.C.L.R (Nigeria) 771; See also, discussion in AWOGU, supra note 82, at 113-114 (holding that Folade, who had been detained for an unusually long period of time on charges of robbery, could not use the Enforcement Rules to challenge his detention. Rather, the Court held that Folade had to pursue the more traditional habeas corpus route for relief); See also Innocent Adikwu v. Federal House of Representatives (1982) 3 N.C.L.R. (Nigeria) 563; Folade was effectively muted a year later by Bade Local Government v. Bulama Mai Ardo., which held that not only must classic procedure give way to the Enforcement Rules, but also that fundamental rights claims could be raised at any time during the litigation, even if the particular claim was not brought at the start of the proceedings – typically a formal requirement of English law. See Bade Local Government v. Bulama Mai Ardo (1982) 3 N.C.L.R. (Nigeria) 804; See also discussion in AWOGU, supra note 82, at 115.


95. See Major Ladejobi, supra note 94; See also AWOGU, supra note 82, at 1144.

96. See AWOGU, supra note 82, at 115 (arguing that “[t]he constitutional guarantee of rights clearly serves a claimant as a shield if he finds in the guarantee [to be] an [independent] answer to his alleged infraction of a public law.”).

97. See FALOLA & HEATON, supra note 24, at 181-209.
politicians, while excluding groups who had historically been marginalized, such as “students, academics, civil servants, and members of labor unions ...” Rather than focusing on everyday Nigerians, the Shagari administration engaged in huge government-subsidized infrastructure projects that were doled-out to allies as a means of buying political support. Eventually, civil society groups, along with the press and religious organizations, demanded Shagari step down; and although he proceeded to win the 1983 election, the boisterous, widespread calls against his corrupt administration persuaded the military to depose him in December of that year.

Nigeria subsequently endured military rule for the next sixteen years. This period was among the harshest in Nigeria’s tumultuous history. But significantly, issues of legal aid and access-to-justice did not disappear. Instead, they took on a different, more quietly bottom-up character.

V. 1983-1999: REVERSION TO MILITARY RULE

A. Background

The sordid saga of the military period between 1983 and 1999 has been previously documented. Briefly, following Shagari’s dismissal, General Muhammudu Buhari took power. Buhari ruled until 1985 when he was toppled by a coup led by General Ibrahim Babangida, who, while deemed to be among the most corrupt of leaders in Nigeria, managed to stay in power until 1993. In 1993, relatively free elections were held, ushering in Nigeria’s Third Republic. But the electoral outcome was soon thereafter cancelled by Babangida, whose actions caused massive protests throughout much of the country. Eventually, Babangida relinquished power to his aide, Ernest Shonekan, but Shonekan was deposed in November of 1993 by General Sani Abacha, who has been seen by many to be Nigeria’s most

98. Id. at 201.
99. Id.
100. Id. at 202-205.
101. Id. at 205-209 (noting that “electoral fraud in this case was undeniable, and an electoral tribunal eventually overturned the result ... [although] opposition forces were unable to prevent the inauguration ... on October 1, 1983.”) Id. at 207.
102. See FALOLA & HEATON, supra note 24, at 209-235.
104. See FALOLA & HEATON, supra note 24, at 216-229; See DAN AGBESE, IBRAHIM BANGIDA: THE MILITARY, POLITICS, AND POWER IN NIGERIA (2012).
105. See FALOLA & HEATON, supra note 24, at 226-228. The winner of the 1993 election was M.K. Abiola who defeated Bashir Tofa. See AGBESE, supra note 104.
vicious ruler since independence.\textsuperscript{106} Abacha’s reign lasted until the summer of 1998, when he was found dead at his home in Abuja.\textsuperscript{107} As Section VI discusses, the following year Nigeria transitioned to its Fourth Republic, which still remains to this day.

Predictably, with all the political tumult occurring between 1983 and 1999, legal aid, access-to-justice, and concerns for individual rights were low priorities for state institutions. The case of the famous musician, Fela Kuti, only reaffirms this point. Throughout the 1970s, Kuti was a social activist and critic of that era’s military regime.\textsuperscript{108} In 1977, Kuti’s family home and personal property were destroyed by military officials.\textsuperscript{109} He sued the regime for damages, and the case languished in the courts for years. Initially, the High Court of Lagos dismissed Kuti’s claim, with the Court of Appeal agreeing with this outcome.\textsuperscript{110} Finally, in 1984—less than one year into the new military government—the Supreme Court heard the matter. The Court ruled that the doctrine of sovereign immunity precluded Kuti from pursuing his case, and that there could be no “liability for actions in tort committed by [the government or] its servants acting on its behalf.”\textsuperscript{111} Unlike its willingness during the second democratic republic to serve as the leader in protecting individual rights, the Court now appeared to buckle to the pressures imposed by the military in denying Kuti the opportunity to access justice through the legal process. The Court’s docile stance, so early on during this latest period of authoritarianism, greatly worried those working within civil society.

Fortunately, as O.C. Okafor has written, rights-activism was energized in 1987 with the birth of the prominent Civil Liberties Organization (CLO).\textsuperscript{112} The CLO and the “NGO community . . . [more broadly] enjoyed a modest measure of success (an achievement that is largely attributable to its dynamism, creativity, and courage under successive military regimes) . . .”\textsuperscript{113} Other rights-based NGOs soon emerged and operated during the Babangida and Abacha periods as a domestic response to widespread


\textsuperscript{107} See FALOLA & HEATON, supra note 24, at 234; Kaufman, supra note 106.

\textsuperscript{108} See FALOLA & HEATON, supra note 24, at 196.


\textsuperscript{110} Id.

\textsuperscript{111} Id. See also TEJUMOLA OLANIYAN, ARREST THE MUSIC! FELA AND HIS REBEL ART AND POLITICS (2004).

\textsuperscript{112} See O.C. OKAFOR, LEGITIMIZING HUMAN RIGHTS NGOS: LESSONS FROM NIGERIA 8 (2006).

\textsuperscript{113} Id. at 6.
human rights abuses that were occurring in the country.\textsuperscript{114} Rather than narrating the familiar story of foreign organizations and foreign actors working as the main protagonists combatting authoritarian regimes, Okafor details how it was the efforts of Nigerian lawyers and other local leaders who served as the main advocates in trying to promote access-to-justice for all Nigerians—for which there were some wins.\textsuperscript{115} This narrative is described next.

B. Civil Society Mobilization—The Efforts of the Civil Liberties Organization

The CLO brought together civically minded, public-spirited lawyers who sought to represent those tormented by the military regime.\textsuperscript{116} In fact, the CLO intentionally implemented a range of tactics that went beyond litigation. Felix Morka, the deputy-director of the CLO during this time, recounted a powerful story some years back explaining why.

\[ \text{In 1990... Maroko, Nigeria's former largest slum community, was demolished by the military government... [The residents] were not consulted or given any notice, except an announcement over the radio which gave them seven days to vacate their homes, nothing else. The military government immediately ordered bulldozers and soldiers and other security forces into the community and completely wiped out that community from the face of the earth... [The] Civil Liberties Organisation... made spirited efforts to actually get the courts to issue an injunction to restrain the implementation of this brutal act. Of course, the Chief Judge... at the time was clearly in cahoots with the government and would not assign the case that I had filed to any court for adjudication, knowing fully well the urgency of the matter. Although we made oral arguments to impress on the judge the need to assign this matter, he did not. It wasn't until the demolition actually began to occur and we returned to the court that he assigned the case, by which time, of course, it was too late. That is a typical example of how the courts were used during the military system to undermine the rule of law and access to justice.}\textsuperscript{117} 

\begin{itemize}
\item \textsuperscript{114} Id. at 5-6, 12-51.
\item \textsuperscript{115} Id. at 151-209, 239-245.
\item \textsuperscript{116} Id. at 15-18, 52-54.
\item \textsuperscript{117} See Frank Upham et al., Issues of Concern to Developing and Transitional Countries, 24 FORDHAM INT’L. L. J. 317, 326 (2000).
\end{itemize}
Therefore, the CLO had to engage in tactics such as street protests, public awareness campaigns, educational seminars, and the publication of provocative (but thoroughly researched and documented) literature—including two circulars that were distributed widely and highlighted the various human rights abuses being committed by the military.\textsuperscript{118} The CLO even lobbied government officials and civil servants.\textsuperscript{119} In 1990, from this pressure it received, the military updated the 1976 Legal Aid Act.\textsuperscript{120} M.A. Banire, a CLO-supporter and still a prominent lawyer in Lagos today, noted at the time that the new legislation was certainly an “improvement.”\textsuperscript{121}

Given the CLO’s cynical views towards the Nigerian courts,\textsuperscript{122} perhaps not surprisingly the group sought another venue in which to pursue their legal claims: the African Commission on Human and People’s Rights.\textsuperscript{123} The African Commission allowed for individuals or organizations wishing to pursue claims against signatory-states of the identically named African Charter to bring their cases to it.\textsuperscript{124} And indeed, the CLO was a leading

\begin{itemize}
\item \textsuperscript{118} See CIVIL LIBERTIES ORGANISATION, ANNUAL REPORT ON HUMAN RIGHTS IN NIGERIA – 1990, 41-47 (1990); CIVIL LIBERTIES ORGANISATION, EXECUTIVE LAWLESSNESS IN THE BABANGIDA REGIME – A REPORT OF THE CIVIL LIBERTIES ORGANIZATION, NIGERIA (March 1991).
\item \textsuperscript{119} See OKAFOR, supra note 112 at 15-18.
\item \textsuperscript{120} Legal Aid Act (1990).
\item \textsuperscript{121} See M.A. Banire, Legal Aid in the Administration of Justice in Nigeria, CURRENT THEMES IN NIGERIAN LAW (I.O. Agbede & E.O. Akanki, eds., 1997), Section III, http://mabandassociates.com/pool/Legal_Aid_in_the_admin_of_justice_Nigeria.pdf. At the same time, Banire (a Senior Advocate of Nigeria) also believed that the new law had defects, including the following: only the poorest of the poor were eligible for government legal aid; that government legal aid covered too narrow of criminal and civil cases; there was too heavy a government representation on the Legal Aid Council and too little representation by members of civil society; there was too little transparency in what the Council did; and the government insufficiently funded civil society organizations to carry out the representation of those who were in desperate need of legal aid. Legal Aid Act (1990).
\item \textsuperscript{122} One key reason for this cynicism was the lack of a “social action litigation” culture in Nigeria. See S.A. Agbakwa & O.C. Okafor, Social Action Litigation and Access-to-Justice in Nigeria: A Critical Case Study in JUSTICE FOR THE POOR: ACCELERATING ACCESS (A. Dias and G. H. Welch eds. 2009) (drawing on Upendra Baxi’s coining of this phrase to argue that although attempts during the military period were made by civil society organizations to effectuate change through this type of court-action, success was limited. As the authors argue, even today, for social action litigation in Nigeria to make a sustained difference, there needs to be the following: empowering of judges to deliver more in the way of remedies to needy claimants; funding civil society organizations at greater levels; encouraging cross border cooperation between civil society activists in Nigeria and in places such as India; promoting technology as a means of offering increased levels of legal aid to more people; and creating incentives for more private sector lawyers to engage in pro bono legal services. (See id. at 246-253.)
\item \textsuperscript{123} It emerged as a result of the passage of the 1981 African Charter of Human and People’s Rights.
\item \textsuperscript{124} See African Charter on Human and People’s Rights (1981), Article 45. Note, in addition to hearing and adjudicating these cases, the Commission, in 2004 (under a 1988 amendment/protocol to the Charter) began preparing cases of its own to be presented in front of the African Court of Human and People’s Rights. This particular Court is meant to complement the Commission. See also, Welcome to the African Court, AFRICAN COURT ON HUMAN AND PEOPLE’S RIGHTS, http://www.african-court.org/en/.
\end{itemize}
party that came before the Commission in several key matters during the 1990s.\footnote{125}{Note, procedurally the typical manner in which a party could appear before the Commission would be to exhaust all domestic court appearances first. The Commission reaffirmed this principle, coincidentally, in a case involving the CLO. See Civil Liberties Org. v. Nigeria, Comm. No. 45/90, (Afr. Comm Human and Peoples' Rights 1994).}

For example, one landmark case involved the military's detention of political opponents in 1991.\footnote{126}{See Communication No. 67/91, Civil Liberties Organisation v. Nigeria (Amicable Resolution), adopted at the 14th Ordinary Session of the Commission, Addis Ababa, Ethiopia, Dec. 1993; See also Odinkalu, The Individual Complaints Procedures of the African Commission on Human and People's Rights: A Preliminary Assessment, 8 TRANSNAT'L L. & CONTEMP. PROBS. 359 (1998) (noting: "In another case, the Commission similarly affirmed that 'the release of the alleged victims does not nullify any violation of the victims' rights.'"). The reply of the government on May 19, 1992 (disclosing that the victims had been released) "does not absolve it of the liability in respect of any violations that may have occurred." Communication No. 67/91, Civil Liberties Organisation v. Nigeria (Amicable Resolution), adopted at the 14th Ordinary Session of the Commission, Addis Ababa, Ethiopia, Dec. 1993.” \textit{Id.} at fn 95.)

The opponents were eventually released the following year, and the military argued that its decision relieved it from any liability to the petitioners.\footnote{127}{See Communication No. 67/91, Civil Liberties Organisation v. Nigeria (Amicable Resolution), adopted at the 14th Ordinary Session of the Commission, Addis Ababa, Ethiopia, Dec. 1993; See also Odinkalu, \textit{supra} note 126, at fn 95; Communication No. 67/91, Civil Liberties Organisation v. Nigeria (Amicable Resolution), adopted at the 14th Ordinary Session of the Commission, Addis Ababa, Ethiopia, Dec. 1993.” \textit{Id.} at fn 95.) However, the Commission rejected this argument, holding that the military was not insulated.\footnote{128}{See Communication No. 67/91, Civil Liberties Organisation v. Nigeria (Amicable Resolution), adopted at the 14th Ordinary Session of the Commission, Addis Ababa, Ethiopia, Dec. 1993; See also Odinkalu, \textit{supra} note 126, at fn 95; Communication No. 67/91, Civil Liberties Organisation v. Nigeria (Amicable Resolution), adopted at the 14th Ordinary Session of the Commission, Addis Ababa, Ethiopia, Dec. 1993.” \textit{Id.} at fn 95.) In another case, the Commission held that individuals who were held for three years in custody by the military without a trial were deprived of their due process rights under Article 6 of the African Charter.\footnote{129}{See Communication 102/93, Constitutional Rights Project & Civil Liberties Organization v. Nigeri; See also the Commission’s decision in Constitutional Rights Project v. The President of the Federal Republic of Nigeria and 5 Others, Suit No. M/102/93 (originating in the High Court of Lagos State of Nigeria) (1993) (holding that six defendants who were sentenced to death for crimes they were convicted of should have their convictions vacated because of the military violating their due process rights. As Odinkalu described in his account of the case, the defendants were released by the military in 1996–years after the Commission’s ruling. See Odinkalu, \textit{supra} note 126, at 402-403.)

And a few years later, during the dictatorship of Sani Abacha, the Commission once again sided with political opponents who had been sentenced to death.\footnote{130}{Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria, African Commission on Human and Peoples' Rights, Comm. No. 218/98 (1998).} The Commission held that Articles 7(1)(a) and (c) of the Charter—which require the right to appeal, sufficient time to mount a defense, and legal representation of the defendants' choice—all had been ignored by the Abacha regime.\footnote{131}{\textit{Id.}}
The Commission was active in other separate but related areas as well. One of its most noteworthy judgments involved Article 10 of the Charter, where the Commission ruled that government opponents, represented by the CLO, were entitled to: associate with one another, collectively congregate, and seek redress in court when they had legal grievances against the state. In another CLO-led case, the Commission held that the military could not unilaterally declare that the Charter did not apply in the Nigerian domestic context, nor could judicial review be removed from the Nigerian courts, nor could political parties be banned from challenging the government in court. The Commission held that if the military wanted to extract itself from its human rights obligations, it had to adhere to specific principles set forth in the Charter, such as providing timely notice to the other member states. And in two other key decisions, the Commission sided with the CLO—one in which an opposition newspaper was deemed to have the right under the Charter to stay open, and the other where the military was found to have improperly stacked the Nigerian Bar Association with over three-quarters of its own appointees.

Yet, arguably no case was as high-profile for the CLO than when it and a coalition of partners represented a brilliant writer and environmental activist from the Niger Delta region—Kenule B. Saro-Wiwa. This story is discussed next.

C. The Saro-Wiwa Case and the Broader Challenges for—and Criticisms of—the NGO Sector

The Niger Delta region has long been the epicenter for debate, discord, and uprisings. Okafor explains that the combination of long-standing discrimination against the indigenous Ogoni people, coupled with the oil and natural resources exploitation by multinational conglomerates, has
fueled the disharmony.\textsuperscript{138} In 1990, an organization known as the Movement for the Survival of Ogoni People (MOSOP) was founded by Ken Saro-Wiwa.\textsuperscript{139}

From its inception, MOSOP argued that international companies had failed to address the Ogoni people’s needs.\textsuperscript{140} Saro-Wiwa distrusted the military and saw the regime as only concerned with financially lining its pockets from the profits these companies produced.\textsuperscript{141} Saro-Wiwa sought to undermine the alliance between these companies and the military and to champion environmental and socio-economic justice for those living in this area.\textsuperscript{142} Saro-Wiwa’s strategic populism, not surprisingly, earned the ire of the military. Under the Babangida government, Saro-Wiwa was imprisoned for a period of time in 1992.\textsuperscript{143} He was detained again the following year.\textsuperscript{144} The turning point came in 1994 after four Ogoni men—who had been opponents of MOSOP—were murdered.\textsuperscript{145} Sani Abacha, who was in power by then, accused Saro-Wiwa and eight others of the killings and prosecuted them in a military tribunal.\textsuperscript{146} Several groups, such as International Pen, the Constitutional Rights Project, Interights, and the CLO,\textsuperscript{147} came to the defense of the “Ogoni nine.”\textsuperscript{148} Having the CLO on board was critical. Okafor describes how a few years prior “a massive campaign by the [Organization] . . . was one of the critical pressure points that persuaded the military government of the time to commute the death sentences [of other

\begin{thebibliography}{99}
\item[138.] Id.
\item[139.] Id.
\item[140.] Id at 40; See also FALOLA & HEATON, supra note 24, at xxxi, 231-232, 239.
\item[141.] OKAFOR, supra note 112, at 40; See also FALOLA & HEATON, supra note 24, at xxxi, 231-232, 239.
\item[142.] OKAFOR, supra note 112, at 40; See also FALOLA & HEATON, supra note 24, at xxxi, 231-232, 239.
\item[143.] OKAFOR, supra note 112, at 40; See also FALOLA & HEATON, supra note 24, at xxxi, 231-232, 239.
\item[145.] See also FALOLA & HEATON, supra note 24, at xxxi, 231-232, 239; See also ROY DORON & TOYIN FALOLA, KEN SARO-WIWA 126 (2016).
\item[146.] See also FALOLA & HEATON, supra note 24, at 231-232; DORON & FALOLA, supra note 145. at 126; OKO supra note 11, at 230-239.
\item[148.] See OKAFOR, supra note 112, at 102 (noting how “[t]he CRP [Constitutional Rights Project] and a number of other groups also worked tirelessly (albeit unsuccessfully) to prevent the execution of Ken Saro-Wiwa and the rest of the Ogoni nine.”)
\end{thebibliography}
Thus, the CLO had on-point experience in this area of defense litigation.

Sadly, Saro-Wiwa and his colleagues lost their case. The Ogoni nine were convicted, and in 1995 they were executed, resulting in domestic and international outrage. In their new book on Saro-Wiwa’s life, Roy Doron and Toyin Falola show that the Shell Corporation—the major extractive industry in this region at the time—was also complicit in this miscarriage of justice. Shell, according to the authors, sought the protection of the military, which it knew engaged in human rights abuses. In fact, the authors examine the civil case brought by Saro-Wiwa’s son and other plaintiffs in U.S. federal court (under the Alien Tort Claims Act) against Shell for collusion with the government in the execution of the Ogoni nine. This matter ultimately settled with Shell paying the plaintiffs $15.5 million in what it called a “humanitarian gesture.” Even though an American non-profit, the Center for Constitutional Rights, brought the case against Shell in the United States, had it not been for the efforts of the Nigerian NGOs, (including the CLO), this settlement would never have occurred.

This last point is important to remember in light of the critiques made against civil society groups in Nigeria over the years. As background, several scholars have expressed concern about the operations, agenda, leadership, and transparency of the Nigerian NGO sector. There are the frequently made derisive comments that these NGOs are too urban or Lagos-based; that the leaders are more focused on issues tied to cities rather than the countryside; and that the groups are too beholden to foreign

149. See Okafor, supra note 112, at 179; 102, noting the efforts of the CRP, which Okafor especially lauds.

150. See Falola & Heaton, supra note 24, at 231-232; Okafor, supra note 112, at 40.

151. See Doron & Falola, supra note 145, at 79-98.

152. Id.

153. See Jad Mouawad, Shell to Pay $15.5 Million to Settle Nigerian Case, NEW YORK TIMES, (Jun 8, 2009) http://www.nytimes.com/2009/06/09/business/global/09shell.html?ref=collection%2Ftimestopic%2FS arowiwa%2C%20Ken&action=click&contentCollection=timestopics&region=stream&module=stream_unit&version=latest&contentPlacement=1&pgtype=collection (discussing also the charges of how Shell flouted environmental laws). See also, two U.S. Supreme Court cases, Sosa v. Alvarez-Machain 542 U.S. 692 (2004) (providing limitations on the types of claims that can brought under the Alien Tort Claims Act); Kiobel v. Royal Dutch Petroleum 133 S.Ct. 1659 (2013) (further narrowing Sosa by noting that the presumption is that the ATCA does not apply outside of the United States.); See also Doron & Falola, supra note 145, at 155 (noting that the Kiobel case “effectively ended lawsuits such as those brought by Saro-Wiwa’s family and [other Ogoni claimants, including] Kiobel.” Id. at 154.).

154. See Mouawad, supra note 153.

155. Id.

156. Id.
funders who dictate policymaking decisions.\textsuperscript{157} Another common criticism is that too often Nigerian organizations are used simply as vehicles by self-aggrandizers who are more interested in gaining access to resources, power, and prestige, than concentrating on alleviating the plight of those most in need.\textsuperscript{158} As that argument goes, because of their intense self-interest, such leaders care little about developing a sound infrastructure for the organization or the organization’s cause, with the consequence being that when these leaders depart, the organization typically folds and the problems of the oppressed remain unresolved.\textsuperscript{159} The result then in Nigeria is an NGO space that is fragmented and disorganized and filled with groups who fail to advance the interests of the very constituents they claim to represent.\textsuperscript{160}

Among the groups that is seen as embodying many of these problems is the CLO. According to the critics, the CLO has struggled to maintain focus and cohesion,\textsuperscript{161} and the result has been the departure of several officials who have formed competing organizations.\textsuperscript{162} Moreover, the inability of the group to develop sound and sustained financial footing, even after all these years, has also been noted as a weakness, along with the perpetual disconnect the central leadership has with those at the grassroots level.\textsuperscript{163} Tactically, the CLO has been chided for engaging in the “negative proclamation[s]”\textsuperscript{164} of human rights violations, rather than embracing...
positive, constructive rhetoric as well as tangible strategies to improve access-to-justice opportunities for Nigerians.

Additionally, there has been criticism of the CLO’s international partnerships. In these relationships, skeptics have seen the benefit-arrow pointing in favor of the international partner. For example, the CLO has provided information on the Nigerian human rights landscape to foreign donors and the embassies of select countries. These entities then go on to determine – with little guidance from the CLO – which domestic partners should receive funding and the policy directions these partners should follow. Another CLO-partnership that has received critical scrutiny is the one it has with a government agency created under, of all leaders, Sani Abacha: the Nigerian National Human Rights Commission (NHRC). The CLO, along with other NGOs, has worked with the NHRC, since its inception. In doing so, however, a repeated question is whether this cooperation has lent credibility to an institution – particularly during those military years – only concerned with human rights in name rather than in substance. As such, the independence and integrity of the CLO has been placed into doubt by critics.

In the final section, there will be a rebuttal to these criticisms, a defense of the CLO, and an evaluation of the impact it has had on human rights. An important part of this discussion includes the ways in which the CLO helped shape the resistance efforts during the military era. Indeed, because of the CLO and other NGOs, the military ultimately relinquished power in 1999.

VI. RESPONSES, TRANSITIONS, AND GAINS MADE

A. Answering the Critics

The above criticisms of the Nigerian NGO sector are valuable. They serve as a reminder that there are communities whose needs remain unmet and that those who hold power, even in the NGO space, need to have checks placed on them. At the same time, however, criticisms can be excessive – even the most well-intentioned ones.
Consider, for example, the cases described above that were brought by the CLO. For that type of litigation to be successful, there was an absolute need for the CLO to have sophisticated leaders familiar with how to operate within the domestic judiciary, as well as the African Commission—both of which, admittedly, were far removed from the grassroots. Of course, it is easy to deride these legal victories as being "hollow."\(^\text{171}\) Questioning the tangible effects judicial rulings have on ordinary people has a long history in the academic and activist literature, beyond Nigeria.\(^\text{172}\) Yet offering this criticism without considering the nuanced impact that such cases can have on an issue ignores the complexities of such "cause lawyering."\(^\text{173}\)

The Saro-Wiwa case highlights this point. Recall, well before the Shell Corporation settled the case brought in the American courts, there was litigation that occurred in Africa. CLO lawyers, together with their coalition partners, tirelessly fought on behalf of Saro-Wiwa in the domestic tribunals and in the African Commission.\(^\text{174}\) These groups saw this litigation not just as a legal tactic, but political as well. As Michael McCann in his classic work on American courts has argued, litigation can serve as the venue to raise public consciousness, introduce new rhetoric to the discourse, and alter a political narrative that is being dominated by a political hegemon—in this case, the different Nigerian military leaders in


\(^{173}\) For a discussion of cause lawyers, See STUART SCHEINGOLD & AUSTIN SARAT, SOMETHING TO BELIEVE IN: POLITICS, PROFESSIONALISM, AND CAUSE LAWYERING (2004) (citing the extensive literature produced by Sarat and Scheingold, including their various edited cause lawyering volumes, on this topic); Also for a summary of this material, See Krishnan, Lawyering for a Cause, supra note 172; See also, Director of State Security Service v. Olisa Agbakoba and Another 3 NWLR 314 (1999) (ruling that it is a fundamental right to travel and to have a passport to do so); For a discussion of how this case was a transformative moment in that the judiciary “would not have even had the opportunity to pronounce on this matter had it not been for the courage, perseverance, and skills of the NGO activists who pursued the matter,” See OKAFOR, supra note 112, at 162.

Elite professionals, such as the lawyers in the Saro-Wiwa coalition, may have directed the strategy of the organization. But contrary to the critics’ assertions, such actions should not be confused with these elites being the primary beneficiaries of these efforts. In this case, the layered legal aid strategies of the coalition ultimately led to: a) a favorable judgment in an international tribunal, b) global condemnation of the military and Shell, and c) a multi-million-dollar settlement for the Saro-Wiwa family and the affected Ogoni communities.

This argument can be extended by adopting Okafor’s subtle approach towards NGOs and the larger access-to-justice context during the military era. On the one hand, Okafor is not hesitant to paint the NGO sector, and the CLO specifically, along the lines of the criticisms made above. At the same time, he recognizes that through their legal and political actions, “NGOs were at the forefront of the campaign to end military rule . . . .” And that “NGOs have had a modest but nevertheless important impact on the content, character, and development of public discourse in Nigeria.”

This concept of “modest but significant” impact underscores Okafor’s entire analysis and is persuasive for how best to evaluate the role of NGOs during this military time. It is a straw-argument to claim that NGO’s in Nigeria were homogenous and were all elite-driven and elite-focused. As Okafor copiously demonstrates, between 1987 and 2001, there were nearly two dozen active groups operating in the country. Although there were broad similarities in how these organizations functioned and were structured, they also each had unique aspects to them. Moreover, these groups were not one-dimensional. They engaged in a combination of tactics – litigation, legislative monitoring and drafting, international outreach, awareness initiatives, educational efforts, and grassroots mobilization – in order to increase their constituents’ ability to better access their rights.

Okafor spends a great deal of time assessing the CLO, in particular. To reiterate, he was not hesitant to be critical. But Okafor was fair; he
recognized that the CLO practiced various tactics and at times did so successfully. For example, while he wished that the group would have addressed socioeconomic rights more in-depth,\(^{184}\) he acknowledges that it did publish key literature that had impact,\(^{185}\) including bravely releasing “a groundbreaking book-length report . . . that captured the dehumanizing conditions in Nigerian prisons”\(^{186}\) during the height of the Babangida regime. Additionally, with offices throughout the country, the CLO was able to create valuable alliances with other organizations in order to pursue educational and grassroots tactics.\(^{187}\) And because of its reputational legitimacy, the CLO and some of its coalition partners also played a role in drafting rights-based pieces of legislation — a “remarkable feature . . . [especially] during the harshest days of military rule . . . .”\(^{188}\)

In sum, the picture of the NGO sector in Nigeria, between 1983 and 1999, was complicated. Along with the criticisms made above, civil society leaders also generally failed to more forcefully emphasize issues relating to the rights of women, the environment, and socioeconomic minorities.\(^{189}\) Regarding this last group, one area that has been especially disappointing is the fact that LGBTQ communities then, and still today, have not been embraced broadly by the NGO sector. Although, ten years earlier, several groups, including the CLO, signed a petition arguing against criminalizing same-sex relations,\(^{190}\) there have been disgraceful statements made about what is seen as the “condemnable”\(^{191}\) behavior of LGBTQ individuals — even from former CLO interim director Igho Akeregha.\(^{192}\)

Thus, the NGO scene in Nigeria has been conflicted. The critics’ observations certainly warrant attention and have merit. At the same time, aspects of the critiques are too blunt and too sweeping. Also, it is important to remember that NGOs were deeply involved in moving Nigeria from a military dictatorship to a democracy in 1999. In those immediate years of the transition, certain NGOs were able to lobby the

\(^{184}\) Id. at 17.

\(^{185}\) Id. at 17 (noting also an “Annual Report [that] include[d] a column for its women’s rights projects, as well as an entry for its Niger Delta monitoring project . . . "). See also, Id. at 173.

\(^{186}\) Id. at 80; See also, another report that it published in 1996, as noted by OKAFOR, supra note 112, at 90.

\(^{187}\) OKAFOR, supra note 112, at 52-54; 84-89.

\(^{188}\) Id. at 171,172-174.

\(^{189}\) Id. at 209-244.


\(^{192}\) Id.
democratic government to commute the life sentences for prisoners convicted by the aforementioned tribunals.\textsuperscript{193} Relatedly, within the first two years of Nigeria’s new democratic Fourth Republic, the CLO, in particular, was influential in educating and professionalizing judges to work in the rejuvenated court system.\textsuperscript{194} And CLO leaders also worked with the NHRC, which helped legitimize this government agency. (Coincidentally, one of the harshest critics of the NGO sector, Chidi Odinkalu, was a former head of the CLO and then later the former head of the NHRC).\textsuperscript{195}

The transition to democracy occurred in 1999. The next section examines the role NGOs have played in providing legal aid and rights-based opportunities for ordinary Nigerians.

\textit{B. Access-to-Justice in the Early Years of Democratic Nigeria}

In 1999, Olusegun Obasanjo returned to power in what was a relatively peaceful election which, while not error-free, was deemed acceptable given Nigeria’s history.\textsuperscript{196} Prior to this transition, the reign of Sani Abacha ended with his surprising death in 1998.\textsuperscript{197} His successor, General Abdulsalami Abubakar, took power but quickly realized that the demands for democracy by civil society activists were too strong. He thus helped facilitate the national elections that occurred less than a year later.\textsuperscript{198}

After almost twenty years since the ushering-in of this Fourth Republic, the empirical evidence shows that many needs continue to go unmet. For example, Nigeria has not had the broad “social action litigation” movement seen in other countries.\textsuperscript{199} There has not been an activist judiciary marshalling widespread change through its decisions.\textsuperscript{200} Nor has it been easy (through, say, liberal standing requirements, low filing fees, or plaintiff-friendly mechanisms) for litigants to enter into court.\textsuperscript{201} Litigants also have not been able to rely on the government to enforce existing rights on the books.\textsuperscript{202}

\begin{itemize}
\item \textsuperscript{193} See \textsc{Okafor}, \textit{supra} note 112, at 180.
\item \textsuperscript{194} Id. at 170.
\item \textsuperscript{195} Id. at 183. For an assessment of Odinkalu’s tenure, see Tobi Soniyi, \textit{An Assessment of Chidi Odinkalu’s Four Years as Chairman, Governing Council, National Human Rights Commission, THIS DAY} (Mar. 2, 2016) https://www.thisdaylive.com/index.php/2016/03/02/an-assessment-of-chidi-odinkalu-four-years-as-chairman-governing-council-national-human-rights-commission/.
\item \textsuperscript{196} See \textsc{Falola }\& \textsc{Heaton}, \textit{supra} note 24, at 234-235.
\item \textsuperscript{197} Id. at 234 notes that Abacha died of “apparent heart attack.”
\item \textsuperscript{198} Id. at 234.
\item \textsuperscript{199} See \textsc{Agbakwa} \& \textsc{Okafor}, \textit{supra} note 122.
\item \textsuperscript{200} Id. at 210-211.
\item \textsuperscript{201} Id. 211 (noting also that there has not been a judiciary-media coalition that work together to promote claimants’ rights.)
\item \textsuperscript{202} Id. at 211.
\end{itemize}
Still, there were activists who continued using the courts after 1999 for "strategic impact" purposes. Such litigation involved advocating for women, workers, defendants, and prisoners. These cases focused on producing impact where possible. Broadly put, this litigation concentrated on the civil and political rights of those in need, and NGOs litigating on behalf of these claimants did achieve a certain amount of success. The major critique, however, remained: that these campaigns failed to provide widespread change for those at the grassroots level. Perhaps most indicative of this point was the labor-rights litigation that occurred within the country. While there were some court victories, this litigation effort did not translate into major transformation. When substantive change happened, it did so because of a set of social movement strategies (beyond the courts) that involved everyday Nigerian workers.

Yet the courts occasionally managed to issue judgments that positively aided the masses. Take the complicated and cross-cutting case involving a dispute between the state government of Lagos and President Obasanjo’s federal government. In 2004, the federal government suspended, what had been until that time, mandated funding to the states under section 162.


204. See Agbakwa & Okafor, supra note 122, at 212.

205. Id. at 210.

206. Id. at 212, 220 (noting that less attention was paid to socio-economic rights.) An alternative view of this point, however, is that the historic divide between civil/political rights and socio-economic rights is more illusory than it is stark – namely because of the inherent linkage between the two sets. See generally Jayanth K. Krishnan et al., Grappling at the Grassroots: Access-to-justice in India’s Lower Tier, 27 HARV. HUM. RTS. J. 151 (2014).

207. See Agbakwa & Okafor, supra note 122, at 221-230 (highlighting a number of civil and political rights cases showing the success of this type of ‘strategic impact litigation,’ which while more limited to its large impact vis-a-vis social action litigation, still has provided claimants with victories and broader opportunities to access justice.)

208. Id. at 230-39.


210. See generally Okafor, Remarkable Returns, supra note 209; Okafor, Irrigating the Famished Fields, supra note 209; Okafor, Between Elite Interests, supra note 209; Okafor & Ugochukwu, Inventing Legal Combat, supra note 209.

(4) of the 1999 Nigerian Constitution. The Lagos government objected and sued, arguing that the denial of this funding prevented its local governments from being able to work on key infrastructure projects intended to benefit those most needy within the state. In response, the federal government counter-claimed that because Lagos State had reconfigured its constitutionally established "20 Local Government Councils . . . [by] replac[ing] [them] with 57," it was no longer obliged to fulfill this commitment.

Unable to reach a solution, the parties called upon the Supreme Court to resolve the conflict. While the Court stated that the 57 new local governments would only be able to receive the funding after the federal "National Assembly passe[d] the appropriate Act," it concluded that "[t]he president has no power . . . to suspend or withhold for any period whatsoever the statutory allocation due and payable to [the] Lagos State Government . . ." The judgment was a clear victory not just for the Lagos government, but for everyday constituents whose interests were being advocated by their state representatives. It also demonstrated the independence of the judiciary. The ability of the Court to stand up to the president, who was once the military dictator of the nation, signaled the progress that had been made.

The early years, following the restoration of democracy, saw another important access-to-justice development as well. In 1999, Obasanjo established a ‘truth commission’ for Nigeria. The commission had different names, but it soon came to be called the ‘Oputa Panel,’ named for its chair, Chukwudifu Oputa, who was a retired justice of the Nigerian Supreme Court. The Oputa Panel was charged with investigating all of

212. Id. ("Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.")

213. Id.

214. Id.

215. Id.


218. Human Rights, supra note 217; Judiciary, supra note 217; Travails, supra note 217; UNITED STATES INSTITUTE FOR PEACE, supra note 217; GUAKER, supra note 217; OKAFOR, supra note 112, at 183.

219. Human Rights, supra note 217; Judiciary, supra note 217; Travails, supra note 217; United States Institute for Peace, supra note 217; Guaker, supra note 217; Okafor, supra note 112, at 183.
the human rights abuses that had occurred between 1966 and 1999. It had investigative powers, such as the ability to call and cross-examine witnesses, find on issues of fact and law, and issue recommendations to the different branches of government. The Panel’s members also saw themselves as serving on a cathartic body — one which would emotionally help heal the wounds for those who had suffered so unjustly under the previous regimes. Otherwise put, the members believed they were to administer legal and moral judgments on past actions by the state and to ensure that these abuses would never occur again.

The Oputa Panel was a model of what several scholars have referred to as ‘transitional justice.’ The concept is that during a period when a state is moving from a non-democratic to democratic system, it will seek to implement mechanisms to assist a society deal with the human rights abuses that occurred during the authoritarian period. Transitional justice bodies take on more than just a legal role; they have a political, economic, and social character, and they possess both substantive and symbolic significance. The creation of the Oputa Panel, thus, provided hope that the new Nigerian government sincerely cared about transparency, responsibility, accountability, and justice.

Unfortunately, the reality fell short of the aspirations. Aggrieved claimants submitted, in total, some 10,000 petitions to the Panel, with roughly 1-2% of these cases heard by its members. The claims covered atrocities that occurred over a thirty-year span. After writing a voluminous report that contained policy recommendations and judgments, the Panel was sued by members of the former military junta (including

220. Human Rights, supra note 217; Judiciary, supra note 217; Travails, supra note 217; UNITED STATES INSTITUTE FOR PEACE, supra note 217; GUAKER, supra note 217; OKAFOR, supra note 112, at 183.
221. Human Rights, supra note 217; Judiciary, supra note 217; Travails, supra note 217; UNITED STATES INSTITUTE FOR PEACE, supra note 217; GUAKER, supra note 217; OKAFOR, supra note 112, at 183.
222. Human Rights, supra note 217; Judiciary, supra note 217; Travails, supra note 217; UNITED STATES INSTITUTE FOR PEACE, supra note 217; GUAKER, supra note 217; OKAFOR, supra note 112, at 183.
223. Human Rights, supra note 217; Judiciary, supra note 217; Travails, supra note 217; UNITED STATES INSTITUTE FOR PEACE, supra note 217; GUAKER, supra note 217; OKAFOR, supra note 112, at 183.
224. For a discussion of this point, see RUTI G. TEITEL, TRANSITIONAL JUSTICE (2000).
225. See Id. Human Rights, supra note 217; Judiciary, supra note 217; Travails, supra note 217; UNITED STATES INSTITUTE FOR PEACE, supra note 217; GUAKER, supra note 217; OKAFOR, supra note 112, at 183.
226. See TEITEL, TRANSITIONAL JUSTICE (2000) supra note 224; Human Rights, supra note 217; Judiciary, supra note 217; Travails, supra note 217; UNITED STATES INSTITUTE FOR PEACE, supra note 217; GUAKER, supra note 217; OKAFOR, supra note 112, at 183.
227. The numbers seem to vary depending on the sources. See Travails, supra note 217 (stating that about 200 cases were chosen); GUAKER, supra note 217 (stating that about 200 cases were chosen); U.S. INSTITUTE FOR PEACE, supra note 217 (stating that about 150 cases were selected).
Babangida). They argued that the federal government had no jurisdiction to impose the Panel’s recommendations on the states, because the states had not been involved in the Panel’s establishment nor had consented to its powers. The case was heard in the Nigerian Supreme Court, which agreed with this argument and ruled that the Panel had been acting unconstitutionally. Soon thereafter, in January 2003, Obasanjo dismantled the Panel and prohibited the public release of its report.

To his critics, Obasanjo’s creation of the Oputa Panel was nothing more than pretext, and so his disassembling of it was not a surprise. In fact, the Court’s ruling gave him the perfect excuse to do away with all of the Panel’s work. Indeed, most disheartening was the role of the Court in this episode. As Hakeem Yusuf has written, the justices failed to “utilize the opportunity presented by Oputa Panel to contribute to the developing jurisprudence on the right to truth for victims of gross human rights violations.”

The Court’s equivocation towards the government – where it displayed its willingness to exercise judicial strength in some cases, but then not in others – exhibited the precarious position in which it saw itself during this transitional period to democracy. For rights activists working in the trenches, however, this ambivalence offered only cold comfort. Still, it is worth noting that after the Oputa Panel case, Nigeria did not revert to military rule. It has remained a democracy, albeit a fragile one that continues to wrestle with how best to address and respond to different access-to-justice issues in these recent years.

C. Bits of Progress . . . with Caveats

The lessons from above, highlighting the struggles of the NGO sector during the military era and then in the early 2000s, apply to this day. Civil society groups continue to face many of the same challenges – lack of leadership and poor infrastructure, insufficient resources, pressure from funders, and difficulty reaching the grassroots. In addition, the country’s primary organization representing the legal profession, the Nigerian Bar Association (NBA), is at a crossroads. While it engaged in certain positive actions during the military era and since 1999, overall the NBA has been

229. Id. at 63.
230. Id.
231. Human Rights, supra note 217; Judiciary, supra note 217; Travails, supra note 217; UNITED STATES INSTITUTE FOR PEACE, supra note 217; GUAKER, supra note 217; OKAFOR, supra note 112, at 183.
beset by a series of challenges.\textsuperscript{233} A similar mixed-bag of results has accompanied the efforts of educators who have sought to improve access to the legal process. We examine these two civil society movements in turn.

\textit{i. The NBA}

The NBA predates Nigeria’s independence by nearly three decades.\textsuperscript{234} In fact, in 1933 the British passed the Legal Practitioners Ordinance, which officially gave the NBA the power to nominate members to a government committee to investigate lawyer misconduct.\textsuperscript{235} During the colonial period, NBA members, many of whom were trained under the English legal education model, banded loosely together for professional purposes, including networking, sharing referrals, developing business connections, and engaging in political advocacy.\textsuperscript{236} And as past research has shown, such professionals were instrumental in the independence movement.\textsuperscript{237}

At points in the post-colonial era, the NBA has served as the preserver of the bar’s reputation and integrity, the defender of individual rights and liberties, and an opponent of state oppression. It has done so through formal and grassroots means. Institutionally, the NBA was an important player in the passage of the first two post-independence statutes regulating the legal profession – the 1962 Legal Practitioners Act (LPA), which was then replaced by a 1975 version under the same name.\textsuperscript{238} The 1975 LPA has remained the signature piece of legislation governing lawyers in Nigeria to this day. It is accompanied by an administrative set of “Rules of Professional Conduct”\textsuperscript{239} passed by the General Council of the Bar, which

\textsuperscript{233} See, e.g., Nicholas Ibekwe, \textit{Inside the Rot Called the Nigerian Bar Association}, PREMIUM TIMES (June 15, 2013), \url{http://www.premiumtimesng.com/news/138802-exclusive-inside-the-rot-called-nigerian-bar-association.html} (showing that incorporated within the skepticism of the bar are similar sentiments, by some, towards the judiciary).

\textsuperscript{234} Id. at 233.

\textsuperscript{235} OKO, supra note 11, at 29; \textit{See also} Ronald Otaru, Paper Presentation at NBA Ilorin 2013 Retreat at Armi, Ilorin, Kwara State, Developing a Better Attitude of Lawyers to Client, Registry and Court, 4-5 (Apr. 2, 2013), \url{http://www.otaruotaru.com/papers/ARMTI%20ILORIN%20LECTURES%20FRM%20SAN.pdf}.

\textsuperscript{236} See Nigerian Bar Association, \textit{The History of the Nigerian Bar Association, Port Harcourt Branch}, (Dec. 30, 2016), \url{http://nbaph.org.ng/history.php}. \textit{See also}, OKO, supra note 11, at 99-103.


\textsuperscript{238} The 1975 act has had amendments added to it over the years as well, including in 1990, 1994, and 2004.

is comprised of the federal attorney general, the attorneys general of each of the states, and importantly, 20 members of the NBA. Under the LPA, the General Council is “charged with the general management of the affairs of the” association. Even though the NBA does not have a majority of seats on the General Council, given its numbers it is able to shape how lawyers in the country must professionally conduct themselves.

Relatedly, the NBA is able to play a key role in determining who is admitted to practice as a lawyer. The Association’s President, along with 30 other members, serves on a standing committee known as “the Body of Benchers,” who are “responsible for the formal call to the Bar of persons seeking to become legal practitioners.” And the NBA is represented on the Council of Legal Education (the body that certifies those who pass the bar exam) in overseeing the Nigerian Law School – the institution from which university law graduates must matriculate and graduate before they can practice.

Through these different roles, the NBA has had crucial input in promoting a range of values it wishes its members to follow – including giving affordable and pro bono legal aid to those in need. Codified in the NBA Constitution is the goal of creating a framework of legal aid for those socially and economically disadvantaged. In addition, the NBA’s Law Reform and Human Rights Committees are mandated to offer free legal representation to the poor.

Recently in June of 2017, the NBA entered into a formal partnership with the Legal Aid Council to provide pro bono assistance to inmates who

240. See Legal Practitioners Act (1975) Cap. 207 §1(2) (Nigeria). See also OKO, supra note 11, at 37 (noting that “beyond formulating the rules of professional practice, the General Council of the Bar does not perform any other useful function.”)
241. See Legal Practitioners Act §1(2); OKO, supra note 11, at 37.
242. Legal Practitioners Act §3.
243. Id.
244. Id. (noting also that this body’s members include: “(a) the Chief Justice of Nigeria and all the Justices of the Supreme Court; (b) the President of the Court of Appeal; (c) the Attorney-General of the Federation and Minister of Justice; (d) the Presiding Justices of Court of Appeal Divisions; (e) the Chief Judge of the Federal High Court; (f) the Chief Judge of the Federal Capital Territory, Abuja; (g) the Chief Judges of the States of the Federation; (h) the Attorneys-General of the States of the Federation; (i) the Chairman of the Council of Legal Education; . . . and such number of persons, not exceeding ten, who appear to the Body of Benchers to be eminent members of the legal profession in Nigeria of not less than 15 years post-call standing.”); See also OKO, supra note 11, at 35-36.
247. Id. at 21, 44 (2015) (noting in the constitution that each respective committee “[s]hall provide free legal aid services in suitable circumstances.”)
have been languishing in Nigeria’s overcrowded prisoners. A month after this compact was signed, the partnership expanded to include an international component, as the United Nations Office on Drugs and Crime joined to lend legal services to indigent defendants facing prosecution for narcotics offenses.

In the rights-based litigation that occurred during the military years and then in the post-1999 era, lawyers who were part of those struggles were also members of the NBA. Indeed, in the more famous cases (including the Saro-Wiwa litigation), the NBA had a central role in championing these rights-based claims.

But the NBA also used other tactics. Consider a famous 1984 episode when Buhari was in charge. His regime instituted several draconian decrees, including establishing military tribunals where formal rules of evidence and procedure were not in effect. Another decree went so far as to suspend the rights established by the 1979 Constitution. The latter measure abridged individual liberties and civil rights and curtailed the independence of the judiciary.

The NBA decried these orders and staged boycotts and demonstrations. Its moves galvanized the public, and soon thereafter there were other mass protests. Buhari’s regime cracked down on these activists, but the protestors, including the NBA, were undeterred. By August of the following year, Buhari was out. Although there were additional reasons for why he was toppled, the NBA, which had been until that point seen as a stolidly conservative cohort, gained enormous political capital through its defiant confrontation. Even the subsequent Abacha government could not ignore the NBA. In his early years, Abacha

250. See FALOLA & HEATON, supra note 24, at 212-216; See also OKO, supra note 11, at 230-239, 243-250.
251. FALOLA & HEATON, supra note 24, at 212-16; See also, OKO, supra note 11, at 230-39, 243-50.
252. FALOLA & HEATON, supra note 24, at 212-16; See also, OKO, supra note 11, at 230-39, 243-50.
253. See FALOLA & HEATON, supra note 24, at 215 (noting that the NBA was “unsuccessful” in keeping law enforcement out of the military tribunals). See also, USMAN A. TAR, THE POLITICS OF NEOLIBERAL DEMOCRACY: STATE AND CIVIL SOCIETY IN NIGERIA 75 (2008); See also, OKO, supra note 11, at 230-39, 243-50.
254. See TAR, supra note 253, at 75.
255. Id.
256. Id. See FALOLA & HEATON, supra note 24, at 212-16.
appointed various NBA lawyers to serve in his government. Abacha eventually came to revile the NBA, but the fact that the government had to acknowledge the organization demonstrated the capital it possessed.

Today, the NBA remains an important force within civil society, but it has encountered recent challenges. In 2016, a prominent human rights lawyer, Ebun-Olu Adegboruwa, called upon the NBA to engage in strikes and boycotts after the Department of State Services conducted raids on the homes of several judges presiding over cases involving government officials. Harkening back to 1984, he declared that the Nigerian government was returning to a “jackboot system of intolerance.” That the NBA vacillated on Adegboruwa’s suggestion drew noticeable criticism. The Association felt added pressure that same year, on a separate matter, from human rights activist Femi Falana who wanted it to do more when actual, known corruption was discovered in the judiciary. The NBA’s reputation was further damaged in a report released by the government’s Economic and Financial Crimes Commission, which found that some senior lawyers had been complicit in cases of money laundering. And in

257. See ENOGIASUN OTOGHAGUA, PROFILE OF NIGERIA HEADS OF STATE, 1960-2003 120 (1999). For strong criticism of NBA lawyers who took positions with the government see OKO, supra note 11, at 227-29 (noting that: “Former Presidents of the Bar Association [and other lawyers] who accept appointed positions in a military government betray their ethical obligations and tarnish the image of the profession.”).

258. See OKO, supra note 11, at 227-29 (arguing that there was “political manipulation” on the part of the government vis-à-vis the NBA). See also, Gbemọ Adeoye, Nigerian Bar Association Lawyers Know All Corrupt Judges, Lawyers in Nigeria – Falana, SAHARA REPORTERS, (Oct. 22, 2016), http://saharareporters.com/2016/10/22/nigerian-bar-association-leaders-know-all-corrupt-judges-lawyers-nigeria-%E2%80%93-falana (writing about lauded human rights lawyer, Femi Falana, who recently noted that during the military period when “judges were harassed or lawyers were detained, the NBA leaders would ... [routinely] find out the basis of any arrest. ... In 1987, Aka-Bashorun [the former NBA president] mobilized 270 lawyers to defend the late [human rights advocate] Gani Fawehinmi. He was fighting a very corrupt military junta. When the same military dictators later charged some of us with treasonable felony, the NBA also defended us. The NBA also rallied round nonlawyers like Comrade Balarabe Musa [a leftist opposition leader] and Dr. Beko Ransome-Kuti [a medical doctor and human rights activist] as they were in the forefront of the struggle for the restoration of democratic rule.”).


260. Id


2017, the current president of the NBA, A.B. Mahmoud, had his election win voided by a federal court, which ruled that the NBA constitution, upon which his victory was premised, had been amended in an improper fashion.\textsuperscript{263}

Perhaps the harshest criticism, however, came from a confidential report on the "secretariat" of the NBA, which was leaked to the press in 2013. The secretariat is the bureaucratic arm of the NBA that originally handled only "minor administrative and logistical issues... [to today where it oversees] programming responsibilities, requiring the full attention of a professional cadre...."\textsuperscript{264} In 2012, the president of the NBA constituted an external committee to review the secretariat, which had developed the reputation for lethargy, corruption, and incompetence.\textsuperscript{265} Chaired by Chidi Odinkalu,\textsuperscript{266} the committee’s final report not only confirmed these negative images, but it offered other damning conclusions.\textsuperscript{267}

The committee found great haphazardness in how the secretariat’s leadership and staff functioned.\textsuperscript{268} There was also an overall lack of funding, and as such, no financial incentive for employees to perform efficiently.\textsuperscript{269} Weak resources prevented the secretariat from: organizing quality legal aid programs, instituting measures to improve the staff’s ability to assist those in need, and distributing information on the NBA’s outreach initiatives.\textsuperscript{270} Yet most disturbing was the committee’s finding that there existed a hostile workplace environment within the administrative headquarters.\textsuperscript{271} As the report noted, “there is a clear pattern of credibly attested allegations of work-place bullying, abuse and sexual harassment, intimidation and exploitation, with no mechanisms of workplace recourse ....”\textsuperscript{272}

The story of the NBA, therefore, is a complicated one. As one of the longest standing civil society organizations in the country, the NBA has been at the forefront of key rights-based moments. At the same time, there have been problems —indeed major ones. The NBA thus epitomizes a
group that is conflicted; perhaps not surprising given the environment in which it operates.

ii. The Clinical Legal Education Movement

Oko has written extensively on the ills plaguing the Nigerian bar and judiciary.\(^\text{273}\) From pervasive corruption, to excessive delay, incompetence, and a lack of transparency, Oko has pleaded for the state in the post 1999-era to take legal reform seriously.\(^\text{274}\) He argues that a healthy legal profession is necessary for “democratic consolidation”\(^\text{275}\) in Nigeria. Indeed, lawyers are required to be at the forefront of this process and to commit to a range of principles to improve the public good.\(^\text{276}\)

One group adhering to Oko’s advice has been clinical legal educators. In 2003, the “[f]irst All-Africa Colloquium on Legal Education . . .” was held in Durban, South Africa.\(^\text{277}\) Sponsored by three different organizations,\(^\text{278}\) the conference brought in educators skilled in clinical practice from around the continent.\(^\text{279}\) Although formal clinical education had not been incorporated into Nigerian law schools, representatives from the country’s newly created Network of University Legal Aid Institutions (NULAI) attended.\(^\text{280}\) Perhaps, the most studied portion of this conference was on how South Africa’s legal aid clinics interacted with civil society and government agencies to deliver services to the poor.\(^\text{281}\) NULAI officials were particularly interested in this aspect, and the following year, it sponsored a conference in the capital, Abuja.\(^\text{282}\) Since then, NULAI has been actively engaging in national and continental seminars, and it has

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273. See generally OKO, supra note 11; Oko, supra note 237.
274. See generally OKO, supra note 11; Oko, supra note 237.
276. See The Nigerian Experience, supra note 275, at 1318 (arguing that lawyers should be stronger at “promoting accountability, strengthening public institutions, recapturing the sense of public good, rejuvenating the civil society, and helping to improve security.”)
278. Id. at 3.
280. Combining Learning, supra note 277; See also The Network, supra note 279.
281. See COMBINING LEARNING, supra note 277, at 6-8; see also Combining Learning and Legal Aid: Clinical Legal Education in Africa, OPEN SOCIETY FOUNDATIONS (June 28, 2003), https://www.opensocietyfoundations.org/reports/combining-learning-and-legal-aid-clinical-legal-education-africa.
282. The Network, supra note 279.
sought to press law faculties throughout the country—49 in total—to incorporate skills education into their curriculums. NULAI's efforts have not been in vain. In less than a ten year period (2005-2014), NULAI helped found 17 clinics across the country. It also established a clinical program at the Nigerian Law School. In addition, in 2011, the group successfully lobbied the federal government to amend the Legal Aid Act to include a new provision, which provided NULAI-established law clinics with the opportunity to receive the government's imprimatur. This was an important step because potential clients looking for credentialed, bona fide assistance could now feel more assured that these legal aid providers were government certified.

As for how these legal aid clinics are performing, the empirical evidence is modest but hopeful. In 2006, the Nigerian Law School incorporated mandatory clinical classes into its curriculum. Over a three year period (2006-2009), one study found a correlation between students who were enrolled in this new curriculum and higher bar passage rates—higher in comparison to the pass-rates of those who were enrolled prior to the adoption of the clinical courses. Other studies have described the operation of clinics within university law faculties. For example, clinical law students at Ambrose Alli University receive training on how to assist fellow students who cannot afford legal representation with different civil claims they encounter. The University of Ibadan Women's Law Clinic offers students the chance to work with rural women on issues relating to health rights. The students here also use "the mobile clinic approach"—

285. See The Network, supra note 279; Bamgbose, supra note 284, at 395.
286. See The Network, supra note 279.
287. See The Network, supra note 279; See Bamgbose, supra note 284, at 379-381.
289. Id. at 37 (although noting that the number of those students who passed with the highest grades was "still very low to reach concrete conclusions.")
vehicles take them and their supervisors to villages to educate women on their rights.292 Furthermore, certain clinics today are partnering with NGOs in order to cover a wider range of cases.293 There are also other studies lauding clinics elsewhere as being a “panacea”294 for law students and lawyers interested in assisting on social justice causes.295

The scholarship mentioned above indicates that clinical legal education has had a positive impact on ordinary Nigerians’ to better access justice. However, there are caveats. Dean Sam Erugo, an academic and practitioner from Abia State University in southeastern Nigeria, has been an enthusiast, albeit a cautious one.296 Erugo notes that while clinics are providing needy clients with services they otherwise may not receive, the legal assistance is still being given by students.297 Of course, there is supervision by faculty, but it is not a substitute for having seasoned practitioners serving as legal representatives.298 Moreover, university law faculties continue to struggle for resources.299 As a result, there are many challenges that hinder these institutions, including hiring and retaining committed, full-time clinicians,300 as most law faculty members are part-time employees.301 Training students in a clinical manner can be expensive as well.


292. Omoragbon, supra note 291, at 54. Also, for a discussion on Ibadan, see Afolasade A. Adewumi and Oluyemisi A. Bamgbose, Attitude of Students to Clinical Legal Education: A Case Study of Faculty of Law, University of Ibadan, 3 ASIAN J. LEGAL EDUC. 106 (2016), available at http://journals.sagepub.com/doi/full/10.1177/2322005815607142.

293. See Bamgbose, supra note 284, at 394.


295. See also, Charles Olufemi Adekoya, Meeting the Required Reforms in Legal Education in Nigeria: Clinical Legal Education—Ten Years After, 20 INT’L. J. CLINICAL LEGAL EDUC. 603, 603-613 (2014).


297. Id. at 173.

298. Id. at 168.

299. See generally NBA Final Report, supra note 264. Note, the observations made in this paragraph and the subsequent one are based on the authors’ direct experiences with the Nigerian legal system and with different Nigerian law schools. For the first author, these run from 2011-2017, as he has made repeated visits to Nigeria. For the second author, they cover over twenty years, with his experiences ranging from being a law student to working as a practicing lawyer within the country.

300. See generally NBA Final Report, supra note 264.

301. Id. at 24.
In addition, many university law faculties lack modern infrastructure, sound technology, and sufficient administrative support. There is also the problem of recruiting top quality students. Divisive politics, and even corruption, infest many university law faculties, which affects how these institutions operate—from who is admitted, to who is hired, to who is rewarded, to the types of programs that are prioritized. Thus, for all the important progress clinical legal education has made in such a short period of time, these adverse conditions still make it difficult for this pedagogical model to thrive within the vast majority of Nigerian law schools.

CONCLUSION

This study has sought to provide a comprehensive overview of the state of legal aid in Nigeria since 1960. The instability of Nigerian politics over the last six decades has made the delivery of legal assistance to those in need a monumental challenge. Even further complicating this situation is the fact that corruption, and perceptions of it, continue to hamper efforts to consolidate this fragile democracy. Peter Obutte’s recent paper notes that corruption has long infiltrated the Nigerian judiciary. A recent survey by the country’s National Bureau of Statistics found that that “the judiciary is the second most corrupt institution in Nigeria.” Furthermore, the Boko Haram insurrection in the north, the deprivation of environmental justice for residents of the Delta region, the constant lack of funding for various legal aid programs, and the perpetual denial of human rights protection for disadvantaged minorities, including women, have placed into question how much substantive progress really has been made.
Still, as this study has shown, even in the bleakest of times, brave lawyers and organizations have asserted themselves, standing up to military dictators and defending the rights of the powerless. There are also other recent examples that provide hope. In 2000, Lagos State opened its Office of the Public Defender (OPD), with the mission of focusing on the “rights of the disadvantaged...” and providing “free representation in court and legal advice” for the indigent. In 2015, the NBA agreed to devote greater resources and personnel towards assisting the OPD so that more people might be served.

Additionally, upon the country’s return to democracy in 1999, Lagos State created the Citizen Mediation Centre (CMC), which was intended to help parties—regardless of background or financial status—resolve disputes in a timely and just manner. The CMC proudly reports that its most recent figures show that “[w]ithin the period of January to December 2015, a total number of 34,511 new cases were received; 20,966 mediated; [and] 19,464 matters were resolved....” The CMC also notes that in 2015 it helped parties recover over $52 million (USD).

Internationally, perhaps the most well-known attempt at providing enhanced access is the Lagos Multi-Door Courthouse (LMDC) project, which was established in 2002, once again, in Lagos State. Drawing upon Frank Sander’s work, Oyeniyi Ajiboye has written about this initiative and how the objective behind the LMDC was to allow a court to determine whether a case should proceed to litigation, or instead, be diverted into an alternative dispute forum. As the first “court-connected” dispute resolution institution on the continent, the LMDC brought together the Lagos judiciary, the American Embassy, and the Negotiation and Conflict Management Group, into a private NGO that works on streamlining the way civil cases enter into local courts. Over the years, Ajiboye notes that

309. Id.
310. Id.
313. Citizen Mediation Centre, supra note 312 (noting “3,622 matters were adjourned while 1,351 matters were unresolved.”)
314. Id.
316. Id.
this project has had qualified success.\textsuperscript{317} Cases that otherwise might have gone through the lengthy process of litigation have been resolved using alternative means.\textsuperscript{318} But, as Ajiboye concludes, the culture of relying on litigation to resolve disputes remains the primary mindset of litigants, lawyers, and even many judges, making it difficult for alternative mechanisms to gain equal footing.\textsuperscript{319}

So, for now, this is how our discussion concludes. Yet, much research remains, especially as further efforts are made to improve the country's access-to-justice sector. If, for example, alternative dispute forums continue to expand in number, several questions emerge:

- Do these forums contain legal standards and procedural due process?
- How do they operate outside of the cosmopolitan city of Lagos?
- What types of informal norms exist alongside the more formal ones?
- What role do legal professionals and NGOs play in this process?\textsuperscript{320}
- How has globalization affected alternative dispute mechanisms?
- How are socio-economically disadvantaged minorities treated in this process?
- How influential are judges in these forums in brokering compromises and settlements?
- Perhaps most importantly, are these outcomes just, and are they perceived as fair by the parties?

Clearly, the answers to these questions are for another day. The hope, however, is that future researchers will consider exploring these issues in

\textsuperscript{317} Id. at 17-18.
\textsuperscript{318} Id.
\textsuperscript{320} One organization that would be important to examine for future inquiry is FIDA—or the Federacion Internacional de Abogadas, which translates into International Federation of Women Lawyers. This group began in 1964 in Nigeria and is part of an international network of partners that promotes the rights of women and children. How FIDA-Nigeria has sustained itself and the impact it has had is a ripe subject for rigorous academic inquiry. For a discussion of FIDA, see Olufunmi Oluyede, \textit{Non-Governmental Organizations and Non-Profit Organizations}, 47 YEAR IN REVIEW (ABA) 319, 320-21 (2013) (noting the various types of legal aid and pro bono work FIDA does in Nigeria, through its 31 offices throughout the country.) But for a discussion of how legal aid today remains a set of "largely unorganized and uncoordinated activities of individual lawyers clearly lacking institutional support," see OKO, \textit{supra} note 11, at 408-410.
order to gain an even deeper understanding of how the legal process can best serve the needs of those living in Africa's most populous country.