

# Legal systems in Nigeria: overview

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A Q&A guide to the legal system in Nigeria.

The Q&A gives a high-level overview of the key legal concepts including the constitution, system of governance and the general legislative process; the main sources of law; the court structure and hierarchy; the judiciary and its appointment; the general rules of civil and criminal litigation, including reporting restrictions, evidentiary requirements, the roles of the judge and counsel, burdens of proof and penalties.

The Q&A is part of the global guide to legal systems.

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## Constitution

### Form



1. What form does your constitution take?

The Federal Republic of Nigeria has a written constitution. The Constitution of the Federal Republic of Nigeria 1999 (as amended) (Nigerian Constitution) is the main constitutional law of Nigeria. It is contained in a single document. The Nigerian Constitution is derived from constitutions of other countries, opinions of political and constitutional writers, customs and conventions, previous constitutions and judicial precedents.

The fundamental features of the Nigerian Constitution are as follows:

- A presidential form of government.
- The separation of powers.
- Federalism.
- The rule of law.
- The supremacy of the constitution.

## General constitutional features

2. What is the system of governance?

### System

Under the Nigerian Constitution, Nigeria has a presidential system of government. A presidential system is a democratic and republican system of government, where a head of government leads an executive branch that is separate from the legislative branch. The head of government is also the head of state.

### Head of state

The President is the head of state and the head of government. The President, whose constituency is the entire country, combines governmental powers and ceremonial powers, and is also the commander-in-chief of the armed forces.

### Structure

The federal government consists of three distinct branches, the:

- Legislative, whose powers are vested by the Nigerian Constitution in the National Assembly. Nigeria has a bicameral legislature at national level (see [Question 3](#)).
- Executive, whose powers are vested by the President.
- Judicial, whose powers are vested by the federal courts, including the Supreme Court of Nigeria.

3. Does the constitution provide for a separation of powers?

The legislative, executive and judicial powers of government are separated under the Nigerian Constitution. Chapter I, Part II of the Nigerian Constitution clearly divides these powers among the three branches of government:

- The legislature.
- The executive.
- The judiciary.

The legislature is the first branch of government in the tripartite classification of powers. Nigeria has a bicameral legislature at the national level, which is made up of the Senate and the House of Representatives, while the legislative system at the state level is unicameral (that is, there is only one legislative house at state level, the State House of Assembly). The legislature is regarded as an assembly of representatives of the people elected under a legal framework to make laws for the good of society. Legislative powers simply refer to the law-making powers of the legislature, which include the power to make new laws, alter existing ones and guard and repeal laws.

The executive is the second branch of government. The executive powers of the Federation of Nigeria are vested in the President and are exercised by the President either directly or through the Vice President and ministers of the Government of the Federation of Nigeria, or officers in the public service of the Federation of Nigeria. The executive powers extend to the execution and maintenance of the Nigerian Constitution, all laws made by the National Assembly and to all matters with respect to which the National Assembly has the power to make laws. The executive powers of a state are vested in each state's Governor and are exercised either directly or through the Deputy Governor and commissioners of the government of that state, or officers in the public service of the state.

The third branch of government is the judiciary, which is the only branch not made up of elected representatives, but of personnel appointed to perform the fundamental role of adjudication in society. The justices of the federal courts are appointed by the President on the recommendation of the National Judicial Council, subject to the Senate's confirmation. The judges of the state courts are appointed by the Governor on the recommendation of the State Judicial Service Council, subject to the State House of Assembly's confirmation.

Checks and balances are a corollary to the doctrine of separation of powers under the Nigerian Constitution. The executive arm can veto bills passed by the legislature (*section 58(3), Nigerian Constitution*). The legislature can override a veto by the executive arm (*section 58(5), Nigerian Constitution*). Similarly, the executive can check the judiciary through its power to appoint or remove judges while the judiciary can declare executive actions and laws enacted by the legislature unconstitutional. The judiciary can also review the actions of the executive through the mechanism of judicial review (see [Question 5](#)).

4. What is the general legislative process?

## Proposal and drafting

The Nigerian Constitution specifically sets out the legislative process. It provides that the power of the National Assembly to make laws will be exercised by Bills, which can originate in either the Senate or the House of Representatives. A Bill will not become a law until the President assents to it. Where the President withholds their assent, it can be presented to both the Senate and House of Representatives, after which it can become law provided that it is passed by a two-thirds majority of each house. In this case, the President's assent will not be required. The Nigerian Constitution provides for a similar procedure for the State Houses of Assembly.

## Scrutiny

A Bill will go through the following procedure to be passed as law:

- **First reading.** The Clerk of the House or Senate reads the short title of the Bill and tables it before the Speaker or the Senate President (whichever is applicable).
- **Second reading.** After the first reading, the Bill will be scheduled for the second reading. The second reading gives the members sufficient time to deliberate on the general principles of the Bill (for example, its merits and demerits). At this stage, legislators can decide to approve or reject the Bill.
- **Standing Committee stage.** After the second reading, and provided that the Bill was not rejected at that stage, the Bill will be passed to a Standing Committee for thorough scrutiny. The Standing Committee will conclude extensive deliberations on the Bill, which can include arranging for a public hearing and requesting contributions from experts on the subject matter of the proposed law.
- **Report stage.** After the Standing Committee has concluded its work, it will set a date on which to present its findings to the House or Senate. The Chairman of the Standing Committee will conduct the report on the Bill.
- **Committee of the whole House/Senate.** At this stage, the Presiding Officer of the House or Senate will leave the Chair and take the place of one of their assistants. The mace will be lowered and the Presiding Officer will be referred to as Chairman, and will call out the number of every clause in succession or the first and last number of a group of clauses. If there are proposed amendments, they will put them forward.
- **Third reading.** After the Bill has been reported to the Committee of the whole House or Senate, it will proceed to the third reading. Corrections and amendments can be made at this stage if there are errors or oversights that have occurred during the Bill's journey. If a legislator wishes to suggest an amendment, they must make a motion that the Bill be "re-committed" to the committee stage for the amendment to be included. If the motion is agreed on, the House or Senate will dissolve to discuss the amendment. After all necessary amendments have been made, the House or Senate proceeds on the third reading and passes the Bill.
- **Engrossment of a Bill.** Engrossment involves the production of a final clean copy of the Bill by the legal department after all of the amendments agreed to by the legislators have been made. The Bill will be drawn up in the proper legal

draft format and sealed with an authenticated certificate endorsed by the Clerk of the House or Senate. The Bill is presented to the Chief Executive (President or governor of a state) for their assent or otherwise.

## Enactment

A Bill does not become law until the President signs it. The President has 30 days to sign a Bill sent to them by the National Assembly. However, the National Assembly is empowered by the Nigerian Constitution to overturn a presidential veto. If, after 30 days, the President refuses to sign the Bill and the National Assembly is not in support of the President's amendments, the two chambers can recall the Bill and re-pass it. If the Bill is passed in the form it was sent to the President by a two-thirds majority vote in both chambers, the Bill automatically becomes a law, even without the President's signature.

5. Is there a procedure by which the judiciary can review legislative and executive actions?

The power of judicial review of legislative Acts derives principally from Nigerian Constitution that states, save as otherwise provided by the Constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law that ousts the jurisdiction of a court of law and of a judicial tribunal established by law (*section 4(8), Nigerian Constitution*).

The Constitution further provides that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail and that other law shall to the extent of the inconsistency be void.

The decision of an inferior court/tribunal or of a public authority can be quashed on an application for judicial review where the inferior court/tribunal or public authority:

- Acted without powers (lack of jurisdiction).
- Went beyond its powers (exceeded jurisdiction).
- Failed to comply with applicable rules of natural justice.
- According to the record, proceeded on a mistaken view of the law (error of law on the face of the record).
- Arrived at a decision so unreasonable that no court, tribunal or public authority properly directing itself on the relevant law and acting reasonably could have reached it.

An application for judicial review can be brought by any person who can show that they have sufficient interest in the matter to which their application relates. An application for judicial review must be brought promptly and not later than three months after the grounds on which the claim is based first arose. The remedies available under judicial review include:

- *Certiorari* (quashing order).
- Prohibition.

- *Mandamus* (writ of mandate).
- Injunction and declarations.
- Damages.

The judicial review procedure involves two stages. The first is in bringing an application without notice to the other side (an *ex parte* motion) to seek the leave of the court to bring an application for judicial review. At this stage, among other things, the court will consider whether the motion raises any question of infringement of a public right and that the party seeking leave has a sufficient interest in the matter to invoke the jurisdiction of the court. It is only on a successful application for leave that the application can proceed to the second stage, at which point the judicial review application will be filed on notice to the other side and served on them. If the relief sought is an order of prohibition or *certiorari* and the judge so directs, the grant of leave will operate as a stay of the proceedings to which the application relates until the determination of the application or until the judge otherwise orders.

In relation to review of legislative enactments, any person claiming to be interested under an enactment can apply by originating summons for the determination of any question of construction arising under the enactment, and for a declaration of the rights of the persons interested.

6. Are certain emergency powers reserved for the executive?

There are certain emergency powers reserved for the executive. The President can, by instrument published in the *Official Gazette of the Government of the Federation*, issue a proclamation of a state of emergency in the federation or any part of the federation. However, a two-thirds majority of the National Assembly must ratify the executive proclamation within two days if the legislators are in session, or ten days, if they are not. The Governor of a state can, with the sanction of a resolution supported by two-thirds majority of the House of Assembly, request the President to issue a proclamation of a state of emergency in the state.

7. Are human rights constitutionally protected?

Human rights are constitutionally protected in Nigeria. Chapter IV of the Nigerian Constitution outlines the fundamental human rights and provides for the protection of these rights. In addition, other international treaties on human rights are recognised and enforced in Nigeria if they are ratified and enacted by the legislature.

Some of the human rights entrenched in the Nigerian Constitution include the:

- Right to life.

- Right to respect and dignity.
- Right to personal liberty.
- Right to privacy.
- Freedom of thought, conscience and religion.
- Freedom of expression.
- Freedom of assembly and association.
- Freedom to move freely throughout Nigeria and to reside in any part thereof.

## Amendment

8. By what means can the constitution be amended?

The authority to amend the Nigerian Constitution is derived from Chapter I, section 9 of the constitution. This section provides that there are separate requirements that must be met to alter the constitution, depending on the part of the constitution that is to be altered. The constitution can be amended by the following means:

### Procedure I – four-fifths majority

This is the more stringent procedure used for certain amendments to the Nigerian Constitution, as it requires the proposed amendment to be passed by the votes of not less than four-fifths majority of all the members of the Senate and the House of Representatives. Once it is passed by the requisite majority, it must be approved by a resolution of the House of Assembly of not less than two-thirds of all states in Nigeria. At present, there are 36 states in Nigeria, therefore the proposed amendment must be approved by a resolution of the House of Assembly in at least 24 states. When two-thirds of the states approve the proposed amendment, it will be sent to the President for their assent. A four-fifths majority is required to make the following types of amendment to the Nigerian Constitution:

- The creation of a new state or local government area.
- The creation of a boundary adjustment to an existing state or local government area.
- A change to the procedure to amend the Nigerian Constitution.
- An amendment to the fundamental rights of all Nigerians.

### Procedure II – two-thirds majority

To make an amendment to any part of the Nigerian Constitution that does not fall under Procedure I, the proposed amendment must be passed by the votes of not less than two-thirds majority of all the members of the Senate and the House of Representatives. Once it is passed by the requisite majority, it must be approved by a resolution of the House of Assembly of not less than two-thirds of all the states in Nigeria. When two-thirds of the states approve the proposed amendment, it will be sent to the President for their assent.

### **Refusal of assent**

Although the Nigerian Constitution is silent on what the process would be if the President declines assent to an amendment, since the proposals for amendment are presented as Bills, the process is the same as for any other type of Bill where the President declines assent. It will be returned to the National Assembly, and the National Assembly is empowered by the Nigerian Constitution to overturn a presidential veto. The two chambers can recall the Bill and re-pass it. If the Bill is passed in the form it was sent to the President by a two-thirds majority vote in both chambers, it will automatically become law, even without the President's signature.

## **Legal system**

### **Form**

9. What form does your legal system take?

Nigeria has four distinct sources of law that form a mixed legal system:

- English law.
- Common law.
- Customary law.
- Sharia (Islamic) law.

### **Main sources of law**

10. What are the main domestic sources of law?

The main sources of Nigerian law in order of hierarchy are:

- The Nigerian Constitution.
- Legislation (Ordinances, Acts, laws, decrees, edicts and bye-laws).
- Judicial precedents
- Customary law.
- Islamic law.
- Received English law (common law, equitable doctrines and statutes of general application that were in force in England on 1 January 1900).

11. To what extent do international sources of law apply?

International treaties to which Nigeria is a signatory are applicable. However, international treaties are not enforceable in Nigeria unless they have been enacted by the Nigerian legislature into Nigerian domestic law.

The main international treaties that have legal effect in Nigeria include:

- The African Charter on Human and People's Rights.
- The African Charter on the Rights and Welfare of the Child.
- The Convention on the Rights of a Child.
- The Rome Statute of the International Criminal Court.

These international sources are not superior to domestic law but rank *pari passu* with domestic law in as much as they have been ratified/domesticated by the legislature.

In addition, foreign case precedents are also of persuasive effect in Nigerian courts, but they are not binding on the courts.

### **Court structure and hierarchy**

12. What is the general court structure and hierarchy?

The general court structure and hierarchy in Nigeria is set below.

### **Magistrate/District Courts**

Each district in Nigeria has one court that acts as both a Magistrate Court (when the judge is presiding over a criminal case) and a District Court (when the judge is presiding over a civil case). It is regarded as a court of inferior jurisdiction for the following reasons:

- It is not listed among the courts in the Nigerian Constitution.
- It cannot punish contempt of court *ex facie curiae* (that is, contempt committed outside the court).

Magistrate Courts and District Courts are bound by decisions of the higher courts, but their own decisions do not bind any court, and they are not bound by their own previous decisions.

### **High Courts/Sharia Court of Appeal/Customary Court of Appeal**

Directly above the Magistrate/District Courts are the High Courts, the Customary Court of Appeal and the Sharia Court of Appeal. Under the Nigerian Constitution, the High Courts consist of the:

- Federal High Court.
- State High Court.
- High Court of the Federal Capital Territory.

The State High Court has the widest jurisdiction in civil and criminal matters. The High Courts have appellate jurisdiction over decisions of Magistrate Courts and District Courts. The Sharia Court of Appeal hears appeals on matters of citizens that concern Islamic personal rights, and the Customary Court of Appeal hears appeals concerning civil proceedings that relate to customary law. The Customary and Sharia Courts of Appeal are not bound by judicial precedent as they are not of common law origin.

The High Courts are referred to as courts of co-ordinate jurisdiction and they are not explicitly bound by previous decisions of another High Court. At best, the decision of a High Court is persuasive on another High Court. However, it is not usual for a High Court to depart from another High Court's decision, except where there is good cause to do so.

A State High Court (unlike the Federal High Court) has wider jurisdiction and where it makes a decision on a matter of federal application, it binds all inferior courts in the country. However, where it makes a decision on matters of state application, it only binds courts of inferior jurisdiction in the applicable state. The jurisdiction of the State High Court is unlimited save for matters within the jurisdiction of the Federal High Court. The Federal High Court is a court of enumerated jurisdiction. Matters listed under section 251(1) of the Nigerian Constitution are within the exclusive jurisdiction of the Federal High Court.

### **Court of Appeal**

Directly above the High Courts is the Court of Appeal. There is only one Court of Appeal in Nigeria, but it has a number of divisions across the country. The Court of Appeal is bound by the decisions of the Supreme Court. In civil matters, when

dealing with a decision of the Court of Appeal in another division, the Court of Appeal is bound to a certain extent by that decision. However, in criminal matters, the Court of Appeal is not bound to follow the decisions of other divisions of the Court of Appeal, as each criminal case must be treated on its own merits (strictly following a previous decision in a different case could cause irreparable damage).

## Supreme Court

The Supreme Court is the highest court in Nigeria and its decisions are final and binding on all other courts throughout the country. The Supreme Court is not bound by the previous decisions of any other court. However, it follows its own previous decisions to maintain certainty and uniformity in the administration of justice. The Supreme Court can, however, choose to depart from its own previous decisions.

13. To what extent are lower courts bound by the decisions of higher courts?

Lower courts are bound to follow the decisions of superior courts, unless these decisions can be successfully distinguished on the facts of the case. The *ratio decidendi* (reasoning) of a judgment forms a binding precedent, whilst the *obiter dicta* (statements made in passing) constitute persuasive authority.

A decision of a court of a co-ordinate jurisdiction is of persuasive effect on another court of similar, co-ordinate or concurrent jurisdiction. *Obiter dicta* from the Supreme Court are strong pointers to the probable direction of the law, and although strictly speaking they are not binding precedents, the lower courts are well advised to take them seriously.

14. Are there specialist courts for certain legal areas?

There are special courts for certain legal areas. These special courts are the:

- National Industrial Court. The National Industrial Court of Nigeria is a court empowered to adjudicate trade disputes and labour practices.
- Court Martial. This is a court established for the trial of members of the armed forces.
- Coroners' Court. The Coroners' Court is a court of inquest and not of trial. The Coroners' Court conducts an inquest into the cause of death of a person where the death is sudden or unnatural, or occurs in a public place.
- Juvenile Courts. The Juvenile Courts try young persons who are less than 18 years of age, and are alleged to have committed a criminal offence.

In addition, special courts have been established in Lagos (one of the 36 states in Nigeria) for the prosecution of sexual offences and corruption cases. There are religious courts (*see Question 12, High Courts/Sharia Court of Appeal/Customary Court of Appeal*). There are no separate family courts.

15. Are quasi-legal authorities commonly used?

There are various other quasi-judicial authorities commonly used, which include the:

- Tax Appeal Tribunal (TAT). The TAT, established in accordance with section 59(1) of the Federal Inland Revenue Service (FIRS) (Establishment) Act 2007, adjudicates on all tax disputes arising from the application of the various tax laws, as stipulated in the Fifth Schedule to the above Act. Appeals from the TAT go to the Federal High Court.
- Code of Conduct Tribunal (CCT). The CCT, established under the Code of Conduct Bureau and Tribunal Act No. 1 of 1989 (CCBTA), is responsible for hearing complaints of corruption by public servants for breaches of the CCBTA. The CCBTA creates the offences of, and sanctions for, official corruption and other acts in breach of prescribed ethics for public officers. The tribunal is incorporated into the Nigerian Constitution (*section 15, Schedule 5, part I, Nigerian Constitution*). Appeals from the CCT go to the Court of Appeal.
- Investment and Securities Tribunal (IST). The IST was originally established under section 274 of the Investments and Securities Act No. 29 of 2007. It has jurisdiction to interpret and adjudicate on all capital market and investments civil disputes as specified under the Investments and Securities Act. Appeals from this body go to the Court of Appeal.
- Legal Practitioners Disciplinary Commission (LPDC). The LPDC, established by section 11 of the Legal Practitioners Act as amended by Decree No. 21 of 1994, is charged with the duty of considering and determining any case where it is alleged that a lawyer is guilty of professional misconduct. Appeals from the LPDC go to the Supreme Court.
- Election Tribunals. Section 285 of the Nigerian Constitution provides for the establishment of the National Assembly Election Tribunal and the Governorship and Legislative Houses Election Tribunal. Election Tribunals have jurisdiction to hear and determine petitions concerning whether a person has been validly elected into certain offices under the remit of the Government of Nigeria. These offices include:
  - senators;
  - members of Houses of Representatives;
  - governors and deputy governors; and
  - members of the State Houses of Assembly.

Appeals from the Election Tribunals go to the Court of Appeal.

16. Does the constitution provide for an independent judiciary?

The Nigerian Constitution provides for an independent judiciary. It vests judicial powers in the superior courts of record, listed in section 6. Chapter VII, parts I and II further establishes each superior court of record. Although these provisions do not expressly address the independence of the judiciary, section 17(2)(e) provides that the independence, impartiality and integrity of the courts of law, and easy access to those courts, will be secured and maintained.

17. How are members of the judiciary typically appointed?

## Appointment

The method of appointing members of the judiciary varies depending on the judicial officer being appointed. The two methods of appointment of judicial officers of the federal courts are as follows:

- Appointment by President on the recommendation of the National Judicial Council, subject to confirmation by the Senate. All of the heads of the various federal courts are appointed through this method, including the:
  - Chief Justice of Nigeria and Justices of the Supreme Court;
  - President of the Court of Appeal;
  - President of the National Industrial Court;
  - Chief Judge of the Federal High Court;
  - Chief Judge of the High Court of the Federal Capital Territory;
  - Grand Kadi of the Sharia Court of Appeal Abuja; and
  - President of the Customary Court of Appeal Abuja.
- Appointment by the President on the recommendation of the National Judicial Council. The judicial officers appointed through this method include the:
  - Court of Appeal justices;
  - National Industrial Court judges;
  - Federal High Court judges;
  - High Court of Abuja judges;
  - Sharia Court of Appeal Abuja kadis; and

- Customary Court of Appeal, Abuja judges.

The two methods of appointment of judicial officers of the state courts are as follows:

- Appointment by the Governor of the state on the recommendation of the National Judicial Council, subject to confirmation by the State House of Assembly. The heads of the various state courts appointed through this method include the:
  - Chief Judge of a state;
  - Grand Kadi of the Sharia Court of Appeal of a state; and
  - President of the Customary Court of Appeal of a state.
- Appointment by the Governor on the recommendation of the National Judicial Council. The judicial officers appointed through this method include the:
  - High Court judges;
  - Sharia Court of Appeal kadis; and
  - Customary Court of Appeal judges.

## Qualifications

The qualifications required for appointment to the judiciary are as follows:

- Chief Justice of Nigeria, or a Supreme Court justice. The candidate must have been qualified to practise as a legal practitioner in Nigeria for a period of not less than 15 years.
- Justice of the Court of Appeal. The candidate must have been qualified to practise as a legal practitioner in Nigeria for a period of not less than 12 years.
- President and judge of the National Industrial Court. The candidate must have been qualified to practise as a legal practitioner in Nigeria for a period of not less than ten years, and must have considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria.
- Chief Judge or judge of the Federal High Court, Chief Judge or judge of the High Court of the Federal Capital Territory, and Chief Judge or judge of the High Court of a state. The candidate must have been qualified to practise as a legal practitioner in Nigeria for a period of not less ten years.
- Grand Kadi or kadi of the Sharia Court of Appeal of the Federal Capital Territory, and Grand Kadi or kadi of the Sharia Court of Appeal of a state. The candidate must either:
  - have been qualified to practise as a legal practitioner in Nigeria for a period of not less ten years; or

- have attended and obtained a recognised qualification in Islamic law from an institution approved by the National Judicial Council and has held that qualification for a period of not less than 12 years, and must have either considerable experience in the practice of Islamic law, or be a distinguished scholar of Islamic law.
- President or judge of the Customary Court of Appeal of the Federal Capital Territory, Abuja and President or judge of the Customary Court of Appeal of a state. The candidate must either:
  - have been qualified to practise as a legal practitioner in Nigeria for a period of not less ten years and, in the opinion of the National Judicial Council, have considerable knowledge and experience in the practice of customary law; or
  - in the opinion of the National Judicial Council, have considerable knowledge of, and experience in, the practice of customary law.

### Litigation (civil and criminal)

18. Do the courts use an adversarial, non-adversarial or other system?

The courts operate an adversarial system. The judge maintains the balance between the parties to the action and decides the case on the evidence brought by both sides, and in accordance with the rules of the particular court and the procedure and practice chosen by the parties in accordance with those rules. Under no circumstances must the judge do anything during the proceedings that may bring into question their impartiality. The judge merely assesses the evidence placed before them, and must never be involved in searching for the facts of the case (*Okoduwa and Others v The State* (1988) 2 NWLR (Pt. 76) 333). The courts do not have a more inquisitorial function for summary hearings.

19. Who is responsible for gathering evidence?

The party bearing the burden of proof is responsible for gathering the evidence necessary to establish their case. Typically, in civil cases, the claimant bears the burden of proof, on a balance of probabilities, and is responsible for gathering evidence. If the claimant fails to adduce relevant evidence for the relief that they claim, the case will fail. The defendant may be required to gather evidence in their defence if the claimant has gathered sufficient convincing evidence, on the strength of which the claimant's claim is already established.

In criminal cases, the prosecution (which includes the police) gathers the evidence necessary to both:

- Establish the guilt of the accused beyond reasonable doubt.
- Rebut the presumption of innocence which is automatically conferred on the accused by the Nigerian Constitution.

In both civil and criminal cases the judges, the court and the government have no evidence gathering responsibility.

20. Is evidence independently examined before a trial?

Independent examination of evidence before trial depends on the rules of the court where the case is heard. In Lagos, the judge, on the application of a party, holds a Case Management Conference to control and schedule the discovery, inspection and production of documents or to settle the documents to be admitted as exhibits at the trial, among other things. However, the admissibility of, or weight to be attached to, evidence is only determined during trial in all courts.

21. Are trials/hearings open to the public?

## Civil law

The Nigerian Constitution provides that all judicial proceedings, including trials and hearings, must be held in public.

With respect to civil trials, the Nigerian Constitution specifically provides that in the determination of a person's civil rights and obligations, they will be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality. The proceedings of the court or tribunal (including the announcement of the decisions of the court or tribunal) are held in public.

## Criminal law

Criminal trials are also open to the public, subject to certain exceptions. The Nigerian Constitution states that if any person is charged with a criminal offence, then, unless the charge is withdrawn, they will be entitled to a fair hearing in public within a reasonable time by a court or tribunal established by law. However, the court can exclude from its proceedings persons other than the parties and their legal representatives:

- In the interest of:
  - public safety;
  - public order;
  - public morality;

- the welfare of persons under 18 years of age; or
  - the protection of the parties' private lives.
- If a minister or commissioner satisfies the court that it is not in the public interest for the matter to be publicly disclosed.

22. Are reporting restrictions typically imposed in relation to a trial?

## Civil law

**Pre-trial.** There are restrictions on reporting before a trial. When litigation is anticipated, a lawyer or law firm associated with a civil action must not make, or participate in making, any extrajudicial statement that is likely to prejudice or interfere with the fair trial or judgment of the matter. The media has the right to make fair comment on matters of public interest. However, media reports that could prejudice a fair trial are generally condemned.

**During trial.** There are restrictions on reporting during a trial. As at pre-trial stage, a lawyer or law firm must not make or participate in making extrajudicial statements that are likely to prejudice or interfere with the fair trial or judgment of the matter, and the media has the same right to make fair comment on matters of public interest.

**Post-trial.** Litigation ends when the court delivers its judgment, therefore, the restrictions imposed on lawyers or law firms extend until the judgment is delivered.

## Criminal law

The civil law restrictions also apply to criminal law.

Legal publishers and members of the public have the same rights as the media provided that no extrajudicial statement that is likely to prejudice or interfere with the fair trial or judgment of the matter is made.

23. What is the main function of the trial and who are the main parties to it?

The main function of a trial is to present the facts of the case (by assertion and providing evidence) and to examine those facts in order to reach a judgment (by examination, cross-examination, and re-examination of witnesses and argument).

In civil trials, the parties are the claimant/plaintiff depending on the state and court where the action is being instituted. The claimant/plaintiff is the party who makes a complaint and seeks relief for an injury to their rights and the defendant is the party

against whom the action is brought. In criminal trials, the parties are the state, which is responsible for presenting the case against an individual accused of committing a criminal offence, and the accused.

24. What is the main role of the judge and counsel in a trial?

### **Role of judiciary**

The main role of the judge is to reach a judgment based on the facts of the case put before them by the parties to the action. Judges evaluate the evidence presented, ascribe probative value to that evidence, and arrive at a judgment in accordance with the applicable law. Judges evaluate the evidence at trial, not before. Judges must remain impartial throughout the proceedings and provide their judgment based on the merits of the case. Judges do not interrogate witnesses, but can ask questions to clarify facts or evidence given by a party for a better understanding of the case. The role of judges is similar in both civil and criminal trials.

### **Role of legal counsel**

Legal counsel are advocates for the party that they represent. The main role of legal counsel is to guide the judge to reach the correct decision in accordance with the law. This includes examining and cross-examining witnesses, and presenting evidence that may be relevant to the case. Legal counsel must not interfere with the facts of the case, and their role is to make submissions on the law to vindicate the facts already presented to the court. The role of legal counsel is similar in both civil and criminal trials.

25. To what extent are juries used?

Juries are not used in civil or criminal law proceedings in Nigeria.

26. What restrictions exist as to the evidence that can be heard by the court?

Evidence which proves the existence, or non-existence, of relevant facts is admissible in court, subject to certain restrictions. Where evidence appears to be relevant but is in fact too remote to be of any material consequence to the circumstances of the case, it is not admissible. In addition, the following types of evidence are also inadmissible:

- Hearsay evidence.

- Involuntary confessions.
- Opinions of any person as to the existence, or non-existence, of a fact in issue (or relevant to a fact in issue), subject to certain exceptions.
- Character evidence of any person in civil cases, except if that person's character is relevant to the facts of the case.
- Evidence of the defendant's bad character in criminal cases, subject to certain exceptions.
- Documents marked "without prejudice" which were made in the course of negotiating the settlement of a dispute out of court.

27. Which party has the burden of proof in a trial and at what standard is this burden met?

### Civil law

In civil cases, the burden of proof is on the claimant. If the claimant adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden of proof falls on the party against whom judgment would be given if no more evidence were adduced (that is, the defendant) to rebut that evidence, and so on successively, until all the issues have been dealt with.

The standard of proof is based on the balance of probabilities (that is, in weighing the evidence there is a more than 50% chance that a matter has been proved) and on the preponderance of the evidence. However, where in a civil proceeding the commission of a crime is in issue, then that crime must be proved beyond reasonable doubt. However, in a civil case that concerns election matters, whether the commission of a crime is in issue or not, the standard of proof will be on the balance of probabilities and the preponderance of evidence.

### Criminal law

In criminal cases, the burden of proof is on the prosecution, who must rebut the presumption of innocence which the Nigerian Constitution guarantees to the accused. This legal burden never shifts. However, the burden of proving the existence of circumstances that bring the case within any exception to, or exemption from, or qualification to, the operation of the law creating the offence with which the accused is charged, is on the accused (*section 139(1), Evidence Act 2011*).

The standard of proof required is beyond reasonable doubt. Proof beyond reasonable doubt does not mean proof beyond all shadow of a doubt. Accordingly, if the evidence is so strong against the accused as to leave only a remote possibility in their favour which can be dismissed with the sentence "of course it is possible, but not in the least probable", the case is said to be proved beyond reasonable doubt.

28. What verdicts can the court give?

### **Civil law**

In civil cases, the court can either find that the claimant's claim succeeds and grant the relief sought by the claimant (or grant the relief that the court thinks suitable), or find that the claimant's claim fails and dismiss the case.

### **Criminal law**

The court can either find the accused guilty and convict the accused accordingly, or find the accused not guilty, and have the accused discharged and acquitted.

Where the accused is found to have been insane when they committed the offence, the court can find the accused not guilty by reason of insanity.

Where the accused submits a claim that there is no case to answer, and this is successful, the court will discharge the accused of the offence for which they are being tried.

29. What range of penalties/relief can the court order upon a verdict?

### **Civil law**

In civil cases, the substantive remedies awarded by the courts include, among others:

- Damages.
- Specific performance.
- Injunctions.
- Rescission.

These reliefs must be specifically sought by the claimant, as relief not specifically sought cannot be granted by the court. However, the court can grant consequential relief which, although not specifically claimed, is incidentally necessary to protect an established right. For example, once a claim for trespass succeeds, a consequential relief or order for an injunction will follow to protect possession (*Peter Nwigbo & Ors v Fidelis Ebubealor & Ors (2012) LPELR-9704 CA*).

### **Criminal law**

The penalties the court can order on conviction depend on the punishment prescribed by law for the offence committed. For example, the penalty could be as little as imprisonment for one month for a simple offence (for example for unlawfully wearing

the uniform of the armed forces), or as grievous as the death penalty for a capital offence (for example, murder). Where a minimum or maximum sentence is prescribed, the court cannot order a punishment below the minimum sentence or higher than the maximum sentence. Where the court finds an accused not guilty by reason of insanity, it must order that the accused be remanded or detained at the Governor's pleasure.

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