



INNOVATIONS FOR SUCCESSFUL SOCIETIES

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MAKGETLA: My name is Itumeleng Makgetla. I'm in Abuja, Nigeria. It's the 31st of August, 2009, and I'm here with the former chief justice of Nigeria, the honorable Muhammed Lawal Uwais, who was recently head of the electoral reform committee. Thank you for joining us.

UWAIS: Yes. Thank you.

MAKGETLA: And before you begin, may I just confirm that I've gone through the issues of consent with you, and that this is a voluntary discussion?

UWAIS: Yes.

MAKGETLA: Great. Thank you. Could we begin by your describing your career briefly, and how you came to be involved as the chief justice of Nigeria in implementing judicial reforms?

UWAIS: Well, I became the Chief Justice of Nigeria in December 1995, and by the year—that was during the military regime, incidentally, so by the year 1999 it was decided to return to democracy. I was still the chief justice, and I attended a conference—annual conference in Vienna organized by the United Nations Office for the Prevention of Crime—for Drugs and the Prevention of Crime [United Nations Office on Drugs and Crime], and at that meeting there was an informal meeting of judicial officers, chief justices who happened to be there from around the world, and so we met and the issue of corruption in the judiciary was raised, and it was agreed that we should meet from time to time, draw up a plan of how we can produce a code of conduct for the judiciary. And as an aside, I was being asked if Nigeria would be willing to accommodate the office for—I think it's International Center for Prevention of Crime, something like that, if they can carry out a project in Nigeria. And I said I was willing, and the project was to be on judiciary integrity, and so from there a program was drawn up. The representatives came here, and we agreed on how they would go about it, and they were given two years to carry out the project. So we had our first meeting here—I think the same year or 2001, I'm not sure now. And then I called a meeting of all the state chief justices—judges: Nigeria is a federation; each state has its own judiciary. So I called a meeting of all the chief judges of the states, plus myself, to discuss the program by the UNODC

And we looked at it; we agreed then. It was decided that we needed to pick pilot states where the program can be carried out. So we agreed on three states, and then the representatives of the UNODC went back to Vienna, and eventually they came back. They got the Nigeria Institute of Advanced Legal Studies to do their research. They have questionnaires and things like that. These were questionnaires about views of litigants—people who use the courts, about lawyers who appear in the courts, how they—their idea—how they perceive the work of the court. Whether the judges are straightforward or they are corrupt and at what level, and so on and so forth.

This went on for almost two years; then they came back after getting the questionnaires; then we met again with the chief judges of the states, the people from Vienna, and we examined the results of the research and then decided certain actions should be taken. Like having complaint boxes outside the courts to enable people who are not satisfied with anything that happened in the courts to drop those complaints each day. They are collected, and then each judiciary set up a small committee that will examine the nature of the complaints on a daily basis so that they knew what people were not satisfied with. At the end of that

people complained, for instance, about the registry, that a lot of the case files get missing, or you needed to file documents, the clerks there would demand money, and things like that. And then people complained about the speed of trials, and then we had to look at what caused the delay there. Is it the lawyers? Is it the judges? Or is it the manner in which affairs of the court are being run? And we came to the conclusion that we—they write, and the judge will sit down or listen to the witnesses or listen to the lawyers talking, and he has to write down by longhand everything that was being said. Now this in a way contributes to the delay. So at the end of the day, he will write his judgment—it could be typed; sometimes it's not typed, it has to be longhand, and after delivery of the judgment, if there is need for an appeal the whole record will have to be transcribed by a secretary, and that takes time again. So that gave us an idea of dealing with delay.

About corruption, like I said, the registrars, the clerks who work in the registry, to some extent, were responsible for making demands on litigants or people who had to deal with the courts. And so we had to think of the way we could deal with that. And, like I said, we had these complaint boxes, so we thought anybody who a demand had been made of should indicate and report by dropping in the box what had happened or transpired in the registry. As for the judges, we felt we had sufficient provisions in the constitution to deal with them. Our 1999 constitution provides for the setting up of the National Judicial Council, and one of the functions of the council is to investigate allegations of corruption, and if confirmed to recommend what action to be taken against the judge.

In most cases, it will come to either a dismissal or retirement—early retirement. So that's what we did with the UNODC office. About the time, also—soon after our president was sworn in in 1999, the president of the United States was here, and he came with technocrats to find out, having emerged from military dictatorship, what kind of assistance we would require. And they looked at various aspect of government, including the judiciary. So it was arranged for me to sit down with them and discuss what are the problems of the judiciary and how did I think the United States could help. So I did mention to them one of the problems is this longhand recording of proceedings. Secondly, funding of the judiciary, it was being treated like any government ministry, and so each time we had to go to the minister of finance, cap in hand, to ask for funding. Or when the budget was being prepared, we had to come up with a proposal, which we would have to defend. And in the process we lost almost everything—when we asked for money for books, for instance, they said, “Do you have to buy books every year?” And we had to explain that, yes, the books are revised, they are law books; new laws are being passed and incorporated in the books—and, in addition, when they have to open new courts, we need books that—those are tools of work. But it didn't appeal to them; they didn't seem to see the point. So we thought of that and quite a number of problems.

So they went back, and they thought of an idea that perhaps they should bring out judges to discuss with us how we would go about reforming some of the shortcomings that we had. We had a retired judge of the Federal Appeals Court in San Diego in California, that was Judge [J. Clifford] Wallace. He came out here, and we sat down and examined everything, examined the provisions of the constitution, and then he tried to get us informed about the way things are being done in the United States. So we then thought of how we could—we agreed on some of them, like funding of the judiciary. He mentioned to us that in the United States there is a court administrator. He is responsible for drawing up the budget and also going to the Congress to see to its approval and so on. And eventually, I think there is a percentage, something like 1% of the US budget that is allocated

to the judiciary. So we look at our 1999 constitution, and it hasn't, of course, got that kind of provision. But then we thought, well, perhaps—because the procedure before then, which we inherited from the military regime, like I said earlier, there will be a call circular issued by the minister of finance in respect of the budget for the coming year, and each ministry or department would be asked to come up with their proposals, for both capital projects and recurrent, which deals with salaries, allowances and things like that.

So we would submit as judiciary our—we have what is called the chief registrar, say, for the Supreme Court. Each court has a chief registrar, who was responsible for drawing up the budget proposal for their courts. And those are put together and presented to the minister of finance. Then the minister of finance has a budget committee that will invite each ministry or department to come, after they study the proposals, to come and defend the proposals. The chief registrars will go and questions will be asked, like I said earlier, if last year you asked for books and this year you are asking for books, you would be asked: since you bought books last year, why do you need books again this year? And things like that. Or if you have new courts: why do you want to open a new court? And you have to justify the need for each, and I think that—it didn't work out satisfactorily, because these budget officials are basically administrators, not lawyers. They don't even understand how the judiciary operated. So we had that problem, and the question is whether the practice in the United States could be adopted here.

In trying to work that out, I had to hold a meeting, like I said, with the minister of finance, with the chairman of the Senate Budget Appropriations Committee, chairman of the House Committee on the Judiciary, and the same thing with the Senate. We all invited them because those are the people involved with the preparation of the budget. And we discussed this issue, and luckily for us the minister of finance shows a lot of understanding, and so it was agreed eventually that the budget—because everybody, even the executive, sends their budget proposal to the National Assembly, to the Senate and the House of Representatives, and the final say is that of the Senate and House of Representatives, so it was agreed that the Judiciary should send its own budget proposal now to the National Assembly instead of the minister of finance.

But the minister of finance should have a copy so that they would examine—if there is anything they disagree with there, then they can come before the Senate committee or the committee of the House of Representatives to raise the issue. And the arbiter will be not the minister of finance but the National Assembly. We succeeded in getting that done, and it has worked wonderfully well for the judiciary ever since then.

MAKGETLA: Can I ask, in negotiating that with the minister of finance, were there any sort of unforeseen obstacles in trying to bypass them?

UWAIS: No. Like I said, maybe by the way we went about it. First of all, we had Judge Wallace. We called that meeting, and we—I spoke for the judiciary to mention the problems we had been facing with the budget, the treatment we had been given. Then Judge Wallace had to explain the procedure in the United States, and the minister of finance asked questions and so on. He didn't take a decision there and then but said he would go and discuss with officials who would then come back to us. So they went and did that, but like I said, the minister showed a lot of understanding. So we didn't have problems. When it comes—we all had to agree that this should be done. But the time—if I could take you back. During the military regime in the government of General Sani Abacha, after I became the Chief Justice in 1995, he was of the view also, surprisingly—a percentage of the

national budget, he suggested 1.5%, should go to the judiciary. That was his idea.

But the minister of finance then said no, that that amount might be too much for the judiciary, or it would be inadequate. So there is the need to know what are the needs of the judiciary, and then on the basis of that to determine what percentage should be given. You see, he—although on the face of it it looks reasonable, that wasn't the reasoning. [Laughter.] He wanted to kill the idea. He was not happy with it. So he suggested to the head of state, "Why don't you have a joint committee of officials of the Ministry of Finance and officials of the judiciary to look into this and come up with some solution." And so President—General Abacha then agreed, and for us to have the committee we nominated representatives of the judiciary, but the Finance Ministry did not tell us who were their representatives, and they were to call the meeting. And no meeting was being called. So we lost that year. The following—the year that was supposed to prepare to reach agreement upon and produce a budget, there was nothing agreed upon. So that's the kind of problem we faced. The president had a very good idea, was prepared to assist the judiciary, but the administrators, the technocrats, the bureaucrats were not in favor, and so they used all sorts of techniques to kill the idea.

MAKGETLA: I see.

UWAIS: [Laughter.] So, like I said, this—what was democracy, and the way the meeting we had we succeeded in getting—it was a different minister of finance, because Abacha died, and so all his ministers went with him, and we had another government and new ministers were appointed, but it was just for a period of 11 months. We had elections and so on, so it is after the elections that we got this particular minister. And, incidentally, he was serving not for the first time. He had been the minister of finance before, so maybe that had helped in his showing a lot of understanding to the problems of the judiciary.

This is how we evolved the present system where the judiciary would draw up its budget proposal, submit it to the National Assembly and the minister of finance. And to the best of my knowledge, since we started there has been no objection from the minister of finance. It has worked smoothly.

MAKGETLA: Has this system improved the funding for the judiciary?

UWAIS: Greatly. Greatly at the federal level. Unfortunately we have not succeeded at getting that done at the state level.

MAKGETLA: Why is that?

UWAIS: It also started from the military days. Like I said, when Abacha came up with this idea of deducting a percentage of the budget for the use by the judiciary, he suggested this to the governors, that they should adopt that procedure too. Now the governors did not like it. They felt the judiciary in their states was already independent, and to get them cut off from the executive completely without coming for favors from the executive, they would be too independent for their liking. So the deputy of General Abacha who supervised affairs coming from the states called a meeting of the governors and said they should work out this—this is what the head of state had suggested. And they told him, like I explained, that the judiciary was already—they couldn't control it 100%, and then at least with the funds controlled by the governor, the Chief Judge would have to come cap in hand and beg the governor for favors from time to time. And that shows the

governor is superior [laughter] to the Chief Judge. This is how they saw it. And then they can exercise some element of control.

From the very beginning they were against it, so it didn't work in the states. And even when we got democracy in 1999, the constitution unfortunately provides that judges' salaries and allowances would be paid by the federal government. These are state judges, state judicial officers, and it is the national judicial council in the budget proposal for the judiciary that includes the salaries and allowances of the judges of the states. So there—they are, they are very happy. Yes. They don't have a problem at all. But the rest of the budget, like a budget to run the courts, salaries for the support staff, all those for vehicles, housing and things like that, are the responsibility of the states, and there is a section of the constitution, Section 121, subsection 3, that says all monies due to the states—I mean due to the judiciary—should be paid after the approval of the budget by the State House of Assembly, should be paid over to the heads of the courts. Because, apart from the high court, in the state we have the Sharia Court of Appeal. Then we have the customary court of appeal, so the idea is that each court will have its own budget, and they are to receive payment directly from the appropriated funds for that purpose.

Now this is not observed at all in the states. It's not observed. The judges are happy with their salaries and allowances, but they are not—as if they are still under the military, have to go from time to time—like an ordinary conference: if you have a conference abroad that the judge is to attend, there wouldn't be the fund for it; the chief judge will have to go and explain to the governor that this judge is nominated to attend a conference and it will cost so much and we need the funds for it. Then the governor will sanction it if he agrees. If he doesn't agree, that is the end of it. So anything that the judiciary needed for recurrent expenditure or capital, this is how—. There would be a budget, it would be approved: the judiciary shall receive, for instance, 20 million naira, but at the end of the day not a kobo is allocated.

MAKGETLA: Are there any examples of states where the judiciary has been able to perhaps build coalitions to put pressure on the governor to honor those budgets? Or the assembly?

UWAIS: It's difficult putting pressure, because unless you have a case in court, where judgment is given, the governor can be forced to obey the court order. If he doesn't it could lead to impeachment because he's neglected a provision of the constitution. But for the sake of good relationships [laughter] the judges are very, very reluctant to take that step. It's rather drastic. And I remember they used to come to me to say if I could write to the governor, and I used to tell them that, look, we are in a democracy now. You have to exert your right. You have to show to the governor that you are not asking for favor. This is what has been provided by the constitution, and you expect the governor to comply.

We had one or two states where the support staff went on strike. They said—and the judiciary was being starved of funds—and that unless the situation improved they are not going back to work. This was a union, and the governor, who in fact was a lawyer, eventually gave in and promised to comply.

But after some time he reneged. [Laughter.] And the situation is still as it used to be. So that's one area where the governors have frustrated the provisions of the constitution. The state judiciaries have that problem. So this is what happened with regards to budget.

On the issue of integrity, we have a lot of problems there which we try to fight, and luckily the national judicial council also controls, or supervises the state judiciary. Both federal and state. And so the National Judicial Council has been able to supervise or deal with issues of corruption.

But we have problems also there. If you have a state judge who has been found guilty of corruption and you recommend he should be removed or retired, if he is to be removed, the governor has to refer the issue to the National Assembly—I mean to the State House of Assembly—and the State House of Assembly will have to pass a two-thirds majority, a resolution supported by two thirds of the members, saying the judge should go.

Now, if he is bribed by the chief executive, and this comes out, and the National Judicial Council recommends he should be removed, that recommendation by the constitution will have to go the governor, and the governor may be reluctant to present the case to the House of Assembly, or he may present it to the House of Assembly. The reason why the judge was bribed may be political, and so because of that, and perhaps because the governor's party controls a majority of the members in the House of Assembly, they would be reluctant to remove the judge. So we have a problem there. Here we are with a corrupt judge who shouldn't be there, and he has been found guilty, and there is a recommendation he should be removed, but that recommendation will not be implemented for that kind of reason.

Secondly, you may have a similar case where the judge—governor is not involved, government is not involved, maybe political parties are not involved; perhaps an individual was the victim, and you recommend the judge should be removed, the National Judicial Council will recommend to the governor in the normal way, and the governor can be put under pressure.

MAKGETLA: OK.

UWAIS: Yeah. So you do have that kind of situation.

MAKGETLA: That's interesting.

UWAIS: Yes. The other one is that where you have the chief judge—unfortunately we have a provision in the constitution that the governor and the House of Assembly could impeach a head of court without reference to the National Judicial Council. So if a judge or a chief judge tried to establish his independence or he has a disagreement with the governor, you can find—we have had instances where chief judges were removed that way.

MAKGETLA: Was there any appeal for them?

UWAIS: Yes, one. I don't know what has happened now. There was a judge in Plateau State that was removed for having disagreement with the governor, and he went to court; the judgment went against him and he appealed to the Court of Appeal. But I retired and I haven't heard anything more again, haven't seen him to find out how far he has gone with the appeal, and the papers do not seem to be interested in pursuing or following the progress in the case. So I don't know what happened.

Another judge was in Sokoto. This is a grand khadi, who is the head of the Sharia Court of Appeals there. He got removed also by the House of Assembly, and I know he filed a case, I think in the federal high court. The federal high court

said it had no jurisdiction. So he had to go to another court. In the end I don't know what happened.

So those were the two cases where the judges who have been removed challenged the removal in court, but unfortunately they don't seem to have succeeded. Yes. At least I know in Plateau State the chief judge was replaced by somebody who is there now. And the same thing in Sokoto, where the grand khadi has been removed and there has been a new grand khadi.

MAKGETLA: Is there anything the National Judicial Council or any other body or committee can do about the situation where they feel that a judge is being removed on a political basis?

UWAIS: No. Nothing, it seems, since—the National Judicial Council is supposed to act as advisor to the executive. The executive could refer any judicial matters to the National Judicial Council to ask for its opinion. The power thus given to the National Judicial Council is to recommend. Now, if you recommend, it doesn't mean the fellow to whom you are making a recommendation is under any obligation to accept your recommendation. He has his own free judgment to accept or to reject. So it's not likely the National Judicial Council will challenge the exercise of discretion by any governor. The discretion can be exercised either way. Yes.

So that is the situation. Another example is when Judge Wallace was here—because he left. Then there was Judge [Henry] Ramsey again, who came also from the US, but he didn't stay long. But then we had—there was a decision to send someone else from the National Center for State Courts from the United States, so they took over the kind of role that Judge Wallace played, and they were coming up with programs about judicial integrity, about court recording, and it was suggested we should computerize, we should have a recording system in court, and then—on tapes—at the end of the day, the tapes can be transcribed by the secretary. And that way you quicken—you avoid delay in producing records. So we worked on that. We had computers. We had these tape recordings in the court rooms—in the Supreme Court at least. We started with the Supreme Court to see how it would work. And computer is a difficult thing. We tried to get the judges organized to attend courses and so on. Supply each one with a desktop, but not everybody was keen. [Laughs.] At the end of the day, after a series of training, I think not more than four or five of us, out of 17 judges.

MAKGETLA: Really.

UWAIS: Really. If you go to their chambers today, you will find on the table of each judge a computer that has been just there as an object, not put in use. So that's one problem which we have had. That the reluctance—they said they have been accustomed over the years to the method we had been using, and they would rather stick to that than submit to a computer. [Laughter.]

So we—that is one problem, and even as the generation of judges that we trained on the first set of computers and so on retired, you have new ones come in from the Court of Appeal, and the Court of Appeal has not computerized—I don't know now, after I retired. So they too had to be trained. I'm not sure. I have asked a few of them if they have started using the computer and they said, no, they have not been trained. So there is that kind of problem you want to reform. You have received the necessary advice. You have provided the necessary instrument, but then the fellow who is to work on the instrument, for one reason—

for being conservative, perhaps—for one reason or the other is not keen, so the whole idea gets stuck there.

MAKGETLA: Are there any ways that you have tried to encourage them, perhaps by bringing their attention to the fact that these are designed to improve the speed of the court process?

UWAIS: Oh, yes. They know it. At the training, even, they are shown how useful it could be. We had meetings, and we had Judge Wallace to speak to my colleagues and so on, and we have seen how it works. For instance, we used to—if a panel of the court sits, maybe a panel of five or seven, and at the end of hearing arguments they hold a conference and agree who should write the leading judgment, we would go and write, draft the leading judgment. Our secretaries—we write in longhand or dictate to the secretary, and the secretary would type, and those typed copies would be sent to every judge.

Now we said, with a computer, the judge, if he wants, on his own, can type his own judgment, with his secretary not knowing what it is, and then with the networking we have he could send the draft to his colleague, who would read it on the screen, or if he wants to print it he could do so from his own computer and can comment. And is so easy for correction, because if you type and send and corrections have to be made, the secretary has to sit and start typing all over—maybe a portion is to be removed, a new one is to be added, so she has to start all over with the typewriter. But if it's a computer, she could just go straight, remove this—everything is easy. But despite all that, I could not get them convinced. [Laughter.]

MAKGETLA: For those who were convinced, why was that? Was it because they used computers ordinarily? Or...

UWAIS: You see, some people didn't like mathematics right from school. So to sit down and figure—you have to learn the keyboard, how to pick the figures, and then you have this screen, and you have the mouse where it will go to—all this, to them, it's something they don't have the patience for. So materially, they just ignore it. This is what I have discovered in some of the people, that anything mechanical they are not interested, so there is nothing you can do to get them convinced.

I don't know now. Maybe with time and with everybody now using computers and so on, maybe they have changed their attitude toward using computers.

MAKGETLA: And have there been efforts at computerization at other court levels?

UWAIS: Computerization?

MAKGETLA: Yeah, beyond the Supreme Court?

UWAIS: Yes. You see, you have to buy the computers and organize training. Some state governors give some independence to their judiciary, and so they made money available to the judiciary to buy computers. I have known Lagos to have done that. I've known the Rivers State to have done that. I have known—nearly all the states, I think at least half the states now, have computerized.

MAKGETLA: And they are being used?

UWAIS: They are being used. They are being used. Yes.

MAKGETLA: Great.

UWAIS: But the recording, court recording is different. Computers you have in the chambers and so on. In the courtroom, it is the court recording system. Now part of the problem—the Supreme Court is one court; if you have the equipment in the courtroom it is going to be used by everybody. But at the state level, because you have individual courts manned by a single judge, the costs can be much, much higher than what the Supreme Court will spend.

And with the difficulty in the budgetary system, a lot of the chief judges did not succeed—by the time I retired—did not succeed in getting the funding from the governors. Maybe the governor will say, we'll make available half the amount this year, and then next year if things improve he'll make the other half—something like that. So I have no idea now, but there was that problem even before I retired.

MAKGETLA: You've listed several areas that you addressed and you tackled around judicial integrity, computerization, around improving the budgetary responsiveness of the government. Are there any other key areas of reform that you tackled that you would identify as your major areas of change?

UWAIS: In the judiciary? Well, the problem is that if you're out of the system—before, I occasionally would meet with the chief judges, I could ask what is the progress, and how far have you gone on this or that? But since I have left service, which is over three years now ago, I have very little contact with the chief judges, so I hardly know what is going on in their states, how far they have gone with some of the projects.

You see, for instance, in some, we introduced a system at the National Judicial Council that judges should submit returns of the cases they handle on a quarterly basis. From there you know the volume of work, whether there is justification for having more judges or not. Now this came about because when we had our former president—under the constitution, like I said, the federal government is responsible for paying the salaries and allowances of judges of the superior courts. And so the states then look at it as, "All right, we can go on and have as many judges as we want, since it is the federal government that will pay."
[Laughter.]

MAKGETLA: I see.

UWAIS: And this went on for some time. Then the Ministry of Finance observed that our budget was increasing at a rate that they were not comfortable with. So they mentioned it to the president, and the president mentioned it to me to say, "What is happening?", that the Ministry of Finance had indicated our budget for salaries, allowances was growing out of proportion. So I explained to him that the power to increase number of courts, by amending the higher courts law, rests with the states' Houses of Assemblies. And so the states wanted to take undue advantage of the fact that they are not to pay the salaries of any judges that were appointed.

He said, "No, there has to be a way. The federal government has limited resources too, just like the states. So this shouldn't be so. We have to find a way of checking that." So then we came up with this idea of receiving returns from each judge. Number of cases pending in his court. Numbers that have been cleared during the quarter and numbers pending, and things like that.

So from the number of cases. If you say on average a judge should not have more than 300 cases but he is having 500, then you can see if there is the need to have more judges, and on the basis of that, since we—the National Judicial Council were responsible for submitting the budget proposal, collate all the proposals from the states, and would present it to the National Assembly.

Even in compiling the proposal, the National Judicial Council was able to say no. If you ask for 10 additional judges, the volume of work in your judiciary does not qualify or justify for that. And therefore, if you look from the figures, you can do with one or two. So that will be made possible. So that's how that is being controlled.

MAKGETLA: Can I ask further details about that? How did the information flow from the judges to the NJC eventually? Would a judge fill out something that went to the court that—can you just explain the process, the way the information traveled?

UWAIS: Within the judiciary, the judge will submit his return to his chief judge. The chief judge is supposed to vet the return. Then, if he's satisfied, he forwards that to the secretary of the National Judicial Council, and the National Judicial Council sets up a subcommittee that will look at all the returns and report to the National Judicial Council. That is the manner in which it is being dealt with.

MAKGETLA: If there are incentives to want to increase the number of judges in their state system, was there any concern that the information provided might not be accurate? And what mechanisms was there for overseeing that?

UWAIS: Information about what? About the cases?

MAKGETLA: If the information given to the NJC was supposed to demonstrate the need for further judges, there might be an incentive for them to play with the figures...

UWAIS: Oh, inflate maybe—yes, because if you have been doing this over the years, the trend is there, it's clear. [Laughs.] And if you increase—and it's a serious offense, the judges know it. If the NJC should discover a judge is giving false information, like inflating the number of cases he has been disposing of, or—they do go, our supervisor or inspectors, who will go sit with the registrar and say, "You know, you have indicated you have 200 cases, can we see the files? Yeah. On those cases." And that way they will know.

MAKGETLA: Was that done with suspicious cases? Or is it arbitrarily?

UWAIS: No it's at random. It's done at random.

MAKGETLA: And when you say that courts saw that they could increase the number of judges they had because they weren't financing them, do you think that was because judges wanted to ease their caseload?

UWAIS: No.

MAKGETLA: Or is it because there was an actual need?

UWAIS: No, there could be a genuine reason for that. In fact, one other way that the National Judicial Council also check on that: they said, all right, the governor will have to indicate that there is a courtroom that has been built, a befitting courtroom for that new judge. Housing, because the government provides housing for the judge. Transportation because the government provides a vehicle

for the judge. Unless all those are provided, are on the ground, they will not appoint a judge. Because they don't want a judge appointed who has to stay in a hotel instead of befitting accommodations, or who will have to use a substandard courtroom. These are all introduced to check [laughter], to make sure that the appointments are not just made for the sake of getting salaries and allowances paid by the federal government. To ensure that the situation is genuine.

MAKGETLA: If you look at this vast number of reforms that you were engaged in overseeing, what would you say were the most effective in terms of their impact on communities or in opening the space for further reforms?

UWAIS: Well, impact on the community, maybe, is difficult to assess. Like I said, now in most of the courts they have complaint boxes. So any member of the public not satisfied with anything that happens in the court has the opportunity to bring it to the notice of the chief judge, or the chief justice, as the case may be. And of course, action then can be taken to put things right. I think, from that point of view, it helped. Secondly, we—corruption in the courts, there is no doubt there is corruption, even by the judges. Now, what we discovered is, sometimes the lawyers are involved. They will tell their clients: if they want to win their case, they will have to bribe the judge. Now the client doesn't have the courage to go near the judge to offer money, but he will use the lawyer as an agent, and the lawyer could be deceiving the client, will receive the money on the pretext that it is going to the judge, and it will never be mentioned to the judge.

Sometimes, after the judge has given a judgment against that particular person, he will turn around and say the judge took his money and did not play ball. [Laughter.] So this will come out to the public, and the National Judicial Council will investigate, and they will find that the judge is not at fault at all. That it is the lawyer that deceived the client. So we had some instances like that. Of course, we had to refer such complaints to the disciplinary committee of the bar, and we had lawyers being disbarred or even being prosecuted because we have the EFCC [Economic Financial Crimes Commission]; we have the ICPC [Independent Corrupt Practices and Other Related Offenses Commission].

So the general public has to some extent been educated that they should not succumb to any enticement by their lawyers to bribe the judge. They could get a judgment if their case is good without bribing the judge. We've succeeded to some extent in enlightening members of the public in that respect.

MAKGETLA: OK. If we look at those two reforms, it does seem you might encounter resistance from people who benefited from the way things previously worked? Was that an issue, and how did you address that?

UWAIS: No. Yes it's true, we—we had an issue, we had problems. I personally, for instance, was being accused of taking bribes. [Laughs.] And I couldn't believe it. I had been a judge since 1973, some thirty years as a judge; not for one day was I accused of corruption. But that came about from two angles. We were doing criminal cases, and unfortunately our criminal—we were doing political cases, not criminal; we were doing political cases, and our politicians can go to the extreme unfortunately. It is not refined, our politics. So because the—this case involved a governor, and the issue with the governor was whether he was an ex-convict before contesting election. So the effort was being done, he was being challenged, that he should not be the governor because he was an ex-convict. Now there was the need to get records of the court that so-called convicted him. And then, by examining the record, asking questions and so on, people giving evidence, the court will be able to arrive at a position.

So doing that particular case was done in the high court. It was said, it wasn't found that this governor was convicted. There was no record, in fact; you had to go to the police where it was reported. How the police took the case to the court. How the court heard the matter and came to a decision. The records were not satisfactory. That could not be established. But somehow, the case was before us, we're hearing this case, when suddenly it was said of us on the panel—it was leaked out, written and so on, that we had been bribed by the governor, that in any event our judgment would go in his favor. So it was quite shocking to me and to all of us. Now the issue was, I was the chairman of National Judicial Council, and there is this kind of complaint. So I just said, "All right, the best thing is we'll refer the complaint to the National Judicial Council." I disqualified myself. I should be investigated. We had that done and it wasn't proved. Of course that wasn't it, it was frivolous. Yes. So that kind of situation does arise.

Another one. I had my office burgled as chief justice. That never happened before, but again there was an election petition against the election of the president, and I considered myself—as the chief justice, I can't shy away from such an important case. So I sat, but some people in support of the president felt that with me there they couldn't approach the judges. They couldn't get me to do their own bidding, and so they needed to find a way how they could get me out of that panel. The first step that was taken was that they should go and find out my bank and my account number, and that they would put money there, and they would come to the court and say I had been bribed. That I should disqualify myself because I had taken a bribe in respect of that case.

But the following is that since that didn't succeed, my office was burgled, just to put fear in me. Now, of course, the burglars damaged some metal cabinets in my office, in my secretary's office; up to today I don't know what they removed or what they were looking for. And since we were not keeping money, it's only documents, whether it—I just couldn't imagine what was needed. And for somebody to have access to the—an ordinary burglar couldn't—the Supreme Court has watchmen all over in the night. It happened in the night. And I couldn't see anybody getting in there, hitting...matters that you have to use an instrument that would either make noise or you have to use force, which will involve knocking, and not a single fellow—. Of course, people who knew how the security agents, they operated, told me it was an inside thing. So we do have that kind of intimidation. Well, I had it during my time.

My successor was there for seven months, so he was lucky he didn't, and the current chief justice who succeeded him also served under a different regime. So he may not have experienced some of these challenges—he is retiring in December; three years he has been there. So these are some of the obstacles. You have to be a clean person, straightforward to face them, actually.

MAKGETLA: What would you suggest for other people who come under that kind of pressure for dealing with it? Did you ever make these issues public? Did you talk to people about it? How did you—?

UWAIS: Oh, I—the petitions, this one everybody knew; it's not secret, but the National Judicial Council investigated and absolved us, and the lawyers who wrote the petition were referred to the disciplinary committee of the bar, and the committee found them guilty, recommended their names should be struck off from the register of practicing lawyers. So this is known generally.

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- The same thing with the break-in into my chambers. That was a news item. The newspapers, the radio, everybody carried it. So, again, it's known...
- MAKGETLA: OK. When you said that you would subject yourself to an investigation, did you have full confidence that the investigators would not be bribed or...
- UWAIS: You need to look at the composition of the National Judicial Council. They are retired justices of the Supreme Court and Court of Appeal. They are the president of the Court of Appeal. The most senior justice of the Supreme Court after the chief justice. Then there are five serving Chief Judges of the states. Then there are five members of the bar, nominated by the Bar Association, and then you have two laymen of—they say people of unimpeachable integrity; that is the expression. So those are the people that constituted it, and I made myself available. I had to appear and answer questions before the sub-committee they set up.
- MAKGETLA: Moving back to the reforms that you discussed and setting up the complaint boxes: sometimes mechanisms like that may seem to the public to be a toy telephone if they're not acted upon, so the people can voice as many complaints as they like but it doesn't go anywhere. How did you ensure that it was actually meaningful to people who voiced their concerns?
- UWAIS: Now, what we did—because still the judiciary is structured on a federal basis; you cannot dictate from the federal level what should happen at the state level. But you can work hand-in-hand. This is why, when we agreed with the United Nations Office for Drug and Crime, we called the meeting of all the chief judges and said, this is what we intend to do. They all agreed. We approved the plan. We selected the states that would serve as pilot states because—so that whatever happened there would eventually be adopted in all the other states.
- Now each state has its own judicial service commission. It is only when it involves a judge of a superior court that the matter comes to the National Judicial Council. If it involves support staff or magistrates, the lower level judiciary, the state judicial service commission is supposed to deal with that.
- So this is how it is being dealt with. If there is a complaint in the complaint box, each court has its own committee that will go through the complaints and investigate. If they feel that the complaint is substantive, then that—it has to be—the office has to be disciplined. That will go to the state judicial service commission that will deal with it as it deems fit.
- MAKGETLA: The other question I had regarded anti-corruption. What other measures were taken to deal with concerns about bribery? You mentioned education of the general public. Can you perhaps explain what exactly was done on the education and public engagement front?
- UWAIS: There are posters. The UN body suggested posters: "Don't give bribes," things like that, and these are kept on the notice board of the courts—and the fact that you can also complain; the box is there if you are not satisfied with the way you are treated in the court premises—even on the radio, like jingles and so on.
- MAKGETLA: OK. If you look at many of the reforms, and not just that, was it important to build a public constituency for those reforms? The reform efforts themselves?
- UWAIS: Yes. The research that was given to the Nigerian Institute of Advanced Legal Studies is the perception of lawyers, perception of the public and so on, of the

judiciary. So anybody walking by the road who was met was asked, "What do you think about our courts? Are they clean? Do they take bribes? Do they give the right judgment?" And things like that. And all that was compiled and produced; it turned into a book. And so it is known what the public impression—the public have of the judiciary, and what needs to be done to either prop up their perception, or if no action is required, since they do not complain in that respect. It's all known from the report. And then the judiciary worked towards that. Toward achieving the solution.

MAKGETLA: And was it seen as important or not to get the public to advocate for some of the reforms? To sort of build up public support? Or was this seen as something that should be dealt with within?

UWAIS: No. It's not given to the public. Well, like I said, we asked for suggestions from the public. This was done during the questionnaire period.

MAKGETLA: And you've touched on some of this before, but I'd like to ask generally how you went about building support for reform. Who did you see as allies you could talk to and colleagues you could count on when you were trying to initiate these?

UWAIS: Well, we got to some of the non-governmental organizations. There were a few that we got involved with; each time we were holding meetings we'd invite them to participate. Like Access to Justice or something like that. We got the NGOs and the civil society organizations to participate in what we were doing.

MAKGETLA: What was the role that they played?

UWAIS: Not much. Well, they come up with suggestions, or information. But not much. Because they are not organized towards that. This is part of the problem. They get their funding from abroad, and those who fund them tell them what they want them to do. So they concentrate on that.

MAKGETLA: So they concentrate on a narrow issue? Is that what you mean? So there might not be overlap with what you're working on?

UWAIS: Yes.

MAKGETLA: OK.

Another question I have concerns deployment, by which I mean sort of managing or organizing people to get jobs done. When you were instituting some of these reforms, did you have to seek additional talented people to bring in to help you with them?

UWAIS: Well, yes and no. I have told you how we went about it from the very beginning. We got the UN people involved; we got the United States officials involved. Then we had the National Center for State Courts from the US. Also here, they worked with us for I think about two years. So a lot of the assistance on support was coming from those organizations.

MAKGETLA: Okay, what would you say, again—this is thinking, this is a message to other people engaged in reform. What was the key role that they played? Was it in developing new ideas for reform? Did they provide funding? What else did you see as the role that they played in this effort?

- UWAIS: No, we didn't get funding as such, but we got assistance. The National Centre for State Courts, actually it was USAID [United States Agency for International Development] that was involved, and they brought in the National Centre for State Courts to do things on their behalf. Now they were, in a way they assisted, if a workshop is organized for magistrates, for instance, who will come to Abuja from the different states, and they would be here for a day or two, USAID would provide the funding for their accommodations and eating, and even the hall that might be used for that kind of thing. We got that kind of funding or assistance.
- MAKGETLA: Many people that we've spoken to have discussed the difficulty of introducing reforms when they have to deal with a civil service that may not share their vision. Was this an issue in some of these reform areas, and how did you address that?
- UWAIS: No, not with the judiciary. We control our own staff, and if we give instructions they're normally carried out, and we didn't experience that.
- MAKGETLA: Another question I have regards the pressure that leaders might experience to appoint people who are from certain important groups or from different factions or friends or family, or leaders that have to deal with those pressures on their subordinates. Was this an issue within the judiciary, within courts, and if so how was this dealt with?
- UWAIS: No, in fact, we didn't have an organized union, before, within the judiciary, but now we do. The junior staff came together to form a union; part of their complaint was that if the judges receive their salaries, allowances from the federal government, they too—like I said, the problem in the state—they too would like to receive their salaries and allowances from the federal government. They put pressure, so much, not the federal judiciary support, but state judiciary. I tried to explain to them that it is the constitution that says this is how it should be done. If you want your own situation to change, you have to put pressure on those who will amend the constitution to bring you in, not on the judiciary itself, not to paralyze the work of the judiciary when the judiciary is helpless; there is nothing they could do in that respect.
- So that union is still there. But their grouse is not with the judiciary itself but with the whole system.
- MAKGETLA: Are there cases where perhaps people may appoint clerks or secretaries or people like that out of response to some pressure that is being put on them to employ family or friends or people who are important?
- UWAIS: Well, you can't rule out that. At the federal level, what we do is, we have the Federal Judicial Service Commission with the chief justice of Nigeria as the chairman. The membership, the heads of the other courts, federal courts, are there. Then the Bar Association is represented, and the lay persons are represented on the commission. Now, anybody who wants to join the federal service, not as a judge but as a registrar, as a clerk, as a driver, and so on, it is the responsibility of the Federal Judicial Service Commission. Because it is such a huge number, what we did is, we delegated the power to appoint from the lowest level up to what we call grade level six. But for anybody to be appointed on grade level seven, which is a senior position, it will have to be done by the Federal Judicial Service Commission. So the chief registrar is responsible for appointing the lower rank, whereas the higher rank will be appointed by the Federal Judicial Service Commission.

What we did is that if you wanted a job, you would have to complete a form where you give information, details, and so on. Those applicants—if there is a qualification you want, because once you advertise, you have to advertise the job of a registrar for instance is vacant; any interested party should apply.

Now, once they apply you look at the qualifications. Your advert would have said a degree in law or something like that. So you look at whether the applicant has a degree. If he has, it is the responsibility of the secretary of the Federal Judicial Service Commission to short-list, because you can't interview everybody that applied. But those with good qualifications are short-listed, and their names are presented to the commission. The commission will then invite them for an interview.

As such, each member has the same set of questions, and he will give a mark to the candidate as to his performance. At the end of the day you add up what mark every member has given, and that will be the mark scored by the candidate. When you hear all the candidates, you look at all the markings and then you go by the score. That is how it is being done, that is at the higher level. So it is very difficult to say that members would only recruit their own relations or people from their area and so on. So that is avoided at the higher level.

At the lower level, because you delegated to the chief registrar who is the head of the administration of the court, it could be abused. It is possible. But what we did is, if anybody is employed at a given period between the sitting of the commission to the next sitting, details about such recruitment will have to be presented to the commission. The commission will go through the kinds of details we want, the name of the candidate, from where he comes, what position he has been given. We could look at his state of origin, because we have even provision in the constitution about federal character, that you have to look all around, you can't just concentrate in one location. So we look at that, and if all that is satisfied then we approve.

MAKGETLA: So that becomes an oversight mechanism.

UWAIS: Yes.

MAKGETLA: I understand also that within—

UWAIS: But I don't know what they do at the state level, because each state has its own Judicial Service Commission, and the Judicial Service Commission is responsible for recruitment. So we have no idea. It is not our responsibility at the federal level to know how things are done at the state level.

MAKGETLA: Talking about the state Judicial Service Commissions, I have read somewhere that it has been a concern that the governor appoints two members to it—is that right?

UWAIS: Yes.

MAKGETLA: And they are political appointees.

UWAIS: Yes.

MAKGETLA: What successful ways have you seen of people on the commission working with those appointees? We're interested in how people are able to accommodate people.

UWAIS: You see, the problem with the composition of the state Judicial Service Commission is that apart from the chief judge, everybody else there is an appointee of the governor, because the attorney general is a member. He is appointed attorney general by the governor. The members, lay members, are also appointed by the governor; they may be party men. Except the Bar, but even there, the Bar Association has I think two representatives, but again, they have to submit, I think—I'm not sure now, I have the constitution—let me clear my mind about the composition.

MAKGETLA: How large is the commission?

UWAIS: It consists of five, six, not more than seven members. Because of the manner in which they are appointed, they could be influenced. Before now, we had a governor who was a lawyer, even when judges were to be appointed, if the names of the candidates were taken to him, he will reject them, and he will say what of Mr. X, Y and Z? Because he knew some lawyers that he would like to be appointed. The chief judge will say, Your Excellency, that's not your role to nominate. If you don't like these candidates it's all right, you can reject them, but you can't nominate. The constitution does not allow that. He'll say, all right. He got his attorney general to go to the meeting and say they were operating a democracy, and therefore why should it be the chief judge who will bring names of candidates for appointment as judges. Each member should have the right also to do so. So [laughter], and it had to be put to a vote, and the chief judge was defeated.

MAKGETLA: So this was a provision that they could overturn with a majority vote?

UWAIS: Oh, yes. It is not a court; it is a meeting, a commission. So that kind of thing does happen at the state level. If you have a powerful governor he could interfere.

MAKGETLA: Is there anything a chief justice would be able to do in that context, perhaps working with other partners such as the National Assembly, to build support for allowing them to have sole control over submitting names or anything like that, to sort of protect the decisions from the—.

UWAIS: The National Assembly can't interfere. It is the function of the executive. It is now the membership of state Judicial Service Commission: the chief judge, who shall be the chairman, the attorney general of the state, the grand khadi of the Sharia Court of Appeal of the state, if any, the president of the Customary Court of Appeal of the state, if any, two members who are legal practitioners and who have been qualified to practice as legal practitioners in Nigeria for not less than ten years, and two other persons not being legal practitioners who in the opinion of the governor are of unquestionable integrity.

So in fact, everything is done by the governor. Everybody, even the Bar Association, is not involved because I thought they were. So there, you could see, the government could influence the action of the commission without even going through the chief judge who is the chairman.

MAKGETLA: So maybe as we wrap up, I'd like to ask if there's anything in your own sort of background or personal management style that you think has helped you to push this reform agenda.

UWAIS: Anything in?

MAKGETLA: In your personal background or personal management style?

UWAIS: I suppose, yes. First of all I worked in the ministry of justice as a lawyer. I started after qualifying, after being called to the Bar. I started as a pupil state counsel and rose through the ranks to become what was called solicitor general and permanent secretary, because I worked in the Ministry of Justice, and all along I had been attending committee meetings. I had been involved in scholarship awards for candidates who wanted law scholarships. And so on and so forth. So by the time I became chief justice from my previous experience, I knew how to go about the procedures that needed to be followed. That's one.

Two, we had a system, like I mentioned: if you have the most senior justice of the court, because it is anticipated that if the chief justice is not there, the most senior judge will act for him. So I have acted twice, in 1991 I think and 1992, as chief justice when the chief justice of Nigeria was not around. Again, as the most senior justice of the Supreme Court you participate in like the national judicial—the board of governors of the National Judicial Institute which is responsible for the training of judges. The most senior justice of the Supreme Court is a member of the board of governors. So again, by the time you become chief justice you would have interacted with the state chief judges. You would have heard their problems and how decisions are reached and things like that, or assisted one in performing the actual job of the chief justice.

MAKGETLA: Several people have spoken for the need of a reform leader to have a clear vision or a common narrative to help people mobilize around their ideas. How important would you say this is and do you have any advice for people on developing such a common narrative?

UWAIS: The question is not clear to me.

MAKGETLA: The question is, some people have said that it is important for leaders who want to implement change to have some sort of a vision or a common story that they can tell people to get them on board. How important do you think that is?

UWAIS: In my case, as chief justice you are—even within the federal judiciary, you are not in charge of all the courts. You are in charge of the Supreme Court, all right, day-to-day running of the court, but there is the Court of Appeals; it has its own president and he is in charge. Just like you are in charge of the Supreme Court, he is in charge of his own court. He does the day-to-day administration. Then you have the federal high court, again with a chief judge. Then you have the high court of the federal capital territory. All these are federal courts that work with the chief justice of Nigeria.

So you cannot be everywhere; you can't deal with every problem. But you rely on the heads. We come as a body with the chief justice of Nigeria as the head of the judiciary, as the chairman in any meeting that is going to be held. A lot of the dealings, like Judge Wallace when he was here, he was dealing with me as the chief justice of Nigeria. Like the people from Vienna, the United Nations people. When they come, even from the very beginning, I went out to Vienna anyway for the first meeting, where we met and a decision was taken about what they were to come and do in Nigeria. So they started to come here; they consulted me first or in writing.

Anytime I felt there was enough information to pass on, I would invite all the heads of the federal courts. There are areas where we meet anyway. We are members of the Federal Judicial Service Commission. We are members of the

National Judicial Council. We are members of the board of governors of the National Judicial Institute. So there is a lot of interaction even that way. Again, I could approach them and hint to them what I want to be done, or whatever information is available to me, or I could leave it. There is the board of governors of the National Judicial Institute that involves all the heads of courts. So when we come together I present to them whatever ideas I have or suggestions or anything new that is coming. We exchange views. If the majority agree that we should go ahead and do it, then we proceed.

So this is how it was being done. It is not a question of getting everybody to agree, but it is a question of getting the heads of the courts to agree. Then it is for them to disseminate that to the members of their own courts.

MAKGETLA: When you first described the reforms that took place, you put it in the context of your meeting to Vienna, and then also advisors coming to Nigeria just before the president was sworn in. Did you have a sense at the time that the time was right for change, outside of these events that external actors were involved in?

UWAIS: The whole idea actually didn't directly come from me. As I said, in 2000 there was to be the annual conference of the United Nations Office for Drug and Prevention of Crime, and I led the Nigerian delegation to that meeting, just like other countries have judicial officers leading their delegation. You know, it was the idea of the United Nations; it was felt corruption had become a global affair. So the United Nations set up this UN office, and then they thought of how they can assist, bring it to the knowledge of the member state of the UN, how they can assist the member states to fight corruption.

So this is how it started in Vienna. But way back here in Nigeria with democratic government, [Bill] Clinton decided to come after the swearing-in of our president, since we were starting afresh. He came, he brought with him a number of his advisors who met with members of the different arms of government, discussed the problems of the members and then how to find a solution. This is what led to USAID and the National Centre for State Courts getting involved, Judge Wallace coming, Judge Ramsey and the rest of it. We met and it evolved; it wasn't my own idea as such, but we met. I presented the problems that we had, then looked at how we can go about finding solutions. This is how all the reform programs came about.

I had been the chief justice even before then. As I said, I was appointed in 1995 but it was military time. I was there up to 1999, when we were to start a democracy afresh. So it is with the coming of democracy that we started all these programs.

MAKGETLA: Were there any difficulties associated with the fact that there were so many outside agencies working with you? Did anyone say, this is being imposed from the outside? How did you manage that?

UWAIS: Well, there were some misgivings that the United States is interfering in the internal affairs and things like that. But I said no, they are here to assist, it is not interference. The United Nations, the same thing. They didn't come on their own to start with. We said we needed their assistance. It was on the basis of our making a request that they came. So that way I think I allayed the fear of those who felt there was unnecessary interference.

MAKGETLA: Did you say that sort of in conversation, or did you do anything to make it clear?

UWAIS: No, it was generally talking when we meet. These issues were raised, and then I would have to answer.

MAKGETLA: As I said throughout, this program is to help leaders share their experiences and innovations about dealing with challenges that arise when trying to advance reforms. Is there anything that you think we've missed or that you would like to add about your experiences?

UWAIS: Not that I can think of. I think that we have covered the ground, really. We didn't have any opposition, I mean at the federal level. The president, our president [Obasanjo] appreciated—he was briefed that this is what is happening. He too agreed that the judiciary needed a reform. So there was no problem from that angle. Members of the National Assembly were also willing to go with us. In fact, most of them had election petitions. They knew how the courts worked, how the courts had helped in bringing about the sustenance of the elections. They knew how important the courts were and were willing to cooperate. So we didn't have problems from the official angle. But the general public again, I don't think we had problems from anywhere.

MAKGETLA: Great.

UWAIS: They were aware of what was going on. Everybody agreed we needed these reforms. The judiciary needed to improve on its performance under the military, so we had support from everybody.

MAKGETLA: Thank you very much for your time and for sharing your thoughts with us.

UWAIS: It is my pleasure.